

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2015-CP-10-00955

Appellate Case No. 2019-000238

**RECEIVED**  
APR 26 2019  
SC Court of Appeals

Ex Parte:

Builders Mutual Insurance Company, Nationwide Mutual Fire Insurance Company, Nationwide Mutual Insurance Company, and Nautilus Insurance Company, Appellants,

In Re:

Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., and Jack Love, individually, and on behalf of all others similarly situated, Plaintiffs,

v.

Island Pointe, LLC; Leonard T. Brown; Complete Building Corporation; Tri-County Roofing, Inc.; Creekside, Inc.; American Residential Services, LLC d/b/a Rescue Rooter Charleston; Andersen Windows, Inc.; Atlantic Building Construction Services, Inc. n/k/a Atlantic Construction Services, Inc.; Christopher N. Union; Builder Services Group, Inc. d/b/a Gale Contractor Services; Novus Architects, Inc. f/k/a SGM Architects, Inc.; Tallent and Sons, Inc.; W C Services, Inc., CRG Engineering, Inc.; Certainteed Corporation; Kelly Flooring Products, Inc. d/b/a Carpet Baggers and John Doe 1-60.....Defendants.

Tri-County Roofing, Inc.....Third-Party Plaintiff,

v.

Cornerstone Construction and Mark Malloy d/b/a Cornerstone Construction; Gutter Works, Inc. and Michael L. Segars d/b/a Gutter Works; Mr. Gutter; Litchfield Seamless Gutters & Windows, LLC and Thomas Litchfield d/b/a Litchfield Seamless Gutter; Miracle Siding, LLC and Wilson Lucas Sales d/b/a Miracle Siding, LLC; Mark Palpoint a/k/a Micah Palpoint; Elroy Alonzo Vasquez; and Chris a/k/a John Doe 61.....Third-Party Defendants.

And  
Complete Building Corporation, Inc.....Third-Party Plaintiff,

v.

Alderman Construction; Stanley's Vinyl Fence Designs; Cohen's Drywall; and Mosley  
Concrete.....Third-Party Defendants.

Of whom Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and  
Jack Love, individually, and behalf of all others similarly situated, Tri-County Roofing, Inc.,  
Stanley's Vinyl Fence Designs, and W C Services, Inc. are the Respondents.

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**PETITION PURSUANT TO RULE 241(d)(7), SCACR  
ON BEHALF OF APPELLANT BUILDERS MUTUAL INSURANCE COMPANY TO  
REVIEW CIRCUIT COURT ORDER LIFTING APPEAL STAY**

**(EXPEDITED RELIEF REQUESTED)**

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Pursuant to Rule 241(d)(7), SCACR, Appellant Builders Mutual Insurance Company  
("Builders Mutual"), files this petition for the Honorable H. Bruce Williams of the Court of  
Appeals to review the Order of the Honorable Jennifer B. McCoy dated April 25, 2019 that lifts  
the automatic stay in the appeal and orders the civil action to trial on May 6, 2019. ("Stay Lift  
Order")(Exhibit A).

The appeal arises from a Civil Action styled *Palmetto Pointe at Peas Island Condominium  
Property Owners Association et al. v. Tri-County Roofing, Inc. et al.* Civil Action No. 2015-CP-  
10-00955 (the "Civil Action"). Palmetto Pointe commenced the action against the developer,  
design professionals and contractors who were involved in the original design and construction of  
the condominium buildings that comprise the Palmetto Pointe residential community. Palmetto  
Pointe alleges that the buildings were constructed improperly and seek damages against  
Defendants based on what Palmetto Pointe alleges it will cost to make future repairs to the

buildings. Palmetto Pointe will seek to satisfy any verdict in favor of Palmetto Pointe from general liability insurance policies issued by insurers to Defendants.<sup>1</sup>

Builders Mutual moved to intervene in the Civil Action for the limited purpose of having the Circuit Court submit a special verdict form and/or special interrogatories to a jury in order to allocate a verdict, if any, in favor of Palmetto Pointe and avoid the consequences of a general verdict that occurred to the insurers in *Auto Owners Ins. Co. v. Newman*, 385 S.C. 187, 198, 684 S.E.2d 541, 546 (2009) (“*Newman*”) and *Harleysville Grp. Ins. v. Heritage Communities, Inc.*, 420 S.C. 321, 332, 803 S.E.2d 288, 294 (2017) (“*Heritage Communities*”). The consequences in *Newman* and *Heritage Communities* were that the insurers were required to pay the entire verdict/award in the underlying actions even though parts of the verdict/award included non-insured damages.<sup>2</sup>

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<sup>1</sup> Builders Mutual issued general liability insurance policies to Defendant/Respondent Tri-County Roofing, Inc. (“Tri-County Roofing”).

<sup>2</sup> Builders Mutual submits that substantive issues of insurance coverage are established and will be addressed or discussed in the appeal with citations to the Supreme Court’s decisions in *Crossmann Communities of North Carolina, Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 50, 717 S.E.2d 589, 594 (2011) (“*Crossmann*”) (“In sum, we clarify that negligent or defective construction resulting in damage to otherwise non-defective components may constitute ‘property damage,’ but the defective construction would not.”); *Newman*, 385 S.C. at 198, 684 S.E.2d at 546 (These terms unambiguously prohibit recovery for the cost of removing and replacing the defective stucco—even when the replacement of the defective work may be incidental to the repair of property damage covered by the policy—and serve as one of the bases for this Court’s acknowledgment that a claim solely for economic losses resulting from faulty workmanship is part of an insured’s contractual liability which a CGL policy is not intended to cover.”).

The present appeal concerns procedures. *Newman* and *Heritage Communities* did not provide definitive procedural guidelines which has resulted in insurers seeking to intervene on a limited basis in construction defect civil actions to guard against a general verdict. If there is a verdict in favor of Palmetto Pointe, the objective is to have separated beforehand or contemporaneously those costs which are to remove and replace Tri-County’s work (not covered) from those cost which are to repair “property damage” (potentially covered).

Although the Civil Action has been pending since February 12, 2015, Builders Mutual was only put on notice of a claim or the Civil Action against Tri-County Roofing by letter dated January 15, 2018. (Exhibit B). After attending a mediation on January 30 and 31, 2018, Builders Mutual moved to intervene in the Civil Action on March 22, 2018. Builders Mutual's motion to intervene was first scheduled and heard by the Circuit Court on December 17, 2018. Palmetto Pointe and Tri-County Roofing objected to Builders Mutual being able to intervene in the Civil Action. The Circuit Court entered its Order/Statement of Judgment denying the Motion to Intervene filed by Builders Mutual. (Exhibit C). Builders Mutual moved to have the Circuit Court reconsider its Order/Statement of Judgment, requesting the Circuit Court provide an explanation, which the Circuit Court denied in its Order/Statement of Judgment Denying Motion to Reconsider. (Exhibit D).

Builders Mutual filed its Notice of Appeal on February 19, 2019. (Exhibit E). Builders Mutual filed a Motion to Transfer the Case to the South Carolina Supreme Court on February 27, 2019 pursuant to Rule 204(b), SCACR. (Exhibit F). Palmetto Pointe filed a response with the Supreme Court stating that it took no position with regard to the Motion to Transfer the Case. (Exhibit G).<sup>3</sup> The Motion to Transfer the Case is pending.<sup>4</sup> The parties to the appeal are currently in the Initial Brief stage.

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<sup>3</sup> The Supreme Court granted a Motion to Transfer the Case, like the one filed by Builders Mutual, in a recent appeal filed by insurers in Appellate Case No. 2017- 02146 concerning the denials of motions to intervene in an underlying construction defect case. (Exhibit H). The parties in Appellate Case No. 2017- 02146 settled the appeal and underlying civil action shortly before scheduled oral arguments in the Supreme Court.

<sup>4</sup> The appeal presents at least one major issue that is recurring in construction defect civil litigation in South Carolina and will continue to recur: If there are to be consequences to a liability insurer for a general verdict, what procedures can an insurer follow to preclude those consequences or to assure there is an allocated verdict for insurance coverage purposes?

On April 5, 2019, Judge McCoy issued an order stating, “[p]ursuant to Rule 205 and 241 of the SCACR, upon review of the Notices of Appeal filed by Builders Mutual Insurance Company and Nautilus Company on February [19], 2019, and the Notice of Appeal filed by Nationwide Insurance Company on February 28, 2019, the Appellate Court has exclusive jurisdiction over this case at this time. Therefore, the case is hereby STAYED. (Exhibit I).

On April 16, 2019, Respondent Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc.’s and Jack Love’s, individually, and behalf of all others similarly situated’s (together “Palmetto Pointe”) filed their Motion for Reconsideration of and/or Relief from Order Staying Case and/or Petition to Lift Stay or Otherwise Modify Any Stay as May be Necessary for this Case to Proceed as Scheduled to Trial On the Merits Beginning on May 6, 2019 (the “Petition to Lift Stay”)(Exhibit J).<sup>5</sup> Builders Mutual filed a memorandum in opposition to the Petition to Lift Stay because it sought to lift the stay in an appeal and proceed with matters affected by the appeal. (Exhibit K).

On April 25, 2019, Judge McCoy heard oral arguments on the Petition to Lift Stay and issued the Stay Lift Order. (Exhibit A). The Stay Lift Order only states that the Plaintiff’s Petition to Lift the Automatic Stay is granted and trial will proceed May 6, 2019. Judge McCoy did not provide any factual findings or conclusions of law although requested to do so. Builders Mutual submits that the Circuit Court erred in lifting the automatic stay because the Circuit Court lacked jurisdiction to proceed with a trial involving Tri-County Roofing.<sup>6</sup> Builders Mutual submits the Court of Appeals should reverse the Circuit Court.

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<sup>5</sup> The Petition to Lift Stay was not served on Builders Mutual as required by Rule 241(d)(5), SCACR.

<sup>6</sup> The stay is automatic upon the filing of the Notice of Appeal. Rule 241(d)(3), SCACR.

**The South Carolina Supreme Court Has Held that a Lower Court May Only Act As to  
Matters Not Stayed by an Appeal**

Rule 205, SCACR, states as follows:

Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.

Rule 205, SCACR concerns subject matter jurisdiction. *See Arnal v. Fraser*, 371 S.C. 512, 519, 641 S.E.2d 419, 423 (2007). The appellate court has exclusive jurisdiction over the appeal with the exception of matters not affected by the appeal; and the appellate court retains jurisdiction until the remittitur is sent to the lower court. *Lancaster v. Georgia-Pacific Corp.*, 403 S.C. 136, 742 S.E.2d 867 (2013).<sup>7</sup>

Rule 241(a), SCACR, provides:

As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.

Rule 241(a), SCACR does not expand the power of a lower court. *See Arnal*, 371 S.C. at 519, 641 S.E.2d at 422. The Supreme Court has stated, “[u]nder Rule 205 and the last sentence of the above-quoted portion of Rule 225, the lower court may not act or issue orders that affect an issue on appeal. Under Rule 225, the lower court may only act to enforce matters not stayed by the

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<sup>7</sup> The Circuit Court has jurisdiction to entertain petitions for writs of supersedeas, which is inapplicable herein. A supersedeas is a procedure to impose a stay where none existed in the first place or for one of the exceptions in Rule 241(b), SCACR.

appeal.”<sup>8</sup> *Arnal*, 371 S.C. at 519, 641 S.E.2d at 422. (emphasis added). Both Rule 205, SCACR and Rule 241, SCACR specifically limit the power of the Circuit Court to only do that which is not affected by the appeal.

The relation between Rule 205(b), SCACR and Rule 241(a), SCACR is addressed by the Court of Appeals in *Tillman v. Oakes*, 398 S.C. 245, 728 S.E.2d 45 (Ct. App. 2012). Writing for the Court of Appeals, now Justice John Cannon Few explains in more detail the two appellate court rules and the limited power of a lower court during an appeal:

When a party appeals an order, two questions may arise as to the effect of the appeal: (1) what is the effect of the appeal on matters decided in the order, particularly the immediate effectiveness of relief ordered; and (2) what is the effect of the appeal on the power of the lower court to proceed with the underlying action while the appeal is pending. The answer to the first question is governed by the stay and supersedeas provisions of Rule 241. If a stay exists, either automatically under Rule 241(a) or by supersedeas under Rule 241(c), the appealed order may not be carried out or enforced during the pendency of the appeal. This is the purpose of a stay under Rule 241- to determine whether the appealed order may be carried out or enforced - not to determine whether the action may proceed in the lower court while the appeal is pending. (emphasis added).

The second question is whether the lower court may proceed with the action during the pendency of the appeal, and its answer is governed by Rule 205, SCACR. (emphasis added). The rule provides: “Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal....” Under Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal, but is specifically allowed to proceed with matters not affected by the appeal. The rule states: “Nothing in these Rules shall prohibit the lower court ... from proceeding with matters not affected by the appeal.” Rule 205, SCACR; *see also* Rule 241(a), SCACR (“The lower court ... retains jurisdiction over matters not affected by the appeal....”). Thus, the existence or nonexistence of a stay under Rule 241 does not control the family court's power to proceed with the action and address matters not affected by the appeal. Rather, the lower court's power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a “matter[ ] affected by the appeal” under Rules 205 and 241(a)(Citations Omitted)(emphasis added).

*Tillman v. Oakes*, 398 S.C. at 255, 728 S.E.2d at 50-51.

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<sup>8</sup> Rule 225, SCACR is the predecessor to Rule 241, SCACR. For the purposes herein, the language is the same in each Rule.

To summarize, the purpose of a stay under Rule 241, SCACR is not to determine whether the action may proceed in the lower court while the appeal is pending. Second, the existence or nonexistence of a stay under Rule 241, SCACR does not control the trial court's power to proceed with the action. Third, whether a lower court may proceed with an action during the pendency of the appeal is governed by Rule 205, SCACR. Fourth, a lower court's power to proceed is determined by whether the issue sought to be litigated before the trial court during the appeal is a "matter[ ] affected by the appeal".

Judge McCoy erred in ruling that a trial can proceed on May 6, 2019 against Tri-County Roofing while the appeal is pending. There is no genuine dispute that proceeding to trial against Tri-County Roofing affects Builders Mutual's appeal. For the definition of the word "affects", the South Carolina Supreme Court cites to the definition of the word in Black's Law Dictionary 68 (10<sup>th</sup> ed. 2014) (defining "affect" to "produce an effect on; to influence in some way"). *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 534, 787 S.E. 485, 494 (2016). Proceeding to trial raises the prospect that the issues on appeal may become moot if the action goes to trial against Tri-County Roofing and the jury delivers a general verdict. Builders Mutual moved to intervene and be a part of the trial so as to avoid a general verdict against Tri-County Roofing. The Circuit Court did not allow Builders Mutual to do so and whether Builders Mutual can do so is now the issue on appeal.

Rule 241(c)(2), SCACR states that a court "should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." Rule 241(c)(2), SCACR. The Circuit Court did not do so. The Circuit Court offered no solution or alternative that will attempt to preserve the jurisdiction of the appeal or to prevent the appeal from potentially becoming moot. A lower court can take action that is necessary to preserve

the appeal or prevent it from becoming moot. The converse is the rule too. A lower court cannot take action that does not preserve the appeal or that causes the appeal to become moot. Judge McCoy gave no grounds for lifting the stay and took no action to address preserving the appeal.

Maintaining the automatic stay does not prejudice Palmetto Pointe in any way or leave it without a remedy. First, Palmetto Pointe could seek a remand from an appellate court if the circumstances of the particular case require it. *Arnal*, 371 S.C. at 519, 641 S.E.2d at 422, fn. 4. Second, the fact is the Petition to Lift Stay was, *in substance*, a motion to dismiss the appeal, for which only the Court of Appeals has jurisdiction pursuant to Rule 240(a) – (b), SCACR.

**The South Carolina Supreme Court Has Held that the Denial of a Motion to Intervene is Immediately Appealable**

The order denying the motion to intervene is immediately appealable as a matter involving a substantial right. S.C. Code § 14-3-330(2). “An order affects a substantial right and is *immediately appealable* when it ‘(a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action ....’” *Hagood v. Sommerville*, 362 S.C. 191, 195, 607 S.E.2d 707, 709 (2005) (quoting S.C. Code § 14-3-330(2)) (emphasis added). Interpreting precisely the same statutory language,<sup>9</sup> the South Carolina Supreme Court held that an order denying a motion to intervene was immediately appealable—even though “the merits of the action hereinbefore mentioned [had] not been determined and as the trial of that action will still be necessary” - because insofar “as the rights of the [putative intervenor] are involved, the

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<sup>9</sup> *Johnson/Rutledge*, 63 S.C. at \_\_\_, 41 S.E. at 309 (“Section 11 of the Code provides that ‘the supreme court shall have exclusive jurisdiction to review upon appeal \*\*\* an order affecting a substantial right made in an action, when such order in effect determines the action and prevents a judgment from which an appeal might be taken.’”). The current statute, S.C. Code Ann. Section 14-3-330, provides identically under (2): “The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: ... (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken....”

order [denying intervention] affects a substantial right, and in effect determines the action and prevents a judgment from which an appeal might be taken.” *Ex parte Johnson (Rutledge v. Tunno)*, 63 S.C. 205, \_\_\_, 41 S.E. 308, 309 (1902). *See also* 15 S.C. Jur. Appeal and Error § 23 South Carolina Jurisprudence (September 2017 Update) (“The refusal of a petition to intervene is directly appealable ‘[i]n so far as the rights of appellant are involved, the order affects a substantial right, and in effect determines the action and prevents a judgment from which an appeal might be taken.’”); *Ex parte Wells*, No. 2012-MO-002, 2012 WL 10906587, at \*1 & n.1 (S.C. Sup. Ct. filed March 7, 2012) (allowing immediate appeal of an order denying a request to intervene in an abuse and neglect action) (citing *Johnson/Rutledge*) (please note that this opinion states “[t]his opinion has no precedential value. It should not be cited or relied on as precedent in any proceeding except as provided by rule 268(d)(2), 8(d)(2), SCACR”); *Ex parte Carter v. L.C.*, No. 2015-001006, 2017 WL 164493, at \*2 (S.C. Ct. App. filed January 13, 2017) (citing *Johnson/Rutledge* with favor that “an order denying a motion to intervene is immediately appealable”) (please note that this opinion states “[t]his opinion has no precedential value. It should not be cited or relied on as precedent in any proceeding except as provided by rule 268(d)(2), SCACR”).

The order denying Builders Mutual’s motion to intervene “in effect determin[e]d the action and prevent[ed] a judgment from which an appeal might be taken,” within the meaning of *Johnson/Rutledge*, 63 S.C. at \_\_\_, 41 S.E. at 309. Builders Mutual therefore has a right to an immediate appeal under S.C. Code § 14-3-330(2) as has been established in South Carolina. In the present matter, the Circuit Court ruled on the merits, and therefore the case is clear that the denial of the motion to intervene is immediately appealable. *See Ex parte Johnson (Rutledge v. Tunno)*, *supra*. The question of whether Builders Mutual has any right or obligation to intervene is

inextricably intertwined with the merits of the controversy or a jury verdict involving Tri-County Roofing.

Palmetto Pointe relied on *South Carolina Public Service Authority v. Arnold*, 287 S.C. 584, 586, 340 S.E.2d 535, 537 (1986) for the proposition that, “when an order is interlocutory and thus not appealable, the notice of intent to appeal does not transfer jurisdiction to this Court, not does it stay further proceeding in the lower court.” First, it is critical to note that whether the appeal in *Arnold* was interlocutory, and not immediately appealable, was an issue before the South Carolina Supreme Court on a motion to dismiss the appeal. *Arnold*, 287 S.C. at 536, 340 S.E.2d at 585. Although the appeal has been pending for over two months, Palmetto Pointe has not moved to dismiss Builders Mutual’s appeal. When faced with an opportunity to express a position about the appeal, in response to Builders Mutual’s Motion to Transfer the Case to the South Carolina Supreme Court, Palmetto Pointe expressed no position (or objection) for the appeal.

Third, whether an appeal concerning a motion to intervene (by insurers) is immediately appealable has been decided by the Court of Appeals adversely to Palmetto Pointe’s position in two recent appeals. The Court of Appeals denied motions to dismiss appeals concerning intervention based on arguments made by the respondents that the appeals are interlocutory and not immediately appealable. *Order, Beresford Commons Homeowners Ass’n, Inc. v. Portrait Homes-South Carolina, LLC, et al.*, Appellate Case No. 2017-000202 (March 7, 2017); *Order, Ex Parte: Hartford Fire Insurance Company In Re: The Harbour Cove Condominium Association*, Appellate Case No. 2017-002146 (January 24, 2018). (Exhibit L). The present appeal is no different.

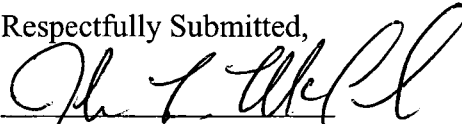
### **Palmetto Pointe Was Not Entitled to Emergency Relief**

Palmetto Pointe sought emergency relief. The Notice of Appeal was filed on February 19,

2019. Palmetto Pointe did not explain why it waited until April 16, 2019 to ask a court to lift the stay as it may relate to a trial involving Tri-County Roofing. Second, throughout its Petition to Lift Stay, Palmetto Pointe discusses the passage of time, and the years gone by; and how Palmetto Pointe must now have a trial or it will be prejudiced. Under the Rules of Civil Procedure, Palmetto Pointe was allowed to move the case to the jury trial roster within six months of filing the Civil Action in 2015. Rule 40(d), SCRCF. While one understands that a construction defect action may involve complex construction industry issues, Palmetto Pointe itself chose to lengthen the time for the action and make it unwieldy by suing numerous parties instead of the developer and general contractor alone. Palmetto Pointe bears responsibility for the passage of time.

Wherefore, Builders Mutual request that the Honorable H. Bruce Williams of the Court of Appeals reverse the Circuit Court.

Respectfully Submitted,



John L. McCants, Esq., SC Bar No. 10423  
Rogers Lewis Jackson Mann and Quinn, LLC  
PO Box 11803 (29211)  
1901 Main Street, Suite 1200  
Columbia, SC 29201  
Ph: 803-978-2834  
Fax: 803-252-3653  
jmccants@rogerslewis.com

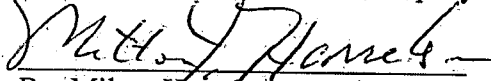
**ATTORNEY FOR APPELLANT BUILDERS  
MUTUAL INSURANCE COMPANY**

April 26, 2019

Appellate Case No. 2019-000238

Verification for Petition Pursuant to Rule 241(d)(7), SCACR on Behalf of Appellant Builders Mutual Insurance Company to Review Circuit Court Order Lifting Appeal Stay (Expedited Relief Requested).

Builders Mutual Insurance Company

A handwritten signature in cursive script, appearing to read "Milton Harrelson", written over a horizontal line.

By: Milton Harrelson

# Exhibit A

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-00955

Palmetto Pointe at Peas Island Condominium  
Property Owners Association, et al.  
PLAINTIFF(S)

Island Pointe, LLC, et al.  
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(b), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Plaintiff's Petition to Lift the Automatic Stay is GRANTED. Trial will proceed May 6, 2019.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

## INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below)                                                                     | Judgment Against<br>(List name(s) below) | Judgment Amount To be<br>Enrolled<br>(List amount(s) below) |
|------------------------------------------------------------------------------------------------------------------|------------------------------------------|-------------------------------------------------------------|
| N/A                                                                                                              |                                          |                                                             |
| If applicable, describe the property, including tax map information and address, referenced in the order:<br>N/A |                                          |                                                             |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

  
Circuit Court Judge

2764  
Judge Code

4/25/19  
Date

ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.F.  
By   
DEPUTY CLERK

# Exhibit B



Andrew N. Cole, Esq. 803.256.2660 F: 803.771.4484 E: acole@collinsandlacy.com

January 15, 2018

VIA E-MAIL  
Milton Harrelson  
Builders Mutual Insurance  
[REDACTED]

**CONFIDENTIAL DOCUMENT:  
REDACTED FOR WORK  
PRODUCT DOCTRINE**

Re: Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v. Island Pointe, LLC, et al. [& Tri-County Roofing, Inc.]; and Tri-County Roofing, Inc. (3<sup>rd</sup>-Party P.) v. Cornerstone Construction and Mark Malloy d/b/a Cornerstone Construction, Miracle Siding, LLC and Wilson Lucas Sales d/b/a Miracle Siding, LLC, Mark Palpoint a/k/a Micah Palpoint, Eloy Alonzo Vazquez, and Chris a/k/a John Doe 61 (3<sup>rd</sup>-Party Ds.)  
Civil Action No. 2015-CP-10-955  
[REDACTED]

Dear Milton:

I have been defending the defendant Tri-County Roofing, Inc. in the above-referenced action under policies issued by Scottsdale (policy effective July 24, 2006 through July 24, 2007) and Lloyd's, London with Raphael & Associates as TPA (policy effect July 24, 2007 through July 24, 2008). I am sending this letter to you because this case is scheduled to be mediated soon on January 30-31, 2018, and I am making an official inquiry to ask if Builders Mutual will be joining in/sharing in the defense of Tri-County Roofing.

I am aware of the policies from Scottsdale and Lloyd's that cover years 2006-2008. I am following up with a subsequent Lloyd's policy from 2008-2009. Although I do not have the actual policy numbers, I understand that Builders Mutual issued policies starting in or after 2009.

[REDACTED]

[REDACTED]

[REDACTED]

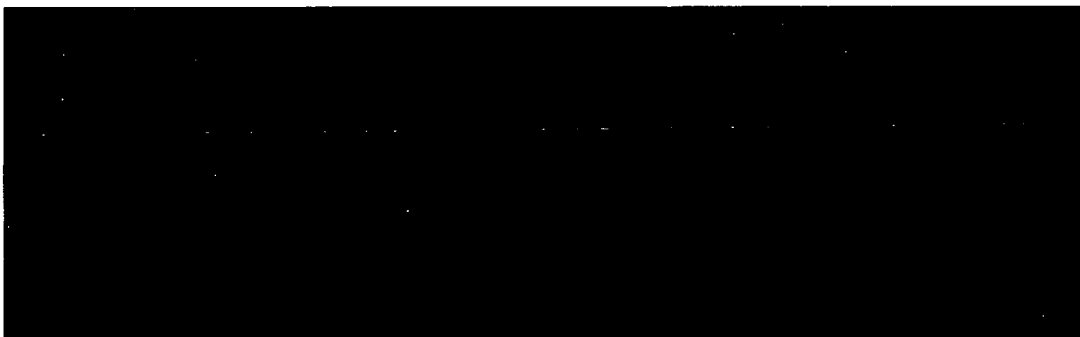
[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]



I thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew N. Cole".

Andrew N. Cole

cc: Scott Nirenberg, Raphael & Associates  
Bruce Canade, Scottsdale Insurance Co



# Exhibit C

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-00955

Palmetto Pointe at Peas Island Condominium  
Property Owners Association, et al.

Island Pointe, LLC, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Motions for Intervention filed by Builders Mutual Insurance Company, Nationwide Mutual Insurance Company, Nautilus Insurance Company, and State Farm Fire and Casualty Company are DENIED.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

## INFORMATION FOR THE JUDGMENT INDEX

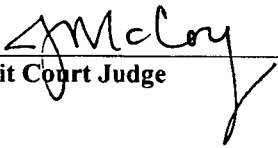
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| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be<br>Enrolled<br>(List amount(s) below) |
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If applicable, describe the property, including tax map information and address, referenced in the order:  
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The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.  
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Circuit Court Judge

2764

Judge Code

12/17/18

Date

# Exhibit D

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-00955

Palmetto Pointe at Peas Island Condominium  
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Circuit Court Judge
2764  
Judge Code1/16/18  
Date

# Exhibit E

**ROGERS ♦ LEWIS**  
— ROGERS LEWIS JACKSON MANN & QUINN, LLC —

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1901 Main Street, Suite 1200  
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Phone (803) 978-2834  
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www.rogerslewis.com

**RECEIVED**

**FEB 19 2019**

**SC Court of Appeals**

February 19, 2019

Via Hand Delivery

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v.  
Island Pointe, LLC, et al.  
Circuit Court Case No.: 2015-CP-10-00955

Dear Ms. Kitchings:

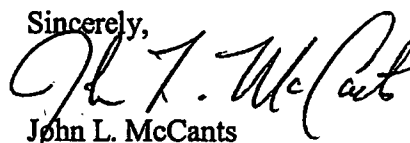
Enclosed for filing is the original Notice of Appeal along with one (1) copy of the Notice of Appeal to be stamped and returned to the courier. Also enclosed are the following:

- (1) Original Proof of Service for the Notice of Appeal and one (1) copy to be stamped and returned with the courier;
- (2) Copies of the Orders which are to be challenged on appeal;
- (3) A filing fee of \$100.00

By copy hereof, all counsel of record are being served with the above.

Thank you for your assistance, and should you have any questions, please do not hesitate to contact me.

Sincerely,



John L. McCants

cc:

The Honorable Clerk of Court for Charleston County  
(via US Mail for filing)

Other Counsel of Record:

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2015-CP-10-00955

**RECEIVED**

FEB 19 2019

**SC Court of Appeals**

Ex Parte:

Builders Mutual Insurance Company, Appellant,

In Re:

Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., and Jack Love,  
individually, and on behalf of all others similarly situated, Plaintiffs,

v.

Island Pointe, LLC; Leonard T. Brown; Complete Building Corporation; Tri-County Roofing,  
Inc.; Creekside, Inc.; American Residential Services, LLC d/b/a Rescue Rooter Charleston;  
Andersen Windows, Inc.; Atlantic Building Construction Services, Inc. n/k/a Atlantic  
Construction Services, Inc.; Christopher N. Union; Builder Services Group, Inc. d/b/a Gale  
Contractor Services; Novus Architects, Inc. f/k/a SGM Architects, Inc.; Tallent and Sons, Inc.; W  
C Services, Inc.; CRG Engineering, Inc.; Certainteed Corporation; Kelly Flooring Products, Inc.  
d/b/a Carpet Baggers and John Doe 1-60.....Defendants.

Tri-County Roofing, Inc.....Third-Party Plaintiff,

v.

