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
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; TriCounty 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.; WC 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, Tri-County Roofing, Inc., Stanley's Vinyl Fence Designs, and WC Services, Inc. are the Respondents.

PLAINTIFFS-RESPONDENTS' RETURN TO PETITION OF APPELLANT BUILDERS MUTUAL INSURANCE COMPANY FOR REVIEW OF CIRCUIT COURT ORDER LIFTING STAY AND/OR CROSS-MOTION TO DISMISS APPEAL, GRANT LIMITED REMAND, OR OTHERWISE CONFIRM THAT TRIAL MAY PROCEED AS SCHEDULED

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

Plaintiffs-Respondents, Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., and Jack Love, Individually, and on behalf of all others similarly situated (collectively, "Plaintiffs"), by and through their undersigned counsel, submit this return in opposition to the Petition Pursuant to Rule 241(d)(7), SCACR on Behalf of Appellant Builders Mutual Insurance Company[1] to Review Circuit Court Order Lifting Automatic Stay (the "Subject Petition") and/or, pursuant to rules 205, 240, 241, 260, and/or 269, SCACR, as well as any other applicable law (procedural and substantive), hereby cross-move this Honorable Court to dismiss this appeal, to grant a limited remand of this case, or to otherwise confirm that the circuit court may proceed as scheduled with the trial set to begin May 6, 2019 (the "Instant Cross-Motion").

INTRODUCTION

This construction defect litigation involves a 40-unit townhouse complex. At long last, after more than four years of discovery and other preliminaries, the case is—without question—ready for adjudication on the *merits* and for months has been set for a two-week, date-certain trial beginning May 6th (next Monday).[2] As reflected

[1] Appellant Builders Mutual Insurance Company is hereinafter referred to as "Builders Mutual."

[2] The case's operative scheduling is its *Fourth* Amended Consent Scheduling Order, filed May 16, 2018, which 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

in the order that Builders Mutual now asks for review, Judge McCoy has determined that the case can and should go to trial as scheduled.

To be clear, though it seeks to derail the scheduled trial of this case,[3] Builders Mutual is not itself a party—nor in fact has it, or any of the other Appellant Insurers,[4] ever actually sought to become one. This appeal, which includes notices filed/served by Builders Mutual and other the Appellant Insurers, is from Judge McCoy's denial of so-called motions to "intervene." Despite being styled as requests to "intervene", in point of fact these motions were no such thing, their substance and effect being something altogether different from the concept of intervention envisioned under Rule 24, SCRCP.

In the motions underlying the orders they have appealed, Builders Mutual and the other Appellant Insurers did not ask to be made "parties" to this case, only to be recognized—albeit in some unnamed, non-pleading capacity—as having a

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the two dates." By order filed August 24, 2018, the case was assigned to the Honorable Jennifer B. McCoy "to hear and handle all pre-trial motions, including scheduling orders." Last fall, Judge McCoy helped the parties find and reserve a two-week term of court, i.e., the one beginning May 6th, capable of accommodating the trial of a case this size.

[3] With apologies in advance for doing so, Plaintiffs are compelled here to state the obvious. Of all the actual case parties, it is of course only Plaintiffs who stand to lose from needless delay. For Plaintiffs, no trial means they cannot possibly win, while for all the other parties it means just the opposite, thus in turn conferring upon Builder Mutual the best coverage defense there is: no judgment against its insured in the first place.

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[5]—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 the circuit court to be tried in this case, but solely in respect of insurance coverage matters that are not—and could not properly be—before the circuit court to be tried in this case. In other words, the substance of this appeal is wholly irrelevant to the determination of the respective claims and defenses of the actual case parties, i.e., it has nothing—literally nothing—to do with the *merits* of the dispute actually before the circuit court for trial, but rather relates to matters of insurance coverage that cannot properly be injected into the trial of this case. *See Harleysville Group Insurance v.*

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[4] Together, the "Appellant Insurers" are Builders Mutual, Nautilus Insurance Company ("Nautilus"), and Nationwide Insurance Company ("Nationwide").

[5] *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, SCRCP, 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")).

