

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Carmen T. Mullen, Circuit Court Judge

Darrell J. Alston, Jr. and Mabel L. Alston, Appellants

v.

Beaufort County School District and South Carolina High School League, Defendants
of which South Carolina High School League is the Respondent

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

Darrell J. Alston, Jr., et al.,)

Plaintiffs,)

vs.)

School District of Beaufort County,)
et al.,)

Defendants.)

ORDER DENYING SUMMARY
JUDGMENT AND GRANTING
MOTION TO COMPEL
Case No.: 2015-CP-07-01147

There are two motions for summary judgment. The plaintiffs and the South Carolina High School League (SCHSL) each seek summary judgment, and their motions are denied at this stage. The School District of Beaufort County (the School District) seeks to compel answers to discovery. That motion is granted. The plaintiffs also indicated that they want their discovery answered. To the extent that this issue is before the court, all parties should be responding to the other parties' discovery requests.

LEGAL STANDARDS REGARDING SUMMARY JUDGMENT

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRPC. Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000). Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to

be drawn from those facts. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000).

Summary judgment is a drastic remedy. It is to be cautiously invoked so that no person will be improperly deprived of a trial on disputed factual issues. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. At the summary judgment stage, it is only necessary for the nonmoving party to submit a scintilla of evidence warranting determination by a jury for summary judgment to be denied. Hill v. York County's Sheriff's Department, 313 S.C. 303, 308, 437 S.E.2d 179, 182 (Ct. App. 1993)(cert. den. 1994).

When a motion for summary judgment is supported by affidavits or stipulated facts, the opposing party cannot rely simply on allegations and denials, but must come forth with evidence of specific fact(s) showing that there is a genuine issue of material fact. [See Rule 56(e), SCRPC.] Summary judgment is not to be granted before an opposing party has had a full and fair opportunity to complete discovery. However, when considering whether to deny summary judgment on the ground of incomplete discovery, the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is "not merely engaged in a 'fishing expedition.'" Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (quoting Baughman, 306 S.C. at 112, 410 S.E.2d at 544) (internal citation omitted). Summary judgment should be avoided where a party can be allowed to amend his pleadings to more precisely state a claim as to which there may appear to be genuine issues of fact.

FACTUAL BACKGROUND

There has been almost no development of the facts in this case. A minor was participating in spring practice for football for a team at a school within the School District. He tore his anterior cruciate ligament (ACL). The limited discovery obtained thus far in this case indicates that there was not a physical examination of this minor prior to his starting practice, nor is there a parental consent form on file with either defendant.

The SCHSL is an organization that supervises and monitors interscholastic sports for secondary schools in South Carolina. It is alleged that the School District's football teams are bound by the rules, constitution, and by-laws of the SCHSL. There is a requirement that athletes have physicals prior to participation in football and that a parental consent form be obtained.

DISCUSSION REGARDING SUMMARY JUDGMENT

The plaintiffs argue that the fact that there was not physical performed and that there is no parental consent form on file establishes liability as a matter of law. It is the plaintiffs' belief that these facts establish gross negligence under an objective standard so that there can be no conclusion but that the defendants are liable for the injuries and damages claimed to have been sustained.

The SCHSL asserts that it is covered by the Tort Claims Act and that there is no genuine issue of material fact related to the determination that the SCHSL is immune from liability under S.C. Code §15-78-60(4). The SCHSL also argues that there is no evidence that any failure of the SCHSL to have the necessary forms procured is a

proximate cause of the injuries and damages claimed, and there is no evidence of any duty that has been breached, much less any evidence of gross negligence.

The School District asserts the immunity afforded under the Tort Claims Act, including §15-78-60(25). According to the School District, there is no evidence of gross negligence, as that term is defined. The School District also raises the issue that discovery is in its infancy in this case and that summary judgment is inappropriate at this stage.

This case is not at an appropriate stage for summary judgment. No affidavits were submitted. No depositions have been taken. Very little has been obtained and presented in the form of written discovery. The court disagrees with the plaintiffs' assertion that the failure to have a parental consent form on file and the failure to conduct a physical examination conclusively establishes liability on the part of the defendants. For example, the court has absolutely no evidence about any actual knowledge of the parents that the minor was participating in football practice. The court has no indication that any physical examination of the minor would have revealed anything that would make the minor more susceptible to a knee injury, and the court has no evidence about the circumstances that led to the damage to the minor's ACL, except that it occurred in spring practice. The development of evidence here is not a fishing expedition. It is a necessary part of determining the merits of this lawsuit.

The plaintiffs dispute the proximate cause issue. Respectfully, there appears to be a strong proximate cause component. The issue of proximate cause is almost always a jury question. The mere failure to have a parental consent form on file and the mere failure to have a pre-practice physical examination is not enough to establish liability.

There are genuine issues of material fact that must be decided by a fact finder or, at a minimum, must be evaluated based on evidence that has not yet been developed. Summary judgment is premature.

The SCHSL's motion for summary judgment is also premature. The court cannot determine, without development of the evidence, that there is no genuine issue of material fact related to the immunity claims, and to such things as the existence or non-existence of some duty. It is not necessary to discuss all the arguments of the defendants because there is at least a scintilla of evidence that justifies further development of the evidence and to conclude how it is to be applied to the law, and it is premature to summarily decide this case.

THE MOTION TO COMPEL

Plaintiffs' counsel basically conceded that he must answer discovery, if the court denies his summary judgment motion. The attorney for the School District argued that plaintiffs' counsel has refused to answer the discovery requests submitted to him until after a determination has been made on the plaintiffs' summary judgment motion. Having done so, the court requires the plaintiffs to respond to discovery within 30 days from the date that this order is mailed to the attorneys by the Clerk of Court's office.

CONCLUSION

THEREFORE, IT IS ORDERED that the motions for summary judgment are denied at this stage, and the School District's motion to compel is granted.

AND IT IS SO ORDERED.

October 8, 2015

William P. Keesley
Judge

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP- 07-01147

Darrel J. Alston, Jr., et al

Beaufort County School District, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Paige Chamberlain Ornduff

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff Darrel J. Alston, Jr.'s Motion for Summary Judgment is respectfully denied. Defendant Beaufort County School District's Motion for Summary Judgment is respectfully denied. Defendant High School League of South Carolina's Amended Motion for Summary Judgment is hereby granted. This Order effectively ends this case only as to Defendant High School League of South Carolina.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

6

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

7



Beaufort Common Pleas

Case Caption: Darrell J Alston Jr , plaintiff, et al VS School District Beaufort County
, defendant, et al

Case Number: 2015CP0701147

Type: Order/Form 4

So Ordered

s/Carmen T Mullen 2142

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-07-01147

Darrel J. Alston, Jr., et al.
PLAINTIFF(S)

Beaufort County School District, et. al.
DEFENDANT(S)

Submitted by: Crystal H. Swinford

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Plaintiff's Motion for Reconsideration of this Court's Order, dated April 17, 2017, granting Defendant South Carolina High School League of South Carolina's Amended Motion for Summary Judgment is respectfully denied without a hearing.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2142

Judge Code

Date

9

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

10



Beaufort Common Pleas

Case Caption: Darrell J Alston Jr , plaintiff, et al VS School District Beaufort County
, defendant, et al

Case Number: 2015CP0701147

Type: Order/Form 4

So Ordered

s/Carmen T Mullen 2142

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

2015 MAY 11 PM 1:02 CASE NO: 15-CP-07-1147

DARRELL J. ALSTON, JR. and
MABEL L. ALSTON,

LENN ANN ROSENEAU
BEAUFORT COUNTY, S.C..
CLERK OF COURT

Plaintiffs,

COMPLAINT
(Jury Trial Demanded)

v.

BEAUFORT COUNTY SCHOOL
DISTRICT, SOUTH CAROLINA
HIGH SCHOOL LEAGUE,

Defendants.

The Plaintiffs bring this action against the Defendants based on the allegations set forth below:

Parties

1. That Plaintiff Darrell J. Alston, Jr., and his mother, Plaintiff Mabel L. Alston, are both residents of Beaufort County, South Carolina, and have been so at all relevant times.
2. That Plaintiff is informed and believes and thereon alleges, that the Defendants, Beaufort County School District (hereinafter also referred to as "School District"), and South Carolina High School League (hereinafter also referred to as "League"), are political subdivisions within the meaning of the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-60(25) and are located or operating in the Beaufort County, South Carolina. At all times relevant herein, the matters alleged below occurred in the Beaufort County, South Carolina.
3. This Court thus has jurisdiction over all parties and causes of action in this action, and venue is proper in this forum.

Factual Background

4. This action is brought pursuant to the South Carolina Tort Claims Act, with jurisdiction and venue in

Beaufort County, South Carolina, again proper pursuant to South Carolina Code of Laws §15-78-100(b).

5. That at all times relevant herein, Plaintiff Darrell J. Alston, Jr., was a student at Beaufort High School, a public school located within the County of Beaufort, South Carolina, under the administration and supervision of Defendants Beaufort County School District and South Carolina High School League.
6. On May 13, 2013, Plaintiff Darrell J. Alston, Jr., participated as an athlete in a Beaufort High School football practice on Beaufort High School grounds, with the knowledge and consent and under the administration and supervision of Defendants Beaufort County School District and South Carolina High School League.
7. That Plaintiff Darrell J. Alston, Jr., then a minor child and student, was allowed by the Beaufort High School football coaching staff, employees or agents of Defendants, to participate in the practice without having gotten written parental permission from either his mother with whom he resides, Plaintiff Mabel L. Alston, or father.
8. That Plaintiff Darrell J. Alston, Jr., then a minor child and student, was also allowed by the Beaufort High School football coaching staff, employees or agents of Defendants, to participate in the practice without proof of a valid physical exam and clearance from a qualified health professional on record with the school.
9. That Plaintiff Darrell J. Alston, Jr. was very seriously injured during said practice, when he was running on offense and was hit by two defenders. Said Plaintiff sustained injuries including, but not limited to, tears to the ACL and meniscus of his right knee. From his right knee being injured and weakened, and him therefore favoring his right knee, his left knee has now also been similarly injured, and he continues to be treated for these injuries.
10. Further, that these injuries to a Plaintiff who was then a minor child and student were caused while he was in the care and supervision at all times pertinent hereto of Defendants, their agents or employees,

and occurred on school grounds (the school football field) in Beaufort County, South Carolina.

11. That after medical treatment, surgery, and lengthy physical therapy for his right knee, Plaintiff Darrell J. Alston, Jr. has sustained injury to his left knee caused by compensating for the pain and weakness from the original right knee injury, and thus still continues to treat.

First Cause of Action
(Gross Negligence)

12. The above paragraphs are re-alleged herein.
13. That the Defendants', and their agents and employees were at all times acting within the scope of their official duties.
14. That the Defendants' football staff had a duty to ensure that the Plaintiff, then a minor child, was eligible to participate in football practice.
15. The School District and the League, their agents and employees, were grossly negligent in failing to adopt and implement policies in accordance with, and/or properly train and supervise its agents and employees to avoid violations of, applicable law. The School District and the League, and their agents and employees, were grossly negligent in not providing procedural safeguards to prevent or mitigate injury to Plaintiff Darrell J. Alston, Jr., and in not training and supervising their agents and employees to follow such procedures.
16. That as a result of the aforementioned breaches of duty and subsequent grossly negligent acts, both Defendants are liable for their own gross negligence, recklessness, willfulness and wantonness and that of their agents and employees at Beaufort High School.
17. As a direct and proximate result of Defendants' gross negligence, Plaintiff, then a minor child now an adult, has been injured and damaged, as has his mother, Plaintiff Mabel L. Alston, and they have incurred and will continue to incur medical treatment and/or bills and/or other losses and damages, in one or more of the following particulars:

- a. Surgery and physical therapy and other treatment;
 - b. Experienced, experiences and will in the future experience, physical pain and suffering;
 - c. Experienced, experiences and will in the future experience, mental anguish, shock, fear and anxiety;
 - d. Experienced, experiences and will in the future experience, emotional and psychological distress;
- And,
- e. Other injuries and damages to be proven at trial.

18. That no proper and complete investigation and/or reporting of the incident was ever commenced by the Defendants' administrators.

19. That at all times relevant to this Complaint, Beaufort County School District and South Carolina High School League, and their agents and employees, had a duty to properly supervise student athletes of Beaufort High School, and to properly train or have properly trained its staff to ensure that any student athlete participating, had and had submitted written parental permission and proof obtained of a physical examination and clearance by a doctor.

20. That the Defendants, Beaufort County School District and South Carolina High School League, were grossly negligent, willful and wanton, and breached their duty owed to the Plaintiffs in one or more of the following particulars:

- a. In failing to properly determine if the then minor child, Darrell J. Alston, Jr., had written parental permission to participate in the football practice;
- b. In failing to exercise a degree of care and caution required by not properly ensuring that Darrell J. Alston, Jr. had proof of the required physical examination and clearance from a doctor, to keep the then minor child safe;
- c. In failing to provide proper medical attention to Darrell J. Alston, Jr., and properly report and

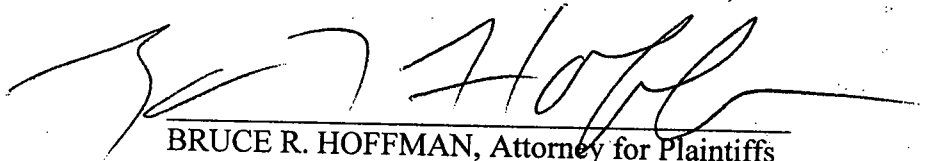
follow up on the incident to Beaufort County School District administration or South Carolina High School League;

- d. In failing to properly notify Plaintiff Mabel L. Alston that her then minor son was injured during said football practice, and to properly assist her in dealing with these injuries;
- e. In other respects to be proven at trial.

- 21. As a result of the injuries, both Plaintiffs endured, endures and will endure extreme mental and/or physical and/or emotional pain, suffering and anguish, and both Plaintiffs were caused to incur, and will continue to incur, costs in seeking medical treatment and/or other costs, expenses and damages.
- 22. The injuries and damages suffered by the then minor child Plaintiff resulted directly and proximately from these above stated acts and omissions of the Defendants Beaufort County School District and South Carolina High School League, directly and/or through their agents and employees.
- 23. The Plaintiffs are informed and believe that they are therefore entitled to judgment against the Defendants for all the injuries and damages sustained as aforescribed.

WHEREFORE, the Plaintiffs pray for judgment against Defendants, and each of them, in this matter in sums sufficient to compensate them for all injuries, damages, costs and expenses, consequential damages, punitive damages, for interest and the attorney fees and costs of this action, and for such other and further relief as the Court may deem just and proper.

LAW OFFICE OF BRUCE R. HOFFMAN, LLC



BRUCE R. HOFFMAN, Attorney for Plaintiffs
574 Sea Island Parkway
Saint Helena Island, SC 29920
(843) 838-5290

Dated: May 11, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

Darrell J. Alston, Jr., and Mabel L. Alston,)
)

Civil Action No. 2015-CP-07-1147

Plaintiffs,)
)

vs.)
)

Beaufort County School District,)
South Carolina High School)
League,)

Defendants.)
)

**ANSWER TO COMPLAINT ON
BEHALF OF DEFENDANT, SOUTH
CAROLINA HIGH SCHOOL LEAGUE**

The defendant, South Carolina High School League, ("SCHSL"), hereby responds to the Summons and Complaint submitted by the Plaintiffs, as follows:

PARTIES

1. Answering Paragraph 1 of the Complaint, the defendant, SCHSL, is without information or knowledge sufficient to form a belief as to the allegations contained therein regarding the residency of the plaintiffs and therefore demands strict proof thereof.

2. Answering Paragraph 2 of the Complaint, the defendant, SCHSL, would only admit so much contained therein that states it is a voluntary association of various public and private schools throughout the State of South Carolina and that its member schools promulgate policies and procedures to govern interscholastic competition for member schools. Further responding, the defendant, SCHSL, would admit that it is subject to the South Carolina Tort Claims Act and that at least one of its member schools is located in Beaufort County. All other allegations not admitted are hereby expressly denied.

3. Admits, upon information and belief, the allegations contained in Paragraph 3 of the Complaint.

FACTUAL BACKGROUND

4. Admits, upon information and belief, the allegations contained in Paragraph 4 of the Complaint.

5. Answering Paragraph 5 of the Complaint, the defendant, SCHSL, is without information or knowledge sufficient to form a belief as to the allegations contained therein regarding Darrell J. Alston, Jr.'s, attendance at Beaufort High School and therefore demands strict proof thereof. Further responding, the defendant, SCHSL, would deny that it had knowledge of, consented to, or had specific administrative and supervisory responsibility over the plaintiff's attendance at Beaufort High School.

6. Answering Paragraph 6 of the Complaint, the defendant, SCHSL, is without information or knowledge sufficient to form a belief as to the allegations contained therein regarding Darrell J. Alston, Jr.'s, participation in a football practice at Beaufort High School on May 13, 2013, and therefore demands strict proof thereof. Further responding, the defendant, SCHSL, would deny that it had knowledge of, consented to, or had specific administrative and supervisory responsibility over the plaintiff's participation in a football practice at Beaufort High School on the date in question.

7. Answering Paragraph 7 of the Complaint, the defendant, SCHSL, is without information or knowledge sufficient to form a belief as to the allegations contained therein regarding Darrell J. Alston, Jr.'s, participation at practice without parental permission and therefore demands strict proof thereof. Further responding, the defendant,

SCHSL, would deny that the Beaufort High School football coaching staff were agents or employees of SCHSL and demand strict proof thereof.

8. Answering Paragraph 8 of the Complaint, the defendant, SCHSL, is without information or knowledge sufficient to form a belief as to the allegations contained therein regarding Darrell J. Alston, Jr.'s, participation at practice without proof of a valid physical exam and therefore demands strict proof thereof. Further responding, the defendant, SCHSL, would deny that the Beaufort High School football coaching staff were agents or employees of SCHSL and demands strict proof thereof.

9. Answering Paragraph 9 of the Complaint, the defendant, SCHSL, is without information or knowledge sufficient to form a belief as to the allegations contained therein regarding the injuries sustained by the plaintiff and therefore demands strict proof thereof.

10. The defendant, SCHSL, denies the allegations contained in Paragraph 10 of the Complaint that state the plaintiff minor child was in the care and supervision of the SCHSL while on the football field at Beaufort County High School.

11. Answering Paragraph 11 of the Complaint, the defendant, SCHSL, is without information or knowledge sufficient to form a belief as to the allegations contained therein regarding the injuries sustained by the plaintiff and therefore demands strict proof thereof.

FOR A FIRST DEFENSE
TO A FIRST CAUSE OF ACTION
(Gross Negligence)

12. Answering Paragraph 12 of the Complaint, the defendant, SCHSL, would reaffirm and reallege each of its defenses above as fully and effectually as if set forth herein verbatim.

13. Answering Paragraph 13 of the Complaint, the defendant, SCHSL, would respond that it is without knowledge or information sufficient to form a belief as to the conduct of the co-defendant, Beaufort County School District, its agents and employees. Further responding, the defendant, SCHSL, denies that the agents and employees of Beaufort County School District, and specifically the football coaching staff at Beaufort County High School, were agents and employees of the SCHSL at any point relevant to this action.

