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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

DEC 15 2017
SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers
in their capacity as Co-Personal Representatives
of the Estate of Evan Morris Myers, ... Appellants,

v.

The Consolidated Employee Recreation Clubs, a
non-profit organization a/k/a Pine Island Club
at Lake Murray, South Carolina Electric and Gas
Holding Company, Inc.; SCANA Respondents.

**RESPONDENTS' MOTION TO DISMISS APPEAL OR, IN THE
ALTERNATIVE, MOTION TO STRIKE AND
AMEND RECORD ON APPEAL**

TO: THE HONORABLE JUDGES OF THE COURT OF APPEALS OF SOUTH
CAROLINA:

Pursuant to Rule 240, SCACR, The Consolidated Employee Recreation
Clubs, a non-profit organization a/k/a Pine Island Club at Lake Murray,

South Carolina Electric and Gas Holding Company, Inc., and SCANA (“Respondents”) respectfully move this Court of an Order dismissing the above-captioned appeal. In the alternative, Respondents move pursuant to Rule 210(c), SCACR, for an order striking and amending sections of the Record on Appeal served and filed by Appellants Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal Representatives of the Estate of Evan Morris Myers (“Appellants”) and requiring Appellants to file an amended Record on Appeal.

Further, Respondents move for an Order imposing sanctions upon Appellants, including, but not limited to attorneys’ fees and costs, relating to Respondents’ motion practice based on Appellants’ continued failure to comply with the Appellate Court Rules.

Respondents additionally request that all deadlines be held in abeyance until the Court issues its ruling on these motions.

FACTUAL/PROCEDURAL BACKGROUND

This action arises out of the accidental drowning of Evan Morris Myers on June 15, 2011. Appellants commenced suit against Respondents, asserting a cause of action for, inter alia, wrongful death sounding in negligence. Appellants have appealed from the Circuit Court’s entry of summary

judgment in favor of Respondents.

Appellants filed their Notice of Appeal on or about December 12, 2016. Appellants filed their Initial Brief and Designation of Matter on January 20, 2017.

On February 21, 2017, Respondents filed a Motion to Strike, requesting the Court strike certain matters contained in Appellants' Designation of Matter. Specifically, Respondents maintained that Appellants included certain matters not part of the circuit court record in their Designation of Matter. Respondents requested the Court strike the following: (1) Answers to all Interrogatories and Requests for Production; (2) Deposition transcript and exhibits of Mandy Bellamy, to the extent Appellants seek to include the entire deposition transcript; and (3) All emails between counsel of record. Respondents further requested the Court strike from Appellants' Designation of Matter the inclusion of all pleadings, all motions and all orders as irrelevant and unnecessary for the Court's review of the Circuit Court order granting summary judgment in favor of Respondents. Finally, Respondents requested the Court strike the designation of "[a]ny other document cited in Appellants' Initial Briefs." (**Ex. A**)

Pursuant to the Court's February 24, 2017, correspondence, all filing

deadlines were held in abeyance pending the Court's decision on Respondents' Motion to Strike. **(Ex. B)**.

On or about March 1, 2017, Appellants filed their Response to Respondents' Motion to Strike, arguing the Motion to Strike was premature and unfounded. **(Ex. C)**. Appellants further argued that despite Respondents' contention, the matters designated by Appellants were indeed part of the Circuit Court record. On the same date, Appellants filed a Supplemental Designation of Matter. **(Ex. D)**.

On March 6, 2017, Respondents filed their Reply to Appellants' Response to Respondents' Motion to Strike. **(Ex. E)**.

By Order filed on April 6, 2017, the Court granted Respondents' Motion to Strike. **(Ex. F)**. The Court directed Appellants to serve and file an amended designation of matter including only those documents that were presented to the Circuit Court and to specifically reference each document Appellants desire to be included in the record on appeal. The Court specifically ordered that the following designations shall not be included in the amended designation of matter: (1) answers to interrogatories and requests for production; (2) emails between counsel that were not part of the circuit court's record; and (3) portions of the deposition transcript of Mandy

Bellamy that were not part of the circuit court's record. (Id.)

On or about April 26, 2017, Appellants filed their Amended Designation of Matter. (**Ex. G**).

On May 11, 2017, Respondents filed their Motion to Dismiss Appeal or, in the Alternative, Motion to Strike certain materials designated by Appellants in their Amended Designation of Matter. (**Ex. H**). Appellants filed their Return to Respondents' Motion to Dismiss Appeal or, in the Alternative, Motion to Strike certain materials designated by Appellants in their Amended Designation of Matter on or about May 22, 2017. (**Ex. I**) On or about May 30, 2017, Respondents filed their Reply to Same. (**Ex. J**) By Order filed on July 13, 2017, the Court denied Respondents' Motion. (**Ex. K**).

On or about December 4, 2017, Appellants filed and served the Record on Appeal. Upon receipt, Respondents reviewed the Record on Appeal and found numerous errors, such as documents and pages included in the Record on Appeal that were not listed in either parties' Designations of Matter; Respondents' Memorandums' missing exhibits to the same; and pages included in Ms. Bellamy's deposition transcript that were not listed in either parties' Designations of Matter.

LAW/ANALYSIS

The Supreme Court of South Carolina has advised that “the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.” Henning v. Kaye, 307 S.C. 436, 415 S.E.2d 794 (1992). A party’s failure to comply with these rules warrants dismissal of the appeal. Id.;¹ Rule 260, SCACR.

The Appellate Court Rules provide that matters not presented to the trial court are not properly included in the Record on Appeal. Rule 210(c), SCACR; see also Associates Discount Corp. v. Hiers, 248 S.C. 430, 150 S.E.2d 611 (1966); Sanders v. Allis Chalmers Mfg. Co., 235 S.C. 259, 111 S.E.2d 201 (1959); State v. Johnson 147 S.C. 325, 145 S.E. 194 (1928); Quattlebaum v. Black, 22 S.C. 587 (1884); State v. White, 372 S.C. 364, 642 S.E.2d 607 (Ct. App. 2007); Norris v. Ferre, 315 S.C. 179, 432 S.E.2d 491 (Ct. App. 1993) (record may not be supplemented with matters not presented

¹ While the Henning Court ultimately permitted appellant to serve and file an initial brief that fully complied with the appellate court rules, the Court noted that it would be “justified in dismissing this appeal based on appellant’s numerous violations of the Rules.” 307 S.C. at 437, 415 S.E.2d at 794.

to trial judge); S.C. Jur. Appeal and Error § 63. Furthermore, matters not presented to the Circuit Court will not be given substantive consideration on appeal. Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999).

As previously stated, Respondents received the Record on Appeal from Appellants on or about December 4, 2017. Upon receipt, Respondents reviewed the Record on Appeal and noted the following errors:

1. Appellants included the original Summons and Complaint. This is not listed in either parties' Designations of Matter;
2. In the Record on Appeal's Index, Appellants repeatedly misname Respondents' Motion for Summary Judgment as Motion for Partial Summary Judgment;
3. Per Order of the Court dated April 16, 2017, Appellants were directed to not include copies of the Answers to Interrogatories and Second Answers to Interrogatories;
4. Appellants removed Respondents' exhibits and/or slip covers designating the exhibit from the following motions and memorandums:
 - a. As to Respondents/Defendants' Memorandum in Support of Their Motion for Summary Judgment, the Exhibit A is missing

and Exhibit B is missing the slip cover designating the Affidavit of Andrea L. Lange and its exhibits as Exhibit B.

- b. Respondents/Defendants' Memorandum in Opposition to Plaintiffs' Motion to Alter or Amend Pursuant to Rule 59(e) is missing Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q and R. These are all of the exhibits included in the memorandum.
5. Record on Appeal pages 299 & 312 are pieces of paper that state "exhibits not scanned". These pages are irrelevant and not included in either parties' Designations of Matter.
6. The following page numbers in the Record on Appeal are illegible: 167-171, 173-185, 313-316, 320, 323-326, 328-329, 331-343 and 345.
7. Appellants did not include the following emails to the court: Email 6/15/16 at 5:42 p.m. from Christian Stegmaier and Email 6/16/16 at 12:41 p.m. from Christian Stegmaier.
8. Appellants included the following pages in the Bellamy transcript but these pages are not listed on either parties' Designations of Matter: 41, 43, 45, 46, 47, 54, 58, 59, 60, 82, 83, 84, 89, 90, 91, 151 & 152.

The above is further proof that Appellants are in direct contravention to

the appellate court rules and this Court's Order of April 16, 2017. Appellants' continued violations of the appellate court rules—specifically Rule 210—have gravely prejudiced Respondents. Respondents have unnecessarily had to incur expenses while engaging in motions practice based on Appellants' counsel's continued failure to comply with both the appellate court rules and this Court's Order during this appeal. Further, Respondents have spent many hours reviewing the Record on Appeal in order to ensure it is in compliance with the appellate court rules and includes all designated documents.

CONCLUSION

Based on Appellants' continued failure to comply with the Appellate Court Rules and this Court's prior Order, Respondents respectfully request the Court dismiss Appellants' appeal. Alternatively, Respondents respectfully request the Court strike certain matters in the Record on Appeal and order Appellants to amend and correct the Record on Appeal. Further, pursuant to Rule 269, SCACR, Respondents respectfully request the imposition of sanctions, including, but not limited to, attorneys' fees and costs related to the continued motions practice.

Respectfully submitted,

COLLINS & LACY, P.C.

A handwritten signature in black ink, appearing to read 'C. Stegmaier', written over a horizontal line.

CHRISTIAN STEGMAIER

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ATTORNEYS FOR RESPONDENTS

**RESPONDENTS' MOTION TO
DISMISS APPEAL OR, IN THE
ALTERNATIVE, MOTION TO
STRIKE AND AMEND RECORD
ON APPEAL**

Columbia, South Carolina
December 15, 2017

EXHIBIT A

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

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FEB 21 2017

Appellate Case No. 2016-002487

SC Court of Appeals

Cassandra M. Myers and Bartholomew Myers
in their capacity as Co-Personal Representatives
of the Estate of Evan Morris Myers, ...Appellants,

v.

The Consolidated Employee Recreation Clubs, a
non-profit organization a/k/a Pine Island Club
at Lake Murray, South Carolina Electric and Gas
Holding Company, Inc.; SCANA Respondents.

RESPONDENTS' MOTION TO STRIKE

TO: THE HONORABLE JUDGES OF THE COURT OF APPEALS OF SOUTH
CAROLINA:

Pursuant to Rule 209(b) and Rule 210(c), SCACR, Respondents The
Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray, South Carolina Electric and Gas Holding

Company, Inc., and SCANA ("Respondents") respectfully move this Court for an order striking from Appellants' Designation of Matter certain materials designated by Appellants and requiring Appellants to file an amended initial brief omitting all references to the disputed items. Respondents additionally request that all deadlines be held in abeyance until the Court issues its ruling on this motion to strike.

This action arises out of the accidental drowning of Evan Morris Myers on June 15, 2011, in the freshwaters of Lake Murray in Lexington County, South Carolina. Appellants commenced suit against Respondents asserting a cause of action for, inter alia, wrongful death sounding in negligence.¹ Appellants have appealed from the Circuit Court's entry of summary judgment in favor of Respondents.

At this time, counsels for Appellants and Respondents are not in agreement concerning the Appellants' Designation of Matter and the undersigned now moves to strike all non-relevant documents from the same.

¹ Appellants initially brought a wrongful death action sounding in negligence and intentional infliction of emotional distress claims against Respondents and other Defendants. Appellants subsequently dismissed the other defendants and amended their complaint eliminating their intentional infliction of emotional distress claims.

The Appellate Court Rules provide that matters not presented to the trial court are not properly included in the Record on Appeal. Rule 210(c), SCACR; see also Associates Discount Corp. v. Hiers, 248 S.C. 430, 150 S.E.2d 611 (1966); Sanders v. Allis Chalmers Mfg. Co., 235 S.C. 259, 111 S.E.2d 201 (1959); State v. Johnson 147 S.C. 325, 145 S.E. 194 (1928); Quattlebaum v. Black, 22 S.C. 587 (1884); State v. White, 372 S.C. 364, 642 S.E.2d 607 (Ct. App. 2007); Norris v. Ferre, 315 S.C. 179, 432 S.E.2d 491 (Ct. App. 1993) (record may not be supplemented with matters not presented to trial judge); S.C. Jur. Appeal and Error § 63. Furthermore, matters not presented to the Circuit Court will not be given substantive consideration on appeal. Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999).

The Record on Appeal must generally contain everything necessary to the resolution of the issues presented to the appellate court, including evidence, statutes or ordinances on which the parties are relying, and written memorials of any judicial action which triggered the appeal or which is necessary for the resolution of the appeal. 5 Am. Jur. 2d Appellate Review § 441. The record is deemed to consist of all papers and exhibits filed with the trial court. Id. at § 442.

Respondents move to strike the following material and documents from Appellants' Designation of Matter that were not part of the Circuit Court record:

- a. Answers to all Interrogatories and Requests for Production;
- b. Deposition transcript and exhibits of Mandy Bellamy, to the extent Appellants' seek to include the entire deposition and excerpts;²
- c. All emails between counsel of record.

Respondents further request the Court strike from Appellants' Designation of Matter the inclusion of all pleadings, all motions and all orders.

This appeal stems from the Circuit Court's order granting Respondents' Summary Judgment. The only relevant pleadings, motions, and orders include: (1) Appellants' Complaint; (2) Appellants' Amended Complaint; (3) Respondents' Answer to Amended Complaint; (4) Respondents' Motion for Summary Judgment and supporting memorandum; (5) Appellants'

² See Rule 209, SCACR ("[T]he Designation may only propose to include portions of the transcript, pleadings, orders, exhibits which may not be properly included in the Record on Appeal [See Rule 210(c)]") (emphasis added).

Memorandum of Law in response to Respondents' Motion for Summary Judgment; (6) Appellants' Motion to Alter or Amend pursuant to Rule 59(e), SCRCF; (7) Respondents' Memorandum in Opposition to Appellants' Rule 59(e) motion; (8) Order granting Summary Judgment; (9) Order denying Rule 59(e) motion, SCRCF.

To the extent Appellants seek to include any pleadings, motions or orders not articulated above, such material and documents are irrelevant to the current appeal. See Rule 209(b) ("A party shall not include any matter on his Designation which is not relevant to the appeal."); 16 S.C. Jur. Appeal and Error § 59 ("The Record on Appeal should contain only information needed to permit the Court to decide the issues on appeal; it should contain no irrelevant material."); 15 S.C. Jur. Appeal and Error § 63 ("Matters irrelevant to the question involved in the appeal are also disallowed.")

Respondents further move to strike from Appellants' Designation of Matter "Any other document cited in Appellants' Initial Briefs." The Appellate Court Rules clearly provide that documents listed in the Designation of Matter must be specifically named. See Rule 209(b), SCARC ("The Designation must clearly identify what the party desires to

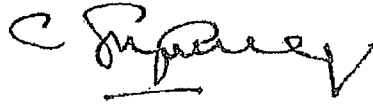
have included in the Record on Appeal[.]”). Appellants’ reference to “[a]ny other document cited,” does not comport with this rule. b4 b

In short, Appellants have included items in their Designation of Matter and Initial Brief that were not presented to the Circuit Court and do not form part of the record on Respondents’ summary judgment motion. Further, Appellants have purported to include items in the Designation of Matter that are irrelevant to the issues on Appeal. Accordingly, pursuant to Rules 209(b) and 210(c), SCACR, Respondents respectfully request the above-listed items be stricken from Appellants’ Designation of Matter and Appellants be ordered to revise their Initial Brief to omit all references to the same. Respondents additionally request the Court hold the briefing deadlines in abeyance during the pendency of this motion.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

COLLINS & LACY, P.C.



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ATTORNEYS FOR RESPONDENTS

**RESPONDENTS' MOTION TO
STRIKE**

Columbia, South Carolina
February 21, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

RECEIVED

FEB 21 2017

SC Court of Appeals

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers
in their capacity as Co-Personal Representatives
of the Estate of Evan Morris Myers, ... Appellants,

v.

The Consolidated Employee Recreation Clubs, a
non-profit organization a/k/a Pine Island Club
at Lake Murray, South Carolina Electric and Gas
Holding Company, Inc.; SCANA Respondents.

PROOF OF SERVICE

I hereby certify that I served Respondents' Motion to Strike upon all parties, by placing a copy in the United States mail, postage prepaid, to all counsel of record on February 21, 2017, addressed to the following:

COUNSEL SERVED:

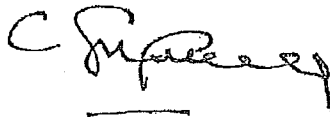
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Counsel for Appellants

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Counsel for Appellants

Respectfully submitted,

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ATTORNEYS FOR RESPONDENTS

EXHIBIT B



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
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February 24, 2017

Mr. Christian Stegmaier, Esquire
PO Box 12487
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Re: Cassandra Myers v. The Consolidated Employee Recreation Clubs
Appellate Case No. 2016-002487

Dear Counsel:

The Court received your motion for extension and your motion to strike on February 21, 2017. All parties are advised the filing deadlines for this appeal will be held in abeyance pending the Court's decision on the motions.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Pedro Eduardo Krompecher, Esquire
Meghan Hazelwood Hall, Esquire
John Layton Ruffin, Esquire
Edward L. Graham, Esquire

EXHIBIT C

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of Evan Morris Myers,

Appellants,

v.

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA,

Respondents.

APPELLANTS' RESPONSE TO
RESPONDENT'S MOTION TO STRIKE

TO: THE HONORABLE JUDGES OF THE COURT OF APPEALS OF SOUTH CAROLINA:

Respondents filed a motion to strike and a motion for extension of time to file Respondents' initial brief that are dated as received by the court of appeals on February 21, 2017. Appellants have no objection to the request for an extension of time. However, Appellants object to the motion to strike because it is premature and unfounded.

With their initial brief, Appellants served and filed their designation of matter it intends to include in the record on appeal. Appellants' designations include only materials which may be properly included in the Record on Appeal pursuant to Rule 210(c), SCACR and which Appellants believe to be relevant to the appeal, as required by Rule 209(b), SCACR. At this

stage, it is not even certain what Respondents' brief will argue or what materials it may reference nor is it certain what Appellants may argue in Reply. As such, it is both premature and inappropriate for Respondents to unilaterally claim to be the arbiter of what is relevant to Appellants' appeal.

