

**EXHIBIT K**

**11/17/16 Builders FirstSource-Southeast Group,  
LLC's Memorandum in Support of its Motion for  
JNOV, New Trial, New Trial Absolute, or, in the  
Alternative, for New Trial *Nisi Remittitur***

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November 17, 2016

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

NOV 21 2016

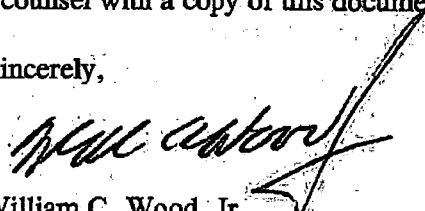
RE: One Belle Hall Property Owners Association Inc., et al. v: Builders FirstSource  
Southeast Group LLC, et al.  
Civil Action No. 2012-CP-10-07594  
Our File No. 00350/01800

Dear Ms. Armstrong:

Enclosed for filing in the above-referenced matter please find the original and one copy of a Memorandum in Support of Builders First's Motion for JNOV, New Trial, New Trial Absolute, Or, In The Alternative, For New Trial *Nisi Remittitur* and Memorandum in Support of Defendant's Motion to Compel Production of Settlement Agreement and Motion for Setoff. 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.

Sincerely,

  
William C. Wood, Jr.

WCWJR:eh  
Enclosures

cc: Justin Lucey, Esquire (via email on 11/17/16 and via hand delivery on 11/18/16)  
Dabny Lynn, Esquire (via email on 11/17/16 and via hand delivery on 11/18/16)

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

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) NINTH JUDICIAL CIRCUIT

One Bell Hall Property Owners ) Civil Action No. 2012-CP-10-07594  
Association Inc. and Marvin T. Meek )  
and Frances E. Hill, individually, and on )  
behalf of all others similarly situated, )

Plaintiffs, )

vs. )

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

Defendant. )

**Memorandum in Support of Builders**  
**FirstSource Southeast Group LLC's**  
**Motion for JNOV, New Trial, New**  
**Trial Absolute, or, in the alternative**  
**for New Trial Nisi Remittitur**

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Defendant Builders FirstSource Southeast Group LLC ("BFS") submits this memorandum in support of its Motion for JNOV, New Trial, New Trial Absolute, or, in the alternative New Trial *Nisi Remittitur*. As set forth in the Motion and below, this Court should grant the motion and enter judgment in favor of BFS or, in the alternative, grant a new trial because the damages awarded by the jury exceed the evidence presented at trial.

**I. JNOV should be granted because this Court improperly denied BFS's directed verdict motion and submitted Plaintiffs' claims to the jury.**

A motion for JNOV should be granted only if no reasonable jury could have reached the challenged verdict. Gastineau v. Murphy, 331 S.C. 565, 503 S.E.2d 712 (1998). The trial judge may reverse when a review of the record discloses no evidence which reasonably supports the factual finding necessary to sustain the verdict. Horry County v. Laychur, 315 S.C. 364, 434 S.E.2d 259 (1993). While the Court is concerned with the existence of evidence, not its weight, Curcio v. Caterpillar, Inc., 355 S.C. 316, 585 S.E.2d 272 (2003),

and may not decide credibility issues or to resolve conflicts in the testimony or the evidence, Id. at 320, 585 S.E.2d at 274, JNOV is warranted when there is no evidence to support the ruling or where the ruling is controlled by an error of law. Hinkle v. National Cas. Ins. Co., 354 S.C. 92, 579 S.E.2d 616 (2003).

**A. Plaintiffs failed to show evidence that they gave the required notice to support their breach of warranty claim.**

Plaintiffs' warranty claims, whether express or implied, failed as a matter of law because Plaintiffs failed to give the required notice. It is undisputed that Plaintiffs gave no notice of breach of warranty to BFS prior to filing suit. Giving of "timely notice to the seller" is a required element of proof in a breach of implied warranty claim or express warranty claim. See Brooks v. GAF Materials Corp., 41 F.Supp.3d 474, 482 (D.S.C. 2014)(listing elements of a breach of implied warranty claim); S.C. Code Ann. §§ 36-2-602, 36-2-607(3)(a), & 36-2-714(1) (requiring notice to the seller of breach of warranty). The Court should grant judgment in favor of BFS on the breach of warranty claims.

