THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Perry M. Buckner, III, Circuit Court Judge

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SC Court of Appeals

Appellate Case No. 2016-001626

Ashley Reeves as Personal Representative for the Estate of Albert Carl "Bert" Reeves, ... Respondent/Appellant,

v.

South Carolina Municipal Insurance and Risk Financing Fund [SCMIRF] ..... Appellant/Respondent.

FINAL RESPONSE BRIEF OF RESPONDENT/APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

RESPONDENT/APPELLANT'S STATEMENT OF ISSUES ON APPEAL 1

RESPONDENT/APPELLANT'S STATEMENT OF THE CASE 2

STATEMENT OF FACTS 3

ARGUMENT 7

I. The Claims Made And The Verdict Rendered Against The Town Of Cottageville And Randall Price, Relating To The Hiring, Retention, And Supervision Of Price 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. 7

II. The Circuit Court Properly Found That There Was An Ambiguity In The Coverage Contract As To Whether Coverage Of $1,000,000 "Per Occurrence" Is Defined By Acts Of Negligence Or The Resulting Damages, And Because The Separate Cause Of Action Involved Separate And Distinct Damages, More Than $1,000,000 In Indemnity Coverage Was Available. 18

III. Alternatively, If The Circuit Court Erred In Finding The Coverage Contract Ambiguous As To Whether "Occurrence" Is Defined By Act Of Negligence Or Damages, The Coverage Contract Unambiguously Defines "Occurrence" By Act Of Negligence, Thereby Resulting In More Than $1,000,000 In Indemnity Coverage For The Underlying Cases. 19

A. *Boiter* explains occurrence defined by negligent act and serves to illustrate the separate and distinct liability arising from each occurrence regardless of the resulting injury. 24

CONCLUSION 30

TABLE OF AUTHORITIES

CASES

Ballard v. Ballard, 314 S.C. 40, 443 S.E.2d 802 (1994) 19

Beaufort County Sch. Dist. v. United Nat'l Ins. Co., 392 S.C. 506, 709 S.E.2d 85 (Ct.App.2011) 8, 20

Boan v. Blackwell, 343 S.C. 498, 541 S.C.2d 242 (2001) 19

Board of County Commissioners of Bryan County v. Brown, 520 U.S. 397 (1997) 6

Boiter v. S.C. Dep't of Transp., 393 S.C. 123, 134, 712 S.E.2d 401, 407 (2011) 24, 25, 26, 28, 29

Brooks v. Memphis & Shelby County Hosp. Auth., 717 S.W.2d 292 (Tenn. App. 1986) 27

Callum v. CVS Health Corp., 2015 WL 5782077, *28-29 (D.S.C. September 29, 2015) 6

Canton v. Harris, 489 U.S. 378, 387 (1989) 6

Doe v. ATC, Inc., 367 S.C. 199, 624 S.E.2d 447 (Ct.App.2005) 6

Ill. Nat'l Ins. Co. v. Szczepkowicz, 542 N.E.2d 90 (Ill. 1989) 27

Johnson v. Hunter, 386 S.C. 452, 688 S.E.2d 593 (Ct.App. 2010) 27

Law v. S. Carolina Dep't of Corr., 368 S.C. 424, 629 S.E.2d 642 (2006) 4

Mitsui Sumitomo Ins. Co. of Am. v. Duke Univ. Health Sys., Inc., 509 F. App'x 233 (4th Cir. 2013) 27

Olsen v. Moore, 202 N.W.2d 236, 241 (Wis. 1972) 28

Pembaur v. Cincinnati, 475 U.S. 469 (1986) 6

Solomon as Personal Representative of Estate of Will Solomon, Jr. v. Coastal Plains Physician Assoc., PA and Hampton Regional Medical Ctr., C.A. No.: 2010-CP-25-105 (S.C.Sup.Ct. filed March 31, 2012) 25, 26

Reynolds v. Wabash Life Ins. Co., 251 S.C. 165, 161 S.E.2d 168 (1968) 8

Town of Duncan v. State Budget and Control Bd., Div. of Ins. Services, 326 S.C. 6, 482 S.E.2d 768 (1997) 8

Williamson v. South Carolina Ins. Reserve Fund, 355 S.C. 420, 586 S.E.2d 115 (2003) 26

Yarborough v. Phoenix Mut. Life Ins. Co., 266 S.C. 584, 225 S.E.2d 344 (1976) 8

STATUTES

42 U.S.C. § 1983 ..... 5, 6, 29

S.C. Code Ann. § 15-78-10 *et seq.* 2

S.C. Code Ann. § 15-78-120(a)(3) & (4) 26

COURT RULES

Rule 220(c), SCRAP 20

Rule 56, SCRCP 2, 4

RESPONDENT/APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Do the claims made and the verdict rendered against the Town of Cottageville and Officer Price, relating to the hiring, retention, and supervision of Officer Price 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?

2. Did the circuit court properly find that there was an ambiguity in the Coverage Contract as to whether coverage of $1,000,000 "per occurrence" is defined by different acts of negligence or the resulting damages, and because the separate causes of action involved multiple distinct damages, more than $1,000,000 in indemnity coverage was available?

3. If the circuit court erred in finding the Coverage Contract ambiguous as to whether "per occurrence" is defined by act of negligence or damage, does the Coverage Contract unambiguously define "occurrence" by act of negligence, thereby resulting in more than $1,000,000 in indemnity coverage available in the underlying cases at issue due to multiple distinct acts of negligence?

RESPONDENT/APPELLANT'S STATEMENT OF THE CASE

On October 16, 2015, Respondent/Appellant, Ashley Reeves as Personal Representative for the Estate of Albert Carl "Bert" Reeves, filed in the Court of Common Pleas, Fourteenth Judicial Circuit an Amended Complaint for Declaratory Judgment as to two questions stipulated by the parties 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 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.*?

(Amended Complaint, R. pp. 76-82).

On October 26, 2015, Appellant/Respondent, South Carolina Municipal Insurance and Risk Financing Fund [SCMIRF], filed its Answer to the Amended Complaint. (Answer, R. pp. 244-251). The Parties mutually sought declaratory judgment on the above two issues and submitted a Stipulation of Facts and Issues, containing Exhibits A-D[1], filed with the Amended Complaint. (Amended Complaint, Exhibit 1 with attachments A-D, R. pp. 83-243). Thereafter, both Reeves and SCMIRF respectively moved for Summary Judgment, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, and filed accompanying memoranda in support of their positions, as well as in opposition of summary judgment for the opposing party. (Reeves's Motion for Summary Judgment and

[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.