For instance, Respondents do not include the consent order allowing Plaintiffs to amend their complaint in its list of purportedly relevant pleadings, motions, and orders. While not the crux of the case, the order was referenced in Appellants statement of the appeal and is relevant to the procedural posture of this case. As such, Appellants designated the order. Respondents do not even cite to any specific pleading, motion, or order in Appellants' designation they believe is irrelevant. As such, Respondents argument should be disregarded and the motion denied.

Respondents claim certain materials are not part of the record. This is inaccurate. Respondents argue emails between counsel are not part of the record. This is untrue. At the hearing, Plaintiffs' counsel represented to the court that hours before the hearing Defendants filed a memorandum raising for the first time entirely new arguments. (Defs' Memo in Support). This exact same correspondence was referenced in Plaintiffs' motion to reconsider as exhibit 1.

Respondents claim the answers to interrogatories and request for production are not part of the record. This too is inaccurate. Plaintiffs' response to Defendants' motion for summary judgment clearly references Defendants answers to interrogatories numerous times. (Pls.' Response to Defendants' Mot. for Summ. J.). Plaintiffs' response also includes references to documents produced by Defendants during discovery.

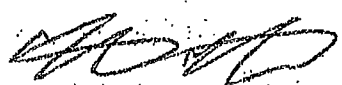
Finally, Respondents argue that to the extent Appellants seek to include Mandy Bellamy's entire deposition, this should be prohibited. Appellants are unaware of any rule which

states that a designated deposition cannot be included in its entirety if portions have been referenced. At this point, Appellants believe the Court would be best served by having her deposition in its entirety, to understand the context in which certain statements were made. Therefore, at this time Appellants believe her deposition is relevant in its entirety. The record on appeal is created at the Appellants expense, so Respondents should not have any objection with respect to costs.

For the foregoing reasons, Respondents motion to strike should be denied. Appellants have no objection to Respondents request for an extension of time.

Respectfully submitted,

GRAHAM LAW FIRM, P.A.
KROMPECHER LAW FIRM, PLLC



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Attorneys for Appellants

March 1, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487.

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of E. M. Myers, Appellants,

v.

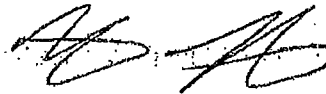
The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy, Respondents.

PROOF OF SERVICE

I hereby certify that one copy of the *Appellants' Response To Respondent's Motion To Strike* in
the above-referenced matter was served by U.S. Mail, postage prepaid, on March 1, 2017
addressed to the following counsel of record:

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Megan H. Hall
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Sixth Floor
Columbia, SC 29201

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Attorneys for Appellants

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
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William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of E. M. Myers,

Appellants,

v.

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy,

Respondents.

**SUPPLEMENTAL DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

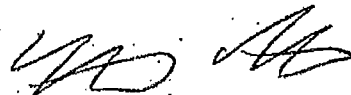
Appellants propose the following to be included in the Record on Appeal:

- 1) All pleadings, except those, if any, which may hereafter be agreed upon by all parties for exclusion at the completion of the briefing process;
- 2) Answers to all Interrogatories and Request for Production;
- 3) Deposition transcript and exhibits of Mandy Bellamy;
- 4) Affidavits and Supplemental Affidavits of Drs. Francesco Pia and Ralph Johnson;
- 5) E-mail correspondence between the Honorable William P. Keesley and Counsel for both the Plaintiff and the Defendant;
- 6) E-mail correspondence between Plaintiff's counsel and Defendant's counsel;
- 7) All Orders except those, if any, which may hereafter be agreed upon by all parties for exclusion at the completion of the briefing process;

- 8) All Motions except those, if any, which may hereafter be agreed upon by all parties for exclusion at the completion of the briefing process;
- 9) Transcription of the Hearing held on December 11, 2015 before the Honorable William P. Keesley, except those portions, if any, which may hereafter be agreed upon by all parties for exclusion at the completion of the briefing process;
- 10) Notice of Appeal by Appellants;
- 11) Plaintiffs response to defendants motion for summary judgment;
- 12) Any other document cited in Appellants' Initial Briefs;
- 13) Plaintiffs response to defendants motion for summary judgment, to the extent that this item was not covered in the initial designation;
- 14) Defendants memoranda in support of motion for summary judgment, to the extent that this item was not covered in the initial designation.

I certify that this designation contains no matter which is irrelevant to this appeal.

GRAHAM LAW FIRM, P.A.
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Attorneys for Appellants

Other Counsel of Record:
Christian Stegnaier
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Attorneys for Respondents

March

1,

2017

2

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
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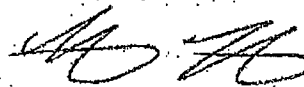
The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy, Respondents.

PROOF OF SERVICE

I hereby certify that one copy of the *Designation of Matter to be Included in the Record*
in the above-referenced matter was served by U.S. Mail, postage prepaid, on March 1, 2017
addressed to the following counsel of record:

Christian Stegmaier
Megan H. Hall
Collins & Lacy, P.C.
1330 Lady Street
Sixth Floor
Columbia, SC 29201

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Attorneys for Appellant

EXHIBIT D

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of E. M. Myers,

Appellants,

v.

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy,

Respondents.

**SUPPLEMENTAL DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

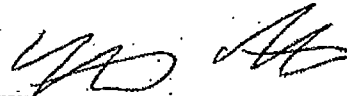
Appellants propose the following to be included in the Record on Appeal:

- 1) All pleadings, except those, if any, which may hereafter be agreed upon by all parties for exclusion at the completion of the briefing process;
- 2) Answers to all Interrogatories and Request for Production;
- 3) Deposition transcript and exhibits of Mandy Bellamy;
- 4) Affidavits and Supplemental Affidavits of Drs. Francesco Pia and Ralph Johnson;
- 5) E-mail correspondence between the Honorable William P. Keesley and Counsel for both the Plaintiff and the Defendant;
- 6) E-mail correspondence between Plaintiff's counsel and Defendant's counsel;
- 7) All Orders except those, if any, which may hereafter be agreed upon by all parties for exclusion at the completion of the briefing process;

- 8) All Motions except those, if any, which may hereafter be agreed upon by all parties for exclusion at the completion of the briefing process;
- 9) Transcription of the Hearing held on December 11, 2015 before the Honorable William P. Keesley, except those portions, if any, which may hereafter be agreed upon by all parties for exclusion at the completion of the briefing process;
- 10) Notice of Appeal by Appellants;
- 11) Plaintiffs response to defendants motion for summary judgment;
- 12) Any other document cited in Appellants' Initial Briefs;
- 13) Plaintiffs response to defendants motion for summary judgment, to the extent that this item was not covered in the initial designation;
- 14) Defendants memoranda in support of motion for summary judgment, to the extent that this item was not covered in the initial designation.

I certify that this designation contains no matter which is irrelevant to this appeal.

GRAHAM LAW FIRM, P.A.
KROMPECHER LAW FIRM, PLLC



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Attorneys for Appellants

Other Counsel of Record:
Christian Stegmaier
Megan H. Hall
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1330 Lady Street
Sixth Floor
Columbia, SC 29201
Attorneys for Respondents

March

1,

2017

2

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of E. M. Myers, Appellants,

v.

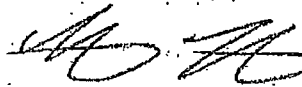
The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy, Respondents.

PROOF OF SERVICE

I hereby certify that one copy of the *Designation of Matter to be Included in the Record*
in the above-referenced matter was served by U.S. Mail, postage prepaid, on March 1, 2017
addressed to the following counsel of record:

Christian Stegmaier
Megan H. Hall
Collins & Lacy, P.C.
1330 Lady Street
Sixth Floor
Columbia, SC 29201

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Attorneys for Appellant

EXHIBIT E

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

MAR 06 2017

APPEAL FROM LEXINGTON COUNTY SC Court of Appeals
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers
in their capacity as Co-Personal Representatives
of the Estate of Evan Morris Myers, ...Appellants,

v.

The Consolidated Employee Recreation Clubs, a
non-profit organization a/k/a Pine Island Club
at Lake Murray, South Carolina Electric and Gas
Holding Company, Inc.; SCANA Respondents.

**RESPONDENTS' REPLY TO APPELLANT'S RESPONSE TO
MOTION TO STRIKE**

TO: THE HONORABLE JUDGES OF THE COURT OF APPEALS OF
SOUTH CAROLINA:

Pursuant to Rule 209(b) and Rule 210(c), SCACR, Respondents The
Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray, South Carolina Electric and Gas Holding

Company, Inc., and SCANA. ("Respondents") moved for an order striking certain materials from Appellant's Designation of Matter. On March 1, 2017, Appellants filed their Response to Respondents' Motion to Strike. Along with their Response, Appellants filed a Supplemental Designation of Matter, adding two additional materials to be included in the record on appeal: (1) Plaintiffs' response to defendants motion for summary judgment, to the extent that this item was not covered in the initial designation; and (2) Defendants/Respondents' memoranda in support of motion for summary judgment, to the extent that this item was not covered in the initial designation.¹ Respondents offer the following in reply.

I. Respondents' Motion to Strike is Not Premature

Initially, Appellants argue that Respondent's Motion to Strike is premature. Appellants specifically aver that "it is not even certain what Respondents' brief will argue or what materials it may reference nor is it certain what Appellants may argue in Reply."

Rule 210(c), SCACR, provides that matters not presented to the trial court are not properly included in the Record on Appeal. Accordingly, these

¹ Respondents do not contest the inclusion of these matters in Appellants' Designation of Matter.

matters should not be identified in the Designation of Matter. See Rule 210(c), SCACR; see also Rule 209(b), SCACR (“[T]he Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)].”). Furthermore, the Designation of Matter should not contain matters or materials that are irrelevant to the appeal. Rule 209(b), SCACR. Indeed, Counsel must certify that the Designation does not contain any matters that are irrelevant to the appeal. Rule 209(b), SCACR.

The determination of whether Appellants have properly designated matters that were presented before the Circuit Court and are relevant to the appeal is ripe for review. First, the Court is readily able to determine what matters were properly before the Circuit Court. Furthermore, the issue of whether certain matters are relevant to the appeal is ripe for this Court consideration, particularly in light of the lower court’s record and what was considered and reviewed by the Circuit Court.

Moreover, Appellants’ argument that it is uncertain what Respondents’ brief will argue or the materials Respondents may reference is without any merit. Several matters identified by Appellants were not part of the Circuit

Court record and would not be referenced-pursuant to the Appellate Court Rules-by Respondents in their brief.

Because the Court can properly determine matters not presented to the Circuit Court or matters irrelevant to the appeal at this time, Respondents' Motion to Strike is ripe.

II. Matters Not Part of the Circuit Court Record

Appellants aver that several matters identified by Respondents in their Motion to Strike as not being a part of the Circuit Court record were in fact part of the record. Appellants specifically identify the following matters as part of the Circuit Court record, and which are now properly identified in their Designation of Matter: (1) Answers to interrogatories and requests for production; (2) Emails between counsel; and (3) Deposition Transcript of Mandy Bellamy.

The Designation of Matter and subsequent Record on Appeal cannot contain matters not presented to the Circuit Court. See Norris v. Ferre, 315 S.C. 179, 432 S.E.2d 491 (Ct. App. 1993) (record may not be supplemented with matters not presented to the trial judge). Furthermore, matters not presented to the Circuit Court will not be given substantive consideration on appeal. Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999).

Respondents concede that the briefing before the Circuit Court contained references to answers to interrogatories and requests for production. However, Respondents aver that copies of the answers to interrogatories and requests for production were not included in any exhibit to any memorandum submitted to the Circuit Court and are thus not part of the record. The Circuit Court did not consider the actual answers to interrogatories and requests for production, save those simply referenced in the text of Appellants' memorandum. Consequently, Appellants cannot now ask this Court to consider the same. Accordingly, the identification of answers to interrogatories and requests for production in Appellants' Designation of Matter is improper and must be struck.

Likewise, emails between counsel were not part of the Circuit Court record. Again, Respondents concede that an email correspondence from Respondents' counsel transmitting Respondents' memorandum in support of motion for summary judgment was attached as Exhibit 1 to Appellants' Motion to Reconsider and, therefore, is arguably part of the Circuit Court record.² However, Appellants seek to generally designate "E-mail

² Respondents aver, however, that because the email was not included as an exhibit in Appellants' memorandum in opposition of motion for summary

correspondence between Plaintiff's counsel and Defendant's counsel." To the extent Appellants seek to include any other email correspondence, Respondents aver such email correspondence was not before the Circuit Court and are therefore improperly designated in Appellants' Designation of Matter. Accordingly, Respondents request the Court strike such designation.

Finally, the entire deposition transcript of Mandy Bellamy was not before the Circuit Court and therefore cannot be included in the Record on Appeal. Appellants acknowledge that only portions of Bellamy's deposition were attached as an exhibit to the briefing before the Circuit Court. Regardless of this concession, Appellants attempt to circumvent Rule 209, SCACR, by including the entire transcript as part of their Designation of Matter. Indeed, Appellants ignore Rule 209(b), SCACR, and Rule 210(c), SCACR, and argue that the "Court would be best served by having [Bellamy's] deposition in its entirety, to understand the context in which certain statements were made. Therefore, at this time Appellants believe her deposition is relevant in its entirety." (See Appellants' Response to Respondents' Motion to Strike, at p. 3). However, before determining

judgment, the email is inadmissible when attached as an exhibit to Appellants' Motion to Reconsider.

whether a matter is relevant, a matter must have been “presented to the lower court or tribunal.” See Rule 210(c), SCACR. Bellamy’s entire deposition transcript was not presented to the Circuit Court.

Moreover, Appellants maintain they “are unaware of any rule which states that a designated deposition cannot be included in its entirety if portions have been referenced.” However, Rule 209, SCACR, directly limits the inclusion of transcripts to only “portions” of the transcript which may be properly included in the Record on Appeal. See Rule 209(b), SCACR (emphasis added).

Therefore, the inclusion of Bellamy’s entire deposition transcript in Appellants’ Designation of Matter is improper. Accordingly, Respondents respectfully request the Court strike the same.

III. Matters Not Relevant to Appeal

The Record on Appeal must generally contain everything necessary to the resolution of the issues presented to the appellate court. 5 Am. Jur. 2d Appellate Review § 441. The record is deemed to consist of all papers and exhibits filed with the trial court. Id. at § 442.

Respondents recognize that the Circuit Court record consists of all orders, pleadings, motions, memorandums, and other writings. However, to

be properly included in the Record on Appeal, such matters must be relevant to the appeal. See Rule 209(b), SCACR; Rule 210(c), SGACR. Furthermore, Rule 209(a) provides that the Designation of Matter “shall set forth with specificity, those parties of the transcript, pleadings, orders, exhibits, or other materials which he proposes to include in the record on appeal.” Rule 209(a), SCACR.

Respondents moved to strike the following designations as not relevant to the appeal: (1) “All Orders ...” and (2) “All Motions” While Respondents acknowledge the any order or motion filed in this case is part of the Circuit Court record, not all orders and motions are relevant to this appeal. See Rule 209(b), SCACR; Rule 210(c), SCACR. Indeed, Appellants’ concede the consent order allowing Plaintiffs to amend their complaint is “not the crux of the case,” yet seeks to designate the same to give reference to the procedural posture of this case.

Moreover, many of the orders and/or motions filed with the Circuit Court would not assist the Court or provide any guidance relevant to the determination of whether the Circuit Court properly granted Respondents’ Motion for Summary Judgment. Furthermore, Respondents aver the designation of “All Motions” and “All Orders” are not matters identified with

specificity as required by the Appellate Court Rules. See Rule 209(a), SCACR. Accordingly, these designations must be stricken.³

CONCLUSION

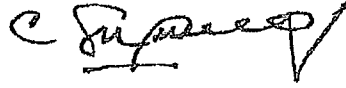
Based on the aforementioned, as well as those articulated in Respondents' Motion to Strike, Respondents aver Appellants have improperly designated curtailed matters in their Designation of Matter. Therefore, Respondents respectfully request this Court strike these matters from the Designation of Matter and Appellants be ordered to revise their Initial Brief to omit all references to the same.

[SIGNATURE PAGE TO FOLLOW]

³ Respondents previously outlined the pleadings, motions and orders they maintain are relevant to the appeal. See Respondents' Motion to Strike.

Respectfully submitted,

COLLINS & LACY, P.C.



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ATTORNEYS FOR RESPONDENTS

Columbia, South Carolina
March 6, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

RECEIVED

MAR 08 2017

SC Court of Appeals

Cassandra M. Myers and Bartholomew Myers
in their capacity as Co-Personal Representatives
of the Estate of Evan Morris Myers, ... Appellants,

v.

The Consolidated Employee Recreation Clubs, a
non-profit organization a/k/a Pine Island Club
at Lake Murray, South Carolina Electric and Gas
Holding Company, Inc.; SCANA Respondents.

PROOF OF SERVICE

I hereby certify that I served Respondents' Reply to Appellants' Return
to Respondents' Motion to Strike upon all parties, by placing a copy in the
United States mail, postage prepaid, to all counsel of record on March 6,
2017, addressed to the following:

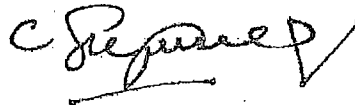
COUNSEL SERVED:

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Counsel for Appellants

Respectfully submitted,

COLLINS & LACY, P.C.



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ATTORNEYS FOR RESPONDENTS

Columbia, South Carolina
March 6, 2017

EXHIBIT F

The South Carolina Court of Appeals

Cassandra M. Myers, and Bartholomew Myers in their
capacity as Co-Personal Representatives of the Estate of
Evan Morris Myers, Appellants,

v.

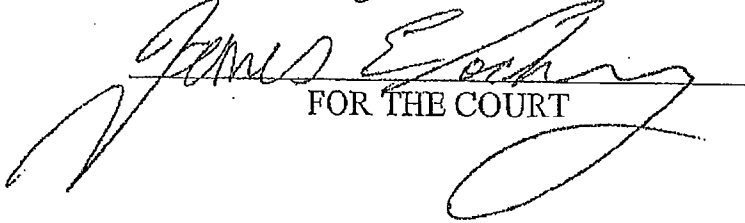
The Consolidated Employee Recreation Clubs, a non-
profit organization a/k/a Pine Island Club at Lake
Murray, South Carolina Electric and Gas Holding
Company, Inc; SCANA, Respondents.