Heritage Communities, Inc., 420 S.C. 321, 363, 803 S.E.2d 288, 311 (2017) (Pleicones, J., dissenting) (pointing to *Sims v. Nationwide Mut. Ins. Co.*, 247 S.C. 82, 145 S.E.2d 523 (1965),[6] which is still good law, and accurately observing, "To the extent the majority relies upon [*Auto Owners Insurance Company, Inc. v. Newman*, 385 S.C. 187, 684 S.E.2d 541 (2009)] to suggest [the insurer] is 'at fault in not seeking an allocation of covered damages, . . . there is no suggestion how [it] could have intervened in the[] lawsuits and asserted a defense against coverage without creating an impermissible conflict of interest in violation of established South Carolina law."); Rule 411, SCRE ("Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully.").

This appeal (including the appeals noticed by Builders Mutual and the other Appellant Insurers) is not proper under S.C. Code Ann. § 14-3-330 and, consequently, the appeal has not actually had any affect on the circuit court's ability to proceed with the case to begin with. But even if the appeal were proper, Judge McCoy has properly determined that the long scheduled trial of this ready-

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[6] *Sims* holds that an insurer will only be bound by material facts established against its insured in an underlying action if the respective interests of the insurer and the insured in opposing the claim against the insured are *identical*, i.e., where there is no conflict of interest between the insurer and the insured, and that there is a conflict of interest between them where the insurer "cannot defend the insured . . . and *at the same time* protect its own interests."),

for-trial case can and should go forward without delay, and most respectfully, whether by denying the Subject Petition and/or by granting the Instant Cross-Motion, under both the governing law and guiding principles of equity, this Court should confirm the propriety Judge McCoy's determination and decline Builders Mutual's invitation to needlessly halt the progress of this case.

ARGUMENT

1. In two other recent cases presenting this exact situation, this Court twice confirmed the circuit court's ability to proceed with trial.

See generally Exhibit J to the Subject Petition at sub-exhibits A and B (i.e., at Exhibits A and B to Plaintiffs' recent motion to Judge McCoy).

2. This appeal is not proper under § 14-3-330 and, consequently, it does not actually have, nor has it ever had, any impact on the circuit court's ability (jurisdictional or otherwise) to proceed with this case.

The mere fact that a notice of appeal is served does not necessarily have any jurisdictional consequence at all. It is only a proper appeal, i.e., an appeal taken from an order or decision that the aggrieved party (the appellant) actually has a right to immediately appeal, that affects jurisdiction—and then only as to matters affected by the appeal. *See* Rules 205 (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."); *see also* 241. If, however, an appeal is

not properly taken—as was the case here—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.").

As this Court is well aware, the right to appeal is controlled by statute. The pertinent statute here is § 14-3-330. The only question raised here is whether "substantial right" provision of the statute is implicated. (*See* Subject Petition pp. 9–11 (arguing the denial of their motion to "intervene" is immediately appealable under § 14-3-330(2) as an order involving a substantial right).) The answer to this question is no.

As explained above, what Builders Mutual and the other the Appellant Insurers styled as motions to "intervene" were in fact nothing of the sort. What they challenge on appeal is not the denial of their requests to "intervene" but to be heard (not even necessarily to be agreed with) during trial (which trial Builders Mutual would have this Court prevent) 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. In other words, this is the bottom line: The relief Builders Mutual and the other Appellant Insurers sought in their motions to "intervene" was not something that they had a *right* to have under South Carolina law. *See Government Employee's*

Ins. Co., Ex parte, 373 S.C. 132, 138–39, 644 S.E.2d 699, 702 (2007) ("[A] party must have standing to intervene in an action pursuant to Rule 24 . . . . 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. . . . We find that [the insurer] does not have an interest relating to the property or transaction which is the subject of the action . . . . Additionally, we hold that the family court correctly found [the insurer] lacked standing because [the insurer] does not have an interest in the subject matter of the family court action. Stated differently, [the insurer] has no real interest in whether Cooper and Goethe have a valid common law marriage. [The insurer's] interest is in the financial implications of the family court's decision, which *is peripheral to the subject matter before the court.* This interest is insufficient to warrant [the insurer's] intervention . . . . .") (internal citations and quotation marks omitted) (emphasis added)).

Logic dictates that a right must first in fact exist before it can be denied. Because the supposed substantial right upon which this appeal depends does not in fact exist, it was not—nor of course could it possibly have been—denied. Consequently, this appeal is improper, and Judge McCoy has properly determined to proceed with the trial of this case because the appeal does not have, nor in fact has it ever had, any impact on her power to hear and determine this case.

