

**EXHIBIT F**

**9/12/16 Builders FirstSource-Southeast Group,  
LLC's Motion for Judgment, New Trial  
Absolute, or, in the Alternative, For New Trial  
*Nisi Remittitur***

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September 12, 2016

The Honorable Julie J. Armstrong  
Clerk of Court  
Charleston County Courthouse  
100 Broad Street, #106  
Charleston, SC 29401

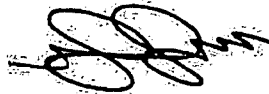
RE: One Belle Hall Property Owners Association Inc., et al. v. Builders FirstSource  
Southeast Group LLC, et al.  
Civil Action No. 2012-CP-10-07594  
Our File No. 00350/01800

Dear Ms. Armstrong:

Enclosed for filing in the above-referenced matter please find the original and one copy each of a Notice of Appearance, Builders FirstSource Southeast Group LLC's Motion and Order Information Form and Coversheet, Motion for Judgment, New Trial Absolute, or, in the Alternative, for New Trial *Nisi Remittitur*, and check for the filing fee. Please return a clocked-in copy of each to us in the envelope provided.

By copy of this letter, we are hereby serving counsel with a copy of this document.

Very truly yours,



Michael J. Anzelmo

MJA:ckh  
Enclosures

cc: Justin Lucey, Esquire  
Dabny Lynn, Esquire

*With offices in the District of Columbia, Florida, Georgia, Massachusetts, North Carolina, South Carolina, Tennessee and West Virginia*

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

2012-CP-10-7594

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

One Belle Hall Property Owners )  
Association Inc. and Marvin T. Meek )  
and Frances E. Hill, individually, and on )  
behalf of all others similarly situated, )

Civil Action No. 2012-CP-10-7594

Plaintiffs, )

vs. )

Builders FirstSource Southeast Group )  
LLC, et al., )

Defendants. )

**BUILDERS FIRTSOURCE**  
**SOUTHEAST GROUP LLC'S**  
**MOTION FOR JUDGMENT, NEW**  
**TRIAL ABSOLUTE, OR, IN THE**  
**ALTERNATIVE, FOR NEW TRIAL**  
**NISI REMITTITUR**

FILED  
2016 SEP 13 AM 11:34  
JULIE J. ARMSTRONG  
CLERK OF COURT

Pursuant to Rules 50 and 59 and all other applicable rules of the South Carolina Rules of Civil Procedure, Defendant Builders FirstSource Southeast Group LLC ("BFS") moves the Court for: (1) Judgment Notwithstanding the Verdict; (2) A New Trial Absolute; and, failing the above, (3) New Trial Nisi Remittitur. The grounds for this motion are those set forth below. Any grounds asserted prior, during, and after the trial in this matter not herein listed are adopted and incorporated the same is if fully set forth below.

**Judgment Notwithstanding the Verdict**

BFS renews its Motion for Directed Verdict made at the close of Plaintiffs' case-in-chief and renewed at the close of the evidence in full. There is no legally sufficient basis for a jury to find for Plaintiffs or for judgment to be entered against BFS. Specifically, based on the grounds listed below, the evidence is insufficient to support a verdict for Plaintiffs, and the evidence affirmatively demonstrates BFS is

entitled to judgment as a matter of law on each and every cause of action asserted by Plaintiffs. To the extent not inconsistent with the relief sought, all arguments advanced in support of BFS's Motions for New Trial Absolute and New Trial Nisi Remittitur also support this relief.

1. The strict product liability claim is barred by the statute of limitations as a matter of law on the evidenced presented at trial.

2. The issue of the statute of limitations was improperly submitted to the jury because the issue of whether Defendant was equitably estopped to assert the statute of limitations based on the actions of or representations of others to Plaintiffs is an equitable issue that must be tried by the Court and not an issue for the jury to decide.

3. The trial court improperly submitted the issue of whether Defendant was equitably estopped to assert the statute of limitations based on the actions or representations of others to Plaintiffs because the actions or representations of others cannot be used to preclude the statute of limitations from barring Plaintiffs' claims against Defendant.

4. Plaintiffs presented, and the trial court improperly allowed to be admitted, inadequate expert testimony or other record evidence to establish that Defendants breached the applicable standard of care with regard to the manufacture or design of the windows.

