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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY COURT OF COMMON PLEAS

Honorable Edgar J. Dickson, Circuit Court Judge

Case No. 2022-000809

Malcolm E. Livingston, Jr. as the Personal Representative of the Estate of Rebecca E. Livingston and personally,..... Respondent

v.

The Regional Medical Center of Orangeburg and Calhoun Counties,.....Appellant

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FINAL BRIEF OF THE REGIONAL MEDICAL CENTER OF ORANGEBURG AND CALHOUN COUNTIES

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November 17, 2022

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STATEMENT OF ISSUES ON APPEAL

1. Whether the Court erred in granting Respondent's Motion for Partial Summary Judgment as to the issue of whether a supervising physician is vicariously liable for negligent acts of a physician's assistant under the South Carolina Physician' Assistants Practice Act.
2. Whether the Court erred in finding that the applicable South Carolina Torts Claim cap for liability in this matter is $1,200,000 for licensed physicians and dentists as prescribed by S.C. Code Ann. §15-78-120(a)(3)-(4), rather than $300,000.00 per occurrence/$600,000.00 aggregate for all others/non-physicians as prescribed by S.C. Code Ann. §15-78-120(a)(1)-(2).

STATEMENT OF THE CASE

This matter arises out of alleged medical malpractice matter which occurred on or about August 12, 2016, following Respondent being seen and treated by a physician's assistant ("PA") at The Regional Medical Center ("TRMC") Emergency Department. (R. pp. 3, 37-92). Respondent filed a Motion for Partial Summary Judgment as a matter of law on September 10, 2021, arguing a supervising physician is vicariously liable for negligent acts of a physician's assistant under the South Carolina Physician' Assistants Practice Act (in effect of August 2016). (R. p. 135-36). Respondent then cited, "A Physician Assistant may perform (1) medical acts, tasks, or functions with written scope of practice under physician supervision; (2) those duties and responsibilities, including by prescribing and dispensing drugs and medical devices, that are lawfully delegated by their supervising physicians." (R. p. 135). Essentially, the Respondent was seeking a ruling as to whether the applicable South Carolina Tort Claim's Act ("SCTCA" or "TCA") liability cap in this matter is $1,200,000.00 physicians and dentists or the liability cap of $300,000.00 per occurrence/$600,000.00 aggregate for all others/non-physicians. Mot. Hearing transcript 6:2-6, Nov. 1, 2021 (R. p. 258); Pltf's Memo. in Opp. to Alter/Amend 2 (R. p. 194).

The decedent was seen in the TRMC Emergency Department by Michael Carothers, P.A. He is not a licensed physician. TMRC is a governmental health facility as defined by the Tort Claims Act. *See Smith v. TRMC*, 713 S.E.2d 656 (Ct. App. 2011). The decedent was not seen or treated by a licensed physician on August 12, 2016. (R. pp. 2-3).

In opposition to Respondent's motion, Appellant argued the existence of a genuine issue as to the matter of facts, the determination of which are relevant to the issue of law that Respondent sought summary judgment in this matter. (R. pp. 145-168; 261-266). Specifically, Appellant argued that the issues at dispute are 1) whether the attending physician must be physically present in the emergency department under the South Carolina Statutes, and 2)

whether the Appellant breached the standard of care. R. pp. 145-168. It is Appellant's position that these are relevant issues that the trial judge will have to hear in determining which TCA cap is applicable. Id; R. pp. 261-265. It is Appellant's position that given the plain language of S.C. Code Ann. §15-78-120, the legislative intent of the SCTCA, and caselaw as determined in *Knox v. US*, C/A No. 0:17-cv-36-CMC (D.S.C. 2018), fn. 4, the applicable liability cap is $300,000/$600,000 because the Respondent was seen solely by a physician's assistant, not a licensed physician, and no licensed physician participated in any way in the care and treatment of the Respondent.

