THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BAMBERG COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2013-CP-05-63

Appellate Case No. 2015-000246

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

v.

The South Carolina Property and Casualty Insurance Guaranty Association, ... Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. **Did the trial court err by finding that the Association's statutory offset of $376,622 should be deducted from the claimant's total amount of alleged or stipulated damages of $800,000 rather than the Association's mandatory statutory claim limit of $300,000?**

STATEMENT OF THE CASE

The sole issue presented by this appeal and the underlying declaratory judgment action concerns the obligation of the South Carolina Property and Casualty Insurance Guaranty Association ("Association"), if any, for Respondents' wrongful death claim under the statutory regime governing the Association when an insurer becomes insolvent. *See* S.C. Code § 38-31-10, *et seq.* (the "Act" or "Guaranty Act"). (Complaint ¶ 13; R. 16). It is undisputed that the Association's responsibility on Respondents' claim is statutorily limited to $300,000 pursuant to S.C. Code § 38-31-60. (Complaint ¶¶ 8, 12; R. 15-16). This is the maximum amount the Association may pay on claims under the Act. It is also undisputed that the Association is entitled to a statutorily-mandated offset of $376,622 for the amount of other insurance coverage received by Respondents as a result of the accident pursuant to S.C. Code § 38-31-100(1). (Complaint ¶¶ 9, 13; R. 15-16).

The parties' positions differ, however, as to how this $376,622 offset should be deducted based on the $300,000 statutory limitation of liability for the Association under the Act. (Complaint ¶ 13; R. 16). Respondents maintain that the offset should be deducted from the total amount of their pled damages of $800,000, resulting in a remainder of $423,378. The Respondents contend the Association should be liable for its maximum claim limit of $300,000 as a result. (Complaint ¶¶ 11-12; R. 16). The Association has shown that the offset should be deducted from its maximum statutory limitation of $300,000, resulting in no liability for the Association here based on the amount of money the Respondents received from other insurance. (Answer; R. 17-21).

Respondents filed a declaratory judgment action on April 12, 2013, alleging the Association was obligated to pay $300,000 and that the Association was not entitled to receive credit for the payments already received by Respondents from other insurance. (Complaint; R. 12-16). The Association filed an Answer denying the allegations, and then filed a Motion for Summary Judgment on April 22, 2014, asserting that the Act entitles the Association to deduct the $376,622 offset from its $300,000 statutory maximum claim obligation. (Association's Motion for Summary Judgment; R. 22-25). Respondents filed a cross-Motion for Summary Judgment on May 14, 2014, asserting that the Association's offset should be deducted from the full amount of the damages prior to any application of the statutory cap. (Respondents' Motion for Summary Judgment; R. 26-28).

The facts are generally not in dispute.[1] On January 7, 2008, James S. Buchanan ("Mr. Buchanan") was involved in a motor vehicle accident in Bamberg, South Carolina, with a vehicle driven by Eddie R. Best ("Best") and owned by Travis Scott ("Scott"). (Complaint ¶¶ 3-4; R. 14-15). Scott's vehicle was insured for $1 million by Aequicap Insurance Company ("Aequicap"). (Complaint ¶ 5; R. 15). Mr. Buchanan died at the scene of the accident. (Complaint ¶ 4; R. 14-15).

Janette Buchanan, individually and as Personal Representative of Mr. Buchanan's Estate ("Mrs. Buchanan"), initiated a wrongful death lawsuit in Bamberg County, South

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[1] Respondents and the trial court mistakenly assert that the Association has assumed the management of claims made against South Carolina insureds for causes of action made against the Florida Guaranty Fund. (Respondents' Memorandum in Support of Summary Judgment at 1; R. 63; Order at 2; R. 4). The Association's obligations are different from those of the Florida Guaranty Fund, and it has not assumed any causes of action made against the Florida Guaranty Fund. Respondents' claim is handled by the Association because the insured was a resident of South Carolina at the time of the accident. S.C. Code § 38-31-20(8)(a).

Carolina, against Best and Scott. (Complaint ¶ 4; R. 14-15). During the pendency of the wrongful death action, Aequicap was declared insolvent by the courts of Florida. (Complaint ¶ 5; R. 15). As a result of Aequicap's insolvency, Mrs. Buchanan's claim was asserted against the Association as provided by S.C. Code § 38-31-60. (Complaint ¶ 6; R. 15).

The parties reached a settlement of the Bamberg County lawsuit, which was approved by the South Carolina Court of Common Pleas by Order filed February 24, 2014. (Complaint ¶ 7; R. 15; Order Approving Settlement with attached Stipulations and Settlement Agreement Between Parties; R. 51-61). As part of the settlement agreement, the parties stipulated that the amount of damages sustained by Mrs. Buchanan is $800,000[2] and that the Respondents have recovered a total of $376,622 in settlement proceeds from co-defendants' insurance and Workers' Compensation benefits. (Complaint ¶¶ 7, 10; R. 15-16; Settlement Agreement at ¶¶ 1, 5-6; R. 57-58). The parties further agreed that the liability of the Association, if any, would be determined via the underlying declaratory judgment action based on the parties' stipulations. (Settlement Agreement at ¶¶ 7, 9; R. 59).

A hearing was held on the cross-Motions on May 28, 2014, before Judge Doyet A. Early, III (Transcript of Hearing; R. 130-167). By Order filed September 10, 2014, the court granted Respondents' Motion for Summary Judgment and denied the Association's Motion for Summary Judgment. (9/10/14 Order; R. 3-11). The court held that the Association's offset is deducted from a claimant's total damages amount rather

[2] The trial court mistakenly referred to this amount as a "judgment" in its Order. (Order p. 2; R. 4). However, no judgment has ever been entered in the wrongful death suit.

than the statutory cap. (*Id.*). The court denied the Association's Motion for Reconsideration of the order on January 22, 2015. (1/22/15 Form 4 Judgment; R. 1-2).

The Association timely appealed from the trial courts orders.

ARGUMENT

The trial court committed reversible error when it determined that the Association's statutory offset is deducted from a claimant's total damages amount rather than the Association's statutory claim limit. (Order; R. 3-11). As set forth below, the trial court's ruling is contrary to the express terms and purpose of the Act. This Court should reverse the trial court's order and declare that the Association is entitled to deduct the statutory offset from the maximum statutory obligation. Otherwise the cap is rendered superfluous.

I. The Act unambiguously requires that any offset be deducted from the Association's $300,000 statutory claim limit rather than a claimant's total amount of damages.

