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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Eugene H. Griffith, Jr., Circuit Court Judge

Civil Action Case No. 2020-CP-02-02238

Appellate Case No. 2024-000592

Cassiopia Rhoads ..... Respondent-Appellant

v.

Aiken County Sheriff's Office ..... Appellant-Respondent

INITIAL BRIEF OF THE RESPONDENT-APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Did the Trial Court erred in vacating a jury's verdict by finding Respondent-Appellant Rhoads' prior settlement with Southern Health Partners—which is a non-governmental, for-profit corporation and against whom the allegations pertained to medical malpractice committed by the company's employees—constituted a qualifying settlement under S.C. Code § 15-78-70(d) and therefore served to bar/extinguish her claims against the Aiken County Sheriff's Department for wholly different acts/omissions of gross negligence committed by its correctional officers.

STATEMENT OF THE CASE

Preface/Overview

This appeal arises from the Trial Court's abolition of a $950,000 jury verdict. The Trial Court misinterpreted S.C. Code § 15-78-70(d) and erred in finding that a claim against a private corporation constituted an action under the South Carolina Tort Claims Act ("TCA" or "the Act") because it was advanced within a lawsuit where a separate claim under the TCA was also brought against a governmental entity. Such a ruling is contrary to law and public policy.

The facts of the case arise from Respondent-Appellant Cassiopia Rhoads' ("Rhoads'") month-long detention at the Aiken County Detention Center ("the ACDC" or "the jail") where she was under the custody of Appellant-Respondent Aiken County Sheriff's Office ("ACSO"). During this time, spanning from May 3rd through June 2nd of 2019, Rhoads developed a very serious, life-threatening, and overtly obvious medical condition (an enormous infectious mass on the side of her head) and was a victim of

medical malpractice by the private healthcare workers who failed to provide appropriate medical treatment. Additionally, ACSO's correctional staff ignored Rhoads' discernably serious ailment and withheld important information about her behavior from the jail's healthcare personnel.

Shortly before trying her TCA claim of gross negligence against ACSO, Rhoads settled her medical malpractice claim against the private, for-profit healthcare entity. The Trial Court erred in finding that settlement of the medical malpractice claim brought against private entity extinguished Rhoads' TCA claim against the governmental entity.

Factual Background and Claims

Appellant-Respondent Aiken County Sheriff's Office ("ACSO") operates the Aiken County Detention Center ("the ACDC" or "the jail"), which contracted with Southern Health Partners, Inc. ("SHP") to provide medical services for the detainees and inmates held at the facility. Importantly, SHP is neither a governmental entity nor a governmental subdivision but is a private corporation which, pursuant to its contract with Aiken County, staffed the jail with nurses and other healthcare professionals.[1] (Contract Between SHP and Aiken County, R. ___).

On May 3, 2019, Rhoads was booked into ACDC. Although her initial health screening revealed no medical issues of consequence, a few days after arrival, the side of

[1] The Minimum Standards for Local Detention Facilities in South Carolina, adopted by S.C. Code § 24-9-30, require county detention centers to have a written agreement or arrangement with a physician for the review and approval of the facility's medical services. As such, besides hiring nurses and healthcare technicians, SHP also arranged for Dr. Robert J. Williams to serve as the "responsible physician," who, regarding his work in that role, was the company's agent. Although dismissed prior to trial, Dr. Williams was also an individual defendant in the case. However, unless a distinction between these two prior defendants is of significance, this brief typically uses the term "SHP" to refer to both SHP and Dr. Williams.

her head became swollen, a condition that would continue to worsen (and that would later be shown to be the result of an infectious abscess). In response to this growing cranial abscess, the medical providers working for SHP prescribed a treatment plan that was essentially limited to the administration of pain medication and a warm compress. (SHP Med. Recs., R. ___). This absurdly inadequate treatment plan (coupled with a failure to appropriately assess the ailment) formed the basis for Rhoads' medical malpractice claims against SHP.

"Inmate Grievance Records," inputted through the jail's "kiosk system," memorialize Rhoads repeatedly pleading for help as her condition worsened. These grievances continued until the time ACSO's deputies placed her in solitary confinement,[2] where she thereby lost access to the jail's kiosks. Those complaints included:

1) May 11, 2019: "I have a huge abcess [sic] on the side of my head that keeps getting bigger and hurts real bad I need my tooth pulled or some antibiotics."

2) May 16, 2019: "I'm having really [b]ad pain in my ear and fever."

3) May 20, 2019: "I have a fluid like sack on side of my head, above my ear, my ear aches and I'm still fighting a [fever] and severe [head] pressure. My eyes water constantly and I have severe nausea n vomiting. I also feel dizzy and can't focus my eyes when I stand up. The whole right side of my face is swollen and very painful. I have not been able to get out of bed for 4 plus days on the exception of showering. Please help me and send motrin."

4) May 21, 2019: "I have fluid under my skin above my [right] ear. Been there 4 plus days, whole side of face is swollen and have placed several sick calls and have not been seen yet. I am in severe pain and pressure in my head."

5) May 24, 2019: "I have been taken off all pain meds and still have yet to have seen the [dentist]."

[22] ACSO deputies placed Rhoads in solitary confinement because she initiated a "peaceful protest" by refusing to go back to her cell and demanding to be taken to a hospital. (ACDC Records, R. ___).

(SHP Med. Recs., R. ___).

As a result of her deteriorating health during the month-long detention at the ACDC, Rhoads was involved in multiple incidents that included falls, loss of consciousness, and hallucinations. (SHP Med. Recs., and ACDC Recs., R. ___).

Both fellow detainees and ACDC Correctional Officers ("COs") testified that Rhoads' seriously deteriorating health was visible and obvious, as was the increasing size of the massive abscess on the side of her head that was described as growing to become the size of a grapefruit. (Trial Trans. Vol. 3, p.47, ll.5-12, R. ___). At least one member of the correctional staff relayed concerns about Rhoads' ill health to SHP's medical providers, who responded by telling the deputy that the medical staff believed the cause of Rhoads' swollen head was result of a self-inflicted injury. However, ACDC's COs knew this to be false—being the persons watching/guarding Rhoads on a 24-7 basis, they knew she was not self-harming. (Trial Trans. Vol. 3, p.47, l.21 – p.50, l.5, R. ___).

COs informed ACSO supervisory command staff (specifically Lieutenants Jessica Whitaker and Erik Riddell) that Rhoads' health was seriously deteriorating and relayed concerns something more needed to be done. Further, the COs informed their command staff that SHP medical personnel erroneously believed Rhoads' health issues were the result of a self-inflicted injury and they (the COs) knew this "diagnosis" was wrong. These complaints/concerns fell on deaf ears, as the supervisory command staff did nothing in response to this information. ACSO's jail administrator, Capt. Nicholas Gallam, admitted that command staff (such as Whitaker and Riddell) were empowered to send a detainee to the hospital even without instruction from medical personnel and are expected to do so when dealing with an obvious health problem. Capt. Gallam testified:

Q: As far as the detention center itself, how do you – how does the – how does you and your training and expecting your correctional officers to comport themselves, ***is there any type of expectation for correctional officers to override the decisions of the clinical decisions, the medical decision making of the medical clinicians, the medical staff?***

A: ***Yes***. There – there is an expectation, and we usually handle that at the supervisory level.

(Trial Trans., Vol 4, p.124, l.19 – p.125, l.2, emphasis added, R. ___). Capt. Gallam went on to note that examples of when that "expectation" would apply would include "***if just something externally that's blatantly obvious***." (Trial Trans., Vol. 4, p.125, ll.16-17, emphasis added, R. ___).