Memorandum in Support, R. pp. 400-520; SCMIRF's Motion for Summary Judgment and Memorandum in Support, R. pp. 376-399; Reeves's Memorandum in Opposition to SCMIRF's Motion, R. pp. 521-529; SCMIRF's Memorandum in Opposition to Reeves's Motion, R. pp. 530-552; Reeves's Supplemental Memorandum and Exhibits to Motion for Summary Judgment, R. pp. 553-576).

On May 17, 2016, the Honorable Perry M. Buckner, III held a hearing on both Reeves's and SCMIRF's Motions for Summary Judgment, where all parties were represented by counsel and heard on oral argument. (Transcript of Hearing, R. pp. 252-350). On June 29, 2016, Judge Buckner filed his Order, granting Reeves's Motion for Summary Judgment as to Issue #1 and denying Reeves's Motion as to Issue #2 and, in turn, denying SCMIRF's Motion for Summary Judgment as to Issue #1 and granting SCMIRF's Motion as to Issue #2. (Summary Judgment Order, R. pp. 1-10).

On July 6, 2016, Reeves's filed a Motion to Alter or Amend the June 29, 2016 judgment, and on July 11, 2016, SCMIRF also filed a Motion to Alter or Amend the judgment. (Reeve's Motion to Alter or Amend, R. pp. 639-651; SCMIRF's Motion to Alter or Amend, R. pp. 652-659). Thereafter, on July 25, 2016, Judge Buckner denied both parties' Motions to Alter or Amend the Summary Judgment Order of June 29, 2016. (Order Denying Cross-Motions to Alter, R. pp. 11-13).

SCMIRF first served its Notice of Appeal on August 4, 2016. (NOA SCMIRF and Certificate of Service, R. pp. 660-677). Reeves served her Notice of Appeal on August 15, 2016. (NOA Reeves and Certificate of Service, R. pp. 678-698).

STATEMENT OF FACTS

The two issues initially presented to the Circuit Court for declaratory judgment arise out of two underlying federal lawsuits brought by Reeves 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, and (2) Civil Action No.: 2:14-cv-01918-DCN against John Craddock, individually. In the Amended Complaint for declaratory judgment below, the parties stipulated to the above two issues for declaratory judgment, as well as to stated facts in the Stipulation of Facts and Issues. (R. pp. 83-86) The parties agreed that no further discovery need be taken to decide the two issues. However, in rendering summary judgment on the issues presented and pursuant to Rule 56, SCRCP, the court is to consider discovery conducted prior to the Motions for Summary Judgment. *See, e.g., Law v. S. Carolina Dep't of Corr.*, 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006).

Of first matter, the Town of Cottageville entered into an Intergovernmental Agreement for an Insurance and Risk Financing Fund for Risk Sharing with other member municipalities to create SCMIRF [South Carolina Municipal Insurance and Risk Financing Fund] in order to insure and pool their risk of exposure to certain liabilities. (Amended Complaint, Stipulation of Facts and Issues, Exhibit C, R. pp. 99-105). "SCMIRF asserts it is an unincorporated voluntary, self-insurance pool in the State of South Carolina." (Amended Complaint, Stipulation of Facts and Issues, at ¶ 6, R. p. 84).

SCMIRF was created specifically to provide insurance to municipalities who are subject to lawsuits. (Reeves's Motion for Summary Judgment, Exhibit 1, Deposition of Heather Ricard, July 28, 2014, p. 15:3-8, R. p. 443). During the period of January 1, 2011 to January 1, 2012, SCMIRF provided insurance coverage to the Town of Cottageville, as

set forth in the 2011 Coverage Contract, P-SCMIRF-1124-2011 [Coverage Contract], which was the contract at issue before the circuit court in the declaratory judgment. (Stipulation of Facts and Issues, Exhibit D, R. pp. 106-243). In Plaintiff's federal lawsuit, Civil Action No. 2:12-02765-DCN, SCMIRF retained attorneys to defend the Town of Cottageville and Officer Price, individually, who by stipulation was acting in the scope of his employment during all times relevant.

The federal lawsuit 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 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. (Amended Complaint, Stipulation of Facts and Issues, Exhibit A, Verdict Forms and Judgment, R. pp. 87-94).

The jury found multiple and independent acts of negligence by Price and by the Town, as well as federal liability against the Town and Price, individually. *See Callum v. CVS Health Corp.*, 2015 WL 5782077, *28-29 (D.S.C. September 29, 2015) (South Carolina holds that "[n]egligent hiring and negligent retention are distinct theories of recovery separate from negligent supervision.") (citing *Doe v. ATC, Inc.*, 367 S.C. 199, 205, 624 S.E.2d 447, 450 (Ct.App.2005)); *Board of County Commissioners of Bryan County v. Brown*, 520 U.S. 397 (1997) (reiterating that municipality liability under 42 U.S.C. § 1983 may be triggered for separate actions of inadequate training; a decision by a final municipal decision maker that deprives a plaintiff of federal rights; and for hiring decisions) (citing *Pembaur v. Cincinnati*, 475 U.S. 469, 485 (1986); *Canton v. Harris*, 489 U.S. 378, 387 (1989)).

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. (Amended Complaint, Stipulation of Facts and Issues, Exhibit A, Verdict Forms and Judgment, R. pp. 87-94). During the lawsuit, Reeves alleged that SCMIRF acted in bad faith in failing to reasonably settle the suit on behalf of its member, the Town of Cottageville, prior to trial. However, after the above jury verdict against the Town of Cottageville and Officer Price, Reeves settled the case, along with the lawsuit against Craddock, by a comprehensive settlement agreement that involved a primary payment made by SCMIRF and a reinsurer that was approved by the federal court. (Summary Judgment Hearing Transcript, Exhibit 1, Judge Norton's Order Approving Settlement in the United States District Court for South Carolina and Settlement Agreement, Feb. 26,

2015, R. pp. 351-364). The settlement agreement contains two contingent payments that are payable to Reeves, depending on the answers, pursuant to exhaustive appeal, to the two stipulated questions that were presented to the circuit court for declaratory judgment.

ARGUMENT

I. The Claims Made And The Verdict Rendered Against The Town Of Cottageville And Randall Price, Relating To The Hiring, Retention, And Supervision Of Price 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.

SCMIRF argues that the circuit court erred in finding that by the terms of the Coverage Contract more than $1,000,000 in indemnity coverage was available for the claims made and the verdict rendered against the Town of Cottageville and Randall Price. SCMIRF supports its argument with the erroneous contention that the coverage issue must be analyzed solely under the Coverage Contract's provision for "personal injury", and that when so focused, damages of bodily injury and personal injury subsume into one injury and, accordingly, a single coverage limit of $1,000,000 for the claims at issue in the underlying lawsuits exists. *See* Amended Complaint, Exhibit 1 with attachment D, Coverage Contract, Sec. IV.G.4 & 18, (R. p. 166 & 169).

