

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable David P. Caraker, Jr.

Appellate Case No. 2026-000074

Delores Holloway and Sherica Powell, Respondents,

v.

Jolly Ehiabhi, Anagkaso, LLC DBA Anagkaso
Logistic, The South Carolina Ports Authority, and
Randy David Anderson, Defendants,

AND

The South Carolina Ports Authority, Appellant,

v.

American Millennium Insurance Company, Third-Party Defendant.

Initial Brief of Appellant
South Carolina Ports Authority

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Statement of the Issue on Appeal

S.C. Code Ann. § 15-78-70(d) provides that “a settlement or judgment in an action or a settlement of a claim under [the Tort Claims Act] constitutes a complete bar to any further action by the claimant against a . . . governmental entity by reason of the same occurrence.” On October 18, 2024, Plaintiffs each executed a separate Settlement Agreement pursuant to which Holloway was paid \$812,414.96 and Powell was paid \$58,960.87 by American Millennium Insurance Company pertaining to an automobile accident occurring on January 25, 2023. After execution of each Settlement Agreement, which named the South Carolina Ports Authority as an Insured, Plaintiffs instituted the underlying actions against the Ports Authority to recover damages based on the same automobile accident. Does § 15-78-70(d) require reversing the circuit court’s denial of the Ports Authority’s motions to dismiss?

Statement of the Case

These actions arise from a motor vehicle accident occurring in Georgetown County and were initiated on January 24, 2025, when Delores Holloway and Sherica Powell each filed a Summons and Complaint against Jolly Ehiabhi, Anagkaso, LLC, DBA Anagkaso Logistic, the South Carolina Ports Authority, and Randy David Anderson.

Pertinent to this appeal, the Ports Authority filed Answers on April 18, 2025. On May 14, 2025, the Ports Authority filed (1) Motions to Dismiss, based upon a Settlement Agreement each Plaintiff executed, and (2) Amended Answers, adding Third-Party Complaints against American Millennium Insurance Company in each matter. AMIC filed Motions to Dismiss on June 16, 2026, seeking dismissal of the Ports Authority's Third-Party Complaints. On September 18, 2025, the Ports Authority filed Memoranda in Support of its Motions to Dismiss and Memoranda in Opposition to AMIC's Motions to Dismiss.

The circuit court heard arguments on the pending Motions to Dismiss on September 25, 2025. On October 13, 2025, the court entered Orders Denying the Ports Authority's Motions to Dismiss each Complaint, concluding that the Settlement Agreement does not constitute the "settlement of a claim under [the Tort Claims Act]." (R. p. ____) (Order at 3). On the same date, the court entered Orders Staying AMIC's Motions to Dismiss.

On October 23, 2025, the Ports Authority filed two Motions to Reconsider in each matter: one directed at the Orders Denying the Motions to Dismiss, and one directed at the Orders Staying the Motions to Dismiss as to the Ports Authority's Third-Party Complaints. On October 31, 2025, AMIC filed Memoranda in Opposition to the Motions to Reconsider. On December 29, 2025, the trial court entered Orders Denying the Motions to Reconsider.

The Ports Authority filed Notices of Appeal on January 13, 2026. On that same date, the Court directed the Ports Authority to "serve and file memoranda addressing the issue of

appealability.” Accordingly, the Ports Authority filed its “Memorandum Regarding Appealability of Interlocutory Order.” On April 14, 2026, the Court issued an Order stating that it appears the dismissal orders are subject to immediate appeal, allowing the appeals to proceed at this time. Subsequently, the Court consolidated the Ports Authority’s appeals of the Orders Denying its Motions to Dismiss Holloway’s and Powell’s Complaints.

Statement of the Facts

Plaintiffs allege claims arising from an automobile accident that occurred on or around January 24, 2023. (R. p. ____) (Compl. ¶ 6).¹ They allege that Defendant Randy Anderson was driving a tractor-trailer that collided into her vehicle. (R. p. ____) (Compl. ¶ 9). Plaintiffs allege that the initial collision caused Plaintiff Holloway to hit another car in front of her. *Id.* Plaintiff Powell alleges she was a passenger in the vehicle operated by Plaintiff Holloway. (R. p. ____) (Powell Compl. ¶ 11).

Plaintiffs allege that the driver of the tractor was employed by Anagkaso Logistic and that Anagkaso Logistic also owned the tractor. (R. pp. ____) (Compl. ¶¶ 11-12). Plaintiffs allege the chassis and container used by Anagkaso Logistic was owned or under the control of the Ports Authority. (R. p. ____) (Compl. ¶ 14). Plaintiffs allege that the Ports Authority “is a governmental agency subject to suit pursuant to the South Carolina Tort Claims Act and common law of the state.” (R. p. ____) (Compl. ¶ 5). Plaintiffs also allege that the Court has jurisdiction in part based on S.C. Code Ann. §§ 15-78-10 to -220, (R. p. ____) (Compl. ¶ 7), which is the South Carolina Tort Claims Act.