5. Plaintiffs failed to establish any alleged defect in the manufacture or design of the windows that would support a claim under a theory of strict product liability or breach of warranty.

6. Plaintiffs failed to establish any alleged defect in the manufacture or design of the windows which proximately caused any alleged injuries or damages to Plaintiffs and any product liability theory.

7. Plaintiffs failed to establish any feasible alternative design for the windows as required to establish a design defect claim for a product liability claim as required by *Branham v. Ford Motor Co.*, 390 S.C. 203, 701 S.E.2d 5 (2010).

8. The evidence did not support an award of \$2,163,494.55 in Plaintiffs' favor which demonstrates the jury's failure to properly consider the evidence and the court's instructions.

9. The claim for breach of warranties fails as a matter of law because the Plaintiffs failed to give the required notice and the claim is barred by the express terms of the warranty or warranties given.

10. The jury's award exactly mirrors, and was based upon a portion of a damages estimate prepared by one of Defendant's experts (Tr. Ex. 56, Def. Ex. 325(f)) which contains repair estimates wholly unrelated to any alleged leaks in the windows, thereby demonstrating the jury's failure to properly consider the evidence and the court's instructions.

11. Defendant was entitled as a matter of law to judgment on any claim of damage pertaining to any windows, but was particularly entitled to judgment as a matter of law as to all windows installed in any unit other than the units of the named plaintiffs or in a common-use area since windows are generally a part of the individual units and not part of the common areas of the property by the terms applicable to the property. Therefore, Plaintiffs had no standing to claim damages as to such windows, since no class was certified.

12. The evidence is insufficient to support or raise a jury issue on any of Plaintiffs' claims asserted against the Defendant and judgment should be entered in favor of the Defendant as a matter of law.

13. Plaintiffs failed to present any legally sufficient evidence that any of the Defendant's alleged action and/or inaction proximately caused any harm to Plaintiffs.

14. Defendant are entitled to judgment as a matter of law in their favor because there are no controverted questions of material fact upon which reasonable people could differ.

15. A verdict against Defendant is contrary to controlling principles of law as applied to the facts adduced at trial.

16. Any verdict in favor of Plaintiffs and against the Defendant would be based on pure speculation and conjecture and not on any evidence or any reasonable inferences to be drawn from the evidence.

17. Plaintiffs failed to present legally sufficient evidence for a jury to award any damages to Plaintiffs against Defendant or that they experienced any loss, injury, or damages because of or as a proximate result of any action or inaction of Defendant.

18. Plaintiffs have failed to prove the amount of their alleged damages by competent evidence, and there is no reasonable basis in the record for an award of any damages against Defendant.

19. Any award of damages to Plaintiffs and against Defendant was not based on any reasonable hypothesis supportable or supported or presented by the evidence.

20. Any award of damages to Plaintiffs was improper as a matter of law because it was not based on the evidence and the applicable law, and instead must have been based on the bias, passion, prejudice, or improper motives of the jury, including the desire to leave

the courthouse after being held for deliberations late into the night while storm conditions were threatened in the area as evidenced by their selection of Trial Exhibit 56 (Def. Exhibit 325(f)) upon which to base the damage award even though that exhibit contained damage repair estimates that were, as a matter of law, causally unrelated to any alleged leakage of the windows.

21. Plaintiffs failed to present legally sufficient evidence that Defendants' alleged actions and/or inactions presented to the jury for consideration were the natural and probable sequence of events that, without intervention of any new or independent cause, produced the injury, and without which the injury would not have occurred.

22. Plaintiffs failed to present legally sufficient evidence to support the jury's ascertainment of damage so as to support the amount of the jury's damage award.

23. The jury's \$2,163,494.55 award was clearly the product of bias, passion, prejudice or other improper motive.

24. The jury verdict, and the judgment rendered thereon, are contrary to the law of this case as charged by the trial court.

25. Defendant is entitled to judgment because (a) Plaintiffs failed to prove any defective condition in that the testing presented was conducted improperly, (b) the improper testing created leaks in windows that had otherwise met expectations, and (c) the windows were evaluated by implementing incorrect standards by which to evaluate windows installed for longer than six months (the windows has been installed for over eight years).

26. Defendant is entitled to judgment as a matter of law because the evidence demonstrated that the windows were damaged after arrival on the job site and also during delivery, handling, or storage.

