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October 13, 2017

## Hand Delivered

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
PO BO 11629  
Columbia, SC 29211

RE: The Harbour Cove Condominium Association v. Centex Homes, a Nevada  
General Partnership, et al.  
Civil Action No.: 2014-CP-26-07634  
NRMS File No. 18813.01548-1

Dear Ms. Kitchings:

Enclosed please find the original and one copy of a Notice of Appeal in regard to the above referenced matter. We would ask that you file the original and return a clocked-in copy to us via our courier. Also enclosed is our check in the amount of \$100.00 as the required filing fee.

By copy of this letter to counsel of record, we are serving them with a copy of this notice. Please contact me should you have any questions.

Very truly yours,

Robert C. Calamari

*By MEC  
with express  
written consent*

RCC:dp  
Enclosures  
cc: All Counsel of Record

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

The Honorable Clifton Newman, Circuit Court Judge

Case No. 2014-CP-26-07634

RECEIVED  
OCT 13 2017  
SC Court of Appeals

Ex Parte: Nationwide Mutual Insurance Company f/k/a  
Harleysville Insurance Company, ..... Appellant,

In re: The Harbour Cove Condominium Association, ..... Respondent,

v.

Centex Homes, a Nevada General Partnership; Centex  
Construction Company, Inc.; Centex Construction, LLC;  
Centex-Rooney Construction, Co., In.; Centex-Rogers,  
Inc.; Balfour Beatty Construction, LLC, f/k/a Centex  
Construction, LLC; Right Way Construction, 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.; Richard  
Blackwell d/b/a Synthetic Designs; Ferst Plastering, Inc.  
a/k/a Ferst Exteriors, Inc.; BR Brick & Masonry, 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.; Morningstar  
Consultants, Inc., A&A Stucco Inc.; Coastal Plaster  
Systems, Inc.; Coastal Plastering Systems, Inc.; and Mike  
Phillips, ..... Respondents,

v.

Centex Homes, a Nevada General Partnership, ..... Respondent,

American Residential Services, LLC d/b/a American Residential Services of South Carolina, Inc.; American Residential Services, Inc.; Builders FirstSource — Atlantic Group, LLC; Stock Building Supply, LLC f/k/a Carolina Builders Corporation; Cohen's Drywall Company, Inc.; Carolina Drywall & Interior, Inc. a/k/a Carolina Drywall & Interiors, Inc., Carolina Drywall Contractors, Inc.; Tri-City Insulation and Building Products of Myrtle Beach, Inc.; Blue Ribbon Cleaning Service, Inc.; Overhead Door Company, Inc.; Right Way Construction, Inc. a/k/a RWG, Inc. a/k/a Right Way Group, Inc. a/k/a RWGR, Inc.; John Doe; Cox Millwork & Supply, Inc.; Top Notch Painters; AO Hardee & Son, Inc.; Sunland Fire Protection, Inc.; Grand Strand Roofing & Siding; Vance Johnson Plumbing Co., Inc.; Ferreira Drywall; Frank Harris Construction; Setzer & Sons; Bond Group, Inc.; South Carolina State Plastering, LLC a/k/a Georgia State Plastering, LLC a/k/a Florida State Plastering, LLC; Jerry's Concrete a/k/a Jerry McRae Construction; Coastal Enclosures & Construction, Inc.; Williamson Construction & Waterproofing; ITP, Inc.; Vereen Concrete Co., Inc.; Weather Protection Systems, Inc.; Dunn Plumbing, Inc.; CEMS, Engineering, Inc., The Martin Architectural Group, P.C., The Harman Group, Inc. f/k/a Cagley Harman & Associates, Inc.; Azimuth Consultants, and Risk Tech, LLC a/k/a or f/k/a Azimuth Consultants, BCI, Inc., Com Tech, Model Home Interiors, Inc., Crescent Architects, LLC, Taylor Made Builders, Inc. .... Respondents.

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**Notice of Appeal**

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Nationwide Mutual Insurance Company f/k/a Harleysville Insurance Company (“Appellant”) hereby appeals the Order Denying the Motion of Insurers for Limited Intervention in the above captioned action dated October 12, 2017, and filed October 13, 2017 attached as Exhibit A.

[SIGNATURE PAGE ATTACHED]

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By MEC  
w/ express  
written consent

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Myrtle Beach, South Carolina  
October 13, 2017

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*EXHIBIT A*

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

Harbour Cove Condominium  
Association, et al.,

Plaintiffs,

v.

Centex Homes, et al.,

Defendants.