Appellate Case No. 2016-002487

ORDER

Respondents' motion to strike Appellants' designation of matter is granted. Within twenty days of this order, Appellants shall serve and file an amended designation of matter that includes only those documents that were presented to the circuit court. The following designations shall not be included in the amended designation of matter: (1) answers to interrogatories and requests for production; (2) emails between counsel that were not part of the circuit court's record; and (3) portions of the deposition transcript of Mandy Bellamy that were not part of the circuit court's record. Further, the amended designation of matter must specifically reference each document Appellant desires to be included in the record on appeal at this time. Nothing, however, prevents Appellants from moving to supplement their designation of matter after Respondents file their initial brief.

Respondents shall serve and file their initial brief and designation of matter within thirty days of service of Appellants' amended designation of matter.


FOR THE COURT

Columbia, South Carolina

cc:

Pedro Eduardo Krompecher, Esquire

Christian Stegmaier, Esquire

Meghan Hazelwood Hall, Esquire

John Layton Ruffin, Esquire

Edward L. Graham, Esquire

FILED

April 6, 2017

EXHIBIT G

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of E. M. Myers,

Appellants,

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy,

Respondents.

AMENDED DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Appellants propose the following to be included in the Record on Appeal:

- 1) The following pleadings:

Amended Complaint
Answers to Plaintiffs' Interrogatories to Defendants
Answers to Plaintiffs' Second Interrogatories to Defendants;

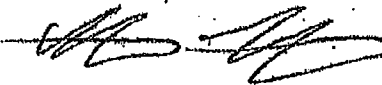
- 2) The following portions of the Deposition transcript and exhibits of Mandy Bellamy:

Bellamy Depo. 44:9-16
Bellamy Depo. 48:17-19
Bellamy Depo. 53:10-15
Bellamy Depo. 56:11 to 57:8
Bellamy Depo. 69:24-25, 71:22 to 72:2
Bellamy Depo. 74:7-10
Bellamy Depo 81:1-9
Bellamy Depo. 92:13-19, 93:7-13
Bellamy Depo. 96:25 to 97:24
Bellamy Depo 149:15-150:1;

- 3) Affidavits and Supplemental Affidavits of Drs. Francisco Pia and Ralph Johnson;
- 4) E-mail correspondence between the Honorable William P. Keesley and Counsel for both the Plaintiff and the Defendant;
- 5) The following Orders:
 - Order (August 24, 2016)
 - Order denying motion to alter or amend (November 15, 2016)
 - Order Granting Summary Judgment
 - Reply to Defendants' Response (October 10, 2016)
 - Response to Defendant's Motion for Summary Judgment (December 8, 2015);
- 6) The following Motions, and responses to motions:
 - Defendant's Motion for Summary Judgment (November 3, 2014)
 - Memo in Opposition to Motion to Alter or Amend (September 27, 2016)
 - Motion to Alter or Amend and Supp. Affs. of Drs. Pia and Johnson;
- 7) Transcription of the Hearing held on December 11, 2015 before the Honorable William P. Keesley;
- 8) Appellants Notice of Appeal and Amended Notice of Appeal;
- 9) The following documents cited in Appellants' Initial Briefs:
 - Consolidated Employee Recreation Clubs Bylaws Art. V.
 - Pine Island Chapter Bylaws Art. V
 - Statement of Evan McPherson
 - Statement of J.W. Seay

I certify that this designation contains no matter which is irrelevant to this appeal.

GRAHAM LAW FIRM, P.A.
KROMPECHER LAW FIRM, PLLC



Edward L. Graham (SC Bar: 2483)
J. Layton Ruffin (SC Bar: 78267)
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Other Counsel of Record:
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April 26, 2017

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Attorneys for Appellants

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

RECEIVED

MAY 11 2017

SC Court of Appeals

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of E. M. Myers,

Appellants,

v.

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy,

Respondents.

PROOF OF SERVICE

I hereby certify that one copy of the *Amended Designation of Matter to be Included in the Record* in the above-referenced matter was served by U.S. Mail, postage prepaid, on April 26, 2017 addressed to the following counsel of record:

Christian Stegmaier
Megan H. Hall
Collins & Lacy, P.C.
1330 Lady Street
Sixth Floor
Columbia, SC 29201

GRAHAM LAW FIRM, P.A.
KROMPECHER LAW FIRM, PLLC

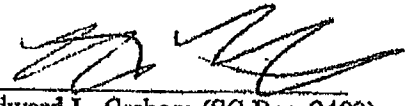

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Attorneys for Appellant

EXHIBIT H

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

RECEIVED

MAY 11 2017

SC Court of Appeals

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers
in their capacity as Co-Personal Representatives
of the Estate of Evan Morris Myers, ... Appellants,

v.

The Consolidated Employee Recreation Clubs, a
non-profit organization a/k/a Pine Island Club
at Lake Murray, South Carolina Electric and Gas
Holding Company, Inc.; SCANA Respondents.

**MOTION TO DISMISS APPEAL OR, IN THE ALTERNATIVE,
MOTION TO STRIKE**

TO: THE HONORABLE JUDGES OF THE COURT OF APPEALS OF SOUTH
CAROLINA:

Pursuant to Rule 231, SCACR, Respondents The Consolidated
Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club
at Lake Murray, South Carolina Electric and Gas Holding Company, Inc.,

and SCANA (“Respondents”) respectfully move this Court for an Order dismissing the above-captioned appeal. In the alternative, Respondents move Pursuant to Rule 209(b) and Rule 210(c), SCACR, for an order striking from Appellants Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal Representatives of the Estate of Evan Morris Myers (“Appellants”) certain materials designated by Appellants and requiring Appellant to file an amended initial brief omitting all references to the disputed items.

Further, Respondents move for an Order imposing sanctions upon Appellants, including, but not limited to attorneys’ fees and costs, relating to Respondents’ motion practice based on Appellants’ continued failure to comply with the Appellate Court Rules.

Respondents additionally request that all deadlines be held in abeyance until the Court issues its ruling on these motions.

FACTUAL/PROCEDURAL BACKGROUND

This action arises out of the accidental drowning of Evan Morris Myers on June 15, 2011. Appellants commenced suit against Respondents, asserting a cause of action for, inter alia, wrongful death sounding in negligence. Appellants have appealed from the Circuit Court’s entry of summary

judgment in favor of Respondents.

Appellants filed their Notice of Appeal on or about December 12, 2016. Appellants filed their Initial Brief and Designation of Matter on January 20, 2017.

On February 21, 2017, Respondents filed a Motion to Strike, requesting the Court strike certain matters contained in Appellants' Designation of Matter. Specifically, Respondents maintained that Appellants included certain matters not part of the circuit court record in their Designation of Matter. Respondents requested the Court strike the following: (1) Answers to all Interrogatories and Requests for Production; (2) Deposition transcript and exhibits of Mandy Bellamy, to the extent Appellants seek to include the entire deposition transcript; and (3) All emails between counsel of record. Respondents further requested the Court strike from Appellants' Designation of Matter the inclusion of all pleadings, all motions and all orders as irrelevant and unnecessary for the Court's review of the Circuit Court order granting summary judgment in favor of Respondents. Finally, Respondents requested the Court strike the designation of "[a]ny other document cited in Appellants' Initial Briefs." (Ex. A)

In addition to their request to strike certain matters from Appellants'

Designation of Matter, Respondents moved for an order requiring Appellants to revise their Initial Brief to omit all references to the improperly included matters. (Id.)

Pursuant to the Court's February 24, 2017, correspondence, all filing deadlines were held in abeyance pending the Court's decision on Respondents' Motion to Strike. (**Ex. B**).

On or about March 1, 2017, Appellants filed their Response to Respondents' Motion to Strike, arguing the Motion to Strike was premature and unfounded. (**Ex. C**). Appellants further argued that despite Respondents' contention, the matters designated by Appellants were indeed part of the Circuit Court record. On the same date, Appellants filed a Supplemental Designation of Matter. (**Ex. D**).

On March 6, 2017, Respondents filed their Reply to Appellants' Response to Respondents' Motion to Strike. (**Ex. E**).

By Order filed on April 6, 2017, the Court granted Respondents' Motion to Strike. (**Ex. F**). The Court directed Appellants, within twenty days of the date of the order, to serve and file an amended designation of matter including only those documents that were presented to the Circuit Court and to specifically reference each document Appellants desire to be

included in the record on appeal. The Court specifically ordered that the following designations shall not be included in the amended designation of matter: (1) answers to interrogatories and requests for production; (2) emails between counsel that were not part of the circuit court's record; and (3) portions of the deposition transcript of Mandy Bellamy that were not part of the circuit court's record.¹ (Id.)

On or about April 26, 2017, Appellants filed their Amended Designation of Matter. (**Ex. G**).

LAW/ANALYSIS

The Supreme Court of South Carolina has advised that “the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.” Henning v. Kaye, 307 S.C. 436, 415 S.E.2d 794 (1992). A party's failure to comply with these

¹ While Respondents requested the Court order Appellants to revise their initial Brief to omit all references to the improperly included matters, the Court did not address Respondents argument regarding the same and did not provide any direction to Appellants regarding their Initial Brief.

rules warrants dismissal of the appeal. Id.,² Rule 260, SCACR.

The Appellate Court Rules provide that matters not presented to the trial court are not properly included in the Record on Appeal. Rule 210(c), SCACR; see also Associates Discount Corp. v. Hiers, 248 S.C. 430, 150 S.E.2d 611 (1966); Sanders v. Allis Chalmers Mfg. Co., 235 S.C. 259, 111 S.E.2d 201 (1959); State v. Johnson 147 S.C. 325, 145 S.E. 194 (1928); Quattlebaum v. Black, 22 S.C. 587 (1884); State v. White, 372 S.C. 364, 642 S.E.2d 607 (Ct. App. 2007); Norris v. Ferre, 315 S.C. 179, 432 S.E.2d 491 (Ct. App. 1993) (record may not be supplemented with matters not presented to trial judge); S.C. Jur. Appeal and Error § 63. Furthermore, matters not presented to the Circuit Court will not be given substantive consideration on appeal. Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999).

Appellants included the following matters in their Amended Designation of Matter: (1) Answers to Plaintiffs' Interrogatories to Defendants; (2) Answers to Plaintiffs' Second Interrogatories to Defendants; (3) several excerpts of the Deposition transcript of Mandy Bellamy; and (4)

² While the Henning Court ultimately permitted appellant to serve and file an initial brief that fully complied with the appellate court rules, the Court noted that it would be "justified in dismissing this appeal based on appellant's numerous violations of the Rules." 307 S.C. at 437, 415 S.E.2d at 794.

Consolidated Employee Recreations Clubs Bylaws Art. V.

Despite the Court's Order directing Appellants to not include Answers to Plaintiffs' Interrogatories in their Amended Designation of Matter, Appellants continue to include the same.³ Furthermore, Appellants have cited and made reference to Answers to Plaintiff's Interrogatories, Interrogatory Nos. 1-3, and Answers to Plaintiffs' Second Interrogatories, Interrogatory Nos. 2, 27, and 29. In addition to continuing to include Answers to Interrogatories in their Amended Designation of Matter to the Court despite this Court's Order, Appellants have included matters in their Initial Brief which were not part of the circuit court record. The inclusion of Answers to Interrogatories in the Designation of Matter and in Appellants' Initial Brief is in direct contravention to the appellate court rules and this Court's Order.

Further, despite the Court's Order directing Appellants to not include portions of the deposition transcript of Mandy Bellamy that were not part of

³ Respondents concede that Appellants submitted Respondents response to Interrogatory No. 21 as an exhibit in an email response to an inquiry made by the Circuit Court. However, this, along with Interrogatory Nos. 17-20—which were on the same page as Interrogatory No. 21—are the only Interrogatory responses that were submitted to the circuit court and are part of the circuit court record.

the Circuit Court's record, Appellants included all but a limited number of pages of the deposition transcript that were not part of the Circuit Court record.⁴

Finally, Appellants included for the first time Consolidated Employee Recreations Clubs Bylaws Art. V., which was not previously included in the Appellant's Designation of Matter—though was referenced and cited in Appellants' Initial Brief—and was not part of the Circuit Court record. Again, the inclusion of the same is in direct contravention to the appellate court rules.

Though this Court's April 6, 2017, Order appears to provide clear direction to Appellants of what matters to include in their Amended Designation of Matter, Appellants have seemingly defied this Court's Order. Appellants' continued violations of the appellate court rules—specifically Rule 209 and Rule 210—have gravely prejudiced Respondents. Respondents have unnecessarily had to incur expenses while engaging in motions practice based on Appellants counsel's perceived lack of familiarity with the Appellate Court Rules.

⁴ The following pages are not part of the circuit court record: 56; 57; 69; 71; 72; 81; 92; 149; and 150.

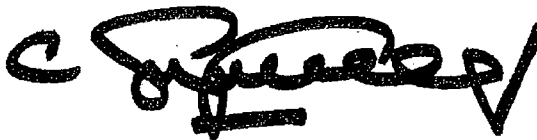
CONCLUSION

Based on Appellants' continued failure to comply with the Appellate Court Rules and this Court's Order, Respondents respectfully request the Court dismiss Appellants' appeal. In the alternative, Respondents respectfully request the Court strike those matters that are not part of the Circuit Court record, as well as any and all references to matters in Appellants' Initial Brief that are not part of the Circuit Court record. Further, pursuant to Rule 269, SCARC, Respondents respectfully request the imposition of sanctions, including, but not limited to, attorneys' fees and costs related to the continued motions practice.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

COLLINS & LACY, P.C.



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ATTORNEYS FOR RESPONDENTS

**RESPONDENTS' MOTION TO
DISMISS APPEAL OR, IN THE
ALTERNATIVE, MOTION TO
STRIKE**

Columbia, South Carolina
May 10, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers
in their capacity as Co-Personal Representatives
of the Estate of Evan Morris Myers, ... Appellants,

v.

The Consolidated Employee Recreation Clubs, a
non-profit organization a/k/a Pine Island Club
at Lake Murray, South Carolina Electric and Gas
Holding Company, Inc.; SCANA Respondents.

PROOF OF SERVICE

I hereby certify that I served Respondents' Motion to Dismiss Appeal
or, in the Alternative, Motion to Strike upon all parties, by placing a copy in
the United States mail, postage prepaid, to all counsel of record on May 10,
2017, addressed to the following:

RECEIVED

MAY 11 2017

SC Court of Appeals

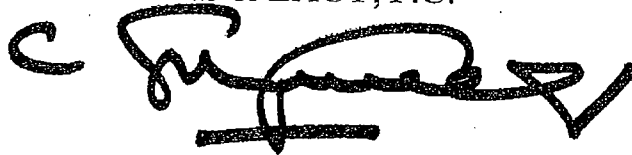
COUNSEL SERVED:

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Raleigh, NC 27628
Counsel for Appellants

Edward L. Graham, Esquire
J. Layton Ruffin, Esquire
Graham Law Firm, P.A.
Post Office Box 550
Florence, SC 29501
Counsel for Appellants

Respectfully submitted,

COLLINS & LACY, P.C.

A handwritten signature in black ink, appearing to read 'C. Stegmaier', with a stylized flourish at the end.

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ATTORNEYS FOR RESPONDENTS

EXHIBIT A

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

RECEIVED

FEB 21 2017

Appellate Case No. 2016-002487

SC Court of Appeals

Cassandra M. Myers and Bartholomew Myers
in their capacity as Co-Personal Representatives
of the Estate of Evan Morris Myers, ...Appellants,

v.

The Consolidated Employee Recreation Clubs, a
non-profit organization a/k/a Pine Island Club
at Lake Murray, South Carolina Electric and Gas
Holding Company, Inc.; SCANA Respondents.

RESPONDENTS' MOTION TO STRIKE

TO: THE HONORABLE JUDGES OF THE COURT OF APPEALS OF SOUTH
CAROLINA:

Pursuant to Rule 209(b) and Rule 210(c), SCACR, Respondents The
Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray, South Carolina Electric and Gas Holding

Company, Inc., and SCANA ("Respondents") respectfully move this Court for an order striking from Appellants' Designation of Matter certain materials designated by Appellants and requiring Appellants to file an amended initial brief omitting all references to the disputed items. Respondents additionally request that all deadlines be held in abeyance until the Court issues its ruling on this motion to strike.

This action arises out of the accidental drowning of Evan Morris Myers on June 15, 2011, in the freshwaters of Lake Murray in Lexington County, South Carolina. Appellants commenced suit against Respondents asserting a cause of action for, inter alia, wrongful death sounding in negligence.¹ Appellants have appealed from the Circuit Court's entry of summary judgment in favor of Respondents.

At this time, counsels for Appellants and Respondents are not in agreement concerning the Appellants' Designation of Matter and the undersigned now moves to strike all non-relevant documents from the same.

¹ Appellants initially brought a wrongful death action sounding in negligence and intentional infliction of emotional distress claims against Respondents and other Defendants. Appellants subsequently dismissed the other defendants and amended their complaint eliminating their intentional infliction of emotional distress claims.

The Appellate Court Rules provide that matters not presented to the trial court are not properly included in the Record on Appeal. Rule 210(c), SCACR; see also Associates Discount Corp. v. Hiers, 248 S.C. 430, 150 S.E.2d 611 (1966); Sanders v. Allis Chalmers Mfg. Co., 235 S.C. 259, 111 S.E.2d 201 (1959); State v. Johnson 147 S.C. 325, 145 S.E. 194 (1928); Quattlebaum v. Black, 22 S.C. 587 (1884); State v. White, 372 S.C. 364, 642 S.E.2d 607 (Ct. App. 2007); Norris v. Ferre, 315 S.C. 179, 432 S.E.2d 491 (Ct. App. 1993) (record may not be supplemented with matters not presented to trial judge); S.C. Jur. Appeal and Error § 63. Furthermore, matters not presented to the Circuit Court will not be given substantive consideration on appeal. Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999).

The Record on Appeal must generally contain everything necessary to the resolution of the issues presented to the appellate court, including evidence, statutes or ordinances on which the parties are relying, and written memorials of any judicial action which triggered the appeal or which is necessary for the resolution of the appeal. 5 Am. Jur. 2d Appellate Review § 441. The record is deemed to consist of all papers and exhibits filed with the trial court. Id. at § 442.

Respondents move to strike the following material and documents from Appellants' Designation of Matter that were not part of the Circuit Court record:

- a. Answers to all Interrogatories and Requests for Production;
- b. Deposition transcript and exhibits of Mandy Bellamy, to the extent Appellants' seek to include the entire deposition and excerpts;²
- c. All emails between counsel of record.

