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S.C. SUPREME COURT

IN 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 and Nationwide
Mutual Insurance Company Appellants,

In Re:

Palmetto Pointe at Peas Island Condominium Property
Owners Association, Inc. and Jack Lowe, 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 Building
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 Does 1-60, Defendants,

And

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

v.

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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 Lowe, individually, and
on behalf of all others similarly situated, Tri-County
Roofing, Inc., and WC Services, Inc., are..... Respondents,

**APPELLANT'S REPLY BRIEF
TO THE *AMICUS CURIAE* BRIEF OF
THE SOUTH CAROLINA ASSOCIATION FOR JUSTICE**

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ARGUMENT

Appellant Nationwide Mutual Insurance Company (hereinafter “Nationwide”) submits the following in reply to the *Amicus Curiae* Brief filed by the South Carolina Association of Justice (hereinafter “SCAJ”):

I. South Carolina trial courts are split on whether current law requires a liability insurer to seek intervention.

These consolidated appeals seek review of the trial court’s denial of motions to intervene filed by Builders Mutual Insurance Company (hereinafter “BMIC”) and Nationwide. On appeal, Nationwide contends that the trial court erred in denying its motion to intervene if the law is interpreted to require intervention in order for a liability insurer to obtain an allocated verdict in a construction defect proceeding to support a ruling, in a separate declaratory judgment, as to which damages are covered and which are not.

SCAJ’s representation that “Appellants incorrectly assume that an insurer’s contractual rights are resolved by the underlying liability trial” is incorrect. In fact, two prior cases have held that an insurer’s contractual rights were resolved adversely to the insurer by failure to raise the issue in the underlying tort proceeding. SCAJ fails to recognize that Auto Owners Insurance Company v. Newman, 385 S.C. 187, 684 S.E.2d 541 (2009), and Harleysville Group Insurance v. Heritage Communities, Inc., 420 S.C. 321, 803 S.E.2d 288 (2017), were both declaratory judgment actions brought by the insurer to obtain a ruling as to liability coverage.

The Newman opinion begins by stating that “[t]he issuer of a homebuilder’s commercial general liability policy sought a declaratory judgment to determine whether the policy covered a homeowner’s claim for damages” 385 S.C. at 190, 684 S.E.2d at 542. The underlying tort proceeding between the homeowner and the insured

homebuilder was referred to arbitration. Id. The arbitrator in the underlying proceeding issued an itemized damages award. Id. This Court held that the insurer was stripped of its ability to allocate between covered and non-covered damages in the declaratory judgment action by failing to raise the issue in the underlying arbitration proceeding. Id. at 198, 684 S.E.2d at 547. This Court explained that “it is not the purpose of this declaratory judgment action to relitigate the issue of damages. [The insurer] had an opportunity to raise this matter when the issue of damages was litigated before the arbitrator” Id.

Insurers cannot act through defense counsel retained to represent the insured in the underlying tort proceeding. Sentry Select Ins. Co. v. Maybank Law Firm, LLC, 426 S.C. 154, 157-160, 826 S.E.2d 270, 271-73 (2019). By implication, an insurer must move to intervene into the underlying tort proceeding to protect its rights.

The Record on Appeal contains three court orders in which Circuit Courts have held that South Carolina law requires insurers to intervene. (R. pp. 175, 181, 191.) In the case of Michael Ingram, et al. v. Lauderdale Bay Developers, LLC, et al., Civ. Action No. 2017-CP-26-2854, Judge William H. Seals, Jr. ruled as follows:

The Supreme Court in Newman thus explained that a liability insurer – even though not a party to the underlying action – has a responsibility to seek an allocation of damages from the factfinder in that underlying action or waive the ability to ‘relitigate the issue of damages’ in a subsequent declaratory judgment action. That was reiterated by the Court in Harleysville. Those decisions, therefore, require an insurer to seek an allocation of damages for coverage purposes in the underlying action, which is what [the insurer] is attempting to accomplish with its intervention in this litigation.