The Association is a nonprofit unincorporated legal entity created by the South Carolina legislature pursuant to the Act. *See S.C. Prop. and Cas. Ins. Guar. Ass'n v. Brock*, 410 S.C. 361, 365-66, 764 S.E.2d 920, 922 (2014); *S.C. Prop. and Cas. Ins. Guar. Ass'n v. Carolinas Roofing and Sheet Metal Contractors Self-Insurance Fund*, 315 S.C. 555, 557, 446 S.E.2d 422, 424 (1994); *Builders Transp. v. S.C. Prop. and Cas. Ins. Guar. Ass'n*, 307 S.C. 398, 406, 415 S.E.2d 419, 424 (Ct. App. 1992). Because the Association was created by statute, its duties, liabilities, and obligations are controlled by the terms and conditions set forth in the Act. S.C. Code § 38-31-60; *see also Brock*, 410 S.C. 361,

365-66, 764 S.E.2d 920, 922; *Builders Transp.*, 307 S.C. at 406, 415 S.E.2d at 424.[3]

"The primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly." *Brock*, 410 S.C. 361, 367, 764 S.E.2d 920, 922; *see also Anderson v. South Carolina Election Comm'n*, 397 S.C. 551, 556, 725 S.E.2d 704, 706-07 (2012) (*citing Beaufort Cnty. v. S.C. State Election Comm'n*, 395 S.C. 366, 718 S.E.2d 432 (2011)); *Builders Transp.*, 307 S.C. at 404, 415 S.E.2d at 423 (looking to intention of South Carolina legislature in adoption of Act to determine meaning of Act's provisions). "In construing statutory language, the statute must be read as a whole, and sections which are a part of the same general statutory law must be construed together and each one given effect." *Anderson*, 397 S.C. at 556, 725 S.E.2d at 707 (*citing Beaufort Cnty.*, 395 S.C. 366, 718 S.E.2d 432; *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000)).

"What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, courts are bound to give effect to the expressed intent of the legislature." *Brock*, 410 S.C. 361, 367, 764 S.E.2d 920, 922 (*citing McClanahan v. Richland Cnty. Council*, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002)); *see also Anderson*, 397 S.C. at 556-57, 725 S.E.2d at 707 ("When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.") (*citing Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, 476 S.E.2d 690 (1996)). "Thus, [courts] must follow the plain and unambiguous language in a statute and have 'no right

[3] *See also* 44 C.J.S. Insurance § 213 ("The association is a statutory entity that depends on statutory law for its existence and for the definition of its powers, duties, and protections.")

to impose another meaning.'" *Brock*, 410 S.C. 361, 367, 764 S.E.2d 920, 922 (*citing McClanahan v. Richland Cnty. Council*, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002)).

A. The Order is internally inconsistent, and the trial court failed to identify any ambiguity in the relevant statutes.

The trial court ruled that portions of the applicable statutes are "most ambiguous." (Order p. 3; R. 5). At the same time, the trial court also found that the "plain language" and the "plain logical interpretation" of the statutes require the statutory offset to be deducted from a claimant's total damages amount. (Order p. 2-5; R. 4-7). The Order is, therefore, internally inconsistent.

Further, the trial court did not identify the ambiguity in its Order. The South Carolina Supreme Court has held that an ambiguity of a statute must be explained, and a simple finding of ambiguity is insufficient:

> When a court makes a finding of ambiguity, it must set forth either how a provision is capable of more than one meaning or is obscure in meaning. A simple finding of ambiguity, absent any reasoning, is insufficient. Without more, an appellate court is unable to review the validity of a circuit court's conclusion that a provision is ambiguous.

Bardsley v. Gov't Employees Ins. Co., 405 S.C. 68, 75, 747 S.E.2d 436, 440 (2013). The Association submits that the reason the trial court failed to articulate or identify any ambiguity is because the statutory scheme, when read as a whole, is unambiguous. Consistent with the Supreme Court's recent decision in *Brock*, the offset must be applied from the statutory claim limit.

B. The trial court failed to properly address recent decisions of the Supreme Court holding that the applicable provisions of the Act are unambiguous.

The trial court does not cite to a single case for the proposition that the Act or any other state's guaranty act is ambiguous. The trial court also ignored the most recent decision of the Supreme Court of South Carolina on this issue, *S.C. Prop. and Cas. Ins. Guar. Ass'n v. Brock*, 410 S.C. 361, 764 S.E.2d 920 (2014),[4] and misconstrued the Supreme Court's recent holding in *Hudson v. Lancaster Convalescent Ctr.*, 407 S.C. 112, 754 S.E.2d 486 (2014).

In *Brock*, the Supreme Court examined S.C. Code §§ 38-31-20(8), 38-31-60, and 38-31-100(1), the same provisions at issue in this matter, and unanimously found that the Act unambiguously allowed the Association to offset its obligation to Brock by all other payments Brock had received from other solvent insurers as a result of the same accident. 410 S.C. 361, 764 S.E.2d 920. Specifically, the *Brock* court noted that "[t]he parties disagree on what types of insurance coverage [the Association] may offset **against its obligation** to pay the $185,000," and held that pursuant to S.C. Code § 38-31-100(1), the Association "is allowed to offset the full limits of such other coverage **against its obligations** under the Act." *Id.* at 366, 764 S.E.2d at 922 (emphasis added). This directly contradicts the trial court's finding here that "§ 38-31-100(1) applies the set-off to the 'covered claim,' rather than the 'Association's obligation.'" (Order p. 4; R. 6).

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[4] Although the *Brock* ruling had not been issued at the time of the Order, it was issued prior to the trial court's ruling on the Motion for Reconsideration of the Order. The Association raised the unambiguous language of the Act prior to the issuance of *Brock* and the Association raised the *Brock* decision on rehearing. *Brock* affirmed the Association's arguments throughout the underlying proceeding that the relevant provisions of the Act are unambiguous and the Association receives an offset for other insurance.

Similarly, the Supreme Court in *Hudson* held the statutory regime governing the Association is not ambiguous. 407 S.C. 112, 754 S.E.2d 486 (2014). Respondents argued, and the trial court agreed, that the *Hudson* holding applied only to S.C. Code § 38-31-60(j), which relates to the Association's ability to sue or be sued, rather than the Act as a whole (Order p. 3; R. 5). Respondents and the trial court read *Hudson* much too narrowly, however.