**B. Plaintiffs' strict product liability claim was barred by the statute of limitations.**

Plaintiff failed to file its strict liability claim against BFS within three years from the time it knew or should have discovered the existence of its potential claims. Thus, this claim is barred by the statute of limitations. S.C. Code Ann. § 15-3-530(5).

**1. The statute began to run when Plaintiffs realized the windows leaked.**

Marvin Meek, President of the HOA, drafted an email and sent it to a representative of the builder, Trammel Crow Residential, on December 18, 2010, itemizing "open issues" at One Belle Hall that had been discussed at some earlier time. See December 18, 2010

email, marked as Exhibit 10 to Meek's deposition. The list included "window leaks." Id. During his testimony, Mr. Meek provided unequivocal evidence that the Plaintiffs had notice of window leaks prior to the date of that correspondence and that they believed someone other than themselves should be responsible for remedying those leaks:

Q: And going back to Exhibit 10, that's the December 18, 2010 letter that you wrote to Donna Kruger with respect to TCR?

A: Here it is. Yes.

Q: Mr. Norris spoke about it at length, but I just have a couple questions. The window leaks that you referred to in that letter, do you recall how many windows were experiencing leaks, approximately?

A: No, I can't — I — I couldn't even guess at it.

Q: Were — were the leaks being experienced at windows in all the buildings, or one building, or just a couple of the buildings?

A: I don't recall. I just know there were several owners who were having window leaks of various sorts. I don't recall how many and which ones were.

Meek Deposition at 217:4-21. He continued:

Q: Well, you at least knew of water intrusion — I'm sorry. You at least knew of window leaks at One Belle Hall as of December 18, 2010; isn't that right?

A: I was aware of unit owners having window leaks.

Meek Dep. at 225:2-7; see also Meek at 286:13-25, Meek Dep. at 318:13-320:2.

Under the limitation statute, South Carolina law requires "very little to start the clock." Maher v. Tietex Corp., 331 S.C. 371, 500 S.E.2d 204 (Ct. App. 1998). The discovery rule applies and states that the time begins to run from the date when the injured party knows or reasonably ought to have known that he might have a claim against some party either in contract or in tort. Smith v. Smith, 291 S.C. 420, 426, 354 S.E.2d 36, 40

(1987); Cline v. J.E. Faulkern Homes, Inc., 359 S.C. 367, 597 S.E.2d 27 (Ct. App. 2004); S.C. Code Ann. §36-3-725(2). The date on which this discovery of a potential cause of action should have been made is an objective, rather than a subjective, question. Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 396, 593 S.E.2d 183 (Ct. App. 2004). The degree of knowledge necessary to start the clock ticking is merely that of a “potential claim” as distinguished from a “full-blown theory of recovery.” Republic, 332 S.C. at 208, 503 S.E.2d at 208. The failure of the injured party to comprehend the full extent of damages is immaterial to determining when the limitations clock begins to run. Barr v. City of Rock Hill, 330 S.C. 640, 645, 500 S.E.2d 157, 160 (Ct. App. 1998).

The Court’s and Plaintiffs’ approach to the statute of limitations at trial directly contradicts the holding of Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169 (1994). In that case, Wiggins was injured in an automobile accident, but did not commence her lawsuit until 3 years and 4 days after the accident. She argued that the statute of limitations did not begin to run until she was “actually able to investigate her case, discover a cause of action existed, and determine who or what caused her injury.” Id. at 128, 442 S.E.2d at 170.

The justices rejected this argument. The court stated:

[T]he focus is upon the date of discovery of the injury, not the date of discovery of the wrongdoer:

The important date under the discovery rule is the date that a plaintiff discovers the injury, not the date of the discovery of the identity of another alleged wrongdoer. If, on the date of injury, a plaintiff knows or should know that she had some claim against someone else, the statute of limitations begins to run for all claims based on that injury.

Wiggins, 314 S.C. at 128, 442 S.E.2d at 170 (quoting Tollison v. B & J Machinery Co., Inc., 812 F.Supp. 618, 620 (D.S.C.1993)). In this case, Plaintiffs knew of their injury – water leaking into their units—and even the potential cause – water leaking through or around the windows, absolutely no later than December 18, 2010, more than 3 years prior to the commencement of this lawsuit. The Court should grant judgment in favor of BFS on Plaintiffs’ claim for strict liability.

