THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2011-CP-46-1090

Brian and Deborah C. Pulliam, Monica Bradshaw, Helen K. Cook, Kala Craig, Victor D. Dirienzo, Cynthia Ditursi, J. Scott Drexel, Kathleen Kramer, Robert Loebe, Melanie McDaniel, Don and Debbie Neff, David Osborne, Celeste Arrowood, Vincent Dionna, Mikel Marcuse, James P. Wheaton, Jr., Joseph Manfredini, Elena Manfredini, David Cox, Jonathan B. Dillard, and Eric Wilson, and Marianna Junda, ...Respondents,

v.

Travelers Indemnity Company, M.U.I. Carolina Corporation, Kensington Place Owners' Association, Inc., and Regent Carolina Corporation, and Regent Corporation, ...Defendants.

Of whom Travelers Indemnity Company is the .....Appellant.

RESPONDENTS' FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

I. **THE LOWER COURT WAS CORRECT IN ITS FINDING THAT THE POA WAS AND IS INSURED UNDER THE TERMS OF THE TRAVELERS' DIRECTORS' AND OFFICERS' POLICY FOR THE UNDERLYING CLAIMS OF NEGLIGENCE AND BREACH OF FIDUCIARY DUTY CAUSING ECONOMIC LOSS TO THE HOMEOWNERS**

II. III. **THE LOWER COURT DID NOT ERR WHEN IT DID NOT SPECIFICALLY ADDRESS TRAVELERS' ADDITIONAL CLAIMS OF NON-COVERAGE RAISED AFTER TRIAL FOR THE FIRST TIME IN ITS RULE 59(E) MOTION, BUT RATHER ADDRESSED THEM IN ITS FORM ORDER DENYING RECONSIDERATION**

STATEMENT OF THE CASE

Respondents generally agree with the Appellant's Statement of the Case in Appellant's Initial Brief.

STATEMENT OF FACTS

The Defendant Kensington Place Owners Association, Inc. (hereinafter "POA"), has been sued by a group of Kensington condominium homeowners for inaction by its developer-controlled Board of Directors during the period of developer-control from 1996 until turnover of the Common Elements of the horizontal property regime in 2007. (R. pp. 64-73). The homeowners' claims, being defended by Travelers under the subject Directors and Officers liability policy, are based in negligence and in Breach of Fiduciary Duty. These claims do not seek any repair of the building, they seek, on the contrary, economic damages. These economic damages are represented by the cost differential of today's more expensive repair versus the condition the Common Elements should have been in (good condition) at the time

of property turnover if the POA through its developer-controlled directors had done their job in inspecting the defective Common Elements and seeing that they were brought up to a state of good condition before being transferred over to the homeowners. Instead, the POA permitted a transfer of defective property to the homeowners, conveying a huge responsibility for repairs. The underlying fiduciary concept is that instead of looking out for the individual homeowners, these developer-controlled Board members were looking out for the interests of the developer during their tenure. Respondent's claims against the POA also include claims wholly unrelated to the building repair issues such as failing to establish adequate reserve funds and failing to establish adequate depreciation schedules – negligent management issues.

Respondents filed their Declaratory Judgment Action on March 21, 2011, and Travelers responded with an Answer and Counterclaim. This Counterclaim contained Travelers' contentions as to lack of coverage for Respondents claims: that the Respondents' claims constituted "property damage" excluded under the policy, and not economic loss as Respondents allege, and that the Breach of Fiduciary Claim was not as Respondents allege - a placing of the Developer interests first - but was actually (although not pled in the underlying Complaint), a claim that the POA had failed to timely sue the Developer.

Both Appellant and Respondents filed Summary Judgment Motions, and after oral argument, the Court handed down its decision on January 27, 2012 (R. pp. 3-8). Thereafter, on February 10, 2012, Travelers filed a Rule 59(e) Motion for Reconsideration. Therein, it advanced for the first time, additional arguments not raised in its Summary

Judgment Motion. After a full hearing, the Court denied Travelers Motion by Form 4 Order dated April 9, 2012. (R. pp. 9-10).