(R. p. 191.) The trial court Order in the Harleysville declaratory judgment action is also included in the Record on Appeal. After quoting Newman, Special Referee John M. Milling ruled as follows: “This Court likewise will not allow [the insurer] to re-litigate the damages for to do so would be a clear invasion of the province of the jury.” (R. p. 243-

44.) The Order explains that “[the insurer] made the decision not to file a motion to intervene or otherwise seek an allocated verdict *as it could have done under Rules 24 and 49, SCRCP.*” (R. p. 245 (emphasis added).)

Federal courts have held that a general verdict in the underlying proceeding prevents an insurer from allocating between covered and non-covered damages in a subsequent declaratory judgment action. Stoneledge at Lake Keowee Owners Ass’n, Inc. v. Cincinnati Ins. Co., Civ. Action No. 8:14-cv-01906-BHH, 2019 WL 3945518 at *4 (D.S.C. signed Aug. 21, 2019). The Stoneledge court refused to follow Sims v. Nationwide Mut. Ins. Co., 247 S.C. 82, 145 S.E.2d 523 (1965). Id. The court held that Newman was directly on point and could not be distinguished. Stoneledge, 2019 WL 3945518 at *4.

Nationwide recognizes that other trial courts have held that intervention is not warranted under current law. However, the above cases demonstrate a court split that, at a minimum, confers standing upon insurers to seek clarification as to whether intervention is necessary. Several courts have held, in declaratory judgment actions, that allocation is impermissible if an allocated verdict is not obtained in the underlying tort proceeding. The only option remaining for insurers is to move to intervene and challenge the denial of their motions on appeal, as was done in this case.

II. The rule that insurers bear the burden of establishing the applicability of policy exclusions is not relevant to this appeal.

SCAJ confuses the issues in this appeal with evidentiary rules applicable to declaratory judgment actions to ascertain coverage. Nationwide has not asked the court to rule on the applicability of exclusions in its policy.

In the first place, SCAJ is simply incorrect when it asserts that the issues in this appeal concern policy exclusions. In Newman, this Court interpreted the insuring

agreement in standard Commercial General Liability (CGL) policies to provide coverage for damage resulting from negligent construction work. Newman, 385 S.C. at 194, 684 S.E.2d at 545 (holding that “the subcontractor’s negligence resulted in an ‘occurrence’ *falling within the CGL policy’s initial grant of coverage* for the resulting ‘property damage’ to the home’s framing and exterior sheathing”) (emphasis added). This Court subsequently clarified that “the relevant policy term *in the insuring agreement* is ‘property damage,’ rather than ‘occurrence.’” Harleysville, 420 S.C. at 335, 803 S.E.2d at 296 (emphasis added). The South Carolina legislature has now codified these holdings by enacting a statute providing that the term “occurrence” must be defined to include “property damage . . . resulting from faulty workmanship, exclusive of the faulty workmanship itself.” S.C. Code Ann. § 38-61-70(B)(2) (Rev. 2015).

The distinction between faulty work and resulting damage does not derive from exclusions in CGL policies. The language of the insuring agreement extends coverage only to “property damage” caused by an “occurrence” to which the insurance applies. (See R. Appx. p. 22.)¹ The policy does not apply to faulty workmanship.

The Harleysville ruling regarding coverage for punitive damages does not, as SCAJ contends, reject the notion that courts should look to the damages awarded to determine whether a claim is “insured” or “uninsured.” (See SCAJ Br., p. 3.) SCAJ quotes a passage from Harleysville, which in turn quotes an earlier case. Harleysville, 420 S.C. at 344, 803 S.E.2d at 301 (quoting Crossmann Cmty. of N.C., Inc. v. Harleysville Mut. Ins. Co., 395 S.C. 40, 717 S.E.2d 589 (2011)). The Crossmann court construed the policy insuring