SCMIRF's argument has two fatal flaws. One, it ignores that the Coverage Contract is a "per occurrence" coverage policy. Two, it ignores that a determination first must be made of whether separate and distinct occurrences, wrongful actions, or conduct occurred for coverage and then second make a determination of whether bodily injury and personal injury both exist within a distinct occurrence such that bodily injury shall be deemed to be a part of the personal injury. In short, SCMIRF ignores that the Contract's

definitions of "bodily injury" and "personal injury" in the Law Enforcement Liability Contract Declarations addresses injuries within an occurrence, and the two definitions do not answer whether a single coverage limit of $1,000,000 exists for the claims in the underlying lawsuits here. *Id.* As such, SCMIRF's argument does not establish that the circuit court erred in granting summary judgment for Reeves.

Review of the Coverage Contract begins with the basic rules of contract construction. "Insurance policies are subject to the general rules of contract construction," and "[t]he cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." *Beaufort County Sch. Dist. v. United Nat'l Ins. Co.*, 392 S.C. 506, 516, 709 S.E.2d 85, 90 (Ct.App.2011) (internal citations omitted). 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." *Id.* However, an insurance contract is to be read as a whole document so that "one may not, by pointing out a single sentence or clause, create an ambiguity." *Id.* (quoting *Yarborough v. Phoenix Mut. Life Ins. Co.*, 266 S.C. 584, 592, 225 S.E.2d 344, 348 (1976)). Furthermore, it is long established that whenever an insurance contract is capable of two meanings, it must be construed in the favor of the insured. *Id.* (citing *Reynolds v. Wabash Life Ins. Co.*, 251 S.C. 165, 168, 161 S.E.2d 168, 169 (1968)); *see also Town of Duncan v. State Budget and Control Bd., Div. of Ins. Services*, 326 S.C. 6, 12, 482 S.E.2d 768, 772 (1997) ("Terms in an insurance policy should be liberally construed in favor of the insured.").

The Coverage Contract is a "per occurrence" policy for general liability, as well as law enforcement liability, as opposed to an aggregate policy, which instead would provide

a single total amount of coverage no matter how many claims are made, no matter how many injuries occur, and no matter how many acts of negligence are involved:

- General Liability Contract Declarations provides limit of $1,000,000 "Per Occurrence or Offense" and
- Law Enforcement Liability Contract Declarations provides limit of $1,000,000 "Per Occurrence".

(Amended Complaint, Exhibit 1 with attachment D, Coverage Contract, Sec. III, p. 28 & Sec. IV, p. 50, R. pp. 133 & 155).

Under Rule 30(b)(6), SCRCP, the SCMIRF designee most knowledgeable as to the 2011 Coverage Contract at issue, Heather Ricard, Director of Risk Management Services, was deposed prior to the filing of the Amended Complaint, and testified that in the Coverage Contract SCMIRF could have sold the Town of Cottageville a single aggregate limit of coverage for law enforcement liability but, instead, sold per occurrence coverage that provides $1,000,000 per occurrence. (Reeves's Memorandum in Support of Summary Judgement Exhibit 2, Deposition of Heather Ricard, July 28, 2014, p. 39:18-23, R. p. 467). In fact, the Coverage Contract does specify a single aggregate limit of $1,000,000 in coverage for incidents involving sexual abuse, not applicable here but demonstrative of the two different types of liability coverage. (Amended Complaint, Exhibit 1 with attachment D, Coverage Contract, Sec. III.D & Sec. IV.D.3, R. pp. 135 & 157). The premiums for per occurrence coverage are higher than the premiums for aggregate coverage, because the exposure or risk for SCMIRF is greater than the exposure under an aggregate policy. (Reeves's Memorandum in Support of Summary Judgement Exhibit 2, Deposition of Heather Ricard, July 28, 2014, p. 28:13-22, R. p. 456). It is undisputed that for general

liability and law enforcement liability, the Coverage Contract provides coverage "per occurrence", and SCMIRF charged the Town of Cottageville accordingly. (Reeves's Memorandum in Support of Summary Judgement, Exhibit 2, Deposition of Heather Ricard, July 28, 2014, pp. 28:23 to 29:6; 39:11- 40:4, R. pp. 456-457, 467-468).

Specifically, the Coverage Contract, Section IV, Law Enforcement Liability Contract Declarations, provides that SCMIRF's limit of liability coverage for "any one occurrence/accident/wrongful act will be $1,000,000." (Amended Complaint, Exhibit 1 with attachment D, Coverage Contract, Sec. IV.D.2., R. p. 157). Section IV, Law Enforcement Declarations, does not separately define occurrence but, rather, specifies in the opening of Section IV that liability is "subject to the limits of liability, exclusions, definitions, and conditions contained in the General Provisions, Section I". (Amended Complaint, Exhibit 1 with attachment D, Coverage Contract, Sec. IV, p. 51, R. p. 156) (emphasis added). Thus, the definition of occurrence in the Coverage Contract, General Provisions applies to Section IV, Law Enforcement Declarations.

The Coverage Contract's Section I- General Provisions 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.

(Amended Complaint, Exhibit 1 with attachment D, Coverage Contract, Sec. I.B.4, R. p. 108) (emphasis added).

The Coverage Contract's Section I- General Provisions also defines "Offense":

> **Offense** means conduct constituting **Personal Injury** or **Advertising Injury** that happens in the course and scope of the **Member's** or **Covered Person's** official duties....[a]ll repetitions of the same basic **Offense** involving any offended person and/or organization or group of persons and/or organizations, whether or not there are different witnesses to the **Offense** or there is a variation in the conduct constituting the **Offense**, will be treated as one Offense, subject to a single Coverage Limit, even if the **Offense** occurs over more than one **Contract Period**.

Id. at Sec. I.B.5 (R. p. 108-109). By the plain language of the Coverage Contract, "the same basic conduct" causing an injury equates to an offense, and when "the same basic conduct" is repeated, it will be treated as a single offense. *Id.* Thus, the emphasis is on whether the same conduct is occurring and repeating in order to treat it as a single offense. Where non-similar and separate acts or omissions occur, by the Contract's definition, separate and individual offenses have occurred.