ARGUMENT

I. THE LOWER COURT WAS CORRECT IN ITS FINDING THAT THE POA WAS AND IS INSURED UNDER THE TERMS OF THE TRAVELERS' DIRECTORS' AND OFFICERS' POLICY FOR THE UNDERLYING CLAIMS OF NEGLIGENCE AND BREACH OF FIDUCIARY DUTYCAUSING ECONOMIC LOSS TO THE HOMEOWNERS

Travelers' definition of "property damage" in its policy exclusion contains the critical definition "1) Physical Injury to tangible property..." The Respondents' Complaint in the underlying action is wholly bare of any allegations that the POA Board members "physically injured" anything. This cannot be found within the four corners of the Complaint, nor can it be implied as Travelers seeks to do. What the Complaint in fact sets out is a negligent failure of management and of placing the developers' interests ahead of the homeowners - fact patterns classically covered by Directors and Officers insurance policies-indeed constituting the very reason for the purchase of such insurance coverage.

Additionally, as the Lower Court correctly found, the exclusion 3(f) cited originally by Travelers in its Summary Judgment Motion, has no applicability, as the underlying Complaint does not state the claim that the POA failed to sue the developers.

In the underlying Complaint, the Plaintiffs allege that the actions of the Defendant POA were negligent:

> a. In failing to perform adequate inspections of the Common Elements from 1996-2007;

b. In failing to retain experts to assess the conditions of the building from 1996-2007;

c. In failing to maintain the Common Elements to an adequate state of repair from 1996-2007;

d. In failing to repair the Common Elements of the building from 1996-2007;

e. In negligently placing the Developers' interests ahead of those of the individual property owners, so as to place the entire financial burden of deferred maintenance upon the property owners, including these Plaintiffs, while acting in the capacity of a fiduciary;

f. In failing to establish and fund adequate reserve funds;

g. In failing to establish an adequate depreciation schedule and adequately fund known building component repair and replacement; and

h. In failing to advise the homeowners of the various conflicts of interest inherent in a developer-controlled POA, and in failing to provide for independent representation of non-developer homeowners both with respect to POA actions, and also regarding property management and maintenance.

(R. p. 72), and as a result of this negligence, Plaintiffs allege:

> "As a direct and proximate result of the negligence, recklessness, willfulness and wantonness of the Defendants as set out above, the Plaintiffs Homeowners will be required to expend considerable sums for the repair and refit of this property, all to their damage."

(R. p. 72).

The language of Defendant's Directors and Officer's liability policy Endorsement states the following with regard to property damage:

D. Exclusions

The insurance provided by this endorsement does not apply to:

(1) "Bodily Injury," "property damage," "personal injury," or "advertising injury."

(R. pp. 33-37). The Policy Endorsement specifically defines property damage:

F. "Property damage" means:

1. Physical injury to tangible property, including all resulting loss of use of that property;

2. Loss of use of tangible property that is not physically injured; or

3. Diminution of property value.

(R. p. 37). Pursuant to that Policy and Endorsement, Travelers has been defending the Defendant POA in the underlying litigation under a reservation of rights.

On March 21, 2011, the Plaintiffs filed the instant Declaratory Judgment action against Travelers Indemnity Company, the POA, and others. (R. pp. 11-18). Travelers Answered and Counterclaimed. In its Counterclaim, Travelers alleged that the allegations in the underlying Complaint against the POA fall within one or more of the policy's exclusions, and, as a result, do not afford coverage or indemnity to the POA. (R. pp. 40-44).

Specifically, Travelers asserted that the gravamen of the aforementioned Fifth Amended Complaint was that the POA negligently and in breach of its fiduciary duties to the Plaintiffs failed to adequately maintain the common elements of the property in question, as a result of which they sustained "property damage," namely, the costs of necessary repairs and, inferentially, damages for any alleged diminution in value of their individual units, all of which constitute "property damage" as defined in the policy.