Respondents further request the Court strike from Appellants' Designation of Matter the inclusion of all pleadings, all motions and all orders.

This appeal stems from the Circuit Court's order granting Respondents' Summary Judgment. The only relevant pleadings, motions, and orders include: (1) Appellants' Complaint; (2) Appellants' Amended Complaint; (3) Respondents' Answer to Amended Complaint; (4) Respondents' Motion for Summary Judgment and supporting memorandum; (5) Appellants'

² See Rule 209, SCACR ("[T]he Designation may only propose to include portions of the transcript, pleadings, orders, exhibits which may not be properly included in the Record on Appeal [See Rule 210(c)]") (emphasis added).

Memorandum of Law in response to Respondents' Motion for Summary Judgment; (6) Appellants' Motion to ~~Alter~~ Amend pursuant to Rule 59(e), SCRCF; (7) Respondents' Memorandum in Opposition to Appellants' Rule 59(e) motion; (8) Order granting Summary Judgment; (9) Order denying Rule 59(e) motion, SCRCF.

To the extent Appellants seek to include any pleadings, motions or orders not articulated above, such material and documents are irrelevant to the current appeal. See Rule 209(b) ("A party shall not include any matter on his Designation which is not relevant to the appeal."); 16 S.C. Jur. Appeal and Error § 59 ("The Record on Appeal should contain only information needed to permit the Court to decide the issues on appeal; it should contain no irrelevant material."); 15. S.C. Jur. Appeal and Error § 63 ("Matters irrelevant to the question involved in the appeal are also disallowed.")

Respondents further move to strike from Appellants' Designation of Matter "Any other document cited in Appellants' Initial Briefs." The Appellate Court Rules clearly provide that documents listed in the Designation of Matter must be specifically named. See Rule 209(b), SCARC ("The Designation must clearly identify what the party desires to

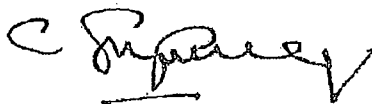
have included in the Record on Appeal[.]”). Appellants’ reference to “[a]ny other document cited,” does not comport with this rule. b b b

In short, Appellants have included items in their Designation of Matter and Initial Brief that were not presented to the Circuit Court and do not form part of the record on Respondents’ summary judgment motion. Further, Appellants have purported to include items in the Designation of Matter that are irrelevant to the issues on Appeal. Accordingly, pursuant to Rules 209(b) and 210(c), SCACR, Respondents respectfully request the above-listed items be stricken from Appellants’ Designation of Matter and Appellants be ordered to revise their Initial Brief to omit all references to the same. Respondents additionally request the Court hold the briefing deadlines in abeyance during the pendency of this motion.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

COLLINS & LACY, P.C.



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ATTORNEYS FOR RESPONDENTS

**RESPONDENTS' MOTION TO
STRIKE**

Columbia, South Carolina
February 21, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

RECEIVED

FEB 21 2017

William P. Keesley, Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers
in their capacity as Co-Personal Representatives
of the Estate of Evan Morris Myers, ... Appellants,

v.

The Consolidated Employee Recreation Clubs, a
non-profit organization a/k/a Pine Island Club
at Lake Murray, South Carolina Electric and Gas
Holding Company, Inc.; SCANA Respondents.

PROOF OF SERVICE

I hereby certify that I served Respondents' Motion to Strike upon all parties, by placing a copy in the United States mail, postage prepaid, to all counsel of record on February 21, 2017, addressed to the following:

COUNSEL SERVED:

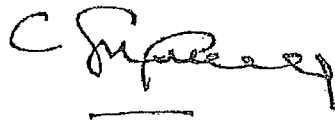
Pedro E. Krompecher, III, Esquire
Krompecher Law Firm, PLLC

Post Office Box 6639
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Counsel for Appellants

Edward L. Graham, Esquire
J. Layton Ruffin, Esquire
Graham Law Firm, P.A.
Post Office Box 550
Florence, SC 29501
Counsel for Appellants

Respectfully submitted,

COLLINS & LACY, P.C.



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ATTORNEYS FOR RESPONDENTS

EXHIBIT B



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
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February 24, 2017

Mr. Christian Stegmaier, Esquire
PO Box 12487
Columbia SC 29211

Re: Cassandra Myers v. The Consolidated Employee Recreation Clubs
Appellate Case No. 2016-002487

Dear Counsel:

The Court received your motion for extension and your motion to strike on February 21, 2017. All parties are advised the filing deadlines for this appeal will be held in abeyance pending the Court's decision on the motions.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Pedro Eduardo Krompecher, Esquire
Meghan Hazelwood Hall, Esquire
John Layton Ruffin, Esquire
Edward L. Graham, Esquire

EXHIBIT C

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of Evan Morris Myers,

Appellants,

v.

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA,

Respondents.

**APPELLANTS' RESPONSE TO
RESPONDENT'S MOTION TO STRIKE**

TO: THE HONORABLE JUDGES OF THE COURT OF APPEALS OF SOUTH CAROLINA:

Respondents filed a motion to strike and a motion for extension of time to file Respondents' initial brief that are dated as received by the court of appeals on February 21, 2017. Appellants have no objection to the request for an extension of time. However, Appellants object to the motion to strike because it is premature and unfounded.

With their initial brief, Appellants served and filed their designation of matter it intends to include in the record on appeal. Appellants' designations include only materials which may be properly included in the Record on Appeal pursuant to Rule 210(c), SCACR and which Appellants believe to be relevant to the appeal, as required by Rule 209(b), SCACR. At this

stage, it is not even certain what Respondents' brief will argue or what materials it may reference nor is it certain what Appellants may argue in Reply. As such, it is both premature and inappropriate for Respondents to unilaterally claim to be the arbiter of what is relevant to Appellants' appeal.

For instance, Respondents do not include the consent order allowing Plaintiffs to amend their complaint in its list of purportedly relevant pleadings, motions, and orders. While not the crux of the case, the order was referenced in Appellants statement of the appeal and is relevant to the procedural posture of this case. As such, Appellants designated the order. Respondents do not even cite to any specific pleading, motion, or order in Appellants' designation they believe is irrelevant. As such, Respondents argument should be disregarded and the motion denied.

Respondents claim certain materials are not part of the record. This is inaccurate. Respondents argue emails between counsel are not part of the record. This is untrue. At the hearing, Plaintiffs' counsel represented to the court that hours before the hearing Defendants filed a memorandum raising for the first time entirely new arguments. (Defs' Memo in Support). This exact same correspondence was referenced in Plaintiffs' motion to reconsider as exhibit 1.

Respondents claim the answers to interrogatories and request for production are not part of the record. This too is inaccurate. Plaintiffs' response to Defendants' motion for summary judgment clearly references Defendants answers to interrogatories numerous times. (Pls.' Response to Defendants' Mot. for Summ. J.). Plaintiffs' response also includes references to documents produced by Defendants during discovery.

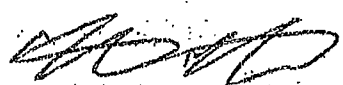
Finally, Respondents argue that to the extent Appellants seek to include Mandy Bellamy's entire deposition, this should be prohibited. Appellants are unaware of any rule which

states that a designated deposition cannot be included in its entirety if portions have been referenced. At this point, Appellants believe the Court would be best served by having her deposition in its entirety, to understand the context in which certain statements were made. Therefore, at this time Appellants believe her deposition is relevant in its entirety. The record on appeal is created at the Appellants expense, so Respondents should not have any objection with respect to costs.

For the foregoing reasons, Respondents motion to strike should be denied. Appellants have no objection to Respondents request for an extension of time.

Respectfully submitted,

GRAHAM LAW FIRM, P.A.
KROMPECHER LAW FIRM, PLLC



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J. Layton Ruffin (SC Bar: 78267)
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Attorneys for Appellants

March 1, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of E. M. Myers, Appellants,

v.

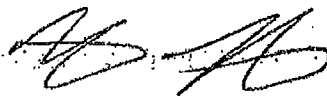
The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy, Respondents.

PROOF OF SERVICE

I hereby certify that one copy of the *Appellants' Response To Respondent's Motion To Strike* in
the above-referenced matter was served by U.S. Mail, postage prepaid, on March 1, 2017
addressed to the following counsel of record:

Christian Stegmaier
Megan H. Hall
Collins & Lacy, P.C.
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GRAHAM LAW FIRM, P.A.
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Attorneys for Appellants

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of E. M. Myers,

Appellants,

v.

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy,

Respondents.

**SUPPLEMENTAL DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

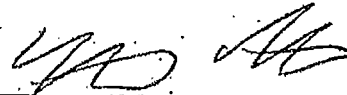
Appellants propose the following to be included in the Record on Appeal:

- 1) All pleadings, except those, if any, which may hereafter be agreed upon by all parties for exclusion at the completion of the briefing process;
- 2) Answers to all Interrogatories and Request for Production;
- 3) Deposition transcript and exhibits of Mandy Bellamy;
- 4) Affidavits and Supplemental Affidavits of Drs. Francesco Pia and Ralph Johnson;
- 5) E-mail correspondence between the Honorable William P. Keesley and Counsel for both the Plaintiff and the Defendant;
- 6) E-mail correspondence between Plaintiff's counsel and Defendant's counsel;
- 7) All Orders except those, if any, which may hereafter be agreed upon by all parties for exclusion at the completion of the briefing process;

- 8) All Motions except those, if any, which may hereafter be agreed upon by all parties for exclusion at the completion of the briefing process;
- 9) Transcription of the Hearing held on December 11, 2015 before the Honorable William P. Keesley, except those portions, if any, which may hereafter be agreed upon by all parties for exclusion at the completion of the briefing process;
- 10) Notice of Appeal by Appellants;
- 11) Plaintiffs response to defendants motion for summary judgment ;
- 12) Any other document cited in Appellants' Initial Briefs;
- 13) Plaintiffs response to defendants motion for summary judgment, to the extent that this item was not covered in the initial designation;
- 14) Defendants memoranda in support of motion for summary judgment, to the extent that this item was not covered in the initial designation.

I certify that this designation contains no matter which is irrelevant to this appeal.

GRAHAM LAW FIRM, P.A.
KROMPECHER LAW FIRM, PLLC



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J. Layton Ruffin (SC Bar: 78267)
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Attorneys for Appellants

Other Counsel of Record:
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Attorneys for Respondents

March

1,

2017

2

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of E. M. Myers, Appellants,

v.

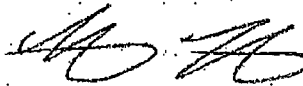
The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy, Respondents.

PROOF OF SERVICE

I hereby certify that one copy of the *Designation of Matter to be Included in the Record*
in the above-referenced matter was served by U.S. Mail, postage prepaid, on March 1, 2017
addressed to the following counsel of record:

Christian Stegmaier
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Attorneys for Appellant

EXHIBIT D

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of E. M. Myers,

Appellants,

v.

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy,

Respondents.

**SUPPLEMENTAL DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

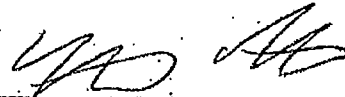
Appellants propose the following to be included in the Record on Appeal:

- 1) All pleadings, except those, if any, which may hereafter be agreed upon by all parties for exclusion at the completion of the briefing process;
- 2) Answers to all Interrogatories and Request for Production;
- 3) Deposition transcript and exhibits of Mandy Bellamy;
- 4) Affidavits and Supplemental Affidavits of Drs. Francesco Pia and Ralph Johnson;
- 5) E-mail correspondence between the Honorable William P. Keesley and Counsel for both the Plaintiff and the Defendant;
- 6) E-mail correspondence between Plaintiff's counsel and Defendant's counsel;
- 7) All Orders except those, if any, which may hereafter be agreed upon by all parties for exclusion at the completion of the briefing process;

- 8) All Motions except those, if any, which may hereafter be agreed upon by all parties for exclusion at the completion of the briefing process;
- 9) Transcription of the Hearing held on December 11, 2015 before the Honorable William P. Keesley, except those portions, if any, which may hereafter be agreed upon by all parties for exclusion at the completion of the briefing process;
- 10) Notice of Appeal by Appellants;
- 11) Plaintiffs response to defendants motion for summary judgment;
- 12) Any other document cited in Appellants' Initial Briefs;
- 13) Plaintiffs response to defendants motion for summary judgment, to the extent that this item was not covered in the initial designation;
- 14) Defendants memoranda in support of motion for summary judgment, to the extent that this item was not covered in the initial designation.

I certify that this designation contains no matter which is irrelevant to this appeal.

GRAHAM LAW FIRM, P.A.
KROMPECHER LAW FIRM, PLLC



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Other Counsel of Record:
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Attorneys for Respondents

March

1,

2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

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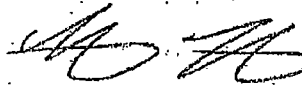
The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy, Respondents.

PROOF OF SERVICE

I hereby certify that one copy of the *Designation of Matter to be Included in the Record*
in the above-referenced matter was served by U.S. Mail, postage prepaid, on March 1, 2017
addressed to the following counsel of record:

Christian Stegmaier
Megan H. Hall
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Sixth Floor
Columbia, SC 29201

GRAHAM LAW FIRM, P.A.
KROMPECHER LAW FIRM, PLLC



Edward L. Graham (SC Bar: 2483)
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Attorneys for Appellant

EXHIBIT E

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

MAR 06 2017

APPEAL FROM LEXINGTON COUNTY SC Court of Appeals
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers
in their capacity as Co-Personal Representatives
of the Estate of Evan Morris Myers, ...Appellants,

v.

The Consolidated Employee Recreation Clubs, a
non-profit organization a/k/a Pine Island Club
at Lake Murray, South Carolina Electric and Gas
Holding Company, Inc.; SCANA Respondents.

**RESPONDENTS' REPLY TO APPELLANT'S RESPONSE TO
MOTION TO STRIKE**

TO: THE HONORABLE JUDGES OF THE COURT OF APPEALS OF
SOUTH CAROLINA:

Pursuant to Rule 209(b) and Rule 210(c), SCACR, Respondents The
Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray, South Carolina Electric and Gas Holding

Company, Inc., and SCANA ("Respondents") moved for an order striking certain materials from Appellant's Designation of Matter. On March 1, 2017, Appellants filed their Response to Respondents' Motion to Strike. Along with their Response, Appellants filed a Supplemental Designation of Matter, adding two additional materials to be included in the record on appeal: (1) Plaintiffs' response to defendants motion for summary judgment, to the extent that this item was not covered in the initial designation; and (2) Defendants/Respondents' memoranda in support of motion for summary judgment, to the extent that this item was not covered in the initial designation.¹ Respondents offer the following in reply.

I. Respondents' Motion to Strike is Not Premature

Initially, Appellants argue that Respondent's Motion to Strike is premature. Appellants specifically aver that "it is not even certain what Respondents' brief will argue or what materials it may reference nor is it certain what Appellants may argue in Reply."

Rule 210(c), SCACR, provides that matters not presented to the trial court are not properly included in the Record on Appeal. Accordingly, these

¹ Respondents do not contest the inclusion of these matters in Appellants' Designation of Matter.

matters should not be identified in the Designation of Matter. See Rule 210(c), SCACR; see also Rule 209(b), SCACR (“[T]he Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)].”). Furthermore, the Designation of Matter should not contain matters or materials that are irrelevant to the appeal. Rule 209(b), SCACR. Indeed, Counsel must certify that the Designation does not contain any matters that are irrelevant to the appeal. Rule 209(b), SCACR.

The determination of whether Appellants have properly designated matters that were presented before the Circuit Court and are relevant to the appeal is ripe for review. First, the Court is readily able to determine what matters were properly before the Circuit Court. Furthermore, the issue of whether certain matters are relevant to the appeal is ripe for this Court consideration, particularly in light of the lower court’s record and what was considered and reviewed by the Circuit Court.

Moreover, Appellants’ argument that it is uncertain what Respondents’ brief will argue or the materials Respondents may reference is without any merit. Several matters identified by Appellants were not part of the Circuit

Court record and would not be referenced-pursuant to the Appellate Court Rules-by Respondents in their brief.

Because the Court can properly determine matters not presented to the Circuit Court or matters irrelevant to the appeal at this time, Respondents' Motion to Strike is ripe.

II. Matters Not Part of the Circuit Court Record

Appellants aver that several matters identified by Respondents in their Motion to Strike as not being a part of the Circuit Court record were in fact part of the record. Appellants specifically identify the following matters as part of the Circuit Court record, and which are now properly identified in their Designation of Matter: (1) Answers to interrogatories and requests for production; (2) Emails between counsel; and (3) Deposition Transcript of Mandy Bellamy.

The Designation of Matter and subsequent Record on Appeal cannot contain matters not presented to the Circuit Court. See Norris v. Ferre, 315 S.C. 179, 432 S.E.2d 491 (Ct. App. 1993) (record may not be supplemented with matters not presented to the trial judge). Furthermore, matters not presented to the Circuit Court will not be given substantive consideration on appeal. Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999).

Respondents concede that the briefing before the Circuit Court contained references to answers to interrogatories and requests for production. However, Respondents aver that copies of the answers to interrogatories and requests for production were not included in any exhibit to any memorandum submitted to the Circuit Court and are thus not part of the record. The Circuit Court did not consider the actual answers to interrogatories and requests for production, save those simply referenced in the text of Appellants' memorandum. Consequently, Appellants cannot now ask this Court to consider the same. Accordingly, the identification of answers to interrogatories and requests for production in Appellants' Designation of Matter is improper and must be struck.

Likewise, emails between counsel were not part of the Circuit Court record. Again, Respondents concede that an email correspondence from Respondents' counsel transmitting Respondents' memorandum in support of motion for summary judgment was attached as Exhibit 1 to Appellants' Motion to Reconsider and, therefore, is arguably part of the Circuit Court record.² However, Appellants seek to generally designate "E-mail

² Respondents aver, however, that because the email was not included as an exhibit in Appellants' memorandum in opposition of motion for summary

correspondence between Plaintiff's counsel and Defendant's counsel." To the extent Appellants seek to include any other email correspondence, Respondents aver such email correspondence was not before the Circuit Court and are therefore improperly designated in Appellants' Designation of Matter. Accordingly, Respondents request the Court strike such designation.