Section IV, Law Enforcement Liability, specifically applies when the liability at issue pertains to a "**Law Enforcement Employee**...whether or not such liability or claim is covered by Section IV", and when the liability is against other persons or entities "who are also defined as **Covered Persons** in Section IV that is based on the conduct or alleged conduct of such **Law Enforcement Employees**, including without limitation claims based on the hiring, training, monitoring, or supervision of, or on the control of or failure to control, such **Law Enforcement Employees**." *Id.* at Sec. III.J.24 (R. p. 142). Further,

Section IV specifies that coverage arises out of, and is triggered by, a law enforcement employee's "wrongful act" provided it amounts to an occurrence:

> SCMIRF agrees, subject to the limitations, terms, and conditions hereunder mentioned to pay on behalf of the **Member** or **Covered Person**(s) for sums which the **Member** or **Covered Person**(s) shall be obligated to pay exclusively as **Money Damages** because of a **Wrongful Act** by a **Member**, a **Law Enforcement Employee** or other **Covered Person**(s) while acting in conjunction with **Law Enforcement Employees**, which is committed while acting in both in the course and the scope of his or her official duties...or while acting in both the course and the scope of a mutual aid agreement...and which results 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**.
>
> Any liability covered by this Section IV must arise out of the performance of a **Covered Person's** duties to provide law enforcement or other SCMIRF approved activities...

Id. at Sec. IV.A.1 (R. p. 156) (underlining added).

Section IV defines "wrongful act" to mean:

> any actual or alleged error in the performance or failure to perform an official duty; or any misstatement, misleading statement, or misleading act made or done in the course of official duty and upon which a claimant or plaintiff has relied to his, her, or its detriment; or any omission or neglect in performing an official duty; or any breach of an official duty, including misfeasance, malfeasance and nonfeasance; but only, with respect to any or all of the foregoing, when committed by a Member or by a Covered Person(s) while acting within both the course and scope of his or her official duties, as provided under the "South Carolina Tort Claims Act.

Id. at Sec. IV.G.27 (R. p. 169-170). Accordingly, Section IV's liability coverage applies to cover injuries or damage from a wrongful act, provided it amounts to an occurrence as defined in Sec. I.B.4., and to a personal injury or advertising injury first caused in the coverage period.

Next, Section IV Law Enforcement "Limit of Liability" specifically focuses on limitations "for any **one** occurrence/accident/wrongful act", providing that "the total liability of [SCMIRF] [for] any **one** occurrence/accident/wrongful act will be $1,000,000 per **Member**..." "SCMIRF's liability for any **one** occurrence/accident/wrongful act will be $1,000,000 per **Member** regardless of the number of **Covered Persons**, number of claimants or claims made, or the number of covered vehicles involved..." *Id.* at Sec. IV.D.2 (R. p. 157) (emphasis added). Thus, the Contract language explicitly requires addressing liability within any one, SINGLE, occurrence, accident, or wrongful act, as well as any applicable limitations as to that SINGLE occurrence. Therefore, where in a single occurrence there exists more than one covered person involved, or more than one resulting claimant or claims, or more than one covered vehicle, there remains one occurrence with a $1,000,000 indemnity coverage for that one occurrence. *Id.*

Likewise, Section IV.D.2's provisions that "all continuing, serial, or repeated instances of **Personal Injury** or **Advertising Injury** will be considered as one occurrence/wrongful act regardless of the number of Covered Persons involved in causing...such injuries" and "only a single Coverage Limit . . . will apply to all claims arising from such continuing, serial, or repeated conduct" applies within an occurrence or offense. (R. p. 157). Section IV.D.2 does not prohibit coverage for multiple separate and distinct occurrences. Similarly, Section I.B.5's provision that when "the same basic conduct" causes an injury that "same basic conduct" will equate to an offense, even when the conduct is repeated, means that all repetitions of the same basic offense will be treated as one offense and subject to a single coverage limit. (R. p. 108-109). Therefore, the

contract provisions look at the conduct at issue to determine if a single occurrence exists and then specifies limitations that may apply within a discrete occurrence.

In sum, the Coverage Contract's limitations on continuing, serial or repeated instances of personal injury or advertising injury consisting of one occurrence with a single coverage limit do not abolish liability and coverage for each separate and distinct occurrence where multiple occurrences exist. "[C]ontinuing, serial, or repeated instances" of injury, for instance, exist in a case of continuing publication of defamatory material over a length of time and would be considered a single occurrence per this provision of the contract rather than as multiple occurrences generated over the entire length of time defamation continues. Limiting liability coverage to a single occurrence where the same basic offense is repeated does not serve to eliminate liability for multiple distinct occurrences, each with their own liability coverage. Here, there are no "continuing, serial, or repeated instances" of personal injury or advertising injury present in the underlying lawsuits or repetition of "the same basic conduct". Instead, the suits involved separate and distinct actions by the Town, by Price, and by Craddock; thus, Sections IV.D.2 and I.B.5 are not applicable to limit the number of occurrences to one or to limit liability coverage to a single limit of $1,000.000.

Neither is the "No Duplication of Coverage or Coverage Limits" provision, located in the General Liability Section, I.C.9, applicable to define occurrence or limit coverage in the underlying cases. The "No Duplication of Coverage" provision states:

> No liability that is covered under any Coverage Section of This Contract will be deemed to be separately covered under any other Coverage Section....Any act(s) or omission(s) that might be described under more than one Coverage Section or more than one category as an Offense(s) or an Occurrence(s) will be treated as a single event for coverage purposes, subject to a single Coverage Limit. A single Coverage Limit applies to all

> claims or suits involving substantially the same injury or damage, or progressive injury or damage. There is no duplication of any coverage or benefits under This Contract.

(Amended Complaint, Exhibit 1 with attachment D, Coverage Contract, Sec. I.C.9, R. p. 112). The "single Coverage Limit" provision explains that there will be no duplication of policy coverage for an occurrence that may fall under more than one coverage section. The provision makes clear that where an act or omission may fall under more than one coverage section, that distinct act or omission will be covered only once, and a "single Coverage Limit applies to all claims or suits involving substantially the same injury or damage, or progressive injury or damage" from that specific act or omission. *Id.*

Ms. Ricard for SCMIRF agrees that the "No Duplication of Coverage or Coverage Limits" provision means that a policy holder cannot collect for the same occurrence under more than one section of the Coverage Contract:

> Q. So, for example, if Randall Price is covered under the General Liability portion, Section III of the policy, and he's also covered under the Law Enforcement Liability, and there's a single occurrence, there—he doesn't get $2,000,000 in insurance; he only gets $1,000.000 in insurance; isn't that correct?
>
> A. That is correct. There is no duplication of coverage.