) IN THE COURT OF COMMON PLEAS  
) FOR THE FIFTEENTH JUDICIAL  
) CIRCUIT  
)  
)  
)

) Civil Action No.: 2014-CP-26-7634  
)

) ORDER DENYING MOTION OF  
) INSURERS FOR LIMITED  
) INTERVENTION  
)  
)  
)  
)  
)  
)  
)

This matter is before me upon separate Motions for Limited Intervention filed by multiple insurance carriers for insureds who are defendants in this action made pursuant to Rule 24 of the South Carolina Rules of Civil Procedure.

The present action is a complex construction defect case. In its Complaint, Plaintiff alleges causes of action for negligence, gross negligence and breach of warranty against each of the above-named Defendants for damages caused by its negligent and defective work.

The Insurers each seek to intervene for the "limited purpose of submitting and participating in the preparation of jury instructions, special interrogatories, and/or a special verdict form for submission to the jury.

The insurers contend that allowing intervention is essential for ensuring jury charges on issues such as, but not limited to, the following:

- (1) definition of progressive damages;
- (2) how to determine the cost of repairing defective workmanship originally performed by each individual subcontractor;

(3) how to determine the cost of repairing damage to other parts of the buildings that result from the defective workmanship of the subcontractor; and

(4) proof requirements by the parties seeking damages such that they must show, before recovery is available, (a) defective work of the subcontractor and (b) damage to other parts of the buildings proximately caused by the defective work of the subcontractor.

In addition to jury charges, the moving parties seeks to be permitted to request certain special interrogatories such as, but not limited to, the following:

(1) line item for the cost of removing and replacing the work of their respective insured(s);

(2) cost of removing and replacing portions of the building damaged by the work of their respective insured(s); and

(3) the date on which the progressive damage started and ended.

This matter has been pending for three (3) years and a date certain trial is scheduled for October 16, 2017.

#### DISCUSSION OF THE LAW

“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, SCRCP.” Id. A party has standing if the party has a personal stake in the

*in*

subject matter of a lawsuit and is a "real party in interest." *Id.* "A real party in interest ... 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.*

### BACKGROUND

Each of the Insurers stated that they did not wish to intervene in this case as parties to the action, and specifically argued that the issue of insurance should not be permitted within the trial nor should the presence of the intervening parties be disclosed to the jury.

After careful consideration of the applicable law, arguments of counsel, the relevant pleadings, and the memoranda and other submissions of the parties, the Court hereby finds as follows:

1. The Insurers lack the necessary standing to intervene and do not meet the requirements for intervention under Rule 24 of the South Carolina Rules of Civil Procedure ("SCRCP"). As our Supreme Court has held, "intervention is only appropriate where the party seeking intervention has 'a real proprietary interest in the subject matter of the proceedings;' an interest which is merely 'peripheral and not the real interest at stake' will not warrant intervention." *Ex parte Gov't Employee's Ins. Co. (GEICO) v. Goethe*, 373 S.C. 132, 139, 644 S.E.2d 699, 703 (2007) (quoting *Bailey v. Bailey*, 312 S.C. 454, 441 S.E.2d 325 (1994)) (in *GEICO*, the court affirmed the family court's denial of insurer's motion to intervene). The Insurers do not have an interest in the property that is the subject of this action, the Harbour Cove Condominium project. The Insurers do not have an interest in the underlying transaction that is the subject of this litigation, namely the development and construction of the Harbour Cove Condominium project. Each of the Insurers' interest arises solely out of its contract of insurance with its insured and those interests are not

appropriate to be litigated or interjected into this construction defect action. Intervention is not appropriate simply because a non-party only has a monetary interest in the outcome of the case.

2. The Insurers can satisfactorily protect any purported interests they may have in a separate declaratory judgment action, including the declaratory judgment action that is currently pending. Furthermore, addressing coverage issues in this action is likely to create inconsistent results pending the judicial determinations and outcomes in the Declaratory Judgment Action.

3. The South Carolina Supreme Court's recent decision in Harleysville Grp. Ins. v. Heritage Communities, Inc., 420 S.C. 321, 803 S.E.2d 288 (2017) does not mandate that the Insurers have a right to intervene to ask special interrogatories or request special verdict forms.

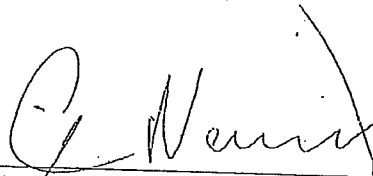
4. In order to avoid impermissible conflict determining coverage issues, this state requires a separate action. See Sims v. Nationwide Mut. Ins. Co., 247 S.C. 82, 145 S.E.2d 523 (1965). I find that the deep injection of insurance coverage issues into this construction defect action would place counsel defending an insured in an irreconcilable conflict created by the diametrically opposed goals where, on the one hand, counsel must try to minimize its insured's liability by showing lack of consequential damages and, on the other hand, counsel would likely be faced with the necessity of proving consequential damages in order to trigger and maximize coverage for its insured.