**2. BFS was not estopped to assert the statute of limitations.**

The Court also erred in submitting the issue of whether BFS was equitably estopped to assert the statute of limitations to the jury. To establish estoppel, a plaintiff must demonstrate that the party to be estopped created mischief – in this case the failure to assert a claim for allegedly leaky windows within the statute of limitations-- as a result of “one’s own fault” that caused the plaintiff prejudice. Janasik v. Fairway Oaks Horizontal Prop. Regime, 307 S.C. 339, 344, 415 S.E.2d 384, 387 (1992). Plaintiffs presented no evidence that BFS made any representation to them and no evidence that BFS appointed any other party or held any other party out as its agent for addressing issues with the windows. See Orphan Aid Society v. Jenkins, 294 S.C. 106, 362 S.E.2d 885 (Ct. App. 1987) (holding that party asserting agency must “prove the existence of the agency, and the agency must be clearly established by the facts,” and that “one who has bought the Brooklyn Bridge cannot overcome the title of the true owner, no matter how persuasive the salesman may have been”).

**C. Plaintiffs' claims of strict liability and breach of warranty fail for failure to submit proof of defect as required by Branham v. Ford Motor Co., 390 S.C. 203, 701 S.E.2d 5 (2010).**

Plaintiffs' claims of strict product liability and breach of warranty contain a common element of proof; both require plaintiff to demonstrate that the product was in a defective condition. Madden v. Cox, 284 S.C. 574, 579, 328 S.E.2d 108, 112 (Ct. App. 1985). Plaintiffs presented inadequate expert testimony or other record evidence to establish that BFS delivered windows – its only activity with respect to the project— which contained a manufacturing or design defect at the time of their delivery. At best, Plaintiffs' evidence showed that the windows ordered and shipped by BFS (it did not manufacture, design, install, or maintain the windows) leaked years after they had been installed.

Whether proceeding on a theory of manufacturing or design defect Plaintiffs failed to offer evidence of the particular defect, whether in manufacturer or design, that caused the window to leak. As to design defect in particular, Plaintiffs produced no evidence of any feasible alternative design for the windows, as required by South Carolina law, that would have stopped the claimed leakage. Branham v. Ford Motor Co., 390 S.C. 203, 701 S.E.2d 5 (2010). Because Plaintiff offered no evidence of and failed to identify any particular manufacturing or design defect in the windows as delivered by BFS, judgment should be entered in favor of BFS on both the strict liability and breach of warranty claims.

Further, the Court also erred in submitting the matter to the jury because the very testing used to established the windows leaked was improper. The testing

protocol used by Plaintiffs' expert to test the windows for leakage specifically referenced AAMA standard 511 as the appropriate testing standards for windows that has been installed for more than six months. Plaintiffs' expert did not utilize this standard. Thus, in addition to there being no evidence that the windows contained a specific manufacturing or design defect, there was no competent evidence demonstrating that the windows leaked under the types of conditions existing in Mt. Pleasant as to weather patterns and the way in which the windows were installed by others.

**II. Alternatively, BFS is entitled to a new trial absolute or nisi remittitur.**

**A. A grant of a new trial pursuant to the thirteenth juror doctrine is warranted because the evidence does not justify the verdict entered by the jury.**

The jury rendered a verdict against BFS that has no support in the evidence admitted at trial for two reasons. First, the jury verdict included repair amounts based upon alleged damages to non-party unit owners despite the fact that no class had ever been certified in this action. Second, the jury awarded damages against BFS that included other aspects of the project in which BFS had no involvement or for repair to aspects of the project for damages unrelated to the windows. Either ground warrants application of the thirteenth juror doctrine and the grant of a new trial.

While Plaintiff set forth class allegations in its pleadings, this Court never certified a class of unit owners. As a result, this matter proceeded to the jury on the claims of only two named unit owners Marvin T. Meek and Frances E. Hill and the HOA. According to the Master Deed of the One Belle Hall regime, the windows are included in the individual

units. See Pl. Ex. 69, p. 5. Consequently, the two named individual Plaintiffs and the HOA could only recover for damages resulting from windows in units controlled by them and not the entirety of the project and the HOA could only recover for damage to common elements of the property proximately caused by the alleged leaks in the windows. Damages could be no more than necessary to repair or replace the specific windows in the units of the two named plaintiffs and a common space controlled by the HOA and consequential damages to common elements controlled by the HOA caused by window leakage.

