

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas
Perry M. Buckner, III, Circuit Court Judge

Case No. 2014-CP-15-135
Appellate Case No. 2016-001626

RECEIVED

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SC Court of Appeals

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

Respondent/
Appellant,

v.

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

Appellant/
Respondent.

**RECORD ON APPEAL
VOLUME I**

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**RECORD ON APPEAL
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STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
)

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

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

Plaintiff,

vs.

ORDER

South Carolina Municipal Insurance
and Risk Financing Fund [SCMIRF]

Defendant.

2016 JUN 29 AM 10:41
CLERK OF COURT
COMMON PLEAS

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

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

The two questions stipulated by the parties are as follows:

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

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

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

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

BACKGROUND

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

#2
Pm B

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

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

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

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

ANALYSIS

- #3
Pmb
- I. Do the claims made and the verdict rendered against the Town of Cottageville and Randall Price, relating to the hiring, retention, supervision and shooting death of Bert Reeves result in there being more than \$1,000,000 in indemnity coverage available under the terms of the SCMIRF Coverage Contract with the Town of Cottageville with respect to all such claims, including the claims made against John Craddock in a separately styled action?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

S.C. Code Ann. § 15-78-30(h).

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

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

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

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

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

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

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

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

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

CONCLUSION

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

AND IT IS SO ORDERED!


Perry M. Buckner, III
Circuit Court Judge

Dated: June 24, 2016

Walterboro, South Carolina

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Civil Action No. 2014-CP-15-135

ORDER

vs.

Defendant.

2016 JUL 25 PM 1:48

WILSON COUNTY
COLLECTION COURT
COMMON PLEAS

This matter comes by way of Plaintiff's Motion to Reconsider filed on July 6, 2016 and Defendant's Motion to Reconsider filed on July 11, 2016 pursuant to SCRCp 59(e). Defendant's Motion to Reconsider asks this Court to alter or amend its ruling in the Court's Order, dated June 24, 2016, which granted Plaintiff's Motion for Summary Judgment and denied Defendant's Motion for Summary Judgment as to issue one set forth in the Plaintiff's Amended Complaint. Plaintiff's Motion to Reconsider asks this Court to alter or amend its ruling in the same Order, dated June 24, 2016, which granted Defendant's Motion for Summary Judgment and denied Plaintiff's Motion for Summary Judgment as to issue two.

A motion made pursuant to Rule 59(e) “may in the discretion of the court be determined on briefs filed by the parties without oral argument.” SCRCP 59(f). The Court may decide a Rule 59(e) motion without oral argument or additional briefs when the moving party has submitted a motion that sets forth arguments on the issues raised. Pollard v. County of Florence, 314 S.C. 397, 444 S.E.2d 534 (Ct. App. 1994). The Court exercises its discretion to decide the

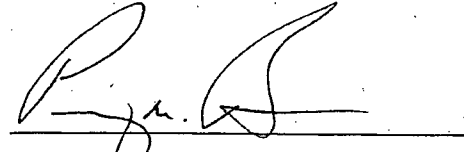
Motions to Reconsider without oral argument and both the Plaintiff and Defendant have submitted memorandum regarding these motions.

“The purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to request the trial judge to ‘reconsider matters properly encompassed in a decision on the merits.’” Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992), (citing Budinich v. Becton Dickinson and Co., 486 U.S. 196, 200, 108 S.Ct. 1717, 1720, 100 L.Ed.2d 178, 184 (1988) (citing White v. New Hampshire Dept. of Employment Security, 455 U.S. 445, 451, 102 S.Ct. 1162, 1166, L.Ed.2d 325, 330-31 (1982)). A Rule 59(e) motion, in essence, asks the Court to reconsider “all relevant facts, law, and arguments” to determine whether “it is has ruled wrongly”. Ion, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

With respect to Defendant’s Motion for Reconsideration as to issue one, the Court has again reviewed and considered the parties’ arguments and submissions, the transcript of the hearing, and the applicable law regarding the parties’ Motions for Summary Judgment. I find my Order dated June 24, 2016 properly granted Plaintiff’s Motion for Summary Judgment and denied Defendant’s Motion for Summary Judgment as to issue one. Accordingly, Defendant’s Motion for Reconsideration is respectfully DENIED.

#2
Pmb
With respect to Plaintiff’s Motion for Reconsideration as to issue two, Plaintiff requests that the Court amend its Order, dated June 24, 2016, to find that the South Carolina Tort Claims Act does not apply and limit a claim for breach of contract. However, the issue before this Court, as stated in the stipulated issues, is “would a *tort claim* for bad faith brought against SCMIRF be subject to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 et seq.?” *Stipulation of Facts and Issues*, at p. 4. Therefore, the issue raised in Plaintiff’s Motion is not presently before this Court and Plaintiff’s Motion for Reconsideration is respectfully DENIED.

AND IT IS SO ORDERED!



Perry M. Buckner, III

Dated: July 19, 2016

Walterboro, South Carolina

The Supreme Court of South Carolina

South Carolina Municipal Insurance and Risk Financing
Fund, Petitioner,

v.

Ashley Reeves, a Personal Representative of the Estate of
Carl "Bert" Reeves, Respondent.

Appellate Case No. 2015-001193

ORDER

Petitioner petitions the Court to entertain this matter in its original jurisdiction.
Respondent consents to the petition. The petition is denied.



FOR THE COURT
Kittredge, J., not participating

C.J.

Columbia, South Carolina

July 24, 2015

cc:

C. Mitchell Brown, Esquire
William C. Wood, Jr., Esquire
Allen Mattison Bogan, Esquire
Michael J. Anzelmo, Esquire
William Mullins McLeod, Jr., Esquire

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

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

Plaintiff,)

vs.)

Town of Cottageville, the Town of)
Cottageville Police Department, and)
Randall Price, individually,)

Defendants.)

Case No.: 2:12-cv-02765-DCN

**NOTICE OF REMOVAL
OF CIVIL ACTION**

NOW COME the Defendants, The Town of Cottageville, the Town of Cottageville Police Department and Randall Price, and respectfully allege:

1. The above designated Defendants, constitute all of the named Defendants, with the Town of Cottageville and the Cottageville Police Department having been duly served on September 13, 2012, with process, in a civil action commenced on August 28, 2012, in the Court of Common Pleas for Colleton County, South Carolina, Civil Action No.: 2012-CP-15-695, entitled Ashley Reeves as the Personal Representative for the Estate of Carl Albert Reeves, Plaintiff, vs. The Town of Cottageville, and Randall Price, individually, Defendants. The Defendant, Randall Price, has not yet been served with process, but waives his right to be so served by the filing of this document.

2. Service of the Summons and Complaint on the named Defendants, Town of Cottageville and the Cottageville Police Department, was made on September 13, 2012, and said documents constitute the initial pleading setting forth the claim upon which the action is based. Said Defendants first received notice of the claim on the date of such service. A copy of the Summons

and Complaint in question is attached hereto and made a part hereof as if fully set forth herein.

3. The action is a civil action of which this Court has original jurisdiction under Title 28 U.S.C. § 1331 and is one which Defendants are entitled to remove to this Court pursuant to Title 28 U.S.C. § 1441. The Plaintiff's Complaint shows that this is a civil action wherein Plaintiff, among others, claims that Carl Albert Reeves was subjected to an unreasonable use of force in violation of his Constitutional rights secured to him under the Fourth Amendment to the Constitution of the United States of America, by Defendant, Price; all in violation of Title 42 U.S.C. §§ 1983. Furthermore, the Complaint asserts that the Defendants, Town of Cottageville and the Cottageville Police Department failed to properly train and supervise Defendant Price, also in violation of the Constitutionally guaranteed rights of Carl Albert Reeves; said allegations claimed by Plaintiff to be in violation of Title 42 U.S.C. § 1983.

WHEREFORE, Defendants, Town of Cottageville, the Cottageville Police Department, and Randall Price constituting all of the named Defendants, file this notice to remove the above action pending in the Court of Common Pleas for Colleton County, State of South Carolina, Civil Action No.: 2012-CP-15-695, from that Court to this United States District Court.

[Signature Page Follows]

LIDE AND PAULEY, LLC

s/ Vinton D. Lide

Vinton D. Lide

Federal ID No.: 2683

Michael S. Pauley

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ATTORNEYS FOR DEFENDANTS

TOWN OF COTTAGEVILLE AND

TOWN OF COTTAGEVILLE POLICE

DEPARTMENT

MALONE THOMPSON SUMMERS
AND OTT, LLC

s/ Lake Eric Summers

Lake Eric Summers

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ATTORNEYS FOR DEFENDANT

RANDALL PRICE

Lexington, South Carolina

September 24, 2012

Unknown

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

IN THE COURT OF COMMON PLEAS

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

CIVIL ACTION COVERSHEET

Plaintiff(s))

vs.)

The Town of Cottageville, The Town of)
Cottageville Police Department, and Randall)
Price, individually)

Defendant(s))

Submitted By: W. Mullins McLeod, Jr.
Address: PO Box 21624, Charleston, SC 29413SC Bar #: 14148
Telephone #: 843-277-6655
Fax #: 843-277-6660
Other:
E-mail: mullins@mcLeod-lawgroup.com

12-CP-15-695

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

☐ Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	☐ Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) ☐ Previous Notice of Intent Case # 20-CP- ☐ Notice/ File Med Mal (230) ☐ Other (299)	☐ Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☒ Wrongful Death (360) ☐ Other (399)	☐ Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
☐ Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	☐ Administrative Law/Relief ☐ Reinstatement License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture Consent Order (850) ☐ Other (899)	☐ Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	☐ Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
☐ Special/Complex/Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-Country Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature: _____

Date: August 28, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous SCCA / 234 (04/2012)

Page 1 of 1

ROA_0018

Unknown

Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

SCCA / 234 (04/2012)

Page 2 of 2

ROA_0019

Unknown

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

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

Plaintiff,)

vs.)

THE TOWN OF COTTAGEVILLE,)
THE TOWN OF COTTAGEVILLE)
POLICE DEPARTMENT and)
RANDALL PRICE, individually,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 12-CP-15-695

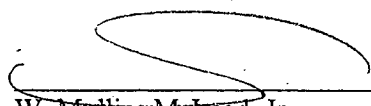
SUMMONS
(Jury Trial Demanded)

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2012 AUG 28 AM 9:54

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer on the subscribers at their office located at 134 Meeting Street, Suite 160, Post Office Box 21624, Charleston, South Carolina, 29413, within thirty (30) days of the service, exclusive of the day of such service; and if you fail to answer the Complaint within this time, the Plaintiff will move for entry of Default Judgment and apply to the Court for the relief sought therein.

MCLEOD LAW GROUP, LLC
P.O. Box 21624
Charleston, SC 29403


W. Mullins McLeod, Jr.
Julie L. Moore
D. Ellis Roberts

Attorneys for Plaintiff

8/17, 2012
Charleston, South Carolina

ROA_0021

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

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

Plaintiff,)

vs.)

THE TOWN OF COTTAGEVILLE,)
THE TOWN OF COTTAGEVILLE)
POLICE DEPARTMENT and)
RANDALL PRICE, individually,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 12-CP-15-695

COMPLAINT
(Jury Trial Demanded)

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2012 AUG 28 AM 9:54

Plaintiff, Ashley Reeves as Personal Representative of the Estate of Albert "Bert" Carl Reeves, complaining of the above-named Defendants alleges and shows as follows:

JURISDICTION AND VENUE

1. Decedent, Bert Reeves, at all times herein was a citizen and resident of Colleton County, State of South Carolina. Plaintiff, Ashley Reeves, is the duly appointed Personal Representative of the Decedent's Estate which is being probated in Colleton County. Plaintiff's certificate of appointment is attached as Exhibit No. 1.

2. Plaintiff brings this wrongful death action on behalf of Decedent's two minor children pursuant to Section 15-51-10 of the South Carolina Code and brings this survival action on behalf of the Decedent's Estate pursuant to Section 15-5-90 of the South Carolina Code.

3. Upon information and belief, the Town of Cottageville is a duly authorized municipality created pursuant to the laws of the State of South Carolina. At all times relevant hereto, the Town of Cottageville, its agents, servants and employees operated, maintained and

controlled the Cottageville Police Department, including all police officers and employees thereof. Upon information and belief, the Town of Cottageville is responsible for the policies, practices and customs of the Cottageville Police Department as well as the hiring, training, supervising, controlling and disciplining of its police officers and other employees.

4. Upon information and belief, the Cottageville Police Department is a political subdivision of the Town of Cottageville and is a municipal entity organized and created pursuant to the laws of the State of South Carolina. Along with the Town of Cottageville, the Cottageville Police Department is responsible for the policies, practices and customs of the Cottageville Police Department as well as the hiring, training, supervising, controlling and disciplining of its police officers and other employees.

5. Upon information and belief, Randall Price is a resident of Colleton County, South Carolina, and was a police officer assigned to the Cottageville Police Department and employed by, and an agent of, the Town of Cottageville.

6. This Court has subject matter jurisdiction over all claims alleged, personal jurisdiction over the parties, and venue is proper in Colleton County.

FACTUAL BACKGROUND

7. The Town of Cottageville is a small rural town with a population of less than 1,000 residents. Decedent Bert Reeves was a lifelong resident of Cottageville, was an active member of this small community, and formerly served as the Mayor of Cottageville.

8. Plaintiff is informed and believes that Defendant Randall Price was fired from the McCormick County Sheriff's Office in 1999, fired from the Wagener Police Department in 2000, fired from the Aiken County Sheriff's Office in 2001, and fired from the Blackville Police Department in 2006.

9. Plaintiff is further informed and believes that the South Carolina Criminal Justice Academy revoked Officer Price's certification as a Class 1 Law Enforcement Officer pursuant to Section 23-23-80(6) of the South Carolina Code as a result of Defendant Price's misconduct.

10. That allegations of excessive force and brutality and reports of Officer Price's prior misconduct resulted in Officer Price being featured in a 2005 series "Tarnished Badges" in which unbiased members of the media questioned how someone with Defendant Officer Price's work history could still be allowed to work as a police officer.

11. That despite Defendant Price's deplorable employment history and prior complaints of excessive force, the Defendant Town of Cottageville and Defendant Cottageville Police Department hired him to police Cottageville in 2008.

12. Plaintiff is informed and believes that Defendant Price's forceful and abusive police tactics began to resurface in Cottageville not long after he began working for Defendants and that Cottageville residents became afraid of his tactics.

13. Residents of Cottageville looked to Decedent Bert Reeves for help in addressing and vocalizing issues with Officer Price and Defendant Town of Cottageville and Defendant Cottageville Police Department had actual and/or constructive knowledge of these complaints.

14. Plaintiff is further informed and believes that after Defendant Officer Price was hired he began to target Bert Reeves because the Decedent had voiced concerns about complaints he received from Cottageville residents regarding Officer Price's aggressive behavior.

15. On or about May 16, 2011, Plaintiff is informed and believes that Defendant Price drove onto Nut Hatch Lane, a dirt road located approximately two miles from Cottageville's

Town Hall, to confront Decedent. Officer Randall Price blocked Decedent from traveling further and proceeded to shoot and killed Decedent Bert Reeves.

16. Officer Price was not performing a traffic stop, did not call for backup, and did not sound his siren at any time prior to the time he shot and killed Bert Reeves with his authorized service revolver. Plaintiff is informed and believes that Decedent was unarmed at the time Officer Price shot him.

FOR A FIRST CAUSE OF ACTION
(Negligence Against All Defendants)

17. Plaintiff realleges and reincorporates all preceding paragraphs as if fully set forth herein.

18. At all times relevant hereto, Defendant Officer Price was employed as a police officer by, and served as an agent of, the Town of Cottageville and the Cottageville Police Department and was acting within the course and scope of his employment.

19. Plaintiff is informed and believes Officer Price was a trained law enforcement officer and owed a duty to the public in general and Decedent in particular to use due care in fulfilling his police duties and to ensure his conduct conformed to generally accepted police standards.

20. On May 16, 2011, Officer Price failed to use due care and was negligent in the following particulars:

- a. Failing to follow proper protocol and procedure for the situation;
- b. Failing to use the appropriate degree of force for the situation;
- c. By drawing and discharging his firearm in a negligent manner and in violation of proper police procedure and protocol;

d. and such other particulars as may be shown at trial.

21. All of the above-referenced acts and/or omissions and/or commissions are in violation of the common laws and statutes of the State of South Carolina, as well as the Defendants' obligations and duties to Decedent.

22. As a direct, foreseeable and proximate result of the negligent, grossly negligent, reckless, willful and wanton acts and/or omissions of Defendant Price, Decedent Bert Reeves was needlessly shot by Officer Price and suffered pain and physical harm.

23. As a direct, foreseeable and proximate result of the aforementioned negligent, grossly negligent, reckless, willful, and wanton acts and omissions by Defendants, Bert Reeves suffered conscious physical harm and injury, and endured pain and suffering, including mental distress, emotional anguish and death.

24. Due to the willful, wanton, reckless, grossly negligent, and negligent acts of Defendants as set out above, Plaintiff is entitled to recover actual and punitive damages from Defendants as determined by a jury.

FOR A SECOND CAUSE OF ACTION

(Negligent Hiring, Supervision and Retention Against the Town of Cottageville and the Cottageville Police Department)

25. Plaintiff realleges and reincorporates all preceding paragraphs as if fully set forth herein.

26. Upon information and belief, the Town of Cottageville and the Cottageville Police Department owed statutory and common law duties to the public at large, and to Decedent in particular, to refrain from negligently hiring, supervising and/or retaining employees.

27. These Defendants knew or reasonably should have known that Officer Price had a marked history of using excessive force while on the job as a police officer and had gone through eight law enforcement jobs in an eleven year period prior to being hired by Defendants in 2008.

28. These Defendants knew or should have known that Officer Price had previously been reported and sanctioned for allegations of police misconduct and the use of excessive force during the course and scope of his employment.

29. Based upon Officer Price's prior work history as well as his work while employed with Defendants, these Defendants knew or should have known that hiring and retaining Price as a police officer for the Cottageville Police Department presented a danger to the public at large, and to Decedent in particular, and that it was foreseeable that Price would fail to perform his responsibilities in a reasonable manner that was consistent with generally excepted law enforcement procedure and protocol.

30. In addition to hiring and retaining Officer Price, these Defendants knew or should have known that their failure to provide adequate training and supervision to Cottageville Police Department police officers on the use of appropriate force during encounters would result in serious injury and/or death.

31. In the hiring, retention and supervision of Officer Randall Price as a law enforcement officer for the Cottageville Police Department, these Defendants failed to use due care and were negligent in the following particulars:

- a. Hiring Officer Price to patrol the Town of Cottageville when his work history was replete with complaints and sanctions for his use of excessive force and documented his repeated failure to perform his law enforcement duties in a reasonable and safe manner;

- b. Failing to properly train Cottageville Police Department in the use of proper law enforcement procedure and protocol;
- c. Failing to discipline and continuing to retain Officer Price as a member of the Cottageville Police Department after receiving reports of his excessive and brutal police tactics from Cottageville residents;
- d. Failing to adequately supervise Officer Price when, before hiring him to join the Cottageville Police Department, his employment record indicated that he presented a danger to the public at large;
- e. Failing to adequately supervise Officer Price when, after hiring him in 2008, complaints of his use of excessive force began to resurface from Cottageville residents and Defendants were again put on notice of the danger he posed to the public;
- f. Failing to properly equip and/or train police officers with the essential non-deadly force weapons to subdue subjects without deadly force; and
- f. Any and all other particulars as may be shown at trial.

32. As a direct, foreseeable and proximate result of the negligent, grossly negligent, reckless, willful and wanton acts and/or omissions of Defendants, Decedent Bert Reeves was needlessly shot by Officer Price and suffered pain and physical harm.

33. As a direct, foreseeable and proximate result of the negligent, grossly negligent, reckless, willful, and wanton acts and omissions of Defendants, the Decedent suffered conscious physical harm and injury, and endured pain and suffering, including mental distress, emotional anguish and death.

34. Due to the willful, wanton, reckless, grossly negligent, and negligent acts of the Defendants as set out above, Plaintiff is entitled to recover actual and punitive damages from Defendants as determined by a jury.

FOR A THIRD CAUSE OF ACTION
(Battery Against All Defendants)

35. Plaintiff realleges and reincorporates all preceding paragraphs as if fully set forth herein.

36. At all times relevant hereto, Defendant Price was an agent/servant of the Town of Cottageville and the Cottageville Police Department, acting within the scope of his employment.

37. Upon information and belief, Officer Randall Price willfully, and with force that was excessive under the circumstances, shot Decedent with his service revolver.

38. Defendant Price's shooting of Decedent was not consensual and constituted a harmful and offensive touching.

39. As a direct and proximate result of Defendants' conduct, Plaintiff is entitled to recover actual and punitive damages from Defendants as determined by a jury.

FOR A FOURTH CAUSE OF ACTION
(Assault Against All Defendants)

40. Plaintiff realleges and reincorporates all preceding paragraphs as if fully set forth herein.

41. At all times relevant hereto, Defendant Price was an agent/servant of the Town of Cottageville and the Cottageville Police Department, and was acting within the scope of his employment.

42. Upon information and belief, Officer Randall Price blocked Decedent's travel down Nut Hatch Lane and presented his service revolver to Decedent Bert Reeves, placing

Decedent in reasonable fear of immediate and grave bodily harm. Decedent did not consent to Defendant Price's conduct.

43. As a direct and proximate result of the Defendants' assault, Plaintiff is entitled to recover actual and punitive damages from Defendants as determined by a jury.

FOR A FIFTH CAUSE OF ACTION

(42 U.S.C. § 1983 – Violation of Decedent's Civil Rights by Defendant Randall Price)

44. Plaintiff realleges and reincorporates all preceding paragraphs as if fully set forth herein.

45. At all times relevant hereto, the Defendant Officer Randall Price was an officer with the Cottageville Police Department and acted under the color of state law.

46. Decedent Bert Reeves was deprived of rights, privileges and immunities safeguarded by the Fourth Amendment of the Bill of Rights, particularly his right to be free from the use of excessive and unreasonable force by Officer Randall Price.

47. Upon information and belief, the excessive force that Decedent was subjected to was employed by Defendant Officer Price without any reasonable necessity to use any force, much less the excessive and deadly force that was employed without legal justification, with malice and with the intent to inflict pain, suffering and death.

48. As a direct result of Officer Randall Price's unlawful use of excessive and unreasonable force, Decedent was killed.

49. As a direct and proximate result of Defendant Price's violation of Decedent's constitutionally protected rights, Plaintiff is entitled to recover actual and punitive damages from Defendants as determined by a jury.

FOR A SIXTH CAUSE OF ACTION
(42 U.S.C. § 1983 – Municipal Liability Against Defendants Town of Cottageville and Cottageville Police Department for the Violation of Decedent's Civil Rights)

50. Plaintiff realleges and reincorporates all preceding paragraphs as if fully set forth herein.

51. At all times relevant hereto, the Town of Cottageville and the Cottageville Police Department acted under the color of state law.

52. Decedent Bert Reeves was deprived of rights, privileges and immunities safeguarded by the Fourth Amendment of the Bill of Rights, particularly his right to be free from the use of excessive and unreasonable force by Defendants Town of Cottageville and Cottageville Police Department.

53. Officer Randall Price, as an employee and agent of these Defendants, has consistently and prolifically violated the rights of individuals with the use of excessive and unreasonable force, and the Defendants' failure to properly respond to prior complaints and instances of improper police conduct by Officer Price, demonstrated a custom and policy of deliberate indifference to or tacit authorization of Price's excessive force. This custom was the moving force behind the deprivation of Decedent's constitutional rights.

54. Upon information and belief, prior to hiring Officer Price to join the Cottageville Police Department, these Defendants had actual and/or constructive knowledge that, Officer

Price had a well-documented history of employing excessive force and engaging in police misconduct that violated the civil rights of individuals while he was employed as a law enforcement officer for various agencies throughout the state.

55. Despite their knowledge of the pattern of Officer Price's use of unconstitutional and excessive force, Defendants acted with reckless and deliberate indifference to Decedent's civil rights in hiring and retaining Officer Price. The deprivation of Bert Reeves's civil rights was a plainly obvious consequence of Defendants' decision to hire and retain Officer Price as an police officer for the Cottageville Police Department.

56. In addition to hiring and retaining Officer Randall Price, Defendants Town of Cottageville and Cottageville Police Department, as the head policy makers for the Cottageville Police Department, acted with reckless and deliberate indifference to Decedent's civil rights, in that, as a matter of policy and custom, they failed to adequately discipline, train, investigate, supervise or otherwise direct the Cottageville Police Department, and Officer Price specifically, concerning the civil rights of the citizens of the Town of Cottageville.

57. As a direct result of Defendants' deliberate indifference, Defendant Price had no fear of internal consequences for employing excessive force in violation of constitutional rights, and Defendant Price violated Decedent's right to be free from excessive force. Defendants, as a matter of custom, caused, encouraged, condoned and allowed Defendant Price to engage in unlawful conduct and use excessive force without fear of consequence for his actions, thereby serving as the moving force behind Officer Price's use of excessive and deadly force against Decedent.

58. As a result of Defendants' deliberate indifference to the violation of Decedent's civil rights, Decedent was subjected to the unlawful use of excessive and unreasonable force, and Decedent Bert Reeves was shot and killed by Officer Randall Price.

59. As a result of Defendants' deliberate indifference to the violation of Decedent's civil rights, Plaintiff is entitled to recover actual and punitive damages from Defendants as determined by a jury.

FOR A SEVENTH CAUSE OF ACTION
(Survival Action Against All Defendants)

60. Plaintiff realleges and reincorporates all preceding paragraphs as if fully set forth herein.

61. As a result of the above referenced acts, Decedent sustained serious injuries ultimately causing his wrongful death.

62. Pursuant to the South Carolina Survival Act, Plaintiff is entitled to bring all of the above-referenced and foregoing causes of action as the duly appointed Personal Representative of the Estate of Albert "Bert" Carl Reeves.

63. Plaintiff alleges that as a result of the above referenced acts, Decedent Bert Reeves suffered conscious pain and suffering, personal injuries and trauma prior to his death, funeral expenses, and other compensatory damages, and is entitled to punitive damages in an amount to be determined by a jury.

64. All of the above-referenced acts and/or omissions and/or commissions are in violation of the common laws and statutes of the State of South Carolina, and Defendants' obligations and duties to Plaintiff.

65. Each of these acts and/or omissions and/or commissions proximately caused Bert

Reeves's injuries and wrongful death.

66. As such, Plaintiff seeks actual and punitive damages and such other and further relief as this honorable court and the jury deems just and proper.

FOR A EIGHTH CAUSE OF ACTION
(Wrongful Death Against All Defendants)

67. Plaintiff realleges and reincorporates all preceding paragraphs as if fully set forth herein.

68. As a result of the above-referenced acts and/or omissions, Decedent Bert Reeves suffered conscious pain and suffering, personal injuries and trauma prior to his death.

69. Pursuant to the South Carolina Wrongful Death Act, Plaintiff alleges entitlement to all of the above-referenced and foregoing causes of action as survivors and/or as the duly appointed Personal Representative of the Estate of Albert "Bert" Carl Reeves.

70. As a direct and proximate result of Defendants' willful, wanton, reckless, grossly negligent and negligent acts as set out above, the Decedent's beneficiaries, as represented by Ashley Reeves, Personal Representative of the Estate of Albert "Bert" Carl Reeves, have suffered injuries, which have caused, and in the future will cause, the beneficiaries to suffer one or more of the following elements of damage as to the survival and wrongful death claims:

- a. Pecuniary loss;
- b. Conscious pain and suffering;
- c. Mental shock and suffering;
- d. Wounded feelings;
- e. Grief and sorrow;
- f. Loss of companionship; and

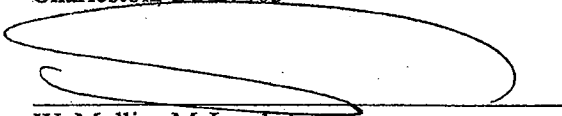
- g. Deprivation of use and comfort of Plaintiff's society, including loss of his experience, knowledge, and judgment in managing the affairs of himself and his beneficiaries.

71. Due to the willful, wanton, reckless, grossly negligent, and negligent acts of Defendants as set out above, as well as his violation of state law, Plaintiff is entitled to compensation for funeral expenses and other compensatory damages, and is entitled to punitive damages in an amount to be determined by a jury.

WHEREFORE, Plaintiff respectfully prays for the following:

- i. Judgment against Defendants jointly and severally for actual damages, special damages and consequential damages, punitive damages, and treble damages in an amount to be determined by the jury;
- ii. Costs of this action; and
- iii. All such other and further relief as this Court deems or the trier of fact deems proper.

MCLEOD LAW GROUP, LLC
P.O. Box 21624
Charleston, SC 29403



W. Mullins McLeod, Jr.
Julie L. Moore
D. Ellis Roberts

Attorneys for Plaintiff

8/27, 2012
Charleston, South Carolina

EXHIBIT No. 1

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

IN THE MATTER OF ALBERT CARL REEVES

CASE NUMBER 2011-ES-15-00170

IN THE PROBATE COURT

CERTIFICATE OF APPOINTMENT

This is to certify that

ASHLEY THOMPSON REEVES

is/are the duly qualified

- ☒ PERSONAL REPRESENTATIVE(S)
☐ GUARDIAN(S)
☐ CONSERVATOR(S)
☐ TRUSTEE(S)

in the above matter and that this appointment, having been executed on the 25th day of July, 2011, is now in full force and effect, including authorization to receive all monies, income, principal, interest & dividends of and belonging to said estate.

RESTRICTIONS: NO ADDITIONAL.

Executed this 25th day of July, 2011.

Do not accept a copy of this certificate without
the raised seal of the Probate Court.



Ashley H. Amundson, Probate Court Judge

FORM #141PC (1/01)
62-1-305, 62-3-103, 62-5-304, 62-5-421, 62-7-201

ROA_0037

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Ashley Reeves, as Personal
Representative of the Estate of
Carl Albert Reeves,

Plaintiff,

vs.

Town of Cottageville, the Town of
Cottageville Police Department, and
Randall Price, individually,

Defendants.

Case No.: 2:12-cv-02765-DCN

**JOINT STATEMENT
CONCERNING REMOVAL
BY DEFENDANTS**

NOW COME the Defendants, by and through their respective counsel, who respectfully submit this Joint Statement Concerning the Removal of this action:

1. The Town of Cottageville and the Town of Cottageville Police Department constitute all of the named Defendants, which received and were served with the Summons and Complaint in this action on or about September 13, 2012. The remaining Defendant, Randall Price, has not been served, but hereby waives such service and joins in this action.

2. The dates for service are no different than those referenced in paragraph 1. Defendants, The Town of Cottageville and the Town of Cottageville Police Department, were both served on September 13, 2012, while Defendant, Randall Price, voluntarily joins this action.

3. This action is not predicated on diversity jurisdiction, but instead is based on federal question jurisdiction.

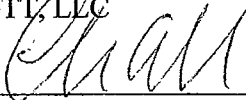
4. This action is not predicated on diversity jurisdiction, and therefore, the amount in controversy is not at issue.

5. This removal was made within thirty (30) days of service of the Summons and Complaint on the Defendants, and therefore, this question does not appear applicable to the present action.

6. This action is based on federal question jurisdiction, and therefore, diversity jurisdiction is not at issue. In the Complaint, the Plaintiff raises several causes of action alleging violations of civil rights, under the Fourth and Fourteenth Amendments to the Constitution of the United States of America, and pursuant to 42 U.S.C. § 1983, and therefore, remand would not be appropriate.

7. There are no such remaining Defendants.

MALONE THOMPSON SUMMERS
AND OTT, LLC



Lake Eric Summers
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Katherine A. Phillips
Federal ID No.: 10381
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ATTORNEYS FOR DEFENDANT
RANDALL PRICE

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ATTORNEYS FOR DEFENDANTS
TOWN OF COTTAGEVILLE AND
TOWN OF COTTAGEVILLE POLICE
DEPARTMENT

Lexington, South Carolina
September 24, 2012

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Ashley Reeves, as Personal
Representative of the Estate of
Carl Albert Reeves,

Plaintiff,

vs.

Town of Cottageville, the Town of
Cottageville Police Department, and
Randall Price, individually,

Defendants.

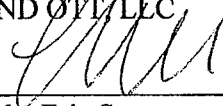
Case No.: 2:12-cv-02765-DCN

**CONSENT TO REMOVAL BY
DEFENDANT RANDALL PRICE**

Defendant, Randall Price, by and through its undersigned counsel, hereby consents to the removal of this action to the United States District Court for the District of South Carolina, Charleston Division, for the reasons articulated in the Notice of Removal filed by Defendants, Town of Cottageville, and Town of Cottageville Police Department. This Defendant has not been served with the Complaint, but hereby waives such service and joins in this action.

This 24th day of September, 2012.

MALONE/THOMPSON SUMMERS
AND OTT/LLC



Lake Eric Summers

Federal ID No.: 7687

Katherine A. Phillips

Federal ID No.: 10381

339 Heyward Street

Columbia, South Carolina 29201

Telephone: (803) 254-3300

Facsimile: (803) 803-254-0309

ATTORNEYS FOR DEFENDANT RANDALL PRICE

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

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

Plaintiff,)

vs.)

SOUTH CAROLINA MUNICIPAL)
INSURANCE AND RISK)
FINANCING FUND ("SCMIRF"))
THE TOWN OF COTTAGEVILLE,)
THE TOWN OF COTTAGEVILLE)
POLICE DEPARTMENT and)
RANDALL PRICE, individually,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.:

14-CP-15-135

**COMPLAINT FOR DECLARATORY
JUDGEMENT**

(Non-Jury)

2014 FEB 18 PM 1:38
PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

COMES NOW, the Plaintiff, seeking a declaration of rights under an insurance policy,
who would show unto the Court the following:

JURISDICTION

1. Plaintiff Ashley Reeves is the Personal Representative for the Estate of Albert Carl Reeves who was shot and killed by a Cottageville Police office on May 16, 2011. The decedent was a resident of Colleton County and therefore his estate is being probated in Colleton County. Plaintiff's certificate of appointment is attached hereto as Exhibit No.1.

2. Defendant South Carolina Municipal Insurance and Risk Financing Fund ("SCMIRF") is an insurer in the State of South Carolina who issued a policy of insurance (P-SCMIRF-1124-2011) to the Defendant Town of Cottageville which is located in Colleton County. The afore-mentioned policy is attached hereto as Exhibit No. 2.

3. Defendant Town of Cottageville is a duly authorized municipality created pursuant to the laws of the State of South Carolina and is located in Colleton County.

4. Defendant Town of Cottageville Police Department is a duly authorized municipality created pursuant to the laws of the State of South Carolina and is located in Colleton County.

5. Defendant Randall Price is a former Town of Cottageville police officer who is an insured pursuant to the terms of the contract of insurance the SCMIRF sold to the Town of Cottageville. He is upon information and belief a resident of Dorchester County.

6. There is no dispute among the parties that the afore-mentioned insurance policy provides insurance coverage in the underlying lawsuit which is pending in the United States District Court, Charleston Division before the Honorable David C. Norton and bearing case no.: 2:12-cv-02765-DCN.

7. There exists between the parties a real and substantial controversy which require judicial determination.

FACTS

8. Albert Carl Reeves was shot and killed on May 16, 2011 on Nut Hatch Lane located in the Town of Cottageville and situated in Colleton County.

9. The lawsuit alleges various state causes of action as well as federal causes of action pursuant to 42 U.S.C. Sec. 1983. A copy of the Complaint is attached hereto as Exhibit No. 3. The Town of Cottageville and Officer Price denied liability in their response to the Decedent's Complaint.

10. For over one year the parties conducted extensive, costly discovery and were in the process of scheduling a mediation to occur on December 10, 2012 when the undersigned was

informed the SCMIRF was "taking the position" there was only \$1,000,000 in coverage for the death of Mr. Reeves. This communication occurred after counsel for all parties had been litigating the case under the belief there was substantially more insurance for the claims associated with the decedent's untimely death.

11. Subsequent thereto the SCMIRF hired counsel who provided the undersigned with a letter attempting to set forth their position regarding the available coverage. In particular, the "SCMIRF contends that the maximum amount available for this claim, including all members or covered persons and all causes of action asserted against them is one million dollars." The aforementioned letter, dated December 2, 2013 is attached hereto as Exhibit 4.

12. Plaintiff is at a loss to understand why she is expected to agree to the SCMIRF's conclusory, self-serving contention, despite the clear language of the policy and the law in South Carolina.

13. Plaintiff is informed and believes the SCMIRF's recent, unreasonable position regarding the available coverage derives from its own self-serving desire to save money on the policy they sold to the Town of Cottageville and was asserted on the eve of mediation in an attempt to gain an advantage in negotiating with the decedent's children. Further, Plaintiff is further informed and believes the SCMIRF's position is an attempt to re-create facts surrounding their refusal to protect their insured's by complying with the Plaintiff's reasonable, time sensitive settlement demand for the available coverage.

14. The unreasonable conduct of the SCMIRF is directly opposite the interests of the Town of Cottageville and Officer Price and upon information and belief is being done to advance their own pecuniary interest at the expense of their insured's and is disrupting the good faith efforts

Plaintiff has made to resolve the underlying action and reduce the costs and expense to the parties and to the Court.

15. To date, neither the Town of Cottageville, its police department nor Officer Price have hired independent counsel relating to the "purported coverage issue" but instead continue to be represented by Counsel provided to them and paid for by the SCMIRF.

16. Plaintiff is informed and believes the matters contained herein need to be addressed by this Honorable Court on an expedited manner so that the parties can have a meaningful mediation and reduce unnecessary court costs and expenses.

FOR A FIRST DECLARATION
(1 Million per Occurrence)

17. The allegations in paragraphs 1 through 13 above are realleged as though repeated verbatim herein.

18. The General Liability Contract Declarations page lists the available coverage under the policy as \$1,000,000 **per occurrence** and NOT \$1,000,000 in the aggregate. (See, Exhibit 2, pg. 28).

19. The insuring statement in the policy provides as follows:

"SCMIRF agrees.....to pay on behalf of the Member or Covered Person(s) for all sums which the Member or Covered Person(s) shall be obligated to pay exclusively as money damages by reason of liability imposed upon them by law on account of bodily injuries.....arising out of any **Occurrence**...."

(See Exhibit 2, pg. 29).

20. The policy further provides:

"As regards the General Liability (Section III), Law Enforcement Liability (Section IV) Public Officials (Section V) and Auto Liability (Section VI) coverage afforded by this Contract, the total liability of the SCMIRF any one **occurrence/accident/wrongful act** will be \$1,000,000 per Member...."

(See Exhibit 2 pg. 52).

21. The Town of Cottageville and Officer Price are insured's under the policy as a Member and as a Covered Person respectively.

22. The policy defines Occurrence as "an accident which results in Bodily Injury or Property Damage, the original cause of which and the initial damage from which happened during the Contract Period.

23. Plaintiff is informed and believes SCMIRF's position that there is only \$1,000,000 in coverage ignores the plain reading of the Declarations Page which sets forth the available coverage as \$1,000,000 **Per Occurrence of Offense** and further ignores the fact that the SCMIRF issues policies in large part to cover claims brought against its insured under the South Carolina Tort Claims Act.

24. Nonetheless, the SCMIRF is attempting to assert the \$1,000,000 limit is an aggregate limit despite the **plain reading** of the policy. The Declarations Page sets forth the four (4) types of coverage provided under the policy as well as the limits for each type of coverage. Under the policy the **only** type of insurance that is listed as having a \$1,000,000 aggregate limit is for "Products/Completed Operations" which is inapplicable to the underlying wrongful death case. (See Exhibit 2, pg. 28)

25. The South Carolina Tort Claims Act (SCTCA) defines occurrence as an unfolding sequence of events which proximately flow from a single act of negligence." See S.C. Code Ann. 15-78-30(g). Further, under the definitional section for **Occurrence** the policy clearly state that the definition includes "conduct in the course and scope of the Member's or Covered Person's official duties as described in The South Carolina Tort Claims Act. (See, Exhibit 2, p. 48).

26. The pending lawsuit alleges causes action that center around three distinct periods of actionable conduct (1) Pre-employment screening (2) Employment conduct (3) Conduct on the day the Decedent was killed. Plaintiff has alleged separate and distinct state and federal causes of action which arise from these periods of time.

27. The South Carolina Supreme Court has specifically held that independent, separate acts of negligence constitute more than one occurrence under the SCTCA. Boiter v. SCDOT, et.al., 712 S.E.2d 401 (S.C. 2011).

28. There is, therefore, \$1,000,000 in coverage for each independent, separate act of negligence the Plaintiff may prove in her claims against the Town of Cottageville, Town of Cottageville Police Department, and Officer Price.

29. The Estate of Albert Carl Reeves, is therefore, entitled to a declaration from the Court that states as a matter of law that the insurance policy applicable in this action provides \$1,000,000 per each independent, separate act of negligence or actionable conduct which Plaintiff may prove against the Town of Cottageville, Town of Cottageville Police Department and/or Officer Price.

WHEREFORE, Plaintiff prays for declaration of the Court that the afore-mentioned insurance policy provides \$1,000,000 per occurrence for the claims asserted by Ashley Reeves as Personal Representative of the Estate of Albert C. Reeves v. The Town of Cottageville, et. al. as well as the costs and fees associated with this action; and for such other remedy as in the opinion of the Court is equitable and reasonable.

Respectfully submitted,

McLEOD LAW GROUP, LLC
P.O. Box 21624
Charleston, SC 29403

W. Mullins McLeod, Jr.
James B. Moore III
Attorneys for Plaintiff

2/11, 2014
Charleston, South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

ASHLEY REEVES as Personal
Representative for the Estate of ALBERT
CARL REEVES,

Plaintiff,

v.

JOHN CRADDOCK, individually,

Defendant.

C/A No: 2:14-cv-01918-DCN

COMPLAINT
(Jury Trial Demanded)

Comes now the Plaintiff, Ashley Reeves, as the duly appointed Personal Representative of the Estate of Albert "Bert" Carl Reeves, complaining of the above named Defendant, John Craddock, individually, and would respectfully show unto this Honorable Court:

PARTIES

1. Plaintiff's decedent, Albert "Bert" Carl Reeves, (hereinafter referred to as "Plaintiff's decedent", "decedent", and/or "Mr. Reeves") at all times mentioned herein was a citizen and resident of Colleton County, State of South Carolina. Plaintiff, Ashley Reeves, is the duly appointed Personal Representative of the Decedent's Estate, which is being probated in Colleton County. Plaintiff's certificate of appointment is attached as Exhibit No. 1.

2. At all times relevant hereto Defendant John Craddock was the duly appointed Chief of Police for the Cottageville Police Department. As such, he was the commanding officer of Police Officer Randall Price, and was responsible for his training, supervision, and conduct. At

all times relevant hereto, Defendant Craddock was acting in such capacity as the official Chief of the Cottageville Police Department. Defendant Craddock is being sued in his individual capacity for compensatory and punitive damages under federal law.

JURISDICTION AND VENUE

3. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, the Fourth and Fourteenth Amendments to the United States Constitution, and the laws of the State of South Carolina.

4. Venue is proper in the United States District Court for the District of South Carolina, Charleston Division under 28 U.S.C. § 1391(b). Further, the most substantial acts and omissions giving rise to liability occurred within this Division.

FACTUAL BACKGROUND

5. The Town of Cottageville is a small rural town with a population of less than 1,000 residents. Plaintiff's decedent, Mr. Bert Reeves, was a lifelong resident of Cottageville, an active member of this small community, and formerly served as the Mayor of Cottageville.

6. On May 16, 2011, Mr. Reeves was shot and killed by Cottageville Police Officer Randall Price during an encounter with Officer Price and Defendant Craddock on Nut Hatch Lane, Cottageville, South Carolina. On August 28, 2012, the Estate of Albert Reeves initiated a lawsuit against the Town of Cottageville, Cottageville Police Department, and Officer Randall Price, individually, C/A No. 2:12-cv-2765 DCN. This separate case is currently pending before the United States District Court of South Carolina, Charleston Division, and alleges various causes of action pursuant to the South Carolina Tort Claims Act and 42 U.S.C. § 1983. Defendant Craddock is not named as an individual defendant in this lawsuit. A copy of the Complaint is attached hereto as Exhibit No. 2.

7. Officer Price was hired as a police officer for the Town of Cottageville in May of 2008. Prior to working for Cottageville Police Department, Officer Price had been dismissed from various law enforcement agencies throughout the State of South Carolina for excessive force, insubordination, and other misconduct. As a result of the allegations of misconduct, the South Carolina Criminal Justice Academy revoked Officer Price's certification as a Class 1 law enforcement officer pursuant to S.C. Code Ann. § 23-23-80(6).

8. Defendant Craddock was hired as a police officer for the Town of Cottageville in October of 2010. Prior to being hired by the Cottageville Police Department, Defendant Craddock worked for various state agencies as a law enforcement officer and a licensed paramedic. Upon information and belief, Defendant Craddock was promoted to Chief of the Cottageville Police Department on January 3, 2011. As such, during the time period alleged in the Complaint, Defendant Craddock was the commanding officer of Officer Price, and was responsible for his training, supervision, and conduct.

9. Plaintiff is informed and believes that Officer Price's problems with impulse control, aggression, and excessive force began to resurface soon after he began working as a police officer for Cottageville Police Department and continued throughout his employment. The Plaintiff is further informed and believes that Defendant Craddock, who was the Chief of Police and Officer Price's commanding officer, had actual and/or constructive knowledge of the forceful and abusive police tactics Officer Price demonstrated while policing the Town of Cottageville.

10. The Plaintiff is informed and believes that Cottageville residents became afraid of Officer Price's tactics and looked to Mr. Reeves for assistance and guidance in addressing their concerns. Upon information and belief, Officer Price began to target Mr. Reeves because he had voiced concerns over complaints he received from the Cottageville community regarding Officer

Price's temperamental and aggressive behavior. The Plaintiff is further informed and believes that Defendant Craddock, who was the Chief of Police and Officer Price's commanding officer, had actual and/or constructive knowledge of these complaints and Officer Price's growing aggression and hostility toward Mr. Reeves.

11. The aggression escalated on the afternoon of May 16, 2011. Plaintiff is informed and believes that at approximately 4:00 p.m., Officer Price followed Mr. Reeves to Nut Hatch Lane; a remote, single lane, dirt road located approximately two miles from the Cottageville Police Department and Town Hall. On Nut Hatch Lane, Officer Price was able to intercept Mr. Reeves, obstructing him from exiting the narrow dirt road.

12. At the time of the encounter on Nut Hatch Lane, Defendant Craddock was the on duty Chief of Police for the Town of Cottageville and Cottageville Police Department. According to Defendant Craddock, he received a call from Officer Price asking him to meet Officer Price at Nut Hatch Lane. Defendant Craddock reported that upon arrival to Nut Hatch Lane, he observed Officer Price and Mr. Reeves engaging in a "physical altercation." According to Defendant Craddock, Mr. Reeves and Officer Price separated, and Craddock exited his police vehicle. After exiting his vehicle, Craddock observed Mr. Reeves "repeatedly striking Price again in the face." He then "heard a gunshot come from their direction" and saw Mr. Reeves "grab his chest and step back." A copy of Defendant Craddock's incident report is attached as Exhibit No. 3.

13. According to Cottageville Police Department's policies and procedures, deadly force is only reasonable when the police officer is faced with imminent threat of serious bodily harm or death. The policy defines "imminent" as an act that is impending or about to occur. Moreover, according to the policies, the appropriate amount of force used during a particular

encounter is to be assessed based on a continuum whereby Deadly Force is the most severe of several lesser alternatives.

14. During the entire encounter with Officer Price, Mr. Reeves was unarmed, outnumbered, and posed no imminent threat of serious bodily harm to Officer Price. Moreover, Defendant Craddock and Officer Price both possessed nonlethal alternatives to deadly force that could have been used to control and/or diffuse the encounter.

15. During the encounter with Officer Price, Defendant Craddock possessed an affirmative duty to uphold the law and protect Mr. Reeves from the illegal and unconstitutional actions of Officer Price. Defendant Craddock, as Officer Price's commanding officer, possessed the power to prevent the actions of Officer Price. Despite his knowledge that Officer Price's actions constituted excessive force, the Plaintiff alleges Defendant Craddock consciously and intentionally chose not act or intervene.

16. Upon information and belief, at the time of the shooting, Defendant Craddock was a licensed paramedic and possessed the affirmative duty to render immediate medical attention to Mr. Reeves. Mr. Reeves, who was still alive as he laid on the ground, was left dying in the dirt on Nut Hatch Lane. Instead of rendering immediate emergency medical attention, Defendant Craddock called dispatch and waited for other paramedics to arrive. At approximately 4:17 p.m., Colleton County Fire - Rescue arrived and found Mr. Reeves unresponsive, but with a pulse. Mr. Reeves was pronounced dead at approximately 4:55 p.m. The cause of death was found to be attributable to a penetrating gunshot wound to the left chest. Additional findings included focal blunt head trauma, scalp abrasion, and a scalp hemorrhage.

17. On December 11, 2013, Defendant Craddock was deposed as a witnesses in connection with C/A No. 2:12-cv-2765 DCN. When questioned regarding his involvement in the

death of Bert Reeves, Defendant Craddock refused to answer Counsel's inquires, asserting his Fifth Amendment Right against self-incrimination. (Exhibit No. 4, Deposition of John Craddock, pp. 128-129, 132).

19. The acts and omissions of Defendant Craddock violated the clearly established and well settled Federal and State Constitutional rights of Albert "Bert" Reeves by authorizing, participating, and failing to prevent the use of excessive force by Officer Price.

20. As a direct and proximate result of these acts and omissions Plaintiff's Decedent suffered the following injuries and damages:

- a. A violation of his Constitutional rights under the Fourth and Fourteenth Amendment to the United States Constitution and Article 1 of the South Carolina Constitution from the use of excessive force;
- b. Loss of his life; and
- c. Physical pain and suffering and emotional trauma and suffering.

21. His family members, including his two minor children, suffered the untimely end of their relation with the Decedent, along with the corresponding loss of his income, services, protection, care, assistance, society, companionship, comfort, guidance, counsel and advice, and were forced to incur funeral and burial expenses.

FOR A FIRST CAUSE OF ACTION
(42 U.S.C. § 1983 Supervisory Liability: Survival and Wrongful Death)

22. Plaintiff realleges and reincorporates all preceding paragraphs as if fully set forth herein.

23. During the time period in question, Defendant Craddock was acting under the color or pretense of State law, customs, practices, usage or policy at all times mentioned herein as the Chief of Police and licensed paramedic and had certain duties imposed upon him with regard to Mr. Reeves. Additionally, during the time period in question, Defendant Craddock was well aware of Mr. Reeves' constitutional rights including his right to be free from excessive force and his right to access to appropriate medical attention.

24. At all times relevant hereto, Defendant Craddock was the Chief of Police for the Town of Cottageville, and as such, was responsible for supervision of his subordinate officers, including, but not limited to, Officer Randall Price.

25. Defendant Craddock, in his role as Chief of Police, was a policymaker for the Town of Cottageville, and when enacting and implementing such policies, was acting with express authority from the State of South Carolina.

26. Defendant Craddock was charged with the responsibility to properly equip police officers with non-deadly technology that would allow officers to maintain their own safety in necessary situations and be able to subdue would-be attackers. He was also charged with the responsibility of ensuring that members of the police force understand when deadly force is necessary and when non-deadly force is sufficient.

27. Defendant Craddock possessed actual knowledge that Officer Randall Price had prior disciplinary action taken against him and was not qualified to patrol unsupervised without additional training in the use of appropriate force and non-lethal tactics.

28. Defendant Craddock possessed actual knowledge of Officer Price's hostility toward Mr. Reeves and possessed further knowledge that Officer Price was following Mr. Reeves to Nut Hatch Lane to improperly and illegally confront Mr. Reeves.

29. Defendant Craddock was present during the encounter with Officer Price and Mr. Reeves and personally observed Officer Price utilize illegal and excessive force against Plaintiff's decedent. Defendant Craddock further observed Officer Price utilize illegal and excessive force against Plaintiff's decedent by discharging his police-issued firearm into the person of Plaintiff's decedent in a manner that was disproportionate to the force necessary for the situation. Defendant Craddock, as Officer Price's supervising and commanding officer, possessed the power to prevent actions of Officer Price. Despite Defendant Craddock's knowledge that Officer Price's actions constituted excessive force, the Plaintiff alleges Defendant Craddock authorized Officer Price's actions by consciously and intentionally failing to act or intervene.

30. All of the above-referenced failures are the responsibility of Defendant Craddock, who was deliberately indifferent to his responsibility to train and supervise the Cottageville Police Officers, including Officer Price, to interact with the public with appropriate force and defensive measures.

31. As the direct and proximate result of the above-mentioned unconstitutional actions of Defendant Craddock, Plaintiff's decedent suffered severe physical injury causing extreme pain, suffering and his death. As a direct and proximate result of Defendant Craddock's violations of decedent's constitutionally protected rights, Plaintiff is entitled to recover actual and punitive damages from Defendant Craddock as determined by a jury.

FOR A SECOND CAUSE OF ACTION

(42 U.S.C. § 1983 Bystander Liability: Survival and Wrongful Death)

32. The Plaintiff incorporates by reference all previous allegations of fact and law in the paragraphs above as if repeated herein.

33. During the time period in question, Defendant Craddock was acting under the color or pretense of State law, customs, practices, usage or policy at all times mentioned herein as the

Chief of Police and licensed paramedic and had certain duties imposed upon him with regard to Mr. Reeves. Additionally, during the time period in question, Defendant Craddock was well aware of Mr. Reeves' constitutional rights including his right to be free from excessive force and his right to access to appropriate medical attention.

34. Plaintiff's decedent posed no imminent threat of serious bodily harm or death threat to Officer Randall Price, Defendant Craddock, or to the general public at large. During the time period in question, Plaintiff's decedent was quite literally incapable of inflicting severe bodily injury to Defendant Craddock or Officer Randall Price.

35. Defendant Craddock had no reasonable belief that he or Officer Randall Price were in danger of death or severe bodily injury.

36. According to Defendant Craddock's own testimony, he was present during the alleged altercation between Officer Randall Price and Plaintiff's decedent, yet made no attempts to intervene, control, or diffuse the situation.

37. Upon information and belief, Defendant Craddock was present during the encounter with Officer Price and Mr. Reeves and personally observed Officer Price utilize illegal and excessive force against Plaintiff's decedent. Defendant Craddock further observed Officer Price utilize illegal and excessive force against Plaintiff's decedent by discharging his police-issued firearm into the person of Plaintiff's decedent in a manner that was disproportionate to the force necessary for the situation.

38. During the encounter with Officer Price, Defendant Craddock possessed an affirmative duty to uphold the law and protect Mr. Reeves from the illegal and unconstitutional actions of Officer Price. Defendant Craddock, as Officer Price's commanding officer, possessed the power to prevent actions of Officer Price. Despite Defendant Craddock's knowledge that

Officer Price's actions constituted excessive force, the Plaintiff alleges Defendant Craddock consciously and intentionally chose not act or intervene.

39. Moreover, after Officer Randall Price illegally discharged his firearm into Plaintiff's decedent's chest, Defendant Craddock, who was also a certified and licensed paramedic, failed to render any medical attention to Plaintiff's decedent, who lay alive, but dying in the dirt on Nut Hatch Lane.

40. As the direct and proximate result of the above-mentioned unconstitutional actions of Defendant Craddock, Plaintiff's decedent suffered severe physical injury causing extreme pain, suffering and his death. As a direct and proximate result of Defendant Craddock's violations of decedent's constitutionally protected rights, Plaintiff is entitled to recover actual and punitive damages from Defendant Craddock as determined by a jury.

FOR A THIRD CAUSE OF ACTION

(42 U.S.C. § 1983 Failure to Render Medical Care: Survival and Wrongful Death)

41. The Plaintiff incorporates by reference all previous allegations of fact and law in the paragraphs above as if repeated herein.

42. During the time period in question, Defendant Craddock was acting under the color or pretense of State law, customs, practices, usage or policy at all times mentioned herein as the Chief of Police and licensed paramedic. Defendant Craddock had certain duties imposed upon him with regard to Mr. Reeves. Additionally, during the time period in question, Defendant Craddock was well aware of Mr. Reeves' constitutional rights, including his right to be free from excessive force and his right of access to appropriate medical attention.

43. At the time of the shooting, Defendant Craddock was a licensed paramedic and possessed the affirmative duty to render immediate medical attention to Mr. Reeves, who was in police custody.

44. Upon information and belief, instead of rendering immediate emergency medical attention, Defendant Craddock called dispatch and waited for other paramedics to arrive.

45. Nearly twenty minutes after Mr. Reeves was shot in the chest, Colleton County Fire and Rescue arrived and found Mr. Reeves unresponsive, but with a pulse. Mr. Reeves was pronounced dead at approximately 4:55 p.m., nearly an hour after he was shot in the chest.

46. As the direct and proximate result of the above-mentioned unconstitutional actions of Defendant Craddock, Plaintiff's decedent suffered severe physical injury causing extreme pain, suffering and his death. As a direct and proximate result of Defendant Craddock's violations of decedent's constitutionally protected rights, Plaintiff is entitled to recover actual and punitive damages from Defendant Craddock as determined by a jury.

WHEREFORE, Plaintiff prays for a trial by jury and for the following:

- i. For a judgment against Defendant Craddock for violating the Fourth and Fourteenth Amendments to the United States Constitution as set forth in this Complaint;
- ii. Judgment against Defendant Craddock for actual and punitive damages in the amount to be determined by the jury;
- iii. To award Plaintiff reasonable attorney fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law;
- iv. Funeral expenses; and
- v. For all other and further relief as this Court deems just and proper.

McLEOD LAW GROUP, LLC
Post Office Box 21624
Charleston, South Carolina 29413
(843) 277-6655

/s/ W. Mullins McLeod, Jr.
W. Mullins McLeod, Jr.
Fed ID No.: 7142

James B. Moore III
Fed ID No.: 10844

May 14, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF COLLETON

CIVIL ACTION NO: 2014-CP-15-135

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

Plaintiff,

vs.

The South Carolina Municipal Insurance and
Risk Financing Fund ("SCMIRF"), The Town
of Cottageville, The Town of Cottageville
Police Department, and Randall Price,
individually,

Defendant.

**ANSWER AND COUNTERCLAIM ON
BEHALF OF DEFENDANT THE SOUTH
CAROLINA MUNICIPAL INSURANCE AND
RISK FINANCING FUND**

PATRICIA C. SPANT
COLLETON COUNTY
COMMON PLEAS
2014 MAY 15 AM 11:30

**TO: W. MULLINS McLEOD, JR., ESQUIRE, ATTORNEY FOR PLAINTIFF, AND
TO THE PLAINTIFF ABOVE NAMED:**

Defendant, The South Carolina Municipal Insurance and Risk Financing Fund, answering
the Plaintiff's Complaint herein, would respectfully show unto the Court that:

FOR A FIRST DEFENSE

1. This Defendant denies each and every allegation of the Plaintiff's Complaint not
hereinafter specifically admitted.
2. Paragraph 1 of the Plaintiff's Complaint is admitted upon information and belief.
3. With regard to Paragraph 2 of the Plaintiff's Complaint, Defendant South
Carolina Municipal Insurance and Risk Financing Fund admits only that it provides coverage to
Defendant The Town of Cottageville through a risk pooling agreement, and craves reference to
the language of the Contract itself.
4. Paragraph 3 is admitted upon information and belief.
5. Paragraph 4 is admitted upon information and belief.

6. With regard to Paragraph 5 of the Plaintiff's Complaint, this Defendant is without information to confirm or deny the allegations in Paragraph 5 and therefor strict proof is required thereof.

7. With regard to Paragraph 6 of the Plaintiff's Complaint, this Defendant admits only that it has been defending The Town of Cottageville and Randall Price in the underlying lawsuit.

8. Paragraph 7 of the Plaintiff's Complaint is denied and strict proof is required thereof.

9. Paragraph 8 of the Plaintiff's Complaint is admitted upon information and belief.

10. With regard to Paragraph 9 of the Plaintiff's Complaint, this Defendant craves reference to the underlying Complaint. The allegation that the Town of Cottageville and Officer Price denied liability in their Answer is admitted upon information and belief.

11. Paragraph 10 of the Plaintiff's Complaint is denied except to the extent that while the underlying tort proceeding was ongoing this Defendant received a request as to the amount of coverage available under the policy. This Defendant advised that the coverage limit is \$1 million per occurrence. The remaining allegations of Paragraph 10 are denied and strict proof is required thereof.

12. With regard to the allegations of Paragraph 11 of the Plaintiff's Complaint, this Defendant admits that it retained counsel to respond to a subpoena which was issued to it in the underlying litigation, which was quashed by order of the court in that action. This Defendant also craves reference to the letter which was attached as Exhibit 4. The remainder of the allegations of Paragraph 11 are denied and strict proof is required thereof.

13. Paragraph 12 of the Plaintiff's Complaint does not appear to require a response but to the extent a response is required, the allegations of Paragraph 12 are denied.

14. Paragraphs 13 and 14 of the Plaintiff's Complaint are denied.

15. With regard to Paragraph 15 of the Plaintiff's Complaint, this Defendant admits only that it continues to defend the Town of Cottageville and Officer Price in the underlying action.

16. Paragraph 16 of the Plaintiff's Complaint does not appear to require a response but to the extent a response is required, the allegations of Paragraph 16 are denied.

FOR A FIRST DEFENSE AS TO FIRST DECLARATION
(1 Million per Occurrence)

16. Paragraph 17 of the Plaintiff's Complaint does not appear to require a response.

17. With regard to Paragraphs 18 through 29 of the Plaintiff's Complaint, this Defendant craves reference to the language of its coverage contract with The Town of Cottageville. The remaining allegations of Paragraph 18 through 29 are denied.

FOR A SECOND DEFENSE

18. The Plaintiff's Complaint fails to state a claim upon which relief can be based and accordingly, this Defendant is entitled to judgment as a matter of law pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

19. The issues raised by Plaintiff are not ripe for judicial consideration in that they are premature and seek to involve the Court in entangling itself in a case or controversy which is contingent and abstract at this time, and therefore the case or controversy requirement is not met.

FOR A FOURTH DEFENSE
AND BY WAY OF A COUNTERCLAIM
FOR A DECLARATORY JUDGMENT

20. Defendant SCMIRF repeats, re-alleges, and incorporates the preceding paragraphs as if fully set forth herein verbatim.

21. The risk pooling agreement at issue (hereinafter "the Contract") covered The Town of Cottageville for certain risks under the insuring agreement, subject to certain terms, conditions, limitations and exclusions. A copy of the Contract is attached as Exhibit A. SCMIRFF craves reference to the Contract for all of the terms, conditions, and provisions therein and incorporates them by reference herein.

22. Section III of the Contract (General Liability Coverage) covers, among other things, "bodily injury" caused by an "occurrence." However, General Liability coverage is excluded when Law Enforcement Liability Coverage applies. (See Exh. A, ¶ J.24., p. 37.)

23. Section IV of the Contract (Law Enforcement Liability Coverage) provides as follows:

A. Coverage Agreements

1. Law Enforcement Employees Coverage

SCMIRF agrees, subject to the limitations, terms, and conditions hereunder mentioned to pay on behalf of the **Member or Covered Person(s)** for sums which the **Member or Covered Person(s)** shall be obligated to pay exclusively as **Money Damages** because of a **Wrongful Act** by a **Member**, a **Law Enforcement Employee**, or other **Covered Person(s)** while acting in conjunction with **Law Enforcement Employees**, which is committed while acting in both in the course and the scope of his or her official duties, as provided under the "South Carolina Tort Claims Act" where a South Carolina state law is involved, or while acting in both the course and the scope of a mutual aid agreement between governmental entities for the temporary sharing of **Law Enforcement Employees** or other **Covered Person(s)** under the terms and circumstances specified therein, and which results in:

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

Any liability covered by this Section IV must arise out of the performance of a **Covered Person's** duties to provide law enforcement or other SCMIRF approved activities pertaining thereto, or both, as declared in the **Application**.

This Section IV applies only to liability for **Money Damages** as defined in the General Definitions of Section I.

24. The Contract defines "Wrongful Act" on pp. 64-65 as:

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

25. The Contract defines "Occurrence" on p. 3 as:

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

Only when used to describe coverage limits on a per "**Occurrence**" basis or when otherwise describing whether an event or series of events constitutes one loss for coverage purposes or more than one loss, the word "**Occurrence**" means a covered event of the sort expressly described in the Insuring Agreement of the relevant Coverage Section pertaining to the loss or claim, whether an **Occurrence** (as defined in the opening paragraph of this General Definition or as defined in the separate definition, if any, appearing in the Definitions part of the relevant Coverage Section), a **Wrongful Act**, a **Loss**, or an **Offense** causing **Personal Injury** or **Advertising Injury**, as those terms are defined in the relevant Coverage Section. When used in that sense, the word 'occurrence' might not be emphasized.

26. The limit set forth on the Declarations page for Law Enforcement Liability coverage is \$1,000,000 Per Occurrence.

27. In the underlying tort action, a single injury-causing event is alleged, a shooting that occurred on May 16, 2011. A copy of the Complaint is attached as Exhibit B.

28. The Complaint in the underlying case alleges a single "occurrence" as defined in the Contract.

29. Accordingly, SCMIRF is entitled to a declaration that the applicable liability limit is a single "per occurrence" limit, or \$1,000,000.

WHEREFORE, this Defendant requests that this Honorable Court dismiss Plaintiff's action with costs. SCMIRF further requests that this honorable Court inquire into these matters and declare that the applicable coverage limit is a single "per occurrence" limit of \$1,000,000, together with its costs and disbursements incurred and such other and further relief as the Court may deem just and proper.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.



J. R. Murphy, Esquire
Timothy J. Newton, Esquire
4406-B Forest Drive (29204)
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorneys for SCMIRF

Columbia, South Carolina
May 8, 2014

pc

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

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

Plaintiff,)

vs.)

SOUTH CAROLINA MUNICIPAL)
INSURANCE AND RISK)
FINANCING FUND ("SCMIRF"))
THE TOWN OF COTTAGEVILLE,)
THE TOWN OF COTTAGEVILLE)
POLICE DEPARTMENT and)
RANDALL PRICE, individually,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2014-CP-15-135

REPLY TO COUNTERCLAIM

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2014 JUN 11 AM 11:35

The Plaintiff, Ashley Reeves, as Personal Representative of the Estate of Albert Carl Reeves, hereby replies to the allegations of the Counterclaim of Defendant South Carolina Municipal Insurance and Risk Financing Fund (hereinafter referred to as "Defendant SCMIRF") set forth in its Answer filed on or about May 13, 2014 as follows:

1. Plaintiff denies each and every allegation of the Counterclaim not hereinafter specifically admitted.

2. With regard to Paragraphs 21 through 25, the Plaintiff admits that Defendant SCMIRF has cited to certain portions of the 2011 Coverage Contract, and craves reference to the language of the 2011 Coverage Contract itself. The remaining allegations of Paragraphs 21 through 25 are denied.

3. With regard to Paragraph 26, the Plaintiff admits that the Declarations page for Law Enforcement Liability coverage states \$1,000,000 Per Occurrence, and craves reference to the language of the 2011 Coverage Contract itself.

4. The allegations in Paragraph 27, 28, and 29 are denied and strict proof is required thereof.

**FURTHER REPLYING AS AN AFFIRMATIVE DEFENSE THE PLAINTIFF
ALLEGES:
(Failure to State a Claim)**

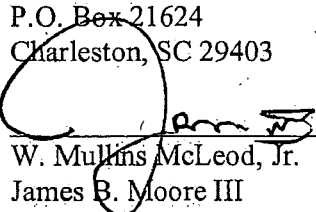
5. The Plaintiff realleges and incorporates by reference all allegations of her Complaint and all responses in the Paragraphs above as if fully repeated herein verbatim.

6. Defendant has failed to state facts sufficient to constitute a cause of action under its Counterclaim.

WHEREFORE, having fully replied to the Counterclaim of Defendant SCMIRF herein, Plaintiff respectfully requests that this Court issue an Order:

- a. Dismissing the Defendant's Counterclaim;
- b. Awarding Plaintiff any relief requested herein and all relief requested in her Complaint;
- c. Awarding Plaintiff such other relief as the Court deems just and proper.

MCLEOD LAW GROUP, LLC
P.O. Box 21624
Charleston, SC 29403



W. Mullins McLeod, Jr.
James B. Moore III
Attorneys for Plaintiff

June 10, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 2014-CP-15-135

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

Plaintiff,

vs.

The South Carolina Municipal Insurance and
Risk Financing Fund ("SCMIRF"), The Town
of Cottageville, The Town of Cottageville
Police Department, and Randall Price,
individually,

Defendant.

**ANSWER AND
AMENDED COUNTERCLAIM
ON BEHALF OF DEFENDANT
THE SOUTH CAROLINA MUNICIPAL
INSURANCE AND RISK FINANCING FUND**

2014 JUN 19 PM 1:31
CLERK OF COURT
JANICE L. BROWN
CLERK OF COURT
JANICE L. BROWN

**TO: W. MULLINS McLEOD, JR., ESQUIRE, ATTORNEY FOR PLAINTIFF, AND
TO THE PLAINTIFF ABOVE NAMED:**

Defendant, The South Carolina Municipal Insurance and Risk Financing Fund, answering
the Plaintiff's Complaint herein, would respectfully show unto the Court that:

FOR A FIRST DEFENSE

1. This Defendant denies each and every allegation of the Plaintiff's Complaint not
hereinafter specifically admitted.

2. Paragraph 1 of the Plaintiff's Complaint is admitted upon information and belief.

3. With regard to Paragraph 2 of the Plaintiff's Complaint, Defendant South
Carolina Municipal Insurance and Risk Financing Fund admits only that it provides coverage to
Defendant The Town of Cottageville through a risk pooling agreement, and craves reference to
the language of the Contract itself.

4. Paragraph 3 is admitted upon information and belief.

5. Paragraph 4 is admitted upon information and belief.

6. With regard to Paragraph 5 of the Plaintiff's Complaint, this Defendant is without information to confirm or deny the allegations in Paragraph 5 and therefor strict proof is required thereof.

7. With regard to Paragraph 6 of the Plaintiff's Complaint, this Defendant admits only that it has been defending The Town of Cottageville and Randall Price in the underlying lawsuit.

8. Paragraph 7 of the Plaintiff's Complaint is denied and strict proof is required thereof.

9. Paragraph 8 of the Plaintiff's Complaint is admitted upon information and belief.

10. With regard to Paragraph 9 of the Plaintiff's Complaint, this Defendant craves reference to the underlying Complaint. The allegation that the Town of Cottageville and Officer Price denied liability in their Answer is admitted upon information and belief.

11. Paragraph 10 of the Plaintiff's Complaint is denied except to the extent that while the underlying tort proceeding was ongoing this Defendant received a request as to the amount of coverage available under the policy. This Defendant advised that the coverage limit is \$1 million per occurrence. The remaining allegations of Paragraph 10 are denied and strict proof is required thereof.

12. With regard to the allegations of Paragraph 11 of the Plaintiff's Complaint, this Defendant admits that it retained counsel to respond to a subpoena which was issued to it in the underlying litigation, which was quashed by order of the court in that action. This Defendant also craves reference to the letter which was attached as Exhibit 4. The remainder of the allegations of Paragraph 11 are denied and strict proof is required thereof.

13. Paragraph 12 of the Plaintiff's Complaint does not appear to require a response but to the extent a response is required, the allegations of Paragraph 12 are denied.

14. Paragraphs 13 and 14 of the Plaintiff's Complaint are denied.

15. With regard to Paragraph 15 of the Plaintiff's Complaint, this Defendant admits only that it continues to defend the Town of Cottageville and Officer Price in the underlying action.

16. Paragraph 16 of the Plaintiff's Complaint does not appear to require a response but to the extent a response is required, the allegations of Paragraph 16 are denied.

FOR A FIRST DEFENSE AS TO FIRST DECLARATION
(1 Million per Occurrence)

16. Paragraph 17 of the Plaintiff's Complaint does not appear to require a response.

17. With regard to Paragraphs 18 through 29 of the Plaintiff's Complaint, this Defendant craves reference to the language of its coverage contract with The Town of Cottageville. The remaining allegations of Paragraph 18 through 29 are denied.

FOR A SECOND DEFENSE

18. The Plaintiff's Complaint fails to state a claim upon which relief can be based and accordingly, this Defendant is entitled to judgment as a matter of law pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

19. The issues raised by Plaintiff are not ripe for judicial consideration in that they are premature and seek to involve the Court in entangling itself in a case or controversy which is contingent and abstract at this time, and therefore the case or controversy requirement is not met.

FOR A FOURTH DEFENSE
AND BY WAY OF A COUNTERCLAIM
FOR A DECLARATORY JUDGMENT

20. Defendant SCMIRF repeats, re-alleges, and incorporates the preceding paragraphs as if fully set forth herein verbatim.

21. The risk pooling agreement at issue (hereinafter "the Contract") covered The Town of Cottageville for certain risks under the insuring agreement, subject to certain terms, conditions, limitations and exclusions. A copy of the Contract is attached as Exhibit A. SCMIRF craves reference to the Contract for all of the terms, conditions, and provisions therein and incorporates them by reference herein.

22. Section III of the Contract (General Liability Coverage) covers, among other things, "bodily injury" caused by an "occurrence." However, General Liability coverage is excluded when Law Enforcement Liability Coverage applies. (See Exh. A, ¶ J.24., p. 37.)

23. Section IV of the Contract (Law Enforcement Liability Coverage) provides as follows:

A. Coverage Agreements

1. Law Enforcement Employees Coverage

SCMIRF agrees, subject to the limitations, terms, and conditions hereunder mentioned to pay on behalf of the **Member or Covered Person(s)** for sums which the **Member or Covered Person(s)** shall be obligated to pay exclusively as **Money Damages** because of a **Wrongful Act** by a **Member, a Law Enforcement Employee, or other Covered Person(s)** while acting in conjunction with **Law Enforcement Employees**, which is committed while acting in both in the course and the scope of his or her official duties, as provided under the "South Carolina Tort Claims Act" where a South Carolina state law is involved, or while acting in both the course and the scope of a mutual aid agreement between governmental entities for the temporary sharing of **Law Enforcement Employees** or other **Covered Person(s)** under the terms and circumstances specified therein, and which results in:

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

Any liability covered by this Section IV must arise out of the performance of a **Covered Person's** duties to provide law enforcement or other SCMIRF approved activities pertaining thereto, or both, as declared in the **Application**.

This Section IV applies only to liability for **Money Damages** as defined in the General Definitions of Section I.

24. The Contract defines "Wrongful Act" on pp. 64-65 as:

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

25. The Contract defines "Occurrence" on p. 3 as:

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

Only when used to describe coverage limits on a per "**Occurrence**" basis or when otherwise describing whether an event or series of events constitutes one loss for coverage purposes or more than one loss, the word "**Occurrence**" means a covered event of the sort expressly described in the Insuring Agreement of the relevant Coverage Section pertaining to the loss or claim, whether an **Occurrence** (as defined in the opening paragraph of this General Definition or as defined in the separate definition, if any, appearing in the Definitions part of the relevant Coverage Section), a **Wrongful Act**, a **Loss**, or an **Offense** causing **Personal Injury** or **Advertising Injury**, as those terms are defined in the relevant Coverage Section. When used in that sense, the word 'occurrence' might not be emphasized.

26. Furthermore, the non-duplication clause in Section I.C.9. of the Contract expressly provides that "[a] single Coverage Limit applies to all claims or suits involving substantially the same injury or damage."

27. The limit set forth on the Declarations page for Law Enforcement Liability coverage is \$1,000,000 Per Occurrence.

28. In the underlying tort action, a single injury-causing event is alleged, a shooting that occurred on May 16, 2011. A copy of the Complaint is attached as Exhibit B.

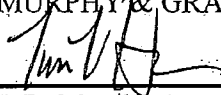
29. The Complaint in the underlying case alleges a single "occurrence" as defined in the Contract.

30. Accordingly, SCMIRF is entitled to a declaration that the applicable liability limit is a single "per occurrence" limit, or \$1,000,000.

WHEREFORE, this Defendant requests that this Honorable Court dismiss Plaintiff's action with costs. SCMIRF further requests that this honorable Court inquire into these matters and declare that the applicable coverage limit is a single "per occurrence" limit of \$1,000,000, together with its costs and disbursements incurred and such other and further relief as the Court may deem just and proper.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.



J. R. Murphy, Esquire
Timothy J. Newton, Esquire
4406-B Forest Drive (29204)
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorneys for SCMIRF

Columbia, South Carolina
June 16, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

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

Plaintiff,)

vs.)

SOUTH CAROLINA MUNICIPAL)
INSURANCE AND RISK)
FINANCING FUND ("SCMIRF"))
THE TOWN OF COTTAGEVILLE,)
THE TOWN OF COTTAGEVILLE)
POLICE DEPARTMENT and)
RANDALL PRICE, individually,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2014-CP-15-135

REPLY TO AMENDED COUNTERCLAIM

2014 JUN 26 AM 11:28
PATRICIA J. GARY
CLERK OF COURT
COMMON PLEAS

The Plaintiff, Ashley Reeves, as Personal Representative of the Estate of Albert Carl Reeves, hereby replies to the allegations of the Amended Counterclaim of Defendant South Carolina Municipal Insurance and Risk Financing Fund (hereinafter referred to as "Defendant SCMIRF") set forth in its Answer filed on or about June 16, 2014 as follows:

1. Plaintiff denies each and every allegation of the Counterclaim not hereinafter specifically admitted.
2. With regard to Paragraphs 21 through 26, the Plaintiff admits that Defendant SCMIRF has cited to certain portions of the 2011 Coverage Contract, and craves reference to the language of the 2011 Coverage Contract itself. The remaining allegations of Paragraphs 21 through 26 are denied.

3. With regard to Paragraph 27, the Plaintiff admits that the Declarations page for Law Enforcement Liability coverage states \$1,000,000 Per Occurrence, and craves reference to the language of the 2011 Coverage Contract itself.

4. The allegations in Paragraph 28, 29, and 30 are denied and strict proof is required thereof.

**FURTHER REPLYING AS AN AFFIRMATIVE DEFENSE THE PLAINTIFF
ALLEGES:
(Failure to State a Claim)**

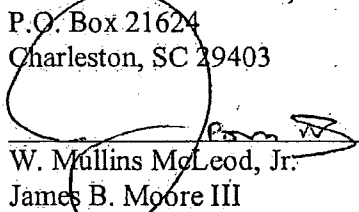
5. The Plaintiff realleges and incorporates by reference all allegations of her Complaint and all responses in the Paragraphs above as if fully repeated herein verbatim.

6. Defendant has failed to state facts sufficient to constitute a cause of action under its Counterclaim.

WHEREFORE, having fully replied to the Counterclaim of Defendant SCMIRF herein, Plaintiff respectfully requests that this Court issue an Order:

- a. Dismissing the Defendant's Counterclaim;
- b. Awarding Plaintiff any relief requested herein and all relief requested in her Complaint;
- c. Awarding Plaintiff such other relief as the Court deems just and proper.

MCLEOD LAW GROUP, LLC
P.O. Box 21624
Charleston, SC 29403


W. Mullins McLeod, Jr.
James B. Moore III
Attorneys for Plaintiff

June 23, 2014
Charleston, South Carolina

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Civil Action No. 2013-CP-15-135

AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT
(Non-Jury)

(Non-Jury)

Defendant.

Defendant.

JURISDICTION

3. Ashley Reeves [Reeves] is the duly appointed personal representative of the Estate of Albert Carl "Bert" Reeves, a deceased former mayor of the Town of Cottageville.

4. Reeves brought the suit styled *Ashley Reeves, as Personal Representative for the Estate of Albert Carl "Bert" Reeves vs. The Town of Cottageville, the Town of Cottageville Police Department, and Randall Price, individually*, in the South Carolina Court of Common Pleas for Colleton County (Civil Action No. 2012-CP-15-695) [the Cottageville Action], seeking damages for negligence and pursuant to Title 42 of the United States Code Section 1983¹ related to the shooting and death of Bert Reeves by Randall Price. Price was a police officer employed by the Town of Cottageville who was acting within the scope of his employment when he shot Reeves. The Town of Cottageville and Price were defended in the Cottageville Action by attorneys retained by SCMIRF as part of a Coverage Contract related to an Intergovernmental Agreement.

5. The Cottageville Action was subsequently removed to the United States District Court for the District of South Carolina, Charleston Division (Civil Action No. 2:12-02765-DCN) [the Federal lawsuit] and Reeves obtained a judgment in the sum of Ninety Seven Million Five Hundred Thousand Dollars and No Cents (\$97,500,000.00) against the defendants in that action, Cottageville and Price. Of this amount, actual damages for all claims was the sum of Seven Million Five Hundred Thousand Dollars and No Cents (\$7,500,000.00). Exhibit 1, Attachment A.

6. Cottageville was at times relevant to this Complaint the employer of Price, a police officer for the Town of Cottageville.

7. On information and belief, Price is a resident of Colleton County, South Carolina. At all times relevant to the lawsuit, Price was an employee of Cottageville in the Police Department.

¹ Initially, the action also included an assault and battery claim, but it was subsequently withdrawn prior to judgment.

8. On information and belief, John Craddock is a resident of Colleton County, South Carolina. At all times relevant to the lawsuit, Craddock was an employee of Cottageville in the Police Department.

9. This Court has jurisdiction over the parties and the causes of action asserted pursuant to the Declaratory Judgments Act, S.C. Code Ann. § 15-53-10 *et seq.* (Law. Code 1976), as amended, and its equitable powers.

FACTUAL ALLEGATIONS & LEGAL ISSUES

10. Upon information and belief, SCMIRF will claim it is an agency established by municipalities of the State of South Carolina as a joint interlocal agency to operate a fund for liability risk sharing.

11. Upon information and belief, SCMIRF will further claim it was established in accordance with Article VIII, section 13 of the South Carolina Constitution, and S.C. Code Ann. § 15-78-140(b)(4).

12. It is undisputed that Cottageville is an entity that entered into the Intergovernmental Agreement and is a Member/Participant in SCMIRF. A copy of the Intergovernmental Agreement executed on behalf of Cottageville is attached to the Stipulations of Fact and Issues, which is attached hereto as Exhibit 1, Attachment C and incorporated herein by reference.

13. During the period of January 1, 2011 to January 1, 2012, SCMIRF provided coverage to Cottageville for certain risks subject to certain terms, conditions, limitations and exclusions as set forth in the 2011 Coverage Contract between SCMIRF and Cottageville [the Contract or Coverage Contract]. A copy of the Contract is attached to the

Stipulations of Fact and Issues and is incorporated herein by reference. Exhibit 1, Attachment D.

14. The Federal lawsuit which resulted in the \$97.5 Million judgment was based on bodily injuries and/or personal injuries relating to the shooting death of Bert Reeves by Price while Price was, by stipulation, acting in the scope of his employment as a Cottageville police officer.

15. During the Federal lawsuit, Reeves alleged, and SCMIRF denied, that SCMIRF had acted in bad faith in failing to reasonably settle the Cottageville Action prior to trial.

16. The Parties entered into a comprehensive settlement of the Federal lawsuit. The settlement involved a primary payment made by SCMIRF and a reinsurer. The settlement also involved two contingent payments that are payable depending on the answers to two stipulated legal questions, which, in turn, are based on stipulated facts. See Exhibit 1. The legal questions raised by the Parties address the scope of such coverage.

17. The specific questions posed by the Parties for this Court are:

- (1) Do the claims made and the verdict rendered against the Town of Cottageville and Randall Price, relating to the hiring, retention, supervision and shooting death of Bert Reeves result in there being more than \$1,000,000.00 in indemnity coverage available under the terms of the SCMIRF Coverage Contract with the Town of Cottageville with respect to all such claims including the claims made against John Craddock² in the separately styled action referenced above? Reeves asserts there is more than one occurrence based on the facts and claims and the jury's verdict relating to the hiring, retention, supervision and shooting death of Bert Reeves, and, thus, there is more than \$1,000,000.00 in indemnity coverage available under the Coverage Contract. SCMIRF asserts the Coverage Contract is limited to a total of \$1,000,000.00 in indemnity coverage.**

² An additional federal action was brought by Reeves against Craddock.