5. I find that the special interrogatories and/or special verdict forms requested by the Insurers will likely be confusing to the jury and may unfairly prejudice the parties participating in the trial due to the interjection of extraneous insurance coverage issues into an already complex construction defect case, particularly given that there may not be any evidence in the record to support the special interrogatories and/or special verdict forms.

Based on the foregoing the Motions to Intervene is Denied.

**AND IT IS SO ORDERED.**

October 12, 2017

A handwritten signature in black ink, appearing to read "Clifton Newman", written over a horizontal line.

Clifton Newman  
Presiding Judge

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

The Honorable Clifton Newman, Circuit Court Judge

RECEIVED  
OCT 13 2017  
SC Court of Appeals

Case No. 2014-CP-26-07634

Ex Parte: Selective Insurance Company of South Carolina, ..... Appellant,

In re: The Harbour Cove Condominium Association, ..... Respondent,

v.

Centex Homes, a Nevada General Partnership; Centex Construction Company, Inc.; Centex Construction, LLC; Centex-Rooney Construction, Co., In.; Centex-Rogers, Inc.; Balfour Beatty Construction, LLC, f/k/a Centex Construction, LLC; Right Way Construction, 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.; Richard Blackwell d/b/a Synthetic Designs; Ferst Plastering, Inc. a/k/a Ferst Exteriors, Inc.; BR Brick & Masonry, 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.; Morningstar Consultants, Inc., A&A Stucco Inc.; Coastal Plaster Systems, Inc.; Coastal Plastering Systems, Inc.; and Mike Phillips, ..... Respondents,

v.

Centex Homes, a Nevada General Partnership, ..... Respondent,

v.

American Residential Services, LLC d/b/a American Residential Services of South Carolina, Inc.; American

Residential Services, Inc.; Builders FirstSource — Atlantic Group, LLC; Stock Building Supply, LLC f/k/a Carolina Builders Corporation; Cohen's Drywall Company, Inc.; Carolina Drywall & Interior, Inc. a/k/a Carolina Drywall & Interiors, Inc., Carolina Drywall Contractors, Inc.; Tri-City Insulation and Building Products of Myrtle Beach, Inc.; Blue Ribbon Cleaning Service, Inc.; Overhead Door Company, Inc.; Right Way Construction, Inc. a/k/a RWG, Inc. a/k/a Right Way Group, Inc. a/k/a RWGR, Inc.; John Doe; Cox Millwork & Supply, Inc.; Top Notch Painters; AO Hardee & Son, Inc.; Sunland Fire Protection, Inc.; Grand Strand Roofing & Siding; Vance Johnson Plumbing Co., Inc.; Ferreira Drywall; Frank Harris Construction; Setzer & Sons; Bond Group. Inc.; South Carolina State Plastering, LLC a/k/a Georgia State Plastering, LLC a/k/a Florida State Plastering, LLC; Jerry's Concrete a/k/a Jerry McRae Construction; Coastal Enclosures & Construction, Inc.; Williamson Construction & Waterproofing; ITP, Inc.; Vereen Concrete Co., Inc.; Weather Protection Systems, Inc.; Dunn Plumbing, Inc.; CEMS, Engineering, Inc., The Martin Architectural Group, P.C., The Harman Group, Inc. f/k/a Cagley Harman & Associates, Inc.; Azimuth Consultants, and Risk Tech, LLC a/k/a or f/k/a Azimuth Consultants, BCI, Inc., Com Tech, Model Home Interiors, Inc., Crescent Architects, LLC, Taylor Made Builders, Inc. .... Respondents.

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**Proof of Service**

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I, the undersigned attorney of the law offices of Nelson Mullins Riley & Scarborough, LLP, attorneys for Nationwide Mutual Insurance Company f/k/a Harleysville Insurance Company, do hereby certify that I have ensured the service on all counsel in this action with copies of Appellant Nationwide Mutual Insurance Company f/k/a Harleysville Insurance Company's Notice of Appeal to the following address(es) via electronic mail:

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*By MEC w/  
express written  
consent*

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f/k/a Harleysville Insurance Company*

Myrtle Beach, South Carolina  
October 13, 2017



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October 13, 2017

Hand Delivered

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
PO BO 11629  
Columbia, SC 29211

RE: The Harbour Cove Condominium Association v. Centex Homes, a Nevada  
General Partnership, et al.  
Civil Action No.: 2014-CP-26-07634  
NRMS File No. 32161.01512

Dear Ms. Kitchings:

Enclosed please find the original and one copy of a Notice of Appeal in regard to the above referenced matter. We would ask that you file the original and return a clocked-in copy to us via our courier. Also enclosed is our check in the amount of \$100.00 as the required filing fee.

By copy of this letter to counsel of record, we are serving them with a copy of this notice. Please contact me should you have any questions.

