

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT

) Ashley Reeves as Personal
) Representative for the Estate of
) Albert Carl "Bert" Reeves,

) Civil Action No. 2014-CP-15-135

) Plaintiff,

) vs.

) South Carolina Municipal Insurance
) and Risk Financing Fund [SCMIRF]

) Defendant.

ORDER
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SC Court of Appeals

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COLLETON COUNTY
COMMON PLEAS

This matter came before the Court on May 17, 2016, by way of the parties' cross-motions for Summary Judgment on the Plaintiff's Amended Complaint for Declaratory Judgment, filed on October 16, 2015. Present on behalf of the Plaintiff, Ashley Reeves as Personal Representative for the Estate of Albert Carl "Bert" Reeves, were Mullins McLeod, Esquire and Jackie Edgerton, Esquire. Present on behalf of the Defendant, South Carolina Municipal Insurance and Risk Financing Fund, hereinafter (SCMIRF), were Mitch Brown, Esquire and Mark Phillips, Esquire.

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The Parties mutually seek summary judgment on two issues and have submitted a *Stipulation of Facts and Issues*, containing *Exhibits A-D*¹, filed with the Amended Complaint.

The two questions stipulated by the parties are as follows:

- (1) Do the claims made and the verdict rendered against the Town of Cottageville and Randall Price, relating to the hiring, retention, supervision and shooting death of Bert Reeves result in there being more than \$1,000,000 in indemnity

¹ *Exhibit A*, Verdict Form and Judgment from Federal lawsuit, Civil Action No. 2:12-02765-DCN; *Exhibit B*, South Carolina Municipal Insurance and Risk Financing Fund Bylaws; *Exhibit C*, Intergovernmental Agreement executed on behalf of Town of Cottageville; and *Exhibit D*, 2011 Coverage Contract between South Carolina Municipal Insurance and Risk Financing Fund to Town of Cottageville.

coverage available under the terms of the SCMIRF Coverage Contract with the Town of Cottageville with respect to all such claims, including the claims made against John Craddock in a separately styled action?

(2) Would a tort claim for bad faith brought against SCMIRF be subject to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 *et seq.*?

BACKGROUND

The two issues presented to the Court for declaratory judgment arise out of two underlying federal lawsuits brought by Plaintiff in the United States District Court for the District of South Carolina against various Defendants for liability in the wrongful death of Bert Reeves that occurred on May 16, 2011— (1) Civil Action No. 2:12-02765-DCN against the Town of Cottageville, South Carolina; the Cottageville Police Department; and Police Officer Randall Price, individually (the “Federal Lawsuit”), and (2) Civil Action No.: 2:14-cv-01918-DCN against John Craddock, individually (the “Craddock Lawsuit”).

The Federal Lawsuit involving Randall Price proceeded to a jury trial, and, on October 15, 2014, the jury found (1) that Officer Price was negligent in proximately causing Bert Reeves’s death; (2) that Price violated Bert Reeves’s constitutional right to be free from the use of excessive force, actionable under 42 U.S.C. § 1983; (3) that Price violated Bert Reeves’s constitutional right to be free from unnecessary seizure, actionable under 42 U.S.C. § 1983; (4) that the Town of Cottageville was negligent in its hiring of Price; (5) that the Town was negligent in its supervision of Price; (6) that the Town was negligent in its retention of Price; (7) that the Town was negligent in its failure to train Price; (8) that the Town was liable under 42 U.S.C. § 1983 for Price’s use of excessive force in accordance with the Town’s custom, policy, ordinance, regulation, or decision; (9) that the Town was liable under 42 U.S.C. § 1983 for its deliberate indifference to the constitutional rights of its citizens in hiring Price; and (10) that the

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Town was liable under 42 U.S.C. § 1983 for its deliberate indifference to the constitutional rights of its citizens in failing to properly train Price, each of which the jury found proximately caused Bert Reeves's death. *Stipulation of Facts and Issues, Exhibit A, Verdict Forms and Judgment.*

The jury awarded \$7,500,000 in compensatory damages against Officer Price and the Town of Cottageville, and awarded punitive damages against Officer Price in the amount of \$30,000,000 and against the Town of Cottageville in the amount of \$60,000,000. *Id.*

After the above jury verdict in the Federal Lawsuit, Plaintiff settled the case, along with the Craddock Lawsuit, by a comprehensive settlement agreement. *See Exhibit 2, Judge Norton's Order Approving Settlement in the United States District Court for South Carolina and Settlement Agreement dated March 3, 2015.* The settlement agreement contains two contingent payments that are payable to Plaintiff, depending on the answers to the two stipulated questions that are presently before this Court by cross-motions for summary judgment.