In *Hudson*, the court was asked to determine the applicability of S.C. Code § 38-31-60(b) (setting forth the Association's obligation on "covered claims") and S.C. Code § 38-31-20(8) (defining "covered claim") to the Association's direct liability referenced in S.C. Code § 38-31-60(j). 407 S.C. at 123-26, 754 S.E.2d at 492-93. The *Hudson* court's recitation of the applicable law evidences that it was construing several different parts of the Act:

> It is axiomatic that "words in a statute must be construed in context," and "the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute." *Eagle Container Co., LLC v. County of Newberry*, 379 S.C. 564, 570, 666 S.E.2d 892, 895 (2008) (*citing Mut. Church Ins. Co. v. S.C. Windstorm & Hail Underwriting Ass'n*, 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991)). Further, statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect, if it can be done by any reasonable construction. *Higgins v. State*, 307 S.C. 446, 415 S.E.2d 799 (1992).

Id. at 124-25, 754 S.E.2d at 492-93. The *Hudson* court then reached its decision based on its "[r]eading [of] both the covered claims and direct liability statutes together" without finding any ambiguity in the statutory scheme. Thus, although the focus in *Hudson* may have been on a different issue than the one before this Court, the Court found the provisions of the Act to work in harmony. Likewise, S.C. Code § 38-31-60(a)(iv) and

S.C. Code § 38-31-100(1) must be read together as a whole consistent with *Brock* and *Hudson*.

C. The trial court misapplied the Act.

S.C. Code § 38-31-60(a) provides that the Association is obligated "to the extent of claims existing before the determination of insolvency . . . ." However, its obligations on such claims are limited: "This obligation includes only the amount each covered claim[5] is in excess of two hundred fifty dollars and is less than three hundred thousand dollars."[6] S.C. Code § 38-31-60(a)(iv). Thus, the Association is never *obligated* on any covered claim over the $300,000 statutory limit. The trial court correctly noted that the Association's "duty to pay" is limited by this section to $300,000. (Order p. 4; R. 6).

The inquiry does not end here, however. The Act further provides that the Association's *obligation* on a covered claim is offset by coverage limits for other insurance for the same facts, injury or loss which gave rise to the claim against the Association. Specifically, the Act states

> A person, having a claim under an insurance policy, whether or not it is a policy issued by a member insurer, and the claim under such other policy arises from the same facts, injury or loss which gave rise to the covered claim against the association, is required to first exhaust all coverage and limits provided by any such policy. **Any amount payable on a covered claim** under this chapter must be

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[5] "Covered claim" is defined as "an unpaid claim, including one of unearned premiums, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if the insurer is an insolvent insurer and (a) the claimant or insured is a resident of this State at the time of the insured event, if for entities other than an individual, the residence of a claimant or insured is the state in which its principal place of business is located at the time of the insured event or (b) the claim is for first-party benefits for damage to property permanently located in this State. . . . " S.C. Code § 38-31-20(8).

[6] Therefore, after taking into account the $250 and $300,000 claim thresholds, the Association's maximum total obligation is $299,750.

> reduced by the full limits of such other coverage as set forth on the declarations page and the association shall receive a full credit for such limits, or, where there are no applicable limits, the claim must be reduced by the total recovery.

S.C. Code § 38-31-100(1) (emphasis added).[7] As set forth in *Brock*, this provision is a "condition precedent" to a claimant's recovery from the Association: "[A] claimant is required to first exhaust all available coverage from solvent insurers, and [the Association] is allowed to offset the full limits of such other coverage against its obligations under the Act." *Brock*, 410 S.C. 361, 366, 764 S.E.2d 920, 922 (*citing* S.C. Code § 38-31-100). There is no dispute that the Association is entitled to offset $376,622 because this amount represents Respondents' total recovery from other insurance coverage arising from the same facts, injury or loss as their claim against the Association.[8]

The dispute exists as to the application of the offset in light of the statutorily mandated liability cap which limits the Association's obligation. The trial court found that the $376,622 offset provided in S.C. Code § 38-31-100(1) applies to reduce a "covered claim" rather than the Association's "obligation" to pay that claim. (Order p. 4;

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[7] *See also* 44 C.J.S. Insurance § 221 ("A person seeking payment from an insurance guaranty association or a fund created by multiple insurance companies generally must first exhaust other insurance available to such person, such as uninsured motorist coverage. It is the philosophy of Insurance Guaranty Fund to have all potential claims against the Fund's assets reduced by a solvent insurer, and not the Fund, whenever possible. The liability of the association or fund is reduced by the amount recovered under such other insurance.").

[8] Although the offset statute provides that the Association may offset the full policy limits of such other coverage—not simply the recovery achieved under those policies—the parties agreed to limit the Association's offset to the amounts actually received under those other insurance policies for the purposes of this action and resolution of this issue only. (Order Approving Settlement with attached Stipulations and Settlement Agreement Between Parties; R. 51-61).

R. 6). However, the trial court ignored the language preceding the term "covered claim" in S.C. Code § 38-31-100(1). The section containing the offset provision expressly states that "**[a]ny amount payable** on a covered claim" is to be reduced by the full limits of the other coverage — here, $376,622. S.C. Code § 38-31-100(1) (emphasis added). Reading the statutory framework as a whole, the "amount payable on a covered claim" cannot exceed $300,000, as set forth in S.C. Code § 38-31-60(a). Therefore, in situations where a claimant's damages exceed the statutory maximum obligation, the starting point is the Association's statutory claim limit of $300,000, and the amount to be offset is deducted from the Association's total potential obligation under the Act—not the alleged damages.[9]

The statute does not contain the term damages. That word is not present in the relevant provisions. Instead, S.C. Code § 38-31-100 repeatedly provides that **"[a]ny amount payable** on a covered claim" must be offset by the recovery received from other various sources. S.C. Code § 38-31-100(1), (2), (3), and (5). Consistently, S.C. Code § 38-31-100(1)(b) provides that "[t]o the extent that the **association's obligation is**