The correctional staff's failure to take Rhoads to a hospital, coupled with their failure to inform SHP's medical providers that Rhoads was, in fact, not self-harming, formed the basis for Rhoads' TCA claim of gross negligence against the Aiken County Sheriff's Department.[3]

On June 2, 2019, Rhoads twice lost consciousness in her cell. After the second episode, she was finally transported to Aiken Regional Medical Center ("ARMC"). Records from ARMC show Rhoads to have a shockingly enormous infectious abscess on the right side of her head, which was approximately 9.7 x 2.2cm in size, had destroyed a large portion of her skull, and was so extensively invading her brain that it was causing a "right-to-left-midline shift"—meaning that her brain had been forcefully pushed to the left side by the invasion of the infectious mass into the right side of her skull). Medical providers at ARMC diagnosed Rhoads with a subgaleal abscess, epidural abscess,

[3] If Rhoads was actually self-harming and this was the cause of the massive swelling on the side of her head and SHP's medical staff were not doing anything to address such a serious mental health problem, Rhoads would posit that a failure to take action by ACSO's correctional officers would also amount to gross negligence.

osteomyelitis (bone infection), and sepsis. She required neurosurgery to remove the infectious mass, and, because the abscess had become so large and invasive, a substantial portion of her skull required removal. (ARMC Med Recs, R. ___, and Trial Trans., Vol. 2, p.266, ll.6-23, R. ____).

Procedural Background

Initially, Rhoads pursued only a medical malpractice claim against SHP, filing a Notice of Intent to File Suit (required under S.C. Code §15-79-125) against the private corporation on May 11, 2020. That Notice of Intent to File Suit ("NOI") noticed that Rhoads intended to sue the Delaware company "for medical malpractice and negligence" and noticed that "SHP by and through its employees and agents is solely responsible for any medical malpractice occurring" at the jail. Pursuant to S.C. Code §15-36-100, the NOI included an expert affidavit attesting to medical malpractice having been committed by the company's healthcare providers. (NOI, R. ___).

In compliance with the prelitigation requirements set forth in South Carolina's Medical Malpractice Act of 2005, on September 3, 2020, Rhoads and SHP conducted a pre-suit mediation, which proved unsuccessful. (Proof of ADR, R. ___). Notably, ACSO was neither a named party on the NOI nor did it participate in the pre-suit mediation. In short, ACSO was not included in Rhoads' medical malpractice claims.

On November 17, 2020, Rhoads filed her Summons and Complaint, which not only brought the anticipated cause of action for medical negligence against SHP[4] but also brought a gross negligence claim under the TCA against ACSO.[5] (Complaint, R. ___).

[4] Rhoads complaint against SHP also included a claim for unfair trade practices, which was not directed at the governmental defendants.

[5] Initially, the named governmental parties were "Michael E. Hunt, in his official and representative capacity as Aiken County Sheriff" and "Aiken County, operating as the

After considerable litigation/discovery, at a mediation held on July 20, 2023, Rhoads resolved all of her claims against SHP. Therefore, the sole remaining claim was the gross negligence cause of action claim under the TCA that had been brought against ACSO. This remaining cause of action against ACSO proceeded to trial during the week of October 9, 2023.

Just before the onset of trial, Rhoads and ACSO stipulated that ACSO could not be vicariously liable for the negligent acts or omissions alleged to have been committed by SHP and its employees and/or subcontractors. The stipulation further acknowledged that if liability were to be found against ACSO and damages awarded, the TCA would control, which would include the Act's liability requirement of "gross negligence" as well as its statutory cap limitations on actual damages and exclusion of punitive damages. (Consent Stipulation, filed Oct. 8, 2023, R. ___).

Additionally, shortly before the start of trial, the ACSO filed a motion for summary judgment asserting eleven alleged grounds for summary judgment, the final of which stated: "[Rhoads'] claims against [ACSO] are barred by operation of S.C. Code Ann. § 15-78-70(d), as a result of the settlement entered in this action between [Rhoads] and [SHP]." (Motion for Sum. Judg., filed Sept. 29, 2023, R. ___). During the course of the trial, the Circuit Court denied the motion, explaining there were causes of action against both the private healthcare provider and the governmental entity and "I think they stand independently. So I don't think [15-78-70(d)] applies to a case with these particular types of facts." (Trial Trans., Vol. 4, p.170, ll.15-17, R. ___).

Aiken County Detention Center," however, just prior to the start of the trial on October 9, 2023, the parties agreed to amend the caption to simply be against "Defendant Aiken County Sheriff's Office." (Consent Stipulation, filed Oct. 8, 2023, R. ___).

Throughout the trial, the ACSO adamantly argued/presented that it was not legally responsible for the acts/omissions of the private medical professionals that were contracted to provide health services in the jail, telling the jury such things as: "The Aiken County Sheriff's Office is not what's called vicariously liable. That means we're not liable for any type of negligence or gross negligence that was committed by the healthcare providers." (Trial Trans., Vol. 2, p.94, ll.21-25, R. ___).

ACSO's defense of the case centered entirely around an assertion that the correctional staff had an absolutely unfettered right to rely upon the decisions of SHP's medical staff, even when those decisions were absurd and blatantly wrong. However, besides simply the application of common sense, the fallacy of this argument was evidenced by the jail's own chief administrator's (Capt. Gallam's) testimony that his correctional officers should take action if a detainee had an obvious injury that required additional treatment. (Trial Trans., Vol. 4, p.124, l.19 – p.125, l.17, R. ___).

Rhoads principally argued that ACSO's employees had been grossly negligent by: (1) the supervisory command staff having ignored complaints from their own COs about the blatantly obvious deterioration of Rhoads' health—made particularly apparent by her external, grapefruit-sized abscess; (2) not informing SHP's medical personnel that the factual basis of their medical diagnosis was incorrect—because none of the correctional officers had observed her exhibiting self-harm, the COs knew Rhoads' swollen head was not the result of a self-inflected injury; and (3) correctional officers were inadequately trained. Notably, these claims against the ACSO were not allegations of healthcare negligence but were distinct and different from the medical malpractice claims that Rhoads' had brought and settled with SHP.

After a week of trial, the jury deliberated for fewer than forty-five minutes before finding the ACSO had been grossly negligent and awarding Rhoads $950,000.00 in actual damages. (Verdict Form, R. ___).

Post-trial, ACSO moved for a JNOV, moved for a new trial absolute, renewed its motion that S.C. Code § 15-78-70(d) should apply to Rhoads' prior settlement with SHP and serve to extinguish her TCA claims against ACSO, sought a set-off of the verdict to account for the settlement amount paid by SHP, and moved to reduce the verdict to the statutory cap set forth in the TCA. (ACSO Motion for JNOV or for New Trial or Reduction of Verdict, R. ___). While opposing the motions for a JNOV, a new trial absolute, and application of S.C. Code § 15-78-70(d), Rhoads did not oppose the request for a set-off or the applicability of the damages cap set forth in the TCA.[6]

Initially, the Trial Court denied the motion for a JNOV, denied the motion for a new trial, denied the motion seeking to apply S.C. Code § 15-78-70(d), and applied a set-off to the verdict to account for the prior settlement with SHP and applied the TCA cap.[7] (Order Reducing Verdict to Statutory Cap and Order Relating To Post-Trial Motions, both filed Mar. 12, 2024, R. ___). ACSO then filed a motion to reconsider and subsequently, while that motion was pending, filed a notice of appeal with the Court of

[6] Rhoads, however, did argue that the Trial Court should find there to have been two or three occurrences of gross negligence committed by ACSO employees and, consequently, that two or three applications of the TCA's damages cap should apply. While Rhoads maintains that there were multiple occurrences of gross negligence by ACSO employees, the issue of whether there was greater than one occurrence is not germane to this appeal. (Motion re Occurrences, filed Oct. 23, 2023, R. ___).

[7] Even after application of the set-off from the SHP settlement, the jury's verdict of $950,000 still resulted in an award that was greater than the $300,000 damages cap under the TCA.

Appeals.[8] The appeal was stayed pending a ruling/resolution of the pending motion to reconsider.