The matter was heard before the court on November 1, 2021, (R. pp. 253-271) and this Court entered an order on February 9, 2022, granting Respondent's Motion for Partial Summary Judgment (R. pp. 1-21). The Court ruled that a physician's assistant is an agent of a supervising physician and that a supervising physician has accepted responsibility for services rendered by its agent/physician assistant and therefore is liable for the physician assistant/agent's acts and omissions. (R. pp. 5-6). The Court further ruled that the $1,200,000.00 liability cap for physicians and dentists under the SCTCA is applicable. Id.

On February 18, 2022, Appellant filed a Rule 59(e) motion. (R. pp. 169-192). Appellant argued that a Rule 59(e) motion was appropriate and/or necessary because it appeared that in its Order & Opinion, this Court failed to fully consider or rule on all of Defendants' arguments in opposition to Respondent's motion and the genuine issues of material facts pursuant to the standards for summary judgment and medical malpractice lawsuits in this state: specifically, 1) whether the attending physician must be present in the emergency department under the South Carolina Statutes, and 2) whether the Appellant breached the standard of care. Id. Appellant maintained its argument that summary judgment should not have been granted, as there are

genuine issues of material facts in dispute as it pertains to this matter. Id. Appellant further argued that the Court's ruling is in contravention to the Tort Claims Act. Id.

Respondent filed a memorandum in opposition to Appellant's motion on April 20, 2022. (R. pp. 193-207). On April 29, 2022, the Court ruled via email that Appellant's Rule 59(e) motion was denied, as it found there to be no evidence presented indicating an intervening change in controlling law, new evidence, a clear error of law or manifest injustice. An Order with the Court's ruling was entered and filed on May 16, 2022. (R. pp. 22-36). This appeal follows. (R. pp. 208-252).

STANDARD OF REVIEW

"When reviewing the grant of a summary judgment motion, this court applies the same standard that governs the trial court under Rule 56(c), SCRCP; summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Watson v. Underwood*, 407 S.C. 443, 756 SE 2d 155 (Ct. App. 2014) (citing *Fleming v. Rose,* 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002)). "In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party." *Id.* (citing *Sauner v. Pub. Serv. Auth. of S. C.*, 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003)). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Management Co., Inc.*, 381, S.C. 326, 330, 673 S.E.2d 801 (2009). This standard requires merely "the slightest amount of relevant evidence" on an issue to warrant denial of summary judgment. Black's Law Dictionary 635 (3d pocket ed. 2006). *Harris Teeter, Inc. v.*

Moore & Van Allen, PLLC, 390 S.C. 275, 294-95, 701 S.E.2d 742, 752 (2010) concurring in part, dissenting in part, Hearn, J.

ARGUMENT

I. This matter is immediately appealable under S.C. Code Ann. § 14-3-330(1) as it involves the merits of this case.

"Generally, orders granting partial summary judgment may be immediately appealable under either the `involving the merits' or `substantial right' categories of section 14-3-330(1) and (2)(c) [of the South Carolina Code]." *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 306, 705 S.E.2d 475, 480 (Ct. App. 2011) (citing *Link v. Sch. Dist. of Pickens County*, 302 S.C. 1, 6, 393 S.E.2d 176, 178-79 (1990) (holding an order granting partial summary judgment may be appealable under either category)). "To decide whether a particular summary judgment order fits into either subsection, however, the [appellate] court must examine the order to determine if it meets the subsection's criteria for appealability." *Id.* "An order 'involves the merits' of a case when it finally determines a substantial matter forming the whole or a part of some cause of action or defense." *Id.* (citing *Mid-State Distribs., Inc. v. Century Imps., Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993)).

The Court in its Order granting Respondent's motion for partial summary judgment, relied on the South Carolina Physician Assistant's Act, S.C. Code Ann. §40-47-905 et seq. to find that "a physician's assistant is the agent of his or her supervising physician and the supervising physician has 'accepted responsibility' for the services rendered by the physician assistant." Ct. Order, Feb. 9, 2022, p. 5 (R. p. 6). The court's order determined that, "Because the supervising physician liable for the acts and omissions committed by his agent, under the plain terms of the TCA, the $1,200,000.00 liability cap is applicable to this case." *Id.* at p. 6 (R. p. 7).