- (2) Allegations have been made that SCMIRF has engaged in bad faith with regard to its handling of the claims relating to the shooting and death of Bert Reeves. SCMIRF denies it has engaged in bad faith. SCMIRF was informed that any bad faith claims that exist in favor of Cottageville would be assigned to Reeves. Would a tort claim for bad faith brought against SCMIRF be subject to the South Carolina Tort Claims Act (S.C. Code. Ann. § 15-78-10 *et seq.*), assuming such a claim were otherwise valid? SCMIRF asserts it would. Reeves asserts otherwise.

18. Due to the difference of agreement on the two remaining legal issues, Reeves seeks declarations from the Court through this Amended Complaint.

19. The Parties stipulated and agreed that this case should be concluded by rulings on the two legal issues alone without the need for this Court to make specific findings of fact.

20. Further, the Parties have stipulated to the necessary facts, see Exhibit 1, and also agree there is no need for discovery.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment – Coverage Under Contract
Not Limited to \$1,000,000.00)

21. Reeves incorporates by reference the allegations set forth in the preceding paragraphs as if fully restated herein.

22. The Parties stipulated that they would litigate the issue of whether Reeves' claims made against Cottageville, Price, and Craddock relating to the shooting and death of Bert Reeves result in there being more than \$1,000,000.00 in indemnity coverage available under the terms of the SCMIRF Coverage Contract with respect to all such claims.

23. Reeves asserts there is more than one occurrence based on the facts and claims relating to the hiring, retention, supervision and shooting death of Bert Reeves, and, thus, there is more than \$1,000,000.00 in indemnity coverage available under the Coverage Contract.

24. Upon information and belief, SCMIRF contends that the Contract provides for only \$1,000,000.00 in the aggregate.

25. Based on the foregoing, a substantial controversy exists between the parties having adverse legal interests to warrant the issuance of a declaratory judgment by this Court.

26. Reeves seeks a declaration from this Court based on the stipulated facts that, as a matter of law, the Coverage Contract provides \$1,000,000.00 for each independent, separate act of negligence or actionable conduct against Cottageville, Price and Craddock.

FOR A SECOND CAUSE OF ACTION

**(Declaratory Judgment – The South Carolina Tort Claims Act
Does Not Apply to Claims Asserted Against SCMIRF of Bad Faith in Handling the
Claims Relating to the Shooting Death of Reeves)**

27. Reeves incorporates by reference the allegations set forth in the preceding paragraphs as if fully restated herein.

28. Reeves, in the underlying Federal lawsuit, asserted that SCMIRF engaged in bad faith with regard to its handling of the claims relating to the shooting and death of Bert Reeves.

29. Upon information and belief, Cottageville informed SCMIRF it intended to assign any bad faith claims in its favor that may exist against SCMIRF to Reeves.

30. Upon information and belief, SCMIRF contends that to the extent that any action for bad faith can be asserted against it, any such action could only be brought pursuant to the provisions of the South Carolina Tort Claims Act.

31. Reeves contends that the South Carolina Tort Claims Act does not apply to a bad faith claim against SCMIRF.

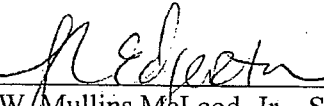
32. A substantial controversy exists between the parties having adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

33. Reeves seeks a declaration from this Court that a bad faith claim against SCMIRF is not subject to the South Carolina Tort Claims Act.

WHEREFORE, Reeves prays that this Court inquire into this matter and enter an Order declaring the rights of the Parties as follows:

- a. Grant a Declaratory Judgment that the Contract provides for indemnity coverage of \$1,000,000.00 for each occurrence and more than one occurrence exists in the shooting death of Bert Reeves;
- b. Grant a Declaratory Judgment that any bad faith claim brought against SCMIRF relating to the claims handling of a suit against an insured covered by its Contract with Cottageville is not governed by the South Carolina Tort Claims Act.

MCLEOD LAW GROUP, LLC

By: 
W. Mullins McLeod, Jr., SC Bar No. 14148
Jacqueline LaPan Edgerton, SC Bar No. 100920
Post Office Box 21624
Charleston, SC 29403
(843) 277-6655

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

Charleston, South Carolina

October 16, 2015

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Civil Action No. 2013-CP-15-135

STIPULATION OF FACTS AND ISSUES

vs.

Defendant.

1. Ashley Reeves [Reeves] is the duly appointed personal representative of the Estate of Albert Carl “Bert” Reeves.
2. The Town of Cottageville [Cottageville] is a South Carolina municipality located in Colleton County, South Carolina. Cottageville was, at all times relevant, the employer of Randall Price [Price] and John Craddock [Craddock], as policemen for the Town of Cottageville.
3. On May 16, 2011, Price, while acting within the scope of his employment as a Cottageville police officer, shot and killed Albert Carl “Bert” Reeves.
4. Reeves held a judgment obtained in the case of *Ashley Reeves, as Personal Representative of the Estate of Carl Albert Reeves v. Town of Cottageville and Randall Price*, individually in the United States District Court for the District of South Carolina, Charleston Division (Civil Action No. 2:12-02765-DCN) [the judgment], in the sum of Ninety Seven Million Five Hundred Thousand Dollars and No Cents (\$97,500,000.00) against the defendants

in that action, the Town of Cottageville and Randall Price. The Verdict Form and Judgment from the Federal lawsuit are attached hereto as Exhibit A.

5. In addition to the judgment, Reeves claims that Craddock was negligent with regard to the death of Bert Reeves due to certain actions or omissions attributable to him in the scope of his employment as a Cottageville police officer, and these claims were the subject of an additional federal court lawsuit styled *Ashley Reeves as Personal Representative for the Estate of Albert Carl Reeves, Plaintiff v. John Craddock, individually, Defendant*, C/A no: 2:14-cv-01918-DCN.

6. The South Carolina Municipal Insurance and Risk Financing Fund [SCMIRF] has Bylaws, which are attached as Exhibit B. SCMIRF asserts it is an unincorporated voluntary, self-insurance pool in the State of South Carolina.

7. Members participating in SCMIRF have entered into an Intergovernmental Agreement. Cottageville is among the municipalities that entered into the Intergovernmental Agreement and is a member/participant in SCMIRF. A copy of the Intergovernmental Agreement executed on behalf of Cottageville is attached as Exhibit C.

8. During the period of January 1, 2011 to January 1, 2012, SCMIRF provided coverage to Cottageville for certain risks as set forth in the "2011 Coverage Contract" between SCMIRF and Cottageville [the Contract], subject to all terms, conditions, limitations and exclusions set forth therein. A copy of the Contract is attached as Exhibit D. The Contract represents the complete agreement between SCMIRF and Cottageville regarding coverage.

9. The case of *Ashley Reeves, as Personal Representative of the Estate of Carl Albert Reeves v. Town of Cottageville and Randall Price, individually* in the United States District Court for the District of South Carolina, Charleston Division (Civil Action No. 2:12-

02765-DCN) has been settled, but a material term of the settlement is that there be a final appellate court decision regarding the two issues listed below in litigation between the Petitioner and Respondent.

10. The Parties agreed that facts exist to warrant the South Carolina Supreme Court's exercise of its powers of Original Jurisdiction over this matter; however the Court denied the Petition for Certiorari. Therefore, Plaintiff now has filed her Amended Complaint for Declaratory Judgments with this Honorable Court.

11. The Parties agree that no other facts are necessary for the Court to answer the stipulated issues, that no discovery is needed for the case, and that the stipulated issues are purely legal in nature.

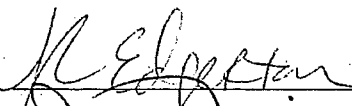
12. The Parties agree that the resolution of the stipulated issues is a part of the settlement of the litigation involving them referenced herein, but that the stipulated issues will also materially affect SCMIRF and litigation relating to members of SCMIRF in other future matters.

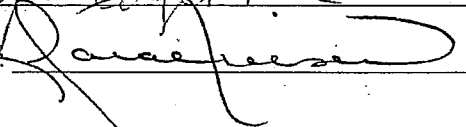
Stipulated Issues

Issue 1: Do the claims made and the verdict rendered against the Town of Cottageville and Randall Price, relating to the hiring, retention, supervision and shooting death of Bert Reeves result in there being more than \$1,000,000.00 in indemnity coverage available under the terms of the SCMIRF Coverage Contract with the Town of Cottageville with respect to all such claims including the claims made against John Craddock in the separately styled action referenced above? Reeves asserts there is more than one occurrence based on the facts and claims and the jury's verdict relating to the hiring, retention, supervision and shooting death of Bert Reeves, and, thus, there is more than \$1,000,000.00 in indemnity coverage available under

the Coverage Contract. SCMIRF asserts the Coverage Contract is limited to a total of \$1,000,000.00 in indemnity coverage.

Issue 2: Allegations have been made that SCMIRF has engaged in bad faith with regard to its handling of the claims relating to the shooting and death of Bert Reeves. SCMIRF denies it has engaged in bad faith. SCMIRF was informed that any bad faith claims that exist in favor of Cottageville would be assigned to Reeves. Would a tort claim for bad faith brought against SCMIRF be subject to the South Carolina Tort Claims Act (S.C. Code. Ann. § 15-78-10 *et seq.*), assuming such a claim were otherwise valid? Petitioner asserts it would. Respondent Reeves asserts otherwise.

For Reeves: 

For SCMIRF: 

October 1, 2015

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

ASHLEY REEVES, *as Personal*
Representative of the Estate of Carl Albert
Reeves,

Plaintiff,

vs.

TOWN OF COTTAGEVILLE, *et al.,*

Defendants.

No. 2:12-cv-02765-DCN

VERDICT FORM 1

You are instructed to answer the following questions. You must all agree on your answer to each question and the foreperson must sign the completed form on the signature line.

WE, THE JURY, UNANIMOUSLY FIND AS FOLLOWS:

NEGLIGENCE

Question No. 1: Has plaintiff Ashley Reeves proved by a preponderance of the evidence that defendant Randall Price was negligent and that his negligence proximately caused Bert Reeves' death?

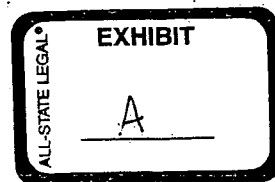
YES ☒ NO ☐

Question No. 2: Have both of the defendants proved by a preponderance of the evidence that Bert Reeves was negligent and that his negligence proximately caused his own death?

YES ☐ NO ☒

*If you answered "Yes" to Question No. 1 and Question No. 2, answer Question Nos. 3 and 4.
If you answered "No" to either Question No. 1 or Question No. 2, move on to Question No. 5.*

ROA_0087



Question No. 3: What percentage of Bert Reeves' injuries are attributable to Randall Price's negligence?

___%

Question No. 4: What percentage of Bert Reeves' injuries are attributable to Bert Reeves' own negligence?

___%

VIOLATION OF CONSTITUTIONAL RIGHTS UNDER SECTION 1983

Question No. 5: Has plaintiff Ashley Reeves proved by a preponderance of the evidence that defendant Randall Price violated Bert Reeves' constitutional right to be free from the use of excessive force?

YES ☒ NO ☐

Question No. 6: Has plaintiff Ashley Reeves proved by a preponderance of the evidence that defendant Randall Price violated Bert Reeves' constitutional right to be free from unnecessary seizure?

YES ☒ NO ☐

SELF-DEFENSE

Question No. 7: Has defendant Randall Price proven, by a preponderance of the evidence, that he acted within his lawful right to self-defense?

YES ☐ NO ☒

If you answered "Yes" to Question Nos. 1, 5 or 6 and answered "No" to Question No. 7, go to Verdict Form 2 and then Verdict Form 3. If you answered "Yes" to question No. 7, do not go to Verdict Form 2 or 3.

Please sign and date the verdict form.

10/15/14
DATE

S/FOREPERSON
SIGNATURE OF FOREPERSON

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

ASHLEY REEVES, *as Personal*
Representative of the Estate of Carl Albert
Reeves,

Plaintiff,

vs.

TOWN OF COTTAGEVILLE, *et al.*,

Defendants.

No. 2:12-cv-02765-DCN

VERDICT FORM 2

You are instructed to answer the following questions. You must all agree on your answer to each question and the foreperson must sign the completed form on the signature line.

WE, THE JURY, UNANIMOUSLY FIND AS FOLLOWS:

NEGLIGENT HIRING, SUPERVISION, RETENTION, AND TRAINING

Question No. 8: Has plaintiff Ashley Reeves proved by a preponderance of the evidence that defendant Town of Cottageville was negligent in its hiring of defendant Randall Price and that such negligence proximately caused Bert Reeves' death?

YES ☒ NO ☐

Question No. 9: Has plaintiff Ashley Reeves proved by a preponderance of the evidence that defendant Town of Cottageville was negligent in its supervision of defendant Randall Price and that such negligence proximately caused Bert Reeves' death?

YES ☒ NO ☐

Question No. 10: Has plaintiff Ashley Reeves proved by a preponderance of the evidence that defendant Town of Cottageville was negligent in its retention of defendant Randall Price and that such negligence proximately caused Bert Reeves' death?

YES ☒ NO ☐

Question No. 11: Has plaintiff Ashley Reeves proved by a preponderance of the evidence that defendant Town of Cottageville was negligent in its failure to train defendant Randall Price and that such negligence proximately caused Bert Reeves' death?

YES ☒ NO ☐

Question No. 12: Has plaintiff Ashley Reeves proved by a preponderance of the evidence that defendant Town of Cottageville was grossly negligent in its hiring, supervising, failing to train, or retaining of defendant Randall Price and that such gross negligence proximately caused Bert Reeves' death?

YES ☒ NO ☐

MUNICIPAL LIABILITY UNDER SECTION 1983

Question No. 13: Has plaintiff Ashley Reeves proved by a preponderance of the evidence that defendant Randall Price's violation of Bert Reeves' constitutional rights was done pursuant to a custom, policy, ordinance, regulation, or decision of defendant Town of Cottageville or as a result of defendant Town of Cottageville's deliberate indifference to the use of excessive force by defendant Randall Price?

YES ☒ NO ☐

Question No. 14: Has plaintiff Ashley Reeves proved by a preponderance of the evidence that defendant Town of Cottageville was deliberately indifferent to the constitutional rights of its citizens in hiring defendant Randall Price and that such deliberate indifference caused Bert Reeves' death?

YES ☒ NO ☐

Question No. 15: Has plaintiff Ashley Reeves proved by a preponderance of the evidence that defendant Town of Cottageville was deliberately indifferent to the constitutional rights of its citizens in failing to properly train defendant Randall Price and that such deliberate indifference caused Bert Reeves' death?

YES ☒ NO ☐

If you answered "Yes" to Question Nos. 1, 5, 6, 8, 9, 10, 11, 12, 13, 14, or 15 go to Verdict Form 3.

Please sign and date the verdict form.

10/15/14
DATE

S/FOREPERSON
SIGNATURE OF FOREPERSON

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

ASHLEY REEVES, as Personal
Representative of the Estate of Carl Albert
Reeves,

Plaintiff,

vs.

TOWN OF COTTAGEVILLE, et al.,

Defendants.

No. 2:12-cv-02765-DCN

VERDICT FORM 3

You are instructed to answer the following questions. You must all agree on your answer to each question and the foreperson must sign the completed form on the signature line.

WE, THE JURY, UNANIMOUSLY FIND AS FOLLOWS:

DAMAGES

Question No. 16: What amount, if any, of actual or compensatory damages has plaintiff Ashley Reeves proved, by a preponderance of the evidence, that she is entitled to recover from defendant Randall Price and/or defendant Town of Cottageville? Answer in dollars and cents.

\$ SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS

If you answered "Yes" to Question No. 16, answer Question Nos. 17 and 18. If you answered "No" to Question No. 16, do not answer Question Nos. 17 or 18.

Question No. 17: If you determine plaintiff Ashley Reeves is entitled to recover actual damages, did plaintiff prove by clear and convincing evidence that defendant Randall Price's conduct rose to the level of willful, wanton or reckless and that the conduct included a "consciousness of wrongdoing?" If so, what amount of punitive damages is plaintiff Ashley Reeves entitled to recover from defendant Randall Price? Answer in dollars and cents.

\$ THIRTY MILLION DOLLARS

Question No. 18: If you determine plaintiff Ashley Reeves is entitled to recover actual damages, did plaintiff prove by clear and convincing evidence that defendant the Town of Cottageville's conduct rose to the level of willful, wanton, or reckless and the conduct involves a "consciousness of wrongdoing?" If so, what amount of punitive damages is plaintiff Ashley Reeves entitled to recover from defendant Town of Cottageville? Answer in dollars and cents.

\$ SIXTY MILLION DOLLARS

Please sign and date the verdict form.

10/15/14

DATE

s/ Foreperson

SIGNATURE OF FOREPERSON

AO 450 (SCD 04/2010) Judgment in a Civil Action

UNITED STATES DISTRICT COURT

for the
District of South Carolina

Ashley Reeves as Personal Representative of the
Estate of Carl Albert Reeves,

Plaintiff

v.

Town of Cottageville, et al.,

Defendant

Civil Action No. 2:12-cv-02765-DCN

JUDGMENT IN A CIVIL ACTION

The court has ordered that (check one):

☐ the plaintiff (name) _____ recover from the defendant (name) _____ the amount of _____ dollars (\$ ____), which includes prejudgment interest at the rate of ____ %, plus postjudgment interest at the rate of ____ %, along with costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant (name) _____ recover costs from the plaintiff (name) _____.

☒ other: the plaintiff, Ashley Reeves, shall recover from the defendant, Randall Price and/or defendant Town of Cottageville, actual damages in the amount of seven million five hundred thousand and .00/100 dollars (\$7,500,000.00). Plaintiff, Ashley Reeves, shall recover from defendant, Randall Price, punitive damages in the amount of thirty million and .00/100 dollars (\$30,000,000.00). Plaintiff, Ashley Reeves, shall recover from defendant, Town of Cottageville, punitive damages in the amount of sixty million and .00/100 dollars (\$60,000,000.00).

This action was (check one):

☒ tried by a jury, the Honorable David C. Norton, U.S. District Judge presiding, and the jury has rendered a verdict.

☐ tried by the Honorable _____ presiding, without a jury and the above decision was reached.

☐ decided by the Honorable _____

Date: October 21, 2014

CLERK OF COURT

s/C. Murray

Signature of Clerk or Deputy Clerk

ROA_0094

Adopted - January 31, 1991
Amended - June 8, 1995
Amended - September 23, 1997

SC MUNICIPAL INSURANCE AND RISK FINANCING FUND

BYLAWS

I. Creation and Purpose

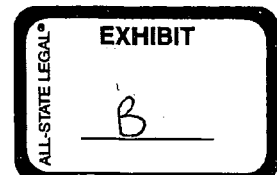
The SC Municipal Insurance and Risk Financing Fund (SCMIRF) is a Fund created by and comprised of South Carolina municipalities and their agencies which are parties to an Intergovernmental Agreement which establishes a pool for the payment of property losses and liability claims on behalf of its members pursuant to the provisions of the Code of Laws of South Carolina, 1976, Section 15-78-140.

II. Membership

Membership in SCMIRF shall be limited to Municipal government units, institutions or agencies in the State of South Carolina and shall be in accordance with the terms of the Intergovernmental Agreement.

III. Board of Trustees

1. There shall be a Board of nine (9) Trustees elected, except for the initial Board of Trustees, from among the members of SCMIRF. To the extent possible regional representation shall be provided.
2. The initial Board shall be appointed by the Municipal Association Board of Directors as follows from municipal governments, which are members of SCMIRF; three members for one year, three members for two years, and three members for three years. Thereafter, the successors to the trustees whose terms are expiring shall be elected for three years commencing on the first day of



IV. Officers

The Board of Trustees shall elect from its membership a Chairman and Vice Chairman, each to serve a term of one year from the date of election and until their successors are elected. The Chairman shall preside at all meetings. The Director of Risk Management Services of the Municipal Association of South Carolina shall serve as Secretary/Treasurer of the Board of Trustees without voting privileges. The Secretary shall provide the agenda, make recommendations, and prepare the minutes of all meetings.

V. Meetings

The Board shall hold an annual meeting for the purpose of electing officers for the following year. Such annual meeting shall be held in October following the annual election of Trustees by the members of SCMRF. The Board of Trustees may direct such other meetings as may be necessary for the transaction of general business. Other meetings may be held when called by the Chairman, Secretary, or when requested in writing by any three Trustees. The meetings shall be held at the offices of the South Carolina Municipal Association in Columbia, or at any other convenient place agreed to by the Trustees. Minutes of all meetings shall be maintained by the Secretary.

Five (5) Trustees shall constitute a quorum for the transaction of business, but any official actions of the Board must have a favorable vote by a majority of the Trustees of the Board.

The Board may agree to go into executive session by majority vote to consider any of the following matters:

of safety requirements, cooperation with organizations or agents or attorneys representing SCMIRF or any of the members of SCMIRF or any other action that may be detrimental to the fiscal soundness or efficiency of SCMIRF on behalf of its members.

The Administrator designates its Director of Risk Management Services to be responsible for carrying out the daily operation and administration of SCMIRF on behalf of the Board of Trustees. The services of the Director of Risk Management Services may include, but shall not be limited to, program promotion, maintenance of records, preparation of documents, and such other services to SCMIRF as the Board of Trustees may direct. The Director of Risk Management Services, as Secretary for SCMIRF, and with the approval of the Board of Trustees, is authorized to contract with any qualified organization to perform any of the functions necessary to carry out the purposes of SCMIRF, including claims administration, loss control services, obtaining stop loss and excess loss coverage, investment of funds, administrative services, and any other services deemed expedient for the proper administration of SCMIRF.

VII. Committees

In order to carry out its powers and duties, the Board of Trustees shall establish from its membership and the membership of SCMIRF such committees as the Board deems necessary or desirable.

VIII. Requirements for Membership

Any municipal local government unit desiring to become a member of SCMIRF shall make its desire known and submit such information as may be required for a quote to be prepared. In addition, a risk management/loss control survey of the prospective

member shall be conducted by the SCMIRF staff and a report of findings, along with a recommendation regarding membership, made to the Board of Trustees. Final approval for membership must be granted by the Board.

If the local government unit is approved for membership, an executed *Resolution Of Intent To Participate* and an executed *Intergovernmental Agreement* must be submitted to SCMIRF. An orientation meeting of the administrative staff of the new member must be held with SCMIRF staff representatives prior to the effective date coverage begins.

IX. Amendments

Notice of proposed amendments to the By Laws shall be mailed to the Trustees at least ten days prior to the meeting to consider the amendments; provided, however, that the Board may adopt proposed amendments at any time when all members of the Board are present and assent thereto.

Amendments to the Intergovernmental Agreement shall be reviewed by the Board of Trustees prior to submission to the membership or the MASC Board of Directors. The Board of Trustees shall make a recommendation on any amendment considered by the MASC Board of Directors for SCMIRF.

INTERGOVERNMENTAL AGREEMENT FOR AN
INSURANCE AND RISK FINANCING FUND
FOR RISK SHARING

This Agreement, made and entered into this 4th of February,
A.D., 2008, by and between all the parties who are now or may hereafter become members of the
South Carolina Municipal Insurance and Risk Financing Fund (hereinafter referred to as the "Fund") and
join in the Fund for certain risk sharing, which Fund is acting by and through its Board of Trustees as
provided herein;

WITNESSETH:

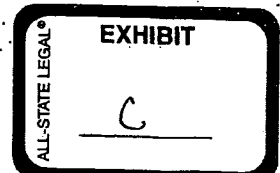
WHEREAS, certain municipalities of the State of South Carolina have agreed to create the Fund
and have agreed to pool the risk of their exposure to certain potential liabilities in the manner herein
provided, pursuant to the provisions of the Code of Laws of South Carolina, 1976 Section
15-78-140; and

WHEREAS, the prospective members of the Fund have agreed upon designation of a Board of
Trustees to direct the affairs of the Fund, adopt policies and procedures for implementing and
administering the Fund, and to pass upon the admissibility of future members of the Fund; and

WHEREAS, the members and Trustees have designated the Municipal Association of South
Carolina as Administrator of the Fund and its assets subject to the provisions of this Agreement and the
policies adopted by the Board of Trustees of the Fund; and

WHEREAS, by this Agreement the Fund will undertake to discharge certain claims against any
member of the Fund, when said claims come within the provisions of this Agreement and the regulations
or policies of the Trustees, and when said claims are determined to be due as a result of a court judgment
or settlement agreement; and

WHEREAS, the members of the Fund agree to pay contributions based upon appropriate
classifications, rates, and loss experience, and other criteria established by the Board of Trustees, out of a
portion of which the Fund will establish and maintain a fund for the payment of the claims, awards and
attorneys fees and further, that the members covenant and agree there will be no disbursements out of the



fund by way of dividends or distribution of accumulated reserves to the respective members, except at the discretion of the Trustees; and

WHEREAS, the members of the Fund, through action of their respective governing bodies, have elected to comply with the conditions of this Agreement and to share their risks for certain liability claims as herein provided;

NOW, THEREFORE, for and in consideration of the mutual covenants, promises and obligations herein contained, which are given to and accepted by each member hereof to the other, the parties hereto agree as follows:

1. The municipalities which are signatories hereto do hereby establish the SC Municipal Insurance and Risk Financing Fund, hereinafter referred to as the "Fund", as a joint interlocal agency to operate a fund for liability risk sharing, including but not being limited to the following risks and coverages; automobile liability; automobile physical damage; comprehensive general liability; property and inland marine; boiler and machinery; and fidelity bonds (with such exclusions, exemptions or limitations as are specified in the regulations or schedules of coverage adopted by the Board of Trustees).
2. There shall be nine (9) Trustees elected, except for the initial Board of Trustees, from Participating Member Municipalities. The term of the Trustees shall be for three (3) years, except for the initial appointment. The initial appointments, which shall be made by the Board of Directors of the Association, shall be made as follows: three members for one year, three members for two years, three members for three years. Thereafter, the successors to the Trustees whose terms are expiring shall be elected for three-year terms commencing on the first day of October following their election. Trustees may be elected for no more than two full terms in succession.
3. The Fund will pay from the assets of the Fund lawful claims according to the types and levels of coverage established by the Board of Trustees. The Board of Trustees shall establish a schedule for types and monetary levels of coverages for which the Fund shall be responsible on behalf of its members, including provisions for levels of coverage for which the members shall be individually responsible. Such types and levels of coverage may vary according to population classifications of members, mutual agreement of the Fund and a member, or such other criteria as may be established by the Board of Trustees. The schedule so established may from time to time be amended by the Board of Trustees (but

not during any twelve-month coverage period) to sustain the financial integrity of the Fund or to reflect the desires of the members as determined by the Board of Trustees.

4. The members intend this Agreement as a mutual covenant of risk sharing and not as a partnership. No member by reason of being a member of the Fund contributing to the Fund shall be liable to the Fund or to any other member, except for the payment of the contributions provided for in its application for membership and joinder in the Fund, for annual contributions for continued membership as determined by the Trustees, and for any necessary additional assessments levied by the Trustees to offset a claims fund deficiency.

5. The Trustees of the Fund shall establish, operate, and enforce administrative rules, regulations and bylaws governing the relationship between the individual members of the Fund and the Fund.

6. The Board of Trustees is authorized to enter into agreements with such agents, service contractors, persons, firms, corporations and attorneys as it deems appropriate to adjust claims, promote membership in the Fund; provide actuarial services; defend against claims and lawsuits; provide accounting services; secure re-insurance coverage; invest the assets of the Fund; provide loss control and risk management services; maintain records and accounts; and provide any other service necessary or desirable for the sound initiation and operation of the Fund.

7. The Municipal Association of South Carolina, a non-profit corporation with offices at 1411 Gervais Street, Columbia, South Carolina 29201, is designated as the Administrator of the Fund. The Administrator shall provide overall supervision of the Fund and other specified services as agreed to by the Board of Trustees. The Administrator shall deposit to the account of the Fund at any bank or banks designated by the Trustees all contributions as collected and such monies shall be disbursed only as provided by the rules, regulations and bylaws of the Trustees and the Agreement between the Trustees and any agents, service providers or contractors of the Fund. The Administrator shall be reimbursed for its direct and indirect cost for services provided.

8. The Trustees shall effect re-insurance coverage designated to protect the Fund against excess losses in such aggregate and specific amounts as is deemed appropriate. The Fund shall not become effective for risk sharing until it has received applications of members requiring and committing annual contributions totaling at least two million two hundred fifty thousand dollars (\$2,250,000).

9. All members of the Fund hereby agree that the Trustees may admit as members of this Fund only Municipal government units, institutions or agencies in the State of South Carolina. The Trustees shall determine which South Carolina municipalities shall be eligible for future membership in accordance with rules for maintenance of membership established by the Trustees. The Trustees shall be sole judge of whether or not an applicant shall be admitted to membership. A member may be suspended or expelled by the Trustees from the Fund after ninety (90) days' notice has been mailed to it and no payment shall be required of the Fund for any claim arising after ninety (90) days' written notice has been mailed to the suspended or expelled member.

10. The rules and regulations for the administering of the Fund and the admission and expulsion or suspension of members shall be promulgated by the Trustees. In addition, each member of the Fund agrees as follows:

(a) To follow any reasonable loss prevention and risk management recommendations from the Trustees or contractors of the Fund in order to minimize claims against and losses of the Fund.

(b) In the event a claim is reported to or is known to a member, to give immediate notification of the claim to the Fund in the manner prescribed by the Trustees.

(c) To make prompt payment of all contributions as required by the Trustees, the contributions to be determined by applying sound actuarial principles concerning exposure to risk.

(d) To (and they do hereby) appoint the Fund, as well as its designees, as its agent and attorney-in-fact, to act in its behalf and to execute all contracts, reports, waivers, agreements, excess insurance contracts, and service contracts; to make or arrange for payment of claims and all other things required or necessary, insofar as they affect its liability for claims and awards and as covered by the terms of this Agreement and the rules and regulations as now provided or as hereafter promulgated by the Trustees.

(e) To permit the Fund to defend in the name of and on the behalf of the members any suits or other proceedings which may at any time be instituted against them concerning claims for which the Fund may be obligated to make payment (although such suits, other proceedings, allegations or demands are considered to be wholly groundless, false, or fraudulent) and to pay all judgments and all expenses which are incurred pursuant to the direction of the Fund for investigation, negotiation or defense, from the

Fund. It is agreed that the Fund shall make all final decisions regarding the legal defense of claims, and shall have absolute and conclusive authority with regard to defense, settlement and payment of claims. It is agreed that the independent settlement or payment of any claim by or on behalf of a member, other than first party claims for physical damage within the member's maintenance deductible, without approval of the Fund shall be at the sole cost of the settling member without any reimbursement or other resources from the Fund; and may be grounds for expulsion of the member from the Fund.

(f) To cooperate in all respects with the Fund, the Administrator and any contractors of the Fund in carrying out the purposes of this Agreement.

(g) In the event of the payment of any loss by the Fund under this Agreement, the Fund shall be subrogated to the extent of such payment to all the rights of the member against any person or other entity legally responsible for damages for such loss, and in such event the member agrees to render all reasonable assistance to affect recovery.

(h) The Trustees of the Fund, the Administrator, and any contractor of the Fund and any of their agents, servants, employees or attorneys, shall be permitted at all reasonable times to inspect the real and personal property, work places, plants, works, machinery, and appliances of each member covered by this Agreement, and shall be permitted at all reasonable times and within two years after the final termination of a member's membership to examine member's books, vouchers, contracts, documents, and records of any and every kind which show or tend to show or verify the contribution which is payable under the terms hereof.

(i) Risk sharing by the Fund under the terms of this Agreement shall with respect to any member, expire and be cancelled automatically for nonpayment of contributions, and a member may be expelled from the Fund upon thirty (30) days' written notice by mail by the Trustees or their designee to the member specifying the date that cancellation shall be effective.

11. The Fund shall operate on a fiscal year from 12:01 a.m. October 1st, 1990 (and each October 1st thereafter) to midnight of the last day of September of the succeeding year (the "Fund Year").

Application for membership, when approved in writing by the Trustees or their designee shall constitute a continuing contract for each succeeding Fund Year unless cancelled by the Trustees.

12. This Agreement may be amended by an agreement executed by those members constituting a majority of the participants in the Fund during the current Fund Year. In lieu of this amendment procedure, the members hereby appoint the Board of Directors of the Municipal Association of South Carolina agents to make any amendments to this agreement which would not fundamentally alter the contemplated arrangement. For purposes of illustration, and not limitation, an amendment to increase or decrease the number of members of the Board of Trustees or their terms shall not be construed as a fundamental alteration of the arrangement, provided that the current term of a member may not be terminated by any such amendment. Written notice of any amendment proposed for adoption by the Board of Directors of the Municipal Association of South Carolina shall be mailed to each member not less than 30 days in advance. Written notice of amendments finally adopted by the Board of Directors of the Municipal Association of South Carolina shall be mailed to each member not more than 30 days after adoption.

13. Any member who formally applies for membership in the Fund and is accepted by the Trustees, shall thereupon become a party to this Agreement and be bound by all of the terms and conditions hereof, and such application shall constitute a counterpart of this Agreement. Cancellation of this Agreement on the part of any member, or withdrawal from membership, shall be permitted only at the end of a fiscal or Fund Year.

14. This Fund has been established with the bona fide intention that it shall be continued in operation indefinitely and that the contributions to the Fund shall continue for an indefinite period. However, the Trustees reserve the right at any time to terminate the Fund by a written instrument to that effect executed by the Trustees. Such written termination notice shall be delivered to each member no less than 120 days prior to the effective date of termination. In the event of such termination, member contributions shall cease as of the date of termination and the assets then remaining in the fund shall continue to be used and applied, to the extent available, for the

(a) payment of claims arising prior to such termination;

(b) payment of reasonable and necessary expenses incurred in such termination.

Any monies or other assets thereafter remaining in the Fund shall revert pro rata, based on cumulative loss ratios, translated into fund dollar balances, to the members covered as of the day of

termination. In no event shall any such assets be returned or distributed to any individual. Upon such termination, the Trustees shall continue to serve for such period of time and to the extent necessary to effectuate termination of the Fund.

IN WITNESS WHEREOF, members listed below acknowledge their membership in the Fund and acceptance of obligations thereunder, by the due execution hereof, following appropriate governmental body approval, by its mayor or other duly authorized official. Further, the members of the SC Municipal Insurance and Risk Financing Fund have caused these presents to be signed by their duly authorized Chairman of the Board of Trustees and have had this Agreement attested by its duly authorized Administrator.

SC MUNICIPAL INSURANCE AND RISK FINANCING FUND

BY:

Duck Dinger
Chairman, Board of Trustees

MUNICIPAL ASSOCIATION OF SC

BY:

Henry R. Mathias
Insurance Director
Administrator

Mayor C. M. White
Member City Administrator

BY:

DATE:

2/5/08



SCMIRF

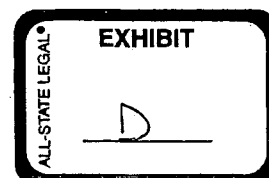
South Carolina
Municipal Insurance and
Risk Financing Fund

2011 Coverage Contract

Town of Cottageville
P-SCMIRF-1124-2011

Fund Administered by:

Risk Management Services
Municipal Association of South Carolina
1411 Gervais Street
PO Box 12109
Columbia, SC 29211
Phone: 803.799.9574
Fax: 803.933.1299



ROA_0106



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- SECTION I -

GENERAL PROVISIONS

A. General Application

This Section I (General Provisions) shall apply to Sections II (Property), III (General Liability), IV (Law Enforcement), V (Public Officials Liability), VI (Automobile), VIII (Excess Casualty), and VIII (Crime) unless specific provisions are contained in the appropriate section.

B. General Definitions

Throughout This Contract, the following terms have the meaning set forth below, except where a different meaning is given in the Definitions part of a Coverage Section. Where a Coverage Section contains its own definition of a term generally defined here, the definition given in that Coverage Section will control in the construction of that Coverage Section, rather than the General Definition listed here. Defined terms, including those defined in these General Definitions and those defined in the individual Coverage Sections, are generally capitalized, appear in quotations, and/or are set off in bold type. The pronouns "we", "us", "our", "you", "your", and "yours" are not similarly emphasized, but have the defined meanings below.

1. The words "we", "us", "our" and "The Fund" refer to SCMIRF, the South Carolina Municipal Insurance and Risk Financing Fund.
2. The words "you", "your", "yours", "Member" and "Named Member" refer to the SCMIRF member listed in the Declarations.
3. "Money Damages" means money awarded by judgment or paid in settlement to compensate another person, organization, or entity for damages arising out of liability to which This Contract applies. Money Damages do not include, and This Contract does not cover, any judgment or award of money or property, or any agreement or settlement involving the same, that is restitutional in nature, restoring or accounting for money or property rightfully belonging to another person, organization or entity which is wrongfully claimed by or withheld by a Member or Covered Person, or which compensates the other person, organization or entity for any failure to perform an obligation or confer a benefit under any express or implied contract, promise, or agreement. Money Damages do not include equitable, injunctive or declaratory relief requiring the Member or Covered Person to fulfill a general duty to the public or to any subset of the public, even if doing so requires the Member or Covered Person to make monetary outlays. Money Damages do not include punitive, exemplary, or multiplied damages, or any fines or penalties. Money Damages do not include any judgment, award, or settlement based on a Member or Covered Person's condemnation or inverse condemnation of property, or on interference with, or failure to permit, the development of real property or the use of personal property. Money Damages do not include any award, judgment, or settlement based on a Member or Covered Person's interference with intangible property, including but not limited to intellectual property, except with respect to covered Advertising Injury. Money Damages do not include interference with economic rights, including without limitation the right to operate a business.
4. "Occurrence" means an accident which results in Bodily Injury or Property Damage, the original cause of which and the initial damage from which happened during the Contract Period set forth in the Declarations. Without limitation, all references to any type of injury arising out of or from an Occurrence or being caused by an Occurrence employ the foregoing meaning. Subject to the foregoing, "Occurrence" includes continuing exposure to the same harmful conditions. All such continuing exposure, damage, or injury shall be treated as one Occurrence.

Only when used to describe coverage limits on a per "Occurrence" basis or when otherwise describing whether an event or series of events constitutes one loss for coverage purposes or more than one loss, the word "Occurrence" means a covered event of the sort expressly described in the Insuring Agreement of the relevant Coverage Section pertaining to the loss or claim, whether an Occurrence (as defined in the opening paragraph of this General Definition or as defined in the separate definition, if any, appearing in the Definitions part of the relevant Coverage Section), a Wrongful Act, a Loss, or an Offense causing Personal Injury or Advertising Injury, as those terms are defined in the relevant Coverage Section. When used in that sense, the word 'occurrence' might not be emphasized.

5. "Offense" means conduct constituting Personal Injury or Advertising Injury that happens in the course and scope of the Member's or Covered Person's official duties as described in The South Carolina Tort Claims Act.



SOUTH CAROLINA MUNICIPAL INSURANCE and RISK FINANCING FUND COVERAGE CONTRACT 2011

All repetitions of the same basic Offense involving any offended person and/or organization or group of persons and/or organizations, whether or not there are different witnesses to the Offense or there is variation in the conduct constituting the Offense, will be treated as one Offense, subject to a single Coverage Limit, even if the Offense occurs over more than one Contract Period.

6. "Policy Period", "Policy Term", "Coverage Period", or "Contract Period" means the period of time between the Effective Date and Expiration Date set forth in the Declarations.
7. "Pool Limit", whether or not emphasized, means a combined loss limit for all Members that applies on a per Occurrence basis or on an annual basis as noted in the Declarations. Where a common disaster or other loss affects more than one Member, coverage for the combined losses of all members affected by the disaster or loss will not exceed the Pool Limit stated in the Declarations.
8. "Property Damage" means only direct physical injury to tangible property and loss of use of such physically injured property which results from the direct physical injury to it; however, Property Damage does not include damage to or lost use of property owned by the Member or Covered Person(s). Property Damage does not include loss of use or diminution in value of any property that has not suffered direct physical injury to it. Property Damage does not include damage of any sort to intangible property. Property Damage does not include injury to development rights, commercial rights, or other rights of use or enjoyment of tangible property not arising from direct physical injury to the tangible property involved. Property Damage does not include the discontinuation or interruption of or failure to provide utility services, waste disposal, or any other service, whether or not such services are provided by the Member and regardless of the effect of such discontinuation, interruption, or failure on the use or enjoyment of any property.

C. General Conditions

The following provisions shall apply to This Contract, unless contrary provisions are specifically provided in a Coverage Section.

1. Action Against SCMIRF
No action shall lie against SCMIRF unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of This Contract, nor until the amount of the Member's obligation to pay shall have been finally determined either by judgment against the Member after actual trial or by written agreement of the Member, the claimant, and SCMIRF.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under This Contract to the extent of the coverage afforded by This Contract. No person or organization shall have any right under This Contract to join SCMIRF as a party in any action against the Member or a Covered Person to determine the Member's or a Covered Person's liability, nor shall SCMIRF be impleaded by the Member or a Covered Person or its legal representative. Bankruptcy or insolvency of the Member or a Covered Person shall not relieve SCMIRF of any of its obligations hereunder.
2. Appraisal
If the Member and SCMIRF fail to agree on the amount of loss, each, upon Notice to SCMIRF or the Member made within sixty (60) days after receipt of Proof of Loss by SCMIRF, will select a competent and disinterested appraiser. The appraisers will then select a competent and disinterested umpire. If they should fail for fifteen (15) days to agree upon such umpire, then upon the request of the Member or of SCMIRF such umpire will be selected by a judge of a court of jurisdiction in the city and state. Then at a reasonable time and place, the appraisers will appraise the Loss stating separately the value at the time of Loss and the amount of Loss. If the appraisers fail to agree they will submit their differences to the umpire. An award in writing of any two will determine the amount of Loss. The Member and SCMIRF will each pay its chosen appraiser and will bear equally the other expenses of the appraisal and the umpire.
3. Assignment
The Member shall not make any assignment of right in This Contract without prior written approval from SCMIRF.
4. Assistance and Cooperation of the Member
The Member will cooperate with SCMIRF, and, upon SCMIRF's request and reasonable expense, will attend hearings and trials and will assist in effecting settlements, in securing and giving evidence, in obtaining the attendance of witnesses, and in conducting suits.



SOUTH CAROLINA MUNICIPAL INSURANCE and RISK FINANCING FUND COVERAGE CONTRACT 2011

5. Conflict Between Deductibles Described In Text and Elective Deductibles: Deductibles for Specific Circumstances or Risks

When a Member has elected a deductible higher than the standard deductible applicable to a coverage section, and the text of the policy or endorsement mentions any lower deductible amount, the higher deductible selected by the Member will apply. When the text of the policy or endorsement sets out a deductible applicable to a specific circumstance or risk, and that deductible is higher than the standard or elective deductible otherwise applicable to the coverage section, the higher specific deductible set out in the text or endorsement will apply.

6. In Case of Loss

a. Notice of Loss

The Member will, as soon as practicable, report in writing to SCMIRF's Claims Department any Occurrence, Accident or Wrongful Act that may give rise to a claim under This Contract. This includes First Party losses that should be reported as soon as the Member has knowledge of the Loss. To the extent possible, Notice should include:

- (1) how, when and where the occurrence took place;
- (2) the names and addresses of any injured person and witnesses; and
- (3) the nature and location of any injury or damage arising out of the occurrence.

The Member and any other involved covered party must:

- (1) assist SCMIRF, upon their request, in the enforcement of any right against any person or organization that may be liable to the covered party because of injury or damage to which this coverage may also apply;
- (2) authorize SCMIRF to obtain records and other information;
- (3) cooperation with SCMIRF in the investigation, settlement or defense of the claim or suit;
- (4) immediately send SCMIRF copies of any demands, notices, summonses or legal papers received in connection with the claim or suit; and
- (5) notify SCMIRF immediately of any judgment or settlement of any claim or suit brought against any covered party.
- (6) make damaged property available for inspection to SCMIRF or their representatives to prove the cause of Loss or damage.

b. Proof of Loss

A signed and sworn detailed Proof of Loss will be filed with SCMIRF within sixty (60) days of our request.

c. Payment of Loss

All adjusted claims will be due and payable no later than sixty (60) days after presentation and acceptance of Proof of Loss by SCMIRF or its appointed representative.

d. Loss Payable

SCMIRF will adjust each loss of the Member. SCMIRF will pay the adjusted covered Loss to the Member, or its order, or other appropriate person whose receipt will constitute a full release of liability under This Contract for such Loss.

e. Legal Defense Procedure

It is agreed that SCMIRF (herein referred to as The Fund) has the right to defend in the name of and on the behalf of the Members any suits or other proceedings which may at any time be instituted against them concerning claims for which The Fund may be obligated to make payment (although such suits, other proceedings, allegations or demands are considered to be wholly groundless, false, or fraudulent) and to pay all judgments and all expenses which are incurred pursuant to the direction of The Fund for investigation, negotiation or defense, from The Fund. It



SOUTH CAROLINA MUNICIPAL INSURANCE and RISK FINANCING FUND COVERAGE CONTRACT 2011

Is agreed that The Fund shall make all final decisions regarding the legal defense of claims, and shall have absolute and conclusive authority with regard to determination of coverage, defense, settlement and payment of claims regardless of whether the Member elects alternative premium financing option, including but not limited to a deductible or individual self-insured retention. It is agreed that the independent settlement or voluntary payment of any claim by or on behalf of a Member, other than first party claims for physical damage within the Member's deductible, without approval of The Fund shall be at the sole cost of the settling Member without any reimbursement or other resources from The Fund; and, may be grounds for expulsion of the Member from The Fund. However, It is agreed that this legal defense procedure does not apply to the Section II Property.

- f. As a condition precedent to SCMIRF providing coverage, the Insured agrees that the Insured's appointed or personal defense counsel, upon request made by SCMIRF, shall make a motion to the trial court to submit a special verdict form and/or special Interrogatories to the jury to determine upon what causes of action or upon what claims for damages a jury's verdict returned or any other reasonable factual inquiry for the jury as may be determined by SCMIRF.
- g. If the amount awarded under any judgment or settlement or other award includes both Money Damages or other damages covered by This Contract and non-covered damages (meaning damages based on liability not covered by This Contract) in the same monetary sum or sums, SCMIRF will pay only that portion which may reasonably be identified as "money damages" or other covered damages. Anyone seeking coverage under This Contract must cooperate with SCMIRF in distinguishing Money Damages or other covered damages, if any, from non-covered damages in the formulation settlement terms, jury verdict forms, arbitration or other awards, or in the of drafting of proposed trial orders, including without limitation non-covered damages based on restitution or accounting, injury to intangible property rights, contract and contract-related obligations, and any other excluded bases of liability. By accepting This Contract, or seeking coverage thereunder, the Member and any Covered Person agree that SCMIRF would be materially prejudiced by any settlements judgments, and/or awards that fail to distinguish between amounts attributable to Money Damages or other covered damages, if any, and amounts attributable to non-covered damages. SCMIRF reserves the right to intervene in any action, lawsuit, or proceeding in order to ensure that covered and non-covered damages are not combined to the extent that they are not reasonably distinguishable. But this right does not obviate the Member or Covered Person's duty to cooperate in doing so or SCMIRF's right to rely on such cooperation. The Member or Covered Person, as a condition of accepting This Contract or seeking coverage thereunder, consents to having appointed defense counsel move the court to submit special verdict forms which clarify upon which claims or causes of action the verdict is rendered, or which specify within reason the factual basis of the verdict, and to similar steps during bench trials, settlements, or arbitration or similar proceedings, in order to separate Money Damages or other damages, if any, covered by This Contract from non-covered damages.
7. Limitation of Known Claims
In manner of limitation only, unless specified differently in a provision of This Contract, coverage shall apply only to Occurrences / accidents / Wrongful Acts during the Contract Period. Any coverage for Occurrences / accidents / Wrongful Acts prior to the Contract Period must be specifically contracted for and shall exclude any Occurrences / Accidents / Wrongful Acts known to the Member at the effective date of this agreement.
8. Member's Duties in the Event of Occurrence, Offense, Wrongful Act Claim or Suit
 - a. Upon the Member becoming aware of any Wrongful Act, offense, or Occurrence which could reasonably be expected to be the basis of a claim or suit covered hereby, written Notice shall be given by or on behalf of the Member to SCMIRF as soon as practicable, together with the fullest information obtainable.
 - b. If claim is made or suit is brought against the Member or a Covered Person, the Member shall immediately forward to SCMIRF every demand, notice, summons, or other process received by the Member or its representative.
 - c. It is agreed that the independent settlement or voluntary payment of any claim by or on behalf of a Member, other than first party claims for physical damage within the Member's deductible, without approval of The Fund shall be at the sole cost of the settling Member without any



SOUTH CAROLINA MUNICIPAL INSURANCE and RISK FINANCING FUND COVERAGE CONTRACT 2011

reimbursement or other resources from The Fund; and, may be grounds for expulsion of the Member from The Fund.

- d. In the event of a disagreement between SCMIRF and the Member regarding determination of coverage and/or defense, it is agreed that the Member must appeal the coverage determination to the Board of Trustees within six months of such determination. No legal action may be undertaken by the Member against SCMIRF prior to the decision of the Board of Trustees regarding the Member's coverage determination appeal.
9. No Duplication of Coverage or Coverage Limits
No liability that is covered under any Coverage Section of This Contract will be deemed to be separately covered under any other Coverage Section. No Offense will be deemed also to constitute separately an Occurrence for coverage purposes, or vice-versa. Personal Injury will not be deemed to constitute separate Advertising Injury for coverage purposes, or vice-versa. Any act(s) or omission(s) that might be described under more than one Coverage Section or more than one category as an Offense(s) or an Occurrence(s) will be treated as a single event for coverage purposes, subject to a single Coverage Limit. A single Coverage Limit applies to any Offense or Occurrence, regardless of the number of claimants, suits, or claims. A single Coverage Limit applies to all claims or suits involving substantially the same injury or damage, or progressive injury or damage. There is no duplication of any coverage or benefits under This Contract.
10. Other Insurance
The coverage afforded by This Contract is primary coverage, except when stated to apply in excess of or contingent upon the absence of other coverage. When this coverage is primary and the Member has other coverage which is stated to be applicable to the loss on an excess or contingent basis, the amount of SCMIRF's liability under this contract shall not be reduced by the existence of such other coverage. When both this coverage and other coverage apply to the loss on the same basis, whether primary, excess or contingent, SCMIRF shall not be liable under This Contract for a greater proportion of the loss than that stated in the applicable contribution provision below.
- a. Contribution by Equal Shares If all of such other valid and collectible coverage provides for contributions by equal shares, SCMIRF shall not be liable for a greater portion of such loss than would be payable if each insurer contributes an equal share until the share of each insurer equals the lowest applicable limit of liability under any one contract or the full amount of the loss is paid, and with respect to any amount of loss not so paid in the remaining amount of the loss until each such insurer has paid its limit in full or the full amount of the loss is paid.
- b. Contribution by Limits If any such other coverage does not provide for contribution by equal shares, SCMIRF shall not be liable for a greater proportion of such loss than the applicable limit of liability under This Contract for such loss bears to the total applicable limit of liability of all valid and collectible coverage against such loss.
11. Prior Acts
Coverage is extended to include claims made during this Policy Period for the liability of the Member, as otherwise more fully defined in the General Liability, Law Enforcement Liability, and Public Officials Coverage parts, in respect of Occurrences, Offenses, Accidents or Wrongful Acts which occurred after the retroactive date shown on the Contract declarations pages and which have not been previously known and reported.
12. Recovery or Salvage
Any recovery or salvage including:
- a. proceeds from subrogation and underlying insurance recovered or received after a loss settlement under This Contract; and
- b. any recovery from suretyship, insurance, reinsurance, security, or indemnity taken by or for the behalf of SCMIRF; will apply as if recovered or received prior to the loss settlement and the loss will be re-adjusted accordingly.
13. Statutes
If any of the provisions of This Contract are declared null and void due to illegality or are contrary to the laws or statutes of any jurisdiction in which This Contract applies, This Contract is amended to conform to such laws or statutes.



SOUTH CAROLINA MUNICIPAL INSURANCE and RISK FINANCING FUND COVERAGE CONTRACT 2011

14. Subrogation

If SCMIRF pays a claim under This Contract, it will be subrogated, to the extent of such payment, to all the Member's rights of recovery from other persons, organizations, and entities. The Member will execute and deliver instruments and papers and do whatever else is necessary to secure such rights.

SCMIRF will have no rights of subrogation against any person or entity, who is a Member under the Contract.

The Member will act in concert with SCMIRF and all other interests concerned, in the exercise of such rights of recovery.

If any amount is recovered as a result of such proceedings, the net amount recovered after deducting the costs of recovery will accrue first to SCMIRF in proportion to its respective interests. Any excess of this amount will be remitted to the Member. If there is no recovery, the interests instituting the proceedings will bear the expense of the proceedings proportionately.

The Member or Covered Person will do nothing before or after a loss to prejudice such rights of subrogation, including, without limitation:

- a. entering into a contract after the starting date of the Contract Period set out in the Declarations, other than a "Covered Contract" as defined in Section III, General Liability Coverage, that waives SCMIRF's right of subrogation or limits the Member or Covered Person's right of recovery to available insurance limits, or
- b. entering into a settlement or release of any legal, claim action, or lawsuit seeking damages in connection with risks or losses to which this insurance applies, without SCMIRF's consent.

15. Termination

- a. Termination by the Pool This Contract can be cancelled by SCMIRF only on an anniversary date and only after having given written Notice to the Member at least ninety (90) days before such anniversary date except that SCMIRF may cancel at any time after giving fifteen (15) days written Notice to the Member if (a) the Member has failed to pay any contribution when due, or (b) the Member has refused to or failed to comply with any loss prevention recommendation submitted to the Member by SCMIRF or by the service agent(s) on behalf of SCMIRF.
- b. Termination by the Member This Contract can be cancelled by the Member only on a Contract anniversary date and only after having given written Notice to SCMIRF at least ninety (90) days prior to such anniversary date. SCMIRF's anniversary date shall be January 01 of each year.
- c. If, at any time This Contract is cancelled by any party, SCMIRF shall hold any contributions which are refundable to the Member, such contributions shall be refunded following the time the statute of limitations on all claims for the year has run out.

16. Deductibles, Offsets, and Retained Limits

All coverage limits herein are subject to and offset by any applicable retained limits, deductibles, disappearing deductibles, or other offsets as stated in the Declarations of each applicable Coverage Section and/or as described in the text of each applicable Coverage Section. Where a deductible is expressly described as a "disappearing deductible" in the Declarations, it applies only to claims less than or equal to the stated amount. Only in the case of deductibles expressly described as "disappearing deductibles", no deductible will apply to claims larger than the stated amount.

17. Losses Exceeding Pool Limits

In the event that Members' combined losses meet or exceed SCMIRF's reinsurance limits, sublimits, or aggregated line of coverage, prior to any payment claim payments will be adjusted proportionally. The contributions for each line of coverage affected by the loss, for each Member affected by the loss, will be divided by the total contributions for all Members affected by the loss, and then multiplied by the total limits available to SCMIRF or as otherwise directed by the Board of Trustees of SCMIRF. Where a Pool Limit described in the Declarations is exhausted in the event of a common disaster by the foregoing method of apportionment, the Member's recovery is limited to the smaller of the following: 1) the amount thereby



SOUTH CAROLINA MUNICIPAL INSURANCE and RISK FINANCING FUND COVERAGE CONTRACT 2011

apportioned to the Member; or 2) the amount of any otherwise applicable per-occurrence, per-member, or other Coverage Limit stated in the Declarations of This Contract.

18. Valuation Appraisal — any value assigned to any property owned by the Member resulting from any appraisal conducted for the Member shall not affect whether that property is covered under the policy. The inclusion of a non-covered item of property in an appraisal or resulting property schedule shall not operate as a waiver or estoppel for SCMIRF to deny coverage for such property should it be damaged as the result of a covered peril. In the event any ineligible property is appraised, added to the schedule and a premium subsequently charged to the Member, SCMIRF will refund the premium charged for the policy year in which the error (of scheduling the ineligible property) is discovered.
19. SCMIRF reserves the right to make such mid-year changes in all coverages, premiums, and deductible or co-payment amounts herein as might be necessary to accommodate changes in the terms and conditions of SCMIRF's reinsurance coverage, in the underwriting requirements of SCMIRF's reinsurers, or in the charges or costs to SCMIRF for such reinsurance. SCMIRF may, with board approval, make mid-year changes to a Member's coverages, premiums, and deductible or co-payment amounts to account for risks associated with the Member's operations which were not disclosed to SCMIRF at the time the policy was issued or renewed. The foregoing sentence does not extend or guarantee coverage for losses arising out of such operations.



SOUTH CAROLINA MUNICIPAL INSURANCE and RISK FINANCING FUND COVERAGE CONTRACT 2011

South Carolina Municipal Insurance and Risk Financing Fund

Town of Cottageville
P-SCMIRF-1124-2011

-Section II -

PROPERTY CONTRACT DECLARATIONS

Contract Period

Effective from 01/01/11 - 01/01/12 both days at 12:01 AM standard time at address of Member

Declared Values As Scheduled:

Building and Contents Total Values	\$717,082
Inland Marine Total Values	\$3,223
Property Extensions	Business Income/Rental Income \$0 Computer Equipment \$19,029 Extra Expense \$0
Property Deductible	\$1,000

Extensions of Coverage:

Earthquake	\$20,000,000 Annual Aggregate per Member / subject to a \$100,000,000 Annual Pool Limit for all Members
Flood	\$10,000,000 Annual Aggregate per Member / subject to \$50,000,000 Annual Pool Limit for all Members
Terrorism	\$1,000,000 per Occurrence/ Pool Limit
Accounts Receivable	\$25,000 per Occurrence/per Member
Business Income/Rental Income	\$100,000 per Occurrence/per Member
Debris Removal	\$5,000,000 per Occurrence/per Member/ subject to a \$25,000,000 Annual Pool Limit for all Members
Employee Personal Property	\$5,000 per person/\$10,000 per Occurrence/per Member
Extra Expense	\$100,000 per Occurrence/per Member
Fine Arts	\$100,000 per Occurrence/per Member
Media Reproduction	\$100,000 per Occurrence/per member
Newly Acquired Locations Including Builders Risk	\$1,000,000 per location/per Member
Ordinance Delicency	\$5,000,000 per Occurrence/ per Member / subject to a \$25,000,000 Annual Pool Limit for all Members
Rented Inland Marine Equipment	\$10,000 per Occurrence
Unscheduled Personal Property of Others In Care, Custody & Control	\$5,000 per Occurrence/per Member
Trees, Plants, Shrubs, Landscaping, Landscaping Materials	\$10,000 per Occurrence/per Member
Valuable Papers & Records	\$100,000 per Occurrence/per Member
Miscellaneous Property	\$10,000 per Occurrence/per Member (any one item limit \$1,000)
Property- Off Premises	\$100,000 per Occurrence/per Member
Transit	\$100,000 per Occurrence/per Member
Unscheduled Owned Mobile Equipment	\$2,500 per Occurrence/per Member
Watercraft	\$5,000 per Occurrence/per Member



Additional Conditions Applying to Certain Property under Section II, Property Coverage:

The following additional conditions apply to certain property, subject to the General Provisions of Section I, the Declarations of Section II, and the other terms, conditions, exclusions, and limitations of Section II:

1. **Newly Acquired Locations** with a value of \$1,000,000 (one million dollars) or less are automatically covered until the expiration of the current Policy Period. However, such new exposures must be reported for full coverage up to the limits set out in the Declarations to apply at renewal. Otherwise, coverage for such unreported buildings is capped at a maximum of \$100,000 (one hundred thousand dollars) and a higher deductible will apply as provided in the Coverage Agreement of Section II, Property Coverage, Extensions of Coverage Applicable to Real and Personal Property.

Notwithstanding the foregoing, automatic coverage during the current Policy Period extends to any **Newly Acquired Location** which exceeds \$1,000,000 (one million dollars) in value only for thirty (30) days after the date of its acquisition. After thirty (30) days have passed from the date of its acquisition, coverage for any **Newly Acquired Location** with a value exceeding \$1,000,000 (one million dollars) which has not been reported to SCMIRF is capped at \$100,000 (one hundred thousand dollars) and a higher deductible will apply as provided in the Coverage Agreement for Section II, Property Coverage, Extensions of Coverage Applicable to Real and Personal Property. The \$100,000 cap on coverage for such unreported property and the higher deductible will apply both during the current Policy Period and thereafter.
2. **Newly Acquired Inland Marine Property** must be reported within thirty (30) days of the date of its acquisition for full coverage up to the policy limits in the Declarations to apply. Property will be deemed to have been acquired on the date of the agreement to purchase or otherwise acquire it. Such **Newly Acquired Inland Marine Property** which remains unreported after thirty (30) days will be treated as **Miscellaneous Property** and subject to the coverage limits applicable to **Miscellaneous Property**, regardless of its actual value, unless it has been reported prior to the loss for which coverage is sought. **Newly Acquired Inland Marine Property** totaling less than \$1,000,000 (one million dollars) in value will not be subject to an additional premium for the balance of the Policy Period during which it is acquired.
3. Any building over \$1,000,000 (one million dollars) in value and over 50 years old requires an appraisal if **Replacement Cost** coverage is to apply. Otherwise, coverage shall be made on an **Actual Cash Value** basis.
4. As regards newly-constructed buildings or buildings under construction, **Mobile Equipment**, communication towers, **Fine Arts**, computer equipment, and software coverage, and items **Scheduled as Inland Marine**, coverage does not apply to losses to any such property which occur more than 30 days after the Member has acquired the property unless the Member has reported the value of the property to SCMIRF prior to the loss.
5. Sublimits of other coverages listed on **Property Declarations Page** can be increased if higher exposures are reported.
6. Additional premiums will be charged for new Members added, on a pro-rata basis, using the account rate. However, prior approval is required for members whose total insurable values exceed \$15,000,000.
7. SCMIRF will cover the Member's personal property while in the open or in Member's vehicles within 1,000 ft. of a scheduled location. SCMIRF will not pay more than the personal property limit Scheduled at a location.

SCMIRF Limits of Liability:

In no event shall the liability for loss, under this Section II (Property) of This Contract, arising out of any one occurrence involving one or more Participants exceed the total amount of property reinsurance purchased by SCMIRF.

Deductible:

SCMIRF will adjust all losses, damages, or expenses arising out of any occurrence as one loss. SCMIRF will deduct the following from each adjusted loss:

\$1,000 per occurrence, per Member – Standard Deductible Unless Endorsed (See Endorsement Section)



- Section II -

PROPERTY COVERAGE

A. Territory

Under this Section II (Property), the coverage territory is the United States of America, its territories, or possessions, the District of Columbia, or Canada.

B. Deductibles

SCMIRF will adjust all losses, damages, or expenses arising out of any Occurrence as one loss. SCMIRF will deduct the following from each adjusted loss:

\$1,000 per Occurrence, per Member - Standard Deductible Unless Endorsed (See Endorsement Section)

C. Coverage Agreement

1. Real and Personal Property

Subject to the terms, conditions, definitions, and limitations of Section I and stated herein, this Section II (Property) of This Contract covers the Member's interest in the following against the risk of direct physical loss or damage from a covered peril. SCMIRF will not pay more than the limits scheduled on the property declarations. SCMIRF will use the most recently appraised values for each item or location unless otherwise endorsed.

- a. Scheduled real and personal property, and improvements and betterments in buildings not owned by the Member; and
- b. Real and personal property of others in the Member's care, custody, or control, and the Member's liability imposed by law subject to amounts shown on Property Declarations. Personal property of others does not include property owned by employees or volunteers.
- c. Personal Property of Employees and Volunteers that is located in or on the Insured's Premises is limited to \$5,000. The most we will pay in any one occurrence is \$10,000 per Member.
- d. Fine Arts - SCMIRF will pay for direct physical loss or damage by a covered peril to Member's Fine Arts, up to the specific limits provided for Fine Arts in the Property Contract Declarations, only if the Fine Art is either owned by a Member or, if it belongs to any other person, is all of the following:
 - (1) in the Member's care, custody and control;
 - (2) specifically scheduled with SCMIRF, and
 - (3) in or on a building location reported to SCMIRF or within 1,000 feet of the building.

Unscheduled Fine Arts belonging to other persons under circumstances that meet the requirements of subparts (1) and (3) above, but not subpart (2), are covered only up to the general limits applicable to "Unscheduled Personal Property of Others in Care, Custody & Control" described in the Property Contract Declarations.

- e. Computers - SCMIRF will pay for direct physical loss or damage by a covered peril to computer hardware, media, software and data which the Member owns, leases or rents from others or for which the Member is legally responsible while it is in a building at Scheduled location or a Newly Acquired Location during the Policy Period.
- f. Any Scheduled monument/statue is covered for one-half (1/2) of agreed valuation. In the event of a total loss, SCMIRF will pay the coverage amount, or one-half (1/2) of the Replacement Cost, whichever is lower. In the event of a partial loss, SCMIRF will pay half the cost of the actual repair expenses, up to but not exceeding the applicable Coverage Limit.
- g. Signs of any sort that are affixed to, or within 100 feet of, a Scheduled building. However, unless the Member elects to schedule such signs under Inland Marine coverage, such signs are included within the coverage for that Scheduled building and are not separately covered.
- h. "Miscellaneous Property" is covered (without being disclosed or Scheduled), as long as the value is less than or equal to \$1,000. This extension is subject to a \$10,000 per occurrence, per Member sub-limit. However, any item of Miscellaneous Property with the value in excess of \$1,000.00 must be disclosed and Scheduled to be covered.



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2.

Extensions of Coverage applicable to Real and Personal Property

The following coverages are included when either building or personal property coverages have been purchased and are shown on the Property Declarations Page. These coverages are not in addition to the limits of coverage for building or Business Personal Property shown in the Coverage Summary.

a. Newly Acquired Locations

This Section II (Property) of This Contract automatically covers existing buildings at Newly Acquired Locations which have a value of \$1,000,000 (one million dollars) or less for the amount shown in the Declarations during the balance of the current Coverage Period in which such property is acquired. However, newly-constructed real property, including additions which increase the square footage of existing buildings, is not covered unless it is reported to SCMIRF prior to commencement of construction. Coverage for new such construction will apply only to losses arising and first becoming manifest after the reporting date. Such report must include the value of the new construction. Any existing building at a Newly Acquired Location acquired during the Policy Period which has a value of more than \$1,000,000 (one million dollars) which has not been reported to SCMIRF prior to a loss will no longer be covered up to the coverage limits described in the Declarations, but will be covered only to a maximum of \$100,000 (one hundred thousand dollars). Newly-acquired buildings reported to SCMIRF may be subject to an increase in charges to cover them.

b. Property Acquired in a Previous Coverage Contract Period

In the event a Member sustains a loss to real property which was acquired in a prior Coverage Period but has not been reported to SCMIRF, an additional deductible of \$2,500 (two thousand five hundred dollars) for every year during which the building was owned by the Member but not reported will apply per Occurrence in addition to the standard or other elected deductible. The limit of coverage for such unreported real property will be no more than \$100,000 (one hundred thousand dollars) per occurrence. This condition does not increase any other property sub-limits provided in This Contract.

c. Debris Removal

SCMIRF will pay the expenses to remove debris of covered Property Damaged or destroyed by a covered peril from Premises covered, except there shall be no coverage for the expense for removal of any foundations, during the term of This Contract. The total liability under this Section II (Property) of this Contract for removal of debris shall not exceed 25% of the actual Property Damage loss, and in no event, shall the combined loss exceed the limit of coverage. However, SCMIRF shall not be liable for more than the proportion of such debris removal expense as the amount of coverage under this Section II (Property) of This Contract bears to the total amount of coverage on the property covered.

SCMIRF will not pay the expense to:

- (1) extract Contaminants or Pollutants from the debris; or
- (2) extract Contaminants or Pollutants from land, air, or water; or
- (3) remove, restore, or replace contaminated or polluted air, land, or water; or
- (4) remove or transport any property or debris to a site for storage or decontamination required because the property or debris is affected by Pollutants or Contaminants, whether or not such removal, transport, or decontamination is required by law or regulation.

SCMIRF will pay the expenses to remove, replace or transport spillage of covered property. However, SCMIRF will not pay for debris removal or clean up operations of any petroleum or chemical products from any stream, river, lake, or other waterway.

SCMIRF will not pay for debris removal occasioned by the enforcement of any state or municipal law or municipal ordinance which requires the demolition of any portion of covered building or structure unless the demolition is required due to direct physical damage caused by a covered loss to the building or structure.

It is a condition precedent to recovery under this subsection that SCMIRF shall have paid or agreed to pay for direct physical loss or damage to the property covered hereunder, and that the Member shall give written Notice to SCMIRF of intent to claim coverage for the cost of debris removal or the cost of cleaning up debris not later than twelve (12) months after the date of such physical loss or damage.

d. Landscaping and Landscaping Materials



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SCMIRF will pay for lawns, outdoor trees, plants, landscaping and landscaping materials for covered perils. A sublimit of \$10,000 per Member/per Loss applies.

3. Valuable Papers and Records
This Section II (Property) of This Contract covers Valuable Papers and Records from direct physical loss or damage by a Covered Peril.
4. Transit
 - a. This Section II (Property) of This Contract covers direct physical loss or damage to property by a covered peril during or in Transit except as otherwise excluded:
 - (1) in or on vehicles owned, leased or operated by the Member;
 - (2) sold and shipped by the Member under terms of free on board (F.O.B.) (as defined in the Uniform Commercial Code adopted in the State) point of origin or other terms usually regarded as terminating the shipper's responsibility short of points of delivery;
 - (3) arising out of any unauthorized person representing himself to be the proper party to receive goods for shipment or to accept goods for delivery; or
 - (4) occasioned by the acceptance by the Member or its agent of fraudulent bills of lading, shipping and delivery orders, or similar documents;
 - b. but as respects this Transit coverage:
 - (1) the Member may waive rights of recovery against private and contract carriers and accept bills of lading or receipts from carriers, bailees, warehousemen, or processors limiting their liability, but this Transit coverage will not inure the benefit of any carrier, bailee, warehouseman, or processor;
5. Civil Authority
Notwithstanding anything contained in this Coverage Contract, property which is insured under this Coverage Contract is also covered against the risk of damage or destruction by civil authority during a conflagration and for the purpose of retarding the same; provided that neither such conflagration nor such damage or destruction is caused or contributed to by war, invasion, revolution, rebellion, insurrection or other hostilities or warlike operations.
6. Ordinance Deficiency
Property which is insured under This Contract is also covered for the loss occasioned by the enforcement of any state or municipal law, ordinance or code which requires the repair, rebuilding, or replacement of material in a covered building or structure due to damage resulting from a covered loss to the building or structure, provided that such repair, rebuilding, or replacement is either completed or is commenced and continuing within 24 months after the date of the loss. If demolition of the damaged building or structure is required to comply with such enforcement, SCMIRF will also cover such additional costs. Nothing within this subsection shall serve to increase the maximum limit of liability under this Section.
7. Business Income
 - a. This Section II (Property) of This Contract covers actual loss of Business Income sustained from necessary interruption of business conducted by the Member. The interruption must be caused by direct physical loss or damage by a covered peril during the term of This Contract to property covered in Section II (Property) D (Coverage Agreement) 1 (Real Property and Personal Property). (For the purposes of Business Income, property does not include Valuable Papers and Records, Accounts Receivable, Mobile Equipment, Fine Arts, Computer Hardware or Computer Software).
 - b. If the Member could reduce the Business Income loss by a complete or partial resumption of operations:
 - (1) by using damaged or undamaged property covered, or
 - (2) by making use of available stock, merchandise, or other property, or
 - (3) by using substitute facilities,SCMIRF will deduct such reduction from the amount of the Business Income loss.
 - c. SCMIRF will consider in the determination of any net income and continuing normal operations expense loss:



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- (1) the experience of the operation before the date of Occurrence of the direct physical loss or damage and the probable experience of the operation had no loss Occurred; and.
- (2) as respects alterations, additions, and property while in the course of construction, erection, installation, or assembly, the available experience of the operation after completion of construction, erection, installation, or assembly.

8. Extra Expense

This Section II (Property) of this Contract covers Extra Expense incurred caused by direct physical loss or damage by a covered peril during the term of This Contract to real property covered in Section II (Property) D (Coverage Agreement) 1 (Real Property and Personal Property). (For the purposes of Extra Expense, property does not include Valuable Papers and Records / Accounts Receivable, Mobile Equipment, Fine Arts, Computer Hardware or Computer Software).

9. Rental Income

a. This Section II (Property) of This Contract covers actual loss of Rental Income sustained by the Member when the property covered hereunder is rendered wholly or partially untenable as a result of direct physical loss or damage by a covered peril during the term of This Contract to property covered under Section II (Property) D (Coverage Agreement) 1 (Real Property and Personal Property). (For the purposes of Rental Income, property does not include Valuable Papers and Records, Accounts Receivable, Mobile Equipment, Fine Arts, Computer Hardware or Computer Software).

b. Experience of the Operation

SCMIRF will consider in the determination of any Rental Income loss: rental conditions for the date of the occurrence of the direct physical loss or damage and the probable rental experience had no loss occurred.

10. Extensions of Coverage Applicable to Business Income, Extra Expense and Rental Income

a. This Section II (Property) of This Contract covers Business Income, Extra Expense, and Rental Income for a period of thirty (30) consecutive days as a result of direct physical loss or damage by a covered peril during the term of This Contract to the following property:

- (1) electrical, steam, gas, water, telephone, and other transmission lines and related plants, substations, and equipment situated on or within one hundred (100) feet outside of the covered Premises;
- (2) any property located within one hundred (100) feet of the covered Premises thereby preventing ingress to or egress from the Member's Premises; and
- (3) any property located within one hundred (100) feet of the Member's Premises when access to the Member's Premises is prohibited by order of civil or military authority.

11. Sewer Backup Limited Coverage

Sewer Backup Limit- Subject to any other limitations that apply, any payment by SCMIRF for covered Loss to the Member's real and personal property,:

a. Resulting from the backup of sewage into a building from any sewage facility or sanitary sewer the "Member" owns, operates or maintains, and

b. Caused by any one Occurrence,

Is further limited as follows:

The Member's participation in a sewer back-up loss is:

- a. For the first \$1,000, the "Member" is responsible for reimbursing SCMIRF for 100% of the sewer back-up loss.
- b. For the next \$49,000 the "Member" is responsible for reimbursing SCMIRF for 10% of the sewer back up loss. The maximum participation of SCMIRF in this layer is \$4,900.
- c. In the event a loss exceeds \$50,000 the Member is responsible for reimbursing SCMIRF for 50% of the amount of the loss above \$50,000 up to \$100,000. The maximum participation of



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SCMIRF In this layer is \$25,000.

D. Provisions Applicable to Business Income and Extra Expense

1. Period of Recovery
"Period of Recovery" means the length of time which:
 - a. commences with the date of direct physical loss or damage by a covered peril and is not limited by the expiration date of This Contract;
 - b. if there is direct physical loss or damage to alterations, additions and property while in the course of construction, erection, installation, or assembly which delays the start of the operations, the Period of Recovery commences with the date operations would have begun if the direct physical loss or damage had not occurred;
 - c. terminates on the date when the damaged or destroyed property should have been replaced or replaced with reasonable speed and similar quality; and
 - d. If the Member has not reached the planned level of production or the level of operations had no loss occurred, extends thirty (30) consecutive days beyond the date the damaged or destroyed property is actually repaired, rebuilt, or replaced.
2. Special Exclusions
SCMIRF will not pay for:
 - a. any loss resulting from damage to or destruction of Finished Stock nor the time required to reproduce said Finished Stock; this exclusion does not apply to Extra Expenses
 - b. any increase of loss which may be occasioned by the suspension, lapse, or cancellation of any lease, license, contract, or order;
 - c. any increase of loss due to interference at the Member's Premises by strikers or other persons with rebuilding, repairing, or replacing the Property Damaged or destroyed or with the resumption of continuation of business, or with the reoccupancy of the Premises; or
 - d. any loss resulting from endorsement of any law or ordinance regulating the construction, repair, or demolition of the property.
3. Expense to Reduce Loss
SCMIRF will pay such expenses as are necessarily incurred for the purpose of reducing any Business Income loss under This Contract, but in no event will the aggregate of such expense exceed the amount by which the loss otherwise payable under This Contract is thereby reduced.

E. Property Excluded

No coverage exists under this Section II (Property) for any of the following property:

1. Aircraft, spacecraft, satellites, mining equipment, rolling stock, any vehicle designed or licensed for highway use, and watercraft over 26 feet;
2. Live animals, birds and fish;
3. Brick, stone, or concrete foundations, piers, or other supports all of which are below the undersurface of the lowest basement floor of each building or section, or when there is no basement, which are below the surface of the ground;
4. Vehicular bridges, roadways, walks, dune walkovers, paving, dikes, sand fencing or other devices to prevent erosion, bird netting, and retaining walls outside of and not forming a part of any building;
(This exclusion does not apply to bridges designed primarily for pedestrian use.)
5. Cost of excavations, grading, backfilling, or filling;
6. Furs, jewelry, jewels, pearls, precious, or semi-precious stones, gold, silver, platinum, or other precious alloys;
7. Land and land values, water, lawns, growing crops, standing timber, and coal mines, including property contained therein. (This exclusion does not apply to golf courses, from tees to greens, if they are Scheduled with SCMIRF.)
8. Member's interest in property of which the Member is a joint owner with other parties (known as a Joint Venture Property) unless declared as such by the Member to SCMIRF in the appropriate form;



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9. Money and securities;
10. Nuclear fuel or waste, raw material for nuclear fuel, and yellowcake;
11. Oil and gas drilling rigs and production platforms including personal property located thereon;
12. Real and personal property situated on any nuclear reactor power plant site;
13. Property sold by the Member under conditional sale, installment payment, or other deferred payment plan, after delivery to customers;
14.
 - a. shipments by mail or parcel post;
 - b. shipments to and from Alaska or Hawaii; and
 - c. export shipments after loading on board an overseas vessel or after ocean marine insurance attaches, whichever occurs first, and import shipments until they have been discharged from the overseas vessel or until the ocean marine insurance terminates, whichever occurs last, all subject to this Contract's territory;
15. Underground caverns, including personal property therein, underground mines and mining property located below the surface of the ground or any underground pipes, flues or drains; and
16. Property undergoing insulation breakdown tests
17. Power transmission, distribution and feeder lines not on the Member's Premises, overhead transmission and distribution lines and supporting structures other than those on or within 1,000 feet of the Insured Premises. (No scheduling required)
18. Traffic signals, street lights unless specifically Scheduled and reported to SCMIRF.
19. Equipment permanently installed in Covered Autos.
20. Member as Mortgagee/Lienholder - this policy does not provide coverage for any damage to property not owned by the Member when the Member acts as a lender and adds property to the schedule that the Member does not own but merely possesses a mortgage, security interest or other lien.
21. Any dock, pier, wharf, or related structure unless specifically Scheduled with SCMIRF. However, SCMIRF will not schedule or cover any dock, pier, wharf, or related structure on the Atlantic Ocean or the Intracoastal Waterway.
22. Cemetery objects, headstones, monuments, fences, tombs, mausoleums in the care, custody or control of a Member and located in or upon a cemetery.
23. Any dam, levee, lock or related structure.
24. Any watercraft more than twenty-six (26) feet in length.

F. Perils Covered

This Contract covers against risks of direct physical loss or damage to property covered, including general average, salvage and all other charges on shipments covered hereunder except as excluded.

G. Perils Not Covered

This Section II (Property) does not cover loss or damage caused directly or indirectly by any peril excluded. Such loss or damage is excluded whether contributed to, in whole or in part, by any excluded peril. Excluded perils are as follows:

1. Hostile or warlike action in time of peace or war, including action in hindering, combating, or defending against an actual, impending, or expected attack:
 - a. by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval, or air forces; or
 - b. by military, naval, or air forces; or
 - c. by an agent of any such government, power, authority, or forces; it being understood that any discharge, explosion; or use of any weapon of war employing nuclear fission or fusion will be conclusively presumed to be such a hostile or warlike action by such government, power, authority, or force;



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2. Insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating, or defending against such an Occurrence;
3. Seizure or destruction by order of public authority, except destruction by order of public authority to prevent spread of fire or explosion;
4. Risks of contraband or illegal trade;
5. Nuclear reaction or radiation or radioactive contamination, however caused; if fire ensues, liability is specifically assumed for direct physical loss or damage by such ensuing fire but not including any loss or damage due to nuclear reaction, nuclear radiation, or radioactive contamination;
6. Dishonest acts or omissions by the Member, or of any associate, agent, or employee of the Member whether acting alone or in collusion with others;
7. Unexplained disappearance, shortage, or other loss discovered upon taking inventory;
8. Voluntary parting with any property by the Member or any other party to whom the Member has entrusted the property if induced to do so by any fraudulent scheme, trick, device, or false pretense; except with respect to the misrepresentation of the identity of a recipient of shipped goods and/or acceptance by the member or its agent of fraudulent bills of lading, shipment and delivery orders, or similar documents as described in subparagraphs (3) and (4) of Section II (Property) D (Coverage Agreement) 4 (Transit) a;
9. Pollution Exclusion:
Loss or damage caused by, resulting from, contributed to or made worse by actual, alleged, or threatened release, discharge, seepage, escape or dispersal of Contaminants, whether or not such release, discharge, seepage, escape or dispersal is in whole or in part caused by, contributed to, or aggravated by any physical damage otherwise covered by This Contract.

Nevertheless, if coverage for fire damage is not otherwise excluded from This Contract, and a fire arises directly or indirectly from seepage or contamination of pollution, then physical loss or damage arising directly from that fire is covered, subject to the provisions of This Contract. However, SCMIRF will not cover any additional cost, damage, loss or expense for decontamination of affected property, buildings or debris, or for removal or decontamination of soil or water on or under the insured premises or location. "Decontamination", as used in the foregoing sentence and below, means the treatment, neutralization, removal, or recovery through any means of Contaminants. We do not pay for any additional disposal costs, above those routinely charged for the disposal of non-contaminated debris, for the disposal of contaminated debris. Coverage for additional expenses for lost use of a contaminated building damaged by such a fire, where applicable and within the limits otherwise applicable, will not exceed the period of recovery reasonably required for repair or replacement of resulting structural damage to fire-damaged buildings and will not be increased to account for any additional time required or undertaken for decontamination.

The term "Contaminants" is synonymous with "Pollutants" and is defined in the Definitions Part of this Section II. "Contamination" and "Pollution" are limited by the definitions of "Contaminants" and "Pollutants" therein, as are other variants of those words. These terms apply to indoor, outdoor, airborne, waterborne, surface, subsurface, localized and/or general environmental contamination.

Subject to the same limitations for non-coverage of costs or expenses for decontamination of property, buildings, debris, and soil and/or water, and/or of additional disposal costs for disposal of contaminated debris, and/or of additional expenses for periods of recovery prolonged by decontamination, as described in the exception for resulting fire damage above, this exclusion shall not apply when physical loss or damage from release, discharge, seepage, escape or dispersal of Contaminants is directly and proximately caused by the following perils: fire, lightning, aircraft impact, explosion, riot, civil commotion, vehicle impact, windstorm, hail, vandalism, malicious mischief, or accidental discharge from automatic fire protection systems.

Any claim falling under any of the exceptions herein must be filed with SCMIRF no later than fifty (50) weeks after the date of the original physical loss or damage.

This Contract does not cover any fees, fines, penalties, expenses or costs or other amounts imposed by an governmental agency or authority or by a court order related to Contaminants or contamination, without exception.



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10. Corrosion, decay, deterioration, erosion, evaporation, inherent vice, latent defect, leakage, loss of weight, marring or scratching, rust, shrinkage, wear and tear and gradual deterioration, wet or dry rot, or any quality in property which causes it to damage or destroy itself;
11. Dampness or dryness of atmosphere, smog, acid rain;
12. Loss or damage to electrical appliance or devices, fixtures or wiring arising from electrical injury or disturbance caused by electrical currents artificially generated; however, this clause shall not apply to electronic data processing media, equipment, or related Extra Expense;
13. Damage caused by insects, birds, rodents, or other animals;
14. Mechanical breakdown, including rupture or bursting caused by centrifugal force;
15. Normal settling, cracking, bulging, expansion, or contraction in foundation, walls, floor, or ceilings;
16. Damage in excess of the \$10,000 sublimit caused by water which backs up from sewers or drains except where such back up is directly caused by peril of Flood as defined in this Section II (Property) of this Contract;
17. Water under the ground surface which presses on or flows or seeps through foundation, walls, floors, paved surfaces, basement, doors, windows, or other openings;

Exception for Perils Not Covered Nos. 9-13 and 15-17

Only with respect to "Perils Not Covered" Numbers 9 through 13 and 15 through 17 above, if such damage results in ensuing damage that would otherwise be covered if it were not caused by these perils, SCMIRF will cover such ensuing loss, subject to applicable limits.