Travelers also asserted that the gravamen of "Plaintiffs[']alleg[ations] that the POA placed the interests of the developer of the property ahead of the owners, including the Plaintiffs, thereby breaching its fiduciary duties to them" actually meant that "the POA failed to enforce its rights against the developers of the property in question, which is specifically excluded by exclusion (3) f." Exclusion (3) f states as follows:

> **D. Exclusions**
>
> The insurance provided by this endorsement does not apply to:
>
> (3) Damages resulting from:
>
> f. The failure of any insured to enforce the rights of the Named insured against the builder, sponsor or developer of the property designated in the Declarations.

(R. p. 34). Put simply, Travelers' counterclaim is that "Property Damage" is not covered by the policy.

In fact, contrary to Travelers' assertions, the Plaintiffs claim only economic loss; they do not allege "property damage." Because economic loss does not constitute "property damage," defined as "physical injury to tangible property," the property damage exclusion does not operate to bar claims which allege only economic loss.

While there is no South Carolina case directly on point, Courts around the country interpreting the phrase "physical injury to tangible property" hold that economic loss does not constitute "property damage." In *Qualman v. Bruckmoser*, the Bruckmosers sold the Qualmans a home with, allegedly, "cracked basement walls and defective kitchen pipes." 163 Wis. 2d 361, 363, 471 N.W.2d 282, 284 (1991). The Qualmans sued the Bruckmosers, alleging "the Bruckmosers misrepresented these known conditions and breached the

contract." Id. The insurance policy at issue, the Bruckmosers' homeowners' policy, covered "property damage" defined as "injury to or destruction of tangible property, including the loss of its use." *Qualman*, 471 N.W.2d at 285.

Stating "the causes of action against the Bruckmosers relate to breach of contract and misrepresentation of structural defects," the Court reasoned "the damages for such claims, if proven, would be the difference between the market value of the property at the time of purchase and the amount actually paid." *Qualman*, 471 N.W.2d at 285. The Court held that the alleged damages "are pecuniary in nature and do not constitute property damage as defined by the insurance policy," concluding "there is no coverage in the policy for the pecuniary loss" the Qualmans alleged. *Id.*

Compared with *Qualman*, where the policy covered "property damage" defined as "injury to or destruction of tangible property, including the loss of its use" and the Court held the Plaintiffs' pecuniary damages did not constitute property damage and were not covered, here, the policy excludes "property damage" defined as "physical injury to tangible property, including all resulting loss of use of that property." The Plaintiffs' allegations that the POA failed to: a) perform adequate inspections of the Common Elements; b) retain experts to assess the conditions of the building; c) maintain the Common Elements to an adequate state of repair; and d) repair the Common Elements of the building (R. p. 72) do not allege "property damage" defined as "injury to or destruction of tangible property, including the loss of its use." The POA's failure to inspect the property and repair the defects injured the Plaintiffs. The measure of damages for those injuries is purely financial. The POA's failure to "establish and fund adequate reserve funds" and to "establish an adequate depreciation

schedule and adequately fund known building component repair and replacement" (R. p. 72) injured the Plaintiffs. The measure of damages for those injuries is purely financial. Pecuniary or economic losses do not constitute "property damage." Because these pecuniary losses do not constitute property damage, they do not fall within the exclusion. Consequently, because the pecuniary losses are not excluded, they are covered under the D&O Endorsement.