14. Answering Paragraph 14 of the Complaint, the defendant, SCHSL, would assert that no response is required given that the allegations call for a legal conclusion. To the extent a response is required, the defendant, SCHSL, denies any inference that it breached a duty of care to the plaintiff and denies that the agents and employees of Beaufort County School District, and specifically the football coaching staff at Beaufort County High School, were agents and employees of the SCHSL at any point relevant to this action. Further answering Paragraph 14, each and every allegation not herein specifically admitted is hereby expressly denied.

15. Denies the allegations contained in Paragraph 15 of the Complaint and demands strict proof thereof.

16. Denies the allegations contained in Paragraph 16 of the Complaint and demands strict proof thereof.

17. Answering Paragraph 17 of the Complaint, the defendant, SCHSL, denies the allegations contained therein which allege gross negligence on behalf of the SCHSL. Further responding, the defendant, SCHSL, is without knowledge or information sufficient to form a belief as to the injuries alleged by plaintiffs, and therefore demands strict proof thereof. Further answering Paragraph 17, each and every allegation not herein specifically admitted is hereby expressly denied.

18. Answering Paragraph 18 of the Complaint, the defendant, SCHSL, would respond that it is without knowledge or information sufficient to form a belief as to the conduct of the co-defendant, Beaufort County School District, its agents and employees. Further responding, the defendant, SCHSL, denies that the administrators of Beaufort High School and/or Beaufort County School District were agents and employees of the SCHSL at any point relevant to this action. All other allegations not admitted are hereby expressly denied.

19. Answering Paragraph 19 of the Complaint, the defendant, SCHSL, would assert that no response is required given that the allegations call for a legal conclusion. To the extent a response is required, the defendant, SCHSL, would deny any inference that it breached a duty of care to the plaintiff. Further answering Paragraph 19, each and every allegation not herein specifically admitted is hereby expressly denied.

20. Denies the allegations contained in Paragraph 20 of the Complaint and all relating subparagraphs and demands strict proof thereof.

21. Answering Paragraph 21 of the Complaint, the defendant, SCHSL, is without knowledge or information sufficient to form a belief as to the injuries alleged by plaintiffs, and therefore demand strict proof thereof. Further answering Paragraph 21, each and every allegation not herein specifically admitted is hereby expressly denied.

22. Denies the allegations contained in Paragraph 22 and 23 of the Complaint and demands strict proof thereof.

23. Except as herein specifically admitted, each and every allegation in plaintiffs' First Cause of Action and the entire Complaint is hereby expressly denied.

FOR A SECOND DEFENSE
(Failure to State a Claim)

24. The defendant, SCHSL, would show that the allegations in Plaintiffs' Complaint fail to allege facts sufficient to constitute a cause of action against it, and, therefore, the Complaint should be dismissed pursuant to Rule 12(b)(6) SCRPC.

FOR A THIRD DEFENSE
(Tort Claims Act)

25. The defendant, SCHSL, would show that under South Carolina law, the South Carolina Tort Claims Act is the sole and exclusive remedy for any action brought against the government or its agencies and the defendant would, therefore, plead the South Carolina Code Section 15-78-10 et seq., and all of its provisions as if incorporated herein verbatim as a defense to this matter.

FOR A FOURTH DEFENSE
(Limitation on Damages)

26. The defendant, SCHSL, would plead South Carolina Code §15-78-120(a) of the South Carolina Tort Claims Act and its limitations on damages as an affirmative defense to any verdict that may exceed the statutory caps provided by the South Carolina Tort Claims Act.

FOR A FIFTH DEFENSE
(Limitation on Punitive Damages)

27. The defendant, SCHSL, would plead South Carolina Code §15-78-120(b) of the South Carolina Tort Claims Act and its prohibition against punitive or exemplary damages as an affirmative defense to the allegations set forth in the Complaint to the extent said allegations seek said damages against the Defendant.

FOR A SIXTH DEFENSE

28. The defendant, SCHSL, would plead South Carolina Code §15-78-200, which provides that "[n]otwithstanding any provision of law, this chapter, the 'South Carolina Tort Claims Act' is 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. The provisions of this chapter establish 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," as an affirmative defense.

FOR A SEVENTH DEFENSE

29. The defendant, SCHSL, expressly reserves the right to assert that the plaintiffs, other defendants, and third persons not a party or parties to this action, may have been negligent or legally responsible or otherwise at fault for the damages alleged in the Complaint. Therefore, this defendant requests that in any finding of any liability in favor of the plaintiffs or settlement through a judgment against this defendant, an apportionment of fault be made among all parties by the Court or jury. This defendant further requests that judgment and declaration of indemnification and contribution against all other parties or persons in accordance with the apportionment of fault, pursuant to the South Carolina Contribution Among Tortfeasors Act, S.C. Code Ann. § 15-38-10 *et. seq.*

FOR AN EIGHTH DEFENSE

30. The defendant, SCHSL, has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances in the plaintiffs' Complaint. This defendant intends to act as best it can to inform itself as to the pertinent facts or prevailing circumstances surrounding any report or injury or damage to the plaintiffs as alleged in the Complaint, and gives notice of its intent to assert any affirmative defenses that its information-gathering process may indicate is supported by law and fact, including, but not limited to, a defensive action is barred in whole or in part by any applicable statute, contract, release, covenant, or the doctrine of laches. The defendant, SCHSL, does reserve the right to amend this Answer to assert any such defenses.

FOR A NINTH DEFENSE
(Lack of Proximate Cause)

31. The defendant, SCHSL, would show that none of its alleged acts proximately caused plaintiffs' alleged injuries and damages, if any, the same of which is denied, and, therefore, the plaintiff cannot recover from this defendant.

FOR A TENTH DEFENSE
(Comparative Negligence of Plaintiff)

32. The defendant, SCHSL, would show that such injuries and damages as the plaintiffs sustained, if any, at the time and place as alleged in the Complaint, were due to and caused and occasioned by the comparative negligence, recklessness, willfulness and wantonness of the plaintiff, which negligence, recklessness, willfulness and wantonness, as aforesaid, combining and concurring with that of the defendants, if any, and the same is denied, contributed to the plaintiff's alleged injuries and damages as a proximate cause thereof. Such negligence, recklessness, willfulness and wantonness of the plaintiff was greater in proportion to the negligence of the defendant, if any, and the same is denied, and, therefore, the defendant, SCHSL, expressly pleads the comparative negligence, recklessness, willfulness and wantonness of the plaintiff as a complete bar to any recovery against the defendant in this action; in the alternative, the defendant is entitled to a reduction of damages based upon the percentage of the negligence, recklessness, willfulness and wantonness of the plaintiff.

FOR AN ELEVENTH DEFENSE
(Assumption of Risk)

33. The defendant, SCHSL, would show that such injuries and damages as the plaintiff sustained, if any, were due to and caused and occasioned by the voluntary actions of the plaintiff, taken with full knowledge of the risks associated therewith, of

which the plaintiff, in the exercise of due care, should have known or appreciated and, therefore, the defendant pleads plaintiff's voluntary assumption of a known risk as a complete bar to this action.

FOR A TWELFTH DEFENSE
(Unconstitutionality of Punitive Damages)

34. To the extent the plaintiffs may assert claims for punitive damages, which is denied, the defendant, SCHSL, would show that an award of punitive damages under South Carolina law violates the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

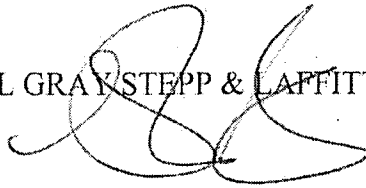
- a. The judiciary's ability to correct a punitive damages award only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;
- b. Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- c. Any award of punitive damages based upon the wealth of the defendant violates due process guarantees;
- d. The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;
- e. Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness; and
- f. The plaintiffs' claim for punitive damages violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the defendant.

The plaintiff's claim for punitive damages violates the Federal Doctrine of Separation of Powers and Article I, Section 8 of the South Carolina Constitution for the

reason that punitive damages are a creation of the judicial branch of government which invades the province of the legislative branch of government.

WHEREFORE, having fully answered, the defendant, SCHSL, prays that plaintiffs' Complaint, be dismissed as to it, with costs, and for such other and further relief as the Court may deem just and proper.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.



By: _____

Rebecca Laffitte
J. Michael Montgomery
Alexander E. Davis
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Post Office Box 11449
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(803) 929-1400

Attorneys for Defendant, South Carolina High
School League

Columbia, South Carolina

June 11, 2015

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

CASE NO. 2015-CP-07-1147

DARRELL J. ALSTON, JR. and
MABEL L. ALSTON,

2015 JUL 24 AM 9:42

ANN ROSEHEAD
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Plaintiffs,

**MOTION FOR SUMMARY
JUDGMENT AS TO LIABILITY
(RULE 56)**

BEAUFORT COUNTY SCHOOL
DISTRICT and SOUTH CAROLINA
HIGH SCHOOL LEAGUE,

Defendants.

TO ALL INTERESTED PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that Plaintiffs Darrell J. Alston, Jr. and Mabel L. Alston, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, will and do hereby move before the Presiding Judge of the above Court, on such date and place as the Court may appoint, for summary judgment as to liability for damages against Defendants.

Plaintiff Darrell J. Alston, Jr., then a minor, was seriously injured on May 13, 2013 while participating in spring football practice with the Beaufort High School football team. Defendant South Carolina High School League (hereinafter SCHSL) makes the rules for participation by South Carolina high school students in football, and Defendant Beaufort County School District (hereinafter BCSD), as a member of/supervised by SCHSL, is bound by these rules, with SCHSL obliged to ensure their rules are being followed by their members.

This motion is made on the grounds that Defendant Beaufort County School District has admitted in pleadings that Plaintiff Darrell J. Alston, Jr. was allowed to participate in spring football practice on May 13, 2013, without a physical examination/clearance, or written parental consent, that he was injured while so participating, and that they had actual care and control of him while he was so participating (see attached, incorporated by reference). Therefore, Defendants are liable for these injuries, with the damages therefrom to both Plaintiffs to be determined.

Summary judgment should be granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC; Lanham v. Blue Cross & Blue Shield of S.C., Inc., 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002). When the evidence is susceptible of only one reasonable interpretation, summary judgment may be granted." Brooks v. Northwood Little League, Inc., 327 S.C. 400, 403, 489 S.E.2d 647, 648 (Ct. App. 1997).

An excerpt from the SCHSL rules, of which this Court can take judicial notice under Rule 201, states: "Never allow a student to practice without having a Parents' Permission Form, Physical Examination Form and insurance coverage."

Excerpts from the BCSD rules, of which this Court can take judicial notice under Rule 201, state: "Students participating in high school athletics are subject to the eligibility requirements of the SCHSL. No student may participate in tryouts, practice or a game without first meeting these two requirements and having a completed physical annually" and "The health and safety of students involved with any team or activity are primary priorities for coaches. No student may participate on an athletic team until he/she has a valid physical exam from a qualified health professional on record with the school. Physicals must be completed once a school year and used for that school year only. A new physical must be completed each school year."

Based on the foregoing, as well as such other evidence, authority or argument that may be presented at the hearing on this motion, Plaintiffs Darrell J. Alston, Jr. and Mabel L. Alston move the Court to enter summary judgment against Defendants Beaufort County School District and South Carolina High School League, on the issue of liability for the damages claimed, and for such other and further relief as the Court deems just and appropriate.

Dated: July 21, 2015

LAW OFFICE OF BRUCE R. HOFFMAN, LLC



BRUCE R. HOFFMAN, Attorney for Plaintiffs
574 Sea Island Parkway
Saint Helena Island, SC 29920
(843) 838-5290

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this pleading in the above entitled action upon all other parties to this cause by depositing a copy herewith, postage paid, in the United States mail addressed to the attorney of attorneys for said parties.

This 21 day of July, 2015

By [Signature]

ANSWER: Monumental Life Insurance Company
Cedar Rapids, IA
Policy # SC14
Limits \$25,000

In addition, the District's coverage is governed by and subject to the limitations set forth in the Tort Claims Act.

4. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

ANSWER: The District has not determined whether it will call any expert witnesses at trial at this time, but reserves the right to supplement this response in the future.

5. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed tr., such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See answer to Interrogatory No. 1.

6. Did you have signed parental permission for Plaintiff Darrell J. Alston, Jr., to participate in high school football on May 13, 2013? If so, produce it.

ANSWER: The District does not have a signed parental permission form.

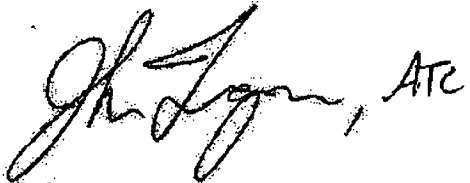
7. Did you have proof of a physical examination and clearance for Plaintiff Darrell J. Alston, Jr., to participate in high school football on May 13, 2013? If so, produce it.

ANSWER: The District does not have a signed physical examination and clearance form.

10/14/2013

Statement Regarding Darrell Alston

A student athlete named Darrell Alston came out during spring football practice, without my knowledge. He was issued equipment by a coach without consulting with me as to whether the student had a physical. The verbal protocol is that the coaches are supposed to send all students that did not play last fall to me, so I can call the Athletic Office (where the physicals are kept), to see if we have an up to date physical. I had not noticed this particular student before at practice, until he got hurt. He injured his knee towards the end of practice on May 13, 2013. I put him in the back of the gator where I performed a Lachman's Test (to test the integrity of the ACL) and iced him. The student gave me his Dad's phone number so his Dad could come pick him up. I met the Dad back at the gym door with his son. I got the son crutches and he went into the locker room to change. I talked to the Dad and told him the prognosis and referred him to Dr. Dean. At no point did the father ask his son why he was at football practice or seemed upset that he was at football practice. I helped the student get into his father's car and I have not seen the student since. I do have an injury report and a copy of the school insurance form in my records.



Joshua Ferguson, ATC
Certified Athletic Trainer
Carolina Sportscare and Physical Therapy
Beaufort High School

Re: Darrell Alston

From: Mark Clifford



Darrell Alston started lifting weights with us after school during the winter and spring of 2013. We issued him pads and he was permitted to practice. I guess I figured he had a Physical because we had it posted in the weight room and preach all newcomers must have it for Spring Practice. He was one of the few players there that didn't play the previous year.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

Darrell J. Alston, Jr., and Mabel L. Alston,)

Civil Action No. 2015-CP-07-1147

Plaintiffs,)

vs.)

Beaufort County School District,)
South Carolina High School)
League,)

Defendants.)

DEFENDANT'S, SOUTH CAROLINA
HIGH SCHOOL LEAGUE'S, NOTICE
OF MOTION AND MOTION FOR
SUMMARY JUDGMENT

TO:

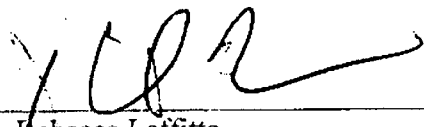
BRUCE R. HOFFMAN, ESQUIRE, OF THE LAW OFFICE OF BRUCE R. HOFFMAN, LLC, ATTORNEY FOR THE ABOVE-NAMED PLAINTIFFS:

YOU WILL PLEASE TAKE NOTICE that the defendant, South Carolina High School League, will move before the Presiding Judge of the Beaufort County Court of Common Pleas on the tenth (10th) day after the service hereof at 10:00 a.m. or as soon thereafter as counsel may be heard for an Order dismissing the Complaint against them, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

The basis of this Motion is that the Plaintiff's claims against the South Carolina High School League are barred by the immunity granted to the League under the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.* Specifically, §15-78-60(4) provides immunity to the League in this case.

This Motion will be supported by a memorandum, affidavits, and/or the applicable law that will be filed prior to or at the time of the hearing in this matter. Given the nature of this Motion, consultation with opposing counsel was not necessary.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 

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rlmontgomery@sowellgray.com

J. Michael Montgomery

mmontgomery@sowellgray.com

Alexander E. Davis

adavis@sowellgray.com

1310 Gadsden Street

Post Office Box 11449

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(803) 929-1400

Attorneys for Defendant, South Carolina High
School League

Columbia, South Carolina

July 29, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

Darrell J. Alston, Jr., and Mabel L.)
Alston,)

Civil Action No. 2015-CP-07-1147

Plaintiffs,)

vs.)

NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT ON
BEHALF OF THE SOUTH CAROLINA
HIGH SCHOOL LEAGUE

Beaufort County School District,)
South Carolina High School)
League,)

Defendants.)

YOU WILL PLEASE TAKE NOTICE that the defendant, South Carolina High School League, will move before the Presiding Judge of the Beaufort County Court of Common Pleas on the tenth (10th) day after the service hereof at 10:00 a.m. or as soon thereafter as counsel may be heard for an Order granting summary judgment in its favor, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

The basis of this Motion is that (a) the South Carolina High School League is entitled to immunity pursuant to S.C. Code § 15-78-60(4); (b) the plaintiffs have failed to set forth sufficient evidence to support their gross negligence claims against the South Carolina High School League; and (c) the plaintiffs cannot establish proximate cause as a matter of law.

Accordingly, the South Carolina High School League respectfully submits that summary judgment is proper, and the plaintiffs' claims against the League should be dismissed. This Motion will be supported by a memorandum, affidavits, and/or the

applicable law that will be filed prior to or at the time of the hearing in this matter. Given the nature of this Motion, consultation with opposing counsel was not necessary.

SOWELL GRAY ROBINSON STEPP &
LAFFITTE, L.L.C.

By: S / J. Michael Montgomery
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(803) 929-1400

Attorneys for Defendant, South Carolina High
School League

Columbia, South Carolina

March 22, 2017

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
CASE NO. 2015-CP-07-1147

DARRELL J. ALSTON, JR. and
MABEL L. ALSTON,

Plaintiffs,

**NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT**

BEAUFORT COUNTY SCHOOL
DISTRICT and SOUTH CAROLINA
HIGH SCHOOL LEAGUE,

Defendants.

TO ALL INTERESTED PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that Plaintiffs Darrell J. Alston, Jr. and Mabel L. Alston, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, will and do hereby move before the Presiding Judge of the above Court, on such date and place as the Court may appoint, for summary judgment against Defendants.

Summary judgment should be granted, as here, when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC; *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002). When the evidence is susceptible of only one reasonable interpretation, summary judgment may be granted." *Brooks v. Northwood Little League, Inc.*, 327 S.C. 400, 403, 489 S.E.2d 647, 648 (Ct. App. 1997).

Based on the foregoing, as well as such other evidence, authority or argument that may be presented at the hearing on this motion, Plaintiffs Darrell J. Alston, Jr. and Mabel L. Alston move the Court to enter summary judgment against Defendants Beaufort County School District and South Carolina High School League, and for such other and further relief as the Court deems just and appropriate.

Dated: March 24, 2017

s/Bruce R. Hoffman
S.C. Bar No. 8716
Attorney for Plaintiffs
574 Sea Island Parkway
Saint Helena Island, SC 29920
843-838-5290
brucehf@embarqmail.com

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

Darrell J. Alston, Jr., and Mabel L. Alston,)

Civil Action No. 2015-CP-07-1147

Plaintiffs,)

vs.)

Beaufort County School District,)
South Carolina High School)
League,)

Defendants.)