(Reeves's Memorandum in Support of Summary Judgement Exhibit 2, Deposition of Heather Ricard, July 28, 2014, p. 42:8-16, R. p. 470). Accordingly, the "No Duplication of Coverage or Coverage Limits" provision specifically addresses a single occurrence and its treatment under the Contract. (Amended Complaint, Exhibit 1 with attachment D, Coverage Contract, Sec. I.C.9, R. p. 112). Prohibiting duplication of coverage for one occurrence simply does not serve to define "occurrence" or serve to eliminate coverage for separate and distinct occurrences and has no bearing on whether multiple occurrences exist

under the Coverage Contract in the underlying claims and verdict rendered against the Town, Price and the separate suit against Craddock. (Reeves's Memorandum in Support of Summary Judgement Exhibit 2, Deposition of Heather Ricard, July 28, 2014, pp. 21:5-11; 55:19 to 56:19, R. pp. 449, 483-484).

Liability coverage and any limitations on coverage apply within an occurrence/accident/wrongful act, and, as such, whether there is more than one distinct occurrence must be determined before analyzing coverage and applicable limitations **per** occurrence. SCMIRF errs in its argument, because it goes right to analyze limitations on any one occurrence without first determining whether separate and distinct occurrences exist. In short, SCMIRF attempts to rework the "per occurrence" Coverage Contract into an aggregate policy for law enforcement liability, despite the explicit "per occurrence" nature of the coverage.

Specifically, SCMIRF's argument focuses on the definitions of "bodily injury" and "personal injury" in the Coverage Contract to erroneously contend that a single coverage limit must apply to the underlying claims. The Contract defines each as follows:

> "**Bodily injury"** means physical injury to any person (including death) and any mental anguish or mental suffering associated with or arising from such physical injury. However, for purposes of this Section IV, **Bodily Injury** does not include such injuries if they result directly and immediately from the infliction of **Personal Injury**, including without limitation assault and battery; any such resulting injuries shall be deemed to be part of the **Personal Injury**.

****

> **"Personal Injury"** in this Section means only the following **Offenses** committed in the course of the **Member's** law enforcement activities:
>
> a. Assault and battery;

b. Illegal search, invasion of an individual's right to privacy, violation of civil rights, or discrimination other than in the course of the victim or alleged victim's employment with the **Member**;

c. False arrest, detention or imprisonment, or malicious prosecution;

d. False or improper service of process;

e. The publication or utterance of a libel or slander or of other defamatory or disparaging material about an individual or an organization, or a publication or utterance in violation of an individual's right to privacy; except publications or utterances in the course of or related to advertising, broadcasting, internet, or telecasting activities by or on behalf of the **Named Member**;

f. Humiliation or mental distress caused by the foregoing provided that such humiliation or distress produces physical symptoms requiring medical attention.

(Amended Complaint, Exhibit 1 with attachment D, Coverage Contract, Sec. IV.G.4 & 18, R. pp. 166 & 169). In short, where one of the 6 offenses constituting personal injury occurs along with bodily injury, the bodily injury will be deemed part of the personal injury.

SCMIRF ignores that the presence of bodily injury subsuming into personal injury takes place within a discrete occurrence, and SCMIRF's argument that these definitions govern liability coverage for the underlying claims at issue here puts the cart before the horse. What the definitions do explain is that within a single occurrence where personal injury and bodily injury both exist, the bodily injury will not be treated separately from the personal injury within that occurrence. Instead the distinct offense causing personal and bodily injury is considered one personal injury for coverage. However, where there are multiple separate and distinct offenses or occurrences, the bodily and personal injury definitions in no way direct that distinct occurrences causing the same injuries become one occurrence. *Id.* SCMIRF's contention fails in the same manner as its argument that the No Duplication of Coverage provision governs. That the contract provides $1,000,000 in

indemnity coverage for a single occurrence that results in both personal injury and bodily injury does not apply to multiple distinct occurrences. Bodily injury subsumes into personal injury within a single occurrence, not across multiple occurrences.

In conclusion, the definitions of personal injury and bodily injury neither define occurrence nor prohibit coverage for multiple distinct occurrences. The definitions of bodily injury and personal injury do not answer the stipulated question of whether the claims and verdicts in the underlying cases result in more than $1,000,000 in indemnity coverage available under the Coverage Contract.

II. The Circuit Court Properly Found That There Was An Ambiguity In The Coverage Contract As To Whether Coverage Of $1,000,000 "Per Occurrence" Is Defined By Acts Of Negligence Or The Resulting Damages, And Because The Separate Causes Of Action Involved Separate And Distinct Damages, More Than $1,000,000 In Indemnity Coverage Was Available.

The circuit court correctly held that the Coverage Contract is ambiguous as to whether "occurrence" is defined by different acts of negligence or the resulting damage. (Order on Summary Judgment, June 29, 2016, R. pp. 1-10). However, whether "occurrence" is defined by negligent act or defined by resulting damage, more than one occurrence exists here in the underlying claims. Specifically, Reeves's claims and the resulting separate verdicts against the Town of Cottageville and Officer Price were for separate and distinct actions, each of which proximately caused (1) Bert Reeves's conscience pain and suffering and (2) the damages sustained by his statutory beneficiaries in their pecuniary loss, mental shock and suffering, wounded feelings, grief, sorrow, and loss of society and companionship of Mr. Reeves. Accordingly, not only were there multiple acts of negligence but two separate and distinct resulting damages as well.

Specifically, in Reeves's underlying lawsuit against the Town of Cottageville and Price, individually, there were numerous federal and state causes of actions for distinct actions by the Defendants. Reeves also sought to recover for two different injuries: for wrongful death and for Bert Reeves's conscious pain and suffering before death, damages that the circuit court correctly noted "clearly are not 'substantially the same' injury or damage.'" (R. p. 6). Wrongful death damages compensate the statutory beneficiaries for the death of their father, to include compensation for 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 (1994) (internal citations omitted). An award in a survival action is for the decedent's conscious pain and suffering that he endured from the injury itself. *Boan v. Blackwell*, 343 S.C. 498, 501-502, 541 S.C.2d 242, 244 (2001).

Therefore, even if the Contract is ambiguous as to whether "occurrence" is defined by act or resulting injury, there were multiple separate and distinct actions and more than one resulting injury, rendering more than one occurrence in the underlying claims under either definition. Therefore, the circuit court correctly held that more than $1,000,000 in total indemnity coverage exists under the Coverage Contract for the Town of Cottageville in the two underlying lawsuits, and summary judgment for Reeves on Issue #1 was properly granted.

III. Alternatively, If The Circuit Court Erred In Finding The Coverage Contract Ambiguous As To Whether "Occurrence" Is Defined By Act Of Negligence Or Damages, The Coverage Contract Unambiguously Defines "Occurrence" By Act of Negligence, Thereby Resulting In More Than $1,000,000 In Indemnity Coverage For The Underlying Cases.