It is Appellant's position and one of its defenses in this matter that this matter is provisions and limitations of the TCA as it involves a governmental agency. *See* S.C. Code Ann. §15-78-200. (R. p. 94). Thus, because the Respondent was only seen and treated by a physician's assistant and no licensed physician was involved in her treatment or care, Appellant maintains its argument that the liability cap is $300,000 per occurrence, $600,000 aggregate total, rather than $1,200,000.00, which is only for licensed physicians and dentists. *See* S.C. Code Ann. §15-78-120(a). As the Court's order finally determines this issue, (R. pp. 5-6), which forms the basis of one of Appellant's defenses, the order "involves the merits" of the case. Thus, the Court's order granting partial summary judgment is immediately appealable.

II. Summary judgment should not have been granted, as pursuant to the standards of summary judgment and medical malpractice in this state, there are relevant, genuine issues of material facts in dispute in this matter.

Summary judgment is a drastic remedy and should be cautiously invoked so that a litigant will not be improperly deprived of trial on disputed factual issues. *Cunningham ex rel. Grice v. Helping Hands, Inc.*, 352 S.C. 485, 575 S.E.2d 549 (2003). The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." *Singleton v. Sherer*, 377 S.C. 185, 659 S.E.2d 196 (Ct. App. 2008).

"[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock*, 381 S.C. at 330. "This standard requires merely 'the slightest amount of relevant evidence' on an issue to warrant denial of summary judgment." *Harris Teeter, Inc*, 390 S.C. at 294, 701 S.E.2d at 752 (2010) (quoting Black's Law Dictionary 635 (3d pocket ed. 2006)). "In determining whether a triable issue of fact exists, the evidence and all factual inferences drawn from it must be viewed in the light most favorable to the nonmoving

party." *Sauner v. Pub. Serv. Auth.*, 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003). If evidentiary facts are not disputed but the conclusions or inferences to be drawn from them are, summary judgment should be denied. *Baugus v. Wessinger*, 303 S.C. 412, 415, 401 S.E.2d 169, 171 (1991). Summary judgment is properly granted when:

> [T]he pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact *and* that the moving party is entitled to a judgment as a matter of law.

Rule 56(c), SCRCP (emphasis added).

"Medical malpractice lawsuits have specific requirements that must be satisfied in order for a genuine factual issue to exist." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). Specifically, a Respondent alleging medical malpractice must provide evidence showing: (1) the generally recognized and accepted practices and procedures that would be followed by average, competent practitioners in the Appellant's field of medicine under the same or similar circumstances, and (2) the Appellant departed from the recognized and generally accepted standards. *Jones v. Doe*, 372 S.C. 53, 61, 640 S.E.2d 514, 518 (Ct. App. 2006). Additionally, the Respondent must demonstrate the Appellant's departure from such generally recognized practices and procedures proximately caused the Respondent's alleged injuries and damages. *David*, 367 S.C. at 248, 626 S.E.2d at 4.

If the subject matter does not lie within common knowledge but requires special learning to evaluate the conduct of the Appellant, then the Respondent must offer expert testimony to establish both the required standard of care and the Appellant's failure to conform to that standard. *Id.* Because "many malpractice suits involve ailments and treatments outside the realm of ordinary lay knowledge, expert testimony is generally necessary." *Ellis v. Oliver*, 323 S.C. 121, 125, 473 S.E.2d 793, 795 (1996). When plaintiffs rely solely upon medical expert testimony as the only evidence of proximate cause, the medical expert must, with reasonable certainty, state

it is their opinion the injuries complained of most probably resulted from the Appellant's negligence. *Id.* The testimony "must provide a significant causal link between the alleged negligence and the Respondent's injuries, rather than a tenuous and hypothetical connection." *Id.*