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[9] As further detailed in Section IV, other states agree the starting point is the statutory claim limit, not the damages amount. *See, e.g., Jangula v. Ariz. Prop. and Cas. Ins. Guar. Fund.*, 88 P.3d 182, 183, 185 (Ariz. Ct. App. 2004) ("Under A.R.S. § 20—667(B) (2002), the Fund is obligated to pay Jangula's damages up to the applicable limits of the insolvent insurer's policy or $99,900, whichever is less. . . . Jangula's allowable recovery from the Fund must be reduced by any amount she has recovered from her own coverage. Because her total recoverable damages exceeded $115,000, she would be entitled to recover $99,900 from the Fund if there was no other coverage available. But because she has recovered UIM benefits of $15,000 from her own policy, her recovery from the Fund must be reduced by $15,000. The Fund is obligated, therefore, to pay her $84,900, and has done so."); *Cooper v. Huddy*, 581 So. 2d 723 (La. Ct. App. 1991), *writ denied*, 585 So. 2d 552 (La. 1991) (finding that Louisiana's offset statute unambiguously required application of the Association's offset for the claimant's other recovery of $118,280.56 to reduce the Louisiana Association's statutory maximum limit of $149,900, rather than the claimant's total damages of $291,604.03, leaving the Association liable to the claimant for only $31,619.44).

reduced by the application of this section, the liability of the person insured by the insolvent insurer's policy for the claim must be reduced in the same amount." S.C. Code § 38-31-100(1)(b) (emphasis added). Hence, the offset provision references the reduction of the Association's obligation, an amount which the trial court correctly found cannot be more than $300,000. Therefore, the trial court's ruling that Section 38-31-100(1) "applies the set-off to the 'covered claim,' rather than the 'Association's obligation'" is completely contradicted by the plain language of the Act. (Order p. 4; R. 6). In sum, when the reduction amount for other insurance exceeds the maximum obligation, the claimant cannot recover from the Association.[10] *See S.C. Prop. and Cas. Ins. Guar. Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 215, 403 S.E.2d 625, 628 (1991) (finding that it is not the intent of the Act to place the Association in the shoes of the insurer because the Association's rights and obligations are limited).

Reading the statute to require the offset to be deducted from a claimant's total amount of claimed damages would render the offset provision meaningless in any situation where the difference between a claimant's damages and the amount received from other available insurance exceeds $300,000. In such situations, the claimant would automatically receive the $300,000 claim limit, the Association would receive no credit for other insurance amounts, and the offset provision would be superfluous. Such a construction would violate the mandate that different provisions of a statute must be construed together and each one given effect. *See Anderson*, 397 S.C. at 556, 725 S.E.2d

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[10] *See, e.g., Cox v. Minnesota Ins. Guar. Ass'n*, 508 N.W.2d 536 (Minn. Ct. App. 1993) (finding Minnesota's offset statute unambiguously requires the application of the offset after applying the $299,900 statutory liability limit and, therefore, the claimants' $299,9000 covered claim was offset by the $599,900 they had received for other coverage, leaving the Minnesota Association with no liability to the claimants).

at 707.

The trial court also misconstrues what is meant by "covered claim" and ignores the ordinary meaning of the words "covered claim" when ruling that Respondents' covered claim is for $800,000. (Order p. 4; R. 6). While Respondents claimed damages in the amount of $800,000, their claim is "covered" only to the extent the Association has any obligation to pay the claim—an amount Respondents admit is $300,000 at most. By operation of the statutory framework in this situation, a "covered claim" and the Association's obligation are synonymous. By analogy, in the usual insurance policy context, a party might have a claim for damages from a motor vehicle accident, but that claim would only be "covered" to the extent of the insurance company's policy limits for that claim. The statutory regime operates in the same manner. The General Assembly adopted the statutory cap and offset provision to limit the obligation of the Association and maximize the benefit and existence other insurance in favor of the Association. Applying the plain, ordinary meaning of the statute, Respondents' claim is covered only up to $300,000, and the offset is applied to reduce the Association's obligation from that amount, resulting in no obligation for the Association in this matter.

II. Even if the Act is ambiguous, the trial court misconstrued the Legislature's intent, the relationship between the Act and other statutory regimes, and the effect of the Act on public policy.

The trial court also overlooked the express stated intent of the Legislature. Further, the trial court mistakenly relied on the Tort Claims Act to support its reading of the Guaranty Act. Finally, the trial court erred by finding that reading the statute as intended would result in adverse public policy consequences.

A. The Legislature intended the Association's liability to be limited to $300,000 with a reduction for any amounts claimants received from other insurance coverage for the same loss.

Because the language of the Act is clear and unambiguous as the Supreme Court found in *Brock* and *Hudson*, there is no need to look beyond the words of the statute for its meaning. *See Anderson*, 397 S.C. at 556, 725 S.E.2d at 706-07. Even if the Act is ambiguous, consideration of the Act's legislative intent supports the Association's position.

The trial court noted that the purpose of the Association is to provide only **some** protection when an insurance company becomes insolvent. (Order p. 3; R. 5). The trial court, however, mistakenly asserted that the purpose of the offset provision is to prevent double recovery. (Order p. 5, 6, and 8; R. 7, 8, and 10). The trial court erroneously found that the Association should provide Respondents nearly full recovery by paying the maximum obligation of $300,000 even though Respondents have received other coverage in excess of that amount. *Id.* The purpose of the Association, however, is not to provide claimants with as full a recovery as possible but some recovery subject to the limitations set forth in the Act. *Brock*, 410 S.C. at 367-68, 764 S.E.2d at 923; *Hudson*, 407 S.C. at 124, 754 S.E.2d at 492; and *Carolinas Roofing*, 315 S.C. at 557, 446 S.E.2d at 424.

The South Carolina Legislature amended the offset provision in 2001 to its current form to clarify that the Association's obligation must be offset by any and all coverage that arises from the same facts, injury, or loss that gave rise to the claim against the Association. 2001 S.C. Acts 82. In the "preamble" to this Act, the Legislature describes it as an Act "to amend Section 38-31-100, as amended, relating to procedures for asserting claims and to **limitations on claims**, so as to require exhausting all coverage

and claims and providing **credit to the Guaranty Association** under certain conditions." *Id.* (emphasis added). The Legislature expressly stated its intent that the offset provision would limit the claims asserted against the Association by providing a credit to the Association for other coverage arising from the same facts, injury, or loss as the claim against the Association.