Cornerstone Construction and Mark Malloy d/b/a Cornerstone Construction; Gutter Works, Inc.  
and Michael L. Segars d/b/a Gutter Works; Mr. Gutter; Litchfield Seamless Gutters & Windows,  
LLC and Thomas Litchfield d/b/a Litchfield Seamless Gutter; Miracle Siding, LLC and Wilson  
Lucas Sales d/b/a Miracle Siding, LLC; Mark Palpoint a/k/a Micah Palpoint; Elroy Alonzo  
Vasquez; and Chris a/k/a John Doe 61.....Third-Party Defendants.

Complete Building Corporation, Inc.....Third-Party Plaintiff,

v.

Alderman Construction; Stanley's Vinyl Fence Designs; Cohen's Drywall; and Mosley Concrete.....Third-Party Defendants.

Of whom Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Jack Love, individually, and behalf of all others similarly situated, and Tri-County Roofing, Inc. are the Respondents.

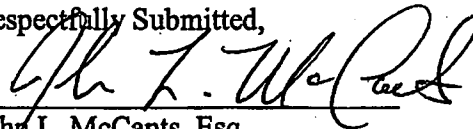
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**NOTICE OF APPEAL**

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Builders Mutual Insurance Company ("Appellant") appeals the Order/Statement of Judgment of the Honorable Jennifer B. McCoy, dated December 17, 2018, denying the Motion for Intervention filed by Builders Mutual Insurance Company; and the Appellant appeals the Order/Statement of Judgment of the Honorable Jennifer B. McCoy, dated January 16, 201[9], denying the Motion for Reconsideration filed by Builders Mutual Insurance Company. Appellant received written notice of entry of the Order/Statement of Judgment denying the Motion to Reconsider on January 21, 2019.

Respectfully Submitted,



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SC Bar No. 10423

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February 19, 2019  
Columbia, South Carolina

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STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

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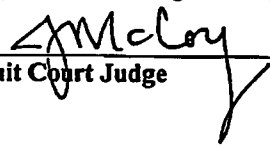
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## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Motions for Reconsideration of this court's ruling on Motions to Intervene filed by Builders Mutual Insurance Company, Nationwide Mutual Insurance Company, Nautilus Insurance Company, and State Farm Fire and Casualty Company are DENIED.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

## INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below)                                                                     | Judgment Against<br>(List name(s) below) | Judgment Amount To be<br>Enrolled<br>(List amount(s) below) |
|------------------------------------------------------------------------------------------------------------------|------------------------------------------|-------------------------------------------------------------|
| N/A                                                                                                              |                                          |                                                             |
| If applicable, describe the property, including tax map information and address, referenced in the order:<br>N/A |                                          |                                                             |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

*A. McCoy*  
Circuit Court Judge

2764  
Judge Code

1/16/18  
Date

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2015-CP-10-00955

**RECEIVED**

**FEB 19 2019**

**SC Court of Appeals**

Ex Parte:

Builders Mutual Insurance Company, Appellant,

In Re:

Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., and Jack Love,  
individually, and on behalf of all others similarly situated, Plaintiffs,

v.

~~Island Pointe, LLC; Leonard T. Brown; Complete Building Corporation; Tri-County Roofing, Inc.; Creekside, Inc.; American Residential Services, LLC d/b/a Rescue Rooter Charleston; Andersen Windows, Inc.; Atlantic Building Construction Services, Inc. n/k/a Atlantic Construction Services, Inc.; Christopher N. Union; Builder Services Group, Inc. d/b/a Gale Contractor Services; Novus Architects, Inc. f/k/a SGM Architects, Inc.; Tallent and Sons, Inc.; W C Services, Inc., CRG Engineering, Inc.; Certainteed Corporation; Kelly Flooring Products, Inc. d/b/a Carpet Baggers and John Doe 1-60.....~~Defendants.

Tri-County Roofing, Inc.....Third-Party Plaintiff,

v.

Cornerstone Construction and Mark Malloy d/b/a Cornerstone Construction; Gutter Works, Inc. and Michael L. Segars d/b/a Gutter Works; Mr. Gutter; Litchfield Seamless Gutters & Windows, LLC and Thomas Litchfield d/b/a Litchfield Seamless Gutter; Miracle Siding, LLC and Wilson Lucas Sales d/b/a Miracle Siding, LLC; Mark Palpoint a/k/a Micah Palpoint; Elroy Alonzo Vasquez; and Chris a/k/a John Doe 61.....Third-Party Defendants.

Complete Building Corporation, Inc.....Third-Party Plaintiff,

*Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v. Island Pointe, LLC, et al.*  
Circuit Court Case No.: 2015-CP-10-00955

v.

Alderman Construction; Stanley's Vinyl Fence Designs; Cohen's Drywall; and Mosley Concrete.....Third-Party Defendants.

Of whom Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Jack Love, individually, and behalf of all others similarly situated, and Tri-County Roofing, Inc. are the Respondents.

---

**PROOF OF SERVICE**

---

I certify that I have served the Notice of Appeal on Other Counsel of Record by depositing a copy of it in the United States Mail, postage prepaid, on February 19, 2019 addressed to their attorneys of record, listed as follows:

cc:

Charleston County Clerk of Court  
The Honorable Julie J. Armstrong  
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**RECEIVED**

FEB 19 2019

**SC Court of Appeals**

*Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v. Island Pointe, LLC, et al.*  
Circuit Court Case No.: 2015-CP-10-00955

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*Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v. Island Pointe, LLC, et al.*  
Circuit Court Case No.: 2015-CP-10-00955

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*Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v. Island Pointe, LLC, et al.*  
Circuit Court Case No.: 2015-CP-10-00955

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*Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v. Island Pointe, LLC, et al.*  
*Circuit Court Case No.: 2015-CP-10-00955*

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*Circuit Court Case No.: 2015-CP-10-00955*

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Circuit Court Case No.: 2015-CP-10-00955

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*Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v. Island Pointe, LLC, et al.*  
*Circuit Court Case No.: 2015-CP-10-00955*

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*Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v. Island Pointe, LLC, et al.*  
Circuit Court Case No.: 2015-CP-10-00955

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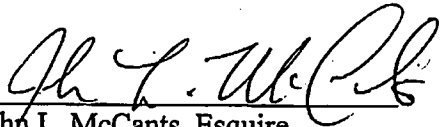
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*Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v. Island Pointe, LLC, et al.*  
Circuit Court Case No.: 2015-CP-10-00955

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February 19 2019  
Columbia, South Carolina

# Exhibit F

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2015-CP-10-00955

Appellate Case No. 2019-000238

**RECEIVED**

FEB 27 2019

**SC Court of Appeals**

**RECEIVED**

FEB 27 2019

**S.C. SUPREME COURT**

Ex Parte: Builders Mutual Insurance Company, Appellant,

In Re:

Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., and Jack Love, individually, and on behalf of all others similarly situated, Plaintiffs, v. Island Pointe, LLC; Leonard T. Brown; Complete Building Corporation; Tri-County Roofing, Inc.; Creekside, Inc.; American Residential Services, LLC d/b/a Rescue Rooter Charleston; Andersen Windows, Inc.; Atlantic Building Construction Services, Inc. n/k/a Atlantic Construction Services, Inc.; Christopher N. Union; Builder Services-Group, Inc. d/b/a Gale Contractor Services; Novus Architects, Inc. f/k/a SGM Architects, Inc.; Tallent and Sons, Inc.; W C Services, Inc., CRG Engineering, Inc.; Certainteed Corporation; Kelly Flooring Products, Inc. d/b/a Carpet Baggers and John Doe 1-60.....Defendants.

Tri-County Roofing, Inc.....Third-Party Plaintiff,

v.

Cornerstone Construction and Mark Malloy d/b/a Cornerstone Construction; Gutter Works, Inc. and Michael L. Segars d/b/a Gutter Works; Mr. Gutter; Litchfield Seamless Gutters & Windows, LLC and Thomas Litchfield d/b/a Litchfield Seamless Gutter; Miracle Siding, LLC and Wilson Lucas Sales d/b/a Miracle Siding, LLC; Mark Palpoint a/k/a Micah Palpoint; Elroy Alonzo Vasquez; and Chris a/k/a John Doe 61.....Third-Party Defendants.

And

Complete Building Corporation, Inc.....Third-Party Plaintiff,

v.

Alderman Construction; Stanley's Vinyl Fence Designs; Cohen's Drywall; and Mosley Concrete.....Third-Party Defendants.

Of whom Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Jack Love, individually, and behalf of all others similarly situated, and Tri-County Roofing, Inc. are the Respondents.

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### MOTION TO TRANSFER CASE TO THE SUPREME COURT

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Pursuant to Rule 204(b), SCACR, Appellant Builders Mutual Insurance Company ("Builders Mutual"), moves to certify the case for immediate review by the Supreme Court.

The appeal arises from a civil action styled *Palmetto Pointe at Peas Island Condominium Property Owners Association et al. v. Tri-County Roofing, Inc. et al.* Civil Action No. 2015-CP-10-00955 (the "Civil Action"). The Plaintiffs in the Civil Action commenced the action against the developer, design professionals and contractors (collectively, "Defendants") who were involved in the original design and construction of the condominium buildings that comprise the Palmetto Pointe residential community. The Plaintiffs allege that the buildings were constructed improperly and seek damages against Defendants based on what Plaintiffs allege it will cost to make future repairs to the buildings. Plaintiffs will seek to satisfy any verdict in favor of the Plaintiffs from general liability insurance policies issued by insurers to Defendants.<sup>1</sup>

Builders Mutual moved to intervene in the Civil Action for the limited purpose of having the Circuit Court submit a special verdict form and/or special interrogatories to a jury in order to

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<sup>1</sup> Builders Mutual issued general liability insurance policies to Defendant/Respondent Tri-County Roofing, Inc. ("Tri-County Roofing"). Builders Mutual is providing a defense to Tri-County Roofing through Andrew Cole, Esq. of the law firm Collins & Lacy, P.C., pursuant to a reservation of rights.

allocate a verdict, if any, in favor of Plaintiffs and avoid the consequences of a general verdict that occurred to the insurers in *Auto Owners Ins. Co. v. Newman*, 385 S.C. 187, 198, 684 S.E.2d 541, 546 (2009) (“*Newman*”) and *Harleysville Grp. Ins. v. Heritage Communities, Inc.*, 420 S.C. 321, 332, 803 S.E.2d 288, 294 (2017) (“*Heritage Communities*”). The consequences in *Newman* and *Heritage Communities* were that the insurers were required to pay the entire verdict/award in the underlying actions even though parts of the verdict/award included non-insured damages.<sup>2</sup>

Plaintiffs and Tri-County Roofing objected to Builders Mutual being able to intervene in the Civil Action.<sup>3</sup> The Circuit Court entered its Order/Statement of Judgment denying the Motion to Intervene filed by Builders Mutual. (Exhibit A). The Circuit Court did not provide an explanation for the ruling. Builders Mutual moved to have the Circuit Court reconsider its Order/Statement of Judgment, including to provide an explanation for the ruling, which the Circuit Court denied in its Order/Statement of Judgment Denying Motion to Reconsider. (Exhibit A).

---

<sup>2</sup> Builders Mutual submits that substantive issues of insurance coverage are established and will be addressed or discussed in the appeal with citations to the Supreme Court’s decisions in *Crossmann Communities of North Carolina, Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 50, 717 S.E.2d 589, 594 (2011) (“*Crossmann*”) (“In sum, we clarify that negligent or defective construction resulting in damage to otherwise non-defective components may constitute ‘property damage,’ but the defective construction would not.”); *Newman*, 385 S.C. at 198, 684 S.E.2d at 546 (These terms unambiguously prohibit recovery for the cost of removing and replacing the defective stucco—even when the replacement of the defective work may be incidental to the repair of property damage covered by the policy—and serve as one of the bases for this Court’s acknowledgment that a claim solely for economic losses resulting from faulty workmanship is part of an insured’s contractual liability which a CGL policy is not intended to cover.”). The present appeal concerns procedures. *Newman* and *Heritage Communities* did not provide definitive procedural guidelines which has resulted in insurers seeking to intervene on a limited basis in construction defect civil actions to guard against a general verdict. If there is a verdict in favor of Plaintiffs, the objective is to have separated beforehand or contemporaneously those costs which are to remove and replace Tri-County’s work (not covered) from those cost which are to repair “property damage” (potentially covered).

<sup>3</sup> Tri-County Roofing hired personal counsel who objected to the Motion to Intervene filed by Builders Mutual.

Builders Mutual filed a Notice of Appeal on February 19, 2019 with the Court of Appeals. The appeal presents at least one major issue that is recurring in construction defect civil litigation in South Carolina and will continue to recur: If there are to be consequences to a liability insurer for a general verdict, what procedures can an insurer follow to preclude those consequences or to assure there is an allocated verdict for insurance coverage purposes? Builders Mutual seeks certification for the Supreme Court to decide the issues to be presented and for Builders Mutual to be able to avoid the legal consequences of a general verdict of past precedent for the present Civil Action.

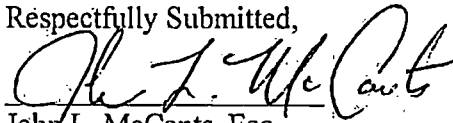
Transferring a case to the Supreme Court “is normally appropriate where the case involves an issue of significant public interest or a legal principle of major importance.” Rule 204(b), SCACR. The Supreme Court has granted certification in appeals, either on the motion of a party or the Court’s own motion, presenting recurring questions affecting liability insurers and insureds with respect to construction defect litigation. *See Heritage Communities; Crossmann; Newman; Bennett and Bennett Const., Inc. v. Auto-Owners Ins. Co.*, 405 S.C. 1, 747 S.E.2d 426 (2013); *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 748 S.E.2d 781 (2013); and *L-J, Inc. v. Bituminous Fire & Marine Ins. Co.*, 366 S.C. 117, 621 S.E.2d 33 (2005). Further, the Supreme Court granted a Motion to Transfer the Case, like the present one, in a recent appeal filed by insurers in Appellate Case No. 2017- 02146 concerning the denials of motions to intervene in an underlying construction defect case.<sup>4</sup> Builders Mutual submits that absent intervention or an appeal, the trial in the Civil Action would have gone forward to an unallocated or general verdict. It thus makes eminent sense to resolve the issues raised by *Newman* and *Heritage Communities* before a trial in the Civil

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<sup>4</sup> The parties in Appellate Case No. 2017- 02146 settled the appeal and underlying civil action before oral arguments in the Supreme Court.

Action; and Builders Mutual submits that a most efficient way is certification under Rule 204(b), SCACR. For these reasons, Builders Mutual moves pursuant to Rule 204(b), SCACR for certification by the Supreme Court for immediate review of the case.

Respectfully Submitted,



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[jmccants@rogerslewis.com](mailto:jmccants@rogerslewis.com)

**ATTORNEY FOR APPELLANT BUILDERS  
MUTUAL INSURANCE COMPANY**

February 27, 2019

# Exhibit A

---

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-00955

Palmetto Pointe at Peas Island Condominium  
Property Owners Association, et al.

Island Pointe, LLC, et al.

PLAINTIFF(S)

DEFENDANT(S)

|               |                                                                                      |
|---------------|--------------------------------------------------------------------------------------|
| Submitted by: | Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant |
|               | or<br><input type="checkbox"/> Self-Represented Litigant                             |

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Motions for Intervention filed by Builders Mutual Insurance Company, Nationwide Mutual Insurance Company, Nautilus Insurance Company, and State Farm Fire and Casualty Company are DENIED.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

| INFORMATION FOR THE JUDGMENT INDEX                                                                                                                                                                           |                                          |                                                             |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|-------------------------------------------------------------|
| Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below. |                                          |                                                             |
| Judgment in Favor of<br>(List name(s) below)                                                                                                                                                                 | Judgment Against<br>(List name(s) below) | Judgment Amount To be<br>Enrolled<br>(List amount(s) below) |
| N/A                                                                                                                                                                                                          |                                          |                                                             |
| If applicable, describe the property, including tax map information and address, referenced in the order:<br>N/A                                                                                             |                                          |                                                             |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

|                                                                                     |            |          |
|-------------------------------------------------------------------------------------|------------|----------|
|  | 2764       | 12/17/18 |
| Circuit Court Judge                                                                 | Judge Code | Date     |

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-00955

Palmetto Pointe at Peas Island Condominium  
Property Owners Association, et al.

Island Pointe, LLC, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Motions for Reconsideration of this court's ruling on Motions to Intervene filed by Builders Mutual Insurance Company, Nationwide Mutual Insurance Company, Nautilus Insurance Company, and State Farm Fire and Casualty Company are DENIED.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

## INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be<br>Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|-------------------------------------------------------------|
| N/A                                          |                                          |                                                             |

If applicable, describe the property, including tax map information and address, referenced in the order:  
N/A

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2764

Judge Code

1/16/18

Date

# Exhibit G

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2015-CP-10-00955

Appellate Case No. 2019-000238

Ex Parte:

Builders Mutual Insurance Company, Nationwide Mutual Fire Insurance Company, Nationwide Mutual Insurance Company, and Nautilus Insurance Company, ..... Appellants,

In Re:

Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., and Jack Love, Individually, and on behalf of all others similarly situated, ..... Plaintiffs,

v.

Island Pointe, LLC; Leonard T. Brown; Complete Building Corporation; Tri-County Roofing, Inc.; Creekside, Inc.; American Residential Services, LLC d/b/a Rescue Rooter Charleston; Andersen Windows, Inc.; Atlantic Building Construction Services, Inc. n/k/a Atlantic Construction Services, Inc.; Christopher N. Union; Builder Services Group, Inc. d/b/a Gale Contractor Services; Novus Architects, Inc. f/k/a SGM Architects, Inc.; Tallent and Sons, Inc.; W C Services, Inc., CRG Engineering, Inc.; CertainTeed Corporation; Kelly Flooring Products, Inc. d/b/a Carpet Baggers and John Doe 1-60, ..... Defendants,

Tri-County Roofing, Inc., ..... Third-Party Plaintiff,

v.

Cornerstone Construction and Mark Malloy d/b/a Cornerstone Construction; Gutter Works, Inc. and Michael L. Segars d/b/a Gutter Works; Mr. Gutter; Litchfield Seamless Gutters & Windows, LLC and Thomas Litchfield d/b/a Litchfield Seamless Gutter; Miracle Siding, LLC and Wilson Lucas Sales d/b/a Miracle Siding, LLC; Mark Palpoint a/k/a Micah Palpoint; Elroy Alonzo Vasquez; and Chris a/k/a John Doe 61, ..... Third-Party Defendants.

and

Complete Building Corporation, Inc., ..... Third-Party Plaintiff,

v.

Alderman Construction; Stanley's Vinyl Fence Designs; Cohen's Drywall; and Mosley Concrete,..... Third-Party Defendants,

Of Whom Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Jack Love, Individually, and on behalf of all others similarly situated, and Tri-County Roofing, Inc. .... Respondents.

---

**RETURN TO MOTION TO TRANSFER  
CASE TO SUPREME COURT**

---

Justin O'Toole Lucey, Esquire  
SC Bar No.: 15438  
Stephanie L. Drawdy, Esquire  
SC Bar No. 70205  
Justin O'Toole Lucey, P.A.  
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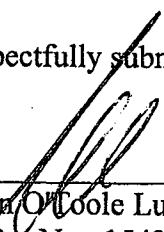
and

Edward D. Buckley, Jr., Esquire  
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*Attorneys for the Respondents Palmetto Pointe  
at Peas Island Condominium Property Owners  
Association, Inc. and Jack Love, Individually, and  
on behalf of all others similarly situated*

Respondents Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Jack Love, Individually, and on behalf of all others similarly situated, take no position on Appellant Builders Mutual Insurance Company's Motion to Transfer Case to the Supreme Court.

Respectfully submitted,



---

Justin O'Toole Lucey, Esquire  
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Stephanie L. Drawdy, Esquire  
SC Bar No. 70205  
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and

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*Attorneys for the Respondents Palmetto Pointe at  
Peas Island Condominium Property Owners  
Association, Inc. and Jack Love, Individually, and  
on behalf of all others similarly situated*

Mount Pleasant, SC  
March 8, 2019

**Other Counsel of Record:**

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Murphy & Grantland, PA  
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Columbia, SC 29211  
bboyd@murphygrantland.com  
rpeele@murphygrantland.com  
*Attorneys for Gutter Works, Gutter Works, Inc., Kelly Flooring Products, Inc. d/b/a Carpet Baggers, and Michael L. Segars*  
803-782-4100

# Exhibit H

**RECEIVED**  
FEB 07 2018  
The Supreme Court of South Carolina  
SC Court of Appeals

In Re Motions to Intervene in:

The Harbour Cove Condominium Association, Plaintiff,

v.

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

And

Beach Villas at Ocean Keyes Property Owners Association, Inc., Plaintiff,

v.

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, 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 Clark Western Dietrich Building  
Systems, LLC, Defendants,

And

Ocean Keyes Development, LLC and Keye Construction  
Co., Inc., Third-Party Plaintiffs,

v.

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,

Of whom Hartford Fire Insurance Company, Hartford  
Casualty Insurance Company, Hartford Underwriters  
Insurance Company, Clarendon National Insurance  
Company as successor in interest to Clarendon America  
Insurance Company, National Fire & Marine Insurance  
Company, Bitco General Insurance Corporation,  
Selective Insurance Company of South Carolina,  
Nationwide Mutual Insurance Company f/k/a  
Harleysville Insurance Company, Canopus US  
Insurance, Inc., and American Empire Surplus Lines  
Insurance Company are the Appellants,

AND

The Harbour Cove Condominium Association, Beach  
Villas at Ocean Keyes Property Owners Association,  
Inc., Ocean Keyes Development, LLC, Keye  
Construction Co., Inc., and Russell P. Baltzer are the  
Respondents.

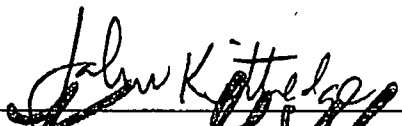
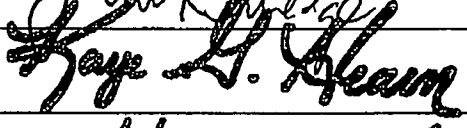
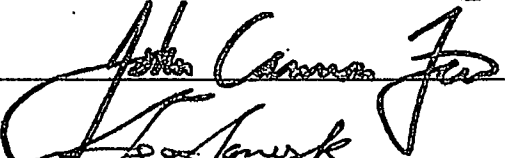
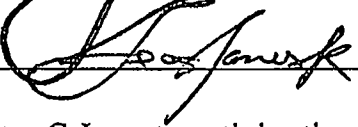
Appellate Case No. 2017-002318

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ORDER

---

Hartford Fire Insurance Company, Hartford Casualty Insurance Company, Hartford Underwriters Insurance Company, National Fire & Marine Insurance Company, and BITCO General Insurance Corporation move this Court to certify the appeals pursuant to Rule 204(b), SCACR. The motion is granted.

|                                                                                    |        |
|------------------------------------------------------------------------------------|--------|
|  | A.C.J. |
|  | J.     |
|  | J.     |
|  | J.     |

Beatty, C.J., not participating

Columbia, South Carolina

February 1, 2018

cc:

The Honorable Jenny Abbott Kitchings  
Robert T. Lyles, Jr., Esquire  
Joseph Kendrick Cunningham, Esquire  
Robert L. Wylie, IV, Esquire  
James E. Lady, Esquire  
Andrew Preston Brittain, Esquire  
G. Michael Smith, Sr., Esquire  
James Lynn Werner, Esquire  
Katon Edwards Dawson, Jr., Esquire  
James H. Elliott, Jr., Esquire  
Edward B. Davis Inabnit, Jr., Esquire  
Mark Steven Barrow, Esquire

# Exhibit I

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

PALMETTO POINTE AT PEAS ISLAND  
CONDOMINIUM PROPERTY OWNERS  
ASSOCIATION, INC. AND JACK LOVE,  
INDIVIDUALLY, AND ON BEHALF OF  
ALL OTHERS SIMILARLY SITUATED,

Plaintiffs,

VS.

ISLAND POINTE, LLC; COMPLETE  
BUILDING CORPORATION; TRI-COUNTY  
ROOFING, INC.; CREEKSIDE, INC.;  
AMERICAN RESIDENTIAL SERVICES, LLC  
D/B/A ARS/RESCUE ROOTER  
CHARLESTON; ANDERSEN WINDOWS,  
INC.; ATLANTIC BUILDING  
CONSTRUCTION SERVICES, INC. N/K/A  
ATLANTIC CONSTRUCTION SERVICES,  
INC.; BUILDER SERVICES GROUP, INC.  
D/B/A GALE CONTRACTOR SERVICES;  
NOVUS ARCHITECTS, INC., F/K/A SGM  
ARCHITECTS, INC.; TALLENT AND SONS,  
INC.; W C SERVICES, INC.; CRG  
ENGINEERING, INC.; CERTAINTED  
CORPORATION; KELLY FLOORING  
PRODUCTS, INC., D/B/A CARPET  
BAGGERS; CORNERSTONE  
CONSTRUCTION AND MARK MALLOY  
D/B/A CORNERSTONE CONSTRUCTION;  
MIRACLE SIDING, LLC AND WILSON  
LUCAS SALES D/B/A MIRACLE SIDING,  
LLC; MARK PALPOINT A/K/A MICAH  
PALPOINT; ELROY ALONZO VASQUEZ;  
CHRIS A/K/A JOHN DOE 61; ALDERMAN  
CONSTRUCTION; STANLEY'S VINYL  
FENCE DESIGNS; COHEN'S DRYWALL  
COMPANY, INC.; MOSELY CONCRETE;  
HAND A FRAMING CONSTRUCTION, LLC  
A/K/A H&A FRAMING CONSTRUCTION,

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) CASE NO. 2015-CP-10-0955

FILED  
2019 APR -5 PM 2:59  
CLERK OF COURT  
JULIE J. ARMSTRONG

ORDER STAYING CASE

JM/1

LLC AND D/B/AH AND A FRAMING, LLC, )  
H&A CONSTRUCTION, AND HAND A )  
CONSTRUCTION; JMC CONSTRUCTION, )  
INC.; JMC CONSTRUCTION, LLC; JOHN )  
DOE 1-15, )

Defendants. )

\_\_\_\_\_  
COMPLETE BUILDING CORPORATION, )  
INC., )

Third-Party Plaintiff, )

VS. )

LEONARD T. BROWNE AND )  
CHRISTOPHER N. UNION, )

\_\_\_\_\_  
Third-Party Defendants. )

CREEKSIDE, INC., )

Third-Party Plaintiff, )

VS. )

CHRISTOPHER N. UNION, )

\_\_\_\_\_  
Third-Party Defendant. )

AMERICAN RESIDENTIAL SERVICES, LLC, )

Third-Party Plaintiff, )

VS. )

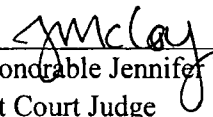
VICTOR HUGO HERNANDEZ; HERNANDEZ )  
ELECTRIC, LLC; LILIANA ROJAS FLORES; )  
MARTIN BARR D/B/A PORT CITY )  
STRUCTURED WIRING; KELLER )  
ELECTRIC, LLC; JOHN TOOLIN D/B/A )  
JOHN F. TOOLIN HEAT AND AIR; RUSSELL )  
"RUSTY" HILL D/B/A RUSTY'S HEATING & )  
AIR; and WARREN ANDERSON, )

\_\_\_\_\_  
Third-Party Defendants. )

Pursuant to Rule 205 and 241 of the SCACR, and upon review of the Notices of Appeal filed by Builders Mutual Insurance Company and Nautilus Insurance Company on February 22, 2019, and the Notice of Appeal filed by Nationwide Insurance Company on February 28, 2019, the Appellate Court has exclusive jurisdiction over this case at this time. Therefore, the case is hereby STAYED.

AND IT IS SO ORDERED!

Charleston, South Carolina  
April 5, 2019

  
\_\_\_\_\_  
The Honorable Jennifer B. McCoy.  
Circuit Court Judge

# Exhibit J

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

PALMETTO POINTE AT PEAS ISLAND  
CONDOMINIUM PROPERTY OWNERS  
ASSOCIATION, INC., and JACK LOVE,  
Individually, and on Behalf of All Others  
Similarly Situated,

Plaintiffs,

v.

ISLAND POINTE, LLC; COMPLETE  
BUILDING CORPORATION; TRI-COUNTY  
ROOFING, INC.; CREEKSIDE, INC.;  
AMERICAN RESIDENTIAL SERVICES, LLC  
d/b/a ARS/RESCUE ROOTER  
CHARLESTON; ANDERSEN WINDOWS,  
INC.; ATLANTIC BUILDING  
CONSTRUCTION SERVICES, INC. n/k/a  
ATLANTIC CONSTRUCTION SERVICES,  
INC.; BUILDER SERVICES GROUP, INC.  
d/b/a GALE CONTRACTOR SERVICES;  
NOVUS ARCHITECTS, INC., f/k/a SGM  
ARCHITECTS, INC.; TALLENT AND SONS,  
INC.; W C SERVICES, INC.; CRG  
ENGINEERING, INC.; CERTAINTEED  
CORPORATION; KELLY FLOORING  
PRODUCTS, INC., d/b/a CARPET BAGGERS;  
CORNERSTONE CONSTRUCTION and  
MARK MALLOY d/b/a CORNERSTONE  
CONSTRUCTION; MIRACLE SIDING, LLC  
and WILSON LUCAS SALES d/b/a MIRACLE  
SIDING, LLC; MARK PALPOINT a/k/a  
MICAH PALPOINT; ELROY ALONZO  
VASQUEZ; CHRIS a/k/a JOHN DOE 61;  
ALDERMAN CONSTRUCTION;  
STANLEY'S VINYL FENCE DESIGNS;  
COHEN'S DRYWALL COMPANY, INC.;  
MOSELY CONCRETE; HAND A FRAMING  
CONSTRUCTION, LLC a/k/a H&A  
FRAMING CONSTRUCTION, LLC and d/b/a  
H AND A FRAMING, LLC, H&A  
CONSTRUCTION, and HAND A

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE NO. 2015-CP-10-0955

**\*\*\*Priority Matter\*\*\***  
**\*\*\*Expedited Hearing Requested\*\*\***

**PLAINTIFFS' MOTION FOR  
RECONSIDERATION OF AND/OR  
RELIEF FROM ORDER STAYING CASE  
AND/OR PETITION TO LIFT OR  
OTHERWISE MODIFY ANY STAY  
AS MAY BE NECESSARY FOR THIS  
CASE TO PROCEED AS SCHEDULED  
TO TRIAL ON THE MERITS  
BEGINNING MAY 6, 2019**

CONSTRUCTION; JMC CONSTRUCTION, )  
INC.; JMC CONSTRUCTION, LLC; JOHN )  
DOE 1-15, )  
)

Defendants. )

COMPLETE BUILDING CORPORATION, )  
INC., )  
)

Third-Party Plaintiff, )  
)

v. )  
)

LEONARD T. BROWNE and CHRISTOPHER )  
N. UNION, )  
)

Third-Party Defendants. )

CREEKSID, INC., )  
)

Third-Party Plaintiff, )  
)

v. )  
)

CHRISTOPHER N. UNION, )  
)

Third-Party Defendant. )

AMERICAN RESIDENTIAL SERVICES, )  
LLC, )  
)

Third-Party Plaintiff, )  
)

v. )  
)

VICTOR HUGO HERNANDEZ; )  
HERNANDEZ ELECTRIC, LLC; LILIANA )  
ROJAS FLORES; MARTIN BARR d/b/a )  
PORT CITY STRUCTURED WIRING; )  
KELLER ELECTRIC, LLC; JOHN TOOLIN )  
d/b/a JOHN F. TOOLIN HEAT AND AIR; )  
RUSSELL "RUSTY" HILL d/b/a RUSTY'S )  
HEATING & AIR; and WARREN )  
ANDERSON, )  
)

Third-Party Defendants. )

NOW COME Plaintiffs, by and through their undersigned counsel, pursuant to Rules 59(e) and/or 60(b), SCRCP, and/or Rule 241, SCACR, as well as any other applicable law (procedural and substantive), and hereby move this Honorable Court to reconsider and/or otherwise grant relief from its Order Staying Case, filed April 5, 2019 (the “Stay Order”),<sup>1</sup> and/or petition the court to lift or otherwise modify any stay as may be necessary for this case to proceed as scheduled to trial on the merits beginning May 6, 2019.