ANALYSIS

- I. Do the claims made and the verdict rendered against the Town of Cottageville and Randall Price, relating to the hiring, retention, supervision and shooting death of Bert Reeves result in there being more than \$1,000,000 in indemnity coverage available under the terms of the SCMIRF Coverage Contract with the Town of Cottageville with respect to all such claims, including the claims made against John Craddock in a separately styled action?

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“Insurance policies are subject to general rules of contract construction,” and courts “must give policy language its plain, ordinary and popular meaning.” Diamond State Ins. Co. v. Homestead Indus., Inc., 318 S.C. 231, 236, 456 S.E.2d 912, 915 (1995). Where the contract language is clear and unambiguous, “the language alone, understood in its plain, ordinary, and popular sense, determines the contract’s force and effect.” Beaufort County Sch. Dist. v. United Nat’l Ins. Co., 392 S.C. 506, 516, 709 S.E.2d 85, 90 (Ct.App.2011). However, when an insurance contract is capable of two meanings, it must be construed in the favor of the insured.

Beaufort County Sch. Dist. v. United Nat'l Ins. Co., 392 S.C. 506, 516, 709 S.E.2d 85, 90 (Ct.App.2011) (citing Reynolds v. Wabash Life Ins. Co., 251 S.C. 165, 168, 161 S.E.2d 168, 169 (1968)).

During the time period relevant to Plaintiff's federal lawsuit against the Town of Cottageville and Officer Price, as well as Plaintiff's suit against Police Chief John Craddock, individually, SCMIRF provided coverage to the Town for certain risks through the 2011 Coverage Contract. See *Stipulation of Facts and Issues*, ¶ 8.

The Coverage Contract's opening provisions, Section I- General Provision, defines occurrence for the policy:

"Occurrence" means an accident which results in Bodily Injury or Property Damage, the original cause of which and the initial damage from which happened during the Contract Period set forth in the Declarations. Without limitation, all references to any type of injury arising out of or from an Occurrence or being caused by an Occurrence employ the foregoing meaning. Subject to the foregoing, "Occurrence" includes continuing exposure to the same harmful conditions. All such continuing exposure, damage, or injury shall be treated as one Occurrence.

Only when used to describe coverage limits on a per "Occurrence" basis or when otherwise describing whether an event or series of events constitutes one loss for coverage purposes or more than one loss, the word "Occurrence" means a covered event of the sort expressly described in the Insuring Agreement of the relevant Coverage Section pertaining to the loss or claim.

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Stipulation of Facts and Issues, Exhibit D, Coverage Contract, p. 3, Sec. I(B)(4).

Plaintiff contends that the Coverage Contract defines occurrence based on negligent acts or omissions and not by a resulting injury. In the Plaintiff's view, the determination of an occurrence is based on action: "an accident," "an event or series of events," "continuing exposure to the same harmful conditions," and "a covered event of the sort expressly described in the Insuring Agreement." *Stipulation of Facts and Issues*, Exhibit D, Coverage Contract, p. 3, Sec. I(B)(4). Specifically, Plaintiff contends that the claims and separate verdicts rendered against the Town of Cottageville and Officer Price, as well as the separate claim against John

Craddock, create multiple covered occurrences under the policy, allowing for more than \$1,000,000 in coverage.

SCMIRF contends that Section IV of the policy, specifically governing Law Enforcement Liability, covers “Money Damages because of a Wrongful Act by a Member, a Law Enforcement Employee, or other Covered Persons(s) while acting in conjunction with Law Enforcement Employees.” *Stipulation of Facts and Issues*, Exhibit D, Coverage Contract, p. 51, Sec. IV(A)(1). The “Wrongful Act” must be committed in the “course and scope of [the employee or covered person’s] official duties, as provided under the ‘South Carolina Tort Claims Act’ where a South Carolina state law is involved.” *Id.* Further, the “Wrongful Act” must result in:

- a. Property Damage or Bodily Injury which is first caused and first becomes manifest during the Coverage Period, provided the Wrongful Act amounts to an Occurrence; or
- b. Personal Injury or Advertising Injury which is first caused and first becomes manifest during the Coverage Period.

Coverage Contract, p. 51, Sec. IV(A)(1)(a)–(b).