In *Safeco Ins. Co. of America v. Andrews*, Kuehl, the Plaintiff in the underlying litigation, sued Andrews following the sale of a house, alleging Andrews failed to disclose certain defects in the property. 915 F.2d 500, 501 (9th Cir. 1990). Kuehl's Complaint alleged damages flowing from Andrew's "negligent failure to inspect the property and inform Kuehl of certain alleged defects in the [...] property" and misrepresentation of "facts materially affecting the value or desirability" of the real property. *Safeco*, 915 F.2d at 501-502. Specifically, Kuehl alleged that Andrews failed to inform Kuehl that: 1) the property "had a serious problem with unstable, shifting and moving earth, which produced and continues to produce sudden landslides;" 2) the property "had defective and inadequate electrical wiring;" 3) the property "had defective plumbing including improper drainage from the main sewer line;" and 4) the "basement addition had severe water leakage." *Safeco*, 915 F.2d at 501.

The Safeco homeowners' policy covered "property damage," which it defined as "physical injury to or destruction of tangible property, including loss of use of this property." *Safeco*, 915 F.2d at 502. The Court held that "Kuehl's claims do not expose Andrews to liability for any damage to tangible property, but rather for economic loss resulting from

Andrew's failure to discover and disclose facts relevant to the property's value and desirability. Such harm is outside the scope of the policy." *Safeco*, 915 F.2d at 502. The Court reasoned: "although the defective condition of the property is an element of Kuehl's claims, the defects cannot, even when interpreting the policy broadly, be considered the *cause* of Kuehl's damages. The cause of the damage was Andrews's alleged misrepresentations, which are not an "occurrence" or a "peril insured against" under the terms of the policy. There is, therefore, no potential for liability that arguably comes within the scope of the insurance coverage provided by Safeco." *Safeco*, 915 F.2d at 502 (emphasis in original).

In *Safeco*, the homeowners' policy covered "property damage" defined as "physical injury to or destruction of tangible property, including loss of use of this property." *Safeco*, 915 F.2d at 502. There, the Court held the alleged harm – economic loss – was "outside the scope of the policy" and thus not covered. *Safeco*, 915 F.2d at 502. Compare that to the facts in this case, where the policy's D&O Endorsement excludes "property damage" which is defined as "physical injury to tangible property, including all resulting loss of use of that property." Though the defective condition of the property is an element of the Plaintiffs' claims, the alleged harm the Plaintiffs suffered is, likewise, only economic loss. Economic loss does not constitute property damage and does not fall within the property damage exclusion. Consequently, economic loss triggers coverage under the D&O Endorsement.

Economic and pecuniary losses simply do not constitute "property damage" defined as "physical injury to tangible property." *See Allstate Ins. Co. v. Miller*, 743 F.Supp. 723 N.D.Cal. 1990) (holding that "economic loss is simply not within the Allstate policy's coverage of tangible property damage"); and *Wisconsin Label Corp. v. Northbrook Property*

& Casualty Ins. Co., 221 Wis.2d 800, 586 N.W.2d 29 (Ct.App.1998) (holding that "economic losses are not property damage within the 'physical injury' provision of the definition of property damage."). *See also*: *Auto-Owners Ins. Co. v. Rhodes*, 385 S.C. 83, 104, 682 S.E.2d 857, 868 (2009) (stating that "the current law of [South Carolina] appears to be that a commercial general liability policy is intended to provide coverage for tort liability for physical damage to property of others, but not for the insured's contractual liability which causes economic losses."); *Isle of Palms Pest Control Co. v. Monticello Ins. Co.*, 319 S.C. 12, 16, 459 S.E.2d 318, 320 (Ct. App.1995), *aff'd*, 321 S.C. 310, 468 S.E.2d 304 (1996) ("a general liability policy is intended to provide coverage for tort liability for physical damage to property of others; it is not intended to provide coverage for insured's contractual liability which causes economic losses").

