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

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.

BRIEF OF RESPONDENTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES
CASES

SOUTH CAROLINA

OTHER JURISDICTIONS

STATUTES

SOUTH CAROLINA

OTHER JURISDICTIONS

RULES

SOUTH CAROLINA

OTHER JURISDICTIONS

MISCELLANEOUS

COUNTER-STATEMENT OF THE ISSUE ON APPEAL

Did the Trial Court properly hold the statutory offset of $376,622 under the South Carolina Property and Casualty Insurance Guaranty Association Act should be deducted from the total amount of Respondents' covered claim of $800,000 against AequiCap, the insolvent insurer, rather than the Association's statutory limit of $300,000 per covered claim?

COUNTER-STATEMENT OF THE CASE

On January 7, 2008, Respondent James Buchanan was involved in a motor vehicle collision in Bamberg County, South Carolina. A set of tandem tires separated from the axle of a log truck owned by Travis Scott and driven by Eddie Best. The set of tires struck the front of Mr. Buchanan's vehicle, breaking the front axle. Mr. Buchanan's truck crossed the centerline and struck another tractor-trailer. Mr. Buchanan's truck caught fire and he was incinerated in the cab of his truck.

Respondent Janette Buchanan brought a wrongful death action in 2008 against Mr. Best and Mr. Scott. Mr. Scott's vehicle was insured for one million ($1,000,000) dollars by Aequicap Insurance Co. (Aequicap). *See AequiCap Ins. Co. v. Best*, 2013-UP-116 (S.C. Ct. App. filed March 20, 2013). In 2011, however, Aequicap went into receivership in Florida. *In re Arbitration Between General Sec. Nat. Ins. Co. and AequiCap Prog. Admins.*, 785 F. Supp.2d 411, 423 n. 9 (S.D.N.Y. 2011); *AequiCap Ins. Co. v. Best*, slip at 1 n. 1. The South Carolina Property and Casualty Insurance Guaranty Association (the "Association") assumed management of the claims against AequiCap's insured, Mr. Scott, under the South Carolina Property and Casualty Insurance Guaranty Association Act (the Act). *See* S.C. Code Ann. § 38-31-10 (2002), *et seq.*

Mrs. Buchanan settled the underlying tort case against Mr. Scott and Mr. Best. The parties to the underlying tort case stipulated Mrs. Buchanan's damages were $800,000. Mrs. Buchanan received a total of $376,622 in combined workers' compensation benefits and recovery in the tort case from the co-defendants. (R. p.58, ¶ 5).

On April 11, 2013, Respondents filed an action against the Association for a declaration that the Association must pay $300,000, the limit of its exposure under S.C. Code Ann. § 38-31-60 (2002). Respondents asserted the balance due them after offsetting their recovery ($376,622) is $423,378, which exceeds the statutory limit. The Association answered, claiming that the credits for amounts already received should be applied from the cap, which would leave a balance of zero. On April 24, 2014, the Association moved for summary judgment. On May 14, 2014, Respondents also moved for summary judgment. Each party filed memoranda in support of the respective positions.

On May 28, 2014, the circuit court held a hearing on the cross-motions. On September 9, 2014, the court issued an order finding the Respondents' "covered claim" under the AequiCap policy was $800,000, to which an offset of $376,622 would be applied under Section 38-31-100(1) (2002), leaving a balance of $423,378 on the covered claim. The court held the Association's obligation to pay is then limited by the $300,000 cap as applied to the balance due on the claim.

On September 25, 2014, the Association filed a motion requesting the court reconsider its ruling pursuant to Rules 52 and 59, SCRCP. On January 20, 2015, the court entered an order denying the Association's motion. This appeal follows.

ARGUMENTS

The Trial Court Properly Held the Statutory Offset of $376,622 under the South Carolina Property and Casualty Insurance Guaranty Association Act Should Be Deducted from the Total Amount of Respondents' Claim of $800,000 Against Aequicap, the Insolvent Insurer, Rather than the Association's Statutory Limit of $300,000 per Covered Claim

This matter is before the Court on cross-motions for summary judgment. Under this posture the parties have agreed that the case is before the Court for its decision as a matter of law. *See, e.g., Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 705 S.E.2d 432 (2011) (where cross motions for summary judgment are filed, the parties concede the issue before the appellate court should be decided as a matter of law). Furthermore, the appeal in this case is not from the denial of the Association's motion for summary judgment, for that ruling is never appealable. *See, e.g., Olson v. Faculty House of Carolina, Inc.*, 354 S.C. 161, 580 S.E.2d 440 (2003) (the denial of a motion for summary judgment is not appealable, even after final judgment). Finally, in a case raising a novel issue of law regarding the interpretation of a statute, the appellate court is free to decide the question with no particular deference to the trial court. *Lambries v. Saluda County Council*, 409 S.C. 1, 760 S.E.2d 785 (2014).

I. The Trial Court Correctly Ruled for Respondents

The issue before this Court is whether the trial court erred in granting summary judgment to the Respondents regarding application of the cap provisions of the South Carolina Property and Casualty Insurance Guaranty Association Act (the "Act"). Respondents contend the Association owes $300,000, which represents the cap applied to

the balance due to Respondents after a setoff for recovery from the co-defendants and from workers' compensation ($376,622) is applied to Respondents' claim of $800,000 against AequiCap's insured, Mr. Scott. The Association contends its obligation is zero because the cap is compared to the amount Respondents have already recovered from the co-defendants and from workers' compensation ($376,622). The trial court agreed with Respondents, and the Association seeks review. This Court should affirm.

Statutory Construction

In recently addressing the Act, the Supreme Court noted:

> "All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." *McClanahan v. Richland Cnty. Council*, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Id.* Thus, we must follow the plain and unambiguous language in a statute and have "no right to impose another meaning." *Id.*

S.C. Property and Cas. Ins. Guar. Ass'n v. Brock, 410 S.C. 361, 366, 764 S.E.2d 920, 922 (2014).

An examination of the text of the statute reveals that the trial court reached the correct result. The Association's responsibility regarding a covered claim is to pay up to the statutory cap after receiving credit against the total claim for any amounts the plaintiff receives. Where the amount of that claim is less than the statutory cap, it may well be that the recovery could take the Association's responsibility to zero. However, where, as here, the claim exceeds not only the cap, but the cap plus amounts recovered from other

sources, the Association must provide coverage up to the statutory cap. That is what the trial court ruled here, and this Court should affirm.

The Act

The Act is found in Chapter 31 of Title 38 of the Code. Section 38-31-20 contains the definitions applicable to the Chapter, and provides:

> (8) *"Covered claim" means an unpaid claim ... 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 Ann. § 38-31-20(8) (2002) (emphasis added). There is no dispute that AequiCap is an insolvent insurer and that the Respondents are residents of this State.

The Respondents' claim is a "covered claim" under the Act. The claim is (1) "unpaid"; (2) "arises out of and is within the coverage"; and (3) "is subject to the applicable limits of an insurance policy to which this chapter applies issued by an insurer," which was $1,000,000. *See S.C. Property and Cas. Ins. Guar. Ass'n v. Brock*, 410 S.C. 361, 764 S.E.2d 920 (2014) (discussing Section 38-31-20(8)).

The Act sets forth the powers and duties of the Association in Section 38-31-60, which provides:

The Association:

> (a) is obligated *to the extent of claims existing before the determination of insolvency* and claims arising up to the earliest of the following dates:

(i) thirty days after the determination of insolvency;

(ii) the policy expiration date; or

(iii) the date the insured replaces or cancels the policy.

(iv) Notwithstanding any other provisions of this chapter, except in the case of a claim for benefits under worker's compensation coverage, any obligation of the association to or on behalf of an insured and its affiliates on all covered claims combined shall cease when ten million dollars shall have been paid in the aggregate by the association and any one or more associations similar to the association of any other state or states, to or on behalf of that insured, its affiliates, and additional insureds on covered claims or allowed claims arising under the policy or policies of any one insolvent insurer. If the association determines that there may be more than one claimant having a covered claim or allowed claim against the association, or any associations similar to the association in other states, under the policy or policies of any one insolvent insurer, the association may establish a plan to allocate amounts payable by the association in such manner as the association in its discretion considers equitable.

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.* * * *

S.C. Code Ann. § 38-31-60 (a) (iv)(2002) (emphasis added). The "covered claim" here is $800,000, the amount of the settlement within the limits of AequiCap's policy. It is thus "in excess of" $250,000. The obligation, however, is then capped at $300,000.