Appellant argues that summary judgment was improperly granted because there are genuine issue as to the matter of facts, which are 1) the standard of care regarding whether the attending physician must be present in the emergency department under the South Carolina Statutes and 2) whether the Appellant TMRC has breached the standard of care. (R. pp. 145-168). As to issue (1), in his deposition of August 25, 2021, Respondent's expert witness Dr. Bruce Janiak, MD. testified that the "standard of care is for every mid-level provider . . . the attending physician must be available, physically in the emergency department, working with the PA, with one exception, which is not true in this case" (Janiak dep. transcript p. 30:10-17, (R. p. 273), and that "in the emergency department, it is physical presence that is required so that mid-level provider can consult on an almost instantaneous basis with the emergency physician attending" (Janiak dep. transcript p. 35:6-9 (R. p. 274). However, Dr. Janiak testified that he has not reviewed the South Carolina Physician Practice Act recently. Janiak dep. transcript p. 27:16-17 (R. p. 272); Mot. hearing transcript 11:13-15 (R. p. 263). Contrary to his testimony, S.C. Code Ann. § 47-40-955 (A) states, "The Supervising Physician is responsible for all the aspects of a PA's practice;" however, "[s]upervision must not be construed as necessarily requiring the physical presence of a supervising physician at the time and place where the services are rendered." *See also* Dr. Coleman Affidavit # 5-j (R. p. 277). This was further corroborated by Appellant's expert, Dr. Thomas H. Coleman, MD, FACEP, who states in his affidavit, that "supervision" does not mean a physician has to go over the treatment plan, the diagnosis the PA makes, the decision of the PA to order tests, or the decision to the PA to either admit or

discharge a patient. Dr. Coleman Affidavit # 5-j (R. p. 277); Mot. hearing transcript 10:18-24 (R. p. 262). Unlike the relationship between a lawyer and a paralegal, where a paralegal cannot act independently, a PA can act independently. Mot. hearing transcript 11:2-4 (R. p. 263). Having to run everything by a physician would defeat the purpose of having midlevel practitioners, such as PAs. Mot. hearing transcript 11:16-22 (R. p. 263).

This disputed issue "sets up a battle of the experts, which should not be resolved at summary judgment." *Reyazuddin v. Montgomery County*, 789 F. 3d 407, 417 (4th Cir. 2015); *see also*, *Green v. Wing Enterprises, Inc.*, C.A. No. RDB-14-1913 (D. Md. Dec. 9, 2015) ("battle of the experts, the comparison of the facts upon which an opinion is based with the opinion itself is precisely the role of the jury"). Additionally, there is no South Carolina appellate court case that defines what supervision under the P.A. statute means. Mot. hearing transcript 10:16-17 (R. p. 262). Thus, it a clear error of law to grant summary judgment when there is a dispute as to whether the standard of care regarding whether the attending physician is required to be physically present in the emergency department under the South Carolina Statutes and this disputed issue is relevant to determining the legal question of whether the PA statute and agency doctrine go so far as to hold the physician vicariously liable and enact the $1,200,000.00 TCA cap.

As to issue (2), Appellant asserts there is a genuine issue as to whether Appellant breached the standard of care. Appellant asserts that in South Carolina, a physician does not "supervise" a PA to the degree that the PA must report to the physician prior to a diagnosis being made and/or treatment being implemented, including the ordering of labs and tests and determining the need for admission and discharge. (R. p. 277). Nor does South Carolina law

require an emergency department to have the physician's name anywhere on the record or the physician to be physically present when the PA is treating a patient. (R. at 149).

However, "[t]he establishment of a doctor/patient relationship is prerequisite to a claim of medical malpractice," *Roberts v. Hunter*, 426 S.E.2d 797 (1993) (citing *Easter v. Lexington Memorial Hospital*, 303 N.C. 303, 278 S.E.2d 253 (1981)). Respondent has not offered any evidence of a physician/patient relationship in this matter. In fact, it is undisputed that the only provider that saw the Respondent was a physician's assistant. Mot. hearing transcript 6:15-16 (R. p. 258); (R. pp. 2-3). Although there was a physician present in emergency department that day and a "supervising physician" listed, no physician saw or treated the Respondent. (R. pp. 2-3, 149). The PA did not run anything by physician, nor did he have to as per South Carolina law. (R. pp. 149, 277). No physician was involved with the care and treatment of Respondent. (R. pp. 2-3); Mot. hearing transcript 11:5-12 (R. p. 263); Carothers dep. transcript 9:10-14, 19-25; 16:13, 16; 62:23-63:4) (R. p. 149).

