Exhibit A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF BAMBERG	)	CASE NO.: 2013-CP-05-63
Janette Buchanan and Shana Smallwood, Individually and as Co-Personal Representatives of the Estate of James S. Buchanan,	)	ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
Plaintiffs,	)	
v.	)	
The South Carolina Property and Casualty Insurance Guaranty Association,	)	
Defendant.	)	

This matter was before me on Cross-Motions for Summary Judgment filed by both parties. The Plaintiffs were represented by Daniel Luginbill and the Defendant was represented by Howard A. VanDine, III and Tara C. Sullivan.

There is no dispute of material fact, and the issues before the Court are purely matters of law. Accordingly, Summary Judgment is the appropriate mechanism to resolve the dispute. However, the facts of the case must be set forth to accurately apply them to the applicable law in this case. Accordingly, I make the following:

FINDINGS OF FACTS

On January 7, 2008, James S. Buchanan was involved in a motor vehicle accident in Bamberg County, South Carolina. A log truck owned by Travis Scott and driven by Eddie Best had a set of tandem tires come off the axle. This set of tires struck the front of Mr. Buchanan's vehicle, breaking the front axle. As a result, Mr. Buchanan's truck crossed the centerline striking another tractor-trailer. The resulting collision caused Mr. Buchanan's truck to catch fire and he was incinerated in the cab of his truck.

Mr. Scott's vehicle was insured for One Million ($1,000,000) by Aequicap Insurance Co. (Aequicap). Aequicap went into receivership in the state of Florida. The South Carolina Property and Casualty Guaranty Association (The Association) has assumed management of claims made against South Carolina insureds for causes of actions made against the Florida Guaranty Fund.

Pursuant to a settlement of the underlying tort case, (Case Number 2008-CP-05-122), which was designed to frame the outstanding issues between the parties, the damages suffered by the Plaintiff are $800,000. After giving the Association credit for $376,622 received by the Plaintiffs pursuant to Florida Workers' Compensation benefits and settlements with certain co-defendants in the underlying case, there remains a "balance" due to Plaintiffs from the full amount of the Judgment of $423,378, which obviously exceeds the $300,000 cap of S.C. Code Ann., §38-31-60. The Association claims that the credits should be applied from the cap, which would leave a balance of zero. Plaintiff asserts the credits are applied to the full amount of the judgment, leaving the Association liable for its full statutory limits of $300,000.

Given the stipulation of facts the parties have entered as part of the wrongful death settlement, there are no issues of material fact in dispute. The only question is one of law for the Court. Both parties have moved for summary judgment, and the court's decision is one of statutory interpretation only.

CONCLUSIONS OF LAW

I. THE PLAIN LANGUAGE OF THE STATUTES MANDATES THAT THE ASSOCIATION HAS AN OBLIGATION TO PAY $300,000 TO THE PLAINTIFF.

The South Carolina Property and Casualty Insurance Guaranty Association Act, S.C. Code Ann, §38-31-10, et seq. (the "Act"), is a remedial statute designed to "protect consumers in the event that their insurer becomes insolvent." *Hudson v. Lancaster Convalescent Center*, 7543 S.E.2d 486, 407 S.C. 112 (2014). "[The Association's] purpose is to provide some protection to insureds whose insurance companies become insolvent." *South Carolina Property and Cas. Ins. Guar. Ass'n v. Carolinas Roofing and Sheet Metal Contractors Self-Insurance Fund*, 446 S.E.2nd 422, 424, 315 S.C. 555, 557 (1994).

Examining the text of the applicable statutes reveals portions of the statute are most ambiguous. The Association has asserted that *Hudson*, *supra*, held that the entire chapter is unambiguous. The case held nothing of the sort, and instead discussed only the ability of the Association to sue or be sued. *Hudson* held that those relevant portions of the statute were unambiguous. *Hudson* did look at the definition of "covered claim," but only in the context of determining whether the Association could be liable in suit for its own actions, specifically penalties and interest for not paying a claim due under a policy of workers' compensation insurance. The Court held it was liable, declining to limit the Association's liability to the payment of covered claims only.