Section 38-31-60 provides further that the Association:

(b) *is considered the insurer to the extent of its obligation on the covered claims and, to this extent, has all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent.* However, the association has the right but not the obligation to defend an insured who is not a resident of this State at the time of the insured

> event unless the property from which the claim arises is permanently located in this State in which instance the association does have the obligation to defend the insured;

S.C. Code Ann. § 38-31-60(b) (2002) (emphasis added). Thus, the Association steps into the shoes of AequiCap "to the extent of its obligation on the covered claims," which is $800,000 (but then limited to $300,000 maximum exposure).

Next, the statute provides the Association:

> (d) shall investigate claims brought against the association and adjust, compromise, settle, and *pay covered claims to the extent of the association's obligation* and deny all other claims and may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which these settlements, releases, and judgments may be properly contested;

S.C. Code Ann. § 38-31-60 (d) (2002) (emphasis added). Thus, the Association must pay a "covered claim," but the Association's "obligation" is then limited to $300,000 for any one "covered claim."

The Act then provides that if the Association pays on a "covered claim," the insured of the insolvent insurer is deemed to have assigned any right against the assets of the insolvent insurer, including any person affiliated with the insolvent insurer whose liability obligations to other persons are satisfied in whole or in part by payments made by the Association. S.C. Code Ann. § 38-31-90(1) & (2) (2002). Thus, the Association again steps into the shoes of the insured with regards to recoverable claims back against the insolvent insurer of any affiliated individual for whom the Association has covered a loss.

The offset provision of the Act is found in Section 38-31-100, which provides:

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 that 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 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*. Notwithstanding the foregoing, no person may be required to exhaust all coverage and limits under the policy of an insolvent insurer.

S.C. Code Ann. § 38-31-100 (1) (2002) (emphasis added). The Respondents' "claim under an insurance policy" (*i.e.*, the other coverage from a solvent insurer and the workers' compensation coverage) is for $800,000. Respondents were required to "first exhaust" other coverages, which they have done in the amount of $376,622. Their "claim under an insurance policy" is then reduced by that total recovery from those other sources, leaving a balance of $423,378 remaining on the "covered claim."

Section 38-31-100 (1) also provides:

> (a) A claim under a policy providing liability coverage to a person who may be jointly and severally liable with or a joint tortfeasor with the person covered under the policy of the insolvent insurer that gives rise to the covered claim must be considered to be a claim arising from the same facts, injury, or loss that gave rise to the covered claim against the association. Any *amount payable on a covered claim* under this chapter must be reduced by the full and combined policy limits of all joint tortfeasers.

Section 38-31-100(1)(a) (emphasis added). The Legislature used the term "covered claim," not "obligation," here. The amount payable on Respondent's "covered claim" is $800,000, the amount of the settlement. That is the amount that must be reduced "by the full and combined policy limits of all joint tortfeasors," which is what was done in this case.

Section 38-31-100(1) next provides:

> (b) To the extent that the association's obligation is 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.*

Section 38-31-100(1)(b) (emphasis added). Again, the liability of the person insured by AequiCap was $800,000, and that liability of that person who should have been covered by the AequiCap policy has been reduced by $376,622, the amount of the recovery from the joint tortfeasors and the employer. There remains, however, a covered claim against that person who would have been insured by the insolvent insurer, AequiCap, in the amount of $423,378.

Section 38-31-100 next provides:

> A person having a claim which may be recovered under more than one insurance guaranty association or associations similar to the association must be required first to exhaust all coverage and limits in recovery *from the association of the place of residence of the insured* except that, if it is a first-party claim for damage to property with a permanent location, he shall be required first to exhaust all coverage and limits in recovery from the association of the location of the property, and, if it is a workers' compensation claim, he shall be required first to exhaust all coverage and limits in recovery from the association of the residence of the claimant. Any amount payable on a covered claim under this chapter must be reduced by the full amount of recovery from any other insurance guaranty association or associations similar to the association, and the association shall receive full credit for such recovery.

Section 38-31-100(2) (emphasis added). The insured under the AequiCap policy (Eddie Best) is a resident of Orangeburg, South Carolina. The Respondents exhausted the applicable workers' compensation coverage which was credited against their covered claim of $800,000.

Section 38-31-100 finally provides:

> A person who has liquidated by settlement or judgment a claim against an insured under a policy issued by an insolvent insurer, and the claim is a covered claim and is also a claim within the coverage of any policy issued by a solvent insurer, must be required first to exhaust all coverage and limits provided under the policy issued by the solvent insurer before execution, levy, or any other proceedings are begun to enforce any judgment obtained against or the settlement with the insured of the insolvent insurer. *Any amount payable on a covered claim* under this chapter, whether through settlement, judgment, or otherwise, must be reduced by the full limits of such other coverage as set forth on the declarations page of the policy issued by the insolvent insurer.

S.C. Code Ann. § 38-31-100 (5) (2002) (emphasis added). Respondents have liquidated by settlement their claim against the insured under AequiCap's policy – the liquidated amount is $800,000. Their claim was a "covered claim." It was *also* a claim within the coverage of AequiCap's policy. Thus, they were required to first exhaust all coverage and limits provided by the solvent insurer, which they have done. The total amount payable under that covered claim was $800,000, and that amount was "reduced by the full limits of such other coverage," which all parties agree is $376,622.

DISCUSSION

The Association is a statutory entity designed to provide some protection for the insureds of insolvent insurance companies. *S.C. Property and Cas. Ins. Guar. Ass'n v. Brock*, 410 S.C. 361, 764 S.E.2d 920 (2014); *S.C. Prop. & Cas. Ins. Guar. Ass'n v. Carolinas Roofing & Sheet Metal Contractor's Self–Insurers Fund*, 303 S.C. 368, 369, 401 S.E.2d 144, 145 (1991). The purpose of the Association is to provide payment for the covered claims of insolvent insurers. *S.C. Prop. & Cas. Ins. Guar. Ass'n v. Wal-Mart*

Stores, Inc., 304 S.C. 210, 403 S.E.2d 625 (1991).

As a condition precedent to recovery from the Association, a claimant is required to first exhaust all available coverage from solvent insurers toward the "covered claim," and the Association is allowed to offset the full limits of such other coverage against the "covered claim" under the Act. *Brock*, citing Section 38-31-100. Here, Respondents exhausted the available coverage from the solvent insurers and applied those amounts to their covered claim against AequiCap's insured. Once that offset was applied, then the Association's obligation under the Act remained. The Association is then required to pay the difference between the settlement amount ($800,000) and the offset amount ($376,622), which is $423,378 (but capped at $300,000). See *Brock,* 410 S.C. at 365, 764 S.E.2d at 922 (the Association paid "the difference between the settlement amount ($185,000) and the offset amount ($93,090.45).").

That is what these statutes plainly say, and that is how the trial court applied them. This should end the inquiry. Respondents proceed, however, to address the specific remaining arguments the Association makes in its brief.

A. Whether the Order Is "Internally Inconsistent" Regarding Ambiguity of the Statute Is Irrelevant

The Association points out that in the order of judgment, the circuit court stated "[e]xamining the text of the applicable statutes reveals portions of the statute are most ambiguous." (R. p.5) (App. Br. p. 7). The Association then points out that the court found the "plain language" of the statutes requires the offset as applied. The Association

contends that "the order is, therefore, internally inconsistent." (App. Br. p. 7). The Association contends further that the trial court failed to "identify the ambiguity in the Order" and submits this is because the scheme is, when read as a whole, unambiguous. (App. Br. p. 7). The Association does not, however, explain why any of this matters or what this Court ought to do about this alleged "internal inconsistency." The Court should not be persuaded to do anything in response to this argument.

As pointed out, the trial court held the "plain language" of the Act mandates that the Association has an obligation to pay $300,000 to Respondents. (R. p.4). The trial court analyzed the plain language of each provision and held it was "following the plain logical interpretation of the statutory text" in reaching its decision. (R. pp.5-7). Thus, the trial court applied a plain reading of the statute's language to arrive at the result. The court did not resort to any rules of construction that favored either party. Any statement in the order about ambiguity does not matter and, therefore, makes no difference. *See Jennings v. Jennings*, 401 S.C. 1, 6, 736 S.E.2d 242, 244 (2012) ("whatever doesn't make any difference, doesn't matter").

Respondents have set forth why the plain language of each portion of Section 38-31-100 supports the trial court's decision. Even if this Court views the order as "internally inconsistent" and decides that something must be done about it, the Court may still affirm a ruling under any reason appearing in the record. Rule 220(c), SCACR. *See also Potomac Leasing Co. v. Otts Market, Inc.*, 292 S.C. 603, 358 S.E.2d 154 (Ct. App. 1987) (the reasoning adopted by the trial court is not binding upon the appellate court if the record discloses a correct result).