And to be clear, neither *Heritage Communities*, 420 S.C. 321, 803 S.E.2d

288, nor *Newman*, 385 S.C. 187, 684 S.E.2d 541, changes this analysis. As Justice Pleicones implies in his dissent in *Heritage Communities* ("*To the extent* the majority relies on Newman . . ."[7]), in neither *Newman* nor *Heritage Communities* did the majority opinions actually discuss intervention by an insurer. Indeed, the word "intervene" does not actually appear in the majority opinions in either case; it is found only in Justice Pleicones's dissent in *Heritage Communities*, where, again, he accurately observes, "[t]o the extent the majority" implicitly suggests intervention by the insurer, it (the suggestion) is irreconcilable with extant South Carolina law, i.e., *Sims*.

Plaintiffs submit that the majority's silence in the face of such a direct challenge by Justice Pleicones can support only one logical inference: that it (the majority) was *not* in fact suggesting intervention by the insurer—this proposition being underscored by the fact that the focus of majority's decision was on the sufficiency of the insurer's reservation of rights,[8] and not on not insurer

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[7] *Heritage Communities*, 420 S.C. at 363, 803 S.E.2d at 311 (Pleicones, J., dissenting) (emphasis added).

[8] *See* 420 S.C. at 358–59, 803 S.E.2d at 309 ("In sum, we find the Special Referee correctly found [the insurer] *failed to reserve the right to contest coverage* of actual damages and that punitive damages are covered under the CGL policies. We also find there is evidence in the record to support the Special Referee's factual findings as to the progressive damages periods and that the Special Referee did not abuse its discretion in determining [the insurer's] time on the risk at Magnolia North. We find loss-of-use actual damages at Riverwalk are subject to time-on-the-risk allocation but that punitive damages at both developments are not. We

intervention, which, again, the majority did not so much as mention by name. Conversely, it would seem absurd to think that the majority was in fact suggesting insurer intervention but, at the same time, either unable or unwilling to resolve so essential a question as Justice Pleicones raised—indeed, it would seem absurd to think that the majority would even broach such a subject by mere implication to begin with. Still, even if some doubt remains about what the majority meant, as between the clear language of *Sims* (which the majority never addressed, much less overruled) and the unclear language of the *Heritage Communities* majority, it is *Sims* that clearly controls unless and until our Supreme Court clearly says otherwise. *See* S.C. Const. art. V § 9 ("The decisions of the Supreme Court shall bind the Court of Appeals as precedents.").

3. Here, where 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.

Regardless of what *Newman* and *Heritage Communities* mean, at this point, the Appellant Insurers' rights cannot possibly be prejudiced if the scheduled trial goes forward. Any rights of the insurers have surely already been protected by the mere making of the motions to intervene and the denial thereof.

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thus affirm in the Magnolia North matter and affirm as modified in the Riverwalk matter.") (emphasis added).

The most that *Newman* and *Heritage Communities* cold possibly require of the Appellant Insurers is to *try* to intervene and then *request* a certain verdict form. Neither *Newman* nor *Heritage Communities* grants an insurer the *right* to intervene, much less the right to dictate to the trial court the jury verdict form.

As Builders Mutual made clear in the Subject Petition, it was not only Plaintiffs, but its own insured, Defendant/Respondent Tri-County Roofing, Inc., who opposed its effort to "intervene" in this case. (Subject Petition p. 4 ("[Plaintiffs] and Tri-County Roofing objected to Builders Mutual being able to intervene in the Civil Action.").) Having no means to force the trial court's hand (as to intervention or the verdict form), and facing opposition from both their own insured and Plaintiffs, Builders Mutual has done all it can—and in turn all it could possibly be required—to do. And having done all it can do, it cannot later be accused of having failed to do something to protect its rights. Should there in fact be any good faith question after trial as to Builders Mutual's indemnity obligation, both *Sims* and, indeed, Builders Mutual's right to due process assure that its rights are protected as to any matters where its and its insured's interests were not identical at trial—neither *Neman* nor *Heritage Communities* could possibly say otherwise.

Thus, Builders Mutual (and the other Appellant Insurers) will suffer no undue prejudice in terms of any binding determination of its rights via the trial of

this case and any good faith coverage questions that exist can be fully and fairly litigated in a separate action. (And, indeed, where else could they possibly be litigated—there is just no way that they could possibly be litigated in this trial, i.e., in the trial of the underlying dispute, without undue prejudice to at least some party by the undue injection of insurance matters into this dispute.)