Thus, according to SCMIRF, there are two routes by which coverage could arise under Law Enforcement Liability (Section IV) – coverage for “Bodily Injury” or coverage for “Personal Injury.” Coverage for “Bodily Injury” being limited to “Wrongful Acts” that amount to an “Occurrence,” which is defined as “an accident which results in bodily injury.” *Coverage Contract*, p. 3, Sec. I(B)(4). Coverage for “Personal Injury” is limited to “Wrongful Acts” that constitute the commission of certain “Offenses,” assault and battery and civil rights violations being the relevant “offenses” here. *Coverage Contract*, p. 64, Sec. IV(G)(18).

Therefore, SCMIRF concludes that under the terms of the Coverage Contract, the fact that a “Wrongful Act” is committed, alone, is insufficient to invoke coverage. Rather, there must be a “Wrongful Act ... which results in ... bodily injury”, or results in the commission of a

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certain "offense." *Coverage Contract*, p. 3, Sec. I(B)(4) & p. 64, Sec. IV(G)(18). According to SCMIRF coverage is not triggered without a resulting injury.

As part of the stipulation, the parties agreed that "no other facts are necessary for the Court to answer the stipulated issues. . ." Stipulation of Facts and Issues, ¶ 11.

The Court, in interpreting this Coverage Contract, must read it as a whole document so that "one may not, by pointing out a single sentence or clause, create an ambiguity." Beaufort Cty. Sch. Dist. v. United Nat. Ins. Co., 392 S.C. 506, 516, 709 S.E.2d 85, 90 (Ct. App. 2011) (citing Yarborough v. Phoenix Mut. Life Ins. Co., 266 S.C. 584, 592, 225 S.E.2d 344, 348 (1976)). In interpreting the present Coverage Contract, the Court finds that ambiguities exist that create uncertainty as to coverage within the contract.

Although "occurrence" is defined in the policy, there is ambiguity as to whether "occurrence" is defined by different acts of negligence or the resulting damage. In addition, the duplication clause in the policy only allows a coverage limit for "substantially the same injury or damage."

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PMB In the Federal Lawsuit, Plaintiff sought to recover damages for wrongful death, as well as conscious pain and suffering, among other things. As noted above, counsel for the Defendant argues that coverage is triggered in part based on the damage suffered. Counsel contended that there is only one "wrongful death" and therefore only one "occurrence" under the policy. However, the measure of damages for a wrongful death claim and a claim for conscious pain and suffering are different. They clearly are not "substantially the same" injury or damage. Damages recoverable for wrongful death are the damages sustained by the statutory beneficiaries resulting from the death of the decedent, including mental shock and suffering, wounded feelings, grief, sorrow, and loss of companionship. Ballard v. Ballard, 314 S.C. 40, 41-42, 443 S.E.2d 802, 802

(1994) (*citing Garner v. Houck*, 312 S.C. 481, 488, 435 S.E.2d 847, 850 (1993)); *Smith v. Wells*, 258 S.C. 316, 188 S.E.2d 470 (1972). An award for pain and suffering compensates the injured person for the physical discomfort and the emotional response to the sensation of pain caused by the injury itself. *Boan v. Blackwell*, 343 S.C. 498, 501-02, 541 S.E.2d 242, 244 (2001).

Therefore, even if the Coverage Contract is viewed as a damages policy for purposes of coverage determination as contended by counsel for the Defendant, the plaintiff suffered separate and distinct damages which could lead to additional coverage under these separate causes of action. The Court does not need to reach the question of supervision, retention, and hiring as a basis of separate "occurrences" within the policy, which was contended by counsel for the Plaintiff.

Additionally, the Coverage Contract also provides coverage in a single aggregate limit of \$1,000,000 for incidents involving "sexual abuse". *Stipulation of Facts and Issues*, Exhibit D, Coverage Contract, p. 30, Sec. III(D) & p. 52, Sec. IV(D)(3). The Plaintiff contends that because SCMIRF, the insurer in this case, chose to give aggregate limits for sexual abuse coverage, that they could have done the same for law enforcement or general liability if they wished in order to limit the coverage to an aggregate amount of one million dollars (\$1,000,000.00). There is no uncertainty or ambiguity in the policy, in the opinion of this Court, on the issue of coverage involving "sexual abuse."

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Therefore, in construing the policy in favor of the insured, the Court GRANTS Plaintiff's Motion for Summary Judgment as to issue one and respectfully DENIES Defendant's Motion for Summary Judgment as to issue one.

II. Would a tort claim for bad faith brought against SCMIRF be subject to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 et seq.?

Plaintiff alleges that that SCMIRF engaged in bad faith with respect to its handling of the claims associated with the shooting, and ultimately the death, of Bert Reeves. *Am. Compl.* at ¶¶ 14–16.