Nearly a year after the trial of the case, the Trial Court wholly reversed course, ruling that S.C. Code §15-78-70(d) applied and barred Rhoads from proceeding on her remaining cause of action against ACSO and thus granted ACSO's motion for reconsideration of the initial post-trial orders. (Order, filed Aug. 19, 2024, R. ___). Rhoads moved for reconsideration and also filed a notice of appeal. (Pl's Motion for Recon., filed Aug. 29, 2024, R. ___). The Trial Court denied Rhoads' motion to reconsider on September 29, 2024. (Order, filed Sept. 29, 2024, R. ___). This appeal by Respondent-Appellant Rhoads followed.

STANDARD OF REVIEW

An appellate court reviews questions of law *de novo*. *Aiken v. S.C. Dep't of Rev.*, 429 S.C. 414, 419, 839 S.E.2d 96, 98 (2020) (quoting *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 798 S.E.2d 555 (2017)). Issues pertaining to statutory interpretation are questions of law. *Town of Summerville v. City of N .Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Hodges v. Rainey*, 341 S.C. 79. 85, 533 S.E.2d 578, 581 (2000). "All rules of statutory construction are subservient to the one that the legislative intent must

[8] At or around that same time, Rhoads also filed a notice of appeal pertaining to the Trial Court's "Order Relating to Post-Trial Motions." Rhoads had intended to appeal how the Trial Court's had calculated post-trial interest deriving from the consequences of an unaccepted offer of judgment and for which she subsequently received a more favorable verdict. While she maintains that the manner of the calculation was in error (the Trial Court did not base the calculation on the actual amount of the jury's verdict but made the calculation based on a reduced figure that applied the set-off and TCA cap), Rhoads no longer intends to appeal that particular issue.

prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." *Broadhurst v. City of Myrtle Beach Election Comm'n*, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000). A statutory interpretation should be rejected "when to accept it would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention." *Unison Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000). "Words must be given their plain and ordinary meaning without resort to subtle or forced construction to expand the statues operation." *State v. Gordon*, 414 S.C. 94, 98, 777 S.E.2d 376, 378 (2015) (*quoting Sloan v. Hardee*, 371 S.C. 495, 499, 640 S.E.2d 457, 459 (2007).

ARGUMENT

I. THE TRIAL COURT ERRED IN FINDING THAT RHOADS' PRIOR SETTLEMENT WITH SHP SERVED TO BAR/EXTINGUISH HER CAUSES OF ACTION AGAINST ACSO, ERRONEOUSLY APPLYING THE TCA TO A NON-GOVERNMENTAL, FOR-PROFIT COMPANY AND ERRONEOUSLY DETERMINING THAT THE MEDICAL MALPRACTICE CAUSE OF ACTION AGAINST SHP AND THE GROSS NEGLIGENCE CAUSE OF ACTION WERE THE SAME OCCURRENCE.

Overview

The Trial Court's ruling runs contrary to both the plain language of S.C. Code § 15-78-70(d) (hereinafter often referenced simply as "70(d)" or as "the statute") and the legislative intent behind it.

The TCA states in relevant part:

> **A settlement or judgment in an action or a settlement of a claim under this chapter constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence.**

S.C. Code §15-78-70(d) (emphasis added).

The TCA also provides:

> **SECTION 15-78-70. Liability for act of government employee;** requirement that agency or political subdivision be named party defendant; effect of judgment or settlement.
>
> (a) **This chapter constitutes the exclusive remedy for any tort committed by an employee of a governmental entity.** An employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided in subsection (b).

S.C. Code §15-78-70 (emphasis added).

The legislative intent and purpose behind S.C. Code §15-78-70(d) can reasonably be determined to be aimed at preventing the government from having to pay twice for the same occurrence. This was noted by the Court of Appeals:

> Neither a "governmental entity," as defined in §15-79-30(d), nor its insurer paid any funds for the covenant. Therefore, ***this case does not present a question of double recovery against a governmental entity***.

Wade v. Berkeley County, 339 S.C. 513, 527, 529 S.E.2d 743, 750, *aff'd in part and rev'd in part* (Ct. App. 2000) (emphasis added).[9] The prior settlement with SHP does not cause such an issue and does not result in any type of double recovery, let alone a double recovery from the government.

The Trial Court's overly narrow interpretation of 70(d) was previously rejected by the South Carolina Supreme Court in *Wade v. Berkeley County*, 348 S.C. 224, 559 S.E.2d 586 (2002). In that matter, Gerald Wade was involved in an automobile collision with

[9] In *Wade v. Berkeley County*, 348 S.C. 224, 559 S.E.2d 586 (2002), the South Carolina Supreme Court affirmed in part and reversed in part the prior decision by the Court of Appeals. The agreement between Wade and Pierce was in the form of a covenant not to execute, which the Supreme Court found constituted a settlement. The Supreme Court reversed only the lower court's finding that a "Covenant not to Execute" was not a settlement. Thus, the Court of Appeals' instruction on the legislative intent of S.C. Code §15-78-70(d) was affirmed in its finding that the purpose behind 70(d) is to prevent double recovery against the government.

Bobby Joe Pierce, who was working for Berkeley County at the time of the wreck. Wade settled with Pierce for the sum of $13,000 and subsequently brought claims against Berkeley County. The South Carolina Supreme Court found that S.C. Code §15-78-70(d) and Wade's prior settlement with Pierce did not serve to bar his claims brought against Berkeley County under the TCA because, even though there was only one automobile wreck (*i.e.* one occurrence), the claims against Pierce were not, technically speaking, brought "under this chapter" because Pierce had settled in his individual capacity. Addressing this issue, the Supreme Court stated:

> County asserts the Court of Appeals erred by holding § 15-78-70(d) does not bar Wade's action because Wade and Pierce's settlement did not arise "under this chapter." Instead, County argues the phrase "under this chapter" only modifies "settlement of a claim," not "a settlement or judgment in an action" and, therefore, the lack of an action "under this chapter" is not dispositive. County further contends that because Wade was aware of its potential claim against County as Pierce's employer at the time it settled with Pierce, § 15-78-70(d) precludes Wade from maintaining its current action. **We disagree.**
>
> As noted above, § 15-78-70(d) provides:
>
> > A settlement or judgment in an action or a settlement of a claim under this chapter constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence.
>
> "This chapter" is defined as the "South Carolina Tort Claims Act." § 15-78-10. Accordingly, "under this chapter" means within the South Carolina Tort Claims Act [.…]
>
> **We conclude the General Assembly intended "under this chapter" to modify both a "settlement or judgment in an action" and a "settlement of a claim" [.…]**
>
> The insertion of "settlement of a claim" into the original proposal, "[a] settlement or judgment in an action under this chapter," indicates the legislature intended "under this chapter" to modify both "[a] settlement or judgment in an action" and "a settlement of a claim." **Consequently, to invoke the provisions of § 15-78-70(d), there must be a settlement or judgment in an action under the Act or a settlement of a claim under the Act.**

Wade at 228-30, 559 S.E.2d at 588-89 (emphasis added).

Thus, the South Carolina Supreme Court allowed a plaintiff, **after** having settled a claim against the county's employee "in his individual capacity," to proceed with a suit against Berkeley County because the prior settlement with the employee was not done "under the [TCA]." Finding that 70(d) should be used sparingly to bar/extinguish a plaintiff's rights, the Supreme Court noted: "As illustrated by the facts of this case, S.C. Code § 15-78-70(d) permits a plaintiff to maintain an action against a governmental employee in his individual capacity, settle, and then pursue an action against the governmental employer for the tort of his employee allegedly committed while in the scope of employment." *Wade* at 230, 559 S.E.2d at 589. If a plaintiff can settle tort claims against a county's employee relating to an automobile wreck and still be able to maintain suit against the governmental entity relating to the same collision, then surely Rhoads' settlement of medical malpractice claims against SHP, a private and wholly separate corporation, did not serve to extinguish/bar her claims against the ACSO.

