

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

RECEIVED

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

APR 06 2020

Clifton Newman, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2019-001053

Ex. Parte: Hartford Fire Insurance Company, Hartford Casualty Insurance Company, American Empire Surplus Lines Insurance Company, BITCO General Insurance Corporation, Clarendon National Insurance Company, Harleysville Insurance Company n/k/a Nationwide Insurance Company, Selective Insurance Company, Crum & Forster Specialty Insurance Company, and First Mercury Insurance Company, ..... Appellants

In Re:

The Havens Condominium Association, ..... Plaintiff,

v.

Centex Homes, et al., ..... Defendants,

The River Crossing Condominium Association, and Vincent J. Tamburro, on behalf of himself and others similarly situated ..... Plaintiffs

v.

Centex Homes, et al., ..... Defendants,

The Tanglewood Condominium Association ..... Plaintiff,

v.

Centex Homes, a Nevada General Partnership, et al., ..... Defendants,

The Woodlands Condominium Association ..... Plaintiff,

v.

Centex Homes, a Nevada General Partnership, et al., ..... Defendants,

Of Which, The Havens Condominium Association, The River Crossing Condominium Association, Vincent J. Tamburro, The Tanglewood Condominium Association, The Woodlands Condominium Association, and Centex Homes, a Nevada General Partnership, are the ..... Respondents.

**Agreement and Stipulation Regarding the Record on Appeal**

Pursuant to Rule 261, SCACR, Appellants-Intervenors' American Empire Surplus Lines Insurance Company, BITCO General Insurance Corporation, Clarendon National Insurance Company, Successor by Merger to Clarendon America Insurance Company, Harleysville Insurance Company n/k/a Nationwide Insurance Company, Selective Insurance Company, Crum & Forster Specialty Insurance Company, and First Mercury Insurance Company (the "Insurers"); Hartford Fire Insurance Company and Hartford Casualty Insurance Company ("Hartford"); Plaintiffs-Respondents The Havens Condominium Association, The River Crossing Condominium Association, The Tanglewood Condominium Association, The Woodlands Condominium Association, and Vincent J. Tamburro (collectively, "Plaintiffs"); and Centex Homes, a Nevada General Partnership, Centex Construction Company, Inc., Centex Construction, LLC, Centex-Rooney Construction, Co., Inc., Centex-Rogers, Inc., Balfour Beatty Construction, LLC F/K/A Centex Construction, LLC ("Centex") submit the following agreement and stipulation for the Court's consideration regarding the record on appeal.

The purpose of this agreement is to limit the volume of materials included in the record on appeal so that the parties need not submit duplicative materials from the four underlying actions. Doing so will aid the Court and the parties in managing the appeal.

In furtherance of this goal, the parties agree:

1. This appeal arises from four separate construction defect actions against Centex and others filed in 2015: (1) *The Havens Condominium Association v. Centex Homes, et al.*, Case No. 2015-CP-26-00118 (the "Havens Lawsuit");<sup>1</sup> (2) *The River Crossing Condominium*

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<sup>1</sup> In February 2020, the parties to this construction defect Havens Lawsuit settled all claims. The parties on appeal intend to proceed with the appeal regarding the River Crossing Lawsuit, the Tanglewood Lawsuit and the Woodlands Lawsuit, which remain pending in the Horry County Court of Common Pleas.

*Association, et al. v. Centex Homes, et al.*, Case No. 2015-CP-26-00279 (the “River Crossing Lawsuit”); (3) *The Tanglewood Condominium Association v. Centex Homes, et al.*, Case No. 2015-CP-26-02718 (the “Tanglewood Lawsuit”); and (4) *The Woodlands Condominium Association v. Centex Homes, et al.*, Case No. 2015-CP-26-04514 (the “Woodlands Lawsuit”). The Insurers timely appealed to the Court of Appeals, which consolidated the four cases on appeal before the Court certified the case under Rule 204(b), SCACR.