In the Coverage Contract, the definition of occurrence is clear and unambiguous, defining occurrence based on the negligent act and not the resulting injury.[2] As such, the Coverage Contract's language alone determines the contract's force and effect. *See, e.g., Beaufort County Sch. Dist.*, 392 S.C. at 516, 709 S.E.2d at 90. In this case, there exist multiple covered occurrences that include the separate and distinct actions of the Town of Cottageville, Officer Price, and John Craddock, thereby resulting in $1,000,000 in indemnity coverage per occurrence and, in total, more than a single coverage limit of $1,000,000.

The actions at issue in the underlying federal lawsuits invoke the General Provisions (Section I) and Law Enforcement (Section IV) sections of the Coverage Contract. As discussed, Section I- General Provisions defines "occurrence" as used within the policy, making clear that 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." (Amended Complaint, Exhibit 1 with attachment D, Coverage Contract, Sec. I.B.4, R. p. 108). Likewise, the General Provisions also define "offense" based on action. *Id.* at I.B.5 (R. p. 108-109). By the plain language of the Coverage Contract, a distinct act or omission— "the same basic conduct"— causing an injury equates to an offense, and

[2] In accordance with Rule 220(c), SCRAP, the appellate court may affirm summary judgment on Issue #1 for Reeves "upon any ground(s) appearing in the Record on Appeal." Reeves specifically argued throughout the lower proceedings that the Coverage Contract defined occurrence unambiguously by negligent act. *See* Reeves's Motion for Summary Judgment and Memorandum in Support (R. pp. 400-520); Reeves's Memorandum in Opposition to SCMIRF's Motion (R. pp. 521-529); Reeves's Supplemental Memorandum and Exhibits to Motion for Summary Judgment (R. pp. 553-576); and Summary Judgment Hearing Transcript (R. pp. 252-350).

when "the same basic conduct" is repeated, it will be treated as a single offense. Thus, offense is determined by whether the same conduct is occurring and repeating in order to treat it as a single offense. *Id.* Where non-similar and separate acts or omissions occur, by the Coverage Contract's definition, separate and individual offenses have occurred as well.

To reiterate Section IV's Law Enforcement Employees Liability coverage is triggered:

> because of a **Wrongful Act** by a **Member**, a **Law Enforcement Employee** or other **Covered Person**(s) while acting in conjunction with **Law Enforcement Employees**, which is committed while acting in both in the course and the scope of his or her official duties...or while acting in both the course and the scope of a mutual aid agreement...and which results 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**.
>
> Any liability covered by this Section IV must arise out of the performance of a **Covered Person's** duties to provide law enforcement or other SCMIRF approved activities...

(Amended Complaint, Exhibit 1 with attachment D, Coverage Contract, Sec. IV.A.1, R. p. 156) (underlining added).

The Coverage Contract also specifically defines "wrongful act" based on action and not resulting injury:

> **any** actual or alleged **error in the performance or failure to perform** an official duty; or **any misstatement, misleading statement, or misleading act** made or done in the course of official duty and upon which a claimant or plaintiff has relied to his, her, or its detriment; or **any omission or neglect** in performing an official duty; or **any breach** of an official duty, **including misfeasance, malfeasance and nonfeasance**; but only, with respect to any or all of the foregoing, when **committed** by a Member or by a Covered Person(s) **while acting within both the course and scope of his or her official duties**, as provided under the "South Carolina Tort Claims Act.

Id. at Sec. IV.G.27 (R. pp. 169-170) (emphasis added).

Further defining occurrence and wrongful act based on negligent act rather than resulting injury, the General Provisions of the Coverage Contract provide a limitation of known claims based on covered actions and omissions, covering "**Occurrences**/accidents/**Wrongful Acts** during the Contract Period". *Id.* at Sec. I.C.7 (R. p. 111). Coverage is not triggered for each injury but rather for each act or omission causing an injury. Also, a covered member has a duty to give written notice to SCMIRF when aware of any "Wrongful Act, offense, or Occurrence which could reasonably be expected to be the basis of a claim or suit...", not when aware of a resulting injury. *Id.* at Sec. I.C.8.a (R. p. 111). It is the member or covered person's actions that drive the required notice, not any resulting injury.

In addition, the Contract's General Liability Coverage also reiterates that coverage for Law Enforcement liability is based on action— triggered "based on the conduct or alleged conduct of such **Law Enforcement Employees**, including without limitation claims based on the hiring, training, monitoring, or supervision of, or on the control of or failure to control, such **Law Enforcement Employees**." *Id.* at Sec. III.J.24 (R. p. 142) (underlining added). Accordingly, SCMIRF's obligation to pay liability coverage under the Coverage Contract specifically arises out of the conduct of the covered persons or employees. Liability coverage pays for the damages or injuries incurred by the covered member's conduct, but nowhere in the Coverage Contract is occurrence determined by the number of injuries. Coverage is triggered by the wrongful act amounting to a covered occurrence, as the Contract unambiguously states that the money damages will be paid because of a wrongful act, "provided the **Wrongful Act** amounts to an **Occurrence**". *Id.*

at Sec. IV.A.1.b (R. p. 156). Further, in direct response to SCMIRF's arguments on appeal, when an offense constitutes "personal injury" and "bodily injury" also occurs from the offense, the Coverage Contract considers all of the injury as one within that offense. (Amended Complaint, Exhibit 1 with attachment D, Coverage Contract, Sec. IV.G.4 & 18, R. pp. 166 & 169). However, the injury definitions do not apply outside of a discrete offense and do not foreclose coverage for more than one offense or occurrence. *Id.*, Sec. I.B.5 (definition of "offense") (R. p. 108-109).

Moreover, Ms. Ricard, on behalf of SCMIRF, agrees that nowhere in the definition of occurrence does it indicate that an occurrence is determined by the number of injuries. (Reeves's Memorandum in Support of Summary Judgement Exhibit 2, Deposition of Heather Ricard, July 28, 2014, p. 53:7-11, R. p. 481). Instead, within the Coverage Contract, occurrence is driven by action (accident, conduct, event) that results in damages or injury, and includes all damages or injuries that come out of that one occurrence of action. Of note, SCMIRF previously contended that the same policy language at issue here defined occurrence by act of negligence and not by number of injuries in insuring liability for the police raid of Stratford High School in 2003. Ms. Ricard of SCMIRF concedes that the raid case involved multiple separate injuries claimed by numerous and individual students; yet, instead of defining occurrence based on each individual injury, SCMIRF claimed liability coverage for one occurrence based on there being one raid— in other words, based on one act of negligence. *Id.*, pp. 31 to 33:7 (R. pp. 459-461); Reeves's Supplemental Memorandum and Exhibits to Motion for Summary Judgment Exhibit 3, Affidavit of Frederick J. Jekel, Jr., July 31, 2014 (R. pp. 556-557). Applying SCMIRF's previous assertion that occurrence is based on act of negligence to this case would mean

that the multiple and distinct acts of negligence by the Town of Cottageville, Officer Price, and John Craddock, each proximately causing Mr. Reeves's and his surviving children's injuries, result in multiple occurrences.