The Trial Court attempted to distinguish *Wade* by focusing on the fact that, at the time of Wade's settlement with Pierce, a lawsuit had not yet been filed against Berkeley County. (Order, filed Aug. 19, 2024, R. ___). However, the timing is not what is important – with "under this chapter" having been determined by the Supreme Court to modify both of the preceding clauses within the sentence, what matters is whether or not the settlement was made under the TCA. Thus, it makes no difference whether a settlement was merely of a claim made or if a lawsuit against the governmental entity had been filed at the time of the settlement—what mattered in *Wade* was that the prior settlement was not, *per se*, made under the TCA. In fact, Pierce could not have been sued under Chapter 78, as the TCA specifically states it does not permit governmental

employees, who were acting within the scope of their official duties, to be personally named as defendants. S.C. Code § 15-78-70(c).

As demonstrated by the plain language of the law, for a prior settlement to extinguish or to serve as a bar of a plaintiff's claim under the TCA, **the prior settlement must meet all three of the following requirements**:

(1) been made with the State or one of its political subdivisions;

(2) be an action made under the TCA or be a claim made under the TCA; and

(3) relate to the same occurrence.

Not even one of these three criteria is met in the matter at bar. Rhoads' prior settlement with SHP: (1) was not made with a governmental entity; (2) was not for a cause of action or claim asserted under the TCA; and (3) was not the same occurrence. Rhoads' only prior settlement: (1) was with a private corporation; (2) was a cause of action that sounded in medical malpractice and was not brought under the TCA; and (3) pertained to occurrences dealing with acts and omissions of healthcare staff (who were employees or subcontractors of SHP) that were distinct and different from the grossly negligent acts/omissions ACSO's correctional officers.

No Prior Settlement with the State of South Carolina or a Political Subdivision

In order for a prior settlement to serve to bar a cause of action pursuant to S.C. Code §15-78-70(d), the prior settlement must necessarily have been made with "the State of South Carolina or [one of its] political subdivisions." However, the Trial Court's ruling errantly states:

> ***[T]here is no requirement that the settlement or judgment must be with another governmental party***. There is no language to that effect in the statute and if that were the intent of the General Assembly, such language could have been included.

(Order, filed Aug. 19, 2024, p.4, with emphasis added, R. ___).

This determination ignores the plain language of the statute and that in order to settle an action or a claim under the TCA claim, the settling defendant must be a governmental entity to which the TCA would apply. This is demonstrated by the fact that Wade's prior (non-qualifying) settlement was with an individual (Pierce) and not any sort of governmental entity. The Trial Court's interpretation that the prior settlement need not be with a governmental entity also overlooks both *Wade* and that the purpose of 70(d) is to prevent double recovery from the governmental entities.

SHP is a private, for-profit corporation, organized under the laws of Delaware and headquartered in Tennessee. (Answer of SHP, ¶ 5, R. ___). The company contracted with Aiken County to provide medical services to detainees at the ACDC. (SHP's Contract with Aiken County, R. ___). Thus, there should be no debate that SHP is a private, independent contractor, doing business with a political subdivision of the State of South Carolina (Aiken County).

The South Carolina Tort Claims Act's definition of who can be considered an "employee" for purposes of the TCA ***specifically excludes*** SHP:

> "employee" means any officer, employee, agent, or court appointed representative of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty including, but not limited to, technical experts whether with or without compensation, ***but the term does <u>not</u> include an independent contractor doing business with the State or a political subdivision of the State.***

S.C. Code §15-78-30(c) (emphasis added). As this definition of "employee" makes clear, SHP's healthcare providers are not "employees" under the TCA and thus their

acts/omissions amounting to medical malpractice are specifically exempted from being covered by the TCA.

ACSO repeatedly pointed this fact out during trial, even noting it was "undisputed":

> This is a case, Your Honor, again, where the Aiken County Sheriff's Department uses ***a medical contractor*** to provide medical care.
>
> [….]
>
> We're not liable for the acts and omissions of Southern Health Partners, they are as ***an independent contractor***.

(Trial Trans., Vol. 1, p.62, l.11-13, and V2, p.23, l.20-22, with emphasis added, R. ___).

Rhoads only prior settlement was not with the State of South Carolina or a political subdivision but was with a non-governmental entity. As such, the first requirement of S.C. Code §15-78-70(d) was not met, and Rhoads' TCA cause of action for gross negligence against ACSO was not barred/extinguished as a consequence of her prior malpractice settlement with the private, for-profit medical company operating as an independent contractor at the jail.

No Prior Settlement Under "This Chapter" – i.e. No Prior Settlement Under the TCA

In order for a prior settlement to bar a plaintiff's claim pursuant to S.C. Code §15-78-70(d), the prior settlement must have been made under the TCA.[10] As discussed below, there was no such qualifying settlement in this matter.[11]

In the order reversing its prior rulings, the Trial Court states:

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[10] Notably, not all claims against the state and its subdivision are under the TCA—they can be for breach of contract, condemnation, sound in equity, allege constitutional challenges, etc.

[11] At first glance, the second prong may seem identical to the first. However, not all claims against a governmental entity fall under the TCA. For example, one could bring a breach of contract, disgorgement, Section 1983, or any number of other causes of action against a governmental entity that would not be considered a TCA claim.

> *The Plaintiff also cited the Tort Claims Act in her Complaint. See Complaint, ¶¶ 4-5. All of the Defendants, including the SHP Defendants, also cited Tort Claims Act defenses in their Answers, with the Plaintiff never moving to strike those defenses. See, SHP Answer, ¶ 83, Sheriff's Office Answer, ¶¶ 51-52, 57. Thus, it is indisputable that the Plaintiff brought this action under the Tort Claims Act.*"

(Order, filed Aug. 19, 2024, p. 4, R. ___). Rhoads' reference to the TCA in her Complaint was part of her identification of the governmental defendants to whom the TCA applied, specifically identifying ACSO as "a governmental agency and/or political subdivision of the State of South Carolina as defined in S.C. Code 15-78-10 *et seq*…" (Complaint, ¶4, R. ___). SHP was never identified as such.

Furthermore, SHP referring to the TCA in its answer does not result in the "indisputable" conclusion that Rhoads' causes of action against the company were brought under the TCA. In its answer, SHP actually went so far as to claim the TCA acted as a complete bar from any recovery and that the company was immune from suit. In other words, the company's assertions did not become indisputably true simply because they were pled within the answer and by Rhoads having not engaged in an unnecessary exercise of moving to strike. (Answer of SHP, R. ___).

S.C. Code §15-78-70(d) must be read and applied *in pari materia* with other sections of the TCA. To determine what is meant by "a settlement or judgment in an action [under this chapter] or a settlement of a claim under this chapter" one may look to other sections within the Act. Crucially, a review of the TCA demonstrates that this phrase would not be intended to include a medical malpractice cause of action and settlement with a private corporation that was merely part of a lawsuit that also included a governmental entity defending a claim brought under the TCA.

S.C. Code §15-78-30, is entitled "Definitions" and reads (with emphasis added):

> (a) "Claim" means any written demand ***against the State of South Carolina or a political subdivision*** for money only, on account of loss, ***caused by the tort of any employee of the State or a political subdivision while acting within the scope of his official duty***…
>
> (b) …On of after January 1, 1989, ***"employee" means any officer, employee, agent, or court appointed representative of the State or its political subdivisions…acting on behalf or in the service of a governmental entity in the scope of official duty…but the term does not include an independent contractor doing business with the State or a political subdivision of the State***…

S.C. Code §15-78-90, is entitled "Settlement of ***claims and actions***; institution of ***action*** where claim has or has not been filed," and reads (with emphasis added):

> (a) ***The State Fiscal Accountability Authority***, or the political subdivision where it has not purchased insurance from the State Fiscal Accountability Authority, ***may adjust, compromise, settle, or allow any claim or settle or compromise*** any ***action***.
>
> (b) Whether or not the claim is filed, the claimant is entitled to institute an ***action*** against the appropriate agency or political subdivision. Provided, however, if a claimant files a claim, he may not institute an ***action*** until after the earliest of one of the following three events:
>
> (1) the passage of one hundred eighty days from the filing of the claim with the governmental entity;
>
> (2) the governmental entity's disallowance of the claim; or,
>
> (3) the governmental entity's rejection of a settlement offer.