S.C. Code Ann. § 38-31-20 defines "covered claim" as "... an unpaid claim ... which arises out of and is within the coverage ... of an insurance policy ... if the insurer is insolvent ... ." The only limitation within the definition is that the claim must be within the coverage limits of the policy written by the defunct insurer. Nothing in the definition of "covered claim" refers to a limit of the Association's liability to pay on a

claim. This is logical, as no one making a claim should be allowed to seek an amount greater than what the policy would pay out if it was in full force and effect.[1]

S.C. Code Ann. § 38-31-60 limits the extent of the Association's liability to pay a claim to $300,000. Section 38-31-60(a)(iv) provides, in pertinent part, "The association ... is obligated to the extent of claims existing before the determination of insolvency ... ." This *obligation* includes only the amount each covered claim is in excess of two hundred fifty dollars and is less than three hundred thousand dollars." (emphasis added). Under the plain language of this section, it is the Association's duty to pay that is limited, not the amount of the covered claim. This is a critical distinction in determining how to apply the set-offs.

S.C. Code Ann., § 38-31-100(1) gives the Association a setoff against "a covered claim" for the full limits of any other coverage from any other insurer that may apply. If there are no limits, then the "claim must be reduced by the total recovery." Of critical importance to understanding the legislature's intent is the fact that § 38-31-100(1) applies the set-off to the "covered claim," rather than the "Association's obligation." [2]

Applying this framework of statutory language to the facts of this case, there was a claim pending before the insolvency, as the wreck happened prior to the insolvency. Neither party disputes this is a covered claim. The *covered claim* is for $800,000, per the approved wrongful death settlement. The off-sets of § 38-31-100(1), totaling $376,622,

[1] It is important to note that all but one of the cases listed by the Association in Appendix A to its brief are cases involving setoffs applied to the policy limit, rather than the statutory limit, despite how they are framed in the brief of the Association.

[2] In this case, the damages were agreed upon and the set-off limited to the amounts actually received, rather than policy limits, under the agreement of the parties settling the wrongful death claim. This was done with the intent to better frame the issue to be decided in this declaratory judgment action.

are then applied to the $800,000 claim, leaving a balance of $423,378. The Association's *obligation* to pay is then further limited to $300,000 by action of § 38-31-60.

It is clear that the purpose of this section is to prevent a double-recovery by an insured making a claim against a solvent insurer then making the same claim against the Association. By following the plain logical interpretation of the statutory text, this purpose is met, while also fulfilling the main purpose of the Act by providing coverage.

II. S.C. CODE ANN. § 38-31-60 IS IDENTICAL IN FUNCTION TO THE TORT CLAIMS ACT, WHICH APPLIES THE SETOFFS TO DAMAGES, NOT THE CAP.

A cardinal rule of statutory interpretation is to determine the intent of the legislature. *Jones v. State Farm Mut. Auto. Ins. Co.*, 612 S.E.2d 719, 364 S.C. 222, (Ct. App. 2005). Where the language of an act is ambiguous or gives rise to doubt as to legislative intent, a court may search for that intent beyond the borders of the act itself. *Id.* To the extent ambiguity remains, looking to similar statutes within South Carolina's statutory framework helps guide the inquiry.

In construing a statute, the court looks to the language as a whole in light of its manifest purpose. *State v. Dawkins,* 352 S.C. 162, 573 S.E.2d 783 (2002); *Adams v. Texfi Indus.*, 320 S.C. 213, 464 S.E.2d 109 (1995). It is well settled that statutes dealing with the same subject matter are *in pari materia* and must be construed together, where possible, to achieve a harmonious result. *Joiner, ex rel. Rivas v. Rivas*, 536 S.E.2d 372, 342 S.C. 102 (2000). Section 38-31-10, et seq. deals explicitly with the application of limitations on the liability of the state, in this case the non-profit Association created by

the State of South Carolina, to persons who have been injured. Accordingly, these statutes must be read together to produce a harmonious treatment of the issues.

There are no reported cases interpreting S.C. Code Ann., §38-31-60. However, there are other limits on the liability of state entities in South Carolina's legislative framework. As Defendant has pointed out in argument and in its brief, the Association is not a governmental agency, but rather a separate entity created by statute. This distinction is not important here, as the Court is looking to similar statutes for guidance only.

The South Carolina Tort Claim's Act, S.C. Code Ann., § 15-78-10, et seq., contains various provisions limiting the liability of state entities for claims made against them. Specifically, S.C. Code Ann.,§ 15-78-120 provides, in pertinent part, "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."