2. The four actions were not consolidated before the trial court; however, the trial court did entertain motions to intervene filed by the Insurers at the same time and based on the same arguments made across the four matters. In those matters, the Insurers filed substantially the same motions to intervene, which were filed in duplicate in the four actions below. In addition, the Insurers joined in the arguments made by Hartford in its memorandum in support filed on December 8, 2017, and its supplemental memorandum in support filed on April 24, 2019. The two memoranda were filed in duplicate in each of the four matters.

3. In response, Centex filed a memorandum in opposition on April 18, 2019, which it duplicated across the four matters. Likewise, Plaintiffs filed a memorandum in opposition on April 24, 2019, which they duplicated across the four matters.

4. Before the trial court, the parties stipulated to the agreed record before the trial court, which incorporated certain filings and arguments made in similar actions. (*See Stipulation and Agreement of Record for Hearing on Motions to Intervene*, June 5, 2019.) This stipulation was filed in all four matters below. The materials set forth in the stipulated record would total roughly 700 pages.

5. To avoid duplication of materials on the record on appeal, the parties agree and stipulate that the record should consist of the following documents—all of which were filed in *The*

*River Crossing Condominium Association, et al. v. Centex Homes, et al.*, Case No. 2015-CP-26-00279, unless otherwise noted—that were filed in substantially similar fashion across the four matters below:

**ORDERS**

- Judge Newman’s Order denying Motions to Intervene, June 21, 2019

**PLEADINGS**

*River Crossing Lawsuit (Representative of Four Consolidated Cases, Horry County, SC)*

- Summons and Complaint, January 13, 2015
- Amended Summons and Complaint, February 13, 2015
- Answer to the Amended Complaint by Centex, February 27, 2015

*Coverage Declaratory Judgment Action (Centex v. Cypress Bend, No. 2016-CP-26-06670)*

- Summons and Complaint (without exhibits), October 19, 2016
- Amended Summons and Complaint (with Exhibits A, K and L), October 25, 2016
- Answer (without exhibits) by American Empire Surplus Lines Insurance Company, December 13, 2016
- Answer (without exhibits) by BITCO General Insurance Corporation, January 4, 2017
- Answer (without exhibits) by Clarendon National Insurance Company, Successor by Merger to Clarendon America Insurance Company, April 12, 2017
- Answer (without exhibits) by Harleysville Insurance Company n/k/a Nationwide Insurance Company, January 6, 2017
- Answer (without exhibits) by Selective Insurance Company, January 6, 2017
- Answer (without exhibits) by Hartford, January 23, 2017
- Answer (without exhibits) by First Mercury and Crum & Forester, February 3, 2017

**TRANSCRIPTS**

- Transcript of Motion to Intervene Hearing dated April 25, 2019.

- Transcript of Motion to Intervene Hearing dated September 27–28, 2017.<sup>2</sup>

### **MOTIONS**

- Hartford Fire Insurance Company and Hartford Casualty Insurance Company Motion to Intervene, filed December 8, 2017.
- Selective Insurance Company of South Carolina’s Motion for Limited Intervention or Alternatively For Order of Protection of Rights, filed December 18, 2017.
- Harleysville Insurance/Nationwide Motion for Limited Intervention or Alternatively For Order of Protection of Rights, filed December 18, 2017.
- BITCO General Insurance Corporation’s Motion for Limited Intervention or Order for Protection of Rights, filed December 21, 2017.
- Crum & Forester Specialty Insurance Company’s and First Mercury Insurance Company’s Motion to Intervene, filed February 27, 2018.<sup>3</sup>
- American Empire Surplus Lines Insurance Company Motion to Intervene, filed May 3, 2018.
- Clarendon National Insurance Company, Successor by Merger to Clarendon America Insurance Company’s Motion to Intervene, filed May 8, 2018.

### **MEMORANDA OF LAW**

- Hartford Fire Insurance Company and Hartford Casualty Insurance Company’s Memorandum of Law in Support of Motion to Intervene, filed December 8, 2017.<sup>4</sup>
- Centex’s Memo in Opposition to Insurance Carriers Motions to Intervene (with Exhibit A), filed April 18, 2019.
- Centex’s Memo in Opposition to Several Insurance Carriers’ Motions to Intervene (with Exhibit A), filed May 18, 2018;

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<sup>2</sup> This transcript is from *Cypress Bend Condominium Assoc. v. Centex Homes*, Civil Action No. 2014-CP-26-01226, *Harbour Cove Condominium Association, et al. v. Centex Homes, et al.*, Civil Action No. 2014-CP-26-7634, and *Beach Villas at Ocean Keyes Property Owners Association, Inc. v. Ocean Keyes Development, LLC, et al.*, Civil Action No. 2014-CP-26-06573, and was incorporated into the record below by stipulation of the parties.