NOTICE OF MOTION AND
AMENDED MOTION FOR SUMMARY
JUDGMENT ON BEHALF OF THE
SOUTH CAROLINA HIGH SCHOOL
LEAGUE

YOU WILL PLEASE TAKE NOTICE that the defendant, South Carolina High School League, will move before the Presiding Judge of the Beaufort County Court of Common Pleas on the tenth (10th) day after the service hereof at 10:00 a.m. or as soon thereafter as counsel may be heard for an Order granting summary judgment in its favor, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

The basis of this Motion is that (a) the South Carolina High School League is entitled to immunity pursuant to S.C. Code § 15-78-60(4); (b) the plaintiffs have failed to set forth sufficient evidence to support their gross negligence claims against the South Carolina High School League; and (c) the plaintiffs cannot establish proximate cause as a matter of law. Additionally, and in the alternative, the South Carolina High School League joins in the motion of the co-defendant, Beaufort County School District, requesting summary judgment as to any damages claimed by the plaintiffs in excess of \$300,000.00, which is the cap pursuant to the South Carolina Tort Claims Act.

Accordingly, the South Carolina High School League respectfully submits that summary judgment is proper, and the plaintiffs' claims against the League should be dismissed. In the alternative, the defendants request an Order limiting plaintiff's potential recovery in this case to the statutory cap of \$300,000.00. This Motion will be supported by a memorandum, affidavits, and/or the applicable law that will be filed prior to or at the time of the hearing in this matter. Given the nature of this Motion, consultation with opposing counsel was not necessary.

SOWELL GRAY ROBINSON STEPP &
LAFFITTE, L.L.C.

By: S / J. Michael Montgomery
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Attorneys for Defendant, South Carolina High
School League

Columbia, South Carolina

March 24, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

Darrell J. Alston, Jr., and Mabel L. Alston,

Civil Action No. 2015-CP-07-1147

Plaintiffs,

vs.

Beaufort County School District,
South Carolina High School
League,

Defendants.

**DEFENDANT'S, SOUTH CAROLINA
HIGH SCHOOL LEAGUE'S,
MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT**

The defendant, South Carolina High School League ("SCHSL" or "League"), by and through its undersigned attorneys, has moved this Honorable Court, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an Order granting summary judgment in its favor. The League respectfully submits that summary judgment is appropriate for three separate and independent grounds: (a) the plaintiffs cannot establish proximate cause as a matter of law; (b) the League is entitled to absolute immunity pursuant to Section 15-78-60(4) of the South Carolina Code; and (c) plaintiffs have failed to set forth sufficient evidence to support their gross negligence claims against the SCHSL. Alternatively, the SCHSL has moved pursuant to Rule 56 of the South Carolina Rules of Civil Procedure for an Order granting partial summary judgment as to various claimed damages in light of the cap of \$300,000 under the South Carolina Tort Claims Act.¹ As set forth more fully below, the League's motion should be granted.

¹ S.C. Code Ann. §§ 15-78-10 through -220.

PROCEDURAL HISTORY AND FACTS

The plaintiffs commenced this action against Beaufort County School District and the SCHSL by filing the Summons and Complaint in the Court of Common Pleas for Beaufort County on May 11, 2015. The plaintiffs seek damages for injuries sustained by plaintiff, Darrell J. Alston, Jr., at a Beaufort High School football practice on May 13, 2013. The basis for the plaintiffs' claims is that Darrell Alston, Jr. attended spring practice at Beaufort High School without a physical or a signed parental permission form, both of which are required under SCHSL rules.² However, Alston's injury resulted from being tackled and tearing his ACL and meniscus in his right knee. (Compl., ¶ 9).

Through the course of discovery, the plaintiffs have failed to produce any evidence that Alston suffered from a preexisting knee condition that would have made him more susceptible to an acute knee injury, nor have they produced any evidence of other medical conditions that would have prevented Alston from passing a physical. With respect to Alston's preexisting knee condition, the following testimony is instructive:

Q: Okay. Since—let's just say since age 10, between the ages of 10 and when this happened—I guess you would have been 16 when this happened—

A: (Head nodding.)

Q: -- the knee injury happened, did you have any—ever go to the hospital for any sort of serious medical condition between the ages of 10 and 16?

A: No.

Q: Never had any prior problems with your knees before this incident?

² Alston testified that he was informed prior to the beginning of spring practice that he would need a physical before the first day of practice, but he did not obtain one before showing up for practice on May 2, 2013. (Darrell Alston Depo., p. 33, ll. 3-16, portions of Darrell Alston's deposition transcript are attached as Exhibit A).

A: No.

Q: No bone or joint issues that you had before this?

A: No.

See Ex. A, pp. 15-16, ll. 24-25; 1-13.

Moreover, nothing in the record indicates that Alston's childhood asthma would have prevented him from being cleared to participate in high school athletics. When questioned in his deposition in April 2016, roughly three years after the incident, the plaintiff testified that he currently has "flare-ups" of asthma once or twice a month. *See* Ex. A., p. 16, ll. 19-21. However, Alston does not see a doctor specifically for asthma, nor does he have an inhaler or a nebulizer. *Id.* at pp. 16-17, ll. 22-25; 1-4. Alston described his "flare-ups" as lasting less than a minute and consisting of shortness of breath, and he does not do anything when they happen. *Id.* at p. 17, ll. 5-21. Alston also testified that his condition has been this way for the past ten years. *Id.* at p. 18, ll. 10-20. Importantly, Alston confirmed that (a) he has never had an inhaler or nebulizer at school, (b) he has never been to see a school nurse for any asthmatic issues, and (c) he cannot remember the last time he used an inhaler or a nebulizer. *Id.* at pp. 18-19, ll. 25; 1-8.

It should also be noted that, prior to starting spring football practice in 2013, Alston participated in Junior ROTC beginning in his ninth grade year. *See* Ex. A., pp. 58-59, ll. 23-25; 1-8. He continued to participate in Junior ROTC, which includes a physical training aspect, until his senior year, and Alston stopped doing physical training due to his right knee. *Id.* at p. 59, ll. 12-25. In fact, Alston's treating orthopedist released him to return to "drill with ROTC" less than five months after his ACL repair surgery. *See* Note of Dr.

Mark Dean.³ Furthermore, Alston acknowledged he has never had an asthma attack during Junior ROTC. *Id.* at p. 60, ll. 8-10. If Alston can participate in physical training for Junior ROTC for at least three years without any asthma attacks, then certainly his alleged asthma would not have prevented him from playing high school sports.

This conclusion is also supported by Alston's medical records. In the histories provided to various providers when he had his knee surgery on May 31, 2013, Alston never mentioned a history of asthma. Additionally, in the pre-anesthesia evaluation for plaintiff's surgery, asthma was circled on the form but written beside it was "as baby, outgrew it."⁴ Therefore, any attempt by plaintiffs to argue that Alston's childhood asthma would have caused him to fail a physical is disingenuous and unsupported by any medical testimony or records.⁵ With these facts in mind, the defendant, SCHSL, submits the following analysis in support of its Motion for Summary Judgment.

LEGAL STANDARD

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCRCP. The purpose of summary judgment is "to expedite disposition of cases which do not require the services of a factfinder." S. Glass & Plastics

³ Given that this one of Alston's medical records, a copy of this note will be provided at the hearing, if necessary.

⁴ A copy of these medical records will also be provided at the hearing, if necessary.

⁵ If plaintiffs chose to make this argument, they will directly contradict one of their main damages claims. Alston testified that his ability to join the Air Force may be impacted by the knee injury he sustained at age 16 in May 2013. Clearly, if Alston could not pass a physical for high school sports due to asthma, he would likewise not be physically cleared for the Air Force, regardless of the condition of his knee.

Co. v. Duke, 367 S.C. 421, 427, 626 S.E.2d 19, 22 (Ct. App. 2005) (citing George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)).

Applying this standard to the present case, this Court should grant the SCHSL's Motion for Summary Judgment.

ARGUMENT

I. Lack of Proximate Cause

In the present case, even if the plaintiff's allegations are accepted as true, i.e. that the SCHSL breached some duty owed to the plaintiffs to ensure that Darrell Alston, Jr. did not practice before having a physical or a parental permission form, the claim of gross negligence against the SCHSL still fails for lack of proximate cause.

In a negligence action, the plaintiff must prove proximate cause. Hurd v. Williamsburg County, 353 S.C. 596, 611, 579 S.E.2d 136, 144 (Ct. App. 2003) (citing Rush v. Blanchard, 310 S.C. 375, 426 S.E.2d 802 (1993); McNair v. Rainsford, 330 S.C. 332, 499 S.E.2d 488 (Ct. App. 1998)). Negligence is not actionable unless it proximately causes the plaintiff's injury. Id.

Proximate cause requires proof of both causation in fact and legal cause. Hurd, 353 S.C. at 611, 579 S.E.2d at 144 (citing Oliver v. South Carolina Dep't of Hwys. & Pub. Transp., 309 S.C. 313, 422 S.E.2d 128 (1992)). Causation in fact is proved by establishing the plaintiff's injury would not have occurred "but for" the defendant's negligence. Id. Legal cause, in contrast to the "but for" nature of causation in fact, is proved by establishing foreseeability. Hurd, 353 S.C. at 611-12, 579 S.E.2d at 144 (citing Oliver, 309 S.C. at 316, 422 S.E.2d at 131). The standard by which foreseeability is determined is that of looking to the natural and probable consequences of the complained-of act. Id.

In other words, a negligent act or omission is a proximate cause of injury if, in a natural and continuous sequence of events, it produces the injury, and without it, the injury would not have occurred. Shepard v. S.C. Dep't of Corr., et al., 299 S.C. 370, 374, 385 S.E.2d 35, 37 (1989) (citing Driggers v. City of Florence, 190 S.C. 309, 2 S.E.2d 790 (1939); Hughes v. Children's Clinic, P.A., 269 S.C. 389, 237 S.E.2d 753 (1977)). An act or omission that does no more than furnish the condition or give rise to the occasion by which the injury is made possible is not the proximate cause of the injury. Id. (citing Driggers, supra). Proximate cause is the efficient cause of the injury-the very thing which brings it about. Hughes, supra.

In this case, the failure to obtain a physical form was not the "very thing which brought about" the plaintiffs' injury. As stated in Shepard, an act or omission that does no more than furnish the condition or give rise to the occasion by which the injury is made possible is *not* the proximate cause of the injury. The lack of forms did not cause Alston to tear his ACL; instead, it merely gave rise to the occasion for Alston to be on the practice field on May 6, 2013. In other words, any student on the football field has a risk of tearing his or her ACL, and in this case, the fact that Alston did not have a physical or a parental permission form before stepping on the field did not make it more likely or less likely that he would suffer an acute injury while being tackled.

The Shepard decision is instructive and similar to the circumstances of this case. In Shepard, the Department of Corrections and the Department of Highways and Public Transportation were sued after a prisoner assigned to work on a Highway Department road crew escaped and went on a crime spree, raping and murdering several people, including the decedent. 299 S.C. at 373, 385 S.E.2d at 36. The plaintiff alleged various negligent

acts on the part of the defendants, including violations of Department of Corrections policies and Highway Department policies, which allowed the prisoner to escape. Id.

In Shepard, the trial judge ruled on a motion to dismiss in favor of the defendants, finding that the defendants' alleged negligence did nothing more than furnish the conditions or give rise to the occasion by which the prisoner was able to cause the death of the decedent, and in and of themselves, the defendants' conduct did not directly bring about the injury. Thus, the plaintiff failed to establish proximate causation as a matter of law.

Likewise, the alleged failure to enforce the SCHSL rule requiring a physical and parent permission form did not naturally and probably lead to the injury in this case, which was an acute injury to the knee caused by tackling. As previously stated, the plaintiffs have presented no evidence to establish any connection between the absence of a physical and the knee injury sustained by the plaintiff.⁶ Therefore, plaintiffs have failed to establish legal causation. *See also Barrett v. Phillips*, 223 S.E.2d 918, 919-20 (N.C. Ct. App. 1976) (upholding summary judgment in favor of North Carolina High School Athletic Association following injury to plaintiff after 20-year old student causing the plaintiff's injury had been allowed to participate in violation of the age rule; court held that violation of rules was not proximate cause of the plaintiff's injury).⁷

II. Immunity under the Tort Claims Act

South Carolina Code section 15-78-60 sets forth numerous exceptions to the State's waiver of immunity under the Tort Claims Act. Subsection 15-78-60(4) provides that there

⁶ In other words, physicals are designed to review a student's health history to ensure the student is physically able to play or if some condition prevents the student from safely participating.

⁷ Attached as Exhibit B.

can be no liability for loss resulting from the “adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies.”

In this case, the claims against the SCHSL are solely based on allowing the plaintiff to participate in violation of its own rules. Although it is anticipated that plaintiffs will argue that their claims involve the failure of the SCHSL to monitor and supervise member schools, the plaintiffs’ argument uses the buzz words “monitor and supervise” to avoid the effect of subsection 15-78-60(4). In other words, plaintiffs’ claim, even if using their own words, cannot be divorced from the fact that the only allegation against the SCHSL is that it failed to “monitor and supervise” Beaufort High School’s compliance with a rule of the SCHSL. Accordingly, the SCHSL is entitled to immunity and the case should be dismissed.

Under the SCHSL Constitution in effect at the time of this incident, member schools are required to maintain various forms with respect to eligibility of a student athlete. Under Article 7, Section 16(C) of the Constitution:

“Each school shall keep on file for all student athletes, a copy of an official birth certificate, a duplicate copy of all submitted eligibility forms, transfer form (if applicable), a parent’s permission record properly filled out and a physical form properly completed by a licensed medical doctor or a certified physician’s assistant in a written collaboration with a licensed medical doctor.”

See portions of the SCHSL 2012-2013 Constitution, attached as Exhibit C.

Additionally, the SCHSL requires each school to provide a roster of participating student-athletes for each sport, and the school certifies eligibility of each student by providing this roster to the SCHSL. *See* Certificate of Eligibility Form, attached as Exhibit

D. In other words, the school's submission of a roster is designed to make sure the school confirms it has all the information required under Article 7, Section 16(C). In fact, there is a statement above the principal's signature line on the Certificate of Eligibility Form that reads, "I have on file a physical and parent's permission form for each student." *Id.* Again, in this case, the only grossly negligent act asserted against the SCHSL is the failure to make sure the rules regarding the physical form and parental permission form had been followed by Beaufort High School. Thus, summary judgment is appropriate pursuant to subsection 15-78-60(4).

The present case is analogous to Adkins v. Varn, 312 S.C. 188, 439 S.E.2d. 822 (1993). In that case, a thirteen-year-old bicyclist was chased into traffic by vicious dogs and killed. Suit was brought against Greenville County for failing to enforce its county animal control ordinance. The circuit court granted summary judgment to the County under subsection 15-78-60(4), concluding that even if the County was negligent in not responding to prior complaints and picking up the dogs, the County was still immune from suit because the allegations merely stated a claim that the County failed to follow its own ordinance. The South Carolina Supreme Court upheld the judgment in the County's favor pursuant to subsection 15-78-60(4), and it also noted the liberal construction in favor of limiting liability under section 15-78-20.⁸ Here, the only wrongful act alleged against the SCHSL is that it failed to ensure that Beaufort High School followed the rules set forth in

⁸ "The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State." S.C. Code Ann. § 15-78-20.

the League's Constitution, and this claim falls squarely within the immunity provided by subsection 15-78-60(4).

III. Failure to Produce Evidence of Gross Negligence Against the SCHSL

If the Court does not find summary judgment appropriate at this stage based upon the lack of proximate cause or based upon immunity under the South Carolina Tort Claims Act, the SCHSL respectfully submits that it is entitled to summary judgment because plaintiffs have failed to produce a genuine issue of material fact with respect to their gross negligence claim against the SCHSL.

Gross negligence is the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do. Richardson by McDaniel v. Hambright, 296 S.C. 504 (1988) (citing Ford v. Atlantic Coast Line Railroad, 169 S.C. 41, 168 S.E.2d 143 (1932)). It is a failure to exercise slight care. Id. (citing Anderson v. Ballenger, 166 S.C. 44, 164 S.E. 313 (1932); and Pilot Industries v. Southern Bell Telephone and Telegraph Co., 495 F.Supp. 356 (D.S.C. 1979)). To prove their claim, plaintiffs are required to show that: (1) the SCHSL owed Alston a duty to ensure that he did not practice without a physical or parental permission; (2) the SCHSL breached this duty in failing to exercise a slight degree of care; and (3) the SCHSL's breach of duty proximately caused his injury. See Rice v. Sch. Dist. of Fairfield, 317 S.C. 87, 93 452 S.E.2d 352, 355 (Ct. App. 1994). For the reasons set forth below, plaintiff cannot meet these requirements.

A. Duty

For grossly negligent conduct to become actionable, it must stem from some specific legal duty owed to the plaintiff. Rice, 317 S.C. at 93, 452 S.E.2d at 355 (citing

Foster v. Greenville County Medical Soc., 295 S.C. 190, 367 S.E.2d 468 (Ct. App. 1988)).

In the absence of a legal duty to prevent an injury, foreseeability of that injury is an insufficient basis on which to rest liability. Id.

In this case, the SCHSL does not have a legal duty to monitor or ensure that every single athlete at every member school in South Carolina has had a physical or parental permission before the athlete steps on the practice field. First of all, it would be administratively impossible to do so, given that the League had a staff of nine people during the 2012-2013 school year. By contrast, 207 high schools offered fall, winter, and spring sports during this same school year. Secondly, there is no duty created under the SCHSL rules for the League to undertake the responsibility of collecting these forms. As previously stated, the League's Constitution requires the member schools to keep copies of these forms on file at the school, and the member school then certifies on an eligibility form that it has complied with the rule.

Moreover, the SCHSL is at least two steps removed from the determination of which student at a particular school is going to practice for a specific sports team. The SCHSL has no way of knowing which students are going to try and participate for a team at a member school, and presumably the first person at the school level with knowledge of interested students would be the coach of the team. Then, depending on how the school implements processes to collect the required eligibility forms (including but not limited to physicals and parental permission forms), the chain of responsibility would go from the team's coach up through the athletic director and to the principal of the member school. The SCHSL has no involvement in the process of obtaining physicals and parental permission forms until the member school certifies that it has been done for the student

athletes on a particular team at the member school. This was also true in the present case. *See* Beaufort County High School's Responses to the SCHSL's Request for Admission, attached as Exhibit E.

Additionally, it should be noted that contrary to some of the arguments posited by plaintiffs in this case, the SCHSL does not have total authority over every aspect of interscholastic activities in South Carolina. Just like many other regulatory bodies in South Carolina, the SCHSL promulgates rules and regulations through the legislative process set forth in its constitution and bylaws. The SCHSL gives discretion to member schools as to how the schools comply with the various rules and regulations adopted by the members of the League. For example, with respect to the sport of football, once the eligibility rules have been met, the SCHSL does not decide who plays on the team, which equipment is used, what uniforms are purchased, the number of coaches, the schedule of games, how practice is organized, etc. And, with respect to the school's process of obtaining physicals and parental permission forms for each male and female sport, the SCHSL does not control (a) how the requirements for participation are communicated to students and parents; (b) when and if member schools coordinate physicals for athletes; (c) how a member school internally assigns responsibility for the collection of these forms; and (d) how a member school maintains the paperwork at its physical location. Again, not only has the SCHSL never undertaken a duty to ensure these forms have been properly collected before a student participates in a practice, but it would also be administratively impossible for the SCHSL staff to fulfill such a duty.