This appeal is neither necessary to protect the Appellant Insurers' rights, nor are the issues raised in it necessary for the determination of this case on its actual merits. The case is ready to be tried, the long awaited (and hard to come by) trial date is finally upon us. (And indeed, at that, in any event, even any error in the foregoing analysis is nothing that cannot be corrected by the grant of a new trial—the Appellant Insurers stand to lose absolutely nothing by keeping this case on track for May 6th.)

Most respectfully, there is—quite literally—no good reason for this case not to go to trial on May 6th. (And even if by chance some contrary reason could be advanced in this regard, it would be vastly outweighed by the interest in judicial economy and avoidance of piecemeal appeals, as this Court has previously recognized, *see* Exhibit A (copies of orders from the *Univar* appeal), even where there is a right of immediate appeal—the Court determining nonetheless that the appeal should be held in abeyance and not proceed further until the trial was allowed to be conducted and concluded below.)

WHEREFORE, Plaintiffs ask the Court to deny the Subject Petition and/or, pursuant grant the Instant Cross-Motion as may be necessary for the circuit court to proceed as scheduled with the trial of this case set to begin May 6, 2019.

<SIGNED ON THE FOLLOWING PAGE>

Respectfully submitted,

By: _____

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

Dated: April 29, 2019

The South Carolina Court of Appeals

Keith Black, Respondent,

v.

Matrix Outsourcing, LLC, Trinity Manufacturing, Inc., and Univar USA, Inc., Defendants,

Of Whom Univar USA, Inc. is the Appellant.

EXHIBIT

A

The Honorable J. C. Buddy Nicholson, Jr.
Oconee County
Trial Court Case No. 2005-CP-37-00604

ORDER

Appellant filed a notice of appeal from a jury verdict rendered on November 17, 2008, and the trial court's denial of Appellant's post-trial motions. Appellant then filed a petition for supersedeas seeking to have the trial court's "oral order" lifting the automatic stay superseded in order for the trial on damages, which started on December 1, 2008, to be stayed. Although an oral order normally cannot be appealed, because the damages trial has started, we find the trial court's oral order lifting the stay has already taken effect. Therefore, we address the merits of Appellant's petition for supersedeas.

We agree with Appellants that the jury verdict on the issue of liability is properly on appeal to this Court. See Nauful v. Milligan, 258 S.C. 139, 187 S.E.2d 511 (1972) (finding grant of summary judgment on the issue of liability, while leaving issue of damages for determination,

finally resolved the merits of every issue in the case, except for damages, and, therefore, was immediately appealable). After careful review, we deny the petition for supersedeas and decline to impose a stay on the damages trial; however, we hold this appeal in abeyance until the trial on the damages has concluded.

AND IT IS SO ORDERED.

Jasper M. Cureton A.J

Columbia, South Carolina
December 4, 2008

FILED
12/4/08 MM

cc: Samuel W. Outen, Esq.
Stephanie Underwood Roberts, Esq.
Stephen L. Brown, Esq.
William L. Howard, Esq.
Duke R. Highfield, Esq.
Brandt R. Horton, Esq.
Russell G. Hines, Esq.
Robert Paul Foster, Esquire
William Walker, Jr., Esq.
The Honorable Sallie C. Smith
The Honorable J.C. Buddy Nicholson, Jr.

The South Carolina Court of Appeals

Scott F. Lawing, Respondent

v.

Univar, Inc., Trinity Manufacturing, Inc., and Matrix Outsourcing, LLC, Defendants,

of whom Univar, Inc. is the Appellant.

The Honorable J. C. Buddy Nicholson, Jr.
Oconee County
Trial Court Case No. 2006-CP-37-00030

ORDER

Appellant filed a notice of appeal from a jury verdict rendered on November 17, 2008, and the trial court's denial of Appellant's post-trial motions. Appellant then filed a petition for supersedeas seeking to have the trial court's "oral order" lifting the automatic stay superseded in order for the trial on damages, which started on December 1, 2008, to be stayed. Although an oral order normally cannot be appealed, because the damages trial has started, we find the trial court's oral order lifting the stay has already taken effect. Therefore, we address the merits of Appellant's petition for supersedeas.

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finally resolved the merits of every issue in the case, except for damages, and, therefore, was immediately appealable). After careful review, we deny the petition for supersedeas and decline to impose a stay on the damages trial; however, we hold this appeal in abeyance until the trial on the damages has concluded.