As authorized by the South Carolina Physician's Assistants Practice Act, Mr. Carothers, PA, a licensed South Carolina PA who has been the main provider of TRMC Urgent Care at Santee since 2017 (Carothers dep. transcript 56:23, 57:13) (R. pp. 149-150), administered drug therapy (Zofran and Dilaudid) for Ms. Livingston to counteract nausea in her treatment (*Id.* 18:17-19) (R. p. 150). Dr. Coleman stated in his affidavit that Ms. Livingston received Dilaudid and Benadryl to prevent distonic reaction that often accompanies the Reglan that she was given. Dr. Coleman Aff. # 5-d (R. p. 276). Dr. Coleman states that while Dilaudid and Benadryl are sedating and can cause risk of fall in elderly patients, Ms. Livingston did not have any neurological complaints reported in her HPI or noted on her exam in the Emergency Department,

and therefore, the administration of drug therapy did not constitute a breach of the standard of care. *Id.* #5e (R. p. 276).

Moreover, there are no documented records indicating that Ms. Livingston complained about the inability to ambulate, lack of movement or feeling in her leg, or that she was experiencing worsening symptoms such as numbness or weakness in her evaluation. Janiak dep. transcript 30:8-20 (R. p. 273). On the contrary, Mr. Carothers, PA testified in his deposition that Ms. Livingston was moving all four extremities without numbness or tingling during the physical exam and she did not have exhibit numbness at the time of the exam. Carothers dep. transcript 50:11-15 (R. p. 150). In addition, Ms. Livingston ambulated to the bathroom prior to discharge. Dr. Coleman Aff. #5-f (R. p. 276); Carothers dep. transcript. 39:25–40:2 (R. p. 151). Thus, this as well goes to show that there was no breach in standard of care.

The "mere fact that the plaintiff's expert may use a different approach" or that "an expert disagrees with the defendant as to what is best or better approached in treatment a patient" does not constitute a breach or deviation from the recognized standard of medical care. *Todd v. United States*, 570 F. Supp. 670 (D.S.C. 1983). "Medicine is an inexact science and eminently qualified physicians may differ as to what constitutes a preferable course of treatment. Such differences as to preference do not amount to malpractice." *Id.* Therefore, there is a genuine issue as to whether Appellant breached the standard of care in this matter.

Appellant has provided a "mere scintilla of evidence," *Hancock*, 381 S.C. at 330, and/or "slightest amount of relevant evidence, " Black's Law Dictionary 635 (3d pocket ed. 2006), as to why granting Respondent's motion was improper. Appellant argues that the granting of Respondent's motion was a clear error of law and unjust as it "improperly deprived [it] of trial on disputed factual issues." *Cunningham v. Helping Hands*, Inc., 352 S.C. 485, 491, 575 SE 2d 549

(2003). Appellant argues that when "viewed in the light most favorable" to Appellant, the non-moving party, partial summary judgment should not have been granted.

III. The Court's ruling is in contravention to the South Carolina Tort Claims Act S. C. Code Ann. §15-78-10 et seq. because this matter does not involve the allegation of a tort by a licensed physician but rather a physician's assistant and therefore, the applicable liability should be $300,000 per occurrence and $600,000 aggregate total as prescribed by S.C. Code Ann. §15-78-120(a)(1)-(2), rather than $1,200,000 as prescribed by S.C. Code Ann. §15-78-120(a)(3)-(4) for licensed physicians and dentists

Respondent has relied on the Physician Assistant's Act to argue that the $1,200,000.00 cap applies because according to the Act, the physician's assistant is an agent of the supervising physician. However, as the Appellant is a governmental entity, this matter is governed by and limited to the provisions of the South Carolina Torts Claims Act, S.C. Code Ann. §15-78-10 et seq. (R. pp. 94, 101). Pursuant to S.C. Code Ann. §15-78-200, "the 'South Carolina Tort Claims Act'[] is the ***exclusive and sole remedy*** for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty." (emphasis added).