Travelers' assertion that the POA's failure to adequately maintain the common elements of the property resulted in the Plaintiffs' sustaining "property damage, namely, the costs of necessary repairs" fails as a matter of law. The Plaintiffs' claim against the POA is for failure to properly manage the property and reserve adequate money to fund any repairs. Travelers' exclusion states on its face that it only excludes "Property Damage" which has been "physically injured." The POA had a duty to properly manage the property and set aside adequate reserves and the POA breached its duty. Had the POA inspected and repaired defects in the property when and as they occurred, the Plaintiffs would be in a better financial position than they now are. However, the POA failed to inspect and repair defects in the property and now the Plaintiffs are far worse off financially. The POA failed to adequately reserve for the costs of the necessary repairs, and the Plaintiffs now must bear a far greater

financial burden. The financial burden, the cost of necessary repairs, is purely an economic loss, and is not considered a "physical injury to tangible property." *See Travelers Ins. Co. v. Eljer Mfg., Inc.*, 197 Ill.2d 278, 757 N.E.2d 481 (2001) (concluding that "under its plain and ordinary meaning, the phrase 'physical injury' does not include intangible damage to property, such as economic loss"; and holding "that indemnity coverage under the [policies] is not triggered by '[p]urely economic losses, such as damages for inadequate value, costs of repair or replacement, and diminution in value'") (internal citation omitted); *Qualls v. Country Mut. Ins. Co.*, 462 N.E.2d 1288, 123 Ill.App.3d 831 (Ct. App. 1984) ("the costs associated with repairing or replacing the insured's defective work and products [...] are purely economic losses.").

The cases interpreting the phrase "physical injury to tangible property" make clear that economic losses do not constitute "property damage." Travelers cannot have it both ways. Just as economic losses are not covered under a commercial general liability policy because such losses do not constitute "property damage," economic damages are not excluded under a Directors and Officers Endorsement since they do not constitute "property damage." The Plaintiffs' damages in this case are solely economic and are not excluded under the Directors and Officers Endorsement.

Travelers points to the (unpublished) decision from the Eleventh Circuit in Florida in the matter of *Eastpointe Condominium I Association, Inc. v. Travelers*, Docket no. 08-81187-CV-DTKH, where it was successful in having a US District Court find that the "property damage" exclusion permitted a denial of coverage in a Directors and Officers claim. A review of this decision, however, will speedily demonstrate that in *Eastpointe*, the "property

damage" exclusion language was far different than in the instant case and specifically excluded damage from "mold, toxic mold, spores, mildew, fungus, or wet or dry rot". These particular issues as it turned out were precisely those claimed in the underlying litigation, and therefore this decision has no similarity to the Kensington matter.

In the *Eastpointe* decision, however, the Court does refer to an earlier US District Court decision in Florida which is in fact similar to the instant underlying claim. Thus in the decision in *Lumbermens Mutual Casualty Company v. Dadeland Cove Section One HOA, Inc.*, 2007 WL 2979828 (USDC Miami Div. 2007), the Court, in interpreting a "property damage" exclusion found that the property damage exclusion did not apply to a breach of fiduciary duty claim brought against a homeowners association after the association allowed the common areas to deteriorate. *Lumbermans* was affirmed on appeal 295 App x 361 (11th Cir. 2008).

Travelers criticizes the Lower Court for its resort to the *Crossmann* decision (*Crossmann Communities of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 717 S.E.2d 589 (2011)), for aid in defining the term, "property damage." While it is true that the *Crossmann* decision involves different coverage - not Directors and Officers liability, and was limited to the "occurrence" question, looking to Appellate decisions for assistance in interpretation of legal terms does not constitute error. Indeed, an examination of the Lower Court's Order demonstrates that the Court was in fact searching not for the concept of "property damage" in a different type of policy coverage, but rather for assistance in interpreting the key concept of "physical injury". The complex field of insurance coverage for an insured's work and related damages pursuant to CGL coverage has puzzled many a jurist

and lawyer over the years, and resort to the *Crossmann* decision for assistance in interpretation of the concept of "physical injury" is not erroneous.