### **INTRODUCTION**

By way introduction, Plaintiffs will cut to the chase about what they are asking the Court to do and, most respectfully, why the Court should do it. Despite a perhaps unwieldy title, at bottom, the instant filing presents the Court with this straightforward request: *Please do not further delay the trial of this case (which is already over four years old and is, without question, ready for adjudication on the merits) on account of the pending appeal taken by the Appellant Insurers<sup>2</sup> (who are themselves not parties to the case, and whose appeal has nothing at all to do with the respective claims and defenses of the actual case parties), but instead determine that the case should proceed to trial beginning May 6, 2019, as indeed it is duly scheduled to proceed but for the Stay Order.* As explained below, contrary to what the Continuance Seeking Defendants<sup>3</sup> represented to the Court (in the motion for continuance that seems to have prompted the Stay Order<sup>4</sup>), the Court has jurisdiction to conduct the scheduled trial and, most respectfully, under

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<sup>1</sup> Plaintiffs received written notice of entry of the stay order on April 8, 2019.

<sup>2</sup> The “Appellant Insurers” are, collectively, Builders Mutual Insurance Company (“Builders Mutual”), Nautilus Insurance Company (“Nautilus”), and Nationwide Insurance Company (“Nationwide”).

<sup>3</sup> Specifically, the “Continuance Seeking Defendants” are, collectively, Defendants Complete Building Corporations, Creekside, Inc., and Mosley Concrete.

<sup>4</sup> Filed April 3, 2019, the motion was made on the ground, simply asserted by the Continuance Seeking Defendants in conclusory fashion, that because of the Appellant Insurers’

both the governing law and guiding principles of equity, should exercise it. Indeed, this point is proved by Exhibits A, B, and C, all of which are attached hereto and incorporated herein by reference, which not only contradict the Continuance Seeking Defendants' assertion that the Court may not proceed with trial, but in the cases of Exhibits A and B (which are comprised of pertinent record materials from other recent cases where, in the face of non-party insurers' eve-of-trial appeals from the denial of so-called motions to "intervene," our Court of Appeals twice confirmed the trial court's ability to proceed with trial) flat out disprove this delay tactic.

### **BACKGROUND**

Now some two months into its fifth year, this residential construction defect lawsuit was filed on February 13, 2015. In short, the case is about alleged defects and damage throughout a 40-unit townhouse complex, i.e., whether, in fact, they exist, and, if so, who, if anyone, is liable for them. It has been fully discovered and is ready to be fully adjudicated in this Court *on the merits*—in other words, the issues actually framed by the parties' respective pleadings, i.e., *all* the claims and defenses actually in issue between the actual named parties to the case, are ripe for decision.

The operative scheduling order for this case is the *Fourth* Amended Consent Scheduling Order, filed May 16, 2018. It provides that "[t]h[e] case is subject to being called to trial not before August 15, 2018 or six (6) months from the date of service of any defendant still in the case at time of trial, whichever is the later of the two dates." By order filed August 24, 2018, the case was assigned to Her Honor "to hear and handle all pre-trial motions, including scheduling orders." Thanks to Her Honor's help in finding and reserving a two-week term of court capable

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appeal this Court "does not currently have jurisdiction to conduct a trial because it is directly affected by the appeal." (Mot. for Continuance p. 2.)

of accommodating litigation of this size, by the time of the Stay Order, the case had been duly set for a date-certain trial beginning May 6, 2019.

According to the Stay Order, however, because of the appeals taken by the Appellant Insurers, “the Appellate Court has exclusive jurisdiction over this case at this time[,]” and “[t]herefore, the case is . . . STAYED.” (Stay Order p. 3.) The Appellant Insurers’ appeals of course relate to the Court’s (correct) decision to deny their respective motions to “intervene” (purportedly made pursuant to Rule 24, SCRCPP), which motions asked not that they be made “parties” to the litigation, only that they be recognized—albeit in some unnamed, pleading-free capacity—as having a status that would allow them, at such future time as the matter was taken up during trial, to voice input about what the verdict form should look like—and, to be clear, not about what it should look like in respect of any issue necessary to a full and final adjudication of the merits of the actual controversy before this Court, but in fact solely in respect of insurance coverage matters that are not before this Court.<sup>5</sup>

Thus, as it stands, the situation is this: After more than four years of discovery and other preliminaries, this case is in fact ready for trial on the merits, and in spite of the difficulty in finding sufficient court time to actually conduct a trial in a case of this size, this case is in fact (but for the Stay Order) actually set to begin trial on May 6, 2019; however, the actual parties to

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<sup>5</sup> See (Builders Mutual Mot. to Intervene p. 15 (moving to intervene “for the limited purpose of participating in the drafting and the court’s submission of a special verdict form and/or general verdict form accompanied by answer to interrogatories to the jury pursuant to Rule 49, SCRCPP, so that the jury can allocate damages as discussed herein that are being sought against [their respect insureds]”)); (Nautilus Mot. to Intervene p. 4 (“seek[ing] leave pursuant to South Carolina Rule of Civil Procedure 24 to intervene in the Lawsuit for the limited purpose of requesting special interrogatories in the event a general verdict is entered against [its insured]”)); (Nationwide Mot. to Intervene p. 7 (“mov[ing] to intervene in this action pursuant to Rule 24(a) and (b) for the limited purpose of obtaining factual evidence necessary for allocating between covered and non-covered damages under [its] Policy and participating in the submitting of a special verdict form or submitting special interrogatories to the jury in order to obtain findings of fact necessary for that allocation”))).

the case must nonetheless hurry up and wait on the resolution of their respective claims and defenses (and, of course, in practical terms, the long awaited redress or relief that hinges thereon) while *nonparties*—nonparties who are, after all, nonparties because this Court has already correctly determined that they should be nonparties—appeal the denial of their supposed right to be heard (not even necessarily to be agreed with) during trial (which trial, of course, their actions are presently preventing) as to the form of a verdict that their names will not be on, in respect of matters of insurance that are not before this Court. (Of course, to be clear, of the actual case parties, it is only Plaintiffs who stand to lose from needless delay. For Plaintiffs, no trial means they cannot possibly win; for everyone else it means just the opposite. This point is well illustrated by the fact that none of the Continuance Seeking Defendants is even insured by any of the Appellant Insurers. In other words, the Continuance Seeking Defendants do not actually have any interest in the substance of the issues involved in the pending appeal. Thus explains the conclusory way in which they represented to the Court the supposedly dire jurisdictional consequences of the pending appeals: Why would they want the Court to have jurisdiction to try the case—they might actually have to try it.)

To put it charitably, any delay in the trial of this case on account of the Appellant Insurers' appeal is a dollar waiting on a dime. Worse yet, it is "heads I win, tails you lose" for the Appellant Insurers, who, by making unmeritorious motions to "intervene" and duly lost them, have effectively won the right to derail the entire case—a case which they are not, and ought not to be, a part of in the first place. (And, again, all the other actual case parties but Plaintiffs are, quite literally, happy to sit back and watch.) In truth, though, the Appellant Insurers do not have this right, and most respectfully, this Court should not allow them to exercise it.

### PERTINENT LAW

While it is true that, “[u]pon the service of the notice of appeal, the appellate court . . . ha[s] exclusive jurisdiction *over the appeal*; the lower court . . . [still] ha[s] jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241.” Rule 205, SCACR (emphasis added). Moreover, as Rule 205 makes expressly clear, “Nothing in the[] [South Carolina Appellate Court] Rules . . . prohibit[s] the lower court . . . from proceeding *with matters not affected by the appeal*.” (emphasis added).

Rule 241 furthers this point, clarifying what it means for the appellate court to have, as Rule 205 puts it, “exclusive jurisdiction *over the appeal* . . .” (emphasis added). “As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay *matters decided in the order, judgment, decree or decision on appeal*, and to automatically stay *the relief ordered in the appealed order, judgment, or decree or decision*.” Rule 241(a) (emphasis added). “This automatic stay continues in effect for the duration of the appeal unless lifted by order of the *lower court, . . . appellate court, or judge or justice of the appellate court*.” *Id.* (emphasis added). “The *lower court . . . retains jurisdiction over matters not affected by the appeal* including the authority to enforce any matters not stayed by the appeal.” *Id.* (emphasis added).

Thus, even where an appeal is properly taken and the automatic stay applies, the trial court (this Court here) has jurisdiction over matters not affected by the appeal and, moreover, is duly empowered to lift the automatic stay. Indeed, it is to this Court (the trial court) that the party seeking to have the stay lifted is supposed to turn first for relief: “Except where extraordinary circumstances make it impracticable, an application for an order lifting the automatic stay . . . must first be made to the lower court . . . which entered the order or decision on appeal.” Rule 241(d)(1). “In determining whether an order should issue pursuant to this

Rule, the . . . court . . . should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.” Rule 241(c)(2).

Moreover, and although completely unmentioned by the Continuance Seeking Defendants, the mere fact that a notice of appeal is filed/served does not necessarily have any jurisdictional consequence at all. Only a properly taken appeal, i.e., an appeal taken where there is in fact a right of immediate appeal, affects jurisdiction—and then only as to matters affected by the appeal, as explained above. If an appeal is not properly taken it is a nonevent insofar the continued progress of the case in the trial court is concerned. *See S.C. Pub. Serv. Auth. v. Arnold*, 287 S.C. 584, 340 S.E.2d 535 (1986) (“Where an order is interlocutory, and thus not appealable, the notice of intent to appeal does not transfer jurisdiction to this Court, nor does it stay proceedings in the lower court.”).

### **GROUND**

1. **In two other recent cases presenting this exact situation, the Court of Appeals has twice confirmed the trial court’s ability to proceed with trial.**

*See generally* **Exhibits A** and **B**.

2. **As was previously recognized by the Honorable Roger M. Young, Sr., a fellow judge of this Court, the presiding trial judge has discretion to assess whether an appeal prohibits it from going forward with trial, and when the trial judge is of the opinion that the appeal does not operate to prevent trial from going forward, the trial court should proceed with trial unless ordered not to by the appellate court. In other words, where there is good reason to question whether an appeal has any rightful impact on the continued progress of the case in the trial court, it is proper for the trial judge to recognize the same and proceed to trial as duly scheduled, putting the onus on any party seeking to stop such a trial to seek and obtain relief in the appellate court.**

*See* **Exhibit A** at p. 35; **Exhibit C**; *cf. Tillman v. Tillman*, 420 S.C. 246, 251, 801 S.E.2d 757, 760 n.1 (Ct. App. 2017) (“We are not persuaded by Appellant’s statement in his brief that the appeal was necessary because the motion to amend could not be heard in circuit

court before trial. *There may be a strategy motivating the appeal other than tactical delay, but we cannot think of a rational one.*") (emphasis added).

**3. There is good reason to question whether the Appellant Insurers' appeals have any rightful impact on the continued progress of this case before this Court.**

See generally Exhibits A and B. As stated above, in both of these cases, the Court of Appeals specifically confirmed the trial court's authority to proceed with trial. It should also be noted that, as reflected in Exhibit A at pp. 40–43, the Court of Appeals specifically questioned whether the orders on appeal were immediately appealable, requesting that the parties brief the matter. No such briefs were ever filed, however, because the matter quickly settled and the appeal was dismissed. See Exhibit A at pp. 44–49.

Moreover, the right to appeal is controlled by statute. The pertinent statute here is S.C. Code Ann. § 14-3-330. Essentially, it would allow for the Appellant Insurers' appeals if the challenged orders involved the merits or affected a substantial right of the Appellant Insurers.

The Continuance Seeking Defendants do not even suggest the challenged orders involve the merits—and indeed they do not. The Continuance Seeking Defendants do, however, assert the “substantial right” prong of the statute is implicated. (See Mot. for Continuance p. 2 (asserting that the appealed orders “affects the mode of trial”).) Most respectfully, this is simply not so.

It must be remembered that what the Appellant Insurers called motions to “intervene” were in fact nothing of the sort, but rather, as explained above, something altogether different from the concept of intervention envisioned under Rule 24. There is no South Carolina law whatsoever granting the Appellant Insurers the right to “intervene” as they asked—indeed, the

Court's correct denials of the motions reflects this point. Simply put, having established no such substantial right, the Appellant Insurers were not denied a substantial right.

4. As Judge Young also recognized, where, as here, a stay of the challenged orders is not necessary to preserve the jurisdiction of the appeal or to prevent a contested issue from becoming moot, and the circumstances are such that a stay of the orders is not in the interests of justice or judicial economy, the matter should proceed in the trial court. This reason supports lifting or otherwise modifying any stay that might otherwise be called for here as may be necessary for this case to proceed as scheduled to trial on the merits beginning May 6, 2019.

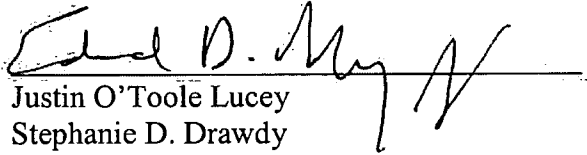
See Exhibit C at p. 2.

WHEREFORE, Plaintiffs so move/petition for relief as stated above, allowing this case to proceed to trial to determine the validity of the respective claims and defenses of the actual parties plaintiff and defendant, who are indeed the only parties who actually have substantial rights to be adjudicated here. Again, Plaintiffs respectfully request an expedited hearing on this matter. Plaintiffs reserve all rights to supplement this motion/petition with any further briefing/argument or submission(s) as the Court may allow or require.

<SIGNED ON THE FOLLOWING PAGE>

Respectfully submitted,

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*Attorneys for Plaintiffs*

Dated: April 16, 2019

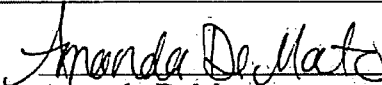
**CERTIFICATE OF SERVICE**

I, the undersigned legal assistant of the law office of Young Clement Rivers, LLP, do hereby certify that I have served a copy of the foregoing Plaintiffs' Motion for Reconsideration of and/or Relief from Order Staying Case and/or Petition to Lift or Otherwise Modify Any Stay as May Be Necessary for This Case to Proceed as Scheduled to Trial on the Merits Beginning May 6, 2019 by electronic transmission and/or U.S. Mail to the following counsel of record:

|                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                   |
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|                                                                                                                                                                                                                        |                                                                                                                                                                                                                    |
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| <p>Andrew N. Cole, Esquire<br/> Collins &amp; Lacy, PC<br/> P.O. Box 12487<br/> Columbia, SC 29211<br/> acole@collinsandlacy.com<br/> <b><i>Attorneys for JMC Construction, Inc. and JMC Construction, LLC</i></b></p> | <p>Christopher Adams, Esq.<br/> James L. Williams, Esq.<br/> Collins &amp; Lacy, P.C<br/> P.O. Box 12487<br/> Columbia, SC 2921<br/> <b><i>Attorneys for Martin Barr d/b/a Port City Structured Wiring</i></b></p> |

  
Amanda DeMato  
April 16, 2019

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Employers Mutual Casualty  
Company,

Petitioner,

IN RE:

Phillip Jefferson,

Plaintiff,

vs.

James White Construction, LLC and  
James White, Individually,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2016-CP-10-4055

**PETITIONER'S NOTICE OF  
MOTION AND MOTION TO  
INTERVENE**

FILED  
2017 DEC 29 AM 11:57  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

YOU WILL PLEASE TAKE NOTICE that ten (10) days after the service hereof, exclusive of the date of service, or at such time as the Court may determine, the undersigned attorneys for the proposed intervenor, Employers Mutual Casualty Company ("EMC"), will move the Court for an order pursuant to Rule 24 of the South Carolina Rules of Civil Procedure, permitting EMC to intervene in the above-captioned action, outside the presence of the jury and for the limited purpose of protecting its interest under certain commercial general liability policies and commercial umbrella policies issued by it to James White Construction, LLC ("JWC"). Specifically, EMC seeks to intervene in this action solely for the purpose of requesting, outside the presence of the jury, that special interrogatories and/or a special verdict or a general verdict form accompanied by interrogatories be submitted to the jury from which the parties can make a determination of the apportionment of damages for each cause of action, if

any, awarded to the plaintiff and against JWC and resolve issues of fact, from which a determination of insurance coverage (or lack thereof) may be made. *See* Rule 49, South Carolina Rules of Civil Procedure; *Harleysville Grp. Ins. Co. v. Heritage Cmty., Inc.* No. 27698, 2017 LEXIS 8 (S.C. Jan. 11, 2017) ("The right to control the litigation carries with it certain duties," including "the duty not to prejudice the insured's rights by failing to request special interrogatories, or a special verdict in order to clarify coverage of damages.").

This motion is based on the following grounds:

1. EMC issued a series of commercial general liability and commercial umbrella policies of insurance to JWC with policy periods spanning from September 10, 2015 to September 10, 2017.

2. In this action, the plaintiff alleges that, from 2010 or 2011 until 2016, JWC has been dumping fill dirt on his property which JWC knew or should have known was not suitable for building upon. The plaintiff asserts negligence, negligent misrepresentation, nuisance, and trespass claims against JWC. *See* Amended Complaint. EMC is providing a defense to JWC in this action under a full and complete reservation of rights under the policies.

3. EMC maintains that there may not be coverage for some or all of the claims made by the plaintiff in the action because the claims and/or damages, if any, do not constitute an occurrence resulting in property damage and/or coverage is otherwise excluded under the policies.

4. EMC does not seek to actively participate in the pretrial or trial of this action other than to make a motion, at the appropriate time, to submit a special verdict form and/or special interrogatories to the jury, after the close of evidence. By proceeding in this manner, there will be no mention of insurance coverage during the trial and, therefore, no resulting

prejudice to the insured. EMC's intervention will also not cause delay or interference with the trial of this case.

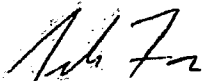
5. EMC's interests are not adequately nor completely represented by other parties to the action. As discussed above, EMC has an interest in the litigation separate from the actual defense of its insured. EMC also has an interest with regard to its obligation to indemnify JWC if a verdict is returned on any non-covered claims or damages.

6. Intervention as a matter of right in this case is warranted because EMC has an interest relating to the subject matter of this case and is so situated that in the absence of such intervention, the disposition of the action may, as a practical matter, impair or impede EMC's ability to protect that interest. Moreover, EMC's interest is not adequately represented by the existing parties, in that defense counsel retained to represent JWC may not advocate any coverage position which would be against the interest of JWC.

7. Alternatively, EMC is entitled to permissive intervention in that a determination of EMC's policies, coverages, exclusions and defenses in this action have common questions of fact relating to the damages, if any, that may be awardable to the plaintiff.

This motion is made pursuant to Rules 24(a) and 24(b) of the South Carolina Rules of Civil Procedure and is supported by the pleadings in this matter, a supporting memorandum, if filed, and all applicable statutory and common law.

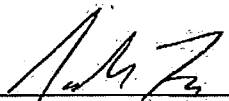
*Signature on following page.*

  
Phillip E. Reeves (S.C. Bar No. 4672)  
Nicholas A. Farr (S.C. Bar No. 78769)  
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Greenville, SC 29603  
(864) 271-9580

Attorneys for Petitioner,  
Employers Mutual Casualty Company

Greenville, SC  
December 27, 2017

The undersigned certified that consultation with counsel would serve no useful purpose.

  
Nicholas A. Farr

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
Frankenmuth Mutual Insurance )  
Company, )  
Petitioner, )  
IN RE: )  
Phillip Jefferson, )  
Plaintiff, )  
vs. )  
James White Construction, LLC and )  
James White, Individually, )  
Defendants. )

IN THE COURT OF COMMON PLEAS

C.A. No.: 2016-CP-10-4055

**PETITIONER'S NOTICE OF  
MOTION AND MOTION TO  
INTERVENE**

FILED  
2018 JAN -8 PM 2:53  
JULIE J. AMSTRONG  
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that ten (10) days after the service hereof, exclusive of the date of service, or at such time as the Court may determine, the undersigned attorneys for the proposed intervenor, Frankenmuth Mutual Insurance Company ("Frankenmuth"), will move the Court for an order pursuant to Rule 24 of the South Carolina Rules of Civil Procedure, permitting Frankenmuth to intervene in the above-captioned action, outside the presence of the jury and for the limited purpose of protecting its interest under certain commercial general liability policies and commercial umbrella policies issued by it to James White Construction Co., LLC ("JWC"). Specifically, Frankenmuth seeks to intervene in this action solely for the purpose of requesting, outside the presence of the jury, that special interrogatories and/or a special verdict or a general verdict form accompanied by interrogatories be submitted to the jury from which the parties can make a determination of the apportionment

of damages for each cause of action, if any, awarded to the plaintiff and against JWC and resolve issues of fact, from which a determination of insurance coverage (or lack thereof) may be made. See Rule 49, South Carolina Rules of Civil Procedure; *Harleysville Grp. Ins. Co. v. Heritage Cmtys., Inc.* No. 27698, 2017 LEXIS 8 (S.C. Jan. 11, 2017) ("The right to control the litigation carries with it certain duties," including "the duty not to prejudice the insured's rights by failing to request special interrogatories, or a special verdict in order to clarify coverage of damages.").

This motion is based on the following grounds:

1. Frankenmuth issued a commercial general liability policy of insurance to JWC with a policy period spanning from September 10, 2013 to September 10, 2015.
2. In this action, the plaintiff alleges that, from 2010 or 2011 until 2016, JWC has been dumping fill dirt on his property which JWC knew or should have known was not suitable for building. The plaintiff asserts negligence, negligent misrepresentation, nuisance, and trespass claims against JWC. See Amended Complaint. Frankenmuth is providing a defense to JWC in this action under a full and complete reservation of rights under the policies.
3. Frankenmuth maintains that there may not be coverage for some or all of the claims made by the plaintiff in the action because the claims and/or damages, if any, do not constitute an occurrence resulting in property damage within its policy period and/or coverage is otherwise excluded under the policy.
4. Frankenmuth does not seek to actively participate in the pretrial or trial of this action other than to make a motion, at the appropriate time, to submit a special verdict form and/or special interrogatories to the jury, after the close of evidence. By proceeding in this manner, there will be no mention of insurance coverage during the trial and, therefore, no

resulting prejudice to the insured. Frankenmuth's intervention will also not cause delay or interference with the trial of this case.

5. Frankenmuth's interests are not adequately nor completely represented by other parties to the action. As discussed above, Frankenmuth has an interest in the litigation separate from the actual defense of its insured. Frankenmuth also has an interest with regard to its obligation to indemnify JWC if a verdict is returned on any non-covered claims or damages.

6. Intervention as a matter of right in this case is warranted because Frankenmuth has an interest relating to the subject matter of this case and is so situated that in the absence of such intervention, the disposition of the action may, as a practical matter, impair or impede Frankenmuth's ability to protect that interest. Moreover, Frankenmuth's interest is not adequately represented by the existing parties, in that defense counsel retained to represent Frankenmuth may not advocate any position which would be against the interest of JWC and may not attempt to protect Frankenmuth's coverage position.

7. Alternatively, Frankenmuth is entitled to permissive intervention in that a determination of Frankenmuth's policies, coverages, exclusions and defenses in this action have common questions of fact relating to the damages, if any, that may be awardable to the plaintiff.

This motion is made pursuant to Rules 24(a) and 24(b) of the South Carolina Rules of Civil Procedure and is supported by the pleadings in this matter, a supporting memorandum, if filed, and all applicable statutory and common law.

*Signature on following page.*



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Attorneys for Petitioner,  
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Greenville, SC  
January 4, 2018

The undersigned certified that consultation with counsel would serve no useful purpose.



Phillip E. Reeves

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Philip Jefferson,

Plaintiff,

vs.

James White Construction, LLC and James  
White, Individually,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2016-CP-10-405

NOTICE OF MOTION AND  
MOTION TO INTERVENE BY  
FIREMEN'S INSURANCE COMPANY OF  
WASHINGTON, D.C.  
FOR THE LIMITED PURPOSE OF  
SUBMITTING A SPECIAL VERDICT FORM  
OR SPECIAL INTERROGATORIES

TO: ALL COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT pursuant to Rule 24(a)(1), SCRPC, or, in the alternative, pursuant to Rule 24(b)(2), SCRPC, Applicant, Firemen's Insurance Company of Washington, D.C. (hereinafter Firemen's) hereby moves to intervene in this action for the limited purpose of submitting a special verdict form or special interrogatories to the jury.

All America is entitled to intervention as a commercial general liability ("CGL") carrier for Defendants JAMES WHITE CONSTRUCTION, LLC and JAMES WHITE, INDIVIDUALLY hereinafter collectively ("James White Construction"), as its rights may be affected by a disposition of this case on the merits. This motion is made on the following grounds:

1. James White Construction is a named insured under four CGL policies (hereinafter collectively "the Policies") issued by Firemen's. Policy number CPA 0122862-4 was in effect from September 10, 2009 to September 10, 2010. The policy was renewed annually under policy numbers CPA 0122862-41 (2010-11), CPA 0122862-42 (2011-12), and CPA 0122862-43 (2012-13). All four policies contain commercial general liability (CGL) coverage with limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Copies of the Policies are attached as Exhibits A, B, C, and D respectively.

2. The Policies only cover "sums that the insured becomes legally obligated to pay as damages because of . . . 'property damage' . . . to which this insurance applies." (Exh. A, B, C, and D Form CG 0001, ¶ 1.A.1.a.)

3. The Policies only apply to "property damage" if it is caused by an "occurrence." (Id. at ¶ 1.A.1.b.(1).)

4. The Policies define "property damage" as physical injury to tangible property, including all resulting loss of use of that property. (Id. at ¶ V.17.) "Occurrence" is defined as "an accident, including continuous and repeated exposure to substantially the same general harmful conditions." (Id. at ¶ V.13.)

5. Under the contractual terms of the Policies, as interpreted by South Carolina law, defective construction is not covered. Crossmann Cmities. of N.C., Inc. v. Harleysville Mut. Ins. Co., 395 S.C. 40, 50, 717 S.E.2d 589, 594 (2011). However, resulting damage to otherwise non-defective components may constitute covered "property damage" caused by an "occurrence," satisfying the requirements of the insuring agreement. Id.

6. Additionally, the contractual terms of the Policies exclude coverage for business risks such as defective construction. (Exh. A, B, C, and D Form CG 0001, ¶ 1.A.2.j., k., l., m., and n.)

7. The Policies exclude coverage for "bodily injury" or "property damage" arising out of the discharge, dispersal, seepage, migration, release or escape of "pollutants." The policy defines "pollutants" to mean various irritants or contaminants. (Exh. A, B, C, and D Form CG 0001, ¶ 1.A.2.f. and Form CG 2165 (12/04).)

8. Upon information and belief, the Plaintiffs in this matter intends to present evidence of defective construction by James White Construction at the trial of this action.

9. To the extent damages are awarded against James White Construction for defective construction, the damages awarded are not damages to which the Policies apply, and they are therefore not covered.

10. To the extent damages are awarded against James White Construction for "property damage" arising out of the discharge, dispersal, seepage, migration, release or escape of "pollutants," the damages awarded are not covered.

11. The contractual terms of the Policies and South Carolina law require an allocation between covered and non-covered damages.

12. Firemen's contends that this allocation does not involve relitigating the issue of damages; it is rather a determination of the amount of covered damages under the contractual terms of the Policies and South Carolina law based upon a review of the evidence submitted at trial in this action. Nevertheless, the Supreme Court of South Carolina has recently held in *dicta* that this contractual allocation of covered damages may not be made in a separate coverage action. Harleysville Group Ins. v. Heritage Cmities, Inc., et al., 2017 WL 105021, Op. No. 27698 (S.C. Sup. Ct. filed Jan. 11, 2017) (Shearouse Adv. Sh. No. 2 at 21, 36 n.11).

13. The court did not clarify this holding in its final opinion. Harleysville Group Ins. v. Heritage Cmities, Inc., et al., 420 S.C. 321, 803 S.E.2d 288 (2017). Instead, the court cited a prior case in which allocation was not allowed due to failure to raise the issue in an underlying arbitration proceeding. See Auto Owners Ins. Co. v. Newman, 385 S.C. 187, 198, 684 S.E.2d 541, 547 (2009). Thus, it appears that South Carolina law may not allow insurers to obtain facts necessary for determinations involving liability coverage for construction defect claims in separate declaratory judgment actions.