Finally, the entire deposition transcript of Mandy Bellamy was not before the Circuit Court and therefore cannot be included in the Record on Appeal. Appellants acknowledge that only portions of Bellamy's deposition were attached as an exhibit to the briefing before the Circuit Court. Regardless of this concession, Appellants attempt to circumvent Rule 209, SCACR, by including the entire transcript as part of their Designation of Matter. Indeed, Appellants ignore Rule 209(b), SCACR, and Rule 210(c), SCACR, and argue that the "Court would be best served by having [Bellamy's] deposition in its entirety, to understand the context in which certain statements were made. Therefore, at this time Appellants believe her deposition is relevant in its entirety." (See Appellants' Response to Respondents' Motion to Strike, at p. 3). However, before determining

judgment, the email is inadmissible when attached as an exhibit to Appellants' Motion to Reconsider.

whether a matter is relevant, a matter must have been “presented to the lower court or tribunal.” See Rule 210(c), SCACR. Bellamy’s entire deposition transcript was not presented to the Circuit Court.

Moreover, Appellants maintain they “are unaware of any rule which states that a designated deposition cannot be included in its entirety if portions have been referenced.” However, Rule 209, SCACR, directly limits the inclusion of transcripts to only “portions” of the transcript which may be properly included in the Record on Appeal. See Rule 209(b), SCACR (emphasis added).

Therefore, the inclusion of Bellamy’s entire deposition transcript in Appellants’ Designation of Matter is improper. Accordingly, Respondents respectfully request the Court strike the same.

III. Matters Not Relevant to Appeal

The Record on Appeal must generally contain everything necessary to the resolution of the issues presented to the appellate court. 5 Am. Jur. 2d Appellate Review § 441. The record is deemed to consist of all papers and exhibits filed with the trial court. Id. at § 442.

Respondents recognize that the Circuit Court record consists of all orders, pleadings, motions, memorandums, and other writings. However, to

be properly included in the Record on Appeal, such matters must be relevant to the appeal. See Rule 209(b), SCACR; Rule 210(c), SCACR. Furthermore, Rule 209(a) provides that the Designation of Matter “shall set forth with specificity, those parties of the transcript, pleadings, orders, exhibits, or other materials which he proposes to include in the record on appeal.” Rule 209(a), SCACR.

Respondents moved to strike the following designations as not relevant to the appeal: (1) “All Orders ...” and (2) “All Motions” While Respondents acknowledge the any order or motion filed in this case is part of the Circuit Court record, not all orders and motions are relevant to this appeal. See Rule 209(b), SCACR; Rule 210(c), SCACR. Indeed, Appellants’ concede the consent order allowing Plaintiffs to amend their complaint is “not the crux of the case,” yet seeks to designate the same to give reference to the procedural posture of this case.

Moreover, many of the orders and/or motions filed with the Circuit Court would not assist the Court or provide any guidance relevant to the determination of whether the Circuit Court properly granted Respondents’ Motion for Summary Judgment. Furthermore, Respondents aver the designation of “All Motions” and “All Orders” are not matters identified with

specificity as required by the Appellate Court Rules. See Rule 209(a), SCACR. Accordingly, these designations must be stricken.³

CONCLUSION

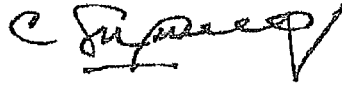
Based on the aforementioned, as well as those articulated in Respondents' Motion to Strike, Respondents aver Appellants have improperly designated curtailed matters in their Designation of Matter. Therefore, Respondents respectfully request this Court strike these matters from the Designation of Matter and Appellants be ordered to revise their Initial Brief to omit all references to the same.

[SIGNATURE PAGE TO FOLLOW]

³ Respondents previously outlined the pleadings, motions and orders they maintain are relevant to the appeal. See Respondents' Motion to Strike.

Respectfully submitted,

COLLINS & LACY, P.C.



CHRISTIAN STEGMAIER

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KELSEY J. BRUDVIG

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ATTORNEYS FOR RESPONDENTS

Columbia, South Carolina
March 6, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

RECEIVED

MAR 08 2017

SC Court of Appeals

Cassandra M. Myers and Bartholomew Myers
in their capacity as Co-Personal Representatives
of the Estate of Evan Morris Myers, ... Appellants,

v.

The Consolidated Employee Recreation Clubs, a
non-profit organization a/k/a Pine Island Club
at Lake Murray, South Carolina Electric and Gas
Holding Company, Inc.; SCANA Respondents.

PROOF OF SERVICE

I hereby certify that I served Respondents' Reply to Appellants' Return
to Respondents' Motion to Strike upon all parties, by placing a copy in the
United States mail, postage prepaid, to all counsel of record on March 6,
2017, addressed to the following:

COUNSEL SERVED:

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J. Layton Ruffin, Esquire
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Counsel for Appellants

Respectfully submitted,

COLLINS & LACY, P.C.



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ATTORNEYS FOR RESPONDENTS

Columbia, South Carolina
March 6, 2017

EXHIBIT F

The South Carolina Court of Appeals

Cassandra M. Myers, and Bartholomew Myers in their
capacity as Co-Personal Representatives of the Estate of
Evan Morris Myers, Appellants,

v.

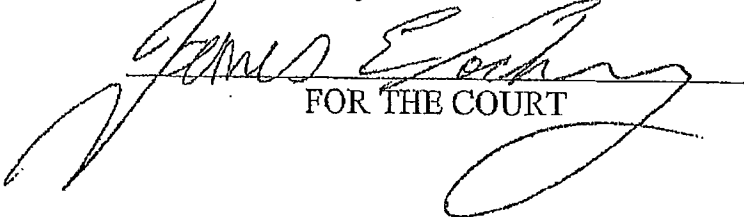
The Consolidated Employee Recreation Clubs, a non-
profit organization a/k/a Pine Island Club at Lake
Murray, South Carolina Electric and Gas Holding
Company, Inc; SCANA, Respondents.

Appellate Case No. 2016-002487

ORDER

Respondents' motion to strike Appellants' designation of matter is granted. Within twenty days of this order, Appellants shall serve and file an amended designation of matter that includes only those documents that were presented to the circuit court. The following designations shall not be included in the amended designation of matter: (1) answers to interrogatories and requests for production; (2) emails between counsel that were not part of the circuit court's record; and (3) portions of the deposition transcript of Mandy Bellamy that were not part of the circuit court's record. Further, the amended designation of matter must specifically reference each document Appellant desires to be included in the record on appeal at this time. Nothing, however, prevents Appellants from moving to supplement their designation of matter after Respondents file their initial brief.

Respondents shall serve and file their initial brief and designation of matter within thirty days of service of Appellants' amended designation of matter.


FOR THE COURT

Columbia, South Carolina

FILED

cc:

Pedro Eduardo Krompecher, Esquire

Christian Stegmaier, Esquire

Meghan Hazelwood Hall, Esquire

John Layton Ruffin, Esquire

Edward L. Graham, Esquire

April 6, 2017

EXHIBIT G

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of E. M. Myers,

Appellants,

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy,

Respondents.

AMENDED DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Appellants propose the following to be included in the Record on Appeal:

- 1) The following pleadings:

Amended Complaint
Answers to Plaintiffs' Interrogatories to Defendants
Answers to Plaintiffs' Second Interrogatories to Defendants;

- 2) The following portions of the Deposition transcript and exhibits of Mandy Bellamy:

Bellamy Depo. 44:9-16
Bellamy Depo. 48:17-19
Bellamy Depo. 53:10-15
Bellamy Depo. 56:11 to 57:8
Bellamy Depo. 69:24-25, 71:22 to 72:2
Bellamy Depo. 74:7-10
Bellamy Depo 81:1-9
Bellamy Depo. 92:13-19, 93:7-13
Bellamy Depo. 96:25 to 97:24
Bellamy Depo 149:15-150:1;

- 3) Affidavits and Supplemental Affidavits of Drs. Francesco Pia and Ralph Johnson;
- 4) E-mail correspondence between the Honorable William P. Keesley and Counsel for both the Plaintiff and the Defendant;
- 5) The following Orders:

Order (August 24, 2016)
Order denying motion to alter or amend (November 15, 2016)
Order Granting Summary Judgment
Reply to Defendants' Response (October 10, 2016)
Response to Defendant's Motion for Summary Judgment
(December 8, 2015);

- 6) The following Motions, and responses to motions:

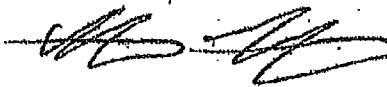
Defendant's Motion for Summary Judgment (November 3, 2014)
Memo in Opposition to Motion to Alter or Amend (September 27, 2016)
Motion to Alter or Amend and Supp. Affs. of Drs. Pia and Johnson;

- 7) Transcription of the Hearing held on December 11, 2015 before the Honorable William P. Keesley;
- 8) Appellants Notice of Appeal and Amended Notice of Appeal;
- 9) The following documents cited in Appellants' Initial Briefs:

Consolidated Employee Recreation Clubs Bylaws Art. V.
Pine Island Chapter Bylaws Art. V
Statement of Evan McPherson
Statement of J.W. Seay

I certify that this designation contains no matter which is irrelevant to this appeal.

GRAHAM LAW FIRM, P.A.
KROMPECHER LAW FIRM, PLLC



Edward L. Graham (SC Bar: 2483)
J. Layton Ruffin (SC Bar: 78267)
Pedro E. Krompecher, III (SC Bar: 100485)
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Other Counsel of Record:
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Attorneys for Respondents

April 26, 2017

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Attorneys for Appellants

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

RECEIVED

MAY 11 2017

SC Court of Appeals

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of E. M. Myers,

Appellants,

v.

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy,

Respondents.

PROOF OF SERVICE

I hereby certify that one copy of the *Amended Designation of Matter to be Included in the Record* in the above-referenced matter was served by U.S. Mail, postage prepaid, on April 26, 2017 addressed to the following counsel of record:

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KROMPECHER LAW FIRM, PLLC

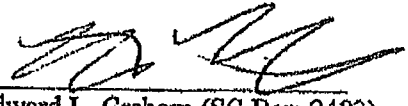

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Attorneys for Appellant

EXHIBIT I



GRAHAM LAW

Shining a Light on Safety, Guiding the Way to Justice.

Edward L. Graham
Diane M. Rodriguez
J. Layton Ruffin

May 22, 2017

Christian Stegmaier
Collins & Lacy, P.C.
1330 Lady Street
Sixth Floor
Columbia, SC 29201

Re: Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal Representatives of the Estate of Evan Morris Myers, Appellants, v. The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding Company, Inc.; SCANA, Respondents.
Appellate Case No. 2016-002487

Dear Mr. Stegmaier:

Enclosed is the Appellants' Return to the Respondent's Motion to Dismiss in the above case, which I hereby serve upon you.

Very truly yours,

J. Layton Ruffin

Enclosures

cc: The Honorable Jenny Abbott Kitchings

FILE NO. 1-2078

MAY 24 2017

REC'D CS/MHH/mmm
COLLINS & LACY

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of Evan Morris Myers, Appellants,

v.

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA, Respondents.

**APPELLANTS' RETURN TO
RESPONDENT'S MOTION TO DISMISS**

TO: THE HONORABLE JUDGES OF THE COURT OF APPEALS OF SOUTH CAROLINA:

In response to the Court's granting Respondents' first Motion to Strike, (Ex. A), Appellants filed an Amended Designation of Matter to be Included in the Record on Appeal. (Ex. B). Respondents filed a second motion to strike designations that this Court received on May 11, 2017. Appellants address the contentions raised in Respondents most recent motion related to initial designations as follows.

The Court's order required Appellants serve and file an amended designation of matter that included only documents which "were presented to the circuit court." The Court's language substantially mirrors the language set forth in Rule 210(c), SCACR. In good faith, Appellants believe that is exactly what Appellants did in their amended designation. Now, Respondents

simultaneously argue Appellants violated the Court's order by including *any* designations from Answers to Interrogatories, while also *conceding* that certain answers to interrogatories were presented to the circuit court. (Ex. C, FN 3, p. 7). Therefore, despite Respondents' arguments to the contrary, it is clearly not that case that *no* answers to interrogatories were presented to the circuit court.

More importantly, the Initial Brief includes only references to interrogatory answers that were previously stated in Plaintiffs' Memorandum of Law in Response to Defendants' Motion for Summary Judgment. (Ex. D, p. 3 and 4, Ex. E, p. 1, 2, and 9). Because the Initial Brief includes only the exact same references to Defendants' Answers to Interrogatories that were previously provided in Plaintiff's Response, it is hard to understand how Respondents can argue this constitutes new materials which were not presented to the circuit court for review.

Finally, the trial Court incorporated the very same information provided by these answers in the Order from which this appeal is taken. The citations show a source of the evidence that the Defendant Club was membership-only, the requirements to be a member, and that non-member access was prohibited. (Ex. F). This exact same information is reflected in the trial Court's order. In determining the decedent was an invitee, the trial Court stated, "[Decedent's] presence at the club and his access to the lake through it required that he be the guest of someone who held membership status by virtue of relationship to Defendants and payment of dues. The club is not open to the public." (Ex. G, p. 9). Therefore, not only was this information properly presented to the trial court, the trial court relied upon it in its Order and is appropriately included in the amended designation.

Secondly, Respondents contend Appellants included citations to Mandy Bellamy's deposition that were not presented to the circuit court. This is false. The *entire deposition transcript*

was presented to the circuit court for consideration. At the hearing, Appellants' counsel presented to the circuit court a binder that contained several documents, including the entire transcript of Mandy Bellamy's deposition. The hearing transcript reads, "Your Honor, the defendants have submitted a few pages of Ms. Bellamy's deposition. In your binder, you have the complete deposition." (Ex. H, p. 27:16-18). Because the entire deposition was presented to the trial Court, Appellants are having difficulty understanding how portions could have been cited to that were not presented to the circuit court. The circuit court never stated at the hearing or in the Order that the deposition transcript was never presented to the court, that it was improperly presented, or that the circuit court, for whatever reason, would not consider it. Therefore, this information was properly presented to the trial court and is appropriately included in the amended designation.

Thirdly, Respondents take issue with the fact that Appellants added Bylaws to the amended designation despite acknowledging that they were cited to in the Initial Brief. Number 11 of the Initial Designation stated that the designation included, "any other document cited in Appellants' Initial Briefs." (Ex. I). In light of this Court's Order, Appellants took the opportunity to explicitly list the Bylaw citations that were included in the Initial Brief in the amended designation. Appellants are unclear what Respondents' concern is regarding the specific naming of certain documents in the Amended Initial Designation that were already included in the Initial Brief. Respondents do not contend that these materials were not presented to the trial court. Therefore, because there does not appear to be any genuine objection to the inclusion of the Bylaws, other than the fact that Appellants explicitly listed them in the Amended Designation, the bylaws are appropriately included in the amended designation.

CONCLUSION

Respondents are clearly taking every effort possible to delay this Court from reviewing the issues on their merits. Respondents personally attack Appellants' counsel for having a "perceived lack of familiarity" with the appellate court rules. However, the motion that lodges this attack is meritless. Respondents cry foul for Appellants designating any answers to interrogatories, despite Respondents' explicitly conceding there are Answers that are part of the record, and ignore the fact that Respondents cited to the exact same interrogatories in their response to Defendants' motion for summary judgment. Moreover, they conveniently overlook the fact that the trial judge incorporated the information found in those interrogatories into its Order. Respondents challenge certain designations to Mandy's deposition even though the entire deposition was presented to the trial court. Respondents have obviously not suffered "grave prejudice." Moreover, if costs associated with Respondents' filing of this motion were unnecessarily incurred, it is because Respondents should have never filed the motion in the first place. For the foregoing reasons, Appellants' respectfully request this Court deny Respondents' Motion.

Respectfully submitted,

GRAHAM LAW FIRM, P.A.
KROMPECHER LAW FIRM, PLLC


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Attorneys for Appellants

May 22, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of E. M. Myers,

Appellants,

v.

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy,

Respondents.

PROOF OF SERVICE

I hereby certify that one copy of the *Appellants' Return To Respondent's Motion To Dismiss* in
the above-referenced matter was served by U.S. Mail, postage prepaid, on May 22, 2017
addressed to the following counsel of record:

Christian Stegmaier
Megan H. Hall
Collins & Lacy, P.C.
1330 Lady Street
Sixth Floor
Columbia, SC 29201

GRAHAM LAW FIRM, P.A.
KROMPECHER LAW FIRM, PLLC


Edward L. Graham (SC Bar: 2483)
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Pedro E. Krompecher, III (SC Bar: 100485)
Post Office Box 550
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f. (800) 859-7028
Attorneys for Appellants

Exhibit A

The South Carolina Court of Appeals

Cassandra M. Myers, and Bartholomew Myers in their capacity as Co-Personal Representatives of the Estate of Evan Morris Myers, Appellants,

v.

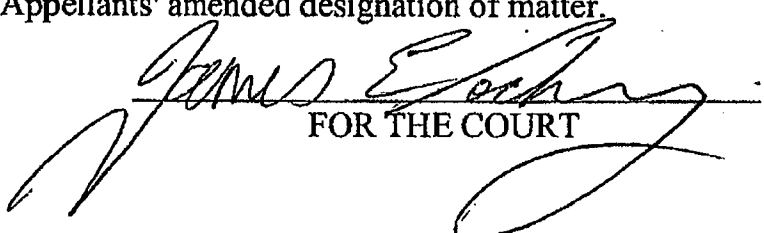
The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club at Lake Murray, South Carolina Electric and Gas Holding Company, Inc; SCANA, Respondents.

Appellate Case No. 2016-002487

ORDER

Respondents' motion to strike Appellants' designation of matter is granted. Within twenty days of this order, Appellants shall serve and file an amended designation of matter that includes only those documents that were presented to the circuit court. The following designations shall not be included in the amended designation of matter: (1) answers to interrogatories and requests for production; (2) emails between counsel that were not part of the circuit court's record; and (3) portions of the deposition transcript of Mandy Bellamy that were not part of the circuit court's record. Further, the amended designation of matter must specifically reference each document Appellant desires to be included in the record on appeal at this time. Nothing, however, prevents Appellants from moving to supplement their designation of matter after Respondents file their initial brief.

Respondents shall serve and file their initial brief and designation of matter within thirty days of service of Appellants' amended designation of matter.


FOR THE COURT

Columbia, South Carolina

cc:

Pedro Eduardo Krompecher, Esquire

Christian Stegmaier, Esquire

Meghan Hazelwood Hall, Esquire

John Layton Ruffin, Esquire

Edward L. Graham, Esquire

FILED

Apr. 16, 2017

Exhibit B

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

RECEIVED

APR 27 2017

SC Court of Appeals

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of E. M. Myers,

Appellants,

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy,

Respondents.