¹ The factual allegations in both Complaints are substantially the same; therefore, for ease of reference, citations to the record refer to Holloway’s Complaint unless it is necessary to cite to Powell’s Complaint specifically.

Before filing suit, Plaintiff Holloway signed and executed two settlement documents. The first was a Total Loss Property Damage Release executed on March 9, 2023. *See* (R. p. ____) (Release at 1). In that document, Plaintiff Holloway “release[d], acquit[ted] and forever discharge[d] . . . [the] South Carolina Ports Authority . . . from any and all claims . . . on account of or in any way growing out of any and all known and unknown, as it relates to property damage only and the consequences thereof resulting or to result from the occurrence on or about [January 26, 2023.]” *Id.*

Second, Plaintiffs Holloway and Powell each executed their own “Settlement Agreement”; Holloway on October 18, 2024, and Powell on October 19, 2024. *See* (R. pp. ____) (Agm’t at 1, 5). The Settlement Agreements were executed concerning an “automobile accident that occurred on January 25, 2023.” (R. p. ____) (Agm’t at 1). AMIC facilitated the Settlement Agreements pursuant to a \$1,000,000.00 insurance policy, in which each of the Defendants, including the Ports Authority, were insureds. (R. p. ____) (Agm’t at 1). Specifically, the Settlement Agreements name, among others, the Ports Authority as an “Insured” and a “Covenantee” to the terms agreed to by Plaintiffs as “Claimant.”² (R. p. ____) (Agm’t at 1). The insurance policy that paid the proceeds for the Settlement Agreements was issued by AMIC pursuant to the Chassis Interchange Agreement between Anagkaso Logistic and the Ports Authority, which required Anagkaso Logistic to indemnify the Ports Authority and to maintain a \$1,000,000 Commercial Auto & Property Damage Policy naming the Ports Authority as an insured. (R. p. ____) (Interchange Agm’t at 5).

² Plaintiff Powell’s Settlement Agreement contains a drafting error. At the beginning, the Agreement identifies Plaintiff Holloway as the Claimant in the introductory paragraph. (R. p. ____) (Agm’t at 1). However, the remainder of the Agreement references Powell’s claims against the Covenantees and Insured parties and provides that she is receiving the payment. (R. pp. ____) (Agm’t at 1-5). And, at the end, Powell signed the Agreement where it states that, “In witness whereof Claimant executes this Agreement and Covenant not to Execute on October 19, 2024. (R. p. ____) (Agm’t at 5).

When executing the Settlement Agreements, each Plaintiff agreed that “[t]his instrument may be pleaded as a complete satisfaction of any judgment against Insureds and as a complete bar to and release of any claim against the assets of Insureds.” (R. p. ____) (Agm’t at 4, ¶ 7). Plaintiff Holloway was paid \$812,414.96 in return for her execution of the Settlement Agreement, and Powell was paid \$58,960.87. (R. p. ____) (Agm’t at 2).

Standard of Review

“In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRPC, the appellate court applies the same standard of review as the trial court.” *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). “The motion will not be sustained if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.” *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001). “Nevertheless, affidavits and other evidence outside the pleadings may, in certain circumstances, be considered in support of a motion to dismiss based on lack of jurisdiction.” *Baird v. Charleston Cnty.*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999). “[T]he presentation of such evidence does not convert the motion to dismiss into one for summary judgment [because] “[s]ummary judgment is an adjudication on the merits of the case, whereas dismissal for lack of subject matter jurisdiction is not an adjudication on the merits.” *Id.*; see *Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009) (holding that, without converting the motion into a motion for summary judgment, a court may consider documents incorporated by reference in the complaint to prevent plaintiffs “from surviving a motion to dismiss by intentionally omitting documents upon which their claims are based”).

Argument

Because a Settlement Agreement involving the Ports Authority as a party had already been consummated regarding the automobile accident on which the Complaints are based, S.C. Code Ann. § 15-78-70(d) requires dismissal of the actions and the circuit court erred in denying the motions to dismiss.