This Court should not be persuaded to find the trial court's order to be "internally inconsistent" in a way that requires reversal.

B. The Trial Court Did Not Fail to Properly Address Recent Decisions of the Supreme Court of South Carolina Holding the Applicable Provisions of the Act Are Unambiguous

The Association contends the trial court failed to address *Brock* (a decision that came out after the initial order but before the ruling on reconsideration) and misconstrued *Hudson v. Lancaster Convalescent Center*, 407 S.C. 112, 754 S.E.2d 486 (2014). (App. Br. pp. 8-9). The Association's argument here is similar to its first argument – that the Supreme Court has found the statutory scheme to be unambiguous and that the trial court's ruling is therefore fatally flawed. Again, because the trial court applied the plain text of each part of the Act and arrived at the correct decision, this argument makes no difference in the outcome. *Jennings v. Jennings.*

Moreover, the Association overreads the holdings of both *Brock* and *Hudson.* The holding of *Brock* is that the Act allows the Association to offset all payments the claimant received from any source against the amount of the covered claim (which, in *Brock*, was $185,000). The Court described the Association's obligation to be $185,000 (*i.e.*, the entire settlement). The disagreement was over "what types of insurance coverage [the Association] may offset against" *that* obligation.

Unlike *Brock*, the entire settlement (and thus the "covered claim") in this case was $800,000, which was above the Act's cap. The next step, then, is to apply all amounts recovered as offsets against that amount to yield the sum due from the Association.

Because that amount is over the $300,000 cap, the next step is to reduce the obligation to pay to that cap. That application of the statutes is consistent in every way with the plain language of the statutes as well as the narrow holding in *Brock*.

The Association reads the words "covered claim" to mean "Association's *net* obligation," but *those* words do not appear in the statute. As pointed out above, the "covered claim" means a claim covered under the policy of the insolvent insurer, and it is against *that* amount that the offsets are to be taken. That is, Section 38-31-100(1) expressly provides that it is "the amount payable on a *covered claim*" that may be reduced by sums already recovered, not the amount of the Association's "obligation under the Act" or "obligation to pay the claim." The Association essentially asks the Court to rewrite Section 38-31-100(1), but amending this statute is the province of the legislature, not the Court. *American Petroleum Institute v. SC Dept. of Rev.*, 382 S.C. 572, 579, 677 S.E.2d 16, 20 (2009) ("it is not the province of [the] Court to perform legislative functions.").

It is also not within this Court's authority to alter the plain meaning of the Act by altering the term "covered claim" to mean "Association's net obligation under the Act." *See Alltel Comm., Inc. v. SC Dept. of Rev.*, 399 S.C. 313, 319, 731 S.E.2d 869, 873 (2012) ("Under the plain meaning rule, it not the province of the court to change the meaning of a clear and unambiguous statute."). Section 38-31-100(1) says what it says, and the meaning of "covered claim" is plain – it is the unpaid claim arising under the coverage set forth within the applicable limits of a policy of an insolvent insurer. Section 38-31-20(8).

As for *Hudson*, the Association concedes "the focus in *Hudson* [was] on a different issue than the one before this Court...." (App. Br. p. 9). That issue was whether Section 38-31-20(8) could be construed as limiting a claim arising from the Association's own actions (*i.e.*, interest incurred due to failure to pay a lump sum workers' compensation award). The Supreme Court held the limitation that a "covered claim" would not include interest did not apply where the Association's liability was direct and not derivative. There is no such issue in this case. *Hudson*, therefore, is meaningfully distinguishable and not relevant.

The Association also contends Section 38-31-100(1) must be read together as a whole with Section 38-31-60(a)(iv) (the cap provision) "consistent with *Brock* and *Hudson*." (App. Br. pp. 9-10). Respondents agree that these provisions should be read *in pari materia*, but they should also be read plainly, and against the backdrop of the legislative purpose in creating the Association. As the Supreme Court stated in *Hudson*:

> [The Association] is a last resort insurer created by the legislature to protect consumers in the event that their insurer becomes insolvent. See § 38–31–60; *South Carolina Property 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)("[The Association's] purpose is to provide some protection to insureds whose insurance companies become insolvent"). Section 38–31–60(b) provides that [the Association] "is considered the insurer to the extent of its obligation on the covered claims and, to this extent, has all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent...." *When [the Association] steps into the shoes of an insolvent insurer, its liability is derivative of the insolvent insurance company's direct liability to the consumer.* The legislature has limited this liability to a "covered claim" which is defined by § 38–31–20(8) as "... an unpaid claim ... which arises out of ... an insurance policy to which this chapter applies issued by an insurer, if the insurer is an insolvent insurer ... covered claim does not include: ... (h) any claim for interest."

> The legislature has chosen to define a "covered claim" as a claim arising from an insolvent insurer, yet [the Association] asks this Court to read the "covered claims" and its corresponding interest limitation to apply to claims arising from [the Association's] own actions. We decline to do so.

Hudson, at 124, 754 S.E.2d at 492 (emphasis added). The Association's derivative liability to the consumer here means the obligation to pay the covered claim under the insolvent insurer's policy – that claim is $800,000. The offset provision then permits the Association to reduce the "covered claim" by the amounts Respondents received, and then *that* number is capped at $300,000 (*i.e.*, the obligation).

In sum, the Court should not be persuaded to reverse the trial court's ruling based upon the Association's argument that the court "failed to properly address" *Brock* and *Hudson*. The trial court's decision is consistent with the Supreme Court's rulings in those cases and with the plain language of the Act.

C. The Trial Court Did Not Misapply the Act

The Association argues that its "*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." (App. Br. pp. 10-14). The Association reads the term "amount payable on a covered claim" to mean the Association's obligation under the Act. (App. Br. pp. 12-14). The upshot is that the Association equates the terms "obligation" and "covered claim." This is a misreading of the statute.

The precise language of the offset provision is as follows:

> 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 that 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 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.* Notwithstanding the foregoing, no person may be required to exhaust all coverage and limits under the policy of an insolvent insurer.

S.C. Code Ann. § 38-31-100 (1)(emphasis added). The Association contends the bolded language *really* means the Association's "obligation" under the Act. (App. Br. p. 14). But that is not what the statute says plainly.

To begin with, in drafting the statute the General Assembly drew a distinction between the terms "covered claim" and "obligation." The Act provides the Association "shall investigate claims brought against the association and adjust, compromise, settle, and *pay covered claims to the extent of the association's obligation....*" S.C. Code Ann. § 38-31-60 (d) (emphasis added). If the term "obligation" is the same as "covered claim," this provision make no sense.

Analyzing Section 38-31-100(1) sentence by sentence is helpful. The first clause of the first sentence provides: "A person, *having a claim under an insurance policy*, whether or not it is a policy issued by a member insurer...." There is no dispute that Respondents meet this language – they are "a person," and they "have a claim under an insurance policy." Respondents had a claim from the solvent insurer as well as a workers' compensation claim.

The second clause of the first sentence provides: "and the claim under such other

policy arises from the same facts, injury, or loss that gave rise to the covered claim against the association...." Again, it is undisputed that the claim against the other solvent insurer and the workers' compensation carrier arose from the same facts, injury or loss that gave rise to the covered claim against the Association (which derives from the claim against the insolvent insurer, AequiCap).

The third clause of the first sentence then states, "is required to first exhaust all coverage and limits provided by any such policy." The parties have agreed to limit the Association's offset to the amounts actually recovered under the other policies. (App. Br. p. 11, n. 8). The phrase "any such policy" means the recovery from the solvent insurer and the workers' compensation carrier in this case.

The second sentence, which is the operative offset sentence, provides, "**Any amount payable on a covered claim** under this chapter must be 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." (Bold added). The Association points to this bolded language as the source of its argument that the offset is against the Association's obligation *after* the cap is applied. This is not correct.

"Any amount payable" is followed by "on a covered claim" – this means the amount payable under the insolvent insurer's policy because "covered claim" references that insolvent insurer, not the Association. As noted above, "covered claim" is specifically defined in the Act:

"Covered claim" *means an unpaid claim ... 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 Ann. § 38-31-20(8) (2002) (emphasis added). The "covered claim" is thus: (a) the "unpaid claim"; (b) "which arises out of and is within the coverage"; and (c) is subject to the applicable limits of an insolvent insurer's policy. The "covered claim" means the $800,000 claim against AequiCap's policy limits of $1,000,000. "Payable on a covered claim" thus means payable under the AequiCap policy, not by the Association.