**AMENDED DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

Appellants propose the following to be included in the Record on Appeal:

- 1) The following pleadings:

Amended Complaint
Answers to Plaintiffs' Interrogatories to Defendants
Answers to Plaintiffs' Second Interrogatories to Defendants;

- 2) The following portions of the Deposition transcript and exhibits of Mandy Bellamy:

Bellamy Depo. 44:9-16
Bellamy Depo. 48:17-19
Bellamy Depo. 53:10-15
Bellamy Depo. 56:11 to 57:8
Bellamy Depo. 69:24-25, 71:22 to 72:2
Bellamy Depo. 74:7-10
Bellamy Depo 81:1-9
Bellamy Depo. 92:13-19, 93:7-13
Bellamy Depo. 96:25 to 97:24
Bellamy Depo 149:15-150:1;

- 3) Affidavits and Supplemental Affidavits of Drs. Francesco Pia and Ralph Johnson;
- 4) E-mail correspondence between the Honorable William P. Keesley and Counsel for both the Plaintiff and the Defendant;
- 5) The following Orders:

Order (August 24, 2016)
Order denying motion to alter or amend (November 15, 2016)
Order Granting Summary Judgment
Reply to Defendants' Response (October 10, 2016)
Response to Defendant's Motion for Summary Judgment
(December 8, 2015);

- 6) The following Motions, and responses to motions:

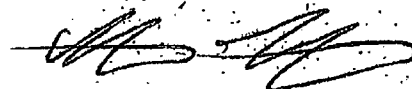
Defendant's Motion for Summary Judgment (November 3, 2014)
Memo in Opposition to Motion to Alter or Amend (September 27,
2016)
Motion to Alter or Amend and Supp. Affs. of Drs. Pia and
Johnson;

- 7) Transcription of the Hearing held on December 11, 2015 before the Honorable William P. Keesley;
- 8) Appellants Notice of Appeal and Amended Notice of Appeal;
- 9) The following documents cited in Appellants' Initial Briefs:

Consolidated Employee Recreation Clubs Bylaws Art. V.
Pine Island Chapter Bylaws Art. V
Statement of Evan McPherson
Statement of J.W. Seay

I certify that this designation contains no matter which is irrelevant to this appeal.

GRAHAM LAW FIRM, P.A.
KROMPECHER LAW FIRM, PLLC



Edward L. Graham (SC Bar: 2483)
J. Layton Ruffin (SC Bar: 78267)
Pedro E. Krompecher, III (SC Bar: 100485)
Post Office Box 550

Florence, SC 29501
t. (843) 662-3281
f. (800) 859-7028
Attorneys for Appellants

Other Counsel of Record:
Christian Stegmaier
Megan H. Hall
Collins & Lacy, P.C.
1330 Lady Street
Sixth Floor
Columbia, SC 29201
Attorneys for Respondents

April 26, 2017



Edward L. Graham
Diane M. Rodriguez
J. Layton Ruffin

April 26, 2017

RECEIVED

APR 27 2017

SC Court of Appeals

Megan H. Hall
Collins & Lacy, P.C.
1330 Lady Street
Sixth Floor
Columbia, SC 29201

Re: Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal Representatives of the Estate of Evan Morris Myers, Appellants, v. The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding Company, Inc.; SCANA, Respondents.
Appellate Case No. 2016-002487

Dear Ms. Hall:

Enclosed is the Appellants' Amended Designation of Matter to be Included in the Record on Appeal in the above case, which I hereby serve upon you.

Very truly yours,

J. Layton Ruffin
Pedro Krompecher
PK/jd
Enclosures

cc: The Honorable Jenny Abbott Kitchings

GRAHAM LAW FIRM, P.A.

383 West Cheves Street, Florence, SC 29501

MAIN OFFICE

P.O. Box 550, Florence, SC 29503

Phone 843.662.3281

SATELLITE OFFICE

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Phone 803.774.4444

EFax 1.800.859.7028

EGraham@GrahamLawFirm.net • DianeR@GrahamLawFirm.net • JLRuffin@GrahamLawFirm.net



Edward L. Graham
Diane M. Rodriguez
J. Layton Ruffin

April 26, 2017

Christian Stegmaier
Collins & Lacy, P.C.
1330 Lady Street
Sixth Floor
Columbia, SC 29201

RECEIVED

APR 27 2017

SC Court of Appeals

Re: Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal Representatives of the Estate of Evan Morris Myers, Appellants, v. The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding Company, Inc.; SCANA, Respondents.
Appellate Case No. 2016-002487

Dear Mr. Stegmaier:

Enclosed is the Appellants' Amended Designation of Matter to be Included in the Record on Appeal in the above case, which I hereby serve upon you.

Very truly yours,

J. Layton Ruffin
Pedro Krompecher
PK/jd
Enclosures

cc: The Honorable Jenny Abbott Kitchings

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GRAHAM LAW

Shining a Light on Safety. Guiding the Way to Justice.

Edward L. Graham
Diane M. Rodriguez
J. Layton Ruffin

April 26, 2017

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED

APR 27 2017

SC Court of Appeals

Re: Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal Representatives of the Estate of Evan Morris Myers, Appellants, v. The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding Company, Inc.; SCANA, Respondents.
Appellate Case No. 2016-002487

Dear Ms. Kitchings:

Enclosed for filing is the Appellants' Amended Designation of Matter to be Included in the Record on Appeal in the above case. By copy of this letter, I am serving attorneys for Respondents with a copy of the same. Please return a clocked copy to me using the enclosed self-addressed, stamped envelope.

Thank you for your attention to this matter.

Very truly yours,

J. Layton Ruffin
Pedro Krompecher
PK/jd
Enclosures
cc: Christian Stegmaier
Megan H. Hall

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Florence, SC 29501

RECEIVED

APR 27 2017

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

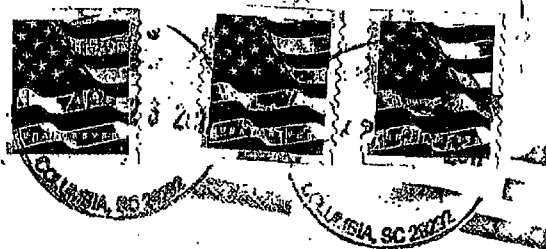


Exhibit C

Exhibit D

 **COPY**

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

JAN 20 2017

SC Court of Appeals

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of Evan Morris Myers,

Appellants,

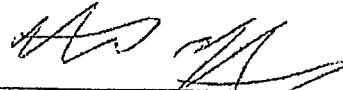
v.

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA,

Respondents.

INITIAL BRIEF OF APPELLANTS

**GRAHAM LAW FIRM, P.A.
KROMPECHER LAW FIRM, PLLC**



Edward L. Graham (SC Bar: 2483)
J. Layton Ruffin (SC Bar: 78267)
Pedro E. Krompecher, III (SC Bar: 100485)
Post Office Box 550
Florence, SC 29501
t. (843) 662-3281
f. (800) 859-7028
Attorneys for Appellants

January 19, 2017

An Order granting Defendants' Motion for Summary Judgment was filed on August 8, 2016. (Order). Summary judgment was granted on the basis of failure to establish proximate causation as a matter of law and no duty owed to decedent. The Form 4 accompanying the signed order indicates the judgment was entered on August 24, 2016. A copy of the signed Order was received on August 30, 2016. On September 6, 2016, Plaintiffs filed a Motion to Alter or Amend Pursuant to Rule 59(e), SCRCP and expert affidavits addressing the late causation argument. (Motion to Alter or Amend and Supp. Affs. of Drs. Pia and Johnson). Defendants filed a Memorandum in Opposition to Plaintiffs' Motion to Alter or Amend on September 27, 2016. (Memo in Opp. to Mot. to Alter or Amend.). Plaintiffs filed a Reply to Defendants' Response on October 10, 2016. (Reply). The trial court entered an Order denying Plaintiffs' motion to alter or amend dated November 4, 2016 and clocked as filed on November 9, 2016. The Form 4 indicated the judgment was entered on November 15, 2016. (Order denying motion to alter or amend).

Appellants served a notice of appeal upon Defendants on December 12, 2016, and the notice was filed on the same date. An amended Notice of Appeal was served on December 27, 2016 and received December 28, 2016. The amount involved on appeal is indeterminable at this time, but would include all damages associated with the wrongful death of a twenty-one-year-old.

STATEMENT OF THE FACTS

On June 15, 2011, Evan Myers and Mandy Bellamy arrived at the Pine Island Club on Lake Murray. Mandy Bellamy was a member of the Pine Island Club and Evan accompanied Mandy as her guest. The Pine Island Club is owned and operated by Consolidated Employee Recreation Clubs. Pine Island Club is a membership-only recreational facility available solely to employees of Defendant SCANA. (Def. Ans. To Interrog. ¶¶ 1-3). To be a member of the Pine Island Club and have access to the facilities, including the swimming beaches, a person must be: (1) an

employee of SCANA, (2) have applied for and been accepted for membership, (3) have paid an initiation fee, and (4) pay monthly membership fees.

Pine Island Club is analogous to a private country club. Guards at the entrance prevent entry of non-members onto the island. Members are checked upon entrance. Members are permitted to bring guests onto the island. However, if a non-member accesses the Pine Island Club without a member, that person is a trespasser and subject to prosecution. (Defs. Ans. to Interrog. ¶ 3, Defs. Ans. to 2d Set of Interrog. ¶¶ 2, 27, 29, Pine Island Chapter Bylaws Art. V; Consolidated Employee Recreation Clubs Bylaws Art. V.).

Facilities like the Pine Island Club that hold themselves out as providing swimming areas and lifeguards to club members have certain duties and obligations to those who lawfully use its facilities. National water safety organizations put out industry safety and standards and practices including those set forth by the National Oceanic and Atmospheric Administration, the National Lightning Safety Institute, the National Weather Service, the American Red Cross, the National Water Safety Congress, and the YMCA to name a few. (Affs. of Drs. Pia and Johnson). The duties owed by a landowner like Pine Island Club to its members include duties to have: (1) weather monitoring equipment, (2) a severe weather safety plan, (3) an Operations Policies and Procedures Manual for life guards, (4) to clear the beach and pool in anticipation of an incoming storm, (5) to warn all swimmers of potentially unsafe water conditions, (6) to have safety posts near the swimming waters that included throwing components, (7) to have water rescue devices on and around the boating dock, and (8) to have a life guard on duty at the swimming pool and beach. (Aff. of Drs. Pia and Johnson).

Evan was the invited guest of Mandy Bellamy, a member of Pine Island Club, when he was granted access to the island club on June 15, 2011. Evan had attended the club previously as

Exhibit E

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

CIVIL ACTION NO. 2014-CP-32-02210

Cassandra M. Myers and Bartholomew
Myers in their capacity as Co-Personal
Representatives of the Estate of
Evan M. Myers,

Plaintiffs,

v.

The Consolidated Employee Recreation
Clubs, a non-profit organization a/k/a Pine
Island Club at Lake Murray; South
Carolina Electric and Gas Holding
Company, Inc.; SCANA,

Defendants.

**PLAINTIFFS' MEMORANDUM OF LAW IN
RESPONSE TO DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

NOW COME the Plaintiffs, by and through the undersigned counsel, and respectfully submit this Memorandum of Law in Response to Defendants' Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

FACTS

The instant action arises out of the drowning death of Evan Myers. Evan drowned on the evening of June 15, 2011, while swimming at the swimming beach of Pine Island Club. Lake Murray is owned by Defendant South Carolina Electric and Gas Holding Company. The Pine Island Club is owned and operated by Defendant Consolidated Employee Recreation Clubs. Pine Island Club a membership-only recreational facility available solely to employees of Defendant SCANA. (See Def. Ans. to Interrogatories ¶¶ 1-3.) In order to be a Member of the Pine Island Club and have access to the facilities, including the subject swimming beach, a person must be

(1) an employee of SCANA, (2) have applied and been accepted for membership, (3) have paid an initiation fee, and (4) pay monthly Membership Fees.

Pine Island Club is analogous to a private country club. There are guards at the entrance and Members are checked upon entrance. Members may bring guests onto the island. If a non-member accesses the Pine Island Club without a member, that person is a trespasser and subject to prosecution. (*See* Defs.' Ans. to Interrogatories, ¶ 3, Feb. 23, 2015. *See also* Defs.' Ans. to Pls. 2d Set of Interrogatories, ¶¶ 2, 27, 28, April 14, 2015. *See also* Pine Island Chapter Bylaws Art. V; Consolidated Employee Recreation Clubs Bylaws Art. V.)

On the evening of June 15, 2011, Evan was the invited guest of Mandy Bellamy, a member of Pine Island Club. Evan had been an invited guest of Ms. Bellamy the week before. They swam together, along with Ms. Bellam's boyfriend, for over an hour, without incident.

On the evening of June 15, 2011, Evan and Ms. Bellamy swam together at the swimming beach in approximately 12 feet of water for over 30 minutes. Evan and Ms. Bellamy were the only people at the swimming beach and Ms. Bellamy's car was the only car in the parking lot. Their bags and towels were on the beach.

During the time Evan and Ms. Bellamy were swimming at the swimming beach, the Pine Island Club received information of an incoming storm and closed down the swimming pool, adjacent to the swimming beach. All lifeguards and swimmers were sent home.

After the swimming pool was closed due to the incoming storm, Evan and Ms. Bellamy, without knowledge of the incoming storm, walked passed the Pine Island Club caretaker, Mr. Seay, dripping wet in their bathing suits, and jumped off the boating dock less than 50 feet away.

Defs.' Ans. to Interrogatories, ¶ 3 (emphasis added). Additionally, membership to the Pine Island Club is voluntary to SCANA employees. *See* Defs.' Answers to Pls. 2d Set of Interrogatories, ¶¶ 2, 27, 28.

Those who choose to be members must pay an initiation fee, as well as month chapter dues which may be deducted from pay roll. *See* Pine Island Chapter Bylaws Art. V. *See also* Consolidated Employee Recreation Clubs Bylaws Art. V.

Additionally, the Recreational Use Statue "limits the liability of landowners who open their land to any persons having 'sought and obtained' permission to enter for recreational purposes." *Harris*, 391 S.C. at 526, 706 S.E. 2d at 49 (emphasis original). While permission may be implied, it must be when the public is invited onto the premises free of charge; in those instances, permission is clearly implied. *See Brooks v. Northwood Little League*, 327 S.C. 400, 408, 489 S.E. 2d 647, 651 (1997) (personal injuries at a Little League T-ball game at Northwood Middle School).

However, in *Harris*, not every entrant onto the property was required to pay the fee to gain admission; "volunteers, family members of employees, and honored visitors" were not charged. *Harris*, 391 S.C. at 521, 706 S.E. 2d at 47. Plaintiff, the mother of an intern at the facility, was injured on boardwalk stairs when returning from the beach. In the lawsuit resulting from her personal injuries, the court held that "whether Harris sought permission to enter the Island and whether her visit was for recreational purposes are questions of fact for the jury to decide." *Harris*, 391 S.C. at 526, 706 S.E. 2d at 49.

In the case at bar, the facts are more akin to *Harris* than *Brooks*. No one is permitted on the island without a member. In this case, Mandy Bellamy's father was a member of Pine Island Club. In her experience, seventy-five percent (75%) of the time, there are people checking

Exhibit F

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
Cassandra M. Myers and Bartholomew	)	Civil Action No.: 2014-CP-32-02210
Myers in their capacity as Co-Personal	)	
Representatives of the Estate of Evan	)	
Morris Myers,	)	
	)	DEFENDANTS
Plaintiffs,	)	MANDY NICOLE BELLAMY AND
	)	MATTHEW BELLAMY'S
vs.	)	ANSWERS TO INTERROGATORIES
	)	
The Consolidated Employee Recreation	)	
Clubs, a non-profit organization a/k/a Pine	)	
Island Club at Lake Murray, South Carolina	)	
Electric and Gas Holding Company,	)	
Inc./SCANA, Mandy Nicole Bellamy,	)	
Matthew Bellamy, Lexington County	)	
Coroner's Office, Lexington County	)	
Sheriff's Department, and Lexington	)	
County Medical Center Auxiliary.	)	
	)	
Defendants.	)	

TO: PEDRO E. KROMPECHER, III, ESQUIRE, COUNSEL FOR PLAINTIFFS;

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, Defendants Mandy Nicole Bellamy and Matthew Bellamy (hereafter "Bellamy Defendants") answer to Plaintiff's First Set of Interrogatories as follows:

GENERAL OBJECTIONS

1. Defendants object to each interrogatory to the extent it seeks information that constitutes evidence or reflects confidential communications between Defendants and their attorneys.
2. Defendants to the extent it seeks information that constitutes evidence or reflects trial preparation materials or work product of the or their representatives, agents, or attorneys.

3. Defendants will remove those documents from files, records or other documents to be the products that come within the foregoing objections. If there are documents withheld based on the privilege, Defendants will provide Plaintiff with a separate list of those documents.
4. Defendants object to each interrogatory to the extent it seeks information already available to or equally available to Plaintiff.
5. The following interrogatory answers are based upon information presently available to Defendants and are made without prejudice to the rights of Defendants to utilize subsequently discovered information.
6. By making a response to any interrogatory or documents request, these Defendants do not intend or mean to waive the attorney-client privilege, the work-product doctrine or any other privilege, objection or other limitations upon discovery as to that interrogatory or as to any other present or future request for discovery.
7. Defendants object to each interrogatory in excess of 25, including subparts, as a violation of Rule 33.
8. All answers to the interrogatories and responses to the requests for production of documents are made without the waiver of these general objections, or the specific objections which are hereinafter set forth.
9. The foregoing objections are general ones applicable to all categories of information to be produced. The following responses to any particular item of information should be deemed to include these objections and categories.

DEFENDANTS' ANSWERS TO PLAINTIFFS' INTERROGATORIES

1. Detail your relationship with every other defendant as it existed on the date of the Incident.

RESPONSE: Bellamy Defendants object to this Interrogatory on the grounds that it is overly broad and unduly vague as to the term "relationship." Bellamy Defendants further object to this Interrogatory on the grounds that it seeks information unlikely to lead to any admissible evidence. Subject to and notwithstanding these objections, Defendant Mandy Bellamy is a witness to this incident and the daughter of Ralph Bellamy. Ralph Bellamy is an SCE&G employee and member of the Pine Island Club, and he and his daughter Defendant Mandy Bellamy possessed "membership privileges and/or permission and/or access to the premises" at Pine Island on June 15, 2011. Matthew Bellamy is Mandy Bellamy's brother and has no nexus to the subject incident.