S.C. Code §15-78-100 is entitled "When and where to institute action; requirement of special verdict specifying proportionate liability of multiple defendants," and reads (with emphasis added):

> (a) Except as provided in Section 15-3-40, ***an action for damages under this chapter***, may be instituted at any time within two years after the loss was or should have been discovered…
>
> […]
>
> (c) In ***all actions brought pursuant to this chapter*** when an alleged joint tortfeasor is named as party defendant in addition to the governmental entity, the trier of fact must return a special verdict specifying the proportion of monetary liability of each defendant against whom liability is determined.

S.C. Code §15-78-110 is entitled "Statute of Limitations," and reads (with emphasis added):

> Except as provided in Section 15-3-40, ***any action brought pursuant to this chapter*** is forever barred unless ***an action*** is commenced ***within two years after the date of loss***…

S.C. Code §15-78-120 is entitled "Limitation on liability; prohibition against recovery of punitive or exemplary damages or prejudgment interest; signature of attorney on the pleadings, motions, or other papers," and reads (with emphasis add):

> (a) For ***any action*** or claim ***for damages brought under the provisions of this chapter***, the liability shall not exceed the following…
>
> (1) Except as provided in Section 15-78-120(a)(3), no person shall recover ***in any action*** or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved…

The excerpts above from the TCA demonstrate that 70(d)'s use of the term "a settlement or judgment in an action [under this chapter]" is intended in connection with the pursuit of relief against governmental tort actors. "Action" is used to impose the two-year statute of limitations and statutory caps on damages under the TCA and to require authorization for the State Fiscal Authority for any resolutions. For 70(d) to be triggered when a claim is settled, the settlement cannot merely be within a lawsuit where the government was a defendant but must be the settlement of a cause of action brought/filed against the government.

Rhoads' allegations against SHP were brought under Title 15, Chapter 79, which is entitled "Medical Malpractice Actions." As discussed in the procedural history above, long before the Summons and Complaint in this matter were ever served, Rhoads filed a *Notice of Intent to File Suit* ("NOI"), as required by S.C. Code § 15-79-125, alleging

medical malpractice against SHP for the acts/omissions committed by its employees/agents. An affidavit of merit, which met the requirements of S.C. Code § 15-36-100, also accompanied the NOI. In fact, SHP was the only putative defendant listed in the NOI. The claims against SHP related to allegations of medical malpractice by the company's healthcare providers, and Rhoads did **not** bring any claims against SHP under the TCA.[12]

The TCA creates limited liability for governmental entities for the tortious conduct of employees of governmental entities. S.C. Code §15-78-70(a) (stating the TCA relates to torts "committed by any employee of a governmental entity"). Further, the TCA specifically states that an "employee" in this context "does not include an independent contractor doing business with the State or a political subdivision of the State**.**" S.C. Code §15-78-30(c). As "the exclusive remedy available for any tort committed by a governmental entity, its employees or its agents," the language of the statue plainly directs that the TCA is not a remedy available for any tort committed by the private medical contractor at the jail.[13] In other others, because SHP is a private corporation that was an independent contractor providing medical services at the Aiken County jail, Rhoads did not even have the ability to bring a cause of action under the TCA against the company.

Similarly, when a government hospital retains a private medical group to operate its emergency department, the TCA provides that the governmental hospital cannot be

[12] Rhoads' claims against SHP alleged a number of failures, all of which, at their core, pertained to the medical care provided (more accurately stated, "not provided"). These matters related to acts and omissions by the nurses and physicians employed by SHP. Although SHP repeatedly asserted that its physicians, including Dr. Williams, are independent contractors and not employees, for the purposes of this appeal, Rhoads submits that such a distinction is of no consequence.

[13] "Exclusive" is defined as "excluding other from participation." See Merriam-Webster's Online Dictionary, "Exclusive," www.meriam-webster.com, accessed March 21, 2025.

held liable for the negligent acts or omissions of the private medical group. *See Smith v. Reg'l Med. Ctr. of Orangeburg & Calhoun Ctys.*, 394 S.C. 110, 713 S.E.2d 656 (Ct. App. 2011) (finding that by contracting with a private medical group for the operations of its emergency department, The Regional Medical Center, which was a governmental hospital, was not responsible for negligence of those contracted physicians). Thus, ACSO was not directly or vicariously liable for any negligence committed by SHP's employees/agents, and conversely, any tort committed by the independent contractor (*i.e.* SHP) doing business for/with the political subdivision (*i.e.* ACSO) does not fall under the TCA.

Rhoads' claims against and settlement with SHP cannot logically or legally be considered as having been "under" Chapter 78. SHP is a private corporation that merely contracts to do business with Aiken County. Rhoads is statutorily barred by the plain language of the TCA from suing SHP under the TCA. Her claims against SHP were under the Medical Malpractice Act (S.C. Code § 15-79-110 *et seq.*) and not the TCA. In direct violation of the statutory definition sections of the TCA, the Trial Court's forced interpretation of the statute would seem to expand the availability of the TCA to an independent contractor.

As discussed above, Rhoads' only prior settlement was not under the TCA but was a settlement under the Medical Malpractice Act. As such, her prior settlement does not meet the second requirement of S.C. Code §15-78-70(d), and her claim against the ACSO was not barred as a consequence of the prior malpractice settlement with the private, for-profit medical company operating as an independent contractor at the jail.

No Prior Settlement for the Same Occurrence

In order for S.C. Code §15-78-70(d) to bar or extinguish a plaintiff's claim, a prior settlement has to have been "by reason of the same occurrence." Thus, even if there is a prior settlement with a governmental entity for a claim brought under the TCA and the first two factors are met, in order for 70(d) to apply, the prior settlement must also involve the same occurrence of negligence. There was no such qualifying settlement in this matter, for, as discussed above and indicated by the record of this case, SHP and ACSO are two separate entities whose employees/agents each breached separate duties owed to Rhoads and did so via different occurrences.

The TCA defines the term "occurrence" to mean "an unfolding sequence of events which proximately flow from a single act of negligence." S.C. Code §15-78-30(g). The Trial Court's order erroneously determined that "any gross negligence by the Sheriff's Office is part of the same 'unfolding sequence of events' proximately flowing from the acts or omissions by the SHP Defendants in its provision of medical care," but provides little-to-no explanation of the rationale behind this determination. (Order, filed May 23, 2024, p. 8, R. ___). This stark conclusion overlooks what constitutes an "occurrence" under South Carolina law and the different nature of Rhoads' allegations against the various defendants.

Simply because the medical malpractice causes of action against SHP and the TCA cause of action against ACSO were brought within the same lawsuit does not equate to the negligent acts/omission committed by SHP's employees and the ACSO's employees being the same occurrence. As the South Carolina Rules of Civil Procedure provide:

> Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative

> in respect of or arising out of the same transaction, occurrence, **or series of transactions or occurrences** and **if any question of law or fact common to all these persons will arise in the action.** All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, **or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.** A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

Rule 20(a), SCRCP (emphasis added).

The negligence acts/omissions by SHP's employees and the grossly negligent acts/omissions by ACSO's employees were part of series of transactions or occurrences. As such, the rules of permissive joiner allowed the medical malpractice cause of action against SHP and the TCA cause of action against ACSO to be brought within the same lawsuit in the interest of judicial economy. However, this does not require a finding that there was only one occurrence.

In the present matter, there were clearly two entities to which Rhoads' various claims related, with each entity serving very different functions and with their employees playing very different roles at the jail. In this case, the acts and omissions by SHP's healthcare providers were separate and distinct from those of the corrections officers working for ACSO. The acts and omissions (the occurrences) by SHP's healthcare providers related to medical malpractice—how they provided woefully inadequate treatment for the large and growing abscess on the side of Rhoads' head. The acts and omissions (the occurrences) by ACSO's correctional officers were different, necessarily so, given that the COs are not healthcare providers and cannot legally practice medicine or engage in nursing.