The Ports Authority moved to dismiss the Complaints in both the Holloway and Powell matters on the basis that, pursuant to S.C. Code Ann. § 15-78-70(d), the Settlement Agreements executed by Plaintiffs barred any further proceedings against the Authority concerning the January 25, 2023, automobile accident. Although the Ports Authority was named in both Agreements and Plaintiffs were paid to satisfy claims against the Authority, the circuit court denied the motions, ruling that neither of the agreements were settlements under the South Carolina Tort Claims Act for purposes of § 15-78-70(d). For the reasons explained below, the circuit court erred in denying the motions to dismiss.

1. Although the Tort Claims Act expressly requires a narrow construction of its waivers of governmental immunity, the circuit court did not consider this interpretive requirement in denying the Ports Authority’s motions to dismiss.

Although the Tort Claims Act waives governmental immunity for the Ports Authority as an instrumentality of the State, that waiver is limited. S.C. Code Ann. § 15-78-30(e) (defining “state” to mean “the State of South Carolina and . . . its . . . instrumentalities”); S.C. Code Ann. § 54-3-130 (“The [Ports] Authority is created as an instrumentality of the State”); *see, e.g., Proctor v. Dep’t of Health & Env’t Control*, 368 S.C. 279, 291, 628 S.E.2d 496, 502 (Ct. App. 2006) (“[T]he Act’s waiver of governmental immunity is limited.”). The General Assembly in fact expressly declared that it is “the public policy of the State of South Carolina that the State . . . [is] only liable for torts within the limitations of this chapter and in accordance with the principles established herein.” S.C. Code Ann. § 15-78-20(a); *see id.* § 15-78-20(b) (granting the “State . . . immunity from liability and suit for any tort except as waived by this chapter”).

In furtherance of that public policy, the General Assembly required that the Tort Claims Act provisions “establishing limitations on and exemptions to the liability of the State. . . *must be liberally construed in favor of limiting the liability of the State.*” *Id.* § 15-78-20(e) (emphasis added); *see also id.* § 15-78-200 (same). One of those “limitations on and exemptions to the liability of the State” is found in § 15-78-70(d):

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.

Thus, if the Settlement Agreement constitutes a (1) settlement of a claim against the Ports Authority (2) under the Tort Claims Act, *see Wade v. Berkeley Cnty.*, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002), any further action against the Ports Authority is completely barred.

2. Because the Settlement Agreement constitutes the “settlement of a claim” against the Ports Authority under the Tort Claims Act, § 15-78-70(d) bars Plaintiffs’ claims and the Complaints should be dismissed as to the Ports Authority.

The circuit court erred in concluding that the Settlement Agreement does not constitute the “settlement of a claim under this chapter.” First, it is beyond question that the agreement executed by each Plaintiff is the settlement of a claim against the Ports Authority, and the circuit court did not rule otherwise.³ Each agreement is entitled “Settlement Agreement” and describes itself as an “Agreement and Covenant not to Execute.” (R. p. ____) (Agm’t at 1); *see Wade*, 348 S.C. at 228, 559 S.E.2d at 587–88 (“Under South Carolina law, a covenant not to execute is one type of settlement agreement.”). And “a covenant not to execute is . . . *a settlement between the parties to*

³ For the same reasons discussed in this brief, the Release dated March 9, 2023, executed by Plaintiff Holloway and releasing all claims for property damage further supports the argument that she cannot make any claims directly against the Ports Authority by virtue of § 15-78-70(d). *See* (R. p. ____) (Release at 1). However, because the allegations of the Complaints are directed to bodily injury claims, the Ports Authority restricts its discussion in the brief to the impact of the Plaintiffs’ respective Settlement Agreements dated October 18, 2024. *See* (R. pp. ____) (Agm’t at 1, 5).

the agreement.” *Id.*, 348 S.C. at 228, 559 S.E.2d at 587 (emphasis added). In the Settlement Agreements, each Plaintiff is a “Claimant”⁴ regarding their “claim[s] against Insureds.” (R. p. ____) (Agm’t at 1). The Ports Authority was an insured on the policy against which Plaintiffs made claims and is identified as a Covenantee and an Insured in the Settlement Agreement. (R. p. ____) (Agm’t at 1). And Plaintiffs agreed that “[t]his instrument may be pleaded as a complete satisfaction of any judgment against Insureds and as a complete bar to and release of any claim against the assets of Insureds.” (R. p. ____) (Agm’t at 4, ¶ 7). Consequently, the Settlement Agreement is the settlement of Plaintiffs’ claims against the Ports Authority, satisfying the first requirement of § 15-78-70(d).