2. On the date of the Incident, detail your relationship with the Pine Island Club.

RESPONSE: Bellamy Defendants object to this Interrogatory on the grounds that it is overly broad and unduly vague as to the term "relationship." Bellamy Defendants further object to this Interrogatory on the grounds that it seeks information unlikely to lead to any admissible evidence. Subject to and notwithstanding these objections, Bellamy Defendants were members of the Pine Island Club. Due to her being a child of a South Carolina Electric & Gas employee, Defendant Mandy Bellamy possessed "membership privileges and/or permission and/or access to the premises" at Pine Island on June 15, 2011. Ralph Bellamy, the father of Mandy Bellamy, is an employee of South Carolina Electric & Gas and possessed "membership privileges and/or permission and/or access to the premises" at Pine Island on June 15, 2011. Ralph Bellamy was not an agent or servant of SCANA Defendants as it pertains to the operation of Pine Island Club.

- 3 In regards to the Pine Island Club and its surrounding area, please describe in detail your relationship in terms of duties, responsibilities, security, ownership, management and financial obligations or otherwise.

RESPONSE: Bellamy Defendants object to this Interrogatory on the grounds that it is overly broad and unduly vague as to the term "relationship." Bellamy Defendants further object to this Interrogatory on the grounds that it seeks information unlikely to lead to any admissible evidence. Subject to and notwithstanding these objections, Bellamy Defendants were members of the Pine Island Club. Due to her being a child of a South Carolina Electric & Gas employee, Defendant Mandy Bellamy possessed "membership privileges and/or permission and/or access to the premises" at Pine Island on June 15, 2011. Ralph Bellamy, the father of Mandy Bellamy, is an employee of South Carolina Electric & Gas and possessed "membership privileges and/or permission and/or access to the premises" at Pine Island on June 15, 2011. Ralph Bellamy was not an agent or servant of Defendants as it pertains to the operation of Pine Island Club.

4. What was your relationship with Pine Island Club from January 1, 2006 to the date of the Incident? (Please detail all duties and responsibilities as well as all ownership interests and management and operational roles)

RESPONSE: Bellamy Defendants object to this Interrogatory on the grounds that it is overly broad and unduly vague as to the term "relationship." Bellamy Defendants further object to this Interrogatory on the grounds that it seeks information unlikely to lead to any admissible evidence. Subject to and notwithstanding these objections, Bellamy Defendants were members of the Pine Island Club. Ralph Bellamy has been an SCE&G employee for nearly 42 years, and a member of the Pine Island Club for some 35 years or more. Ralph Bellamy was not an agent or servant of SCANA Defendants as it pertains to the operation of Pine Island Club, and had no ownership, management, or operational roles within the Pine Island Club.

5. Please identify the names, addresses, and phone numbers of the persons who you believe to have the knowledge of your relationship with Pine Island Club during the 90 days before the Incident up to and including the date of the Incident.

RESPONSE: Bellamy Defendants object to this Interrogatory on the grounds that it is overly broad and unduly vague as to the term "relationship." Defendants further object to this Interrogatory on the grounds that it seeks information unlikely to lead to any admissible evidence. Subject to and notwithstanding these objections, Bellamy Defendants assert that they possessed "membership privileges and/or permission and/or access to the premises" at Pine Island during the 90 days before the incident. Vanessa Abercrombie, Assistant Secretary for Pine Island Club and Analyst at SCE&G, c/o Collins and Lacy, P.C., can confirm Bellamy Defendants' membership(s).

6. Please identify the names, addresses and phone numbers of the persons who you believe to have knowledge about the Incident.

RESPONSE: Bellamy Defendants object to this Interrogatory on the grounds that it is overly broad, unduly burdensome, and vague as to the term "knowledge." Subject to and notwithstanding these objections, Bellamy Defendants assert that the following named persons would be witnesses to this incident.

Mandy Bellamy
Defendant
c/o Collins & Lacy, P.C.
PO Box 12487
Columbia, SC 29211

Ralph Bellamy
Defendant
c/o Collins & Lacy, P.C.
PO Box 12487
Columbia, SC 29211

Clyde Evan McPherson
301 Barmount
Columbia, SC, 29210
803-217-8322
802-206-9448

Kim McPherson
301 Barmount
Columbia, SC, 29210
(803) 238-4715
(803) 924-2896

John W. ("JW") Seay
c/o Collins & Lacy, P.C.
PO Box 12487
Columbia, SC 29211

7. Identify all persons, including members of Pine Island Club, who based on their job duties and responsibilities with any entity, would have knowledge of any complaints, allegations, lawsuits or notices received Pine Island Club with the five (5) years before the date of the Incident up to and including the date of the Incident.

RESPONSE: Upon information and belief, these Bellamy Defendants do not have knowledge of any persons, including members of Pine Island Club, who based on their job duties and responsibilities with any entity would have knowledge of any complaints/allegations/lawsuits/notices served upon Pine Island Club within the five years prior to this incident.

8. If you are an entity, identify all officers of your entity, all members of your board of directors, and all of those individuals who during the month when the Incident took place had any role in safety, security or supervision of any part of Pine Island Club. For each

responsive individual, identify their (1) employer, (2) job title, and (3) job duties and responsibilities on the date of the Incident.

RESPONSE: Bellamy Defendants are not an entity; therefore, this Interrogatory does not apply to them.

9. Identify all individuals who were present at the Pine Island Club on the day of the incident. For each responsive individual, identify their (1) name, (2) employer, (3) current address, (4) current phone number, (5) what you believe they know as it pertains to the Incident and the claims made by Plaintiffs about the cause of Mr. Myer's death, (6) identify all oral and written statements they have made to anyone, at any time, about the Incident, and (7) for each statement (oral or written), identify to whom it was made, when, and how it was recorded or memorialized.

RESPONSE: Bellamy Defendants object to this Interrogatory on the grounds that it is overly broad and unduly burdensome. Bellamy Defendants further object to this Interrogatory on the grounds that it seeks information unlikely to lead to any admissible evidence. Subject to and notwithstanding these objections, upon information and belief the Pine Island Club does not keep a log of every person present at Pine Island Club on a daily basis. The following were identified as present at the Pine Island Club on the date of the incident, witnesses to the incident, and were interviewed by law enforcement:

Mandy Bellamy
Defendant
c/o Collins & Lacy, P.C.
PO Box 12487
Columbia, SC 29211

Defendant Mandy Bellamy provided oral statements and a written statement to the Lexington County Sheriff's Office on June 15, 2011. Additionally, Defendant Mandy Bellamy provided a recorded statement to Chartis Senior Investigator Michael Funkhouser on or about November 11, 2011.

Ralph Bellamy
Defendant
c/o Collins & Lacy, P.C.
PO Box 12487
Columbia, SC 29211

Upon information and belief, no oral or written statements were given by Defendant Ralph Bellamy.

Clyde Evan McPherson
301 Barmount
Columbia, SC, 29210
803-217-8322
802-206-9448

Clyde Evan McPherson provided oral statements and a written statement to Lexington County Sheriff's Office on June 16, 2011. Additionally, Mr. McPherson provided an orally recorded statement to Chartis Senior Investigator Michael Funkhouser on or about November 16, 2011.

Kim McPherson
301 Barmount
Columbia, SC, 29210
(803) 238-4715
(803) 924-2896

Kim McPherson provided oral statements and a written statement to Lexington County Sheriff's Office on June 16, 2011.

John W. ("JW") Seay
c/o Collins & Lacy, P.C.
PO Box 12487
Columbia, SC 29211

John W. Seay provided oral statements and a written statement to Lexington County Sheriff's Department upon information and belief on or about June 15, 2011.

Detective S. Ellis
Lexington County Sheriff's Department

Upon information and belief, Detective Ellis drafted an Investigative Report in Case No. 11023390 on behalf of Lexington County Sheriff's Department.

Deputy Wade Newberry
Lexington County Sheriff's Department

Upon information and belief, Deputy Newberry drafted an Incident Report in Case No. 11023390 on behalf of Lexington County Sheriff's Department.

Detective Trish Stoner
Lexington County Sheriff's Department

Detective M. Longshore
Lexington County Sheriff's Department

Captain Rowe
Lexington County Sheriff's Department

CSI Phipps
Lexington County Sheriff's Department

MD White

Lowell C. Spires, III
Lexington County Deputy Coroner

Upon information and belief, Lowell Spires, III drafted an Incident Report and Supplemental Report in case number 11-865 on behalf of the Lexington County Coroner's Office on or about June 15, 2011.

10. How do you believe Mr. Myers died on the date of the Incident?

RESPONSE: Bellamy Defendants crave reference to Evan Myers' death certificate bates numbered LEX CORONER 0030 (SCANA/BELLAMY).

11. Why do you believe Mr. Myers died on the date of the Incident?

RESPONSE: Bellamy Defendants crave reference to Evan Myers' death certificate bates numbered LEX CORONER 0030 (SCANA/BELLAMY).

12. Who was responsible for the safety of area where Mr. Myers was swimming after 6:30pm on the date of the Incident?

RESPONSE: Upon information and belief, every person swimming in the freshwaters of Lake Murray at Pine Island Club is responsible for his or her own safety.

13. Detail (1) all investigations which were performed, by anyone and at any time, surrounding the Incident, (2) the reason(s) for each responsive investigation, (3) all those individuals involved in the responsive investigation(s), (4) who paid for the investigations, (5) who was interviewed in the responsive investigation(s), (5) identify all

documents authored or prepared in the course of each responsive investigation, and (7) the conclusion(s) of each responsible investigation(s).

RESPONSE: Bellamy Defendants object to this Interrogatory on the grounds that it is overly broad and unduly burdensome. Bellamy Defendants further object to this Interrogatory on the grounds that it seeks information unlikely to lead to any admissible evidence. Subject to and notwithstanding these objections, upon information and belief, the Lexington County Sheriff's Office and the Lexington County Coroner's Office investigated this incident and drafted reports regarding the same. Upon information and belief, these documents were requested by Plaintiffs and produced to Plaintiffs on or about August 22, 2011. In addition, Senior Investigator Michael Funkhouser of AIG investigated this incident on behalf of SCANA, and provided a report regarding the same on or about November 20, 2011. Finally, upon information and belief, Plaintiffs hired their own private investigator who performed his or her own investigation of this incident.

14. Was anyone disciplined related in any way to what took place at Pine Island Club on the date of the Incident? If so, state (1) who was disciplined, (2) date of discipline, (3) reason for discipline, and (4) result of the discipline (termination, suspension, probation, etc.)

RESPONSE: Upon information and belief, no one was disciplined in any way related to this incident.

15. Was there anyone at Pine Island Club on the date of the Incident that was not lawfully on said property? If so, (1) who was not lawfully on the property, (2) how did said person gain access to the property, (3) why do you believe that said person was not lawfully on the property, and (4) what involvement, if any, do you believe said person(s) may have had with the death of Mr. Myers.

RESPONSE: Upon information and belief, no one was unlawfully at Pine Island Club on the evening of June 15, 2011.

16. Do you contend that any person, company, and/or agency failed to properly design, construct, maintain and/or warn against any dangerous conditions regarding the manmade lake where the Incident occurred?

RESPONSE: Upon information and belief, Bellamy Defendants are not aware of any person, company, and/or agency, which failed to properly design, construct, maintain, and/or warn against dangerous conditions regarding Lake Murray.

17. How did Mr. Myers gain access to Pine Island Club on the date of the Incident?

RESPONSE: Mr. Myers was the invited guest of Defendant Mandy Bellamy, a member of Pine Island Club.

18. Who was with Mr. Myers at Pine Island Club on the date of the Incident?

RESPONSE: Mr. Myers was the invited guest of Defendant Mandy Bellamy, a member of Pine Island Club, and was with Ms. Bellamy at the Pine Island Club on June 15, 2011.

19. Why was Mr. Myers present at Pine Island Club on the date of the Incident?

RESPONSE: See SCANA Defendants' answer to Interrogatories 17 and 18.

20. If you have ever been a party to a lawsuit in South Carolina, detail (1) caption of the action, (2) county where the action was filed, (3) reason for the action, (4) who represented your interests in said civil action, (5) if you were deposed in said civil action, and (6) the resolution of the civil action.

RESPONSE: Upon information and belief, Bellamy Defendants have not been a party to a lawsuit, aside from this subject lawsuit. They did, however, engage the services of a lawyer in settlement with an insurance company related to a car accident sustained by Defendant Mandy Bellamy in early 2014.

21. Was there security or life guard(s) on duty at Pine Island Club? If so, identify each person and state the following for the date of the Incident: (1) their full name, (2) current address, (3) current phone number, (4) employer on the date of the Incident, and (5) current employer.

RESPONSE: Upon information and belief, Pine Island Club employs the services of lifeguards at their pool area only. Those lifeguards end their duty at 8pm during typical summer hours. However, due to an approaching storm, the pool closed early on June 15, 2011, and the lifeguards were not present at 8pm. These lifeguards are not responsible for overseeing the freshwaters of Lake Murray, where this incident occurred.

22. Was any video taken of any part of Pine Island Club on the date of the Incident? If so, what video was taken, who has the video, and if it was lost when the last time you had custody or control of said video?

RESPONSE: Upon information and belief, there were no videos taken of any part of Pine Island Club on June 15, 2011.

Respectfully Submitted,
COLLINS & LACY, P.C.

By: 

CHRISTIAN STEGMAIER
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ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina
February 23, 2015

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Cassandra M. Myers and Bartholomew
Myers in their capacity as Co-Personal
Representatives of the Estate of Evan
Morris Myers,

Plaintiffs,

vs.

The Consolidated Employee Recreation
Clubs, a non-profit organization a/k/a Pine
Island Club at Lake Murray, South Carolina
Electric and Gas Holding Company,
Inc./SCANA, Mandy Nicole Bellamy,
Ralph Bellamy, Lexington County
Coroner's Office, Lexington County
Sheriff's Department, and Lexington
County Medical Center Auxiliary.

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2014-CP-32-02210

CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2015, I caused to have served a true and correct copy of the Defendants' Answers to Plaintiffs' First Set of Interrogatories to the below listed counsel of record in this proceeding with sufficient postage and appropriate address.

COUNSEL SERVED:

Pedro E. Krompecher, III, Esquire
Krompecher Law Firm, PLLC
Post Office Box 6639
Raleigh, NC 27628
Counsel for Plaintiff

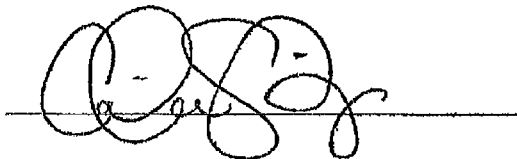


Exhibit G

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Cassandra M. Myers and Bartholomew
Myers in their capacity as Co-Personal
Representatives of the Estate of Evan
Morris Myers,)

Plaintiffs,)

vs.)

The Consolidated Employee Recreation
Clubs, a non-profit organization a/k/a Pine
Island Club at Lake Murray, South Carolina
Electric and Gas Holding Company, Inc.;
SCANA,)

Defendants.)

IN THE COURT OF COMMON PLEAS

ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2014-CP-32-02210

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

BETH A. CARRIG
CLERK OF COURT
LEXINGTON, SC

2016 AUG - 8 P 3:04

FILED

WPC
#1

The Defendants' motion for summary judgment was heard on December 11, 2015. The court has wrestled with the issue for an extended period and has requested additional input from the attorneys in the interim. Having carefully considered the matter, the court finds that summary judgment must be granted. The events giving rise to this lawsuit are the result of a tragic accident, and there is no evidence that they were the result of any negligence or gross negligence on the part of the Defendants.

FACTUAL/PROCEDURAL BACKGROUND

The Plaintiffs' decedent drowned on June 15, 2011, after having entered the waters of Lake Murray from a boat dock at the Pine Island Club. Defendants are The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club at Lake Murray ("Pine Island Club" or the "club"), South Carolina Electric and Gas Holding Company, Inc., and SCANA (all defendants being designated collectively as "SCANA Defendants" or "Defendants"). The Plaintiffs Cassandra M. Myers and Bartholomew Myers, in their capacity as

The Plaintiffs assert that the decedent died while on the Pine Island Club premises, so the RUS does not apply. The SCANA Defendants deny that assertion and maintain that he was in the waters of Lake Murray, which are open to the public for recreational use, without charge. In this court's view, the Plaintiffs' decedent had the status of an invitee for purposes of this summary judgment motion. His presence at the club and his access to the lake through it required that he be the guest of someone who held membership status by virtue of relationship to Defendants and the payment of dues. The club is not open to the public.

However, if Plaintiffs' decedent were an invitee, to which a duty of care would be owed (and which SCANA Defendants deny), the Defendants argue that a landowner has no duty to warn of the perils of obvious natural conditions of which an invitee is reasonably aware. Meadows v. Heritage Village Church and Missionary Fellowship, Inc., 305 S.C. 375, 378 (1991) (holding wet grass an open and obvious natural condition). The court agrees.

WPK
#9
Exhibits in support of the motion were introduced, and those included such things as photos, deposition excerpts, by-laws, and affidavits. The by-laws of the Pine Island Club state, "Swimming in the lake is allowed only in the designated area. Hazards from boating, underground cables, etc., prohibit swimming around docks, ramps or other areas of the Island." A diagram of the property shows the swimming area near the beach, the swimming pool, and three docks. The court is assuming that the dock in question is the one closest to the designated swimming area.

The court finds that there is no evidence that the Defendants' negligence or gross negligence caused or contributed to any dangerous conditions for which the Defendants are responsible. Dangers of swimming in a lake are open and obvious.⁴

⁴ If there were evidence of a proximate cause related to the weather conditions, an

Exhibit H

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State of South Carolina
County of Lexington

Cassandra M. Myers and
Bartholomew Myers as
Co-Personal Representatives
of the Estate of
Evan M. Myers,

Plaintiffs,
v.

The Consolidated Employee
Recreation Clubs, a
nonprofit organization a/k/a
Pine Island Club at
Lake Murray, et al.

Defendants.

Transcript of Record
14-CP-32-2210

December 11, 2015
Lexington, South Carolina

B E F O R E:

The Honorable William P. Keesley, Judge.