Finally, the SCHSL's role as a regulatory body with rule-making authority over its members is akin to a number of other state agencies or associations for which it would be absurd to impose a duty or liability in an analogous situation. For example:

- The Supreme Court of South Carolina promulgates various rules for South Carolina lawyers that regulate advertising and solicitation, and there are rules requiring a certain amount of continuing education credits per year. If a lawyer does not certify every year that he/she obtained the required amount of CLE credits, he/she is immediately suspended. Suppose the Court fails to suspend a lawyer who has misrepresented the amount of CLE credits obtained, and the lawyer then commits legal malpractice when he should have been suspended. Certainly, the aggrieved client would have not cause of action against the Supreme Court of South Carolina.
- The Department of Social Services (DSS) promulgates rules and regulations for the licensing of child care centers. Some of these rules require certain ratios for adult to child based upon age. If a child falls and breaks his arm while the classroom has a ratio in violation of the DSS regulations, DSS is not liable for the child care center's violation of its rule.
- The Department of Health and Environmental Control (DHEC) is the entity that regulates licensing of pharmacists and the manner in which controlled substances are dispensed. If a pharmacist at CVS fails to store a controlled substance at the appropriate temperature in violation of DHEC regulations and then dispenses the drug to a customer, thereby making him sick, DHEC would not be liable for the pharmacist's conduct.

Just as these entities would not be tasked with the duty to monitor compliance with every rule and regulation, neither is the SCHSL. Therefore, plaintiffs' gross negligence claim fails as a matter of law based on the failure to establish a duty.

B. Breach of Duty

If the Court finds that plaintiffs have set forth sufficient evidence of a duty owed by the SCHSL to monitor compliance by member schools with the physical and parental permission form requirements, the SCHSL respectfully submits that plaintiffs have set forth no evidence that the SCHSL has acted without slight care. Therefore, summary judgment is still appropriate.

In the SCHSL's verified Responses to Plaintiff's Fourth Set of Interrogatories and Requests for Production,⁹ the SCHSL set forth detailed descriptions and supporting documentation of how the League staff encouraged compliance with Article VII, Section 16 of the League's Constitution. For the sake of brevity, the League would summarize its efforts as follows: (a) the SCHSL held two workshop meetings per year for new principals and new athletic directors, with the primary focus being student eligibility issues and eligibility forms, including the Certificate of Eligibility form that required the attestation by the principal about the parental permission form and physical form being kept at the school; (b) the SCHSL held four meetings per year to certify head coaches who are not employed by the school, and parts of these meetings including discussions about safety rules, including the rule requiring a pre-participation physical exam; (c) the SCHSL held two meetings per year for each classification, which required attendance by every principal and athletic director in Class AAAA, of which Beaufort High School was a member, and eligibility form requirements were discussed in these meetings; (d) the SCHSL held five regional meetings per year with coaches and officials for the purpose of discussing football rules and rule changes, and in these meetings, the League's Football Pre-Season Practice Plan would have been discussed, which includes the statement, "All athletes must have a pre-participation physical exam before athletic participation;" (e) during the 2012-2013 school year, the SCHSL's Executive Committee approved a new physical form that could be used in addition to the existing physical form, and information was disseminated to member schools about the adoption of the new physical form; and (f) during the 2012-2013

⁹ These Responses are attached as Exhibit F. To the extent the Court would like to see all or part of the supporting documentation produced and Bates labeled 143-441, the SCHSL will gladly supplement this memorandum.

school year and in previous years, the SCHSL staff would periodically publish a newsletter entitled "League Update," and this newsletter often encouraged attendance at the various meetings described above; furthermore, these newsletters would encourage member schools to confirm the accuracy of the Certificate of Eligibility forms.

Therefore, in light of all of these efforts by the SCHSL to ensure compliance with the rule requiring pre-participation physicals and parental permission forms, there is no genuine issue of material fact as to the claim that the SCHSL acted without slight care.

The SCHSL anticipates that the plaintiffs will argue that their retained expert, Dan Durbin, has provided testimony that defeats summary judgment. However, Dr. Durbin's testimony is not sufficient to overcome the SCHSL's motion for three reasons.¹⁰ First, Dr. Durbin admitted that he has not looked at the specifics of this case, and he acknowledged that he could not offer an opinion specific to the SCHSL. Dr. Durbin testified:

A: All I've said today is are there processes in place to make sure your representatives can do that. If you can prove that, then—then there's no discussion for me. If that can't be proven, then the discussion is, after you're done with this case, what are you going to do to make sure it is?

Q: All right. And then I guess my follow-up is, then, you do not have an opinion in this case as to whether or not there are appropriate processes in place?

A: That's because I don't—I intentionally haven't got involved in the details of the case.

(Deposition of Dan Durbin, pp. 75-76, ll. 13-25; 1-2; portions of Dr. Durbin's deposition transcript are attached as Exhibit G). Dr. Durbin repeated similar testimony at other points in his deposition. *See* Ex. J, p. 71, ll. 2-19; p. 92, ll. 9-24; p. 148, ll. 3-14; p. 150, ll. 12-22.

¹⁰ The SCHSL would also note that Dr. Durbin's testimony does not impact the proximate cause issue or the Tort Claims Act immunity defense.

Secondly, Dr. Durbin's thoughts on the appropriate processes in place for responsibility to collect physical forms and parental permission forms do not establish credible evidence of a standard of care for a state high school athletic association. Dr. Durbin admitted that he only checked to see how one other state association handled similar situations, and it was consistent with the SCHSL requirements. Ex. J, pp. 34-35, ll. 9-25; 1-3. Therefore, his testimony is insufficient to raise a question about the "processes" of the SCHSL with respect to an accepted standard of care. See Guinan v. Tenet Healthsystems of Hilton Head, Inc., 383 S.C. 48, 56, 677 S.E.2d 32, 37-38 (holding expert's testimony was insufficient to survive summary judgment because the testimony, at most, showed the defendant deviated from the expert's personal standard of care rather than the generally recognized and accepted standard of care). Additionally, given that the standard in this case is one of gross negligence, it should be noted that Dr. Durbin agreed that the SCHSL had processes in place to make sure that member schools were complying with the rule concerning parental permission and pre-participation physicals. The fact that he believes additional steps could be taken does not negate the fact that the SCHSL was exercising slight care. See Pack v. Assoc. Marine Institutes, Inc., 362 S.C. 239, 608 S.E.2d 134 (holding the fact that more could have been done does not negate a finding that defendant exercised at least slight care).

Finally, with respect to Dr. Durbin's testimony, his main questions about "processes" included whether there was communication about eligibility form requirements between the SCHSL and school personnel. As previously stated, the SCHSL has since produced approximately 300 pages of documents outlining meetings, workshops, and communications between the SCHSL staff and principals, athletic directors, and

coaches that would have taken place before Alston's incident. Therefore, any "potential" concerns he raised in his deposition have been answered.

C. Proximate Cause

The defendant, SCHSL, would refer to its prior analysis on proximate cause as to why plaintiffs cannot meet this element of gross negligence. Accordingly, plaintiffs cannot establish the elements of gross negligence as to the SCHSL, and the SCHSL's motion for summary judgment should be granted.

IV. Partial Summary Judgment is Appropriate as to Certain Damages

Finally, in the alternative, the Court should grant SCHSL's motion for partial summary judgment as to the damages recoverable in this case.

The General Assembly has set forth the following cap on damages recoverable for claims brought pursuant to the South Carolina Tort Claims Act:

(a) For any action or claim for damages brought under the provisions of this chapter, the liability shall not exceed the following limits:

(1) Except as provided in Section 15-78-120(a)(3), no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved.

(2) Except as provided in Section 15-78-120(a)(4), the total sum recovered hereunder arising out of a single occurrence shall not exceed six hundred thousand dollars regardless of the number of agencies or political subdivisions or claims or actions involved.

S.C. Code Ann. § 15-78-120(a)(1)–(2). Under the Tort Claims Act, an occurrence is defined as “an unfolding sequence of events which proximately flow from a single act of negligence.” S.C. Code Ann. § 15-78-30(g).

“Ordinarily, the parents of an injured child have the right to bring an action against the tortfeasor for expenses incurred in caring for the child.” Endres v. Greenville Hosp., Sys., 312 S.C. 64, 66, 439 S.E.2d 261, 262 (1993). In Wright v. Colleton County School District, our supreme court concluded that a “parent’s claims for loss of services and medical expenses are within the statutory definition of ‘loss’ as contained in [s]ection 15-78-30(g) and are therefore recoverable.” 301 S.C. 282, 289, 391 S.E.2d 564, 569 (1990). However, a parent does not have the right to sue for loss of filial consortium under South Carolina law. *See* Doe v. Greenville County Sch. Dist., 375 S.C. 63, 69, 651 S.E.2d 305, 308 (2007).

In the instant case, the plaintiffs argue two occurrences stemmed from the single act of Darrell Alston being tackled on the football field during practice. Our appellate courts have admittedly recognized the ability of a parent to bring a separate claim under the Act. While the SCHSL would argue those cases are distinguishable, even when accepting this as true, the plaintiffs’ damages are still limited in the instant case. First, Darrell’s damages cannot include a recovery for medical expenses incurred. *See* Trident Reg’l Med. Ctr. v. Evans, 317 S.C. 346, 352, 454 S.E.2d 343, 346–47 (Ct. App. 1995) (holding that parents were “liable for the medical expenses incurred by [their child]” because “[u]nder the common law, a parent is responsible for the support of his or her minor child”). Because his mother is legally responsible for paying his medical bills, Darrell may not receive damages for costs incurred to date because this would amount to a

double recovery. See generally Adams v. Grant, 292 S.C. 581, 585, 358 S.E.2d 142, 144 (Ct. App. 1986) (“The basic purpose of election of remedies is to prevent double recovery for a single wrong.”).

Similarly, the mother’s damages are limited to Darell’s medical bills and lost services. See Wright, 301 S.C. at 289, 391 S.E.2d at 569. The SCHSL would submit that plaintiffs have set forth no evidence of lost services as they relate to mother. Furthermore, to the extent mother seeks any damages beyond those mentioned above, such as her lost wages, pain and suffering, mental anguish, etc., they are not recoverable under the Tort Claims Act. Our appellate courts have not recognized loss of filial consortium as a cause of action in South Carolina. See Doe, 375 S.C. at 69, 651 S.E.2d at 308. Indeed, when faced with the question of what kinds of damages a parent may recover under the Act, our supreme court limited them to medical bills and lost services. See Wright, 301 S.C. at 289, 391 S.E.2d at 569. Moreover, no court has recognized the ability of a parent to recover her own medical expenses allegedly stemming from her child’s injury in a claim brought pursuant to the Tort Claims Act, and the Court should reject the plaintiffs’ attempt to do so here, particularly given that the mother asserted these medical expenses for the first time in an affidavit filed on April 7, 2017.¹¹ A plain reading of the Tort Claims Act compels the conclusion that these damages are not recoverable as a matter of law. If the General Assembly wished to expand the liability of governmental entities to include these damages, then it would have expressly done so. In the absence of the expression of such legislative

¹¹ The plaintiffs have yet to produce any alleged medical bills for Ms. Alston, despite their continuing obligation to respond to the SCHSL’s Interrogatories and Requests for Production. Thus, they cannot seek to defeat partial summary judgment as to the damages portion of their claim at the eleventh hour by alleging she has medical issues purportedly stemming from her son tearing an ACL.

intent, however, the SCHSL's liability should be limited. See S.C. Code Ann. § 15-78-20 (providing that the provisions of the Tort Claims Act "must be liberally construed in favor of limiting the liability of the State").

Accordingly, because most of the damages the plaintiffs seek to recover are not recognized under the common law or the Tort Claims Act, the SCHSL is entitled to partial summary judgment as to this issue.

CONCLUSION

As previously stated, each of the grounds raised by the defendant, SCHSL, are independent reasons for which summary judgment is appropriate. Therefore, for the foregoing reasons, the defendant, SCHSL, respectfully requests that this Court dismiss plaintiffs' claims against it.

Respectfully submitted,

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April 7, 2017

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
BEAUFORT COUNTY

DEPOSITION OF DARRELL J. ALSTON, JR.

DARRELL J. ALSTON, JR., and MABEL L. ALSTON,
Plaintiffs,

vs.

CASE NO. 2015-CP-07-1147

BEAUFORT COUNTY SCHOOL DISTRICT, SOUTH CAROLINA
HIGH SCHOOL LEAGUE,
Defendants.

DEPONENT: DARRELL J. ALSTON, JR.

DATE: MARCH 16, 2016

TIME: 2:00 PM

LOCATION: LAW OFFICE OF BRUCE HOFFMAN
ST. HELENA ISLAND, SOUTH CAROLINA

REPORTED BY: ANNE BOULEY MEYER, RPR
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Exhibit A

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1 crime of any kind?

2 A. No.

3 Q. All right. Trying to stay organized. So
4 let me switch gears on you a little bit and ask you
5 about your medical history. Some of it may not be
6 relevant to this case, and I have got to ask you
7 about some of it just so I know. I don't know
8 unless I ask you.

9 So let me just ask you. Generally, I have
10 been provided some of your pediatric records. Have
11 you ever been hospitalized before this incident?

12 A. Yes.

13 Q. Tell me what that was for, if you remember.

14 A. I don't remember it myself, but for asthma.

15 Q. Okay. And that was when you were younger?

16 A. Yes.

17 Q. Okay. And it would have been -- you would
18 have been so young you don't remember?

19 A. Yes.

20 Q. You don't remember which hospital or
21 anything like that? Or what they did or anything
22 like that?

23 A. Yes.

24 Q. Okay. Since -- let's just say since age 10,
25 between the ages of 10 and when this happened -- I

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1 guess you would have been 16 when this happened --

2 A. (Head nodding.)

3 Q. -- the knee injury happened, did you have
4 any -- ever go to the hospital for any sort of
5 serious medical condition between the ages of 10
6 and 16?

7 A. No.

8 Q. Never had any prior problems with your knees
9 before this incident?

10 A. No.

11 Q. No bone or joint issues that you had before
12 this?

13 A. No.

14 Q. Okay. Let me ask a little about your asthma
15 history. Let me maybe start now.

16 Do you currently suffer from asthma or
17 asthmatic symptoms?

18 A. Yes.

19 Q. How often do you have, I guess, flare-ups of
20 asthma?

21 A. Maybe once or twice a month.

22 Q. Once or twice a month. Okay. Do you see a
23 doctor specifically for the asthma?

24 A. No.

25 Q. Do you carry around an inhaler at all times?

1 A. No.

2 Q. As needed if you have a flare-up, do have an
3 inhaler or a nebulizer of some sort?

4 A. No.

5 Q. If you have a flare-up of asthma, what do
6 you do or what do you take? And let me be clear,
7 I'm talking about currently.

8 What do you do if you have a flare-up of
9 asthma?

10 A. I don't do anything.

11 Q. Does it, I guess, resolve on its own?

12 A. Yes.

13 Q. And the symptoms, can you tell me what kind
14 of symptoms you would have when you would have an
15 asthma attack, you know, once or twice a month as
16 you've told me?

17 A. Shortness of breath maybe.

18 Q. And how long does it typically last?

19 A. Short. It's very short.

20 Q. Less than a minute?

21 A. Yes.

22 Q. Okay. And I know this is -- this maybe
23 seems like a little bit of an odd question. But
24 the current sort of status that you've told me
25 about your asthma, once or twice a month, shortness

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1 of breath for a minute or less, it resolved itself,
2 you don't take Albuterol or nebulizer, that sort of
3 picture that you've given me of your current asthma
4 condition, was that the same as of May of 2013?

5 A. Yes.

6 Q. Okay. And then maybe going back a little
7 bit further, would that have been the same as of
8 2012? The year 2012?

9 A. Yes.

10 Q. I guess -- and again, we have just met so I
11 kind of -- let me ask it this way. How long has
12 your asthma condition been that way?

13 Has it been that way -- you're 19 now, has
14 it been that way for 10 years where you don't
15 necessarily carry an inhaler, have, you know, a
16 doctor who sees you when you have these flare-ups,
17 has that been -- how long has it been like that?

18 A. Yes, 10 years.

19 Q. About 10 years?

20 A. (Nodding head.)

21 Q. Okay. And let's maybe -- just to be sure, I
22 will keep my focus on the 2012-2013 school year
23 which would have been your freshman year at
24 Beaufort High School.

25 Did you ever have an inhaler or nebulizer at

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1 school?

2 A. No.

3 Q. Did you ever go see the school nurse when
4 you had an asthma flare-up?

5 A. No.

6 Q. Can you recall the last time you used an
7 inhaler or a nebulizer?

8 A. No.

9 Q. And I think I know the answer, but again,
10 let me ask it. As of the 2012-2013 school year,
11 were you on any daily medications for any
12 condition?

13 A. I can't remember.

14 Q. Okay. Sitting here, do you recall any daily
15 medications you would have ever taken as a
16 teenager?

17 A. Yes.

18 Q. What would that be?

19 A. Some ibuprofen, or whatever it was called,
20 for my knee.

21 Q. For pain relief?

22 A. Yes.

23 Q. Okay. Right. I think you were probably
24 prescribed some pain medication, and that you would
25 take that as prescribed during that time period; is

65

1 High School?

2 A. Yes.

3 Q. And I don't want to assume what all you
4 discussed, but did he give you, I guess,
5 information about where to show up for the first
6 day of practice?

7 A. Yes.

8 Q. Okay. And what time?

9 A. Yes.

10 Q. Okay. Do you recall that person who you
11 spoke with about practice ever saying anything
12 about a physical or a parental permission form?

13 A. Physical.

14 Q. A physical. What did he tell you?

15 A. He said that I would have to go and get a
16 physical first.

17 Q. And do you remember how far in advance of
18 the first day of practice you had this conversation
19 with this coach?

20 A. No.

21 Q. And did the coach mention anything about
22 where to go to get a physical?

23 A. No.

24 Q. And you were living with your mom at this
25 time?

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1 A. Yes.

2 Q. And then got injured?

3 A. Yes.

4 Q. Okay. If you'll bear with me just one
5 second, Darrell. I'm trying to make sure and see
6 if I have any records from Dr. Reese.

7 There was a record from Dr. Dean in October
8 of 2013, and I think probably you were at the tail
9 end of your physical therapy after the surgery.
10 And he's got a note where it says, Tony did a nice
11 job with the rehab.

12 But I take it you've never gone by Tony?

13 A. No.

14 Q. And it says, he plays football strictly so
15 he is going to lose some season, but we will see
16 him back in six weeks for a final recheck.

17 I take it you never went back out for
18 football again?

19 A. No.

20 Q. And I see where he gave a note to allow you
21 to participate in ROTC?

22 A. Yes.

23 Q. Had you participated in -- I guess it's
24 Junior ROTC?

25 A. Yes.

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1 Q. Had you participated in that before spring
2 practice?