<sup>3</sup> This document was filed in the Havens Lawsuit only. The Havens Lawsuit is the only case of the four underlying cases involving Appellants Crum & Forester Specialty Insurance Company and First Mercury Insurance Company.

<sup>4</sup> The parties agree to omit Exhibit A from the memorandum.

- Centex's Memo in Opposition to Hartford's Motion to Intervene (with Exhibit A), filed December 15, 2017;
- River Crossings's Memo in Opposition to Insurance Carriers Motions to Intervene, filed April 24, 2019.
- Hartford Fire Insurance Company and Hartford Casualty Insurance Company' Supplemental Memorandum of Law in Support of Motion to Intervene, filed April 24, 2019.<sup>5</sup>

#### **NOTICES OF APPEAL**<sup>6</sup>

- Hartford Casualty Insurance Company and Hartford Fire Insurance Company Notice of Appeal, filed June 27, 2019.
- BITCO General Insurance Corporation's Notice of Appeal, filed July 18, 2019.
- Harleysville Insurance and Nationwide's Notice of Appeal, filed July 19, 2019.
- Selective Insurance Company of South Carolina's Notice of Appeal, filed July 19, 2019.
- Crum & Forester Specialty Insurance Company and First Mercury Insurance Company's Notice of Appeal, filed July 22, 2019.
- American Empire Surplus Lines Insurance Company Notice of Appeal, filed July 22, 2019.
- Clarendon National Insurance Company Notice of Appeal, filed July 22, 2019.

#### **MISCELLANEOUS**

- Stipulation and Agreement of Record for Hearing on Motion to Intervene, June 6, 2019.<sup>7</sup>
- This Agreement and Stipulation Regarding the Record on Appeal.

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<sup>5</sup> The parties agree to omit the exhibits from this supplemental memorandum.

<sup>6</sup> The parties agree to omit the notices of appeal filed in the other cases because those notices of appeal were substantially the same and were all filed on the same day.

<sup>7</sup> The parties agree to omit exhibits to the stipulation.

6. The parties agree that it would be unnecessary to include copies of each filing from each of the four cases below. The parties further agree that the arguments set forth in their motions and memoranda were made in each of the four cases below.

7. The parties' counsel certify, pursuant to Rule 209(c), SCACR, that this agreement should control in lieu of any designations of matter filed by the parties, and that the documents set forth in paragraph 5 contain no matter which is irrelevant to the appeal.

8. The parties stipulate that limiting the number of documents included in the record on appeal as set forth in paragraph 5 would promote the orderly administration of justice and would focus the record to those issues on appeal.


#### **Conclusion**

Therefore, the Insurers, Plaintiffs, and Centex agree that, to reduce the size of the Record on Appeal, the parties shall limit the record to those documents set forth in paragraph 5, above. The parties respectfully request that the Court accept the parties' agreement and stipulation, and that the Insurers' be ordered to file the Record on Appeal containing only the matters set forth in paragraph 5 according to the timeframes established under Rule 210, SCACR.

**[Signatures on following page.]**

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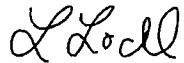
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Of Which, The Havens Condominium Association, The River Crossing Condominium Association, Vincent J. Tamburro, The Tanglewood Condominium Association, The Woodlands Condominium Association, and Centex Homes, a Nevada General Partnership, are the ..... Respondents.

Proof of Service

I, the undersigned associate of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Harleysville Insurance Company n/k/a Nationwide Insurance Company and Selective Insurance Company, certify that I have served all counsel in this action with a copy of the document set forth below by emailing a copy to all counsel of record using the attorneys' AIS email addresses set forth below:

**Pleadings: Agreement and Stipulation Regarding the Record on Appeal**

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