Very truly yours,

*Bob Calamari*

Robert C. Calamari

*By MEC  
with express  
written consent*

RCC:dp  
Enclosures  
cc: All Counsel of Record

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED  
OCT 18 2017  
SC Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

The Honorable Clifton Newman, Circuit Court Judge

Case No. 2014-CP-26-07634

Ex Parte: Selective Insurance Company of South Carolina, ..... Appellant,

In re: The Harbour Cove Condominium Association, ..... Respondent,

v.

Centex Homes, a Nevada General Partnership; Centex Construction Company, Inc.; Centex Construction, LLC; Centex-Rooney Construction, Co., Inc.; Centex-Rogers, Inc.; Balfour Beatty Construction, LLC, f/k/a Centex Construction, LLC; Right Way Construction, 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.; Richard Blackwell d/b/a Synthetic Designs; Ferst Plastering, Inc. a/k/a Ferst Exteriors, Inc.; BR Brick & Masonry, 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.; Morningstar Consultants, Inc., A&A Stucco Inc.; Coastal Plaster Systems, Inc.; Coastal Plastering Systems, Inc.; and Mike Phillips, ..... Respondents,

v.

Centex Homes, a Nevada General Partnership, ..... Respondent,

v.

American Residential Services, LLC d/b/a American Residential Services of South Carolina, Inc.; American

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**Notice of Appeal**

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Selective Insurance Company of South Carolina (“Appellant”) hereby appeals the Order Denying the Motion of Insurers for Limited Intervention in the above captioned action dated October 12, 2017, and filed October 13, 2017 attached as Exhibit A.

[SIGNATURE PAGE ATTACHED]

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October 13, 2017

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*EXHIBIT A*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL
COUNTY OF HORRY	)	CIRCUIT
	)	
	)	
Harbour Cove Condominium Association, et al.,	)	Civil Action No.: 2014-CP-26-7634
	)	
	)	ORDER DENYING MOTION OF
Plaintiffs,	)	INSURERS FOR LIMITED
	)	INTERVENTION
v.	)	
	)	
Centex Homes, et al.,	)	
	)	
Defendants.	)	

This matter is before me upon separate Motions for Limited Intervention filed by multiple insurance carriers for insureds who are defendants in this action made pursuant to Rule 24 of the South Carolina Rules of Civil Procedure.

The present action is a complex construction defect case. In its Complaint, Plaintiff alleges causes of action for negligence, gross negligence and breach of warranty against each of the above-named Defendants for damages caused by its negligent and defective work.

The Insurers each seek to intervene for the "limited purpose of submitting and participating in the preparation of jury instructions, special interrogatories, and/or a special verdict form for submission to the jury.

The insurers contend that allowing intervention is essential for ensuring jury charges on issues such as, but not limited to, the following:

- (1) definition of progressive damages;
- (2) how to determine the cost of repairing defective workmanship originally performed by each individual subcontractor;

(3) how to determine the cost of repairing damage to other parts of the buildings that result from the defective workmanship of the subcontractor; and

(4) proof requirements by the parties seeking damages such that they must show, before recovery is available, (a) defective work of the subcontractor and (b) damage to other parts of the buildings proximately caused by the defective work of the subcontractor.

In addition to jury charges, the moving parties seeks to be permitted to request certain special interrogatories such as, but not limited to, the following:

(1) line item for the cost of removing and replacing the work of their respective insured(s);

(2) cost of removing and replacing portions of the building damaged by the work of their respective insured(s); and

(3) the date on which the progressive damage started and ended.

This matter has been pending for three (3) years and a date certain trial is scheduled for October 16, 2017.

**DISCUSSION OF THE LAW**

“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 ... 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.*

**BACKGROUND**

Each of the Insurers stated that they did not wish to intervene in this case as parties to the action, and specifically argued that the issue of insurance should not be permitted within the trial nor should the presence of the intervening parties be disclosed to the jury.

After careful consideration of the applicable law, arguments of counsel, the relevant pleadings, and the memoranda and other submissions of the parties, the Court hereby finds as follows:

1. The Insurers lack the necessary standing to intervene and do not meet the requirements for intervention under Rule 24 of the South Carolina Rules of Civil Procedure ("SCRCP"). As our Supreme Court has held, "intervention is only appropriate where the party seeking intervention has 'a real proprietary interest in the subject matter of the proceedings;' an interest which is merely 'peripheral and not the real interest at stake' will not warrant intervention." *Ex parte Gov't Employee's Ins. Co. (GEICO) v. Goethe*, 373 S.C. 132, 139, 644 S.E.2d 699, 703 (2007) (*quoting* *Bailey v. Bailey*, 312 S.C. 454, 441 S.E.2d 325 (1994)) (in *GEICO*, the court affirmed the family court's denial of insurer's motion to intervene). The Insurers do not have an interest in the property that is the subject of this action, the Harbour Cove Condominium project. The Insurers do not have an interest in the underlying transaction that is the subject of this litigation, namely the development and construction of the Harbour Cove Condominium project. Each of the Insurers' interest arises solely out of its contract of insurance with its insured and those interests are not

appropriate to be litigated or interjected into this construction defect action. Intervention is not appropriate simply because a non-party only has a monetary interest in the outcome of the case.