¹ Nationwide’s policy was not written on an Insurance Services Office (ISO) form. However, the applicable provisions in Nationwide’s policy are substantially similar to language interpreted in Newman and Harleysville.

agreement, based upon the expanded definition of “occurrence,” to be “triggered by the damages caused by repeated water intrusion.” 395 S.C. at 47, 717 S.E.2d at 593. However, it is clear from the opinion that the reference to “damages” does not concern the type of remedy awarded (*i.e.*, “legal damages”), but rather the property damage (*i.e.*, physical injury to tangible property) caused by water intrusion. This phrase appears in a section entitled “Commercial General Liability Policies and the Coverage Question in a Progressive Damage Case.” *Id.* at 47, 717 S.E.2d at 592. The court concluded the section by clarifying that negligent or defective construction does not constitute “property damage,” whereas resulting damage to otherwise non-defective components does qualify as “property damage.” *Id.* at 50, 717 S.E.2d at 597. The legislature subsequently codified this distinction. S.C. Code Ann. § 38-61-70(B)(2).

In Harleysville, this Court held that “Crossmann left unchanged the basic concept, . . . formally adopted in Newman, that the cost of repairing faulty workmanship is not covered under CGL policies but resulting property damage beyond the defective work product itself is covered.” Harleysville, 420 S.C. at 336, 803 S.E.2d at 296. Thus, Harleysville supports the need for allocation between covered and non-covered damages under the language of the insuring agreement.

The Harleysville court went on to hold that the “expected or intended” exclusion did not exclude coverage for punitive damages. 420 S.C. at 346-48, 803 S.E.2d at 301-03. The court reached this argument after holding that the insurer properly reserved its right to contest coverage for punitive damages. *Id.* at 344, 803 S.E.2d at 301. Moreover, allocation was not a concern because the punitive damages awards were separate from the

compensatory damages awards. Id. at 331, 803 S.E.2d at 294. The argument SCAJ attempted to advance in footnote 4 of its brief is without merit. (SCAJ Br., p. 4.)

Secondly, Nationwide has not asked this Court to rule on the applicability of any policy provisions. Newman held that the insurer could not “relitigate the issue of damages” in a subsequent declaratory judgment action because it “had an opportunity to raise this matter” in the underlying arbitration proceeding.” 385 S.C. at 198, 684 S.E.2d at 547. The court’s concern was not with the applicability of the policy language, but rather with the lack of a factual record to support an allocation between covered and non-covered damages.

As discussed above, Nationwide contends that, should this court rule consistently with the courts that have held intervention is necessary, the trial court erred in refusing to allow Nationwide to intervene for the purpose of seeking an allocated verdict. It appears to be uncontested that Nationwide may seek a ruling as to the applicability of its policy provisions in the separate pending declaratory judgment action. The question of burdens of proof as to the applicability of policy provisions pertains to the declaratory judgment action, not this construction defect action.

III. SCAJ misapprehends the Duke holding.

The Fifth Circuit’s holding in Duke v. Hoch, 468 F.2d 973 (5th Cir. 1972) did not concern the burden to demonstrate the applicability of policy provisions. The burden-shifting procedure employed by that court concerned the burden of producing evidence to support an allocation between covered and non-covered damages.

The Duke court did not specify whether the policy language at issue in that case was contained in the insuring agreement or an exclusion. However, the court’s recitation

of the relevant policy language appears to indicate that the coverage issue turned on an exclusion. The court indicated that the policy covered professional negligence claims “unless ‘committed by or at the direction of the insured . . . with affirmative dishonesty or actual intent to deceive or defraud.’” Duke, 468 F.2d at 976. The use of the term “unless” signifies a limitation on coverage that is typical of policy exclusions.