Despite this limitation, the jury returned a verdict that included damages for repair and replacement damages to non-party unit owners for all windows in all units. The jury returned a verdict of \$2,163,493.55. This verdict exactly mirrored the damage estimate of \$2,163,493.55 contained in Trial Exhibit 56 (Def. Exhibit 325(f)) that included damage estimates for all units in One Belle Hall, not just those units owned by the two named plaintiffs or the HOA. Further, the itemization of damages in the exhibit contained damage repair estimates that were causally unrelated to any alleged leakage of the windows. The exhibit only estimated damage related to the windows of \$12,325.00. See Trial Exhibit 56 (Def. Exhibit 325(f)) at p. 2.

The thirteenth juror doctrine "entitles the trial judge to sit, in essence, as the thirteenth juror when he finds 'the evidence does not justify the verdict,' and then to grant a new trial based solely 'upon the facts.'" Norton v. Norfolk S. Ry. Co., 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002) (quoting Folkens v. Hunt, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990)). As the thirteenth juror, the trial judge hangs the

jury by refusing to agree with the jury's unanimous verdict and casting his or her vote against it, resulting in a verdict which is no longer unanimous. Id.

The court may grant a new trial, sitting as the thirteenth juror, when it is convinced that a new trial is necessary on the basis of the facts. Vinson v. Hartley, 324 S.C. 389, 404, 477 S.E.2d 715, 722 (Ct. App. 1996). Under the doctrine, a new trial may be granted where the court merely finds that "the verdict is unsupported by the evidence," that "the verdict is inconsistent and reflects the jury's confusion," or that "justice has not prevailed." Id. at 404, 477 S.E.2d at 722-23; see also Trivelas v. S.C. Dep't of Transp., 357 S.C. 545, 552 593 S.E.2d 504, 508 (Ct. App. 2004) (granting new trial where "the evidence does not justify the verdict"); Norton, 350 S.C. at 480, 567 S.E.2d at 855 (granting new trial when court "disapprov[es] of the verdict on factual grounds"); McEntire v. Mooregard Exterminating Servs., Inc., 353 S.C. 629, 631, 578 S.E.2d 746, 747 (Ct. App. 2003) (characterizing use of doctrine as "granting a new trial upon the facts").

The Court's discretion in granting or denying a new trial under the thirteenth juror doctrine is "founded upon the facts, the evidence, the witnesses, the trial circumstances, the verdict and the judge's view of them." Vinson, 324 S.C. at 404, 477 S.E.2d at 723 (quoting Fallon v. Rucks, 217 S.C. 180, 189, 60 S.E.2d 88, 92 (1950)). Consequently, the Court is entitled to "weigh the evidence and rely on his or her view of the circumstances." Sorin Equip. Co. v. The Firm, Inc., 323 S.C. 359, 364, 474 S.E.2d 819, 822 (Ct. App. 1996).

Importantly, this Court need not provide any reasons for its exercise of this thirteenth juror power aside from a finding that the Court disapproves and rejects the verdict based on the facts and evidence. Howard v. Roberson, 376 S.C. 143, 654 S.E.2d 877 (Ct. App. 2007). Further, this Court's exercise of its thirteenth juror power will not be disturbed on appeal in the absence of a misuse of the power. Trivelas v. South Carolina Dept. of Transp., 357 S.C. 545, 593 S.E.2d 504 (Ct. App. 2004) (holding that a circuit court's order granting a new trial upon the facts will not be disturbed unless its decision is wholly unsupported by the evidence or the conclusion reached was controlled by an error of law).

As set forth above and in the grounds asserted for judgment as a matter of law, the jury's verdict is unsupported by the evidence. The verdict should be set aside with a new trial ordered. See, e.g., Folkens v. Hunt, 300 S.C. 251, 387 S.E.2d 265 (1990) (upholding the grant of the excise of the trial court's thirteenth juror authority because the verdict was not in accordance with the facts, was unsupported by the evidence and/or was against the manifest weight of the evidence).

**B. This Court should grant a new trial absolute because the jury verdict is not supported by the evidence admitted at trial and the jury was erroneously charged.**

A trial judge is required to grant a new trial absolute when the amount of the verdict is "so grossly . . . excessive that it shocks the conscience of the court and clearly indicates the amount was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives." Waring v. Johnson, 341 S.C. 248, 257, 533 S.E.2d 906, 911 (Ct. App. 2000); Vinson v. Hartley, 324 S.C. 389, 404, 477 S.E.2d 715, 723 (Ct. App.