18. Delay, loss of use, or loss of market, or other consequential loss unless specifically covered in This Contract;
19. Explosion, rupture, or bursting of steam boilers, steam pipes, steam turbines or steam engines owned, leased, or operated under the Member's control. But, if direct physical loss or damage by fire or combustion explosion ensues, This Contract will cover for such ensuing loss or damage. This Contract will also cover direct physical loss or damage caused by or resulting from explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass;
20.
 - a. error, omission, or deficiency in designs, plans, or specifications; and
 - b. faulty and/or defective workmanship, materials, or supplies, unless an Occurrence of direct physical loss or damage by a covered peril ensues, not consisting of the faulty or defective quality of the workmanship, materials, or supplies themselves or any diminution in the value of property due to said faulty or defective quality, and then Section II of This Contract will cover such ensuing loss or damage;
21. Rain, snow, ice, or sleet to personal property in the open;
22. Extremes or changes of temperature (except to water piping or space heating equipment due to freezing) or changes in relative humidity, all whether atmospheric or not.
23. With regard to real property,
 - a. any increase of loss due to interference with rebuilding, repairing, or replacing the property or with the resumption or continuation of business at the described premises caused by strikers or other persons.
 - b. any increase in loss due to the suspension, lapse or cancellation of any lease or license, contract or order.
24. With regard to personal property,
 - a. shrinkage, evaporation, loss of weight, leakage, depletion, erosion, marring, scratching, exposure to light, or change in color, texture or flavor, unless an Occurrence of such loss or damage is caused directly by fire or the combating thereof, lightning, windstorm, hail, explosion, strike, riot or civil commotion, aircraft, vehicles, breakage of pipes or apparatus, sprinkler leakage, vandalism and malicious mischief, Theft or attempted Theft.
 - b. loss resulting from processing, renovating, repairing or faulty workmanship, unless fire or explosion ensues, and then only for an Occurrence of direct loss or damage caused by such ensuing fire or explosion.



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25. With regard to property in the course of construction:
- loss or damage to property caused by or resulting from errors in design or testing of that property but not excluding resultant Occurrence of physical loss or damage to property covered hereunder other than the property lost or damaged by error in the design or testing of that property.
 - the repair or replacement of faulty or defective workmanship, material, or construction, but this exclusion shall not apply to an Occurrence of direct physical damage to other property resulting from such faulty or defective workmanship or material.
 - penalties for non-completion of or delay in completion of contract or non-compliance with contract conditions, nor for loss of use of occupancy howsoever caused.
26. Asbestos materials:
- asbestos material removal unless the asbestos is itself damaged by fire, lightning, aircraft impact, explosion, riot, civil commotion, smoke, vehicle impact, windstorm or hail, vandalism, malicious mischief, or leakage or accidental discharge from automatic fire protective systems;
 - demolition or increased cost of reconstruction, repair, debris removal, or loss of use necessitated by the enforcement of any law ordinance regulating asbestos material; and
 - any governmental direction or request declaring that asbestos material present in or part of or utilized on any undamaged portion of the Member's property can no longer be used for the purpose for which it was intended or when installed and must be removed or modified;
27. Authorities exclusion:
- Except as provided by the Ordinance Deficiency Extension in this Section, SCMIRF shall not be liable for loss, damage, costs, expenses, fines, or penalties incurred or sustained by or imposed on the Member at the order of any government agency, court, or other authority arising from any cause whatsoever; and
28. Pathogenic and/or Poisonous Biological or Chemical Materials:
- Loss or damage caused directly or indirectly by the discharge, dispersal, seepage, migration, release, escape or release of any pathogenic and/or poisonous biological or chemical materials or organisms. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

H.

Earthquake and Flood

Each loss by Earthquake, Flood, cyclone, tornado, hurricane, windstorm, or hail will constitute a single loss occurrence.

Flood coverage is excluded for Real and Personal Property located within Flood Zones A or V, except that SCMIRF will provide limited coverage for losses to properties eligible for coverage through the National Flood Insurance Program (NFIP), but only in excess of NFIP maximum limits that are or would have been available to the Member or Covered Person, regardless of whether the Member or Covered Person has actually purchased coverage through NFIP or not. However, any state or federal statute or regulation that limits available NFIP coverage or disaster relief for previously-damaged property, including without limitation the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207, the Federal Flood Disaster Protection Act of 1973, and/or any implementing regulations or amendments thereto, will not operate to increase the amount of coverage available under This Contract. Coverage under This Contract will be in excess of the NFIP coverage that would have been available or deemed available if the property had not been previously damaged and/or if the Member and/or Covered Person had complied with any statutory or regulatory requirement to obtain NFIP insurance or other primary insurance. However, to the extent NFIP insurance provides only Actual Cash Value coverage and This Contract would otherwise provide Replacement Cost coverage or Functional Replacement Cost coverage for the type of property covered by the NFIP insurance, SCMIRF will, subject to the applicable Coverage Limits and all applicable terms and conditions of This Contract, pay the difference between such NFIP payments and Replacement Cost or Functional Replacement Cost value, whichever is applicable, based on SCMIRF's own method of valuation.

SCMIRF will not be liable for any loss caused by any Earthquake or Flood where such loss begins or is originally caused before the Policy Period, nor for any loss arising in fact or continuing after the expiration of the Policy Period.

I.

Valuation

At the time of loss, the basis of valuation unless otherwise endorsed herein shall be as follows:



1. buildings and structures, the **Replacement Cost** if actually replaced, repaired or rebuilt within two years after loss or damage; if not so replaced, repaired or rebuilt, the **Actual Cash Value**; however, if the building where loss or damage occurs has been **Vacant or Unoccupied** for more than 60 consecutive days before that loss or damage, then **Actual Cash Value**, up to a coverage limit of no more than \$10.00 per square foot for such **Vacant or Unoccupied** building, whether or not the building is actually repaired, replaced or rebuilt. Subject to the foregoing, if at the time of loss a building is being used for a lesser purpose than its original use, including without limitation buildings used for storage or maintenance work which were originally designed for full occupancy, value will be figured according to **Functional Replacement Cost**.
2. the smallest of the following:
 - a. the cost to repair; or
 - b. the cost to rebuild or replace the destroyed or damaged property in a condition equal to but not superior to nor more extensive than its condition when new. If the Member decides to replace destroyed or damaged property on another site, cost of such site is not included.
 - c. the actual expenditure incurred in rebuilding, repairing or replacing on the same or another site; or
 - d. 150% of the scheduled value on file with SCMIRF.
3.
 - a. raw stock, supplies and other merchandise not manufactured by the Member, the **Replacement Cost**;
 - b. stock in process, the value of the raw stock and labor expended, plus the proper proportion of overhead charges; and
 - c. **Finished Stock**, the regular cash selling price, less all discounts and charges to which such **Finished Stock** would have been subject had no loss occurred;
4. Improvements and betterments and personal property, the **Replacement Cost** if actually replaced within two years after loss or damage, if not so replaced, the **Actual Cash Value**;
5. electronic data processing systems and equipment (computer hardware):
 - a. owned, the **Functional Replacement Cost**, if actually replaced, of the existing equipment or similar equipment performing the same functions, if not so replaced then the **Actual Cash Value**; and
 - b. leased, the amount of the Member's liability imposed by law or assumed by written contract;
6. **Fine Arts**, the stated amount as declared in the Statement of Values on file with SCMIRF;
7. "**Finished Stock**" means stock manufactured by the Member which in the ordinary course of the Member's operation is ready for packing, shipment, or sale; this exclusion does not apply to **Extra Expense**;
8. patterns, molds, and dies, the **Replacement Cost** if **Replacement Cost** values have been reported to SCMIRF and if actually replaced; otherwise, at **Actual Cash Value**;
9. exhibitions and displays, the cost to the Member;
10. **Valuable Papers and Records**, the cost to repair or replace the property with other of like kind and quality including the cost of gathering and/or assembling information; or if not replaced, the cost of blank material and transcribing for books of account, manuscripts, abstracts, drawings, card index systems, and other records; and the cost of unexposed or blank electronic data processing films, tapes, discs, drums, cells, and other magnetic or storage media;
11. property in Transit, the actual net invoice cost together with such costs and charges as may have accrued or become legally due since shipment, but in the absence of an invoice the market value of the property at the point of destination on the day of actual loss;
12. buildings over 50 years old and over \$1,000,000 in value, the **Actual Cash Value** subject to the reported value, unless an appraisal has been received by SCMIRF and a contribution charged on appraised value and then **Replacement Cost**;
13. machinery and equipment, **Replacement Cost**, if so reported and if actually replaced within two years after loss or damage, otherwise the **Actual Cash Value**; and



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14. Mobile Equipment, Actual Cash Value or the cost to repair, whichever is less.
 15. values must be reported by each Member on a 100% Replacement Cost basis.
 16. personal property of others - Actual Cash Value, or the cost to repair, whichever is less.
 17. Miscellaneous Property - Actual Cash Value or the cost to repair, whichever is less.
- J. Architects Fees**
This Contract covers the additional assessment involving architects' fees for consultations arising from losses resulting from an insured peril. Fees are limited to seven (7%) percent of Replacement Cost.
- K. Misrepresentation and Fraud**
This Contract is void in its entirety if:
1. the Member has concealed or misrepresented any material fact or circumstances concerning this coverage; or
 2. the Member makes any attempt to defraud SCMIRF either before or after a loss.
- L. Inspection and Audit**
While this coverage is in effect, SCMIRF can, at any reasonable time, inspect the Member's property and operations. However, neither SCMIRF's inspection nor any report thereof can serve as any representation that the Member's property or operations are safe or healthful or that the Member's property or operations comply with any law, rule, or regulation.
- M. Protection of Property**
In case of direct physical loss or damage by a covered peril, the Member will take reasonable steps to protect, recover, or save the covered property and minimize any further potential loss.
- The acts of the Member or SCMIRF in protecting, recovering or saving the covered property will not be considered a waiver or an acceptance or abandonment. The Member and SCMIRF will bear the expenses incurred proportionate to their respective interests.
- N. Pair and Set**
1. In the event of loss or damage to any covered article or articles which are part of a pair or set, the measure of loss or of damage to such article or articles will be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article or articles, but in no event will such loss or damage be construed to mean total loss of the pair or set, or
 2. In the event of loss or damage to any part of property covered consisting, when complete for use, of several parts, SCMIRF will only be liable for the value of the part lost or damaged.
- O. Contributing Insurance**
Permission is granted for the Member to purchase other policies written upon the same plan, conditions, and provisions as those contained in this Section II (Property) of This Contract.
- This Section II (Property) of This Contract will contribute to the total of each loss otherwise payable herein, to the extent of the participation of this Section II (Property) of This Contract in the total limit of liability as provided by all policies written upon the same plan, conditions, and provisions as those contained in this Section II (Property) of This Contract.
- P. Excess Insurance**
Permission is granted to the Member to have excess insurance over the limit of liability set forth in this Section II (Property) of this Contract without prejudice to this Section II (Property) of this Contract, nor will the existence of such insurance, if any, reduce any liability under this Section II (Property) of this Contract.
- Q. Other Insurance**
Except where the provisions of this Section set out immediately above concerning Contributing Insurance, Excess Insurance, and Joint Loss apply by their terms, if there is other collectible insurance, This Contract will cover as excess coverage and will not contribute with such other insurance.
- R. Reinstatement**
With the exception of loss caused by perils which are subject to annual aggregate limits, any loss hereunder will not reduce the amount of limits of Section II (Property).
- S. Benefit to Bailee**
This Contract will not inure, directly or indirectly, to the benefit of any carrier or bailee.



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T. Abandonment

There will be no abandonment of any property to SCMIRF.

U. Conditions Applicable to Section II (Property)

1. Member's Duties in the Event of Occurrence, Claim, or Suit

- a. In the event of an loss to which this Section II applies, written Notice containing information sufficient to identify the Member and also reasonably obtainable information with respect to the time, place, and circumstances the loss and descriptions of the property involved and the identity of any available witnesses shall be given by or for the Member to SCMIRF's Claims Department as soon as practicable.
- b. If a claim for loss to property owned or leased by a third party and in the care and control of the Member is brought to Member's attention, the Member shall immediately forward the same to SCMIRF's Claims Department.
- c. It is agreed that SCMIRF (herein referred to as The Fund) has the right to investigate all claims involving coverage under this Section II. In the event of a disagreement between The Fund and the Member or any person or organization seeking coverage under this Section II regarding determination of the existence or amount of coverage as to any property loss claims, it is agreed that the Member or any person or organization seeking coverage must appeal the coverage determination to the Board of Trustees within six months of such determination. No legal action may be undertaken by the Member or any person or organization against The Fund prior to the decision of the Board of Trustees regarding such an appeal. It is agreed that the independent settlement or voluntary payment of any claim by or on behalf of a Member, other than first party claims for physical damage within the Member's deductible, without approval of The Fund shall be at the sole cost of the settling Member without any reimbursement or other resources from The Fund; and may be grounds for expulsion of the Member from The Fund. It is agreed that The Fund shall make all final decisions regarding the legal defense of any third-party property claims, and shall have absolute and conclusive authority with regard to determination of coverage, defense, settlement and payment of such claims, regardless of whether the Member elects alternative premium financing option, including but not limited to a deductible or individual self-insured retention.

2. Other Provisions

- a. See Section I (General Provisions) for items not addressed in this Section II (Property).

V. Definitions

In this Section II (Property) of This Contract, defined terms shall have the meanings below, unless the context clearly requires otherwise, and each shall appear in bold print and/or have their first letter or letters capitalized. Different Sections may have different meanings for the same word of the defined term. Except where the context otherwise required, words importing the singular number shall include the plural number and vice versa. Unless otherwise defined in a section or provision therein as used in this Contract, the following defined terms shall have the following meanings:

1. "Actual Cash Value" means the replacement cost, at the time of loss, of the damaged or destroyed property, less depreciation.
2. "Application" means the document or documents required from the Member prior to and during its participation in SCMIRF.
3. "Auto" means a land motor vehicle, Trailer, or semi-trailer licensed for road use, but does not include Mobile Equipment.
4. "Business Income" means (1) net income (net profit or its equivalent) which would have been earned or incurred; and (2) any continuing normal operating expenses, including ordinary payroll, incurred.
5. "Business Personal Property" means things you own or have a financial interest in such as stock, furniture, fixtures, machinery, equipment, prototypes, supplies, and other movable items and all other personal property owned by you and used in your business.



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Business Personal Property may include personal property used in your business that's leased from others when you are contractually required to insure it and its value is included in your **Business Personal Property** limit of coverage.

Your **Business Personal Property** coverage also includes the value of materials, labor, and other services you've expended on other people's property.

6. **"Contaminant"** or **"Pollutant"** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste, which after its release can cause or threaten damage to human health or human welfare or causes or threatens damage, deterioration, loss of value, marketability, or loss of use to property covered hereunder due to its physical contact with said property or presence on, in, or under it, including but not limited to bacteria, fungi, viruses, or hazardous substances as listed in the Federal Water Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976, and Toxic Substances Act, or as designated by the U.S. Environmental Protection Agency. **"Waste"** as used herein includes human and animal waste, whether raw or processed for disposal or use as fertilizer or for any other purpose. **"Waste"** includes materials to be recycled, reconditioned, or reclaimed as well as materials disposed of or meant for disposal.
7. **"Contract"** where capitalized or **"This Contract"** means this entire agreement to provide coverage for property loss, general liability, law enforcement liability, public official liability, automobile liability, commercial crime coverage, excess casualty coverage (if purchased) and any additional coverage forms incorporating the provisions of any of the above, including without limitation their "additional exclusions, conditions and definitions". **"Contract"** or **"This Contract"** also includes the title pages, the declarations, the table of contents (and all coverage sections, pages, and provisions referred to therein), and all endorsements.
8. **"Contract Declarations"** means the items stated in the initial page of each Section of this Contract listing the name of SCMIRF, the Member, Contract Period, Effective Date, and other items.
9. **"Contract Period"** or **"Coverage Period"** or **"Policy Period"** means the period of time set forth in the Contract Declarations between the Effective Date and the Expiration Date.
10. **"Declarations Page"** means the page or pages at the beginning of each Section showing the Member and general provisions or limits of coverage.
11. **"Earthquake"** means earthquake, volcanic eruption, subterranean fire, landslide, subsidence, earth sinking and earth rising or shifting or any such convulsion of nature. If more than one earthquake shall occur within any period of seventy two (72) hours during the term of this Agreement, such earthquake shock shall be deemed to be a single earthquake within the meaning hereof.
12. **"Effective Date"** means at 12:01 a.m. eastern standard time on the initial date listed across from the Contract Period in the Contract Declarations.
13. **"Expiration Date"** means at 12:01 a.m. eastern standard time of the last day stated in the Contract Period.
14. **"Extra Expense"** means the expense incurred during the Period of Recovery that would not have occurred, if there had been no direct physical loss or damage to property covered.
15. **"Fine Arts"** means sculptures, ceramic or glass objects, paintings, etchings, pictures, tapestries, art glass windows, and other bona fide works of art which:
 - a. are unique or of rarity; and
 - b. have historical value or artistic merit.

"Fine Arts" do not include the structural or ornamental parts of a building, including without limitation friezes, mosaics, murals, or other plaster, painting, tile, or stone work attached to building.
16. **"Finished Stock"** means stock manufactured by the Member which in the ordinary course of the Member's operation is ready for packing, shipment, or sale; this exclusion does not apply to Extra Expense.
17. **"Flood"** means rising water, surface water, waves, tidal water, tidal wave, overflow of streams or other bodies of water, or spray from any of the foregoing, all whether driven by wind or not. For purposes of this definition, **"surface water"** includes water that originated as rain or storm water runoff, whether or not such water has been channeled or concentrated into drainage pipes, which has not since reached a natural



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water channel or a body of water. For purposes of this definition, improved property that lies in the course of a former water channel, whether built on fill material or otherwise, is not considered to be part of a natural water channel or a body of water, and surface water collected on or flowing through such property retains its character as surface water.

18. **"Functional Replacement Cost"** means the cost of repairing, replacing, or rebuilding a property to suit the use to which it was being put at the time of the loss. This valuation applies in lieu of Replacement Cost where a building or structure is being used for a lesser purpose than that for which it was originally designed. This includes, without limitation, buildings used for storage or maintenance work which were originally designed for full occupancy, such as former office buildings, libraries, school buildings, courthouses, and other buildings whose original use has been abandoned or indefinitely interrupted and/or which include finishes, design features, and heating and air conditioning, plumbing, electrical and similar support systems which are not required, or which are more extensive than required, under applicable building codes or other applicable laws to support the current use. Functional Replacement Cost valuation does not increase the limits applicable to Vacant or Unoccupied property.

Subject to the limits applicable to Vacant or Unoccupied property, Functional Replacement Cost valuation will not apply to temporary use of a building or structure for one year or less for storage, maintenance or another lesser purpose than its original use and occupancy level, provided that the Member has currently budgeted or received substantial current allocations for actual construction work to renovate or rehabilitate or restore it to its original use, or for a type of use and/or a level of occupancy which is reasonably comparable to its original use. The mere budgeting or receipt of allocations for studies or plans for possible rehabilitation is not deemed to be for actual construction work for purposes of this definition.

19. **"Inland Marine"** means those items Scheduled and/or rated as such by SCMIRF, including Scheduled animals, radio or broadcast antennae, seasonal banners and decorations, canine mortality, cell phones, coastal structures, cookers, brackish water and fresh water docks, electrical chargers, electrical panels, fences, Fine Arts (owned and non-owned), fire hydrants, flag poles, fountains, golf course greens, guns, ice makers, landscaping planters and vases, light poles, Mobile Equipment, mobile or wireless radios, monuments, motors, pedestrian bridges at parks, outdoor switches, emergency phones, playground equipment, portable bathrooms, recreation property, retaining walls, signs (except signs that are attached to or within 100 feet of a Scheduled building and have not been Scheduled by the Member as Inland Marine), stages, streetlights, storage tanks, target systems for firing ranges, employee tools, tool attachment sets, trash cans, traffic lights, transmission towers, video surveillance cameras, water craft, waterslides, wells and pumps, walkie-talkies, and any other property so Scheduled or rated by us as "Inland Marine".
20. **"Joint Venture Property"** means Member's interest in property of which the Member is a joint owner with other parties.
21. **"Member"** means the political subdivision listed in the Contract Declarations.
22. **"Members"** means all political subdivisions participating in SCMIRF.
23. **"Miscellaneous Property"** includes real and/or personal property not defined elsewhere in the policy that includes but is not limited to traffic lights, retaining walls, street lights, fencing, bleachers, signs and landmark signs, (other than any signs attached to or within 100 feet of a Scheduled building), score boards, and playground equipment.
24. **"Miscellaneous Unnamed Property"** means that property owned by the Member whether real or personal but inadvertently not reported to SCMIRF.
25. **"Mobile Equipment"** means any of the following categories of land vehicles, including any attached machinery or equipment;
- a. bulldozers, farm machinery, forklifts, and other vehicles designed for use principally off public roads;
 - b. vehicles maintained for use solely on or next to premises the Member owns or rents;
 - c. vehicles that travel on crawler treads;



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- d. vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) power cranes, shovels, loaders, diggers, or drills; or
 - (2) road construction or resurfacing equipment such as graders, scrapers, or rollers.
 - e. vehicles not described in subparagraphs a, b, c, or d above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) air compressors, pumps, and generators, including spraying, welding, building, cleaning, geophysical exploration, lighting, and well servicing equipment; or
 - (2) cherry pickers and similar devices used to raise or lower workers.
 - f. vehicles not described in subparagraphs a, b, c, or d above that are maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not Mobile Equipment but will be considered Autos:
 - (1) equipment designed primarily for:
 - (a) snow removal;
 - (b) road maintenance, but not construction or resurfacing; or
 - (c) street cleaning;
 - (2) cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (3) air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting, and well servicing equipment.
26. "Newly Acquired Inland Marine Property" means Inland Marine property that is acquired after the effective date of This Contract. The Member will report all such property to SCMIRF within thirty (30) days of acquisition, measured from the date of the agreement to purchase or otherwise acquire it.
27. "Newly Acquired Locations" means locations acquired or erected after the effective date of This Contract. The Member will report all locations with a total value of \$1,000,000 or over to SCMIRF within thirty (30) days of acquisition or commencement of construction.
28. "Notice" means only written notice to SCMIRF's Claims Department, on the form provided by SCMIRF for that purpose, which is actually physically delivered to SCMIRF.
29. "Notice of Loss" means a report in writing from the Member to SCMIRF's Claims Department on a form provided by SCMIRF for that purpose concerning an incident that may give rise to a claim under This Contract.
30. "Pollutants" means (See Contaminant)
31. "Proof of Claim" or "Proof of Loss" means a signed and sworn detailed statement filed with SCMIRF as soon as possible after the applicable event.
32. "Rental Income" means (1) the fair rental value of any portion of the property occupied by the Member; (2) income reasonably expected from rentals of unoccupied or unrented portions of such property; (3) the rental income from the rented portions of such property, according to bona fide leases, contracts, or agreements in force at the time of loss; and (4) continuing charges and expenses necessarily incurred in reducing the loss under This Contract for an amount not to exceed that by which the loss is reduced.
33. "Replacement Cost" means the smallest of the following amounts:
- a. the amount of coverage under This Contract applicable to the damaged or destroyed property;
 - b. the cost of replacing the damaged or destroyed property or any part thereof with property identical to it on the same premises and intended for the same occupancy and use; or



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- c. the amount actually and necessarily expended in repairing or replacing the damaged or destroyed property or any part thereof.

(See also, "Functional Replacement Cost")

34. "Scheduled" refers to property: (1) in which the Member has an Insurable Interest and (2) which has been reported to SCMIRF.
35. "SCMIRF" means the South Carolina Municipal Insurance and Risk Financing Fund.
36. "Section" means the divisions into Section I (General Provisions), Section II (Property), Section III (General Liability), Section IV (Law Enforcement Liability), Section V (Public Officials Liability) and Section VI (Automobile).
37. "State" means the state of South Carolina.
38. "Storage" means to accumulate and keep for future use.
39. "Table of Contents" means the listing of contents of This Contract.
40. "Third Party Administrator" means any independent appraiser or claims handling company selected by SCMIRF to administer claims on its behalf and designated by SCMIRF as such.
41. "Transit" means all shipments within and between the territory of this Section II (Property) of this contract including coastal waters thereof, by any means of conveyance, from the time the property is moved for purpose of loading and continuously thereafter while awaiting and during loading and unloading and in temporary storage on any conveyance intended for use for any outbound or used for any inbound shipment, including during deviation and delay, until safely delivered into place of final destination.
42. "Unoccupied" means the building contains contents to conduct the Member's customary operations, but the building is not utilized for intended use for at least four months out of the year.
43. "Vacant" means 70% or more of the square footage is not rented or not used to conduct customary operations. Buildings under construction are not considered Vacant.
44. "Valuable Papers and Records" meaning inscribed, printed or written:
- a. Documents;
 - b. Manuscripts;
 - c. Records; including abstracts, books, deeds, drawings, films, maps, or mortgages.
- But "Valuable Papers" and "Records" does not mean:
- a. "Money" and "Securities";
 - b. Converted data;
 - c. Programs or instructions used in your data processing operations, including the material in which the data is recorded.
 - d. Media Reproduction — the cost of reproducing data onto a medium that was damaged or destroyed by a Covered Peril and includes costs of contractors to reconstruct data.



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South Carolina Municipal Insurance and Risk Financing Fund

**Town of Cottageville
P-SCMIRF-1124-2011**

- SECTION III -

GENERAL LIABILITY CONTRACT DECLARATIONS

Contract Period

Effective from 01/01/11 – 01/01/12 both days at 12:01 AM standard time at address of Member

COVERAGE:	LIMIT:	
General Liability	\$1,000,000	Per Occurrence or Offense
Products/Completed Operations	\$1,000,000	Aggregate
Excess Premises Medical Payments (Unless Otherwise Endorsed)	\$1,000	Per Person
	\$10,000	Per Occurrence
Sewer Back Up Limit (See Sewer Back Up Sub-Limit Coverage Wording for more details)	\$100,000	Per Occurrence

DEDUCTIBLE TYPE:	DEDUCTIBLE:	
3 rd Party Property Damage Disappearing Deductible	\$500	Per Occurrence
Fiber Optic Communications Lines Deductible	\$10,000	Per Occurrence
General Liability Deductible – All Other	\$0	Per Occurrence



- SECTION III -

GENERAL LIABILITY COVERAGE

A. Coverage Agreement

SCMIRF agrees, subject to the limitations, terms, definitions, and conditions stated in the General Provisions of Section I and hereunder mentioned:

To pay on behalf of the Member or Covered Person(s) for all sums which the Member or Covered Person(s) shall be obligated to pay exclusively as Money Damages by reason of the liability imposed upon them by law on account of Bodily Injuries, including death resulting therefrom at any time, suffered or alleged to have been suffered by any person or persons (except employees of the Member injured in the course of their employment), and/or Property Damage, arising out of any Occurrence other than as covered by Section IV (Law Enforcement), Section V (Public Officials), and Section VI (Auto) of This Contract. The coverage for Bodily Injury and/or Property Damage includes, without limitation, the coverage discussed in the subsections herein for General Property Damage Liability, Products/Completed Operations Liability, Fire Legal Liability - Real Property, and described in the Definition in this Section III for Incidental Malpractice. (There is no separate Coverage Amount for these unless a separate Coverage Limit is expressly indicated on the Declarations page of this Section III.)

To pay on behalf of the Member and Covered Person(s) all costs and expenses incurred in the investigation, adjustment, settlement, defense and appeal or any claim or suit for which coverage is afforded by this Section III (General Liability) of This Contract. Coverage for such costs and expenses provided herein is in addition to, and shall not erode, the applicable Limit of Liability as stated in the Declarations and/or as described and limited in the Limit of Liability provisions in the text of this Section III.

Solely for the purposes of liability assumed by the Member in a Covered Contract, SCMIRF will pay the reasonable attorney fees and necessary litigation expenses incurred by or for a party other than a Member, provided:

1. Liability to such party to provide, or pay the cost of, that party's defense has also been expressly assumed by the Member in the same Covered Contract;
2. Such attorney fees and litigation expenses are for defense of that party against a claim, civil suit, or alternative resolution proceeding in which Money Damages for Bodily Injury or Property Damage to which both This Contract and the Covered Contract apply are alleged;
3. The party other than a Member to be defended consents to SCMIRF's control of the defense and/or settlement of the claim, civil suit, or proceeding and cooperates with SCMIRF in the investigation, defense, and/or settlement of the claim, civil suit, or proceeding. SCMIRF has no duty to defend any person or organization against any claims, civil suits, or proceedings to which This Contract does not apply.

We will also cover the Member or Covered Person for liability to pay sums exclusively as Money Damages on account of negligent acts, errors, or omissions causing Employee Benefits Liability as described herein.

The conduct causing any Money Damages covered herein and the resulting actual injury must arise, and the injury become manifest, on or after the Retroactive Date of coverage for This Contract. This Section III does not cover liability for damages other than Money Damages.

B. Sewer Backup Limited Coverage

Subject to the terms and conditions in Paragraph A., Coverage Agreement, and any other applicable coverage limits, the following additional limitations apply:

Sewer Backup Limit - The most SCMIRF will pay for all covered Bodily Injury, Property Damage and Medical Expenses that:

1. Result from the backup of sewage into a building from any sewage facility or sanitary sewer the "Member" owns, operates or maintains, and
2. are caused by any one "Occurrence"

Is further limited as follows:



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The Member's participation in a sewer back-up loss is:

1. For the first \$500, the "Member" is responsible for reimbursing SCMIRF for 100% of the sewer back-up loss.
2. For the next \$49,500 the "Member" is responsible for reimbursing SCMIRF for 10% of the sewer back up loss. The maximum participation of SCMIRF in this layer is \$44,550.
3. In the event a loss exceeds \$50,000 the Member is responsible for reimbursing SCMIRF for 50% of the amount of the loss above \$50,000 up to \$100,000. The maximum participation of SCMIRF in this layer is \$25,000.

C. Fire Legal Liability - Real Property

With respect to Property Damage to structures or portions thereof rented to or leased to the Named Member including fixtures permanently attached thereto, if such Property Damage arises out of fire,

1. all of the exclusions of This Contract, other than the Nuclear Explosion Exclusion are deleted and replaced by the following:

This coverage does not apply to liability assumed by the Member or Covered Person(s) under any contract or agreement, including without limitation any obligation to continue paying rent on any property, to maintain any portion of any property, or to continue providing services or performing any obligation in or on any property.

2. There is no separate coverage limit under this part. The per-occurrence limit of \$ 1,000,000.00 applicable to Property Damage under this Section III applies to this part.
3. The Fire Legal Liability Coverage - Real Property shall be excess coverage over any valid and collectible property insurance (including any deductible portion thereof), available to the Member, such as, but not limited to fire, extended coverage, builder's risk coverage or installation risk coverage and the other insurance conditions of This Contract are amended accordingly.

D. Coverage for Negligent Supervision Resulting in Abuse: Special Aggregate Limit

Liability Coverage for any claim based on a Member's or Covered Person(s)' failure to supervise, disclose, warn of, or prevent the conduct of an Employee, or of any other person whose conduct the Member or Covered Person(s) is legally obligated to supervise, control, disclose, warn of, or prevent, which results in the Sexual Abuse or physical abuse or neglect of any person, whether or not said person and/or the perpetrator, tortfeasor, and/or defendant, is in the custody or care of the Member or Covered Person(s), shall be subject to a single aggregate limit of \$1,000,000.00. This single aggregate shall apply, regardless of the number of Contract Periods during which the Sexual Abuse or physical abuse or neglect began or allegedly began or continued, the number of perpetrators, tortfeasors, and/or defendants involved, and/or the number of victims and/or claimants involved, and regardless of the number of incidents of Sexual Abuse or physical abuse or neglect that happened over time. All such repeated and/or continuing Sexual Abuse or physical abuse and neglect shall be deemed to constitute one single act, and all conduct on the Member's or Covered Person(s)' part in failing to supervise, disclose, warn of, or prevent such abuse and neglect will be treated as one Occurrence. This provision will not operate to extend coverage for intentional injuries and/or conduct outside the course and the scope of a Covered Person(s)' official duties under the "South Carolina Tort Claims Act", nor will it extend coverage for any person who commits or allegedly commits Sexual Abuse. This provision applies regardless of how injury or damage from Sexual Abuse is described, or what legal theory or right is invoked, by the victim(s) or other claimant(s). There will be no duplication of such coverage, regardless of whether a claim is covered under another Coverage Section, and only one such aggregate will apply to all such claims.

E. Identity Fraud: Limits on Coverage

This coverage provides coverage of up to a maximum of \$50,000.00 per occurrence for liability for Money Damages imposed on a Member or Covered Person(s) for failure to protect personal information which causes or contributes to Identity Theft as provided in "The South Carolina Financial Identity Fraud and Identity Theft Protection Act". All instances of improper disclosure, use, and/or failure to protect a person's personal information shall be treated as one occurrence, regardless of whether the disclosure, use, or failure to protect such information was continuous or repeated, or of the number of perpetrators involved, or of the number of instances of Identity Theft, or of Loss from Identity Theft, involving a single victim and/or claimant which resulted. This part does not extend coverage for intentional misconduct or conduct outside the course and the scope of a Covered Person(s)' official duties under the "South Carolina Tort Claims Act". This provision is the only Liability Coverage for Identity Theft or related claims under This Contract, regardless of any other statutory or common law basis for such



claims, and no other coverage or coverage limit applies to such claims.

F. General Property Damage Liability

Liability Coverage for Property Damage under this Section III applies subject to Part A above (the general insuring agreement of Section III), the other general provisions, conditions, exclusions and definitions of this Section III and of Section I of This Contract, and to the following additional provisions:

There is no coverage under this Section III for:

1. damage to property owned, occupied by, or rented to the Member or Covered Person(s), except for the coverage extended under the Fire Legal Liability - Real Property part of this Section III;
2. damage to property which is in the custody of the Member or Covered Person(s) which is to be installed, erected or used in construction by the Member or Covered Person(s);
3. damage to that particular part of any property, not on premises owned by or rented to the Member or Covered Person(s):
 - a. upon which operations are being performed by or for the Member or Covered Person(s) at the time of Property Damage arising out of such operations; or
 - b. which is defective, dangerous, less useful or of lesser value because the Member's or Covered Person(s)' work or product was incorporated into it; or
 - c. the restoration, repair, or replacement of which has been made necessary by reason of faulty workmanship thereon by or on behalf of the Member or Covered Person(s); or
4. With respect to work completed, abandoned, or indefinitely interrupted by the Member or Covered Person(s), damage to, or consisting of, work performed by or for the Member or Covered Person(s) arising out of such work or any portion thereof, or out of any materials, parts, equipment, furnished in connection therewith, or any express or implied warranties of any sort made by the Member or Covered Person(s) by anyone for whom the Member or Covered Person(s) is legally responsible in connection with any of the above. All the above provisions of this paragraph also apply to any products made by or on behalf of the Member or Covered Person(s). (For damage to property other than the Member's or Covered Person(s)' own work or product caused by completed or abandoned work or products, see the separate coverage provided for "Products/ Completed Operations" described elsewhere in this Section III.)
5. personal property of others, if covered under Section II or elsewhere in This Contract.
6. damage, including continuing damage, to property which has been sold, given away, or otherwise aliened by the Member or Covered Person(s).

G. Products/Completed Operations Coverage

Products / Completed Operations coverage applies to liability for Money Damages for Bodily Injury and Property Damage to property other than the Member's own work or own product, caused by an Occurrence arising out of work completed or abandoned by, or products made by, the Member or Covered Person(s) or another party for whose work or products the Member or Covered Person(s) is legally liable. "Work" and "product" include all warranties made by the Member or Covered Person(s), or by persons for whose conduct they are legally liable, in connection therewith and any instructions or warnings, or failure to give instructions or warnings, pertaining thereto. Where a separate liability limit for this coverage appears in the Declarations, no other coverage limit applies. This coverage is subject to Part A above (the general insuring agreement of Section III), the other general provisions, conditions, exclusions and definitions of this Section III and of Section I of This Contract. This coverage does not apply to liability for damage to property owned by the Member or Covered Person(s).

H. Employee Benefits Liability Coverage

This coverage applies to a Member's liability for Money Damages as the result of economic damage sustained by an employee, prospective employee, former employee of the beneficiaries, assignees or legal representatives thereof in the Administration of the Member's Employee Benefit Programs as defined herein, caused by any negligent act, negligent error, or negligent omission of the Member or of any person for whose acts the Member is legally liable, occurring during This Contract Period described in the Declarations. This coverage is subject to Part A above (the general insuring agreement of Section III), the other general provisions, conditions, exclusions and definitions of this Section III and to the following additional provisions.



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1. Exclusions:
Employee Benefits Liability Coverage under this Section III does not apply:
 - a. to any dishonest, fraudulent, criminal or malicious act, libel, slander, discrimination or humiliation;
 - b. to Bodily Injury to, or sickness, disease or death of, any person, or to injury to or destruction of any tangible property, including the Loss of use thereof;
 - c. to any claim for failure of performance of contract by any Insurer, including failure of any Employee Benefit Program;
 - d. to any claim based upon the Insured's failure to comply with any law concerning Workers' Compensation, Unemployment Insurance, Social Security or Disability Benefits;
 - e. to any claim based upon:
 - (1) Failure of stock to perform as represented by a Member;
 - (2) Advice given by a Member to an employee to participate or not to participate in stock subscription plans;
 - (3) The investment or non-investment of funds;
 - f. to claims based upon the Employee Retirement Income Security Act of 1974, Public Law 93-406 commonly referred to as the Pension Reform Act of 1974 and amendments thereto, or similar provisions of any Federal, State or Local Statutory Law or Common Law.
2. Additional Definitions applicable to Employee Benefits Liability Coverage:
 - a. "Administration" - The unqualified word "Administration" whenever used, shall mean:
 - (1) Giving counsel to employees with respect to the Employee Benefit Program;
 - (2) Interpreting the Employee Benefit Programs;
 - (3) Handling of records in connection with the Employee Benefit Programs;
 - (4) Effecting enrollment, termination or cancellation of employees under the Employee Benefit Program; provided all such acts are authorized by the Member.
 - b. "Employee Benefit Programs" - The term Employee Benefit Programs shall mean group life insurance, profit sharing plans, pension plans, Employee stock subscription plans, workers' compensation, unemployment insurance, social security, disability benefits insurance and travel, savings or vacation plans.

- I. Cross Liability
In the event of claims being made by reason of Bodily Injury and/or Property Damage suffered by one Covered Person herein for which another Covered Person herein is or may be liable, then this coverage shall apply to such Covered Person against whom a claim is made or may be made in the same manner as if separate Contracts had been issued to each Covered Person herein, subject to any applicable Exclusions or other limitations in this Section III or in the Section I General Provisions that expressly exclude or limit Liability Coverage for certain types of claims by one Covered Person against another.

Nothing contained herein shall operate to increase SCMIRF's Limit of Liability as set forth herein and SCMIRF agrees to waive all rights of subrogation against any Covered Person protected under this coverage.

- J. General Exclusions Applicable to Section III, General Liability
This Coverage Section does not apply, and SCMIRF's duty to defend and indemnify does not extend, to any of the following:



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1. ADA
Any claim arising out of or in any way connected with alleged violation of the American With Disabilities Act (ADA), or Section 503 and 504 of the Rehabilitation Act of 1973 as stated below:
 - a. Under ADA Title I - Employment:
 - (1) for salaries, wages or employment benefits;
 - (2) for the cost of implementing reasonable accommodations even if directed by a court, federal or state agency, or any other regulatory entity;
 - b. Under ADA Title II - Public Services:
 - (1) for the cost of creating or modifying public services; programs, activities or facilities even if directed by a court, federal or state agency, or any other regulatory entity;
 - (2) for the cost of purchasing new transit equipment or; modifying existing transit equipment even if directed by a court, federal or state agency, or any other regulatory entity;
 - c. Under the ADA Title III - Public Accommodations:
 - (1) for the cost of creating new facilities or modifying existing facilities owned or controlled by the Named Member, even if directed by a court, federal or state agency, or any other regulatory entity;
 - d. Under the ADA Title IV - Telecommunications:
 - (1) for the cost of creating new services or modifying existing services owned or controlled by the Named Member even if directed by a court, federal or state agency, or any other regulatory entity;
 - e. Under ADA Title V:
 - (1) for the cost of compliance with this Title even if directed by a court, federal or state agency, or any other regulatory entity.
2. Aircraft, Airfields
Any liability arising out of the ownership, maintenance, loading or unloading, use, or operation of any aircraft, airfields, runways, hangars, buildings or other properties in connection with aviation activities;
3. Asbestos
Any:
 - a. Property Damage due to, or arising out of, the actual or alleged presence of asbestos in any form, including the cost of remedial investigations or feasibility studies, or to the costs of testing, monitoring, abatement, mitigation, cleaning, removal, or disposal of any property or substance; or
 - b. damages arising out of any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with the above; or
 - c. obligation to share damages with or repay someone else who must pay damages in connection with the above;
 - d. Bodily Injury or charges or expenses for any type of medication, medical treatment, or equipment, or for any rehabilitative treatment or equipment, caused or made necessary by any of the following diseases:
 - (1) Asbestosis
 - (2) Mesothelioma
 - (3) Emphysema



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- (4) Pneumoconiosis
- (5) Pulmonary Fibrosis
- (6) Pleuritis
- (7) Endothelioma

of any lung disease or any ailment caused by, or aggravated by, exposure to or inhalation, consumption or absorption of asbestos in any form.

(The coverage afforded by this contract does not apply to payment for the investigation or defense of any Loss, injury, or damage or any cost, fine, or penalty or for any expense or claim or suit related to any of the above);

4. Auto Liability

Any liability, claim or Occurrence covered under Section VI, Business Auto Coverage, or any liability or claim arising from the ownership, operation, maintenance or use of any Auto.

5. Bungee Cord and Similar Amusement Devices

Any Bodily Injury or Property Damage arising from the use of bungee cords, rappelling lines, or similar devices employed to allow a person to fall without making hard contact with the surface below when such devices are used for amusement or entertainment purposes; whether such devices are attached to the falling person's body or used in connection with a seat or cage in which the person(s) sits or stands or which he otherwise occupies while falling. Without limitation, this exclusion applies to the use of holists and other equipment to secure, hold, or control bungee cords, rappelling lines, and similar equipment for amusement or entertainment purposes, to the anchoring, testing, selection, and measuring of the cords or lines themselves or failure to do so, and to any conduct or omission involved in the design, operation, supervision, selection, use or maintenance of any such equipment, cords, or lines or in the selection or control of operators or participants. This exclusion does not apply to the use of bungee cords, rappelling lines, or similar devices in the course of rescue operations or their use solely as safety devices in the course and scope of the Member's other official duties and not for the purpose of providing amusement or entertainment. A public demonstration of safety or rescue techniques authorized by the Member in which direct participation in falling or rappelling is limited to the Member's duly trained and authorized Employees will not be deemed to be done for the purpose of amusement or entertainment and will not affect coverage for damage or injury to the persons or property of nonparticipating observers. This exclusion does not apply to the operation of elevators which are not themselves used as free-falling entertainment or amusement devices and are not used to secure or control such devices.

6. Care, Custody, and Control

Any Property Damage to property owned, rented to or occupied by the Member, except in the limited circumstances expressly provided in the Fire Legal Liability - Real Property part of this Section III and in the General Property Liability Coverage part of this Section III. At the option of the Member, and subject to additional charges, coverage for property in the care, custody, and control of the Member may be obtained under Section II (Property), subject to the provisions thereof. If coverage of the same Loss otherwise applies under Section II and Section III, then recovery will be limited to only one section. Subject to the foregoing, if the amount of recovery would be higher under one section than the other, then that higher single amount will apply.

7. Cannon and Other Artillery

Any liability arising out of the ownership, maintenance, or use of cannon or other artillery, except when used in actual law enforcement, rescue, or civil defense operations.

8. Conspiracy to Commit Excluded or Non-Covered Acts

Any claim or lawsuit based on conspiracy or alleged conspiracy to engage in conduct where:

- a. Liability for the conduct which is the focus, means, and/or goal of the conspiracy or alleged conspiracy is excluded or otherwise not covered under This Contract; or
- b. Liability for the actual effect of the conspiracy or alleged conspiracy is excluded or otherwise not covered under This Contract.



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If either a. or b. above applies, SCMIRF will have no duty to defend or indemnify any claim or lawsuit based on any injury or damage caused by or alleged to have been caused by such conspiracy, regardless of whether the injury or damage that resulted or is alleged to have resulted from the conspiracy or alleged conspiracy is different in kind or degree from the injury or damage which was intended or alleged to have been intended by the conspirators or alleged conspirators.

9. Contractual Liability

Any Bodily Injury or Property Damage for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- a. assumed in a contract or agreement that is a Covered Contract, provided the Bodily Injury or Property Damage is caused by an Occurrence that happens after the execution of the contract or agreement; or
- b. that the Member would have in the absence of the contract or agreement.

10. Cosmetology, Bodywork, and Similar Practices -

Any liability arising from the employment or use of cosmetologists, manicurists, tanning beds, personal massage, bodywork, barbers, hairstylists, tattoo or body piercing practitioners, aroma therapists, or any similar personal services or equipment, or arising from the use of, or exposure to, any supplies, topical solutions or ointments, injections, ingested substances, inhaled substances, absorbed substances, tools, appliances, or other equipment in connection with the provision of such personal services.

11. Employee Indemnification and Employer's Liability

Any Bodily Injury to:

- a. an Employee of the Member arising out of or in the course of employment by the Member; or
- b. the spouse, child, parent, brother, sister, or any other relative of that Employee as a consequence of paragraph "a" above.

This exclusion applies:

- (1) whether the Member may be liable as an employer or in any other capacity; and
- (2) to any obligation to share damages with or repay someone else who must pay damages because of the injury;

12. Errors and Omissions / Public Officials Liability

Any liability covered in Section V, Public Officials Liability (Errors and Omissions).

13. Expected or Intended Injury

Any Bodily Injury or Property Damage expected or intended, or which should have been expected from the standpoint of the Member or Covered Person(s) who caused it or directed the conduct that caused it, regardless of whether the actual injury or damage resulting from the Member's or Covered Person(s)' conduct is different from that expected or intended. This exclusion applies only to the Member or Covered Person(s) who caused the injury or directed the conduct that caused the injury under the circumstances described in the foregoing sentence. This exclusion does not apply to Bodily Injury or Property Damage that is the result of the use of reasonable force to protect persons or property.

14. Failure to Supply

Any claims arising out of the failure of the Member to supply, or adequately supply, utilities such as gas, oil, water, sewer, electricity, or steam, except incidents in which the interruption is solely due to the negligence of the Member in improperly disconnecting service to a customer.

15. Firing Ranges

Any Bodily Injury or Property Damage arising out of the use of and operation of, or any activity taking place at, a firing range, including vicarious liability and strict liability unless the firing range is being used for authorized law enforcement training of sworn law enforcement personnel and the training is being conducted by a certified firearms training instructor.



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16. Fireworks Displays
Any liability arising from the use, manufacturing, or distribution of fireworks.
17. Forfeiture
Any claim arising out of the filing or the failure to file an appropriate forfeiture action relating to property seized by the Member or Covered Person(s), or out of any improper conduct related thereto, including, without limitation, the use of improper means in obtaining a waiver of the owner or possessor's rights to a full forfeiture action or hearing.
18. Hospital and Health Clinic Professional Liability
Any Bodily Injury to any person arising out of the rendering of or failure to render any of the following professional services:
- a. medical, surgical, dental, X-ray or nursing treatment to such person or the person inflicting the injury including the furnishing of food or beverages in connection therewith;
 - b. furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances;
 - c. handling of or performing post-mortem examinations on human bodies; or
 - d. service by any person as a Member of a formal accreditation or similar professional board or committee Member, or as a person charged with the duty of executing directives of any such board or committee.
- However, this exclusion shall not apply to liability of City employed or City volunteer Emergency Medical Technicians.
- Also excluded is Bodily Injury to:
- (1) an employee of the Member arising out of and in the course of employment by the Member except first aid, medical or paramedical services administered to the Members employees; as authorized by the Member, by any other employee other than a doctor or dentist; or
 - (2) the spouse, child, parent, brother or sister of that employee as a consequence of Subparagraph a. above.
19. Hurricane Shelters
Any hurricane shelters not approved by the American Red Cross. This exclusion applies to any and all liability arising out of the use of any facility when designated as a hurricane evacuation shelter, unless the facility has been certified to be in full compliance with the requirements for such facilities as set forth by the American Red Cross.
20. Inflation of Emotional Harm
Any claim, made by or against a Member or a Covered Person(s), for the intentional, reckless, or grossly negligent infliction of emotional harm or anything related thereto, including without limitation, emotional distress and/or outrage. This exclusion applies to any related claims of Bodily Injury caused by emotional distress.
21. Inflatable Amusement Devices
Any liability arising out of the operation, maintenance, or use of inflatable amusement devices, including without limitation any device for climbing, sliding, jumping, or bouncing, which consists of and/or is supported by inflatable components, whether installed on a temporary or long-term basis. This exclusion applies to devices inflated by inserting air or gas into their inflatable components and to devices inflated by filling their inflatable components with water or other liquid. This exclusion does not apply to devices which are not otherwise inflatable, but include the use of water merely as weight to anchor a rigid and non-inflatable base, such as portable basketball goals and similar devices.
22. Intangible Property and Intellectual Property
Any liability for infringement of, or damage or injury to, intellectual property or other intangible property of any sort.



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23. Inverse Condemnation
Any inverse condemnation, condemnation, temporary taking, permanent taking, or any claim arising out of or in any way connected with the operation of the principles of eminent domain; adverse possession or dedication by adverse use.
24. Law Enforcement Liability
Any liability covered in Section IV, Law Enforcement Liability, or any liability or claim against a Law Enforcement Employee as that term is defined in Section IV (whether or not such liability or claim is covered in Section IV), or any liability or claim against other persons or entities who are also defined as Covered Persons in Section IV that is based on the conduct or alleged conduct of such Law Enforcement Employees, including without limitation claims based on the hiring, training, monitoring, or supervision of, or on the control of or failure to control, such Law Enforcement Employees (whether or not such liability or claim is covered in Section IV).
25. Lead in Any Form
Any:
- a. Bodily Injury arising out of the ingestion, inhalation or absorption of lead in any form;
 - b. Bodily Injury or Property Damage, arising from the presence of lead in any form; or
 - c. Any loss, cost or expense arising out of any orders by, or on behalf of, any governmental authority to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize lead in any form;
- at or from any premises, sites or locations which are, or were at any time, owned by, rented to, loaned to or used by any Member or Covered Person, or arising from operations at any location by any Member or Covered Person.
26. Legal, Professional Liability
Any injury or damage of any sort to any person arising out of the rendering of, or failure to render, any legal services.
27. Medical Payments coverage shall not be applicable to:
- a. any individual participating in any capacity in any sporting event or sports activity whether or not a charge was made for that event or activity.
 - b. inmates, prisoners, or any person in custody of the Member's law enforcement division regardless of place or method;
28. Mechanical Amusement Devices
Any damages arising out of the ownership, maintenance, use, or operation of mechanical amusement devices.
29. Non-Monetary Damages
Any claim or suit seeking equitable, injunctive, declaratory, or similar relief in any form other than Money Damages. This exclusion applies even if such relief involves the expenditure of money to comply with any order, verdict, agreement, or settlement, including without limitation expenditures for the construction, demolition, modification, or maintenance of buildings, infrastructure, or other real improvements; the purchase, removal, or upgrading of equipment, supplies or other personal property; or the provision of staff, pay, or services in order to satisfy a duty the Member or Covered Person(s) has or purportedly has to provide such property, improvements, or services to the public or any subset of the public.
30. Nuclear Explosion
Any:
- a. Bodily Injury or Property Damage including Medical Payments resulting from the Hazardous Properties of Nuclear Material, if
 - (1) the Nuclear Material



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- (a) Is from any Nuclear Facility owned by or operated by or on behalf of a Member; or
- (b) has been discharged or dispersed there from; or
- (2) the Nuclear Material is contained in Spent Fuel or Waste at any time possessed, handled, used, processed, stored, transported, or disposed of by or on behalf of a Member; or
- (3) the Bodily Injury or Property Damage arises out of the furnishing by a Member of services, materials, parts, or equipment, in connection with the planning, construction, maintenance, operation, or use of any Nuclear Facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to Property Damage to such Nuclear Facility and any property threat.

b. As used in this exclusion:

"Hazardous Properties" includes radioactive, toxic, or explosive properties;

"Nuclear Facility" means:

- (1) any Nuclear Reactor,
- (2) any equipment or device designed or used for
 - (a) separating the isotopes of uranium or plutonium,
 - (b) processing or utilizing spent fuel, or
 - (c) handling, processing or packaging waste,
- (3) any equipment or device used for the processing, fabricating or alloying of special Nuclear Material if at any time the total amount of such material in the custody of the Member at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (4) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of Waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"Nuclear Material" means Source Material, Special Nuclear Material or By-Product Material;

"Nuclear Reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction; or to contain a critical mass of fissionable material;

"Property Damage" includes all forms of radioactive contamination of property;

"Source Material", "Special Nuclear Material", and "By-Product" Material have the meanings given them in the Atomic Energy Act of 1954 or in any amendment thereof;

"Spent Fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"Waste" means any waste material (1) containing by-product material and (2) resulting from the operation by any person or organization of any Nuclear Facility included within the definition of Nuclear Facility under paragraphs 1 or 2 thereof;



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31. Personal Injury or Advertising Injury
Personal Injury or Advertising Injury of any sort (See, Section IV, Law Enforcement Liability or Section V, Public Officials Liability).

31. Pollution Exclusion
 Any liability arising out of actual, alleged, or threatened discharge, dispersal, release or escape of Pollutants:

- a. At or from premises owned, rented or occupied by, or under the control of, the original Insured;
- b. At or from any site or location used by any Insured for the handling, storage, disposal, processing or treatment of waste;
- c. Which are at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any Insured or any person or organization from whom the Insured may be legally responsible; or
- d. At or from any site or location on which any Insured or any contractors or subcontractors working directly or indirectly on behalf of an Insured are performing operations:
 - (1) If the Pollutants are brought on or to the site or location in connection with such operation; or
 - (2) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants.
- e. At or from a sewer system owned, rented, occupied, under the control of or operated by the Member which is released, dispersed, escapes or backs up into any private residence, building or premises not owned, rented or occupied by the Member.

Subparagraphs a. and d. (1) do not apply to "Bodily Injury" or "Property Damage" arising out of heat, smoke or fumes from a hostile fire. As used in the exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

Any Loss, cost, or expense arising out of any governmental direction or request that an Insured must test for, monitor, evaluate, clean up, remove, contain, treat, detoxify or neutralize Pollutants.

The term "Contaminants" is synonymous with "Pollutants" and is defined in the Definitions Part of this Coverage Section. "Contamination" and "Pollution" are limited by the definitions of "Contaminants" and "Pollutants" therein, as are other variants of those words. These terms apply to indoor, outdoor, airborne, waterborne, surface, subsurface, localized and/or general environmental contamination.

The exclusion does not apply to:

- a. Fuel, lubricants, fluids or exhaust gases that have leaked from Insured's Mobile Equipment if they are needed for or result from normal electrical hydraulic or mechanical function of Mobile Equipment and leak from the part of the Mobile Equipment designed by its manufacturer to hold or dispose of them;
- b. Fluids or fuel that have leaked from an original Insured's Mobile Equipment after an accident;
- c. Overturn or upset of an original Insured's Mobile Equipment.
- d. Liability arising due to sudden and accidental discharge, dispersal, release, or escape of Pollutants caused by or arising out of the operation of a wastewater treatment plant when the sudden and accidental discharge, dispersal, release, or escape occurs on or at an owned wastewater treatment plant. Coverage is included for expenses or costs incurred by the Member in defending a lawsuit by any governmental agency, court or other authority in connection with environmental impairment including seepage pollution or contamination from causes relating to the operation on or at owned wastewater treatment plants.

Nothing in subparagraph d. immediately above shall effect the application of exclusion e above nor prevent the exclusion from applying to any damage to a private residence, building or premises not owned by the Insured which is damaged as the result of the discharge, dispersal, release or escape of Pollutants caused by or resulting from the operation of a wastewater treatment plant.

Subparagraphs a. and d. (1), do not apply to "Bodily Injury" or "Property Damage" arising out of a "short-term pollution event" provided:

- (1) The "short-term pollution event" would not have taken place but for a "Named Peril" having occurred; and



- (2) The "short-term pollution event" was reported to the Member no more than fourteen (14) days after its ending.

The following definitions apply:

a. "Named Peril" means:

- (1) Lightning, windstorm, or earthquake;
- (2) Explosion, implosion, collapse, puncture, bursting, rupture, collision, or overturn of a tank, a vessel, machinery, equipment, or other similar apparatus or device (other than an "Auto"), including any attached piping, pumps or valves, if the explosion, implosion, collapse, puncture, bursting, rupture, collision, or overturn is not caused by deterioration, corrosion, erosion, decay, rotting or wear and tear; or
- (3) Vandalism or malicious mischief by someone other than the Insured.

b. "Short-term pollution event" means a discharge, dispersal, release or escape of Pollutants which:

- (1) Begins during the Policy Period;
- (2) Begins at an identified time and place;
- (3) Ends, in its entirety, at an identified time within forty-eight (48) hours of the beginning of the discharge, dispersal, release or escape of Pollutants; and
- (4) Does not originate from an "Underground Storage Tank".

To be a "short-term pollution event", the discharge, dispersal, release or escape of Pollutants need not be continuous. However, if the discharge, dispersal, release or escape is not continuous, then all discharges, dispersals, releases or escapes of the same Pollutants from essentially the same source, considered together, must satisfy part a. through d. of the definition of "short-term pollution event" to be considered a "short-term pollution event".

c. "Underground Storage Tank" means any storage tank, including any attached pumps, valves or piping which:

- (1) Is buried below the surface of the ground or water or;
- (2) At any time, had been buried under the surface of the ground or water and then subsequently exposed.

For the purpose of this definition, buried means at least 10% of the tank is below the surface of the ground or water.

32. Prisoners

Any "Bodily Injury" to any "Prisoner" in the custody of the Member while the "Prisoner" is employed on behalf of or performing labor for the Member, regardless of whether the "Prisoner" is eligible for workers compensation coverage. This exclusion does not apply to any "Bodily Injury" sustained by the "Prisoner" while he/she is being housed as a prisoner or inmate in any detention center or jail owned or operated by the Member.

33. Property Damage and Work Performed

Any Property Damage to work performed by or on behalf of the Named Member arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;

34. Sale of Alcoholic Beverages

Any liability arising from the sale of alcoholic beverages, including without limitation liability based on bodily injuries, Property Damage and/or any related damages caused by persons to whom alcoholic beverages were sold while such persons were under the influence of such alcoholic beverages.

This exclusion does not apply to the furnishing of alcoholic beverages free of charge:

- a. by or at the express direction of a Member at an event, party, or gathering sponsored by the Member, or



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- b. by or at the express direction of a third party renting or leasing a Member's property for a private event, party or gathering which is not open to the general public.

For purposes of this exclusion, the fact that donations may be solicited, in advance or at the door or gate, from persons attending an event, party, or gathering will not be treated as a sale of alcohol, provided that no additional charge is made for the alcoholic drinks furnished. The sale of, or extra charge for, any coupons, tickets, stamps, badges, or other device that can be used to purchase an alcoholic drink will be treated as a sale.

35. Sexual Abuse

- a. Any claim arising out of or in any way connected with any act or the participation in any act of criminal sexual conduct, sexual misconduct, sexual molestation or other Sexual Abuse, physical or mental, of any person by any Covered Person or any other person.
- b. However, the Named Members and/or other Covered Person(s) who did not actually or allegedly participate in or actively condone or encourage the conduct involved will be covered under This Contract as to any claim against such Members or Covered Person(s) by reason of any alleged act of the participation in any act of criminal sexual conduct, sexual misconduct, sexual molestation or other Sexual Abuse, physical or mental, on the part of a Covered Person(s) while allegedly acting within the course and scope of the performance of their duties or on the part of other persons, subject to the Special Aggregate Limit for Negligent Supervision Resulting in Abuse described above.

36. Skateboard Parks

Any claim arising out of any skateboard park or designated skating area. (Limited coverage is available, by endorsement, for an additional Member contribution);

37. Ski Lifts or Ski Resorts

Any liability arising out of the ownership, maintenance, use, or operation of ski lifts or ski resorts.

38. Strikes, Riots, or Civil Commotions

Any Bodily Injury or Property Damage arising from strikes, riots, or general widespread civil unrest;

39. Trampolines and Rebounding Equipment

Any liability arising out of the ownership, maintenance, use, or operation of any trampoline or other similar rebounding equipment.

40. Volunteer Fire Fighters

Any Bodily Injury of any volunteer fire fighter, whether or not a Member of the Member's organization while in the course of the volunteer's duties as such;

41. Wage Exclusion

Any Loss including, but not limited to, any judgments, settlements, awards, or other amounts, for, based upon, relating to, or arising from the following:

- a. Claims for back wages, present wages, forward wages, overtime, employee benefits, or any other wage related compensation benefits or payments (including liquidated damages and attorney's fees).
- b. Any amounts payable with respect to breach of any provisions or any collective bargaining agreements or similar arrangements between an employer and any labor union organization.
- c. Any obligation, either by express or implied contract, statute, regulation, or otherwise, to pay any wage, benefit or compensation to an Employee.

For the purpose of this exclusion, the term "Employee" shall mean those past, present, or future persons who were, are or will be employed either full-time or part-time by the Named Member on either an hourly or salaried basis, whether by employment contract, pursuant to civil service or other statutory or regulatory procedure, or at will.



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42. War
Any Bodily Injury or Property Damage due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion, or revolution.
43. Watercraft
Any liability except with respect to operations performed by independent contractors, to the ownership, maintenance, or use, including loading or unloading of watercraft over 26 feet in length;
44. Watercraft Operations
Any liability arising from:
- the ownership, maintenance, or use of any watercraft over 26 feet long; or
 - the ownership, maintenance or use of watercraft under 26 feet long which are used for recreational purposes.
- For the purposes of this exclusion, "use" means all use of such watercraft, including without limitation operation, loading, and unloading.
45. Workers' Compensation
Any obligation for which the Member or the Member's Insurer may be held liable under any workers compensation, USL&H, disability benefits, or unemployment compensation law or any similar law.
46. Zoos
Any liability arising out of the ownership, maintenance, or operation of a zoo.

K. Coverage Territory

Under this Section III (General Liability), the coverage territory is:

- the United States of America, its territories, or possessions, or Canada; or
- International waters or air space, provided the Bodily Injury or Property Damage does not occur in the course of travel or transportation to or from any other country, state, or nation; or
- anywhere in the world with respect to damages because of Bodily Injury or Property Damage arising out of a product which was sold for use or consumption within the territory described in paragraph 1 above, provided the original suit for such damages is brought within such territory; or
- anywhere in the world with respect to Bodily Injury, Property Damage arising out of the activities of any Covered Person permanently domiciled in the United States of America though temporarily outside the United States of America, its territories and possessions, or Canada, provided the original suit for damages because of any such injury or damage is brought within the United States of America, its territories or possessions, or Canada.

Such coverage as is afforded by paragraph 4 above shall not apply:

- to Bodily Injury or Property Damage included within the Completed Operations hazard or the Products Liability hazard; or
- to premises Medical Payments coverage.

L. Limit of Liability

- Limit of Liability
For any action or claim brought under the provisions of Chapter 78 of the South Carolina Code of Laws, cited as the "South Carolina Tort Claims Act", the liability of SCMIRF shall not exceed the limit set forth by law.

In no event shall the total amount available to pay all claims for any one Member exceed the amount shown on This Contract's Declarations Page.
- SCMIRF's Limit of Liability
As regards the General Liability (Section III), Law Enforcement Liability (Section IV), Public Officials



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Liability (Section V), and Automobile Liability (Section VI), coverages afforded by this Contract, the total liability of the South Carolina Municipal Insurance and Risk Financing Fund any one occurrence/accident/wrongful act will be \$1,000,000 per Member excluding expenses and defense costs; except, where other liability and/or coverage sublimits apply, then SCMIRF's liability will be limited to the applicable sublimit. SCMIRF will have the right and duty to defend a Member or Covered Person for coverages afforded by this contract; however, SCMIRF will have no duty to defend a Member or Covered Person to which this coverage does not apply. SCMIRF's duty to defend ends when the applicable limits have been exhausted.

SCMIRF's liability for any one occurrence/accident/wrongful act will be limited to \$1,000,000 per Member regardless of the number of Covered Persons, number of claimants or claims made, or the number of covered vehicles involved, whether or not covered in one or more than one capacity under this Contract or This Contract of other SCMIRF Members.

In no event shall coverage under any Liability Section of this Contract, combine with any other Section, to increase the per occurrence/accident/wrongful act limit of liability of \$1,000,000 per Member as set out above.

M. Conditions Applicable to Section III (General Liability)

1. Member's Duties In the Event of Occurrence, Offense, Claim, or Suit

- a. In the event of an Occurrence or an offense causing Bodily Injury or Property Damage, written Notice containing particulars sufficient to identify the Member and also reasonably obtainable information with respect to the time, place, and circumstances thereof and the names and addresses of the Injured and of available witnesses shall be given by or for the Member to SCMIRF as soon as practicable.
- b. If a claim is made or suit is brought against the Member, the Member shall immediately forward to SCMIRF every demand, notice, summons, or other process received by the Member or its representative.
- c. It is agreed that SCMIRF (herein referred to as The Fund) has the right to defend in the name of and on the behalf of the Members any suits or other proceedings which may at any time be instituted against them concerning claims for which The Fund may be obligated to make payment (although such suits, other proceedings, allegations or demands are considered to be wholly groundless, false, or fraudulent) and to pay all judgments and all expenses which are incurred pursuant to the direction of The Fund for investigation, negotiation or defense, from The Fund. It is agreed that The Fund shall make all final decisions regarding the legal defense of claims, and shall have absolute and conclusive authority with regard to determination of coverage, defense, settlement and payment of claims, regardless of whether the Member elects alternative premium financing option, including but not limited to a deductible or individual self-insured retention. In the event of a disagreement between SCMIRF and the Member regarding determination of coverage and/or defense, it is agreed that the Member must appeal the coverage determination to the Board of Trustees within six months of such determination. No legal action may be undertaken by the Member against SCMIRF prior to the decision of the Board of Trustees regarding the Member's coverage determination appeal. It is agreed that the independent settlement or voluntary payment of any claim by or on behalf of a Member, other than first party claims for physical damage within the Member's deductible, without approval of The Fund shall be at the sole cost of the settling Member without any reimbursement or other resources from The Fund; and, may be grounds for expulsion of the Member from The Fund.

2. Medical Reports, Proof, and Payment of Claim

As soon as practicable the Member or someone on its behalf shall give to SCMIRF a Proof of Claim, under oath if required, and shall, after each request from SCMIRF, execute authorization to enable SCMIRF to obtain medical reports and copies of records. The Injured person shall submit to physical examination by physicians selected by SCMIRF when and as often as SCMIRF may reasonably require. SCMIRF may pay the Injured person or any person or organization rendering the services and the payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute an admission of liability of any person or, except hereunder, of SCMIRF.

3. Other Provisions



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- a. Deductible for Fiber Optic Communications Lines – This condition established a separate deductible for any claim, otherwise covered under the General Liability section of the policy, and involving damage to or destruction of any fiber optic communications lines including loss of use thereof. For any such claims, the Member agrees to a \$10,000.00 deductible. (As used in this condition, fiber optic communications lines includes any and all cable and television lines, computer lines, telephone lines or other forms of communication transmission lines utilizing fiber optic technology.
- b. See Section I (General Provisions) for items not addressed in this Section III (General Liability).

N. **Definitions**

The following definitions apply to this Coverage Section. They are in addition to the General Definitions in Section I unless a separate definition for the same term is set out herein.

1. "Advertising Injury", which is excluded in this Section III, means an injury arising out of an Offense committed and originally beginning during this Contract Period and occurring in the course of the Named Member's Advertising Activities, if such injury arises out of libel, slander, defamation, violation of right of privacy, piracy, unfair competition, or infringement of copyright, title, or slogan in a advertisement broadcast or published by the Member to the general public in print, televised, radio, or electronic form. "Advertising Activities" as used herein include only the direct communication of information to the general public for promotional, educational, or public service purposes. However, Advertising Activities do not include goods, equipment, buildings or other real improvements, or any other form of tangible property incorporating any infringed copyright, title, slogan, or other intellectual property or intangible property rights, or the possession, transfer, sale, or use for other purposes thereof. To the extent the Member's or Covered Person(s)'s possession, general use, transfer, sale, or other exercise of rights over tangible property violates or is alleged to violate any other person's or organization's statutory, common law, or other rights to, or interests in, intellectual or other intangible property, such violation or alleged violation is not Advertising Injury and is not covered herein. Subject to the applicable Limits of Coverage, where the infringement of copyright, title, or slogan is involved, the covered Advertising Injury is limited to the value of using such property or material in the communication itself. No other violation of intellectual or intangible property rights or interests constitutes covered Advertising Injury. Repeated broadcast or publishing of substantially the same information is deemed to be a single Advertising Injury.
2. "Application" means the document or documents required from the Member prior to and during its participation in SCMIRF.
3. "Auto" means a self-propelled land motor vehicle which is principally designed or licensed for use on public roads, or a Trailer or semi-trailer designed for use with such vehicles, but does not include Mobile Equipment or Golf Carts. For purposes of this exclusion, the meaning of the terms "Mobile Equipment", "Trailer" and "Golf Cart" will be the same as set out in the Definitions of Section VI, Business Auto Coverage.
4. "Bodily Injury" means physical injury to any person (including death) and any mental anguish or mental suffering associated with or arising from such physical injury.
5. "Completed Operations" wherever used herein includes Bodily Injury or Property Damage arising out of Operations or reliance upon a representation of warranty made at any time with respect thereto, but only if the Bodily Injury or Property Damage occurs after such Operations have been completed or abandoned and occurs away from premises owned by or rented to the Member. Operations shall be deemed completed at the earliest of the following times:
 - a. when all Operations to be performed on behalf of the Member have been completed;
 - b. when all Operations to be performed by or on behalf of the Member at this site of Operations have been completed; or
 - c. when the portion of the work out of which the injury arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing Operations for a principal as a part of the same project.



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Operations which may require further service or maintenance work, or correction, repair, or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.

6. **"Contaminant" or "Pollutant"** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste, which after its release can cause or threaten damage to human health or human welfare or causes or threatens damage, deterioration, loss of value, marketability, or loss of use to property covered hereunder due to its physical contact with said property or presence on, in, or under it, including but not limited to bacteria, fungi, viruses, or hazardous substances as listed in the Federal Water Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976, and Toxic Substances Act, or as designated by the U.S. Environmental Protection Agency. **"Waste"** as used herein includes human and animal waste, whether raw or processed for disposal or use as fertilizer or for any other purpose. **"Waste"** includes materials to be recycled, reconditioned, or reclaimed as well as materials disposed of or meant for disposal.
7. **"Contract" or "This Contract"**, where emphasized in quotation marks and/or bold type, means this entire agreement to provide coverage for properly Loss, general liability, law enforcement liability, public official liability, automobile liability, commercial crime coverage, excess casualty coverage (if purchased) and any additional coverage forms incorporating the provisions of any of the above, including without in their "additional exclusions, conditions and definitions". **"Contract" or "This Contract"** also includes the title pages, the declarations, the table of contents (and all coverage sections, pages, and provisions referred to therein), and all endorsements.
8. **"Contract Declarations"** means the items stated in the initial page of each Section of this Contract listing the name of SCMIRF, the Member, Contract Period, Effective Date, and other items.
9. **"Contract Period" or "Coverage Period" or "Policy Period"** means the period of time set forth in the Contract Declarations, between the Effective Date and the Expiration Date.
10. **"Covered Contract"** means:
- a contract for a lease of premises. However, that portion of **This Contract** for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not a **Covered Contract**.
 - a sidetrack agreement;
 - any easement or license agreement;
 - an elevator maintenance agreement;
 - that part of any other contract or agreement pertaining to the Member's operations under which the Member assumes the tort liability of another party to pay **Money Damages for Bodily Injury or Property Damage** to a third person or organization, provided the **Bodily Injury or Property Damage** is caused, in whole or in part, by the Member or by those acting on the Member's behalf. Such coverage is subject to the terms, definitions, limitations, conditions, and exclusions of **This Contract**, regardless of any conflicting terms in the **Covered Contract**, but will not exceed the above-referenced duty assumed by the Member in the **Covered Contract**. Tort

liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph e. does not include that part of any contract or agreement:

- (1) that indemnifies an architect, engineer or surveyor for injury or damage arising out of:
- preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
 - giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or



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- (2) under which the person covered therein, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of such person's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection or engineering services.
- (3) Involving the following contracted activities:
 - (a) aircraft or airports, as respects coverage for all liability arising out of the ownership, maintenance, or use of an aircraft, airport or flight operations;
 - (b) airplane, helicopter, or ballooning rides or shows;
 - (c) archery (unless endorsement provided);
 - (d) automobile, motorcycle, watercraft or aircraft racing or stunting;
 - (e) lifeguard operations;
 - (f) bungee jumping of any description;
 - (g) fireworks displays;
 - (h) firing ranges;
 - (i) horse farms and horse training facilities;
 - (j) hospital or health clinic operations or activities;
 - (k) housing authority operations or activities, except where a part of the direct operations of a municipality;
 - (l) parachuting or hang gliding;
 - (m) concerts organized and promoted by outside third parties;
 - (n) rodeos;
 - (o) skateboard facilities of any description;
 - (p) ski lifts or ski resorts;
 - (q) trampolines and rebounding equipment;
 - (r) travelling carnivals, circuses, or temporary mechanically operated amusement devices owned, operated, supervised, or regulated by the Member;
 - (s) water slides in excess of 10 feet.
- f. any mutual aid agreement between two governmental entities, but only to the extent of the Member's own liability arising thereunder.

11. "Covered Persons":

The following are Covered Persons under this Section III (General Liability):

- a. the Member - the covered political subdivision named in the Contract Declarations.
- b. any member of the governing body of the Named Member, while acting in the both the course and the scope of his official duties as a member of said governing body, as provided under the "South Carolina Tort Claims Act". No such governing body member is a Covered Person if his or her conduct was outside the scope of his or her official duties or if such conduct constituted actual fraud, actual malice, intent to harm, or a crime of moral turpitude.



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- c. any member of the Authorities, Boards, or Commissions appointed by the Named Member, while acting within both the course of his official duties, and within the scope of his official duties, as provided under the "South Carolina Tort Claims Act."
- d. any Director, Employee (other than a Law Enforcement Employee as defined in Section IV, Law Enforcement Liability, while acting in the course and scope of his or her duties as such), Officer, Trustee, or Volunteer, past or present, acting for and on behalf of the Named Member and under its direction and control, or appointed by the Named Member, while acting both within the course of his official duties, and within the scope of his official duties, as provided under the "South Carolina Tort Claims Act." No person or organization is a Covered Person if his (its) conduct was not within the scope of his (its) official duties or if his (its) conduct constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

No person or organization is covered with respect to the conduct of any partnership, joint venture, multi-jurisdictional law enforcement or other organization or multi-jurisdictional penal institution that is not shown as a Named Member in the Declarations, except for the Named Member and its employees.

- 12. "Declarations Page" means the page or pages at the beginning of each Section showing the Member and general provisions or limits of coverage.
- 13. "Effective Date" means at 12:01 a.m. eastern standard time on the initial date listed across from This Contract Period in the Contract Declarations.
- 14. "Expiration Date" means at 12:01 a.m. eastern standard time of the last day stated in the Contract Period.
- 15. "Incidental Malpractice" means emergency professional medical services rendered or which should have been rendered to any person or persons (excepting employees of the Member injured in the course of their employment) by any duly qualified medical practitioner (except any physician, radiologist, osteopath, dentist, pharmacist, medical resident or student, or any individual licensed to practice medicine), nurses, or Technicians employed by or acting on behalf of the Member. Professional medical services shall include medical, surgical, dental, x-ray, or nursing services, or food and beverages in connection with these services; or drugs or medical, surgical, or dental supplies, or appliances.

Included within Incidental Malpractice coverage is coverage for any Employee while acting independent of that person's activities as the Member's Employee or acting as a volunteer with another emergency unit or organization but only when the person encounters the scene of an accident or medical emergency requiring sudden action.

However, this coverage will not apply if the nurses, emergency medical technicians and paramedics are performing those actions on behalf of another medical emergency organization for which they may be either employees or volunteers on a regular or irregular basis.
- 16. "Medical Payment" means expenses for necessary medical, surgical, x-ray and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing, and funeral services. This payment is excess over any other valid and collectible insurance.
- 17. "Member" means the political subdivision listed in the Contract Declarations.
- 18. "Members" means all political subdivisions participating in SCMIRF.
- 19. "Mobile Equipment" means any of the following categories of land vehicles, including any attached machinery or equipment:
 - a. bulldozers, farm machinery, forklifts, and other vehicles designed for use principally off public roads;
 - b. vehicles maintained for use solely on or next to premises the Member owns or rents;
 - c. vehicles that travel on crawler treads;



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- d. vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) power cranes, shovels, loaders, diggers, or drills; or
 - (2) road construction or resurfacing equipment such as graders, scrapers, or rollers.
 - e. vehicles not described in subparagraphs a, b, c, or d above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) air compressors, pumps, and generators, including spraying, welding, building, cleaning, geophysical exploration, lighting, and well servicing equipment; or
 - (2) cherry pickers and similar devices used to raise or lower workers.
 - f. vehicles not described in subparagraphs a, b, c, or d above that are maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not Mobile Equipment but will be considered Autos:
 - (1) equipment designed primarily for:
 - (a) snow removal;
 - (b) road maintenance, but not construction or resurfacing; or
 - (c) street cleaning;
 - (2) cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (3) air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting, and well servicing equipment.
20. "Notice" means only written notice to SCMIRF's Claims Department, on the form provided by SCMIRF for that purpose, which is actually physically delivered to SCMIRF.
21. "Notice of Loss" means a report in writing from the Member to SCMIRF's Claims Department on a form provided by SCMIRF for that purpose concerning an incident that may give rise to a claim under This Contract.
22. The word "Occurrence" in Section III (General Liability) means an accident, including continuous or repeated exposure to substantially the same generally harmful conditions, which results in Property Damage and/or Bodily Injury, which:
- a. arose in the coverage area and during the Policy Period stated in the Declarations,
 - b. was actually caused by an act(s) or event(s) that first happened during the Policy Period stated in the Declarations; and
 - c. arose from conduct in the course and scope of the Member's or Covered Person's official duties as described in The South Carolina Tort Claims Act.
- All Bodily Injury to one or more persons and/or all Property Damage arising out of any event or causally related sequence of events is considered to be one "Occurrence". "Occurrence" does not include ongoing Property Damage or Bodily Injury that was caused by an act(s) or event(s) that happened before the Policy Period stated in the Declarations, regardless of whether the injury or damage, or potential for injury or damage, caused by such earlier act(s) or event(s) continued during or after the Policy Period stated in the Declarations.
23. "Operation" includes materials, parts, or equipment furnished in connection therewith.
24. "Personal Injury", which is excluded in this Section III, means only the following Offenses:
- a. assault and battery;



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- b. illegal search, invasion of an individual's right to privacy, violation of civil rights, or discrimination other than (with respect to any of these) in the course of the claimant's or plaintiff's employment with the Member;
 - c. false arrest, detention or imprisonment, or malicious prosecution;
 - d. false or improper service of process;
 - e. the publication or utterance of a libel or slander or of other defamatory or disparaging material about an individual or an organization, or a publication or utterance in violation of an individual's right to privacy; except publications or utterances in the course of or related to advertising, broadcasting, Internet, or telecasting activities by or on behalf of the Named Member.
 - f. humiliation or mental distress caused by the foregoing provided that such humiliation or distress produces physical symptoms requiring medical attention;
25. "Pollutant" means (see definition for Contaminant)
26. "Premises" means any building or land occupied or owned by a "Member".
27. "Prisoner" means prisoner, inmate, trustee or any other person detained by, in the custody of or serving a sentence for conviction of a crime by the Member, including any such person incarcerated pursuant to any contract or agreement with any other governmental agency including the State of South Carolina and the United States of America. "Prisoner" is also any person incarcerated by the Member or other governmental entity whether as a prisoner, inmate, trustee and whether or not such person is awaiting bond, trial, release or serving a sentence imposed after conviction or plea.
28. "Products Liability" means Bodily Injury or Property Damage arising out of the Member's product or reliance upon a representation or warranty made at any time with respect thereto, but only if the Bodily Injury or Property Damage occurs away from premises owned by or rented to the Member and after physical possession of such products has been relinquished to others.
29. "Proof of Claim" or "Proof of Loss" means a signed and sworn detailed statement filed with SCMIRF as soon as possible after the applicable event.
30. "SCMIRF" means the South Carolina Municipal Insurance and Risk Financing Fund.
31. "Section" means the divisions into Section I (General Provisions), Section II (Property), Section III (General Liability), Section IV (Law Enforcement Liability), Section V (Public Officials Liability) and Section VI (Automobile).
32. "Sexual Abuse" means the actual, threatened, attempted, or alleged unlawful sexual conduct towards, or sexual contact of, a person by another person, or by persons acting in concert, that causes Bodily Injury, Personal Injury or any emotional injury or stress to the victim or to any other person, whether carried out by the use of force against the victim or intended victim, or by coercion, intimidation, or any other wrongful inducement to obtain the victim or intended victim's participation in any sexual contact or sexual conduct.
33. "State" means the state of South Carolina.
34. "Table of Contents" means the listing of contents of This Contract.
35. "Technician" means a certified first responder, certified emergency medical technician, certified intravenous technician, certified paramedic, or ambulance driver.
36. "Third Party Administrator" means any independent appraiser or claims handling company selected by SCMIRF to administer claims on its behalf and designated by SCMIRF as such.



SOUTH CAROLINA MUNICIPAL INSURANCE and RISK FINANCING FUND COVERAGE CONTRACT 2011

South Carolina Municipal Insurance and Risk Financing Fund

**Town of Cottageville
P-SCMIRF-1124-2011**

- SECTION IV -

LAW ENFORCEMENT LIABILITY CONTRACT DECLARATIONS

Contract Period

Effective from 01/01/11 – 01/01/12 both days at 12:01 AM standard time at address of Member

LIMITS:

Liability Limit	\$1,000,000	Per Occurrence

RETENTIONS/DEDUCTIBLES:

Disappearing Deductible (Applicable to all Third Party Property Damage Claims)	\$500	Per Occurrence
Law Enforcement Liability Deductible	\$0	Per Occurrence



- Section IV -

LAW ENFORCEMENT LIABILITY

SCMIRF agrees with the Member in consideration of the payment of the contribution and in reliance upon the statements in the application and subject to the limits of liability, exclusions, definitions, and conditions contained in the General Provisions, Section I and as follows:

A. Coverage Agreements

1. Law Enforcement Employees Coverage

SCMIRF agrees, subject to the limitations, terms, and conditions hereunder mentioned to pay on behalf of the Member or Covered Person(s) for sums which the Member or Covered Person(s) shall be obligated to pay exclusively as Money Damages because of a Wrongful Act by a Member, a Law Enforcement Employee, or other Covered Person(s) while acting in conjunction with Law Enforcement Employees, which is committed while acting in both in the course and the scope of his or her official duties, as provided under the "South Carolina Tort Claims Act" where a South Carolina state law is involved, or while acting in both the course and the scope of a mutual aid agreement between governmental entities for the temporary sharing of Law Enforcement Employees or other Covered Person(s) under the terms and circumstances specified therein, and which results in:

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

Any liability covered by this Section IV must arise out of the performance of a Covered Person's duties to provide law enforcement or other SCMIRF approved activities pertaining thereto, or both, as declared in the Application.