EXCLUSION (D)(3)(f) DOES NOT EXCLUDE COVERAGE FOR THIS CLAIM

This exclusion permits coverage denial where the underlying suit is against the POA for failing to bring a claim against the builder or developer of the Condominium on behalf of itself. This is not the claim alleged in the underlying litigation, and therefore, this exclusion has no relevance as the Lower Court specifically held. The exclusion reads: "The failure of any insured to enforce the rights of the Named Insured against the builder, sponsor or developer of the property designated in the Declarations." Not only do the Plaintiffs herein not allege this claim, the POA has in fact asserted a claim against the developer in this matter by way of a cross-claim, and has counterclaimed against the Plaintiffs taking the position that the POA is the proper party to assert the developer claims. This Court issued its Order in these matters on June 14, 2010, denying the Plaintiffs' motion to dismiss the POA counterclaim.

Thus, Plaintiffs have not sued the HOA for matters covered by the language of this exclusion, and it has no applicability.

II. III. THE LOWER COURT DID NOT ERR WHEN IT DID NOT SPECIFICALLY ADDRESS TRAVELERS' ADDITIONAL CLAIMS OF NON-COVERAGE RAISED AFTER TRIAL FOR THE FIRST TIME IN ITS RULE 59(E) MOTION, BUT RATHER ADDRESSED THEM IN ITS FORM ORDER DENYING RECONSIDERATION

If there is any unambiguous statement from the case law regarding Civil Procedure, it is the following: "A party cannot use Rule 59(e) to present to the Court an issue the party

could have raised prior to judgment, but did not." *Patterson v. Reid,* 318 S.C 183, 456 S.E.2d 436, 437 (Ct. App. 1995). *MailSource, LLC v. M.A. Bailey & Associates, Inc.,* 356 S.C. 370, 374, 588 S.E.2d 639, 641 (Ct. App. 2003). *Anderson Memorial Hospital, Inc. v. Hagen,* 313 S.C. 497, 443 S.E.2d 399, 400 (Ct. App. 1994). *C.A.H. v. L.H.,* 315 S.C. 389, 434 S.E.2d 268, 270 (1993).

Travelers' 59(e) Motion here attempted to do just that - to argue new issues which could have been presented, but were not, and the Court did not have the authority pursuant to Rule 59 to grant relief based on those arguments - assuming that any of them had merit-which they did not.

In its form Order denying Reconsideration, the Lower Court, after a prolonged oral argument was granted to the parties, stated, "I find no matter that was not addressed by the Court expressly or by CLEAR IMPLICATION IN THE PRIOR ORDER" (emphasis supplied). Thus, the Court, even in light of the impropriety of Traveler's attempt to introduce new matters post-trial, gave it the benefit of the doubt. Quite simply, as will be seen below, the Court had no need to address these arguments specifically-as they had and have absolutely no merit.

A. TRAVELERS' "SPECIAL DAMAGES" ARGUMENT

Although difficult to understand, this argument seems to advance a novel theory in civil jurisprudence - that somehow the instant Declaratory Judgment action must fail as Respondents in the underlying action did not cost out their repair damages and include this cost accounting as part of their Complaint? This specificity of damages, quite naturally, is Respondent's burden of proof before the trial jury, and its absence in a pleading can offer no

relief to Travelers in this coverage litigation.

B. TRAVELERS' EXCLUSION (3)(b) ARGUMENT

As noted in Travelers' brief, its policy exclusion (3)(b) excludes coverage for generally fraudulent acts or criminal conduct on the part of the POA. Fraudulent and intentional acts are the opposite of negligent acts, being imbued with the concepts of intent and *Mens Rea*. No reading of the underlying Complaint can find any mention of claims of intentional, fraudulent, or criminal acts, so therefore this Exclusion can have no bearing as the Lower Court inferentially found.

C. TRAVELERS' EXCLUSION (3)(I) ARGUMENT

This particular argument seeks to exclude coverage, taking the incorrect position that the underlying action constitutes one "insured" suing another "insured," and is thus barred. This position ignores a salient fact: Plaintiffs/Respondents, are individuals, not coexistent with the corporate POA Defendant which has its own identity at law, and Plaintiffs/Respondents are not "insureds" within the coverage of the Travelers Directors and Officers' policy. Indeed, this Court can only imagine Travelers' response should one of the Plaintiffs herein have sought to be covered under this policy!