3 A. Yes.

4 Q. Did you start that in your 9th grade year?

5 A. Yes.

6 Q. And have you continued to do that since
7 then?

8 A. Yes.

9 Q. And ever had any problems with Junior ROTC
10 due to your knee?

11 A. Yes.

12 Q. Tell me what kind of problems you've had.

13 A. Starting this year they haven't let me do
14 any PT.

15 Q. Had you done any before this year?

16 A. Yes.

17 Q. And is it because your knee has been
18 bothering you? Or other reasons?

19 A. Could you repeat the question?

20 Q. Yeah. You said they wouldn't let you do PT
21 this year but you had done it in previous years?

22 A. Yes.

23 Q. Is the reason they have not let you do PT
24 due to your right knee?

25 A. Yes.

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1 Q. Or is there some other health issue, or left
2 knee, or asthma, or whatever, that's caused them to
3 not let you do PT?

4 A. My right knee and my asthma.

5 Q. But your asthma is still about once or twice
6 a month, shortness of breath for about a minute?

7 A. Yes.

8 Q. Have you had an asthma attack during Junior
9 ROTC?

10 A. No.

11 Q. I think we've covered all this, so that's
12 why I'm flipping through it as quickly as I can.

13 Darrell, in some of the documents produced
14 by the Beaufort County School District it looks
15 like this year you're taking math and English,
16 biology.

17 You're taking a full load of classes this
18 year; is that correct?

19 A. Yes.

20 Q. And the plan is to graduate in May?

21 A. Yes.

22 Q. Have you read the statement by the athletic
23 trainer who was present at the time of your injury?

24 A. No.

25 Q. And if you wanted to look at it, really the

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29 N.C.App. 220
Court of Appeals of North Carolina.

Edgar Luther BARRETT, Jr., Administrator of the Estate of Edgar Luther Barrett, III

v.

R. Bud PHILLIPS et al.

No. 753SC885.

April 21, 1976.

Administrator of estate brought action to recover on theory that defendants were jointly and severally liable for wrongful death of administrator's intestate who assertedly died as result of collision with a defendant during high school football game. The Superior Court, Pitt County, Joshua S. James, J., granted defendants' summary judgment, and administrator appealed. The Court of Appeals, Martin, J., held that even if defendants, by incorrectly preparing and filing eligibility list and by allowing a defendant to participate in game, had violated rules stating, inter alia, that players 20 years of age or older were not eligible for competition, defendants' conduct did not constitute actionable negligence, in that such violation of rules was not proximate cause of the death.

Affirmed.

****918 *220** The plaintiff, Administrator of the estate of Edgar Luther Barrett, III, commenced this action on 16 August 1972, in Superior Court of New Hanover County. The complaint alleges that the defendants were jointly and severally liable for the wrongful death of plaintiff's intestate, Edgar Luther Barrett, III. The injuries he received on October 9, 1970, allegedly resulted from a collision with the defendant, Johnny Lee Smith, while participating in a football game between J. H. Rose High School of Greenville, North Carolina, and New Hanover High School of Wilmington, North Carolina. The alleged acts and omissions complained of concerned negligent or wilful disregard for the rules, regulations, and requirements of the North Carolina High School Athletic Association and the North Carolina State Department of Public Instruction, in that the J. H. Rose High ****919** School football team used a player, Johnny Lee Smith, who was ineligible for competition under the aforesaid rules, regulations, and requirements. These rules stated that players twenty years of age or older were not eligible for competition and that players were not eligible for competition beyond the eighth consecutive semester after entry into the ninth grade.

The present action was removed from New Hanover County to Pitt County Superior Court upon defendants' motion. Thereafter, defendants filed a motion for summary judgment under Rule 56 of the North Carolina Rules of Civil Procedure. A hearing ***221** was had upon defendants' motion on 3 March 1975. Judgment was rendered out of term on 19 May 1975. The plaintiff excepted to the judgment and his appeal entries were filed on 21 May 1975.

Attorneys and Law Firms

Mattox & Reid, P.A., by David E. Reid, Jr., Greenville, and Gary B. Davis, for plaintiff-appellant.

Hogue, Hill, Jones, Nash & Lynch, by William L. Hill, II, Wilmington, and Speight, Watson & Brewer, by William C. Brewer, Jr., Greenville, for defendant-appellees.

Opinion

MARTIN, Judge.

Barrett v. Phillips, 29 N.C.App. 220 (1976)

223 S.E.2d 918

Plaintiff contends the trial judge erred in granting defendants' motion for summary judgment.

'The purpose of summary judgment can be summarized as being a device to bring litigation to an early decision on the merits without the delay and expense of a trial where it can be readily demonstrated that no material facts are in issue . . . The standard for summary judgment is fixed by Rule 56(c). 'The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law' . . . Rule 56 is for the disposition of cases where there is no genuine issue of fact and its purpose is to eliminate formal trials where only questions of law are involved . . . 'The determination of what constitutes a 'genuine issue as to any material fact' is often difficult . . . It has been said that a genuine issue is one which can be maintained by substantial evidence. Where the pleadings or proof of either party disclose that no cause of action or defense exists, a summary judgment may be granted . . . ' Kessing v. Mortgage Corp., 278 N.C. 523, 180 S.E.2d 823 (1971).

Procedurally, the question in the instant case is reduced to whether or not the pleadings, together with the answers to Rule 33 Interrogatories, show any genuine issue as to any material fact, and whether any party is entitled to a judgment as a matter of law. Applying this test to the case at bar, it appears that the judgment of the trial court should be affirmed.

*222 ⁽¹⁾ ⁽²⁾ A careful review of the record reveals that the parties were in agreement as to the material factual particulars concerning the death of Edgar Luther Barrett, III. There was no 'genuine issue as to any material fact.' The effect of the undisputed facts was a question of law for the court to determine. See Kessing v. Mortgage Corp., supra. The question of law decided by the trial court was whether the defendants' violation of the rules, regulations, and requirements of the North Carolina State Department of Public Instruction and the North Carolina High School Athletic Association through the incorrect preparing and filing of the 1970 Master Eligibility List and their allowing Johnny Lee Smith to participate in the football game constituted actionable negligence.

Plaintiff contends that the defendants' negligence in the preparation and filing of the 1970 Master Eligibility List and in allowing Smith to participate in the football game was the proximate cause of Barrett's death. While defendants may have violated the aforesaid rules, regulations, and requirements, **920 we fail to perceive a causal relation between the violation and the injury resulting in the boy's death.

'(T)he principle prevails in this State that what is negligence is a question of law, and when the facts are admitted or established, the court must say whether it does or does not exist. 'This rule extends and applies not only to the question of negligent breach of duty, but also the feature of proximate cause' . . . (Citations omitted). Hudson v. Transit Co., 250 N.C. 435, 108 S.E.2d 900 (1959); See McNair v. Boyette, 15 N.C.App. 69, 189 S.E.2d 590 (1972).

For the reasons stated above, we hold that the trial court was correct in entering summary judgment in favor of the defendants.

Affirmed.

BRITT and HEDRICK, JJ., concur.

All Citations

29 N.C.App. 220, 223 S.E.2d 918

End of Document

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2. Financial aid for transportation, room, board or clothing.
 3. Promise of a job for the student and/or parent or guardian.
 4. Special privileges given to parents such as employment, free or reduced rent, etc.
 5. Promise of help in securing a college scholarship.
 6. Other privileges or consideration made to induce or influence the student to transfer from one school to another because of his athletic ability.
 7. Given any consideration not afforded other students.
- C. Any student transferring as a result of recruiting or undue influence may be declared ineligible for a period of one calendar year from the date of the determination of the violation. Any school adjudged guilty of being part of such undue influence shall be subjected to disciplinary action by the League.

Section 15. Ineligible Participants

A. AN INELIGIBLE PLAYER MUST NOT PARTICIPATE IN ANY INTERSCHOLASTIC COMPETITION.

This applies to any level of competition including varsity, junior varsity, junior high, middle school, "B" and any other teams representing a school. The use of an ineligible player will subject a school to suspension, probation and/or fine. Any student in the uniform of one of the competing schools and permitted in the bench area is considered as having participated in the game or scrimmage.

NOTE: Any student that participates before fulfilling the requirements of a mandated athletic suspension will be declared an ineligible participant.

B. The following penalties will apply when an ineligible student participates:

1. The player will be dropped from the team immediately.
2. All contests in which the ineligible player dressed will be forfeited.
3. All honors or individual points earned will be forfeited.
4. The school will be reprimanded and fined \$300.00.

C. If a student is ineligible according to SCHSL rules but is permitted to participate in interscholastic competition contrary to such SCHSL rules but in accordance with the terms of a court restraining order or injunction against his/her school and/or SCHSL, and that injunction is subsequently voluntarily vacated, stayed, reversed or finally determined by the courts that injunctive relief is not or was not justified or expires without further judicial determinations, those actions stipulated Article VII, Section 15.B shall be taken.

D. If the school knowingly played the ineligible student, the Commissioner may fine and/or discipline the school, program or team, to include fine, and/or warn, probation, or suspension. In lieu of the suspension, the Executive Committee may fine the school \$2,500.00 for each ineligible player and place the program or team involved on probation for a period of time not to exceed one calendar year.

Section 16. Certificate of Eligibility and Other Forms

A. All students in each sport must be submitted on a certificate of eligibility before being allowed to participate.

1. Eligibility is the responsibility of the principal and the principal must sign all eligibility forms.
2. If there is any doubt about the eligibility of a student, the case should be presented in written detail to the Commissioner.
3. If an ineligible student is submitted on a certificate of eligibility and the student does not participate, the school will be fined \$50.00.

4. Initial eligibility forms containing at least the number of students composing a legal team must be submitted to the League Office at least seven days before the first regular season contest. (A \$25.00 late fee will be assessed to any school not meeting this deadline.)

NOTE: If a school is participating in a preseason tournament more than seven days prior to its first regular season game, the certificate of eligibility must be submitted before participation in this tournament.

5. The minimum number of students necessary to compose a team are: Football - 11, Volleyball - 6, Cross Country - 5, Tennis - 3, Basketball - 5, Soccer - 11, Wrestling - 7, Golf - 4, Track and Field - 6, Baseball - 9, Softball - 9, Competitive Cheer - 8, Swimming - 6, Boys' Lacrosse - 10 and Girls' Lacrosse - 12.
 6. Eligibility forms will be kept on file in the League Office for five years.
- B. Each school will be furnished three posters summarizing the League's eligibility rules. These posters are to be placed in (1) the boys' dressing room, (2) the girls' dressing room, and (3) a prominent thoroughfare in the school.
 - C. Each school shall keep on file for all student athletes, a copy of an official birth certificate, a duplicate copy of all submitted eligibility forms, transfer form (if applicable), a parent's permission record properly filled out and a physical form properly completed by a licensed doctor of medicine or a nurse practitioner in a written collaboration with a licensed medical doctor or a certified physicians assistant in a written collaboration with a licensed medical doctor.
 1. These forms must be on file for all participating students regardless of level of competition.
 2. Forms can be found on the League website.
 3. **A physical examination is valid from April 1 of the current school year through the following school year.**
 - D. *Special Form A* must be sent to the League Office on each transfer student who has not been enrolled in his school or feeder school for at least one calendar year. The League Office must approve all transfer forms before the student is submitted on a Certificate of Eligibility.
 - E. A Foreign Exchange Student Eligibility Request Form must be approved by a member of the League Staff prior to submission on a certificate of eligibility. **Do not submit Special Form A for foreign exchange students.**
 - F. The records of each school shall be open to inspection or investigation by the Commissioner or his representative. Any school failing to open these records for investigation shall be subject to a fine not to exceed \$100.00 and/or dismissed from the League for a period not to exceed one calendar year.
- Schools who violate any of the preceding sections of this article shall be subject to a fine of not less than \$25.00 and not more than \$2,500.00 and/or suspension for not more than one calendar year.**

ARTICLE VIII. - SCHOOL REGULATIONS

Section 1. Schedules

Each school will furnish the Commissioner a copy of all varsity sport schedules. Dates for submitting schedules are listed on page B-3. Schools that are late in submitting these schedules will be assessed a \$20.00 late fee.

Section 2. Opponents

- A. No school shall enter any contest with a South Carolina public school that is not a member of the League or with a public high school in another state that is not a member of the high school association of that state.

South Carolina High School League

Certificate of Eligibility

NAME OF SCHOOL _____

NAME OF SPORT _____

DATE OF PRE-SEASON TOURNAMENT _____ DATE OF FIRST REGULAR CONTEST _____

HEAD COACH _____ BOYS ☐ ☐FIRST SEMESTER ☐ SECOND SEMESTER ☐ATHLETIC DIRECTOR'S APPROVAL _____ INITIAL ELIGIBILITY ☒

	NAME AS IT APPEARS ON THE BIRTH CERTIFICATE APPROVED BY SCHOOL OFFICIALS	DATE OF BIRTH AS APPROVED BY SCHOOL OFFICIALS			GRADE	DATE STUDENT ENTERED 9TH GRADE		(1) TOTAL UNITS EARNED PREVIOUS SCHOOL YEAR	(2) TOTAL UNITS EARNED SECOND SEMESTER PREVIOUS SCHOOL YEAR	(3) PREVIOUS YEAR OVERALL PASSING AVERAGE YES/NO	(4) HALF UNIT EQUIVALENTS EARNED FIRST SEMESTER CURRENT SCHOOL YEAR	(5) FIRST SEMESTER OVERALL PASSING AVERAGE YES/NO	DID NON- DIPLOMA STUDENT MEET IEP? YES/NO	TRANSFER STUDENT YES/NO *
		MONTH	DAY	YEAR		MONTH	YEAR							
	<i>List Alphabetically</i>													
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO. 2015-CP-07-1147
	)	
DARRELL J. ALSTON, JR. AND	)	
MABEL L. ALSTON,	)	
	)	
PLAINTIFFS,	)	DEFENDANT BEAUFORT COUNTY
	)	SCHOOL DISTRICT'S RESPONSES TO
vs.	)	DEFENDANT SOUTH CAROLINA HIGH
	)	SCHOOL LEAGUE'S FIRST SET OF
BEAUFORT COUNTY SCHOOL	)	REQUESTS FOR ADMISSION AND
DISTRICT AND SOUTH CAROLINA	)	SUPPLEMENTAL INTERROGATORIES
HIGH SCHOOL LEAGUE,	)	
	)	
DEFENDANTS.	)	

TO: MICHAEL MONTGOMERY, ESQUIRE; SOWELL GRAY STEPP & LAFITTE,
ATTORNEYS FOR DEFENDANT SOUTH CAROLINA HIGH SCHOOL LEAGUE

REQUESTS FOR ADMISSION

1. Admit that during the 2012-2013 school year, there were over 207 high schools and 203 junior high and middle schools that were members of the SCHSL.

RESPONSE: Beaufort County School District ("BCSD") has made a reasonable inquiry, and the information known or readily available at this time is insufficient to enable it to admit or deny this Request, as the BCSD has no information regarding the number of SCHSL member schools during the 2012-2013 school year. That information is in the care, custody, and/or control of SCHSL. Accordingly, this Request is denied at this time; BCSD reserves the right to supplement this response at a later date.

2. Admit that during the 2012-2013 school year, the League's activities were offered to over 338,000 students.

RESPONSE: BCSD has made a reasonable inquiry, and the information known or readily

available at this time is insufficient to enable it to admit or deny this Request, as the BCSD has no information regarding the number of students to whom League activities were offered during the 2012-2013 school year. That information is in the care, custody, and/or control of SCHSL. Accordingly, this Request is denied at this time; BCSD reserves the right to supplement this response at a later date.

3. Admit that during the 2012-2013 school year, the League staff was comprised of nine (9) individuals.

RESPONSE: BCSD has made a reasonable inquiry, and the information known or readily available at this time is insufficient to enable it to admit or deny this Request, as the BCSD has no information regarding the SCHSL's staffing. That information is in the care, custody, and/or control of SCHSL. Accordingly, this Request is denied at this time; BCSD reserves the right to supplement this response at a later date.

4. Admit that the SCHSL did not require member schools to submit copies of executed physical forms and permission slips for every participating student athlete to the League office in May 2013.

RESPONSE: BCSD admits only that pursuant to Sections 16(C) and 16(F) of the South Carolina High School League Constitution for the 2012-2013 school year, the League required each school to keep on file for all student athletes "...a parent's permission record properly filled out and a physical form properly completed..." and that "the records of each school shall be open to inspection or investigation by the Commissioner or his representative." The District has made a reasonable inquiry, and based on the information known or readily available at this time is

unaware of any SCHSL requirement for member schools to submit copies of executed physical forms and permission slips of participating student athletes in May 2013.

5. Admit that the SCHSL requires member schools such as Beaufort High School to submit a roster certifying eligibility of students in each sport before being students are allowed to participate in a contest.

RESPONSE: BCSD admits only that pursuant to Section 16(A)(4) of the South Carolina High School League Constitution for the 2012-2013 school year, the League mandated that “[a]ll students in each sport must be submitted on a certificate of eligibility before being allowed to participate” and that “initial eligibility forms containing at least the number of students composing a legal team must be submitted to the League Office at least seven days before the first regular season contest.”

6. Admit that the certificate of eligibility submitted by the member schools is for the purpose of verifying that the member school has copies of the student athletes’ birth certificates, physical forms, parental permission forms, transfer forms (if applicable), and other eligibility forms that may be required.

RESPONSE: BCSD has made a reasonable inquiry, and the information known or readily available at this time is insufficient to enable it to admit or deny this Request in its entirety, as it is unaware of the League’s purpose for requiring certificates of eligibility. Accordingly, BCSD admits only that pursuant to Sections 16(A) and 16(C) of the South Carolina High School League Constitution for the 2012-2013 school year, the League required that “[a]ll students in each sport must be submitted on a certificate of eligibility before being allowed to participate” and that

"Each school shall keep on file for all student athletes, a copy of an official birth certificate, a duplicate copy of all submitted eligibility forms, transfer form (if applicable), a parent's permission record properly filled out and a physical form properly completed by a licensed doctor of medicine..."

7. Admit that eligibility submissions are the responsibility of the principal of the member school and that the principal must sign all eligibility forms.

RESPONSE: BCSD admits only that pursuant to Section 16(A)(1) of the South Carolina High School League Constitution for the 2012-2013 school year, the League mandated that "[e]ligibility is the responsibility of the principal and the principal must sign all eligibility forms."

8. Admit that the SCHSL did not supervise Beaufort High School's efforts to obtain physical and permission forms for its athletes in May 2013.

RESPONSE: Admitted.

9. Admit that the SCHSL was not involved in formulating the spring practice schedule for Beaufort High School in May 2013.

RESPONSE: Admitted.

10. Admit that the SCHSL was not involved in handing out equipment to student athletes at Beaufort High School in May 2013.

RESPONSE: Admitted.

11. Admit that no member of the SCHSL staff was present at a spring football practice at Beaufort High School in May 2013.

RESPONSE: Admitted, upon information and belief.

12. Admit that prior to the injury involving Darrell Alston, Jr., in May 2013, Beaufort High School had no prior incidents of a football player practicing before obtaining the required physical or parental permission form.

RESPONSE: Admitted, upon information and belief.