AND IT IS SO ORDERED.

Joseph M. Anderson, A. J.

Columbia, South Carolina
December 4, 2008

FILED
12/4/08

cc: Samuel W. Outten,Esquire
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Duke R. Highfield,Esquire
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Russell G. Hines, Esquire
Larry C. Brandt, Esquire
Ellis M. Johnston, II,Esquire
Joshua Howard, Esquire
The Honorable Sallie C. Smith
The Honorable J.C. Buddy Nicholson, Jr.

The South Carolina Court of Appeals

Curtis Martin, Respondent

v.

Univar, Inc., Trinity Manufacturing, Inc., and Matrix Outsourcing, LLC, Defendants,

of whom Univar, Inc. is Appellant.

The Honorable J. C. Buddy Nicholson, Jr.
Oconee County
Trial Court Case No. 2005-CP-37-00605

ORDER

Appellant filed a notice of appeal from a jury verdict rendered on November 17, 2008, and the trial court's denial of Appellant's post-trial motions. Appellant then filed a petition for supersedeas seeking to have the trial court's "oral order" lifting the automatic stay superseded in order for the trial on damages, which started on December 1, 2008, to be stayed. Although an oral order normally cannot be appealed, because the damages trial has started, we find the trial court's oral order lifting the stay has already taken effect. Therefore, we address the merits of Appellant's petition for supersedeas.

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immediately appealable). After careful review, we deny the petition for supersedeas and decline to impose a stay on the damages trial; however, we hold this appeal in abeyance until the trial on the damages has concluded.

AND IT IS SO ORDERED.

Joseph M. Cureton A.J.

Columbia, South Carolina

December 4, 2008

FILED
12/4/08 MMA

cc: Samuel W. Outten, Esquire
Stephanie Underwood Roberts, Esquire
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Ellis M. Johnston, II, Esquire
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The Honorable Sallie C. Smith
The Honorable J.C. Buddy Nicholson, Jr.

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
Appellate Case No. 2019-000238

Ex Parte:

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Nationwide Mutual Fire Insurance Company,
Nationwide Mutual Insurance Company, and
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In Re:

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Complete Building Corporation; TriCounty
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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.;
WC 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, Tri-County Roofing, Inc., Stanley's Vinyl Fence Designs, and WC Services, Inc. are the Respondents.

PROOF OF SERVICE

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

I, Edward D. Buckley, Jr., of Young Clement Rivers, LLP, counsel for Respondents Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., and Jack Love, Individually, and on behalf of all others similarly situated hereby certify that the foregoing **PLAINTIFFS-RESPONDENTS' RETURN TO PETITION OF APPELLANT BUILDERS MUTUAL INSURANCE COMPANY FOR REVIEW OF CIRCUIT COURT ORDER LIFTING STAY AND/OR CROSS-MOTION TO DISMISS APPEAL, GRANT LIMITED REMAND, OR OTHERWISE CONFIRM THAT TRIAL MAY PROCEED AS SCHEDULED** was served on all other parties to this matter by depositing a copy of the same in the U.S. Mail on April 29, 2019.

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: _____
Edward D. Buckley, Jr.

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

Dated: 4/29/19

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April 25, 2019

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P.O. Box 11629
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Re: Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., et al. v. Island Pointe, LLC;
Circuit Court Case No.: 2015-CP-10-0955
Appellate Case No.: 2019-000238
YCR File: 15491-20150066

Dear Ms. Kitchings:

Enclosed please find an original and six (6) copies of **Plaintiffs-Respondents' Return to Petition of Appellant Builders Mutual Insurance Company for Review of Circuit Court Order Lifting Stay and/or Cross-Motion to Dismiss Appeal, Grant Limited Remand, or Otherwise Confirm that Trial May Proceed as Scheduled** in the above-referenced matter. I am also enclosing a check in the amount of $50.00 for the filing fee.

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.

With kindest regards, I am

Sincerely,

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Edward D. Buckley, Jr.

EDB/akd
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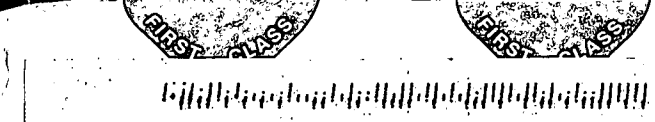

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