2. The Insurers can satisfactorily protect any purported interests they may have in a separate declaratory judgment action, including the declaratory judgment action that is currently pending. Furthermore, addressing coverage issues in this action is likely to create inconsistent results pending the judicial determinations and outcomes in the Declaratory Judgment Action.

3. The South Carolina Supreme Court's recent decision in Harleysville Grp. Ins. v. Heritage Communities, Inc., 420 S.C. 321, 803 S.E.2d 288 (2017) does not mandate that the Insurers have a right to intervene to ask special interrogatories or request special verdict forms.

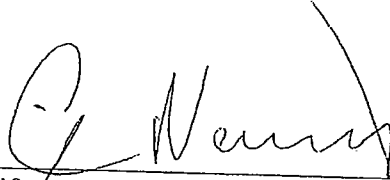
4. In order to avoid impermissible conflict determining coverage issues, this state requires a separate action. See Sims v. Nationwide Mut. Ins. Co., 247 S.C. 82, 145 S.E.2d 523 (1965). I find that the deep injection of insurance coverage issues into this construction defect action would place counsel defending an insured in an irreconcilable conflict created by the diametrically opposed goals where, on the one hand, counsel must try to minimize its insured's liability by showing lack of consequential damages and, on the other hand, counsel would likely be faced with the necessity of proving consequential damages in order to trigger and maximize coverage for its insured.

5. I find that the special interrogatories and/or special verdict forms requested by the Insurers will likely be confusing to the jury and may unfairly prejudice the parties participating in the trial due to the interjection of extraneous insurance coverage issues into an already complex construction defect case, particularly given that there may not be any evidence in the record to support the special interrogatories and/or special verdict forms.

Based on the foregoing the Motions to Intervene is Denied.

**AND IT IS SO ORDERED.**

October 12 2017

  
\_\_\_\_\_  
Clifton Newman  
Presiding Judge

ELECTRONICALLY FILED - 2017 Oct 13 4:28 PM - HORRY - COMMON PLEAS - CASE#2014CP2607634

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

The Honorable Clifton Newman, Circuit Court Judge

Case No. 2014-CP-26-07634

RECEIVED  
OCT 13 2017  
SC Court of Appeals

Ex Parte: Selective Insurance Company of South Carolina, ..... Appellant,

In re: The Harbour Cove Condominium Association, ..... Respondent,

v.

Centex Homes, a Nevada General Partnership; Centex Construction Company, Inc.; Centex Construction, LLC; Centex-Rooney Construction, Co., In.; Centex-Rogers, Inc.; Balfour Beatty Construction, LLC, f/k/a Centex Construction, LLC; Right Way Construction, 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.; Richard Blackwell d/b/a Synthetic Designs; Ferst Plastering, Inc. a/k/a Ferst Exteriors, Inc.; BR Brick & Masonry, 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.; Morningstar Consultants, Inc., A&A Stucco Inc.; Coastal Plaster Systems, Inc.; Coastal Plastering Systems, Inc.; and Mike Phillips, ..... Respondents,

v.

Centex Homes, a Nevada General Partnership, ..... Respondent,

v.

American Residential Services, LLC d/b/a American Residential Services of South Carolina, Inc.; American

Residential Services, Inc.; Builders FirstSource — Atlantic Group, LLC; Stock Building Supply, LLC f/k/a Carolina Builders Corporation; Cohen's Drywall Company, Inc.; Carolina Drywall & Interior, Inc. a/k/a Carolina Drywall & Interiors, Inc., Carolina Drywall Contractors, Inc.; Tri-City Insulation and Building Products of Myrtle Beach, Inc.; Blue Ribbon Cleaning Service, Inc.; Overhead Door Company, Inc.; Right Way Construction, Inc. a/k/a RWG, Inc. a/k/a Right Way Group, Inc. a/k/a RWGR, Inc.; John Doe; Cox Millwork & Supply, Inc.; Top Notch Painters; AO Hardee & Son, Inc.; Sunland Fire Protection, Inc.; Grand Strand Roofing & Siding; Vance Johnson Plumbing Co., Inc.; Ferreira Drywall; Frank Harris Construction; Setzer & Sons; Bond Group, Inc.; South Carolina State Plastering, LLC a/k/a Georgia State Plastering, LLC a/k/a Florida State Plastering, LLC; Jerry's Concrete a/k/a Jerry McRae Construction; Coastal Enclosures & Construction, Inc.; Williamson Construction & Waterproofing; ITP, Inc.; Vereen Concrete Co., Inc.; Weather Protection Systems, Inc.; Dunn Plumbing, Inc.; CEMS, Engineering, Inc., The Martin Architectural Group, P.C., The Harman Group, Inc. f/k/a Cagley Harman & Associates, Inc.; Azimuth Consultants, and Risk Tech, LLC a/k/a or f/k/a Azimuth Consultants, BCI, Inc., Com Tech, Model Home Interiors, Inc., Crescent Architects, LLC, Taylor Made Builders, Inc. .... Respondents.