13. If the Request in No. 13 (sic) above is denied, admit that at no point was a prior similar incident report (sic) to the SCHSL.

RESPONSE: See response to Request No. 12.

14. Admit that Beaufort High School had never been disciplined before this incident for failing to obtain a physical or permission form for one of its students prior to practicing.

RESPONSE: Admitted.

SUPPLEMENTAL INTERROGATORY NUMBER 1:

1. If you deny any of the foregoing Requests for Admission, for each such denial please answer the following:

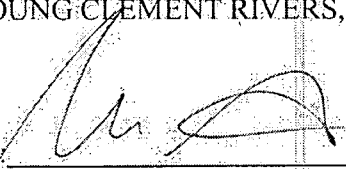
- a. Identify by name, address, telephone number, job description and employer, each individual who knows or claims to know any facts in support of each denial.
- b. State in detail and not in summary fashion all facts known or claimed to be known

by any such individual identified in response to the preceding subpart.

- c. Identify by author, date, title, page, and subject matter each document or tangible thing that supports or tends to support each such denial and attach copies to your answers hereto.

ANSWER: See BCSD's responses to SCHSL's Requests to Admit 1, 2, and 3.

YOUNG CLEMENT RIVERS, LLP

By 

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Attorneys for the Defendant
Beaufort County School District

Charleston, South Carolina

8/21, 2016

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this 21st day of August, 2016.

8

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

Darrell J. Alston, Jr., and Mabel L. Alston,)

Civil Action No. 2015-CP-07-1147

Plaintiffs,)

vs.)

Beaufort County School District;)
South Carolina High School)
League,)

Defendants.)

DEFENDANT'S, SOUTH CAROLINA
HIGH SCHOOL LEAGUE'S,
RESPONSES TO PLAINTIFFS'
FOURTH SET OF
INTERROGATORIES

TO: BRUCE R. HOFFMAN, ESQUIRE, OF THE LAW OFFICE OF BRUCE R. HOFFMAN, ATTORNEY FOR THE ABOVE-NAMED PLAINTIFFS:

The defendant, South Carolina High School League, herein responds to Plaintiffs' Fourth Set of Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure.

GENERAL OBJECTIONS

1. The defendant, South Carolina High School League, objects to each Interrogatory to the extent that it seeks information or documents which were compiled in anticipation of litigation or for trial and which are protected by the attorney work-product doctrine. This defendant further objects to each and every Interrogatory to the extent the information called for is protected by the attorney-client privilege, consulting expert privilege, or any other privilege. The disclosure of any information protected by any of the foregoing privileges shall be deemed inadvertent and not with the intention to waive any privilege with regard to the information disclosed.

Exhibit F

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2. Any information produced in response hereto is produced expressly subject to any objections contained herein and is produced without in any way waiving or intending to waive any objections that the defendant, South Carolina High School League, may have with respect to the subsequent use of such information and this defendant respectfully reserves:

- a. All questions as to admissibility of any and all such information, in whole or in part, or of the subject matter thereof;
- b. The right to object to the use of any such information, in whole or in part, or the subject matter covered thereby, in any subsequent step or proceeding in this action, on any or all of the foregoing grounds or on any proper grounds whether or not enumerated above; and
- c. The right to object to any and all grounds at any time to Interrogatories or other discovery procedures involving or related to the subject matter of the information sought by the requesting party.

3. The defendant, South Carolina High School League, objects to each and every Interrogatory to the extent that it seeks information that is equally available to or already in the possession of the party and its counsel and the burden on the party or its counsel to obtain the requested information is no greater than the burden on this defendant.

4. The defendant, South Carolina High School League, objects to each and every Interrogatory to the extent it is overly broad, oppressive, unduly burdensome, or unduly expensive. This defendant further objects to each and every Interrogatory to the extent it seeks information not limited in time, nature, and scope.

5. The defendant, South Carolina High School League, objects to each and every Interrogatory to the extent that it seeks confidential or proprietary information.

Similarly, this defendant reserves the right to redact sensitive or proprietary information from any documents that it produces in response hereunder.

FOURTH SET OF INTERROGATORIES

1. Describe in detail the training that the Beaufort High School principal (holding the position at the time of Plaintiff's injury, give name and present contact information for him) received from you in processing parental permission slips and physical examination certificates for football, provide the name, present address and title of anyone who provided/supervised this training, and when this training was provided.

RESPONSE: The defendant, South Carolina High School League, would object to this Interrogatory on the basis that the term "training" is vague and subject to different interpretations. Not waiving this objection, the defendant would respond that in the time period leading up to the date of this incident, it encouraged compliance with Article VII, Section 16 of the League's 2012-2013 Constitution ("Certificate of Eligibility and Other Forms") in the following ways:

- a. The League held two workshop meetings per year at its office in Columbia for new principals and new athletics directors, although every principal and athletic director was invited. These meetings were held on July 18, 2012, and January 14, 2013, and similar meetings were conducted in July and January of years prior to these dates. Upon information and belief, the Beaufort High School principal for the 2012-2013 school year, Corey Murphy, should have attended at least one of these meetings, as it was his first year as principal of Beaufort High School. These workshops were led by Associate Commissioner Dru Nix, and Assistant Commissioners Nessie Harris and Skip Lax would have assisted, along with Commissioner of Officials Bruce Hulton. In these workshops, the League would focus on student eligibility and eligibility forms, including Certificates of Eligibility forms and the required information in the school's on-site student athlete files, i.e. parental permission forms and physical forms.

- b. The League held four meetings per year at its office in Columbia for the purpose of certifying head coaches who are not employed by the school. These meeting were held on August 15, 2012; October 24, 2012; January 23, 2013; and January 24, 2013. These meetings were led by a former Executive Director of the South Carolina High School League, Pete Ayoub, and they used materials supplied by the National Federation of High Schools (NFHS). Additionally, upon information and belief, part of these meetings included discussions about safety, including the rule requiring a pre-participation physical exam.
- c. The League held two meetings per year at its office in Columbia for classification-wide attendance. Beaufort High School was a member of Class AAAA in 2012-2013, and the Class AAAA meetings were held on September 5, 2012, and February 6, 2013. All principals and athletic directors were required to attend these meetings; therefore, upon information and belief, the Beaufort High School Principal, Corey Murphy, and the Beaufort High School Athletic Director, Jerry Linn, would have been present at these two meetings. In these classification meetings, numerous topics would be covered, including eligibility forms, and Commissioner Jerome Singleton would have been involved in these meetings on behalf of the League staff.
- d. The League held four meetings per year at various schools across the state specifically for the purpose of discussing football rules and rule changes. For the 2012-2013 school year, these meetings were held on July 21, 2012 (Lexington High School); July 30, 2012 (Rock Hill High School); July 31, 2012 (Florence-Darlington Technical College); and August 1, 2012 (Fort Dorchester High School). Football coaches and football officials would be required to attend at least one of these meetings, which were led by Commissioner of Officials, Bruce Hulion. Therefore, upon information and belief, Beaufort High School's football coach, Mark Clifford, attended one of these meetings. The primary focus of these meetings was rule changes, but topics such as player safety, sportsmanship, etc. were also covered. Additionally, the League's Football Pre-Season Practice Plan would have been discussed, which includes the statement, "All athletes must have a pre-participation physical exam before athletic participation." In addition to these four meetings, Commissioner Hulion would present to the football coaches at the S.C. Athletic Coaches Association's annual meeting every July.
- e. During the 2012-2013 school year, the League's Executive Committee approved a new physical form that could be used by member schools. Information would have been disseminated to all

member schools about the adoption of the new physical form, and this new form would have been discussed at the meetings described above.

- f. During the 2012-2013 school year and in previous years, the League staff would periodically prepare a newsletter entitled "League Update." This newsletter would go to every member school and be published on the League's website. These newsletters would often encourage attendance, or either remind schools of mandatory attendance, at the various meetings described above. In addition, the newsletters would also occasionally mention eligibility forms, which include the certification by a school's principal that the school has a physical form and parental permission form on file for each student.

2. Describe in detail the training that the Beaufort High School athletic director (holding the position at the time of Plaintiff's injury, give name and present contact information for him) received from you in processing parental permission slips and physical examination certificates for football, provide the name, present address and title of anyone who provided/supervised this training, and when this training was provided.

RESPONSE: Please see Response to Interrogatory No. 1, above.

3. Describe in detail the training that the Beaufort High School coaches (holding their positions at the time of Plaintiff's injury, give name and present contact information for them) received from you in processing parental permission slips and physical examination certificates for football, provide the name, present address and title of anyone who provided/supervised this training, and when this training was provided.

RESPONSE: Please see Response to Interrogatory No. 1, above.

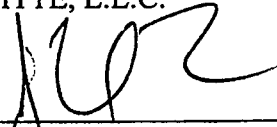
4. Describe in detail the training that anyone else at Beaufort High School (holding their positions at the time of Plaintiff's injury, give name and present contact information for them) received from you in processing parental permission slips

and physical examination certificates for football, provide the name, present address and title of anyone who provided/supervised this training, and when this training was provided.

RESPONSE: Please see Response to Interrogatory No. 1, above.

Respectfully submitted,

SOWELL GRAY ROBINSON STEPP &
LAFFITTE, L.L.C.

By: 

Rebecca Laffitte
rlaffitte@sowellgray.com
J. Michael Montgomery
mmontgomery@sowellgray.com
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Defendant, South Carolina High
School League

Columbia, South Carolina

April 6, 2017

VERIFICATION

I, Jerome Singleton, Commissioner of the South Carolina High School League, certify that the statements and responses made in the foregoing Responses to Plaintiff's Fourth Set of Interrogatories are true to the best of my knowledge, information and belief.

Dated: 4-6-17

Jerome Singleton
Jerome Singleton, Commissioner

SWORN TO AND SUBSCRIBED BEFORE ME

This 6th day of April, 2017.

Amy S. Boeger (L.S.)
Notary Public for South Carolina

My Commission Expires: June 3, 2026

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CERTIFICATE OF SERVICE

I, the undersigned legal assistant of the law offices of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for Defendant, South Carolina High School League, 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:

Defendant's, South Carolina High School League's, Responses to Plaintiffs' Fourth Set of Interrogatories

Counsel Served:

Bruce R. Hoffman, Esquire
Law Office of Bruce R. Hoffman, LLC
574 Sea Island Parkway
Saint Helena Island, South Carolina 29920

Duke R. Highfield, Esquire
Victoria L. Anderson, Esquire
Young Clement Rivers
Post Office Box 993
Charleston, South Carolina 29402

Carenn N. Moore
Carenn N. Moore
Legal Assistant

Columbia, South Carolina

April 6, 2017.

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

Darrell J. Alston, Jr., and Mabel L. Alston,)

Civil Action No. 2015-CP-07-1147

Plaintiffs,)

vs.)

Beaufort County School District;)
South Carolina High School)
League,)

Defendants.)

DEFENDANT'S, SOUTH CAROLINA
HIGH SCHOOL LEAGUE'S,
RESPONSES TO PLAINTIFFS'
FOURTH REQUEST FOR
PRODUCTION

TO: BRUCE R. HOFFMAN, ESQUIRE, OF THE LAW OFFICE OF BRUCE R. HOFFMAN, ATTORNEY FOR THE ABOVE-NAMED PLAINTIFFS:

The defendant, South Carolina High School League, herein responds to Plaintiffs' Fourth Request for Production pursuant to Rule 34 of the South Carolina Rules of Civil Procedure.

GENERAL OBJECTIONS

1. The defendant, South Carolina High School League, objects to each Request to the extent that it seeks information or documents which were compiled in anticipation of litigation or for trial and which are protected by the attorney work-product doctrine. This defendant further objects to each and every Request to the extent the information called for is protected by the attorney-client privilege, consulting expert privilege, or any other privilege. The disclosure of any information protected by any of the foregoing privileges shall be deemed inadvertent and not with the intention to waive any privilege with regard to the information disclosed.

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2. Any information produced in response hereto is produced expressly subject to any objections contained herein and is produced without in any way waiving or intending to waive any objections that the defendant, South Carolina High School League, may have with respect to the subsequent use of such information and this defendant respectfully reserves:

- a. All questions as to admissibility of any and all such information, in whole or in part, or of the subject matter thereof;
- b. The right to object to the use of any such information, in whole or in part, or the subject matter covered thereby, in any subsequent step or proceeding in this action, on any or all of the foregoing grounds or on any proper grounds whether or not enumerated above; and
- c. The right to object to any and all grounds at any time to Interrogatories or other discovery procedures involving or related to the subject matter of the information sought by the requesting party.

3. The defendant, South Carolina High School League, objects to each and every Request to the extent that it seeks information that is equally available to or already in the possession of the party and its counsel and the burden on the party or its counsel to obtain the requested information is no greater than the burden on this defendant.

4. The defendant, South Carolina High School League, objects to each and every Request to the extent it is overly broad, oppressive, unduly burdensome, or unduly expensive. This defendant further objects to each and every Request to the extent it seeks information not limited in time, nature, and scope.

5. The defendant, South Carolina High School League, objects to each and every Request to the extent that it seeks confidential or proprietary information.

Similarly, this defendant reserves the right to redact sensitive or proprietary information from any documents that it produces in response hereunder.

REQUESTS FOR PRODUCTION

1. Any and all documents, records, correspondence, submissions, reports and filings in your possession or under your control, referred to, consulted, identified or otherwise pertaining to your answers to Plaintiffs' Fourth Set of Interrogatories served concurrently herewith.

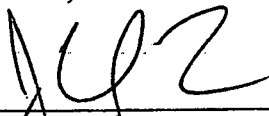
RESPONSE: Produced herewith are the following documents that correspond with the defendant's, South Carolina High School League's, answers to Plaintiffs' Fourth Set of Interrogatories:

- a. Registration Form for New Principal and New Athletic Director Workshops (Bates labeled 143)
- b. Certificate of Eligibility Form discussed at various meetings with statement by principal affirming existence of parental permission form and physical form on file at school (Bates labeled 144-145)
- c. Registration Form for Coaches Education Program enrollment (Bates labeled 146)
- d. South Carolina High School League schedule for Class AAAA meetings in September 2012 and February 2013 (Bates labeled 147-148)
- e. 2012-2013 Class AAAA Handbook (Bates labeled 149-237)
- f. Listing of rules meetings for 2012-2013 school year, including football (Bates labeled 238-240)
- g. Powerpoint presentations for football rules clinic for years 2010-2011 (Bates labeled 241-288); 2011-2012 (Bates labeled 289-331); and 2012-2013 (Bates labeled 332-377)
- h. South Carolina High School Football Pre-Season Practice Plan for 2012-2013 (Bates labeled 378) and for 2013-2014 (Bates labeled 379)

- i. New physical form approved by the League's Executive Committee during the 2012-2013 school year (Bates labeled 380-382)
- j. Prior physical form still acceptable during the 2012-2013 school year (Bates labeled 383-384)
- k. December 2010 League Update (Bates labeled 385-395)
- l. December 2011 League Update (Bates labeled 396-405)
- m. May 2012 League Update (Bates labeled 406-413)
- n. December 2012 League Update (Bates labeled 414-423)
- o. March 2013 League Update (Bates labeled 424-435)
- p. May 2013 League Update (Bates labeled 436-441)

Respectfully submitted,

SOWELL GRAY ROBINSON STEPP &
LAFFITTE, L.L.C.

By: 

Rebecca Laffitte
rlaffitte@sowellgray.com
J. Michael Montgomery
mmontgomery@sowellgray.com
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Defendant, South Carolina High
School League

Columbia, South Carolina

April 6, 2017

VERIFICATION

I, Jerome Singleton, Commissioner of the South Carolina High School League, certify that the statements and responses made in the foregoing Responses to Plaintiff's Fourth Request for Production are true to the best of my knowledge, information and belief.

Dated: 4-6-17

Jerome Singleton
Jerome Singleton, Commissioner

SWORN TO AND SUBSCRIBED BEFORE ME

This 6th day of April, 2017.

Ann G. Boeger (L.S.)
Notary Public for South Carolina

My Commission Expires: June 3, 2026

CERTIFICATE OF SERVICE

I, the undersigned legal assistant of the law offices of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for Defendant, South Carolina High School League, 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:

Defendant's, South Carolina High School League's, Responses to Plaintiffs' Fourth Request for Production

Counsel Served:

Bruce R. Hoffman, Esquire
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Charleston, South Carolina 29402

Carenn N. Moore
Carenn N. Moore
Legal Assistant

Columbia, South Carolina

April 6, 2017.

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1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 BEAUFORT COUNTY

4 DEPOSITION OF DANIEL H. DURBIN, ED.D.

5 DARRELL J. ALSTON, JR., and
6 MABEL L. ALSTON,

7 Plaintiffs,

8 vs.

9 Case No. 2015-CP-07-1147

10 BEAUFORT COUNTY SCHOOL
11 DISTRICT, SOUTH CAROLINA
12 HIGH SCHOOL LEAGUE,

13 Defendants.

14 DEPONENT: DANIEL H. DURBIN, ED.D.

15 DATE: FEBRUARY 16, 2017

16 TIME: 10:00 AM

17 LOCATION: LAW OFFICE OF BRUCE R. HOFFMAN
18 ST. HELENA ISLAND, SOUTH
19 CAROLINA

20 REPORTED BY: JULIE K. LYLE, RPR/RMR/CRR
21 Registered Merit Reporter
22 Certified Realtime Reporter

23 CLARK & ASSOCIATES, INC.
24 P.O. Box 73129
25 Charleston, SC 29415
 843-762-6294
 WWW.CLARK-ASSOCIATES.COM

9/6

1 wanted me to do, how you wanted me to do it.

2 I'm not saying that the High School
3 League didn't do those things in this case.

4 I'm simply saying that are you sure that your
5 principal in particular in this case was
6 prepared?

7 If you can say yes and prove that,
8 that's one thing. But to say, Well, no, it's
9 just kind of common sense; you had a good
10 athletic director. You don't say to the
11 athletic director you're the one ultimately
12 responsible for it. We say it to the
13 principal.

14 And I happen to like the principal,
15 so I don't have an opinion about that. I'm
16 just wanting you to see that there is a
17 difference between saying we've got a process
18 and having the trained people that fulfill
19 the process.

20 Who is it that you're going to
21 call -- the athletic -- athletic league calls
22 when they're going to fine? They send a
23 letter, and that letter is sent to the
24 principal. And if I had ever known that a
25 letter -- if I didn't know a letter was

1 could have been -- that would have been the
2 very basic of rules on physicals?

3 A I'm not disagreeing with that, but
4 let's think of it this way. Think about the
5 High School League is a well-respected
6 institute in South Carolina. And I don't
7 think -- there will be some people who will
8 disagree with it, but it really is well
9 respected. It's a sports state.

10 In order to remain respected,
11 everyone who represents that league has to
12 represent the same mission, the same
13 commitment. All I've said today is are there
14 processes in place to make sure that your
15 representatives can do that.

16 If you can prove that, then -- then
17 there's no discussion for me. If that can't
18 be proven, then the discussion is, after
19 you're done with this case, what are you
20 going to do to make sure it is?

21 Q All right. And then I guess my
22 follow-up is, then, you do not have an
23 opinion in this case as to whether or not
24 there are appropriate processes in place?