For S.C. Code § 15-78-70(d) to be triggered, it is not enough that there was a prior settlement (or judgment) within a lawsuit where one of the claims asserted against one of multiple defendants was a claim brought under the TCA. The legislative intent of the statute was not to create total governmental immunity anytime there was a settlement within a multi-party lawsuit but was designed to limit governmental liability by preventing multiple governmental entities from having to pay a claimant/plaintiff for the same occurrence. The General Assembly has passed numerous laws that make clear there is no governmental liability in certain situations (such as the list of exceptions to the waiver of immunity within Section 15-78-60). If expensive governmental immunity was the intention with Section 15-78-70(d), the legislature would have expressly stated as such. However, the legislature did not do this but, instead, sought to word the statute to prevent a claimant/plaintiff from receiving multiple recoveries from multiple governmental entities when there had only been a single occurrence.

The occurrence issue is typically a question of fact for the jury to determine. *Boiter v. S.C. Dep't of Transp.*, 393 S. C. 123, 125 (2011); *Chastain v. Anmed Health Found.*, 388 S.C. 170, 174, 694 S.E.2d 541, 543 (2010) ("more than one single act of negligence" constitutes multiple occurrences). As discussed in more detail in the section below addressing the charges given to the jury, the jury's verdict in Rhoads' favor demonstrates the negligence of SHP's employees and the gross negligence of ACSO's employees were separate occurrences. A brief look into our case law on occurrences bears out the existence of separate occurrences and the jury's right to make such a determination.

In *Boiter v. S.C. Dep't of Transp.*, 393 S.C. 123, 712 S.E.2d 401 (2011), the South Carolina Supreme Court reversed the lower court's decision to reduce the jury's damage award to single occurrence caps under the TCA. The Boiters were injured in a motor

vehicle accident at an intersection where the red lights had ceased working earlier in the day. *Id*. at 126, 712 S.E.2d at 402. The plaintiffs filed suit against both the South Carolina Department of Transportation and South Carolina Department of Public Safety, alleging the former was negligent in failing to implement an appropriate re-lamping policy and the latter was negligent in failing to respond to notice of the outage. *Id*. At trial, the jury returned a verdict of $1.875 million per plaintiff. Concluding the plaintiffs had only demonstrated one occurrence, the trial court reduced the jury's award to a single damages cap of $300,000 per plaintiff. *Id*. On appeal the question was whether the circuit court erred in failing to find two separate occurrences. The South Carolina Supreme Court overturned the trial court's imposition of a single occurrence damages cap. *Id*. at 131-32, 712 S.E.2d at 405. In so doing, the Supreme Court specifically found the trial court erred in tying the number of occurrences to the number of injuries. *Id*. at 134, 712 S.E.2d at 406. Rather, the *Boiter* court found where an incident involves two separate entities committing independent acts of negligence, it was not the intent of the General Assembly to limit recovery to only one occurrence. *Id*. As a result, the Court found each entity's separate acts of negligence constituted separate occurrences. *Id*.

In *Chastain v. Anmed Health Found.*, 388 S.C. 170, 694 S.E.2d 541 (2010), the Supreme Court addressed whether the lower court properly reduced a verdict to the $300,000.00 cap for one occurrence where the jury entered a general verdict. The Court affirmed because "the jury was never instructed on the definition of occurrence nor was it asked to determine whether there was more than one occurrence, either in the instructions or in its verdict." *Chastain* at 174, 694 S.E.2d at 544. This statement plainly shows that it is legally and procedurally proper for the jury to determine occurrences and that the issue is not a matter of law solely for the court.

In *Reeves v. S.C. Mun. Ins. & Risk Fin. Fund*, 434 S.C. 18, 862 S.E.2d 248 (2021), the South Carolina Supreme Court was asked to interpret coverage provisions in a policy issued by the South Carolina Municipal Insurance Reserve Fund ("SCMIRF"). Concluding the only applicable coverage were single policy limits of $1,000,000, the Court found *Boiter* distinguishable on two bases, one of which was that *Boiter* had involved two acts of negligence by entirely separate entities. *Id*. at 634, 832 S.E.2d at 323. In other words, the involvement of negligence of employees from two different entities (or, in that particular case, the lack thereof) was something to consider when determining if there had been multiple occurrences.

The Trial Court charged the jury in a manner that, if the jury found ACSO's employees to have been grossly negligent, this would equate to a jury determination that ACSO's gross negligence was separate and distinct from SHP's negligence—that it was a different occurrence. The Trial Court specifically charged:

> Another defense is that any injuries and damages suffered by Ms. Rhoads ***were the result of the independent acts of a third person. Aiken County Sheriff's Office claims that her injuries were caused by the treatment of the medical providers, Southern Health Partners***.

(Trial Trans. Vol 5, p. 121, ll.16-22, with emphasis added, R. ____).

The jury being charged on **not** holding ACSO liable for SHP's acts/omissions is evidenced in the gross negligence charge that was read to the jury:

> I charge you that South Carolina law states that a governmental entity, such as the Aiken County Sheriff's Office, is liable only if it is grossly negligent in confining, supervising, and maintaining its inmates.
>
> Gross negligence involves an intentional conscience failures to do something that one ought to do or the doing of something that one ought not to do. Gross negligence involves conduct that shows an utter disregard of caution amounting to the complete neglect for the

> safety of others. Gross negligence connotes the failure to exercise a slight degree of care. A defendant is guilty of gross negligence if he is so indifferent to the consequences of his conduct a to not give slight care to what he is doing.
>
> Now, I will instruct you further that no inference of gross negligence arises from the mere fact that an incident occurs. The plaintiff must prove from the greater weight of the preponderance of the evidence that there had been a breach of a legal duty owed to them by the defendant as I have already instructed you. I instruct you ***that the defendant, Aiken County Sheriff's Office, in operating the Aiken County Detention Center, as authorized by law, to contact with a medical contractor in this case, such as Southern Health Partners, to provide medical care to inmates***.
>
> I further instruct you that the defendant, ***the Aiken County Sheriff's Office, is not liable for any acts or omissions constituting medical malpractice or medical negligence committed by Southern Health Partners, their doctors or their nurses in the diagnosis and care provided to the plaintiff. <u>That means that your verdict cannot be based upon any acts or omissions committed by the Southern Health Partners and doctors</u>. Your only call here in this case is to determine the liability of the employees of the Aiken County Sheriff's Office***. You are required to judge the conduct of the Aiken County Sheriff's Office employees in which were and with the knowledge that they had at the time of the events at issue, and not judge them with the benefit of hindsight.
>
> Let me say that again and make sure I'm clear in reading this sentence. You are required to judge the conduct of the Aiken County Sheriff's Office employees in which were and with the knowledge that they had at the time of the events at issue, and not with the benefit of hindsight. In other words, the reasonableness of the Aiken County Sheriff's Office employees at issue must be judged from the perspective of a reasonable officer when the events occur rather than with 20/20 vision of hindsight.

(Trial Trans. Vol. 5, p.129, l.21 – p.131, l.22, with emphasis added, R. ___).

Further, ACSO zealously argued to the jury that Rhoads' injuries were caused solely by SHP's negligence:

> In this particular case, I would submit to you that Ms. Rhoads, the plaintiff, she has a valid claim, but it's not a valid claim against the party that she sued. It's a valid claim for medical malpractice against Southern Health Partners who, as we've discussed, is no longer in this courtroom.

> Don't take your eyes off the ball to what this case is about. This case is directed at the Aiken Sheriff's Office contending that employees of the Aiken County Sheriff's Office, the Aiken County Detention Center, were grossly negligent.

(Trial Trans., Vol. 5, p.59, l.19 – p.60, l.5, R. ___).

> In fact, the judge will, I believe, charge you that South Carolina law authorizes the use of a medical contractor. And he will also, I believe, charge you that the sheriff's office is not liable, is not responsible legally, for any types of acts or omissions or mistakes that Southern Health Partners made. We're not responsible for what Southern Health Partners did.