If the General Assembly intended the result the Association seeks, it could have drafted the statute as follows:

> Any amount payable ~~on a covered claim~~ on the association's obligation under this chapter must be 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~~ obligation must be reduced by the total recovery.

(Strikethrough and underline added). But that is not what the statute says, and this Court should not read it that way.

The Association asserts that :

> 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.

(App. Br. p. 13). Precisely. The legislature drafted the statute in this manner, expressing a

policy decision to protect consumers up to $300,000 against an insolvent carrier where the damages and coverage under an applicable policy exceed that amount. If Respondents' carrier was not insolvent, they could recover all of the remaining balance on the loss up to $423,378. Under the Act, their recovery of the remaining loss is limited to $300,000.

This construction of the statute does not render the offset provision "meaningless." Had Respondents received $600,000 from other sources, then the Association's obligation in this case would have been $200,000 without concern for the cap. Because Respondents received less than $500,000 towards their $800,000 claim, the Association is required to step up at the capped amount.

Furthermore, Respondents are not being made whole - far from it. Their damages totaled $800,000 against which they received only $376,622 from other sources. Of the $423,378 balance remaining, they may only recover $300,000 from the Association, leaving them responsible for the remaining $123,378 themselves. The Act is consumer protection legislation and is supposed to provide "last resort" insurance coverage. *Hudson*. The trial court's ruling serves that goal – the Association's position does not.

What the Association advocates would render these provisions perfunctory in any case where there are other sources of coverage that provide at least $300,000 towards the covered claim. Nothing in the statutory scheme supports that result. The Association is intended to provide some form of coverage for any consumer who is injured. *Hudson*. In exchange for this consumer protection, the legislature requires two things: (1) the consumer must pursue all other avenues of payment before turning to the Association;

and (2) in *then* responding, the Association must provide coverage, but *that* obligation is limited to a cap of $300,000. It is not the consumer's overall recovery on a covered claim that is capped at $300,000 total, but the amount the Association must pay in order to cover damages that would have been covered by the insolvent insurer.

That is the result required by the Act, and that is the result the trial court reached. This Court should affirm.

II. The Trial Court Did Not Misconstrue Legislative Intent or Public Policy Underlying the Act

The Association contends the trial court overlooked the legislature's "express stated intent," "mistakenly relied on the [South Carolina] Tort Claims Act" to support the court's conclusions under the Act, and erred "by finding that reading the statute as intended would result in adverse public policy consequences." (App. Br. p. 14). These arguments exaggerate, overstate or misstate what the trial court actually did. They should not persuade this Court to reverse.

A. The Legislature's Intent

The Association contends that the 2001 amendment to the Act was intended "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." (App. Br. p. 15). The Association's argument, however, is based upon the erroneous premise that the offset is to be applied to its obligation. (App. Br. p. 15-18).

The Association asserts "the language of the Act is clear and unambiguous" as

found in *Brock* and *Hudson*. Of course, neither of those cases made such a sweeping pronouncement of the entire Act but, rather, explained the specific portions then before the Court. Even so, the "clear and unambiguous" language of the relevant statute provides that the offset is *not* against the Association's obligation, but against the Respondent's "covered claim" against AequiCap. S.C. Code Ann. § 38-31-100(1)(a) ("Any amount payable on a *covered claim* under this chapter must be reduced by the full and combined limits of all joint tortfeasors."). The "covered claim under this chapter" refers to the "covered claim" as defined by the Act under Section 38-31-20(8), that is "an unpaid claim ... 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...." The "unpaid claim" is the claim against AequiCap, which in this case is $800,000.

The Association next points to the "preamble" to the 2001 Act which amended this statutory scheme as support for its view that the legislature intended to "[provide] a credit to the Association for other coverages arising from the same facts, injury, or loss as the claim against the Association." (App. Br. pp. 15-16).

The preamble of an Act is not part of the effective portion of a statute, although it may supply the guide to the meaning of an act. *Mitchell v. City of Greenville*, 411 S.C. 632, 770 S.E.2d 391 (2015). The preamble to the 2001 Act is lengthy, and informs that the Act was intended, among other things:

> 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....

Act No. 82, 2001 S.C. Acts preamble. The Association believes the phrase "limitations on claims" means 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." (App. Br. pp. 15-16). The Association's argument here reads too much into this preamble.

Respondents do not disagree that through the Act and the 2001 amendment, the legislature intended to require an offset against a "covered claim" before a claimant could then turn to the Association – the intent was to ensure the Association was not a first line insurer but would provide coverage for a "covered claim" only after a claimant has exhausted all other available sources. If exhausting those other sources first fully satisfied the covered claim, then the Association would owe nothing since the claimant would be made whole from those other sources. Otherwise, after exhausting those other sources, the claimant could then turn to the Association to fill the uncovered gap, but only up to the statutory limitation of $300,000.

Comparing the 2001 amendment Section 38-31-100 to the prior version of the statute is helpful. The 2001 amendment did the following to Section 38-31-100:

(A) Added the last sentence to Part (1), which provides "Notwithstanding the foregoing, no person may be required to exhaust all coverage and limits under the policy of an insolvent insurer."

(B) Added to Part (1) the provisions of subparts (a) and (b), which state:

(a) "A claim under a policy providing liability coverage to a person who may be jointly and severally liable with or a joint tortfeasor with the person

covered under the policy of the insolvent insurer that gives rise to the covered claim must be considered to be a claim arising from the same facts, injury, or loss that gave rise to the covered claim against the association. Any amount payable on a covered claim under this chapter must be reduced by the full and combined policy limits of all joint tortfeasers."

(b) "To the extent that the association's obligation is 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."

(C) Part (2) was amended slightly for verbiage, and the following sentence added: "Any amount payable on a covered claim under this chapter must be reduced by the full amount of recovery from any other insurance guaranty association or associations similar to the association, and the association shall receive full credit for such recovery."

(D) Part (4) was amended to add the underlined language as follows: "No claim held by an insurer, reinsurer, insurance pool, or underwriting association based on an assignment or on rights of subrogation, or otherwise, may be recovered from a claimant or asserted in any legal action against a person insured under a policy issued by an insolvent insurer or the association except to the extent the amount of the claim exceeds the obligation of the association under this chapter."

(E) Part (5) was amended to strike words and add underlined language as follows: " A

person who has liquidated by settlement or judgment a claim against an insured under a policy issued by an insolvent insurer, and the claim is a covered claim and is also a claim within the coverage of any policy issued by a solvent insurer, ~~is~~ must be required first to exhaust ~~first his rights~~ all coverage and limits provided under the policy issued by the solvent insurer before execution, levy, or any other proceedings are begun to enforce any judgment obtained against or the settlement with the insured of the insolvent insurer. Any amount payable on a covered claim under this chapter, whether through settlement, judgment, or otherwise, must be reduced by the full limits of such other coverage as set forth on the declarations page of the policy issued by the insolvent insurer.

(F) Part (6) was added to provide, "A person having a claim against an insolvent insurer under any provision in an insurance policy is limited to ten million dollars aggregate payout from the association."

(G) Part (7) was added to provide, "A person having a net worth of greater than twenty-five million dollars and having a claim against an insolvent insurer under any provision in an insurance policy may not make a claim against the association."

None of these amendments to Section 38-31-100 support the Association's view that its capped obligation under the Act must be reduced by any other recovery. Rather, the Association is entitled to credit against the "covered claim," which here is $800,000.

Nothing in the preamble contradicts the trial court's reading of the express terms of the offset provision. And nothing in the preamble expresses any intent that the offset

must be applied only to the Association's capped obligation under the Act. The Court should not be persuaded to read the preamble to the 2001 amendment to Section 38-31-100 to include something that simply is not there. And even if the Court could divine such language from the preamble to the 2001 amendment, that preamble may serve only to guide the meaning of the Act and is not a part of the effective portion of the statute. *Mitchell*.

The Association next contends the trial court's order "unlawfully forces the Association to fully 'step in the shoes' of the insolvent insurer" in contrast to the expressed legislative intent as allegedly set forth in *Brock* and *Hudson*. (App. Br. p. 16). This simply is not so. Although the Association presents these rulings as parenthetical "holdings," these cases must be examined in detail.

1. *S.C. Prop. & Cas. Ins. Guar. Ass'n v. Wal-Mart Stores*

First, the Association points to *S.C. Prop. & Cas. Ins. Guar. Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 403 S.E.2d 625 (1991), asserting the Supreme Court found "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." (App. Br. p. 16). This is a misstatement of the holding in *Wal-Mart*.