14. Generally, insurers lack standing to intervene in underlying actions to determine liability. Ex Parte Gov't Employee's Ins. Co., 373 S.C. 132, 138-39, 644 S.E.2d 699, 702-03

(2007); Baker Hosp. v. Fireman's Fund Ins. Co., 314 S.C. 98, 101, 441 S.E.2d 822, 823 (1994) (citing Blue Cross and Blue Shield of S.C. v. S.C. Indus. Comm'n., 274 S.C. 204, 262 S.E.2d 35 (1980)). These holdings were based upon the understanding that factual determinations for coverage purposes could be litigated in separate coverage actions. See Ex Parte GEICO, 373 S.C. at 137, 644 S.E.2d at 702. Harlevsville appears to contradict this prior understanding.

15. Notice and opportunity to be heard are fundamental requirements of due process. If Firemen's is denied any forum for obtaining facts necessary for its allocation for coverage purposes, then its due process rights are violated in violation of both state and federal law.

16. Accordingly, Firemen's hereby moves to intervene in this action for the limited purpose of participating in the drafting of a special verdict form or submitting special interrogatories to the jury regarding the amount of any damages award that is for covered damages.

17. Under South Carolina law, a party seeking intervention under Rule 24(a)(2), SCRPC, must: (1) establish timely intervention; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties. In re Horry County State Bank, 361 S.C. 503, 508, 604 S.E.2d 723, 725 (Cl. App. 2004).

18. Firemen's motion to intervene is timely. This motion is being filed in advance of trial, and it is not expected to impact discovery. The parties participated in a mediation held on December 21, 2017 in a good faith effort to resolve the case out of court, but a settlement could not be reached.

19. Firemen's has an interest relating to the property or transaction which is the subject of this action. As discussed above, this action represents the only forum in which Firemen's can obtain an allocation as to the amount of covered damages under the Policies.

20. Firemen's is in a position such that, without intervention, disposition of this action will impair or impede its ability to protect that interest. The Supreme Court appears to have held that if intervention is not sought, an insurer waives its right to seek an allocation as to the amount of covered damages. Harlevsille, 2017 WL 105021 at \*7 n.11; Newman, 385 S.C. at 198, 684 S.E.2d at 547.

21. Firemen's is not adequately represented by other parties to this action. None of the parties to this action have an incentive to seek an allocation as to the amount of covered damages. The interests of the Plaintiffs and James White Construction are aligned against the interest of Firemen's. Indeed, federal courts often realign parties to coverage litigation to reflect the fact that the interests of the liability carrier are adverse to the interests of both the plaintiffs and the defendants in the underlying tort litigation. See Bi-Lo, LLC v. Nat'l Union Fire Ins. Co. of Pittsburgh, C.A. No. 0:14-cv-00335-CMC, 2014 WL 12605522 at \*7-8 (D.S.C. Apr. 30, 2014). When the interests of the party seeking intervention are adverse to the interests of the party litigants, "there is an obvious lack of adequate representation." In re Horry County State Bank, 361 S.C. at 509, 604 S.E.2d at 726.

22. Accordingly, Firemen's has satisfied all of the elements for intervention of right under Rule 24(a)(2). The use of the mandatory term "shall be permitted to intervene" demonstrates that this right is not subject to this Court's discretion.

23. In the alternative, Firemen's also moves to intervene under Rule 24(b). Permissive intervention is allowed at the court's discretion based upon the existence of a common question of fact or law between the underlying litigation and the intervenor's claims or defenses. S.C. Tax Comm'n v. Union County Treasurer, 295 S.C. 257, 263, 368 S.E.2d 72, 75 (Ct. App. 1988). Sound administrative procedure favors the disposition of all claims or defenses in a single action. Id. As

discussed above, this action represents the only forum in which an allocation of covered versus non-covered damages can be made.

24. Firemen's motion to intervene is made for the limited purpose of presenting the jury with a special verdict or special interrogatories for a finding as to allocation between covered and non-covered damages. Courts have allowed limited intervention for a special purpose. Davis v. Jennings, 304 S.C. 502, 504, 405 S.E.2d 601, 603 (1991) (holding that intervention is appropriate for third-party challenges to protective orders).

25. Upon information and belief, the granting of this motion will not unduly delay or prejudice the adjudication of the rights of the original parties to the instant action, in that intervention is for the limited purpose of determining the form of the verdict to be submitted to the jury, and intervention will not impact the ability of the original parties to present their claims and/or defenses at trial.

Firemen's respectfully moves to intervene in this action pursuant to Rule 24(a) and (b) for the limited purpose of participating in the drafting of a special verdict or submitting special interrogatories to the jury in order to obtain findings of fact necessary for an allocation between covered and non-covered damages under the Policies. The grounds for this Motion are set forth above.

*[Signature page follows]*

Respectfully submitted,

**MURPHY & GRANTLAND, P.A.**



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Columbia, South Carolina  
January 2, 2018

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

PHILLIP JEFFERSON,

Plaintiff,

vs.

JAMES WHITE CONSTRUCTION, LLC, and  
JAMES WHITE, individually,

Defendants.

2016-CP-10-4055  
IN THE COURT OF COMMON PLEAS

Case No. 2016-CP-10-04055

**ORDER DENYING NON-PARTY  
INSURERS' MOTIONS TO INTERVENE**

FILED  
2018 MAY 16 PM 3:07  
JULIE J. JAMES, CLERK OF COURT

The matter came before the Court upon separate Motions to Intervene filed by insurance carriers Employers Mutual Casualty Company, Firemen's Insurance Company of Washington, D.C. and Frankenmuth Mutual Insurance Company ("Insurers"). These carriers are insurers for Defendants James White Construction, LLC and James White, individually ("Defendants") and seek to intervene in this action, pursuant to Rule 24, SCRCP, for the limited purpose of submitting special interrogatories and/or verdict questions to the jury related to the allocation of covered and non-covered damages during the upcoming trial. I heard the motion in open court on January 12, 2018 at which time all parties and non-party Insurers appeared through their attorneys. I have reviewed the file along with all submissions and applicable law and considered arguments of counsel as well. Based upon the record and applicable law, I deny Insurers' Motions to Intervene for the reasons explained below.

**FACTS**

This case concerns allegations that unsuitable quality fill dirt was delivered and deposited on Plaintiff's property located on Huro Road in Mount Pleasant, South Carolina. Plaintiff filed his Amended Complaint on August 31, 2016. Insurers insured Defendants under a series of

policies applicable to Plaintiff's claims and hired counsel to represent Defendants under a reservation of rights at the onset of this litigation. On December 29, 2017 – almost 16 months after this action was commenced – Insurers filed the present motions, pursuant to Rule 24, SCRPC. This case is now set for a date certain trial beginning on June 18, 2018.

### LAW

Rule 24(a), SCRPC, provides for intervention as of right (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties. Rule 24(b), SCRPC, allows permissive intervention when (1) a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. Rule 24(b), SCRPC.

"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.

### ANALYSIS

Since the South Carolina Supreme Court published its opinion in the case of Harleysville Grp. Ins. V. Heritage Communities, Inc., 420 S.C. 321, 803 S.E.2d 288 (2017), insurers have attempted to intervene in cases on the eve of trial for the purpose of submitting special interrogatories and/or verdict questions to the jury related to the allocation of covered and non-covered damages. However, the court's opinion in Harleysville opinion does not mandate that insurers have a right to intervene to ask special interrogatories or request special verdict forms.

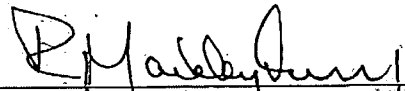
In this matter, Insurers cannot meet the requirements for intervention under Rule 24, SCRCP. First, Insurers have not proffered a statutory right to intervene, conditional or otherwise. Second, Insurers do not have an interest in the property that is the subject of this action, located on Huro Road in Mount Pleasant, South Carolina, and Insurers do not have an interest in the underlying interactions between Plaintiff and Defendants that is the subject of this litigation. Insurers' interests arise solely out of their contracts of insurance with Defendants and those interests are not appropriate to be litigated or interjected into this action. Finally, if Insurers were to be permitted to intervene at this stage of the litigation then it would be to the detriment of Defendants, their insureds, as a result of an impermissible conflict of interest that would be created and the likelihood of confusing the jury.

**ORDER**

Accordingly, and based upon the foregoing, it is therefore

ORDERED, ADJUDGED AND DECREED that Non-Party Insurers Employers Mutual Casualty Company, Firemen's Insurance Company of Washington, D.C. and Frankenmuth Mutual Insurance Company's Motions to Intervene are Denied.

AND IT IS SO ORDERED.



The Honorable R. Markley Dennis, Jr.  
Presiding Judge

May 16, 2018  
Charleston, South Carolina

*Rme/4*

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court Of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case No: 2016-CP-10-4055

Ex Parte: Frankenmuth Mutual Insurance Company  
and Employers Mutual Casualty Company.....Appellants,

In re: Phillip Jefferson.....Respondent,

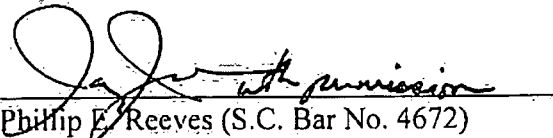
v.

James White Construction, LLC and James White, Individually..... Respondents,

NOTICE OF APPEAL

Pursuant to Rules 201 and 203 of the South Carolina Appellate Court Rules,  
Appellants Frankenmuth Mutual Insurance Company and Employers Mutual Casualty  
Company hereby appeal the Charleston County Court of Common Pleas Order Denying  
Non-Party Insurers' Motions to Intervene, dated and filed May 16, 2018.

Respectfully submitted,



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87002

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2016-CP-10-04055

RECEIVED

JUN 13 2018

SC Court of Appeals

Ex Parte:

Firemen's Insurance Company of Washington, D.C., .....Appellant,

In Re:

Phillip Jefferson, .....Respondent,

v.

James White Construction, LLC and James White, Individually, ..... Respondents.

NOTICE OF APPEAL

Appellant Firemen's Insurance Company of Washington, D.C. (hereinafter  
"Firemen's"), appeals the ruling of the Honorable R. Markley Dennis, Jr. filed May 16,  
2018. Appellant received notice of the ruling denying Firemen's Motion to Intervene on

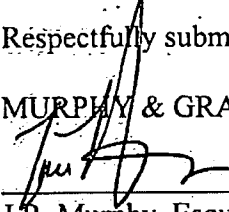
May 22, 2018. This action is set for trial beginning on Monday, June 18, 2018.

Firemen's appeal affects mode of trial. A copy of the final Order is attached.

June 13, 2018

Respectfully submitted,

MURPHY & GRANTLAND, P.A.



---

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Attorneys for Frankenmuth Mutual  
Insurance Company and  
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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

PHILLIP JEFFERSON,

Plaintiffs,

vs.

JAMES WHITE CONSTRUCTION, LLC  
and JAMES WHITE, individually

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO. 2016-CP-10-4055

**MOTION TO LIFT STAY**  
(Priority Matter)

2018 JUN 13 PM 3:56  
FILED  
CLERK OF COURT

Pursuant to Rule 241 of the South Carolina Rules of Appellate Procedure, Plaintiff, Phillip Jefferson (hereinafter, "Mr. Jefferson") moves for an order to lift any stay associated with the Notices of Appeal filed on June 13, 2018 by non-parties Frankenmuth Mutual Insurance Company, Employers Mutual Casualty Company, and Firemen's Insurance Company of Washington, D.C . Pursuant to Rule 11, the undersigned counsel certifies that communication with opposing counsel could not timely be had and/or would serve no useful purpose.

The grounds for this motion is that the motions appealed upon involve non-parties to this action, and that the matters decided in the Orders have no bearing on any of the claims and defenses between the Plaintiff and Defendants.

WHEREFORE, Mr. Jefferson respectfully requests that the Court lift the stay as it may pertain to the Plaintiffs and Defendants, allow the trial to proceed on Monday, June 18, 2018, and/or require the non-parties post a bond in the amount of Plaintiff's demand.

**HALVERSEN & ASSOCIATES, LLC**

By: 

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*Attorneys for the Plaintiff*

June 15<sup>th</sup>, 2018  
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court Of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case No: 2016-CP-10-4055

Ex Parte: Frankenmuth Mutual Insurance Company  
and Employers Mutual Casualty Company.....

RECEIVED

JUN 15 2018

SC Court of Appeals

Appellants,

In re: Phillip Jefferson.....

Respondent,

v.

James White Construction, LLC and James White, Individually..... Respondents,

APPELLANT FRANKENMUTH MUTUAL INSURANCE  
COMPANY'S PETITION FOR WRIT OF SUPERSEDEAS TO  
STAY TRIAL SCHEDULED FOR JUNE 18, 2018  
IMMEDIATE ACTION REQUIRED: 1 BUSINESS DAY  
UNTIL TRIAL

Appellant Frankenmuth Mutual Insurance Company ("Frankenmuth") petitions this Court to stay the trial scheduled for June 18, 2018, until the underlying appeal is resolved because the issues on appeal have a substantial effect on the trial of this matter. Significantly, Appellant has timely appealed an order denying its motion to intervene in this action for the purpose of requesting, outside the presence of the jury, that special interrogatories and/or a special verdict or a general verdict form accompanied by interrogatories be submitted to the jury from which the parties can make a determination of the apportionment of damages for each cause of action, if any, awarded to Respondent Phillip Jefferson and resolve issues of fact, from

which a determination of insurance coverage (or lack thereof) may be made. See Rule 49, South Carolina Rules of Civil Procedure; *Harleysville Grp. Ins. Co. v. Heritage Cmty's., Inc.*, 420 S.C. 321, 341, 803 S.E.2d 288, 299 (S.C. 2017) ("The right to control the litigation carries with it certain duties," including "the duty not to prejudice the insured's rights by failing to request special interrogatories, or a special verdict in order to clarify coverage of damages."). Due to the limited time until the current trial date, Appellant requests immediate review by this Court.<sup>1</sup>

### FACTUAL/PROCEDURAL HISTORY

Appellant Frankenmuth, along with Appellants Employers Mutual Casualty Company ("EMC") and Firemen's Insurance Company of Washington, D.C. ("Firemen's"), issued a series of commercial general liability policies of insurance to Respondent James White Construction, LLC ("JWC") which were in effect from September 10, 2009 to September 10, 2017. On August 4, 2016, Respondent Jefferson commenced a lawsuit in the Charleston County Court of Common Pleas against Respondents JWC and James White, individually, in which he alleges that, from 2010 or 2011 until 2016, JWC has been dumping fill dirt on his property which JWC knew or should have known was not suitable for building upon. The plaintiff asserts negligence, negligent misrepresentation, nuisance, and trespass claims against JWC. Appellants are providing a defense to JWC in this action under a full and complete reservation of rights under their respective policies.

Because there are questions as to whether some or all of the claims made and damages claimed by Respondent Jefferson in this matter are covered by their respective policies of insurance, Appellants each filed motions to intervene pursuant to Rule 24 of the South Carolina

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<sup>1</sup> Because of the exceptional circumstances of this matter and the limited time for review, Appellant has included the order as provided to it by the Court. Appellant will provide a certified copy of the order when it is made available by the Charleston County Clerk's Office pursuant to Rules 241(1) and 241(4)(C).

Rules of Civil Procedure for the limited purpose of protecting their interests under their policies by requesting special interrogatories and/or a special verdict form be submitted to the jury if this matter proceeds to trial. (Ex. 1, Frankenmuth's Motion to Intervene). The motions were heard by Judge R. Markley Dennis, Jr, on January 12, 2018. By order dated May 16, 2018, Judge Dennis denied Appellants' motions to intervene. (Ex. 2, Order Denying Insurers' Motions to Intervene).

On June 13, 2018, Appellants filed a notice of appeal of Judge Dennis' May 16, 2018, order. Appellants informed Judge Roger Young, the trial judge set to preside over the June 18, 2018 trial of this matter, via email that a notice of appeal had been filed. (Ex. 3, Email correspondence between counsel and the trial court, dated June 13, 2018). Thereafter, Respondent Jefferson filed a motion to lift any stay generated by the notice of appeal pursuant to Rule 241 of the South Carolina Appellate Court Rules. (Ex. 4, Plaintiff's Motion to Lift Stay). On June 14, 2018, Judge Young informed the parties that the appeal did not automatically stay the trial and that, unless the appellate court ruled otherwise, the matter would proceed to trial on June 18, 2018. (Ex. 5, Email correspondence between trial court and counsel, dated June 14, 2018).

Appellant now petitions this Court and seeks a writ to stay the upcoming trial until resolution of the appeal.

#### **STANDARD OF REVIEW**

A supersedeas is an extraordinary writ, which appellate courts use only when necessary to preserve the fruits of a meritorious appeal, to avoid irreparable harm, or to prevent a miscarriage of justice. *See Graham v. Graham*, 301 S.C. 128, 130, 390 S.E.2d 469, 470 (Ct. App. 1990) ("[T]he purpose...of a supersedeas...is to...preserve to appellant the fruits of a

meritorious appeal where they might otherwise be lost to him.”); *Andrews v. Sumter Commercial & Real Estate Co.*, 87 S.C. 301, 304, 69 S.E. 604, 606 (1910) (explaining that a supersedeas should be issued “only to the extent clearly made to appear to be necessary to prevent irreparable injury or a miscarriage of justice.”).

### ARGUMENT

The June 18, 2018 trial should be stayed pending the outcome of the appeal because (1) the filing of a notice of appeal automatically stays the trial and (2) a stay of the trial is necessary to preserve the fruits of a meritorious appeal and to avoid irreparable harm to Appellant.

Rule 205, SCACR, provides an appellate court with exclusive jurisdiction over matters on appeal. The lower court may only proceed with matters not affected by the appeal. Rule 241(a), SCACR, in governing matters which are stayed while on appeal, provides as follows:

As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.

Thus, a lower court may not act or issue orders that affect an issue on appeal, which would include, but not be limited to, proceeding to trial.

In *Tillman v. Oakes*, the Court acknowledged that the question of determining whether a lower court may proceed with a case once an order has been appealed is “a difficult one to answer.” 398 S.C. 245, 254, 728 S.E.2d 45, 50 (2012). The inquiry for this Court is whether Appellant and its appeal are affected by proceeding with the trial of this matter. The answer must be yes.

Appellant is an insurer providing a defense to Respondents-Defendants under a

reservation of rights. In *Harleysville Group Ins. v. Heritage Cmtys., Inc.*, the South Carolina Supreme Court set forth certain duties of an insurer providing a defense to an insured under a reservation of rights, including the duty to ensure that a verdict entered against its insured is allocated between covered and non-covered damages. 420 S.C. 321, 341, 803 S.E.2d 288, 299 (2017) (quoting *Magnum Foods, Inc. v. Cont'l Cas. Co.*, 36 F.3d 1491, 1498 (10th Cir. 1994) (“The right to control the litigation carries with it certain duties,” including “the duty not to prejudice the insured’s rights by failing to request special interrogatories or a special verdict in order to clarify coverage of damages.”).<sup>2</sup> Pursuant to this obligation, Appellant moved to intervene in this action solely to make such a request. The order denying this motion is at issue in this appeal.

If the matter proceeds to trial prior to a decision on Appellant’s appeal, the jury will not be presented with a special verdict form and/or special interrogatories. Rather, to the extent a verdict is entered against Respondents-Defendants, the verdict will be a general verdict. If faced with a general verdict, Appellant faces the possibility of having to indemnify its insureds for the entire verdict if at least one of several claims submitted to the jury is covered. See *Owners Ins. Co. v. Clayton*, 364 S.C.555, 561-62, 614 S.E.2d 611, 614-15 (2005). To prevent this inequity, the Court in *Harleysville* established that an allocated verdict must be obtained in the underlying trial. Appellant is attempting to comply with *Harleysville* but will be deprived of that opportunity

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<sup>2</sup> It should be noted that *Harleysville* may also be construed to place a similar burden on the insured to request an allocated verdict. See *Harleysville*, 420 S.C. 321, 338-39, 803 S.E.2d 288, 297-98 (citing *Remodeling Dimensions, Inc. v. Integrity Mut. Ins. Co.*, 819 N.W.2d 602, 618 (Minn. 2012) (holding that “when an insurer notifies its insured that it accepts the defense of a claim under a reservation of rights that includes covered and non-covered claims, the insurer not only has a duty to defend the claim, but also to disclose to its insured the insured’s interest in obtaining a written explanation of the award that identifies the claims or theories of recovery actually proved and the portions of the award attributable to each”). The Respondents-Defendants, however, have opposed Appellant’s motion to intervene to request such an allocation.

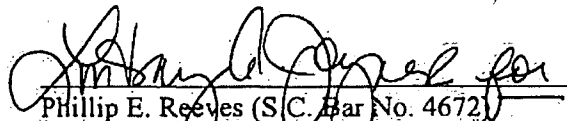
should this matter proceed to trial prior to a resolution of its appeal.

Appellant has a substantial interest in the outcome of the trial and preserving the ability to request that the jury be presented with a special verdict form and/or special interrogatories to obtain a determination of the damages, if any, attributable to covered and non-covered claims. Proceeding with a trial which may result in a general verdict if Respondents-Defendants are found liable to Respondent Jefferson prior to a decision on the merits of the appeal may either (1) render Appellant's appeal moot, leaving Appellant with the possibility of having to indemnify its insureds for an unallocated general verdict that includes covered and non-covered claims or (2) result in having to try the case a second time in the event Appellant's appeal is successful. As such, a supersedeas should be granted to preserve the fruits of a meritorious appeal, to avoid irreparable harm, and to prevent a miscarriage of justice. Further, Appellant contends that no bond or undertaking is required as a judgment has as a monetary judgment has not been entered in this matter.

#### CONCLUSION

For these reasons, Appellant respectfully requests this Court to issue a stay and to continue the trial of this matter until the appeal is resolved.

Respectfully submitted,



Phillip E. Reeves (S.C. Bar No. 46721)

Nicholas A. Farr (S.C. Bar No. 78769)

Gallivan, White & Boyd, P.A.

Post Office Box 10589

Greenville, South Carolina 29603

(864) 271-9580

Attorneys for Appellant

Greenville, South Carolina

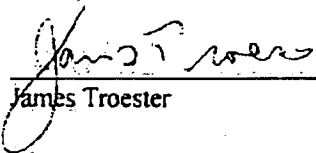
June 15, 2018

STATE OF Michigan )

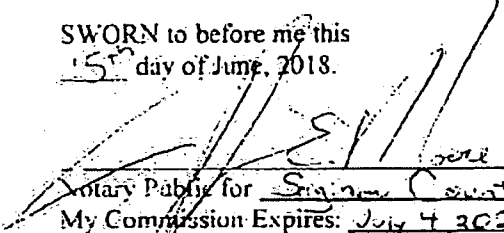
COUNTY OF Saginaw )

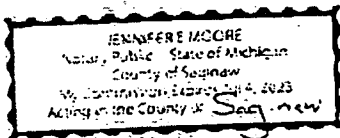
VERIFICATION

PERSONALLY APPEARED before me, James Troester, who after being duly sworn, says that he has read the foregoing Petition, knows the contents thereof, and that the same are true and correct to the best of his own knowledge, saving and excepting as to those matters alleged therein on information and belief, and, as to those, he believes them to be true.

  
James Troester

SWORN to before me this  
15<sup>th</sup> day of June, 2018.

  
Notary Public for Saginaw County  
My Commission Expires: July 4, 2023



# EXHIBIT 5

Nick Farr

---

**From:** Young, Roger <ryoungj@sccourts.org>  
**Sent:** Thursday, June 14, 2018 2:10 PM  
**To:** Dan  
**Cc:** Yount, Adam; Brent Halversen; Emily Medlin; Young, Roger Law Clerk (Taylor Grooms); Nick Farr; Rogers; rteague@wardfirm.com; Phil Reeves; Tim J. Newton; paralegal@slotchiverlaw.com  
**Subject:** Re: Phillip Jefferson v. James White Construction, LLC and James White, Individually (C.A. No. 2016-CP-10-4055) M&G File No.: 1465-0021

The word I get from Columbia is that this is one of those cases where the appellant thinks the appeal automatically stays the pending trial, and it is up to me to decide if I agree or not. They will only act if someone files something asking them to tell me to stop the trial.

I am of the opinion this appeal does not automatically stay the trial.

Therefore, unless I get something from the appellate courts telling me to stop, be ready to go to trial Monday. Please send me pre-trial briefs, voir dire and proposed jury charges by the end of the day Friday.

Roger Young

On 6/14/18, 12:52 PM, "Dan" <dan@slotchiverlaw.com> wrote:

Thank you Judge. We will await word from you. In the interim, please let us know if you want a Pre trial brief in advance of trial, assuming we are going forward.

Dan

Daniel S Slotchiver  
Slotchiver & Slotchiver LLP  
44 State Street  
Charleston SC 29401  
843-577-6531

This communication may be attorney-client privileged or otherwise confidential. If you are not the intended recipient, please delete this message and notify the sender of this error

> On Jun 14, 2018, at 11:00 AM, Young, Roger <ryoungj@sccourts.org> wrote:

>

> I have someone at the COA looking out for the appeal so they can make a decision as to whether the appeal stays the case. As of a few minutes ago the notice of appeal has not been filed with the COA. I will let you know what they decide when they get it and make a decision.

>

> RY

>

> From: "Yount, Adam" <ayount@hsblawfirm.com>

> Date: Wednesday, June 13, 2018 at 4:24 PM  
> To: Brent Halversen <Brent@halversenlaw.com>, Emily Medlin <emedlin@murphygrantland.com>, Roger Young <ryoungj@sccourts.org>, Taylor Grooms <ryounglc@sccourts.org>  
> Cc: "nfarr@gwblawfirm.com" <nfarr@gwblawfirm.com>, Rogers <JRogers@wardfirm.com>, "dan@slotchiverlaw.com" <dan@slotchiverlaw.com>, "rteague@wardfirm.com" <rteague@wardfirm.com>, "preeves@gwblawfirm.com" <Preeves@gwblawfirm.com>, "Tim J. Newton" <tnewton@murphygrantland.com>  
> Subject: RE: Phillip Jefferson v. James White Construction, LLC and James White, Individually (C.A. No. 2016-CP-10-4055) M&G File No.: 1465-0021

>  
> Judge Young,  
>  
> Please have this confirm that Defendants join in the referenced Motion to Lift Stay.  
>  
> Thanks,  
>  
> Adam  
>  
>  
> [Haynsworth Sinkler Boyd, P.A.]<[https://urldefense.proofpoint.com/v2/url?u=http-3A\\_\\_www.hsblawfirm.com\\_home.php&d=DwMFAG&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=glX2g4ctOFJAM0d-MqMR-XsuVclXWkmM4xiiWcK\\_xvM&m=-XQTIKOs7fskfWqhggGqnEJ-TtIXUKBhwLOeZhpRZDk&s=5n5qmcZzCeI8EA1ZF98idbOo3Ab\\_zwJZGhoRV7nLcwE&e=>](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.hsblawfirm.com_home.php&d=DwMFAG&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=glX2g4ctOFJAM0d-MqMR-XsuVclXWkmM4xiiWcK_xvM&m=-XQTIKOs7fskfWqhggGqnEJ-TtIXUKBhwLOeZhpRZDk&s=5n5qmcZzCeI8EA1ZF98idbOo3Ab_zwJZGhoRV7nLcwE&e=>)>  
>  
> Adam N. Yount | Attorney | Haynsworth Sinkler Boyd, P.A.  
>  
> 134 Meeting Street, 3rd Floor (29401) | Post Office Box 340 (29402) | Charleston, South Carolina  
> Phone: 843.722.3366 | Fax: 843.722.2266 | Direct: 843.720.4484  
> website<[https://urldefense.proofpoint.com/v2/url?u=http-3A\\_\\_www.hsblawfirm.com\\_home.php&d=DwMFAG&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=glX2g4ctOFJAM0d-MqMR-XsuVclXWkmM4xiiWcK\\_xvM&m=-XQTIKOs7fskfWqhggGqnEJ-TtIXUKBhwLOeZhpRZDk&s=5n5qmcZzCeI8EA1ZF98idbOo3Ab\\_zwJZGhoRV7nLcwE&e=>](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.hsblawfirm.com_home.php&d=DwMFAG&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=glX2g4ctOFJAM0d-MqMR-XsuVclXWkmM4xiiWcK_xvM&m=-XQTIKOs7fskfWqhggGqnEJ-TtIXUKBhwLOeZhpRZDk&s=5n5qmcZzCeI8EA1ZF98idbOo3Ab_zwJZGhoRV7nLcwE&e=>)> |  
> bio<[https://urldefense.proofpoint.com/v2/url?u=http-3A\\_\\_hsblawfirm.com\\_attorneys\\_adam-2Dn-2Dyount&d=DwMFAG&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=glX2g4ctOFJAM0d-MqMR-XsuVclXWkmM4xiiWcK\\_xvM&m=-XQTIKOs7fskfWqhggGqnEJ-TtIXUKBhwLOeZhpRZDk&s=G4N33f0dwrYnQLenzQXEUQm\\_fkjfaDUSQAAA\\_Hs9qIU&e=>](https://urldefense.proofpoint.com/v2/url?u=http-3A__hsblawfirm.com_attorneys_adam-2Dn-2Dyount&d=DwMFAG&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=glX2g4ctOFJAM0d-MqMR-XsuVclXWkmM4xiiWcK_xvM&m=-XQTIKOs7fskfWqhggGqnEJ-TtIXUKBhwLOeZhpRZDk&s=G4N33f0dwrYnQLenzQXEUQm_fkjfaDUSQAAA_Hs9qIU&e=>)> |  
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> email<<mailto:ayount@hsblawfirm.com>>  
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>  
> From: Brent Halversen [<mailto:Brent@halversenlaw.com>]  
> Sent: Wednesday, June 13, 2018 4:22 PM

> To: Emily Medlin; ryoungj@sccourts.org; ryounglc@sccourts.org  
> Cc: nfarr@gwblawfirm.com; Rogers; dan@slotchiverlaw.com; rteague@wardfirm.com; Yount, Adam;  
preeves@gwblawfirm.com; Tim J. Newton  
> Subject: RE: Phillip Jefferson v. James White Construction, LLC and James White, Individually (C.A. No. 2016-CP-10-4055) M&G File No.: 1465-0021

>  
> Judge Young,

>  
> Attached is the Plaintiff's Motion to Lift Stay associated with any of these notices of appeal that the various Insurance companies have just filed this afternoon in our case. The Defendants in the case, through Adam Yount, have just indicated to me that they also join in this motion.