The Supreme Court of South Carolina has previously noted the Act's intent for the Association's liability to be limited as well. As stated in *Brock*, *Hudson*, and *Carolinas Roofing*, the purpose of the Association is "to provide **some** protection" to insureds whose insurance companies become insolvent. 410 S.C. at 367-68, 764 S.E.2d at 923; 407 S.C. at 124, 754 S.E.2d at 492; 315 S.C. at 557, 446 S.E.2d at 424 (emphasis added). The Association is a "last resort" for payment when an insurance company is declared insolvent. *Hudson*, 407 S.C. at 124, 754 S.E.2d at 492. Contrary to these decisions, the trial court's Order unlawfully forces the Association to fully "step in the shoes" of the insolvent insurer. *See S.C. Prop. and Cas. Ins. Guar. Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 215, 403 S.E.2d 625, 628 (1991) (finding that it is not the intent of the Act to place the Association in the shoes of the insurer because the Association's rights and obligations are limited); 44 C.J.S. Insurance § 213 ("[T]he duties of an Insurance Guarantee Association are not co-extensive with the duties owed by the insolvent insurer under its policy. An Insurance Guarantee Association is a guarantor of last resort. . . . [A]n Insurers Insolvency Fund is not an insurer; rather, it is a statutorily mandated nonprofit association created to provide limited protection to insureds and claimants in the event of insolvency of an insurer. It is not itself an insurer and does not 'stand in the shoes' of the insolvent insurer for all purposes.").

The Supreme Court's holdings in these cases correctly depict the Legislature's intent to limit the Association's liabilities as set forth in the Act. The Association steps in to reduce the inequity that would occur should claimants be left without **any** potential source of recovery when an insurer becomes insolvent. The Association is not intended as a failsafe to guarantee complete recovery to those unfortunate claimants. *See* 44 C.J.S. Insurance § 218 ("A claimant, however, will not always be put in the same position [the claimant would have been in had insolvency not occurred], as the association or fund does not completely step into the shoes of the insolvent, and is obligated to pay claims only to the extent provided by statute."); *see also Marra v. Wilson*, 2003 WL 367831, at *5 (Del. Super. Ct. Feb. 20, 2003) ("'[I]t was anticipated by the [l]egislature that some claimants would suffer some amount of financial loss due to the insolvency of an insurer [ ] because . . . [the guarantee association]'s obligation to a claimant is limited to $300,000.00 . . . ' Furthermore, at least one treatise has described the purpose behind insurance guaranty acts as 'not completely step[ping] into the shoes of the insolvent . . . [but] obligated to pay claims only to the extent provided by statute.'").[11]

[11] *See also Colorado Ins. Guar. Ass'n v. Menor*, 166 P.3d 205, 215 (Colo. App. 2007) ("[T]he Act was intended 'to give a measure of protection to policyholders and claimants who are faced with financial loss because of the insolvency of certain carriers of property and casualty insurance.' It was not designed to pay all claims regardless of whether there are other sources of recovery. The Association is a source of "last resort." Member insurers pay assessments to the Association, derived from premiums of policyholders. Although [insureds] correctly point out that a purpose of the fund is to provide a source of recovery of covered claims when an insurer becomes insolvent, the fund should be reserved to pay insureds of insolvent insurers who have not recovered the same damages from another source. The requirement that a previous insurance recovery reduce the amount owed by the Association serves to protect the limited fund from depletion when the insured has already obtained a recovery for the loss.") (*quoting Strickler v. DeSai*, 813 A.2d 650, 656 (Pa. 2002)).

Here, if the offset was applied to reduce the claimant's total "damages" as the trial court ruled, the Association isn't given any credit for the other coverage subject to its maximum statutory obligation. The trial court's ruling directly contradicts the plain meaning of the Act as well as the stated intent of the Legislature.

B. The trial court erroneously relied on the Tort Claims Act.

The trial court further erred in equating the Association with a State entity in analogizing the Guaranty Act to the South Carolina Tort Claims Act, S.C. Code § 15-78-10 *et seq.* ("Tort Claims Act"). (Order p. 5; R. 7). The trial court wrongly reasoned that the Tort Claims Act is instructive in this case because it deals with limitations on the liability of State entities. (Order p. 5; R. 7). The Association is not a State entity, however, and the Guaranty Act in no way deals with limitations on the liability of the State.

Although the Association is created by statute, it is an unincorporated legal entity consisting of all insurers licensed to transact insurance in South Carolina. S.C. Code § 38-31-40. It is not funded by tax dollars but rather by assessments to its members, which are ultimately passed on to policyholders as increased insurance costs. S.C. Code §§ 38-31-60(c) and 38-31-140. There are no State tax dollars at risk for any action or inaction by the Association. *Id.* Because the Association is not a State entity, and the Guaranty Act does not relate to limits on the State's liability, the Tort Claims Act is totally inapplicable here.

Further, the Tort Claims Act is not instructive in this case because it does not include any statutory offset provisions to lessen the liability of the State measured from the statutory cap on liability for the State. The offsets applied in the Tort Claims Act

context are equitable in nature instead and, therefore, necessarily different from an offset mandated by statute. *See Smalls v. South Carolina Dep't of Educ.*, 339 S.C. 208, 219, 528 S.E.2d 682, 688 (Ct. App. 2000) ("The trial court's jurisdiction to set off one judgment against another is equitable in nature and should be exercised when necessary to provide justice between the parties. A set-off is not necessarily founded upon 'any statute or fixed rule of court, but grows out of the inherent equitable jurisdiction' of the court.") (internal citations omitted). Unlike in *Smalls*, here there is a statutory directive requiring the offset and setting forth the process for its application. As such, the trial court's reliance on *Smalls* and the equitable setoff applied to the statutory cap in the Tort Claims Act is error as the offset under the Guaranty Act is not discretionary.

Moreover, the equities necessitating an offset in the Tort Claims Act context are not present here. The Tort Claims Act "is the **exclusive** and **sole** remedy for any tort committed by an **employee** of a governmental entity while acting within the scope of his official duty." S.C. Code § 15-38-65 (emphasis added). Likewise, S.C. Code § 33-56-180, on which the trial court also relies and which incorporates the Tort Claims Act, relates only to persons sustaining injury or dying because of a tort committed by an **employee** of a charitable organization acting within the scope of his employment.[12] S.C. Code § 33-56-180 (emphasis added). In this action, there has been no tort committed by an employee of the Association. The Guaranty Act is not Respondents' sole remedy—they in fact received coverage from other solvent insurers. Nor was the trial court asked to determine the equitable apportionment of liability among joint tortfeasors or to reduce the liability of a wrongdoer. Instead, the trial court was asked to apply the statutory

[12] The Association does not qualify as a "charitable organization." *See* S.C. Code § 33-56-170.

scheme created by the Legislature to provide "some protection" for those unfortunate insureds whose insurance companies are declared insolvent. *Carolinas Roofing*, 315 S.C. at 557, 446 S.E.2d at 424.