In sum, the Coverage Contact's language is clear and unambiguous that an occurrence triggering liability coverage is based on a negligent act or omission by the member or covered person. *See* Amended Complaint, Exhibit 1 with attachment D, Coverage Contract, Secs. I.B.4; I.B.5; IV.A.1; IV.G.27 (R. pp. 108-109, 156, 169-170). As a "per occurrence" policy, the Coverage Contract explicitly provides $1,000,000 per occurrence of negligence that proximately caused an injury, and, here, where separate and distinct occurrences exist, $1,000,000 indemnity coverage exists per occurrence. As such, the circuit court's grant of summary judgment to Reeves on Issue #1 was proper.

A. *Boiter* explains occurrence defined by negligent act and serves to illustrate the separate and distinct liability arising from each occurrence regardless of the resulting injury.

The South Carolina Supreme Court's decision of *Boiter v. S.C. Dep't of Transp.*, 393 S.C. 123, 134, 712 S.E.2d 401, 407 (2011), which defined occurrence under the Tort Claims Act based on negligent act rather than resulting injury, serves to illustrate how separate and distinct acts of covered negligence, each proximately causing injury, constitute separate and distinct occurrences. *Boiter* held that an occurrence is defined by a negligent action and not controlled by the resulting injury so that the distinct and separate acts of negligence by two different entities constitute two separate occurrences for liability coverage.

Specifically, in *Boiter*, the South Carolina Department of Transportation failed to implement an appropriate re-lamping policy to replace bulbs in traffic signals, and the

South Carolina Department of Public Safety separately failed to notify a trooper to direct traffic when it received a phone call reporting the signal outage approximately an hour and a half before the collision at issue. 393 S.C. at 125, 712 S.E.2d at 402. The Supreme Court held that "two independent and separate acts of negligence occurred," and "there is no indication that the [departments'] actions combined to form a single act of negligence." 393 S.C. at 134, 712 S.E. 2d at 406.

Moreover, in *Boiter*, the jury issued separate verdicts against SCDOT and SCDPS for each department's distinct act of negligence, and the Supreme Court found no causal connection between the two entity's actions that would constitute an unfolding sequence of events that injured the plaintiffs. "[H]ad the jury not found SCDOT negligent, the verdict against SCDPS could still stand, and the converse is also true." 393 S.C. at 134, 712 S.E.2d at 407. Accordingly, the two separate and distinct acts of negligence amounted to two occurrences, regardless of proximately causing the same injury.

The Judicial Circuit where the current appeal originated also has specifically applied *Boiter* to determine whether more than one occurrence existed for purposes of applying statutory caps under the South Carolina Solicitation of Charitable Funds Act, which implements a recovery cap on a "per occurrence" basis. *See Solomon as Personal Representative of Estate of Will Solomon, Jr. v. Coastal Plains Physician Assoc., PA and Hampton Regional Medical Ctr.*, C.A. No.: 2010-CP-25-105 (S.C.Sup.Ct. filed March 31, 2012) (R. pp. 421-428). In that medical malpractice case, the Fourteenth Circuit agreed with the plaintiff that two separate occurrences existed- one act of negligence on December 17th, when treated by Defendant Hampton Regional Medical Center and Dr. Jansen, and a second act of negligence on December 19th, when treated by Coastal Plains and Dr.

Koreckij. *Id.* at p. 5-7 (R. pp. 425-427). The verdict form gave the jury distinct options for determining liability: (1) solely against Hampton Regional Medical Center; (2) solely against Coastal Plains Physician Associates; (3) in favor of both defendants; OR (4) against both defendants. *Id.* at p. 6 (R. p. 426). The jury found both defendants negligent in the treatment of the deceased and that both acts of negligence proximately caused the same injury— the deceased's conscience pain and suffering. *Id.* Applying *Boiter's* reasoning, the Fourteenth Circuit found that the two negligent acts by two separate defendants that were independent of each other constituted two occurrences, even though they resulted in the same injuries to the plaintiff. *Id.* at p. 5-7 (R. pp. 425-427). Accordingly, two occurrences existed, each subject to the statutory cap of $1.2 Million, with a total cap of $2.4 Million for the case. *Id.*

Furthermore, the mere fact that multiple state actors within the same state entity commit separate acts of negligence does not serve to turn their acts of negligence into one unfolding sequence of events. Multiple occurrences may exist based on distinct unconnected acts of negligence. For example, in *Williamson v. South Carolina Ins. Reserve Fund*, 355 S.C. 420, 422-23, 586 S.E.2d 115, 116 (2003), two occurrences were established for purposes of the Tort Claims Act where negligent acts of two different physicians were separate and apart from the other. Each physician had examined the plaintiff during childbirth and failed to take necessary steps at different times during the delivery to prevent harm to the child, constituting two occurrences that caused the injury. *Id.* (Supreme Court held that recovery caps under § 15-78-120(a)(3) & (4) not applicable because claims arose/accrued before reinstatement of statutory caps and, as such, unnecessary for Court to address occurrence issue).

Likewise, the Tennessee Court of Appeals has found multiple occurrences by a single governmental hospital under Tennessee's applicable tort claims act where one employee negligently failed to prevent the patient from falling off a stretcher, resulting in personal injury to the patient, and a second employee, thereafter, negligently provided an overdose of medication, which ultimately resulted in the patient's death. *See Brooks v. Memphis & Shelby County Hosp. Auth.*, 717 S.W.2d 292, 297 (Tenn. App. 1986). The court found each act of negligence constituted a separate occurrence, individually subject to the applicable indemnity limit, despite there being one resulting death. *Id.*

In addition, the reasoning in this Court's decision of *Johnson v. Hunter*, 386 S.C. 452, 688 S.E.2d 593 (Ct.App. 2010), also is instructive to explain how a single entity may incur liability for multiple occurrences. While in *Johnson*, the Court considered the novel question in South Carolina of how to determine if a single motor vehicle accident or multiple accidents occurred for purposes of insurance liability limits, the court's process of analyzing the issue is applicable to determining when multiple occurrences by a single entity have occurred. The Court looked to other jurisdictions and concluded that most courts evaluate the circumstances under the causation theory: "[c]ourts applying the 'cause' theory uniformly find a single accident 'if cause and result are so simultaneous or so closely linked in time and space as to be considered by the average person as one event.'" *Id.* at 455, 595 (quoting *Ill. Nat'l Ins. Co. v. Szczepkowicz*, 542 N.E.2d 90, 92 (Ill. 1989)). The cause theory stands in opposition to the effect test, which determines the number of occurrences based on each injury. *Mitsui Sumitomo Ins. Co. of Am. v. Duke Univ. Health Sys., Inc.*, 509 F. App'x 233, 238 (4th Cir. 2013) (acknowledging North Carolina has adopted the cause theory).