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**Proof of Service**

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I, the undersigned attorney of the law offices of Nelson Mullins Riley & Scarborough, LLP, attorneys for Selective Insurance Company of South Carolina, do hereby certify that I have ensured the service on all counsel in this action with copies of Appellant Selective Insurance Company of South Carolina's Notice of Appeal to the following address(es) via electronic mail:

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Myrtle Beach, South Carolina  
October 13, 2017



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October 30, 2017

**RECEIVED**  
OCT 31 2017  
SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
PO BO 11629  
Columbia, SC 29211

RE: Beach Villas at Ocean Keys Property Owners Association, Inc. v. Ocean  
Keys Development, LLC et al.  
Civil Action No.: 2014-CP26-06573  
Appellate Case No.: 2017-002146  
NMRS File No.: 32161.01509

Dear Ms. Kitchings:

Enclosed please find the original and one copy of a Notice of Appeal in regard to the above referenced matter. We would ask that you file the original and return a clocked-in copy to us via the enclosed self-addressed, pre-paid envelope. Also enclosed is our check in the amount of \$100.00 as the required filing fee.

By copy of this letter to counsel of record, we are serving them with a copy of this notice. Please contact me should you have any questions.

Very truly yours,

Robert C. Calamari

RCC:dp  
Enclosures  
cc: All Counsel of Record

Hastler

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**NELSON MULLINS**

Post Office Box 3939

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The Honorable Jenny Abbott Kitchings  
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**RECEIVED**

OCT 31 2017

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM Horry County  
Court of Common Pleas

The Honorable Clifton Newman, Circuit Court Judge  
Case No. 2014-CP-26-06573

APPELLATE CASE NO: 2017-002146

**RECEIVED**  
OCT 31 2017  
SC Court of Appeals

Hartford Fire Insurance Company, Hartford Casualty  
Insurance Company, Hartford Underwriters Insurance  
Company, Canopus US Insurance Inc., and Selective  
Insurance Company of South Carolina, ..... Appellants,

v.

Beach Villas at Ocean Keyes Property Owners  
Association, Inc., Ocean Keyes Development, LLC,  
Keye Construction Co., Inc., Russell P. Baltzer, First  
Exteriors, LLC, Carefree Exteriors, Inc., Coastal Stucco  
Inc., Richard H. Construction, LLC a/k/a Ricardo  
Hernandez d/b/a Richard Framing Con. Inc., Builders  
FirstSource-Southeast Group, LLC, Innovative Steel  
Technologies Steel Homes International, Inc.,  
Renaissance Steel Installation, LLC n/k/a Renaissance  
Steel, LLC, Benchmark Steel Service, LLC and Dietrich  
Building System n/k/a Clarkwestern Dietrich Building  
Systems, LLC, ..... Respondents.

Notice of Appeal

Selective Insurance Company of South Carolina ("Appellant") hereby appeals the Order Denying the Motion of Insurers for Limited Intervention in the above captioned action dated October 11, 2017, and filed October 12, 2017, attached as Exhibit A.

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM Horry County  
Court of Common Pleas

The Honorable Clifton Newman, Circuit Court Judge  
Case No. 2014-CP-26-06573

APPELLATE CASE NO: 2017-002146

RECEIVED  
OCT 31 2017  
SC Court of Appeals

Hartford Fire Insurance Company, Hartford Casualty  
Insurance Company, Hartford Underwriters Insurance  
Company, Canopus US Insurance Inc., and Selective  
Insurance Company of South Carolina ..... Appellants,

v.