25 A That's because I don't -- I

1 intentionally haven't got involved in the
2 details of the case.

3 Q Okay.

4 A Now, if someone said to me, would
5 you do this and this and this, and I knew
6 more details in the case, then I would -- I'd
7 give what my opinion is.

8 Q Right.

9 A But from a process point only,
10 there are certain steps that have to take
11 place.

12 Q Right. And I guess my question,
13 then -- and maybe -- I'm trying to ask it in
14 a way that maybe wasn't as clear the first
15 time I asked it.

16 But if you had the principal and
17 the athletic director testify under oath that
18 they understood what was expected, they knew
19 what to do, they'd been doing it for a long
20 time, you would not think that would fulfill
21 the appropriate process because there was no
22 sign-off on training?

23 A I would have asked. The first
24 thing I would have asked if I were doing the
25 cross-examination is, Explain to me how you

1 but if you find a -- in the process related
2 to eligibility for transfer students, well, I
3 may not agree that that has any impact for
4 processes for physical forms and permission
5 slips which is in this case.

6 So that's why I'm asking you, did
7 you see anything specific to permission slips
8 and physical forms in the handbook?

9 A If you're asking do I think the
10 process is legit, yes, it's a legit process.
11 The real -- there are two factors if you were
12 asking me what's your opinion.

13 Factor one is is there follow-up to
14 the people that represent us. How do we
15 monitor that what they're representing is
16 proper?

17 And the other thing is, is it
18 articulated in such a way that, when we go
19 back to it, it's a clear path from A to B?

20 Q Okay. You haven't formed an
21 opinion as to the specific whether the High
22 School League is meeting those two
23 criteria --

24 A No.

25 Q -- a thousand feet?

1 term "gross negligence"?

2 A Yes.

3 Q Okay. Do you intend to give any
4 opinions in this case about gross negligence?

5 A I would have to -- I would have to
6 check -- look at the mission statement of the
7 constitution and the bylaws, and if something
8 were in that that -- for example, if you say
9 you're going to do X and X and X and you
10 didn't come up with a process to complete
11 that --

12 Q Right.

13 A -- then you could ask me that
14 question.

15 Q Right. We've established in this
16 case that there are processes in place. You
17 may -- if you looked at it, you may find them
18 to be inadequate, but we've talked about some
19 of those processes that are in place.

20 A Right. But if someone were to ask
21 me -- if I were on the stand and they said,
22 Could there have been this and this and this
23 and is that in that constitution? No, it's
24 not. That doesn't mean that it should have
25 been or shouldn't have, but it's not there.

1 Q Have you submitted a bill to
2 Mr. Hoffman to date?

3 A No.

4 Q Okay. At this time, do you intend
5 to supplement your opinions or provide any
6 additional opinions?

7 A I really don't unless I'm asked.

8 Q Right. And maybe that's the way I
9 should ask it. Have you been asked to date
10 to --

11 A No.

12 Q Okay. And I take it that, since
13 you authored that letter, you haven't done
14 any initial -- any additional work to
15 supplement or support your opinions?

16 A No. No. That letter was simply to
17 say they have -- they're a voluntary
18 organization; they have a hierarchy in place;
19 they have these things written down about
20 this particular issue, and I've left the
21 "what did they not have" stuff out of my
22 thought.

23 MR. MONTGOMERY: All right. I
24 think that's all the questions I have. I may
25 have some follow-ups. Thank you for your

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

CASE NO. 2015-CP-07-1147

DARRELL J. ALSTON, JR. and
MABEL L. ALSTON,

Plaintiffs,

**AFFIDAVIT OF PLAINTIFF MABEL L. ALSTON
IN OPPOSITION TO DEFENDANTS' MOTIONS
FOR SUMMARY JUDGMENT AND IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

BEAUFORT COUNTY SCHOOL
DISTRICT and SOUTH CAROLINA
HIGH SCHOOL LEAGUE,

Defendants.

I, Mabel L. Alston, state:

1. I am a Plaintiff in this case, and the single mother of the Plaintiff Darrell J. Alston, Jr. The following is of my own personal knowledge.
2. Neither verbally, nor by conduct, nor in writing, did I ever give my then minor son, Plaintiff Darrell J. Alston, Jr., permission to play tackle football with the Beaufort High School football team. In fact, I specifically told him I did not want him to play football with or for them, because he would get hurt. That is also the reason I did not take him to get the required physical examination, though he asked me to, because I did not want him playing football with or for them.
3. Instead, he had been in ROTC at Beaufort High School, in anticipation of joining the Air Force, and I did not want to jeopardize his dream of joining the Air Force, which a football injury would certainly do (and has now done).
4. I did know he was weight lifting with his friends after school, and assumed that is the only sport he was involved in after school with his friends and I had neither given the required written permission nor taken him to get the required physical examination clearance, for tackle football. I knew there were rules in place for such things, and had to trust that the Defendants would follow the rules and processes in place to protect my minor son from something I had specifically told him I did not want him to do, nor had given permission for him to

do. As a single mother with a teenage son, it is hard to police him sometimes, but I was adamant I did not want him to play football with the school team because he would get hurt, and I had to rely on the Defendants, the adults in charge to whom I entrust my minor son, that they would not allow him to do something I had absolutely not given him permission to do, nor did he have physical examination clearance to do.

5. Therefore, I was completely shocked and extremely distressed when I got the phone call on May 13, 2013, that my minor son had been seriously injured when tackled during a tackle football practice at Beaufort High School. I rushed to the school, saw my teenaged son on crutches, with ice, sitting on the back of a golf cart, and was told by who I later found out was the football team trainer, that his leg was damaged. My response was "Who in the hell allowed him to play football without my permission?" I immediately took him to the hospital, and was told he had torn his ACL and meniscus in his right knee and needed surgery.

6. He then had the surgery, but his knee has never been the same, and now he needs a second surgery on the knee to clear up complications from the first surgery and continuing weakness in the knee from the injury, but without insurance or the resources otherwise, this second surgery has been delayed (there is now an appointment with Dr. Dean on April 11th to set a date for the second surgery). My son applied to the Air Force after graduating from high school, but the Air Force won't finalize his application because of the issues with his knee. So, because of the Defendants letting him play tackle football without my permission and without a physical examination clearance (when he has a history of asthma), thereby violating their most fundamental requirements for letting minors in their custody and control play high school sports, my only son will likely never have the military career he dreamed of having, and nothing could be more grossly negligent than what occurred here, it is obvious gross negligence.

7. Besides all the medical bills, pain, and other resulting damages, my son has suffered from his injury, I too was damaged by what occurred. It is highly insulting to me as a single mother, that the Defendants have and continue to ignore my injuries and damages also as stated in the Complaint, and testified to at my deposition and in my interrogatory answers, by implying in their motions that there was only one injury to my son and one

cap here instead of two caps and two separate grossly negligent actions.

8. In this regard, as stated in my Complaint a) I have had thousands of dollars in out of pocket expenses, for example, co-pays, reimbursements, deductibles and transportation costs when Darrell went to the doctor, had surgery, and had complications from surgery, including over-compensating injury to his left knee, and physical therapy; b) I have had distress damages of hundreds of thousands of dollars – as stated in my deposition “upset and mad because he was injured doing something that I didn’t know he was doing,” with my incurring my own medical and medication bills as a result; c) I missed work and am making a claim for lost wages of several thousand dollars as part of this lawsuit (I also listed all these damages in my deposition and interrogatory answers, so Defendants have known for years what I was claiming).

9. Also, I have been and continue to be extremely upset, distressed and disturbed by what happened and by the fallout from what happened, particularly, my son not being accepted by the Air Force, which has been his dream for many years. When you entrust your child to the school authorities, you just do not expect such complete lack of care and concern, to the point of gross negligence, in their dealings with your child. I feel extremely guilty that this happened to him, that I trusted these people and my son was seriously injured as a result. I was not asked at my deposition, though it was plead in our Complaint, but I have seen a doctor and have taken, and still take, medication to cope with what happened, for being so extremely upset, distressed and disturbed.

10. It is up to the jury to decide the extent of my damages and the compensation I am entitled to, but for the Defendants to ignore my feelings and my damages, is extraordinarily upsetting to me and just confirms for me the complete lack of even the slightest care and concern for children in their care and their parents, as evidenced by the separate grossly negligent actions of both the Beaufort County School District and the South Carolina

High School League that occurred here.


MABEL L. ALSTON

Sworn to and subscribed before me

This 7th day of April, 2017



NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission expires: 08/08/21

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
DARRELL J. ALSTON, JR. AND	)	CASE NO. 2015-CP-07-1147
MABEL L. ALSTON,	)	
	)	
PLAINTIFFS,	)	
	)	
vs.	)	MEMORANDUM IN SUPPORT OF
	)	MOTION FOR SUMMARY JUDGMENT
BEAUFORT COUNTY SCHOOL	)	
DISTRICT AND SOUTH CAROLINA	)	
HIGH SCHOOL LEAGUE,	)	
	)	
DEFENDANTS.	)	

Defendant Beaufort County School District ("BCSD") submits this Memorandum of Law in Support of its Motion for Summary Judgment. Because there exist no genuine issues as to any material fact and, pursuant to the exceptions set forth in S.C. Code Ann. § 15-78-10 *et seq.*, the Defendant is entitled to judgment as a matter of law as to each and every cause of action set forth in the Complaint.

STATEMENT OF THE FACTS

This case is before the Court in relation to a lawsuit against the Defendant arising out of claims that Plaintiff Darrell Alston sustained an injury while practicing with the Beaufort High School (BHS) football team during the Spring of 2013. Plaintiffs allege that Darrell Alston, a minor at the time of the injury, was permitted to participate in this football practice without signed parental consent and/or a current physical form on file. Accordingly, the Plaintiff has made claims for gross negligence arguing, in addition to the allegation above, that BCSD (1) failed to adopt and implement policies and supervise its agents and/or failure to train/supervise its agents and employees; (2) failed to have a proper and complete investigation and/or reporting

of the incident; (3) failed to provide proper medical attention and properly report/follow-up on the incident; and (4) failed to properly notify Plaintiff Mabel Alston that Darrell Alston was injured and properly assist her in dealing with the claimed injury. (See Plaintiffs' Complaint, attached hereto as **Exhibit A**).

BCSD answered the Plaintiffs' Complaint and specifically denied that it knowingly allowed Darrell Alston to participate in football practice without a physical or written parental consent. BCSD also asserted affirmative defenses to the action, including the following: comparative negligence; failure to state a claim; inapplicability of punitive damages; no liability for acts of others; no recovery for certain damages; Tort Claims Act; immunity under the Tort Claims Act; limitation of liability under the Tort Claims Act; intervening and superseding negligence; laches, waiver and/or estoppel; inapplicability of vicarious liability; qualified immunity; immunity; assumption of the risk; and set off. (See BCSD's Answer to Plaintiffs' Complaint, attached hereto as **Exhibit B**).

Darrell Alston, a freshman at Beaufort during the 2012-2013 school year, decided (after encouragement from his friends) to try playing high school football by participating in a spring practice during May of 2013. (See Deposition of Darrell Alston, p. 28, ll. 16-22, excerpts attached hereto as **Exhibit C**). Before making any attempt to participate in the sport, Darrell approached a member of the football coaching staff in the hallway at school regarding his desire to play.¹ The coach informed Darrell that he was required to obtain a physical before participating in football.² (Alston, p. 31, ll. 18-25, p. 32, ll. 1-10, p. 33, ll. 10-16). Darrell's

¹ While Darrell could not recall the name of this coach, he described him as "older, tall, [with] glasses." (Alston, p. 32, ll. 11-12). This description matches the appearance of head football coach Mark Clifford.

² The physical form in use at the time also contained the parental permission slip on the same document. (See Sample Physical Form, attached as **Exhibit D**).

friends, who played on the football team, also informed Darrell that he needed a physical to be on the football field. (Alston, p. 72, ll. 14-23).

After hearing from the coach that he would need to get a physical, Darrell asked his mother, Plaintiff Mabel Alston, for permission to obtain a physical in order to play football. She did not give permission for him to do the same. (Alston, 34, ll. 10-20). They discussed the issue multiple times, but Mrs. Alston would not allow Darrell to obtain a physical or play football. (Alston, p. 39; *see also* Deposition of Mabel Alston, p. 25, ll. 16-21, excerpts attached hereto as **Exhibit E**). According to Mrs. Alston, she “knew there were rules in place for such things [as written permission and required physical examinations]” at the school. (See Affidavit of Mabel L. Alston, p. 4).

Despite the fact that his mother forbade him to play, and knowing he did not have the required physical forms to play, Darrell Alston chose to participate in BHS spring football practice. He was aware of the dangers of football, a contact sport, and knew that he could get hurt playing football when he went to the spring practice. (Alston, p. 30, ll. 18-25, p. 31, ll. 1-4). Darrell ultimately participated in the spring football practice without the required permission slip and/or physical forms.

A few days into this practice, on or about May 13, 2013, Darrell was running the ball when two other players hit him during a practice drill; he was running behind the offensive line when he was tackled. (Alston, p. 45, ll. 20-25, p. 46, ll. 1-6). After this tackle, Darrell felt pain in his knee and the trainer came to assist him. (Alston, p. 46, ll. 7-18, p. 68, ll. 3-17). The trainer checked his knee and informed Darrell that he may have torn his ACL. (Alston, p. 47, ll. 9-20). Darrell had surgery to repair his ACL shortly thereafter.

Darrell attended three practices before he was injured. (Alston, p. 40, ll. 16-18). He testified that he suffered no problems with asthma, nor did he suffer any injury requiring assistance from the trainer, during those practices. (Alston p. 43, ll. 2-12). Darrell had previously been given permission to participate in ROTC by a doctor, which he did before participating in Spring football. (Alston, p. 58, ll. 20-25, p. 59, ll. 1-5).

After returning home from these practices prior to his injury, Mrs. Alston questioned Darrell as to his whereabouts and activities; Darrell informed her that he was at football practice. While Mrs. Alston was upset with Darrell, and instructed him not to continue with football, she never tried to call the school to complain to the coaches. (Alston, p. 41, ll. 16-25, p. 42, ll. 1-15, p. 57, ll. 13-25, p. 58, ll. 1-3). Mrs. Alston admits that while Darrell told her he was playing football, but claims she did not know where he was playing; she did not investigate further. (Mabel Alston, p. 23, ll. 6-14; p. 24, ll. 1-15). Afterwards, Mrs. Alston went to the school and recalled speaking with the athletic trainer, but recalled very little about their conversation. She did ask for information on the school's medical insurance; the trainer confirmed its existence and provided her with paperwork. (Mabel Alston, p. 30, ll. 2-25, p. 31, ll. 1-5). Mrs. Alston never had any follow-up conversations with anyone at the school regarding the reasons for Darrell's presence on the practice field that day. (Mabel Alston, p. 32, ll. 16-20, p. 34, ll. 15-19).

While Darrell did participate in spring football practice without a physical or permission slip, BCSD and BHS had appropriate measures in place with regard to the collection of said forms. According to Jerry Linn, the BHS Athletic Director from January 2002 until January 2015, he was generally responsible for supervision and training of the school's coaches, including the football coaching staff during the 2012-2013 school year. (Affidavit of Gerald Linn, Jr., p. 2-3, attached hereto as **Exhibit F**).

During this time, including the 2012-2013 school year, BHS and BCSD had procedures in place to ensure that coaches were aware of and complied with the South Carolina High School League (SCHSL) requirement that a parental permission and physical form, provided by the SCHSL, be obtained and kept on file for each student athlete prior to that athlete's participation in sports. The District Athletic Participation Handbook emphasized this requirement along with additional requirements for coaches, athletes and parents. (Linn, p. 4).

Each year, the BCSD held a "Coaches' Convocation," which was a mandatory training for BCSD coaches and athletic directors to ensure they understood the policies and practices in place for student athletics. Among the topics and/or policies discussed, was the requirement for and importance of collecting permission slips and physical forms from each student athlete prior to any participation in team sports. (Linn, p. 5; see also Deposition of Daniel Durbin³, p. 31, ll. 13-25, p. 152, ll. 4-9, excerpts attached hereto as **Exhibit G**).

Additionally, on the school level at BHS, Linn held coaches' meetings at the beginning of each athletic season (Fall, Winter, and Spring) and, among other things, reminded the coaches of the procedure to submit rosters of players, the need for physicals and permission slips for each participating athlete, and the deadlines for doing so. Every year at the Freshman orientation meeting, (for parents and rising ninth graders), he would tell parents of these same requirements. (Linn, p. 6).

The team coaches were responsible for collecting permission slips and physical forms from each student athlete. With regard to the football team specifically, the coach had additional help from the athletic trainer to check on the status of each player with regard to physicals and permission slips. Once the permission slips and physical forms were collected, they were provided

³ Daniel "Dan" Durbin is a former Beaufort High School principal and the Plaintiff's designated expert in this case to testify regarding "rules, regulations, and guidelines governing high school football in South Carolina and at Beaufort High School..."

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to Linn's office and the principal was provided with information with regard to player eligibility. A file folder was created for every athlete that participated with varsity and sub-varsity teams at BHS and maintained in Linn's office. In this folder, all required forms were kept including annual parent permission and physical forms. (Linn, p. 7).

As part of his analysis of this case, Plaintiff's expert Dan Durbin contacted current BHS assistant Athletic Director Jeremy Huff who confirmed that BHS still operates according to this system. (Durbin, p. 107, ll. 1-25, p. 108, ll. 1-15). Based on what he knew and observed, there was oversight at BHS for the issue of collecting physical forms and permission slips. (Durbin, p. 152, ll. 20-25, p. 153, ll. 1-6). Durbin had no information to suggest that there were not processes and supervision of those processes in place at the time of the incident at issue in this case. (Durbin, p. 153, ll. 7-21). BCSD, from what Durbin observed in the past, corrects issues as they arise; he stated that "having the physical on file has been a priority for the District." (Durbin, p. 153, ll. 22-25, p. 154, ll. 1).

BHS athletic director Jerry Linn met regularly with the school's principal to discuss athletics and any issues which may arise in the day-to-day operation of athletic administration. (Linn, p. 8). Durbin had not seen any evidence that the principal of BHS at the time of this incident did not know what his responsibilities were with regard to permission slips and physical forms. (Durbin, p. 45, ll. 1-14). Durbin did not intend to offer any opinions as to the conduct of the principal at the time of the incident. (Durbin, p. 49, ll. 18-25). In fact, Mr. Durbin did not issue any opinions which were critical of BHS or BCSD. Durbin stated that Jerry Linn was an extremely qualified individual with regard to the area of physicals and very effective in the performance of his duties. (Durbin, p. 16, ll. 12-25; p. 47, ll. 15-19).

Additionally, Durbin was not critical of the process with regard to collection of physical forms and permission slips at the school level. (Durbin, p. 108, ll. 16-20; p. 151, ll. 11-25; p. 153, ll. 1-3). To his knowledge, the athletic director and principal had a cut-off date for when the collection of physicals and permission slips was to be done and a process for who was responsible for making sure they were in, checking them off before proceeding, and the like. (Durbin, p. 151, ll. 24-25; p. 152, ll. 1-9; p. 155, ll. 16-25; p. 156, ll. 1-4). Jerry Linn, by way of his affidavit, confirmed that these processes were still in place at the time of the incident—as they had been for years. Durbin did not intend to offer any opinions that BHS and BCSD did not have proper processes with regard to collection of physical forms and/or permission slips in place at the time of the incident. (Durbin, p. 157, ll. 15-25, p. 158, ll. 1-7).