This Section IV applies only to liability for Money Damages as defined in the General Definitions of Section I.

B. Defense Costs; Charges & Expenses

With respect to such coverage as is afforded by this Section IV (Law Enforcement Liability) of this Contract, SCMIRF shall, as part of and subject to the Limits of Liability:

1. defend any action or suit seeking Money Damages brought against the Member or a Covered Person alleging a Wrongful Act, even if such action or suit is groundless, false, or fraudulent; but, the Member shall not admit liability for or settle any claim or incur any cost or expense without the written consent of SCMIRF, and SCMIRF shall have the right to make such investigation and conduct negotiations and enter into such settlement of any claim or suit as SCMIRF deems expedient.
2. pay all reasonable expenses, other than salaries of any Covered Person incurred by the Member at SCMIRF's request.

C. Territory

In this Section IV (Law Enforcement Liability) of this Contract, coverage shall apply anywhere in the world with respect to Bodily Injury, Property Damage, Personal Injury or Advertising Injury arising out of the activities of any Covered Person permanently domiciled in the United States of America though temporarily outside the United States of America, its territories and possessions, or Canada, provided the original suit for damages because of any such injury or damage is brought within the United States of America, its territories or possessions, or Canada.

D. Limit of Liability

1. Limit of Liability

For any action or claim brought under the provisions of Chapter 78 of the South Carolina Code of Laws, cited as the "South Carolina Tort Claims Act", the liability of SCMIRF shall not exceed the limit set forth by law.



SOUTH CAROLINA MUNICIPAL INSURANCE and RISK FINANCING FUND COVERAGE CONTRACT 2011

In no event shall the total amount available to pay all claims for any one Member exceed the amount shown on the Contract Declarations Page for this Section under Member's Annual Aggregate. Only a single limit or Annual Aggregate from a single Contract for a single Coverage Period will apply, regardless of the number of persons or organizations injured or making claims, or the number of Covered Persons who allegedly caused them, or whether the damage or injuries at issue were continuing or were repeated over the course of more than one Coverage Period.

2. SCMIRF's Limit of Liability

As regards the General Liability (Section III), Law Enforcement Liability (Section IV) Public Officials Liability (Section V), and Auto Liability (Section VI) coverages afforded by this Contract, the total liability of the South Carolina Municipal Insurance and Risk Financing Fund any one occurrence/ accident/ wrongful act will be \$1,000,000 per Member excluding expenses and defense cost; except, where other liability and/or coverage sublimits apply, then SCMIRF's liability will be limited to the applicable sublimit.

SCMIRF's liability for any one occurrence/wrongful act will be limited to \$1,000,000 per Member regardless of the number of Covered Persons, number of claimants or claims made, or the number of covered vehicles involved whether or not covered in one or more than one capacity under This Contract or under both This Contract and any SCMIRF coverage available to other SCMIRF Members.

Subject to any special aggregates, all continuing, serial, or repeated instances of Personal Injury or Advertising Injury will be considered as one occurrence/wrongful act, regardless of the number of Covered Persons involved in causing or failing to permit such injuries or the number of persons injured, and only a single Coverage Limit or Aggregate for one year will apply to all claims arising from such continuing, serial, or repeated conduct, regardless of the number of Coverage Periods during which such conduct occurred or continued.

In no event shall coverage under any liability Section of This Contract, combine with any other Section, to increase the per occurrence/accident/wrongful act limit of liability of \$1,000,000 as set out above.

3. Negligent Supervision Resulting in Abuse: Special Aggregate Limit

Liability Coverage for any claim based on a Member's or Covered Person(s)' failure to supervise, disclose, warn of, or prevent the conduct of a Law Enforcement Employee, or of any other person whose conduct the Member or Covered Person(s) is legally obligated to supervise, control, disclose, warn of, or prevent, which results in the Sexual Abuse or physical abuse or neglect of any person, whether or not said person and/or the perpetrator, tortfeasor, and/or defendant, is in the custody or care of the Member or Covered Person(s), shall be subject to a single aggregate limit of \$1,000,000.00. This single aggregate shall apply, regardless of the number of Contract Periods during which the Sexual Abuse or physical abuse or neglect began or allegedly began or continued, the number of perpetrators, tortfeasors, and/or defendants involved, and/or the number of victims and/or claimants involved, and regardless of the number of incidents of Sexual Abuse or physical abuse or neglect that happened over time. All such repeated and/or continuing Sexual Abuse or physical abuse and neglect shall be deemed to constitute one single act, and all conduct on the Member's or Covered Person(s)' part in failing to supervise, disclose, warn of, or prevent such abuse and neglect will be treated as one Occurrence. This provision will not operate to extend coverage for intentional injuries and/or conduct outside the course and the scope of a Covered Person(s)' official duties under the "South Carolina Tort Claims Act", nor will it extend coverage for any person who commits or allegedly commits Sexual Abuse. This provision applies regardless of how injury or damage from Sexual Abuse is described, or what legal theory or right is invoked, by the victim(s) or other claimant(s). There will be no duplication of such coverage, regardless of whether a claim is covered under another Coverage Section, and only one such aggregate will apply to all such claims.

E: General Exclusions Applicable to Section IV, Law Enforcement Liability

This coverage does not apply, and SCMIRF's duty to defend and indemnify does not extend, to any of the following:

1. ADA

Any claim arising out of or in any way connected with alleged violation of the American with Disabilities Act (ADA), or Section 503 and 504 of the Rehabilitation Act of 1973 as stated below:

a. Under ADA Title I - Employment:

- (1) for salaries, wages or employment benefits;
- (2) for the cost of implementing reasonable accommodations even if directed by a court, federal or state agency, or any other regulatory entity;



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- b. Under ADA Title II - Public Services:
 - (1) for the cost of creating or modifying public services, programs, activities or facilities even if directed by a court, federal or state agency, or any other regulatory entity;
 - (2) for the cost of purchasing new transit equipment or, modifying existing transit equipment even if directed by a court, federal or state agency, or any other regulatory entity;
 - c. Under the ADA Title III - Public Accommodations:
 - (1) for the cost of creating new facilities or modifying existing facilities owned or controlled by the Named Member, even if directed by a court, federal or state agency, or any other regulatory entity;
 - d. Under the ADA Title IV - Telecommunications:
 - (1) for the cost of creating new services or modifying existing services owned or controlled by the Named Member even if directed by a court, federal or state agency, or any other regulatory entity;
 - e. Under ADA Title V:
 - (1) for the cost of compliance with this Title even if directed by a court, federal or state agency, or any other regulatory entity.
2. Aircraft, Airfields
Any liability arising out of the ownership, maintenance, loading or unloading, use, or operation of any aircraft, airfields, runways, hangars, buildings or other properties in connection with aviation activities;
3. Asbestos
Any:
- a. Bodily Injury, Property Damage, or Personal Injury due to, or arising out of, the actual or alleged presence of asbestos in any form, including the cost of remedial investigations or feasibility studies, or to the costs of testing, monitoring, abatement, mitigation, cleaning, removal, or disposal of any property or substance; or
 - b. damages arising out of any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with the above; or
 - c. obligation to share damages with or repay someone else who must pay damages in connection with the above.
 - d. bodily injury, personal injury or charges or expenses for any type of medication, medical treatment or equipment, or for any rehabilitative treatment or equipment, caused or made necessary by any of the following diseases:
 - (1) Asbestosis
 - (2) Mesothelioma
 - (3) Emphysema
 - (4) Pneumoconiosis
 - (5) Pulmonary Fibrosis
 - (6) Pleuritis
 - (7) Endothelioma
- or any lung disease or any ailment caused by, or aggravated by, exposure to or inhalation, consumption or absorption of asbestos in any form.



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(The coverage afforded by this contract does not apply to payment for the investigation or defense of any Loss, injury, or damage or any cost, fine, or penalty or for any expense or claim or suit related to any of the above);

4. Auto Liability
Any liability, claim or Occurrence covered under Section VI, Business Auto Coverage, or any liability or claim arising from the ownership, operation, maintenance or use of any Auto.
5. Care, Custody and Control
Any claim for Property Damage to:
 - a. property owned or occupied by or rented to any Covered Person or the Member;
 - b. property used by a Covered Person or the Member; or
 - c. property in the care, custody, or control of Covered Persons or the Member or as to which the Covered Person or the Member is for any purpose exercising physical control. This exclusion does not apply to property in custody or to property seized pursuant to judicial order or otherwise under the lawful control of a Law Enforcement Employee;
6. Conspiracy to Commit Excluded or Non-Covered Acts
Any claim or lawsuit based on conspiracy or alleged conspiracy to engage in conduct where:
 - a. liability for the conduct which is the focus, means, and/or goal of the conspiracy or alleged conspiracy is excluded or otherwise not covered under This Contract; or
 - b. liability for the actual effect of the conspiracy or alleged conspiracy is excluded or otherwise not covered under This Contract.

If either a. or b. above applies, SCMIRF will have no duty to defend or indemnify any claim or lawsuit based on any injury or damage caused by or alleged to have been caused by such conspiracy, regardless of whether the injury or damage that resulted or is alleged to have resulted from the conspiracy or alleged conspiracy is different in kind or degree from the injury or damage which was intended or alleged to have been intended by the conspirators or alleged conspirators.
7. Contractual Liability
Any Bodily Injury or Property Damage for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:
 - a. assumed in a contract or agreement that is a Covered Contract, provided the Bodily Injury or Property Damage is caused by an Occurrence that happens after the execution of the contract or agreement; or
 - b. that the Member would have in the absence of the contract or agreement.
8. Cosmetology, Bodywork, and Similar Practices
Any liability arising from the employment or use of cosmetologists, manicurists, tanning beds, personal massage, bodywork, barbers, hairstylists, tattoo or body piercing practitioners, aroma therapists, or any similar personal services or equipment, or arising from the use of, or exposure to, any supplies, topical solutions or ointments, injections, ingested substances, inhaled substances, absorbed substances, tools, appliances, or other equipment in connection with the provision of such personal services.
9. Covered Persons
Personal Injury or Advertising Injury to a Covered Person inflicted, in whole or in part, by a Member or by another Covered Person.
10. Dishonest or Criminal Acts
Any claim for damages arising out of:
 - a. fraudulent, dishonest, or criminal acts, including without limitation the willful violation of a penal



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statute or ordinance, committed by or with the consent of the Member or by a Covered Person (but only with respect to the Member or Covered Person who commits or consents to such acts);

- b. fraudulent, dishonest or criminal acts which occur after the Member or a supervisory Employee or agent of the Member who is responsible for overseeing the conduct of another Employee or agent of the Member receives any oral or written notice of prior or ongoing fraudulent, dishonest, or criminal acts by the other Employee or agent, other than notice received between incidents that are so closely related in time that immediate and reasonable response by the Member or supervisor, although undertaken, cannot prevent the subsequent injury or damage; or
- c. the willful, intentional or malicious conduct of any Covered Person; or claims with respect to which the Member or Covered Person admits guilt of the fraudulent, dishonest, or criminal act.

11. Emotional Harm

Any claim, made by or against a Member or a Covered Person(s), for the intentional, reckless, or grossly negligent infliction of emotional harm or anything related thereto, including without limitation, emotional distress and/or outrage. This exclusion applies to any related claims of Bodily Injury caused by emotional distress.

12. Employee Indemnification and Employer's Liability
Any Bodily Injury to:

- a. an Employee of the Member arising out of or in the course of employment by the Member; or
- b. the spouse, child, parent, brother, sister, or any other relative of that Employee as a consequence of paragraph "a" above.

This exclusion applies:

- (1) whether the Member may be liable as an employer or in any other capacity; and
- (2) to any obligation to share damages with or repay someone else who must pay damages because of the injury;

13. Errors and Omissions / Public Officials Liability

Any liability covered in Section V, Public Officials Liability (Errors and Omissions).

14. Expected or Intended Injury

Any Bodily Injury, Property Damage, Personal Injury or Advertising Injury expected or intended, or which should have been expected from the standpoint of the Member or Covered Person(s) who caused it or directed the conduct that caused it, regardless of whether the actual injury or damage resulting from the Member's or Covered Person(s)' conduct is different from that expected or intended. This exclusion applies only to the Member or Covered Person(s) who caused the injury or directed the conduct that caused the injury under the circumstances described in the foregoing sentence. This exclusion does not apply to Bodily Injury, Property Damage or Personal Injury that is the result of the use of reasonable force to protect persons or property or to carry out a lawful arrest.

15. Firing Ranges

Any Bodily Injury, personal injury, or Property Damage arising out of the use of and operation of, or any activity taking place at, a firing range, including vicarious liability and strict liability unless the firing range is being used for authorized law enforcement training of sworn law enforcement personnel and the training is being conducted by a certified firearms training instructor.

16. Forfeiture

Any claim arising out of the filing or the failure to file an appropriate forfeiture action relating to property seized by the Member or Covered Person(s), or out of any improper conduct related thereto, including, without limitation, the use of improper means in obtaining a waiver of the owner or possessor's rights to a full forfeiture action or hearing.

17. General Liability

Any liability covered in Section III, General Liability.



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18. Health Care Professional
Any claim for the acts of any Covered Person while engaged in any form of health care or ambulance services, except for first aid as specifically defined and limited herein;
19. Hurricane Shelters
Any hurricane shelters not approved by the American Red Cross. This exclusion applies to any and all liability arising out of the use of any facility when designated as a hurricane evacuation shelter, unless the facility has been certified to be in full compliance with the requirements for such facilities as set forth by the American Red Cross.
20. Identity Theft
Any claim based on Identity Theft or improper handling, use, or disclosure of personal information protected by common law or by any state or federal statute under this Coverage Section. Coverage for such claims, if any, is limited to Section III (General Liability); subject to the provisions thereof.
21. Inflatable Amusement Devices
Any liability arising out of the operation, maintenance, or use of inflatable amusement devices, including without limitation any device for climbing, sliding, jumping, or bouncing, which consists of and/or is supported by inflatable components, whether installed on a temporary or long-term basis. This exclusion applies to devices inflated by inserting air or gas into their inflatable components and to devices inflated by filling their inflatable components with water or other liquid. This exclusion does not apply to devices which are not otherwise inflatable, but include the use of water merely as weight to anchor a rigid and non-inflatable base, such as portable basketball goals and similar devices.
22. Intangible Property and Intellectual Property
Any liability for infringement of, or injury or damage to, intellectual property or other intangible property or intangible economic rights, other than those intangible property or economic rights included within the definition of Advertising Injury; however, claims based on such intangible property or economic rights are excepted from this exclusion only to the extent they arise directly out of Advertising Injury, subject to all applicable exclusions and other limitations on such coverage.
23. Inverse Condemnation
Any inverse condemnation, condemnation, temporary taking, permanent taking, or any claim arising out of, or in any way connected with any of the above, or with the operation of the principles of eminent domain; adverse possession; or dedication by adverse use.
24. Non-Monetary Damages
Any claim seeking relief, redress, or injunctive relief, in any form other than Money Damages, even if such relief involves the expenditure of money to comply with any order, verdict, agreement, or settlement, including without limitation expenditures for the construction, demolition, modification, or maintenance of buildings, infrastructure, or other real improvements; the purchase, removal, or upgrading of equipment, supplies or other personal property; or the provision of staff, pay, or services in order to satisfy a duty the Member or Covered Person(s) has or purportedly has to provide such property, improvements, or services to the public or any subset of the public.
25. Nuclear Explosion
Any:
 - a. **Personal Injury, Bodily Injury or Property Damage** including Medical Payments resulting from the Hazardous Properties of Nuclear Material, if
 - (1) the Nuclear Material
 - (a) is from any Nuclear Facility owned by or operated by or on behalf of a Member; or
 - (b) has been discharged or dispersed therefrom; or
 - (2) the Nuclear Material is contained in Spent Fuel or Waste at any time possessed, handled, used, processed, stored, transported, or disposed of by or on behalf of a Member; or
 - (3) the Personal Injury, Bodily Injury or Property Damage arises out of the furnishing by a Member of services, materials, parts, or equipment, in connection with the planning,



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construction, maintenance, operation, or use of any Nuclear Facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to Property Damage to such Nuclear Facility and any property threat.

b. As used in this exclusion:

"Hazardous Properties" includes radioactive, toxic, or explosive properties;

"Nuclear Facility" means:

- (1) any Nuclear Reactor;
- (2) any equipment or device designed or used for
 - (a) separating the isotopes of uranium or plutonium,
 - (b) processing or utilizing spent fuel, or
 - (c) handling, processing or packaging waste,
- (3) any equipment or device used for the processing, fabricating or alloying of special Nuclear Material if at any time the total amount of such material in the custody of the Member at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (4) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of Waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"Nuclear Material" means Source Material, Special Nuclear Material or By-Product Material;

"Nuclear Reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction; or to contain a critical mass of fissionable material;

"Property Damage" includes all forms of radioactive contamination of property;

"Source Material", "Special Nuclear Material", and "By-Product" Material have the meanings given them in the Atomic Energy Act of 1954 or in any amendment thereof;

"Spent Fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"Waste" means any waste material (1) containing by-product material and (2) resulting from the operation by any person or organization of any Nuclear Facility included within the definition of Nuclear Facility under paragraphs 1 or 2 thereof;

26. Personal Injury and Advertising Injury under Certain Circumstances

Except where expressly stated as applying only with respect to specific persons, any:

- a. Personal Injury or Advertising Injury arising out of the willful violation of a penal statute or ordinance committed by, or with prior notice to or the consent of, the Member, or committed by or with the knowledge or express or implied consent of the Covered Person (but only with respect to the Member or Covered Person committing such willful violation, having such notice or knowledge, or giving such consent).
- b. Personal Injury or Advertising arising out of a publication or utterance of a libel or slander, or a publication or utterance in violation of an individual's right of privacy, if the first injurious publication broadcast, or utterance of the same or similar material by or on behalf of the Named Member or the Covered Person was made prior to the Effective Date of this coverage;



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- c. **Personal Injury or Advertising Injury** arising out of libel or slander or the publication, broadcast, or utterance of defamatory or disparaging material concerning any person or organization, or any goods, products or services, or in violation of an individual's right of privacy, made by or at the direction of the Member or the Covered Person(s) with knowledge of the falsity thereof or with reckless disregard for the truth thereof (but only with respect to the Member or Covered Person committing such libel, slander, publication, broadcast or utterance with such knowledge or reckless disregard for the truth);
- d. **Personal Injury or Advertising Injury** of any sort caused by or at the direction of the Member or the Covered Person with knowledge that the act would violate the rights of another and cause **Personal Injury or Advertising Injury** (but only as to the Member or Covered Person causing or directing such injury with such knowledge);
- e. **Personal Injury or Advertising Injury** arising out of the conduct of any partnership or joint venture of which the Member is a partner or Member which is not designated in This Contract Declarations as the Named Member.
- f. **Personal Injury**, including without limitation a violation or alleged violation of any person's or entity's or organization's civil or constitutional rights, arising from or related directly or indirectly to:
 - (1) a Member or Covered Person's failure to permit, delay in permitting, or interference with the development or use of real property or any part thereof, the use of any personal property, or the operation of any business or any part of a business; or
 - (2) a Member or Covered Person's failure or alleged failure to follow proper procedures, including without limitation proper notice, hearings, or formulation of or adherence to any legally required studies or findings, in doing any of the above.

This exclusion applies, regardless of whether the person, entity, or organization aggrieved or allegedly aggrieved is the owner of the property or business affected and regardless of the nature of the **Personal Injury** suffered or allegedly suffered. Without limitation, this exclusion applies to claims brought under the federal Fair Housing Act or any other state or federal civil rights statute or regulation, or under any provision(s) of the Constitutions of the United States, the State of South Carolina, or both. It applies absolutely to exclude all coverage as to the Member and to all Covered Persons, regardless of who is responsible for any act or omission that caused the **Personal Injury**.

27. **Pollution Exclusion**

Any **Bodily Injury**, **Property Damage**, or **Personal Injury** caused by, resulting from, contributed to or made worse by actual, alleged, or threatened release, discharge, escape, or dispersal of Contaminants, in whole or in part caused by, contributed to, or aggravated by any physical damage covered by this Contract.

Contaminants or Pollutants means any material which after its release can cause or threaten damage to human health or human welfare or causes or threatens damage, deterioration, loss or value, marketability, or loss of use to property covered hereunder, including, but not limited to, bacteria, fungi, virus, or hazardous substances as listed in the Federal Water Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976, and Toxic Substances Control Act; or as designated by the U.S. Environmental Protection Agency.

28. **Prisoners**

Any "**Bodily Injury**" to any "**Prisoner**" in the custody of the Member while the "**Prisoner**" is employed on behalf of or performing labor for the Member, regardless of whether the "**Prisoner**" is eligible for workers compensation coverage. This exclusion does not apply to any "**Bodily Injury**" sustained by the "**Prisoner**" while he/she is being housed as a prisoner or inmate in any detention center or jail owned or operated by the Member.

29. **Property Damage and Work Performed**

Any **Property Damage** to work performed by or on behalf of the Named Member arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;



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30. Sexual Abuse

- a. Any claim arising out of or in any way connected with any act or the participation in any act of criminal sexual conduct, sexual misconduct, sexual molestation or other Sexual Abuse, physical or mental, of any person by any Covered Person or any other person;
- b. However, the Named Members and/or other Covered Person(s) who did not actually or allegedly participate in or actively condone or encourage the conduct involved will be covered under This Contract as to any claim against such Members or Covered Person(s) by reason of any alleged act or the participation in any act of criminal sexual conduct, sexual misconduct, sexual molestation or other Sexual Abuse, physical or mental, on the part of a Covered Person(s) while allegedly acting within the course and scope of the performance of their duties or on the part of other persons, subject to the Special Aggregate Limit for Negligent Supervision Resulting in Abuse described under the 'Limit of Liability' heading above.

31. Skateboard Parks

Any claim arising out of any skateboard park or designated skating area. (Limited coverage is available, by endorsement, for an additional Member contribution);

32. Strikes, Riots, or Civil Commotions

Any Bodily Injury, Personal Injury, or Property Damage arising from strikes, riots, or general widespread civil unrest;

33. Temporary Police Officers

Any act or omission of any person employed as a temporary police officer by the Member when that individual is employed by another law enforcement agency and the Member does not maintain its own police force or law enforcement agency or department.

34. Volunteer Fire Fighters

Any Bodily Injury of any volunteer fire fighter, whether or not a Member of the Member's organization while in the course of the volunteer's duties as such;

35. Wage Exclusion

Any liability or claim including, but not limited to, any judgments, settlements, awards, or other amounts, for, based upon, relating to, or arising from the following:

- a. Claims for back wages, present wages, forward wages, overtime, employee benefits, or any other wage related compensation benefits or payments (including liquidated damages and attorney's fees).
- b. Any amounts payable with respect to breach of any provisions or any collective bargaining agreements or similar arrangements between an employer and any labor union organization.
- c. Any obligation, either by express or implied contract, statute, regulation, or otherwise, to pay any wage, benefit or compensation to an Employee.

For the purpose of this exclusion, the term "Employee" shall mean those past, present, or future persons who were, are or will be employed either full-time or part-time by the Named Member on either an hourly or salaried basis, whether by employment contract, pursuant to civil service or other statutory or regulatory procedure, or at will.

36. War

Any Bodily Injury, Personal Injury or Property Damage due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion, or revolution.

37. Watercraft

Any liability except with respect to operations performed by independent contractors, to the ownership, maintenance, or use, including loading or unloading of watercraft over 26 feet in length;

38. Workers' Compensation

Any obligation for which the Member or the Member's insurer may be held liable under any workers compensation, disability benefits, or unemployment compensation law or any similar law.



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F. Conditions Applicable to Section IV (Law Enforcement Liability)

1. Member's Duties in the Event of Occurrence, Wrongful Act, Claim, or Suit

- a. In the event of an Occurrence or Wrongful Act, written Notice containing particulars sufficient to identify the Member and also reasonably obtainable information with respect to the time, place, and circumstances thereof and the names and addresses of the injured and of available witnesses shall be given by or for the Member to SCMIRF as soon as practicable.
- b. If a claim is made or suit is brought against the Member, the Member shall immediately forward to SCMIRF every demand, notice, summons, or other process received by the Member or its representative.
- b. It is agreed that SCMIRF (herein referred to as The Fund) has the right to defend in the name of and on the behalf of the Members any suits or other proceedings which may at any time be instituted against them concerning claims for which The Fund may be obligated to make payment (although such suits, other proceedings, allegations or demands are considered to be wholly groundless, false, or fraudulent) and to pay all judgments and all expenses which are incurred pursuant to the direction of The Fund for investigation, negotiation or defense, from The Fund. It is agreed that The Fund shall make all final decisions regarding the legal defense of claims, and shall have absolute and conclusive authority with regard to determination of coverage, defense, settlement and payment of claims, regardless of whether the Member elects alternative premium financing option, including but not limited to a deductible or individual self-insured retention. In the event of a disagreement between SCMIRF and the Member regarding determination of coverage and/or defense, it is agreed that the Member must appeal the coverage determination to the Board of Trustees within six months of such determination. No legal action may be undertaken by the Member against SCMIRF prior to the decision of the Board of Trustees regarding the Member's coverage determination appeal. It is agreed that the independent settlement or voluntary payment of any claim by or on behalf of a Member, other than first party claims for physical damage within the Member's deductible, without approval of The Fund shall be at the sole cost of the settling Member without any reimbursement or other resources from The Fund; and, may be grounds for expulsion of the Member from The Fund.

2. See Section I (General Provisions) for items not addressed in this Section IV (Law Enforcement Liability).

G. Definitions

The following definitions apply to this Coverage Section. They are in addition to the General Definitions in Section I unless a separate definition for the same term is set out herein.

1. "Advertising Injury" means an injury arising out of an Offense committed and originally beginning during this Contract Period and occurring in the course of the Named Member's Advertising Activities, if such injury arises out of libel, slander, defamation, violation of right of privacy, piracy, unfair competition, or infringement of copyright, title, or slogan in a advertisement broadcast or published by the Member to the general public in print, televised, radio, or electronic form. "Advertising Activities" as used herein include only the direct communication of information to the general public for promotional, educational, or public service purposes. However, Advertising Activities do not include goods, equipment, buildings or other real improvements, or any other form of tangible property incorporating any infringed copyright, title, slogan, or other intellectual property or intangible property rights, or the possession, transfer, sale, or use for other purposes thereof. To the extent the Member's or Covered Person(s)'s possession, general use, transfer, sale, or other exercise of rights over tangible property violates or is alleged to violate any other person's or organization's statutory, common law, or other rights to, or interests in, intellectual or other intangible property, such violation or alleged violation is not Advertising Injury and is not covered herein. Subject to the applicable Limits of Coverage, where the infringement of copyright, title, or slogan is involved, the covered Advertising Injury is limited to the value of using such property or material in the communication itself. No other violation of intellectual or intangible property rights or interests constitutes covered Advertising Injury. Repeated broadcast or publishing of substantially the same information is deemed to be a single Advertising Injury.
2. "Application" means the document or documents required from the Member prior to and during its participation in SCMIRF.
3. "Auto" means a self-propelled land motor vehicle which is principally designed or licensed for use on public roads, or a trailer or semi-trailer designed for use with such vehicles, but does not include Mobile



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Equipment or Golf Carts. For purposes of this exclusion, the meaning of the terms 'Mobile Equipment', 'Trailer' and 'Golf Cart' will be the same as set out in the Definitions of Section VI, Business Auto Coverage.

4. **"Bodily Injury"** means physical injury to any person (including death) and any mental anguish or mental suffering associated with or arising from such physical injury. However, for purposes of this Section IV, Bodily Injury does not include such injuries if they result directly and immediately from the infliction of Personal Injury, including without limitation assault and battery; any such resulting injuries shall be deemed to be part of the Personal Injury.
5. **"Contract" or "This Contract"**, where emphasized in quotation marks and/or bold type, means this entire agreement to provide coverage for property loss, general liability, law enforcement liability, public official liability, automobile liability, commercial crime coverage, excess casualty coverage (if purchased) and any additional coverage forms incorporating the provisions of any of the above, including without limitation their "additional exclusions, conditions and definitions". "Contract" or "This Contract" also includes the title pages, the declarations, the table of contents (and all coverage sections, pages, and provisions referred to therein), and all endorsements.
6. **"Contract Declarations"** means the items stated in the initial page of each Section of This Contract listing the name of SCMIRF, the Member, Contract Period, Effective Date, and other items.
7. **"Contract Period" or "Coverage Period" or "Policy Period"** means the period of time set forth in the Contract Declarations, between the Effective Date and the Expiration Date.
8. **"Covered Contract"** means
 - a. a contract for a lease of premises. However, that portion of This Contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not a Covered Contract.
 - b. a sidetrack agreement;
 - c. any easement or license agreement;
 - d. an elevator maintenance agreement;
 - e. that part of any other contract or agreement pertaining to the Member's operations under which the Member assumes the tort liability of another party to pay Money Damages for Bodily Injury or Property Damage to a third person or organization, provided the Bodily Injury or Property Damage is caused, in whole or in part, by the Member or by those acting on the Member's behalf. Such coverage is subject to the terms, definitions, limitations, conditions, and exclusions of This Contract, regardless of any conflicting terms in the Covered Contract, but will not exceed the above-referenced duty assumed by the Member in the Covered Contract. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph e. does not include that part of any contract or agreement:

- (1) that indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
 - (b) giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (2) under which the Covered Person(s), if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the Covered Person's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection or engineering services.
- (3) involving the following contracted activities:



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- (a) aircraft or airports, as respects coverage for all liability arising out of the ownership, maintenance, or use of an aircraft, airport or flight operations;
 - (b) airplane, helicopter, or ballooning rides or shows;
 - (c) archery (unless endorsement provided);
 - (d) automobile, motorcycle, watercraft or aircraft racing or stunting;
 - (e) lifeguard operations;
 - (f) bungee jumping of any description;
 - (g) fireworks displays;
 - (h) firing ranges;
 - (i) horse farms and horse training facilities;
 - (j) hospital or health clinic operations or activities;
 - (k) housing authority operations or activities, except where a part of the direct operations of a municipality;
 - (l) parachuting or hang gliding;
 - (m) concerts organized and promoted by outside third parties;
 - (n) rodeos;
 - (o) skateboard facilities of any description;
 - (p) ski lifts or ski resorts;
 - (q) trampolines and rebounding equipment;
 - (r) traveling carnivals, circuses, or temporary mechanically operated amusement devices owned, operated, supervised, or regulated by the Member;
 - (s) water slides in excess of 10 feet.
- f. any mutual aid agreement between two governmental entities, but only to the extent of the Member's own liability arising thereunder.
9. "Covered Person(s)" means the Member Named in the Declarations Page and:
- a. the law enforcement department of the Member Named in the Declarations Page of this Section IV (Law Enforcement Liability) of this Contract; and
 - b. each of the individual law enforcement officers or other employees of such department who are officially employed in law enforcement duties or in the control thereof, but only in furtherance of the official pursuits of the law enforcement department or other SCMIRF-approved activities, and only while acting within both the course and the scope of their official duties, as provided under the "South Carolina Tort Claims Act". No one is a Covered Person if his conduct was not within the scope of his official duties or if his conduct constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.
 - c. an Employee of the Member acting in the both the course and the scope of his official duties, as provided under the "South Carolina Tort Claims Act", or any person who performs a service on a voluntary basis for the Member and under its direction and control and acting in both the course and the scope of any official duties conferred on him or her by the Member as provided under the "South Carolina Tort Claims Act", including any person whom the Member has provided to perform services for another governmental entity under a mutual aid agreement, acting in both



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the course and the scope of any official duties conferred on him or her pursuant to said mutual aid agreement. However, This Contract does not cover the liability or defense costs of other governmental entities which are parties to a mutual aid agreement or its employees who are not under the Member's supervision and control. This Contract does not cover the liability of any person whose services are provided to the Member by another governmental entity under a mutual aid agreement except to the extent that the Member is otherwise legally responsible for said person's conduct. The term "Employee" herein does not include any person working on a retainer or under a contractual agreement. No employee, volunteer, or provider of services under a mutual aid agreement is a Covered Person if his or her conduct was outside the scope of his or her official duties as provided under the "South Carolina Tort Claims Act" or if such conduct constituted actual fraud, actual malice, intent to harm, or a crime of moral turpitude;

10. "Declarations Page" means the page or pages at the beginning of each Section showing the Member and general provisions or limits of coverage.

11. "Effective Date" means at 12:01 a.m. eastern standard time on the initial date listed across from the Contract Period in the Contract Declarations.

12. "Expiration Date" means at 12:01 a.m. eastern standard time of the last day stated in the Contract Period.

13. "Law Enforcement Employees" means persons described as Class A, Class B, and Class C, while acting both within the course of his official duties, and within the scope of his official duties, as provided under the "South Carolina Tort Claims Act."

"Class A" means those armed employees who deal directly with the public and exercise general powers of arrest. This category includes but is not limited to the following:

- a. police chief and chief deputy exercising powers of arrest;
- b. an officer exercising powers of arrest; and
- c. all personnel with regular street or road duties, or both, detectives and investigators.

"Class B" means those employees, armed or unarmed, who do not deal directly with the public or only exercise limited power of arrest under the direct supervision of a certified officer; or those employees who do not exercise power of arrest and whose duties are only administrative in nature. This category includes but is not limited to the following:

- a. jailers and matrons;
- b. auxiliary or reserve officers while on duty (under the direct supervision of a certified officer) exercising arrest powers;
- c. court security;
- d. civil process officers;
- e. auxiliary or reserve officers while on duty not exercising powers of arrest;
- f. coroner; and
- g. school crossing guards, humane officers, and crime prevention officers.

"Class C" means those employees whose ordinary duties are only indirectly related to the enforcement of criminal laws. This category includes but is not limited to the following:

- a. clerical staff, fingerprinting staff, license examination staff;
- b. stenographic personnel, food service staff, photographic staff; and
- c. dispatcher staff, and staff with record keeping duties.



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14. "Member" means the political subdivision listed in the Contract Declarations in this Section.
15. "Members" means all political subdivisions participating in SCMIRF.
16. "Notice" means only written notice to SCMIRF's Claims Department, on the form provided by SCMIRF for that purpose, which is actually physically delivered to SCMIRF.
17. "Notice of Loss" means a report in writing from the Member to SCMIRF's Claims Department on a form provided by SCMIRF for that purpose concerning an incident that may give rise to a claim under This Contract.
18. "Personal Injury" in this Section means only the following Offenses committed in the course of the Member's law enforcement activities:
 - a. assault and battery;
 - b. illegal search, invasion of an individual's right to privacy, violation of civil rights, or discrimination other than in the course of the victim or alleged victim's employment with the Member;
 - c. false arrest, detention or imprisonment, or malicious prosecution;
 - d. false or improper service of process;
 - e. the publication or utterance of a libel or slander or of other defamatory or disparaging material about an individual or an organization, or a publication or utterance in violation of an individual's right to privacy; except publications or utterances in the course of or related to advertising, broadcasting, Internet, or telecasting activities by or on behalf of the Named Member;
 - f. humiliation or mental distress caused by the foregoing provided that such humiliation or distress produces physical symptoms requiring medical attention;
19. "Prisoner" means prisoner, inmate, trustee or any other person detained by, in the custody of or serving a sentence for conviction of a crime by the Member, including any such person incarcerated pursuant to any contract or agreement with any other governmental agency including the State of South Carolina and the United States of America. "Prisoner" is also any person incarcerated by the Member or other governmental entity whether as a prisoner, inmate, trustee and whether or not such person is awaiting bond, trial, release or serving a sentence imposed after conviction or plea.
20. "Proof of Claim" or "Proof of Loss" means a signed and sworn detailed statement filed with SCMIRF as soon as possible after the applicable event.
21. "SCMIRF" means the South Carolina Municipal Insurance and Risk Financing Fund.
22. "Section" means the divisions into Section I (General Provisions), Section II (Property), Section III (General Liability), Section IV (Law Enforcement Liability), Section V (Public Officials Liability) and Section VI (Automobile).
23. "Sexual Abuse" means the actual, threatened, attempted, or alleged unlawful sexual conduct towards, or sexual contact of, a person by another person, or by persons acting in concert, that causes Bodily Injury, Personal Injury or any emotional injury or stress to the victim or to any other person, whether carried out by the use of force against the victim or intended victim, or by coercion, intimidation, or any other wrongful inducement to obtain the victim or intended victim's participation in any sexual contact or sexual conduct.
24. "State" means the state of South Carolina.
25. "Table of Contents" means the listing of contents of This Contract.
26. "Third Party Administrator" means any independent appraiser or claims handling company selected by SCMIRF to administer claims on its behalf and designated by SCMIRF as such.
27. "Wrongful Act" means any actual or alleged error in the performance or failure to perform an official duty, or any misstatement, misleading statement, or misleading act made or done in the course of official duty and upon which a claimant or plaintiff has relied to his, her, or its detriment; or any omission or neglect in



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performing an official duty; or any breach of an official duty, including misfeasance, malfeasance and nonfeasance; but only, with respect to any or all of the foregoing, when committed by a Member or by a Covered Person(s) while acting within both the course and the scope of his or her official duties, as provided under the "South Carolina Tort Claims Act".



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South Carolina Municipal Insurance and Risk Financing Fund

**Town of Cottageville
P-SCMIRF-1124-2011**

- SECTION V -

PUBLIC OFFICIALS LIABILITY CONTRACT DECLARATIONS

Contract Period

Effective from 01/01/11 - 01/01/12 both days at 12:01 AM standard time at address of Member

LIMITS:

Each Wrongful Act	\$1,000,000

Member Annual Aggregate	\$1,000,000

DEDUCTIBLE/RETENTION:

Disappearing Deductible per Wrongful Act (Applicable to All Third Party Property Damage Claims)	\$500
Public Officials Deductible	\$0

Public Officials Retroactive Date	6/1/2008



- Section V -

PUBLIC OFFICIALS LIABILITY

SCMIRF agrees with the Member in consideration of the payment of the contribution and in reliance upon the statements in the application and subject to the limits of liability, exclusions, conditions, definitions, and other terms of This Contract as stated in General Provisions, Section I and as follows:

A. Coverage Agreements

1. Public Officials Coverage

SCMIRF will pay on behalf of the Member or a Covered Person(s) all sums which the Member or Covered Person(s) shall become obligated to pay exclusively as Money Damages because of Claims First Made for Personal Injury or Advertising Injury on or after the Retroactive Date of coverage for This Contract, and first becoming manifest during the Coverage Period, against the Member or a Covered Person(s):

- a. arising out of any Wrongful Act of any Covered Person acting in his or her capacity as a Covered Person for the Member, while acting within both the course and the scope of his or her official duties, as provided under the "South Carolina Tort Claims Act", or
- b. arising out of Sexual Harassment by any Employee or any volunteer or worker of the Member or Covered Person while acting within both the course and the scope of his or her official duties.

However, all claims arising out of Personal Injury due to Sexual Abuse of any kind are excluded from coverage.

All claims arising out of Sexual Harassment by one person or several persons acting in concert will be deemed to constitute one claim, made at the time the first of these claims is made, regardless of the number of persons actually or allegedly harassed, or the number of incidents of Sexual Harassment prior to or after the first claim is made, or the period of time over which said incidents take place.

This Section V does not cover liability for any damages other than Money Damages or any claims other than for Personal Injury or Advertising Injury, as those terms are defined herein and/or in the General Definitions of Section I.

B. Defense Costs; Charges & Expenses

With respect to such coverage as is afforded by this Section V (Public Officials Liability) of This Contract, SCMIRF shall, in addition to the Limits of Liability:

1. defend any suit seeking Money Damages brought against the Member or a Covered Person alleging a Wrongful Act, even if such action or suit is groundless, false, or fraudulent; but the Member or Covered Person(s) shall not admit liability for or settle any claim or incur any cost or expense without the written consent of SCMIRF, and SCMIRF shall have the right to make such investigation and conduct negotiations and enter into such settlement of any claim or suit as SCMIRF deems expedient.
2. pay all reasonable expenses, other than salaries of any Covered Person incurred by the Member at SCMIRF's request.

C. Territory

In this Section V (Public Officials Liability) of This Contract, coverage shall apply anywhere in the world with respect to personal injury arising out of the activities of any Covered Person permanently domiciled in the United States of America though temporarily outside the United States of America, its territories and possessions, or Canada, provided the original suit for damages because of any such injury or damage is brought within the United States of America, its territories or possessions, or Canada.

D. Limit of Liability

1. Limit of Liability

For any action or claim brought under the provisions of Chapter 78 of the South Carolina Code of Laws,



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cited as the "South Carolina Tort Claims Act", the liability of SCMIRF shall not exceed the limit set forth by law.

In no event shall the total amount available to pay all claims for any one Member exceed the amount shown on the Contract Declarations Page for this Section under Member's Annual Aggregate. Only a single limit or Annual Aggregate from a single Contract for a single Coverage Period will apply, regardless of the number of persons or organizations injured or making claims, or the number of Covered Persons who allegedly caused them, or whether the damage or injuries at issue were continuing or were repeated over the course of more than one Coverage Period.

2. SCMIRF's Limit of Liability

As regards the General Liability (Section III), Auto Liability (Section VI), Public Officials Liability (Section V), and Law Enforcement Liability (Section IV) coverages afforded by This Contract, the total liability of the South Carolina Municipal Insurance and Risk Financing Fund any one occurrence/accident/wrongful act will be \$1,000,000 per Member, excluding expenses and defense cost; except where other liability and/or coverage sublimits apply, then SCMIRF's liability will be limited to the applicable sublimit.

SCMIRF's liability for any one occurrence/wrongful act will be limited to \$1,000,000 per Member regardless of the number of Covered Persons, number of claimants or claims made, or the number of covered vehicles involved whether or not covered in one or more than one capacity under This Contract or under both This Contract and any SCMIRF coverage available to other SCMIRF Members.

Subject to any special aggregates, all continuing, serial, or repeated instances of Personal Injury or Advertising Injury will be considered as one occurrence/wrongful act, regardless of the number of Covered Persons involved in causing or failing to permit such injuries or the number of persons injured, and only a single Coverage Limit or Aggregate for one year will apply to all claims arising from such continuing, serial, or repeated conduct, regardless of the number of Coverage Periods during which such conduct occurred or continued.

In no event shall coverage under any liability Section of This Contract, combine with any other Section, to increase the per occurrence/accident/wrongful act limit of liability of \$1,000,000 per Member as set out above.

E. General Exclusions Applicable to Section V, Public Officials' Liability

This Coverage Section does not apply, and SCMIRF's duty to defend and indemnify does not extend, to any of the following:

1. ADA

Any claim arising out of or in any way connected with alleged violation of the American with Disabilities Act (ADA), or Section 503 and 504 of the Rehabilitation Act of 1973 as stated below:

a. Under ADA Title I - Employment:

- (1) for salaries, wages or employment benefits;
- (2) for the cost of implementing reasonable accommodations even if directed by a court, federal or state agency, or any other regulatory entity;

b. Under ADA Title II - Public Services:

- (1) for the cost of creating or modifying public services, programs, activities or facilities even if directed by a court, federal or state agency, or any other regulatory entity;
- (2) for the cost of purchasing new transit equipment or, modifying existing transit equipment even if directed by a court, federal or state agency, or any other regulatory entity;

c. Under the ADA Title III - Public Accommodations:

- (1) for the cost of creating new facilities or modifying existing facilities owned or controlled by the Named Member, even if directed by a court, federal or state agency, or any other regulatory entity;

d. Under the ADA Title IV - Telecommunications:



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- (1) for the cost of creating new services or modifying existing services owned or controlled by the Named Member even if directed by a court, federal or state agency, or any other regulatory entity;
 - e. Under ADA Title V:
 - (1) for the cost of compliance with this Title even if directed by a court, federal or state agency, or any other regulatory entity.
2. Aircraft, Airfields

Any Personal Injury or Advertising Injury arising out of, caused by, or related directly or indirectly to the ownership, maintenance, loading or unloading, use, or operation of any aircraft, airports, airfields, runways, hangars, buildings or other properties in connection with aviation activities, or the handling of property or the treatment or screening of passengers, including without limitation claims of discrimination or other civil rights violations associated with any of the above;
3. Asbestos

Any Personal Injury or Advertising Injury arising out of, related directly or indirectly to, or which causes or contributes to any of the following:

 - a. the presence of asbestos in any form, including the cost of remedial investigations or feasibility studies, or to the costs of testing, monitoring, abatement, mitigation, cleaning, removal, or disposal of any property or substance; or
 - b. damages arising out of any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with the above; or
 - c. obligation to share damages with or repay someone else who must pay damages in connection with the above.
 - d. charges or expenses for any type of medication, medical treatment or equipment, or for any rehabilitative treatment or equipment, caused or made necessary by any of the following diseases:
 - (1) Asbestosis
 - (2) Mesothelioma
 - (3) Emphysema
 - (4) Pneumoconiosis
 - (5) Pulmonary Fibrosis
 - (6) Pleuritis
 - (7) Endothelioma

or any lung disease or any ailment caused by, or aggravated by, exposure to or inhalation, consumption or absorption of asbestos in any form.

(The coverage afforded by This Contract does not apply to payment for the investigation or defense of any Loss, Injury, or damage or any cost, fine, or penalty or for any expense or claim or suit related to any of the above);
4. Auto Liability

Any liability, claim or Occurrence covered under Section VI, Business Auto Coverage, or any liability or claim arising from the ownership, operation, maintenance, or use of any Auto.
5. Bodily Injury

Any Bodily Injury, except that arising out of direct and immediate physical violence by a Covered Person in the course of committing Personal Injury as that term is defined herein; however, any injury falling



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within the foregoing exception will be deemed to be part of the Personal Injury and not separately covered.

6. Breach of Contract

Any Personal Injury or Advertising Injury arising out of breach of contract or negligent breach of a contractual duty except as assumed under Mutual Aid Agreements.

7. Conspiracy to Commit Excluded or Non-Covered Acts

Any claim or lawsuit based on conspiracy or alleged conspiracy to engage in conduct where:

- a. liability for the conduct which is the focus, means, and/or goal of the conspiracy or alleged conspiracy is excluded or otherwise not covered under This Contract; or
- b. liability for the actual effect of the conspiracy or alleged conspiracy is excluded or otherwise not covered under This Contract.

If either a. or b. above applies, SCMIRF will have no duty to defend or indemnify any claim or lawsuit based on any injury or damage caused by or alleged to have been caused by such conspiracy, regardless of whether the injury or damage that resulted or is alleged to have resulted from the conspiracy or alleged conspiracy is different in kind or degree from the injury or damage which was intended or alleged to have been intended by the conspirators or alleged conspirators.

8. Covered Persons

Personal Injury or Advertising Injury to a Covered Person inflicted, in whole or in part, by a Member or by another Covered Person.

9. Dishonest or Criminal Acts

Any claim for damages arising out of:

- a. fraudulent, dishonest, or criminal acts, including without limitation the willful violation of a penal statute or ordinance, committed by or with the consent of the Member or by a Covered Person (but only with respect to the Member or Covered Person who commits or consents to such acts);
- b. fraudulent, dishonest or criminal acts which occur after the Member or a supervisory Employee or agent of the Member who is responsible for overseeing the conduct of another Employee or agent of the Member receives any oral or written notice of prior or ongoing fraudulent, dishonest, or criminal acts by the other Employee or agent, other than notice received between incidents that are so closely related in time that immediate and reasonable response by the Member or supervisor, although undertaken, cannot prevent the subsequent injury or damage; or
- c. the willful, intentional or malicious conduct of any Covered Person; or claims with respect to which the Member or Covered Person admits guilt of the fraudulent, dishonest, or criminal act.

10. Employee Benefits

Any claims arising out of or in any way involving any Employee Benefit Plan of the Member (see Section III).

11. Employee Indemnification and Employer's Liability

Any Personal Injury or Advertising Injury to:

- a. an Employee of the Member arising out of or in the course of employment by the Member; or
- b. the spouse, child, parent, brother, sister, or any other relative of that Employee as a consequence of paragraph "a" above.

This exclusion applies:

- (1) whether the Member may be liable as an employer or in any other capacity; and
- (2) to any obligation to share damages with or repay someone else who must pay damages because of the injury;



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12. Expected or Intended Injury
Personal Injury, or Advertising Injury expected or intended, or which should have been expected from the standpoint of the Member or Covered Person(s) who caused it or directed the conduct that caused it, regardless of whether the actual injury or damage resulting from the Member's or Covered Person(s)' conduct is different from that expected or intended. This exclusion applies only to the Member or Covered Person(s) who caused the injury or directed the conduct that caused the injury under the circumstances described in the foregoing sentence. This exclusion does not apply to Personal Injury alleged to have occurred if such injury is the result of the use of reasonable force to protect persons or property.
13. Failure to Supply
Any claims arising out of the failure of the Member to supply or adequately supply utilities such as gas, oil, water, sewer, electricity, or steam, except incidents in which the interruption is solely due to the negligence of the Member in improperly disconnecting service to a customer.
14. Forfeiture
Any claim arising out of the filing or the failure to file an appropriate forfeiture action relating to property seized by the Member or Covered Person(s), or out of any improper conduct related thereto, including, without limitation, the use of improper means in obtaining a waiver of the owner or possessor's rights to a full forfeiture action or hearing.
15. General Liability
Any claim or Occurrence covered by Section III, General Liability, is excluded from coverage in Section V, Public Officials Liability.
16. Illegal Gain
Any claim seeking the return of any profit, advantage, gain, or remuneration to which the Member or a Covered Person was not legally entitled; however, the Member shall be defended under the terms of This Contract unless a judgment or final adjudication established such lack of legal entitlement.
17. Identity Theft
Any claim based on Identity Theft or improper handling, use, or disclosure of personal information protected by common law or by any state or federal statute under this Coverage Section. Coverage for such claims, if any, is limited to Section III (General Liability), subject to the provisions thereof.
18. Intangible Property and Intellectual Property
Any liability for infringement of, or injury or damage to, intellectual property or other intangible property or intangible economic rights, other than those intangible property or economic rights included within the definition of Advertising Injury; however, claims based on such intangible property or economic rights are excepted from this exclusion only to the extent they arise directly out of Advertising Injury, subject to all applicable exclusions and other limitations on such coverage.
19. Inverse Condemnation
Any claim involving inverse condemnation, temporary taking, permanent taking, or any claim arising out of or in any way connected with any of the above, or with the operation of the principles of eminent domain; adverse possession or dedication by adverse use.
20. Infliction of Emotional Harm
Any claim, made by or against a Member or a Covered Person(s), for the intentional, reckless, or grossly negligent infliction of emotional harm or anything related thereto, including without limitation, emotional distress and/or outrage. This exclusion applies to any related claims of Bodily Injury caused by emotional distress.
21. Law Enforcement Liability
Any liability covered in Section IV, Law Enforcement Liability, or any liability or claim against a Law Enforcement Employee as that term is defined in Section IV (whether or not such liability or claim is covered in Section IV), or any liability or claim against other persons or entities who are also defined as Covered Persons in Section IV that is based on the conduct or alleged conduct of such Law Enforcement Employees, including without limitation claims based on the hiring, training, monitoring, or supervision of, or on the control of or failure to control, such Law Enforcement Employees (whether or not such liability or claim is covered in Section IV).



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22. Lead In Any Form
Any Personal Injury or Advertising Injury arising out of, related directly or indirectly to, or which causes or contributes to any of the following:
- the ingestion, inhalation or absorption of lead in any form;
 - the presence of lead in any form; or
 - Any loss, cost or expense arising out of any orders by, or on behalf of, any governmental authority to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize lead in any form;
- at or from any premises, sites or locations which are, or were at any time, owned by, rented to, loaned to or used by any Member or Covered Person, or arising from operations at any location by any Member or Covered Person.
23. Medical Professional
Any liability arising out of the rendering of or failure to render the following professional services:
- medical, surgical, dental, x-ray or nursing service or treatment or the furnishing of food or beverages in connection therewith;
 - furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances;
 - service by any person as a Member of a formal accreditation or similar professional board or committee of the Member, or as a person charged with the duty of executing directives of any such board or committee.
24. Non-Monetary Damages
Any claim or suit seeking equitable, injunctive, declaratory or similar relief in any form other than Money Damages. This exclusion applies even if such relief involves the expenditure of money to comply with any order, verdict, agreement, or settlement, including without limitation expenditures for the construction, demolition, modification, or maintenance of buildings, infrastructure, or other real improvements; the purchase, removal, or upgrading of equipment, supplies or other personal property; or the provision of staff, pay, or services in order to satisfy a duty the Member or Covered Person(s) has or purportedly has to provide such property, improvements, or services to the public or any subset of the public.
25. Nuclear Explosion
Any:
- Personal Injury including without limitation claims of disparate treatment or other civil rights violations allegedly causing or contributing to the risk of exposure to the Hazardous Properties of Nuclear Material, if
 - the Nuclear Material
 - is from any Nuclear Facility owned by or operated by or on behalf of a Member; or
 - has been discharged or dispersed therefrom; or
 - the Nuclear Material is contained in Spent Fuel or Waste at any time possessed, handled, used, processed, stored, transported, or disposed of by or on behalf of a Member; or
 - the Personal Injury arises out of the furnishing by a Member of services, materials, parts, or equipment, in connection with the planning, construction, maintenance, operation, or use of any Nuclear Facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to damage to such Nuclear Facility and any property threat.
 - As used in this exclusion:
"Hazardous Properties" includes radioactive, toxic, or explosive properties;



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"Nuclear Facility" means:

- (1) any Nuclear Reactor,
- (2) any equipment or device designed or used for
 - (a) separating the isotopes of uranium or plutonium,
 - (b) processing or utilizing spent fuel, or
 - (c) handling, processing or packaging waste,
- (3) any equipment or device used for the processing, fabricating or alloying of special Nuclear Material if at any time the total amount of such material in the custody of the Member at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (4) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of Waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"Nuclear Material" means Source Material, Special Nuclear Material or By-Product Material;

"Nuclear Reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction, or to contain a critical mass of fissionable material;

"Source Material", "Special Nuclear Material", and "By-Product" Material have the meanings given them in the Atomic Energy Act of 1954 or in any amendment thereof;

"Spent Fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"Waste" means any waste material (1) containing by-product material and (2) resulting from the operation by any person or organization of any Nuclear Facility included within the definition of Nuclear Facility under paragraphs 1 or 2 thereof;

26. Personal Injury and Advertising Injury under Certain Circumstances
Except where expressly stated as applying only with respect to specific persons, any:

- a. **Personal Injury or Advertising Injury** arising out of the willful violation of a penal statute or ordinance committed by, or with prior notice to or the consent of, the Member, or committed by or with the knowledge or express or implied consent of the Covered Person (but only with respect to the Member or Covered Person committing such willful violation, having such notice or knowledge, or giving such consent).
- b. **Personal Injury or Advertising Injury** arising out of a publication or utterance of a libel or slander, or a publication or utterance in violation of an individual's right of privacy, if the first injurious publication broadcast, or utterance of the same or similar material by or on behalf of the Named Member or the Covered Person was made prior to the Effective Date of this coverage;
- c. **Personal Injury or Advertising Injury** arising out of libel or slander or the publication, broadcast, or utterance of defamatory or disparaging material concerning any person or organization, or any goods, products or services, or in violation of an individual's right of privacy, made by or at the direction of the Member or the Covered Person(s) with knowledge of the falsity thereof or with reckless disregard for the truth thereof (but only with respect to the Member or Covered Person committing such libel, slander, publication, broadcast or utterance with such knowledge or reckless disregard for the truth);
- d. **Personal Injury or Advertising Injury** of any sort caused by or at the direction of the Member or the Covered Person with knowledge that the act would violate the rights of another and cause



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Personal Injury or Advertising Injury (but only as to the Member or Covered Person causing or directing such Injury with such knowledge):

- e. **Personal Injury or Advertising Injury** arising out of the conduct of any partnership or joint venture of which the Member is a partner or Member which is not designated in This Contract Declarations as the Named Member.
- f. **Personal Injury**, including without limitation a violation or alleged violation of any person's or entity's or organization's civil or constitutional rights, arising from or related directly or indirectly to:
 - (1) a Member or Covered Person's failure to permit, delay in permitting, interference with the development or use of real property or any part thereof, the use of any personal property, or the operation of any business or any part of a business; or
 - (2) a Member or Covered Person's failure or alleged failure to follow proper procedures, including without limitation proper notice, hearings, or formulation of or adherence to any legally required studies or findings, in doing any of the above.

This exclusion applies, regardless of whether the person, entity, or organization aggrieved or allegedly aggrieved is the owner of the property or business affected and regardless of the nature of the Personal Injury suffered or allegedly suffered. Without limitation, this exclusion applies to claims brought under the federal Fair Housing Act or any other state or federal civil rights statute or regulation, or under any provision(s) of the Constitution of the United States, the State of South Carolina, or both. It applies absolutely to exclude all coverage as to the Member and to all Covered Persons, regardless of who is responsible for any act or omission that caused the Personal Injury.

27. Pollution Exclusion

Any Personal Injury or Advertising Injury, including without limitation claims based on disparate treatment or other civil rights violations, which causes or contributes to any person or entity's risk of exposure to the actual, alleged, or threatened discharge, dispersal, release or escape of Pollutants:

- a. At or from premises owned, rented or occupied by, or under the control of, the original Insured;
- b. At or from any site or location used by any Insured for the handling, storage, disposal, processing or treatment of waste;
- c. Which are at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any Insured or any person or organization from whom the Insured may be legally responsible; or
- d. At or from any site or location on which any Insured or any contractors or subcontractors working directly or indirectly on behalf of an Insured are performing operations:
 - (1) If the Pollutants are brought on or to the site or location in connection with such operation; or
 - (2) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants.
- e. At or from a sewer system owned, rented, occupied, under the control of or operated by the Member which is released, dispersed, escapes or backs up into any private residence, building or premises not owned, rented or occupied by the Member.

Any Loss, cost, or expense arising out of any governmental direction or request that an Insured must test for, monitor, evaluate, clean up, remove, contain, treat, detoxify or neutralize Pollutants.

The term "Contaminants" is synonymous with "Pollutants" and is defined in the Definitions Part of this Coverage Section. "Contamination" and "Pollution" are limited by the definitions of "Contaminants" and "Pollutants" therein, as are other variants of those words. These terms apply to indoor, outdoor, airborne, waterborne, surface, subsurface, localized and/or general environmental contamination.

28. Property Damage

Any liability for Property Damage or for any damage, injury, or loss arising from the loss of use or enjoyment of any type of property, whether tangible or intangible, including without limitation Property Damage or loss of use that might arise from conduct that also causes Personal Injury. (See Section III—



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General Liability or Section IV -- Law Enforcement Liability for Property Damage coverage, if applicable, subject to the limitations therein and in Section I; but there is no such coverage in this Section V.)

29. Sexual Abuse: Absolute Exclusion

Any claim arising out of or in any way connected with any act or the participation in any act of criminal sexual conduct, sexual misconduct, sexual molestation, or other Sexual Abuse, physical or mental, of any person by any Covered Person or by any other person. This exclusion applies not only with respect to claims against persons directly involved in Sexual Abuse but also to claims that a Member or other Covered Person(s) failed to prevent such conduct or failed to take proper precautions in hiring, training, supervising, or monitoring the Covered Person(s) or other person(s) accused of such conduct or in responding or failing to respond to notice of such conduct or to warn about or protect any other person from such conduct. (See Section III, General Liability, or Section IV, Law Enforcement Liability.)

30. Strikes, Riots, or Civil Commotions

Any Personal Injury arising from strikes, riots, or general widespread civil unrest;

31. Wage Exclusion

Any liability or claim including, but not limited to, any judgments, settlements, awards, or other amounts, for, based upon, relating to, or arising from the following:

- a. Claims for back wages, present wages, forward wages, overtime, Employee benefits or any other wage related compensation benefits or payments (including liquidated damages and attorney's fees).
- b. Any amounts payable with respect to breach of any provisions or any collective bargaining agreements or similar arrangements between an employer and any labor union organization.
- c. Any obligation, either by express or implied contract, statute, regulation, or otherwise, to pay any wage, benefit or compensation to an Employee.

For the purpose of this exclusion, the term "Employee" shall mean those past, present, or future persons who were, are or will be employed either full-time or part-time by the Named Member on either an hourly or salaried basis, whether by employment contract, pursuant to civil service or other statutory or regulatory procedure, or at will.

32. War

Any Personal Injury due to war, whether or not declared, or any act of condition incident to war. War includes civil war, insurrection, rebellion, or revolution.

33. Willful Violation of Law

Any liability or claim arising from the willful violation of any statute, ordinance, or regulation committed by or with the knowledge or consent of any Covered Person is excluded.

34. Workers' Compensation

Any obligation for which the Member or the Member's insurer may be held liable under any workers compensation, USL&H, disability benefits, or unemployment compensation law or any similar law.

F. Conditions Applicable to Section V (Public Officials Liability)

1. Member's Duties in the Event of Occurrence, Wrongful Act Claim, or Suit

- a. In the event of an Occurrence or Wrongful Act, written Notice containing particulars sufficient to identify the Member and also reasonably obtainable information with respect to the time, place, and circumstances thereof and the names and addresses of the injured and of available witnesses shall be given by or for the Member to SCMIRF as soon as practicable.
- b. If a claim is made or suit is brought against the Member, the Member shall immediately forward to SCMIRF every demand, notice, summons, or other process received by the Member or its representative.
- c. It is agreed that SCMIRF (herein referred to as The Fund) has the right to defend in the name of and on the behalf of the members any suits or other proceedings which may at any time be instituted against them concerning claims for which The Fund may be obligated to make payment.



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(although such suits, other proceedings, allegations or demands are considered to be wholly groundless, false, or fraudulent) and to pay all judgments and all expenses which are incurred pursuant to the direction of The Fund for investigation, negotiation or defense, from The Fund. It is agreed that The Fund shall make all final decisions regarding the legal defense of claims, and shall have absolute and conclusive authority with regard to determination of coverage, defense, settlement and payment of claims, regardless of whether the Member elects alternative premium financing option, including but not limited to a deductible or individual self-insured retention. In the event of a disagreement between SCMIRF and the Member regarding determination of coverage and/or defense, it is agreed that the Member must appeal the coverage determination to the Board of Trustees within six months of such determination. No legal action may be undertaken by the Member against SCMIRF prior to the decision of the Board of Trustees regarding the Member's coverage determination appeal. It is agreed that the independent settlement or voluntary payment of any claim by or on behalf of a Member, other than first party claims for physical damage within the Member's deductible, without approval of The Fund shall be at the sole cost of the settling Member without any reimbursement or other resources from The Fund; and, may be grounds for expulsion of the Member from The Fund.

2. Action Against SCMIRF

No action shall lie against SCMIRF unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of This Contract, or until the amount of the Member's obligation to pay shall have been finally determined either by judgment against the Member after actual trial or by written agreement of the Member, the claimant, and SCMIRF.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under This Contract to the extent of the coverage afforded by This Contract. No person or organization shall have any right under This Contract to join SCMIRF as a party in any action against the Member or a Covered Person to determine the Member's or a Covered Person's liability, nor shall SCMIRF be impleaded by the Member or a Covered Person or its or his legal representative. Bankruptcy or insolvency of the Member or a Covered Person shall not relieve SCMIRF of any of its obligations hereunder.

3. Other Coverage

If an Employee of the Member performs services for another entity, not in the course and scope of their employment for the Member, any coverage provided by This Contract shall be excess over other valid and collectible coverage.

4. Cancellation

This Section V (Professional Liability) shall be canceled as provided in Section I (General Provisions).

5. Subrogation

In addition to the subrogation provisions of Section I (General Provisions), the following shall apply in this Section V (Professional Liability).

SCMIRF will have no rights of subrogation against any person or entity, which is a Covered Person under this Section V (Professional Liability) of This Contract; or against any other person or entity, which the Member has waived its right of subrogation against in writing before the time of Loss.

6. See Section I (General Provisions) for items not addressed in this Section V (Public Officials Liability).

G. Extended Reporting Period

In the event of cancellation or non-renewal of This Contract (other than cancellation for non-payment of premium or violation of Policy Terms and conditions) the Member shall have the option of:

1. upon payment of an additional premium as determined by SCMIRF purchasing an Extended Reporting Period extending such insurance as is afforded by this Section in respect of Claims First Made within a maximum period of twelve months following immediately upon the effective date of such cancellation or non-renewal, or
2. if the Member does not purchase the Extended Reporting Period, SCMIRF shall extend such coverage as is afforded by this Section to apply to Claims First Made against the Member during the 60 days immediately upon the effective date of such cancellation or non-renewal but only by reason of a claim for injuries or damages which commences and was sustained subsequent to the Retroactive Date set out in the Public Officials Liability Contract Declarations and prior to the effective date of such cancellation or



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non-renewal, and which is otherwise covered by this policy. The Extended Reporting Period for claims made subsequent to termination of the Policy Period, if purchased, must be endorsed hereto.

If however, this policy is immediately succeeded by similar claims-made insurance coverage, with any insurer, on with the Retroactive Date is the same as or earlier than that showing in the Public Officials Liability Contract Declarations, the succeeding policy shall be deemed to be a renewal of This Contract, and the Member shall have no right to secure an Extended Reporting Period from SCMIRF.

The Member's right to purchase the Extended Reporting Period must be exercised by Notice in writing to SCMIRF not later than thirty (30) days after the cancellation or termination date of This Contract and must include tender of the entire premium for the Extended Reporting Period. If such Notice and tender is not so given, the Member shall not at a later date be able to exercise the right to purchase the Extended Reporting Period.

The purchase of the Extended Reporting Period does not increase the limit of liability provided to the Member by SCMIRF. The limits in the last term of the policy are continued and not increased.

H. Definitions

The following definitions apply to this Coverage Section. They are in addition to the General Definitions in Section I unless a separate definition for the same term is set out herein.

1. "Advertising Injury" means an injury arising out of an Offense committed and originally beginning during this Contract Period and occurring in the course of the Named Member's Advertising Activities, if such injury arises out of libel, slander, defamation, violation of right of privacy, piracy, unfair competition, or infringement of copyright, title, or slogan in a advertisement broadcast or published by the Member to the general public in print, televised, radio, or electronic form. "Advertising Activities" as used herein include only the direct communication of information to the general public for promotional, educational, or public service purposes. However, Advertising Activities do not include goods, equipment, buildings or other real improvements, or any other form of tangible property incorporating any infringed copyright, title, slogan, or other intellectual property or intangible property rights, or the possession, transfer, sale, or use for other purposes thereof. To the extent the Member's or Covered Person(s)'s possession, general use, transfer, sale, or other exercise of rights over tangible property violates or is alleged to violate any other person's or organization's statutory, common law, or other rights to, or interests in, intellectual or other intangible property, such violation or alleged violation is not Advertising Injury and is not covered herein. Subject to the applicable Limits of Coverage, where the infringement of copyright, title, or slogan is involved, the covered Advertising Injury is limited to the value of using such property or material in the communication itself. No other violation of intellectual or intangible property rights or interests constitutes covered Advertising Injury. Repeated broadcast or publishing of substantially the same information is deemed to be a single Advertising Injury.
2. "Application" means the document or documents required from the Member prior to and during its participation in SCMIRF.
3. "Auto" means a self-propelled land motor vehicle which is principally designed or licensed for use on public roads, or a Trailer or semi-trailer designed for use with such vehicles, but does not include Mobile Equipment or Golf Carts. For purposes of this exclusion, the meaning of the terms 'Mobile Equipment', 'Trailer' and 'Golf Cart' will be the same as set out in the Definitions of Section VI, Business Auto Coverage.
4. "Bodily Injury" means physical injury to any person (including death) and any mental anguish or mental suffering associated with or arising from such physical injury.
5. "Claim First Made" shall be understood to have happened when:
 - a. SCMIRF's Claims Department first receives written Notice of a civil suit or a written demand for Money Damages on the form provided by SCMIRF for that purpose; or
 - b. the Member provides written Notice to SCMIRF's Claims Department on the form provided by SCMIRF for that purpose of an incident likely to give rise to a claim for Money Damages;
 whichever comes first.
6. "Contaminant" or "Pollutant" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste, which after its release can cause.



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or threaten damage to human health or human welfare or causes or threatens damage, deterioration, loss of value, marketability, or loss of use to property covered hereunder due to its physical contact with said property or presence on, in, or under it, including but not limited to bacteria, fungi, viruses, or hazardous substances as listed in the Federal Water Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976, and Toxic Substances Act, or as designated by the U.S. Environmental Protection Agency. "Waste" as used herein includes human and animal waste, whether raw or processed for disposal or used as fertilizer or for any other purpose. "Waste" includes materials to be recycled, reconditioned, or reclaimed as well as materials disposed of or meant for disposal.

7. "Contract" or "This Contract", where emphasized in quotation marks and/or bold type, means this entire agreement to provide coverage for property Loss, general liability, law enforcement liability, public official liability, automobile liability, commercial crime coverage, excess casualty coverage (if purchased) and any additional coverage forms incorporating the provisions of any of the above, including without limitation their "additional exclusions, conditions and definitions". "Contract" or "This Contract" also includes the title pages, the declarations, the table of contents (and all coverage sections, pages, and provisions referred to therein), and all endorsements.
8. "Contract Declarations" means the items stated in the initial page of each Section of this Contract listing the name of SOMIRF, the Member, Contract Period, Effective Date, and other items.
9. "Contract Period" or "Coverage Period" or "Policy Period" means the period of time set forth in the Contract Declarations, between the Effective Date and the Expiration Date.
10. "Covered Persons" means
 - a. a person who is or during the Coverage Period shall be a lawfully elected or lawfully appointed official of the Member, including any member of its governing body, while acting in the both the course and the scope of his or her official duties, as provided under the "South Carolina Tort Claims Act". No such official or governing body member is a Covered Person for conduct outside the course and the scope of his or her official duties or if his or her conduct amounted to actual fraud, actual malice, intent to harm, or a crime involving moral turpitude;
 - b. a member of a commission, board, or other unit operating by and under the jurisdiction of the Member and within apportionment of the total operating budget indicated in the Application, provided that the coverage afforded shall not extend to any of the following boards, commissioners, or units unless specifically endorsed hereon: schools, airports, transit authorities, hospitals and health clinics, municipally owned gas or electric companies or housing authorities.
 - c. an Employee of the Member acting in the both the course and the scope of his official duties, as provided under the "South Carolina Tort Claims Act" (other than a Law Enforcement Employee as defined in Section IV, Law Enforcement Liability, while acting in the course and scope of his or her duties as such), or any person who performs a service on a voluntary basis for the Member and under its direction and control and acting in both the course and the scope of any official duties conferred on him or her by the Member as provided under the "South Carolina Tort Claims Act", or any person providing services to the Member under any mutual aid or similar agreement between governmental entities, acting in both the course and the scope of any official duties conferred on him or her by the Member pursuant to said mutual aid agreement. However, This Contract does not cover the liability or defense costs of other governmental entities which are parties to a mutual aid agreement or its employees who are not under the Member's supervision and control. This Contract does not cover the liability of any person whose services are provided to the Member by another governmental entity under a mutual aid agreement except to the extent that the Member is otherwise legally responsible for said person's conduct. The term "Employee" does not include any person working on a retainer or under a contractual agreement. No Employee, volunteer, or provider of services under a mutual aid agreement is a Covered Person if his or her conduct was outside the scope of his or her official duties or if such conduct constituted actual fraud, actual malice, intent to harm, or a crime of moral turpitude;
11. "Declarations Page" means the page or pages at the beginning of each Section showing the Member and general provisions or limits of coverage.
12. "Effective Date" means at 12:01 a.m. Eastern Standard Time on the initial date listed across from the Contract Period in the Contract Declarations.



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13. "Expiration Date" means at 12:01 a.m. Eastern Standard Time of the last day stated in the Contract Period.
14. "Member" means the political subdivision listed in the Contract Declarations.
15. "Members" means all political subdivisions participating in SCMIRF.
16. "Notice" means only written notice to SCMIRF's Claims Department, on the form provided by SCMIRF for that purpose, which is actually physically delivered to SCMIRF.
17. "Notice of Loss" means a report in writing from the Member to SCMIRF's Claims Department on a form provided by SCMIRF for that purpose concerning an incident that may give rise to a claim under This Contract.
18. "Personal Injury" as used in this Section means only the following offenses:
 - a. assault and battery;
 - b. illegal search, invasion of an individual's right to privacy, violation of civil rights, or discrimination other than (with respect to any of these) in the course of the claimant's or plaintiff's employment with the Member;
 - c. false arrest, detention or imprisonment, or malicious prosecution;
 - d. false or improper service of process;
 - e. the publication or utterance of a libel or slander or of other defamatory or disparaging material about an individual or an organization, or a publication or utterance in violation of an individual's right to privacy, except publications or utterances in the course of or related to advertising, broadcasting, internet, or telecasting activities by or on behalf of the Named Member;
 - f. humiliation or mental distress caused by the foregoing provided that such humiliation or distress produces physical symptoms requiring medical attention;
19. "Proof of Claim" or "Proof of Loss" means a signed and sworn detailed statement filed with SCMIRF as soon as possible after the applicable event.
20. "Retroactive Date" means the Retroactive Date shown in Contract Declarations. It is the earliest date that:
 - a. Loss may happen and be covered by this agreement
 - b. A Wrongful Act may be committed and cause Loss covered by this agreement
21. "SCMIRF" means the South Carolina Municipal Insurance and Risk Financing Fund.
22. "Section" means the divisions into Section I (General Provisions), Section II (Property), Section III (General Liability), Section IV (Law Enforcement Liability), Section V (Public Officials Liability) and Section VI (Automobile).
23. "Sexual Abuse" means the actual, threatened, attempted, or alleged unlawful sexual conduct towards, or sexual contact of, a person by another person, or by persons acting in concert, that causes Bodily Injury, Personal Injury or any emotional injury or stress to the victim or to any other person, whether carried out by the use of force against the victim or intended victim, or by coercion, intimidation, or any other wrongful inducement to obtain the victim or intended victim's participation in any sexual contact or sexual conduct.
24. "State" means the state of South Carolina.
25. "Table of Contents" means the listing of contents of This Contract.
26. "Third Party Administrator" means any independent appraiser or claims handling company selected by SCMIRF to administer claims on its behalf and designated by SCMIRF as such.



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



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South Carolina Municipal Insurance and Risk Financing Fund

Town of Cottageville
P-SCMIRF-1124-2011

- SECTION VI -

BUSINESS AUTO CONTRACT DECLARATIONS

Contract Period

Effective from 01/01/11 to 01/01/12 both days at 12:01 AM standard time at address of Member

SCHEDULE OF COVERAGES AND COVERED AUTOS

This coverage is for those Autos listed on the Application and any Autos acquired AFTER the Effective Date of coverage.

LIABILITY COVERAGE	COVERED AUTOS	EACH MEMBER LIMIT
Liability Limit	Any Covered Auto*	\$1,000,000 Limit
Uninsured Motorists	Any Covered Auto*	\$25,000 Bodily Injury per Person \$50,000 Bodily Injury per Accident \$25,000 Property Damage (Minimum Limit as Required by South Carolina State Law)

PHYSICAL DAMAGE COVERAGE	COVERED AUTOS	EACH MEMBER LIMIT
Comprehensive	Any Covered Auto*	Actual cash value or cost of repair, whichever is less
Collision	Any Covered Auto*	Actual cash value or cost of repair, whichever is less

GARAGEKEEPERS COVERAGE		EACH MEMBER LIMIT
Comprehensive (actual cash value or cost of repair, whichever is less)	Per Occurrence	\$50,000
Collision (actual cash value or cost of repair, whichever is less)	Per Occurrence	\$50,000

DEDUCTIBLES		
Property Damage Liability	Per Occurrence	\$500
Auto Liability Deductible	Per Occurrence	\$0
Comprehensive	Per Vehicle	\$1,000
	Per Occurrence	\$5,000
Collision	Per Occurrence	\$1,000
Garagekeepers Comprehensive	Per Vehicle	\$1,000
	Per Occurrence	\$5,000
Garagekeepers Collision	Per Occurrence	\$1,000

* See Section VI-A for detailed description of Covered Autos



- SECTION VI -

BUSINESS AUTO COVERAGE

SCMIRF agrees with the Member in consideration of the payment of the contribution and in reliance upon the statements in the application and subject to the limits of liability, exclusions, definitions, and conditions stated in the General Provisions, Section I and hereunder:

A. Covered Autos

1. Descriptions of Covered Autos:
The following are Covered Autos:
Owned Autos;
Hired Autos; and
Non-Owned Autos while used in the furtherance of the business of the Named Member.

2. Owned Autos Acquired by the Member After the Coverage Begins

The Member has Liability Coverage and Physical Damage Coverage as those coverages are described below for Owned Autos that the Member acquires during the Policy Term of This Contract for the duration of said Policy Term; subject to the terms and conditions of this Section VI. However, Physical Damage coverage for any Owned Auto which is more than \$1,000,000.00 (one million dollars) in value does not apply to any Loss to such an Owned Auto which occurs more than 30 (thirty) days after the Member has acquired it unless the Member has reported its value to SCMIRF prior to the Loss. For purposes of Physical Damage Coverage, a Member will be deemed to have acquired an Owned Auto which is more than \$1,000,000.00 (one million dollars) in value and to own it at the time when the Member or its agent enters an agreement to purchase such an Auto, regardless of whether physical possession of the Auto has been transferred to the Member, the payments for the Auto have been completed, or the title paperwork has been completed. However, the date of such a purchase agreement will in no event be deemed to occur later than the date when the Member or its agent pays all or part of the purchase price of the Auto or takes possession of the Auto, whichever occurs first. This 30-day (thirty-day) period for reporting the acquisition of Owned Autos more than \$1,000,000.00 (one million dollars) in value will not operate to extend coverage for any Auto beyond the duration of the Policy Term during which it was acquired.

Immediate reporting of newly acquired Owned Autos worth \$1,000,000.00 (one million dollars) or less is not required, but is strongly encouraged. This would reduce the number of such Autos which could possibly be omitted from the schedule during the renewal process.

3. Coverage Provisions for Unreported Autos

- a. In the event an Auto (that was acquired during a prior Coverage Period) is discovered to be omitted from the current schedule:
 - (1) the Member will be REQUIRED to add the unscheduled Auto to auto Liability Coverage by paying all past due auto liability contributions for the unscheduled vehicle.
 - (2) the Member may ELECT to add the unscheduled vehicle to auto physical damage coverage by paying all past due auto physical damage contributions.
- b. In the event an Auto (that was acquired during a prior Coverage Period) is discovered to be omitted from the current schedule AND is involved in a claim or Loss, the claim and contribution adjustment will be handled as follows:
 - (1) The Auto liability claim will be paid, however, an extra graded deductible of \$1,000 per year for every year of coverage (except the first year) during which the Auto was owned by the Member but not Scheduled, must be paid by the Member. This deductible will be in addition to whatever optional liability deductible appears in the Business Auto Contract Declarations.
 - (2) The Member can ELECT to have the auto physical damage claim paid, however, an extra graded deductible of \$1,000 per year for every year of coverage (including the first



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year) during which the Auto was owned by the Member but not scheduled, must be paid by the Member. This deductible will be in addition to whatever optional auto physical damage deductible appears in the Business Auto Contract Declarations.

A. Certain Trailers, Mobile Equipment, and Temporary Substitute Autos

The following types of vehicles are also Covered Autos for Liability Coverage:

- a. Trailers with a load capacity of 2,000 pounds or less designed primarily for travel on public roads;
- b. Mobile Equipment while being carried or towed by a Covered Auto; and
- c. any Auto the Member does not own while used with the permission of its owner as a temporary substitute for a Covered Auto the Member owns that is out of service because of its breakdown, repair, servicing, Loss, or destruction.

B. Liability Coverage

SCMIRF will pay all sums the Covered Person(s) legally must pay as damages because of Bodily Injury or Property Damage to which this coverage applies, caused by any Accident and resulting from the ownership or use of a Covered Auto.

SCMIRF has the right and duty to defend any Suit asking for these damages. However, SCMIRF has no duty to defend Suits for Bodily Injury or Property Damage not covered herein. SCMIRF may investigate and settle any claim or Suit as SCMIRF considers appropriate. The duty to defend or settle ends when the Limit of Liability has been exhausted by payment of judgments or settlements, or costs and expenses incurred in the investigation, adjustment, settlement, defense and appeal of the claim.

1. Covered Persons

The following are Covered Persons:

Class One - the Member as stated in the Contract Declarations;

Class Two - Covered permissive users

- a. any official, trustee, director, officer, volunteer or Employee of the Member while acting within the course and scope of his duties as such; and any person, organization, trustee, or estate to whom the Member is obligated by virtue of a written contract or agreement to provide coverage such as is offered by this coverage, but only in respect of operations by or on behalf of the Member;

This coverage with respect to any person or organization other than the Member does not apply to any person or organization, or any agent or Employee thereof operating any Owned Auto or Hired Auto under any contract with the Member, whether express or implied, with respect to any Accident arising out of the maintenance, use or operation of the Owned Auto or Hired Auto for any amounts exceeding the

(1) Minimum Limit for Bodily Injury per Person, Bodily Injury per Accident

(2) Minimum Limit for Property Damage

applicable under the South Carolina Financial Responsibility Act in force during the effective dates of the Coverage Contract.

- b. any person while using an Owned Auto or a Hired Auto and any person or organization legally responsible for the use thereof, provided the actual use of the automobile is by the Member or with his permission, and any official of the Member with respect to the use of Non-owned Autos in the business of the Member.

This coverage with respect to any person or organization other than the Member does not apply:

- (1) to any person or organization, or to any agent or Employee thereof, operating an automobile sales agency, repair shop, service station, storage garage, or public parking place, with respect to any Accident arising out of the operation thereof;



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- (2) to any Employee with respect to injury to or sickness, disease or death of another Employee of the Member injured in the course and scope of such employment in an Accident arising out of the maintenance or use of the Auto in the business of the Member;
- (3) with respect to any Hired Auto, to the owner or a lessee thereof, other than the Member, nor to any agent or Employee of such owner or lessee;
- (4) with respect to any Non-Owned Auto, to any official or Employee if such Auto is owned by him or a Member of the same household; and
- (5) to anyone other than the Member's Employees or a lessee or borrower, or any of their employees, while moving property to or from a Covered Auto.
- (6) to any person or organization, or any agent or Employee thereof operating any Owned Auto or Hired Auto under any contract with the Member, whether express or implied, with respect to any Accident arising out of the maintenance, use or operation of the Owned Auto or Hired Auto for any amounts exceeding the
 - (a) Minimum Limit for Bodily Injury per Person, Bodily Injury per Accident
 - (b) Minimum Limit for Property Damage

applicable under the South Carolina Financial Responsibility Act in force during the effective dates of the Coverage Contract.

- a. Anyone liable for the conduct of the Member described above but only to the extent of that liability. However, the owner or anyone else from whom the Member hires or borrows a Covered Auto is covered only if that Auto is a Trailer connected to a Covered Auto the Member owns.

2. Out of State Coverage Extensions

While a Covered Auto is away from the state where it is licensed, SCMIRF will:

- a. Increase the Limit for Liability Coverage to meet the limit or limits specified by a compulsory or financial responsibility law in the jurisdiction where the Covered Auto is being used; and
- b. provide the minimum amount and types of other coverages, such as no-fault, required of out of state vehicles by the jurisdiction where the Covered Auto is being used.

SCMIRF will NOT pay any person more than once for the same elements of Loss because of these extensions.

C. Exclusions

This coverage does not apply to any of the following, except where expressly required by the South Carolina statutes governing Automobile Liability coverage, and then only in the minimum amounts required by such statutes:

1. Care, Custody, and Control
Property Damage to property owned or transported by the Member or in the Member's care, custody, or control. But this exclusion does not apply to liability assumed under a sidetrack agreement or where specifically covered by SCMIRF. (See Section III (General Liability) for limited care, custody, and control coverage);
2. Completed Operations
Bodily Injury or Property Damage arising out of the Member's work after that work has been completed or abandoned;

In this exclusion, the Member's work means:

- a. work or operations performed by the Member or on its behalf; and
- b. materials, parts, or equipment furnished in connection with such work or operations.



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The Member's work includes warranties or representations made at any time with respect to the fitness, quality, durability, or performance of any of the items included in subparagraphs (1) or (2) above.