>  
> Given that we have a one week date certain before your Honor that starts on Monday of next week, I am sure I speak for everyone in asking that the Court rule upon the motion as soon as possible in light of the number of people involved in trial preparation, travelling etc. We believe that any stay invoked by the filing of the notices should be lifted consistent with the rulings of other courts in South Carolina. I have attached one such ruling from Judge Newman to that effect. Thank you for your consideration.

>  
> Brent

>  
>  
>  
>  
> \_\_\_\_\_  
> Brent Souther Halversen, Esq.  
> Halversen & Associates, LLC  
> 171 Church Street, Suite 330  
> Charleston, South Carolina 29401  
> (843) 284-5790 tel.  
> (864) 326-4844 fax.  
> brent@halversenlaw.com<mailto:brent@halversenlaw.com>  
> www.halversenlaw.com<https://urldefense.proofpoint.com/v2/url?u=http-  
3A\_www.halversenlaw.com\_&d=DwMFAG&c=YGVVmrQQ6VQOFx3Z93C9uQ&r=gIX2g4ctOFJAM0d-MqMR-  
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> [Company logo]

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> From: Emily Medlin <emedlin@murphygrantland.com<mailto:emedlin@murphygrantland.com>>  
> Sent: Wednesday, June 13, 2018 3:25 PM  
> To: ryoungj@sccourts.org<mailto:ryoungj@sccourts.org>; ryounglc@sccourts.org<mailto:ryounglc@sccourts.org>  
> Cc: nfarr@gwblawfirm.com<mailto:nfarr@gwblawfirm.com>; Rogers  
<jrogers@wardfirm.com<mailto:jrogers@wardfirm.com>>; Brent Halversen  
<Brent@halversenlaw.com<mailto:Brent@halversenlaw.com>>;  
dan@slotchiverlaw.com<mailto:dan@slotchiverlaw.com>; rteague@wardfirm.com<mailto:rteague@wardfirm.com>;  
ayount@hsblawfirm.com<mailto:ayount@hsblawfirm.com>;  
preeves@gwblawfirm.com<mailto:preeves@gwblawfirm.com>; Tim J. Newton  
<tnewton@murphygrantland.com<mailto:tnewton@murphygrantland.com>>  
> Subject: Phillip Jefferson v. James White Construction, LLC and James White, Individually (C.A. No. 2016-CP-10-4055)  
M&G File No.: 1465-0021

>  
> Judge Young,  
>  
> I hope this email finds you well! The above-case matter is currently set for trial starting Monday morning, June 18, 2018. We have attached our Notice of Appeal filed on behalf of Firemen's Insurance Company of Washington, D.C. appealing the Order Denying our Motion to Intervene which was Ordered on May 16, 2018. Our Notice of Appeal is being hand-delivered today to the Court of Appeals for filing. All parties have been emailed and mailed a hard copy of the attached also.

>  
> Thank you,  
> Emily  
> [cid:image003.png@01D28B5E.CB6890A0]  
> Murphy & Grantland, P.A.  
> Emily Medlin, CP  
> Paralegal/Legal Assistant to Chris Majure  
> Legal Assistant to Tim Newton  
> emedlin@murphygrantland.com<mailto:bpierce@murphygrantland.com>  
> Post Office Box 6648  
> Columbia, South Carolina 29260  
> 803-782-4100 ext. 1307  
> 803-782-4140 fax

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# The South Carolina Court of Appeals

Ex Parte: Frankenmuth Mutual Insurance Company and  
Employers Mutual Casualty Company, Appellants,

In Re: Phillip Jefferson, Respondent,

v.

James White Construction, LLC and James White,  
individually, Respondent.

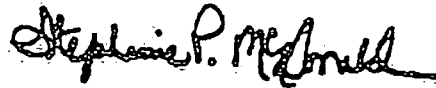
Appellate Case No. 2018-001094

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## ORDER

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Appellants' motion to stay the trial is denied. Judge Roger M. Young, Sr. may proceed with the trial set for Monday, June 18, 2018.



---

FOR THE COURT

Columbia, South Carolina

**FILED**

cc:

The Honorable Roger M. Young, Sr.  
Phillip E. Reeves, Esquire  
Nicholas Andrew Farr, Esquire  
Daniel Scott Slotchiver, Esquire  
John Elliott Rogers, II, Esquire  
Ginger D. Goforth, Esquire  
Carl Reed Teague, Esquire  
Adam Noah Yount, Esquire  
Brent Souther Halversen, Esquire

June 15, 2018



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
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June 18, 2018

Mr. Phillip E. Reeves, Esquire  
PO Box 10589  
Greenville SC 29603

Mr. Nicholas Andrew Farr, Esquire  
PO Box 10589  
Greenville SC 29603

Re: Ex Parte: Frankenmuth Mutual Insurance Company and Employers Mutual  
Casualty Company  
Appellate Case No. 2018-001094

Dear Counsel:

This Court has received your notice of appeal. A preliminary review of the order(s) challenged on appeal indicates it might not be immediately appealable.

Accordingly, it is requested that all counsel serve and file a memorandum addressing the issue of appealability within ten (10) days of the date of this letter. The time limits for perfecting the appeal are held in abeyance pending the Court's consideration of the memoranda.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Daniel Scott Slotchiver, Esquire  
John Elliott Rogers, II, Esquire  
Ginger D. Goforth, Esquire  
Carl Reed Teague, Esquire  
Adam Noah Yount, Esquire  
Brent Souther Halversen, Esquire



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June 18, 2018

Mr. John Robert Murphy, Esquire  
PO Box 6648  
Columbia SC 29260

Mr. Timothy J. Newton, Esquire  
PO Box 6648  
Columbia SC 29260

Re: Ex Parte: Firemen's Insurance Company of Washington, D.C.  
Appellate Case No. 2018-001103

Dear Counsel:

This Court has received your notice of appeal. A preliminary review of the order(s) challenged on appeal indicates it might not be immediately appealable.

Accordingly, it is requested that all counsel serve and file a memorandum addressing the issue of appealability within ten (10) days of the date of this letter. The time limits for perfecting the appeal are held in abeyance pending the Court's consideration of the memoranda.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Brent Souther Halversen, Esquire  
Daniel Scott Slotchiver, Esquire  
John Elliott Rogers, II, Esquire  
Ginger D. Goforth, Esquire  
Carl Reed Teague, Esquire

# The South Carolina Court of Appeals

Ex Parte: Frankenmuth Mutual Insurance Company and  
Employers Mutual Casualty Company, Appellants,

In Re: Phillip Jefferson, Respondent,

v.

James White Construction, LLC and James White,  
individually, Respondents.

Appellate Case No. 2018-001094

The Honorable R. Markley Dennis, Jr.  
Charleston County  
Trial Court Case No. 2016CP1004055

---

## ORDER

---

It appears to the satisfaction of the Court that the above case has been fully and finally settled by agreement between the parties. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY V. Claire Allen, Deputy  
CLERK

Columbia, South Carolina

**FILED**

June 29, 2018

cc:

Phillip E. Reeves, Esquire

Nicholas Andrew Farr, Esquire

Daniel Scott Slotchiver, Esquire  
John Elliott Rogers, II, Esquire  
Ginger D. Goforth, Esquire  
Carl Reed Teague, Esquire  
Adam Noah Yount, Esquire  
Brent Souther Halversen, Esquire

# The South Carolina Court of Appeals

Ex Parte: Firemen's Insurance Company of Washington,  
D.C., Appellant,

In Re: Phillip Jefferson, Respondent,

v.

James White Construction, LLC and James White,  
Individually, Respondents.

Appellate Case No. 2018-001103

The Honorable R. Markley Dennis, Jr.  
Charleston County  
Trial Court Case No. 2016CP1004055

---

## ORDER

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It appears to the satisfaction of the Court that the above case has been fully and finally settled by agreement between the parties. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY

V. Elaine Allen, Deputy  
CLERK

Columbia, South Carolina

**FILED**

June 29, 2018

---

cc:

John Robert Murphy, Esquire

Timothy J. Newton, Esquire

Brent Souther Halversen, Esquire

Daniel Scott Slotchiver, Esquire

John Elliott Rogers, II, Esquire

Ginger D. Goforth, Esquire

Carl Reed Teague, Esquire



## The South Carolina Court of Appeals

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July 17, 2018

The Honorable Julie J. Armstrong  
100 Broad St Ste 106  
Charleston SC 29401-2210

### REMITTITUR

Re: Ex Parte: Frankenmuth Mutual Insurance Company and Employers Mutual  
Casualty Company  
Lower Court Case No. 2016CP1004055  
Appellate Case No. 2018-001094

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A  
copy of the judgment of this Court is enclosed.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

Enclosure

cc: Phillip E. Reeves, Esquire  
Nicholas Andrew Farr, Esquire  
Daniel Scott Slotchiver, Esquire  
John Elliott Rogers, II, Esquire  
Ginger D. Goforth, Esquire  
Carl Reed Teague, Esquire  
Adam Noah Yount, Esquire  
Brent Souther Halversen, Esquire



## The South Carolina Court of Appeals

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July 17, 2018

The Honorable Julie J. Armstrong  
100 Broad St Ste 106  
Charleston SC 29401-2210

### REMITTITUR

Re: Ex Parte: Firemen's Insurance Company of Washington, D.C.  
Lower Court Case No. 2016CP1004055  
Appellate Case No. 2018-001103

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

Enclosure

cc: John Robert Murphy, Esquire  
Timothy J. Newton, Esquire  
Brent Souther Halversen, Esquire  
Daniel Scott Slotchiver, Esquire  
John Elliott Rogers, II, Esquire  
Ginger D. Goforth, Esquire  
Carl Reed Teague, Esquire

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
Civil Action No.: 2008-CP-10-6897

Montclair Property Owners Association (a South Carolina Non-Profit Corporation) and Montclair Property Owners Association Board of Directors for and on behalf of all owners of the Montclair Horizontal Property Regime,

Plaintiffs,

vs.

Bruce E. Kinney, Individually and as an incorporation for Montclair Homes, LLC; Montclair Homes, LLC, a South Carolina Limited Liability Company (Declarant-Master Deed); Cremco, LLC, an Illinois Limited Liability Company; Montclair Associates Limited Partnership, an Illinois Limited Liability Company; Montclair Property Owners Association a/k/a Montclair Homeowners Association (Grantor Control Period); Bruce Kinney as an officer or director in the Montclair Property Owners Association a/k/a Montclair Homeowners Association (Grantor Control Period), a SC non-profit corporation; Church Creek Construction, LLC and Larry Elsey, Individually and d/b/a ECI or Elsey Construction a/k/a Elsey Construction, Inc.; and Roger Lockey;

Defendants.

FILED  
2012 SEP 13 PM 4:13  
JULIE J. ARMSTRONG  
CLERK OF COURT

**MOTION TO INTERVENE  
FOR THE LIMITED PURPOSE OF REQUESTING SPECIAL INTERROGATORIES  
AND/OR SPECIAL VERDICT FORM**

Alea London, LTD ("Alea"), pursuant to Rule 24 of the South Carolina Rules of Civil Procedure (SCRCP), and other applicable law, hereby moves before the Court to enter an order

permitting Alea to intervene in the civil action for the limited purpose of participating in a request for special verdict form and/or general verdict form accompanied by written interrogatories pursuant to SCRCP 49.<sup>1</sup>

Alea issued insurance policies with general liability coverage to Defendant Church Creek Construction LLC ("Church Creek"), effective, with the noted exception, for the following periods: 1) July 25, 2003 to July 25, 2004; 2) July 25, 2004 to July 25, 2005; and 3) July 25, 2005 to July 25, 2006 (together, "Policy").<sup>2</sup> The third policy period cancelled effective October 18, 2005. The Policy provides in part that the insurance applies to "property damage" as defined in the Policy, only if the "property damage" occurs during the policy period.

---

<sup>1</sup> RULE 49. SPECIAL VERDICTS AND INTERROGATORIES

(a) Special Verdicts. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(b) General Verdict Accompanied by Answer to Interrogatories. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and answers shall be entered pursuant to Rule 58. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to Rule 58 in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

<sup>2</sup> Copies of the Policy will be made available for review.

The civil action is a construction defect one. The Plaintiff, the Montclair Property Owners Association, Inc., alleges that Church Creek is liable for alleged construction defects in condominium buildings. Plaintiff alleges progressive property damages caused by an occurrence. (See Third Amended Complaint ¶ 35). Plaintiff alleges that the damages have progressed since 2003. (See Third Amended Complaint ¶ 35).

**Insurance Coverage Law for a Progressive Property  
Damage Construction Defect Claim**

The allegations made by Plaintiff will be governed in part by the recent South Carolina Supreme decision in Crossmann Communities of North Carolina, Inc. v. Harleysville Mut. Ins. Co., 395 S.C. 40, 717 S.E.2d 589 (2011) (“Crossmann”). In Crossmann, the South Carolina Supreme Court addressed insurance coverage for a construction defect case related to a building’s exterior envelope and resulting progressive water intrusion damages to other parts of a building. The facts in Crossmann are similar generally to the ones in the present matter. Crossmann Communities of North Carolina, Inc. constructed the condominium buildings that suffered from construction defects and resulting water intrusion damages. In a lawsuit, the homeowners alleged that Crossmann Communities defectively installed the exterior siding on the buildings, which resulted in water penetration and progressive damage to other parts of the buildings. Crossmann Communities settled with the homeowners and then filed a declaratory judgment action seeking to have the insurers reimburse Crossmann Communities for the amount paid in settlement.

Crossmann may be divided into two parts. The first part is the Supreme Court’s analysis of the insuring agreement portion of the policy. The Supreme Court analyzed whether the facts written above constituted an “occurrence” of “property damage” as written in the insuring agreement portion of the policy and decided in other insurance coverage decisions around the

country. Crossmann, 395 S.C. at 46, 717 S.E.2d at 592.<sup>3</sup> In finding the facts did constitute an “occurrence” of “property damage”, and an insured loss in that case, the Supreme Court recognized that there may be insured and uninsured losses in a construction defect claim. See Crossmann, 395 S.C. at 50, 717 S.E.2d at 594. The Supreme Court stated, “[i]n sum, we clarify that negligent or defective construction resulting in damage to otherwise non-defective components may constitute ‘property damage,’ but the defective construction would not.” Crossmann, 395 S.C. at 50, 717 S.E.2d at 594.

The second part of Crossmann is the Supreme Court’s analysis of the allocation of multi-year, progressive property damages, as alleged by Plaintiff in their pleadings, between insurer(s) and the insured. Crossmann, 395 S.C. at 50, 717 S.E.2d at 594. The Supreme Court adopted a “time on risk” formula for allocating progressive property damages that may occur over multiple years. Crossmann, 395 S.C. at 50, 717 S.E.2d at 594. The Supreme Court described the formula it adopted as follows: “[t]he basic formula consists of a numerator representing the number of years an insurer provided coverage and a denominator representing the total number of years during which the damage progressed. This fraction is multiplied by the total amount the policyholder has become liable to pay as damages for the entire progressive injury. In this way, each triggered insurer is responsible for a share of the total loss that is proportionate to its time on the risk.” Id. at 65, 717 S.E.2d at 601. Moreover, the Court stated, “[b]y making the denominator the total number of years during which the damage progressed, a policyholder who chose not to purchase coverage for certain years will be left with the

---

<sup>3</sup> The parties in Crossmann stipulated that they would not argue the applicability of any policy exclusions. Crossmann, 395 S.C. at 46, 717 S.E.2d at 592. The parties presented the coverage question on the basis of the presence or absence of an “occurrence”. Crossmann, 395 S.C. at 46, 717 S.E.2d at 592.

responsibility for whatever portion of the total loss is attributed to those uninsured years.” Id. at 65, 717 S.E.2d at 601 Fn. 14.

The Court concluded, “[t]his formula is not a perfect estimate of the loss attributable to each insurer’s time on the risk. Rather, it is a *default rule* that assumes the damage occurred in equal portions during each year that it progressed. If proof is available showing that the damage progressed in some different way, then the allocation of losses would need to conform to that proof. However, absent such proof, assuming an even progression is a logical default.” Id. In summary, the Supreme Court stated as follows:

In sum, we construe the standard CGL policy to require that each insurer cover only that portion of a loss attributable to property damage that occurred during its policy period. In light of the difficulty in proving the exact amount of damage incurred during each policy period, we adopt the formula above as the default method for allocating shares of the loss. Trial courts may vary from this default formula where appropriate to the circumstances of a particular case, but they must remain faithful to the premise that each insurer is responsible only for a pro rata portion of the total loss, and each pro rata portion must be defined by the insurer’s time on the risk.

Id. at 66, 717 S.E.2d at 603.

The purpose of the motion herein is to do as instructed in Auto-Owners Insurance Co., Inc. v. Newman, 385 S.C. 187, 684 S.E.2d 541 (2009) (“Newman”) and segregate damages. In Newman, the South Carolina Supreme Court also addressed the issue of insurance coverage for construction and design defects related to a building’s envelope and resulting water intrusion claims to other portions of the building structure. The facts in Newman involved a construction defect claim arising out of the construction of a single family house. The homeowner and homebuilder submitted the claim to binding arbitration; and Auto Owners Insurance Company provided defense counsel to the builder pursuant to an insurance policy with commercial general liability coverage. The arbitrator awarded damages to the homeowner based on a contractor’s

itemized cost of repair proposal that included an estimate for the costs to remove and replace the stucco siding, as well as an allowance to repair any water-damaged sheathing and framing that may be found once the stucco was removed from the house.

After the arbitrator issued the award, Auto-Owners filed a declaratory judgment civil action with respect to the issue of insurance coverage for the removal and replacement of the stucco system and the allowance for any resulting water damaged sheathing and/or framing. The trial court ruled in favor of the homeowner holding that the policy covered both the cost for the removal and replacement of the stucco and the allowance for any water damaged sheathing and framing. Auto-Owners appealed.

The Supreme Court in Newman held that while there was an occurrence of property damage, i.e., faulty construction, performed by a subcontractor to the builder (insured), that resulted in physically damaged sheathing and framing (property damage), the CGL policy did not cover the cost to remove and replace the stucco and relied on Exclusion N, the "Recall of Products, Work or Impaired Property" exclusion :

C. Damages awarded for replacement of the defective stucco

Auto-Owners finally argues that even if an "occurrence" warrants recovery for the Homeowner's property damage, the trial court erred in determining that the CGL policy covered the arbitrator's itemized allowance for replacing and repairing the defective stucco itself as an incidental cost to repairing the damage to other property. We agree.

Although the subcontractor exception preserves coverage for property damage that would otherwise be excluded as "your work," another policy exclusion bars coverage for damage to the defective workmanship itself. Specifically, the policy exclusion provides that the insurance does not cover damages "claimed for any loss, cost or expense ... for the repair, replacement, adjustment, removal or disposal of ... 'Your product'; ... 'Your work'; or ... 'Impaired property'; if such product, work or property is withdrawn ... from use ... because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it." These terms unambiguously prohibit recovery for the cost of removing and replacing the defective stucco-even when the replacement of the defective work may be

incidental to the repair of property damage covered by the policy-and serve as one of the bases for this Court's acknowledgment that a claim solely for economic losses resulting from faulty workmanship is part of an insured's contractual liability which a CGL policy is not intended to cover. See L-J 366 S.C. at 122, 621 S.E.2d at 35. Accordingly, we hold that any amount in the arbitrator's allowance allotted to the removal and replacement of the defective stucco is not covered under the CGL policy.

Newman, 385 S.C. 187, 197-98, 684 S.E.2d 541, 546.

Although the Supreme Court ruled that Exclusion N excluded coverage for the removal and replacement of the stucco, the Supreme Court nonetheless required Auto-Owners to pay the entire judgment (removal and replacement included) because it found that Auto-Owners had not addressed the issue in the underlying arbitration. The Supreme Court stated the following:

Nevertheless, it is not possible from the record before the Court to determine what portion of the arbitrator's itemized list of damages may be attributable to the removal and replacement of the defective stucco, and it is not the purpose of this declaratory judgment action to relitigate the issue of damages. Auto-Owners had an opportunity to raise this matter when the issue of damages was litigated before the arbitrator, who issued a final, binding award on the merits. 5 (Citation Omitted)

#### CONCLUSION

For the foregoing reasons, we affirm the trial court's decision finding that the CGL policy issued by Auto-Owners to Trinity covers the damage awarded by the arbitrator to the Homeowner. Although we reverse the trial court's decision to the extent that it orders recovery under the policy for the removal and replacement of the defective stucco, there is no evidence in the record indicating which damages may be attributed to the removal and replacement of the defective stucco.

Footnote 5 reads as follows:

Auto-Owners represented Trinity in binding arbitration, made mandatory by the terms of the insurance contract. Auto-Owners did so with a reservation of rights and an understanding that the coverage issue would be reserved for judicial consideration in a separate proceeding. When the arbitrator determined damages, Auto-Owners did not seek review of or otherwise contest the damages award.

Newman, 385 S.C. 187, 198, 684 S.E.2d 541, 547

The Supreme Court did not provide specific guidance on how an insurer is to raise the

matter of insurance coverage in the underlying liability civil action. SCRCP 24<sup>1</sup> permits intervention as of right where the party seeking intervention submits a timely application, the party claims an interest relating to the property or transaction that is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest, and the interest of the party may not be adequately represented by the existing parties. Ken's Cabana, LLC v. Flemington Props., LLC (Ex parte Horry County State Bank), 604 S.E.2d 723 (S.C. Ct. App. 2004). Alea meets the requirements, thus entitling it to intervene as a matter of right.

Alea's application is timely. Alea is seeking to intervene for the limited purpose of participating in the special interrogatories and/or the verdict form. At this time, the preparation of these documents is not even imminent. Further, the trial in the civil action will not be delayed, and Alea assures the court that its motion to intervene will not delay or disrupt the legal proceedings prior to trial.

The next requirement to consider is whether Alea claims an interest relating to the property or transaction that is the subject of this action and is so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest. Based upon Newman and South Carolina law discussed below, Alea satisfies the requirement.

The construction defect civil action should be free of the mention of insurance. See Crocker v. Weathers, 240 S.C. 412, 126 S.E.2d 335, 340-41 (1962) ("The long-established rule of our decisions is that the fact that a defendant is protected from liability in an action for damages by insurance shall not be made known to the jury. The reason of the rule is to avoid prejudice in the verdict, which might result from the jury's knowledge that the defendant will not have to pay it").

In recognition of potentially divergent interests among insurers and insureds, the Rules of Professional Conduct, Rule 407, SCACR, mandate that counsel for Church Creek owes a duty of loyalty only to Church Creek, not Alea, if their interests diverge. Specifically, Comment 11 of Rule 1.8, RPC, Rule 407, SCACR states:

Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. . . . Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client.

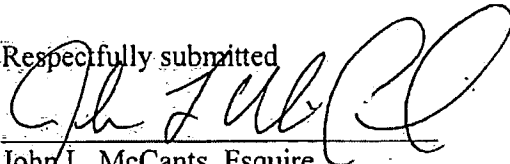
Further, Rule 5.4(c), RPC, Rule 407, SCACR states, "[a] lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services." Accordingly, when Alea retained counsel to defend Church Creek under a reservation of rights, that counsel represented *only* Church Creek's interests, and *not* Alea's interests, with respect to any duty to present evidence as to categories of damages which may fall within a policy exclusion.

The Supreme Court has a long history of not allowing the existence of insurance to be introduced in litigation between a third party plaintiff and an insured. Hence, Alea should not be made to intervene as a named party, to be identified to a jury or otherwise appear in the underlying trial between Plaintiff and Church Creek. See Dobson v. American Indemnity Co., 227 S.C. 307, 87 S.E.2d 869, 870 (1955). The bar exists to prevent a jury's liability determination from being improperly influenced or prejudiced. See also Cox v. Employers Liability Assur. Corp., 191 S.C. 233, 236, 196 S.E. 549, 550 (1938) ("The writer of this opinion, after twelve years' experience upon the trial bench, knows of no more effective method of embalming a defense than that of informing a jury in a negligence case that the defendant in the

suit is protected against their verdict by liability insurance.”); Horsford v. Carolina Glass Co., 92 S.C. 236, 258-59, 75 S.E. 533, 541 (1912) (“There can be no doubt on the bench or at the bar that, in an action by an employee against his employer to recover damages for personal injury, both reason and authority forbid bringing into the evidence or argument the fact that defendant is protected by employer’s liability insurance. Such evidence or argument has a manifest and strong tendency to carry the jury away from the real issue and to lead them to regard carelessly the legal rights of the defendant on the ground that someone else will have to pay the verdict.”).

If this Court finds that Alea is not entitled to intervention as of right under SCRCP 24(a), Alea respectfully requests that it be entitled to permissive intervention under SCRCP 24(b) for the above reasons.

Respectfully submitted



John L. McCants, Esquire  
Ellis, Lawhorne & Sims, PA  
1501 Main Street, 5<sup>th</sup> Floor (29201)  
Post Office Box 2285  
Columbia, South Carolina 29202  
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E-mail: [jmccants@ellislawhorne.com](mailto:jmccants@ellislawhorne.com)  
**ATTORNEY FOR ALEA LONDON LTD**

September 11, 2012

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MONTCLAIR PROPERTY OWNERS  
ASSOCIATION (A SOUTH CAROLINA  
NON-PROFIT CORPORATION) AND  
MONTCLAIR PROPERTY OWNERS  
ASSOCIATION BOARD OF  
DIRECTORS FOR AND ON BEHALF  
OF ALL OWNERS OF THE  
MONTCLAIR HORIZONTAL  
PROPERTY REGIME,

PLAINTIFFS,

vs.

BRUCE E. KINNEY, INDIVIDUALLY  
AND AS AN INCORPORATOR FOR  
MONTCLAIR HOMES, LLC;  
MONTCLAIR HOMES, LLC, A SC  
LIMITED LIABILITY COMPANY  
(DECLARANT - MASTER DEED);  
CREMCO, LLC, AN ILLINOIS  
LIMITED LIABILITY COMPANY;  
MONTCLAIR ASSOCIATES LIMITED  
PARTNERSHIP, AN ILLINOIS  
LIMITED PARTNERSHIP;  
MONTCLAIR PROPERTY OWNERS  
ASSOCIATION A/K/A MONTCLAIR  
HOMEOWNERS ASSOCIATION  
(GRANTOR CONTROL PERIOD);  
BRUCE E. KINNEY AS AN OFFICER  
OR DIRECTOR IN THE MONTCLAIR  
PROPERTY OWNERS ASSOCIATION  
A/K/A MONTCLAIR HOMEOWNERS  
ASSOCIATION (GRANTOR CONTROL  
PERIOD), A SC NON-PROFIT  
CORPORATION; AND CHURCH  
CREEK CONSTRUCTION, LLC.

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO. 2008-CP-10-6897

BY \_\_\_\_\_

JULIE J. ARMSTRONG  
CLERK OF COURT

FILED

Entered 10/11/10 1:33 PM  
Canceled

**ORDER DENYING ALEA'S  
MOTION TO INTERVENE  
FOR THE PURPOSE OF  
REQUESTING SPECIAL  
INTERROGATORIES**

This action arises from the conversion of the Montclair Apartments to condominium units. Plaintiffs filed the initial complaint in this matter on December 5, 2008. On January 12, 2010, Plaintiffs filed a Second Amended Complaint naming Church Street Construction, LLC ("Church Creek"), as an additional defendant. Church Creek answered the Second Amended Complaint on March 17, 2010. In the initial Consent Scheduling Order, signed on April 22, 2010, mediation was to be conducted on or before February 15, 2011, and the case was subject to be called for trial on or after March 15, 2011.

The First Amended Scheduling Order was filed on February 3, 2011. In that order, the Honorable Kristi Harrington granted the parties leave to request a "date certain" trial and ordered that the case was subject for trial on or after September 26, 2011. A Second Amended Consent Scheduling Order set the case for trial not before February 1, 2012. The Third Amended Consent Scheduling Order, signed on April 30, 2012, set the matter for a two-week date certain trial. The case has been mediated three times, and the trial is set to begin on Monday, October 1, 2012.

On September 13, 2012, Alea London, LTD ("Alea") filed a Motion to Intervene for the Limited Purpose of Requesting Special Interrogatories and/or a Special Verdict Form. Alea, the general liability carrier for Church Street Construction, seeks to submit special interrogatories to the jury to, presumably, assist with the division of any money damages between the covered and non-covered acts of its insured. The Court heard Alea's motion on September 26, 2012.

Rule 24(a) of the South Carolina Rules of Civil Procedure provides that:

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

"Thus, a party seeking intervention under Rule 24(a)(2) must: (1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties." *In re Horry County State Bank*, 361 S.C. 503, 508, 604 S.E.2d 723, 725 (Ct. App. 2004). When a party seeks to intervene, "each case will be examined in the context of its unique facts and circumstances." *Id.*

At the outset, the Court finds Alea's application to be untimely. Alea's insured, Church Creek, was named a defendant in January of 2010. The case has been mediated three times, and over four months prior to the filing of Alea's Rule 24 motion, the court reserved a two-week date certain term for the trial of this case.

More significantly, Plaintiffs contend that intervention at this late date would prejudice them as discovery has been completed, and they have not conducted any discovery directed to address Alea's clear attempt to deny or severely limit coverage to its insured, Church Creek. Church Creek would likewise be prejudiced as it was not aware during discovery that its independent counsel would need to take depositions regarding coverage for his client as to the alleged negligent construction and resulting damage.

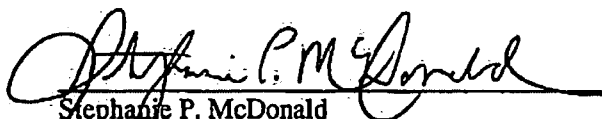
Further, Alea has failed to demonstrate that absent intervention, "disposition of this action may impair or impede its ability to protect" its interest in the underlying litigation. Alea's counsel acknowledged that the carrier analyzed and declined to file a declaratory judgment action addressing the coverage issues that it asserts are relevant in this case. Indeed, the questions which the parties in the underlying case have not yet asked (due to the unfortunate timing of Alea's motion) would still be appropriate in a declaratory judgment action addressing

the coverage issue. There is currently a federal declaratory judgment action pending, *Scottsdale Ins. Co. v. Montclair Associates Limited Partnership et al*, Civil Action No. 2:10-CV-03157, which Alea could have joined in order to address any legitimate coverage concerns arising from this litigation.