For all of these reasons, the Tort Claims Act cannot provide any guidance as to the construction of S.C. Code § 38-31-100(1), and the trial court's findings to the contrary are in error.

III. The trial court misapprehends the impact of offsetting other insurance amounts from the Association's maximum statutory obligation when ruling that doing so would be against public policy.

The trial court held that ruling in favor of the Association would be against public policy based on its mistaken assertion that the application of the offset suggested by the Association would "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." (Order p. 8; R. 10).

This conclusion demonstrates a fundamental misunderstanding of the offset provision. The offset provision specifically provides that a claimant "is **required** to **first** exhaust all coverage and limits provided by any" policy covering the same facts, injury or loss. S.C. Code § 38-31-100(1) (emphasis added). Claimants therefore must first exhaust their claims against other applicable policies for the same loss **before** being entitled to any recovery from the Association. *Id.*; *see also Brock*, 410 S.C. at 366, 764 S.E.2d at 922 ("**As a condition precedent to recovery** from [the Association], a claimant is required to first exhaust all available coverage from solvent insurers, and [the Association] is allowed to offset the full limits of such other coverage against its obligations under the Act.") (*citing* S.C. Code § 38-31-100) (emphasis added).

Thereafter, the Association is entitled to an offset "for the **full limits** of such other coverage." S.C. Code § 38-31-100(1) (emphasis added); *see also Brock*, 410 S.C. at 366, 764 S.E.2d at 922.

Therefore, because the Association is entitled to offset the full limits of the other coverage, claimants are encouraged to recover as much as possible from other insurers and they must look to other solvent insurers first, before making any claim against the Association. Consequently, applying the offset against the statutory cap does not result in increased exposure or litigation for the Association.

IV. The majority of other jurisdictions ruling on this issue apply the offset from the Association's statutory claim limit rather than a claimant's total amount of damages.

Although there are no South Carolina cases directly addressing whether the Association's offset should be deducted from its statutory claim limit or a claimant's total amount of damages, almost all of the states have guaranty associations created by similar statutes. Case law from other jurisdictions may be instructive in the absence of South Carolina authority on the issue. The majority of other states ruling on this issue agree that the Association's offset is applied to reduce its statutory claim limit rather than a claimant's total amount of damages.[13]

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[13] *See also* 44 C.J.S. Insurance § 213 ("[T]he duties of an Insurance Guarantee Association are not co-extensive with the duties owed by the insolvent insurer under its policy. An Insurance Guarantee Association is a guarantor of last resort. . . . [A]n Insurers Insolvency Fund is not an insurer; rather, it is a statutorily mandated nonprofit association created to provide limited protection to insureds and claimants in the event of insolvency of an insurer. It is not itself an insurer and does not 'stand in the shoes' of the insolvent insurer for all purposes."); 44 C.J.S. Insurance § 218 ("A claimant, however, will not always be put in the same position [the claimant would have been in had insolvency not occurred], as the association or fund does not completely step into the shoes of the insolvent, and is obligated to pay claims only to the extent provided by statute."); 44 C.J.S. Insurance § 221 ("A person seeking payment from an insurance

The trial court inaccurately depicts the cases from other jurisdictions cited by the Association which support its reading of the offset provision. (Order p. 4 n. 1; R. 6). The trial court asserts that only one of the cases listed in Appendix A to the Association's Memorandum in Support of its Motion for Summary Judgment and in Opposition to Respondents' Cross-Motion for Summary Judgment involved the application of the offset to a statutory limit while the remainder dealt with the application of the offset to a policy limit instead. *Id.* However, nine of the cases cited to the trial court involved the deduction of the offset from the statutory maximum/limit. *Jangula*, 88 P.3d 182, 183, 185 ("Under A.R.S. § 20—667(B) (Ariz. Ct. App. 2002), the Fund is obligated to pay Jangula's damages up to the applicable limits of the insolvent insurer's policy or $99,900, whichever is less. . . . Jangula's allowable recovery from the Fund must be reduced by any amount she has recovered from her own coverage. Because her total recoverable damages exceeded $115,000, she would be entitled to recover $99,900 from the Fund if there was no other coverage available. But because she has recovered UIM benefits of $15,000 from her own policy, her recovery from the Fund must be reduced by $15,000. The Fund is obligated, therefore, to pay her $84,900, and has done so."); *Marra*, 2003 WL 367831, at *4-6 (Del. Super. Ct., Feb. 20, 2013) ("[T]he pertinent part of title 18, section 4212(a) provides that after other potential sources of insurance have been exhausted, '[a]ny amount payable on a covered claim under . . . [Delaware's Insurance Guaranty Act] shall be reduced by the amount of any recovery under such insurance

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guaranty association or a fund created by multiple insurance companies generally must first exhaust other insurance available to such person, such as uninsured motorist coverage. It is the philosophy of Insurance Guaranty Fund to have all potential claims against the Fund's assets reduced by a solvent insurer, and not the Fund, whenever possible. The liability of the association or fund is reduced by the amount recovered under such other insurance.").

policy.' The Act further provides that DIGA's obligations 'shall be satisfied by paying to the claimant an amount not exceeding $300,000 . . . ' Thus it is clear that the Act specifically proscribes the maximum amount a claimant may recover from DIGA; it is equally clear that the Act provides a framework within which DIGA's liability can be reduced. . . . As section 4212(a) itself states . . . 'any amount payable on a covered claim under . . . [the Act] shall be reduced . . .' and section 4208(a)(1)(iii) indicates that such a 'covered claim' will never exceed $300,000, *i.e.* a covered claim will never be a claimant's full amount of damages. And '[w]hen statutory language is both clear and consistent with other provisions of the same legislation and with legislative purpose and intent, a court must give effect to that intent.' . . . Given Delaware's statutory framework and this Court's reading of sections 4212(a) and 4208(a)(1)(iii), combined with what this Court perceives as the policy behind such statutes, the Court finds that the $100,000 policy tendered by State Farm is properly deducted from DIGA's $300,000 limit so that DIGA's liability to Plaintiffs in this case is $200,000."); *Cooper*, 581 So. 2d 723 (finding that Louisiana's offset statute unambiguously required application of the Association's offset for the claimant's other recovery of $118,280.56 to reduce the Louisiana Association's statutory maximum limit of $149,900, rather than the claimant's total damages of $291,604.03, leaving the Association liable to the claimant for only $31,619.44); *Cox*, 508 N.W.2d 536 (finding Minnesota's offset statute unambiguously requires the application of the offset after applying the $299,900 statutory liability limit and, therefore, the claimants' $299,9000 covered claim was offset by the $599,900 they had received for other coverage, leaving the Minnesota Association with no liability to the claimants); *Leitch v. Mississippi Ins. Guar. Ass'n*, 27 So. 3d 405, 409 (Miss. Ct. App.