27. Defendant is entitled to judgment in its favor as a matter of law on the basis of set-off as Plaintiffs have already recovered amounts in excess of the verdict from other parties in settlement of claims for the same damages which Plaintiffs claimed were the joint and several responsibility of settling co-defendants.

In addition to the above-stated grounds, Defendant incorporates herein by reference all grounds previously raised in their motions for directed verdict made during trial, the memorandum of law in support hereof to be filed in advance of the hearing, as well as any oral argument the Court may permit in support of the instant motion.

#### New Trial Absolute

For the specific grounds listed in greater detail below, Defendant's motion is based upon the singular, cumulative, and prejudicial impact of numerous evidentiary and legal rulings by the Court, improper and/or inadequate charges to the jury, the failure of the jury to obey the instructions of the court, the resulting miscarriage of justice, and the excessiveness of the jury's verdict. If this Court grants the motion for judgment notwithstanding the verdict as to Defendants, Defendants also move the Court to conditionally grant a new trial absolute pursuant to Rule 50(b) of the South Carolina Rules of Civil Procedure. If this Court declines to grant judgment notwithstanding the verdict, then Defendant moves for a new trial absolute in this matter. Defendant makes this motion as an alternative to its Motion for Judgment Notwithstanding the Verdict and specifically reserve all grounds stated therein.

The following grounds in support of the motion for new trial are enumerated:

1. Defendant expressly incorporates by reference and repeats each of the grounds set forth above for judgment notwithstanding the verdict.

2. Defendant is entitled to a new trial because the Court's charge to the jury improperly commented upon the facts, or otherwise, of the case by stating that "there is often 'more than one reasonable inference' as to when one 'knows or should have known' that he or she has a claim" when charging on the issue of the statute of limitations.

3. Defendant is entitled to a new trial because the Court improperly submitted the question of equitable estoppel as a defense to the statute of limitations based on the promises or actions of others besides Defendant to the jury when the issue was properly only decided by Court in its equitable jurisdiction.

4. Defendant is entitled to a new trial because the Court failed to charge Defendant's proposed charge on speculative damages, and the Court's failure to do so allowed the jury to base its award on evidence of alleged damages with absolutely no causal relationship to the alleged leakage of the windows.

5. Defendant is entitled to a new trial because the Court failed to charge that Defendant was entitled to notice as a condition to any warranty claim as expressly stated in the warranty given by Defendant and erroneously charged the jury that no proof of notice was required to sustain the claim.

6. The Court erred in not charging each proposed charge submitted by Defendant for inclusion in the charge.

7. Defendant is entitled to a new trial because the Court, despite never ruling upon the claims of class certification, allowed the jury to consider and include repair amounts in the verdict based upon alleged damages to non-party unit owners.

8. Defendant is entitled to a new trial because the Court failed to prohibit Plaintiffs' counsel from referring to the windows at issue as "illegal."

9. Defendant is entitled to a new trial because the Court failed to prevent Plaintiffs' counsel from pitting witnesses against one another.

10. Defendant is entitled to a new trial because the Court allowed Plaintiffs to present evidence of testing on the windows that did not replicate substantially similar conditions to which the windows were exposed while installed and which was designed for windows of a different age and not exposed to conditions similar to those of the windows in this case which had been installed for over eight years.

11. Defendant is entitled to a new trial to the extent the verdict form implies that judgment is mandated against the Defendant.

12. Defendant is entitled to a new trial because the jury's verdict was the product of passion, prejudice or bias.

13. Defendant is entitled to a new trial because the verdict was grossly excessive, as to be clearly actuated by passion, caprice or prejudice; thus, it is the trial judge's duty to set aside the verdict absolutely. *See Allstate Ins. Co. v. Durham*, 314 S.C. 529, 431 S.E.2d 557 (1993).

14. The jury's verdict was so grossly excessive as to have been influenced by matters outside the evidence.

15. The jury was unable to follow the Court's instructions or charges in rendering its verdict and/or deliberately refused or carelessly failed to follow the instructions, including, but not limited to, the fact that it based its verdict on Trial Exhibit 56 (Def. Ex. 325(f)) and such exhibit included repair estimates for portions of the property not within the individual units of the named Plaintiffs and not within any common area of the property as set forth in the governing documents for the property.