Moreover, the TCA provides limitations and exemptions on liability and favors limiting the liability of the governmental entity. S.C. Code Ann. §15-78-200 ("The provisions of this chapter establish limitations on and exemptions to the liability of the governmental entity and must be *liberally construed* in favor of limiting the liability of the governmental entity." (emphasis added)). S.C. Code Ann. §15-78-120 provides for such limitations of liability. For non-physicians the statute provides for a liability cap of $300,000.00 for a loss arising from a single occurrence and $600,000.00 aggregate cap. S.C. Code Ann. §15-78-120(a)(1) & (a)(2). The statute provides for an increased liability cap of $1,200,000.00 for torts "caused by the tort of any licensed physician or dentist, employed by a governmental entity and acting within the scope of his profession." S.C. Code Ann. §15-78-120(a)(3) & (a)(4) (emphasis added).

This matter involves the alleged tort of a physician's assistant, not a licensed physician. Without a physician/patient relationship, there can be no physician liability under the Tort Claims Act. The South Carolina District Court in *Knox* acknowledged that a physician's assistant is not a "licensed physician" and therefore damages available for a physician's assistant alleged negligent acts are limited to $300,000 per occurrence. *Knox v. US*, C/A No. 0:17-cv-36-CMC (D.S.C. 2018), fn. 4. The Court in *Knox* did not go into analysis of agency with regard to the physician's assistant. Rather, it simply looked to the plain and direct language of S. C. Code Ann. §15-78-120 and ruled that the $300,000/$600,000 cap was applicable for the PA. Therefore, in accordance with the *Knox*, the applicable liability cap in this matter, which also involves the treatment and care rendered by a physician's assistant and not a physician, should be $300,000/$600,000.

This is a matter of statutory construction and legislative intent. "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it reasonably can be discovered in the language used, and the language used must be construed in the light of the intended purpose of the statute." *Eagle Container Co., LLC v. County of Newberry*, 666 S.E.2d 892, 895 (S.C. 2008). "Legislative intent is best determined by examining the language of the statute itself." *Doe v. American Red Cross Blood Svcs.*, 377 S.E.2d 323, 437 (S.C. 1989).

Contrary to Respondent's arguments, S. C. Code Ann. §15-78-120(a)(3) and (4) do not state that the $1,200,000 cap applies to all medical malpractice cases. Rather, the statute unambiguously limits its application to solely matters involving torts committed by licensed physicians and dentists. Fundamentally, this means there has to be a doctor-patient relationship, which in this case there was not, for this physician cap to apply. Mot. hearing transcript 11:24-12:5 (R. p. 263-64). This case involves a physicians' assistant-patient relationship: no physician

saw, treated, or laid hands on the Respondent and nothing regarding the PA's care and treatment of the Respondent was approved by any physician. No physician was involved for any part of the Respondent's care and treatment. Mot. hearing transcript 11:24-12:5 (R. p. 263-64); 14:8-12 (R. p. 266); R. pp. 2-3. Given the plain language of the statute, it would reasonably follow that the legislative intent would be that an alleged tort committed by a physician's assistant, which is not a licensed physician or dentist, would fall within the $300,000/$600,000 cap. Moreover, this would be consistent with the legislative intent to limit liability in favor of the governmental entity. S.C. Code Ann. §15-78-200 ("The provisions of this chapter . . . must be *liberally construed* in favor of limiting the liability of the governmental entity."). Therefore, Appellant argues that the Court's ruling constitutes a clear error of law as it contravenes the plain language of §15-78-120(a), legislative intent of the SCTCA, and the courts ruling in *Knox*, and to prevent injustice, this matter should be limited to the $300,000/$600,000 liability cap as provided in the SCTCA.

CONCLUSION

For the reasons stated, Appellant respectfully requests the Appellate Court to reverse the decision of the Trial Court, deny the Respondent's Motion for Partial Summary Judgment, and rule that the applicable South Carolina Torts Claim liability cap for this matter is $300,000 per occurrence/$600,000 aggregate total.

Respectfully submitted,

November 14, 2022

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

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