In the current case, Church Creek's trial counsel has continued to represent his client, Alea's insured - - for over two years, through voluminous discovery, numerous pre-trial motions, and the repeated mediations - - without objection from Alea or Alea's insured. Both Alea and its insured share the objective to minimize exposure to liability and to minimize any damages that could be awarded as a result of Church Creek's work on the Montclair conversion.

For these reasons, on the eve of the two-week trial set to begin on Monday, October 1, 2012, Alea's Motion to Intervene under Rule 24 of the South Carolina Rules of Civil Procedure is denied.<sup>1</sup>

**AND IT IS SO ORDERED.**

  
Stephanie P. McDonald  
Presiding Judge, Ninth Judicial Circuit

Dated: September 28, 2012

Charleston, South Carolina

---

<sup>1</sup> For the reasons set forth in the analysis of Rule 24(a), Alea's alternative Rule 24(b) request that it be entitled to permissive intervention under Rule 24(b) is likewise denied.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Stephanie P. McDonald, Circuit Court Judge

Case No. 2008-CP-10-6897

Montclair Property Owners Association (a South Carolina  
Non-Profit Corporation) and Montclair Property Owners  
Association Board of Directors for and on behalf of all  
owners of the Montclair Horizontal Property Regime; and  
Church Creek Construction, LLC

Respondents.

v.

Alea London, LTD,

Appellant.

NOTICE OF APPEAL

Appellant, Alea London, LTD ("Alea"), hereby appeals the order of the Honorable  
Stephanie P. McDonald issued orally on September 26, 2012, on Alea's Motion to Intervene For  
the Limited Purpose of Requesting Special Interrogatories and/or Special Verdict Form.  
Appellant has not received written notice of entry of the oral Order. Trial is scheduled to  
commence on October 1, 2012.

September 28, 2012

  
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P. O. Box 2285  
Columbia, SC 29202  
(803) 212-4959  
Attorney for Appellant

FILED  
2012 OCT -1 PM 3:54  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY 

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The Honorable Stephanie P. McDonald  
Circuit Court Judge  
100 Broad Street, Suite 427  
Charleston, South Carolina 29401

The Honorable Julie J. Armstrong

Charleston County Clerk of Court  
100 Broad Street, #106  
Charleston, SC 29401

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Stephanie P. McDonald, Circuit Court Judge

Case No. 2008-CP-10-6897

Montclair Property Owners Association (a South Carolina  
Non-Profit Corporation) and Montclair Property Owners  
Association Board of Directors for and on behalf of all  
owners of the Montclair Horizontal Property Regime; and  
Church Creek Construction, LLC

Respondents.

v.

Alea London, LTD,

Appellant.

**EMERGENCY PETITION FOR WRIT OF SUPERSEDEAS**

Appellant, Alea London, LTD ("Alea"), moves before the South Carolina Court of Appeals for a Writ of Supersedeas requiring the trial court to not commence the trial of the civil action on Monday, October 1, 2012.

Appellant filed a Motion to Intervene For the Limited Purpose of Requesting Special Interrogatories and/or Special Verdict Form (the "Motion") on September 13, 2012. A copy of the Motion is attached hereto. The motion was heard by the Honorable Stephanie P. McDonald on September 26, 2012; and Judge McDonald denied the Motion by oral ruling during the hearing. Alea filed a Notice of Appeal on September 28, 2012. Judge McDonald ruled on Friday

afternoon, September 28, 2012, that she intends to proceed with the trial on Monday, October 1, 2012, despite the Notice of Appeal.

The South Carolina Code provides a statutory right to appeal and provides, in pertinent part, as follows:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas . . . ;
- (2) **An order affecting a substantial right** made in an action when such order (a) **in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action**, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
- (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment . . . .

S.C. Code Ann. § 14-3-330.

Pursuant to subsection 14-3-330(2), the South Carolina courts have held that “when a trial court’s order deprives a party of a mode of trial to which it is entitled as a matter of right, such order is immediately appealable.” *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000). Alea has a right to immediately appeal the trial court’s order denying intervention as of right under South Carolina Rule of Civil Procedure 24(a). An order refusing a petition to be made a party to a cause is appealable. *Rutledge v. Tunno et. al.*, 63 S.C. 205, 41 S.E. 308 (1902). The trial court’s order denying intervention as of right affects a substantial right of Alea—that is, to participate and protect its interests in this action in accordance with *Auto-Owners Insurance Co. v. Newman*, 385 S.C. 187, 684 S.E.2d 541 (2009). Proceeding with the trial may effectively moot the appeal. The *Flagstar* Court goes on to state that “these cases not only permit, but indeed require, immediate appeal in the event of a denial of a mode to trial

to which one is entitled as a matter of right. Failure to immediately appeal such an order forever bars appellate review." Flagstar, 341 S.C. at 72, 533 S.E.2d at 333.

The United States Supreme Court addressed the appeal of a motion to intervene under the Federal Rules of Civil Procedure in Brotherhood of Trainmen v. Baltimore & O.R. Co., 331 U.S. 519, 67 S.Ct. 1387, 91 L.Ed. 1646 (1947). In Brotherhood of Trainmen, the U.S. Supreme Court held the following:

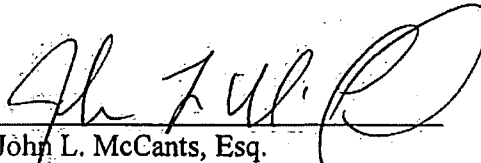
Ordinarily, in the absence of an abuse of discretion, no appeal lies from an order denying leave to intervene where intervention is a permissive matter within the discretion of the court. *United States v. California Co-op. Canneries*, 279 U.S. 553, 556, 49 S.Ct. 423, 424, 73 L.Ed. 838. The permissive nature of such intervention necessarily implies that, if intervention is denied, the applicant is not legally bound or prejudiced by any judgment that might be entered in the case. He is at liberty to assert and protect his interests in some more appropriate proceeding. Having no adverse effect upon the applicant, the order denying intervention accordingly falls below the level of appealability.

**But where a statute or the practical necessities grant the applicant an absolute right to intervene, the order denying intervention becomes appealable. Then it may fairly be said that the applicant is adversely affected by the denial, there being no other way in which he can better assert the particular interest which warrants intervention in this instance. And since he cannot appeal from any subsequent order or judgment in the proceeding unless he does intervene, the order denying intervention has the degree of definitiveness which supports an appeal therefrom. See *Missouri-Kansas Pipe Line Co. v. United States*, 312 U.S. 502, 508, 61 S.Ct. 666, 668, 85 L.Ed. 975.**

Our jurisdiction to consider an appeal from an order denying intervention thus depends upon the nature of the applicant's right to intervene. **If the right is absolute, the order is appealable and we may judge it on its merits. But if the matter is one within the discretion of the trial court and if there is no abuse of discretion, the order is not appealable and we lack power to review it.** In other words, our jurisdiction is identified by the necessary incidents of the right to intervene in each particular instance. We must therefore determine the question of our jurisdiction in this case by examining the character of the Brotherhood's right to intervene in the proceeding brought under s 16(12) of the Interstate Commerce Act.

Wherefore, Alea request that the Court of Appeals enter a Writ of Supersedeas commanding the trial court not to hold the trial of the civil action and recognize the Notice of

Appeal filed by Alea so that the appeal can proceed in the jurisdiction of the South Carolina Court of Appeals.



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(803) 212-4959  
Attorney for Appellant

September 28, 2012

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The Honorable Stephanie P. McDonald  
Circuit Court Judge  
100 Broad Street, Suite 427  
Charleston, South Carolina 29401

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



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
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September 28, 2012

Via U.S. Mail and Facsimile

Mr. John Lucius McCants

PO Box 2285

Columbia SC 29202

Re: Montclair Property Owners v. Alea London  
Appellate Case No. 2012-213037

Dear Counsel:

The following order has been endorsed on your Emergency Petition for Writ of Supersedeas in the above matter:

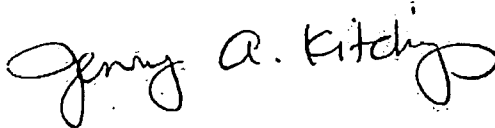
"Denied.

s/ John Cannon Few C.J.

For the Court

September 28, 2012."

Very truly yours,

A handwritten signature in cursive script, reading "Jerry A. Kitching".

CLERK

cc: Joseph Edwin Dapore  
Edward D. Buckley, Jr.  
Frank M. Cisa  
Thomas Hayden Hessee  
Roy Pearce Maybank  
Thomas Bacot Pritchard  
Timothy W. Bouch  
Thomas C. Salane  
The Honorable Stephanie McDonald

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Stephanie P. McDonald, Circuit Court Judge

Case No. 2008-CP-10-6897

FILED  
2012 OCT -3 PM 1:33  
JULIE J. ARMSTRONG  
CLERK OF COURT

Montclair Property Owners Association (a South Carolina  
Non-Profit Corporation) and Montclair Property Owners  
Association Board of Directors for and on behalf of all  
owners of the Montclair Horizontal Property Regime; and  
Church Creek Construction, LLC

Respondents.

v.

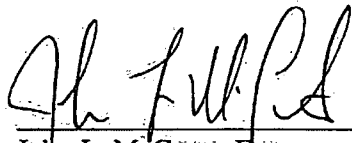
Alea London, LTD,

Appellant.

AMENDED NOTICE OF APPEAL

Appellant, Alea London, LTD ("Alea"), hereby appeals the Order of the Honorable  
Stephanie P. McDonald Denying Alea's Motion to Intervene for the Purpose of Requesting  
Special Interrogatories issued on September 28, 2012, and received by Appellant on the same  
day. A copy of the Order is attached hereto.

October 1, 2012

  
\_\_\_\_\_  
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Attorney for Appellant

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The Honorable Stephanie P. McDonald  
Circuit Court Judge  
100 Broad Street, Suite 427  
Charleston, South Carolina 29401

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

Charleston, SC 29401

# The South Carolina Court of Appeals

Montclair Property Owners Association (a South Carolina Non-Profit Corporation) and Montclair Property Owners Association Board of Directors for and on behalf of all owners of the Montclair Horizontal Property Regime; and Church Creek Construction, LLC,  
Respondents,

v.

Alea London, LTD, Appellant.

Appellate Case No. 2012-213037

The Honorable Stephanie P. McDonald  
Charleston County  
Trial Court Case No. 2008CP1006897

---

## ORDER

---

This Court has received the "appellant's motion to dismiss appeal". No return has been received. Therefore, the appellant's motion to dismiss the notice of appeal is hereby granted. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY V. Claire Allen, Deputy  
CLERK

**FILED**

Feb 2, 2013

Columbia, South Carolina

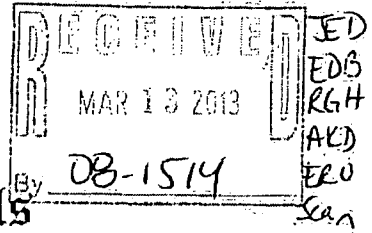
cc:

John Lucius McCants

Joseph Edwin Dapore

Edward D. Buckley, Jr.

Frank M. Cisa



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
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March 11, 2013

The Honorable Julie J. Armstrong  
100 Broad St Ste 106  
Charleston SC 29401-2210

### REMITTITUR

Re: Montclair Property Owners v. Alea London  
Lower Court Case No. 2008CP1006897  
Appellate Case No. 2012-213037

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

Enclosure

cc: John Lucius McCants  
Joseph Edwin Dapore

Edward D. Buckley, Jr.  
Frank M. Cisa

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
CASE NO. 2007-CP-07-3166

JIM LANCASTER, NANCY )  
LANCASTER, ART HOLLAND, )  
JEANNETTE HOLLAND, WENDELL )  
TURNER, PHYLLIS TURNER, JACK )  
BENNETT, JOAN BENNETT, ON )  
BEHALF OF THEMSELVES AND )  
OTHERS SIMILARLY SITUATED, )

PLAINTIFFS, )

vs. )

GEORGIA-PACIFIC CORPORATION )  
AND/OR GEORGIA-PACIFIC LLC, )  
GRAYCO HOME CENTER, INC., DEL )  
WEBB COMMUNITIES, INC., AN )  
ARIZONA CORPORATION, RAZOR )  
COMPONENT SYSTEMS, INC., A )  
SOUTH CAROLINA CORPORATION, )  
RAZOR ENTERPRISES, INC., A )  
TEXAS CORPORATION, AND DJ )  
CONSTRUCTION CO., LLC, )

DEFENDANTS. )

**ORDER REGARDING  
INTERLOCUTORY APPEALS**

2012 MAY 14 AM 11:51  
J. Neil Ann. ROSENEAU  
BEAUFORT COUNTY, S.C.  
CLERK OF COURT

THIS MATTER COMES BEFORE THE COURT via Defendant Del Webb Communities, Inc.'s ("Del Webb") request for a conference call. The requested conference call was held on May 11, 2012, during which the impact of the appeals recently taken by Del Webb and Defendant Georgia-Pacific Corporation and/or Georgia-Pacific LLC ("Georgia-Pacific") was discussed.

Both Del Webb and Georgia-Pacific have appealed six interlocutory orders that the Court has entered in the conduct of this class action. The Plaintiffs have filed motions in the Court of Appeals to dismiss the appeals taken by Del Webb and Georgia-Pacific on the grounds that the orders identified in their respective notices of appeal are interlocutory and not immediately

R

appealable. The Plaintiffs have also moved the Supreme Court to certify and expedite the appeals for its direct and immediate review; particularly, immediate and expedited consideration and disposition of their motions to dismiss the appeals.

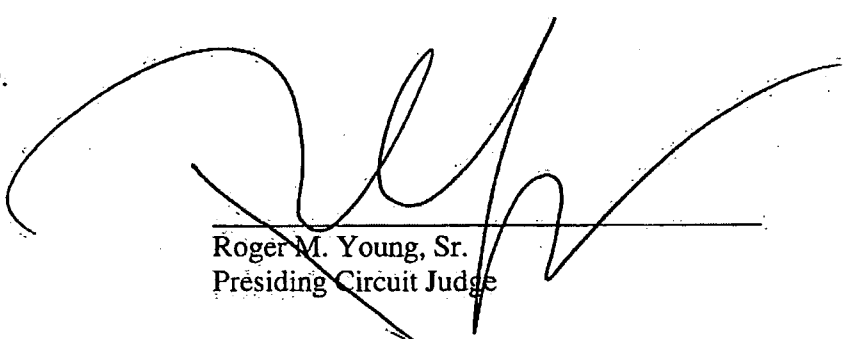
Del Webb asks this Court to rule that all of the orders identified in its notice of appeal are stayed because of its appeal, to include the present May 15, 2012 opt-out deadline set forth in the class notice, which notice was mailed to the putative class members by the Plaintiffs' counsel following this Court's order approving and authorizing class notice. Georgia-Pacific does not ask that the opt-out deadline be stayed, but asks for a stay of the Court's preliminary case management and scheduling order with respect to matters after the opt-out deadline.

After due consideration of this matter, I find that a legitimate question exists as to whether any of the interlocutory orders appealed by Del Webb and Georgia-Pacific is immediately appealable, and I am concerned that they are not. If the appeals are improperly taken, they should have no rightful impact upon the continued progress of this now four-plus-year old case. See S.C. Pub. Serv. Auth. v. Arnold, 287 S.C. 584, 340 S.E.2d 535 (1986) ("Where an order is interlocutory, and thus not appealable, the notice of intent to appeal does not transfer jurisdiction to this Court, nor does it stay proceedings in the lower court.") Moreover, I find that a stay of the appealed orders is not necessary to preserve the jurisdiction of the appeal or to prevent a contested issue from becoming moot. Further still, I find that, under the circumstances, a stay of the appealed orders is not in the interests of justice or judicial economy. Accordingly, I find that the orders identified in Del Webb and Georgia-Pacific's notices of appeal are and should be operative and decline the requests to stay these orders.

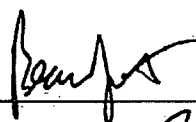
<SIGNED ON THE FOLLOWING PAGE>

A handwritten signature in black ink, appearing to be a stylized 'R' or 'P' followed by a flourish.

AND IT IS SO ORDERED.



Roger M. Young, Sr.  
Presiding Circuit Judge

, South Carolina

Dated: \_\_\_\_\_

5/14/12

# **SAFE FCU**

## **Board Strategic Planning Session**

### **(8:30 – 3:00)**

#### **I. Introductions**

#### **II. Ground Rules**

#### **III. E-Scan & M-Scan Review**

#### **IV. Pre-Session Survey Review**

- (1) What type and level of risk would you like SAFE to take in the next 5 years?
- (2) How would you like the credit union to begin reaching small businesses?
- (3) What branching strategy would you like SAFE to have in the next 5 years?
- (4) What Millennial strategy would you like SAFE to have in the next 5 years?
- (5) Would the board like additional information about SAFE's Succession Plan?
- (6) What other key strategic initiatives must be addressed in this year's planning session?
- (7) How frequently should a planning session take place at SAFE?

#### **V. Key Strategic Issues**

- (1) Millennial strategy
- (2) Small business strategy
- (3) Risk strategy
- (4) Technology strategy

#### **VI. Ranking/Strategic Objectives**

#### **VII. Wrap-Ups and Follow-Ups**

## Conversation with Safe (Feb 2015 Training)

- What are you seeking during the 2-hour facilitation?
  - MA did planning session
  - Lynn sent different topics
  - Just now getting to point where everyone believes it
  - Start holding people more accountable
  - More emphasis on tips, strategies, etc. that they could gain benefit and take back
  - The whole concept of us being truly in a sales culture; buying into it; the lifeline of it
- Managers role in achieving SAFE goals
- Will they have seen any part of the strategic plan?
  - Not sure what has & hasn't been shared
  - Know the goals; not sure how much has been shared
  - Will have the business plan strategies
- Who is attending?
  - All managers and supervisors
  - About 40
- Can I involve the top executives in the facilitation part? (their perspectives, etc.)
  - Yes, that is okay
  - If want to send out something that can help with it (Questions, etc.)
  - VP could utilize to make it smoother (Bev, Daryl, Penny, Debbie, Lynn)
- When is lunch? (1:15 seems late)
- She only been there 7 months (HR VP) (whole gamut)
- 12:30 – 1:30 is lunch
- 9:00 – 10:30 (sales session)
- 10:45- 12:30 (goals session)

Tiffany Winston  
*VP of Human Resources*

October 21, 2016

Ken PriVette  
Chairman of the Board  
SAFE Federal Credit Union  
160 West Wesmark Boulevard  
Sumter, SC 29150

Dear Ken,

As you know, I have worked with SAFE Federal Credit Union for the past several years. It is an honor and privilege to serve as your strategic planning partner and also work with the credit union on its marketing audit.

Having assisted the credit union on strategic issues I believe I have a thorough understanding of its strengths, weaknesses, challenges and opportunities. The marketing audit also allowed me the chance to conduct a deeper dive analysis into the organization.

Through conducting this work and projects, it is clear to me that SAFE Federal Credit Union has a leadership lapse at the CEO level. I am extremely concerned that Beverly Gagne has not led SAFE FCU well for the past several years. In addition, it is my opinion that Beverly is not the type of leader to move the credit union forward with its new five-year vision.

Here are a few examples regarding the poor leadership I have observed (please note these comments derive from my direct observations along with multiple conversations with staff members):

- Staff is unable to reach her on many occasions.
- She is not in the office on a regular basis.
- She stalls on projects and decision-making (for example, the strategic branding project; I submitted proposals multiple times all of which were ignored; and branding has been a strategic initiative from the board for years).
- The staff is scared of Beverly and her leadership style is more authoritarian in nature.
- Other industry consultants have told me they would not work with SAFE FCU as long as Beverly was the CEO; one specifically cited not doing leadership training because "nothing will change until their CEO changes"
- Beverly and I agreed that if we did a day and a half planning session with the board this year the first day had to start at noon so I could travel in that morning. She never notified me that the first day was starting at 9:00. That

change in schedule meant an increase in the fee (a different amount than we negotiated).

- She missed a flight to a vendor meeting that other employees were also attending. She completely missed that out of town meeting.
- One employee communicated to me when asked about what the brand is that no one knows because the CEO doesn't know and won't communicate it to staff.

While I wish leadership at the CEO level were different, the reality is it is holding SAFE FCU back from being all it can be. If you would like additional details I would be more than happy to provide them.s

Sincerely,

J. Mark Arnold  
President  
On the Mark Strategies

# Exhibit K

**ROGERS ♦ LEWIS**  
— ROGERS LEWIS JACKSON MANN & QUINN, LLC —

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1901 Main Street, Suite 1200  
Columbia, SC 29201  
Phone (803) 978-2834  
jmccants@rogerslewis.com  
www.rogerslewis.com

April 22, 2019

Via E-Mail

jmccoysc@sccourts.org  
The Honorable Jennifer B. McCoy  
100 Broad Street, Suite 348  
Charleston, SC 29401

Re: Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc.,  
et al., v. Island Pointe, LLC, et al.  
Case No.: 2015-CP-10-00955  
Appellate Case No.: 2019-000238

Dear Judge McCoy:

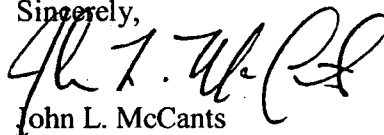
Enclosed please find Builders Mutual Insurance Company's Memorandum in Opposition to Petition to Lift Stay.

Additionally, the original and one (1) copy of Builders Mutual Insurance Company's Memorandum in Opposition to Petition to Lift Stay are being mailed to The Honorable Julie Armstrong for filing in the above referenced matter.

By copy hereof, all counsel of record are being served with the above.

Thank you for your assistance, and should you have any questions, please do not hesitate to contact me.

Sincerely,

  
John L. McCants

cc: jmccoyle@sccourts.org  
The Honorable Julie J. Armstrong (via US Mail)  
All Counsel of Record per Proof of Service (via E-Mail and US Mail)

*Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v. Island Pointe, LLC, et al.*  
*Circuit Court Case No.: 2015-CP-10-00955*

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Circuit Court Case No.: 2015-CP-10-00955

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*Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v. Island Pointe, LLC, et al.*  
Circuit Court Case No.: 2015-CP-10-00955

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*Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v. Island Pointe, LLC, et al.*  
*Circuit Court Case No.: 2015-CP-10-00955*

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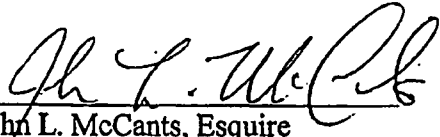
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*Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v. Island Pointe, LLC, et al.*  
Circuit Court Case No.: 2015-CP-10-00955

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Company

February 19 2019  
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARELSTON

PALMETTO POINTE AT PEAS ISLAND  
CONDOMINIUM PROPERTY OWNERS  
ASSOCIATION, INC. AND JACK LOVE,  
INDIVIDUALLY, AND ON BEHALF OF  
ALL OTHERS SIMILARLY SITUATED,

PLAINTIFFS,

V.

ISLAND POINTE, LLC; COMPLETE  
BUILDING CORPORATION; TRI-  
COUNTY ROOFING, INC.; CREEKSIDE,  
INC; AMERICAN RESIDENTIAL  
SERVICES, LLC D/B/A ARS/RESCUE  
ROOTER CHARLESTON; ANDERSEN  
WINDOWS, INC.; ATLANTIC  
BUILDING CONSTRUCTION  
SERVICES, INC. N/K/A ATLANTIC  
CONSTRUCTION SERVICES, INC.;  
BUILDER SERVICES GROUP, INC.  
D/B/A GALE CONTRACTOR  
SERVICES; NOVUS ARCHITECTS,  
INC., F/K/A SGM ARCHITECTS, INC.;  
TALLENT AND SONS, INC.; W C  
SERVICES, INC.; CRG ENGINEERING,  
INC.; CERTAINTEED CORPORATION;  
KELLY FLOORING PRODUCTS, INC.,  
D/B/A CARPET BAGGERS;  
CORNERSTONE CONSTRUCTION AND  
MARK MALLOY D/B/A  
CORNERSTONE CONSTRUCTION;  
MIRACLE SIDING, LLC AND WILSON  
LUCAS SALES D/B/A MIRACLE  
SIDING, LLC; MARK PALPOINT A/K/A  
MICAH PALPOINT; ELROY ALONZO  
VASQUEZ; CHRIS A/K/A JOHN DOE 61;  
ALDERMAN CONSTRUCTION;  
STANEY'S VINYL FENCE DESIGNS;  
COHEN'S DRYWALL COMPANY, INC.;  
MOSELY CONCRETE; HAND A

IN THE COURT OF COMMON PLEAS  
THE NINTH JUDICIAL CIRCUIT  
Civil Action No.: 2015-CP-10-00955

FILED

2019 APR 24 PM 12:16

JULIE J. ARMSTRONG  
CLERK OF COURT

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FRAMING CONSTRUCTION, LLC  
A/K/A H&A FRAMING  
CONSTRUCTION, LLC AND D/B/A  
H AND A FRAMING, LLC, H&A  
CONSTRUCTION, AND HAND A  
CONSTRUCTION; JMC  
CONSTRUCTION, INC.; JMC  
CONSTRUCTION, LLC; JOHN DOE 1-  
15,

DEFENDANTS.

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COMPLETE BUILDING  
CORPORATION, INC.,

THIRD-PARTY PLAINTIFF,

V.

LEONARD T. BROWNE AND  
CHRISTOPHER N. UNION,

THIRD-PARTY DEFENDANTS.

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CREEKSIDE, INC.,

THIRD-PARTY PLAINTIFF,

V.

CHRISTOPHER N. UNION,

THIRD-PARTY DEFENDANT.

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**MEMORANDUM IN OPPOSITION BY APPELLANT BUILDERS MUTUAL  
INSURANCE COMPANY TO PETITION TO LIFT STAY**

Pursuant to Rule 241(b), SCACR, Appellant Builders Mutual Insurance Company ("Builders Mutual"), submits this memorandum in opposition to Respondent Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc.'s and Jack Love's, individually, and behalf of all others similarly situated's (together "Palmetto Pointe") Motion for Reconsideration

of and/or Relief from Order Staying Case and/or Petition to Lift Stay or Otherwise Modify Any Stay as May be Necessary for this Case to Proceed as Scheduled to Trial On the Merits Beginning on May 6, 2019 (the “Petition to Lift Stay”).

The appeal arises from a civil action styled *Palmetto Pointe at Peas Island Condominium Property Owners Association et al. v. Tri-County Roofing, Inc. et al.* Civil Action No. 2015-CP-10-00955 (the “Civil Action”). Palmetto Pointe commenced the action against the developer, design professionals and contractors who were involved in the original design and construction of the condominium buildings that comprise the Palmetto Pointe residential community. Palmetto Pointe alleges that the buildings were constructed improperly and seek damages against Defendants based on what Palmetto Pointe alleges it will cost to make future repairs to the buildings. Palmetto Pointe will seek to satisfy any verdict in favor of Palmetto Pointe from general liability insurance policies issued by insurers to Defendants.<sup>1</sup>

Builders Mutual moved to intervene in the Civil Action for the limited purpose of having the Circuit Court submit a special verdict form and/or special interrogatories to a jury in order to allocate a verdict, if any, in favor of Palmetto Pointe and avoid the consequences of a general verdict that occurred to the insurers in *Auto Owners Ins. Co. v. Newman*, 385 S.C. 187, 198, 684 S.E.2d 541, 546 (2009) (“*Newman*”) and *Harleysville Grp. Ins. v. Heritage Communities, Inc.*, 420 S.C. 321, 332, 803 S.E.2d 288, 294 (2017) (“*Heritage Communities*”). The consequences in *Newman* and *Heritage Communities* were that the insurers were required to pay the entire

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<sup>1</sup> Builders Mutual issued general liability insurance policies to Defendant/Respondent Tri-County Roofing, Inc. (“Tri-County Roofing”).

verdict/award in the underlying actions even though parts of the verdict/award included non-insured damages.<sup>2</sup>

Although the Civil Action has been pending since February 12, 2015, Builders Mutual was only put on notice of a claim or the Civil Action against Tri-County Roofing by letter dated January 15, 2018. (Exhibit A). After attending a mediation on January 30 and 31, 2018, Builders Mutual moved to intervene in the Civil Action on March 22, 2018. Builders Mutual's motion to intervene was first scheduled and heard by the Circuit Court on December 17, 2018. Palmetto Pointe and Tri-County Roofing objected to Builders Mutual being able to intervene in the Civil Action. The Circuit Court entered its Order/Statement of Judgment denying the Motion to Intervene filed by Builders Mutual. (Exhibit B). Builders Mutual moved to have the Circuit Court reconsider its Order/Statement of Judgment, which the Circuit Court denied in its Order/Statement of Judgment Denying Motion to Reconsider. (Exhibit C).

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<sup>2</sup> Builders Mutual submits that substantive issues of insurance coverage are established and will be addressed or discussed in the appeal with citations to the Supreme Court's decisions in *Crossmann Communities of North Carolina, Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 50, 717 S.E.2d 589, 594 (2011) ("*Crossmann*") ("In sum, we clarify that negligent or defective construction resulting in damage to otherwise non-defective components may constitute 'property damage,' but the defective construction would not."); *Newman*, 385 S.C. at 198, 684 S.E.2d at 546 (These terms unambiguously prohibit recovery for the cost of removing and replacing the defective stucco—even when the replacement of the defective work may be incidental to the repair of property damage covered by the policy—and serve as one of the bases for this Court's acknowledgment that a claim solely for economic losses resulting from faulty workmanship is part of an insured's contractual liability which a CGL policy is not intended to cover."). The present appeal concerns procedures. *Newman* and *Heritage Communities* did not provide definitive procedural guidelines which has resulted in insurers seeking to intervene on a limited basis in construction defect civil actions to guard against a general verdict. If there is a verdict in favor of Palmetto Pointe, the objective is to have separated beforehand or contemporaneously those costs which are to remove and replace Tri-County's work (not covered) from those cost which are to repair "property damage" (potentially covered).