In *Wal-Mart*, Transit Casualty Insurance Company provided workers' compensation coverage for all of Wal-Mart's stores throughout the country. A dispute arose between Wal-Mart and Transit about the compensation policies and Wal-Mart filed a declaratory judgment action in Arkansas in February 1985 to establish its rights under the policies. In December 1985, however, Transit was declared insolvent and its license

to transaction business in South Carolina was revoked.

In 1988 the Eighth Circuit Court of Appeals ruled the contract was illegal and unenforceable and hence void. The Court found that Transit's agent had materially misrepresented various facts to be reported to regulatory agencies in order to meet a flat guaranteed premium for coverage, thereby violating various state statutory laws. The Court found both Transit and Wal-Mart were aware of the illegality of the agreement and applied the doctrine of *in pari delicto,* with the result that the parties were in the same position as if the contract had never been executed.

In the meantime, the Association had received notification of Transit's insolvency and began to process Wal-Mart's workers' compensation claims.[1] Between January 1986 and November 1988 the Association handled 36 claims against Transit's Wal-Mart coverage and paid benefits for 13 of those claims. In September 1988, however, the Association received notice of the Eighth Circuit's decision that the contract was illegal. The Association then sent all of the claim files to Wal-Mart in November 1988. The Association filed an action to recover the expenses incurred and payments it had made on Wal-Mart's behalf, asserting the claims were not "covered" as required under the Act.

Wal-Mart alleged the Association's payments were proper, and counterclaimed to require the Association to continue coverage. The parties filed cross-motions for summary judgment as to liability. The trial court granted the Association's motion for partial summary judgment on the ground Wal-Mart was collaterally estopped by the

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[1] The Supreme Court added that the legislature created the Association in 1956, and its "purpose ... is to provide payment for the covered claims of insolvent insurers." *Wal-Mart*, at 212, 403 S.E.2d at 626.

Eighth Circuit decision from denying the illegality and unenforceability of the workers' compensation agreement with Transit. The trial court rejected Wal-Mart's *in pari delicto* defense.

On appeal, the Supreme Court affirmed the ruling that Wal-Mart could not relitigate the validity of the workers' compensation contract. Regarding the *in pari delicto* defense, the Supreme Court stated:

> Wal-Mart argues that [the Association] stands in the shoes of Transit *and that it cannot recover because of Transit's bad acts*. We find that this is not the intent of the statutes.

Wal-Mart, at 215, 403 S.E.2d at 628 (emphasis added). In light of the ultimate outcome of the case, the Supreme Court's finding regarding the intent of the statutes is directed to the language Respondent's emphasized, not the language about the Association standing in the shoes of Transit. This becomes apparent when the remainder of this part of the opinion is examined. The Supreme Court continued:

> Section 38-31-60(b) provides in pertinent part:
>
> [The Association] is considered the insurer to the extent of its obligation on the covered claims and, to this extent, has all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent.
>
> [The Association] has no rights or obligations to claims which are not covered. The trial court found, therefore, that *when it was determined that the claims were not covered*, [the Association] could not be considered the insurer nor could it be bound by Transit's actions.

Id. (emphasis added). Thus, it was the finding that the "claims were not covered" that took the Association out of Transit's shoes – the Court was not making a broad pronouncement that the legislature did not intend to place the Association in the shoes of

an insolvent insurer for all purposes.

The Supreme Court next stated:

> Wal-Mart argues that its position is based on § 38-31-90(1) rather than § 38-31-60. This section states that [the Association] has no cause of action against the insured except for amounts that would have been paid by the insolvent insurer. Wal-Mart argues that Transit would not have paid anything because of the illegal contract and therefore [the Association] cannot recover anything from Wal-Mart.
>
> We find that this section, as all others in this article, is triggered by a "covered claim." *Without a covered claim*, the insolvent insurer would not be liable for payment of any claims. We therefore agree with the decision of the trial court.

Id. (emphasis added). The key, therefore, is that there was no "covered claim," and under *those* facts, the Association would not stand in the shoes of Transit at all, much less to the point that the Association could not recover because of Transit's bad acts.

The Association plucks language from *Wal-Mart* out of context to argue the trial court unlawfully forced the Association to "stand fully in the shoes" of AequiCap. This Court should not be persuaded to read *Wal-Mart* in such an incorrect and improper way.

2. *Hudson v. Lancaster Convalescent Center* And *SC Property and Cas. Ins. Guar. Ass'n v. Brock*

The Association argues *Hudson v. Lancaster Convalescent Center*, 407 S.C. 112, 754 S.E.2d 486 (2014) and *SC Property and Cas. Ins. Guar. Ass'n v. Brock*, 410 S.C. 361, 764 S.E.2d 920 (2014) demonstrate the legislature intended the Association's "liability to be limited" under the Act. (App. Br. p. 16).

Under the Association's reading of the Act, *Brock* and *Hudson*, the Association

becomes a "no resort" payor *any* time there is a payment from another source that combines to exceed $300,000. The legislature could have written the Act in that manner, but it chose not to do so. Instead, the legislature provided that the Association steps into the liability of AequiCap, *Hudson*, which is $800,000. The offsets are then applied, leaving the balance of liability for the covered claim. The caps then reduce that amount.

The Association asserts it "is not intended as a failsafe to guarantee a complete recovery to those unfortunate claimants" of insolvent insurers. (App. Br. p. 17). Respondents do not quarrel with this, and neither did the trial court. No "complete recovery" is being guaranteed here, nor is a "complete recovery" being made. As noted above, Respondents are being left without any recovery of $123,378 after the caps under the Act are applied to the balance of the covered claim against AequiCap.

The Association concludes that the trial court's ruling results in the Association not being "given any credit for the other coverages subject to its maximum statutory obligation." (App. Br. p. 18). Again, this is not so. The trial court gave the Association credit for the other sources of recovery against the "covered claim," which in this case is $800,000. After giving the credit, the balance remaining on the covered claim was $423,378, and that is the Association's "statutory obligation" under the Act. Only then does the cap provision reduce that obligation to $300,000.

This Court should not be persuaded to misread section 38-31-60, *Brock* and *Hudson* to find that the Association steps up only if a claimant "be left without **any** potential source of recovery when an insurer becomes insolvent." (App. Br. p. 17). Instead the Court should affirm the trial court's ruling.

B. The Trial Court's Use of the Tort Claims Act as Persuasive Authority Does Not Mandate Reversal

The trial court noted the following in its order:

> As [the Association] 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.

(R. p.8). The trial court then turned to cases construing the mechanics of the Tort Claims Act to assist the court in applying the Act in this case. The Association does not explain how the trial court's analysis, even if misguided, would lead to a different result in this case. The Court should not be persuaded to reverse on this ground.

Courts often turn to other sources for guidance in how to apply a statutory scheme. The trial court here looked at how the offsets were applied in Tort Claims cases for guidance as to how the offset provisions under the Guaranty Act should work. An examination of those cases reveals the trial court correctly applied the statute in this case.

Under South Carolina law, the entire assessment of damages is considered in determining a setoff. *See Truesdale v. S.C. Highway Dept.*, 264 S.C. 221, 234-235, 213 S.E.2d 740, 746-747 (1975), *overruled on other grounds by McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985) (applying this rule to a jury verdict); *Smalls v. S.C. Dep't of Educ.*, 339 S.C. 208, 221-22, 528 S.E.2d 682, 689 (Ct. App. 2000) (same). Once the setoff is subtracted from the total amount, the other reductions are made. This is because the purpose of setoff is generally to prevent double recovery. *Truesdale*, 264 S.C. at 235, 213 S.E.2d at 747.

In *Truesdale*, the plaintiff's claim against the South Carolina Highway

Department was statutorily capped at $10,000. 264 S.C. at 225, 213 S.E.2d at 741. The trial court nevertheless allowed the jury to determine the plaintiff's "full measure of damages" solely for the purpose of determining whether the trial defendant would be entitled to a setoff in the amount of the plaintiff's covenant not to sue a joint tortfeasor. *See id.* at 235, 213 S.E.2d at 746. The consideration for the covenant not to sue was $6,000.

The Highway Department argued that the jury should not be permitted to find damages more than the statutory cap of $10,000, and that the setoff should be applied to the $10,000 so that the Highway Department's liability was limited to only $4,000. The Supreme Court found such an approach to be "completely unsound." *Id.* at 234, 213 S.E.2d at 746. Rather, it found that the trial court properly protected the rights of both parties by allowing the jury to fully assess the plaintiff's damages at $35,000, and then applying the setoff to that full amount of damages. *See id.* at 235, 213 S.E.2d at 746-47. The Court observed that, "in the absence of it being determined what the full measure of damages is, it cannot be determined whether a joint feasor is or not entitled to an offset of the consideration for a covenant not to sue." *Id.* at 235, 213 S.E.2d at 746.