16. The Court should order a new trial based on the cumulative impact above.

17. The verdict in Plaintiffs' favor is not in accordance with the facts, is unsupported by the evidence and/or is against the manifest weight of the evidence, and thus, the Court should invoke its authority pursuant to the "thirteenth juror" doctrine to order a new trial. *See Folkens v. Hunt*, 300 S.C. 251, 387 S.E.2d 265 (1990).

18. The Court, sitting as the thirteenth juror, should determine that the evidence and facts do not justify the verdict and order a new trial on the facts.

19. The amount of the verdict awarded by the jury is so "grossly excessive" that it "shocks the conscience" and "clearly indicates the amount of the verdict was the result of caprice, passion, prejudice, partiality, corruption, or other improper motive." *Duncan v. Hampton County School Dist. No. 2*, 335 S.C. 535, 517 S.E.2d 449, 455 (Ct. App. 1990).

20. The jury's consideration of and deliberation involving any extraneous or inappropriate facts, evidence, testimony, argument, standards, or legal principles, whether external or internal in origin, denied Defendant's rights to fundamental fairness and due process in this trial by jury as provided by the law of South Carolina, the South Carolina Constitution, and the Fifth, Fourteenth, and Sixth Amendments to the United States Constitution.

21. The verdict, and each part thereof, was contrary to law.

22. The verdict, and each part thereof, was contrary to the evidence presented at trial.

23. The verdict, and each part thereof, was against the greater weight and preponderance of the evidence.

24. The Court erred in submitting Plaintiffs' claims to the jury because there was no significant evidentiary basis to support such a claim under controlling law.

Alternatively, a new trial is appropriate because the amount of damages awarded by the jury was not supported by the evidence, was contrary to the great weight of the evidence, and was inconsistent with controlling law.

25. Where “good counts” and “bad counts” are submitted to the jury, and a general verdict is returned, a new trial is required because it is impossible to know whether the jury based its verdict on the good count alone. The jury’s award of \$2,163,494.55 fails to state what damages were awarded as to each named party and the amount awarded to each named party and, therefore, mandates a new trial.

26. The Court erred by overruling Defendant’s challenge to the charges given to the jury.

27. The jury considered extraneous matters in reaching its verdict, and therefore, the verdict is due to be set aside.

28. The jury’s verdict and award was arrived at in contravention of the trial court’s instructions regarding damages which could be awarded in this case.

29. A new trial is warranted because the compensatory damage verdict is excessive and far exceeds any legitimate award to compensate Plaintiffs for any alleged damage proximately caused by Defendant’s alleged action and/or inaction.

30. Defendant relies on all grounds set forth in its motions for directed verdict made at the close of Plaintiffs’ case-in-chief and renewed at the close of all evidence, as well as in its Motion for Judgment Notwithstanding the Verdict, and the same are hereby incorporated as if set forth herein *verbatim*. Defendant also relies upon any memorandum in support of its post-trial motions to be filed in support hereof, as well as the governing procedural and substantive law of the United States, this State, and any oral argument the Court may permit in support of the instant motion.

### New Trial Remittitur

If this Court chooses not to grant judgment as a matter of law to Defendant and not to grant a new trial absolute on all other grounds previously set forth above that are inconsistent with the relief requested, then this Court should, at a minimum, grant a new trial nisi remittitur. As an initial matter, this motion is also based on all other grounds previously set forth above that are consistent with the relief requested. In South Carolina, the trial judge "has the power, and with it the responsibility," of reducing a damages award that is "unduly liberal" or "merely excessive." *Easler v. Hejaz Temple of Greenville*, 285 S.C. 348, 329 S.E.2d 753, 758 (1985); *Becker v. Wal-Mart Stores, Inc.*, 339 S.C. 629, 529 S.E.2d 758, 762 (Ct. App. 2000).

Here, the total verdict awarded is far in excess of any actual damages attributable to Defendant's conduct which consisted of nothing more than taking an order for windows and communicating it to the manufacturer, which then shipped the windows directly to the construction site. The jury verdict in this case was excessive, arbitrary, capricious, based on emotion and sentiment, unsupported by the evidence in the record, contradictory to the evidence in the record, not in accord with the Court's instructions regarding damages, and was actuated by passion, caprice and prejudice. Consequently, if the Court declines to grant JNOV and further declines to order a new trial absolute, it should at minimum order a new trial nisi remittitur, and reduce the verdict accordingly. As further grounds for this motion, Defendants state as follows:

1. The compensatory damage award in this case is grossly excessive and is not supported by the evidence in this action.
2. The compensatory damage award in this case is far in excess of any amount reasonably calculated to compensate Plaintiffs for any alleged injury and/or damage.