1996); Duncan v. Hampton County School Dist. No. 2, 335 S.C. 535, 517 S.E.2d 449, 455 (Ct. App. 1990)(“The trial court must grant a new trial absolute if the verdict is so grossly excessive that it shocks the conscience of the court and clearly indicates the amount of the verdict was the result of caprice, passion, prejudice, partiality, corruption, or other improper motive.”). Importantly, it is an abuse of discretion not to grant a new trial absolute when the verdict is “shockingly disproportionate” to the evidence present at trial. Sullivan v. Porter, 317 S.C. 462, 467, 454 S.E.2d 907, 912 (Ct. App. 1995).

As set forth above, the verdict in this case resulted from caprice, passion, prejudice, partiality, corruption, or other improper motive rather than the evidence at trial.

First, the jury returned a verdict based on repair and replacement damages for all unit owners at One Belle Halle despite the fact that no class was certified by this Court. The jury disregarded this fact and returned a verdict that included damages for repair and replacement damages to non-party unit owners for all windows in all units. Thus, the verdict resulted from motives other than the evidence of damages to the two named Plaintiffs’ units. It is this Court’s duty to set aside the verdict absolutely.

Second, this Court should grant a new trial because Plaintiffs presented evidence to the jury 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. Thus, the jury's verdict was the product of passion, prejudice or bias rather than competent evidence.

A new trial is also required where the charges to the jury are incorrect and mislead the jury in its fact-finding role. Koutsogiannis v. BB&T, 365 S.C. 145, 149, 616 S.E.2d 425, 427-28 (2005).

First, the Court failed to give the required charge that BFS was entitled to notice as a condition precedent to any warranty claim as required by South Carolina law. See Brooks v. GAF Materials Corp., 41 F.Supp.3d 474, 482 (D.S.C. 2014)(listing elements of a breach of implied warranty claim); S.C. Code Ann. §§ 36-2-602, 36-2-607(3)(a), & 36-2-714(1) (requiring notice to the seller of breach of warranty). The failure to give a notice charge to the jury was error and allowed the jury to consider that no proof of notice was required to sustain the claim.

The Court also improperly charged the jury on the statute of limitations. The Court charged the jury 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." This instruction was an improper charge upon the facts of the case. S.C. Const. art. V, § 21. The charge expressly states to the jury the Court's opinion in the matter that it should begin deliberations upon the premise that there are most likely multiple reasonable conclusions they could be reached on the fact of when the Plaintiffs knew or should have known that the windows leaked and were causing damage rather than simply charging the law as to the trigger for the statute of limitations. Cf. State v. Mahaffey, 125 S.C. 313, 118 S.E. 613 (1923) ( a court "should carefully refrain from and avoid expressing any opinion that he may have formed from the

facts as to the force, weight, and effect, leaving it to the jury to draw their own conclusions, and not impress upon them any impressions that the testimony may have made in the mind of the judge”). It was the jury’s duty to examine the evidence presented to decide what inferences, and how many, might be drawn as to Plaintiffs’ knowledge of leaking windows.

The undisputed testimony at trial was that the Plaintiff HOA and homeowners actually knew – not just objectively should have known—that the windows were leaking as early as December 18, 2010, more than three years prior to the commencement of the lawsuit and informed the developer of that fact. See December 18, 2010 email, marked as Exhibit 10 to Meek’s deposition; Meek Deposition at 217:4-21, 225:2-7; 286:13-25, and 318:13-320:2. This was all that was necessary to trigger the running of the statutes of limitations. Wiggins, 314 S.C. at 128, 442 S.E.2d at 170. Plaintiffs then had three years to figure out the particulars of that claim and bring suit.

In light of the foregoing, the actual damages verdict was improper or grossly excessive. Hence, a new trial absolute must be ordered.

**IV. The Court should grant remittitur because the jury rendered an excessive verdict when compared to the evidence of window repair and replacement adduced at trial.**

Failing any of the relief requested above, this Court should grant new trial nisi remittitur because the damages awarded by the jury are clearly excessive compared to the evidence presented at trial. BFS did nothing more than take an order for windows and communicate it to the manufacturer, who then shipped the windows directly to the construction site. BFS had no role in manufacturing or installing the windows. Despite

this limited role, the jury awarded damages against BFS that included other aspects of the project in which BFS had no involvement.

This Court “may grant a new trial nisi remittitur when it finds the verdict is merely inadequate or excessive.” Howard v Roberson, 376 S.C. 143, 654 S.E. 2d 877, 883 (2007). “The consideration of a motion for a new trial nisi remittitur requires the court to consider the adequacy of the verdict in light of the evidence presented.” Waring v. Johnson, 341 S.C. 248, 256, 533 S.E.2d 906, 910 (Ct. App. 2000).