Section 38-31-100(1) has the same purpose as § 15-78-120 in that it prevents a double recovery as discussed above, and protects the State from unlimited exposure. This interpretation gains further support in § 38-31-100(2), which specifically contemplates a claimant being able to recover from more than one Guaranty Association, and that the S.C. Association is entitled to credit for the amount of recovery the claimant receives from such other Association. Again, the purpose of the language is to prevent double recovery, not prevent full recovery, by the claimant. The Association admits this purpose in its brief when it cites to the following language from *Colorado Ins. Guar. Ass'n v. Menor*, 166 P.2nd 205, 215 (Colo. App. 2007), ". . . the fund should be reserved

to pay insureds of insolvent insurers who have not recovered the same damage from another source." Here, Plaintiff has not recovered the same damages, rather, the Estate is pursuing the damages still unpaid after applying the set-off and the caps.

The issue of how to apply a set-off from a joint tortfeasor in a Tort Claims Act case was specifically decided in *Smalls v South Carolina Dept. of Educ.*, 528 S.E.2nd 682, 339 S.C. 208 (Ct. App. 2000). In *Smalls*, the Court held, "[c]ontrary to Department's argument, it is not entitled to a set-off from the amount of the cap because Smalls has not recovered all damages awarded by the jury and application of a set-off in this manner would unfairly deprive a plaintiff of the verdict." *Id.*, at 689, at 222. In *Smalls*, the Plaintiff's settlements with joint tortfeasors were less than the jury's verdict. Therefore, applying the set-off to the verdict, rather than the cap, did not result in a double recovery and thus "we see no equitable reason to apply the credit in the manner urged by the Department." *Id.*

The same manner of applying set-offs also applies to actions against charitable organizations. S.C. Code Ann., § 33-56-180(A) states "[a] person...may recover in an action brought against the charitable organization only the actual damages he sustains in an amount not exceeding the limitations on liability imposed in the South Carolina Torts Claims Act ... ." As *Smalls* sets out the manner in which the cap and set-offs are applied to it for Tort Claims Act cases, it follows that the same rule would apply to charitable immunity cases as well. While not controlling, *Smalls* and its progeny have a logic that the Court finds persuasive and harmonious to the statutes at issue here.

Of note, nothing in Title 38, Chapter 10 clearly sets out that a claimant may only receive $300,000 in any event. It only limits the Association's payment to a single

claimant to $300,000. If the purpose of the Act is to protect South Carolina citizens from insurance companies who become insolvent, then the Act is remedial and should be liberally construed in favor of payment to the claimant in order to best accomplish that goal. Adopting the interpretation suggested by the Association would prevent full compensation, and in this case, any compensation from the Association. It would also work to dissuade claimants from resolving claims against joint tortfeasors who may have little proportional liability, thus increasing the likelihood of protracted litigation and actually increasing the Association's exposure. As such, it is against public policy to adopt such an argument.

For the reasons set forth above, Plaintiff's Motion for Summary Judgment is GRANTED. Defendant's Motion for Summary Judgment is DENIED. The Association shall pay $300,000 within thirty (30) days of service of this Order.

AND IT SO ORDERED

By: _____
D.A. Early, III
Presiding Judge
2nd Judicial Circuit

Bamberg, SC
~~August~~ Sept 9, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF BAMBERG)

CERTIFICATE OF MAILING

I, Bari J. Crider, secretary to Daniel W. Luginbill, counsel for plaintiff in the case of Janette Buchanan and Shana Smallwood, et al. v. The South Carolina Property and Casualty Insurance Guaranty Association, Case #13-CP-05-63, do hereby certify that I have served the foregoing Order Granting Plaintiffs' Motion for Summary Judgment and Denying Defendant's Motion for Summary Judgment, by mailing a copy U. S. mail, first class delivery, postage prepaid to the attorney(s) or person(s) at the address(es) indicated as follows:

Tara Sullivan, Esquire
Howard VanDine, III, Esquire
Nelson, Mullins, Riley & Scarborough, LLP
PO Box 11070
Columbia, S. C. 29211

Sept. 11, 2014

Bamberg, SC

By: Bari J. Crider
Bari J. Crider, Secretary to
Daniel W. Luginbill, Counsel for Plaintiff
Wilson & Luginbill, LLC
P. O. Box 1150
Bamberg, SC 29003
(803) 245-7799

Exhibit B

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BAMBERG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 **CP**-05-63

Janette Buchanan and Shana Smallwood, Individually and as Co-Personal Representative of the Estate of James S. Buchanan

PLAINTIFF(S)

The South Carolina Property and Casualty Insurance Guaranty Association

DEFENDANT(S)

Submitted by:	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion to Recosider is DENIED.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk :

FILED
BAMBERG COUNTY
2015 JAN 22 PM 2:
JAMES B. CURRIE
CLERK OF COURT
BAMBERG

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge | 0136 **Judge Code** | 1/20/15 **Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this 22 day of JAN, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.