The Member's work will be deemed completed at the earliest of the following times:

- (1) when all of the work called for in the Member's contract has been completed;
- (2) when all of the work to be done at the site has been completed if the Member's contract calls for work at more than one site; or
- (3) when that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

3. Contractual Liability

Bodily Injury or Property Damage for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- a. assumed in a contract or agreement that is a Covered Contract, provided the Bodily Injury or Property Damage occurs subsequent to the execution of the contract or agreement and is caused by the Member's or a Covered Person's own negligence in the ownership, maintenance, or use of a Covered Auto; or
- b. that the Member would have in the absence of the contract or agreement.

4. Fellow Employee

Bodily Injury to any fellow Employee of the Covered Person(s) arising out of and in the course of the fellow Employee's employment;

5. Handling of Property

Bodily Injury or Property Damage resulting from the handling of property:

- a. before it is moved from the place where it is accepted by the Member for movement into or onto the Covered Auto, or
- b. after it is moved from the Covered Auto to the place where it is finally delivered by the Member;

6. Movement of Property by Mechanical Device

Bodily Injury or Property Damage resulting from the movement of property by a mechanical device (other than a hand truck) unless the device is attached to the Covered Auto;

7. Personal Property

To personal property of the Member or property held by the Member in trust or on commission or on consignment for which the Member may be held legally liable in due course of transit.

8. Pollution

Bodily Injury or Property Damage resulting from the Contamination of any Environment by Pollutants that are introduced at any time, anywhere, in any way; except:

- a. Fuel, lubricants, fluids or exhaust gases that have leaked from an Insured Auto if they are needed for or result from normal electrical, hydraulic or mechanical function of an Auto and leak from the part of the Auto designed by its manufacturer to hold or dispose of them;
- b. Fluids or fuel that have leaked from an original Auto after an accident;
- c. Overturn or upset of an original Insured's Auto.

9. Member as Mortgagee/Lienholder

This Contract does not provide coverage for any damage to property not owned by the Member when the



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Member acts as a lender and adds property to the schedule that the Member does not own but merely possesses a mortgage, security interest or other lien.

10. State Fleet Management Program
Bodily Injury" or "Property Damage" arising out of the ownership, maintenance, lease or use of any vehicle under the control of the State of South Carolina Fleet Management Program (or any program functioning as a successor), including but not limited to any school bus or vehicle covered by a policy issued by the Insurance Reserve Fund or any other valid and collectible insurance.

D. Limit of Liability

1. Limit of Liability
For any action or claim brought under the provisions of Chapter 78 of the South Carolina Code of Laws, cited as the "South Carolina Tort Claims Act", the liability of SCMIRF shall not exceed the limit set forth by law.
2. SCMIRF's Limit of Liability
As regards the General Liability (Section III), Law Enforcement Liability (Section IV), Public Officials Liability (Section V), and Auto Liability (Section VI); coverages afforded by This Contract, the total liability of the South Carolina Municipal Insurance and Risk Financing Fund for any one occurrence/accident/Wrongful Act will be \$1,000,000 per Member. Except, where other liability and/or coverage sublimits apply, then SCMIRF's liability will be limited to the applicable sublimit. SCMIRF will have the right and duty to defend the Member or Covered Persons for coverages afforded by This Contract; however, SCMIRF will have no duty to defend a Member or Covered Person to which this coverage does not apply. SCMIRF's duty to defend ends when the applicable limits have been exhausted.

SCMIRF's liability for any one occurrence/accident/Wrongful Act will be limited to \$1,000,000 per Member regardless of the number of Covered Persons, number of claimants or claims made, or the number of covered vehicles involved whether or not covered in one or more than one capacity under This Contract or This Contract of other SCMIRF Members.

In no event shall the total amount available to pay all claims for any one Member exceed the amount shown on the Contract Declarations Page for this Section.

E. Physical Damage Coverage

1. Coverage
- a. SCMIRF will pay for Loss to a Covered Auto or its equipment, whether factory installed or installed after delivery, under:
- (1) comprehensive coverage from any cause except:
 - (a) the Covered Auto's collision with another object; or
 - (b) the Covered Auto's overturn.
 - (2) collision coverage caused by:
 - (a) the Covered Auto's collision with another object; or
 - (b) the Covered Auto's overturn.
- b. Glass breakage -- hitting a bird or animal -- falling objects or missiles.
- SCMIRF will pay for the following under comprehensive coverage:
- (1) glass breakage;
 - (2) Loss caused by hitting a bird or animal; and
 - (3) Loss caused by falling objects or missiles. However, the Member has the option of



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having glass breakage caused by a Covered Auto's collision or overturn considered a Loss under Collision Coverage.

2. Limit of Coverage
The most SCMIRF will pay for Loss in any one Accident is the lesser of:
 - a. the Actual Cash Value of the damaged or stolen property as of the time of the Loss ; or
 - b. the cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.
3. Deductible
For each Covered Auto, SCMIRF's obligation to pay for, repair, return, or replace damaged or stolen property will be reduced by \$1,000 deductible (unless endorsed).

F. Uninsured Motorists Coverage

For a Covered Auto licensed or principally garaged in South Carolina, insurance is provided at minimum limits as required by South Carolina State Law.

1. Coverage
We will pay in accordance with This Contract all sums the Covered Person is legally entitled to recover as damages from the owner or driver of an Uninsured Motor Vehicle. The damages must result from Bodily Injury sustained by a Covered Person or Property Damage caused by an Accident. The owner's or driver's liability for these damages must result from the ownership, maintenance or use of the Uninsured Motor Vehicle.
2. Who is a Covered Person:
 - a. Class 1: The Member
 - b. Class 2: Any official, trustee, director, officer, volunteer or Employee of the Member while acting within the course and scope of his duties as such, and any person including Member owned public transportation passengers, organization, trustee, or estate to whom the Member is obligated by virtue of a written contract or agreement to provide coverage such as is offered by this coverage, but only in respect of operations by or on behalf of the Member;
 - c. Anyone else Occupying a Covered Auto or a temporary substitute for a covered Auto. The covered Auto must be out of service because of its breakdown, repair, servicing, Loss or destruction.
 - d. Anyone for damages he or she is entitled to recover because of Bodily Injury sustained by another Covered Person(s).
3. Exclusions:
This coverage does not apply to any of the following except where expressly required by the South Carolina statutes governing Uninsured Motorist coverage, and then only in the minimum amounts required by such statutes:
 - a. Any claim settled without our consent.
 - b. Anyone using a vehicle without a reasonable belief that the person is entitled to do so.
 - c. That part of Property Damage for which a Covered Person has been compensated by insurance or otherwise.
4. Limit of Coverage
 - a. Regardless of the number of Covered Autos, Covered Person(s), premiums paid, claims made or vehicles involved in the Accident, if Bodily Injury or Property Damage is sustained in an accident by an individual Covered Person or any family member while occupying a Covered Auto;



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- (1) The most we will pay for all damages resulting from Bodily Injury sustained by any one person caused by the Accident, including all damages claimed by any person or organization for care, Loss of services or death is the sum of:
 - (a) The per person Bodily Injury limit shown on the business auto Declarations Page for this coverage that applies to the Covered Auto; and
 - (b) That part of the each person limit for Bodily Injury on each additional Covered Auto that does not exceed the limit applicable to the Covered Auto Involved in the Accident.
 - (2) Subject to this limit for each person, the most we will pay for all damages resulting from Bodily Injury sustained in that accident is the sum of:
 - (a) The each accident Limit of Insurance shown in the Declarations Page for Bodily Injury for this coverage that applies to that Covered Auto; and
 - (b) That part of the each Accident limit for Bodily Injury on each additional Covered Auto that does not exceed the limit of Insurance applicable to the Covered Auto involved in the Accident.
 - (3) The most we will pay for all Property Damage resulting from the Accident is the sum of:
 - (a) The each Accident limit of insurance shown on the Declarations Page for Property Damage for this coverage that applies to the Covered Auto; and
 - (b) That part of the each accident limit of Property Damage for this coverage on each additional Covered Auto that does not exceed the limit of Insurance applicable to the Covered Auto involved in the Accident.
 - (4) Subject to the maximum limit of Insurance set forth in paragraphs 1, 2, 3 above:
 - (a) The most we will pay for Bodily Injury or Property Damage sustained in the accident by an Insured other than an individual Covered Person or any family member is that insured's pro-rata share of the each person or each accident limit shown in the declarations for this coverage that applies to the vehicle that the Covered Person was occupying at the time of the Accident; and
 - (b) An individual Covered Person or any family member who sustains Bodily Injury or Property Damage in the accident will also be entitled to a pro rata share of the each person or each accident limit described in paragraph 4. a. above.

A person's pro rata share shall be the proportion that that person's damages bears to the total damages sustained by all Covered Persons.
- b. Regardless of the number of Covered Autos, Covered Persons, premiums paid, claims made or vehicles involved in the Accident, if Bodily Injury or Property Damage is sustained in an accident by an individual Covered Person or any family member while not occupying any Auto:
- (1) The most we will pay for all damages resulting from Bodily Injury sustained by any one person caused by the accident, including all damages claimed by any person or organization for care, Loss of services or death, is the sum of:
 - (a) The highest each person limit of insurance for Bodily Injury for this coverage that applies to any one of an individual Covered Person's Covered Autos; and
 - (b) That part of the each person limit of Bodily Injury for this coverage on each additional Covered Auto that does not exceed the limit of Insurance applicable to the Covered Auto Involved in the Accident.



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- (2) Subject to this limit for each person, the most we will pay for all damages resulting from Bodily Injury sustained in that Accident is the sum of:
 - (a) The highest each Accident limit of Insurance for Bodily Injury for this coverage that applies to anyone of an Individual Covered Person's Covered Autos; and
 - (b) That part of the each Accident limit for Bodily Injury for this coverage on each additional Covered Auto that does not exceed the limit of insurance applicable to the Covered Auto involved in the accident.
- (3) The most we will pay for all Property Damage resulting from that accident is the sum of:
 - (a) The highest each accident limit of Insurance for Property Damage for this coverage that applies to anyone of an Individual Covered Person's Covered Autos; and
 - (b) That part of the each accident limit for Property Damage for this coverage on each additional Covered Auto that does not exceed the limit of insurance applicable to the Covered Auto involved in the Accident.
- c. Regardless of the number of Covered Autos, Covered Persons, premiums paid, claims made or vehicles involved in the Accident, if Bodily Injury or Property Damage is sustained in an accident by an Individual Covered Person or any family member while occupying a vehicle not owned by an Individual Covered Person or any family member:
 - (1) The most we will pay for all damages resulting from Bodily Injury sustained by anyone person caused by that accident, including all damages by any person or organization for care, Loss of services or death, is the highest each person limit of Insurance for Bodily Injury for this coverage that applies to anyone of an Individual Covered Person's Covered Autos;
 - (2) Subject to this limit for each person, the most we will pay for all damages arising out of Bodily Injury sustained in that accident is the highest each accident limit of Insurance for Bodily Injury for this coverage that applies to anyone of an Individual Covered Person's Covered Autos; and
 - (3) The most we will pay for all Property Damage resulting from that accident is the highest each Accident limit of Insurance for Property Damage for this coverage that applies to anyone of an Individual Covered Person's Covered Autos.
- d. Regardless of the number of covered Autos, Covered Persons, premiums paid, claims made or vehicles involved in the Accident, if Bodily Injury or Property Damage is sustained by an Insured other than an Individual Covered Person or any family member in an accident in which neither an Individual Covered Person nor any family member sustained Bodily Injury or Property Damage:
 - (1) The most we will pay for all damages resulting from Bodily Injury sustained by anyone person caused by that Accident, including all damages claimed by any person or organization for care, Loss of services or death, will be the each person limit of Insurance shown in the Declarations Page for Bodily Injury for this coverage that applies to the vehicle that Covered Person was occupying at the time of that Accident.
 - (2) Subject to this limit for each person, the most we will pay for all damages arising out of Bodily Injury sustained in that Accident is the each Accident limit of Insurance shown in the Declarations Page for Bodily Injury for this coverage that applies to the vehicle that Covered Person was occupying at the time of the Accident.
 - (3) The most we will pay for all Property Damage resulting from that Accident is the each Accident limit of Insurance shown in the Declarations Page for Property Damage for this coverage that applies to the vehicle that Covered Person was occupying at the time of the Accident.



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- e. Any Uninsured Motorist Coverage provided herein for any Employee of the Member shall be excess to the following; where any are applicable to the Loss or Bodily Injury for which an Uninsured Motorist Coverage claim is made, and any Uninsured Motorist Coverage provided for such Employees' claims will not be payable until proceeds from the following are exhausted or are paid or payable after having been fixed by a judicial order, by an appropriate administrative agency hearing, or by a settlement approved by SCMIRF, without the Employee having been fully compensated for his or her damages:

- (1) all sums paid or payable under any workers' compensation, disability benefits, or similar law, exclusive of non-occupational disability benefits;
- (2) all sums paid by or for anyone who is legally responsible, including all sums paid under the Contractual Liability coverage; and
- (3) all sums paid or payable under any policy of property insurance.

The foregoing shall not increase or extend any type of coverage under This Contract.

5. Changes In Conditions

- a. OTHER INSURANCE is replaced by the following:

- (1) If a Covered Person sustains Bodily Injury while Occupying a vehicle not owned by that person or while not Occupying any vehicle, the following priorities of coverage apply:

FIRST PRIORITY The policy affording Uninsured Motorists Coverage to the vehicle the Covered Person was Occupying at the time of the Accident.

SECOND PRIORITY Any policy affording Uninsured Motorists Coverage to the Covered Person as a named Insured or as a family Member.

- (a) If there is no applicable insurance available under the first priority, the maximum recovery under all policies in the second priority shall not exceed the highest applicable limit for any one vehicle under any one policy.

- (b) If there is applicable insurance available under the first priority:

- i. The limit of insurance applicable to the vehicle the Covered Person was Occupying, under the policy in the first priority, shall first be exhausted; and
- ii. The maximum recovery in the second priority shall not exceed the highest limit for any one vehicle under any one policy in the second priority.

- (2) We will pay only our share of the Loss, not to exceed our share of the maximum recovery. Our share is the proportion that our limit of coverage bears to the total of all applicable limits on the same level of priority.

- (3) For Property Damage, this insurance is excess over all collectible insurance of any kind.

- (4) Except for Property Damage, the reference to "other collectible insurance" applies only to other collectible uninsured motorists insurance.

- b. DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS is changed by adding the following:

- (1) Promptly notify the police if a hit-and-run driver is involved; and
- (2) Promptly send us copies of the legal papers if a suit is brought.



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c. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US is replaced by the following:

- (1) If any Member or Covered Person(s) to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us to the extent of such payment that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act. That person or Member must do everything necessary to secure our rights and must do nothing after the Accident or Loss to impair them.
- (2) If a Covered Person has prosecuted to judgment any Suit against anyone responsible, we will be entitled to an assignment of the judgment to the extent of payment under This Contract that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act.
- (3) We will pay our proportionate part of any reasonable costs and expenses incurred for any recovery, including reasonable attorneys' fees. However, we reserve the right to retain an attorney of our choice to pursue a claim instead of reasonable attorneys' fees.
- (4) If a Covered Person making a claim for Property Damage under This Contract is also entitled to insurance or other compensation for the Property Damage, we will not be obligated to pay the claim until the Covered Person has assigned us the rights to the compensation to the extent of payment under This Contract that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act.

d. The following Condition is added:

CONFORMITY TO STATUTE

This endorsement is intended to be in full conformity with the South Carolina Insurance Laws. If any provision of this endorsement conflicts with that law, it is changed to comply with the law.

Member's Duties in the Event of Occurrence, Claim, or Suit

- a. In the event of an Occurrence, written Notice containing particulars sufficient to identify the Member and also reasonably obtainable information with respect to the time, place, and circumstances thereof and the names and addresses of the injured and of available witnesses shall be given by or for the Member to SCMIRF as soon as practicable.
- b. If a claim is made or suit is brought against the Member, the Member shall immediately forward to SCMIRF every demand, notice, summons, or other process received by the Member or its representative.
- c. It is agreed that SCMIRF (herein referred to as The Fund) has the right to defend in the name of and on the behalf of the Members any suits or other proceedings which may at any time be instituted against them concerning claims for which The Fund may be obligated to make payment (although such suits, other proceedings, allegations or demands are considered to be wholly groundless, false, or fraudulent) and to pay all judgments and all expenses which are incurred pursuant to the direction of The Fund for investigation, negotiation or defense, from The Fund. It is agreed that The Fund shall make all final decisions regarding the legal defense of claims, and shall have absolute and conclusive authority with regard to determination of coverage, defense, settlement and payment of claims, regardless of whether the Member elects alternative premium financing option, including but not limited to a deductible or individual self-insured retention. In the event of a disagreement between SCMIRF and the Member regarding determination of coverage and/or defense, it is agreed that the Member must appeal the coverage determination to the Board of Trustees within six months of such determination. No legal action may be undertaken by the Member against SCMIRF prior to the decision of the Board of Trustees regarding the Member's coverage determination appeal. It is agreed that the independent settlement or voluntary payment of any claim by or on behalf of a Member, other than first party claims for physical damage within the Member's deductible, without approval of The Fund shall be at the sole cost of the settling Member without any reimbursement or other resources from The Fund; and, may be grounds for expulsion of the Member from The Fund.



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6. See Section I (General Provisions) for items not addressed in this Section VI (Automobile Liability).

G. Definitions

The following definitions apply to this Coverage Section. They are in addition to the General Definitions in Section I unless a separate definition for the same term is set out herein.

1. **"Accident"** includes continuous or repeated exposure to the same conditions resulting in Bodily Injury or Property Damage.
2. **"Actual Cash Value"** means the replacement cost, at the time of Loss, of the damaged or destroyed property, less depreciation.
3. **"Application"** means the document or documents required from the Member prior to and during its participation in SCMIRF.
4. **"Auto"** means a self-propelled land motor vehicle which is principally designed or licensed for use on public roads, or a Trailer or semi-trailer designed for use with such vehicles, but does not include "Mobile Equipment" or "Golf Carts".
5. **"Bodily Injury"** means bodily injury, sickness, or disease sustained by a person including death resulting from any of these.
6. **"Collision Coverage"** means as described in Section VI (Auto) D (Physical Damage Coverage) 1 (Coverage) a (2).
7. **"Comprehensive Coverage"** means as described in Section VI (Auto) D (Physical Damage Coverage) 1 (Coverage) a (1).
8. **"Contaminant" or "Pollutant"** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste, which after its release can cause or threaten damage to human health or human welfare or causes or threatens damage, deterioration, loss of value, marketability, or loss of use to property covered hereunder due to its physical contact with said property or presence on, in, or under it, including but not limited to bacteria, fungi, viruses, or hazardous substances as listed in the Federal Water Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976, and Toxic Substances Act, or as designated by the U.S. Environmental Protection Agency. "Waste" as used herein includes human and animal waste, whether raw or processed for disposal or use as fertilizer or for any other purpose. "Waste" includes materials to be recycled, reconditioned, or reclaimed as well as materials disposed of or meant for disposal.
9. **"Contract" or "This Contract"**, where emphasized in quotation marks and /or bold type, means this entire agreement to provide coverage for property loss, general liability, law enforcement liability, public official liability, automobile liability, commercial crime coverage, excess casualty coverage (if purchased) and any additional coverage forms incorporating the provisions of any of the above, including without limitation their "additional exclusions, conditions and definitions". "Contract" or "This Contract" also includes the title pages, the declarations, the table of contents (and all coverage sections, pages, and provisions referred to therein), and all endorsements.
10. **"Contract Declarations"** means the items stated in the initial page of each Section of This Contract listing the name of SCMIRF, the Member, Contract Period, Effective Date, and other items.
11. **"Contract Period" or "Coverage Period" or "Policy Period"** means the period of time set forth in the Contract Declarations, between the Effective Date and the Expiration Date.
12. **"Covered Auto"** means as described in Section VI (Auto) A (Covered Auto).
13. **"Covered Contract"** means:
 - a. contract for a lease of premises. However, that portion of a contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not a Covered Contract.



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- b. a sidetrack agreement;
- c. any easement or license agreement;
- d. an elevator maintenance agreement;
- e. that part of any other contract or agreement pertaining to your business under which you assume the tort liability of another party to pay for Bodily Injury or Property Damage to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph e. does not include that part of any contract or agreement:

- (1) that indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (2) under which the Covered Person(s), if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the Covered Person's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection or engineering services.
- (3) involving the following contracted activities:
 - (a) aircraft or airports, as respects coverage for all liability arising out of the ownership, maintenance, or use of an aircraft, airport or flight operations;
 - (b) airplane, helicopter, or ballooning rides or shows;
 - (c) archery (unless endorsement provided);
 - (d) automobile, motorcycle, watercraft or aircraft racing or stunting;
 - (e) lifeguard operations;
 - (f) bungee jumping of any description;
 - (g) fireworks displays;
 - (h) firing ranges;
 - (i) horse fairs and horse training facilities;
 - (j) hospital or health clinic operations or activities;
 - (k) housing authority operations or activities, except where a part of the direct operations of a municipality;
 - (l) parachuting or hang gliding;
 - (m) concerts organized and promoted by outside third parties;
 - (n) rodeos;
 - (o) skateboard facilities of any description;
 - (p) ski lifts or ski resorts;
 - (q) trampolines and rebounding equipment;



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- (r) traveling carnivals, circuses, or temporary mechanically operated amusement devices owned, operated, supervised, or regulated by the Member;
 - (s) water slides in excess of 10 feet.
- 14. "Covered Persons" means as described in Section VI (Auto) B (Liability Coverage) 1 (Coverages) a (Covered Persons).
 - 15. "Coverage Territory" means as described in Section VI (Auto) H (Business Auto Conditions) 2 (General Conditions) f (Contract Period, Coverage Territory).
 - 16. "Declarations Page" means the page or pages at the beginning of each Section showing the Member and general provisions or limits of coverage.
 - 17. "Effective Date" means at 12:01 a.m. eastern standard time on the initial date listed across from the Contract Period in the Contract Declarations.
 - 18. "Expiration Date" means at 12:01 a.m. eastern standard time of the last day stated in the Contract Period.
 - 19. "Golf Cart" means Golf Cart, whether or not it is being used to actually play golf, all-terrain vehicles including but not limited to four-wheelers, gators, mules, or related work/recreational vehicles designed and used primarily off roads and highways.
 - 20. "Hired Auto" means an Auto rented or leased by a Member, while used in furtherance of the Member's business.
 - 21. "Liability Coverage" means as described in subsection B of Section VI (Auto).
 - 22. "Liability Limit" means as described in Section VI (Auto) C (Limit of Liability).
 - 23. "Loss" means direct and accidental damage or Loss.
 - 24. "Member" means the political subdivision listed in the Contract Declarations.
 - 25. "Members" means all political subdivisions participating in SCMIRF.
 - 26. "Mobile Equipment" means any of the following categories of land vehicles, including any attached machinery or equipment:
 - a. bulldozers, farm machinery, forklifts, and other vehicles designed for use principally off public roads;
 - b. vehicles maintained for use solely on or next to premises the Member owns or rents;
 - c. vehicles that travel on crawler treads;
 - d. vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) power cranes, shovels, loaders, diggers, or drills; or
 - (2) road construction or resurfacing equipment such as graders, scrapers, or rollers.
 - e. vehicles not described in subparagraphs a, b, c, or d above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) air compressors, pumps, and generators, including spraying, welding, building, cleaning, geophysical exploration, lighting, and well servicing equipment; or
 - (2) cherry pickers and similar devices used to raise or lower workers.
 - f. vehicles not described in subparagraphs a, b, c, or d above that are maintained primarily for



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purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not Mobile Equipment but will be considered Autos:

- (1) equipment designed primarily for:
 - (a) snow removal;
 - (b) road maintenance, but not construction or resurfacing; or
 - (c) street cleaning;
- (2) cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting, and well servicing equipment.

27. "Non-Owned Autos" means land motor vehicles, Trailers, or semi-trailers that the Member DOES NOT own, lease, hire, rent, or borrow, designed for travel on public roads that are used in connection with the Member's business. This does not include Mobile Equipment. Non-Owned Auto includes Autos owned by the Member's employees or partners or members of their households but only while used in the course and scope of the Member's business.
28. "Notice" means only written notice to SCMIRF's Claims Department, on the form provided by SCMIRF for that purpose, which is actually physically delivered to SCMIRF.
29. "Notice of Loss" means a report in writing from the Member to SCMIRF's Claims Department on a form provided by SCMIRF for that purpose concerning an incident that may give rise to a claim under This Contract.
30. "Occupying" means in, upon, getting in, on, out, or off.
31. "Owned Autos" means an Auto owned by the Member.
32. "Pollutant" means (see definition for Contaminant)
33. "Property Damage" means only direct physical injury to tangible property and loss of use of such physically injured property which results from the direct physical injury to it.
34. "Proof of Claim" or "Proof of Loss" means a signed and sworn detailed statement filed with SCMIRF as soon as possible after the applicable event.
35. "SCMIRF" means the South Carolina Municipal Insurance and Risk Financing Fund.
36. "Section" means the divisions into Section I (General Provisions), Section II (Property), Section III (General Liability), Section IV (Law Enforcement Liability), Section V (Public Officials Liability) and Section VI (Automobile).
37. "Suit" means a civil proceeding in which damages because of Bodily Injury or Property Damage to which This Contract applies are alleged. Suit includes an arbitration proceeding alleging such damages to which the Member must submit or submit with SCMIRF's consent.
38. "State" means the state of South Carolina.
39. "Table of Contents" means the listing of contents of This Contract.
40. "Third Party Administrator" means any independent appraiser or claims handling company selected by SCMIRF to administer claims on its behalf and designated by SCMIRF as such.
41. "Trailer" includes semi-trailer.
42. "Transit" means all shipments within the Coverage Territory described in this Section of This Contract, including coastal waters thereof, by any means of conveyance, from the time the property is moved for the



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purpose of loading and continuously thereafter while awaiting and during loading and unloading and in temporary storage on any conveyance intended for use for any inbound shipment; including during deviation and delay; until safely delivered into place of final destination.

43. "Uninsured Motor Vehicle" means a land motor vehicle or Trailer:

- a. For which neither a liability bond or policy nor cash or Securities deposited with the State Treasurer provides at least the amounts required by the South Carolina Motor Vehicle Financial Responsibility Act;
- b. That is a hit-and-run vehicle whose operator or owner cannot be identified and that hits or that causes an Accident resulting in Bodily Injury or Property Damage without hitting a Covered Person, a vehicle that a Covered Person(s) is Occupying, your covered Auto or any of your property.

The facts of the Accident must be corroborated by competent evidence of an eyewitness other than the owner or operator of the vehicle that a Covered Person(s) was Occupying at the time of the Accident. The eyewitness must sign an affidavit attesting to the truth of the facts of the Accident contained in the affidavit.

- c. For which an insuring or bonding company successfully denies coverage, is or becomes insolvent, is in delinquency proceedings, suspension or receivership, or is proven unable to respond to a judgment;

However, "Uninsured Motor Vehicle" does not include any vehicle:

- (1) Owned by any governmental unit or agency unless a cause of action against that governmental unit or agency is barred by the Tort Claims Act, South Carolina Laws 1986, Ratification No. 514, Subsection 15-78-60, or by other applicable statute.
- (2) Designed for use mainly off public roads while not on public roads.

44. "Wrongful Acts", for purposes of this Section VI (Business Auto Coverage), means any actual or alleged error, or misstatement, or misleading statement, or act, or omission, or neglect, or breach of duty, including misfeasance, malfeasance, and nonfeasance, by a Covered Person which is committed or done while acting both within the course of his or her official duties and within the scope of such duties, as provided under the 'South Carolina Tort Claims Act', and which causes Bodily Injury or Property Damage that arises directly out of the operation, maintenance, or use of a Covered Auto.

H. Underinsured Motorist Coverage

It is understood and agreed by all parties that Underinsured Motorists Liability coverage has been rejected by the Member.

I. Garagekeepers Coverage

1. SCMIRF will pay all sums the Member legally must pay as damages for Loss to a covered Auto or Auto equipment left in the Member's care while the Member or Covered Person(s) is attending, servicing, repairing, parking or storing it in their garage operations under:
 - a. Comprehensive Coverage. From any cause except:
 - (1) the Covered Auto's collision with another object; or
 - (2) the Covered Auto's overturn.
 - b. Collision Coverage Caused by:
 - (1) the Covered Auto's collision with another object; or
 - (2) the Covered Auto's overturn.
2. SCMIRF has the right and duty to defend any suit asking for these damages. However, they have no duty to defend suits for Loss not covered by this coverage part. SCMIRF may investigate and settle any claim



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or suit as considered appropriate. The Fund's duty to defend or settle ends when the limit of coverage has been exhausted by payment of judgments or settlements.

3. Exclusions applicable to this coverage

Coverage does not apply to any of the following:

- a. Contractual Obligations - Liability resulting from any agreement by which the Member accepts responsibility for Loss.
- b. Theft - Loss due to Theft or conversion caused in any way by the Member and/or Covered Person(s).
- c. Defective Parts or Materials.
- d. Faulty Work - Faulty work performed by any Covered Person(s).

SCMIRF will not pay for Loss to any of the following:

- a. Tape decks or other sound reproducing equipment unless permanently installed in a covered Auto.
- b. Tapes, records or other sound reproducing devices designed for use with sound reproducing equipment.
- c. Sound receiving equipment designed for use as a citizens' band radio, two-way mobile radio or telephone or scanning monitor receiver, including its antennas and other accessories, unless permanently installed in the dash or console opening normally used by the Auto manufacturer for the installation of a radio.

J. Garage Liability

1. SCMIRF will pay all sums the Member legally must pay as damages for Bodily Injury or Property Damage as a result of the ownership, maintenance or use of locations for a garage operation limited to servicing Member owned vehicles. Coverage is also included for operations necessary or incidental to this servicing or repair.
2. SCMIRF has the right and duty to defend any suit asking for these damages, but no duty to defend suits for Loss not covered by this coverage part.
3. Exclusions applicable to this coverage.

Coverage does not apply to:

- a. Contractual Obligations - Liability resulting from any agreement by which the Member accepts responsibility for Loss.
- b. Defective Parts or Materials.
- c. Faulty Work performed by any Covered Person(s).
- d. Any work performed on autos not owned by the Named Member.

K. Business Auto Conditions

The following conditions apply in addition to the common policy conditions:

1. Loss Conditions

- a. Appraisal for Physical Damage Loss

If the Member and SCMIRF disagree on the amount of Loss, either may demand an appraisal of the Loss. In this event, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the Actual Cash



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Value and amount of Loss. If they fail to agree, they will submit their difference to the umpire. A decision agreed to by any two will be binding. Each party will:

- (1) pay its chosen appraiser; and
- (2) bear the other expenses of the appraisal and umpire equally.

If SCMIRF submits to an appraisal, SCMIRF will still retain its right to deny the claim.

b. Duties In the Event of Accident, Claim, Suit or Loss

- (1) In the event of an Accident, Claim, Suit, or Loss, the Member must give SCMIRF prompt Notice of the Accident or Loss, including:
 - (a) how, when, and where the Accident or Loss occurred;
 - (b) the Covered Person's name and address; and
 - (c) to the extent possible, the names and addresses of any injured persons and witnesses.
- (2) Additionally, the Member and any other involved Covered Person must:
 - (a) assume no obligation, make no payment, or incur no expense without SCMIRF's consent, except at the Covered Person's own cost;
 - (b) immediately send SCMIRF copies of any demand, notice, summons, or legal paper received concerning the claim or suit;
 - (c) cooperate with SCMIRF in the investigation, settlement, or defense of the claim or suit;
 - (d) authorize SCMIRF to obtain medical records or other pertinent information; and
 - (e) submit to examination, at SCMIRF's expense, by physicians of SCMIRF's choice, as often as SCMIRF reasonably requires.
- (3) If there is a Loss to a Covered Auto or its equipment the Member must also do the following:
 - (a) promptly notify the police if the Covered Auto or any of its equipment is stolen;
 - (b) take all reasonable steps to protect the Covered Auto from further damage and keep a record of all expenses for consideration in the settlement of the claim;
 - (c) permit SCMIRF's representative to inspect the Covered Auto and records proving the Loss before its repair or disposition; and
 - (d) agree to examinations under oath at SCMIRF's request and give SCMIRF a signed statement of the Member's answers.

- c. It is agreed that SCMIRF (herein referred to as The Fund) has the right to defend in the name of and on the behalf of the Members any suits or other proceedings which may at any time be instituted against them concerning claims for which The Fund may be obligated to make payment (although such suits, other proceedings, allegations or demands are considered to be wholly groundless, false, or fraudulent) and to pay all judgments and all expenses which are incurred pursuant to the direction of The Fund for investigation, negotiation or defense, from The Fund. It is agreed that The Fund shall make all final decisions regarding the legal defense of claims; and shall have absolute and conclusive authority with regard to defense, settlement and payment of claims. It is agreed that the independent settlement or payment of any claim by or on behalf of a Member, other than first party claims for physical damage within the Member's deductible,



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without approval of The Fund shall be at the sole cost of the settling Member without any reimbursement or other resources from The Fund; and, may be grounds for expulsion of the Member from The Fund.

d. Legal Action Against SCMIRF

No one may bring a legal action against SCMIRF under this Section VI (Auto) until:

- (1) there has been full compliance with all the terms of This Contract; and
- (2) under Liability Coverage, SCMIRF agrees in writing that the Covered Person has an obligation to pay or until the amount of that obligation has finally been determined by judgment after trial. No one has the right under This Contract to bring SCMIRF into an action to determine the liability of the Covered Person.

e. Loss Payment - Physical Damage Coverages

At SCMIRF's option it may:

- (1) pay for, repair, or replace damaged or stolen property;
- (2) return the stolen property, at its expense; SCMIRF will pay for any damage that results to the Covered Auto from the Theft; or
- (3) take all or any of the damaged stolen property at an agreed or appraised value.

f. Transfer of Rights of Recovery Against Others to SCMIRF

If any person or organization to or for whom we make payment under This Contract has rights to recover damages from another, those rights are transferred to SCMIRF. That person or organization must do everything necessary to secure SCMIRF's rights and must do nothing after an Accident or Loss to impair them.

2. Member's Duties In the Event of Occurrence, Claim, or Suit

- a. In the event of an Occurrence, written Notice containing particulars sufficient to identify the Member and also reasonably obtainable information with respect to the time, place, and circumstances thereof and the names and addresses of the injured and of available witnesses shall be given by or for the Member to SCMIRF as soon as practicable.
- b. If a claim is made or suit is brought against the Member, the Member shall immediately forward to SCMIRF every demand, notice, summons, or other process received by the Member or its representative.
- c. It is agreed that SCMIRF (herein referred to as The Fund) has the right to defend in the name of and on the behalf of the Members any suits or other proceedings which may at any time be instituted against them concerning claims for which The Fund may be obligated to make payment (although such suits, other proceedings, allegations or demands are considered to be wholly groundless, false, or fraudulent) and to pay all judgments and all expenses which are incurred pursuant to the direction of The Fund for investigation, negotiation or defense, from The Fund. It is agreed that The Fund shall make all final decisions regarding the legal defense of claims, and shall have absolute and conclusive authority with regard to determination of coverage, defense, settlement and payment of claims, regardless of whether the Member elects alternative premium financing option, including but not limited to a deductible or individual self-insured retention. In the event of a disagreement between SCMIRF and the Member regarding determination of coverage and/or defense, it is agreed that the Member must appeal the coverage determination to the Board of Trustees within six months of such determination. No legal action may be undertaken by the Member against SCMIRF prior to the decision of the Board of Trustees regarding the Member's coverage determination appeal. It is agreed that the independent settlement or voluntary payment of any claim by or on behalf of a Member, other than first party claims for physical damage within the member's deductible, without approval of The Fund shall be at the sole cost of the settling Member without any reimbursement or other resources from The Fund; and, may be grounds for expulsion of the Member from The Fund.



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3. General Conditions

a. Bankruptcy

Bankruptcy or insolvency of the Member will not relieve SCMIRF of any obligations under This Contract.

b. Concealment, Misrepresentation or Fraud

This Contract is void in any case of fraud by a Covered Person relating to it. It is also void if the Member intentionally conceals or misrepresents a material fact concerning:

- (1) This Contract;
- (2) the Covered Auto; or
- (3) the Member's interest in the Covered Auto.

c. Liberalization

If This Contract is revised to provide more coverage without additional charge, This Contract will automatically provide the additional coverages the day of the revision and adoption.

d. No Benefit to Bailee -- Physical Damage Coverages

SCMIRF will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing, or transporting property for a fee regardless of any other provision of this coverage form.

e. Other Coverage

- (1) For any Auto the Member owns, This Contract provides primary coverage. For any Covered Auto the Member does not own, the coverage provided by This Contract is excess over any other collectible insurance. (When physical damage coverage is offered by a rental company on an optional basis and the Member refuses the coverage, then coverage under This Contract applies, subject to a \$1,000 deductible.) However, while a Covered Auto which is a Trailer is connected to another vehicle, the Liability Coverage This Contract provides for the Trailer is:

- (a) excess while it is connected to a motor vehicle the Member does not own; or
- (b) primary while it is connected to a Covered Auto the Member does own.

- (2) Regardless of the provisions of subsection (1) above, This Contract's Liability Coverage is primary for any liability assumed under a Covered Contract.

- (3) When This Contract and any other contract or policy covers on the same basis, either excess or primary, SCMIRF will pay only its share. This share is the proportion that the limit of This Contract bears to the total of the limits of all the coverage forms and policies covering on the same basis.

f. Contract Period, Coverage Territory

Under this Section VI (Auto), SCMIRF covers Accidents and Losses occurring:

- (1) during the Contract Period shown on the Declaration Page; and
- (2) within the Coverage Territory.

The Coverage Territory is:

- (1) The United States of America;



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- (2) The territories and possessions of the United States of America;
- (3) Puerto Rico; and
- (4) Canada.

SCMIRF will also cover Loss to, or Accidents involving, a Covered Auto while being transported between any of these places.

g. Two or More Contracts Issued by SCMIRF

If This Contract and any other contract issued to the Member by SCMIRF apply to the same Accident, the aggregate maximum limit of coverage under any one Contract or contract(s) shall not exceed the highest applicable limit under any one contract.

4. See Section I (General Provisions) for items not addressed in this Section VI (Automobile Liability).



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South Carolina Municipal Insurance and Risk Financing Fund

**Town of Cottageville
P-SCMIRF-1124-2011**

- SECTION VII -

CRIME CONTRACT DECLARATIONS

Contract Period

Effective from 01/01/11 – 01/01/12 both days at 12:01 AM standard time at address of Member

SCHEDULE OF COVERAGES

FORM	LIMIT	DEDUCTIBLE
Coverage Form O – Public Employee Dishonesty	\$200,000	\$1,000
Coverage Form B – Forgery or Alteration	\$200,000	\$1,000
Coverage Form C – Theft, Disappearance and Destruction	\$200,000	\$1,000
Inside the Premises	\$200,000	\$1,000
Outside the Premises		
Coverage Form F – Computer Fraud	\$200,000	\$1,000



Section VII – COMMERCIAL CRIME

GENERAL PROVISIONS

Various provisions in this coverage contract restrict coverage. Read the entire coverage contract carefully to determine rights, duties and what is or is not covered.

Throughout this coverage contract the words "you" and "your" refer to the Member shown in the DECLARATIONS.

The words "we," "us" and "our" refer to SCMIRF.

Words and phrases in quotation marks are defined in the coverage contract.

Unless stated otherwise in any Crime Coverage Form, DECLARATIONS or endorsement, the following General Exclusions, General Conditions and General Definitions apply to all Crime Coverage Forms forming part of This Contract.

GENERAL CONDITIONS APPLICABLE TO SECTION VII (Crime)

1. Member's Duties in the Event of Occurrence, Claim, or Suit
 - a. In the event of an Occurrence, written Notice containing particulars sufficient to identify the Member and also reasonably obtainable information with respect to the time, place, and circumstances thereof and the names and addresses of the injured and of available witnesses shall be given by or for the Member to SCMIRF as soon as practicable.
 - b. If a claim is made or suit is brought against the Member, the Member shall immediately forward to SCMIRF every demand, notice, summons, or other process received by the Member or its representative.
 - c. It is agreed that SCMIRF (herein referred to as The Fund) has the right to defend in the name of and on the behalf of the members any suits or other proceedings which may at any time be instituted against them concerning claims for which The Fund may be obligated to make payment (although such suits, other proceedings, allegations or demands are considered to be wholly groundless, false, or fraudulent) and to pay all judgments and all expenses which are incurred pursuant to the direction of The Fund for investigation, negotiation or defense, from The Fund. It is agreed that The Fund shall make all final decisions regarding the legal defense of claims, and shall have absolute and conclusive authority with regard to determination of coverage, defense, settlement and payment of claims, regardless of whether the Member elects alternative premium financing option, including but not limited to a deductible or individual self-insured retention. In the event of a disagreement between SCMIRF and the Member regarding determination of coverage and/or defense, it is agreed that the Member must appeal the coverage determination to the Board of Trustees within six months of such determination. No legal action may be undertaken by the Member against SCMIRF prior to the decision of the Board of Trustees regarding the Member's coverage determination appeal. It is agreed that the independent settlement or voluntary payment of any claim by or on behalf of a Member, other than first party claims for physical damage within the member's deductible, without approval of The Fund shall be at the sole cost of the settling Member without any reimbursement or other resources from The Fund; and, may be grounds for expulsion of the Member from The Fund.
2. Other Provisions
 - a. See Section I (General Provisions) for items not addressed in this Section VII (Crime).

A. General Exclusions

We will not pay for loss as specified below:

1. **Acts Committed by You or Your Partners:** Loss resulting from any dishonest or criminal act committed by you or any of your partners whether acting alone or in collusion with other persons.
2. **Governmental Action:** Loss resulting from seizure or destruction of property by order of governmental authority.



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3. Indirect Loss: Loss that is an indirect result of any act or "Occurrence" covered by this coverage including, but not limited to, loss resulting from:
 - a. Your inability to realize income that you would have realized had there been no loss of, or loss from damage to, Covered Property.
 - b. Payment of damages of any type for which you are legally liable. But, we will pay compensatory damages arising directly from a loss covered under this coverage.
 - c. Payment of costs, fees or other expenses you incur in establishing either the existence or the amount of loss under this coverage.
4. Legal Expenses: Expenses related to any legal action.
5. Nuclear: Loss resulting from nuclear reaction, nuclear radiation or radioactive contamination, or any related act or incident.
6. War and Similar Actions: Loss resulting from war, whether or not declared, warlike action, insurrection, rebellion or revolution, or any related act or incident.

B. General Conditions

1. Consolidation - Merger: If through consolidation or merger with, or purchase of assets of, some other entity:
 - a. Any additional persons become "Employees", or
 - b. You acquire the use and control of any additional "Premises", any coverage afforded for "Employees" or "Premises" also applies to those additional "Employees" and "Premises", but only if you:
 - (1) Give us written notice within 30 days thereafter; and
 - (2) Pay us the additional premium.
2. Coverage Extensions: Unless stated otherwise in the Coverage Form, our liability under any Coverage Extension is part of, not in addition to, the Limit of Coverage applying to the Coverage or Coverage Section.
3. Discovery Period for Loss: We will pay only for covered loss discovered no later than one year from the end of the coverage Contract Period.
4. Duties in the Event of Loss: After you discover a loss or a situation that may result in loss of, or loss from damage to, Covered Property you must:
 - a. Notify us as soon as possible.
 - b. Submit to examination under oath at our request and give us a signed statement of your answers.
 - c. Give us a detailed, sworn Proof of Loss within 120 days.
 - d. Cooperate with us in the investigation and settlement of any claim.
5. Joint Member
 - a. If more than one Member is named in the DECLARATIONS, the first Named Member will act for itself and for every other Member for all purposes of this coverage. If the first Named Member ceases to be covered, then the next Named Member will become the first Named Member.
 - b. If any Member or partner or officer of that Member has knowledge of any information relevant to this coverage, that knowledge is considered knowledge of every Member.
 - c. An "Employee" of any Member is considered to be an "Employee" of every Member.



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- d. If this coverage or any of its coverages is cancelled or terminated as to any Member, loss sustained by that Member is covered only if discovered no later than one year from the date of that cancellation or termination.
- e. We will not pay more for loss sustained by more than one Member than the amount we would pay if all the loss had been sustained by one Member.
- 6. Legal Action Against Us: You may not bring any legal action against us involving Loss:
 - a. Unless you have complied with all the terms of this coverage; and
 - b. Until 90 days after you have filed Proof of Loss with us; and
 - c. Unless brought within 2 years from the date you discover the Loss.
- 7. Loss Covered Under More Than One Coverage of This Coverage: If two or more coverages of this coverage apply to the same Loss, we will pay the lesser of:
 - a. The actual amount of Loss; or
 - b. The sum of the limits of coverage applicable to those coverages.
- 8. Loss Sustained During Prior Coverage
 - a. If you, or any predecessor in interest, sustained Loss during the period of any prior coverage that you or the predecessor in interest could have recovered under that coverage except that the time within which to discover Loss had expired, we will pay for it under this coverage, provided:
 - (1) This coverage became effective at the time of cancellation or termination of the prior coverage; and
 - (2) The Loss would have been covered by this coverage had it been in effect when the acts or events causing the Loss were committed or occurred.
 - b. The coverage under this Condition is part of, not in addition to, the Limits of Coverage applying to this coverage and is limited to the lesser of the amount recoverable under:
 - (1) This coverage as of its effective date; or
 - (2) The prior coverage had it remained in effect.
- 9. Loss Covered Under This Coverage and Prior Coverage Issued by Us or Any Affiliate: If any loss is covered:
 - a. Partly by this coverage; and
 - b. Partly by any prior cancelled or terminated coverage that we, or any affiliate had issued to you or any predecessor in interest; the most we will pay is the larger of the amount recoverable under this coverage or the prior coverage.
- 10. Non-Cumulation of Limit of Coverage: Regardless of the number of years this coverage remains in force or the number of premiums paid, no Limit of Coverage cumulates from year to year or period to period.
- 11. Other Coverage: This coverage does not apply to Loss recoverable or recovered under other coverage or indemnity. However, if the limit of the other coverage or indemnity is insufficient to cover the entire amount of the Loss, this coverage will apply to that part of the Loss, other than that falling within any deductible amount, not recoverable or recovered under the other coverage or indemnity. However, this coverage will not apply to the amount of Loss that is more than the applicable Limit of Coverage shown in the DECLARATIONS.
- 12. Ownership of Property; Interests Covered: The property covered under this coverage is limited to property:
 - a. That you own or hold; or



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- b. For which you are legally liable.

However, this coverage is for your benefit only. It provides no rights or benefits to any other person or organization.

13. Coverage Contract Period

- a. The Coverage Contract Period is shown in the DECLARATIONS.
- b. Subject to the Loss Sustained During Prior Coverage condition, we will pay only for Loss that you sustain through acts committed or events occurring during the Coverage Contract Period.

14. Records: You must keep records of all Covered Property so we can verify the amount of any Loss.

15. Recoveries

- a. Any recoveries, less the cost of obtaining them, made after settlement of Loss covered by this coverage will be distributed as follows:
- (1) To you, until you are reimbursed for any Loss that you sustain that exceeds the Limit of Coverage and the Deductible Amount, if any;
 - (2) Then to us, until we are reimbursed for the settlement made;
 - (3) Then to you, until you are reimbursed for that part of the Loss equal to the Deductible Amount, if any.
- b. Recoveries do not include any recovery:
- (1) From coverage, suretyship, reinsurance, security or indemnity taken for our benefit; or
 - (2) Of original "Securities" after duplicates of them have been issued.

16. Territory: This coverage covers only acts committed or events occurring within the United States of America, U. S. Virgin Islands, Puerto Rico, Canal Zone, or Canada.

17. Transfer of Your Rights of Recovery Against Others to Us: You must transfer to us all your rights of recovery against any person or organization for any Loss you sustained and for which we have paid or settled. You must also do everything necessary to secure those rights and do nothing after Loss to impair them.

18. Valuation - Settlement a. Subject to the applicable Limit of Coverage provision we will pay for:

- a. Loss of "Money" but only up to and including its face value. We may, at our option, pay for Loss of "money" issued by any country other than the United States of America:
- (1) At face value in the "money" issued by that country; or
 - (2) In the United States of America dollar equivalent determined by the rate of exchange on the day the Loss was discovered.
- b. Loss of "Securities" but only up to and including their value at the close of business on the day the Loss was discovered. We may, at our option:
- (1) Pay the value of such "Securities" or replace them in kind, in which event you must assign to us all your rights, title and interest in and to those "Securities";
 - (2) Pay the cost of any Lost Securities Bond required in connection with issuing duplicates of the "Securities". However, we will be liable only for the payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of the: i. Value of the "Securities" at the close of business on the day the Loss was discovered; or ii. Limit of Coverage.



SOUTH CAROLINA MUNICIPAL INSURANCE and RISK FINANCING FUND COVERAGE CONTRACT 2011

- c. Loss of, or loss from damage to, "Property Other Than Money and Securities" or Loss from damage to the "Premises": for not more than the:
- (1) Actual Cash Value of the property on the day the Loss was discovered;
 - (2) Cost of repairing the property or "Premises"; or
 - (3) Cost of replacing the property with property of like kind and quality.
We may, at our option, pay the Actual Cash Value of the property or repair or replace it. If we cannot agree with you upon the Actual Cash Value or the cost of repair or replacement, the value or cost will be determined by arbitration.
 - (4) We may, at our option, pay for Loss of, or Loss from damage to, property other than "money":
 - (a) In the "money" of the country in which the Loss occurred; or
 - (b) In the United States of America dollar equivalent of the "money" of the country in which the Loss occurred determined by the rate of exchange on the day the Loss was discovered.
 - (5) Any property that we pay for or replace becomes our property.

C. General Definitions

The following definitions apply to this Section VII. They are in addition to the General Definitions in Section I unless a separate definition for the same term is set out herein.

1. "Actual Cash Value" means the replacement cost, at the time of Loss, of the damaged or destroyed property, less depreciation.
2. "Contract Period" or "Coverage Period", or "Contract Coverage Period" or "Policy Period" means the period of time set forth in the Contract Declarations between the Effective Date and the Expiration Date.
3. "Employee" means:
 - a. Any natural person:
 - (1) While in your service (and for 30 days after termination of service); and
 - (2) Whom you compensate directly by salary, wages or commissions; and
 - (3) Whom you have the right to direct and control while performing services for you; or
 - b. Any natural person employed by an employment contractor while that person is subject to your direction and control and performing services for you excluding, however, any such person while having care and custody of property outside the "Premises." But "Employee" does not mean any:
 - (1) Agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character; or
 - (2) Director or trustee except while performing acts coming within the scope of the usual duties of an Employee.
4. "Money" means:
 - a. Currency, coins and bank notes in current use and having a face value; and
 - b. Travelers checks, register checks and money orders held for sale to the public.
5. "Premises" means any building or land occupied or owned by a Member.



SOUTH CAROLINA MUNICIPAL INSURANCE and RISK FINANCING FUND COVERAGE CONTRACT 2011

6. **"Property Other Than Money and Securities"** means any tangible property other than "Money" and "Securities" that has intrinsic value but does not include any property listed in any Crime Coverage Form as Property Not Covered.
7. **"Securities"** means negotiable and nonnegotiable instruments or contracts representing either "money" or other property and includes:
 - a. Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
 - b. Evidences of debt issued in connection with credit or charge cards, which cards are not issued by you, but does not include "money."



SOUTH CAROLINA MUNICIPAL INSURANCE and RISK FINANCING FUND COVERAGE CONTRACT 2011

INCLUDE VOLUNTEER WORKERS AS EMPLOYEES

THIS ENDORSEMENT CHANGES THE COVERAGE CONTRACT.
PLEASE READ IT CAREFULLY.

This endorsement applies to the CRIME GENERAL PROVISIONS FORM and all Crime Coverage Forms forming part of This Contract.

PROVISIONS

"Employee" also includes any non-compensated natural person:

Other than one who is fund solicitor, while performing services for you that are usual to the duties of an "Employee", or
While acting as a fund solicitor during fund raising campaigns.



Coverage Form O - PUBLIC EMPLOYEE DISHONESTY COVERAGE FORM

A. Coverage

We will pay for the Loss of, and Loss from damage to, Covered Property resulting directly from an Occurrence of the Covered Cause of Loss.

1. Covered property: "Money, "Securities" and "property other than money and securities"
2. Covered Cause of Loss: "Employee dishonesty",
3. Coverage Extension

Employees temporarily outside coverage territory: We will pay for loss caused by an Employee while temporarily outside the territory specified in the Territory General Condition for a period of not more than 90 days.

B. Limit of Coverage

The most we will pay for Loss in any one "Occurrence" is the applicable limit of Coverage shown in the Declarations.

C. Deductible

1. We will not pay for Loss in any one occurrence unless the amount of Loss exceeds the Deductible amount shown in the Declarations. We will then pay the amount of Loss in excess of the Deductible amount, up to the limit of coverage.
2. You must:
 - a. Give us notice as soon as possible of any Loss of the type Member under this Coverage Form even though it falls entirely within the Deductible amount.
 - b. Upon our request, give us a statement describing the Loss.

D. ADDITIONAL EXCLUSIONS, CONDITIONS, AND DEFINITIONS:

In addition to the provisions in the Crime General provisions form, this Coverage Form is subject to the following:

1. Additional Exclusions: We will not pay for Loss or damages as specified below:
 - a. Employee; cancelled under prior coverage: Loss caused by any Employee of yours, or predecessor in interest of yours, for whom similar prior coverage has been cancelled and not reinstated since the last such cancellation.
 - b. Inventory shortages: Loss, or that part of any Loss, the proof of which is to its existence, or amount is dependent upon:
 - (1) An inventory computation; or
 - (2) A profit and Loss computation
 - c. Damages: damages for which you are legally liable as a result of:
 - (1) the deprivation or violation of the civil rights of any person by an Employee; or
 - (2) the tortious conduct of an Employee except conversion of property of other parties held by you in any capacity.
2. Additional Conditions:
 - a. Cancellation as to any Employee:

This coverage is cancelled as to any Employee:

 - (1) Immediately upon discovery by you or any official or Employee authorized to manage, govern, or control your employees, of any dishonest act by that Employee whether before or after becoming employed by you.



SOUTH CAROLINA MUNICIPAL INSURANCE and RISK FINANCING FUND COVERAGE CONTRACT 2011

- (2) On the date specified in a notice mailed to you. That date will be at least 30 days after the date of mailing.

The mailing of Notice to you at the last mailing address known to us will be sufficient proof of Notice. Delivery of Notice is the same as mailing.

- b. Sole Benefit: This insurance is for your sole benefit. No legal proceeding of any kind to recover on account of Loss under this coverage may be brought by anyone other than you.
- c. Indemnification: We will indemnify any of your officials who are required by law to give bonds for the faithful performance of their service against Loss through dishonest acts of person who serve under them, subject to the Limit of Coverage.

3. Additional Definitions:

- a. Employee Dishonesty in paragraph A.2 means only dishonest acts committed by an Employee, whether identified or not, acting alone or in collusion with other persons, with the manifest intent to:
- (1) Cause you to sustain Loss; and also
- (2) Obtain financial benefit (other than employee benefits earned in the normal course of employment, including: salaries, commissions, fees, bonuses, promotions, awards, profit sharing, or pensions) for:
- (a) The employee; or
- (b) Any person or organization intended by the employee to receive that benefit.
- b. For purposes of Coverage O, "Occurrence" means all Loss up to the Limit of Liability caused during the Contract Period by each Employee.



ADD FAITHFUL PERFORMANCE OF DUTY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement applied only to PUBLIC EMPLOYEE DISHONESTY COVERAGE FORM O.

PROVISIONS

1. The following is added as a Covered Cause of Loss:
Failure of any "Employee" to faithfully perform his or her duties as prescribed by law, when such failure has as its direct and immediate result a Loss of your Covered Property.
2. The following Additional Exclusion is added:
Depository Failure: Loss resulting from the failure of any entity acting as a depository for your property or property for which you are responsible.
3. Part 2.a. 1) of the Coverage Form is deleted and the following substituted:
Immediately upon discovery by you or any official or Employee authorized to manage, govern or control your employees of any act on the part of an "Employees" whether before or after becoming employed by you which would constitute a Loss covered under the terms of this Coverage Form, as amended by this endorsement.
4. Part 2.o. of the Coverage Form is deleted and the following substituted:
Indemnification: We will indemnify any of your officials who are required by law to give bonds for the faithful performance of their service against Loss through the failure of any "Employee" under the supervision of that official to faithfully perform his or her duties as prescribed by law, when such failure has as its direct and immediate result a Loss of your Covered Property.



Coverage Form C - THEFT, DISAPPEARANCE AND DESTRUCTION COVERAGE

A. Coverage

We will pay for Loss of Covered Property resulting directly from the Covered Causes of Loss.

1. Section 1. - Inside The Premises

a. Covered Property: "Money" and "Securities" inside the "Premises" or a "Banking Premises".

b. Covered Causes of Loss

(1) "Theft"

(2) Disappearance

(3) Destruction

c. Coverage Extensions

d.

(1) Containers of Covered Property: We will pay for Loss of, and Loss from damage to, a locked safe, vault, cash register, cash box or cash drawer located in the "Premises" resulting directly from an actual or attempted:

(a) "Theft" of; or

(b) Unlawful entry into those containers.

(2) Premises Damage: We will pay for Loss from damage to the "Premises" or its exterior resulting directly from an actual or attempted "Theft" of Covered Property if you are the owner of the "Premises" or are liable for damage to it.

2. Section 2. - Outside the Premises

a. Covered Property: "Money" and "Securities" outside the "Premises" in the care and custody of a "messenger."

b. Covered Causes of Loss

(1) "Theft"

(2) Disappearance

(3) Destruction

c. Coverage Extension

Conveyance of Property By Armored Motor Vehicle Company: We will pay for Loss of Covered Property resulting directly from the Covered Causes of Loss while outside the "Premises" in the care and custody of an armored motor vehicle company.

But, we will pay only for the amount of Loss that you cannot recover:

(1) Under your contract with the armored motor vehicle company; and

(2) From any coverage or indemnity carried by, or for the benefit of customers of, the armored motor vehicle company.

B. Limit of Coverage

The most we will pay for Loss in any one "Occurrence" is the applicable Limit of Coverage shown in the DECLARATIONS.

C. Deductible

We will not pay for Loss in any one "Occurrence" unless the amount of Loss exceeds the Deductible Amount



SOUTH CAROLINA MUNICIPAL INSURANCE and RISK FINANCING FUND COVERAGE CONTRACT 2011

shown in the DECLARATIONS. We will then pay the amount of Loss in excess of the Deductible Amount, up to the Limit of Coverage.

In the event more than one Deductible Amount could apply to the loss, only the highest Deductible Amount may be applied.

D. Additional Exclusions, Conditions and Definitions:

In addition to the provisions in the Crime General Provisions, this Coverage Form is subject to the following:

1. Additional Exclusions: We will not pay for Loss as specified below:

- a. Accounting or Arithmetical Errors or Omissions: Loss resulting from accounting or arithmetical errors or omissions.
- b. Acts of Employees, Directors, Trustees or Representatives: Loss resulting from any dishonest or criminal act committed by any of your "Employees", directors, trustees or authorized representatives:
 - (1) Acting alone or in collusion with other persons; or
 - (2) While performing services for you or otherwise.
- c. Exchanges or Purchases: Loss resulting from the giving or surrendering of property in any exchange or purchase.
- d. Fire: Loss from damage to the "Premises" resulting from fire, however caused
- e. Money Operated Devices: Loss of property contained in any money operated device unless the amount of "money" deposited in it is recorded by a continuous recording instrument in the device.
- f. Transfer or Surrender of Property
 - (1) Loss of property after it has been transferred or surrendered to a person or place outside the "Premises" or "Banking Premises":
 - (a) On the basis of unauthorized instructions; or
 - (b) As a result of a threat to do:
 - I. Bodily harm to any person; or
 - II. Damage to any property.
 - (2) But, this exclusion does not apply under COVERAGE, Section 2, to loss of Covered Property while outside the "Premises" or "Banking Premises" in the care and custody of a "messenger" if you:
 - (a) Had no knowledge of any threat at the time the conveyance began; or
 - (b) Had knowledge of a threat at the time the conveyance began, but the Loss was not related to the threat.
- g. Vandalism: Loss from damage to the "Premises" or its exterior or to containers of Covered Property by vandalism or malicious mischief.
- h. Voluntary Parting of Title to or Possession of Property: Loss resulting from your, or anyone acting on your express or implied authority, being induced by any dishonest act to voluntarily part with title to or possession of any property.

2. Additional Condition Duties in the Event of Loss: If you have reason to believe that any Loss of, or Loss from damage to, Covered Property involves a violation of law, you must notify the police:



SOUTH CAROLINA MUNICIPAL INSURANCE and RISK FINANCING FUND COVERAGE CONTRACT 2011

3. Additional Definitions :

- a. **"Banking Premises"** means the interior of that portion of any building occupied by a banking institution or similar safe depository.
- b. **"Messenger"** means you, any of your partners or any "Employee" while having care and custody of the property outside the "Premises".
- c. **"Occurrence"** means Loss, not expected or intended from the standpoint of the Member, its officers, employees, directors, trustees or representatives, caused during the Contract Period by an:
 - (1) Act or series of related acts involving one or more persons resulting in a Covered Cause of Loss; or
 - (2) Event, or a series of events not involving any person, but resulting in the Disappearance of Covered Property.
- d. **"Premises"** means the interior of that portion of any building you occupy in conducting your business.
- e. **"Theft"** means any act of stealing.



Coverage Form B – FORGERY AND ALTERATION COVERAGE FORM

A. Coverage

We will pay for Loss involving Covered Instruments caused by an Occurrence and resulting directly from a Covered Cause or Covered Cause of Loss.

1. Covered Instruments: Checks, drafts, promissory notes, or similar written promises, orders or directions to pay a sum certain in "money" that are:
 - a. Made or drawn by or drawn upon you;
 - b. Made or drawn by one acting as your agent; or that are purported to have been so made or drawn.
2. Covered Causes of Loss: Forgery or alteration of, on or in any Covered Instrument.
3. Coverage Extension
Legal Expenses: If you are sued for refusing to pay any Covered Instrument on the basis that it has been forged or altered, and you have our written consent to defend against the suit, we will pay for any reasonable legal expenses that you incur and pay in that defense. The amount we will pay under this extension is in addition to the Limit of Insurance applicable to this Insurance.

B. Limit of Insurance

The most we will pay for Loss in any one "Occurrence" is the applicable Limit of Insurance shown in the Declarations.

C. Deductible

We will not pay for Loss in any one "Occurrence" unless the amount of Loss exceeds the Deductible Amount shown in the Declarations. We will then pay the amount of Loss in excess of the Deductible Amount, up to the Limit of Insurance. This provision does not apply to legal expenses paid under the Coverage Extension.

D. Additional Exclusions, Conditions and Definitions

In addition to the provisions in the Crime General Provisions Form, this Coverage Form is also subject to the following:

1. Additional Exclusion
Acts of Employees, Directors, or Trustees: We will not pay for Loss resulting from any dishonest or criminal act committed by any of your "Employees", directors, or trustees;
 - a. Whether acting alone or in collusion with other persons; or
 - b. Whether while performing services for you or otherwise.
2. Additional Conditions
 - a. Facsimile Signatures: We will treat mechanically reproduced facsimile signatures the same as handwritten signatures.
 - b. General Amendment: As respects this Coverage Form, the words Covered Property in the Crime General Provisions Form mean Covered Instruments.
 - c. Proof of Loss: You must include with your proof of Loss any instrument involved in that Loss, or, if that is not possible, an affidavit setting forth the amount and cause of Loss.
 - d. Territory: We will cover Loss you sustain anywhere in the world.
The Territory General Condition does not apply to this Coverage Form.
3. Additional Definitions



SOUTH CAROLINA MUNICIPAL INSURANCE and RISK FINANCING FUND COVERAGE CONTRACT 2011

"Occurrence" means all Loss, not expected or intended from the standpoint of the Member, its officers, employees, directors, or trustees, which is caused during the Contract Period by any person, or in which that person is involved, whether the Loss involves one or more Covered Instruments. All such Loss, whether involving one or more Covered Instruments, or one or more Covered Causes of Loss, will be treated as one Occurrence.



CREDIT, DEBIT OR CHARGE CARD FORGERY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement applies only to the FORGERY AND ALTERATION COVERAGE FORM B.

A. Schedule

Limit of Insurance
\$200,000

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☐

Includes Covered Instruments
limited to Covered Instruments

B. Provisions

1. Covered Instruments either includes or is limited to, whichever is indicated as applicable in the SCHEDULE, written instruments required in conjunction with any credit, debit, or charge card issued to you or any "Employee" for business purposes.
2. The most we will pay in any one "Occurrence" is the Limit of Insurance shown in the SCHEDULE.
3. The following Additional Exclusion is added:

Non-Compliance With Credit, Debit, or Charge Card Issuer's Requirements: We will not pay for Loss arising from any credit, debit, or charge card if you have not complied fully with the provisions, conditions, or other terms under which this card was issued.



Coverage Form F - COMPUTER FRAUD COVERAGE FORM

A. Coverage

We will pay for Loss of, and Loss from damage to, Covered Property resulting directly from the Covered Cause of Loss.

1. Covered Property: "Money", "Securities", and "Property Other Than Money and Securities"
2. Covered Cause of Loss: "Computer Fraud"

B. Limit of Insurance

The most we will pay for Loss in any one "Occurrence" is the applicable Limit of Insurance shown in the DECLARATIONS.

C. Deductible

We will not pay for Loss in any one "Occurrence" unless the amount of Loss exceeds the Deductible Amount in the DECLARATIONS. We will then pay the amount of Loss in excess of the Deductible Amount, up to the Limit of Insurance. In the event more than one Deductible Amount could apply to the Loss, only the highest Deductible Amount may be applied.

D. Additional Exclusions, Conditions, and Definitions

In addition to the provisions in the Crime General Provisions, this Coverage Form is subject to the following:

1. Additional Exclusions: We will not pay for Loss as specified below:
 - a. Acts of Employees, Directors, Trustees or Representatives: Loss resulting from any dishonest or criminal act committed by any of your "Employees", directors, trustees; or authorized representatives;
 - (1) Acting alone or in collusion with other persons; or
 - (2) While performing services for you or otherwise.
 - b. Inventory Shortages: Loss, or that part of any Loss, the proof of which as to its existence or amount is dependent upon:
 - (1) An inventory computation; or
 - (2) A profit or loss computation.
2. Additional Conditions
 - a. Duties in the Event of Loss: If you have reason to believe that any Loss of, or Loss from damage to, Covered Property involves a violation of law, you must notify the police.
 - b. Special Limit of Insurance for Specified Property: We will only pay up to \$5,000 for any one "Occurrence" of Loss of, and Loss from damage to manuscripts, drawings, or records of any kind or the cost of reconstructing them or reporting any information contained in them.



INCLUDE COVERAGE FOR FUNDS TRANSFER FRAUD

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement applies only to Computer Fraud Coverage Form F.

PROVISIONS

A. The following is added to paragraph A.1., Covered Property:

1. "Money" and "Securities" contained in a "Transfer Account".

B. The following is added to paragraph A.2., Covered Cause of Loss:

1. "Funds Transfer Fraud".

C. The following is added to paragraph D.3. Additional Definitions:

1. "Fund Transfer Fraud" means:

- a. Fraudulent telegraphic, cable, teletype or telephone instructions transmitted to a "Financial Institution" directing such institution to debit a "Transfer Account" and to transfer, pay or deliver "Money" or "Securities" from such "Transfer Account" which instructions purport to have been transmitted by you but were in fact fraudulently transmitted by someone other than you without your knowledge or consent, or
- b. Fraudulent written instructions (other than those covered under Forgery or Alteration Coverage Form B) issued to a "Financial Institution" directing such institution to debit a "Transfer Account" and to transfer, pay or deliver "Money" or "Securities" from such "Transfer Account" by use of an electronic funds transfer system at specified intervals or under specified conditions which instructions purport to have been issued by you but were in fact fraudulently issued, forged, or altered by someone other than you without your knowledge or consent.

2. "Financial Institution" means:

- a. A banking, savings, thrift institution, or
- b. A stockbrokerage firm, mutual fund, liquid assets fund or similar investment institution where you maintain a "Transfer Account".

3. "Transfer Account" means an account maintained by you at a "Financial Institution" from which you can initiate the transfer, payment, or delivery of "Money" or "Securities":

- a. By means of electronic, telegraphic, cable, teletype, or telephone instructions communicated directly or through an electronic funds transfer system, or
- b. By means of written instruction (other than those covered under Forgery or Alteration Coverage Form B) establishing the conditions under which such transfers are to be initiated by such "Financial Institution" through an electronic funds transfer system.



SOUTH CAROLINA MUNICIPAL INSURANCE and RISK FINANCING FUND COVERAGE CONTRACT 2011

South Carolina Municipal Insurance and Risk Financing Fund

**Town of Cottageville
P-SCMIRF-1124-2011**

- SECTION VIII -

EXCESS CASUALTY CONTRACT DECLARATIONS (If Purchased)

Contract Period

Effective from 01/01/11 – 01/01/12 both days at 12:01 AM standard time at address of Member

Liability Limit	\$0 Each Occurrence/Each Line of Coverage \$0 Each Wrongful Act/Annual Aggregate-Public Officials Liability and Products Completed Operations Liability
Excess of	\$1,000,000 Each Occurrence General Liability or Automobile Liability \$1,000,000 Each Wrongful Act Law Enforcement or Public Officials Liability

Public Officials Retroactive Date: 6/1/2008



- Section VIII -

EXCESS CASUALTY COVERAGE

A. Coverage Agreement

SCMIRF agrees, subject to the limitations, terms and conditions stated in the General Provisions, Section I, General Liability, Section III, Law Enforcement Liability, Section IV, Public Officials Liability, Section V, Automobile Liability, Section VI and hereunder mentioned:

1. to pay on behalf of the Member and Covered Person(s) for all sums which the Member or Covered Person(s) shall be obligated to pay by reason of the liability imposed upon the Covered Person(s) by law for damages on account of Bodily Injury, Property Damage, Personal Injury or arising out of any Wrongful Acts of any Covered Person while acting in the course and scope of their official duties, as provided by the "South Carolina Tort Claims Act".

The amount of ultimate net Loss for each occurrence is in excess of the applicable limits of liability of the underlying insurance as shown in the Declarations, and then only up to a further sum of \$1,000,000 per occurrence.

2. It is warranted by the Member that underlying policies shall be maintained in force during this Policy Period. In the event of failure to maintain such policies, the coverage afforded by this Section shall apply in the same manner it would have applied had such policies been in force.
3. In the event the underlying insurance provides coverage(s) which are subject to an aggregate limit of liability, SCMIRF's liability under This Contract shall likewise be limited to the amount stated in the Declarations as the Aggregate Limit for all ultimate net Loss arising out of one or more occurrences during each annual period while This Contract is in force, commencing from its effective date. The Aggregate Limit hereunder shall apply separately to each coverage for which the underlying insurance provides an Aggregate Limit.

B. Additional Conditions

This Section supplements the coverage limits applicable to the Coverage Sections of the underlying Contract listed in the first sentence of Part A above. All Excess Casualty Coverage herein depends on and incorporates the terms, conditions, definitions, limitations, and exclusions set out in the underlying Coverage Sections applicable to the Loss for which any excess coverage is provided herein, including any Section I General Definitions which may apply by default to the underlying Coverage Section.



SOUTH CAROLINA MUNICIPAL INSURANCE and RISK FINANCING FUND COVERAGE CONTRACT 2011

South Carolina Municipal Insurance and Risk Financing Fund

Town of Cottageville
P-SCMIRF-1124-2011

Section IX -

EQUIPMENT BREAKDOWN COVERAGE SCHEDULE

Contract Period

Effective from 01/01/11 - 01/01/12 both days at 12:01 AM standard time at address of Member

Equipment Breakdown is subject to the limits of liability shown in the Property Contract Declarations except as specifically shown below.

These coverages apply to all locations covered on the policy, unless otherwise specified.

Coverages	Limits
Equipment Breakdown Limit	\$75,000,000 (Annual Aggregate per Member)
Business Income	Included
Rental Income	Included
Extra Expense	Combined with Business Income
Expediting Expenses	Included
Hazardous Substances	\$5,000,000
Spoilage	Included
Data Restoration	\$1,000,000
Service Interruption	Combined with Business Income
Drying Out	Included

Deductibles

Combined, All Coverages	\$1,000
All Coverages Except:	
Combined on Boiler and Pressure Vessels	\$1,000
Internal Combustion Engines/Generator Units	\$25 per hp, \$10,000 minimum
Direct Coverages	\$738,111
Indirect Coverages	\$0
	or _____ hrs.
	or _____ times ADV
Spoilage	\$
	or _____ % of loss, \$ _____ minimum

Other Conditions



- SECTION IX -

EQUIPMENT BREAKDOWN COVERAGE

This endorsement modifies insurance provided under the following:

SOUTH CAROLINA MUNICIPAL INSURANCE and RISK FINANCING FUND COVERAGE CONTRACT

A. The following is added to Paragraph C, Coverage Agreement in Section II - Property Coverage:

Equipment Breakdown

This Section II (Property) of This Contract covers Equipment Breakdown as described and limited below.

1. SCMIRF will pay for direct physical damage to covered property that is the direct result of an Accident. As used in this Equipment Breakdown coverage, Accident means a fortuitous event that causes direct physical damage to Covered Equipment. The event must be one of the following:
 - a. mechanical breakdown, including rupture or bursting caused by centrifugal force;
 - b. artificially generated electrical current, including electric arcing, that disturbs electrical devices, appliances or wires;
 - c. explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under the Member's control;
 - d. loss or damage to steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment; or
 - e. loss or damage to hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment.
2. Unless otherwise shown in a Schedule, the following coverages also apply to the direct result of an Accident. These coverages do not provide additional amounts of insurance.
 - a. **Expediting Expenses**
With respect to the Member's damaged covered property, SCMIRF will pay the reasonable extra cost to:
 - (1) make temporary repairs; and
 - (2) expedite permanent repairs or permanent replacement.
 - b. **Hazardous Substances**
SCMIRF will pay for the additional cost to repair or replace covered property because of contamination by a Hazardous Substance. This includes the additional expenses to clean up or dispose of such property. This does not include contamination of Perishable Goods by refrigerant, including but not limited to ammonia, which is addressed in 2.c.(1)(b) below. As used in this coverage, additional costs mean those beyond what would have been payable under this Equipment Breakdown Coverage had no Hazardous Substance been involved.
The most SCMIRF will pay for loss, damage or expense under this coverage, including actual loss of Business Income and Rental Income the Member sustains, and necessary Extra Expense the Member incurs, is \$5,000,000 unless otherwise shown in a Schedule.
 - c. **Spoilage**
 - (1) SCMIRF will pay:
 - (a) for physical damage to Perishable Goods due to spoilage;
 - (b) for physical damage to Perishable Goods due to contamination from the release of refrigerant, including but not limited to ammonia;
 - (c) any necessary expenses the Member incurs to reduce the amount of loss under this coverage to the extent that they do not exceed the amount of loss that otherwise would have been payable under this coverage.



SOUTH CAROLINA MUNICIPAL INSURANCE and RISK FINANCING FUND COVERAGE CONTRACT 2011

- (2) If the Member is unable to replace the Perishable Goods before its anticipated sale, the amount of SCMIRF's payment will be determined on the basis of the sales price of the Perishable Goods at the time of the Accident, less discounts and expenses the Member otherwise would have had. Otherwise SCMIRF's payment will be determined in accordance with the Valuation condition.

d. Data Restoration

SCMIRF will pay for the Member's reasonable and necessary cost to research, replace and restore lost Data. The most SCMIRF will pay for loss or expense under this coverage, including actual loss of Business Income and Rental Income the Member sustains, and necessary Extra Expense the Member incurs, is \$1,000,000 unless otherwise shown in a Schedule.

e. Service Interruption

- (1) Any Insurance provided for Business Income, Rental Income, Extra Expense or Spoilage is extended to apply to the Member's loss, damage or expense caused by the interruption of utility services. The interruption must result from an Accident to equipment, including overhead transmission lines, that is owned by a utility, landlord, a landlord's utility or other supplier who provides the Member with any of the following services: electrical power, waste disposal, air conditioning, refrigeration, heating, natural gas, compressed air, water, steam, Internet access, telecommunications services, wide area networks or data transmission. The equipment must meet the definition of Covered Equipment except that it is not covered property.

- (2) SCMIRF will not pay for Business Income or Rental Income the Member sustains that results from the interruption of utility services during the first 24 hours following the Accident. However, if a deductible is shown in a Schedule as provided for in paragraph C. below, or if the Period of Recovery begins more than 24 hours after the time of the direct physical damage for Business Income, then that deductible or time period will apply instead of the 24 hours provided for in this paragraph.

- (3) The most SCMIRF will pay in any One Accident for loss, damage or expense under this coverage is the applicable limit for Business Income, Rental Income, Extra Expense or Spoilage, except that if a limit is shown in a Schedule for Service Interruption, that limit will apply to Business Income and Extra Expense loss under this coverage.

f. Business Income, Rental Income and Extra Expense

Any insurance provided under this coverage part for Business Income, Rental Income or Extra Expense is extended to the coverage provided by this endorsement. However, if a deductible is shown in a Schedule, then as respects Equipment Breakdown coverage, the Period of Recovery will begin immediately after the Accident, and the deductible shown in the Schedule will apply. The most SCMIRF will pay for loss or expense under this coverage is the applicable limit for Business Income, Rental Income and Extra Expense, unless otherwise shown in a Schedule.

h. Drying Out

SCMIRF will pay for the direct expenses to dry out electrical Covered Equipment that is damaged by:

- (1) flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;
- (2) mudslide or mudflow; or
- (3) water that backs up or overflows from a sewer, drain or sump.

B. Equipment Breakdown Exclusions

All exclusions in This Contract apply except to the extent that coverage is specifically provided by this Equipment Breakdown coverage.

The following exclusions are added:

1. SCMIRF will not pay for loss, damage or expense caused by or resulting from:

- a. the Member's failure to use all reasonable means to protect covered property from damage following an Accident;



SOUTH CAROLINA MUNICIPAL INSURANCE and RISK FINANCING FUND COVERAGE CONTRACT 2011

- b. a hydrostatic, pneumatic or gas pressure test of any boiler or pressure vessel, or an electrical insulation breakdown test of any type of electrical equipment; or
- c. any of the following:
 - (1) defect, programming error, programming limitation, computer virus, malicious code, loss of data, loss of access, loss of use, loss of functionality or other condition within or involving Data of any kind; or
 - (2) misalignment, miscalibration, tripping off-line, or any condition which can be corrected by resetting, tightening, adjusting or cleaning, or by the performance of maintenance. However, if an Accident results, SCMIRF will pay for the resulting loss, damage or expense caused by that Accident.
- 2. With respect to Service Interruption coverage, SCMIRF will also not pay for an Accident caused by or resulting from: fire; lightning; windstorm or hail; explosion (except as specifically provided in A, 1.c. above); smoke; aircraft or vehicles; riot or civil commotion; vandalism; sprinkler leakage; falling objects; weight of snow, ice or sleet; freezing; collapse; flood or earth movement.
- 3. With respect to Business Income, Rental Income, Extra Expense and Service Interruption coverages, SCMIRF will also not pay for loss caused by the Member's failure to use due diligence and dispatch and all reasonable means to resume business.
- 4. SCMIRF will not pay for any loss or damage to animals.

C. Deductibles

The deductible in the Declarations applies unless a separate Equipment Breakdown deductible is shown in a Schedule. If a separate Equipment Breakdown deductible is shown, the following applies.

Only as regards Equipment Breakdown Coverage, provision C. Deductibles is deleted and replaced with the following:

- 1. **Deductibles for Each Coverage**
 - a. Unless the Schedule indicates that the Member's deductible is combined for all coverages, multiple deductibles may apply to any One Accident.
 - b. SCMIRF will not pay for loss, damage or expense under any coverage until the amount of the covered loss, damage or expense exceeds the deductible amount indicated for that coverage in the Schedule. SCMIRF will then pay the amount of loss, damage or expense in excess of the applicable deductible amount, subject to the applicable limit.
 - c. If deductibles vary by type of Covered Equipment and more than one type of Covered Equipment is involved in any One Accident, only the highest deductible for each coverage will apply.
- 2. **Direct and Indirect Coverages**
 - a. Direct Coverages Deductibles and Indirect Coverages Deductibles may be indicated in the Schedule.
 - b. Unless more specifically indicated in the Schedule:
 - (1) Indirect Coverages Deductibles apply to Business Income, Rental Income and Extra Expense loss; and
 - (2) Direct Coverages Deductibles apply to all remaining loss, damage or expense covered by this endorsement.
- 3. **Application of Deductibles**
 - a. **Dollar Deductibles**
SCMIRF will not pay for loss, damage or expense resulting from any One Accident until the amount of loss, damage or expense exceeds the applicable Deductible shown in the Schedule.



SOUTH CAROLINA MUNICIPAL INSURANCE and RISK FINANCING FUND COVERAGE CONTRACT 2011

SCMIRF will then pay the amount of loss, damage or expense in excess of the applicable Deductible or Deductibles, up to the applicable Limit of Insurance.

- b. **Time Deductible**
If a time deductible is shown in the Schedule, SCMIRF will not be liable for any loss occurring during the specified number of hours or days immediately following the Accident. If a time deductible is expressed in days, each day shall mean twenty-four consecutive hours.
- c. **Multiple of Average Daily Value (ADV)**
If a deductible is expressed as a number times ADV, that amount will be calculated as follows:

The ADV (Average Daily Value) will be the Business Income or Rental Income (as defined in any Business Income or Rental Income coverage that is part of this policy) that would have been earned during the period of interruption of business had no Accident occurred, divided by the number of working days in that period. No reduction shall be made for the Business Income or Rental Income not being earned, or in the number of working days, because of the Accident or any other scheduled or unscheduled shutdowns during the period of interruption. The ADV applies to the Business Income or Rental Income value of the entire location, whether or not the loss affects the entire location. If more than one location is included in the valuation of the loss, the ADV will be the combined value of all affected locations. For purposes of this calculation, the period of interruption may not extend beyond the Period of Recovery. The number indicated in the Schedule will be multiplied by the ADV as determined above. The result shall be used as the applicable deductible.
- d. **Percentage of Loss Deductibles**
If a deductible is expressed as a percentage of loss, SCMIRF will not be liable for the indicated percentage of the gross amount of loss, damage or expense (prior to any applicable deductible or coinsurance) insured under the applicable coverage. If the dollar amount of such percentage is less than the indicated minimum deductible, the minimum deductible will be the applicable deductible.

D. Conditions

The following conditions are in addition to the General Conditions and Conditions Applicable to Section II. (Property) of This Contract.

- 1. **Suspension**
Whenever Covered Equipment is found to be in, or exposed to, a dangerous condition, any of our representatives may immediately suspend the Insurance against loss from an Accident to that Covered Equipment. This can be done by mailing or delivering a written notice of suspension to:
 - a. the Member's last known address; or
 - b. the address where the Covered Equipment is located.
Once suspended in this way, the Member's Insurance can be reinstated only by an endorsement for that Covered Equipment. If SCMIRF suspend the Member's Insurance, the Member will get a pro rata refund of premium for that Covered Equipment for the period of suspension. But the suspension will be effective even if SCMIRF have not yet made or offered a refund.
- 2. **Jurisdictional Inspections**
If any property that is Covered Equipment under this endorsement requires inspection to comply with state or municipal boiler and pressure vessel regulations, SCMIRF agrees to perform such inspection on the Member's behalf. SCMIRF does not warrant that conditions are safe or healthful.
- 3. **Environmental, Safety and Efficiency Improvements**
If Covered Equipment requires replacement due to an Accident, SCMIRF will pay the Member's additional cost to replace with equipment that is better for the environment, safer or more efficient than the equipment being replaced. However, SCMIRF will not pay more than 125% of what the cost would have been to replace with like kind and quality. This condition does not increase any of the applicable limits. This condition does not apply to any property to which Actual Cash Value applies.



SOUTH CAROLINA MUNICIPAL INSURANCE and RISK FINANCING FUND COVERAGE CONTRACT 2011

4. **Coinurance**
If a coinurance percentage is shown in a Schedule for specified coverages, the following condition applies.