Builders Mutual filed its Notice of Appeal on February 19, 2019. (Exhibit D). Builders Mutual filed a Motion to Transfer the Case to the South Carolina Supreme Court on February 27, 2019 pursuant to Rule 204(b), SCACR. (Exhibit E). Palmetto Pointe filed a response with the Supreme Court stating that it took no position with regard to the Motion to Transfer the Case. (Exhibit F).<sup>3</sup> The Motion to Transfer the Case is pending.<sup>4</sup> The parties to the appeal are currently in the Initial Brief stage.

The Petition to Lift Stay includes both a Motion to Reconsider and Order Staying Case entered on April 5, 2019 and a Petition to Lift or Otherwise Modify any Stay. First, Builders Mutual submits that the Circuit Court cannot proceed with a trial involving Tri-County Roofing because the Circuit Court lacks subject matter jurisdiction and a stay was automatic upon the filing of the Notice of Appeal.<sup>5</sup> Second, to the extent that the Circuit Court grants relief that does not affect Builders Mutual's appeal, Builders Mutual does not have an objection to the Circuit Court doing so.

**The South Carolina Supreme Court Has Held that a Lower Court May Only Act As to Matters Not Stayed by an Appeal**

Rule 205, SCACR, states as follows:

Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have

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<sup>3</sup> The Supreme Court granted a Motion to Transfer the Case, like the one filed by Builders Mutual, in a recent appeal filed by insurers in Appellate Case No. 2017- 02146 concerning the denials of motions to intervene in an underlying construction defect case. (Exhibit G). The parties in Appellate Case No. 2017- 02146 settled the appeal and underlying civil action shortly before scheduled oral arguments in the Supreme Court.

<sup>4</sup> The appeal presents at least one major issue that is recurring in construction defect civil litigation in South Carolina and will continue to recur: If there are to be consequences to a liability insurer for a general verdict, what procedures can an insurer follow to preclude those consequences or to assure there is an allocated verdict for insurance coverage purposes?

<sup>5</sup> The stay is automatic upon the filing of the Notice of Appeal. Rule 241(d)(3), SCACR.

jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.

Rule 205, SCACR concerns subject matter jurisdiction. *See Arnal v. Fraser*, 371 S.C. 512, 519, 641 S.E.2d 419, 423 (2007). The appellate court has exclusive jurisdiction over the appeal with the exception of matters not affected by the appeal; and the appellate court retains jurisdiction until the remittitur is sent to the lower court. *Lancaster v. Georgia-Pacific Corp.*, 403 S.C. 136, 742 S.E.2d 867 (2013).<sup>6</sup>

Rule 241(a), SCACR, provides:

As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.

Rule 241(d)(1), SCACR states, “[e]xcept where extraordinary circumstances make it impracticable, an application for an order lifting the automatic stay or a supersedeas must first be made to the lower court or administrative tribunal which entered the order or decision on appeal.” Simply because a party must first file a motion with a lower court does not mean that a lower court is empowered to do something that it does not have jurisdiction to do. Rule 241(a), SCACR does not expand the power of a lower court. *See Arnal*, 371 S.C. at 519, 641 S.E.2d at 422. The Supreme Court has stated, “[u]nder Rule 205 and the last sentence of the above-quoted portion of Rule 225, the lower court may not act or issue orders that affect an issue on appeal. Under Rule 225, the

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<sup>6</sup> The Circuit Court has jurisdiction to entertain petitions for writs of supersedeas, which is inapplicable herein. A supersedeas is a procedure to impose a stay where none existed.

lower court may only act to enforce matters not stayed by the appeal."<sup>7</sup> *Arnal*, 371 S.C. at 519, 641 S.E.2d at 422. (emphasis added). Both Rule 205, SCACR and Rule 241, SCACR specifically limit the power of the Circuit Court to only do that which is not affected by the appeal.

The relation between Rule 205(b), SCACR and Rule 241(a), SCACR is addressed by the Court of Appeals in *Tillman v. Oakes*, 398 S.C. 245, 728 S.E.2d 45 (Ct. App. 2012). Writing for the Court of Appeals, now Justice John Cannon Few explains in more detail the two appellate court rules and the limited power of a lower court during an appeal:

When a party appeals an order, two questions may arise as to the effect of the appeal: (1) what is the effect of the appeal on matters decided in the order, particularly the immediate effectiveness of relief ordered; and (2) what is the effect of the appeal on the power of the lower court to proceed with the underlying action while the appeal is pending. The answer to the first question is governed by the stay and supersedeas provisions of Rule 241. If a stay exists, either automatically under Rule 241(a) or by supersedeas under Rule 241(c), the appealed order may not be carried out or enforced during the pendency of the appeal. This is the purpose of a stay under Rule 241- to determine whether the appealed order may be carried out or enforced - not to determine whether the action may proceed in the lower court while the appeal is pending. (emphasis added).

The second question is whether the lower court may proceed with the action during the pendency of the appeal, and its answer is governed by Rule 205, SCACR. (emphasis added). The rule provides: "Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal..." Under Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal, but is specifically allowed to proceed with matters not affected by the appeal. The rule states: "Nothing in these Rules shall prohibit the lower court ... from proceeding with matters not affected by the appeal." Rule 205, SCACR; *see also* Rule 241(a), SCACR ("The lower court ... retains jurisdiction over matters not affected by the appeal..."). Thus, the existence or nonexistence of a stay under Rule 241 does not control the family court's power to proceed with the action and address matters not affected by the appeal. Rather, the lower court's power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a "matter[ ] affected by the appeal" under Rules 205 and 241(a)(Citations Omitted)(emphasis added).

*Tillman v. Oakes*, 398 S.C. at 255, 728 S.E.2d at 50-51.

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<sup>7</sup> Rule 225, SCACR is the predecessor to Rule 241, SCACR. For the purposes herein, the language is the same in each Rule.

To summarize Justice Few's conclusions, first, the purpose of a stay under Rule 241, SCACR is not to determine whether the action may proceed in the lower court while the appeal is pending. Second, the existence or nonexistence of a stay under Rule 241, SCACR does not control the trial court's power to proceed with the action. Third, whether a lower court may proceed with an action during the pendency of the appeal is governed by Rule 205, SCACR. Fourth, a lower court's power to proceed is determined by whether the issue sought to be litigated before the trial court during the appeal is a "matter[ ] affected by the appeal".

The Circuit Court cannot proceed to trial with Tri-County Roofing.<sup>8</sup> There is no genuine dispute that proceeding to trial against Tri-County Roofing affects Builders Mutual's appeal. For the definition of the word "affects", the South Carolina Supreme Court cites to the definition of the word in Black's Law Dictionary 68 (10<sup>th</sup> ed. 2014) (defining "affect" to "produce an effect on; to influence in some way"). *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 534, 787 S.E. 485, 494 (2016). Proceeding to trial raises the prospect that the issues on appeal may become moot if the action goes to trial against Tri-County Roofing and the jury delivers a general verdict. Builders Mutual moved to intervene and be a part of the trial so as to avoid a general verdict against Tri-County Roofing. The Circuit Court did not allow Builders Mutual to do so and whether Builders Mutual can do so is now the issue on appeal. Palmetto Pointe has offered no solution or alternative that will in fact preserve the jurisdiction of the appeal or to prevent the appeal from

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<sup>8</sup> Furthermore, Rule 241(c)(2), SCACR states that a court "should consider whether such an order [to lift the stay] is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." Rule 241(c)(2), SCACR. In other words, a lower court can take action that is necessary to preserve the appeal or prevent it from becoming moot. The converse is the rule too. A lower court cannot take action that does not preserve the appeal or that causes the appeal to become moot.

potentially becoming moot.<sup>9</sup> Palmetto Pointe simply wishes to press forward to a general verdict and will later argue that Builders Mutual and other insurers are bound by the general verdict.

Denying the Petition to Lift Stay does not prejudice Palmetto Pointe in any way or leave it without a remedy. First, Palmetto Pointe may petition the Court of Appeals, *that does have jurisdiction*, and if the Court of Appeals chooses to do so, it can impose limitations, on the lifting of the stay, in order to retain jurisdiction or not make the appeal moot. Second, similarly, a party can seek a remand from an appellate court if the circumstances of the particular case require it. *Arnal*, 371 S.C. at 519, 641 S.E.2d at 422, fn. 4. Third, the fact is the Petition to Lift Stay is, *in substance*, a motion to dismiss the appeal, which must be filed with the Court of Appeals under Rule 240(a) – (b), SCACR.

**The South Carolina Supreme Court Has Held that the Denial of a Motion to Intervene is Immediately Appealable**

Palmetto Pointe argues for the Circuit Court to declare the appeal interlocutory and proceed with a trial. Palmetto Pointe cites to *South Carolina Public Service Authority v. Arnold*, 287 S.C. 584, 586, 340 S.E.2d 535, 537 (1986) for the proposition that, “when an order is interlocutory and thus not appealable, the notice of intent to appeal does not transfer jurisdiction to this Court, not does it stay further proceeding in the lower court.” First, it is critical to note that whether the appeal in *Arnold* was interlocutory was an issue before the South Carolina Supreme Court on a motion to dismiss the appeal. *Arnold*, 287 S.C. at 536, 340 S.E.2d at 585. Albeit pending for over two months, Palmetto Pointe has not moved to dismiss Builders Mutual’s appeal. When faced with an opportunity to express a position about the appeal, in response to Builders Mutual’s Motion to

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<sup>9</sup> Palmetto Pointe, and other parties, can agree to waive any coverage or not seek insurance from Builders Mutual for any claim or judgment rendered in the Civil Action. Palmetto Pointe can agree to request the special interrogatories and suffer the consequences if not done adequately or sufficiently for the purposes of a later declaratory judgment action concerning insurance coverage.

Transfer the Case to the South Carolina Supreme Court, Palmetto Pointe expressed no position (or objection) for the appeal.

Second, whether an appeal concerning a motion to intervene (by insurers) is interlocutory has been decided by the Court of Appeals adversely to Palmetto Pointe's position in two recent appeals. The Court of Appeals denied motions to dismiss appeals concerning intervention based on arguments made by the respondents that the appeals are interlocutory. *Order, Beresford Commons Homeowners Ass'n, Inc. v. Portrait Homes-South Carolina, LLC, et al.*, Appellate Case No. 2017-000202 (March 7, 2017); *Order, Ex Parte: Hartford Fire Insurance Company In Re: The Harbour Cove Condominium Association*, Appellate Case No. 2017-002146 (January 24, 2018). (Exhibit H). The present appeal is no different.

Third, the order denying the motion to intervene is not interlocutory and is immediately appealable as a matter involving a substantial right. S.C. Code § 14-3-330(2). "An order affects a substantial right and is *immediately appealable* when it '(a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action ....' " *Hagood v. Sommerville*, 362 S.C. 191, 195, 607 S.E.2d 707, 709 (2005) (quoting S.C. Code § 14-3-330(2)) (emphasis added). Interpreting precisely the same statutory language,<sup>10</sup> the South Carolina Supreme Court held that an order denying a motion to intervene was immediately appealable—even though "the merits of the action hereinbefore mentioned [had] not been determined and as

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<sup>10</sup> *Johnson/Rutledge*, 63 S.C. at \_\_, 41 S.E. at 309 ("Section 11 of the Code provides that 'the supreme court shall have exclusive jurisdiction to review upon appeal \*\*\* an order affecting a substantial right made in an action, when such order in effect determines the action and prevents a judgment from which an appeal might be taken.'"). The current statute, S.C. Code Ann. Section 14-3-330, provides identically under (2): "The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: ... (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken...."

the trial of that action will still be necessary” - because insofar “as the rights of the [putative intervenor] are involved, the order [denying intervention] affects a substantial right, and in effect determines the action and prevents a judgment from which an appeal might be taken.” *Ex parte Johnson (Rutledge v. Tunno)*, 63 S.C. 205, \_\_\_, 41 S.E. 308, 309 (1902). *See also* 15 S.C. Jur. Appeal and Error § 23 South Carolina Jurisprudence (September 2017 Update) (“The refusal of a petition to intervene is directly appealable ‘[i]n so far as the rights of appellant are involved, the order affects a substantial right, and in effect determines the action and prevents a judgment from which an appeal might be taken.’”); *Ex parte Wells*, No. 2012-MO-002, 2012 WL 10906587, at \*1 & n.1 (S.C. Sup. Ct. filed March 7, 2012) (allowing immediate appeal of an order denying a request to intervene in an abuse and neglect action) (citing *Johnson/Rutledge*) (please note that this is opinion states “[t]his opinion has no precedential value. It should not be cited or relied on as precedent in any proceeding except as provided by rule 268(d)(2), 8(d)(2), SCACR”); *Ex parte Carter v. L.C.*, No. 2015-001006, 2017 WL 164493, at \*2 (S.C. Ct. App. filed January 13, 2017) (citing *Johnson/Rutledge* with favor that “an order denying a motion to intervene is immediately appealable”) (please note that this is opinion states “[t]his opinion has no precedential value. It should not be cited or relied on as precedent in any proceeding except as provided by rule 268(d)(2), SCACR”).

The order denying Builders Mutual’s motion to intervene “in effect determin[e]d the action and prevent[ed] a judgment from which an appeal might be taken,” within the meaning of *Johnson/Rutledge*, 63 S.C. at \_\_\_, 41 S.E. at 309. Builders Mutual therefore has a right to an immediate appeal under S.C. Code § 14-3-330(2) as has been established in South Carolina. In the present matter, the Circuit Court ruled on the merits, and therefore the case is clear that the denial of the motion to intervene is immediately appealable. *See Ex parte Johnson (Rutledge v. Tunno)*,

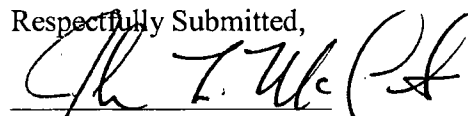
*supra*. The question of whether Builders Mutual has any right or obligation to intervene is inextricably intertwined with the merits of the controversy or a jury verdict involving Tri-County Roofing.

**Palmetto Pointe is Not Entitled to Emergency Relief**

Palmetto Pointe seeks emergency relief. The Notice of Appeal was filed on February 19, 2019. Palmetto Pointe does not explain why it waited until April 16, 2019 to ask a court to lift the stay as it may relate to a trial involving Tri-County Roofing. Second, throughout its Petition to Lift Stay, Palmetto Pointe discusses the passage of time, and the years gone by; and how Palmetto Pointe must now have a trial or it will be prejudiced. Under the Rules of Civil Procedure, Palmetto Pointe was allowed to move the case to the jury trial roster within six months of filing the Civil Action in 2015. Rule 40(d), SCRPC. While one understands that a construction defect action may involve complex construction industry issues, Palmetto Pointe itself chose to lengthen the time for the action and make it unwieldy by suing numerous parties instead of the developer and general contractor alone. Palmetto Pointe bears responsibility for the passage of time.

Wherefore, Builders Mutual request that the Circuit Court deny the relief requested by Palmetto Pointe.

Respectfully Submitted,



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**ATTORNEY FOR APPELLANT BUILDERS  
MUTUAL INSURANCE COMPANY**

April 22, 2019

# Exhibit A



Andrew N. Coble | P: 803.256.6433 | E: acote@collinsandlacy.com

January 15, 2018

VIA E-MAIL  
Milton Harrelson  
Builders Mutual Insurance  
[REDACTED]

**CONFIDENTIAL DOCUMENT:  
REDACTED FOR WORK  
PRODUCT DOCTRINE**

Re: Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v. Island Pointe, LLC, et al. [& Tri-County Roofing, Inc.]; and Tri-County Roofing, Inc. (3<sup>rd</sup>-Party P.) v. Cornerstone Construction and Mark Malloy d/b/a Cornerstone Construction, Miracle Siding, LLC and Wilson Lucas Sales d/b/a Miracle Siding, LLC, Mark Palpoint a/k/a Micah Palpoint, Eloy Alonzo Vazquez, and Chris a/k/a John Doe 61 (3<sup>rd</sup>-Party Ds.)  
Civil Action No. 2015-CP-10-955  
[REDACTED]

Dear Milton:

I have been defending the defendant Tri-County Roofing, Inc. in the above-referenced action under policies issued by Scottsdale (policy effective July 24, 2006 through July 24, 2007) and Lloyd's, London with Raphael & Associates as TPA (policy effect July 24, 2007 through July 24, 2008). I am sending this letter to you because this case is scheduled to be mediated soon on January 30-31, 2018, and I am making an official inquiry to ask if Builders Mutual will be joining in/sharing in the defense of Tri-County Roofing.

I am aware of the policies from Scottsdale and Lloyd's that cover years 2006-2008. I am following up with a subsequent Lloyd's policy from 2008-2009. Although I do not have the actual policy numbers, I understand that Builders Mutual issued policies starting in or after 2009.  
[REDACTED]

[REDACTED]

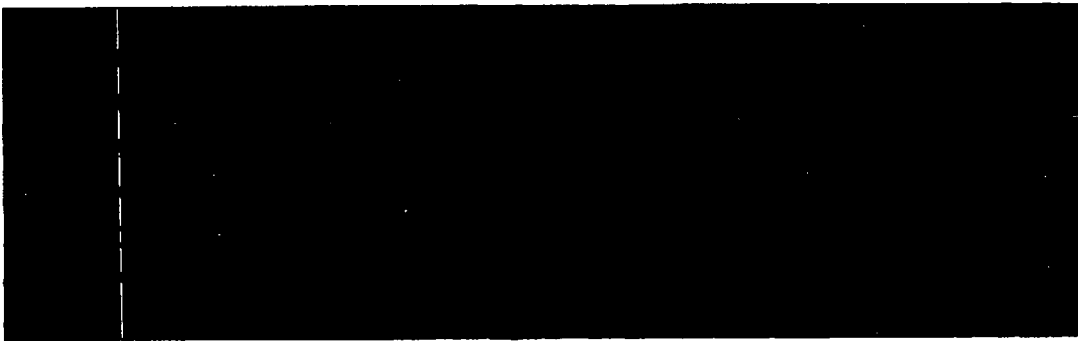
[REDACTED]

[REDACTED]

[REDACTED]

---

[REDACTED]



I thank you for your attention to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Andrew N. Cole", is written over the typed name.

Andrew N. Cole

cc: Scott Nirenberg, Raphael & Associates  
Bruce Canade, Scottsdale Insurance Co



# Exhibit B

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-00955

Palmetto Pointe at Peas Island Condominium  
Property Owners Association, et al.  
PLAINTIFF(S)

Island Pointe, LLC, et al.

DEFENDANT(S)

|               |                                                                                      |
|---------------|--------------------------------------------------------------------------------------|
| Submitted by: | Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant |
|               | or<br><input type="checkbox"/> Self-Represented Litigant                             |

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Motions for Intervention filed by Builders Mutual Insurance Company, Nationwide Mutual Insurance Company, Nautilus Insurance Company, and State Farm Fire and Casualty Company are DENIED.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

| INFORMATION FOR THE JUDGMENT INDEX                                                                                                                                                                           |                                          |                                                             |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|-------------------------------------------------------------|
| Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below. |                                          |                                                             |
| Judgment in Favor of<br>(List name(s) below)                                                                                                                                                                 | Judgment Against<br>(List name(s) below) | Judgment Amount To be<br>Enrolled<br>(List amount(s) below) |
| N/A                                                                                                                                                                                                          |                                          |                                                             |
| If applicable, describe the property, including tax map information and address, referenced in the order:<br>N/A                                                                                             |                                          |                                                             |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

|                                                                                                            |                    |                  |
|------------------------------------------------------------------------------------------------------------|--------------------|------------------|
| <br>Circuit Court Judge | 2764<br>Judge Code | 12/17/18<br>Date |
|------------------------------------------------------------------------------------------------------------|--------------------|------------------|

# Exhibit C

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-00955

Palmetto Pointe at Peas Island Condominium  
Property Owners Association, et al.

Island Pointe, LLC, et al.

PLAINTIFF(S)

DEFENDANT(S)

|               |                                                                                      |
|---------------|--------------------------------------------------------------------------------------|
| Submitted by: | Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant |
|               | or<br><input type="checkbox"/> Self-Represented Litigant                             |

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Motions for Reconsideration of this court's ruling on Motions to Intervene filed by Builders Mutual Insurance Company, Nationwide Mutual Insurance Company, Nautilus Insurance Company, and State Farm Fire and Casualty Company are DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

| INFORMATION FOR THE JUDGMENT INDEX                                                                                                                                                                           |                                          |                                                             |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|-------------------------------------------------------------|
| Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below. |                                          |                                                             |
| Judgment in Favor of<br>(List name(s) below)                                                                                                                                                                 | Judgment Against<br>(List name(s) below) | Judgment Amount To be<br>Enrolled<br>(List amount(s) below) |
| N/A                                                                                                                                                                                                          |                                          |                                                             |
| If applicable, describe the property, including tax map information and address, referenced in the order:<br>N/A                                                                                             |                                          |                                                             |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

  
Circuit Court Judge

2764  
Judge Code

1/16/18  
Date

# Exhibit D

# ROGERS ♦ LEWIS

— ROGERS LEWIS JACKSON MANN & QUINN, LLC —

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**RECEIVED**

February 19, 2019

FEB 19 2019

**SC Court of Appeals**

Via Hand Delivery

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v.  
Island Pointe, LLC, et al.  
Circuit Court Case No.: 2015-CP-10-00955

Dear Ms. Kitchings:

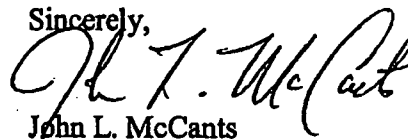
Enclosed for filing is the original Notice of Appeal along with one (1) copy of the Notice of Appeal to be stamped and returned to the courier. Also enclosed are the following:

- (1) Original Proof of Service for the Notice of Appeal and one (1) copy to be stamped and returned with the courier;
- (2) Copies of the Orders which are to be challenged on appeal;
- (3) A filing fee of \$100.00

By copy hereof, all counsel of record are being served with the above.

Thank you for your assistance, and should you have any questions, please do not hesitate to contact me.

Sincerely,



John L. McCants

cc:

The Honorable Clerk of Court for Charleston County  
(via US Mail for filing)

Other Counsel of Record:

*Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v. Island Pointe, LLC, et al.*

*Circuit Court Case No.: 2015-CP-10-00955*

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*Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v. Island Pointe, LLC, et al.*

*Circuit Court Case No.: 2015-CP-10-00955*

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*Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v. Island Pointe, LLC, et al.*

*Circuit Court Case No.: 2015-CP-10-00955*

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*Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v. Island Pointe, LLC, et al.*  
*Circuit Court Case No.: 2015-CP-10-00955*

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*Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v. Island Pointe, LLC, et al.*  
*Circuit Court Case No.: 2015-CP-10-00955*

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*Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v. Island Pointe, LLC, et al.*

*Circuit Court Case No.: 2015-CP-10-00955*

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*Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v. Island Pointe, LLC, et al.*  
*Circuit Court Case No.: 2015-CP-10-00955*

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*Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v. Island Pointe, LLC, et al.*  
Circuit Court Case No.: 2015-CP-10-00955

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*Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v. Island Pointe, LLC, et al.*

*Circuit Court Case No.: 2015-CP-10-00955*

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

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2015-CP-10-00955

**RECEIVED**

FEB 19 2019

**SC Court of Appeals**

Ex Parte:

Builders Mutual Insurance Company, Appellant,

In Re:

Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., and Jack Love,  
individually, and on behalf of all others similarly situated, Plaintiffs,

v.

Island Pointe, LLC; Leonard T. Brown; Complete Building Corporation; Tri-County Roofing, Inc.; Creekside, Inc.; American Residential Services, LLC d/b/a Rescue Rooter Charleston; Andersen Windows, Inc.; Atlantic Building Construction Services, Inc. n/k/a Atlantic Construction Services, Inc.; Christopher N. Union; Builder Services Group, Inc. d/b/a Gale Contractor Services; Novus Architects, Inc. f/k/a SGM Architects, Inc.; Tallent and Sons, Inc.; W C Services, Inc.; CRG Engineering, Inc.; Certainteed Corporation; Kelly Flooring Products, Inc. d/b/a Carpet Baggers and John Doe 1-60.....Defendants.

Tri-County Roofing, Inc.....Third-Party Plaintiff,

v.

Cornerstone Construction and Mark Malloy d/b/a Cornerstone Construction; Gutter Works, Inc. and Michael L. Segars d/b/a Gutter Works; Mr. Gutter; Litchfield Seamless Gutters & Windows, LLC and Thomas Litchfield d/b/a Litchfield Seamless Gutter; Miracle Siding, LLC and Wilson Lucas Sales d/b/a Miracle Siding, LLC; Mark Palpoint a/k/a Micah Palpoint; Elroy Alonzo Vasquez; and Chris a/k/a John Doe 61.....Third-Party Defendants.

Complete Building Corporation, Inc.....Third-Party Plaintiff,

v.

Alderman Construction; Stanley's Vinyl Fence Designs; Cohen's Drywall; and Mosley Concrete.....Third-Party Defendants.

Of whom Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Jack Love, individually, and behalf of all others similarly situated, and Tri-County Roofing, Inc. are the Respondents.

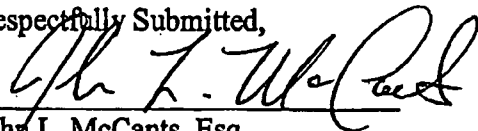
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**NOTICE OF APPEAL**

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Builders Mutual Insurance Company ("Appellant") appeals the Order/Statement of Judgment of the Honorable Jennifer B. McCoy, dated December 17, 2018, denying the Motion for Intervention filed by Builders Mutual Insurance Company; and the Appellant appeals the Order/Statement of Judgment of the Honorable Jennifer B. McCoy, dated January 16, 201[9], denying the Motion for Reconsideration filed by Builders Mutual Insurance Company. Appellant received written notice of entry of the Order/Statement of Judgment denying the Motion to Reconsider on January 21, 2019.

Respectfully Submitted,



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February 19, 2019  
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STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-00955

RECEIVED

FEB 19 2019

Palmetto Pointe at Peas Island Condominium  
Property Owners Association, et al.  
PLAINTIFF(S)

Island Pointe, LLC, et al.

DEFENDANT(S)

SC Court of Appeals

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Motions for Intervention filed by Builders Mutual Insurance Company, Nationwide Mutual Insurance Company, Nautilus Insurance Company, and State Farm Fire and Casualty Company are DENIED.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

## INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

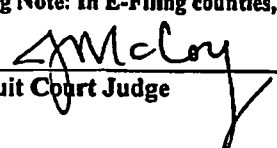
| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be<br>Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|-------------------------------------------------------------|
| N/A                                          |                                          |                                                             |

If applicable, describe the property, including tax map information and address, referenced in the order:  
N/A

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

  
Circuit Court Judge

2764  
Judge Code

12/17/18  
Date

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-00955

RECEIVED

FEB 19 2019

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Property Owners Association, et al.  
PLAINTIFF(S)

Island Pointe, LLC, et al.

DEFENDANT(S)

SC Court of Appeals

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- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**  
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NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Motions for Reconsideration of this court's ruling on Motions to Intervene filed by Builders Mutual Insurance Company, Nationwide Mutual Insurance Company, Nautilus Insurance Company, and State Farm Fire and Casualty Company are DENIED.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

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|------------------------------------------------------------------------------------------------------------------|------------------------------------------|-------------------------------------------------------------|
| N/A                                                                                                              |                                          |                                                             |
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E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

*J. McCoy*  
Circuit Court Judge

2764  
Judge Code

1/16/18  
Date

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2015-CP-10-00955

**RECEIVED**

**FEB 19 2019**

**SC Court of Appeals**

Ex Parte:

Builders Mutual Insurance Company, Appellant,

In Re:

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individually, and on behalf of all others similarly situated, Plaintiffs,

v.

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Tri-County Roofing, Inc.....Third-Party Plaintiff,

v.

Cornerstone Construction and Mark Malloy d/b/a Cornerstone Construction; Gutter Works, Inc. and Michael L. Segars d/b/a Gutter Works; Mr. Gutter; Litchfield Seamless Gutters & Windows, LLC and Thomas Litchfield d/b/a Litchfield Seamless Gutter; Miracle Siding, LLC and Wilson Lucas Sales d/b/a Miracle Siding, LLC; Mark Palpoint a/k/a Micah Palpoint; Elroy Alonzo Vasquez; and Chris a/k/a John Doe 61.....Third-Party Defendants.

Complete Building Corporation, Inc.....Third-Party Plaintiff,

*Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v. Island Pointe, LLC, et al.*  
Circuit Court Case No.: 2015-CP-10-00955

v.

Alderman Construction; Stanley's Vinyl Fence Designs; Cohen's Drywall; and Mosley Concrete.....Third-Party Defendants.

Of whom Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Jack Love, individually, and behalf of all others similarly situated, and Tri-County Roofing, Inc. are the Respondents.

---

**PROOF OF SERVICE**

---

I certify that I have served the Notice of Appeal on Other Counsel of Record by depositing a copy of it in the United States Mail, postage prepaid, on February 19, 2019 addressed to their attorneys of record, listed as follows:

cc:

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The Honorable Julie J. Armstrong  
100 Broad Street  
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**RECEIVED**

**FEB 19 2019**

**SC Court of Appeals**

*Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v. Island Pointe, LLC, et al.*  
*Circuit Court Case No.: 2015-CP-10-00955*

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*Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v. Island Pointe, LLC, et al.*  
*Circuit Court Case No.: 2015-CP-10-00955*

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*Circuit Court Case No.: 2015-CP-10-00955*

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# Exhibit E

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2015-CP-10-00955

Appellate Case No. 2019-000238

**RECEIVED**

FEB 27 2019

SC Court of Appeals

**RECEIVED**

FEB 27 2019

S.C. SUPREME COURT

Ex Parte: Builders Mutual Insurance Company, Appellant,

In Re:

Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., and Jack Love, individually, and on behalf of all others similarly situated, Plaintiffs, v. Island Pointe, LLC; Leonard T. Brown; Complete Building Corporation; Tri-County Roofing, Inc.; Creekside, Inc.; American Residential Services, LLC d/b/a Rescue Rooter Charleston; Andersen Windows, Inc.; Atlantic Building Construction Services, Inc. n/k/a Atlantic Construction Services, Inc.; Christopher N. Union; Builder Services-Group, Inc. d/b/a Gale Contractor Services; Novus Architects, Inc. f/k/a SGM Architects, Inc.; Tallent and Sons, Inc.; W C Services, Inc., CRG Engineering, Inc.; Certainteed Corporation; Kelly Flooring Products, Inc. d/b/a Carpet Baggers and John Doe 1-60.....Defendants.