“The trial court has wide discretionary power to reduce the amount of a verdict which in his or her judgment is excessive.” See, e.g., Rush v. Blanchard, 310 S.C. 372, 381, 426 S.E.2d 802, 806 (1993) (affirming trial court’s remittitur); RRR, Inc. v. Toggas, 378 S.C. 174, 183, 662 S.E. 2d 438, 442 (Ct. App. 2009) (“[T]he circuit court . . . has the power to grant a new trial nisi when it finds the amount of the verdict to be merely inadequate or excessive”); Becker v. Wal-Mart Stores, Inc., 339 S.C. 629, 837, 529 S.E.2d 758, 762 (Ct. App. 2000) (affirming trial court’s granting of motion for remittitur on grounds that amount awarded by jury was “merely excessive”).

The jury based its verdict on one exhibit from trial—Trial Exhibit 56 (Def. Exhibit 325(f))—as evident from the exact match between this repair estimate and the verdict, \$2,163,493.55. The exhibit contained damage repair estimates that were, as a matter of law, causally unrelated to any alleged leakage of the windows and provided estimates for those unrelated repairs. For instance, the exhibit includes estimates for repairing garage roofs, replacing toilets and vanities, doing landscaping around outside HVAC units, and removing kitchen tile.

Further, the estimates in Exhibit 56, and thus the verdict, included repair amounts based upon alleged damages to non-party unit owners. While Plaintiff set forth class allegations in its pleadings, this Court never certified a class of unit owners. As a result, this matter proceeded to the jury on the claims of only the named unit owners, Marvin T. Meek and Frances E. Hill and the HOA. Because the windows are, by the Master Deed for the regime, deemed to be part of the individual units, Plaintiffs could only recover repair costs associated with the windows in the Meek and Hill units and in any area (such as an office or other common area) held by the HOA.

The jury could not award damages for the windows of units of other non-party unit owners or damages to the interior of their units. The jury could not award damages against BFS that were not causally related to the alleged window leakage. The jury improperly did so, however, and awarded damages for all windows in all units and for repairs to property with absolutely no relationship to the windows, such as garage roofs and wiring, missing fire stops in the plumbing chases, and regrading of the landscape. See Exhibit 56. Remittitur is necessary to reduce the excessive and incorrect jury verdict. Because the jury relied on Exhibit 56 to set its verdict, the verdict should be remitted to no more than specified in that exhibit for window repairs. Even if one assumes (contrary to reason) that the jury did not simply take Exhibit 56 and make it its verdict, the jury's verdict also has no reasonable, discernable relationship to Plaintiffs' expert's valuation of damages related to replacement of the windows and repair of resulting damage allowable given the named parties and the standing of those parties to claim damages under the regime documents.

Therefore, this Court should grant remittitur and reduce the verdict to no more than \$12,325.00, plus a proportionate share of the general requirements, permits, overhead, profit, contingency and similar charges set forth in the exhibit 56.

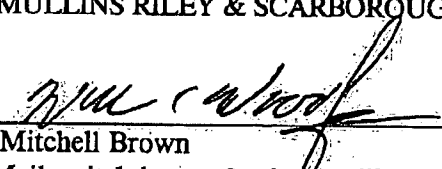
**Conclusion**

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

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Attorneys for Builders FirstSource-Southeast Group LLC

Columbia, South Carolina

November 17, 2016

2012-CP-10-7594

**CERTIFICATE OF SERVICE**

I, the undersigned Administrative Assistant 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: **MEMORANDUM IN SUPPORT OF BUILDERS FIRST'S MOTION FOR JNOV, NEW TRIAL, NEW TRIAL ABSOLUTE, OR, IN THE ALTERNATIVE, FOR NEW TRIAL NISI REMITTITUR, and**

**MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO COMPEL PRODUCTION OF SETTLEMENT AGREEMENT AND MOTION FOR SETOFF**

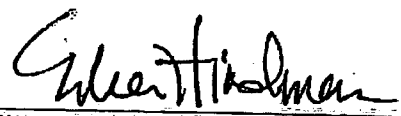
Counsel Served:

**Via Email on 11/17/16 and  
Via Hand Delivery on 11/18/16:**

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2016 NOV 21 PM 12:00  
JULIE J. ARMSTRONG  
CLERK OF COURT

FILED



Eileen Hindman  
Sr. Administrative Assistant

November 17, 2016