(Trial Trans., Vol. 5, p.64, l.8-15, R. ___).

> And unfortunately, something did happen here. But again, it's not because of the correctional staff. It's because the medical providers made errors, and we're not liable for the medical providers. The judge is going to charge you that. It's going to be very important to keep that straight.

(Trial Trans., Vol. 5, p.91, l.20-25, R. ___).

> And not to beat a dead horse, Southern Health Partners is not in this courtroom. Southern Health Partners is not on the verdict form that the judge is going to give you. But her claim is against Southern Health Partners, it's not against the correctional staff. I would submit to you, ladies and gentlemen of the jury, that the correctional staff didn't deny her medical care. And going back to my original point, there's absolutely no basis in this – in this record. ***There's no standard, there's not statute, there's no rule, that says a correctional officer has a legal duty, has an obligation, to override – or first, to second guess*** a medical diagnosis and course of treatment that are being provided on a ongoing basis by medical personnel and to seek a different type of course of treatment. There simply isn't any. ***You haven't heard an expert step into this courtroom, place their hand on the Bible, and tell you that that is so***.

(Trial Trans., Vol. 5, p.94, l.14 – p.95, l.8, emphasis added, R. ___).

The jury was repeatedly instructed that ACSO could not be held liable for the negligence of SHP's employees and then took less than an hour to determine that

ACSO's employees had been grossly negligent in their separate and distinct acts/omissions relating to Rhoads.

The Trial Court's finding that, as a matter of law, SHP's medical malpractice negligence was the same occurrence as ACSO's gross negligence, invades the province of the jury by vacating the jury's decision that necessarily found ACSO's gross negligence was a separate and distinct occurrence from SHP's medical negligence.

South Carolina's Case Law Does Not Support Such a Broad Interpretation of S.C. Code §15-78-70(d)

Since the TCA was enacted in 1986, S.C. Code §15-78-70(d) has never been interpreted in a manner that would stand for the proposition that a settlement with a private defendant can extinguish a claim against a governmental entity.

In *Wooten v. South Carolina DOT*, 326 S.C. 516, 485 S.E.2d 119 (Ct. App. 1997), the plaintiff (mother) filed two lawsuits (one on behalf of her daughter as her guardian and another on her own behalf relating to medical expenses for which she was responsible) naming a private individual at-fault driver (Henderson) and several TCA governmental entities (City of Greer, Greenville County School District, and SCDOT) as defendants. The plaintiff settled with Henderson and the School District, voluntarily dismissed the City, went to trial versus SCDOT, where she obtained jury awards for both her daughter ($315,000) and herself ($135,000). The trial court granted setoff for settlement amounts Henderson and the school paid, denied SCDOT's motions for JNOV, new trial, or in alternative, remittitur of verdict to the TCA's damages cap. The South Carolina Court of Appeals affirmed. Notably, in *Wooten*, the plaintiff's prior settlements (with both private and governmental defendants) did not extinguish the TCA cause of action against the SCDOT.

In *Rutland v. South Carolina Dept. of Transp.*, 400 S.C. 209, 734 S.E.2d 142 (2012), the driver (Bishop) of a vehicle encountered accumulated water on the road and lost control, thereby injuring the plaintiff (Rutland) and killing the plaintiff's wife, both of whom were passengers in the vehicle. The plaintiff settled with Bishop's insurance carrier for $30,000 and then filed a wrongful death action against SCDOT. The plaintiff later amended that complaint, adding General Motors (GM) as a defendant and subsequently settled with GM for $275,000, thus making the total settlement $305,000, which was allocated as $167,000 for wrongful death and $138,000 for survival. The case proceeded to trial against SCDOT, with a jury awarding $300,000. SCDOT moved for a set-off and asserted the entire amount of the prior settlement should be equitably reapportioned to the wrongful death action because there was zero evidence of conscious pain and suffering. The trial court agreed, thereby reducing the judgment to zero. Rutland appealed, and both the Court of Appeals and Supreme Court affirmed. *Id.* Notably, in *Rutland*, the plaintiff's prior settlements (with GM) did not extinguish the TCA cause of action against SCDOT.

In *Chester v. S.C. Dep't of Pub. Safety*, 388 S.C. 343, 698 S.E.2d 559 (2010), a wrongful death case arising obstructed visibility on a highway as a result of heavy smoke from a controlled burn by the South Carolina Forestry Commission, the plaintiff brought suit against three TCA defendants in Dorchester County and subsequently received settlements from a number of other defendants in actions brought in Hampton County. The Dorchester TCA defendants argued their right to apportionment under S.C. Code §15-78-100(c) entitled them to join the other alleged tortfeasors the plaintiff had settled with in Hampton County, and since these co-tortfeasors could not be joined since personal representative had already settled with them, dismissal was required. The trial court agreed and dismissed the Dorchester County TCA defendants. The South Carolina Supreme Court reversed, refusing to overturn the firmly established common law

principle that a plaintiff has the sole right to determine which co-tortfeasors to sue. Notably, in a case that was decided post-*Wade*, the Supreme Court specifically noted that if dismissal were required when "defendants cannot be joined because they have already settled with the plaintiff," this would "would thwart our strong public policy favoring the settlement of disputes." *Chester* at 346, 698 S.E.2d at 560. In reversing the trial court's decision, the Supreme Court specifically found:

> We are not persuaded that the General Assembly, in enacting §15-78-100(c), giving a SCTCA defendant the right to a proportionate verdict "when an alleged tortfeasor is named a party defendant," intended to abrogate the tort plaintiff's right to choose her defendant, ***nor to effectively force the plaintiff to choose between settling with some parties and thereby forego her right to sue a SCTCA defendant, or going to trial against all co-tortfeasors***."

Id. (emphasis added). Notably, in *Chester*, the plaintiff's prior settlements (with Hampton County TCA defendants) did not extinguish the TCA cause of action against the Dorchester County TCA defendant.

In *Smalls v. South Carolina Dep't of Educ.*, 339 S.C. 208, 528 S.E.2d 682 (Ct. App. 2000), the plaintiffs brought wrongful death and survival actions after their daughter was killed by a truck as she crossed a road in order to be picked up by a SCDOE school bus. The plaintiff initially filed suit against the private at-fault driver of the truck (Bussiere) and his employer (T.F. Anderson & Sons, Inc.) and later amended the complaint to add SCDOE. Prior to trial, the plaintiff settled with Bussiere and T.F. Anderson for $100,000, allocating $90,000 to wrongful death and $10,000 to survival. The remaining TCA cause of action against SCDOE went to trial, with jury returning a $600,000 verdict for the wrongful death and $310,000 verdict for survival. The trial court then reduced both verdicts to the TCA cap. SCDOE appealed the trial court's rulings on several motions, including the refusal of the trial court to submit a special interrogatory to the jury to allocate liability between SCDOE and the driver, arguing S.C. Code §15-78-

100(c) mandated such. The Court of Appeals agreed with the trial court that S.C. Code §15-78-100(c)'s special verdict form requirement was inapplicable "in a case such as this where only one named defendant was before the jury." *Smalls* at 218, 528 S.E.2d at 687. Notably, in *Smalls*, the plaintiff's prior settlements (with private defendants) did not extinguish the TCA cause of action against the SCDOE.

Unfortunately, the Trial Court ignored the above-case law, particularly that which shows the issue of the loss of apportionment (set forth in S.C. Code §15-78-100(c)) does **not** support a determination that 70(d) barred Rhoads from pursuing her cause of action against ACSO:

> Section 15-78-100(c) requires that a jury return a special verdict specifying the proportional liability of each joint tortfeasor, both governmental and non-governmental. The reason for this is clear and supported by constitutional principles: the government and the taxpayers are not jointly and severally liable and instead are only liable for their own proportioned share of liability. The right to apportioned fault under Section 15-78-100(c) is lost, however, if a joint tortfeasor is able to settle out of litigation. That is the reason that Section 15-78-70(d) was enacted and must be read *in pari materia* with Section 15-78-100(c). Contrary to the Plaintiff's argument, the General Assembly did not deny a plaintiff's or claimant's right to settle with less than all alleged joint tortfeasors, but if the plaintiff or claimant does settle with a joint tortfeasor, that then bars any further recovery from a governmental entity because the governmental entity has lost the critical right to apportionment.