Beach Villas at Ocean Keyes Property Owners  
Association, Inc., Ocean Keyes Development, LLC,  
Keye Construction Co., Inc., Russell P. Baltzer, First  
Exteriors, LLC, Carefree Exteriors, Inc., Coastal Stucco  
Inc., Richard H. Construction, LLC a/k/a Ricardo  
Hernandez d/b/a Richard Framing Con. Inc., Builders  
FirstSource-Southeast Group, LLC, Innovative Steel  
Technologies Steel Homes International, Inc.,  
Renaissance Steel Installation, LLC n/k/a Renaissance  
Steel, LLC, Benchmark Steel Service, LLC and Dietrich  
Building System n/k/a Clarkwestern Dietrich Building  
Systems, LLC, ..... Respondents,

Proof of Service

I, the undersigned attorney of the law offices of Nelson Mullins Riley & Scarborough, LLP, attorneys for Selective Insurance Company of South Carolina, do hereby certify that I have ensured the service on all counsel in this action with copies of Appellant Selective Insurance Company of South Carolina's Notice of Appeal to the following address(es) via US Mail:

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October 13, 2017



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November 8, 2017

The Honorable Jenny Abbot Kitchings  
Clerk of Court  
SC Court of Appeals  
PO Box 11629  
Columbia, SC 29211

RE: Beach Villas at Ocean Keys Property Owners Association, Inc. v. Ocean  
Keys Development, LLC et al.  
Civil Action No.: 2014-CP26-06573  
Appellate Case No.: 2017-002146  
NMRS File No.: 32161.01509

Dear Ms. Kitchings:

Selective Insurance Company of South Carolina filed a Notice of Appeal on October 30, 2017 and inadvertently attached the wrong order. Judge Newman issued an Amended Order Denying Motion of Insurers for Limited Intervention on October 13, 2017. I have enclosed the Amended Order. Please contact me should you have any questions or need more information.

Very truly yours,

A handwritten signature in black ink that reads "Robert C. Calamari".

Robert C. Calamari

RCC:dp  
Enclosure  
cc: All Counsel of Record (*via email with enclosure*)

*EXHIBIT A*

STATE OF SOUTH CAROLINA  
COUNTY OF Horry

BEACH VILLAS AT OCEAN KEYES PROPERTY OWNERS  
ASSOCIATION, INC.,

Plaintiff,

vs.

OCEAN KEYES DEVELOPMENT, LLC, KEYE CONSTRUCTION CO., INC.,  
RUSSELL P. BALTZER, FIRST EXTERIORS, LLC, CAREFREE EXTERIORS  
INC., COASTAL STUCCO, INC., RICHARD H. CONSTRUCTION, LLC a/k/a  
RICARDO HERNANDEZ d/b/a RICHARD FRAMING CONSTRUCTION,  
RICHARD H. CONSTRUCTION, LLC a/k/a RICARDO HERNANDEZ d/b/a  
RICHARD FRAMING CON., INC., BUILDERS FIRSTSOURCE-SOUTHEAST  
GROUP,  
LLC, STEEL HOMES INTERNATIONAL, INC., RENAISSANCE STEEL  
INSTALLATION, LLC n/k/a RENAISSANCE STEEL, LLC, BENCHMARK  
STEEL SERVICE, LLC AND DIETRICH BUILDING SYSTEMS n/k/a  
CLARKWESTERN DIETRICH BUILDING  
SYSTEMS, LLC,

Defendants.

OCEAN KEYES DEVELOPMENT, LLC AND KEYE CONSTRUCTION  
CO., INC.,

Third-Party Plaintiffs,

vs.

RENAISSANCE STEEL INSTALLATION, LLC f/k/a RENAISSANCE  
STEEL, LLC n/k/a INNOVATIVE STEEL TECHNOLOGIES,  
BENCHMARK STEEL ERECTORS, and TOTAL CONSTRUCTION, LLC,

Third-Party Defendants.

) IN THE COURT  
) OF COMMON  
) PLEAS  
) FIFTEENTH  
) JUDICIAL  
) CIRCUIT

) CASE NO. 2014-  
) CP-26-6573

) **AMENDED**  
) **ORDER**  
) **DENYING**  
) **MOTION OF**  
) **INSURERS**  
) **FOR LIMITED**  
) **INTERVENTIO**  
) **N**

THIS MATTER comes before this Court upon Motions of Canopus US Insurance Inc. ("Canopus"); Hartford Fire Insurance, Hartford Casualty Insurance Company and Hartford Underwriters Insurance Company (collectively "Hartford"); and Selective Insurance Company of

South Carolina ("Selective") seeking to intervene in the trial of this matter for the limited purpose of submitting special interrogatories to the jury regarding issues related to insurance coverage.

The present action is a complex construction defect case. In its Complaint, Plaintiff alleges causes of action for negligence, gross negligence and breach of warranty against each of the above-named Defendants for damages caused by its negligent and defective work.

The Insurers each seek to intervene for the "limited purpose of submitting and participating in the preparation of jury instructions, special interrogatories, and/or a special verdict form for submission to the jury.