Tri-County Roofing, Inc.....Third-Party Plaintiff,

v.

Cornerstone Construction and Mark Malloy d/b/a Cornerstone Construction; Gutter Works, Inc. and Michael L. Segars d/b/a Gutter Works; Mr. Gutter; Litchfield Seamless Gutters & Windows, LLC and Thomas Litchfield d/b/a Litchfield Seamless Gutter; Miracle Siding, LLC and Wilson Lucas Sales d/b/a Miracle Siding, LLC; Mark Palpoint a/k/a Micah Palpoint; Elroy Alonzo Vasquez; and Chris a/k/a John Doe 61.....Third-Party Defendants.

And

Complete Building Corporation, Inc.....Third-Party Plaintiff,

v.

Alderman Construction; Stanley's Vinyl Fence Designs; Cohen's Drywall; and Mosley Concrete.....Third-Party Defendants.

Of whom Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Jack Love, individually, and behalf of all others similarly situated, and Tri-County Roofing, Inc. are the Respondents.

---

### MOTION TO TRANSFER CASE TO THE SUPREME COURT

---

Pursuant to Rule 204(b), SCACR, Appellant Builders Mutual Insurance Company ("Builders Mutual"), moves to certify the case for immediate review by the Supreme Court.

The appeal arises from a civil action styled *Palmetto Pointe at Peas Island Condominium Property Owners Association et al. v. Tri-County Roofing, Inc. et al.* Civil Action No. 2015-CP-10-00955 (the "Civil Action"). The Plaintiffs in the Civil Action commenced the action against the developer, design professionals and contractors (collectively, "Defendants") who were involved in the original design and construction of the condominium buildings that comprise the Palmetto Pointe residential community. The Plaintiffs allege that the buildings were constructed improperly and seek damages against Defendants based on what Plaintiffs allege it will cost to make future repairs to the buildings. Plaintiffs will seek to satisfy any verdict in favor of the Plaintiffs from general liability insurance policies issued by insurers to Defendants.<sup>1</sup>

Builders Mutual moved to intervene in the Civil Action for the limited purpose of having the Circuit Court submit a special verdict form and/or special interrogatories to a jury in order to

---

<sup>1</sup> Builders Mutual issued general liability insurance policies to Defendant/Respondent Tri-County Roofing, Inc. ("Tri-County Roofing"). Builders Mutual is providing a defense to Tri-County Roofing through Andrew Cole, Esq. of the law firm Collins & Lacy, P.C., pursuant to a reservation of rights.

allocate a verdict, if any, in favor of Plaintiffs and avoid the consequences of a general verdict that occurred to the insurers in *Auto Owners Ins. Co. v. Newman*, 385 S.C. 187, 198, 684 S.E.2d 541, 546 (2009) ("*Newman*") and *Harleysville Grp. Ins. v. Heritage Communities, Inc.*, 420 S.C. 321, 332, 803 S.E.2d 288, 294 (2017) ("*Heritage Communities*"). The consequences in *Newman* and *Heritage Communities* were that the insurers were required to pay the entire verdict/award in the underlying actions even though parts of the verdict/award included non-insured damages.<sup>2</sup>

Plaintiffs and Tri-County Roofing objected to Builders Mutual being able to intervene in the Civil Action.<sup>3</sup> The Circuit Court entered its Order/Statement of Judgment denying the Motion to Intervene filed by Builders Mutual. (Exhibit A). The Circuit Court did not provide an explanation for the ruling. Builders Mutual moved to have the Circuit Court reconsider its Order/Statement of Judgment, including to provide an explanation for the ruling, which the Circuit Court denied in its Order/Statement of Judgment Denying Motion to Reconsider. (Exhibit A).

---

<sup>2</sup> Builders Mutual submits that substantive issues of insurance coverage are established and will be addressed or discussed in the appeal with citations to the Supreme Court's decisions in *Crossmann Communities of North Carolina, Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 50, 717 S.E.2d 589, 594 (2011) ("*Crossmann*") ("In sum, we clarify that negligent or defective construction resulting in damage to otherwise non-defective components may constitute 'property damage,' but the defective construction would not."); *Newman*, 385 S.C. at 198, 684 S.E.2d at 546 (These terms unambiguously prohibit recovery for the cost of removing and replacing the defective stucco—even when the replacement of the defective work may be incidental to the repair of property damage covered by the policy—and serve as one of the bases for this Court's acknowledgment that a claim solely for economic losses resulting from faulty workmanship is part of an insured's contractual liability which a CGL policy is not intended to cover."). The present appeal concerns procedures. *Newman* and *Heritage Communities* did not provide definitive procedural guidelines which has resulted in insurers seeking to intervene on a limited basis in construction defect civil actions to guard against a general verdict. If there is a verdict in favor of Plaintiffs, the objective is to have separated beforehand or contemporaneously those costs which are to remove and replace Tri-County's work (not covered) from those cost which are to repair "property damage" (potentially covered).

<sup>3</sup> Tri-County Roofing hired personal counsel who objected to the Motion to Intervene filed by Builders Mutual.

Builders Mutual filed a Notice of Appeal on February 19, 2019 with the Court of Appeals. The appeal presents at least one major issue that is recurring in construction defect civil litigation in South Carolina and will continue to recur: If there are to be consequences to a liability insurer for a general verdict, what procedures can an insurer follow to preclude those consequences or to assure there is an allocated verdict for insurance coverage purposes? Builders Mutual seeks certification for the Supreme Court to decide the issues to be presented and for Builders Mutual to be able to avoid the legal consequences of a general verdict of past precedent for the present Civil Action.

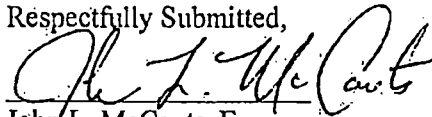
Transferring a case to the Supreme Court “is normally appropriate where the case involves an issue of significant public interest or a legal principle of major importance.” Rule 204(b), SCACR. The Supreme Court has granted certification in appeals, either on the motion of a party or the Court’s own motion, presenting recurring questions affecting liability insurers and insureds with respect to construction defect litigation. *See Heritage Communities; Crossmann; Newman; Bennett and Bennett Const., Inc. v. Auto-Owners Ins. Co.*, 405 S.C. 1, 747 S.E.2d 426 (2013); *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 748 S.E.2d 781 (2013); and *L-J, Inc. v. Bituminous Fire & Marine Ins. Co.*, 366 S.C. 117, 621 S.E.2d 33 (2005). Further, the Supreme Court granted a Motion to Transfer the Case, like the present one, in a recent appeal filed by insurers in Appellate Case No. 2017- 02146 concerning the denials of motions to intervene in an underlying construction defect case.<sup>4</sup> Builders Mutual submits that absent intervention or an appeal, the trial in the Civil Action would have gone forward to an unallocated or general verdict. It thus makes eminent sense to resolve the issues raised by *Newman* and *Heritage Communities* before a trial in the Civil

---

<sup>4</sup> The parties in Appellate Case No. 2017- 02146 settled the appeal and underlying civil action before oral arguments in the Supreme Court.

Action; and Builders Mutual submits that a most efficient way is certification under Rule 204(b), SCACR. For these reasons, Builders Mutual moves pursuant to Rule 204(b), SCACR for certification by the Supreme Court for immediate review of the case.

Respectfully Submitted,



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**ATTORNEY FOR APPELLANT BUILDERS**

**MUTUAL INSURANCE COMPANY**

February 27, 2019

# Exhibit A

---

FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-00955

Palmetto Pointe at Peas Island Condominium  
Property Owners Association, et al.

Island Pointe, LLC, et al.

PLAINTIFF(S)

DEFENDANT(S)

|               |                                                                                      |
|---------------|--------------------------------------------------------------------------------------|
| Submitted by: | Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant |
|               | or<br><input type="checkbox"/> Self-Represented Litigant                             |

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ STAYED DUE TO BANKRUPTCY
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Motions for Intervention filed by Builders Mutual Insurance Company, Nationwide Mutual Insurance Company, Nautilus Insurance Company, and State Farm Fire and Casualty Company are DENIED.

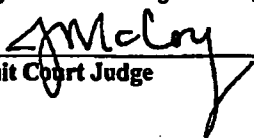
ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

| INFORMATION FOR THE JUDGMENT INDEX                                                                                                                                                                           |                                          |                                                             |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|-------------------------------------------------------------|
| Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below. |                                          |                                                             |
| Judgment in Favor of<br>(List name(s) below)                                                                                                                                                                 | Judgment Against<br>(List name(s) below) | Judgment Amount To be<br>Enrolled<br>(List amount(s) below) |
| N/A                                                                                                                                                                                                          |                                          |                                                             |
| If applicable, describe the property, including tax map information and address, referenced in the order:<br>N/A                                                                                             |                                          |                                                             |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

|                                                                                     |            |          |
|-------------------------------------------------------------------------------------|------------|----------|
|  | 2764       | 12/17/18 |
| Circuit Court Judge                                                                 | Judge Code | Date     |

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-00955

Palmetto Pointe at Peas Island Condominium  
Property Owners Association, et al.

Island Pointe, LLC, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Motions for Reconsideration of this court's ruling on Motions to Intervene filed by Builders Mutual Insurance Company, Nationwide Mutual Insurance Company, Nautilus Insurance Company, and State Farm Fire and Casualty Company are DENIED.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

## INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below)                                                                     | Judgment Against<br>(List name(s) below) | Judgment Amount To be<br>Enrolled<br>(List amount(s) below) |
|------------------------------------------------------------------------------------------------------------------|------------------------------------------|-------------------------------------------------------------|
| N/A                                                                                                              |                                          |                                                             |
| If applicable, describe the property, including tax map information and address, referenced in the order:<br>N/A |                                          |                                                             |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

A. McCoy  
Circuit Court Judge

2764

Judge Code

1/16/18

Date

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2015-CP-10-00955

Appellate Case No. 2019-000238

**RECEIVED**

FEB 27 2019

SC Court of Appeals

Ex Parte: Builders Mutual Insurance Company, Appellant,

In Re:

Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., and Jack Love, individually, and on behalf of all others similarly situated, Plaintiffs, v. Island Pointe, LLC; Leonard T. Brown; Complete Building Corporation; Tri-County Roofing, Inc.; Creekside, Inc.; American Residential Services, LLC d/b/a Rescue Rooter Charleston; Andersen Windows, Inc.; Atlantic Building Construction Services, Inc. n/k/a Atlantic Construction Services, Inc.; Christopher N. Union; Builder Services Group, Inc. d/b/a Gale Contractor Services; Novus Architects, Inc. f/k/a SGM Architects, Inc.; Tallent and Sons, Inc.; W C Services, Inc., CRG Engineering, Inc.; Certainteed Corporation; Kelly Flooring Products, Inc. d/b/a Carpet Baggers and John Doe 1-60.....Defendants.

Tri-County Roofing, Inc.....Third-Party Plaintiff,

v.

Cornerstone Construction and Mark Malloy d/b/a Cornerstone Construction; Gutter Works, Inc. and Michael L. Segars d/b/a Gutter Works; Mr. Gutter; Litchfield Seamless Gutters & Windows, LLC and Thomas Litchfield d/b/a Litchfield Seamless Gutter; Miracle Siding, LLC and Wilson Lucas Sales d/b/a Miracle Siding, LLC; Mark Palpoint a/k/a Micah Palpoint; Elroy Alonzo Vasquez; and Chris a/k/a John Doe 61.....Third-Party Defendants.

And

Complete Building Corporation, Inc.....Third-Party Plaintiff,

v.

Alderman Construction; Stanley's Vinyl Fence Designs; Cohen's Drywall; and Mosley Concrete.....Third-Party Defendants.

Of whom Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Jack Love, individually, and behalf of all others similarly situated, and Tri-County Roofing, Inc. are the Respondents.

---

**PROOF OF SERVICE**

---

I certify that I have served the Motion To Transfer Case To The Supreme Court on Other Counsel of Record by depositing a copy of it in the United States Mail, postage prepaid, on February 27, 2019 addressed to their attorneys of record, listed as follows:

cc:

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Stephanie D. Drawdy, Esq.  
Joshua F. Evans, Esq.  
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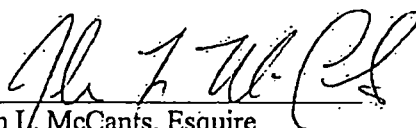
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February 27, 2019  
Columbia, South Carolina

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**RECEIVED**

FEB 27 2019

SC Court of Appeals

**RECEIVED**

FEB 27 2019

S.C. SUPREME COURT

February 27, 2019

Via Hand Delivery

South Carolina Supreme Court  
Daniel E. Shearouse, Clerk of Court  
1231 Gervais Street  
Columbia, SC 29201

Re: Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v.  
Island Pointe, LLC, et al.  
Circuit Court Case No.: 2015-CP-10-00955  
Appellate Case No.: 2019-000238

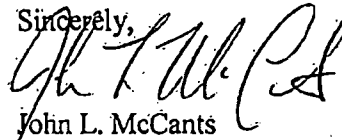
Dear Mr. Shearouse:

Enclosed please find the original and eight (8) copies of Builders Mutual Insurance Company's Motion to Certify to the South Carolina Supreme Court Under Rule 204, SCACR with the Proof of Service for filing along with a check in the amount of Fifty and 00/00 (\$50.00) Dollars representing the filing fee in connection with the above-referenced matter. Please file the original and six copies, and return the remaining two copies to the Courier which then will file a clocked copy with the Court of Appeals.

By copy hereof, all counsel of record are being served with the above.

Thank you for your assistance, and should you have any questions, please do not hesitate to contact me.

Sincerely,



John L. McCants

cc: South Carolina Court of Appeals  
All Counsel of Record per Proof of Service

# Exhibit F

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2015-CP-10-00955

Appellate Case No. 2019-000238

Ex Parte:

Builders Mutual Insurance Company, Nationwide Mutual Fire Insurance Company, Nationwide Mutual Insurance Company, and Nautilus Insurance Company, ..... Appellants,

In Re:

Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., and Jack Love, Individually, and on behalf of all others similarly situated, ..... Plaintiffs,

v.

Island Pointe, LLC; Leonard T. Brown; Complete Building Corporation; Tri-County Roofing, Inc.; Creekside, Inc.; American Residential Services, LLC d/b/a Rescue Rooter Charleston; Andersen Windows, Inc.; Atlantic Building Construction Services, Inc. n/k/a Atlantic Construction Services, Inc.; Christopher N. Union; Builder Services Group, Inc. d/b/a Gale Contractor Services; Novus Architects, Inc. f/k/a SGM Architects, Inc.; Tallent and Sons, Inc.; W C Services, Inc.; CRG Engineering, Inc.; CertainTeed Corporation; Kelly Flooring Products, Inc. d/b/a Carpet Baggers and John Doe 1-60, ..... Defendants,

Tri-County Roofing, Inc., ..... Third-Party Plaintiff,

v.

Cornerstone Construction and Mark Malloy d/b/a Cornerstone Construction; Gutter Works, Inc. and Michael L. Segars d/b/a Gutter Works; Mr. Gutter; Litchfield Seamless Gutters & Windows, LLC and Thomas Litchfield d/b/a Litchfield Seamless Gutter; Miracle Siding, LLC and Wilson Lucas Sales d/b/a Miracle Siding, LLC; Mark Palpoint a/k/a Micah Palpoint; Elroy Alonzo Vasquez; and Chris a/k/a John Doe 61, ..... Third-Party Defendants.

and

Complete Building Corporation, Inc., ..... Third-Party Plaintiff,

v.

Alderman Construction; Stanley's Vinyl Fence Designs; Cohen's Drywall; and Mosley Concrete,..... Third-Party Defendants,

Of Whom Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Jack Love, Individually, and on behalf of all others similarly situated, and Tri-County Roofing, Inc. .... Respondents.

---

**RETURN TO MOTION TO TRANSFER  
CASE TO SUPREME COURT**

---

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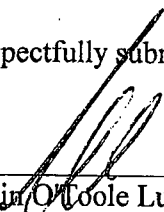
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*Attorneys for the Respondents Palmetto Pointe  
at Peas Island Condominium Property Owners  
Association, Inc. and Jack Love, Individually, and  
on behalf of all others similarly situated*

Respondents Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Jack Love, Individually, and on behalf of all others similarly situated, take no position on Appellant Builders Mutual Insurance Company's Motion to Transfer Case to the Supreme Court.

Respectfully submitted,



---

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March 8, 2019

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# Exhibit G

The Supreme Court of South Carolina

RECEIVED

FEB 07 2018

SC Court of Appeals

In Re Motions to Intervene in:

The Harbour Cove Condominium Association, Plaintiff,

v.

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

And

Beach Villas at Ocean Keyes Property Owners Association, Inc., Plaintiff,

v.

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, 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 Clark Western Dietrich Building  
Systems, LLC, Defendants,

And

Ocean Keyes Development, LLC and Keye Construction  
Co., Inc., Third-Party Plaintiffs,

v.

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,

Of whom Hartford Fire Insurance Company, Hartford  
Casualty Insurance Company, Hartford Underwriters  
Insurance Company, Clarendon National Insurance  
Company as successor in interest to Clarendon America  
Insurance Company, National Fire & Marine Insurance  
Company, Bitco General Insurance Corporation,  
Selective Insurance Company of South Carolina,  
Nationwide Mutual Insurance Company f/k/a  
Harleysville Insurance Company, Canopus US  
Insurance, Inc., and American Empire Surplus Lines  
Insurance Company are the Appellants,

AND

The Harbour Cove Condominium Association, Beach  
Villas at Ocean Keyes Property Owners Association,  
Inc., Ocean Keyes Development, LLC, Keye  
Construction Co., Inc., and Russell P. Baltzer are the  
Respondents.

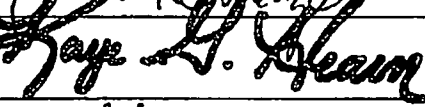
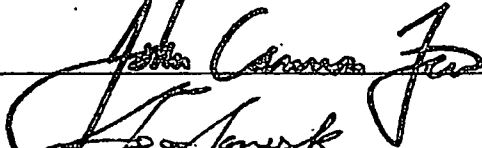
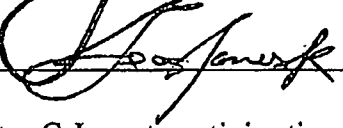
Appellate Case No. 2017-002318

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ORDER

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Hartford Fire Insurance Company, Hartford Casualty Insurance Company, Hartford Underwriters Insurance Company, National Fire & Marine Insurance Company, and BITCO General Insurance Corporation move this Court to certify the appeals pursuant to Rule 204(b), SCACR. The motion is granted.

 A.C.J.  
 J.  
 J.  
 J.  
Beatty, C.J., not participating

Columbia, South Carolina

February 1, 2018

cc:

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Kenneth Michael Barfield, Esquire  
Robert Buchanan Hawk, Esquire

# Exhibit H

# The South Carolina Court of Appeals

Ex Parte:

Hartford Fire Insurance Company, Hartford Casualty Insurance Company, Hartford Underwriters Insurance Company, Clarendon National Insurance Company as successor in interest to Clarendon America Insurance Company, National Fire & Marine Insurance Company, Bitco General Insurance Corporation, Selective Insurance Company of South Carolina, Nationwide Mutual Insurance Company f/k/a Harleysville Insurance Company, Canopus US Insurance, Inc., and American Empire Surplus Lines Insurance Company, Appellants,

In Re:

The Harbour Cove Condominium Association, Plaintiff,

v.

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

Consultants, Inc., Defendants,

And

Beach Villas at Ocean Keys Property Owners  
Association, Inc., Plaintiff,

v.

Ocean Keys 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, 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 Clark Western Dietrich Building  
Systems, LLC, Defendants,

And

Ocean Keys Development, LLC and Keye Construction  
Co., Inc., Third-Party Plaintiffs,

v.

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,

Of whom The Harbour Cove Condominium Association,  
Beach Villas at Ocean Keys Property Owners  
Association, Inc., Ocean Keys Development, LLC,  
Keye Construction Co., Inc., and Russell P. Baltzer are  
the Respondents.

Appellate Case No. 2017-002146

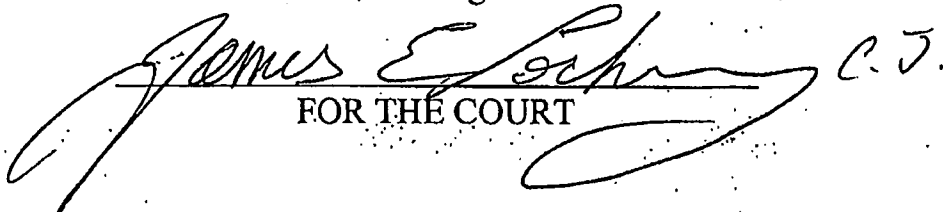
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ORDER

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The motions to dismiss this appeal are denied. Nothing, however, prevents Respondents from raising the issue of appealability in their briefs.

The caption is amended as set forth above. All future filings shall reflect this amended caption.

  
FOR THE COURT

Columbia, South Carolina

cc:

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Christy Elizabeth Mahon, Esquire  
Robert L. Wylie, IV, Esquire  
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Neil S. Haldrup, Esquire  
Thomas B. Boger, Esquire  
John Lucius McCants, Esquire  
Lawrence Mims Hunter, Jr., Esquire

**FILED**

January 24, 2018

# The South Carolina Court of Appeals

Ex Parte:

Nationwide Mutual Fire Insurance Company, Appellant,

In Re:

Beresford Commons Homeowners Association, Inc.,  
Respondent,

v.

Superior Solution, LLC, Respondent.

Appellate Case No. 2017-000202

---

## ORDER

---

The motion to dismiss is denied at this time. Nothing in this order prevents the parties from arguing the issue of appealability in their briefs.

FOR THE COURT

Columbia, South Carolina

cc:

John Robert Murphy, Esquire  
Adam J. Neil, Esquire  
Timothy J. Newton, Esquire  
Phillip Ward Segui, Jr., Esquire  
Amanda Morgan Blundy, Esquire

**FILED**

March 7, 2017

EXHIBIT

B

PROOF OF SERVICE

I certify that I have served the Builders Mutual Insurance Company's Memorandum in Opposition to Petition to Lift Stay by depositing a copy of it in the United States Mail, postage prepaid, and/or electronically delivered on April 22, 2019 addressed to their attorneys of record, listed as follows:

cc: The Honorable Julie J. Armstrong  
Charleston County Clerk of Court  
100 Broad Street  
Charleston, SC 29401

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2019 APR 24 PM 12:16  
JULIE J. ARMSTRONG  
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BY \_\_\_\_\_

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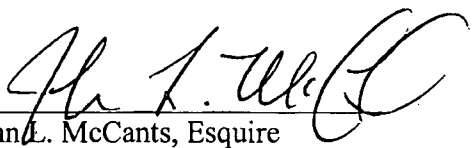
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April 22, 2019  
Columbia, South Carolina

# Exhibit L

# The South Carolina Court of Appeals

Ex Parte:

Nationwide Mutual Fire Insurance Company, Appellant,

In Re:

Beresford Commons Homeowners Association, Inc.,  
Respondent,

v.

Superior Solution, LLC, Respondent.

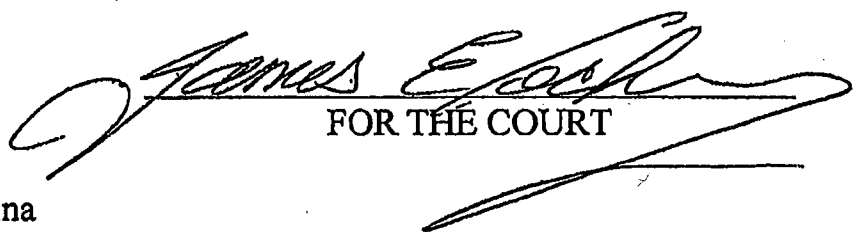
Appellate Case No. 2017-000202

---

## ORDER

---

The motion to dismiss is denied at this time. Nothing in this order prevents the parties from arguing the issue of appealability in their briefs.

  
FOR THE COURT

Columbia, South Carolina

cc:

John Robert Murphy, Esquire  
Adam J. Neil, Esquire  
Timothy J. Newton, Esquire  
Phillip Ward Segui, Jr., Esquire  
Amanda Morgan Blundy, Esquire

**FILED**

March 7, 2017

EXHIBIT

**B**

# The South Carolina Court of Appeals

Ex Parte:

Hartford Fire Insurance Company, Hartford Casualty Insurance Company, Hartford Underwriters Insurance Company, Clarendon National Insurance Company as successor in interest to Clarendon America Insurance Company, National Fire & Marine Insurance Company, Bitco General Insurance Corporation, Selective Insurance Company of South Carolina, Nationwide Mutual Insurance Company f/k/a Harleysville Insurance Company, Canopus US Insurance, Inc., and American Empire Surplus Lines Insurance Company, Appellants,

In Re:

The Harbour Cove Condominium Association, Plaintiff,

v.

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

Consultants, Inc., Defendants,

And

Beach Villas at Ocean Keyes Property Owners  
Association, Inc., Plaintiff,

v.

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, 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 Clark Western Dietrich Building  
Systems, LLC, Defendants,

And

Ocean Keyes Development, LLC and Keye Construction  
Co., Inc., Third-Party Plaintiffs,

v.

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,

Of whom The Harbour Cove Condominium Association,  
Beach Villas at Ocean Keyes Property Owners  
Association, Inc., Ocean Keyes Development, LLC,  
Keye Construction Co., Inc., and Russell P. Baltzer are  
the Respondents.

Appellate Case No. 2017-002146

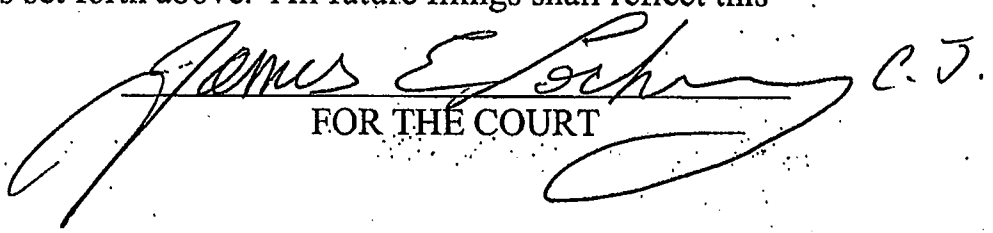
---

ORDER

---

The motions to dismiss this appeal are denied. Nothing, however, prevents Respondents from raising the issue of appealability in their briefs.

The caption is amended as set forth above. All future filings shall reflect this amended caption.

  
FOR THE COURT

Columbia, South Carolina

cc:

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**FILED**

January 24, 2018

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2015-CP-10-00955

Appellate Case No. 2019-000238

**RECEIVED**  
APR 26 2019  
SC Court of Appeals

Ex Parte:

Builders Mutual Insurance Company; Nationwide Mutual Fire Insurance Company, Nationwide Mutual Insurance Company, and Nautilus Insurance Company, Appellants,

In Re:

Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., and Jack Love, individually, and on behalf of all others similarly situated, Plaintiffs,

v.

Island Pointe, LLC; Leonard T. Brown; Complete Building Corporation; Tri-County Roofing, Inc.; Creekside, Inc.; American Residential Services, LLC d/b/a Rescue Rooter Charleston; Andersen Windows, Inc.; Atlantic Building Construction Services, Inc. n/k/a Atlantic Construction Services, Inc.; Christopher N. Union; Builder Services Group, Inc. d/b/a Gale Contractor Services; Novus Architects, Inc. f/k/a SGM Architects, Inc.; Tallent and Sons, Inc.; W C Services, Inc., CRG Engineering, Inc.; Certainteed Corporation; Kelly Flooring Products, Inc. d/b/a Carpet Baggers and John Doe 1-60.....Defendants.

Tri-County Roofing, Inc.....Third-Party Plaintiff,

v.

Cornerstone Construction and Mark Malloy d/b/a Cornerstone Construction; Gutter Works, Inc. and Michael L. Segars d/b/a Gutter Works; Mr. Gutter; Litchfield Seamless Gutters & Windows, LLC and Thomas Litchfield d/b/a Litchfield Seamless Gutter; Miracle Siding, LLC and Wilson Lucas Sales d/b/a Miracle Siding, LLC; Mark Palpoint a/k/a Micah Palpoint; Elroy Alonzo Vasquez; and Chris a/k/a John Doe 61.....Third-Party Defendants.

And  
Complete Building Corporation, Inc.....Third-Party Plaintiff,

v.

Alderman Construction; Stanley's Vinyl Fence Designs; Cohen's Drywall; and Mosley  
Concrete.....Third-Party Defendants.

Of whom Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and  
Jack Love, individually, and behalf of all others similarly situated, Tri-County Roofing, Inc.,  
Stanley's Vinyl Fence Designs, and W C Services, Inc. are the Respondents.

---

**PROOF OF SERVICE**

---

I certify that I have served the Petition Pursuant to Rule 241(d)(7), SCACR on Behalf of Appellant  
Builders Mutual Insurance Company to Review Circuit Court Order Lifting Appeal Stay  
(Expedited Relief Requested) by depositing a copy of it in the United States Mail, postage prepaid,  
on April 26, 2019, addressed to their attorneys of record, and e-mail, listed as follows:

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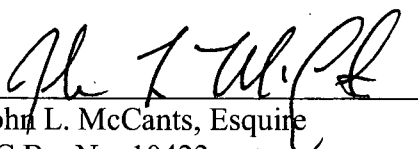
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April 26, 2019

**RECEIVED**  
APR 26 2019  
SC Court of Appeals

Via Hand Delivery

The Honorable H. Bruce Williams  
Judge, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

Re: Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v.  
Island Pointe, LLC, et al.  
Circuit Court Case No.: 2015-CP-10-00955  
Appellate Case No.: 2019-000238

Dear Judge Williams:

Enclosed please find the original and two copies of Petition Pursuant to Rule 241(d)(7), SCACR on Behalf of Appellant Builders Mutual Insurance Company to Review Circuit Court Order Lifting Appeal Stay. Expedited relief is requested.

By copy hereof, we are serving counsel of record.

Sincerely,



John L. McCants

cc: Other Counsel of Record:

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