The Court in *Truesdale* found the proper method of applying the setoff was to reduce the total verdict by the amount of the $6,000 consideration for the covenant not to sue. See *id.* After the offset was applied and the verdict was reduced to $29,000, the Court then applied the statutory cap to reduce the verdict against the defendant to the statutory cap of $10,000. *See id.* at 235, 213 S.E.2d at 747. The Court explained that this method effectuated the purpose of preventing a double recovery: "Since the purpose of

allowing an offset or credit for the consideration of a covenant not to sue is to prevent double recovery the department in the present case would have been entitled to pro tanto relief if, but only if, the total damages had been found to be something less than $16,000." *Id.*

The *Smalls* case similarly applied the setoff to the total verdict before taking other reductions. 339 S.C. at 221-23, 528 S.E.2d at 689. In *Smalls*, suit arose out of an accident in which a child was struck and killed by a car while crossing the road. *See id.* at 213-14, 528 S.E.2d at 685. Her parents sued the driver, the driver's employer, and the Department of Education. They settled with the driver and his employer for $100,000, which was divided $90,000 to the wrongful death claim and $10,000 to the survival claim. They went to verdict against the Department of Education and the jury awarded damages of $600,000 for wrongful death and $310,000 for survival damages. *See id.* at 214, 528 S.E.2d at 685. Fault was apportioned 18% to the child and 82% to the Department of Education. *See id.* At that time, the Tort Claims Act imposed a statutory cap of $250,000 for each claim. *See id.* at 215, 528 S.E.2d at 685.

The *Smalls* court determined that the proper method of applying credit for the plaintiff's pretrial settlement was to subtract the settlement amount from the jury's verdict before reducing the verdict in the amount of plaintiff's comparative fault or the statutory cap. *See id.* at 221, 528 S.E.2d at 689. Applying that method to the survival claim, for example, the court started with the jury's verdict of $310,000, subtracted the settlement credit of $10,000, and then subtracted the 18% negligence of the plaintiff ($54,000), leaving a verdict of $246,000. *See id.* at 222, 528 S.E.2d at 689. The court followed a

Michigan case, *Rittenhouse v. Erhart*, 380 N.W.2d 440 (Mich. 1986), which had used this approach in a comparative fault case and had reasoned that the jury's verdict represented the total amount of damages suffered by the plaintiff and the fault allocations were only among the parties at trial. *See id.*

As in *Truesdale*, the defendant in *Smalls* argued that the setoff should be deducted from the amount of the cap, not the amount of the jury's verdict. *See id.* at 222, 528 S.E.2d at 689. The Court of Appeals disagreed, holding that "because Smalls has not recovered all damages awarded by the jury[,] application of a set-off in this manner would unfairly deprive a plaintiff of the verdict." *Id.* The court noted that the amount of the pre-trial settlement, plus the amount received from the Department of Education, "still does not rise to the full level of damages awarded by the jury. Therefore, Smalls has not obtained a double recovery, and we see no equitable reason to apply the credit in the manner urged by the Department." *Id.* at 222-23, 528 S.E.2d at 689.

The principles announced in *Truesdale* and *Smalls* are equally applicable in this case: Any setoff under the statute should be deducted from the total "covered claim" before applying the statutory cap. The cap under the Guaranty Act is akin to the comparative negligence finding in *Smalls* or statutory cap applied in *Truesdale* in that they are all mechanisms for reducing the plaintiff's full amount of damages before turning to payments due from the party before the court. Any settlement credit should therefore be deducted from the full amount of the Respondents' covered claim, $800,000, not from the cap under the Act.

Even if the trial court erred by using Tort Claims Act cases to guide the trial court

on how to apply the offset under the Guaranty Act, the trial court arrived at the correct result required by the plain language of the statute. An appellant must demonstrate not only error but resulting prejudice. *Keller v. Pearce-Young-Angel Co.*, 253 S.C. 395, 399, 171 S.E.2d 352, 355 (1969) ("The burden is, of course, upon the appellant to show not only error but resulting prejudice."). *See also Jennings v. Jennings*, 401 S.C. 1, 6, 736 S.E.2d 242, 244 (2012) ("whatever doesn't make any difference, doesn't matter").

This Court should reject the Association's contention that somehow the trial court's use of Tort Claims cases for guidance renders the trial court's order fatally defective.

III. The Trial Court's Decision Did Not Violate Public Policy

The trial court stated:

> 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.

(R. pp.9-10). The Association does not challenge these holdings in its brief.

The trial court then stated:

> Adopting the interpretation suggestion 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 proportionate 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.

(R. p.10). The Association contends that these statements are erroneous because exhaustion of claims against others is a "condition precedent to recovery" from the Association. (App. Br. pp. 20-21). This Court should not be persuaded to reverse based upon this argument.

Once again, the Association does not explain why this ruling, even if error, should justify reversing the trial court's order based upon a plain reading of the Act. As noted above, an appellant must demonstrate not only error but resulting prejudice. *Keller v. Pearce-Young-Angel Co.*, 253 S.C. 395, 399, 171 S.E.2d 352, 355 (1969) ("The burden is, of course, upon the appellant to show not only error but resulting prejudice."). Without prejudice, any error makes no difference in the result. *See Jennings v. Jennings*, 401 S.C. 1, 6, 736 S.E.2d 242, 244 (2012) ("whatever doesn't make any difference, doesn't matter").

In this case there is no claim that Respondents did not look first to other available sources for recovery for their covered claim – they, in fact, did so. After exhausting those sources, the Respondents turned to the Association, who had the obligation to respond to the remainder of the covered claim. That obligation was then capped at $300,000.

The Association "is a last resort insurer created by the legislature *to protect consumers* in the event that their insurer becomes insolvent." *Hudson*, 407 S.C. at 124, 754 S.E.2d at 492 (emphasis added). Consumer protection is at the heart of this statutory scheme. It is not designed to insulate the Association to the point that it may only respond to claims where the total recovery from all sources is $300,000 or less. Had the General Assembly desired such a result it would have been a simple matter to draft the legislation

in that fashion.

Whether the trial court correctly described public policy concerns or not, the trial court arrived at the correct result. Rule 220(c), SCACR. *See also Potomac Leasing Co. v. Otts Market, Inc.*, 292 S.C. 603, 358 S.E.2d 154 (Ct. App. 1987) (the reasoning adopted by the trial court is not binding upon the appellate court if the record discloses a correct result). Accordingly, this Court should not be persuaded to reverse the trial court's decision even if the Court finds the trial court misapplied the policy concerns underlying the Act.

IV. The Holdings of a Majority of Other Jurisdictions Do Not Support Reversal

The Association argues that 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." (App. Br. p. 21). The trial court noted that "all but one of the cases listed by the Association" in its brief to the circuit court "are cases involving setoffs applied to the policy limit, rather than the statutory limit, despite how they are framed in" the Association's brief. (R. p.6, n. 1). The trial court's view of those decisions was correct and this Court should affirm.

The Association contends that "nine of the cases cited to the trial court involved the deduction of the offset from the statutory maximum/limit." (App. Br. p. 22). The Association contends remaining cases (including a case from Kentucky) are instructive. (App. Br. pp. 25-30). Respondents thus provide this Court with a discussion of why each of those cases is distinct from this case in meaningful ways.

A. Arizona. The Association first cites to *Jangula v. Arizona Property and Cas. Ins. Guar. Fund*, 88 P.3d 182 (Ariz. Ct. App. 2004). Arizona's scheme, however, is different from South Carolina's statute in a very meaningful way.

The Arizona statute obligated the Fund to pay damages "up to the applicable limits of the insolvent insurer's policy or $99,900, whichever is less." A.R.S. § 20-667(B)(2002). Additionally, prior to 1998, the Arizona statute provided:

> Where more than one policy may be applicable, a policy issued by the insolvent insurer shall be deemed to be excess coverage. The claimant shall be required to exhaust all rights under other applicable coverage or coverages. Any amount *payable on a covered claim* shall be reduced by the amount of such recovery under other applicable insurance.

A.R.S. § 20-673(C) (1997) (emphasis added). The Arizona Supreme Court construed the last sentence of pre-1998 subsection (C) to require only that the amount of the claimant's total damage claim be reduced by the amount paid under other insurance policies, but that the other payments would not be offset against the Fund's obligation. *Arizona Property & Casualty Insurance Guaranty Fund v. Herder*, 751 P.2d 519, 523-525 (Ariz. 1988). The Court concluded that the phrase "amount payable on a covered claim" referred to "the total amount payable as damages for the claimant's injuries caused by the covered occurrence," *not* to the extent of the Fund's obligation. *Id.* at 523. A reduction in the "amount payable on a covered claim" would reduce the total amount of the damage claim, but if the total damages still exceeded the Fund's maximum obligation (the lesser of $99,900 or the limits of the insolvent insurer's policy), the amount paid by the Fund would not be reduced.[2]

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[2] This result in *Herder* is identical to the result the trial court reached in this case.