The insurers contend that allowing intervention is essential for ensuring jury charges on issues such as, but not limited to, the following:

- (1) definition of progressive damages;
- (2) how to determine the cost of repairing defective workmanship originally performed by each individual subcontractor;
- (3) how to determine the cost of repairing damage to other parts of the buildings that result from the defective workmanship of the subcontractor; and
- (4) proof requirements by the parties seeking damages such that they must show, before recovery is available, (a) defective work of the subcontractor and (b) damage to other parts of the buildings proximately caused by the defective work of the subcontractor.

In addition to jury charges, the moving parties seeks to be permitted to request certain special interrogatories such as, but not limited to, the following:

- (1) line item for the cost of removing and replacing the work of their respective insured(s);
- (2) cost of removing and replacing portions of the building damaged by the work

of their respective insured(s); and

(3) the date on which the progressive damage started and ended.

This matter has been pending for three (3) years and a date certain trial is scheduled for October 16, 2017.

**DISCUSSION OF THE LAW**

“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 ... 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.

**BACKGROUND**

At the outset of the hearing in this matter, counsel for Plaintiff agreed to allow each of the Insurers to fully intervene as named parties in the case and allow counsel for each of the Insurers to participate in the actual trial, including the questioning of witnesses and making of arguments to the jury. Each of the Insurers stated that they did not wish to intervene in this case as parties to

the action, and specifically argued that the issue of insurance should not be permitted within the trial nor should the presence of the intervening parties be disclosed to the jury.

Additionally, counsel for Plaintiff agreed that, if the Insurers have properly reserved their rights through the issuance of proper reservation of rights letters to their insureds, Plaintiff would agree that the Insurers could contest all coverage issues in a subsequent action. The Insurers Selective and Hartford each moved alternatively that in the event their Motions for Intervention are denied, that they be allowed to contest all insurance coverage issues in a subsequent action.

After careful consideration of the applicable law, arguments of counsel, the relevant pleadings, and the memoranda and other submissions of the parties, the Court hereby finds as follows:

1. The Insurers lack the necessary standing to intervene and do not meet the requirements for intervention under Rule 24 of the South Carolina Rules of Civil Procedure ("SCRCP"). As our Supreme Court has held, "intervention is only appropriate where the party seeking intervention has 'a real proprietary interest in the subject matter of the proceedings;' an interest which is merely 'peripheral and not the real interest at stake' will not warrant intervention." Ex parte Gov't Employee's Ins. Co. (GEICO) v. Goethe, 373 S.C. 132, 139, 644 S.E.2d 699, 703 (2007) (quoting Bailey v. Bailey, 312 S.C. 454, 441 S.E.2d 325 (1994)) (in GEICO, the court affirmed the family court's denial of insurer's motion to intervene). The Insurers do not have an interest in the property that is the subject of this action, the Beach Villas project. The Insurers do not have an interest in the underlying transaction that is the subject of this litigation, namely the development and construction of the Beach Villas project. Each of the Insurers' interest arises solely out of its contract of insurance with its insured and those interests are not appropriate to be

litigated or interjected into this construction defect action. Intervention is not appropriate simply because a non-party only has a monetary interest in the outcome of the case.

2. The Insurers can satisfactorily protect any purported interests they may have in a separate declaratory judgment action, including the declaratory judgment action that is currently pending. Furthermore, addressing coverage issues in this action is likely to create inconsistent results pending the judicial determinations and outcomes in the Declaratory Judgment Action.

3. The South Carolina Supreme Court's recent decision in Harleysville Grp. Ins. v. Heritage Communities, Inc., 420 S.C. 321, 803 S.E.2d 288 (2017) does not mandate that the Insurers have a right to intervene to ask special interrogatories or request special verdict forms.

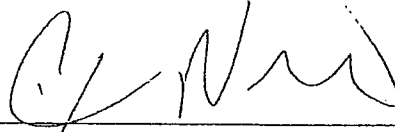
4. In order to avoid impermissible conflict determining coverage issues, this state requires a separate action. See Sims v. Nationwide Mut. Ins. Co., 247 S.C. 82, 145 S.E.2d 523 (1965). I find that the deep injection of insurance coverage issues into this construction defect action would place counsel defending an insured in an irreconcilable conflict created by the diametrically opposed goals where, on the one hand, counsel must try to minimize its insured's liability by showing lack of consequential damages and, on the other hand, counsel would likely be faced with the necessity of proving consequential damages in order to trigger and maximize coverage for its insured.

5. I find that the special interrogatories and/or special verdict forms requested by the Insurers will likely be confusing to the jury and may unfairly prejudice the parties participating in the trial due to the interjection of extraneous insurance coverage issues into an already complex construction defect case, particularly given that there may not be any evidence in the record to support the special interrogatories and/or special verdict forms.

Based on the foregoing the Motions to Intervene is Denied.

AND IT IS SO ORDERED.

October 12, 2017



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Clifton Newman  
Presiding Judge