(Order, filed Aug. 19, 2024, p. 6, R. ___).

The Court of Appeals' decision in *Smalls* exposes the error in the Trial Court's reasoning above. In *Smalls*, this Court specifically addressed the loss of the special verdict apportioning fault (see S.C. Code §15-78-100(c)) when a plaintiff settled with non-TCA defendants after a multi-defendant lawsuit was filed:

> The trial court ruled that a special interrogatory was not necessary as ***Bussiere and his employer has settled with Smalls prior to trial***. The court reasoned Department was the only remaining defendant before the jury in the case and so there was no need for the jury to apportion liability between multiple defendants. **We agree with the**

> **trial court's determination that the requirement in §15-78-100(c) for a special verdict form is not applicable in a cause such as this where only one named defendant was before the jury.**

Smalls at 218, 528 S.E.2d at 687 (emphasis added). The *Smalls* court then determined that while apportionment was not appropriate, a set-off to account for the prior settlement/recovery was needed. *Smalls* at 220-21, 528 S.E.2d at 687-89. Thus, the lack of apportionment between tortfeasors was not a problem in the matter at bar because ACSO had a right to seek a set-off for the settlement proceeds paid by SHP.

The Trial Court's order vacating the jury's verdict simply cannot be reconciled with *Wade*, *Wooten*, *Rutland*, *Chester*, and *Smalls* (let the plain language of the statute as argued above).

In reality, ACSO may actually recognize that the Trial Court's order cannot stand, because approximately three months after Rhoads' motion to reconsider in the matter at bar was denied, in another case involving a plaintiff injured at the ACDC and where the plaintiff had previously settled causes of action brought against SHP, ACSO settled the plaintiff's TCA cause of action. (*Lila Crow, as Personal Representative of the Estate of Adam Crow v. Michael Hunt, in his Representative Capacity as Sheriff of Aiken County, et al.*, C/A No.2020-CP-02-01434, Verified Petition filed Sept. 30, 2024, R. ___).[14] In *Crow*, **after** the plaintiff settled with the very same SHP defendants and in a case where ACSO wase presented by the same counsel as in the present matter, instead of moving for dismissal of the plaintiff's TCA claims, it agreed to pay a six-figure settlement. (*Lila Crow, as Personal Representative of the Estate of Adam Crow v. Michael Hunt, in his representative capacity as Sheriff of Aiken County, et al.*, C/A No.2020-CP-02-01434,

[14] *See* Rule 201(d) SCRE ("A court shall take judicial notice if requested by a party and supplied with the necessary information.").

Order Approving Wrongful Death and Survival Settlement, filed April 30, 2024, R. ___). Rhoads submits that if ACSO actually had the courage of its convictions regarding the applicability of S.C Code §15-78-70(d) and believed that the Trial Court's order in this case was correct, it simply would not have settled the *Crow* case for six figures.

II. A DETERMINATION THAT A PRIOR SETTLEMENT WITH A PRIVATE COMPANY SERVES TO EXTINGUISH ALL TORT CLAIMS AGAINST GOVERNMENTAL ENTITIES VIOLATES PUBLIC POLICY BY STRONGLY DISCOURAGING SETTLEMENTS.

South Carolina has a "strong public policy favoring the settlement of disputes." *Riley v. Ford Motor Co.,* 414 S.C. 185, 196, 777 S.E.2d 824, 830 (2015) (*citing Chester v. S.C. Dep't of Pub. Safety*, 388 S.C. 343, 698 S.E.2d 559 (2010)); *see also Kinghorn v. Sakakini*, 426 S.C. 147, 152 (Ct. App. 2019) (noting that "it has long been the policy of the Court to encourage settlement in lieu of litigation"). "Settlements are not designed to benefit nonsettling third parties. They are instead created by the settling parties in the interests of these parties." *Riley* at 197, 777 S.E.2d 831 (quoting *Lard v. AM/FM Ohio, Inc.*, 901 N.E.2d 1006, 1018, 1019 (Ill. App. 2009)).

The Trial Court's interpretation and application of S.C. Code §15-78-70(d) would have the effect of chilling settlements anytime a government entity were a party to a tort case. By way of example, suppose there were to be a three-vehicle wreck involving: (1) the plaintiff, (2) Defendant P, who is a private citizen who negligently operated a vehicle involved in the wreck; and (3) Defendant G, who is a governmental entity whose employee negligently operated a vehicle involved in the wreck (*e.g*. city sanitation truck, county building inspector, Department of Corrections transport vehicle, etc.). Should the plaintiff driver settle with Defendant P, the Trial Court's ruling in the present matter

would require—irrespective of Defendant G's culpability in the wreck and no matter how small the settlement with Defendant P may have been—Defendant G should be entitled to a dismissal merely as a result of plaintiff's settlement with Defendant P. If this were the law of South Carolina, it would discourage the plaintiff from settling with the private citizen.

This is precisely the judicial straightjacket on settlements the Court of Appeals refused to support in *Wade* as a matter of judicial/public policy:

> Here, Wade only added the County after Pierce testified in his deposition that he was working on the job. In short, under the facts here, to refuse to let Wade end his lawsuit with GEICO ***would force him to go to trial against both parties*** – even though GEICO wanted out. As a matter of judicial policy, ***it would wreak havoc*** to adopt the position of the dissent. ***We refuse to countenance the use of judicial straightjacket in this trial scenario***.

Wade v. Berkeley County, 339 S.C. 513, 527, 529 S.E.2d 743, 751, *aff'd in part and rev'd in part* (Ct. App. 2000) (emphasis added).

Similarly, this Court refused to dismiss the plaintiff's case against the Dorchester SCTCA defendants in *Chester*, *supra*, when other defendants could not be joined (because they had settled), finding to do so would "thwart our strong public policy favoring settlement of disputes" and not being persuaded that the General Assembly intended to "effectively force the plaintiff to choose between settling with some parties and thereby forego her right to sue a TCA defendant, or going to trial against all co-tortfeasors." *Chester v. S.C. Dep't of Pub. Safety*, 388 S.C. 343, 346, 698 S.E.2d 559, 560 (2010).

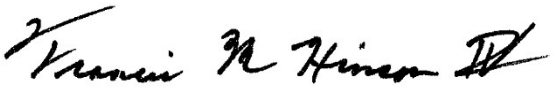
If the Trial Court's interpretation and application of S.C. Code §15-78-70(d) is the law in South Carolina, plaintiffs would be strongly discouraged from settling claims with private corporations anytime a governmental entity was a party to the same lawsuit. This

would apply to road defect cases where a plaintiff brought claims against the Department of Transportation for design defects and also other claims against a private state contractor for the quality of a road's construction. Countless other common scenarios and examples exist. Were the Trial Court's interpretation of 70(d) to be adopted by our appellate courts, future plaintiffs would be encouraged to file separate lawsuits and fight consolidation, and if consolidation were to be granted, a plaintiff could not settle with the non-governmental defendant without fully ending his/her case, thereby discouraging settlement. All of this would wreak havoc and only add to the workload faced by our trial courts.

CONCLUSION

The Trial Court erred in applying S.C. Code § 15-78-70(d), vacating the jury's verdict, and granting a JNOV and dismissal of Rhoads' claims against ACSO. Rhoads' prior medical malpractice settlement with the private, for-profit medical company operating as an independent contractor at the Aiken Couty Detention Center does not serve to extinguish her claim against ACSO. The Trial Court's order from August 19, 2024, should be revered and the jury's verdict reinstated.

Respectfully submitted,



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