SCMIRF will not pay for the full amount of the Member's loss if the applicable limit is less than the product of the specified coinurance percentage times the value of the property subject to the coverage at the time of the loss. Instead, SCMIRF will determine what percentage this calculated product is compared to the applicable limit and apply that percentage to the gross amount of loss. SCMIRF will then subtract the applicable deductible. The resulting amount, or the applicable limit, is the most SCMIRF will pay. SCMIRF will not pay for the remainder of the loss. Coinurance applies separately to each insured location.

E. The Following Definitions are Added:

1. **"Covered Equipment"**
 - a. **Covered Equipment** means, unless otherwise specified in a Schedule, covered property:
 - (1) that generates, transmits or utilizes energy, including electronic communications and data processing equipment; or
 - (2) which, during normal usage, operates under vacuum or pressure, other than the weight of its contents.
 - b. **None of the following is Covered Equipment:**
 - (1) structure, foundation, cabinet, compartment or air supported structure or building;
 - (2) insulating or refractory material;
 - (3) sewer piping, buried vessels or piping, or piping forming a part of a sprinkler or fire suppression system;
 - (4) water piping other than boiler feedwater piping, boiler condensate return piping or water piping forming a part of a refrigerating or air conditioning system;
 - (5) Vehicle or any equipment mounted on a Vehicle; or
 - (6) dragline, excavation or construction equipment.
2. **"Data"** means information or instructions stored in digital code capable of being processed by machinery.
3. **"Hazardous Substance"** means any substance that is hazardous to health or has been declared to be hazardous to health by a governmental agency.
4. **"One Accident"** means: If an Initial Accident causes other Accidents, all will be considered One Accident. All Accidents that are the result of the same event will be considered One Accident.
5. **"Perishable Goods"** means personal property maintained under controlled conditions for its preservation, and susceptible to loss or damage if the controlled conditions change. This term does not appear elsewhere in this endorsement, but may appear in a Schedule.
6. **"Vehicle"** means, as respects this endorsement only, any machine or apparatus that is used for transportation or moves under its own power. Vehicle includes, but is not limited to, car, truck, bus, trailer, train, aircraft, watercraft, forklift, bulldozer, tractor or harvester. However, any property that is stationary, permanently installed at a covered location and that receives electrical power from an external power source will not be considered a Vehicle.

The most SCMIRF will pay for loss, damage or expense under this endorsement arising from any One Accident is the applicable limit of liability in the Declarations unless otherwise shown in a Schedule. Coverage provided under this endorsement does not provide an additional amount of insurance.



SOUTH CAROLINA MUNICIPAL INSURANCE and RISK FINANCING FUND COVERAGE CONTRACT 2011

South Carolina Municipal Insurance and Risk Financing Fund

**Town of Cottageville
P-SCMIRF-1124-2011**

- SECTION X -

ENDORSEMENTS



SOUTH CAROLINA MUNICIPAL INSURANCE and RISK FINANCING FUND COVERAGE CONTRACT 2011

HURRICANE SHELTERS – EXCLUSION

General Endorsement No. 1

Effective Date of this endorsement: January 1, 2011 until cancelled.

As respects, Section III General Liability Coverage, including Incidental Medical Malpractice Liability Coverage, Section IV Law Enforcement Liability Coverage, and Section V Public Officials Liability where applicable:

Exclusion:

Hurricane Shelters not approved by the American Red Cross.

This exclusion applies to any and all liability out of the use of any facility when designated as a hurricane evacuation shelter, unless the facility has been certified to be in full compliance with the requirements for such facilities as set forth by the American Red Cross.



SOUTH CAROLINA MUNICIPAL INSURANCE and RISK FINANCING FUND COVERAGE CONTRACT 2011

SOUTH CAROLINA CHANGES - VALUATION

General Endorsement No. 2

Effective Date of this endorsement: January 1, 2011 until cancelled.

As respects Section I, Property Coverage including Builders Risk coverage:

The following is added to VALUATION Loss Condition:

- A.** For Loss or damage to buildings caused by or resulting from fire or lightning, the Members and SCMIRF agree that:
1. the value of the buildings described in Section I, Property and
 2. the total amount of insurance to be carried on the buildings, included in Section I, Property
- are the amounts shown in the Schedule on file.



FUNGI OR BACTERIA-GENERAL LIABILITY EXCLUSION

General Endorsement No. 3

Effective Date of this endorsement: January 1, 2011 until cancelled.

As respects Section III (General Liability Coverage), Section V (Public Officials Liability), and any other Liability Coverage afforded under any Coverage Section of This Contract:

A. The following exclusion is added to Section III, G.:

As respects Bodily Injury, Personal Injury, Advertising Injury, and Property Damage Liability:

This coverage provided in this Section does not apply to:

Fungi or Bacteria

1. "Bodily Injury" or "Property Damage" which would not have occurred or taken place in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.
2. Any Loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

B. "Fungus" means any type or form of Fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi. "Fungus" includes, but is in no way limited to, any of the plants or organisms belonging to the major group fungi, lacking chlorophyll, and including without limitation mold(s), rusts, mildews, smuts and mushrooms. "Fungus" includes the spores of any Fungus, including without limitation any dormant or reproductive body or particle produced by or arising or emanating from any Fungus, mold(s), mildew, plants, organisms or microorganisms. "Fungus" includes, without limitation, any molds whether living on damp or decaying organic matter or in or on living organisms (including without limitation humans and animals), and fungi that produce mold(s).



FUNGI OR BACTERIA-PROPERTY (ABSOLUTE) EXCLUSION

General Endorsement No. 4

Effective Date of this endorsement: January 1, 2011 until cancelled.

As respects "Perils Not Covered" under Section II, Property Coverage:

A. The following item is added:

Fungus, Wet Rot, Dry Rot and Bacteria

SCMIRF will not pay for Loss damage caused directly or indirectly by, arising out of, contributed to, or resulting from the presence, growth, proliferation, spread or activity of any type of "fungus", mold(s), mildew, wet or dry rot, yeast, spores, or bacteria. Such Loss or damage, including any continuing Loss or damage, is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the Loss.

B. The following definition is added to the "Definitions" Section of Section II:

"Fungus" means any type or form of Fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi. "Fungus" includes, but is in no way limited to, any of the plants or organisms belonging to the major group fungi, lacking chlorophyll, and including without limitation mold(s), rusts, mildews, smuts and mushrooms. "Fungus" includes the spores of any Fungus, including without limitation any dormant or reproductive body or particle produced by or arising or emanating from any Fungus, mold(s), mildew, plants, organisms or microorganisms. "Fungus" includes, without limitation, any molds whether living on damp or decaying organic matter or in or on living organisms, and fungi that produce mold(s).



ADDITIONAL INSURED ENDORSEMENT FOR LESSORS OF AUTOMOBILES

General Endorsement No. 5

This endorsement changes the coverage contract effective January 1, 2011.

As respects Section VI Business Auto coverage, B. Liability Coverage, a. Covered Persons, the following is added:

Class Three - Lessor and/or Owner of "Hired Autos":

A. any lessor and/or owner of any "Hired Auto".

The coverages provided for the lessor and/or owner under this endorsement apply to any "Hired Auto", but are limited to defense and indemnity arising from any negligent act of the "Member", as stated in the Contract Declarations, or its Employees.

This endorsement DOES NOT provide coverage for any negligent acts of Lessor and/or Owner.

In no event shall the liability for Loss, under this endorsement, arising out of any one Occurrence involving one or more Members exceed the Liability Limit shown on the Business Auto Contract Declarations Page or \$1,000,000 whichever is less.

The coverages provided under this endorsement apply to any "Hired Auto" until the expiration date of the Coverage Contract, or when the lessor and/or owner or his or her agent takes possession of the "Hired Auto" whichever occurs first.

**"NAMED STORM" PERCENTAGE DEDUCTIBLE****General Endorsement No. 6**

Effective Date of this endorsement: January 1, 2011 until cancelled.

This endorsement modifies coverage provided on locations insured under Section II Property Coverage, as well as vehicles insured under Section VI Business Auto Coverage. A separate deductible applies for "Named Storm" losses in the following counties:

County	"Named Storm" Deductible Percentage
Beaufort	1%
Berkeley	1%
Charleston	1%
Colleton	1%
Georgetown	1%
Horry	1%

The "Named Storm" Deductible, as shown in the above table, applies to Loss or damage to Covered Property caused directly or indirectly by a "Named Storm", regardless of any other cause or event that contributes concurrently or in a sequence to the Loss or damage. If Loss or damage from a covered weather condition other than "Named Storm" occurs, and that Loss or damage would not have occurred but for the "Named Storm", such Loss or damage shall be considered to be caused by "Named Storm" and therefore part of the "Named Storm" occurrence.

With respect to an Auto or Covered Property at a location identified in the Schedule, the greater of the policy deductible (\$1,000) or the calculated "Named Storm" deductible applies, but not both, unless that Member has elected a property deductible by resolution of its governing body and for which a premium credit has been given. In this instance, the greater of the elected deductible or the calculated "Named Storm" deductible applies, but not both.

The "Named Storm" deductible applies whenever there is an occurrence of a "Named Storm", and without regard to any other coverage that may be applicable.

"Named Storm" Deductible Clause:**A. All Property Coverages**

1. A deductible is calculated separately for, and applies separately to:
 - a. Each building, if two or more buildings sustain Loss or damage;
 - b. The building and to personal property in that building, if both sustain Loss or damage;
 - c. Personal property at each building, if personal property at two or more buildings sustain Loss or damage;
 - d. Personal property in the open.
 - e. Each vehicle, if two or more vehicles sustain Loss or damage.
2. We will not pay for Loss or damage until the amount of Loss or damage exceeds the applicable "Named Storm" deductible. We will then pay the amount of Loss or damage in excess of that "Named Storm" deductible, up to the applicable Scheduled limit subject to the valuation provisions set forth in Section II, J., and after any reduction required by any of the following endorsements:
 - a. Agreed Value Endorsement, or
 - b. Vacant/Unoccupied Endorsement.



SOUTH CAROLINA MUNICIPAL INSURANCE and RISK FINANCING FUND COVERAGE CONTRACT 2011

B. Calculation of the Deductible

In determining the amount, if any, that we will pay for Loss or damage, we will deduct an amount equal to 1% of the value(s) of the property that has sustained Loss or damage. The value(s) to be used are those shown on the current schedule on file with SCMIRF and are subject to the valuation provisions set forth in Section II - J. of the Property Coverage form, or in Section VI - E & L of the Business Auto Coverage Form.

C. The SCMIRF coverage contract contains a separate deductible for "Named Storm" losses, which may result in high out of pocket expenses to you. The enclosed example illustrates how the deductible might affect you.

Example:

The value of Building #1 is \$500,000.
The value of Contents at Building #1 is \$50,000
Building #1 sustained damage.
Building #1 Contents sustained damage.
The amount(s) of loss to this building is \$40,000
The amount of loss to the contents is \$7,500
The "Named Storm" deductible is 1%.

Building -

Step 1: $\$500,000 \times 1\% = \$5,000$
Step 2: $\$40,000 - \$5,000 = \$35,000$ (total pd for bldg damages)

Contents -

Step 1: $\$50,000 \times 1\% = \$500$
Step 2: $\$7,500 - \$500 = \$7,000$ (total pd for contents damages)

Total amount paid for this loss = \$42,000

D. The following definition is added to the Definitions in Section II - X, and Section VI, H:

"Named Storm" means any specific storm system which has sustained wind speed of 39 miles per hour or greater and has been named and declared by the National Hurricane Service (NHS) or Central Pacific Hurricane Center (CPHC) to be a Hurricane, Typhoon, Tropical Cyclone or Tropical Storm.

"Named Storm" also includes the following:

1. Any one or more tornadoes that are a result of actions or effects of a "Named Storm."
2. Any hail or sleet that is a result of a "Named Storm."
3. Any material, object or debris that is carried, propelled or in any manner moved by a "Named Storm."

The period of time for a "Named Storm" shall begin when the NHS or CPHC issues a watch or warning and ends 72 hours after the termination of the watch or warning.

**SOUTH CAROLINA MUNICIPAL INSURANCE
& RISK FINANCING FUND (SCMIRF)**

AGREED AMOUNT ENDORSEMENT

ENDORSEMENT attaching to and forming part of the SCMIRF Coverage Contract for the City/Town of Cottageville

Effective date of this endorsement: January 1, 2011 until cancelled.

It is agreed between SCMIRF and the Member that the property referenced below is subject to the following valuation and conditions in the event of a property loss.

As respects Section II, Property Coverage, J. Valuation, Item 1:

Building Description	Address	Square Footage	Building Valuation/Limit	Contents Valuation/Limit
BRICK CLASSROOM BUILDING	72 SALLY ACKERMAN	7,000	\$70,000	

Building and Personal Property

The above stated value is the agreed valuation and is the maximum liability to SCMIRF.

Valuation - Actual Cash Value

All losses to the specified location will be subject to Actual Cash Value at the time of the loss.

Except as amended in this Endorsement, this insurance is subject to all coverage terms, clauses and conditions in the policy to which this Endorsement is attached.

**SOUTH CAROLINA MUNICIPAL INSURANCE
& RISK FINANCING FUND (SCMIRF)**

AGREED AMOUNT ENDORSEMENT

ENDORSEMENT attaching to and forming part of the SCMIRF Coverage Contract for the City/Town of Cottageville

Effective date of this endorsement: January 1, 2011 until cancelled.

It is agreed between SCMIRF and the Member that the property referenced below is subject to the following valuation and conditions in the event of a property loss.

As respects Section II, Property Coverage, J, Valuation, Item 1:

Building Description	Address	Square Footage	Building Valuation/Limit	Contents Valuation/Limit
OLD SCHOOL	72 SALLY ACKERMAN	15,000	\$150,000	

Building and Personal Property

The above stated value is the agreed valuation and is the maximum liability to SCMIRF.

Valuation - Actual Cash Value

All losses to the specified location will be subject to Actual Cash Value at the time of the loss.

Except as amended in this Endorsement, this insurance is subject to all coverage terms, clauses and conditions in the policy to which this Endorsement is attached.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON) FOURTEENTH JUDICIAL CIRCUIT

Ashley Reeves as Personal) Civil Action No. 2014-CP-15-135
Representative for the Estate of Albert)
Carl "Bert" Reeves,)

Plaintiff,) ANSWER TO AMENDED
) COMPLAINT FOR
vs.) DECLARATORY JUDGMENT
) (Non-Jury)

South Carolina Municipal Insurance and)
Risk Financing Fund ("SCMIRF"))

Defendant.)

Defendant South Carolina Municipal Insurance and Risk Financing Fund
("SCMIRF") hereby submits this Answer to Plaintiff Ashley Reeves as Personal
Representative for the Estate of Albert Carl "Bert" Reeves' ("Plaintiff") Amended
Complaint for Declaratory Judgment. Except as specifically admitted herein, each and
every allegation in Plaintiff's Amended Complaint is expressly denied.

FOR A FIRST DEFENSE

1. SCMIRF admits the allegations in Paragraph 1.
2. SCMIRF admits the allegations in Paragraph 2.
3. SCMIRF admits the allegations in Paragraph 3, upon information
and belief.
4. SCMIRF admits the allegations in Paragraph 4.
5. SCMIRF admits the allegations in Paragraph 5, in so far as they
coincide with the Judgment attached as Exhibit 1, Attachment A.
6. SCMIRF admits the allegations in Paragraph 6.

7. Answering Paragraph 7, SCMIRF admits that Price was an employee of the Town of Cottageville Police Department at all times relevant to this lawsuit and admits, upon information and belief, that Price is a resident of Colleton County, South Carolina.

8. Answering Paragraph 8, SCMIRF admits that Craddock was an employee of the Town of Cottageville Police Department at all times relevant to this lawsuit and admits, upon information and belief, that Craddock is a resident of Colleton County, South Carolina.

9. Paragraph 9 contains a legal conclusion, which does not require a response. To the extent a response is deemed necessary, SCMIRF admits this Court has jurisdiction pursuant to the Declaratory Judgments Act, S.C. Code Ann. § 15-53-10 *et seq.*, and its equitable powers.

10. Answering Paragraph 10, SCMIRF admits it is an agency established by municipalities of the State of South Carolina as a joint inter-local agency to operate a fund for liability risk sharing.

11. Answering Paragraph 11, SCMIRF admits it was established in accordance with Article VIII, section 13 of the South Carolina Constitution and S.C. Code Ann. § 15-78-140(b)(4).

12. SCMIRF admits the allegations in Paragraph 12 with respect to all times pertinent to this action, and craves reference to Exhibit 1, Attachment C incorporated therein by reference.

13. SCMIRF admits the allegations in Paragraph 13, in so far as they coincide with the Coverage Contract attached as Exhibit 1, Attachment D.

14. Answering Paragraph 14, SCMIRF admits only that the Federal Lawsuit resulted in a \$97.5 million judgment on claims for negligence and Title 42 of the United States Code Section 1983 related to the shooting and death of Bert Reeves by Price while Price was acting within the scope of his employment as a Town of Cottageville Police Officer.

15. Answering Paragraph 15, SCMIRF denies that it acted in bad faith in failing to settle the Federal Lawsuit prior to trial. Further answering Paragraph 15, SCMIRF maintains its position that it did not act in bad faith and, even if it acted in bad faith (which is expressly denied), any claim would be subject to the South Carolina Tort Claims Act. Otherwise, the allegations of Paragraph 15 are admitted.

16. SCMIRF admits the allegations in Paragraph 16 insofar as they are consistent with the comprehensive settlement and craves reference to the Stipulated Facts attached as Exhibit 1.

17. Answering Paragraph 17, SCMIRF admits that the legal questions outlined are those which the parties agreed to have resolved as part of the settlement of the Federal Lawsuit. Further answering Paragraph 17, SCMIRF expressly denies the positions taken by Plaintiff on each of the legal questions outlined.

18. Answering Paragraph 18, SCMIRF admits that the parties disagree on the two legal questions outlined in Paragraph 17, and that Plaintiff filed the Amended Complaint asking the Court to declare answers to the two legal questions posed. Further answering Paragraph 18, SCMIRF expressly denies the positions taken by Plaintiff on each of the legal questions outlined.

19. Answering Paragraph 19, SCMIRF admits that this Court can conclude this case by deciding the two legal questions outlined and without the need for specific findings of fact.

20. Answering Paragraph 20, SCMIRF admits that the parties have stipulated to the necessary facts, which are attached as Exhibit 1, to the Amended Complaint. SCMIRF also admits that there is no need for discovery.

21. Answering Paragraph 21, SCMIRF re-alleges its responses to Paragraphs 1-20 as if set forth fully herein.

22. Answering Paragraph 22, SCMIRF admits that the parties agreed to litigate the issue of whether Reeves' claims made against Cottageville, Price, and Craddock relating to the shooting and death of Bert Reeves result in there being more than \$1,000,000.00 in indemnity coverage available under the Coverage Contract with respect to all such claims. Further answering Paragraph 22, SCMIRF denies that there is more than \$1,000,000.00 in indemnity coverage available under the Coverage Contract with respect to all such claims.

23. Answering Paragraph 23, SCMIRF denies that there is more than one occurrence based on the facts and claims related to the hiring, retention, supervision, and shooting death of Bert Reeves and, thus, there is not more than \$1,000,000.000 in indemnity coverage available under the Coverage Contract with respect to such claims.

24. Answering Paragraph 24, SCMIRF admits that its position is that the Coverage Contract provides only for \$1,000,000.00 in indemnity coverage with respect to the aforementioned claims in Paragraph 23, above.

25. Answering Paragraph 25, SCMIRF admits that a substantial controversy exists between the parties to warrant the issuance of a declaratory judgment by this Court.

26. Answering Paragraph 26, SCMIRF denies that the Coverage Contract provides \$1,000,000.00 for each independent, separate act of negligence or actionable conduct against Cottageville, Price, and Craddock. Further answering Paragraph 26, SCMIRF states that the Coverage Contract provides only \$1,000,000.00 in indemnity coverage for all of the acts complained of by Plaintiff.

27. Answering Paragraph 27, SCMIRF re-alleges its responses to Paragraphs 1-26 as if set forth fully herein.

28. Answering Paragraph 28, SCMIRF denies that it engaged in bad faith with regard to its handling of the claims relating to the shooting and death of Bert Reeves under the underlying Federal Lawsuit. Further answering Paragraph 28, SCMIRF maintains its position that it did not act in bad faith and, even if it acted in bad faith (which is expressly denied), any claim would be subject to the South Carolina Tort Claims Act. Otherwise, Paragraph 28 is admitted.

29. Answering Paragraph 29, SCMIRF denies that it engaged in bad faith with regard to its handling of the claims relating to the shooting and death of Bert Reeves under the underlying Federal Lawsuit. Further answering Paragraph 29, SCMIRF admits that Cottageville informed SCMIRF that it intended to assign any bad faith claim, to the extent any exist in its favor (which is expressly denied), to Reeves.

30. Answering Paragraph 30, SCMIRF denies that it engaged in bad faith with regard to its handling of the claims relating to the shooting and death of Bert

Reeves under the underlying Federal Lawsuit. Further answering Paragraph 30, SCMIRF admits that any such action for alleged bad faith would be subject to the South Carolina Tort Claims Act.

31. Answering Paragraph 31, SCMIRF denies Plaintiff's position and states that any such action for alleged bad faith would be subject to the South Carolina Tort Claims Act. SCMIRF admits Plaintiff is making the contention that that the South Carolina Tort Claims Act does not apply to a claim of bad faith against SCMIRF.

32. Answering Paragraph 32, SCMIRF admits that a substantial controversy exists between the parties to warrant the issuance of a declaratory judgment by this Court.

33. Answering Paragraph 33, SCMIRF states that any claim for alleged bad faith against SCMIRF is subject to the South Carolina Tort Claims Act and admits Reeves seeks a contrary declaration.

34. Answering the Paragraph beginning with "WHEREFORE," SCMIRF expressly denies the declarations sought by Plaintiff in subparagraphs (a) and (b), and asks that the Court declare that there is only one occurrence under the Coverage Contract, which provides for indemnity coverage totaling \$1,000,000.00, and that any claim for alleged bad faith brought against SCMIRF would be subject to the South Carolina Tort Claims Act.

FOR A SECOND DEFENSE
(\$1,000,000.00 per occurrence limit of coverage)

35. SCMIRF re-alleges its responses to Paragraphs 1-34 as if set forth fully herein.

36. The Coverage Contract, a copy of which is attached as Exhibit 1, Attachment D, and incorporated herein by reference, provides coverage for certain risks subject to terms, conditions, limitations, and exclusions.

37. The limit set forth on the declarations page for Law Enforcement Liability Coverage is \$1,000,000.00 per occurrence.

38. The claims made and verdict rendered against Cottageville and Price related to the hiring, retention, supervision, and shooting death of Bert Reeves and the claims made against Craddock result in there being only \$1,000,000.00 in indemnity coverage.

39. Accordingly, SCMIRF is entitled to and seeks a declaration that the applicable liability limit is \$1,000,000.00, and that the answer to question 1) under Paragraph 17 in Plaintiff's Amended Complaint is that the limit of coverage is \$1,000,000.

FOR A THIRD DEFENSE
(South Carolina Tort Claims Act)

40. SCMIRF re-alleges its responses to Paragraphs 1-39 as if set forth fully herein.

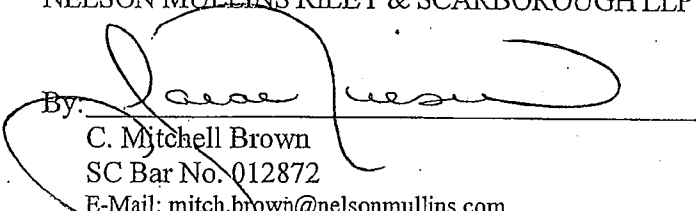
41. SCMIRF is an inter-local agency established by municipalities of the State of South Carolina to operate a fund for liability risk sharing.

42. SCMIRF was established pursuant in accordance with Article VIII, section 13 of the South Carolina Constitution and is subject to S.C. Code Ann. § 15-78-140(b)(4). As such, SCMIRF is afforded the protections of the South Carolina Tort Claims Act and any claim against it for alleged bad faith would be subject to those protections. SCMIRF thus maintains it is entitled to and seeks a declaration from this

Court that the answer to question 2) in Paragraph 17 of Plaintiff's Amended Complaint is that SCMIRF would be entitled to the protections of the South Carolina Tort Claims Act.

WHEREFORE, having responded to the allegations in the Amended Complaint, SCMIRF requests that this Honorable Court make the declarations as set forth above.

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10/26, 2015

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF COLLETON) CASE NO.: 2014-CP-15-00135

ASHLEY REEVES, AS PERSONAL REPRESENTATIVE)
OF THE ESTATE OF ALBERT CARL "BERT")
REEVES,)

PLAINTIFF,)

VS.)

TRANSCRIPT OF RECORD

SOUTH CAROLINA MUNICIPAL INSURANCE AND)
RISK MANAGEMENT FUND,)

DEFENDANT.)

TUESDAY, MAY 17TH, 2016
COMMENCING AT
COLLETON COUNTY COURTHOUSE
WALTERBORO, SOUTH CAROLINA
BEFORE THE HONORABLE PERRY M. BUCKNER, III.

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1

1 THE COURT: Let's start with - I've been through this
2 so many times, but I think the correct case number now,
3 based on Mr. McLeod's summons dated October 16th, 2015, is
4 2014-CP-15-135; does everybody agree that that is the
5 correct CP number?

6 MR. BROWN: Yes, Your Honor.

7 MR. MCLEOD: Yes, Your Honor.

8 THE COURT: All right. Becky, you have the caption and
9 this is Ashley Reeves, as Personal Representative for the
10 Estate of Albert Carl "Bert" Reeves, plaintiff, vs. the
11 South Carolina Municipal Insurance Risk and Financing Fund,
12 S-C-M-I-R-F, which the lawyers have referred to as "SCMIRF"
13 in my chambers.

14 Present before me this morning is Mr. Mullins McLeod
15 for the plaintiff. Also for the plaintiff is Ms. Jackie
16 Edgerton. Present before me this morning for the defendant
17 is Mr. Mark Phillips and Mr. Mitch Brown, representing the
18 defendant. Somewhere I hope I have in the back, I believe I
19 do, Ms. Emily Limehouse. Emily, come on up here and get
20 closer, so you don't feel like you have to sit way back
21 there. It's a pleasure to have you here. Emily was Judge
22 Norton's law clerk when this matter was tried in Federal
23 Court, and she has driven all the way, as has Mitch Brown,
24 from Columbia today for purposes of this hearing. I also
25 have my friend, Mr. Jack Bonds, out here. Jack is at

1 Clemson University and he's the son of Bobby Bonds, who is a
2 local attorney and city council member, and he wanted to
3 come witness the hearing today.

4 In our meeting this morning, both sides have filed
5 cross motions for summary judgment and I'm going to go
6 through that in just a minute, and both sides have
7 stipulated certain facts, which are pretty much consistent
8 with what the pleadings reflect as to what was admitted in
9 the pleadings when Mr. McLeod served his amended complaint
10 in this matter.

11 And what the parties have agreed is that since they've
12 both filed motions for summary judgment and there are
13 stipulated facts in this case, Mr. McLeod is going to be the
14 only one to argue for the plaintiff.

15 There are two issues that the pleadings asked the Court
16 to address. Mr. McLeod is going to open on both issues.
17 Then, I'm going to have a response from Mr. McLeod's
18 argument, first, by Mr. Brown, who is going to deal with
19 what I call issue one, whether there was more than one
20 occurrence. And then a response by Mr. Phillips on issue
21 two, whether or not the Tort Claims Act is applicable to the
22 South Carolina Municipal Insurance and Risk Financing Fund.

23 Then, Mr. McLeod will get a brief reply. Then, Mr.
24 Brown will get a brief reply, and I emphasize "brief" on
25 issue one, and then finally, Mr. Phillips will get a brief

1 reply on issue two, since both are moving parties and both
2 have asked for that order. Have I accurately stated what
3 occurred in chambers, insofar as the plaintiff is concerned?

4 MR. MCLEOD: You have, Your Honor.

5 THE COURT: Insofar as the defendants are concerned?

6 MR. BROWN: Yes, Your Honor.

7 THE COURT: All right. Now, let me talk a little bit
8 about what brought us here. Becky, I've given you the
9 caption. This is a declaratory judgment action. It arises
10 out of two different lawsuits that were brought by the
11 plaintiff. One against the Town of Cottageville and Officer
12 Randall Price, and the other against John Craddock, who was
13 an employee of the Town of Cottageville, for the shooting
14 death of Albert Carl "Bert" Reeves.

15 Both of these cases were removed to Federal Court where
16 a verdict was found for the plaintiff in the amount of
17 \$97,000,500,000. The only case that was tried, as is my
18 understanding, was the case brought for both wrongful death
19 and conscious pain and suffering; is that correct?

20 MR. MCLEOD: That's correct, Your Honor. The case that
21 was tried was the case against the Town of Cottageville and
22 Randall Price.

23 THE COURT: That's right, but the case involving
24 against John Craddock was never tried, but is part of the
25 global settlement?

1 MR. MCLEOD: That's correct, Your Honor.

2 THE COURT: All right. Both cases were removed to
3 Federal Court. That is both the case against Mr. Price and
4 the case against Mr. Craddock, where a verdict was found for
5 the plaintiff only in the Price case.

6 The jury's verdict in Federal Court found that Officer
7 Price was negligent in proximately causing Bert Reeves'
8 death. The jury also found that Officer Price violated Bert
9 Reeves' constitutional right to be free from the use of
10 excessive force, which is actionable under 42 USC 1983. The
11 jury also found that Officer Price violated Bert Reeves'
12 constitutional right to be free from unnecessary seizure,
13 which was actionable under 42 USC 1983.

14 The jury also found in Federal Court that the Town of
15 Cottageville was negligent in its hiring of Officer Price.
16 That the Town of Cottageville was negligent in its
17 supervision of Officer Price. That the Town of Cottageville
18 was negligent in its retention of Officer Price. That the
19 Town of Cottageville was negligent in its failure to train
20 Officer Price.

21 It also found that the Town of Cottageville was liable
22 under 42 USC 1983 for Price's use of excessive force. It
23 also found that the Town of Cottageville was liable under 42
24 USC 1983 for its deliberate indifference to the
25 constitutional rights of its citizens in hiring Officer

1 Price. And it found that the Town of Cottageville was
2 liable under 42 USC 1983 for its deliberate indifference to
3 the constitutional rights of its citizens in failing to
4 properly train Officer Price. All of which the jury found
5 contributed to Mr. Reeves' death.

6 After the verdict in Federal Court, the parties entered
7 into a comprehensive settlement agreement contingent upon
8 the outcome of this declaratory judgment action. This
9 declaratory judgment action asked the Court to answer two
10 questions.

11 Question one: do the claims made and the verdict
12 rendered against the Town of Cottageville and Randall Price,
13 relating to the hiring, retention, supervision, and shooting
14 death of Mr. Reeves result in there being more than
15 \$1,000,000 in indemnity coverage available under the terms
16 of the South Carolina Municipal Insurance and Risk Financing
17 Fund, or SCMIRF, coverage contract with the Town of
18 Cottageville with respect to all such claims, including the
19 claim made against John Craddock, which was a separately
20 styled action, but never tried in Federal Court to a
21 verdict.

22 Question Two, would a tort claim for bad faith brought
23 against the South Carolina Municipal Insurance and Risk
24 Financing Fund be subject to the South Carolina Tort Claims
25 Act, which is South Carolina Code Section 15-78-10, et seq.

1 Both parties to this action have submitted motions for
2 summary judgment on these questions and have stipulated to
3 the facts of this case. Now, in their settlement agreement,
4 the parties provided for the payment of what is known as
5 contingent settlement funds, based on the outcome of the
6 declaratory judgment action.

7 For each question, and there are two presented in the
8 declaratory judgment action answered in favor of the
9 plaintiff, the SCMIRF, or the South Carolina Municipal
10 Insurance and Risk Financing Fund would agree to pay an
11 additional \$1,000,000 of contingent settlement funds to the
12 plaintiff.

13 Therefore, if the Court answered both questions in
14 favor of the plaintiff, the South Carolina Municipal
15 Insurance and Risk Financing Fund would pay \$2,000,000 in
16 contingent settlement funds.

17 If only one of the questions was answered in the
18 plaintiff's favor, then the fund would pay one million in
19 contingent settlement funds and if both questions are
20 answered in favor of the defendant, South Carolina Municipal
21 Insurance and Risk Financing Fund, then no additional
22 contingent settlement funds would be paid.

23 Now, for purposes of today's hearing, the parties
24 entered into a settlement agreement, which was signed by the
25 parties, and then ultimately there was an Order signed by

1 Judge Norton dated March 3rd, 2015, approving the settlement
2 in Federal Court.

3 The parties first sought to ask the Appellate Court to
4 take original jurisdiction of these matters, but in the
5 event the Court chose not to do so, then the parties agreed
6 that they would have the matter heard by the Court of Common
7 Pleas here in Colleton County, and the agreement provides
8 that they would appeal the matter and get a final decision
9 from the Appellate Court concerning the two issues which
10 I've outlined.

11 The parties entered into a stipulation of facts and
12 issues, which has been filed with the Court here in Colleton
13 County. The parties stipulate that Ashley Reeves is the
14 duly appointed personal representative of the Estate of
15 Albert Carl "Bert" Reeves. That the parties stipulate that
16 the Town of Cottageville, as a South Carolina Municipality,
17 located in Colleton County, South Carolina, and was at all
18 times relevant to the pleadings herein, the employer of
19 Randall Price and John Craddock, both which were policemen
20 for the Town of Cottageville.

21 The parties stipulate that on May 16th, 2011, Randall
22 Price, while acting within the scope of his employment as a
23 Cottageville Police Officer, shot and killed Albert Carl
24 "Bert" Reeves.

25 The parties stipulate that Reeves held a judgment

1 obtained in the case of Ashley Reeves v. The Town of
2 Cottageville and Randall Price, which was obtained at the
3 United States District Court, Charleston Division, in the
4 sum of \$97,500,000 against the defendants who were in that
5 action The Town of Cottageville and Randall Price.

6 The verdict form and the judgment from the Federal
7 lawsuit are filed with the Clerk of Court here in Colleton
8 County and are attached as exhibits. In addition to the
9 judgment, the plaintiff, Reeves, claims that John Craddock
10 was negligent with regard to the death of Bert Reeves due to
11 certain actions or omissions attributable to him in the
12 scope of his employment as a Cottageville Police Officer,
13 and these claims were the subject of an additional Federal
14 Court lawsuit which was filed Ashley Reeves, as Personal
15 Representative for the Estate of Albert Carl Reeves,
16 plaintiff, vs. John Craddock, individually, as defendant.

17 The parties stipulate also that the South Carolina
18 Municipal Insurance Risk Financing Fund, or SCMIRF, has
19 bylaws, which are attached as Exhibit B, and filed with the
20 Clerk of Court of Colleton County. The defendant and
21 plaintiff agree that SCMIRF is an unincorporated, voluntary,
22 self-insurance pool in the State of South Carolina.

23 The parties stipulate that members participating in
24 SCMIRF have entered into an inter-governmental agreement.
25 The Town of Cottageville is one of the municipalities that

1 entered into the inter-governmental agreement and therefore,
2 the parties stipulate that the Town of Cottageville is a
3 member, or a participant, in SCMIRF.

4 This inter-governmental agreement is filed with the
5 Clerk of Court, and is Exhibit C, and was executed on behalf
6 of Cottageville. It is attached to their stipulation.

7 The parties also stipulate that during the period of
8 January 1st, 2011, to January 1st, 2012, SCMIRF provided
9 coverage to Cottageville for certain risks that were set
10 forth in the 2011 coverage contract between SCMIRF and the
11 Town of Cottageville. It was subject to the terms and
12 conditions, limitations, and exclusions therein. A copy of
13 that contract is also attached to the stipulation here as
14 Exhibit B. The contract represents the agreement between
15 SCMIRF and the Town of Cottageville regarding coverage.

16 The parties also stipulate that the case of Ashley
17 Reeves as Personal Representative of the Estate of Albert
18 Carl Reeves v. Cottageville and Randall Price, which was
19 tried for a verdict in the United States District Court has
20 been settled, but a material term of that settlement is that
21 there be a final Appellate Court decision regarding the two
22 issues which I've outlined earlier listed in this litigation
23 between the petitioner before me today and the respondent.

24 Although the parties don't have it in their
25 stipulation, I think the parties would agree that the global

1 settlement also refers to the action involving John
2 Craddock; is that correct, from the plaintiff?

3 MR. MCLEOD: Yes, Your Honor.

4 THE COURT: Is that correct from the defendant?

5 MR. BROWN: Yes, Your Honor.

6 THE COURT: All right. The parties agree that they
7 would first ask the South Carolina Supreme Court to exercise
8 its powers for original jurisdiction over this matter;
9 however, the Court denied their petition for cert.
10 Therefore, the plaintiff has now filed her amended complaint
11 here in Colleton County for declaratory judgment.

12 The parties also have informed me in the conference
13 this morning, and it's in their stipulation of facts, that
14 there are no other facts they feel are necessary for the
15 Court to answer the stipulated questions. That no discovery
16 is needed in this case, and that the stipulated issues, they
17 believe, only raise questions of law and no disputes of fact
18 for purposes of this hearing. Therefore, both have filed
19 cross motions for summary judgment.

20 The parties also believe and stipulate that the
21 resolution of these stipulated issues that I've referred to,
22 the two issues before the Court, is a part of their
23 settlement of this litigation, but that the stipulated
24 issues will also materially affect the South Carolina
25 Municipal Insurance and Risk Management Fund and litigation

1 relating to members of the South Carolina Municipal Risk
2 Management and other future matters.

3 I think now that I've accurately covered all of the
4 matters that occurred before getting here. Is there
5 anything on the history of this case from the plaintiff
6 before we begin with argument?

7 MR. MCLEOD: Your Honor, the only thing I would add is
8 that the time the parties agreed to litigate the two issues
9 that are before this Court, there was an agreement by the
10 parties for ten million dollars to be paid in settlement
11 funds which are not contingent, and they have been dispersed
12 and this litigation has no impact on that lump sum payment,
13 Your Honor.

14 THE COURT: I assume, Mr. Phillips, that you and Mr.
15 Brown agree that that is correct?

16 MR. BROWN: Your Honor, assuming the remaining part of
17 the settlement agreement is carried out as we have already
18 discussed with you answering the questions, yes.

19 MR. PHILLIPS: Yes, Your Honor.

20 THE COURT: Counsel approach.

21 (Off the record, briefly.)

22 THE COURT: Mr. Brown, Mr. McLeod has stated an
23 addendum to my history of this case concerning the agreement
24 that the parties entered into, which was approved by Judge
25 Norton's Order, and my understanding is that you have

1 advised me at the bench that what Mr. McLeod has stated
2 accurately states the terms of that agreement; is that
3 correct insofar as the defendant is concerned?

4 MR. BROWN: It is correct, insofar as the defendant is
5 concerned consistent with the remaining terms of agreement.

6 THE COURT: All right. Now, I understand that the
7 agreement is lengthy and that there is -- I assume that
8 y'all have attached it. Do either one of you want to make
9 the agreement and Judge Norton's Order a part of the record
10 of this hearing?

11 MR. MCLEOD: I think that would be good, Your Honor.

12 THE COURT: It's not attached to your stipulation.

13 MR. BROWN: I've got it.

14 THE COURT: Any objection, Mr. McLeod?

15 MR. MCLEOD: No, Your Honor.

16 THE COURT: Very good. We'll mark this is a Court
17 Exhibit's One.

18 (Whereupon, Court Exhibit Number One, Judge Norton's
19 Order approving settlement and Settlement Agreement, is
20 received into the record of this hearing.)

21 THE COURT: Becky, let the record reflect that without
22 objection, both sides have agreed to enter as Court's
23 Exhibit Number One, Judge Norton's Order approving
24 settlement in the United States District Court for South
25 Carolina. That Order is dated March 3rd, 2015, and attached

1 to that Order is the Settlement Agreement that the parties
2 entered into on February 26th, 2015, which Mr. McLeod and
3 Mr. Brown just referred which contains the provision
4 concerning in paragraph four the Continued Litigation of
5 Unresolved Issues and defines the issues which would be
6 resolved before this Court and an Appellate Court and the
7 amount that would be payable depending on the outcome of
8 those issues whether in favor of the plaintiff or the
9 defendant, and there is also provision in that agreement
10 concerning the allocation of any contingent settlement
11 funds.

12 With that, I believe, now, I've traced what has been
13 the history of this matter. Anything further on the
14 history, from counsel for the plaintiff?

15 MR. MCLEOD: No, Your Honor.

16 THE COURT: Counsel for the defendant?

17 MR. BROWN: No, Your Honor.

18 THE COURT: Both of you believe that the Court has
19 accurately stated what brought us here today; is that
20 correct?

21 MR. MCLEOD: That is correct, Your Honor.

22 THE COURT: Is that correct, Mr. Brown?

23 MR. BROWN: Yes, sir.

24 THE COURT: Mr. Phillips?

25 MR. PHILLIPS: Yes, sir.

1 THE COURT: All right. Mr. McLeod, you are first and
2 I'm going to hear you on both of the issues involved. Bring
3 anything that you want. You can use the rostrum. All of
4 the microphones are on.

5 MR. MCLEOD: May it please the Court, Your Honor?

6 THE COURT: Yes, sir.

7 MR. MCLEOD: First, even though the issues -- it's not
8 that all issues that come before this Court aren't
9 important, I do believe that these particular issues are of
10 significant importance for a lot of reasons. The first of
11 which is that on issue number one, in particular, is if this
12 Court were to adopt what SCMIRF is asking this Court to
13 rule, then, in essence, you can have multiple insurers, all
14 of who are named defendants in a lawsuit, all of whom have
15 committed individual distinct acts of negligence, that
16 despite that, there is only one million dollars in coverage
17 and it would have, in effect, many people working for
18 municipalities, for the state as political subdivisions, who
19 are working without insurance.

20 In this case, the one that was tried, when we dealt
21 with this issue, and Your Honor has a copy of Heather
22 Ricard's deposition, a 30(b)(6) deposition that I took
23 trying to get to the bottom of why SCMIRF was taking the
24 position that they were taking. You will see in the
25 deposition, I asked her, "Well, if there's a verdict against

1 Mr. Price for his independent acts of negligence, and the
2 jury finds that his independent acts of negligence
3 proximately caused Bert Reeves' death, and the jury also
4 finds that the Town of Cottageville committed independent
5 acts of negligence and that their independent distinct acts
6 of negligence were the proximate cause of Mr. Reeves'
7 injury, how do you protect both insurers?" And what you'll
8 see in her deposition testimony is she didn't really have a
9 good answer. All she would say is, "There's just one
10 million in coverage. There's just one million in coverage."

11 And so I asked her, "Well, what happens when there's a
12 verdict and you send my office a check for one million
13 dollars and I tell you, 'Fine, we will accept the one
14 million dollars and we will release one defendant.' What
15 are you going to do?" "Well, they're not going to give you
16 the one million dollars without the release," and so it pits
17 one insurer against the other, and in effect, it leaves law
18 enforcement officers, the practical effect of it, it leaves
19 them without insurance.

20 And when I deposed Ms. Ricard, of course, I asked her,
21 because she is a sophisticated executive for SCMIRF, "Well,
22 would you agree with me that Court's historically have
23 looked at whether or not occurrence in an insurance policy
24 comes from either the number of injuries or from the acts of
25 negligence?" And she basically agreed with that, and as

1 Your Honor knows, our Supreme Court has addressed that issue
2 in the Boiters' Opinion, and after looking at other
3 circuits, ultimately what our Supreme Court said was that in
4 South Carolina, the word "occurrence" as it is contained in
5 the Tort Claims Act, is based upon the number of negligent
6 acts. So for example, in the Boiters case, you had the
7 highway department and you have the Department of Public
8 Safety, and you had the DOT, both of whom had committed
9 independent acts of negligence that the jury found
10 proximately caused the accident in that case and because of
11 that, there was more than one occurrence.

12 When I asked Ms. Ricard, "Okay, you're telling me that
13 the SCMIRF policy is based upon the number of injuries, what
14 happens if Randall Price runs a red light and kills two
15 people, how much coverage is there?" "There's only one
16 million." And so it became pretty clear to me that, from a
17 SCMIRF standpoint, there position is it's one million no
18 matter what. And of course, as we briefed, that is not
19 consistent with their policy and it's not consistent with
20 the law of South Carolina.

21 So it's of particular significance, Your Honor, moving
22 forward because as our Brief has pointed out, SCMIRF has
23 taken inconsistent positions with regard to how many
24 occurrences there are in their own policy. We submitted,
25 Your Honor, an affidavit from Fritz Jekel who was co-class

1 counsel in the Stratford raid case. If you remember some
2 years ago where some law enforcement officers did a raid on
3 the school, ultimate litigation ensued, and of course, the
4 litigation was that there was a class action, numerous kids,
5 all of whom were claiming constitutional violations.

6 SCMIRF was the insurer in that case, and as Mr. Jekel's
7 affidavit points out in that case, SCMIRF said the opposite
8 thing to Mr. Jekel. They said, "No, the number of
9 occurrences is not based on the number of injuries. There
10 was one raid; therefore, there's only one occurrence."

11 Despite the fact that there are multiple injuries claimed by
12 multiple different children. And so, they have taken
13 inconsistent positions, and that's one reason why we're
14 happy that this issue is before the Court so that we can
15 prevent that from happening going forward.

16 As far as the policy is concerned itself, Your Honor,
17 if it pleases the Court, may I hand up a copy of the policy
18 for you?

19 THE COURT: I think I have it right here in front of
20 me. You just tell me -- you can hand it to me, but I've got
21 it in front of me.

22 MR. MCLEOD: Okay.

23 THE COURT: Let the record reflect, Becky, that Mr.
24 McLeod has handed me the 2011 coverage contract between the
25 South Carolina Municipal Insurance and Risk Financing Fund

1 and the Town of Cottageville, which I referred to earlier
2 concerning the stipulations.

3 MR. MCLEOD: And Your Honor, first, before we get to
4 the specific language in the contract, Ms. Ricard testified
5 and agreed with me in her 30(b)(6) deposition that a per
6 occurrence policy is not an aggregate policy. For example,
7 in an aggregate policy there is one million dollars in
8 aggregate coverage no matter what. A per occurrence policy,
9 of course, we submit, is just that. For every occurrence
10 there is one million dollars in coverage.

11 And she agreed with me in her deposition that the
12 premium that's charged for a per occurrence policy is
13 greater than a premium charged for an aggregate policy for
14 the obvious reasons. The exposure is greater, multiple
15 occurrences, multiple millions requires a greater premium,
16 whereas the one million in the aggregate, there's less
17 exposure and requires a smaller premium.

18 THE COURT: The defendant argues, Mr. McLeod, and I
19 don't want to jump ahead of your argument. The defendant
20 argues that the limit on the declarations page of this
21 policy for law enforcement liability is a million per
22 occurrence. Tell me your response to that argument based on
23 the language of law enforcement liability in the policy.

24 MR. MCLEOD: I will, Your Honor. If you look at page
25 3, if you will, which is the General Provisions.

1 THE COURT: I'm with you, which you have kindly
2 highlighted for me, Mr. McLeod. Let the record reflect,
3 counsel, that he is referring me Section I, page 3 of the
4 contract, and he's calling my attention to paragraph 4.
5 There are two paragraphs to four. One begins with the word
6 "Occurrence," which is defined, and the second paragraph
7 begins with "Only when used to describe coverage limits on a
8 per "occurrence" basis." Are both of you with us now?

9 MR. PHILLIPS: Yes, Your Honor.

10 MR. BROWN: Yes, sir.

11 THE COURT: Proceed, Mr. McLeod.

12 MR. MCLEOD: Thank you, Your Honor. Of particular
13 significance is the second paragraph of Paragraph 4 on page
14 3, and I'll just read for the record. "Only when used to
15 describe coverage limits on a per "occurrence" basis or when
16 otherwise describing whether an event, or a series of
17 events, constitutes one loss for coverage purposes or more
18 than one loss, the word "occurrence" means a covered event
19 of the sort expressly described in the insuring agreement of
20 the relevant covered section."

21 And so the way to read this policy, Your Honor, with
22 regard to occurrences is after you see that language, you
23 then turn to page 51, which is the coverage section for law
24 enforcement liability.

25 THE COURT: Which was my question. We're now at

1 Section IV of the contract, Mr. Brown, page 51. He's now
2 going to refer to Paragraph A in Section IV, which is
3 entitled Law Enforcement Employees Coverage; are you there?

4 MR. BROWN: Yes, sir.

5 THE COURT: Proceed.

6 MR. MCLEOD: And Your Honor, this is again the coverage
7 section for law enforcement liability, and what you will see
8 in this section is that clearly both the letter and the
9 intent in the policy is governed by acts of negligence as
10 opposed to the number of injuries. And for the record,
11 under Paragraph 1, "SCMIRF agrees, subject to the
12 limitations, terms, and conditions hereunder mentioned to
13 pay on behalf of the member or covered persons" -- covered
14 persons would include Mr. Craddock and Mr. Price, "for sums
15 which the member or covered persons" -- again, the member is
16 the Town, the covered persons are Mr. Craddock or Mr. Price,
17 "shall be obligated to pay exclusively as money damages
18 because of a, one, wrongful act" -- that's the only
19 reference there. "We're going to pay for money damages that
20 are ruled against you for a wrongful act by a member, a law
21 enforcement employee, or other covered persons while acting
22 in conjunction with the law enforcement employees."

23 And if you look at the next to last paragraph, Your
24 Honor, of Section 1, the policy specifically says, "Any
25 liability covered by this Section IV must arise out of the

1 performance of a covered person's duties to provide law
2 enforcement or other SCMIRF approved activities pertaining
3 thereto, or both, as declared in the Application."

4 And what's important there, Your Honor, and I'll go
5 through ---

6 THE COURT: Where were you referring to then? Section
7 I of what?

8 MR. MCLEOD: I'm sorry, Your Honor. So on page 51,
9 Section I, Coverage Agreements, the next to last paragraph
10 which begins with "Any liability covered by this Section
11 IV".

12 THE COURT: I'm with you now.

13 MR. MCLEOD: And so what is important about that is
14 from an insurance standpoint, of course, what they are
15 insuring and underwriting is a risk, and it's a risk of
16 wrongful acts committed by their insured they can subject
17 them to liability. That is something that fits in a
18 statistical model for which an insurance carrier can't
19 analyze the risk and assign a premium.

20 What an insurance company cannot do is underwrite how
21 many sprained ankles there are going to be in Cottageville;
22 how many hurt necks there are going to be in Cottageville.
23 That's a risk that they can't underwrite. And that's why
24 the policy is so specific and driven towards the number of
25 negligent acts.

1 For example, Your Honor, if you'll look at page 6 of
2 the policy, and in particular paragraph 7.

3 THE COURT: And just for the record, Mr. McLeod,
4 because y'all refer to it as a contract in your
5 stipulations, and you're referring to it as a policy --
6 that's fine, but I want the record to be clear. This is the
7 2011 Coverage Contract between the Town of Cottageville and
8 South Carolina Municipal Insurance Risk and Financing Fund.
9 I'm with you now on page 6, paragraph 7, and entitled
10 Limitation of Known Claims.

11 MR. MCLEOD: Thank you, Your Honor. And so in
12 paragraph 7, this paragraph, what it does do is it narrows
13 in on exactly what the carrier, and in this case SCMIRF, is
14 insuring, and that is negligent acts, wrongful conduct on
15 behalf of their insurers.

16 And for the record, what paragraph 7 states is, "In
17 manner of limitation only, unless specified differently in a
18 provision of this contract, coverage shall apply only to
19 occurrences," and you'll note that occurrences is in bold,
20 Your Honor, "occurrences/accidents/wrongful acts," which is
21 in bold, "during the coverage period. Any coverage for
22 occurrences/accidents/wrongful acts, prior to the coverage
23 period, must be specifically contracted for and shall
24 exclude any occurrences/accidents/wrongful acts known to the
25 member at the effective date of this agreement."

1 So you see, Your Honor, what they're doing is they're
2 telling the insured, "We're going to cover you for negligent
3 acts, and you have a responsibility to tell us whether or
4 not you are aware of any negligent acts that occur before we
5 underwrite this period of insurance on each fiscal year.
6 Because if there are any known acts of negligence or
7 wrongful acts, we have to know what they are so we can
8 calculate, or factor that in, into the risk, into the
9 corresponding premium that we assign for the policy."

10 In addition, Your Honor, not only does the policy, or
11 contract, Your Honor, spell out or exclude prior wrongful
12 conduct, unless disclosed at the time the premium is made,
13 the contract also has an affirmative obligation on behalf of
14 the Town, the insurer of this case --

15 THE COURT: Written notice.

16 MR. MCLEOD: Written notice, Your Honor, which is in
17 paragraph 8a, and just again, for purposes of the record ---

18 THE COURT: And let the record reflect that he's
19 referring to page 8, paragraph 8a of what he's calling the
20 policy, and what they've stipulated was the contract.

21 MR. MCLEOD: Yes, Your Honor. And for the record, this
22 paragraph 8 is entitled Member's Duties in the Event of
23 Occurrence, Offense, Wrongful Act, Claim or Suit. Paragraph
24 a states, "Upon the member becoming aware of any wrongful
25 act, offense, or an occurrence, which could reasonably be

1 expected to the basis of a claim or suit covered thereby,
2 written notice shall be given by or on behalf of the member
3 to the South Carolina Municipal Insurance and Risk Fund as
4 soon as practicable together with the fullest information
5 obtainable."

6 Again, Your Honor, I just point out that policy
7 language to prove the point that nowhere through this policy
8 will this Court find that the number of injuries is the risk
9 that is underwritten and the risk that is covered. And in
10 fact, when I deposed Ms. Ricard, and her deposition is a
11 part of this record, I asked her would you agree with me
12 that there's no language that says that occurrences is
13 determined based on the number of injuries, and she agreed
14 with that, and that's part of the record, Your Honor.

15 Nonetheless, SCMIRF is asking this Court to find,
16 although there is no language to that effect, that in
17 essence -- well, the number of injuries is how we determine
18 occurrences.

19 Your Honor, paragraph 9 on page 7 is the first -- is
20 what Ms. Ricard used at her deposition; one of the things
21 that she used in her deposition to say that there's only one
22 million dollars in coverage, and this provision, paragraph 9
23 is entitled, "No Duplication of Coverage or Coverage
24 Limits," and clearly what this section says is that if
25 you're covered under Section III, General Liability, and

1 you're covered under Section IV, Law Enforcement Liability,
2 which in this case, it's our position that all of the
3 defendants would have been covered under both sections.

4 THE COURT: Your position is that the plaintiff is
5 covered under Section III or paragraph 3 or 4.

6 MR. MCLEOD: That's correct, Your Honor.

7 THE COURT: And that would be true as to both of the
8 defendants?

9 MR. MCLEOD: That's correct, Your Honor. And so what
10 the "no duplication of coverage" says it does not mean that
11 one million per occurrence is not for every occurrence
12 there's a million in coverage. It means that you can't
13 stack the two coverage sections. For example, if there's a
14 million dollars per occurrence because of liability under
15 section III, you can't have an additional one million of
16 occurrence when there's two million per occurrence. There's
17 no duplication between sections of the policy or the
18 contract. That does not mean, Your Honor, that per
19 occurrence is not that, per occurrence.

20 And if you go through the dec pages ---

21 THE COURT: That section also says, Mr. McLeod, and
22 it's contended by the defendants that a single coverage
23 limit applies to any offense or occurrence regardless of the
24 number of claimants, regardless of the number of suits or
25 claims. That a single coverage limit applies to all claims

1 or suits involving substantially the same injury or damage
2 or progressive injury or damage.

3 Now in light of that sentence, does that apply to the
4 situation here, and if so, how? Let me hear your position
5 on that.

6 MR. MCLEOD: It doesn't apply, Your Honor, and this is
7 why it doesn't apply. We have not asserted that there
8 should be any duplication of coverage. What we've asserted
9 is that, in fact, the per occurrence language is just that,
10 per occurrence.

11 For example, let's say in this case we came before the
12 Court and said there was a former police chief who did the
13 hiring interview of Randy Price and processed his
14 application and we believe that he was negligent. And we
15 also believe that the Town is negligent for hiring Mr.
16 Price. Therefore, we should be entitled to two million
17 dollars in coverage just for the negligent hiring claim.
18 That's where that provision would come in, because it would
19 say, "No, Mullins, you can't do that." You can only get us
20 for the negligent hiring claim, regardless of how many
21 people in the office were a part of that process.

22 THE COURT: So your argument goes back to -- I recited
23 the findings of the jury in Federal Court. Do you believe
24 that because there was a finding of negligence in hiring, a
25 finding of negligence in supervision, a finding of

1 negligence in retention, that those constitute separate
2 occurrences within the meaning of the policy under your
3 interpretation of the policy?

4 MR. MCLEOD: I do, Your Honor. And the only thing that
5 I would add to that is, as Judge Norton submitted three
6 verdict forms. Verdict Form One was as to Randall Price.
7 Verdict Form Two was as to the Town, and Verdict Form Three
8 was a joint damages form. But with regard to Verdict Form
9 One, the Court specifically charged the jury and gave them a
10 verdict form that allowed them to consider the facts before
11 them and whether or not, in fact, each of those negligent
12 acts occurred both for the State law cause of action and for
13 the Federal cause of action.

14 And the same thing was done, Your Honor, with regard to
15 the Town of Cottageville, the State law claims and the
16 Federal claims.

17 And if you ---

18 THE COURT: And there were five of each, were there
19 not?

20 MR. MCLEOD: That's correct, Your Honor. And I might
21 point out, you know what has never been part of this process
22 is election of remedies. You know, obviously, I would
23 concede that if we tried to pick up \$300,000 per occurrence
24 on the State Law claim and a \$1,000,000 per occurrence on
25 the 1983 claim for the hiring, retention, and supervision,

1 then we couldn't do that.

2 THE COURT: And you believe that the paragraph 9 on
3 page 7 would apply, would you not, Mr. McLeod? Would there
4 be no duplication of coverage or coverage limits, insofar as
5 just the hiring is concerned if this Court were to adopt
6 your argument as to occurrence?

7 MR. MCLEOD: That's correct, Your Honor. The other
8 thing I think that is important if you put in the dec pages
9 for basically the insuring sections of the contract, the dec
10 page for Section III is found at page 28 of the policy, or
11 contract.

12 THE COURT: Mr. Brown, are you with me?

13 MR. BROWN: Yes, Your Honor.

14 THE COURT: Mr. Phillips?

15 MR. PHILLIPS: Yes, Your Honor.

16 THE COURT: All right. Page 28 of the contract or
17 policy.

18 MR. MCLEOD: You will see there, Your Honor, under
19 General Liability, the limit is \$1,000,000, and then the
20 language is per occurrence or offense. If you turn to page
21 50 of the contract, that is the dec page of the Law
22 Enforcement Liability Section. And again, you will see a
23 liability limit that's \$1,000,000 per occurrence.

24 THE COURT: So page 28 is General Liability and page 50
25 is Law Enforcement Liability?

1 MR. MCLEOD: That's correct, Your Honor.

2 THE COURT: Both of which state the coverage limit is
3 \$1,000,000. One says per occurrence or offense, and the
4 other says per occurrence.

5 MR. MCLEOD: That's correct, Your Honor. And if you'll
6 notice for Section III on page 28, for the
7 Products/Completed Operations Insurance is \$1,000,000 in the
8 aggregate. According to Ms. Ricard, they have the option
9 had they chosen to sell a \$1,000,000 aggregate policy on the
10 general liability, but instead charged a higher premium to
11 the insurer; it's only a per occurrence policy.

12 THE COURT: Did you ask her what the premium difference
13 would be insofar as the Town of Cottageville was concerned?

14 MR. MCLEOD: I did not, Your Honor. My question was
15 limited to ---

16 THE COURT: But you did ask whether or not the insurer
17 in this case charged a higher premium per occurrence than
18 they did if they had written a contract in the aggregate; is
19 that correct?

20 MR. MCLEOD: I did, Your Honor.

21 THE COURT: And that's in her deposition, as I recall?

22 MR. MCLEOD: It is, Your Honor.

23 THE COURT: Very well. Because the risk would be
24 greater; is that your argument?

25 MR. MCLEOD: That's correct, Your Honor.

1 THE COURT: All right.

2 MR. MCLEOD: But the other thing, Your Honor, that is
3 of particular significance, if you turn on page 37, that is
4 where the contract ---

5 THE COURT: Once again, Becky, for the record, this is
6 page 37 of the policy or the contract. Mr. McLeod has
7 called my attention to paragraph 24 on page 37 entitled "Law
8 Enforcement Liability."

9 MR. MCLEOD: That's correct, Your Honor. And this
10 particular paragraph is where we see the contract
11 specifically define what law enforcement liability is and I
12 will read it for the record, Your Honor. "Any liability
13 covered in Section IV, Law Enforcement Liability, or any
14 liability or claim against a law enforcement employee, as
15 that term is defined in Section IV (whether or not such
16 liability or claim is covered in Section IV). So for
17 example, if there's coverage under Section III for law
18 enforcement employee, or any liability claim against other
19 persons or entities who are also defined as covered persons
20 in Section IV, that is based on the conduct, or alleged
21 conduct, of such law enforcement employees, including
22 without limitation, claims based on a hiring, training,
23 monitoring, or supervision of, or on the control of or
24 failure to control such law enforcement employees."

25 And again, Your Honor, we have highlighted that

1 provision of the contract to prove what we believe is an
2 obvious point that this entire policy was written to cover
3 per occurrences based on insured members' conduct, and it is
4 not written and was never intended to be based upon the
5 number of injuries.

6 And just before I leave that point, another illogical
7 position that Ms. Ricard made on behalf of the insurer in
8 this case, I said, "Okay, let's just assume for the sake of
9 argument that the policy, the number of occurrences based
10 upon the number of injuries." Well, there isn't just one
11 injury here. Bert Reeves had a claim under South Carolina
12 Law for the conscious pain and suffering that he experienced
13 from the time he was shot in his chest and the police chief
14 and Randall Price left him bleeding on the side of the road,
15 and instead walked to the head of the road and called a
16 lawyer. He is entitled to be compensated for that pain and
17 suffering. A separate injury that is South Carolina Law is
18 Ashley Reeves' loss of companionship.

19 THE COURT: You are differentiations the measure of
20 damages between conscious pain and suffering or libel and
21 wrongful death. I'm very cognizant of that fact, Mr.
22 McLeod. Move on. You're at the point where I need to tell
23 you (The Court taps three times on the bench.)

24 MR. MCLEOD: I will. The other section that they rely
25 on, Your Honor, on the occurrence issue is on page 52,

1 paragraph 2.

2 THE COURT: I'm with you at page 52. You're referring
3 now to paragraph 2, which is entitled SCMIRF's Limit of
4 Liability.

5 MR. MCLEOD: And they point out in their Brief that we
6 did not comment on in our Brief paragraph 3 of Section II,
7 which is, "Subject to any special aggregates all continuing,
8 serial, or repeated instances of personal injury or
9 advertising injury will be considered as one
10 occurrence/wrongful act." The reason why we didn't comment
11 on that, Your Honor, is the same reason we didn't comment on
12 contamination or collusion portions of the contract because
13 they aren't an issue and didn't have anything to do with
14 this case.

15 We're not talking about an instance where there is a
16 repeated instance of personal injury or a repeated instance,
17 or continuing instance, of advertising here. That's not
18 what this case is about. But even if you were to somehow
19 think well, that somehow provides some limitation, if you go
20 to the first paragraph of paragraph 2 as regards the General
21 Liability Section III, Law Enforcement Liability Section IV,
22 Public Officials Liability Section V, and Auto Liability
23 Section VI, "Coverage's afforded by this contract, the total
24 liability of the South Carolina Municipal Insurance and Risk
25 Financing Fund any one occurrence/accident/wrongful act will

1 be \$1,000,000 per member." That's exactly what we're
2 saying. For every one act of negligence by a member or a
3 governed person, there is \$1,000,000. For every additional
4 act, if it's a proximate cause, as the jury found in this
5 case, there is an additional fee.

6 And Your Honor ---

7 THE COURT: Now, there is also a second paragraph to
8 paragraph 2 on page 52 that says that "SCMIRF's liability
9 for any one occurrence/wrongful act will be limited to
10 \$1,000,000 per member regardless of the number of covered
11 persons, number of claimants, or claims made, or the number
12 of covered vehicles involved -- and I realize we don't have
13 -- or I assume that anybody is talking about auto liability
14 coverage in this case, are we?

15 MR. BROWN: No, sir.

16 THE COURT: Everybody is shaking their head no. So
17 tell me does that sentence that is after the part that you
18 published to me, Mr. McLeod, change the intent of this
19 contract in any way because of the attempt to limit it
20 regardless of the number of covered persons/claimants/or
21 claims?

22 MR. MCLEOD: It doesn't, Your Honor, because that
23 paragraph continues and talks about the single limit
24 coverage in a policy period, and that goes back to what I
25 previously said. For example, in the hiring of Randall

1 Price, if we tried to claim that employee one was negligent,
2 employee two was negligent, employee three was negligent,
3 that provision would preclude us from doing that. And it
4 would say, "No, there's only one occurrence for the Town for
5 its negligent hiring decision."

6 THE COURT: Let me ask you this, in summary, your
7 position is that it's a policy you interpret per occurrence.
8 You believe because of the finding of the jury in Federal
9 Court that there was negligence by the Town in hiring, there
10 was negligence by Officer Price, negligence in supervision,
11 negligence in retention, and that those are separate acts of
12 negligence and separate occurrences for which there would be
13 separate coverage?

14 MR. MCLEOD: There is, Your Honor.

15 THE COURT: Is that a summation of that part of your
16 argument?

17 MR. MCLEOD: There is.

18 THE COURT: Now, I ask you about Mr. Craddock. I
19 realize that case was never tried. We never got any finding
20 from the finder of fact about Mr. Craddock, but that case
21 was part of your global settlement. Now, for purposes of
22 this issue, address for me how the matter involving Mr.
23 Craddock would not give rise to a separate occurrence or
24 would it?

25 MR. MCLEOD: Thank you for that question, Your Honor.

1 First, on the independent acts of negligent hiring,
2 retention, supervision, both in the body of law in State
3 Court there is a wealth of law that says that those are
4 either/or acts of negligence. For example, you can
5 negligently hire someone but properly train and supervise
6 them or you could properly hire someone but not ---

7 THE COURT: You want to make sure that I understand
8 those are separate acts of negligence.

9 MR. MCLEOD: I know you do, Your Honor. I'm just for
10 the purpose of the record. And the same is the case under
11 Canton v. Ohio.

12 THE COURT: All right. Let's go back to my
13 question, now, Mr. McLeod, because you're at 35 minutes.

14 MR. MCLEOD: Yes, sir.

15 THE COURT: And you haven't even reached issue two.

16 MR. MCLEOD: Yes, sir.

17 THE COURT: And let the record reflect, Becky, he told
18 me he could do them both in 30 minutes. Go ahead, Mr.
19 McLeod.

20 MR. MCLEOD: Your Honor, for Mr. Craddock's complaint,
21 that lawsuit was limited to supervisory liability under
22 Section 1983.

23 THE COURT: The Federal Action.

24 MR. MCLEOD: That's correct, Your Honor. And what we
25 would not have been able to do is have Mr. Craddock looped

1 in with the negligent hiring claim that we brought against
2 the Town. So his cause of action was limited to that one
3 narrow cause of action that exists that that Federal Body of
4 law brought. Before I move to the same question ---

5 THE COURT: You haven't answered my question yet. What
6 is your position as to coverage for that cause of action?
7 Regardless of what the allegation was in the Craddock
8 action, as to this first issue, is that a separate
9 occurrence?

10 MR. MCLEOD: It is a separate occurrence, Your Honor.

11 THE COURT: And you believe there is a separate amount
12 of coverage for a different defendant who would be an
13 insured under the policy under your definition; is that
14 correct?

15 MR. MCLEOD: That's correct, Your Honor.

16 THE COURT: You don't there is a duplication between
17 what was alleged in that action and what was alleged in the
18 Price action?

19 MR. MCLEOD: I don't, Your Honor.

20 THE COURT: And you don't think the limitation on
21 duplication in the policy would apply to the Price action
22 and the Craddock action?

23 MR. MCLEOD: That's correct, Your Honor.

24 THE COURT: All right. Move on.

25 MR. MCLEOD: And this will be my last point on

1 occurrence and I'll be brief on issue two. On page 64 of
2 the policy, of which not coincidentally, under the Wrongful
3 Act ---

4 THE COURT: We are on page 64 of the contract,
5 paragraph 27, entitled Wrongful Act, counsel. Tell us if
6 you're there, Mr. Brown.

7 MR. BROWN: Yes, Your Honor.

8 THE COURT: Proceed, Mr. McLeod.

9 MR. MCLEOD: Yes, sir. And Your Honor, Mr. Phillips
10 and Mr. Brown can correct me if I'm wrong, but in the
11 definitions portion of Section IV, what is not included in
12 that section is the word "occurrence." What is included and
13 defined under Section IV is Wrongful Act and that's found at
14 paragraph 27 under the definition portion of Section IV.

15 And in particular, wrongful act is defined as "Any
16 actual or alleged error in the performance or failure to
17 perform an official duty or any misleading statement or
18 misleading act made or done in the course of official duty
19 and upon which a claimant or plaintiff has relied to his or
20 her detriment or any omission or neglect in performing an
21 official duty or any breach of official duty, including
22 misfeasance, malfeasance, and nonfeasance."

23 So again, you will see, Your Honor, that the whole
24 policy is geared towards wrongful acts committed by the
25 member or covered persons. Therefore, Your Honor, we would

1 ask the Court to find that with regard to issue one, that
2 there was a \$1,000,000 per occurrence policy is just that.
3 For every provable act of negligence for which the jury
4 found that negligent acts proximately caused the death of
5 Bert Reeves and the named defendant was a covered person,
6 which is not in dispute, there is \$1,000,000 per act of
7 negligence, Your Honor.

8 THE COURT: Very well. Let's move to issue two.

9 MR. MCLEOD: Thank you, Your Honor. Regarding Issue
10 two, I will be fairly brief, because I think it's fairly --
11 our position is that, number one, in order for the Tort
12 Claims Act to apply to SCMIRF, and in order for a tort of
13 bad faith to be capped at \$300,000.00, then two things have
14 to happen. Number one, South Carolina Municipal Insurance
15 and Risk Financing Fund has to be considered a governmental
16 entity as per the definition set forth in the Tort Claims
17 Act. And/or the insured, which would be the Town of
18 Cottageville, would be unable to collect their damages
19 against the insurer through a breach of contract plan.

20 And if you look at the Charleston County School Board
21 case, which I believe, Your Honor, is the only case where
22 this issue of bad faith sounding and tort with -- there's no
23 disagreement with us that the IRF was created by a statute,
24 the governor sits on the board, the South Carolina Budget
25 and Control Board, and it is clearly a governmental entity.

1 In that case, it was a bad faith case after Hurricane Hugo
2 where the IRF, the Budget and Control Board insures schools
3 throughout Charleston County and there was a dispute over
4 what was covered, property damage that was covered. It
5 ultimately resulted in Mr. Rosen bringing a bad faith claim
6 on behalf of the member schools against the IRF and he also
7 brought a breach of contract claim. And in that case, Your
8 Honor ---

9 THE COURT: Give the site for the record.

10 MR. MCLEOD: I will, Your Honor. That is Charleston
11 County School District v. State Budget and Control Board.
12 It's found at 437, S.E. 2d, page 6, 1993 S.C. Supreme Court.
13 And Your Honor, in this opinion, what the court specifically
14 finds is -- ultimately what they say is the bad faith claim
15 was dismissed in the lower court and because there is no
16 prejudice to you, because you can get your damages, school
17 districts through a breach of contract claim, there's no
18 harm, no foul.

19 THE COURT: You don't contend, Mr. McLeod that a breach
20 of contract claim is subject to the State Court Tort Claims
21 Act, do you?

22 MR. MCLEOD: It's not, Your Honor.

23 THE COURT: I can't wait to ask Mr. Phillips that
24 question, but I understand your position.

25 MR. MCLEOD: That would cause a lot of problems with

1 the State trying to negotiate.

2 THE COURT: You don't need to elaborate on that. I
3 will let Mr. Phillips address that issue.

4 MR. MCLEOD: And just for the purpose of the record,
5 the Court specifically said the district's damages under the
6 bad faith claim would necessarily include the insurance
7 proceeds it alleges it is entitled to under breach of
8 contract action. However, the district is entitled to
9 recover in actual damages only once in either tort or
10 contract. Since the insurance proceeds, the district claims
11 greatly exceed the statutory cap in the Tort Claims Act.
12 The district could not benefit from bringing the Tort action
13 in this case. The reason why I believe, Your Honor, this is
14 a very important issue is that whether -- let's take the
15 Town of Cottageville.

16 The Town of Cottageville operates under the assumption
17 that they have significant insurance coverage to cover them
18 in the event that there is obviously a significant
19 liability, a threat to their financial wherewithal. Well,
20 if its insurer takes the position that, you know, the policy
21 is \$1,000,000, we're not going to pay the \$1,000,000 because
22 that's our worst day in Court, even though the claim greatly
23 exceeds \$1,000,000, and there's a verdict against the Town
24 of Cottageville for say, \$10,000,000, then what happens is
25 SCMIRF turns around and says, "Hey, take your assignment,

1 and the most you can get from us is \$300,000. So it
2 prejudices the insurers, the municipalities, and that is the
3 risk of allowing their position to basically be approved or
4 adopted by this Court. And I went through all of that, that
5 they negotiated this case.

6 In addition, Your Honor, on the issue of whether or not
7 SCMIRF is a governmental entity, we have cited for this
8 Court the specific language in the Tort Claims Act, and I
9 won't reiterate it now, just for the sake of brevity, but in
10 addition to the plain language of the Tort Claims Act, we
11 also have ---

12 THE COURT: But you take the position that SCMIRF is
13 not a political subdivision of South Carolina, that the Tort
14 Claims Act does not apply to a claim for bad faith against
15 SCMIRF, do you not?

16 MR. MCLEOD: That's correct, Your Honor.

17 THE COURT: And your position is, one, that under
18 15-78-10, it provides the State in its political
19 subdivision, obviously, since I wrote a -- well, I won't go
20 into that, but the State Tort Claims Act, after we abrogated
21 sovereign immunity in South Carolina, was created by the
22 Legislature and it gives political subdivisions immunity
23 from liability, except as waived by the Act; you would agree
24 with that?

25 MR. MCLEOD: I do, Your Honor.

1 THE COURT: And in consideration of balancing the cost
2 and effectiveness of governing with liability for tortious
3 conduct, so political subdivisions are defined in the act
4 and you contend that the phrase, "Any agency, governmental
5 healthcare facility, department or subdivision thereof,"
6 only applies to the special purpose districts of this State?

7 MR. MCLEOD: That's correct, Your Honor.

8 THE COURT: Even though the Attorney General's Opinion
9 doesn't necessarily agree with that interpretation, does it?

10 MR. MCLEOD: That's correct, Your Honor.

11 THE COURT: Thus according to you, SCMIRF is a fund and
12 not a political subdivision of the State; is that your
13 argument?

14 MR. MCLEOD: It is, Your Honor. It's an unincorporated
15 association.

16 THE COURT: But you also concede that if this Court
17 were to find that SCMIRF were a political subdivision, the
18 Tort Claims Act does not affect the claim, that you could
19 bring a breach of contract for failing to pay a claim which
20 is a matter of contract and not tort?

21 MR. MCLEOD: That is correct, Your Honor.

22 THE COURT: So claims against an insurance carrier for
23 failing to protect insured and pay claims may be brought as
24 a claim for breach of contract or under the Nichols case, if
25 bad faith is present, it could be brought as a tort claim?

1 MR. MCLEOD: That is correct, Your Honor.

2 THE COURT: And your argument is because the Tort
3 Claims Act has a limitation not only on punitive damages,
4 but also on the limits of the amount of exposure if that
5 were less than the coverage you effectively are reducing the
6 amount that the insured could recover. So if you had a
7 million dollar policy and it was a \$300,000 cap under the
8 Tort Claims Act, the insured could not collect more than the
9 Tort Claims Act, if they're subject to the Tort Claims act.

10 MR. MCLEOD: That's correct, Your Honor.

11 THE COURT: Anything else you want to tell me?

12 MR. MCLEOD: Just real briefly, Your Honor. We do have
13 the South Carolina Supreme Court, in the case of Health
14 Promotions Specialist, LLC, v. South Carolina Board of
15 Dentistry, and that case is found at 2013 Supreme Court
16 case, and it's found at ---

17 THE COURT: It was cited to me in your Brief and by the
18 defendant, which set forth factors for the Court to consider
19 in determining whether or not we're dealing with a political
20 subdivision of the State.

21 MR. MCLEOD: That's correct, Your Honor. And the
22 Supreme Court in answering this issue that's before the
23 Court, what they said in that case was, number one, the
24 Board of Dentistry was created by the General Assembly as a
25 statewide regulatory authority for dentists and dental

1 hygienists. Of course, SCMIRF, was not created by the
2 General Assembly and is not a statewide regulatory authority
3 in any way, shape, or form.

4 Another factor the Court looked at was they said with
5 regard to the dentistry board, several members of the board
6 are appointed by the governor and -- this is important, Your
7 Honor, its funds are controlled by the State Treasury.

8 Of course, in this case, SCMIRF, no members are
9 appointed by the governor, and none of its revenue from
10 selling premiums has to be paid into the State Treasury,
11 just like none of its expenses, as a going concern, as an
12 unincorporated association come from the General Treasury,
13 Your Honor.

14 And in addition, Your Honor, it actually points out,
15 and I'll read this for the record, "All fees received by the
16 Board become the property of the State General Fund and must
17 be deposited into the account of the State Treasurer. The
18 expenditures of the Board must be from State appropriations.
19 All fines must be deposited into a special account to be
20 held by the State Treasurer for the purpose of the payment
21 of administrative costs upon the approval of the Budget and
22 Control Board." And so, that of course, is not the case
23 with South Carolina Municipal Insurance and Risk Financing
24 Fund with all their costs and revenues have nothing to do
25 with the State Treasury.

1 In addition, the Court pointed out a notable factor was
2 that the individual members of the Board are entitled to
3 immunity for actions performed in the course of their
4 official duties per South Carolina Code 40-15-60, which
5 would not be the case, Your Honor, with SCMIRF.

6 So finally, the Court concluded in this Health
7 Promotions Specialist case that thus by creating this
8 governmental entity, SCMIRF is not a governmental entity,
9 the General Assembly intended for the Board as a whole to
10 come within the purview of the Tort Claims Act.

11 Accordingly, as a governmental entity, the board is
12 entitled to assert and affirm the defense of immunity under
13 the provisions of the Tort Claims Act. And for the very
14 factors addressed in this opinion, Your Honor, proves our
15 position that SCMIRF is not a political subdivision and does
16 not come under the purview of the Tort Claims Act. I
17 appreciate the Court's patience. I'm sorry I went over my
18 allotted time.

19 THE COURT: Not at all, Mr. McLeod. I told y'all I
20 reserved today for you and I wasn't going to put any time
21 limit. I was just quoting you that you said you could do
22 both issues in 30 minutes and you did it in 55.

23 MR. MCLEOD: Thank you, Your Honor.

24 THE COURT: And that doesn't count your reply, Mr.
25 McLeod, which you also asked for. All right, Mr. Brown, I'm

1 going to give you the same leeway I gave Mr. McLeod. I
2 understand you are going to address issue one. Come on and
3 bring anything up with you to my rostrum. Use that
4 microphone for me for Becky's sake and the Court's sake.

5 Mr. Brown, you have the floor and I'm anxiously -- and
6 I'll pay a compliment to Mr. Brown. Mr. McLeod complimented
7 him in the conference we had this morning and appreciated
8 his zealous representation of the defendant in helping get
9 this matter contingently resolved.

10 MR. BROWN: May I approach the Court?

11 THE COURT: Absolutely.

12 MR. BROWN: I'd like to hand up one case, Your Honor.

13 THE COURT: Becky, let the record reflect that Mr.
14 Brown is handing me Boiter v. the South Carolina Department
15 of Transportation. This is found at 712 S.E. 2d, 401. It
16 is a Supreme Court of South Carolina case. I'll be happy to
17 hear from you about this case, Mr. Brown.

18 MR. BROWN: May it please the Court, Your Honor. I
19 wanted to hand that case up so I didn't have to break up the
20 presentation. I'm going to talk about it in just a moment.
21 I'd like to first ---

22 THE COURT: Did you give Mr. McLeod a copy?

23 MR. BROWN: I did, Your Honor.

24 THE COURT: All right.

25 MR. BROWN: Before I forget this, I wanted to talk

1 about one of the stipulations of the parties, which is
2 paragraph 11.

3 THE COURT: Let me get to that, since I quoted all of
4 them before we began.

5 MR. BROWN: Your Honor, consistent with our briefing
6 that has previously been filed with this Court ---

7 THE COURT: Paragraph 11, that I believe you're
8 referring to, is that the parties agree that no other facts
9 are necessary for the Court to answer the stipulated issues.
10 That no discovery is needed for the case and that the
11 stipulated issues are purely legal in nature; is that
12 correct?

13 MR. BROWN: That's correct, Your Honor. And consistent
14 with that stipulation and with our previous filings to this
15 Court, we are wanting to maintain our position that we
16 disagree with having deposition transcript, excerpts, or
17 affidavits, or any of that, none of that is proper before
18 the Court because the parties stipulated they would not --
19 there were no other facts necessary, other than the
20 stipulated facts.

21 THE COURT: Well, when you entered into that
22 stipulation, hadn't you already taken the deposition of your
23 30(b)(6) designee?

24 MR. BROWN: Your Honor ---

25 THE COURT: -- or you weren't in the case then?

1 MR. BROWN: No, sir, Your Honor.

2 THE COURT: Mr. McLeod?

3 MR. MCLEOD: It had already happened, Your Honor.

4 THE COURT: Mr. Phillips, were you in the case when
5 that happened?

6 MR. PHILLIPS: No, sir, but we do have a limited set of
7 agreed stipulations.

8 THE COURT: Normally, on a motion for summary judgment,
9 Mr. Brown, under Rule 56, and of course, as you know,
10 there's a great case, Baird v. Charleston County. I teach
11 this in judge's school and I'm very familiar with it.
12 That's the difference between a Rule 12 motion to dismiss
13 and Rule 56 motion for summary judgment as to -- we do
14 consider affidavits on a Rule 56 motion. You've made a
15 motion for summary judgment and so has Mr. McLeod. We do
16 consider deposition testimony. In fact, I actually had a
17 lawyer recently, Mr. Brown, that -- and I understand your
18 argument. You're arguing it because you said there were no
19 other discovery needed for this case, but you had already
20 completed this discovery that was referred to me, so I'm
21 going to consider that part of the record. I want you to
22 know that. I had a lawyer argue to me that I could only
23 consider a deposition in a Rule 56 motion what he designated
24 and I couldn't read the entire deposition. And I read the
25 entire deposition and ruled in that lawyer's favor because

1 of what I read in the entire deposition. So I understand
2 y'all's stipulations that you don't need to take anymore
3 discovery, but whatever was taken at the time you entered
4 into that stipulation, I believe constitutes the record in
5 this case. Move along. And I want to point out also that a
6 Rule 12(b)(6) motion, the Court is limited to the pleadings.
7 I can't go into depositions. I can't go into affidavits.
8 But we're not talking about a motion to dismiss on the
9 pleadings here, we're talking about a Rule 56 motion for
10 summary judgment, which is the reason the Court can go
11 beyond it. Proceed.

12 MR. BROWN: Your Honor, I'd like to mention just for a
13 moment the generalized discussion that Mr. McLeod engaged in
14 with respect to insurance.

15 THE COURT: All right.

16 MR. BROWN: And how an insurance company calculates
17 premiums. And premiums, I think, the only common sense way
18 to understand it are calculated through an actuarial
19 assessment of actual losses, not acts that don't cause
20 losses. So the focus by Mr. McLeod on the insurance premium
21 is somehow calculated on acts that don't have to do with
22 losses, instead of on what actual losses have occurred over
23 a policy period or pursuant to underwriting, is just
24 completely backwards and mistaken.