3. The compensatory damages award in this case is grossly excessive in that it is not supported by sufficient direct evidence.

4. Damages should be no more than necessary to repair or replace the specific windows in the units of the two named plaintiffs or any window that might be in a common use area. Defendant is in the process of calculating a number from the trial evidence and will submit a suggested amount in its supporting memorandum of law to be filed with the Court.

5. Defendant reserves the right to add additional and further grounds following sufficient time to review the complete, final trial transcript in this case.

Wherefore, BFS requests that the Court grant judgment in its favor, grant a new trial absolute, or alternatively, grant a new trial nisi remittitur.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

Date: 09/12/2016

By: 

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Attorneys for Builders FirstSource-Southeast Group LLC

2012 CP-10-7594

**CERTIFICATE OF SERVICE**

I, the undersigned Paralegal of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Builders FirstSource Southeast Group LLC, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified to the following address(es):


Pleadings: **NOTICE OF APPEARANCE**

**BUILDERS FIRSTSOURCE SOUTHEAST GROUP LLC'S MOTION AND ORDER INFORMATION FORM AND COVERSHEET and MOTION FOR JUDGMENT, NEW TRIAL ABSOLUTE, OR, IN THE ALTERNATIVE, FOR NEW TRIAL *NISI REMITTITUR***

Counsel Served:

**U.S. Mail**  
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FILED  
2016 SEP 13 AM 11:34  
JULIE J. ARMSTRONG  
CLERK OF COURT


BY \_\_\_\_\_  
  
Kevin J. Werner

September 12, 2016

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 One Belle Hall Property Owners Assoc. Inc., et al. )  
 Plaintiff, )  
 vs. )  
 Builders FirstSource Southeast Group LLC, et al. )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 CASE NO.: 2012 -CP-10-07594

**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

<b>Plaintiff's Attorney:</b> <u>Justin Lucey, Esquire</u> <u>Dabny Lynn, Esquire, Bar No.</u> Address: Justin O'Toole Lucey, P.A. 415 Mill Street Post Office Box 806 Mt. Pleasant, SC 29465 Phone: <u>843.849.4800</u> Fax E-mail: <u>jlucey@lucey-law.com</u> <u>dlynn@lucey-law.com</u> Other:	<b>Defendant's Attorney:</b> <u>C. Mitchell Brown, Esquire, Bar No. 12872</u> <u>William C. Wood, Esquire, Bar No. 15111</u> <u>Michael J. Anzelmo, Esquire, Bar No. 72933</u> Address: Nelson Mullins Riley & Scarborough LLP 1320 Main Street, 17 <sup>th</sup> Floor (29201) Post Office Box 11070 Columbia, SC 29211 Phone: <u>803.255.9534</u> Fax <u>803.255-5167</u> Phone: <u>803.255.9312</u> Fax <u>803.255-5167</u> E-mail: <u>bill.wood@nelsonmullins.com;</u> <u>michael.anzelmo@nelsonmullins.com</u> Other:
<input checked="" type="checkbox"/> <b>MOTION HEARING REQUESTED</b> (attach written motion and complete <b>SECTIONS I and III</b> ) <input type="checkbox"/> <b>FORM MOTION, NO HEARING REQUESTED</b> (complete <b>SECTIONS II and III</b> ) <input type="checkbox"/> <b>PROPOSED ORDER/CONSENT ORDER</b> (complete <b>SECTIONS II and III</b> )	
<b>SECTION I: Hearing Information</b> Nature of Motion: <u>for judgment, new trial absolute, or, in the alternative, for new trial nisi remittitur.</u> Estimated Time Needed: <u>1 hour</u> 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 type="checkbox"/> Plaintiff/ <input checked="" type="checkbox"/> Defendant	
Date submitted <u>9/12/2016</u>	
<b>SECTION III: Motion Fee</b> <input checked="" type="checkbox"/> PAID - AMOUNT: \$ <u>25.00</u> <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, SCRPC) <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.	JUDGE CODE _____

<input type="checkbox"/> Other: _____	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)