Second, contrary to the Order, the Settlement Agreement is “under this chapter”—i.e., under the Tort Claims Act—as required to preclude further action by Plaintiffs against the Ports Authority. § 15-78-70(d); *see Wade*, 348 S.C. at 229, 559 S.E.2d at 588. In ruling otherwise, the circuit court relied on *Wade*, in which the supreme court held that because the plaintiff had not asserted any claim against the governmental entity before the settlement agreement—between only the plaintiff and a private individual—was executed, there were no actions under the Act at the time of execution; therefore, the settlement agreement was not under the Act. *Id.*, 348 S.C. at 230, 559 S.E.2d at 588. In contrast, the Ports Authority was an insured on the policy against which Plaintiffs made claims and was identified specifically as a Covenantee and an Insured in each Settlement Agreement. (R. p. ____) (Agm’t at 1). Similarly, unlike in *Whetstone v. Office of Governor*, No. 2023-001424, 2026 WL 810197, at *2 (S.C. Ct. App. Mar. 20, 2026), where there “were no allegations of tortious conduct by the government entity” in the settlement with the government employee, the Settlement Agreement expressly states that its purpose is to “settle

⁴ See discussion *supra* n.2.

Claimant's claim against Insureds," which expressly includes the Ports Authority. (R. p. ____)
(Agm't at 1). And, somewhat echoing the language of § 15-78-70(d), the Settlement Agreement states that "[t]his instrument may be pleaded as a complete satisfaction of any judgment against Insureds and as a *complete bar to and release of any claim against the assets of Insureds.*" (R. p. ____)
(Agm't at 4, ¶ 7 (emphasis added)).

Thus, including the Ports Authority in the Settlement Agreement requires a different resolution than in either *Wade* or *Whetstone* because settling a claim against the Ports Authority as an instrumentality of the State necessarily involves settling a claim under the Tort Claims Act. § 15-78-20(b) (the Tort Claims Act establishes "the exclusive civil remedy available for any tort committed by a governmental entity"). It is impossible to conclude otherwise. And, indeed, Plaintiff now acknowledges that the Ports Authority is a "governmental agency subject to suit pursuant to the South Carolina Tort Claims Act." (R. p. ____)
(Compl. ¶ 5). Stated another way, because the Ports Authority's tort liability exists only by virtue of the Tort Claims Act, including the Ports Authority as a tort liability releasee inherently invokes the Tort Claims Act.

The circuit court therefore erred in concluding that the Settlement Agreement was not made "under the Tort Claims Act." In doing so, the circuit court reasoned that the "settlement . . . was pursuant to an indemnity agreement between two parties, and by a private insurance company." (R. p. ____)
(Order at 4). However, that distinction is irrelevant to the statutory framework and overlooks the fact that, in addition to indemnity, the Chassis Interchange Agreement required Anagkaso Logistic to obtain a \$1,000,000 policy naming the Ports Authority as an "additional insured." (R. p. ____)
(Interchange Agm't ¶ 10). That is, the policy served to satisfy any claims against the Ports Authority based on Anagkaso Logistic's use of the chassis. *See* (R. p. ____)
(Order at 2) (quoting Interchange Agm't ¶ 13 (R. p. ____)). And while the policy was obtained to fulfill

Anagkaso Logistic's indemnity obligation, that obligation only arises if a claim is made against the Ports Authority; else, there is nothing to indemnify. The circuit court focused on the mechanics of payment, but § 15-78-70(d) turns on the nature of the claim settled. The source of the settlement funds and the indemnity arrangement that produced coverage are beside the point; the controlling question is whether Plaintiffs settled tort claims against a governmental entity.

As such, the circumstances of this case are no different than if Plaintiffs' claims had been paid from an insurance policy purchased directly by the Ports Authority: there was a settlement of Plaintiffs' claims alleging tort liability against a State instrumentality. *Cf. McCall v. Finley*, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987) ("[W]hatever doesn't make any difference, doesn't matter."). Thus, the Settlement Agreement necessarily involved the settlement of a claim under the Tort Claims Act for purposes of the § 15-78-70(d) bar on successive claims against the State. That is especially so given that the "limitations on and exemptions to the liability of the State . . . must be liberally construed in favor of limiting the liability of the State." §§ 15-78-20(e) & 15-78-200. The circuit court erred in denying the Ports Authority's motion to dismiss.

Conclusion

Because the Settlement Agreement includes the Ports Authority as a named insured and settles their bodily injury claims against the Ports Authority arising out of Anagkaso Logistic's use of the chassis, Plaintiffs' respective agreements constitute the settlement of a claim under the Tort Claims Act. Section 15-78-70(d) therefore bars any further actions against the Ports Authority based on the same facts. Plaintiffs' claims therefore are barred, and the Court should order dismissal of the Ports Authority from the underlying actions.

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Respectfully submitted,

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