The result in Duke did not turn on the applicability of policy provisions. The appellate court began by recounting the evidence upon which the trial court concluded that some of the damages awarded in the underlying action were not covered. The court explained that “the troublesome problem of separating out of the unallocated verdict the precise damages for which [the insurer] was responsible would be reached only if it was first established that a portion of the verdict represented liability for noncovered acts.” Id. at 976. After reviewing the evidence, the trial court “held that [the insurer] was not responsible under the policy for damages representing liability on the trust account claim.” Id. at 977. This indicates that the court was satisfied that the insurer had met its burden of proving the applicability of the policy exclusion, and this finding does not appear to have been contested.

The burden at issue in Duke concerned which party was responsible for obtaining an allocated verdict that was assumed to be necessary for determining the amount of covered damages in the coverage action. The court held that the insurer had met its burden by demonstrating that the judgment included damages for non-covered acts. Id. at 976. The court held that the burden shifted to the claimant “to prove the precise portion of the unallocated verdict representative of acts for which [the insurer] is responsible.” Id. at 977. The burden at issue concerned the responsibility for providing an allocated verdict in the

underlying proceeding, not the burden of proving the applicability of a particular policy provision.

Nationwide does not rely on Duke in its appeal. Nationwide contends that Duke addresses a distinguishable situation in which one cause of action is not covered, whereas other causes of action are covered. The amount awarded on a particular cause of action is a determination that is within the province of the jury in the proceeding in which the damages are awarded. Thus, Duke addressed a situation that could arguably be considered a “relitigation” of the jury verdict. The Duke court’s holding was based upon the view “that coverage problems capable of resolution at the main trial (*i.e.*, the underlying tort proceeding) should be resolved.” 468 F.2d at 382. South Carolina courts have not formally adopted the Duke burden-shifting procedure.²

Importantly, Duke distinguished the line of cases involving a conflict of interest between the insurer and the insured. Id. n.9 (citing American Sur. Co. of N.Y. v. Coblentz, 381 F.2d 185 (5th Cir. 1967)). In Coblentz, like in Sims, the court held that an insurer is not precluded from relitigating issues in a separate declaratory judgment proceeding when there is a conflict of interest. Coblentz, 381 F.2d at 188. The court recognized that “[a] contrary

² South Carolina courts have held that when several causes of action are asserted that are based upon the same alleged misconduct, a finding that one cause of action is covered answers the coverage question. Owners Ins. Co. v. Clayton, 364 S.C. 555, 560, 614 S.E.2d 611, 614 (2005). This holding is distinguishable for several reasons. First, different policy provisions were involved. (See Nationwide Reply Br., p. 7.) Second, the holding was not based upon insurance law, but rather upon the law governing the underlying tort proceeding. Clayton, 364 S.C. at 560-61, 614 S.E.2d at 614 (citing Frazier v. Badger, 364 S.C. 94, 603 S.E.2d 587 (2004) for the proposition that “where general verdict is supported by at least one theory it will be upheld on appeal.”). Third, the insurer consented to the general verdict in that case. (Nationwide Reply Br. p.7 n.1.) Duke is distinguishable from Clayton in that Duke involved severable damages awards, one amount for professional negligence and another amount for commingling of funds. Duke, 468 F.2d at 975. The jury could have awarded separate verdicts for each amount.

holding would leave the parties free to stipulate away the right of an absent insurer to raise a legitimate defense to its liability under the policy.” Id.

Duke and Coblentz / Sims address different factual situations. In Duke, the court did not find a conflict of interest between the insurer and the insured that would prevent the parties to the underlying proceeding from requesting an allocated verdict. Accordingly, the insurer was not permitted to litigate the issue separately in its declaratory judgment action. The court resolved the problem presented by the unallocated verdict by holding that if the insurer fails to warn the insured of the need for an allocated verdict, then the claimant is relieved of his burden of proving the amount of covered damages. Duke, 468 F.2d at 97-78.