IV. THE LOWER COURT DID NOT ERR IN NOT SPECIFICALLY ADDRESSING TRAVELERS' CLAIM THAT PUNITIVE DAMAGES ARE EXCLUDED

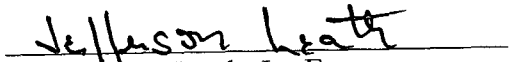
Travelers' policy provides for an exclusion for punitive damages. The Lower Court's lack of specifically addressing this exclusion does not, and cannot, standing alone, warrant a reversal of the finding that coverage exists for the actual damages claimed in the underlying

Complaint. Punitive damages may possibly not exist in the underlying case, they may possibly not be charged or returned by the jury. Since the Lower Court has not commented on this issue, if, following a trial, this issue of punitive damages exists at all, nothing would prevent Travelers from refusing to pay them and indeed to reinstitute another Declaratory Judgment Action if it felt the necessity. Additionally, this Court may make the independent judgment as to this policy exclusion while affirming, as it should do, the Lower Court's decision as to coverage for actual damages.

CONCLUSION

As the Lower Court correctly stated in its Order of January 30, 2012, "The policy here must be broadly construed in favor of the insured, and thus, in favor coverage. *See, e.g., Town of Duncan v. State Budget and Control Bd., Div. of Ins. Services,* 326 S.C. 6, 482 S.E.2d 768 (1997); *Torrington C. v. Aetna Cas. and Sur. Co.*, 264 S.C. 636, 216 S.E.2d 547 (1975). Further exclusions of coverage are always to be construed strongly against the insurer. *Owners. Inc. Co. v. Clayton*, 272 S.C. 460, 252 S.E.2d 565 (1979)." There are no errors in the decision of the Lower Court which would warrant reversal, to the contrary, the Court's decision should be affirmed.

Respectfully Submitted,



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CERTIFICATE OF COUNSEL

The undersigned certifies that Respondents' Final Brief complies with the provisions of Rule 211(b) of the South Carolina Appellate Court Rules.

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CERTIFICATE OF COMPLIANCE

Respondents, by and through its undersigned counsel, hereby certify that all personal data identifiers and other sensitive information in the Record on Appeal is redacted or sealed as required by the August 13, 2007, Order of the South Carolina Supreme Court.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2011-CP-46-1090

Brian and Deborah C. Pulliam, Monica Bradshaw, Helen K. Cook, Kala Craig, Victor E. Dirienzo, Cynthia Ditursi, J. Scott Drexel, Kathleen Kramer, Robert Loebe, Melanie McDaniel, Don and Debbie Neff, David Osborne, Celeste Arrowood, Vincent Dionna, Mikel Marcuse, James P. Wheaton, Jr., Joseph Manfredini, Elena Manfredini, David Cox, Jonathan B. Dillard, and Eric Wilson, and Marianna Junda, ... Respondents,

v.

Travelers Indemnity Company, M.U.I. Carolina Corporation, Kensington Place Owners' Association, Inc., and Regent Carolina Corporation, and Regent Corporation, ...Defendants.

Of whom Travelers Indemnity Company is the . . . . . .Appellant.

PROOF OF SERVICE

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I, W. Jefferson Leath, Jr., do hereby certify that on November 8, 2012, I served opposing counsel with a copy of Respondents' Final Brief via regular first class United States mail, postage prepaid, addressed as follows:

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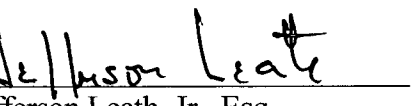

W. Jefferson Leath, Jr., Esq.

Charleston, South Carolina

November 8, 2012