While under the cause theory an accident means a "single, sudden, unintentional occurrence and is used to describe the event, no matter how many persons or things are involved," the accident or occurrence is viewed from the perspective of cause and not effect. *Id.* (citing *Olsen v. Moore*, 202 N.W.2d 236, 241 (Wis. 1972)). Thus, the cause theory requires consideration of the particular facts of the case to examine the timing of actions, or space interval between actions, to determine whether one source of negligence set all the subsequent events in motion or whether multiple distinct acts of negligence caused the injury at issue. *Id.* at 457-58, 596 (holding extremely short time between collisions, close distance of defendant's car to plaintiff that he could not stop, and plaintiff's assertion that he did not believe defendant could have done anything to avoid hitting him constituted one accident). The cause theory mirrors the Supreme Court's reasoning in *Boiter* that where there is no causal connection between separate negligent actions, multiple independent acts of negligence caused the injury rather than one unfolding sequence of events. 393 S.C. at 134, 712 S.E.2d at 407. Each independent act of negligence constitutes an occurrence regardless of the resulting injury or injuries.

Here, the distinct actions taken separately by the Town of Cottageville, Officer Price, and John Craddock over the course of the Town's <u>hiring</u> of Price, <u>supervision</u> of Price, and <u>retention</u> of Price up to, and including, Officer Price's <u>actions in shooting and killing</u> Bert Reeves, are not the unfolding of a single sequence of immediate events. Rather the negligent actions were separate and distinct, made on different days, at different locations, and by different individuals that ultimately resulted in the death of Bert Reeves. The jury specifically found multiple and distinct acts that constituted constitutional violations and multiple independent acts of negligence by Officer Price and the Town of

Cottageville and that each act proximately caused Reeves's and his children's injuries. (Amended Complaint, Exhibit 1 with attachment A, Verdict Form and Judgment, R. pp. 87-94). Specifically, the jury found Defendant Price violated Bert Reeves's constitutional right against the use of excessive force, violated Bert Reeves's constitutional right against unreasonable seizure, and found Officer Price negligent in his actions. *Id.* The jury also found the Defendant Town of Cottageville violated Bert Reeves's constitutional rights in its hiring of Officer Price; in its retention of Officer Price; in its supervision of Officer Price; and in its failure to train Officer Price, and found the Town negligent in its actions as well. *Id.*

The jury verdict establishes that multiple and independent actions by The Town of Cottageville and Officer Price exist that were not causally connected to constitute the unfolding of a single sequence of events that proximately caused the death of Bert Reeves and his statutory beneficiaries' injuries. Specifically, had the jury not found against the Town of Cottageville, the verdict against Officer Price could still stand, and vice versa. *See Boiter*, 393 S.C. at 134, 712 S.E.2d at 407 ("had the jury not found SCDOT negligent, the verdict against SCDPS could still stand, and the converse is also true"). Furthermore, the separate actions of Craddock, for supervisory liability under 42 U.S.C. § 1983, constitute a separate and distinct occurrence. *See Boiter*, 393 S.C. at 134, 712 S.E.2d at 407. In sum, separate liability exists "per occurrence" for the distinct acts of the Town, Officer Price, and Craddock, resulting in multiple occurrences in the underlying cases. Therefore, pursuant to the Coverage Contract, more than $1,000,000 in liability coverage exists, and summary judgment for Reeves on Issue #1 was properly granted.

CONCLUSION

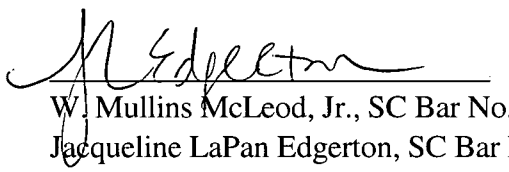
The claims made and the verdict rendered against the Town of Cottageville and Randall Price, along with the separate actions of John Craddock, result in more than $1,000,000 in indemnity coverage available under the Coverage Contract. The underlying cases involve multiple and distinct acts that caused multiple and distinct injuries. Therefore, whether "occurrence" is defined by action or injury, multiple occurrences exist, each with $1,000,000 in coverage "per occurrence". Accordingly, the circuit court correctly found that the definition of "occurrence" is ambiguous, but the presence of the wrongful death injuries and the decedent's own injury of conscious pain and suffering result in more than $1,000,000 in indemnity coverage.

Alternatively, if the circuit court erred in finding "occurrence" ambiguous in the Coverage Contract, summary judgment nonetheless was properly granted to Reeves on Issue #1, because "occurrence" is defined by act, and multiple separate and distinct actions exist in the underlying lawsuit, rendering more than $1,000,000 in coverage applicable.

Lastly, SCMIRF errs in its contention that the definitions of "bodily injury" and "personal injury" dictate that a single coverage limit of $1,000,000 applies, as its argument ignores that the Coverage Contract is a "per occurrence" policy and that a determination of whether separate and distinct occurrences, wrongful action, or conduct occurred must first be made before determining whether bodily injury and personal injury both exist within a single occurrence. Bodily injury subsumes into personal injury within a single occurrence, not across multiple occurrences.

As such, the circuit court's grant of summary judgment to Reeves on Issue One was proper, and Reeves, as Respondent/Appellant, respectfully requests that the Court AFFIRM the lower court's June 29, 2016 Order as to Issue #1.

Respectfully submitted this 23rd day of January 2017,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Perry M. Buckner, III, Circuit Court Judge

RECEIVED
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SC Court of Appeals

Appellate Case No. 2016-001626

Ashley Reeves as Personal Representative for the Estate of Albert Carl "Bert" Reeves, ... Respondent/Appellant,

v.

South Carolina Municipal Insurance and Risk Financing Fund [SCMIRF] ..... Appellant/Respondent.

CERTIFICATE OF COMPLIANCE

Respondent/Appellant's counsel certifies that her final response brief complies with Rule 211(b), SCACR.

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