2009), *aff'd*, 27 So. 3d 396 (Miss. 2010) ("MIGA was entitled to offset its liability with any amount paid by State Farm. State Farm settled its claim with Leitch for the policy limit of $300,000, which is also the maximum amount for which MIGA may be held liable. Therefore, pursuant to section 83-23-123(1) [Mississippi's offset statute], MIGA was entitled to offset the entire amount of its $300,000 liability with the $300,000 State Farm settlement."); *Palmer v. Montana Ins. Guar. Ass'n*, 779 P.2d 61 (Mont. 1989) (finding that the Montana Association's offset was to be applied to reduce the Association's statutory cap, not the claimant's higher damages amount, as explained in more detail below); *New Hampshire Ins. Guar. Ass'n v. Pitco Frialator, Inc.*, 705 A.2d 1190, 1192-94 (N.H. 1998) ("Despite its seemingly expansive purpose, the statute places several limitations on NHIGA's payment obligations. First, NHIGA's exposure per covered claim is capped at $300,000. *See* RSA 404—B:8, I(a). . . . Third, the statute provides: Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, including but not limited to the provisions of uninsured motorist coverage of any policy, shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of any recovery under such insurance policy. RSA 404—B:12, I (1983). . . . Although the *title* of RSA 404—B:12 suggests that its purpose is merely to prevent a double recovery, we conclude that the *language* of the provision requires us to subtract the $300,000 of workers' compensation benefits from NHIGA's $300,000 statutory cap. . . . Indeed, the '*amount payable* on a covered claim under this chapter' is *$300,000* pursuant to RSA 404—B:(8), I(a); further, this $300,000 'amount payable' must 'be reduced by' the $300,000 of

workers' compensation payments, according to RSA 404—B:12, I.") (emphasis in original); *Oglesby v. Liberty Mut. Ins. Co.*, 832 P.2d 834, 842 (Okla. 1992) ("[T]he [Association's] obligation is limited to the lesser of $150,000.00 or the coverage provided in the insolvent insurer's policy. . . . The Oklahoma Guaranty Association insists Oglesby must exhaust her rights against Liberty Mutual and apply the recoveries obtained against the $150,000.00 statutory cap. We agree."); *Blackwell v. Pennsylvania Ins. Guar. Ass'n*, 567 A.2d 1103 (Pa. Super. Ct. 1989) (finding that the Pennsylvania Association's offset was to be applied to reduce the Association's statutory cap, not the claimant's higher damages amount, as explained in more detail below).

Although the remaining cases involve the application of the offset to a policy limit, these cases are still instructive here because the statutory limit is the policy limit if the policy limit is less than the statutory cap. S.C. Code § 38-31-60(a)(iv) ("The association is not obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer under the policy or coverage from which the claim arises."). Therefore, the same issue before this Court arises in those situations where the damages exceed policy limits which are less than the statutory cap. Consistent with the nine cases cited to the trial court in Appendix A holding that the offset should be deducted from the statutory cap and not the damages amount, the other cases citied in Appendix A dealing with policy limits less than the statutory cap hold that the policy limits become the statutory cap and the offset is applied against the policy limits, not the damages amount. (Appendix A, Memorandum in Support of Defendant's Motion for Summary Judgment and in Opposition to Plaintiffs' Cross-Motion for Summary Judgment; R. 42-50).

For example, the Kentucky Court of Appeals held that the reduction should extend from the lesser statutory liability cap of a policy's limits and not the plaintiff's higher damages in *Hawkins v. Kentucky Ins. Guar. Ass'n*, 838 S.W.2d 410 (Ky. Ct. App. 1992). Hawkins was injured in an motorcycle accident and suffered damages in excess of $50,000. 838 S.W.2d at 411. Upon the at-fault driver's insurer becoming insolvent, Hawkins received $25,000 from his uninsured coverage. *Id.* The Kentucky Association's maximum statutory obligation was only $25,000, the amount of the at-fault driver's insurance policy. *Id.* The Kentucky Association argued that its $25,000 obligation was offset by the $25,000 in other recovery Hawkins received, resulting in no liability for the Association. *Id.* The Kentucky court agreed and concluded that the Association had no liability to the claimant when applying the reduction as measured from the statutory maximum obligation. *Id.* at 412.

As evidenced by the above cited cases from other jurisdictions, the reading of the offset statute advanced by the Association is widely supported by courts across the country applying offset statutes very similar or identical to South Carolina's. For example, in *Palmer*, the Supreme Court of Montana was asked to decide whether the Montana Association's offset was to be applied to reduce the claimant's total damages or its lesser statutory cap. 779 P.2d 61 (Mont. 1989). Palmer suffered more than $1,000,000 in damages from a motorcycle accident and received $300,000 in other recovery for the accident. *Id.* at 62-63. Palmer then sought to recover the statutory limit of $300,000 from the Montana Association. *Id.* Like Plaintiffs here, he argued that the Association's $300,000 offset should be applied to his total damages of over $1,000,000, resulting in the Association's liability to him for its full $300,000 statutory limit. *Id.* In

doing so, Palmer relied on the Association's stated purpose "to avoid financial loss to claimants or policyholders because of the insolvency of an insurer." *Id.* at 63. The Montana Association argued that the offset statute explicitly requires its $300,000 offset to be applied to its $300,000 statutory cap, resulting in no liability to Palmer. *Id.* at 62. The Montana Supreme Court agreed, finding that the offset statute unambiguously requires such a result:

> While the purpose of the act is to "avoid financial loss" to claimants and policyholders because of the insolvency of an insurer, the breadth of this announced goal is limited by the terms of the statute. Section 33-10-105, MCA, provides that the association shall:
>
> > (a) be obligated to the extent of the covered claims . . . *but such obligation shall include only that amount of each covered claim which is in excess of $100 and is less than $300,000* . . . (emphasis added).
>
> Recovery under this act, therefore, is **limited** to an amount which exceeds $100 but is less than $300,000. The scope of MIGA's coverage is **additionally limited** by the offset provisions of § 33-10-115, MCA:
>
> > (1) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim shall be required to exhaust first his right under such policy. *Any amount payable on a covered claim under this part shall be reduced by the amount of any recovery under such insurance policy.*
>
> . . .
>
> MIGA's statutory obligations are not as broad as Palmer suggests. The act's purpose language, while very broad, cannot be given the "effect" as Palmer construes it, in light of the unambiguous language which defines and limits MIGA's obligations.
>
> . . .