25 And it's important to understand that part and

1 recognize that because it affects the overall interpretation
2 of the approach to the policy and what the premium is for.
3 It's to protect against -- it's to insure for losses that
4 have occurred. That's what it's for. It's not to try to
5 keep somebody from hiring somebody that doesn't lead to
6 anything. It's to protect against losses. That's what
7 insurance is designed for.

8 Now, I also want, as a preliminary housekeeping matter,
9 to address very quickly Your Honor's question to Mr. McLeod
10 about whether there's any duplication between the Craddock
11 matter and the other litigations. I've got the Craddock
12 complaint here, which is a matter of public record, and I
13 just want to read one short paragraph of it to show you that
14 there is, in fact, duplication.

15 This paragraph reads, and is paragraph 30, page 8 of
16 12, of the Craddock lawsuit. "All of the above referenced
17 failures are the responsibility of the defendant Craddock
18 who was deliberately indifferent to his responsibility to
19 train and supervise the Cottageville police officers,
20 including Officer Price to interact with the public with
21 appropriate force and defensive measures." So in other
22 words, Your Honor, this is exactly what we've already
23 alleged against the Town of Cottageville and the police
24 department of Cottageville is training and ---

25 THE COURT: Let me stop you right there. I understood

1 that Officer Price was the Chief and that officer Craddock
2 was just a subordinate, but an officer of the Town of
3 Cottageville. Have I got that reversed?

4 MR. BROWN: Actually, yes, Craddock was the Chief.

5 THE COURT: Okay. Officer Craddock was the Chief.

6 MR. BROWN: Right.

7 THE COURT: And Officer Price was an officer under
8 Officer Craddock; is that correct?

9 MR. BROWN: Yes, Your Honor. I wanted to point that
10 out just to show the Court that there was -- in fact, Mr.
11 McLeod made the other lawsuit an exhibit to this particular
12 Craddock lawsuit; in fact, it's a jury exhibit incorporated
13 into the complaint.

14 THE COURT: Let's go back to your argument on
15 duplication, Mr. Brown.

16 MR. BROWN: Yes, sir, because that's where I was going
17 with that. Your Honor pointed out two of the critical
18 provisions on duplication in the policy that prohibit this
19 from being anything more than a single coverage limit
20 applicable here.

21 And there is a five-step way to get where you need to
22 go when interpreting this coverage contract. What I want to
23 do first, if I can, before I get to those five steps is
24 quickly explain away the relevance of this Boiter case.
25 Because he cites this Boiter case and relies upon it, but he

1 also relies upon the Circuit Court Judge Order from Roger
2 Young that also is kind of adopting the Boiter case.

3 If you look at the Boiter Opinion, Your Honor, I've
4 highlighted a portion of it on page 6.

5 THE COURT: All right. Page 6 of the Boiter Opinion,
6 and I'm looking at page 6, the third paragraph down and
7 begins with the number 132 and HN6.

8 MR. BROWN: And I've highlighted Mr. McLeod's section
9 of the case as well for him. But this is merely a quotation
10 of the definition of occurrence as it exists in the Tort
11 Claims Act. And as Your Honor went through with Mr. McLeod,
12 the Tort Claims Act has to do with the waiver of sovereign
13 immunity in certain respects. And how much of that waiver
14 occurs and how much is not. There's a definition of
15 occurrence with respect to the immunity question, okay.

16 That definition of occurrence has nothing to do, Your
17 Honor, other than the fact that this is a governmental
18 entity involved with the question of what occurrence means
19 under the coverage contract. There are two different
20 definitions that this definition here about what the
21 immunity means, how much immunity is waived and how much is
22 not waived is a different definition, literally, from the
23 occurrence language in the coverage contract.

24 If you read the definition in the statute it says,
25 "Occurrence is defined as an unfolding sequence of events

1 which proximately flow from a single act of negligence." If
2 you read the definition of occurrence in the contract, it
3 says, "It means an accident."

4 THE COURT: Refer to the page.

5 MR. BROWN: Let me get that page for you. It's in the
6 definition section

7 THE COURT: It's in the back.

8 MR. BROWN: If you look on page 3, Your Honor,
9 paragraph 4, it is the coverage definition of occurrence
10 meaning an accident which results in bodily injury or
11 property damage. The original cause of which of the initial
12 damage from which happened during the contract period set
13 forth in the definition. So just to be clear, the Boiter
14 case in the Judge Young decision had to do with a different
15 legal question that is before the Court.

16 THE COURT: In other words, you're differentiating what
17 is in the contract from the definition of occurrence in the
18 State Tort Claims Act.

19 MR. BROWN: Exactly, Your Honor. And I think that's
20 important, Your Honor, because my friend, Mr. McLeod, has
21 previously told me that the Boiter case controls this and it
22 really is irrelevant to this question. The Court, instead,
23 has to interpret a contract between the parties and what
24 does that contract mean? And that's what the Court is
25 engaging in, in this question one.

1 Now, turning to that issue, and regardless of how the
2 word occurrence actually gets treated, Your Honor, we go to
3 the five steps that I mentioned. Step number one, there has
4 to be a wrongful act under the policy for there to be any
5 coverage. That wrongful act can be either, one, an
6 occurrence causing bodily injury; or two, an offense which
7 can be a violation of civil rights causing personal injury.
8 So it's either an occurrence causing bodily injury or an
9 offense which is a violation of civil rights causing
10 personal injury. If you look at what does personal injury
11 mean? That's on page 64 of the policy. If you look at page
12 64, paragraph 18.

13 THE COURT: Is it 64 or 54?

14 MR. BROWN: Page 64. And there you will see personal
15 injury in this section meets and the two applicable
16 subparts, I would suggest Your Honor applied to this, the
17 assault and battery and then further down detention or
18 imprisonment, possibly, but really assault and battery is
19 the main one we're talking about here.

20 THE COURT: Now, is this just dealing with law
21 enforcement coverage?

22 MR. BROWN: Yes, sir. Absolutely. Which is what we're
23 dealing with is the law enforcement part of the policy.

24 THE COURT: And we're also dealing with the fact that
25 we're dealing with general liability because we have both

1 the Town of Cottageville as a member and a named law
2 enforcement individual defendant, are we not, Mr. Brown?

3 MR. BROWN: No, sir, because here's why.

4 THE COURT: So it's your contention that only the law
5 enforcement section of the policy applies.

6 MR. BROWN: Yes, sir.

7 THE COURT: Tell me why.

8 MR. BROWN: I'll tell you why. That's step three and
9 four.

10 THE COURT: Gee, amazing.

11 MR. BROWN: I'm almost there. I'm getting you there, I
12 think. Step three, as you've already pointed out in the
13 hearing, Section 1(c)(9) which is back near the front in the
14 general conditions. This is on page 7.

15 THE COURT: Page 7. I assume you're talking about the
16 duplication clause.

17 MR. BROWN: Yes, sir, that you referenced earlier.
18 That provision specifically eliminates any duplication
19 between personal injury or bodily injury coverage. So you
20 can't have both, which is what Mr. McLeod got up here and
21 said. We've got both. We've got bodily injury and personal
22 injury. This provision specifically says, "No, you can't do
23 both for the same actions. You have one. You're only
24 having personal injury or you're having bodily injury, one
25 of the two.

1 So then the question becomes what does the personal
2 injury here mean and does bodily injury somehow get brought
3 within? And if you look at page 61, you will see that along
4 with this -- consistent with this duplication coverage
5 provision, look at page 61, Your Honor, at the top paragraph
6 4, numeral 4.

7 THE COURT: Bodily injury?

8 MR. BROWN: Yes, sir. It says "Bodily injury means
9 physical injury to any person, including a death, and any
10 mental anguish or mental suffering associated with or
11 arising from such physical injury." Here's the next
12 sentence, "However, for purposes of this section IV, which
13 is the law enforcement part, bodily injury does not include
14 such injuries as they are a result directly and immediately
15 from infliction of the personal injury," which is the
16 assault and battery, "including without limitation the
17 assault and battery. Any such resulting injury shall be
18 deemed part of the personal injury." So you only have
19 personal injury, which is all we're talking about here under
20 Section IV.

21 Then, you finally come to step five, and Your Honor has
22 already alluded to and the primary sentence is back in that
23 section 1(c)(9) that says ---

24 THE COURT: That's on page 7, paragraph 9 of the
25 contract.

1 MR. BROWN: And you go back to it and the most
2 important sentence is for purposes of analyzing this is "A
3 single coverage limit, meaning \$1,000,000, applies to any
4 offense," which is the personal injury type thing, "or
5 occurrence, regardless of the number of claimants, suits or
6 claims." So regardless of how many suits, whether it's the
7 Craddock suit, the other suit, or claims where there's
8 multiple claims within the other suit, "A single coverage
9 limit applies to all claims or suits involving substantially
10 the same injury or damage or progressive damage or injury.

11 THE COURT: Well, let's talk about that, Mr. Brown.

12 MR. BROWN: Yes, sir.

13 THE COURT: It's Mr. McLeod's position that when we
14 talk about supervision, retention, that those are separate
15 occurrences under the policy and the jury found separate
16 acts of negligence which proximately caused the death of Mr.
17 Reeves.

18 MR. BROWN: Yes, sir.

19 THE COURT: It's your position that regardless of the
20 jury's finding of these separate acts of negligence as
21 against not only your member, the Town of Cottageville, but
22 also a covered employee who you stipulate was acting within
23 the course and scope of employment, there is no additional
24 coverage for that?

25 MR. BROWN: No, Your Honor. There would be a

1 \$1,000,000 limit, because everything led to a single -- the
2 same substantial injury here; mainly the shooting and death
3 one hour after the shooting of Mr. Reeves. And the fact
4 that whether there was one person who was holding the
5 trigger and shot him or whether there were five people who
6 shot him ---

7 THE COURT: Well, we don't have that situation.

8 MR. BROWN: Right, Your Honor.

9 THE COURT: We have a finding by the jury as to -- I'm
10 not talking about multiple claimants, because obviously that
11 paragraph that I've asked about and you've referred me to
12 now talks about multiple claimants.

13 MR. BROWN: Yes, sir.

14 THE COURT: But we don't have multiple claimants here.
15 We have the same claimant, but we have individual findings
16 by the jury of acts of negligence, basically in hiring,
17 supervising, and retention.

18 Your position is that even though the jury found that
19 the Town of Cottageville was negligent in hiring Price, in
20 supervising Price, and in retaining Price, that that does
21 not provide a basis for additional \$1,000,000 coverage under
22 the policy in light of the duplication clause which has been
23 argued to me during this hearing.

24 MR. BROWN: That's right, Your Honor, because looking
25 at the general verdicts in another way, you have a single

1 damage set forth; a single actual damage.

2 THE COURT: But the policy never defines coverage based
3 on damage, does it, Mr. Brown?

4 MR. BROWN: This sentence, Your Honor, applicable to
5 this fact pattern.

6 THE COURT: What sentence are you referring?

7 MR. BROWN: It's that page 7.

8 THE COURT: Okay. Back again to paragraph 9 on page 7.

9 MR. BROWN: Yes, sir, Your Honor. We contend as strong
10 as we can that there was a single shooting, an injury in
11 which led to an unfortunate death within an hour of the
12 shooting, according to the report.

13 THE COURT: But that sentence says a single coverage
14 limit applies to an offense or occurrence, regardless of the
15 number of claimants, suits, or claims. It doesn't refer to
16 damages... You're arguing to me that it's the same damage
17 arising from separate acts of negligence. Yet, the jury
18 found that the Town was negligent in hiring, negligent in
19 retaining, negligent in supervising. And it's your position
20 that even though the company wrote the policy, your client,
21 and has to be construed how, Mr. Brown?

22 MR. BROWN: Liberally against my client.

23 THE COURT: Correct, Mr. Brown. You're an excellent
24 lawyer. There is no word there defining damages, which is
25 exactly your argument to me, and that is that because there

1 was one wrongful death and one conscious pain and suffering
2 arising from what the jury found to be separate acts of
3 negligence, the company could have included damages in this
4 duplication clause, but chose not to do so.

5 MR. BROWN: Your Honor, we believe that the sentence
6 after that does, in fact, do that. The very next sentence
7 says, "A single coverage limit applies to all claims or
8 suits involving substantially the same injury or damage."

9 THE COURT: Or progressive injury or damage.

10 MR. BROWN: Or progressive injury or damage; either
11 one. And Your Honor, that's the point that we would like to
12 emphasize with the Court is that here ---

13 THE COURT: So you don't believe that there is separate
14 coverage for survival and wrongful death?

15 MR. BROWN: Your Honor, that word is a closer issue
16 than the others.

17 THE COURT: I think they're all pretty close, Mr.
18 Brown.

19 MR. BROWN: Your Honor, my view is that when you have
20 multiple, multiple claims ---

21 THE COURT: And we don't have multiple claimants, which
22 the policy talks about. It talks about suits, claimants,
23 and claims.

24 MR. BROWN: Right.

25 THE COURT: We have a finding of different acts of

1 negligence by a covered person or entity under the contract.

2 MR. BROWN: But you have, Your Honor, multiple claims
3 of wrongful acts, and then you have a single damage in the
4 verdict form, okay?

5 THE COURT: When you say a single damage, the single
6 damage could be multiple if you're differentiating between
7 wrongful death and conscious pain and suffering or
8 survivorship. If I adopted your view then, there would be a
9 million dollars coverage for conscious pain and suffering
10 and a million dollars coverage for wrongful death?
11 Certainly the measure of damages, Mr. Brown, are completely
12 different. We're talking about conscious pain and
13 suffering, loss of companionship, and grief and sorrow.
14 Aren't the measure of damages completely different in those
15 two causes of action?

16 MR. BROWN: The measure of damages there would be
17 different; you are correct.

18 THE COURT: Would there be different coverage's then?

19 MR. BROWN: There would be different coverage's.

20 THE COURT: So your position is like what Mr. McLeod
21 argued to me before that Ms. Ricard testified that there is
22 only one million regardless of whether there are two
23 different causes of action, two different elements of
24 damage, even though I don't have multiple claimants, I don't
25 have multiple claims. I do have, I guess if you count the

1 Craddock action, which we went to, you could say there are
2 multiple suits. But Mr. Craddock would be a different
3 insured, would he not?

4 MR. BROWN: He would be an insured ---

5 THE COURT: You admit he's an insured?

6 MR. BROWN: Right. Here's the reason, Your Honor ---

7 THE COURT: But you think there's duplication in that
8 as well?

9 MR. BROWN: There certainly is.

10 THE COURT: Based on what you read to me in the
11 pleadings?

12 MR. BROWN: He literally duplicates it by incorporating
13 the other complainant, but Your Honor, this is the reason
14 why I candidly told the Court I think the survival damage
15 and the death -- wrongful death is a closer question. I
16 don't think the other questions are close, in my humble
17 opinion.

18 I think the closer question is the one Your Honor
19 brought up about whether there is some difference from this
20 provision, and here's why there is not a difference.
21 Because as I walk through in these steps, in this instance
22 where personal injury has occurred as a result of an
23 offense, okay? We're talking about a civil rights violation
24 claim.

25 THE COURT: We haven't even addressed that yet. We're

1 just talking about wrongful death and conscious pain and
2 suffering. Because there's a difference between the State
3 causes of action and the Federal cause of action, because
4 the jury also found that the Town was negligent and that
5 officer Price violated Mr. Reeves' constitutional rights to
6 be free from the use of excessive force and that the Town
7 was liable under 1983 for Prices' use of excessive force in
8 accordance with the Town's custom and policies.

9 MR. BROWN: Yes, sir. Now, I will direct the Court, if
10 I could, back to one point that I think completely answers
11 this question in my client's favor. And that is back to
12 page 61, and I read part of this provision, Your Honor.
13 This is near number 4 at the top.

14 THE COURT: Page 61 of the contract, paragraph 4,
15 defining bodily injury.

16 MR. BROWN: Right. And in that section, it talks about
17 an instance where there are bodily injuries, and what the
18 contract talks about personal injuries, use of excessive
19 force, assault and battery with excessive force. And it
20 states there that when you're looking at this, when you have
21 that instance when you have both bodily injuries and then
22 you have personal injuries, and it says, "All resulting
23 injuries are deemed to be part of the personal injury."
24 That is why, Your Honor, you cannot separate -- there is no
25 difference between the survival and the wrongful death.

1 Everything is deemed part of the personal injury under
2 this policy. When you make a claim like they've done here,
3 when you bring a lawsuit and you assert both constitutional
4 violations and the regular lost State Tort Claims Act causes
5 of action. Then, this provision specifically says when you
6 have that scenario, it's all deemed to be part of a personal
7 injury, okay? And then when you look to see, okay, what
8 does that mean?

9 Well, personal injury is the excessive force which
10 occurred, and that's it. So then you say, well, was there
11 one excessive force or was there more than one excessive
12 force? There was one. It was a shooting. That's all that
13 happened. So you have a single coverage limit that applies
14 to that instance, Your Honor. And that is our argument.
15 Boiter and all these other cases don't have anything to do
16 with this.

17 You look at this language and under that fact pattern,
18 and Mr. McLeod brought up other fact patterns, and we could
19 go on and on forever if we bring up different fact patterns.
20 Your Honor needs to, with all due respect, focus on this
21 fact pattern, which is what we stipulated to do, and look at
22 this language to make a determination and we think Your
23 Honor should find that there is a single limit.

24 THE COURT: Thank you very much, Mr. Brown.
25 Interesting, interesting argument. All right, Mr. Phillips,

1 you're up on issue two.

2 MR. PHILLIPS: All right, sir. Your Honor, we all know
3 this, the parties made a deal and this deal resulted in the
4 verdict against Cottageville, the verdict being resolved.
5 And then we were going to present two issues, we hoped, to
6 the Supreme Court and probably, ultimately, to one of the
7 Appellate Courts.

8 The issue that I'm focused on is did a bad faith tort
9 claim -- or would a bad faith tort claim against the South
10 Carolina Municipal Insurance and Risk Financing Fund be
11 subject to the South Carolina Tort Claims Act, very simple.

12 To start, and just to note from the outset, it has
13 nothing to do with a simple breach of contract claim. It is
14 a bad faith tort claim against the South Carolina Municipal
15 Insurance and Risk Financing Fund.

16 THE COURT: And listen, I told you that I was going to
17 get to this when you got up, so I'll ask you this now. You
18 agree that if we were talking about -- I'm assuming, because
19 you have told me somewhere in this record, you have told me
20 that Cottageville assigned any rights that it had after the
21 verdict to the plaintiff concerning bad faith.

22 MR. BROWN: Your Honor, I'm sorry, but I'll need to
23 answer. There was a statement that there would be an
24 assignment, but as it turned out, I don't believe there was
25 ever any need for that.

1 THE COURT: There was not an assignment?

2 MR. MCLEOD: Because the money changed hands, the
3 assignment didn't take place.

4 THE COURT: All right. Well, my question then will be
5 one in theory, Mr. Phillips, regardless of whether there's
6 an assignment in this case. If, in fact, the plaintiff here
7 in this matter, and that is, of course, Mrs. Reeves as
8 Personal Representative, had standing to bring a breach of
9 contract action against your client, SCMIRF, for failing to
10 pay its coverage. Would that action, if it were only a
11 breach of contract action, be subject to the State Tort
12 Claims Act?

13 MR. PHILLIPS: Your Honor, you're asking me for an
14 advisory opinion.

15 THE COURT: Mr. Phillips, you ask me for advisory
16 opinions every day of my career.

17 MR. PHILLIPS: Even though no such contracts or
18 obligation was alleged by the plaintiff, and even though no
19 such contractual breach was part of this theory that brought
20 us to you today, in theory, a simple breach of contract
21 claim, if properly brought, if there were standing, if it
22 weren't a third party assertion ---

23 THE COURT: Would not be subject ---

24 MR. PHILLIPS: I don't believe would be subject to the
25 Tort Claims Act, that's right.

1 THE COURT: As hard as it was for you, Mr. Phillips, to
2 answer a theoretical question.

3 MR. PHILLIPS: All right.

4 THE COURT: However, if you brought, and this is where
5 we get to the edge of the law, all right, if you brought an
6 action as Nichols envisions you can, and you've been
7 involved in them, and you bring an action in bad faith in
8 tort and in contract, all right? Now, Mr. Phillips, what
9 happens then? Or would it be your position that the
10 plaintiff would have to elect if he wanted to proceed or
11 would it be your position that the Tort Claims Act would not
12 apply because you have a contract action?

13 MR. PHILLIPS: I believe the bad faith action, period,
14 would put such a scenario to the end of the tort claims.

15 THE COURT: But there is no case in South Carolina that
16 I'm aware of that has addressed that issue. Are you aware
17 of a case?

18 MR. PHILLIPS: We cited, as you know ---

19 THE COURT: I know you have. I'm not talking about the
20 political subdivision argument, now.

21 MR. PHILLIPS: Yes, I get it, Judge. And I'd like to
22 get to that one, first, if you don't mind. But I will say
23 this, there's no question I don't think between any of us
24 that a bad faith action is a tort action, and a tort action
25 is one that belongs, if it's against a political

1 subdivision, the State of South Carolina, it's one for which
2 unlimited immunity exists through the tort claim.

3 THE COURT: Regardless of whether you've pled
4 alternative causes of action.

5 MR. PHILLIPS: That's right.

6 THE COURT: But there's no case that I know of where
7 that has occurred, do you?

8 MR. PHILLIPS: Not that I am specifically aware of,
9 Your Honor.

10 THE COURT: All right. Go ahead. I know you want to
11 talk to me about the political subdivision. Judges are
12 often asking questions that lawyers feel really aren't
13 germane to their prepared argument, and I apologize for
14 that. But since I have to decide this matter, I'd like to
15 get my questions answered.

16 MR. PHILLIPS: It is their privilege, sure. And Your
17 Honor, Title 15, Chapter 78, the Tort Claims Act that you
18 are very, very aware of specifically directs political
19 subdivisions, like the Town of Cottageville, in 15-78-140
20 specifically directs them to obtain liability contract
21 coverage, just as was done here.

22 Under 15-78-140A, the political subdivisions of the
23 state in regard to the tort and the automobile liability
24 property casualty insurance shall procure insurance to cover
25 these risks for which immunity has been waived by -- and it

1 specifically contemplates, and you know this, establishing
2 pooled self-insurance liability funds by intergovernmental
3 agreement, which may not be construed as transacting the
4 business of insurance or otherwise subject to state laws
5 regulating insurance.

6 THE COURT: So the statutory authorization for doing
7 this in the Tort Claims Act, as well as constitutional
8 authorization in article 8; isn't that right, section 13?

9 MR. PHILLIPS: If you say so, Your Honor. Yes, Your
10 Honor. I'm sorry to be cute.

11 THE COURT: So you're telling me that in the law -- I
12 hope I'm right on that, Moose. Let me check, because I
13 don't want to tell you something wrong. Article 8, section
14 13, entitled "Joint Administration of Functions and Exercise
15 of Powers" and subsection B of Section 13 says, "Nothing in
16 this Constitution may be construed to prohibit state or any
17 of its counties incorporated municipalities, or other
18 political subdivisions from agreeing to share the lawful
19 costs, responsibility and administration of functions with
20 one or more governments, whether within or without this
21 state.

22 MR. PHILLIPS: Right. The Tort Claims Act specifically
23 directs political subdivisions, like the Town of
24 Cottageville, as an option to pool a liability risk fund by
25 intergovernmental agreement and must provide liability

1 coverage for all employees in the political subdivision. We
2 contend, of course, that this South Carolina Municipal
3 Insurance and Risk Financing Fund is exactly what is
4 contemplated by the Tort Claims Statute and it's there for a
5 political subdivision.

6 The statutes, Judge, and you know this, also part of
7 Tort Claims Act, Title 15, Chapter 78, Section 30
8 specifically makes a definition of an agency and of a
9 political subdivision. And it goes into ---

10 THE COURT: Whoa, whoa, whoa. Go back and repeat that
11 statement again.

12 MR. PHILLIPS: It specifically defines this part of the
13 Tort Claims Act, both an agency, under (a).

14 THE COURT: But it doesn't define the entity which is
15 your client, the South Carolina Municipal Insurance and Risk
16 Financing Fund?

17 MR. PHILLIPS: No, no, no. I contend that it is
18 obvious that the SCMIRF, as we've referred to the South
19 Carolina Municipal Insurance and Risk Financing Fund is
20 specifically contemplated as an agency under (a) or as a
21 political subdivision ---

22 THE COURT: It falls within the definition in the Tort
23 Claims Act?

24 MR. PHILLIPS: That is correct. That is our
25 contention. And forget about the Attorney General's

1 Opinion, but I will call your attention to it in just a
2 minute.

3 THE COURT: I'm glad that you mentioned that. I think
4 both of you agree that I'm not bound by an Attorney
5 General's Opinion. I told y'all the story about one that I
6 wrote that got cited against me, but when Mr. Cook wrote the
7 Opinion, he also looked at several matters, including the
8 Constitution, I believe, if my memory serves me correct.
9 I'm looking for it now, because I had it in front of me when
10 I read it earlier. My law clerk has found it. That's what
11 a good law clerk does is find it when the judge is looking
12 for it.

13 Mr. Cook's Opinion cites not only -- he cites 15-78-
14 200, which is in the Tort Claims Act. He cites the Board of
15 Dentistry case, which Mr. McLeod went into great detail to
16 differentiate the South Carolina Board of Dentistry from
17 South Carolina Municipal Insurance and Risk Financing Fund.
18 He also cites 15-78-40, all right?

19 MR. PHILLIPS: Which is what you and I have already
20 discussed.

21 THE COURT: Exactly. And then interestingly enough,
22 Mr. Cook in the Attorney General's Opinion says that "SCMIRF
23 is an unincorporated, voluntary, self-insurance pool created
24 solely by municipalities in the State of South Carolina."
25 It says in the Opinion that SCMIRF was established pursuant

1 to Article 8, Section 13 of the South Carolina Constitution
2 which authorizes any two government entities to enter into
3 an interlocal contract or agreement with each other to
4 undertake collectively matters which each entity could
5 undertake alone.

6 So the purpose of SCMIRF, according to the Attorney
7 General's Office, was to establish a fund created by and
8 comprised of South Carolina municipalities and their
9 agencies, which are parties to an intergovernmental
10 agreement, which establishes a pool for the payment of
11 property losses and liability claims on behalf of its
12 members, pursuant to 15-78-140, which is the Municipal
13 Insurance and Risk Financing Fund.

14 MR. PHILLIPS: As a matter of fact, that was the
15 statute that you and I specifically discussed was 15-78-140.

16 THE COURT: Do you agree that that is what SCMIRF is?

17 MR. PHILLIPS: Yes, sir. Insomuch as it was created
18 solely by municipalities and their agencies.

19 THE COURT: And there are no other members other than
20 municipalities?

21 MR. PHILLIPS: Right. How can it not be a political
22 subdivision under a very broad definition in the Tort Claims
23 Act? And the broad definition is political subdivision
24 means, and it's a huge series, counties, municipalities,
25 school districts, regional transportation authority,

1 established pursuant to Chapter 25 of Title Faith, Title 58,
2 and an operator as defined in Item 58-25-20, which provides
3 public transportation on behalf of Regional Transportation
4 Authority, special purpose districts of the State and any
5 agency, governmental, healthcare facility, department or
6 subdivision thereof.

7 The only real question raised by Mr. McLeod on this
8 piece, which was analyzed pretty thoroughly by the Attorney
9 General's mention, is whether or not there should have been
10 a comma after the word "State" before a series that mentions
11 agency and governmental healthcare facility department or
12 subdivision thereof, as if those entities modify a special
13 purpose district, which I believe is by no means good
14 analysis.

15 THE COURT: And which was addressed in the Attorney
16 General's Opinion ---

17 MR. PHILLIPS: --- specifically. And as you remember,
18 the Attorney General's Opinion was one in 2014 and one in
19 1990.

20 THE COURT: I'm referring to the one in 2014. December
21 17th, 2014, authored by Robert Cook.

22 MR. PHILLIPS: And it refers back Your Honor, to one in
23 1990.

24 THE COURT: It does.

25 MR. PHILLIPS: Specifically, you know, consider that

1 series and the omission of that comma. And just for fun, I
2 will hand something to you and Mullins. I had a debate
3 yesterday with my co-counsel about it, because I always put
4 a comma after the last conjunction.

5 THE COURT: I love lawyers.

6 MR. PHILLIPS: Before the end of a series.

7 THE COURT: Hold on. Give Mr. McLeod a copy, because
8 he's anxiously awaiting his copy.

9 MR. MCLEOD: I never thought that Moose would be the
10 one to teach me grammar. Looks like I would be the one to
11 teach him, Your Honor.

12 MR. PHILLIPS: You need the comma before the
13 conjunction. Oxford comma indication is maybe you do, maybe
14 you don't. But the only thing that makes sense, Judge, is
15 that it's exactly what we discussed that an agency, a
16 governmental healthcare facility ---

17 THE COURT: What you're telling me is that a comma is
18 optional, according to what you found. You don't cite your
19 authority for this, but I assume ---

20 MR. PHILLIPS: We can mark it as Court's Exhibit Number
21 Two if you'd like, Your Honor.

22 THE COURT: But I mean who did it come from? It says
23 stackexchange at the top. This wasn't from some grammatical
24 book?

25 MR. PHILLIPS: No, sir. It came from the internet.

1 THE COURT: All right. Court's Exhibit Number Two.

2 Mr. McLeod, any objection?

3 MR. MCLEOD: No, Your Honor.

4 THE COURT: Court's Exhibit Number Two, without
5 objection. Mr. Phillips wants the Court to take grammatical
6 notice of the use of a comma.

7 (Whereupon, Court Exhibit Number Two, Use of a comma by
8 english.stackexchange.com, is entered into evidence.)

9 MR. PHILLIPS: Your Honor, under 15-78-30, besides the
10 definition of political subdivision, which we believe that
11 SCMIRF comes very squarely under.

12 There's discussion also that agency means an individual
13 office, agency, authority, department, commission, board,
14 division, instrumentality or institution, including a state-
15 supported governmental, then it goes into healthcare
16 facility, school, college, university, or technical college,
17 which employs employees whose act or omission gives rise to
18 the claim.

19 Again, as we discussed with SCMIRF being created solely
20 by municipalities and their agencies, our strong contention
21 is that it is a political subdivision.

22 THE COURT: All right. Let me ask you this, Mr. McLeod
23 thinks that this creates a terrible scenario, he outlines
24 because you have a cap under the Tort Claims Act of \$300,000
25 and that the prejudicial to its insured because if I were to

1 hold that it's a political subdivision, and if only the Tort
2 Claims Act applied, then you couldn't collect damages in
3 Tort if they exceeded -- even if the coverage were greater
4 than the cap in the Tort Claims Act. Let me hear from you
5 on that.

6 MR. PHILLIPS: All I can say, Your Honor, is that is
7 the whole magic of the Tort Claims Act. I mean, it
8 specifically ---

9 THE COURT: In other words, you believe the Legislature
10 only abrogated sovereign immunity to the tune of \$300,000
11 regardless of how it affected private insurance companies?

12 MR. PHILLIPS: For single incident, in aggregate, I
13 believe it's \$600,000. And Your Honor, one of the Tort
14 Claims Act statutes is -- it specifically indicates that --
15 excuse me, I'm trying to find my spot. Under 15-78-200, I'm
16 sure you're aware of the languages that the Tort Claims Act,
17 provisions in the chapter, establish limitations. Own and
18 exemptions to the liability of the governmental entity and
19 must be liberally construed in favor of limiting the
20 liability of the governmental entity.

21 THE COURT: Yes, sir, I am familiar with it. This is
22 the policy of insurance, according to Mr. Brown, must be
23 construed against the maker, the Tort Claims Act must be
24 liberally construed in favor of the governmental entity.

25 MR. PHILLIPS: Right. Your Honor, we've got, as you

1 know, some analysis on this Health Promotions Specialist v.
2 the South Carolina Board of Dentistry case. And it had the
3 five-prong set of analysis. Does the entity function
4 statewide here? The South Carolina Municipal Insurance and
5 Risk Financing Fund does function statewide. It provides
6 coverage contracts to municipalities across the state.

7 THE COURT: Once again, I ask you again, only
8 municipalities or covered members or its employees under
9 SCMIRF?

10 MR. PHILLIPS: That's my understanding. That is my
11 understanding.

12 THE COURT: What work of the state does SCMIRF perform?
13 Would it be the coverage to the municipalities?

14 MR. PHILLIPS: It provides coverage, contracts of
15 political subdivisions of the state. Was the entity created
16 by the Legislature? We contend that under 15-78-140, which
17 we discussed ---

18 THE COURT: Which is in the Tort Claims Act.

19 MR. PHILLIPS: In the Tort Claims Act, but it
20 specifically directs the creation or specifically authorizes
21 the creation of this by municipalities. Whether the entity
22 is subject to local control. Here, the funds allocated to
23 SCMIRF are public funds, in that they are pooled by
24 municipalities, municipal funds, to cover losses
25 attributable to liability claims.

1 Then, finally, the character of the power delegated to
2 the entity the nature of the function performed; here the
3 individual members, which are municipalities, as you just
4 pointed out, and their employees are the ones who are
5 covered. So yes, we believe that the South Carolina
6 Municipal Insurance and Risk Financing Fund fits very
7 squarely into the case and into the definition. Therefore,
8 it is a governmental entity. There's no question it's a
9 subset of these more rural counties, not always -- I said
10 counties; I meant municipalities, or smaller towns that have
11 pooled their resources to manage risks. And they are
12 specifically authorized to do that all by the Tort Claims
13 Act.

14 Your Honor, I've got to mention, and I know you've
15 acknowledged it, the South Carolina Attorney General has on
16 two occasions specifically considered whether SCMIRF, South
17 Carolina Municipal Insurance and Risk Financing Fund, is a
18 governmental entity or a political subdivision. Of course,
19 it's come down very loud and clear; yes, realizing it's an
20 Attorney General Opinion. It does contain some dicta.
21 There is a particular interest, if there is such a thing as
22 dicta in an Attorney General's Opinion.

23 THE COURT: I've been told that everything in an
24 Attorney General's Opinion is dicta, but go ahead, including
25 one's I authored.

1 MR. PHILLIPS: It says that SCMIRF is subject to Tort
2 suits only pursuant to the Tort Claims Act, on its
3 conclusion and that the members' participation of SCMIRF is
4 an exercise of an essential governmental function. That
5 SCMIRF serves as an agency or department of its
6 municipality. Members and thus falls within the definition
7 of a political subdivision. And then they predict what a
8 Court would find if encountered by this situation.

9 Your Honor, back to the very beginning of my argument,
10 and then I will sit down. As I said, we made a deal. And
11 the deal was that a lawsuit, a verdict, was going to be
12 resolved and two narrow questions were going to be
13 considered by us the lawyers and by the Courts and perhaps
14 by the Appellate Courts. And in this case, it was whether a
15 bad faith tort claim ---

16 THE COURT: You want to take me as far away from my
17 theoretical question as possible, don't you, Mr. Phillips?

18 MR. PHILLIPS: Because that was the deal.

19 THE COURT: That's why I said "in theory."

20 MR. PHILLIPS: This is all in the Court's Exhibit
21 Number One. A bad faith tort claim against SCMIRF is or is
22 not subject to South Carolina Tort Claims Act. We believe
23 very much that SCMIRF is a political subdivision and we
24 certainly believe that the bad faith tort claim is one that
25 is subject to the Tort Claims Act. Thank you.

1 THE COURT: Thank you very much. All right, Mr.
2 McLeod, I'm going to remind you that you told me you wanted
3 a reply and that you would be brief.

4 MR. MCLEOD: I will be very brief, Your Honor.

5 THE COURT: And I am very happy to hear from you. And
6 Mr. Brown, I'm going to give you a reply and Mr. Phillips,
7 I'm going to give you a reply afterwards, because I promised
8 you both that and I promised you I wouldn't put a time limit
9 on you, and I'm not gonna.

10 MR. MCLEOD: Yes, sir. This will be very brief, Your
11 Honor. The first point, with regard to Mr. Brown's comments
12 regarding aggregate insurance and occurrence insurance. Ms.
13 Ricard testified in the deposition on page 39, and I asked
14 her this question.

15 THE COURT: Hold on. Come up to the microphone for our
16 sake. All right, page what?

17 MR. MCLEOD: Page 39.

18 THE COURT: This is dealing with you, Mr. Brown, and
19 your portion of the argument. Page 39 of the contract.
20 What paragraph?

21 MR. MCLEOD: It begins at line 18.

22 MR. BROWN: He's talking about the deposition.

23 THE COURT: Oh, I'm sorry. You're referring to the
24 deposition and not the contract. I apologize. I don't have
25 the deposition in front of me. Hold on a second. My law

1 clerk says he has it under my stack.

2 MR. MCLEOD: I can, Your Honor, read the question and
3 answer.

4 THE COURT: How much do you want me to read?

5 MR. MCLEOD: I'm just going to do one question and
6 answer.

7 THE COURT: All right. Read it for the record for me.

8 MR. MCLEOD: It's page 39, beginning at line 18.

9 THE COURT: Mr. McLeod, this is the deposition of who?

10 MR. MCLEOD: Heather Ricard, Your Honor.

11 THE COURT: Ms. Ricard. Mr. McLeod is going to publish
12 the question and the answer.

13 MR. MCLEOD: Actually, she was a 30(b)(6), technically,
14 Your Honor. The question was: And certainly had SCMIRF
15 wanted to sell a single aggregate limit of law enforcement
16 liability they could have done so just like they did for the
17 sexual abuse scenario that we see on page 30 of the
18 contract; isn't that correct? Her answer was yes.

19 And even if the Court for some reason didn't want to
20 consider Ms. Ricard's deposition, if you look at the
21 contract itself on page 52.

22 THE COURT: You called that to my attention earlier I
23 thought.

24 MR. MCLEOD: Yes, sir. On page 52, paragraph 3, there
25 is a specific special aggregate limit for \$1,000,000 with

1 regard to sexual abuse claims only. That special aggregate
2 limit does not apply to any other claim contained or insured
3 through this contract of insurance, Your Honor.

4 THE COURT: Wait a minute, now. Read the sentence that
5 limits it to sexual abuse claims on page 52 of the
6 policy/contract.

7 MR. MCLEOD: Yes, sir. In paragraph number 3, it's
8 entitled "Negligent supervision resulting in abuse: special
9 aggregate limit."

10 THE COURT: You didn't highlight that one. I was
11 looking at the wrong paragraph.

12 MR. MCLEOD: Yes, sir, I'm sorry. So then the
13 operative language is as follows: liability coverage for
14 any claim based on a member or covered persons failure to
15 supervise, disclose, warn or prevent the conduct of law
16 enforcement employees or any other person, his conduct,
17 member or covered persons is legally obligated to supervise,
18 control, disclose, warn of or prevent which results in a
19 sexual abuse or physical abuse or neglect of any person,
20 whether or not said person, or perpetrator, tortfeasor,
21 and/or defendant, is in the custody or care of a member or
22 covered persons shall be subject to a single aggregate limit
23 of \$1,000,000."

24 THE COURT: All right. So your argument is that
25 because the company, or the insurer in this case, chose to

1 give aggregate limits for sexual abuse coverage, that they
2 could have done so for law enforcement or general liability,
3 but you could find no such provision in the contract here?

4 MR. MCLEOD: That's correct, Your Honor.

5 THE COURT: All right. Proceed.

6 MR. MCLEOD: The next point is that with regard to Mr.
7 Brown's pointing the Court to paragraph 61, and in
8 particular, the definition of bodily injury.

9 THE COURT: Now, you're talking about page 61 and not
10 paragraph 61?

11 MR. MCLEOD: No, sir, it's page 61, paragraph 4.

12 THE COURT: All right, Mr. Brown, we're now turning to
13 the contract, page 61, paragraph 4, defining bodily injury.

14 MR. MCLEOD: And this is in the definitions portion of
15 this section of the contract, and our position is that it
16 defines what bodily injury is within an occurrence. It
17 doesn't mean that an occurrence is based on bodily injury.

18 The final point, Your Honor, with regard to question
19 number two is that clearly the Legislature provided in its
20 definition of what a governmental entity was, what a
21 political subdivision was. They did not include in either
22 of those definitions an unincorporated association.
23 Therefore, they cannot fall under the purview of the Tort
24 Claims Act when the Legislature didn't give them that
25 coverage. And that's really our Brief, Your Honor. If you

1 have any questions after they speak, I'm happy to assist the
2 Court.

3 THE COURT: Thank you very much. Mr. Brown, I'll be
4 happy now to hear from you in reply. And Mr. McLeod, thank
5 you very much for getting right to the point in giving me a
6 reply to your argument.

7 MR. BROWN: Thank you, Your Honor, may it please the
8 Court. I will first address Mr. McLeod's point about the
9 aggregate limit related to sex abuse claims. What that
10 provision means, Your Honor, is no matter how many sex abuse
11 claims occur, there is a \$1,000,000 aggregate limit. So
12 that's not the case with respect to shootings.

13 For example, if there were three different shootings by
14 somebody represented by the Town of Cottageville, then
15 you've got three different million dollar limits that would
16 apply. If there were three different sex abuse cases by the
17 Town of Cottageville, you've got \$1,000,000 period. That's
18 what that aggregate means.

19 THE COURT: Hold on a second. Now, we're getting back
20 to your argument a while ago when we were talking about
21 damages. If I've got one perpetrator and three different
22 instances of sexual misconduct, \$1,000,000 is the limit; do
23 you agree?

24 MR. BROWN: Yes, sir.

25 THE COURT: However, if I've got three perpetrators,

1 you're now conceding that \$3,000,000 would apply?

2 MR. BROWN: No, Your Honor.

3 THE COURT: Because of the language in the provision,
4 Mr. McLeod cited?

5 MR. BROWN: Right. For that purpose.

6 THE COURT: His argument was why couldn't you have done
7 that for law enforcement liability and general liability to
8 make it clear? You want to address that?

9 MR. BROWN: Yes, sir. We could have sold that type of
10 policy where the Town of Cottageville, if Randall Price went
11 out on a Monday and shot somebody and then went out on a
12 Tuesday and shot somebody else, we could have sold them a
13 policy that says, "Well, it doesn't matter that there are
14 two separate shootings. You just got a million dollars."
15 We could have sold that; we didn't sell that.

16 But here, we have a single shooting, multiple different
17 claims, but they all lead to the same injury, and as I've
18 gone through with Your Honor, that personal injury, it is
19 solitary in its nature and it encompasses everything
20 involving that.

21 Now, let me address his next point ---

22 THE COURT: And that was an issue we never finished,
23 and I want to ask you about.

24 MR. BROWN: Okay.

25 THE COURT: We agreed that there were State causes of

1 action and Federal causes of action; did we not?

2 MR. BROWN: Yes, sir.

3 THE COURT: We agreed that the jury made findings in
4 its verdict form on both; did we not?

5 MR. BROWN: Right.

6 THE COURT: We agreed that those findings said that --
7 well, Mr. McLeod likes to argue about the Town of
8 Cottageville, because it's easy to say the Town of
9 Cottageville was negligent in hiring Price.

10 Mr. McLeod argues that a separate coverage matter
11 occurs because they were negligent in supervision of Price
12 and that they were negligent in retention of Price. There's
13 also a finding, by the way, which we haven't even mentioned,
14 that the Town was negligent in failing to train Officer
15 Price. So there are actually four different instances.

16 Then, we deal with 1983 and the constitutional right to
17 be free from the use of excessive force, be free from
18 unnecessary seizure, and deliberate indifference to the
19 constitutional rights of its citizens, deliberate
20 indifference to the constitutional rights -- now here we
21 have your argument bolstered because one of those findings
22 was deliberate indifference to the constitutional rights in
23 failing to train Price.

24 MR. BROWN: Yes, sir.

25 THE COURT: So there is some duplication, which I

1 concede to you, Mr. Brown, your argument has merit here,
2 because of you can't have coverage for training on one and
3 the other and increase the coverage if we have any effect to
4 your clause.

5 But aren't we talking about different types of injury
6 here? You concede that if you shot one person on one day
7 and Price shot another on another, you didn't sell a policy
8 that limited it to a million, and yet we're talking about
9 wrongful death, conscious pain and suffering, and we're
10 talking about constitutional right deprivation from the use
11 of unnecessary seizure, excessive force, completely
12 different types of damages, which you said to me earlier,
13 and I quote you, Mr. Brown, was a "real close question."

14 In fact, you thought it was much closer than Mr.
15 McLeod's argument that we're talking about an occurrence
16 policy. Am I quoting you accurately?

17 MR. BROWN: I think I said "closer questions."

18 THE COURT: Closer, all right. I'll concede that might
19 be what you said. That's my hearing.

20 MR. BROWN: That's what I meant to say.

21 THE COURT: You concede that's your argument?

22 MR. BROWN: Right.

23 THE COURT: Now, tell me, when you have these different
24 types of harm and damage, different elements of damage, and
25 you have a finding that it was proximately caused by these

1 different actions, where in the policy does it prohibit the
2 duplication for that?

3 MR. BROWN: Your Honor, I think that what you do is you
4 look at the two main provisions that I've referenced in the
5 past, which is page 61, Section IV, D.4.

6 THE COURT: Section what?

7 MR. BROWN: Page 61, number 4 at the top, which we've
8 gone over.

9 THE COURT: Bodily injury?

10 MR. BROWN: Yes, sir. And let me address what Mr.
11 McLeod said about this in his reply for just a moment,
12 because he said occurrence is not based on bodily injury, or
13 words to that effect. Your Honor, if you look at page 3 of
14 the policy.

15 THE COURT: Yes, I'm with you on page 3.

16 MR. BROWN: Paragraph 4

17 THE COURT: Definition of occurrence?

18 MR. BROWN: Yes, sir. It means an accident which
19 results in bodily injury. So yes, it does. I'm afraid I
20 disagree with my friend. Occurrence does relate and is
21 based on a bodily injury, but then when you turn to page 61,
22 paragraph 4, which we've been going over. "When there is
23 bodily injury and personal injury arising out of the same --
24 it says when any physical injury for purposes of Section IV,
25 it does not include injuries that were a result directly and

1 immediately from the affliction of personal injury,
2 including without limitation, assault and battery. Any such
3 results or injuries shall be deemed part of the personal
4 injury. So all of this gets wrapped up into the personal
5 injury under the very clear terms of the contract, Your
6 Honor.

7 Then, the question is you have a single personal
8 injury, the assault and the battery, which is specifically
9 listed there, and you have a single recovery under the
10 provisions that I've read to you. The principle one being
11 under the duplication provision, that line, Your Honor; I
12 think it's page 7.

13 THE COURT: Page 7?

14 MR. BROWN: I think that's where it was. Yes, sir,
15 page 7, paragraph 9.

16 THE COURT: The no duplication provision.

17 MR. BROWN: Yes, sir. If you look at the next to the
18 last sentence, a single coverage limit -- that's a million
19 dollars, applies to all claims or suits involving
20 substantially the same injury or damage or progressive
21 injury/damage.

22 THE COURT: Which is why I asked you that question
23 concerning constitutional rights, wrongful death, and
24 conscious pain and suffering.

25 MR. BROWN: But all of the bodily injury is ported over

1 into the personal injury on that page 61 that we read. Then
2 you look and say, okay, what limit applies? And it says the
3 single limit or as long as it's substantially the same
4 injury or damage, and it is the same injury. It's the
5 assault and battery. So Your Honor, our position continues
6 to be looking at the contractual language in this particular
7 fact pattern, there's been a single shooting, a single
8 death, and that is a single personal injury with one limit,
9 \$1,000,000.

10 THE COURT: Thank you very much, Mr. Brown. Mr.
11 Phillips, you're up.

12 MR. PHILLIPS: Two sentences. 15-78-140 specifically
13 contemplates the political subdivision ---

14 THE COURT: --- in the State Tort Claim ---

15 MR. PHILLIPS: --- like Cottageville getting
16 intergovernmental agreement risk management coverage. And
17 then, so this is specifically political subdivision getting
18 an intergovernmental agreement with a group like SCMIRF.

19 THE COURT: So whether or not a voluntary association
20 is numerically listed in the State Tort Claims Act, you
21 believe I can look to 140 and find the authorization still
22 in the State Tort Claims Act.

23 MR. PHILLIPS: And if there is any doubt, then you go
24 to 15-78-30, and you look at the definition of political
25 subdivision or an agency, and then you will be very

1 comfortable in deciding that SCMIRF is indeed a political
2 subdivision, it's subject to Tort Claims Act pursuant to our
3 deal, and that that's the end of that inquiry. Thank you.

4 THE COURT: Thank you. First of all, I want to thank
5 the patience of my people who have been watching. I
6 normally take a break for Becky's sake and for my audience,
7 but because I put no limit on the lawyers today, all of you
8 have now been sitting for two hours and twenty-five minutes.
9 I apologize that I haven't given you a break today, but this
10 is such an important matter that I wanted to make sure the
11 lawyers had sufficient time to tell me how they felt about
12 it. I want to thank you for being so courteous and thank
13 you very much for your patience during the argument.

14 I also want to thank my lawyers for being so well
15 prepared. There's nothing that a judge likes more than a
16 lawyer who has taken the time to really prepare an issue. I
17 realize you've had a lot of time. In fact, we've had -- Mr.
18 McLeod has been in it from day one, but I've actually got
19 new lawyers for SCMIRF today that were not involved in the
20 Federal Court trial.

21 Here's what I'm going to do. I'm going to give you
22 both the opportunity to educate me again. First of all, I
23 want you to understand that I've ruled during this matter,
24 even though Mr. Brown objected. And the only thing I've
25 ruled on, Mr. Brown, because I can promise you I haven't

1 made a decision on the merit. I do believe that the
2 stipulation you entered into does not prohibit my
3 considering depositions. I certainly would not allow Mr.
4 McLeod or you or Mr. Phillips to take another deposition in
5 this case. I think it's clear.

6 So you can cite to me your pleadings. You can cite to
7 me an excerpt from deposition taken prior to your entering
8 the stipulation of facts in this case, because I believe
9 it's a Rule 56 motion for summary judgment by both sides and
10 I'm not bound by just the pleadings.

11 I am bound by your stipulation of facts, however, and I
12 intend for you to adhere to that also. Mr. Brown is
13 absolutely right that you don't enter into a stipulation of
14 facts and then try to add some new fact that wasn't
15 stipulated to or agreed to by the parties, and I want to
16 make sure that both sides understand that.

17 I'm going to ask you both to submit proposed Orders to
18 me. I'm going to give you each 30 days, so you have a
19 month. Normally, I give seven, and most of my lawyers know
20 that, but because of the voluminous material I've had to
21 review in preparation of this, I'm going to ask you both to
22 submit your proposed Orders to me within 30 days of today.
23 Today is the 17th; is it not? So you've got until June 16th
24 to submit your proposed Orders.

25 I'll expect you to submit them to me at P.O. Drawer

1 470; that's 4-7-0, Walterboro, 29488. I'm going to expect
2 you to submit them to me by copying opposing counsel on your
3 transmittal to the Court. I will expect you to include a
4 self-addressed envelope with sufficient postage affixed
5 thereto. Mr. Phillips?

6 MR. PHILLIPS: Yes, sir.

7 THE COURT: If you write a 65-page Order, much like
8 what we discussed in my chambers, the nine-hour discovery
9 deposition for purposes that you enumerated to me, I expect
10 you to send me an envelope with enough postage to return
11 your Order since I have to pay my own postage; do you
12 understand?

13 MR. PHILLIPS: Yes, sir.

14 THE COURT: Very good. I'll expect you both to send
15 your Orders to me. Now, Mr. Brown is in Columbia, Mr.
16 McLeod is in Charleston, and Mr. Phillips is in Charleston.
17 If you want to comply with the time deadline, you can e-mail
18 me your Order, but you're still going to have to snail-mail
19 me the envelope with sufficient postage affixed thereto.

20 I always require that my lawyers send my law clerk a
21 working copy of what you're going to send me so we don't
22 have to copy or pass back and forth. His e-mail address is
23 pbucknerlrc@sccourts.org. His name is Durham Hill. Those of
24 you that know his Uncle Gary who is a Circuit Court Judge up
25 in Greenville and a dear friend of mine; and Moose, a fellow

1 Wofford College graduate, Mullins.

2 Please send Durham a working copy of your proposed
3 Order. You can mail it to him at P.O. Drawer 470, Durham
4 Hill, or you can e-mail it to him at
5 pbucknerlc@sccourts.org. Any e-mail transmission or United
6 States Mail transmission, you must copy opposing counsel on
7 any communication to the Court. You can e-mail me your
8 Order, also, but you still will have to snail-mail me the
9 envelope and postage and my e-mail address is
10 pbucknerj@sccourts.org.

11 I'm going to expect you if you cite -- now, I already
12 have what you handed me today, but if you cite a case, I'll
13 expect you to have Shephardized it or you don't cite it.
14 And number two, I expect you to send me with your Brief any
15 case that you intend to rely on in your proposed Order, so
16 that the time I get your proposed Orders, I can look at
17 every bit of information that you're relying on, whether it
18 be in the record or whether it be by virtue of case
19 authority or statutory authority that you intend to rely on
20 in your proposed Orders in sending it to the Court.

21 Are there any questions about the proposed Order
22 procedure from counsel for the plaintiff?

23 MR. MCLEOD: None from the plaintiff, Your Honor.

24 THE COURT: Any questions about the proposed Order
25 procedure from counsel for the defendant?

1 MR. PHILLIPS: No, sir.

2 THE COURT: Thank y'all very much for your excellent,
3 excellent work in preparing. I very much appreciate it. I
4 really find these issues to be interesting and fascinating.
5 I want you to know that I appreciate lawyers that work hard.
6 I thank y'all so much for that work.

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON) CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the
Judicial Department of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had in the
hearing of the captioned case, in the Court of Common Pleas
Non-Jury for Colleton County, South Carolina, on the 17th
day of May 2016.

I do further certify that I am neither of kin, counsel,
nor interest to any party hereto.

June 3rd, 2016

Rebecca H. Hill

Rebecca H. Hill,
Official Court Reporter

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement"), dated to be effective February 26, 2015, is entered into between: Ashley Reeves, as the Personal Representative for the Estate of Albert Reeves ("Reeves"); the South Carolina Municipal Insurance and Risk Financing Fund ("SCMIRF"); Randall Price ("Price"); and John Craddock ("Craddock"). Reeves, SCMIRF, Price and Craddock are collectively referred to herein as "the Parties," for purposes of this agreement.

RECITALS

WHEREAS, the Town of Cottageville ("Cottageville") has entered into an Intergovernmental Agreement for an Insurance and Risk Financing Fund for Risk Sharing with SCMIRF and in doing so, Cottageville became a member of SCMIRF;

WHEREAS, SCMIRF and Cottageville entered into a 2011 Coverage Contract (P-SCMIRF-1124-2011) ("the Coverage Contract") whereby SCMIRF provided liability coverage to Cottageville pursuant to the terms and limitations set forth in the Coverage Contract;

WHEREAS, NLC Mutual Insurance Company ("NLC Mutual") and SCMIRF entered into a Liability Reinsurance Agreement relating to SCMIRF's coverage contracts with its members, including the Coverage Contract entered into between SCMIRF and Cottageville;

WHEREAS, on or about May 16, 2011, Price, while acting in his capacity as a police officer with the Cottageville Police Department, shot and killed Albert Carl Reeves ("Bert Reeves");

WHEREAS, on August 28, 2012, Reeves filed a lawsuit styled *Ashley Reeves, as Personal Representative for the Estate of Albert Carl "Bert" Reeves vs. The Town of Cottageville, the Town of Cottageville Police Department, and Randall Price, individually*, in the South Carolina Court of Common Pleas for Colleton County (Civil Action No. 2012-CP-15-695) ("the Cottageville Action"), relating to the death of Bert Reeves;

WHEREAS, the Cottageville Action was a survivorship and wrongful death action that asserted claims based on negligence and violations of 42 U.S.C. § 1983;

WHEREAS, the Cottageville Action was removed to the United States District Court for the District of South Carolina – Charleston Division on September 24, 2012 (C/A No. 2:12-cv-03765-DCN);

WHEREAS, On February 18, 2014, Reeves filed a declaratory judgment lawsuit styled *Ashley Reeves, as the Personal Representative for the Estate of Albert Carl "Bert" Reeves vs. South Carolina Municipal Insurance and Risk Financing Fund ("SCMIRF"), the Town of Cottageville, the Town of Cottageville Police Department, and Randall Price, individually*, in the South Carolina Court of Common Pleas for Colleton County (Civil Action No. 2013-CP-15-135) ("the Declaratory Judgment Action");

WHEREAS, the Declaratory Judgment Action sought a declaration that the Coverage Contract provides \$1,000,000.00 in coverage for each independent, separate act of negligence, relating to the claims asserted in the Cottageville Action, thus resulting in the Coverage Contract providing for more than \$1,000,000;

WHEREAS, on May 14, 2014, Reeves filed a lawsuit against Craddock, in the United States District Court for the District of South Carolina – Charleston Division (Civil Action No. 2:14-cv-01918-DCN) (“the Craddock Action”), asserting claims for violations of 42 U.S.C. § 1983, relating to the death of Bert Reeves;

WHEREAS, a trial of the Cottageville Action was held from September 30, 2014 through October 15, 2014, resulting in a verdict in favor of Reeves and against Price and Cottageville on the negligence and § 1983 claims;

WHEREAS, on October 21, 2014, a judgment was entered against Price and Cottageville in the Cottageville Action based on the jury’s verdict;

WHEREAS, on November 12, 2014, Price and Cottageville filed post-trial motions in the Cottageville Action, and a hearing as to those motions was held on December 16, 2014;

WHEREAS, the Court in the Cottageville Action has not yet ruled on Price’s and Cottageville’s post-trial motions;

WHEREAS, the Parties have agreed upon terms that will fully and finally resolve the Judgment entered and all claims asserted (and which could have been asserted) in the Cottageville Action, all claims asserted (and which could have been asserted) in the Craddock Action; and all claims for costs and attorneys fees relating to any litigation between Reeves and Craddock, Cottageville, and Price;

WHEREAS, the Parties have also agreed upon terms respecting issues to be raised and resolved in further declaratory judgment proceedings and the manner in which those claims are to be resolved; and

NOW THEREFORE, in consideration of the foregoing and of the undertakings of the Parties set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

TERMS

1. **Payment of Primary Settlement Funds to Reeves.** Subject to the terms set forth in this Agreement, SCMIRF shall pay Reeves the total combined sum of TEN MILLION AND 00/100 DOLLARS (\$10,000,000.00) (“the Primary Settlement Funds”). The settlement check(s) shall be made payable to McLeod Law Group, LLC as attorney for the Estate of Albert Reeves and Ashley Reeves, as Personal Representative of the Estate of Albert Reeves and Ashley Lowe as Trustee of the 2015 Reeves Children’s Trust. Reeves’ counsel shall provide SCMIRF with any

necessary executed I.R.S. W-9 Forms. Reeves understands that SCMIRF will be reimbursed some of this money through reinsurance.

(a) **Timing for Primary Payment.** Payment of the Primary Settlement Funds shall be made within fifteen (15) days of the approval of the settlement by the United States District Court.

(b) **Allocation of Primary Settlement Funds.** The Parties agree that the Primary Settlement Funds are allocated as follows: ONE MILLION, FOUR HUNDRED THOUSAND AND 00/100 DOLLARS (\$1,400,000.00) to the Survivorship Action; and EIGHT MILLION, SIX HUNDRED THOUSAND AND 00/100 DOLLARS (\$8,600,000.00) to the Wrongful Death Action, all on account of physical injuries to Albert Reeves. Reeves represents and warrants that the allocation will result in such payments to creditors which in turn will result in the extinguishment of all liens and claims by third parties, and agrees to hold Cottageville, Price, Craddock, SCMIRF, and NLC Mutual harmless against any such third party claims.

2. **Resolution of Cottageville Action Upon Payment of Primary Settlement Funds.** The Parties agree that the payment of the Primary Settlement Funds is in consideration of the full and final resolution of the Cottageville Action.

(a) **Dismissal of and Satisfaction of Judgments in the Cottageville Action.** Upon payment of the Primary Settlement Funds to Reeves, Reeves shall file a stipulation of dismissal with prejudice as to all claims in the Cottageville Action. The parties further agree to take any and all appropriate steps and/or execute and file any and all appropriate documents necessary to fully satisfy any judgments against Cottageville and Price in the Cottageville Action and to ensure that there is no outstanding judgment of any kind against any of the Parties arising from the Cottageville Action. No Party shall seek attorneys fees or costs from any other Party, and any pending attorneys fees or costs requests are agreed to be withdrawn and moot between the Parties. Pending subpoenas and motions relating to NLC Mutual will be withdrawn and no new subpoenas on NLC Mutual shall be served related in any way to the shooting and death of Bert Reeves.

(b) **Releases in the Cottageville Action.** In consideration of the execution of this Agreement, payment of the Primary Settlement Funds set forth in Paragraph 1 of this Agreement, and the promises and covenants contained herein, the sufficiency of which is acknowledged, Reeves, as Personal Representative of the Estate of Albert Carl Reeves, on behalf of the estate, heirs, executors, and administrators, does hereby release, acquit, and forever discharge: (a) the Town of Cottageville, its departments or subdivisions, and its current and former officers, employees, agents, successors and assigns; (b) the Town of Cottageville Police Department, its current and former officers, employees, agents, successors and assigns; and (c) Randall Price, his heirs, executors or administrators; from any and all claims, demands, judgments, liabilities, duties, obligations, damages, interest and causes of action, of any kind or nature, known or unknown, asserted or unasserted, arising from or relating in any way to the shooting and death of Bert Reeves, including, but not limited to, any and all claims or causes of action that have been asserted, or which could have been asserted in the Cottageville Action.

3. Resolution of Craddock Action Upon Payment of Primary Settlement Funds. The Parties agree that the payment of the Primary Settlement Funds is in consideration of the full and final resolution of the Craddock Action.

(a) **Dismissal of the Craddock Action.** Upon payment of the Primary Settlement Funds to Reeves, Reeves shall file a stipulation of dismissal with prejudice as to all claims in the Craddock Action.

(b) **Releases in the Craddock Action.** In consideration of the execution of this Agreement, payment of the Primary Settlement Funds set forth in Paragraph 1 of this Agreement, and the promises and covenants contained herein, the sufficiency of which is acknowledged, Reeves, as Personal Representative of the Estate of Albert Carl Reeves, on behalf of the estate, heirs, executors, and administrators, does hereby release, acquit, and forever discharge: (a) the Town of Cottageville, its departments or subdivisions, and its current and former officers, employees, agents, successors and assigns; (b) the Town of Cottageville Police Department, its current and former officers, employees, agents, successors and assigns; and (c) John Craddock, his heirs, executors or administrators; from any and all claims, demands, judgments, liabilities, duties, obligations, damages, interest and causes of action, of any kind or nature, known or unknown, asserted or unasserted, arising from or relating in any way to the shooting and death of Bert Reeves, including, but not limited to, any and all claims or causes of action that have been asserted, or which could have been asserted in the Craddock Action.

4. Continued Litigation of Unresolved Issues. In consideration of the execution of this Agreement, payment of the Primary Settlement Funds set forth in Paragraph 1 of this Agreement, and the promises and covenants contained herein, the sufficiency of which is acknowledged, the Parties hereby agree that the issues raised in the Declaratory Judgment Action as well as any other issues relating to coverage under the Coverage Contract with respect to any and all claims asserted in the Cottageville and Craddock Actions or relating to or arising out of the shooting and death of Bert Reeves, shall be fully and finally resolved in the following manner:

(a) **Issues to be Resolved.** The Parties hereby agree that Reeves and SCMIRF shall litigate, to a final appellate decision, the following two issues, and only these two issues:

- i. Do the claims made and the verdict rendered against the Town of Cottageville and Randall Price, relating to the hiring, retention, supervision and shooting death of Bert Reeves result in there being more than \$1,000,000.00 in indemnity coverage available under the terms of the SCMIRF Coverage Contract with the Town of Cottageville with respect to all such claims including the claims made against John Craddock in the separately styled action referenced above? Reeves asserts there is more than one occurrence based on the facts and claims and the jury's verdict relating to the hiring, retention, supervision and shooting death of Bert Reeves, and, thus, there is more than \$1,000,000.00 in indemnity coverage available under the Coverage

Contract. SCMIRF asserts the Coverage Contract is limited to a total of \$1,000,000.00 in indemnity coverage.

- ii. **Allegations have been made that SCMIRF has engaged in bad faith with regard to its handling of the claims relating to the shooting and death of Bert Reeves. SCMIRF denies it has engaged in bad faith. SCMIRF was informed that any bad faith claims that exist in favor of Cottageville would be assigned to Reeves. Would a tort claim for bad faith brought against SCMIRF be subject to the South Carolina Tort Claims Act (S.C. Code. Ann. § 15-78-10 *et seq.*), assuming such a claim were otherwise valid? SCMIRF asserts it would. Respondent Reeves asserts otherwise.**

(b) Agreement to Forum for Continued Litigation of Unresolved Issues.

The Parties agree that Reeves and SCMIRF shall seek, through the most expeditious means available, a final appellate court decision in South Carolina State Court as to the two issues stated in paragraph 4(a) of this Agreement. The Parties further agree that this is to be accomplished in the following manner:

- i. **Original Jurisdiction Petition to the S.C. Supreme Court.** The Parties agree that SCMIRF shall file a petition requesting leave to bring a declaratory judgment action in the original jurisdiction of the South Carolina Supreme Court seeking resolution of the two issues stated in paragraph 4(a) of this Agreement. SCMIRF and Reeves have already agreed to stipulations which will govern the litigation relating to the two issues, and those stipulations are attached to this agreement.
- ii. **Stay of Declaratory Judgment Action.** The Parties agree to seek a stay of the Declaratory Judgment Action in the Court of Common Pleas for Colleton County pending a determination by the South Carolina Supreme Court on the petition for original jurisdiction referenced in paragraph 4(c)(i) of this Agreement. The Parties further agree to a stipulated dismissal of the Town of Cottageville and of Randall Price from the Declaratory Judgment Action.
- iii. **Adverse Determination of Original Jurisdiction Petition.** In the event that the South Carolina Supreme Court declines to hear the declaratory judgment action in its original jurisdiction, then the Parties agree that they will then proceed with the Declaratory Judgment Action pending in the Court of Common Pleas for Colleton County, and that the pleadings in that action shall be amended and stipulations as are necessary will be agreed to in order to reflect that the issues to be determined are solely the issues set forth in paragraph 4(a) of this Agreement and that the Stipulation of Facts outlined in paragraph 4(b) of this Agreement shall control all factual issues. The Parties further agree that the Declaratory Judgment Action will continue until there is a final appellate decision, which is defined as the date when the remittitur is issued.

(c) **Potential Payment of Contingent Settlement Funds.** The Parties agree that a final appellate decision on the issues set forth in paragraph 4(a) of this Agreement shall have the following result:

- i. **Determination of Issue 4(a)(i) in Favor of Reeves.** In the event that the final appellate decision on the issue set forth in paragraph 4(a)(i) of this Agreement is that the Coverage Contract provides more than a total of \$1,000,000.00 in indemnity coverage for the shooting and death of Bert Reeves, SCMIRF hereby agrees that it shall pay the additional sum of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) ("Contingent Settlement Funds – Coverage") to Reeves within thirty (30) days of receipt of the final appellate court decision, which is defined as the remittitur, on that issue.
 - ii. **Determination of Issue 4(a)(ii) in favor of Reeves.** In the event that the final appellate decision on the issue set forth in paragraph 4(a)(ii) of this Agreement is that a bad faith tort claim against SCMIRF is not subject to the South Carolina Tort Claims Act, SCMIRF hereby agrees that it shall pay the additional sum of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) ("Contingent Settlement Funds – SCTCA") to Reeves within thirty (30) days of receipt of the final appellate court decision, which is defined as the remittitur, on that issue.
 - iii. **Other Resolution.** In the event that: (a) the final appellate decision on the both issues set forth in paragraph 4(a) of this Agreement is in favor of SCMIRF; (b) no final appellate decision on these issues can be achieved as set forth herein despite the good faith efforts of the Parties; or (c) if other aspects of this settlement cannot be achieved as a result of actions or decisions by the Courts involved in the Cottageville, Craddock, and/or Declaratory Judgment Actions despite the good faith efforts of the Parties; then the Parties hereby agree that the payment of the Primary Settlement Funds (as set forth in paragraph 1 of this Agreement) shall constitute the sole payment to Reeves, and that Reeves is no longer entitled to any potential payment of the Contingent Settlement Funds – Coverage or the Contingent Settlement Funds – SCTCA. A ruling on one, but not both, of the issues in favor of Reeves results in the contingent payment on that one issue being made by SCMIRF as further outlined herein above.
 - iv. **Allocation of Contingent Settlement Funds.** In the event that, under the terms of this Agreement, SCMIRF makes payment of either the Contingent Settlement Funds – Coverage or the Contingent Settlement Funds – SCTCA (or both), those settlement funds shall be allocated as follows: 10% to the Survivorship Action; and 90% to the Wrongful Death Action.
- (e) **Final Resolution of All Litigation and Full Releases.** Upon the final resolution of the issues set forth in paragraph 4(a) of this Agreement, as outlined in paragraph 4(i)-(iii), to the extent any litigation referenced in this Agreement still exists,

including but not limited to stayed actions, pending motions, etc, the Parties agree that all such litigation shall be terminated and that stipulations of dismissal with prejudice as to all claims and parties and/or satisfactions of judgments as to all parties shall be entered. Additionally, upon the final resolution of the issues set forth in paragraph 4(a) of this Agreement, as outlined in paragraph 4(i)-(iii), the following releases shall go into effect:

- i. **Release Granted by Reeves, Price, and Craddock.** In addition to any other release(s) provided for in this Agreement, Reeves, as Personal Representative of the Estate of Albert Carl Reeves, on behalf of the estate, heirs, executors, and administrators, Price, and Craddock, on behalf of themselves, their heirs, executors, administrators, officers, employees, agents, departments or subdivisions, successors and assigns, do hereby release, acquit, and forever discharge: (a) SCMIRF, including its current and former, officers, directors, employees, contractors, administrators, servants, agents, insurers, reinsurers, and attorneys (but the right to bring a claim(s) against the trial lawyers and their insurers in *Ashley Reeves, as Personal Representative for the Estate of Albert Carl "Bert" Reeves vs. The Town of Cottageville, the Town of Cottageville Police Department, and Randall Price, individually*, in the South Carolina Court of Common Pleas for Colleton County (Civil Action No. 2012-CP-15-695) removed and having (C/A No. 2:12-cv-03765-DCN) is expressly not released); and (b) NLC Mutual, including its current and former officers, directors, employees, contractors, administrators, servants, agents, insurers, reinsurers, and attorneys (but a claim against the trial lawyers and their insurers in *Ashley Reeves, as Personal Representative for the Estate of Albert Carl "Bert" Reeves vs. The Town of Cottageville, the Town of Cottageville Police Department, and Randall Price, individually*, in the South Carolina Court of Common Pleas for Colleton County (Civil Action No. 2012-CP-15-695) removed and having (C/A No. 2:12-cv-03765-DCN) is expressly not released); from any and all claims, demands, judgments, liabilities, duties, obligations, damages, interest and causes of action, of any kind or nature, known or unknown, asserted or unasserted, arising from or relating in any way to the shooting and death of Bert Reeves, the handling of any claims relating to that incident, including, but not limited to, any and all claims or causes of action that have been asserted, or which could have been asserted in the Cottageville Action, the Craddock Action, and the Declaratory Judgment Action.

5. **Use.** Reeves and her counsel specifically agree that they will not publicize, or cause to be publicized, the facts of settlement, any of the terms of this Agreement, or the amount(s) of Settlement Funds involved in this settlement through any media source, including but not limited to the internet, television, radio, print, or any other form of mass media.

6. **Attorneys' Fees and Costs.** The Parties agree that they are responsible for their own future attorneys' fees and costs related to the continued litigation of the issues set forth in paragraph 4(a) of this agreement. To the extent that any Party possesses a claim for past attorneys fees and costs incurred as of the effective date of this Agreement, all such claims are included in

the payment of Primary Settlement Funds and in the releases granted herein. The Parties agree that each shall bear their own attorneys' fees and costs related to this Settlement Agreement and Release.

7. **Court Approval of the Settlement.**

The Parties agree to seek court approval of any settlements as is required by law.

8. **Miscellaneous.**

(a) **Intent.** It is the intent of the Parties to give the broadest releases and discharges possible under the law, and the provisions hereof should be interpreted as to give effect to such intent as those releases and discharges related to this case.

(b) **Construction of Agreement.** This Agreement shall be construed as if the Parties jointly prepared it, and any uncertainty or ambiguity in the Agreement shall not be interpreted against either Party.

(c) **No Oral Modification.** This Agreement shall not be altered, amended, or modified by oral representation made before or after the execution of this Agreement. All modifications must be in writing and duly executed by all Parties.

(d) **Final and Binding Agreement.** The Parties acknowledge that this Agreement is a full and final accord and satisfaction and shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, agents, representatives, successors, and assigns.

(e) **Complete Agreement.** This Agreement constitutes a single, integrated, written contract expressing the entire understanding and agreement between the Parties, and the terms of the Agreement are contractual and not merely recitals. No other agreement, written or oral, expressed or implied, exists between the parties with respect to the subject matter of this Agreement, and the Parties declare and represent that no promise, inducement, or other agreement not expressly contained in this Agreement has been made conferring any benefit upon them.

(f) **No Admission of Wrongdoing.** This Agreement effects the settlement of claims that are disputed. This Agreement is a compromise of a dispute resulting from arms-length negotiations conducted by counsel for the Parties with the Parties' full approval and consent and is entered into for the purpose of avoiding the expense and/or burden of further litigation. Payment by or on behalf of a Party released is not to be construed as an admission of liability on the part of that Party, by whom liability is expressly denied.

(g) **Additional Representations and Warranties.** In accordance with South Carolina and all other applicable law, the Parties hereby warrant and guarantee that all liens and/or monetary obligations owed, whether public, private or otherwise, relating to the Primary Settlement Funds and/or the Contingent Settlement Funds, have been or will be satisfied and paid off in their entirety by the Party owing under the lien and/or monetary obligation and/or an authorized agent of that Party. Any party owing under a lien and/or

monetary obligation agrees to indemnify and hold harmless any party released in this Agreement from any liability it may incur to any lien holder for the payment of any actual or equitable lien amount, whether public, private or otherwise.

(h) **Headings and Captions.** The headings and captions inserted into this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Agreement, or any provisions hereof, or in any way affect the interpretation of this Agreement.

(i) **Severability.** If any provision hereof is found by a Court of competent jurisdiction to be prohibited or unenforceable, it shall be ineffective only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provisions to the extent it is not prohibited or unenforceable, nor invalidate the other provisions to the extent it is not prohibited or unenforceable, nor invalidate the other provisions hereof.

(j) **Counterparts.** This Settlement Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed an original and all of which shall constitute the same instrument.

(k) **Choice of Law.** This Agreement is entered into in the State of South Carolina, and the Agreement and any rights, remedies, or obligations provided for in this Agreement shall be construed and enforced in accordance with South Carolina law.

(l) **Assignment and Transfer Warranty.** The Parties represent and warrant that they have not assigned, conveyed or otherwise transferred to any other person or entity in any manner, including by way of subrogation or operation of law or otherwise, all or any portion of any claims, demands or causes of action released in this Agreement. Price agrees he will enter into such assignments as are necessary for SCMIRF to assert claims, should SCMIRF so desire, against the trial lawyers involved in *Ashley Reeves, as Personal Representative for the Estate of Albert Carl "Bert" Reeves vs. The Town of Cottageville, the Town of Cottageville Police Department, and Randall Price, individually*, in the South Carolina Court of Common Pleas for Colleton County (Civil Action No. 2012-CP-15-695) removed and having (C/A No. 2:12-cv-03765-DCN). It is understood that SCMIRF may not need any such assignment to bring such a claim, should it decide to do so. It is further understood that Price may be precluded from making such an assignment until such time as criminal charges no longer remain possible against him. Price agrees that any recovery resulting from claims against the trial lawyers will belong to SCMIRF, and not to Price. It is understood a similar assignment agreement will be authorized by Cottageville in the normal course of business.

(m) **Authority to Enter This Agreement.** The undersigned represent and warrant that the person signing on behalf of their respective entity is authorized to execute this Settlement Agreement on behalf of that entity.

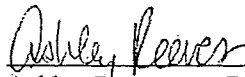
(n) **Terms Read and Understood.** The Parties declare that the terms of this Agreement have been completely read and fully understood and voluntarily executed. The

Parties further declare that they have consulted with their respective independent attorneys, who are the attorneys of their own choice, as to the meaning and effect of the execution of this Agreement.

ACCORDINGLY, the Parties hereby duly execute and deliver this Agreement.

SIGNATURE PAGES ATTACHED

**FOR ASHLEY REEVES, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF
ALBERT CARL REEVES:**

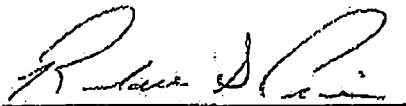


Ashley Reeves, as Personal Representative of the Estate of
Albert Carl Reeves

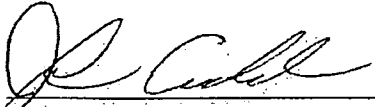
**FOR THE SOUTH CAROLINA MUNICIPAL INSURANCE AND RISK FINANCING
FUND:**

Heather M. Ricard
South Carolina Municipal Insurance and Risk Financing
Fund
By: Heather M. Ricard
Its: Secretary/Treasurer SCMIRF

FOR RANDALL PRICE:


Randall Price

FOR JOHN CRADDOCK:


John Craddock

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUITAshley Reeves, as the Personal
Representative for the Estate of Albert
Carl "Bert" Reeves,Civil Action No. 201⁴~~3~~-CP-15-135

Plaintiff,

PARTIAL STIPULATION OF
DISMISSAL

vs.

South Carolina Municipal Insurance and
Risk Financing Fund, the Town of
Cottageville, the Town of Cottageville
Police Department, and Randall Price,
Individually,

Defendants.

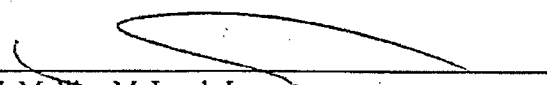
2015 APR 20 PM 1:40
PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

Pursuant to Rule 41(a)(1)(B) of the South Carolina Rules of Civil Procedure, Plaintiff, Ashley Reeves, as the Personal Representative for the Estate of Albert Carl "Bert" Reeves ("Plaintiff"), by and through their undersigned counsel, stipulate to the dismissal of all of Plaintiff's claims against Town of Cottageville and Price, *with prejudice*. However, the claims between Plaintiff and SCMRFF are not impacted by this Stipulation.

SIGNATURE PAGES ATTACHED

WE SO STIPULATE:

MCLEOD LAW GROUP, LLC

By: 

W. Mullins McLeod, Jr.

SC Bar No. 14148

E-Mail: mullins@mcleod-lawgroup.com

Post Office Box 21624

Charleston, SC 29403

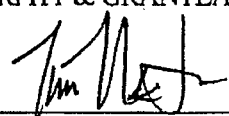
(843) 277-6655

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

Charleston, South Carolina

4/16, 2015**WE SO STIPULATE:**

MURPHY & GRANTLAND, P.A.

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SC Bar No. 7941

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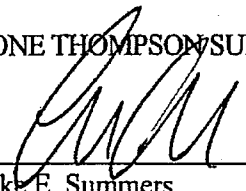
Attorneys for South Carolina Municipal Insurance and
Risk Financing Fund

Columbia, South Carolina

April 16, 2015

WE SO STIPULATE:

MALONE THOMPSON SUMMERS & OTT LLC

By: 

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Attorneys for Randall Price

Columbia, South Carolina

APRIL 14, 2015

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JUN - 3 2015

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

S.C. Supreme Court

South Carolina Municipal Insurance and Risk
Financing Fund ("SCMIRF"), ... Petitioner,

v.

Ashley Reeves, as Personal Representative of the
Estate of Carl "Bert" Reeves Respondent.

CONSENT PETITION FOR ORIGINAL JURISDICTION

South Carolina Municipal Insurance and Risk Financing Fund ("SCMIRF"), hereby respectfully requests that the South Carolina Supreme Court authorize the bringing of the attached suit within its original jurisdiction pursuant to Rule 245 of the South Carolina Appellate Court Rules, S.C. Code Ann. § 14-3-310, and S.C. Const. art. V, § 5. Respondent Ashley Reeves, as Personal Representative of the Estate of Carl "Bert" Reeves ("Reeves" or "Respondent") consents to this Petition¹. The proposed Complaint² is attached as Exhibit "I."

Authority of the Court to Assume Original Jurisdiction

Under Rule 245(a) of the South Carolina Appellate Court Rules, the Court may assume jurisdiction when "the public interest is involved, or if special grounds of emergency or other good reasons exist why the original jurisdiction of the Supreme Court should be exercised" See also S.C. Const. art. V, § 5; Amisub of S.C. v. S.C. Dep't

¹ Reeves does not agree on the merits of the claims asserted in the attached Complaint asserted by SCMIRF. Reeves consents to this Court adjudicating those claims in its original jurisdiction.

² The Complaint also incorporates attachments.

of Health & Envtl. Control, 407 S.C. 583, 757 S.E.2d 408 (2014). Here, the public interest as well as other good reasons exist for this Court to assume original jurisdiction.

This Court has exercised its authority in the original jurisdiction in a number of cases involving the public interest where there is a potential impact on government function. See S.C. State Ports Auth. v. Jasper County, 368 S.C. 388, 629 S.E.2d 624 (2006) (deciding whether the Ports Authority's condemnation power is superior to that of Jasper County); Charleston County Pub. Schs., Inc. v. Moseley, 343 S.C. 509, 541 S.E.2d 533 (2001) (deciding issue related to levying of taxes by Charleston County School District's board of Trustees); Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000) (clarifying statute and determining Governor's authority to remove Public Service Authority members); City of Hardeeville v. Jasper County, 340 S.C. 39, 530 S.E.2d 374 (2000) (determining the authority of a county to enact accommodations and hospitality taxes). As outlined herein, coverage for municipalities in this State may be impacted by the answers to the legal questions posed and, therefore, a case impacting the public interest exists under the Stipulated Facts set forth in this matter.

Reasons to Exercise Original Jurisdiction

Respondent brought the suit styled *Ashley Reeves, as Personal Representative for the Estate of Albert Carl "Bert" Reeves vs. The Town of Cottageville, the Town of Cottageville Police Department, and Randall Price, individually*, in the South Carolina Court of Common Pleas for Colleton County (Civil Action No. 2012-CP-15-695) ("the Cottageville Action"), seeking damages for negligence and pursuant to Section 1983 of the United States Code³ related to the shooting and death of Reeves by Randall Price.

³ Initially, the action also included an assault and battery claim, but it was subsequently withdrawn by Reeves prior to judgment.

Randall Price ("Price") was a police officer employed by the Town of Cottageville who was acting within the scope of his employment when he shot Reeves. The Town of Cottageville and Price were defended in the Cottageville Action by attorneys retained by SCMIRF as part of a Coverage Contract related to an Intergovernmental Agreement. Specifically, the Town of Cottageville, as a municipality, is a member of an Intergovernmental Agreement with SCMIRF, which provides coverage for certain risks as set forth in the Coverage Contract. Both the Town of Cottageville and Price were covered "persons" under the Intergovernmental Agreement.

The Cottageville Action was subsequently removed to the United States District Court for the District of South Carolina – Charleston Division on September 24, 2012 (C/A No. 2:12-cv-03765-DCN). The case went to trial and Respondent won a verdict against the Defendants, Price and the Town of Cottageville on the negligence and Section 1983 claims for, \$97.5 million.

During the litigation, allegations were made—and denied by SCMIRF—that SCMIRF had acted in bad faith in failing to reasonably settle the Cottageville Action prior to trial. SCMIRF was informed by the Town of Cottageville, moreover, that it would assign its rights to any bad faith claim to Reeves, if necessary. SCMIRF denied any bad faith liability, but also asserted that any such bad faith claim made against SCMIRF, whether assigned or not, would be subject to the South Carolina Tort Claims Act.

Under the circumstances described, the Parties agreed to a comprehensive settlement with one primary payment amount, part of which was paid by a reinsurer, and two contingent payment amounts. The two contingent payment amounts are based on the

outcome of two legal questions, both of which are set forth in the attached draft Complaint (pursuant to agreed Stipulations of Facts and Issues between the Parties) and regarding which the Parties seek to have resolved through the Court's original jurisdiction. See Stipulations attached to Complaint Ex. I. The answers to these two questions are important to the Parties due to the significant monetary sums involved, but also important to SCMIRF as it addresses future claims against its members.