In Sims and Coblentz, the court found a conflict between the interests of the insured with those of the insurer. The Sims court allowed the insurer to litigate separately the question of whether the injuries were negligently or intentionally inflicted. 247 S.C. at 86-87, 145 S.E.2d at 525. This is consistent with South Carolina law holding that a non-party to a prior proceeding is not estopped as to issues upon which the non-party did not have “a full and fair opportunity to previously litigate.” Carolina Renewal, Inc. v. S.C. Dep’t of Transp., 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009), cert denied, (S.C. Jan. 6, 2011). The conflict of interest in Sims prevented the insurer from being afforded a full and fair to litigate the question of the insured’s intent in the underlying tort proceeding.

The allocation in construction defect coverage cases between damages awarded for faulty workmanship and those awarded for resulting damage is another step removed beyond Sims. The homeowners in this case do not deny that the issues in this proceeding do not involve allocating between faulty work and resulting damage. (Palmetto Pointe Br.,

p. 16.) This provides an additional ground for a ruling that collateral estoppel should not apply—the issue was not “actually litigated” and “directly determined” in this proceeding. See Carolina Renewal, 385 S.C. at 554, 684 S.E.2d at 782. Thus, Nationwide contends that it should be allowed to allocate in the pending declaratory judgment action under Sims.

IV. Nationwide’s position does not contravene public policy or require revision of the rules of civil procedure.

Many of SCAJ’s arguments do not appear to be directed against Nationwide’s position in this appeal. Nationwide is not contending that the verdict should be “undone.” Nor does its position involve policy exclusions that are “hard to prove.” The need for allocation does not involve policy exclusions, but rather a distinction in standard CGL insuring agreements that has been codified by statute. S.C. Code Ann. § 38-61-70. The dilemma is not of Nationwide’s making—in fact, Nationwide’s motion to intervene was filed to avoid this argument.

Nationwide recognizes that many complications arise from a ruling that insurers must intervene in order to protect their right to allocate between covered and non-covered damages. Accordingly, Nationwide has requested that this Court reaffirm Sims and rule that intervention is not required. Nevertheless, the court split necessitated that Nationwide act to protect its rights by seeking intervention.

Finally, South Carolina law does not clearly reflect that insurers can avoid problems with allocation simply by issuing reservation of rights letters. (See SCAJ Br. p. 10.) In Harleysville, this Court initially upheld the special referee’s ruling based upon alternative grounds. (See Nationwide Br. pp. 13-14.) The final opinion does not specify that an insurer can avoid allocation problems merely by including warnings in a reservation of rights

letter. Harleysville holds only that “generic denials of coverage” with quotations of policy provisions are insufficient. 420 S.C. at 338, 803 S.E.2d at 297.

It should not escape notice that recent cases have imposed what amounts to waiver or estoppel on insurers under surprising circumstances. Prior to Harleysville, there were no court-mandated requirements for reservation of rights letters. Longstanding precedent held that insurance coverage cannot be created by waiver and estoppel. Laidlaw Envtl. Servs. (TOC), Inc. v. Aetna Cas. & Sur. Co. of Illinois, 338 S.C. 43, 53, 524 S.E.2d 847, 852 (Ct. App. 1999). The only exception was when the insured relied upon an insurer’s representations of coverage to its detriment. Liberty Mut. Ins. Co. v. Westport Ins. Corp., 664 F. Supp. 2d 587, 595 (D.S.C. 2009). After the Harleysville opinion was released, courts began applying the Harleysville standard to reservation of rights letters written years before then and holding that failure to meet that subsequently-imposed standard resulted in a waiver of nearly all applicable policy provisions. Stoneledge at Lake Keowee Owners Ass’n, Inc. v. Cincinnati Ins. Co., Civ. Action No. 8:14-cv-01906-BHH, 2019 WL 4689135 at *20-*21, *25 (D.S.C. signed Sept. 28, 2018).