> It is the duty of this Court to give effect to the purpose of a statute. *LaFountaine v. State Farm Mut. Auto. Ins. Co.*, 698 P.2d 410 (Mont. 1985). However, if the intent of the legislature can be determined from the plain meaning of statutory words, we will go no further or apply any other means of interpretation. *Phelps v. Hillhaven Corp.*, 752 P.2d 737 (Mont. 1988). We conclude that this language of the statute is clear and unambiguous.
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> . . .
>
> The Montana Insurance Guaranty Association was not adopted as a form of reinsurance for every insurer who becomes insolvent. Rather, it is clear the Association was established to soften resulting hardship which may be encountered, under limited circumstances, by a policy holder or claimant when an insurer become insolvent.

Id. at 63-64 (emphasis in bold added). The Montana statute requiring that "[a]ny amount payable on a covered claim under this part shall be reduced" is virtually identical to South Carolina's offset provision requiring that "[a]ny amount payable on a covered claim under this chapter must be reduced." Like the Montana statute, our offset statute unambiguously requires application of the Association's offset to reduce its $300,000 statutory maximum rather than a claimant's total amount of damages.

The Superior Court of Pennsylvania also has found that its similar offset provision unambiguously requires application of the offset to the Association's statutory limit, not the claimant's damages amount. *Blackwell*, 567 A.2d 1103 (Pa. Super. Ct. 1989). In *Blackwell*, Blackwell suffered damages of at least $365,000 in an automobile accident and received $65,000 from uninsured coverage as a result. *Id.* at 1104. Blackwell then sought $299,900 ($300,000 statutory claim limit less the $100 deductible) from the Pennsylvania Association. *Id.* at 1104-05. She argued the Association "exists to prevent financial loss due to the insolvency of an insurer" and because she would have received

more than $299,900 had the at-fault insurer not become insolvent, the Association's offset should be applied to her total damages amount rather than the $299,900 statutory limit to avoid this financial loss for her and effectuate the protection meant to be afforded by the Act. *Id.* at 1105. The Pennsylvania court disagreed, finding that the statutory language expressly provided for the application of the offset to the $299,900 statutory limit:

> Some of the stated purposes of the Act relevant in the instant case are . . . "to avoid financial loss to claimants or policyholders as a result of the insolvency of an insurer." 40 P.S. § 1701.102(1). To these ends, the Act provides that PIGA is "obligated to make payment on the extent of the covered claims of an insolvent insurer . . . but such obligation shall include only that amount of each covered claim which is in excess of one hundred dollars ($100), and is less than three hundred thousand dollars ($300,000)." 40 P.S. § 1701.201(b)(1)(i). **Further**, PIGA is prohibited from paying more than the maximum applicable limits of the insurance coverage which had been provided by the insolvent insurance company. 40 P.S. § 1701.103(5)(c). PIGA's obligation to pay a covered claim is **also** subject to the following provision:
>
> > *Non-duplication of recovery*
> > (a) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall first be required to exhaust his right under such policy. Any amount payable on a covered claim under this act shall be reduced by the amount of any recovery under such insurance policy.
>
> 40 P.S. § 1701.503(a).
>
> . . .
>
> PIGA's obligation to Blackwell under 40 P.S. § 1701.201(b)(1)(i) is $299,900.00. As we have stated, Blackwell's damages are in excess of $365,000, and the applicable maximum limit on the insurance coverage which had been provided by [the insolvent insurer] was $6,000,000. The only matter to be resolved is whether PIGA's obligation under 40 P.S. § 1701.201(b)(1)(i) is to

> be reduced pursuant to 40 P.S. § 1701.503(a), in view of the fact that Blackwell has been able to recover $65,000.00 from other insurance companies as a result of [the insolvent insurer's] insolvency.
>
> . . .
>
> Although we understand the arguments set forth by Blackwell, it is axiomatic that where the words of a statutory enactment are clear and unambiguous, courts must construe the statute according to its plain and obvious meaning. *Philadelphia Housing Authority v. Pennsylvania Labor Relations Board*, 499 A.2d 294 (1985); *Garcia v. Community Legal Services Corp.*, 524 A.2d 980 (1987). We have carefully reviewed the language of 40 P.S. § 1701.503(a), and have found it to be unambiguous as a matter of law. Section 503(a) provides that "any amount payable on a covered claim under this act" which, in this case, has been determined to be $299,900.00, "shall be reduced by the amount of any recovery" of insurance coverage which has been received by the claimant due to the insolvency of an insurer. In this case, this latter amount equals $65,000.00. When $65,000.00 is deducted from the $299,900.00, PIGA's final obligation is to provide Blackwell with the sum of $234,900.00.

Id. at 1105 (emphasis in bold added); *see also Brock*, 410 S.C. 361, 764 S.E.2d 920. Again, like the Pennsylvania statute, our offset statute also provides that the amount payable on a covered claim must be reduced by the claimant's other insurance coverage.

In conclusion, although there is no South Carolina case directly addressing the issue at hand, the overwhelming majority of courts from other jurisdictions reviewing similar statutory schemes agree that the Association's offset is applied to reduce its statutory claim limit rather than a claimant's total amount of damages. It is therefore clear that the Act unambiguously requires application of the Association's offset to reduce its statutory maximum rather than a claimant's total damages amount.

CONCLUSION

The Act's plain language, Legislative intent, public policy, and supporting case law from other jurisdictions establish that the Association is entitled to deduct its statutory offset from its statutory claim limit rather than a claimant's total amount of damages. For the foregoing reasons, the Association respectfully requests this Court reverse the circuit court's ruling that the Association is not entitled to deduct its statutory offset from its statutory claim limit and enter judgment for the Association declaring that it has no obligation in this matter.

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November 25, 2015.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BAMBERG COUNTY
Court of Common Pleas
Doyet A. Early III, Circuit Court Judge

Case No. 2013-CP-05-00063
Appellate Case No. 2015-000246

Janette Buchanan and Shana Smallwood, individually, and as Co-Personal Representatives of the Estate of James S. Buchanan, ... Respondent,

v.

The South Carolina Property and Casualty Insurance Guaranty Association, ... Appellant.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for The South Carolina Property and Casualty Insurance Guaranty Association, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

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