Significantly, in 1998 the Arizona legislature amended § 20–673(C) (2002) to add this sentence: "Any recovery pursuant to this article shall be reduced by the amount of the recovery under the claimant's insurance policy." The section now provides:

> Where more than one policy may be applicable, a policy issued by the insolvent insurer shall be deemed to be excess coverage. The claimant shall be required to exhaust all rights under other applicable coverage or coverages. *Any recovery pursuant to this article shall be reduced by the amount of the recovery under the claimant's insurance policy.* Any amount payable on a covered claim shall be reduced by the amount of such recovery under other applicable insurance.

A.R.S. § 20-673(C) (1997) (emphasis added). The *Jangula* Court held the *new* language in the 1998 amendment "changed the interpretation announced in *Herder*." 88 P.3d at 184. The Court stated:

> The word "recovery" in this context customarily means the amount of money received by a claimant after asserting a claim or pursuing an action for damages. See BLACK'S LAW DICTIONARY 1280 (7th ed. 1999) (defining "recovery" as an "amount awarded in or collected from a judgment or decree"). The referenced "article" is Article 6 of Chapter 3 of Title 20 of the Arizona Revised Statutes. Article 6 establishes the Fund and defines its obligations. See A.R.S. §§ 20–661 to –680. A " recovery pursuant to this article" is defined as the smallest of (1) the claimant's damages, (2) the face amount of the policy issued by the insolvent insurer, or (3) $99,900. See A.R.S. §§ 20–661(3) (defining covered claim) and 20–667(B) (limiting coverage to lesser amount of covered claim, face amount of policy, or $99,900).

Jangula, at 185. Thus, the amended statute specifically required the result in *Jangula*. There has been no similar amendment to South Carolina's Act. *Jangula* and its discussion of *Herder* actually support the trial court's ruling in this case.

B. Delaware. The Association next points to *Marra v. Wilson*, 2003 WL

367831 (Del. Sup. Ct. 2/20/03) (memorandum decision)[3] to support its position. Respondents concede that the Delaware trial court construed "payable on a covered claim" to mean the capped amount the Fund in that case would owe. This ruling, however, is by a trial court in Delaware trying to decide an issue it repeatedly described as "a matter of first impression."

Marra is apparently viewed as an outlier. In 2006, the Supreme Court of New Jersey ruled that under New Jersey's IGA "when an insured is covered by both a solvent and an insolvent insurer and the solvent insurer has paid the insured an amount exceeding the Act's maximum payment, but which falls short of the insured's total damages, the insured may seek compensation from the Association." *Thomsen v. Mercer-Charles*, 901 A.2d 303 (N.J. 2006). The New Jersey Court stated:

> Given that the New Jersey Legislature adopted the Model Act's language, we have no reason to believe that the Legislature intended a different interpretation of the provision than that commonly understood as having been intended by the drafters of the Model Act. Moreover, when New Jersey adopted the language of Section 12b, the Legislature had the benefit of the Connecticut Supreme Court's explanation and application of Section 12b. The very purpose of adoption of a model act is to encourage consistency in approach in the legislative language and its application. See [*Carpenter Tech. Corp. v. Admiral Ins. Co.*, 800 A.2d 54, 60 (N.J. 2004)] ("In passing New Jersey's Act, the Legislature sought to bring our State within a nationwide network of individual insurance guaranty association statutes designed to spread equitably the risk of insurer insolvency among the states."). The salutory purpose of uniformity is advanced by interpreting Section 12b consistent *with the nearly unanimous approach taken by our sister jurisdictions, all but one of which have interpreted the section as did the trial court below. See Marra v. Wilson*, 2003 WL 367831, 2003 Del.Super. LEXIS 63 (Feb. 20, 2003) (holding that insurance credit should be applied to Association's statutory liability rather

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[3] The Delaware Supreme Court permits citation to unreported decisions so long as a copy is attached to the brief. Rule 14 (B)vi(B)(2), Del. Sup. Ct. Rules.

than to plaintiffs' total amount of damages).

901 A.2d at 311 (emphasis added). Like the Supreme Court of New Jersey, this Court should not follow the unpublished trial court decision in *Marra* when construing the Act.

C. Louisiana. The Association cites to *Cooper v. Huddy*, 581 So.2d 723 (La. Ct. App. 1991) in support of its argument. The issue in *Cooper* was whether the Louisiana Insurance Guaranty Act (LIGA) was entitled to an offset for amounts the claimants had already recovered from the Pennsylvania Insurance Guaranty Association (PIGA). The relevant portion of LIGA provided:

> (2) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property, and if it is a workmen's compensation claim, he shall seek recovery first from the association of the residence of the claimant. *Any recovery under this Part shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.*

LSA-R.S. 22:1386 (2) (emphasis added). The Lousiana Court found "no ambiguity in the provision of LSA-R.S. 22:1386(2) which states that '[a]ny recovery under this Part [which in this case is $597,719.64] shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent." 581 So.2d 727-728.

Cooper is meaningfully distinct from this case. Unlike the issue in *Cooper*, the issue here is not an attempt to offset payment under the Act by payments recovered under another state's Insurance Guaranty Association Act.

Furthermore, South Carolina has a similar provision as the one at issue in *Cooper*,

but South Carolina's statute is *different* from the Louisiana statute in a meaningful way. Under South Carolina's version of the Act:

> (2) A person having a claim which may be recovered under more than one insurance guaranty association or associations similar to the association must be required first to exhaust all coverage and limits in recovery from the association of the place of residence of the insured except that, if it is a first-party claim for damage to property with a permanent location, he shall be required first to exhaust all coverage and limits in recovery from the association of the location of the property, and, if it is a workers' compensation claim, he shall be required first to exhaust all coverage and limits in recovery from the association of the residence of the claimant. *Any amount payable on a covered claim* under this chapter must be reduced by the full amount of recovery from any other insurance guaranty association or associations similar to the association, and the association shall receive full credit for such recovery.

S.C. Code Ann. § 38-31-100(2) (2005) (emphasis added). Thus, South Carolina's statute uses the phrase "amount payable on a covered claim" rather than "recovery under this Part." *Cooper*, therefore, does not support the Association's argument in this case.

D. Minnesota. The Association cites to *Cox v. Minnesota Ins. Guar. Assoc.*, 508 N.W.2d 536 (Minn. Ct. App. 1994) in support of its position. *Cox*, however, dealt with whether the Minnesota Insurance Guaranty Association (MIGA) was entitled to offset its limit of liability against an amount the claimant had already recovered from another guaranty association, the Florida Insurance Guaranty Association (FIGA). The provision at issue provided:

> Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the state of residence of the insured. * * * Any *recovery under this chapter* shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

Minn. Stat. § 60C.13, subd. 2 (emphasis added). The Court of Appeals found "the plain meaning of 'recovery under this chapter' can only mean MIGA's obligation to a claimant as created and defined by Chapter 60C. 'Recovery' is the amount arrived at after applying the liability limit set forth in 60C.09, subd. 3." *Cox*, at 541. Thus, MIGA was entitled to offset claimant's recovery from FIGA from the amount claimant could recover from MIGA under the Minnesota statute. Unlike the issue in *Cox*, this case does not involve an attempt to offset payment under the Act by payments recovered under another state's Insurance Guaranty Act.

Furthermore, South Carolina's statute is different from the Minnesota statute in a meaningful way. As noted above, under South Carolina's version of the Act:

> *Any amount payable on a covered claim* under this chapter must be reduced by the full amount of recovery from any other insurance guaranty association or associations similar to the association, and the association shall receive full credit for such recovery.

S.C. Code Ann. § 38-31-100(2) (2005) (emphasis added). Thus, South Carolina's statute uses the phrase "amount payable on a covered claim" rather than "recovery under this chapter." *Cox*, therefore, does not support the Association's argument in this case.

E. Mississippi. The Association cites to *Leitch v. Mississippi Ins. Guar. Assoc.*, 27 So.3d 405 (Miss. Ct. App. 2009), *aff'd* 27 So.3d 396 (Miss. 2010) in support of its claim. *Leitch*, however, is distinct in a meaningful way from this case.