The special referee in Harleysville held that the insurer’s miscalculation as to the state of the law was sufficient to support a finding of waiver. (R. p. 245-46, 248.) As discussed above, a warning that a special verdict form or special interrogatories may be required would not solve the allocation problem because construction defect actions typically do not concern allocation between faulty workmanship and resulting damage. (Palmetto Pointe Br., p. 16.) The special referee ruled that the insurer’s decision not to intervene created a “dilemma of its own making,” and this Court did not overrule that determination. Harleysville, 420 S.C. at 343 n.11, 803 S.E.2d at 300 n.11.

Likewise, the issue of allocation was raised for the first time by the Supreme Court on appeal in the declaratory judgment action in Newman. The result was based upon a finding that the insurer had a prior opportunity to seek an allocation in the underlying arbitration proceeding. Newman, 385 S.C. at 198 n.5, 684 S.E.2d at 547 n.5. The published opinion is the only ruling in Newman that has binding precedential value. Rule 268(d)(2), SCACR. However, insurers are not unaware that the finding that the insurer had a prior opportunity to seek allocation was challenged in a petition for rehearing. (R. p. 657.) The insurer in the Newman case argued that the Sims rule should be applied, but this Court denied the petition. (R. pp. 661-668.)

These holdings appear to signal that South Carolina law regarding waiver and estoppel has been drastically altered. The precise elements of proving waiver and estoppel under current law remain unspecified. However, it appears that insurers have been and may continue to be held to have waived various rights based upon any misstep that might support such an argument. The uncertainty is compounded by the recent ruling that insurers may sue attorneys they retain to represent their insureds. Sentry, 426 S.C. at 158, 826 S.E.2d at 272.³ Insurance lawyers face potential malpractice liability for failure to predict subsequent changes in the law over which they have no control.

For these reasons, insurers cannot ignore the possibility that failure to intervene may be subsequently held to support a finding that they have waived or are estopped to assert coverage defenses in a subsequent declaratory judgment action. The only way they can protect their rights is to allow no grounds for a finding of waiver or estoppel. In this

³ Sentry addressed suits against defense counsel retained to represent insureds, but the case indirectly may increase the likelihood of insurer suits against attorneys retained to represent them as coverage counsel.

context, the current state of the law appears to require insurers to attempt to intervene, and to consistently maintain that position until it has become clear that no opportunity for allocation in the construction defect proceeding has been allowed. This is precisely what Nationwide did in this case—moved to intervene well before the trial to obtain an allocation, should such an allocation be determined to be required.

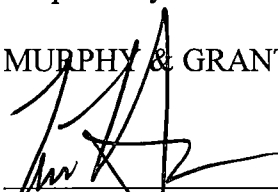
Nationwide is aggrieved by the trial court’s denial of its motion to intervene, should this Court rule that intervention is necessary. However, Nationwide’s preferred relief is a ruling that reaffirms an insurer’s ability to litigate coverage issues separately under Sims and that confirms that intervention is not necessary.

CONCLUSION

For the reasons set forth above, the SCAJ *Amicus Curiae* Brief is not helpful in resolving the issues in Nationwide’s appeal. Nationwide requests that SCAJ’s arguments be rejected.

Respectfully submitted,

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Columbia, South Carolina
February 20, 2020

IN 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 Lowe, 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 Does 1-60,.....Defendants,

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

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S.C. SUPREME COURT

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 Lowe,
Individually, and on behalf of all others similarly situated,
Tri-County Roofing, Inc.; Stanley's Vinyl Fence Designs;
and WC Services, Inc. are Respondents,

PROOF OF SERVICE

I certify that I have served the Appellant Nationwide Mutual's Reply Brief to the *Amicus Curiae* Brief of The South Carolina Association for Justice, via U.S Mail, postage prepaid and electronic mail, on February 20, 2020, to the following counsel of record:

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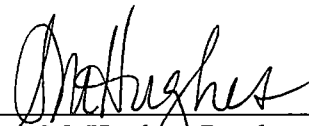
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FEB 20 2020
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February 20, 2020