The South Carolina Tort Claims Act, hereinafter (“TCA”), provides limitations on liability for torts asserted against the State and its political subdivisions. S.C. Code Ann. § 15-78-10 et seq. It provides that the “the State, and its political subdivisions, are only liable for torts within the limitations of this chapter and in accordance with the principles established herein.” S.C. Code Ann. § 15-78-20(a). The term “political subdivision” is defined under the TCA as:

[T]he counties, municipalities, school districts, a regional transportation authority established pursuant to Chapter 25 of Title 58, and an operator as defined in item (8) of § 58-25-20 which provides public transportation on behalf of a regional transportation authority, and special purpose districts of the State and any agency, governmental health care facility, department, or subdivision thereof.

S.C. Code Ann. § 15-78-30(h).

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SCMIRF contends that it is a “political subdivision” based on the foregoing definition, interpreting the language “any agency, governmental health care facility, department, or subdivision thereof” to qualify all terms listed before it, such that political subdivisions include any agency, governmental health care facility, department, or subdivision of “counties, municipalities, school districts, regional transportation authorities, operators defined in item (8) of Section 58-25-20..., and special purpose districts of the State.” SCMIRF relies on the Attorney General’s opinions stating that the SCMIRF is an agency or department of the municipality members. S.C. Op. Att’y Gen., 014 WL 7405219 (S.C.A.G. December 17, 2014) & 1990 WL 599264 (S.C.A.G. July 25, 1990).

Plaintiff argues that although it may be persuasive authority, an Attorney General's opinion is not binding, and the court may disagree with the opinion's reasoning and decline to adopt it. State v. Ramsey, 409 S.C. 206, 212, 762 S.E.2d 15, 18 (2014) (referencing Charleston Cnty. Sch. Dist. v. Harrell, 393 S.C. 552, 560-61, 713 S.E.2d 604, 609 (2011) ("Attorney General opinions, while persuasive, are not binding upon this Court.")). Specifically, Plaintiff contends that section 15-78-30(h)'s phrase "any agency, governmental health care facility, department, or subdivision thereof" only qualifies the phrase "special purpose districts of the State" within this section. Pl.'s Memo. in Supp. of Sum. Judgmt. p. 15-16.

The Supreme Court in Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry, 403 S.C. 623, 636, 743 S.E.2d 808, 814-15 (2013), specified the following factors to determine whether an entity is the state or its political subdivision for purposes of coverage by the Tort Claims Act:

"[1] [W]hether the entity functions statewide, [2] whether the entity performs the work of the state, [3] whether the entity was created by the legislature, and [4] whether the entity is subject to local control." Additionally, we have examined [5] "the character of the power delegated to the entity, and the nature of the function performed by the entity."

Id. at 636, 743 S.E.2d at 814 (citing 81A C.J.S. States § 552 (Supp. 2013)).

Plaintiff contends that SCMIRF is merely a "fund", which does not qualify as a "governmental entity" under the TCA and that the General Assembly did not create the SCMIRF. Pl.'s Memo. in Supp. of Sum. Judgmt. p. 15-16.

However, SCMIRF contends that it functions statewide in municipalities across the state; performs the work of the state by providing coverage contracts to political subdivisions of the state; is administered by an agency created by municipalities in accordance with the Tort Claims

Act; and the funds are allotted and controlled by SCMIRF. Defendant's Memo. in Supp. of Sum. Judgmt. p. 8-9.

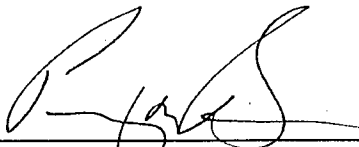
The Court, having fully considered all memoranda submitted; the evidence presented; and the oral arguments of counsel, GRANTS Defendant's Motion for Summary Judgment on issue two and respectfully DENIES Plaintiff's Motion for Summary Judgment on issue two.

CONCLUSION

Based on the foregoing, the Court hereby enters declaratory judgment as follows: (1) the claims made and the verdict rendered against the Town of Cottageville and Randall Price, relating to the hiring, retention, supervision and shooting death of Bert Reeves do result in there being more than \$1,000,000 in indemnity coverage available under the terms of the SCMIRF Coverage Contract with the Town of Cottageville with respect to all such claims, including the claims made against John Craddock in a separately styled action and (2) that a tort claim for bad faith brought against SCMIRF is subject to the South Carolina Tort Claims Act (S.C. Code Ann. § 15-78-10 et seq.).

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AND IT IS SO ORDERED!



Perry M. Buckner, III
Circuit Court Judge

Dated: June 24, 2016
Walterboro, South Carolina