Leitch was involved in a collision with a truck owned by H-G & F Co., Inc., and driven by Jack L. Dillard, an H-G&F employee of H-G & F. At the time of the wreck, the truck was insured by Reliance Insurance Company, which was later declared an insolvent

insurer within the meaning of Mississippi's Insurance Guaranty Act. Leitch initially sued Dillard and H-G & F, and later added his uninsured motorist ("UM") carrier, State Farm, seeking recovery under his UM policy's limit of $300,000. Leitch and State Farm settled for $300,000, and Leitch continued to maintain his claims against H-G & F and Dillard. Leitch then filed a declaratory judgment action against the Mississippi Insurance Guaranty Association ("MIGA"), seeking a ruling that any award received from his own UM coverage did not reduce MIGA's obligation.

MIGA moved for summary judgment, arguing that, pursuant to Mississippi Code Section 83-23-123, MIGA's obligation must be reduced by State Farm's payment of UM benefits, and since State Farm's payment of $300,000 was equal to MIGA's entire statutory limit of $300,000, MIGA had no further obligation. The trial court agreed, and granted MIGA's motion for summary judgment. Leitch appealed, and the Court of Appeals affirmed.

The Supreme Court granted Leitch's petition for writ of certiorari to address the Supreme Court's prior opinion in *Mississippi Insurance Guaranty Association v. Cole ex rel. Dillon*, 954 So.2d 407 (Miss.2007). The Supreme Court concluded that Leitch's claim for UM benefits was a "covered claim" under MIGA. The Court then noted that for MIGA to have a statutory obligation and authority to pay, any "claim" against a solvent insurer that is the same as the "covered claim" against MIGA must first be exhausted. Miss. Code Ann. § 83-23-123(1) (Rev.1999)("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....")(emphasis by the Court). The Court stated:

> The case before us today presents a plaintiff who made a claim against State Farm (a solvent insurer) *which is the same* as the "covered claim" he now pursues against MIGA. The maximum amount payable on a "covered claim" is $300,000. Miss. Code Ann. § 83-23-115(1)(a)(iii). According to the statute, "[a]ny amount payable on a covered claim ... shall be reduced by the amount of any recovery under [the State Farm] policy." Miss. Code Ann. § 83-23-123(1). Accordingly, MIGA is statutorily required to reduce the "amount payable on [Leitch's] covered claim ... by the amount of any recovery under [the State Farm] insurance policy."

Leitch, at 400 (emphasis added). *Leitch* therefore involved a claim against a plaintiff's UM carrier because the defendant's insurer became insolvent. That UM carrier stepped into the shoes of the insolvent insurer to adjust Leitch's claim, and thus the claim against State Farm was "the same as the 'covered claim' he [pursued] against MIGA." The Mississippi Court held that under those circumstances, MIGA was entitled to a complete offset against any amount recoverable under the Act.

This case does not involve a similar situation. Respondents did not file claims against a UM carrier for it to step into the shoes of AequiCap. Had they done so, their claim would have been the identical claim they assert against the Association (*i.e.*, looking to two sources to step into AequiCap's shoes). *Leitch* is meaningfully distinct and should not persuade this Court to reverse the trial court.

F. Montana. The Association next cites to *Palmer v. Montana Insurance Guaranty Ass'n*, 779 P.2d 61 (Mont.1989). (App. Br. pp. 24, 26-28). In *Palmer*, the Supreme Court of Montana held that the Montana Insurance Guaranty Fund (MIGA) was entitled to offset its obligation to the plaintiff by the maximum amount recoverable by the plaintiff from the Idaho Insurance Guaranty Fund (IIGF), the primarily-liable insurance

guaranty association. The court observed that MIGA "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." *Id.* at 64. The offset therefore involved recovery from another Association. Furthermore, Montana's offset provision stated, "Any recovery under this part shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent." § 33-10-115(2), M.C.A. *Palmer*, therefore, is meaningfully distinct from this case.

G. New Hampshire. The Association next cites to *New Hampshire Ins. Guar. Ass'n v. Pitco Frialator, Inc.*, 705 A.2d 1190 (N.H. 1998). New Hampshire's statute, however, is considerably different from South Carolina's version of the IGA. For instance, "covered claim" is defined as "a *net* unpaid claim ... which arises out of and is within coverage and *not in excess of* the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if such insurer after the effective date of this chapter is declared insolvent..." N.H.R.S.A. § 404-B:5, IV (emphasis added). Under South Carolina's statute, however, a "covered claim" means "an unpaid claim ... 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...." S.C. Code Ann. § 38-31-20(8) (2002) (emphasis added). The "powers and duties" provision of the New Hampshire version of the Act is also significantly different. The Act provides:

> The association shall... [b]e obligated to the extent of the covered claims

> existing prior to the determination of insolvency and arising within 30 days after the determination of insolvency, or before the policy expiration date if less than 30 days after the determination, or before the insured replaces the policy or causes its cancellation, if he does so within 30 days of the determination, but such obligation shall include only that amount of each covered claim which is less than $300,000 except that the association shall pay the full amount of any covered claim arising out of a workmen's compensation policy, provided however RSA 281-A:37 shall not apply to payments or settlements made pursuant to this chapter. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

N.H.R.S.A. § 404-B:8, I.(a). In light of these differences *Pitco Frialator* is meaningfully distinct from this case.

H. Oklahoma. The Association cites to *Oglesby v. Liberty Mut. Ins. Co.*, 832 P.2d 834 (Okla. 1992). (App. Br. p. 25). The Oklahoma statute at issue, however, provides, "Any obligation of the association to defend an insured shall cease upon the payment or tender by the association of an amount equal to the lesser of the covered claim obligation limit of the association or the applicable policy limit...." 36 Okl. St. Ann. § 2007(A)(2). It is on the basis of this statute that the Court held the Oklahoma Guaranty Association's "obligation is limited to the lesser of $150,000.00 or the coverage provided in the insolvent insurer's policy."

It is true that the offset provision under Oklahoma's statute is the same as the provision in South Carolina. See 36 Okl. St. Ann. § 2012. However, the Court made clear that its analysis was also "pursuant to § 2007"; South Carolina's Act contains no similar provision. *Oglesby*, then, is meaningfully distinct from this case.

I. Pennsylvania. The Association next cites *Blackwell v. Pennsylvania Ins.*

Guar. Ass'n, 567 A.2d 1103 (Pa. Super. Ct.1989). (App. Br. pp. 25, 28-30). In *Blackwell*, a panel of the Superior Court of Pennsylvania found that the nonduplication provision of Pennsylvania's Insurance Guaranty Act required the reduction of recovery against the cap, not the overall damages. But that panel found the phrase "any amount payable on a covered claim under this act" to mean the cap itself (which was $299,900). Respondents assert the trial court in this case properly found the "amount payable on a covered claim" refers to the amount payable by the insolvent insurer (here $800,000). Otherwise, the legislature would have used language such as "the amount payable by the Association under this act must be reduced."

Although *Blackwell* does, indeed, support the Association's argument, this Court should not be persuaded to follow a decision by a panel of Pennsylvania's intermediate appellate court construing Pennsylvania's IGA.

J. Kentucky. Lastly, the Association cites to *Hawkins v. Kentucky Guar. Ass'n*, 838 S.W.2d 410 (Ky. Ct. App. 1992). (App. Br. p. 26). *Hawkins* however, involved an injured party who settled with his UM carrier after the at-fault liability carrier became insolvent. This case is similar to the *Leitch* case out of Mississippi, discussed *supra*, that is, involving two entities who step into the shoes of the insolvent insurer to cover the exact same claim.

Contrary to the Association's assertion, these cases do not make it "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." (App. Br. p. 30). Instead, most

of these cases are distinct from this case in very meaningful ways.

The plain language of South Carolina's Act supports the trial court's ruling. This Court should not be persuaded to reverse that decision.

CONCLUSION

For the reasons stated this Court should affirm the trial court's decision in this case.

Respectfully submitted,

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December 2, 2015

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

RECEIVED
DEC 07 2015
SC Court of Appeals

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.

CERTIFICATE OF COMPLIANCE

With the consent of Appellant's counsel, Respondent removed a reference to a document that had not ben presented to the lower court. Otherwise, pursuant to Rule 211(a), SCACR, I certify that the *Brief of Respondents* complies with the provisions of Rule 211(b), SCACR, and with the August 13, 2007, Supreme Court Order regarding personal data identifiers.

/Signature page attached

December 7, 2015

Respectfully submitted,

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PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Appellant with a copy of the *Final Brief of Respondents* and *Certificate of Compliance* by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

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December 7, 2015
Columbia, South Carolina

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