Moreover, the public interest is plainly involved here, and the circumstances constitute grounds of emergency or other good reason for the exercise of this Court's original jurisdiction. This Court has recognized that "the insurance business is affected with a high degree of public interest," Coker v. Pilot Life Ins. Co., 265 S.C. 260, 268, 217 S.E.2d 784, 788 (1975) (citations omitted), and has previously exercised its original jurisdiction to determine whether certain claims or statutory protections could be asserted by or against an insurer, see, e.g., S.C. Ins. Comm. v. S.C. Life & Health Ins. Guaranty Ass'n, 267 S.C. 378, 228 S.E.2d 273 (1976); Powell v. Gary, 200 S.C. 154, 20 S.E.2d 391 (1942). While SCMIRF is not legally an "insurer" covered by statute, it issues coverage contracts which resemble insurance policies to local political subdivision member-entities, thereby invoking the public interest.

These local, political subdivision members rely on SCMIRF to administer and handle various claims made by third-parties against them. This process includes defending them in litigation brought by third-parties, such as those asserted by Reeves in the Cottageville Action. The legal questions raised by the Parties address the scope of such coverage. The specific questions posed by the Parties for this Court are:

- (1) Do the claims made and the verdict rendered against the Town of Cottageville and Randall Price, relating to the

hiring, retention, supervision and shooting death of Bert Reeves result in there being more than \$1,000,000.00 in indemnity coverage available under the terms of the SCMIRF Coverage Contract with the Town of Cottageville with respect to all such claims including the claims made against John Craddock⁴ in the separately styled action referenced above? Reeves asserts there is more than one occurrence based on the facts and claims and the jury's verdict relating to the hiring, retention, supervision and shooting death of Bert Reeves, and, thus, there is more than \$1,000,000.00 in indemnity coverage available under the Coverage Contract. SCMIRF asserts the Coverage Contract is limited to a total of \$1,000,000.00 in indemnity coverage.

- (2) Allegations have been made that SCMIRF has engaged in bad faith with regard to its handling of the claims relating to the shooting and death of Bert Reeves. SCMIRF denies it has engaged in bad faith. SCMIRF was informed that any bad faith claims that exist in favor of Cottageville would be assigned to Reeves. Would a tort claim for bad faith brought against SCMIRF be subject to the South Carolina Tort Claims Act (S.C. Code. Ann. § 15-78-10 *et seq.*), assuming such a claim were otherwise valid? SCMIRF asserts it would. Respondent Reeves asserts otherwise.

SCMIRF takes the position that if Reeves' legal positions and averments are followed and accepted in South Carolina, SCMIRF's ability to adequately and economically insure its members becomes threatened. As a result, SCMIRF does not believe its coverage for the incidents outlined in the attached Complaint, see Ex. I, relating to the shooting and death of Bert Reeves exceeds \$1,000,000. Additionally, SCMIRF also believes its tort liability for a bad faith claim, if any, is subject to the protections of the South Carolina Tort Claims Act. Respondent disagrees with SCMIRF's position on both questions.

⁴ An additional federal action was brought by Reeves against John Craddock, see attached Complaint.

Due to this difference of agreement and the impact a resulting decision will have on the public interest, the Parties seek rulings from this Court through its original jurisdiction.

Grounds for Judgment

The purpose of a declaratory judgment action, as outlined herein and in the Complaint, is to settle and to afford relief from uncertainty and insecurity with respect to legal rights and other legal relations. See S.C. Code Ann. § 15-53-130; see also Ex. I. The interests of all Parties are protected by proceeding in the Court's original jurisdiction and the Parties specifically consent to the same.

Further, this case may be concluded by rulings on legal issues alone, without the need for this Court to make specific findings of fact. The Parties have stipulated to the necessary facts, and also agree there is no need for discovery. In addition to the streamlining of this litigation by agreeing to necessary facts and agreeing to forego discovery, judicial economy is further served by allowing this action to proceed in the original jurisdiction of this Court in that the delay entailed in seeking relief from a trial court and time lost in an appeal from a lower court's decision on the issues presented is avoided. Proceeding in this Court's original jurisdiction will serve the Parties in terms of time and expense, and allow these issues of public importance to be efficiently and finally resolved.

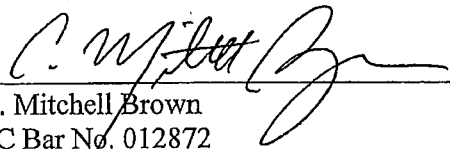
Conclusion

SCMIRF respectfully requests that this Court accept this case in its original jurisdiction and grant a declaratory judgment consistent with the relief requested in the attached Complaint. See Ex. I.

Respondent consents to the original jurisdiction request and also requests the Court to Answer the declaratory judgment questions after she has had an opportunity to respond to the Petitioner's Complaint and fully brief the issues outlined therein. Additionally, she requests the Court to answer the declaratory judgment questions, in her favor.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

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(803) 799-2000

Attorneys for Petitioner South Carolina Municipal
Insurance and Risk Financing Fund

Columbia, South Carolina

June 3, 2015

WE CONSENT TO THE ORIGINAL JURISDICTION REQUEST:

MCLEOD LAW GROUP, LLC

By: W. Mullins McLeod, Jr. *by CUB of express permission*

W. Mullins McLeod, Jr.

SC Bar No. 14148

Email: mullins@mcleod-lawgroup.com

James B. Moore, III

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(843) 277-6655

Attorneys for Respondent Ashley Reeves, as Personal
Representative of the Estate of Carl "Bert" Reeves

Charleston, South Carolina

June 3, 2015

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON) FOURTEENTH JUDICIAL CIRCUIT

Ashley Reeves as Personal) Civil Action No. 2013-CP-15-135
Representative for the Estate of Albert)
Carl "Bert" Reeves,)

Plaintiff,) MOTION FOR SUMMARY
) JUDGMENT

vs.)

South Carolina Municipal Insurance and)
Risk Financing Fund ("SCMIRF"))

Defendant.)

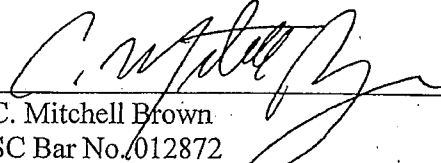
2015 DEC 15 PM 4:00

PATRICIA L. GRANT
COLLETON COUNTY
COMMON PLEAS

In accordance with Rule 56, SCRPC, the Defendant South Carolina Municipal Insurance and Risk Financing Fund ("SCMIRF") hereby moves for summary judgment on the two declaratory judgment claims outlined in the Plaintiff Ashley Reeves as Personal Representative for the Estate of Albert Carl "Bert" Reeves' Amended Complaint. SCMIRF notes that there is no genuine issue as to any material fact, and asserts it is entitled to judgment as a matter of law on both declaratory judgment claims. This Motion is based on the pleadings on file, the Stipulated Facts before this Court and the corresponding exhibits thereto, the Memorandum being filed and served contemporaneously herewith, and any such other memoranda and exhibits SCMIRF may file consistent with the Rules of Civil Procedure.

SIGNATURE PAGE ATTACHED

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

C. Mitchell Brown
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G. Mark Phillips
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151 Meeting Street.
Charleston, SC 29401
(843) 853-5200

Attorneys for South Carolina Municipal Insurance and
Risk Financing Fund ("SCMIRF")

Columbia, South Carolina

Dec. 15, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

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

Civil Action No. 2013-CP-15-135

Plaintiff,

vs.

South Carolina Municipal Insurance and
Risk Financing Fund ("SCMIRF"), the
Town of Cottageville, the Town of
Cottageville Police Department, and
Randall Price, individually,

Defendants.

MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2015 DEC 15 PM 4:04

South Carolina Municipal Insurance and Risk Financing Fund ("SCMIRF"), by and through its undersigned counsel and pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, respectfully submits this Memorandum in Support of its Motion for Summary Judgment on the two declaratory judgment causes of action before this Court. As outlined below, based on the Stipulated Facts, there is no genuine issue as to any material fact and SCMIRF is entitled to judgment as a matter of law on the claims.

INTRODUCTION

This action originated on February 18, 2014, when Plaintiff Ashley Reeves as Personal Representative for the Estate of Albert Carl "Bert" Reeves ("Plaintiff") filed a Complaint for Declaratory Judgment seeking a declaration as to the interpretation of a 2011 Coverage Contract for the Town of Cottageville. This action stemmed from mediation preparations for a separate lawsuit related to the shooting death of Albert Carl "Bert" Reeves that was filed by Plaintiff against the Town of Cottageville and Randall

Price and was being litigated in the United States District Court for the District of South Carolina, Civil Action No. 2:12-02765 (the "Federal Lawsuit"). A separate lawsuit was also filed by Plaintiff against John Craddock, Civil Action No. 2:14-01918, in the United States District Court for the District of South Carolina (the "Craddock Lawsuit") related to his alleged negligence during the shooting death of Albert Carl "Bert" Reeves. In preparation for the mediation, SCMIRF informed counsel for Plaintiff that the 2011 Coverage Contract provided a total of \$1 million in indemnity coverage for the claims of the Plaintiffs in both the Federal Lawsuit and the Craddock Lawsuit. Plaintiff disputed SCMIRF's position and filed the current action seeking a declaration that the 2011 Coverage Contract provided \$1 million per occurrence and arguing that more than one occurrence existed under the facts pled in the lawsuits.

In the Federal Lawsuit, Plaintiff obtained a judgment against the Town of Cottageville and Randall Price in the amount of \$97.5 million. The jury found that Price was negligent and that his negligence proximately caused the death of Bert Reeves and that Price violated Bert Reeves' constitutional right to be free from excessive force and unnecessary seizure. (*See* Ex. A to Stipulated Facts; Verdict Form 1.) Moreover, the jury found that the Town of Cottageville was grossly negligent in its hiring, supervision, failing to train, and retention of Price and such negligence proximately caused Bert Reeves' death. (*Id.* at Verdict Form 2.) The Town of Cottageville was also found to have violated Bert Reeves' constitutional rights and was "deliberately indifferent to the constitutional rights of its citizens" by the use of force by Price, the hiring of Price, and its failure to train Price. (*See id.*) In sum, both Price and the Town of Cottageville were found liable for (1) negligence and (2) violation of 42 U.S.C. § 1983. While the

Craddock Lawsuit did not go to judgment, Plaintiff alleged that in his supervisory capacity over Price, Craddock also violated 42 U.S.C. § 1983, by failing to intervene in the altercation between Price and Bert Reeves and by failing to render medical care to Bert Reeves.

Thereafter, the Parties settled the Federal Lawsuit and the Craddock Lawsuit and, as a material term of the settlement, agreed to litigate two declaratory judgment questions:

- (1) Would a tort claim for bad faith brought against SCMIRF be subject to the South Carolina Tort Claims Act (S.C. Code, Ann. § 15-78-10 *et seq.*), assuming such a claim were otherwise valid?
- (2) Do the claims made and the verdict rendered against the Town of Cottageville and Randall Price, relating to the hiring, retention, supervision and shooting death of Bert Reeves result in there being more than \$1,000,000.00 in indemnity coverage available under the terms of the Coverage Contract with respect to all such claims including the claims made against John Craddock in the separately styled action referenced above?

On June 3, 2015, the Parties jointly petitioned the South Carolina Supreme Court to hear and decide both questions in its original jurisdiction. On July 24, 2015, the South Carolina Supreme Court declined the Petition and the Parties proceeded, in accordance with the terms of their settlement agreement before this Court.¹

Following the denial of the Petition, Plaintiff, with the consent of SCMIRF, filed an Amended Complaint and the Parties' Stipulated Facts with this Court. A Consent Scheduling Order was entered, and SCMIRF has moved for summary judgment in

¹ On April 20, 2015, and as part of the settlement, a partial stipulation of dismissal was filed leaving only the SCMIRF as a defendant in this action.

accordance therewith. SCMIRF now contemporaneously submits this Memorandum in Support of Summary Judgment on both issues.

STATEMENT OF UNDISPUTED FACTS

The undisputed facts are set forth in the Stipulated Facts of the parties filed with this Court. Based on the undisputed facts, and applicable case law and South Carolina precedent, SCMIRF seeks an order from this Court finding that: (1) a tort claim for bad faith brought against SCMIRF would be subject to the South Carolina Tort Claims Act (S.C. Code. Ann. § 15-78-10 *et seq.*), assuming *arguendo* such a claim were otherwise valid and (2) the verdict rendered against the Town of Cottageville and Randall Price, relating to the hiring, retention, supervision and shooting death of Bert Reeves and the claims made against John Craddock result in there being only \$1,000,000.00 in indemnity coverage available under the terms of the Coverage Contract.

ARGUMENTS

I. A Tort Claim for Bad Faith Against SCMIRF Related to its Handling of the claims Relating to the Shooting and Death of Bert Reeves is Subject to the South Carolina Tort Claims Act ("TCA").

Plaintiff² claims that SCMIRF engaged in bad faith with respect to its handling of the claims associated with the shooting, and ultimately death, of Bert Reeves. (Compl. at ¶¶ 14-16.) Where an "insured can demonstrate bad faith or unreasonable action by the insurer in processing a claim under their mutually binding insurance contract, he can recover consequential damages in a *tort* action." *Nichols v. State Farm Auto. Ins. Co.*, 279 S.C. 336, 340, 306 S.E.2d 616, 619 (1983) (emphasis added); *see also Doe v. S.C. Med. Malpractice Liab. Joint Underwriting Ass'n*, 347 S.C. 642, 649, 557 S.E.2d 670,

² SCMIRF understood, prior to the settlement of the Federal Lawsuit, that the Town of Cottageville, as the insured, intended to assign any bad faith claims that may exist to Respondent Reeves.

674 (2001) (noting tort action exists where insured can demonstrate bad faith or unreasonable action by insurer in processing claim). Further, “if [the insured] can demonstrate the insurer’s actions were willful or in reckless disregard of the insured’s rights, he can recover punitive damages.” *Nichols*, 279 S.C. at 340, 306 S.E.2d at 619. SCMIRF is by law, not an insurer. Further, SCMIRF denies the existence of any bad faith. However, the question before this Court is, assuming *arguendo* that a bad faith claim could otherwise be made against SCMIRF, whether any such claim would be subject to the TCA. *See Charleston County Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993) (holding claim for bad faith associated with an insurance claim is subject to the Tort Claims Act and dismissal of bad faith claim did not prejudice appellant where proceeds obtained already exceeded statutory cap). SCMIRF contends the answer to this question is yes, the TCA would apply. Plaintiff argues otherwise.

A. Limitations on liability established by the TCA.

The TCA, codified at S.C. Code Ann. § 15-78-10, *et seq.*, provides limitations on liability for torts asserted against the State and its political subdivisions. *See* S.C. Code Ann. § 15-78-10. It provides that the “the State, and its political subdivisions, are only liable for torts within the limitations of this chapter and in accordance with the principles established herein.” S.C. Code Ann. § 15-78-20(a). The TCA also extends to employees of the State and provides the “exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee’s official duty.” S.C. Code Ann. § 15-78-200. In sum, it “establish[es] limitations on and exemptions to the liability of the governmental entity and *must be liberally construed in favor of limiting the liability* of the governmental entity.” *Id.* (emphasis added).

Under the TCA, the “State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein.” S.C. Code Ann. § 15-78-40. The limitation on liability is found in Section 15-78-120, which provides for a statutory damages cap and specifically prohibits recovery of punitive or exemplary damages and pre-judgment interest. *See* S.C. Code Ann. § 15-78-120. If a bad faith claim, such as the one proposed by Plaintiff, is asserted against an entity covered by the TCA, any resulting damages would be subject to the limitations described therein.

SCMIRF asserts that it, as an agency established by municipalities for liability risk sharing, is a “governmental entity” under the TCA and, therefore, is entitled to the immunity protections of the TCA.

B. Application of TCA to SCMIRF as a “governmental entity.”

As described above, the TCA, and its limitations on liability and damages, applies to the “State, an agency, a political subdivision, and a *governmental entity*.” S.C. Code Ann. § 15-78-40 (emphasis added). “Governmental entity” is a defined term meaning “the State and its *political subdivisions*.” S.C. Code Ann. § 15-78-30(d) (emphasis added). The term “political subdivision,” as used therein, is defined in Section 15-78-30(h) of the TCA as:

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

S.C. Code Ann. § 15-78-30(h) (emphasis added). The applicable phrase in Section 15-78-30(h), emphasized *supra*, has been construed by the South Carolina Attorney General to both stand on and be applied on its own: “The final phrase amplifies the term ‘political subdivision’ and cannot be reasonably read to modify the term ‘State’ since that term, as used in this paragraph, exists only to further describe special purpose districts.” S.C. Op. Att’y Gen., 1990 S.C. A.G. LEXIS 173, at *4 (S.C.A.G. July 25, 1990); *see also id.* at *5 (“Each clause is of equal status and no phrase exists as modification or explanation of another.”). Rather, the term “political subdivision” “when reduced to its simplest terms provides that a political subdivision means or includes the following:

1. counties;
2. municipalities;
3. school districts;
4. regional transportation authorities established pursuant to Chapter 25 of Title 58;
5. an operator as defined in item (8) of Section 58-25-20;
6. special purpose districts; and
7. any agency, governmental health care facility, department or subdivision of any of the aforementioned political subdivisions.”

Id. at *4–5 (emphasis added). Under this analysis, the term “political subdivision” would necessarily include SCMIRF.

Beyond the plain, textual reading of the statute, if this Court applies the “factors” outlined in the recent case, *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 743 S.E.2d 808 (2013), the same conclusion is reached, *i.e.*, that the SCMIRF is a governmental entity sufficient to invoke the protections of the TCA. There, this Court considered whether the Board of Dentistry constituted a governmental entity that could invoke the immunity protections of the TCA. In answering the question in the affirmative, this Court looked to the following “factors:”

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

Id. at 636, 743 S.E.2d at 814 (citing 81A C.J.S. *States* § 552 (Supp. 2013) (footnote omitted).) When all six factors from *Health Promotion* are applied to SCMIRF, they indicate that SCMIRF is a governmental entity sufficient to invoke the protections of the TCA.

First, SCMIRF functions statewide in that it provides coverage contracts to municipalities across the state, who become members of the fund. Second, SCMIRF performs the work of the State by providing coverage contracts to political subdivisions of the State. Third, SCMIRF is a pool of funds administered by an agency that is created by municipalities in accordance with the provisions of the Constitution of the State of South Carolina and statutory mandate under the TCA. *See* S.C. Const. Ann. Art. VIII, § 13; S.C. Code Ann. § 15-78-140; (Compl. at ¶¶ 9–11, 29, 30.) More specifically, Art. VIII, § 13 of the South Carolina Constitution authorizes an “incorporated municipality, or other political subdivision” to “agree with the State or with any other political subdivision for the joint administration of any function and exercise of powers and the sharing of the costs thereof.” S.C. Const. Ann. Art. VIII, § 13(A). It also provides that “[n]othing in this Constitution may be construed to prohibit the State or any of its counties, incorporated municipalities, or other political subdivisions from agreeing to share the lawful cost, responsibility, and administration of functions with any one or more governments, whether within or without this State.” *Id.* at § 13(B). Additionally,

the TCA itself provides that “political subdivisions of this State, in regard to tort and automobile liability, property and casualty insurance shall procure insurance to cover these risks for which immunity has been waived by, . . . (4) *establishing pooled self-insurance liability funds, by intergovernmental agreement[.]*” S.C. Code Ann. § 15-78-140(b) (emphasis added). Thus, the SCMIRF was created as a “[f]und created by and comprised of South Carolina municipalities and their agencies which are parties to an Intergovernmental Agreement” to “establish[] a pool for the payment of property losses and liability claims on behalf of its members pursuant to the provisions of the Code of Laws of South Carolina, 1976. Section 15-78-140,” thereby meeting the third “factor” of *Health Promotions*. S.C. Municipal Ins. and Risk Financing Fund, Bylaws, p.1; (Compl., Ex. 1 at ¶ 6).

Fourth, as in *Health Promotions*, the funds allotted to and controlled by SCMIRF are public funds in that they are pooled by municipalities to cover losses attributable to liability claims of its members. *See* 403 S.C. at 636, 743 S.E.2d at 814–15; (Compl. at ¶¶ 12–13). Fifth, and also like *Health Promotions*, the individual members of the SCMIRF—municipalities and their employees—“are entitled to immunity for actions performed in the course of their official duties.” 403 S.C. at 636, 743 S.E.2d at 815; *see also* S.C. Code Ann. §§ 15-78-20(a), 15-78-200. Thus, by recognizing the need for intergovernmental agreements such as the one created by SCMIRF, the General Assembly must have intended for SCMIRF “as a whole to come within the purview of the TCA.” *Health Promotions*, 403 S.C. at 636, 743 S.E.2d at 815. All of the *Health Promotions* factors thus weigh in favor of a finding that SCMIRF is a “governmental entity” sufficient to invoke the immunity protections of the TCA.

C. The South Carolina Attorney General and courts in other states have reached the same or a similar conclusion.

The South Carolina Attorney General has performed the same textual analysis of the provisions of the TCA, compared it to the creation and purpose of the SCMIRF, and found the TCA applicable to the SCMIRF as a “governmental entity.” *See* S.C. Op. Att’y Gen., 2014 S.C. A.G. LEXIS 116, at *5 (S.C.A.G. Dec. 17, 2014) (“[W]e believe a court would likely conclude that SCMIRF is a ‘governmental entity’ for purposes of the Tort Claims Act.”). The opinion stemmed from a request by the City Manager for the City of Cayce, as a participating municipality of the SCMIRF, for an opinion as to the applicability of the TCA to torts asserted against the SCMIRF. *See id.* at *1.

In the written opinion, the Attorney General went through the same statutory analysis described above, concluding that “[b]ecause SCMIRF *clearly serves as an agency or department of its municipality members*, it therefore falls within the foregoing definition [of “governmental entity”] and *is subject to tort suits only pursuant to the terms of the Act.*” *Id.* at *5–6 (emphasis added). The opinion concludes with a finding that “[t]he members’ participation in SCMIRF is an exercise of an essential governmental function” and, it is therefore “certainly reasonable for municipalities to ensure financial security and provide a collective source for paying liability from tort suits, as authorized and limited by the Tort claims Act.” *Id.* at *7–8.

While the South Carolina Attorney General opinion is not binding on this Court, it is highly persuasive and in line with analogous decisions in other states which consider similar pooling agreements. *See Kalber v. Redfearn*, 215 S.C. 224, 243, 54 S.E.2d 791, 799 (1949) (adopting opinion which notes that “[w]hile the opinions of the Attorney General are not binding upon the Court, they are persuasive, for that official occupies a

quasi judicial position[.]”). First, and perhaps most obvious, courts have concluded that state insurance funds, such as the Insurance Reserve Fund in South Carolina, are covered by corresponding state tort claims acts. *See, e.g., Ben Bolt-Palito Blanco Consol. Indep. Sch. Dist. v. Tex. Political Subdivisions Property/Casualty Joint Self-Insurance Fund*, 212 S.W.3d 320, 326 (Tex. 2006) (“We conclude that the Fund’s ‘nature, purposes and powers’ demonstrate legislative intent that it exist as a distinct governmental entity entitled to assert immunity in its own right for the performance of a governmental function. With regard to that function, the Fund enjoys the same governmental immunity as other political subdivisions.”); *Fehring v. State Ins. Fund*, 19 P.3d 276, 283 (Ok. 2001) (finding the Oklahoma State Insurance Fund is a state entity falling under the Governmental Tort Claims Act); *Dryden v. State Accident Ins. Fund Corp.*, 746 P.2d 240, 241–42 (Or. Ct. App. 1987) (finding State Accident Insurance Corporation Fund covered by the Oregon Tort Claims Act). Second, and by logical extension, other jurisdictions considering similar insurance pooling agreements for political subdivisions have found that they are also subject to immunity and the protections of those states’ versions of the TCA. *See, e.g., Shapiro v. Middlesex County Mun. Joint Ins. Fund*, 704 A.2d 1316, 1320 (N.J. 1998) (“JIF, formed to act on behalf of a group of municipalities, is also immune as a public entity under the Tort Claims Act (N.J.S.A. 59:1-1 to:12-3).”); *Colo. Special Dists. Prop. & Liab. v. Lyons*, 277 P.3d 874 (Colo. 2012) (affirming finding that Colorado Special Districts Property and Liability Pool is governed by the Colorado Governmental Immunity Act).

Based on the foregoing, this Court should find in favor of SCMIRF and hold that “the Tort Claims Act itself expressly contemplates the approach taken by SCMIRF” and

that “SCMIRF serves as an agency or department of its municipality members,” thereby falling within the parameters of the TCA. 2014 S.C. A.G. LEXIS, at *8. This Court should thus grant summary judgment in favor of SCMIRF and find that, assuming *arguendo* that a bad faith claim could be lodged against it, it is nevertheless protected by the TCA.

II. There is Only \$1 Million of Coverage Under the SCMIRF Coverage Contract For the Claims Made Against Craddock and the Verdicts Rendered Against the Town of Cottageville and Randall Price.

In the Federal Lawsuit,³ Plaintiff obtained a judgment against Price and the Town of Cottageville for negligence and deprivation of rights pursuant to 42 U.S.C. § 1983, in the total sum of \$97.5 million. (*See* Compl. at ¶ 14; *see also* Ex.1, ¶ 4; Ex. A. to Stipulated Facts). The total actual damages figure for all claims totaled \$97.5 million. (*See id.*) The claims and resulting judgment were based on the injuries resulting from the shooting death of Bert Reeves by Price, while Price was acting within the scope of his employment with the Town of Cottageville as a police officer. (*Id.* at Ex. 1, ¶¶ 2–3.) In addition to the negligence claimed in the Federal Lawsuit, Plaintiff also claimed that “Craddock was negligent with regard to the death of Bert Reeves due to certain actions or omissions attributable to him in the scope of his employment as a Cottageville police officer” and, in this regard, filed a separate federal lawsuit⁴ against Craddock. (*Id.* at Ex. 1, ¶ 5.)

³ *Ashley Reeves as Personal Representative of the Estate of Carl Albert Reeves v. Town of Cottageville and Randall Price*, Civil Action No. 2:12-02765-DCN, in the United States District Court for the District of South Carolina, Charleston Division.

⁴ *Ashley Reeves as Personal Representative of the Estate of Albert Carl Reeves v. John Craddock, individually*, Civil Action No. 2:14-01918-DCN, United States District Court for the District of South Carolina, Charleston Division.

During the relevant period, the Town of Cottageville was among the municipalities participating in an Intergovernmental Agreement and was a member of the SCMIRF self-insurance pool. (*See id.* at Ex. 1, ¶¶ 6–8.) While the parties have settled the Federal Lawsuit and the Craddock Lawsuit, a material term of the settlement is a final appellate decision regarding whether the \$1 million Coverage Limit set forth in the Coverage Contract applies to the Plaintiff’s claims and the verdict. As set forth below, while the claims at issue implicate coverage in various ways, coverage is limited to \$1 million for all of the claims.

A. Applicable provisions in the 2011 SCMIRF Coverage Contract.

Where the question before a court is one of coverage, “the policy itself should be examined to see whether coverage is provided by its terms.” *Horry County v. Ins. Reserve Fund*, 344 S.C. 493, 499, 544 S.E.2d 637, 640 (Ct. App. 2001). “Insurance policies,” such as the 2011 SCMIRF Coverage Contract, “are subject to general rules of contract construction,” and courts “must give policy language its plain, ordinary and popular meaning.” *Diamond State Ins. Co. v. Homestead Indus., Inc.*, 318 S.C. 231, 236, 456 S.E.2d 912, 915 (1995). In this case, the 2011 SCMIRF Coverage Contract only provides \$1,000,000.00 in coverage.

At the outset, the 2011 SCMIRF Coverage Contract includes a specific section—Section IV—which governs “Law Enforcement Liability.” (*See* Compl., Stipulated Facts at ¶ 8 (“The Contract represents the complete agreement between SCMIRF and Cottageville regarding coverage.”); Ex. D to Stipulated Facts, at pp.50–65). Section IV governs the “**Member**” named in the declarations page, *i.e.*, the Town of Cottageville, “the law enforcement department of the **Member** named,” and “each of the individual

law enforcement officers,” *i.e.*, Price and Craddock. (*Id.* at Ex. D, Sec. IV(A)(1) and (G)(9).) Section IV also provides that for the Contract Period, the liability limit is \$1 million, “Per Occurrence.” (*Id.* at Ex. D, Sec. IV, p.50 (“Law Enforcement Liability Contract Declarations”).)

In addition to the specific section governing law enforcement, the 2011 SCMIRF Coverage Contract also includes “General Provisions” in Section I, which govern “unless specific provisions are contained in the appropriate section.” (*Id.* at Ex. D, Sec. I(A).)⁵ Here, the relevant individuals are either the “member” or individual law enforcement officers acting within the scope of their employment. Therefore, Section IV of the Coverage Contract governs the verdict and claims.

Looking to Section IV, it covers “**Money Damages** because of a **Wrongful Act** by a **Member**, a **Law Enforcement Employee**, or other **Covered Persons(s)** while acting in conjunction with **Law Enforcement Employees**.” (*Id.* at Ex. D, Sec. IV(A)(1).) The “Wrongful Act” must be committed in the “course and scope of [the employee or covered person’s] official duties, as provided under the ‘South Carolina Tort Claims Act’ where a South Carolina state law is involved.” (*Id.*)⁶ Further, the “Wrongful Act” must result in:

- a. **Property Damage**⁷ or **Bodily Injury**⁸ which is first caused and first becomes manifest during the Coverage

⁵ Both the General Liability and Public Officials sections, Section III and Section V respectively, exclude coverage of claims related to the conduct of law enforcement officers, including negligent hiring and supervision claims. (See Compl., Ex. D to Stipulated Facts at Sec. III(J)(24); Sec. V(E)(21).) Thus, only Section IV, specifically governing Law Enforcement Liability, is applicable to the verdict and claims of Plaintiff.

⁶ For purposes of this case, the Parties have stipulated that “[o]n May 16, 2011, Price, while acting within the scope of his employment as a Cottageville police officer, shot and killed Albert Carl ‘Bert’ Reeves.” (Compl., Stipulated Facts at ¶ 3.) The Parties further stipulated as to Craddock that “Reeves claims that Craddock was negligent with regard to the death of Bert Reeves due to certain actions or omissions attributable to him in the scope of his employment as a Cottageville police officer.” (*Id.* at ¶ 5.)

⁷ Property Damage is not at issue in this case.

Period, provided the **Wrongful Act** amounts to an **Occurrence**; or

- b. **Personal Injury or Advertising Injury**⁹ which is first caused and first becomes manifest during the **Coverage Period**.

(*Id.* at Ex. D, Sec. IV(A)(1)(a)–(b).) Thus, there are two routes by which coverage could arise in this situation under Section IV – coverage for “Bodily Injury” or coverage for “Personal Injury.” These are discussed, in turn, below.

1. *Coverage for Bodily Injury.*

First, if Bodily Injury is the resulting damage at issue, the “Wrongful Act” resulting in the Bodily Injury must amount to an “Occurrence” to be covered under the Coverage Contract. The term “Wrongful Act” is specifically defined in Section IV, as follows:

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

(*Id.* at Ex D, Sec. IV(G)(27) (emphasis added).) Accordingly, the “Wrongful Act” would be the alleged negligence of the officer in the performance of his/her duties. The term

⁸“**Bodily Injury**” means physical injury to any person (including death) and any mental anguish or mental suffering associated with or arising from such physical injury. However, for purposes of this Section IV, **Bodily Injury** does not include such injuries if they result directly and immediately from the infliction of Personal Injury, including without limitation assault and battery; any such resulting injuries shall be deemed to be part of the **Personal Injury**. (*Id.* at Ex D, Sec. IV(G)(4).)

⁹ Advertising Injury is not at issue in this case.

"Occurrence" is specifically defined in the General Definitions section of Section I, as follows:

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

(*Id.* at Ex D, Sec. I(B)(4).) Therefore, for coverage to exist based on Bodily Injury, the Wrongful Act, *i.e.*, negligent act(s), must amount to an "Occurrence."

2. *Coverage for Personal Injury.*

The second possible area of coverage is where the resulting damage from a "Wrongful Act" is a "Personal Injury." "Personal Injury" is defined to include certain "Offenses" committed in the course of a Member's law enforcement activities, including: "assault and battery;" "violation of civil rights;" and "false arrest, detention and imprisonment." (*See id.* at Ex D, Sec. IV(G)(18)). The term "Offense" is defined as "conduct constituting **Personal Injury** or **Advertising Injury** that happens in the course and scope of the Member's or Covered Person's official duties as described in the South Carolina Tort Claims Act." (*Id.* at Ex D, Sec. I(B)(5).) Therefore, for coverage to exist based on Personal Injury, the "Wrongful Act" must constitute a qualifying "Offense."

3. *General provisions regarding the \$1 million Coverage Limit.*

As described above, coverage for "Bodily Injury" is limited to "Wrongful Acts" that amount to an "Occurrence," and coverage for "Personal Injury" is limited to "Wrongful Acts" that constitute the commission of certain "Offenses." However, under

the terms of the Coverage Contract, there is no duplication of these coverages. Rather the \$1 million Coverage Limit still applies. Specifically, the 2011 SCMIRF Coverage Contract states:

No liability that is covered under any Coverage Section of **This Contract** will be deemed to be separately covered under any other Coverage Section. No **Offense** will be deemed also to constitute an **Occurrence** for coverage purposes, or vice-versa. **Personal Injury** will not be deemed to constitute separate **Advertising Injury** for coverage purposes, or vice-versa. Any act(s) or omission(s) that might be described under more than one Coverage Section or more than one category as an **Offense(s)** or an **Occurrence(s)** will be treated as a single event for coverage purposes, subject to a single Coverage Limit. A single Coverage Limit applies to all claims or suits involving substantially the same injury or damage, or progressive injury or damage. There is no duplication of coverage or benefits under **This Contract**.

(*Id.* at Ex. D, Sec. I(C)(9) (underline emphasis added).) Thus, for coverage purposes, conduct amounting to an “Offense” supporting “Personal Injury” coverage cannot also constitute an “Occurrence” supporting “Bodily Injury” coverage, and vice versa.¹⁰ Additionally, where all of the “claims or suits” involve “substantially the same injury or damage,” such as the death of Bert Reeves in this case, “[t]here is no duplication of coverage or benefits.” (*Id.*) Instead, Plaintiff—regardless of the number of suits pursued—is limited to the \$1 million limit.

Moreover, the Coverage Contract provides that only a single limit will apply regardless of the number of persons injured or the number of covered person(s) who

¹⁰ Section IV(G)(4)’s definition of “Bodily Injury” also prevents the same conduct from constituting both a “Bodily Injury” and a “Personal Injury.” Specifically, the definition of “Bodily Injury” provides that, “for the purposes of this Section IV, Bodily Injury does not include such injuries if they result directly and immediately from the infliction of Personal Injury, including without limitation assault and battery; any such resulting injuries shall be deemed to be part of the Personal Injury.” (*See id.* at Ex. D., Sec. IV.(G)(4) (underline emphasis added)).

caused them. (*See id.* at Ex D, Sec. IV(D)(1).) This point is emphasized under “SCMIRF’s Limit of Liability.” The limitation on liability subsection provides: “SCMIRF’s liability for any one occurrence/wrongful act will be limited to \$1,000,000 per **Member** regardless of the number of **Covered Persons**, number of claimants or claims made . . . whether or not covered in one or more than one capacity under **This Contract[.]**” (*Id.* at Ex. D, Sec. IV(D)(2).) Where there are “continuing, serial, or repeated instances of **Personal Injury** or **Advertising Injury** [it] will be considered as one occurrence/wrongful act, regardless of the number of **Covered Persons** involved in causing or failing to permit such injuries or the number of persons injured, and only a single **Coverage Limit** or **Aggregate** for one year will apply to all such claims arising from such continuing, serial or repeated conduct[.]” (*Id.* (underline emphasis added).)

Additionally, in the Coverage Contract’s definition of “Offense” it specifically provides that “[a]ll repetitions of the same basic **Offense** involving any offended person and/or organization or group of persons and/or organizations, whether or not there are different witnesses to the offense or there is a variation in conduct constituting the offense, will be treated as one **Offense**, subject to a single coverage limit, even if the **Offense** occurs over more than one **Contract Period**.” (*Id.* at Ex D, Sec. I(B)(5).) And, finally, Section IV provides that “[i]n no event shall coverage under any liability Section of **This Contract**, combine with any other Section, to increase the per occurrence/accident/wrongful act limit of liability of \$1,000,000 as set out above.” (*Id.* (underline emphasis added).)

Based on the foregoing, the Coverage Contract, on its face, provides that coverage is limited to \$1 million despite the number of person(s) involved, the number of

claimants, the number of claims made, the number of repetitions of the same basic "Offense," or whether "Bodily Injury," "Personal Injury," or both, is claimed. Moreover, as outlined above, in those instances where conduct is alleged that would constitute both an "Occurrence" and an "Offense," both Section IV and the general provisions of Section I provide that only a single coverage limit applies. (*See id.* at Ex. D, Sec. I(C)(9); Sec. IV(D)(1).)

B. Applying the Coverage Contract terms results in only \$1 million in coverage.

For all of these reasons and based on the undisputed facts before this Court, the second declaratory judgment question must be answered in the negative. The claims made and the verdict rendered against the Town of Cottageville and Randall Price, relating to the hiring, retention, supervision and shooting death of Bert Reeves do not result in there being more than \$1,000,000.00 in indemnity coverage available under the terms of the Coverage Contract with respect to all such claims, including the claims made against John Craddock in the separately styled action.

This conclusion is supported by multiple provisions of the Coverage Contract, including, but not limited to:

- Sec I(C)(9) p. 7 (providing that a single coverage limit applies to all claims or suits involving substantially the same injury or damage);
- Sec. IV(D)(2) p. 52 (providing that the total liability of SCMIRF for any one occurrence/wrongful act is limited to \$1,000,000 per "Member" regardless of the number of "Covered Persons" involved or the number of claims made);
- Sec. I(C)(9) p. 7 (providing that the same conduct or wrongful act(s) cannot separately constitute both an "Offense" supporting Personal Injury and an "Occurrence" supporting Bodily Injury, and vice versa);
- Sec I(C)(9) p. 7 (providing that any act(s) or omission(s) that might be described as either an "Offense" supporting Personal Injury or an

“Occurrence” supporting Bodily Injury will be treated as a single event for coverage purposes, subject to a single Coverage Limit);

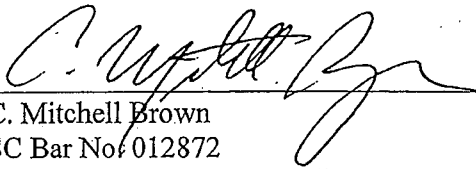
- Sec. IV(G)(4) p. 61 (providing that, for the purposes of Section IV, “Bodily Injury” does not include injuries that result directly and immediately from the infliction of Personal Injury, and that such injuries shall be deemed to be part of the Personal Injury);
- Sec. IV(D)(2) p. 52 (providing that continuing, serial or repeated instances of Personal Injury will be considered as one occurrence/wrongful act, regardless of the number of covered persons involved in causing or failing to [prevent] such injuries – and only a single Coverage Limit applies);
- Sec. I(B)(5) pp. 3-4 (providing that repetitions of the same basic “Offense” will be treated as one “Offense” subject to a single coverage limit);
- Sec. I(B)(4) p. 3 (distinguishing the meaning of “occurrence” when used in the context of the coverage limits and providing that conduct amounting to a Wrongful Act, an “Offense” supporting Personal Injury, and/or an “Occurrence” supporting Bodily Injury could constitute one loss for coverage purposes);
- Sec. I(C)(9) p. 7 (providing that a single Coverage Limit applies to any Offense or Occurrence, regardless of the number of claimants, suits, or claims).

CONCLUSION

The Stipulated Facts and analysis of applicable law and Coverage Contract terms lead directly to a finding that SCMIRF is subject to the South Carolina Tort Claims Act and despite several claims being asserted against several defendants/covered persons, coverage is limited to \$1 million.

Signature Page Attached

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Attorneys for South Carolina Municipal Insurance and
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Columbia, South Carolina

December 15, 2015

CERTIFICATE OF SERVICE

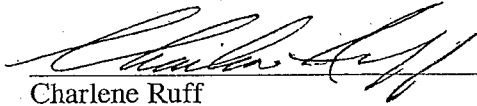
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for South Carolina Municipal Insurance and Risk Financing Fund, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing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

Pleadings:

MEMORANDUM IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

Counsel Served:

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December 15, 2015

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2015 DEC 15 PM 4:08

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Civil Action No. 2013-CP-15-135

**PLAINTIFF'S NOTICE OF
AND MOTION FOR SUMMARY
JUDGMENT**

VS.

Defendant.

This Motion is supported by a memorandum of law filed contemporaneously hereto and by the pleadings and Stipulation of Facts and Issues and attached Exhibits filed with the Court. The Motion will also be supported by the argument of counsel at the hearing of the Motion and any subsequent filed memoranda.

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Attorneys for the Plaintiff

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Civil Action No. 2013-CP-15-135

**PLAINTIFF'S MEMORANDUM IN
SUPPORT OF SUMMARY JUDGMENT**

South Carolina Municipal Insurance
and Risk Financing Fund [SCMIRF]

Defendant.

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

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

Answer: No, the Tort Claims Act does not apply to a claim for bad faith brought against SCMIRF because it is not a political subdivision of the State, and even if it is, the Tort Claims Act does not apply and

limit a claim by the insured for actual damages for breach of the Coverage Contract.

FACTUAL AND PROCEDURAL BACKGROUND

On October 16, 2015, Plaintiff filed her Amended Complaint for Declaratory Judgment as to two issues presented to the Court, along with a Stipulation of Facts and Issues, signed by the parties and containing exhibits A-D. On October 26, 2015, Defendant filed its Answer to the Amended Complaint. The issues in the declaratory judgment arise out of two underlying lawsuits brought by Plaintiff; the first, against the Town of Cottageville, South Carolina, the Cottageville Police Department, and Police Officer Randall Price, individually, in the United States District Court for the District of South Carolina (Civil Action No. 2:12-02765-DCN) and the second, against John Craddock, individually, (Civil Action No.: 2:14-cv-01918-DCN) for liability in the wrongful death of Bert Reeves on May 16, 2011.

The Town of Cottageville entered into an Intergovernmental Agreement for an Insurance and Risk Financing Fund for Risk Sharing with other member municipalities to create the South Carolina Municipal Insurance and Risk Financing Fund [SCMIRF] in order to insure and pool their risk of exposure to certain liabilities. *See Stipulation of Facts and Issues, Exhibit C.* “SCMIRF asserts it is an unincorporated voluntary, self-insurance pool in the State of South Carolina.” *Id.* at ¶ 6. During the period of January 1, 2011 to January 1, 2012, SCMIRF provided insurance coverage to the Town of Cottageville as set forth in the 2011 Coverage Contract, P-SCMIRF-1124-2011 [Coverage Contract]. *See Stipulation of Facts and Issues, Exhibit D.* In the federal lawsuit brought by Plaintiff, Civil Action No. 2:12-02765-DCN, SCMIRF retained attorneys to defend the Town of Cottageville and Officer Price, individually, who by stipulation was acting in the scope of his employment during all times relevant.

The federal lawsuit proceeded to a jury trial, and, on October 15, 2014, the jury found (1) that Officer Price was negligent in proximately causing Bert Reeves's death; (2) that Price violated Bert Reeves's constitutional right to be free from the use of excessive force, actionable under 42 U.S.C. § 1983; (3) that Price violated Bert Reeves's constitutional right to be free from unnecessary seizure, actionable under 42 U.S.C. § 1983; (4) that the Town of Cottageville was negligent in its hiring of Price; (5) that the Town was negligent in its supervision of Price; (6) that the Town was negligent in its retention of Price; (7) that the Town was negligent in its failure to train Price; (8) that the Town was liable under 42 U.S.C. § 1983 for Price's use of excessive force in accordance with the Town's custom, policy, ordinance, regulation, or decision; (9) that the Town was liable under 42 U.S.C. § 1983 for its deliberate indifference to the constitutional rights of its citizens in hiring Price; and (10) that the Town was liable under 42 U.S.C. § 1983 for its deliberate indifference to the constitutional rights of its citizens in failing to properly train Price, each of which the jury found proximately caused Bert Reeves's death. *Stipulation of Facts and Issues, Exhibit A, Verdict Forms and Judgment.* The jury awarded \$7,500,000 in compensatory damages against Officer Price and the Town of Cottageville and awarded punitive damages against Officer Price in the amount of \$30,000,000 and against the Town of Cottageville in the amount of \$60,000,000. *Id.* During the lawsuit, Plaintiff alleged that SCMIRF acted in bad faith in failing to reasonably settle the suit on behalf of its member, the Town of Cottageville, prior to trial.

After the above jury verdict in the case against the Town of Cottageville and Officer Price, Plaintiff settled the case, along with the lawsuit against Craddock, by a comprehensive settlement agreement that involved a primary payment made by SCMIRF and a reinsurer. The settlement contains two contingent payments that are payable depending on the answers to the two stipulated legal questions that are presently before this Court for declaratory judgment.

Accordingly, pursuant to S.C.Code Ann. § 15-53-20, Plaintiff has brought the current Amended Complaint for Declaratory Judgment that (1) the Coverage Contract provides for \$1,000,000 indemnity coverage per occurrence, and the claims made and verdicts rendered against the Town and Officer Price, as well as the suit against Craddock, result in there being more than one occurrence and, thus, more than \$1,000,000 total indemnity coverage and (2) the Tort Claims Act does not apply to a claim for bad faith brought against SCMIRF because it is not a political subdivision of the State, and, even if it is, the Tort Claims Act does not apply and limit a claim for actual damages for breach of the Coverage Contract in failing to protect the insured.

ARGUMENT

I. The Coverage Contract Provides For \$1,000,000 Indemnity Coverage Per Occurrence, And The Claims Made And Verdicts Rendered Against The Town And Officer Price, To Include The Suit Against Craddock, Result In There Being More Than One Occurrence.

It is undisputed that during the time period relevant to Plaintiff's federal lawsuit against the Town of Cottageville and Police Officer Price, in his individual capacity, as well as Plaintiff's suit against John Craddock, individually, SCMIRF provided coverage to the Town for certain risks through the 2011 Coverage Contract. *See Stipulation of Facts and Issues, Exhibit D ¶ 8.* The Coverage Contract provides \$1,000,000 in coverage per occurrence, and Plaintiff's claims against the Town of Cottageville, Officer Price, and John Craddock involve multiple occurrences and, thus, more than \$1,000,000 in total indemnity coverage for the Town of Cottageville in the two lawsuits.

"Insurance policies are subject to the general rules of contract construction," and, as stated by the Court of Appeals, "[t]he cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." *Beaufort County Sch. Dist. v. United Nat'l Ins. Co.*, 392 S.C. 506, 516, 709 S.E.2d 85, 90 (Ct.App. 2011) (internal

citations omitted). Where the contract language is clear and unambiguous, "the language alone, understood in its plain, ordinary, and popular sense, determines the contract's force and effect." *Id.* Furthermore, an insurance contract is to be read as a whole document so that "one may not, by pointing out a single sentence or clause, create an ambiguity." *Id.* (quoting *Yarborough v. Phoenix Mut. Life Ins. Co.*, 266 S.C. 584, 592, 225 S.E.2d 344, 348 (1976)). However, whenever an insurance contract is capable of two meanings, it must be construed in the favor of the insured. *Id.* (citing *Reynolds v. Wabash Life Ins. Co.*, 251 S.C. 165, 168, 161 S.E.2d 168, 169 (1968)); see also *Town of Duncan v. State Budget and Control Bd., Div. of Ins. Services*, 326 S.C. 6, 12, 482 S.E.2d 768, 772 (1997) ("Terms in an insurance policy should be liberally construed in favor of the insured.").

Here, the Coverage Contract's definition of occurrence is clear and unambiguous, defining occurrence based on the negligent act and not a resulting injury, and, as such, its language alone determines the contract's force and effect. See, e.g., *Beaufort County Sch. Dist.*, 392 S.C. at 516, 709 S.E.2d at 90. The Coverage Contract's opening provisions, Section I- General Provision, define occurrence for the policy:

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

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

See Stipulation of Facts and Issues, Exhibit D at p. 3 (emphasis added). Defining occurrence as “an **accident**,” “**continuing exposure** to the same harmful conditions,” and “a **covered event** of the sort expressly described in the Insuring Agreement” distinguishes one occurrence from another based on an act of negligence.

The Coverage Contract’s provisions for general liability and for law enforcement liability likewise define occurrence based on a negligent act and not based on a resulting injury. Specifically, Section III provides general liability coverage with limits of \$1,000,000 “per occurrence or offense,” with SCMIRF agreeing:

To pay on behalf of the Member or Covered Person(s) for all sums which the Member or Covered Person(s) shall be obligated to pay exclusively as Money Damages by reason of the liability imposed upon them by law on account of Bodily Injuries, including death resulting there from at any time, suffered or alleged to have been suffered by any person or persons (except employees of the Member injured in the course of their employment), and/or Property Damage, **arising out of any Occurrence** other than as covered by Section IV (Law Enforcement), Section V (Public Officials), and Section VI (Auto) of This Contract.

Id. pp. 28-29 (emphasis added). The policy reiterates in the general liability section that occurrence “**means an accident, including continuous or repeated exposure to substantially the same generally harmful conditions**, which results in Property Damage and/or Bodily Injury...” *Id.* at p. 48 (emphasis added).

Similarly, Section IV, Law Enforcement Liability Contract Declarations, provides a liability limit of \$1,000,000 “per occurrence” and repeats SCMIRF’s limit of liability coverage of \$1,000,000 for “any one occurrence/accident/wrongful act”. *See Id.* at pp. 50; 52, ¶ 2. Section IV, Law Enforcement Declarations, does not separately define occurrence but specifies within Section IV that liability is “subject to the limits of liability, exclusions, definitions, and conditions contained in the General Provisions, Section I”, as noted above. *Id.* at p. 51. Thus, the definition

of occurrence in the Coverage Contract, General Provisions applies to Section IV as well. Furthermore, in Section IV, liability coverage is referenced for any one occurrence or wrongful act, *Id.* at p. 52, ¶ 2, with “wrongful act” specifically and unambiguously defined as:

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

Id. at p. 64-65 (emphasis added). Like occurrence, “wrongful act” is defined by an act or omission and not by a resulting injury from the act.

Furthermore, the Coverage Contract’s definition of occurrence based on a negligent act or omission conforms with the South Carolina Supreme Court’s definition of occurrence applicable in the Tort Claims Act, S.C.Code Ann. § 15-78-10 *et seq.* In *Boiter v. S.C. Dep’t of Transp.*, 393 S.C. 123, 134, 712 S.E.2d 401, 407 (2011), the Supreme Court held that an occurrence is defined by a negligent action and not controlled by the resulting injury so that the distinct and separate acts of negligence by two different entities constitute two separate occurrences. Specifically in *Boiter*, the South Carolina Department of Transportation failed to implement an appropriate re-lamping policy to replace bulbs in traffic signals, and the South Carolina Department of Public Safety separately failed to notify a trooper to direct traffic when it received a phone call reporting the signal outage approximately an hour and a half before the collision at issue. *Id.* at 125, 402. The Supreme Court held that “two independent and separate acts of negligence occurred here,” and “there is no indication that the [departments’] actions combined to form a single act of negligence.” *Id.* at 134, 406. Moreover, the Supreme Court noted that the jury issued separate verdicts against

SCDOT and SCDPS for each department's distinct act of negligence, and the Court found no causal connection between the entity's actions that would constitute an unfolding sequence of events that injured the plaintiffs. As the Court explained, "had the jury not found SCDOT negligent, the verdict against SCDPS could still stand, and the converse is also true." *Id.* at 134, 407. Accordingly, the two acts of negligence amounted to two occurrences.

The Fourteenth Judicial Circuit specifically applied *Boiter* in determining whether more than one occurrence existed for purposes of applying statutory caps under the South Carolina Solicitation of Charitable Funds Act, which implements a recovery cap on a "per occurrence" basis. See *Solomon as Personal Representative of Estate of Will Solomon, Jr. v. Coastal Plains Physician Assoc., PA and Hampton Regional Medical Ctr.*, C.A. No.: 2010-CP-25-105 (March 31, 2012) (attached as Exhibit 1). In that medical malpractice case, the court agreed with the plaintiff that two separate occurrences existed- one act of negligence on December 17th, when treated by Defendant Hampton Regional Medical Center and Dr. Jansen, and a second act of negligence on December 19th, when treated by Coastal Plains and Dr. Koreckij. *Id.* at p. 5-7. The verdict form gave the jury distinct options for determining liability: solely against Hampton Regional Medical Center; solely against Coastal Plains Physician Associates; in favor of both defendants; OR against both defendants. *Id.* at p. 6. The jury found both defendants negligent in the treatment of the deceased and that both acts of negligence proximately caused the deceased's conscience pain and suffering. *Id.* Applying *Boiter*, the Circuit Court found that the two negligent acts by two separate defendants that were independent of each other constituted two occurrences, even though they resulted in the same injuries to the plaintiff. *Id.* at p. 5-7. Accordingly, two occurrences existed, each subject to the statutory cap of \$1.2 Million, with a total cap of \$2.4 Million for the case. *Id.*

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

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

Moreover, the reasoning in the South Carolina Court of Appeals' decision of *Johnson v. Hunter*, 386 S.C. 452, 688 S.E.2d 593 (Ct.App. 2010) is instructive to explain how a single governmental entity may incur liability for multiple occurrences. While in *Johnson*, the Court of Appeals considered the novel question in South Carolina of how to determine if a single motor

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

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

The distinct actions taken separately by the Town of Cottageville, Officer Price, and John Craddock over the course of the Town's hiring of Price, supervision of Price, and retention of Price up to, and including, Officer Price's actions in shooting and killing Bert Reeves, are not the unfolding of a single sequence of immediate events. Rather the negligent actions were separate and distinct, made on different days, at different locations, and by different individuals that resulted in the death of Bert Reeves. Furthermore, the jury specifically found multiple actions that constituted constitutional violations, as well as separate acts of negligence, by Officer Price and the Town of Cottageville. The jury found Defendant Price violated Bert Reeves's constitutional right against the use of excessive force, violated Bert Reeves's constitutional right against unreasonable seizure, and found Officer Price negligent in his actions. *See Stipulation of Facts and Issues, Exhibit A.* The jury also found the Defendant Town of Cottageville violated Bert Reeves's constitutional rights in its hiring of Officer Price; in its retention of Officer Price; in its supervision of Officer Price; and in its failure to train Officer Price, and found the Town negligent in its actions as well. *Id.* Had the jury not found against the Town of Cottageville, the verdict against Officer Price could still stand, and vice versa. *See Boiter*, 393 S.C. at 134, 712 S.E.2d at 407 ("had the jury not found SCDOT negligent, the verdict against SCDPS could still stand, and the converse is also true"). Thus, the separate actions by The Town of Cottageville and by Officer Price, as well as the acts of John Craddock, do not amount to one occurrence. Multiple occurrences exist in this case, with liability coverage of \$1,000,000 **per occurrence** of negligence.

Heather Ricard, Director of Risk Management Services, with the Municipal Association of South Carolina, was deposed pursuant to Rule 30(b)(6), SCRCF. *See Exhibit 2*, Deposition of Heather Ricard, July 28, 2014. Ms. Ricard asserted SCMIRF's position that there is one occurrence in this case based on the presence of a single injury, that being the death of Bert Reeves,

ignoring the separate damages suffered by Mr. Reeves's surviving children for the loss of their father. Exhibit 2, pp. 45-47. Ms. Ricard explained that SCMIRF relies on the "No Duplication of Coverage or Coverage Limits" provision, located in the General Liability Section, ¶ C.9, for its stance that occurrence is defined by the number of injuries. Exhibit 2, p. 21:5-11; 55:19 to 56:19. The "No Duplication of Coverage" provision states:

No liability that is covered under any Coverage Section of This Contract will be deemed to be separately covered under any other Coverage Section....Any act(s) or omission(s) that might be described under more than one Coverage Section or more than one category as an Offense(s) or an Occurrence(s) will be treated as a single event for coverage purposes, subject to a single Coverage Limit. A single Coverage Limit applies to all claims or suits involving substantially the same injury or damage, or progressive injury or damage. There is no duplication of any coverage or benefits under This Contract.

Stipulation of Facts and Issues, Exhibit D, p. 7, ¶ 9. The "single Coverage Limit" language here does not define "occurrence" and, rather, explains the no duplication of policy coverage for an act that may fall under different coverage sections. The provision makes clear that if where an act or omission may fall under more than one coverage section, that single act or omission will be covered only once, and a "single Coverage Limit applies to all claims or suits involving substantially the same injury or damage, or progressive injury or damage" from that specific act or omission. *Id.*

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

Q. So, for example, if Randall Price is covered under the General Liability portion, Section III of the policy, and he's also covered under the Law Enforcement Liability, and there's a single occurrence, there—he doesn't get \$2,000,000 in insurance; he only gets \$1,000,000 in insurance; isn't that correct?

A. That is correct. There is no duplication of coverage.

Exhibit 2, p. 42:8-16. Thus, a single occurrence that may fall under more than one provision of liability results in a single indemnity limit of \$1,000,000 for that single occurrence.

However, duplication of coverage is not at issue when there are multiple occurrences, with the policy covering each occurrence separately and providing an indemnity limit of \$1,000,000 per occurrence. Where there are multiple occurrences in a case, there will be more than \$1,000,000 in total coverage for all occurrences. Thus, the “no duplication of coverage” provision simply does not apply to define occurrence or assist to determine whether multiple occurrences exist. It simply has no bearing on whether multiple occurrences exist in the Coverage Contract.

Ms. Ricard agrees that nowhere in the Coverage Contract’s definition section of “occurrence” does it indicate that occurrence is based on the number of injuries. Exhibit 2, p. 53:7-14. Yet, she still insists that there is one occurrence here based on the presence of a “single injury” and, hence, a single policy limit. Exhibit 2, pp. 21; 53:7-14. However, SCMIRF’s assertion now that the Coverage Contract defines occurrence based on injury rather than negligent action not only is counter to the policy language, it contradicts the position SCMIRF took in insuring liability for the police raid of Stratford High School in 2003. There, SCMIRF contended that the same policy language defined occurrence by act of negligence and not by number of injuries. Exhibit 2, p. 31 to 33:7. Ms. Ricard concedes that the raid case involved multiple separate injuries claimed by different students. However, SCMIRF claimed liability coverage for one occurrence based on there being one raid— in other words, based on one act of negligence. *Id.*

Applying SCMIRF’s previous assertion that occurrence is based on act of negligence to this case would mean that the multiple and distinct acts of negligence by the Town of Cottageville, Officer Price, and John Craddock result in multiple occurrences. And to apply SCMIRF’s current position that occurrence is based on number of injuries would mean that the raid case actually

consisted of multiple occurrences—one occurrence for each individual student’s injury. SCMIRF seeks to apply its preferred definition of occurrence based on the insurable situation at hand. However, the Coverage Contract is clear and unambiguous, and the contract language governs to define occurrence based on negligent act or omission— occurrence defined as “an **accident**,” “**continuing exposure** to the same harmful conditions,” and “a **covered event** of the sort expressly described in the Insuring Agreement.” See *Stipulation of Facts and Issues, Exhibit D* at p. 3. The Coverage Contract does not define occurrence based on number of injuries.

Furthermore, the Coverage Contract’s language deeming when the original cause of an injury occurred for triggering insurance coverage purposes also is not relevant to determining the number of occurrences covered. See *Stipulation of Facts and Issues, Exhibit D*, p. 3, ¶ 4 (“Occurrence means an accident...the original cause of which and the initial damage from which happened during the Contract Period...”). South Carolina, along with other jurisdictions, hold that such “deemer clauses” are intended to address when coverage under the policy is triggered for injuries that span multiple policy periods and have no bearing upon the separate question of number of occurrences:

As the courts have recognized, this coverage-triggering inquiry is analytically distinct from the question whether a policy treats a series of related acts or incidents as one or multiple occurrences. In *TIG Insurance [Co. v. Smart School]*, 401 F.Supp.2d 1334 (S.D.Fla. 2005)], for instance, the court noted that “numerous cases involving occurrence policies” had “ma[d] a distinction between the issue of whether and under what policy particular claims are covered versus the issue of whether, if there is coverage, the claims amount to more than one occurrence.” 401 F.Supp.2d at 1347. Similarly, in a case “present[ing] the question of what constitutes a separate ‘occurrence’” under the policies at issue, the Sixth Circuit repeatedly emphasized that the portions of the policies addressing coverage-triggering issues— i.e., that specified “when and where an occurrence must take place for...coverage to exist”— had no bearing on the distinct question of “the number of occurrences.” *Michigan Chemical Corp. v. American Home Assurance Co.*, 728 F.2d 374, 378, 381-82 (6th Cir. 1984)...Consistent with this distinction, the Court concludes that the “first occurs” policy language in this case is intended to address the trigger-of-coverage issue, and has no bearing upon the separate

question whether a series of related acts of molestation should be treated as one or multiple occurrences.

Beaufort County Sch. Dist., 392 S.C. at 519-20, 709 S.E.2d at 92 (quoting *Western World Ins. Co. v. Lula Belle Steward Center, Inc.*, 473 F.Supp.2d 776, 785 (E.D.Mich. 2007)) (holding deemer clause has no bearing on how many claims presented). Likewise here, the Coverage Contract's language deeming when the original cause of an injury occurred for coverage purposes has no bearing on determining whether the claims amount to more than one occurrence.

In sum, multiple and distinct actions by The Town of Cottageville, Officer Price, and John Craddock exist that are not causally connected to constitute the unfolding of a single sequence of events, or a single occurrence, that caused the death of Bert Reeves. *See Boiter*, 393 S.C. at 134, 712 S.E.2d at 407. Each action is an occurrence, and the Coverage Contract provides for \$1,000,000 in indemnity coverage per occurrence. Accordingly, the multiple occurrences here result in more than \$1,000,000 in coverage under the Coverage Contract.

II. The Tort Claims Act Does Not Apply To A Claim For Bad Faith Brought Against SCMIRF.

The Tort Claims Act, S.C.Code Ann. § 15-78-10 *et seq.*, does not govern claims brought against SCMIRF, because SCMIRF is not a political subdivision of South Carolina. The Tort Claims Act provides for some limitations on tort liability for the State and its political subdivisions out of recognition by the General Assembly "that each governmental entity has financial limitations within which it must exercise authorized power and discretion in determining the extent and nature of its activities." S.C.Code Ann. § 15-78-20(a). Thus, the Tort Claims Act provides the State and its political subdivisions immunity from tort liability, except as waived by the Act, in consideration of balancing the costs and effectiveness of governing with liability for tortious conduct. S.C.Code Ann. § 15-78-10 *et seq.*

A “governmental entity” within the meaning of the Tort Claims Act “means the State and its political subdivisions”. S.C.Code Ann. § 15-78-30(d). The Act defines “State” as:

the State of South Carolina and any of its offices, agencies, authorities, departments, commissions, boards, divisions, instrumentalities, including the South Carolina Protection and Advocacy System For the Handicapped, Inc., and institutions, including state-supported governmental health care facilities, schools, colleges, universities, and technical colleges.

S.C.Code Ann. § 15-78-30(e). “Political subdivisions” specifically are:

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

S.C.Code Ann. § 15-78-30(h).

Plaintiff recognizes that the Office of the Attorney General has issued an opinion that SCMIRF is a political subdivision based on the foregoing definition of political subdivisions, interpreting the language “any agency, governmental health care facility, department, or subdivision thereof” to qualify all terms listed before it: “counties, municipalities, school districts, regional transportation authorities, operators defined in item (8) of Section 58-25-20..., and special purpose districts of the State.” 2014 WL 7405219 (S.C.A.G. December 17, 2014). The opinion then concludes that SCMIRF is an agency or department of the municipality. *Id.* It is well settled by the Supreme Court that although it may be persuasive authority, an Attorney General's opinion is not binding, and the court may disagree with the reasoning and decline to adopt it. *See, e.g., State v. Ramsey*, 409 S.C. 206, 212, 762 S.E.2d 15, 18 (2014).

This court should disagree with the Attorney General's opinion, because the phrase “any agency, governmental health care facility, department or subdivision thereof” only qualifies “special districts of the State”, which is the listed entity directly preceding the qualifying phrase.

S.C.Code Ann. § 15-78-30(h). Political subdivisions include any agency, governmental health care facility, department or subdivision of special districts of the State. *Id.* In addition, even if the Court applies the Attorney General's interpretation of the definition of "political subdivision," SCMIRF is not an agency or a department of a municipality to qualify as a political subdivision under the controlling definition.

In contrast with the Insurance Reserve Fund, which is a Division of the South Carolina State Fiscal Accountability Authority and organized and controlled by numerous statutes, see S.C.Code Ann. §§ 1-11-140, 1-11-147, 10-7-10, 10-7-40, 10-7-120, 10-7-130, 11-9-75, 15-78-10 to 15-78-150, 38-13-190, 59-67-710, and 59-67-790, SCMIRF is not organized and controlled by statute. Instead, SCMIRF is "an unincorporated voluntary, self-insurance pool" of municipality members, to include the Town of Cottageville, that agreed to create a pooled fund for the payment of property losses and liability claims on behalf of its members. See *Stipulation of Facts and Issues*, ¶¶ 6-7, and *Exhibit B*. Municipalities, as political subdivisions of the State, may procure insurance to cover risks for which immunity has not been waived under the Tort Claims Act by either the purchase of insurance pursuant to S.C. Code Ann. § 1-11-140, by the purchase of insurance from a private carrier, or by self-insurance or an established pooled liability fund. See S.C.Code Ann. § 15-78-140(b). The Tort Claims Act's allowance of municipalities to create voluntary self-insurance pools no more renders the pooled funds political subdivisions of the State than the Act's allowance of the purchase of private insurance transforms private insurance carriers into political subdivisions of the State.

SCMIRF is a fund, not an agency or department of the State. See *Exhibit 2*, Ricard Deposition, p. 8:8; 9:20-24; 14:1-12. As an insurance fund, SCMIRF does not share in the concerns of the State and its political subdivisions with the balance of financial exposure to tort

liability with costs of governing our State, which underlies the purpose of the Tort Claims Act. *See* S.C.Code Ann. § 15-78-20(a). Accordingly, any tort committed by SCMIRF, its employees, or agents, is not governed by and subject to the Tort Claims Act, and a tort claim for bad faith brought against SCMIRF would not be subject to the Tort Claims Act.

III. Even If The Tort Claims Act Applies To SCMIRF, The Tort Claims Act Does Not Apply And Limit A Claim Of Breach Of The Coverage Contract In Failing To Protect The Insured.

Even if SCMIRF were a political subdivision of South Carolina, the Tort Claims Act does not affect SCMIRF's liability, or any political subdivision's liability for that matter, based on contract. *See* S.C.Code Ann. 15-78-20(d). A claim against SCMIRF for breach of the Coverage Contract in failing to pay its insured's claims within the contract's limits of \$1,000,000 per occurrence is not a tort and is not subject to the limitations contained in the Tort Claims Act. Thus, a breach of contract claim against SCMIRF is not subject to the statutory recovery cap under the Tort Claims Act.

Claims against an insurance carrier for failure to protect its insured and pay claims may be brought as claims of breach of contract or, if bad faith is present, as tort claims. *See Nichols v. State Farm Mut. Auto. Ins. Co.*, 279 S.C. 336, 339, 306 S.E.2d 616, 618 (1983). South Carolina's Supreme Court first recognized bad faith tort liability of an insurer in the context of an insurer's unreasonable refusal to settle within the policy's limits. *See Tyger River Pine Co. v. Maryland Cas. Co.*, 170 S.C. 286, 170 S.E. 346 (1933). Thereafter, the Supreme Court recognized tort liability for the amount of a judgment against the insured in excess of the policy limits where the insurer unreasonably refused to accept an offer of compromise settlement. *Miles v. State Farm Mut. Ins. Co.*, 238 S.C. 374, 120 S.E.2d 217 (1961). Then, based on the same duty of good faith and fair dealing underlying the above tort liability, the Supreme Court held that an insurer may be

liable in tort for bad faith in the handling of a claim for first party benefits. *Nichols*, 279 S.C. at 340, 306 S.E.2d at 619.

The Supreme Court also has held that the State Budget and Control Board, as a State governmental entity as defined in the Tort Claims Act, may be liable under a tort claim of bad faith failure to pay a claim. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 7, 437 S.E.2d 6, 9 (1993). Such bad faith tort liability is subject to the statutory cap of the Tort Claims Act. *Id.* However, in holding that the State Budget and Control Board may be liable under a claim for bad faith, the Supreme Court emphasized that the Board also may be liable for breach of contract to its insured in the handling of a claim. *Id.* at 7, 9. A breach of contract claim does not require a showing of bad faith or unreasonable conduct and is not subject to the Tort Claims Act. *See Nichols*, 279 S.C. at 341, 306 S.E.2d at 619. Furthermore, under a breach of contract claim, the State Budget and Control Board would be liable for the insurance proceeds it failed to pay, and actual damages in a breach of contract claim are not subject to any recovery cap. *See S.C.Code Ann. § 15-78-20(d); Charleston County Sch. Dist.*, 313 S.C. at 7, 437 S.E.2d at 9.

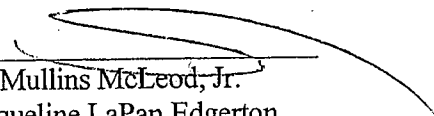
In *Charleston County Sch. Dist.*, the Supreme Court found no prejudice to the school district from the dismissal of its bad faith claim when its breach of contract claim survived, because the insurance proceeds claimed as damages by the district greatly exceeded the Tort Claims Act cap that would apply to any recovery under the bad faith claim. 313 S.C. at 7, 437 S.E.2d at 9. However, no statutory cap applied to recovery under the breach of contract claim, and the district could be awarded its actual damages from the Budget and Control Board's breach of contract. *Id.* Therefore, even if SCMIRF were a political subdivision of South Carolina, a claim against it for actual damages from its breach of contract would not be subject to the Tort Claims Act and a statutory cap.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court enter a declaratory judgment that (1) the Coverage Contract provides for \$1,000,000 per occurrence, and the claims made and the verdict rendered against the Town of Cottageville and Officer Price, as well as the separate suit against John Craddock, relating to the hiring, retention, supervision and shooting death of Bert Reeves result in there being multiple occurrences and, thus, more than \$1,000,000 in indemnity coverage available under the terms of the Coverage Contract and (2) that the Tort Claims Act, S.C. Code Ann. § 15-78-10 *et seq.*, does not govern a bad faith tort claim against SCMIRF because it is not a political subdivision of the State, and, even if it is, the Tort Claims Act does not apply and limit a claim by the insured for actual damages for breach of the Coverage Contract.

Respectfully submitted this 14th day of December 2015,

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STATE OF SOUTH CAROLINA)

COUNTY OF HAMPTON)

Lurean Solomon as Personal Representative
of the Estate of Will Solomon, Jr.,)

Plaintiff,)

v.)

Coastal Plains Physician Associates, PA
and Hampton Regional Medical Center,)

Defendants.)

COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

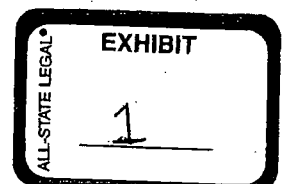
C.A. No.: 2010-CP-25-105

ORDER

The above-captioned matter is before me for the determination of whether the acts and/or omissions of Defendants constituted one or two occurrences for purposes of applying the statutory caps established by the South Carolina Solicitation of Charitable Funds Act. The Defendants argue that there was a single occurrence and that a \$1.2 Million cap applies. The Plaintiff argues that there were two occurrences and that a \$2.4 Million cap applies. After considering the pleadings, arguments of counsel, the evidence presented at trial, and applicable law, I hereby find that there were two occurrences proven by Plaintiff at trial.

FACTUAL BACKGROUND

This is a medical malpractice case wherein Plaintiff is alleging that Defendants failed to diagnose and treat the deceased, Will Solomon, for an infection in his left knee which ultimately led to septic shock and caused his death. More specifically, Mr. Solomon had experienced some pain in his knee in December of 2007, and his family physician in Savannah, Georgia, Dr. Gary Norman Harvey tapped, or aspirated, the knee on December 13, 2007. Over the next few days, Mr. Solomon experienced increasing pain and went to the emergency room at Hampton Regional Medical Center at approximately 11:00 a.m. on December 17, 2007.



On December 17th, Defendant Christian Jansen, MD was the emergency room physician who evaluated Mr. Solomon. The medical records from the 17th show, *inter alia*, that Mr. Solomon presented to the emergency room with left knee pain of 10 on a scale of 0-10 (with 10 being the greatest pain). Defendant Jansen ordered blood work and brought in an orthopedist, Defendant Theodore Koreckij, MD, for a consult. Both doctors considered the possibility that Mr. Solomon had an infected left knee, but the decision was made to send Mr. Solomon home and have him return later that week for a follow-up. It is undisputed that Mr. Solomon's knee was not tapped on the 17th to determine whether it was infected. Furthermore, it is undisputed that Mr. Solomon received medication on the 17th to help inflammation and pain but received no treatment whatsoever that would aid in fighting an infection. Mr. Solomon was discharged with instructions for "RICE," which calls for rest, ice, compression, and elevation. The medical records on the 17th do not indicate that any diagnosis was made to explain Mr. Solomon's symptoms.

Mr. Solomon continued to experience tremendous pain in his left knee over the remainder of the 17th and throughout the 18th. Due to fact that Mr. Solomon's condition did not improve, Mr. Solomon's wife, Plaintiff Lurean Solomon, drove Mr. Solomon back to the emergency room at Hampton Regional on December 19, 2007. In the early morning of the 19th, Mr. Solomon was evaluated by Sonny Park, MD, who administered some pain medication and instructed Mr. Solomon to go to Dr. Koreckij's office (Coastal Plains Physician Associates) when it opened that morning around 9 a.m.

Mr. and Mrs. Solomon were at Dr. Koreckij's office before it opened on the 19th, and Dr. Koreckij evaluated Mr. Solomon. Dr. Koreckij aspirated Mr. Solomon's left knee and drew approximately 30cc's of "light brown pussy material," and further noted that Mr. Solomon's

knee was "obviously septic." Rather than administering IV antibiotics and admitting Mr. Solomon for irrigation and debridement of the knee, or otherwise arranging for transport to another hospital with IV antibiotics enroute, Dr. Koreckij told the Solomons that he was leaving for vacation that afternoon and instructed Mr. Solomon to drive himself to Savannah to see his family doctor, Dr. Harvey. Dr. Koreckij called Dr. Harvey to let him know that the Solomons would be coming. Mr. and Mrs. Solomon left Dr. Koreckij's office at approximately 11:00 a.m. on December 19th, went home to pack an overnight bag, and went to Savannah.

Mr. Solomon drove to Savannah because Mrs. Solomon does not drive in the city. Mrs. Solomon testified that, during the car ride, Mr. Solomon was in so much pain that he was sweating. Mr. and Mrs. Solomon arrived at Dr. Harvey's office in the early afternoon and were instructed to go to the office of an orthopedist, Dr. Deriso, to get paperwork needed for Mr. Solomon's admission to the hospital and irrigation/debridement.

Mr. Solomon arrived at Memorial University Medical Center in Savannah at approximately 4:00 p.m. on the 19th. Mr. Solomon's condition continued to decline to the point that he suffered from septic shock, and he was ultimately placed in ICU that night. Despite efforts on the night of the 19th and throughout the 20th to save Mr. Solomon, he died in the early morning hours of December 21, 2007.

Aside from Mr. Solomon's septic knee, Mr. Solomon was otherwise in good health. It is undisputed that if Mr. Solomon had received treatment for his infection on the 17th or on the morning of the 19th, he would have survived.

Plaintiff commenced this action against Hampton Regional Medical Center, Christian Jansen, MD, Coastal Plains Physician Associates, and Theodore Koreckij, MD. Specifically, Plaintiff alleged that Christian Jansen, MD and Hampton Regional Medical Center were

negligent and grossly negligent in failing to diagnose and treat Mr. Solomon on December 17, 2007 and that Theodore Koreckij, MD and Coastal Plains Physician Associates were negligent and grossly negligent by failing to admit Mr. Solomon for emergency medical treatment and instead instructing him to drive himself to Savannah, Georgia for treatment. (Plaintiff's Complaint, Paragraphs 11-19).¹

The case was tried before a jury March 19-23, 2012. At the conclusion of trial, the jury determined that Hampton Regional Medical Center (acting through its agent, Christian Jansen, MD) was negligent in providing care to Mr. Solomon and that such negligence proximately caused Mr. Solomon's injuries and death. Furthermore, the jury determined that Coastal Plains Physician Associates, PA (acting through its agent, Theodore Koreckij, MD) was negligent in providing care to Mr. Solomon and that such negligence proximately caused Mr. Solomon's injuries and death. The jury awarded Plaintiff actual damages of Ten Million, Nine Hundred Thousand and No/100 Dollars (\$10,900,000.00).²

Following the return of the verdict, the parties delivered arguments regarding apportionment of fault. The jury deliberated and made a determination that fault should be apportioned 50/50 among Defendants.

DISCUSSION

1. Pursuant to the South Carolina Solicitation of Charitable Funds Act, S.C. Code Ann. §§ 33-56-10 to -200, Plaintiff's Recovery against Defendants is limited to \$1.2 Million Per Occurrence.

¹ The Court recognizes that, in spite of Plaintiff failing to allege independent acts/omissions of Defendant Koreckij on December 17, 2007, Defendants did not object at trial to Plaintiff's presentation of evidence as to the acts/omissions of Dr. Koreckij on December 17th. However, the vast majority of the evidence presented and arguments made by Plaintiff's counsel at trial centered around Dr. Koreckij's decision to transfer Mr. Solomon to Savannah on December 19th without immediately arranging IV antibiotics and admission and/or transport. Furthermore, as to December 17th, Dr. Jansen testified that he was the ultimate decision-maker with regard to Mr. Solomon's treatment on that day, regardless of the result of an orthopedic consult.

² The Court directed a verdict on the issue of gross negligence, and therefore the individual physicians, Dr. Jansen and Dr. Koreckij, were dismissed from this action before the verdict.

Pursuant to the South Carolina Solicitation of Charitable Funds Act, S.C. Code Ann. §§ 33-56-10 to -200, Plaintiff is limited to a recovery against of \$1.2 million per occurrence, and there is no limit for non-economic damages as long as the total recovery *against the entities* does not exceed \$1.2 million *per occurrence*. See S.C. Code Ann. § 15-32-240 (stating that the provisions of the Tort Reform Act of 2005 are not applicable to the South Carolina Solicitation of Charitable Funds Act or the South Carolina Tort Claims Act).

2. The Facts Proven at Trial and the Verdict Delivered by the Jury Establish that there were Two Occurrences.

Plaintiff proved in this case that Dr. Jansen and Dr. Koreckij were both negligent in the treatment of Will Solomon and that their negligence proximately caused his conscious pain and suffering and death. Plaintiff thoroughly established, through the direct testimony of her witnesses and the cross examination of the defense witnesses, that Dr. Jansen breached the standard of care on the 17th by failing to tap Mr. Solomon's knee and start him on empiric antibiotic therapy and Dr. Koreckij breached the standard of care on the 19th by instructing Mr. Solomon to drive himself to Savannah to obtain treatment.

The South Carolina Supreme Court recently determined that two negligent acts by two separate defendants constituted two occurrences even though they resulted in the same injuries to the plaintiff. In Boiler v. S. Carolina Dept. of Transp., 393 S.C. 123, 131-35, 712 S.E.2d 401, 405-07 (2011), reh'g denied (July 21, 2011), the plaintiffs were injured when the motorcycle they were riding collided with a car at an intersection. The red signal light bulbs for the road that the driver of the car was traveling had burned out earlier that day. The plaintiffs suffered significant injuries as a result of being thrown from the motorcycle. The plaintiffs alleged that SCDOT failed to implement an appropriate re-lamping policy to replace bulbs in traffic signals before they burn out. The plaintiffs also alleged that SCDPS should have sent a trooper to direct traffic

at the intersection when SCDPS had received a call reporting the signal outage one hour and twenty-seven minutes prior to the accident.

In Boiter, the Court found that the jury could have returned a verdict against one defendant without returning a verdict against the other defendant, and vice versa. The same is true here. The verdict form in the instant case gave the jury four distinct options. The jury was permitted to: (1) find solely against Hampton Regional Medical Center; (2) find solely against Coastal Plains Physician Associates; (3) find in favor of both defendants; or (4) find against both defendants. Based upon the overwhelming proof at trial of independent acts of negligence by the defendants, the jury found against Hampton Regional Medical Center and against Coastal Plains Physician Associates, PA.

The allegations and the evidence of negligence against each entity are separate and distinct. These acts of negligence are not an unfolding sequence of events - they are negligent acts made on different date, at different locations, by different agents and employees of different institutions. There was no evidence in the record establishing any special relationship between the parties, and defense counsel argued that the entities are completely distinct.

The distinct nature of the entities and the acts/omissions was argued throughout the case when Defendant Hampton repeatedly argued against the foreseeability of any future acts of malpractice by any physician - whether Hampton or Savannah. Further, the Defendants *both* argued for disparate apportionment and stressed to the jury that Coastal Plains had the last clear chance to save Will Solomon and further that nothing which occurred, or failed to occur, on the 17th had anything to do with the decision not to administer antibiotics and transfer on the 19th. Defense counsel argued that the clinical decisions made by each physician were completely independent of one another. The facts, the arguments and the positions of Defense counsel

throughout trial support a finding of two separate and independent acts of negligence.

Accordingly, the Court finds that the Plaintiff pled and proved two occurrences at trial.

3. Defense Counsel Waived any Claim of Error with Regard to the Procedure for Determining the Number of Occurrences or any Error in the Verdict Form.

In spite of Defendants' post-trial complaints about the verdict form, the use of the verdict form and the procedure for finding the number of occurrences were both at the request of defense counsel. As the parties will recall, at the charge conference the parties argued as to the appropriate verdict form. The Plaintiff specifically requested a verdict form which put the issue of multiple occurrences before the jury and further delineated between negligence on the 17th and 19th. The Defendants argued that would be improper and instead requested that the Court make a determination on the number of occurrences as a matter of law should the jury find negligence in the case. Plaintiff's counsel argued against such a general verdict but stated on the record that the Defendants were requesting the Court to make this determination as a matter of law and further that they were waiving any argument that the jury needed to make a separate determination of negligence. The Defendants continued to insist on a general verdict form and further argued that it was only appropriate for the Court to determine the number of occurrences as a matter of law. As a result, the jury was provided the subject verdict form and the Court has made a determination of two (2) occurrences based upon the evidence presented and the jury's verdict.

A party may not complain of error or object to a trial procedure which his own conduct has induced. Erickson v. Jones Street Publishers, 368 S.C. 444, 629 S.E.2d 653 (2006). See also Harrison v. Bevilacqua, 354 S.C. 129, 580 S.E.2d 109 (2003), TNS Mills, Inc. v. South Carolina Department of Revenue, 331 S.C. 611, 503 S.E.2d 471 (1998), and Shearer v. DeShon, 240 S.C. 472, 126 S.E.2d 514 (1962). Defense counsel consented to the verdict form over Plaintiff's

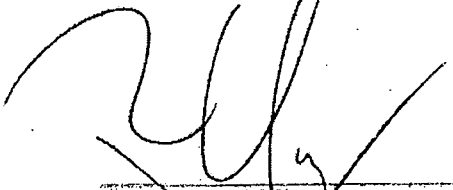
objection and deferred to the Court for the determination on the number of occurrences. Defense counsel cannot now complain about the very procedure they requested at trial.

CONCLUSIONS OF LAW

For the reasons set forth above, the Court hereby finds that the facts pled by Plaintiff and proven at trial constitute two occurrences. Accordingly, the statutory cap applicable to the Defendants, collectively, is Two Million Four Hundred Thousand and No/100 Dollars (\$2,400,000.00).

IT IS SO ORDERED.

This 31st day of March, 2012



The Hon. Roger M. Young
Circuit Court Judge