A P P E A R A N C E S:

Pedro Krompecher, Esquire
Attorney for the Plaintiffs

Christian Stegmaier, Esquire
David Kiebler, Esquire
Attorneys for the Defendants

Stacy L. Sheppard, RPR
Circuit Court Reporter

1 Mr. Myers drowned somewhere around that depth
2 marker. Whether he jumped off the dock or swam from
3 where he was swimming five minutes before with
4 Ms. Bellamy, the issue of how he got there if that
5 water is still water within the eyesight and control
6 of the Pine Island Club and its subsidiaries is a
7 question of fact.

8 As a example or as an analogy, if we would have
9 had the opposite happen in this case, had they
10 closed the swimming beach for the incoming storm,
11 but failed to close the swimming pool, failed to
12 warn and failed to clear, you'd have the same -- the
13 same application.

14 Ms. Bellamy also talked about in her deposition
15 that she had seen, at page 77 of her deposition --
16 Your Honor, the defendants have submitted a few
17 pages of Ms. Bellamy's deposition. In your binder,
18 you have the complete deposition. It's lengthy.
19 But at page 77 in her deposition, she talks about
20 people swimming around the docks. She also talks
21 about, at page 81, 84, 85, 88 and 89, walking by the
22 caretaker and how their presence was acknowledged by
23 those adults that were next to this vehicle.

24 The question as to whether this is open and
25 obvious, one, I think exceeds the motion for summary

Exhibit I

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2014-CP-32-02210

RECEIVED

JAN 20 2017

SC Court of Appeals

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of E. M. Myers,

Appellants,

v.

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy,

Respondents.

**DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

Appellants propose the following to be included in the Record on Appeal:

- 1) All pleadings, except those, if any, which may hereafter be agreed upon by all parties for exclusion at the completion of the briefing process;
- 2) Answers to all Interrogatories and Request for Production;
- 3) Deposition transcript and exhibits of Mandy Bellamy;
- 4) Affidavits and Supplemental Affidavits of Drs. Francesco Pia and Ralph Johnson;
- 5) E-mail correspondence between the Honorable William P. Keesley and Counsel for both the Plaintiff and the Defendant;
- 6) E-mail correspondence between Plaintiff's counsel and Defendant's counsel;
- 7) All Orders except those, if any, which may hereafter be agreed upon by all parties for exclusion at the completion of the briefing process;

- 8) All Motions except those, if any, which may hereafter be agreed upon by all parties for exclusion at the completion of the briefing process;
- 9) Transcription of the Hearing held on December 11, 2015 before the Honorable William P. Keesley, except those portions, if any, which may hereafter be agreed upon by all parties for exclusion at the completion of the briefing process;
- 10) Notice of Appeal by Appellants;
- 11) Any other document cited in Appellants' Initial Briefs.

I certify that this designation contains no matter which is irrelevant to this appeal.

GRAHAM LAW FIRM, P.A.
KROMPECHER LAW FIRM, PLLC



Edward L. Graham (SC Bar: 2483)
J. Layton Ruffin (SC Bar: 78267)
Pedro E. Krompecher, III (SC Bar: 100485)
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Attorneys for Appellants

Other Counsel of Record:
Christian Stegmaier
Megan H. Hall
Collins & Lacy, P.C.
1330 Lady Street
Sixth Floor
Columbia, SC 29201
Attorneys for Respondents

January 19, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2014-CP-32-02210

RECEIVED

JAN 20 2017
SC Court of Appeals

Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal
Representatives of the Estate of E. M. Myers,

Appellants,

v.

The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a
Pine Island Club at Lake Murray; South Carolina Electric and Gas Holding
Company, Inc.; SCANA; and Mandy Nicole Bellamy,

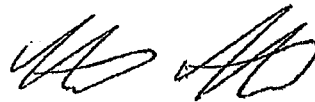
Respondents.

PROOF OF SERVICE

I hereby certify that one copy of the *Appellants' Initial Brief* in the above-referenced
matter was served by U.S. Mail, postage prepaid, on January 19, 2017 addressed to the following
counsel of record:

Christian Stegmaier
Megan H. Hall
Collins & Lacy, P.C.
1330 Lady Street
Sixth Floor
Columbia, SC 29201

GRAHAM LAW FIRM, P.A.
KROMPECHER LAW FIRM, PLLC



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t. (843) 662-3281
f. (800) 859-7028
Attorneys for Appellants

EXHIBIT J

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

RECEIVED

MAY 30 2017

SC Court of Appeals

Cassandra M. Myers and Bartholomew Myers
in their capacity as Co-Personal Representatives
of the Estate of Evan Morris Myers, ... Appellants,

v.

The Consolidated Employee Recreation Clubs, a
non-profit organization a/k/a Pine Island Club
at Lake Murray, South Carolina Electric and Gas
Holding Company, Inc.; SCANA Respondents.

**RESPONDENTS' REPLY TO
APPELLANTS' RETURN TO MOTION TO DISMISS APPEAL,
OR IN THE ALTERNATIVE, MOTION TO STRIKE**

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT
OF APPEALS:

Pursuant to Rule 231, SCACR, Respondents The Consolidated
Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club

at Lake Murray, South Carolina Electric and Gas Holding Company, Inc., and SCANA (“Respondents”) moved for an order dismissing the above-captioned appeal. In the alternative, Respondents moved pursuant to Rules 209(b) and 210(c), SCACR for an order striking from Appellants Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal Representatives of the Estate of Evan Morris Myers (“Appellants”) certain materials designated by Appellants and requiring Appellant to file an amended initial brief omitting all references to the disputed items. Respondents further moved for an Order imposing sanctions upon Appellants based on Appellants’ continued failure to comply with the Appellate Court Rules.

On or about May 22, 2017, Appellants filed their Return to Respondents’ Motion to Dismiss or in the Alternative, Motion to Strike.

Respondents offer the following in reply.

I. Only Certain Interrogatories Are Part of the Circuit Court Record

Appellants aver their Initial Brief includes only references to interrogatory responses that were previously stated in their Memorandum of Law in Response to Respondents’ Motion to Summary Judgment. Appellants attached to their Return as Exhibits D & E their memorandum of law and

initial brief.

Appellants' contention abrogates the Court's rules regarding evidence and records on appeal. Appellants simply referenced interrogatories in their memorandum without including the interrogatory answers as exhibits. The Circuit Court never reviewed the interrogatories identified in Appellants' memorandum of law.¹ Indeed, Appellant did not even put into the text of their memorandum of law the interrogatories and responses.

Further, Appellants contend the trial court "incorporated the very same information provided by these answers in the Order from which this appeal is taken[,]" and, therefore, it is clear the Circuit Court reviewed and relied upon the interrogatories and responses cited in Appellants' Memorandum of Law. However, again, Appellants fail to recognize that the interrogatories and responses were never submitted to the Circuit Court as an exhibit for proper review by the Circuit Court. Indeed, the briefing alone provided the content upon which the Circuit Court relied in its Order.

¹ Respondents again concede that a limited number of interrogatories were submitted to the Circuit Court for review subsequent to the hearing on Respondents' motion for summary judgment. The interrogatories were submitted via email correspondence to the trial court in support of its argument made in response to the Circuit Court's inquiry on a specific matter.

It is clear from the record the Circuit Court never reviewed the interrogatories and responses because the same were not submitted as exhibits for the Circuit Court's review. Yet, Appellants now desire this Court to review evidence not considered by the Circuit Court—i.e., interrogatory responses. Such consideration is contrary the Court's rules. See Rule 210(c), SCACR ("The Record shall not, however, include matter which was not presented to the lower court or tribunal.").

Accordingly, Respondents' maintain that with the exception of the limited number of interrogatories presented to the Circuit Court post-hearing, Appellants' have failed to comply with Rules 209 and 210, SCACR. Appellants continued failure to properly comply with the Court's rules and previous order warrants dismissal of the appeal. See Henning v. Kaye, 307 S.C. 436, 415 S.E.2d 794 (1992); see also Rule 260, SCACR.

II. Mandy Bellamy's Entire Deposition Transcript is Not Part of the Circuit Court Record

Appellants maintain that the entire deposition transcript of Mandy Bellamy was presented to the Circuit Court for consideration. Specifically, Appellants aver counsel presented a binder to the Circuit Court during the

hearing containing several documents, including the entire transcript of Mandy Bellamy's deposition.

However, the proper mechanism for submission of documents to be included in the Circuit Court record is by a party's exhibits or a Court's exhibit. The binder was never submitted nor identified as an exhibit by Appellant or as a Court's exhibit.

Accordingly, it is not clear the binder was in fact considered by the Circuit Court. Consequently, the binder and its contents are not part of the Circuit Court record. Any of the contents of the binder cannot now be considered by this Court.

III. The Consolidated Employee Recreations Clubs Bylaws Are Not Part of Circuit Court Record

Appellants contend that because the Consolidated Employee Recreations Clubs Bylaws were cited in their Initial Brief, and were originally designated in their Designation of Matter under "any other document cited in Appellants' Initial Briefs," such is part of the Record and should be considered by this Court.

As articulated above, simply referencing materials and documents in a memorandum of law or Initial Brief does not conclusively designate a matter

as part of the Record. See generally Norris v. Ferre, 315 S.C. 179, 432 S.E.2d 491 (Ct. App. 1993) (holding the record may not be supplemented with matters not presented to the trial judge). The Consolidated Employee Recreation Clubs Bylaws was not independently submitted to the Circuit Court for review as an exhibit to Appellants' memorandum of law or as a supplemental exhibit at the hearing. Such documents and matters not presented to the Circuit Court cannot now be given any substantive consideration on appeal. See Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999).

IV. Respondents' Motion is Meritorious and is Not a Delay Tactic

Finally, Appellants maintains that Respondents "are clearly taking every effort possible to delay this Court from reviewing the issues on their merits." (Appellants' Return, p. 4). Appellants further contend that Respondents' motions are meritless.

Despite Appellants' contentions, Respondents' desire is to ensure only proper matters are considered by the Court. An inclusion of matters not presented to the Circuit Court, but possibly considered by this Court, could gravely prejudice Respondents and is completely contrary to the rules of appellate practice in South Carolina.

Respondents initially filed a motion to strike certain matters in Appellants' designation of matter that were clearly not part of the Circuit Court record. The Court agreed with Respondents and granted the motion to strike. The Court directed Appellants to file an amended designation of matter removing certain matters.

Though this Court's April 6, 2017, Order provides clear direction to Appellants of what matters to include in their Amended Designation of Matter, Appellants have seemingly defied this Court's Order. Appellants continue to designate matters clearly not part of the Circuit Court record in direct contravention of Rules 209 and 210, SCACR.

Respondents desire to ultimately have the Court review the merits of Appellants' appeal. However, Appellants' continued violations of the appellate court rules—specifically Rules 209 and 210, SCACR—have prevented Respondents from moving forward with briefing on the merits and have prejudiced Respondents. Respondents have unnecessarily had to incur expenses while engaging in motions practice based on Appellants counsel's arguable lack of familiarity with the South Carolina Appellate Court Rules.

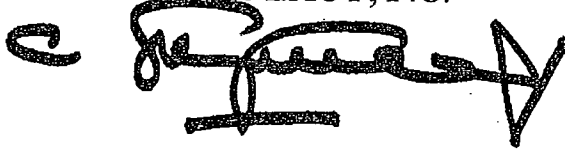
CONCLUSION

Based on Appellants' continued failure to comply with the Appellate Court Rules and this Court's Order, Respondents respectfully request the Court dismiss Appellants' appeal. In the alternative, Respondents respectfully request the Court strike those matters that are not part of the Circuit Court record, as well as any and all references to matters in Appellants' Initial Brief that are not part of the Circuit Court record. Further, pursuant to Rule 269, SCARC, Respondents respectfully request the imposition of sanctions, including, but not limited to, attorneys' fees and costs related to the continued motions practice.

[SIGNATURE PAGE ATTACHED]

Respectfully submitted,

COLLINS & LACY, P.C.



CHRISTIAN STEGMAIER
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ATTORNEYS FOR RESPONDENTS

**RESPONDENTS' REPLY TO
APPELLANTS' RETURN TO
MOTION TO DISMISS APPEAL, OR
IN THE ALTERNATIVE, MOTION
TO STRIKE**

Columbia, South Carolina
May 30, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

RECEIVED

MAY 30 2017

SC Court of Appeals

Cassandra M. Myers and Bartholomew Myers
in their capacity as Co-Personal Representatives
of the Estate of Evan Morris Myers, ...Appellants,

v.

The Consolidated Employee Recreation Clubs, a
non-profit organization a/k/a Pine Island Club
at Lake Murray, South Carolina Electric and Gas
Holding Company, Inc.; SCANA Respondents.

PROOF OF SERVICE

I hereby certify that I served Respondents' Reply to Appellants' Return
to Motion to Dismiss Appeal or, in the Alternative, Motion to Strike upon all
parties, by placing a copy in the United States mail, postage prepaid, to all
counsel of record on May 30, 2017, addressed to the following:

COUNSEL SERVED:

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Post Office Box 6639
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Counsel for Appellants

Edward L. Graham, Esquire
J. Layton Ruffin, Esquire
Graham Law Firm, P.A.
Post Office Box 550
Florence, SC 29501
Counsel for Appellants

Respectfully submitted,


COLLINS & LACY, P.C.

CHRISTIAN STEGMAIER
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ATTORNEYS FOR RESPONDENTS

EXHIBIT K

The South Carolina Court of Appeals

Cassandra M. Myers, and Bartholomew Myers in their
capacity as Co-Personal Representatives of the Estate of
Evan Morris Myers, Appellants,

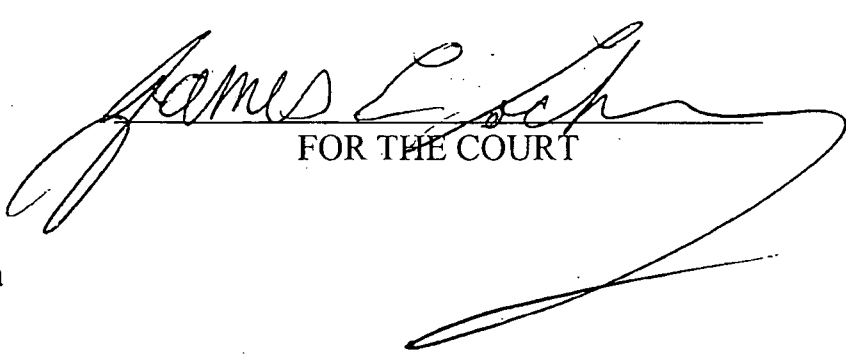
v.

The Consolidated Employee Recreation Clubs, a non-
profit organization a/k/a Pine Island Club at Lake
Murray, South Carolina Electric and Gas Holding
Company, Inc; SCANA, Respondents.

Appellate Case No. 2016-002487

ORDER

After careful consideration, Respondents' motion to dismiss or strike is denied.



FOR THE COURT

Columbia, South Carolina

cc:

Pedro Eduardo Krompecher, Esquire
Christian Stegmaier, Esquire
Meghan Hazelwood Hall, Esquire
John Layton Ruffin, Esquire
Edward L. Graham, Esquire

FILED

July 13, 2017

RECEIVED

DEC 15 2017

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Appellate Case No. 2016-002487

Cassandra M. Myers and Bartholomew Myers
in their capacity as Co-Personal Representatives
of the Estate of Evan Morris Myers, ... Appellants,

v.

The Consolidated Employee Recreation Clubs, a
non-profit organization a/k/a Pine Island Club
at Lake Murray, South Carolina Electric and Gas
Holding Company, Inc.; SCANA Respondents.

PROOF OF SERVICE

I hereby certify that I served Respondents' Motion to Dismiss Appeal
or, In the Alternative, Motion to Strike and Amend Record on Appeal upon
all parties, by placing a copy in the United States mail, postage prepaid, to all
counsel of record on December 15, 2017 addressed to the following:

COUNSEL SERVED:

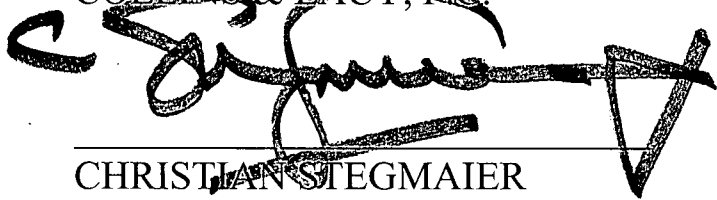
Pedro E. Krompecher, III, Esquire
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Raleigh, NC 27628

Counsel for Appellants

Edward L. Graham, Esquire
Graham Law Firm, P.A.
Post Office Box 550
Florence, SC 29501

Counsel for Appellants

Respectfully submitted,
COLLINS & LACY, P.C.

A handwritten signature in black ink, appearing to read 'Christian Stegmaier', written over a horizontal line.

CHRISTIAN STEGMAIER
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ATTORNEYS FOR RESPONDENTS

**PROOF OF SERVICE-
RESPONDENTS' MOTION TO
DISMISS OR, IN THE
ALTERNATIVE MOTION TO
STRIKE AND AMEND RECORD ON
APPEAL**



Christian Stegmaier | D: 803.255.0454 | E: cstegmaier@collinsandlacy.com

December 15, 2017

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED
DEC 15 2017
SC Court of Appeals

Re: *Cassandra M. Myers and Bartholomew Myers in their capacity as Co-Personal Representatives of the Estate of Evan Morris Myers, vs. The Consolidated Employee Recreation Clubs, a non-profit organization a/k/a Pine Island Club at Lake Murray, South Carolina Electric and Gas Holding Company, Inc./SCANA*

Civil Action No. 2014-CP-32-02210
Appellate File No. 2016-002487
Claim No. 683-411339
C&L File No. 000001-02078

Dear Ms. Kitchings:

Please find enclosed for filing the unbound original and seven (7) copies of Respondents' Motion to Strike and Amend Record on Appeal in the above referenced matter. Also enclosed is our firm's check in the amount of \$25.00, representing the filing fee of same. Please file the original and return a clocked copy of same via our courier.

By copy of this letter and enclosure, we are serving same on counsel of record.

Thank you for your time and attention. Should you have any questions or concerns, please do not hesitate to contact us.

Respectfully,

A handwritten signature in black ink, appearing to read 'Christian Stegmaier', written over a horizontal line.

Christian Stegmaier

CS/mmm

Enclosures

cc: Edward L. Graham, Esquire
Pedro E. Krompecher, III, Esquire