Finally, there is no evidence in the record that any player at Beaufort High School had ever been permitted to play any sport (including spring football practice) without the required forms prior to the incident at issue in this case. Linn, a veteran athletic director, was unaware of any other instances wherein a student participated in athletics without the required permission slip and physical form. (Linn, p. 9). Additionally, in the ten years that Durbin was principal of BHS, there was not another situation wherein a student did not have a physical form before participating in a sport. (Durbin, p. 68, ll. 9-20).

Based on the foregoing, the Plaintiff has failed to prove that BCSD was grossly negligent in the supervision of its student. Additionally, the Plaintiff cannot prove proximate cause for Darrell Alston's injury, nor is the Plaintiff entitled to multiple occurrences under these facts. Accordingly the District is entitled to summary judgment as to all causes of actions.

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP. In ruling on a motion for summary judgment, the Court must view the evidence and all reasonable inferences drawn therefrom in the light most favorable to the non-moving party. Byrd v. City of Hartsville, 365 S.C. 650, 656, 620 S.E.2d 76, 79 (2005). “However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” Rife v. Hitachi Constr. Mach. Co. Ltd., 363 S.C. 209, 214, 609 S.E.2d 565, 568 (Ct. App. 2005).

Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. The moving party need not support its motion with affidavits or other similar materials negating the opponent's claim but must clearly establish by the record the absence of a triable issue of fact. Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). With respect to an issue upon which the non-moving party bears the burden of proof, the moving party may discharge this initial responsibility by pointing out to the Court the absence of evidence to support the nonmoving party's case. Id. After the moving party has met this initial burden, the opposing party must, under Rule 56(e), SCRCP, “do more than simply show that there is some metaphysical doubt as to the material facts” and “must come forward with specific facts showing that there is a genuine issue for trial.” Id.

In response to a properly supported motion for summary judgment, “the non-moving party may not rest on the mere allegations or denial of the pleadings, but must set forth or point

to specific facts showing there is a genuine issue of material fact. Thus the existence of a mere scintilla of evidence in support of the non-moving party's position is not sufficient to overcome a motion for summary judgment." Thomas v. Waters, 315 S.C. 524, 526, 445 S.E.2d 659, 661 (Ct. App. 1994), *quoting*, Dickert v. Metropolitan Life Ins. Co., 306 S.C. 311, 313, 411 S.E.2d 672, 673 (Ct. App. 1993), *rev'd in part on other grounds*, 311 S.C. 218, 428 S.E.2d 700 (1993); Rule 56(e), SCRCP.

ARGUMENT AND CITATION TO AUTHORITY

I. The Plaintiffs cannot meet their burden to prove gross negligence

Plaintiffs' claims for gross negligence and loss of services are governed by the provisions of the South Carolina Tort Claims Act. S.C. Code Ann. § 15-78-10 *et. seq.* The Act provides for a limited waiver of general sovereign immunity; however, it specifically limits the liability of the State, its agencies, political subdivisions, and other governmental entities for causes of action sounding in tort. The Tort Claims Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity. Flateau v. Harrelson, 355 S.C. 197, 203, 584 S.E.2d 413, 416 (Ct. App. 2003).

According to S.C. Code Ann. § 15-78-60(25), "a governmental entity is not liable for a loss resulting from "responsibility or duty including but not limited to supervision, protection, control, confinement or custody of any . . . student . . . , except when the responsibility or duty is exercised in a grossly negligent manner." The student supervision exception, like all provisions establishing limitations upon and exemptions from liability of a governmental entity, must be liberally construed in favor of limiting liability. Steinke v. South Carolina Dep't of Labor, Licensing and Regulation, 336 S.C. 373, 393, 520 S.E.2d 142, 152 (1999).

Under the Tort Claims Act, Plaintiffs can theoretically prevail under the student supervision exception if they can establish that the District was grossly negligent in carrying out its supervisory and protective duties; because no genuine issue exists as to gross negligence, however, summary judgment remains appropriate. South Carolina courts have recognized that "gross negligence" is a relative term, generally meaning the "absence of care that is necessary under the circumstances." Smart by Clark v. Hampton Cnty. Sch. Dist. No. 2, 315 S.C. 192, 195, 432 S.E.2d 487, 489 (Ct. App. 1993) citing Hicks v. McCandlish, 221 S.C. 410, 415, 70 S.E.2d 629, 631 (1952).

In order to prevail, Plaintiffs must show that Defendant was grossly negligent in its actions or inactions regardless of the type of duty owed to the Plaintiff. Therefore, a showing of simple negligence is not enough to defeat the protections of the Act. Gross negligence essentially involves an "intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." Richardson v. Hambright, 296 S.C. 504, 506, 374 S.E.2d 296, 298 (1988). This degree of negligence connotes the failure to exercise even a slight degree of care. Wilson v. Etheredge, 214 S.C. 396, 400, 52 S.E.2d 812, 814 (1949); Anderson v. Ballenger, 166 S.C. 44, 55, 164 S.E. 313, 317 (1932). Conversely, there is no gross negligence where slight care is exercised. "While gross negligence is ordinarily a mixed question of law and fact, when the evidence supports but one reasonable inference, the question is solely a matter of law. Etheredge v. Richland County Sch. Dist. One, 341 S.C. 307, 534 S.E.2d 275 (2000).

In Etheredge v. Richland County Sch. Dist. One, a high school student was shot and killed in the school hallway during class change. Upholding the circuit court's grant of summary judgment to the school, our Supreme Court held that because the school (1) "had no direct

knowledge or notice of the animosity” between the students; and (2) took some steps to monitor the school grounds, the school exercised at least “slight care” and was entitled to summary judgment pursuant to S.C. Code Ann. § 15-78-60. “That the School District might have done more does not negate the fact that it exercised ‘slight care.’” Etheredge, supra.

In Richardson v. Hambright, *supra*, the Supreme Court’s reasoning and result—approving the trial court’s grant of summary judgment—is this Court’s best guide for the proper outcome of this motion. 296 S.C. 504, 374 S.E.2d 296 (1988). In Richardson, the plaintiff sued the school because minor Terry Richardson was injured while riding as a passenger in a private vehicle between the high school and area vocational center. The District had a “Driving/Riding” policy requiring parental permission for students to ride in personal vehicles rather than the bus provided by the District. Id. at 505, 374 S.E.2d at 297. This policy provided for car checks (random and regular) for parental permission at both schools. During the first week of school, the High School took steps to make students and parents aware of the policy; both the student and his mother admitted knowledge of the policy. No checks were made for parental permission during the first week of school (which is when the accident occurred). The Supreme Court held that as a matter of law, as governed by the South Carolina Tort Claims Act, the “District’s failure to conduct an ID check during the one week of school when this accident occurred simply does not constitute an intentional and conscious failure.” Id. at 506, 374 S.E.2d at 298. The District in Richardson took steps to make all students aware of the policy, copies of the policy were sent home to parents, the policy included a statement on safety and outlined enforcement procedures. The Court held these facts, at the very least, showed that the District exercised “slight care.” Id. at 506-507, 374 S.E.2d at 298. The Supreme Court upheld the trial court’s ruling that the

District was not grossly negligent and that summary judgment was appropriate as a matter of law. Id.

Consider the subsequent case of Hollins v. Richland Cty. Sch. Dist. One, 310 S.C. 486, 490, 427 S.E.2d 654, 656 (1993), wherein the Supreme Court stated that it was for the jury to determine whether the District's failure to ensure that the child's mother received actual notice of a child's bus suspension constituted gross negligence, but in a footnote, distinguished Hollins from Richardson in the following manner: the School District took measures to ensure that both students and parents had notification of a driving/riding policy, and the students involved were high school age, not grade school. It is clear that the Supreme Court intended to limit the holding of Hollins to the facts of that particular case; *see also* Clyburn v. Sumter Cty. Sch. Dist. 17, 311 S.C. 521, 526, 429 S.E.2d 862, 865 (Ct. App. 1993), *aff'd sub nom.* Clyburn v. Sumter Cty. Sch. Dist. No. 17, 317 S.C. 50, 451 S.E.2d 885 (1994).

As an initial matter, the picture of liability and allocation of fault in this case governed by the Tort Claims Act is not as clear as the Plaintiffs would have the Court believe. The Plaintiffs make no allegations that BCSD acted intentionally in a way that it ought not to do. Rather, the thrust of their complaint are the allegations of inaction, an "an intentional, conscious failure to do something which it is incumbent upon one to do." Richardson, supra. The language used by the court in its definition of gross negligence indicates that there must be some willful, intentional, conscious inaction on the part of a defendant before that defendant can liable for gross negligence under the Act. The failure to act *must* be intentional. Further, if there has been the exercise of even a *slight* degree of care, there is no gross negligence and therefore no liability. See Etheridge, supra.

The instant case is strikingly similar to Richardson, *supra*. As noted above, BCSD and BHS had policies in place with regard to the requirement for collection of physical forms and permission slips, and had measures in place to ensure that coaches were aware of and trained/instructed on the same. (See also various BCSD policies with regard to athletic participation, attached hereto as **Exhibit H**):

- BHS Athletic Director and all coaches received the District Athletic Participation Handbook which emphasized this requirement
- BHS had a specific process by which these forms were collected and maintained
- The BCSD, on a District level, held an annual "Coaches' Convocation," which was a mandatory training for BCSD coaches and athletic directors to ensure they understood the policies and practices in place for student athletics, including the collection of permission slips and physical forms.
- At the BHS school level, there were at least three coaches' meetings held during the school year, which included the topic of the procedure to submit rosters of players, the need for physicals and permission slips for each participating athlete, and the deadlines for doing so.
- Every year at the Freshman orientation meeting, (for parents and rising ninth graders), Athletic Director Jerry Linn informed parents of these same requirements.
- Jerry Linn met regularly with the school's principal to discuss athletics and any issues which may arise in the day-to-day operation of athletic administration. (Linn, p. 8).

Additionally, like the students in Richardson, the student involved in this case was high school age, not grade school. Not only were there efforts to ensure that both students and parents had notification of the policy with regard to physical forms and permission slips (e.g., telling the

student directly, having policies in place, and discussing the requirement at Freshman Orientation), both Darrell Alston and Mabel Alston have also admitted actual knowledge of the policy/requirement before Darrell participated in the Spring football practice. Finally, outside of the allegations at issue in this case, the Plaintiffs have produced no evidence in the record that BHS had any prior (or subsequent) issues with regard to student participation in any athletic competition without the requisite forms. Testimony from Plaintiff's expert Durbin and the affidavit from former athletic director Jerry Linn indicate quite the opposite. Therefore, as in Etheridge, supra, BCSD also had no direct knowledge of the issues underlying the Plaintiffs' Complaint prior to or during the incident.

Not only have the Plaintiffs failed to show that BCSD exercised "an intentional, conscious failure to do something which it is incumbent upon one to do," Richardson, supra, the record reflects, at the very least, the exercise of slight care. "That the School District might have done more [will] not negate the fact that it exercised 'slight care.'" Etheredge, supra. Based on the foregoing, the Plaintiffs cannot meet their burden and, accordingly, there is no liability under a gross negligence standard because there has been no willful, intentional, and/or conscious failure to act on the part of BCSD. Accordingly BCSD is entitled to an order granting summary judgment.

II. The Plaintiffs cannot prove proximate cause

In addition to their failure to prove grossly negligent supervision of a student, the Plaintiffs also cannot meet their burden to prove that any grossly negligent conduct on the part of BCSD was the proximate cause of Darrell Alston's claimed injuries.

In a negligence action the plaintiff must prove proximate cause. Hurd v. Williamsburg Cty., 363 S.C. 421, 427-28, 611 S.E.2d 488, 492 (2005), *citing* Rush v. Blanchard, 310 S.C.

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375, 426 S.E.2d 802 (1993). “Ordinarily, the question of proximate cause is one of fact for the jury and the trial judge's sole function regarding the issue is to inquire whether particular conclusions are the only reasonable inferences that can be drawn from the evidence.” McNair v. Rainsford, 330 S.C. 332, 349, 499 S.E.2d 488, 497 (Ct.App.1998). Proximate cause requires proof of both causation in fact and legal cause. Oliver v. South Carolina Dep't of Hwys. & Pub. Transp., 309 S.C. 313, 422 S.E.2d 128 (1992). Causation in fact is proved by establishing the plaintiff's injury would not have occurred “but for” the defendant's negligence. Oliver, 309 S.C. at 316, 422 S.E.2d at 130. Legal cause is proved by establishing foreseeability. *Id.* An injury is foreseeable if it is the natural and probable consequence of a breach of duty. Trivelas v. South Carolina Dep't of Transp., 348 S.C. 125, 558 S.E.2d 271 (Ct.App.2001).

Our Supreme Court has declared that a negligent act or omission is a proximate cause of injury if, in a natural and continuous sequence of events, it produces the injury, and without it, the injury would not have occurred. Shepard v. S.C. Dep't of Corr., et al., 299 S.C. 370, 374, 385 S.E.2d 35, 37 (1989) (citing Driggers v. City of Florence, 190 S.C. 309, 2 S.E.2d 790 (1939); Hughes v. Children's Clinic, P.A., 269 S.C. 389, 237 S.E.2d 753 (1977)). “Proximate cause is the efficient cause of the injury—the very thing which brings it about.” Hughes v. Children's Clinic, P.A., 269 S.C. 389, 237 S.E.2d 753 (1977). An act or omission which does no more than furnish the condition or give rise to the occasion by which the injury is made possible is not the proximate cause of the injury. Shepard, *supra*.

In the instant case, the missing permission slip and physical form was not the “very thing which [brought about]” Darrell's injury to his knee. Particular attention should be paid to the last phrase; the fact that Darrell was on the field that day without the proper forms on file can only be proximate cause of the injury if “without it, the injury would not have occurred.” Darrell

testified that he was well aware of the dangers of participating in football and admitted that he knew he was required to have the requisite forms prior to participating in the same, but chose to participate without the same. It was not the lack of forms which caused the injury; rather, at most, the lack of said forms simply gave rise to the occasion for Alston to be on the field on the day at issue. Had those forms been in place, Darrell would still have been on the football field and the injury at issue would still have occurred.

In Shepard, *supra*, the Defendants were sued on various negligence causes of action after an escaped prisoner assaulted and killed several people following his escape. 299 S.C. at 373, 385 S.E.2d at 36. The trial court granted the Defendants' motion to dismiss, holding that any purported negligence on the part of the Defendants simply furnished the conditions or gave rise to the occasion by which the escaped prisoner had the opportunity to cause the decedent's death. The Defendants' alleged conduct did not, on its own, directly bring about the claimed injury or give rise to the occasion by which the prisoner was able to cause the death of the decedent, and in and of themselves, the defendants' conduct did not directly bring about the injury. Thus, the plaintiff failed to establish proximate causation as a matter of law.

Similarly, in the instant case, the Plaintiffs have failed to meet their burden to show that the absence of the requisite forms led to Darrell's injury. Accordingly, because the cause of the plaintiffs' injury may be as reasonably attributed to an act for which the Defendant is not liable as to one for which it may be liable, the Plaintiffs have failed to carry the burden of establishing that Darrell's injuries were the proximate result of BCSD's purported negligence. *See e.g., Anderson's Request to Charge*, § 20-2, Proximate Cause.

III. *The Plaintiffs' alleged damages are limited under the Tort Claims Act*

BCSD is entitled to a grant of summary judgment as to each and every cause of action as outlined above. Should the Court reach this issue, however, the Court must also issue an order limiting the Plaintiffs' claimed damages as outlined by the provisions of the South Carolina Tort Claims Act.

As discussed in detail above, the BCSD, as a governmental entity is entitled to the protections of the South Carolina Tort Claims Act, which provides the following limitations on damages:

(a) For any action or claim for damages brought under the provisions of this chapter, the liability shall not exceed the following limits:

(1) Except as provided in Section 15-78-120(a)(3), no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved.

(2) Except as provided in Section 15-78-120(a)(4), the total sum recovered hereunder arising out of a single occurrence shall not exceed six hundred thousand dollars regardless of the number of agencies or political subdivisions or claims or actions involved.

S.C. Code Ann. § 15-78-120(a)(1)–(2).

Under the Tort Claims Act, an occurrence is defined as “an unfolding sequence of events which proximately flow from a single act of negligence.” S.C. Code Ann. § 15-78-30(g). While Darrell was a minor at the time of the incident, he has since reached the age of eighteen. Accordingly, while a “parent’s claims for loss of services and medical expenses are within the statutory definition of ‘loss’ as contained in [s]ection 15-78-30(g) and are therefore recoverable.” a parent does not have the right to sue for loss of filial consortium under South Carolina law. *See Doe v. Greenville County Sch. Dist.*, 375 S.C. 63, 69, 651 S.E.2d 305, 308 (2007). Additionally, to the extent a claim for negligent infliction of emotional distress is made by the

parent of a minor, South Carolina courts have held that such claims are limited to bystander liability. Id. At 68, 651 S.E. 2d at 307.

In the instant case, the Plaintiff Mabel Alston claims in her recently filed affidavit that she was "damaged by what occurred" and "suffered distress damages" to the effect of being "upset, distressed, and disturbed" as a result of the incident complained of in the Plaintiffs' Complaint. (See Mabel Alston Affidavit, p. 7-9). As an initial matter, Mabel Alston has not submitted a single medical record and/or bill to substantiate this claim. Secondly, these statements are a thinly veiled attempt to make a claim for negligent infliction of emotional distress, which claim is barred by the underlying facts of this case. The elements of a bystander liability claim provide that a Plaintiff must show (1) the negligence of the defendant caused the death or serious physical injury to another; (2) the plaintiff bystander was in close proximity to the accident; (3) the plaintiff and the victim are closely related; (4) the plaintiff contemporaneously perceived the accident; and (5) the plaintiff's emotional distress manifests itself by physical symptoms capable of objective diagnosis and the establishment thereof by expert testimony. Kinard v. Augusta Sash & Door Co., 286 S.C. 579, 582, 336 S.E.2d 465, 467 (1985).

Plaintiff Mabel Alston was not in close proximity to the accident, nor did she contemporaneously perceive the same. Additionally, she has not established by expert testimony that she suffers from physical symptom capable of objective diagnosis. Finally, Plaintiffs have presented no evidence to substantiate a claim for alleged "loss of services." As a result, Mabel Alston cannot establish a basis for her individual claims outside of a claim for medical bills incurred while Darrell was a minor. Her damages, if any, are limited to Darrell's medical bills

and lost services. See Wright v. Colleton Cty. Sch. Dist., 301 S.C. 282, 289, 391 S.E.2d 564, 569 (1990).

Similarly, Darrell may not make a claim for medical bills incurred while he was still a minor. See Trident Reg'l Med. Ctr. v. Evans, 317 S.C. 346, 352, 454 S.E.2d 343, 346-47 (Ct. App. 1995) (holding that parents were "liable for the medical expenses incurred by [their child]" because "[u]nder the common law, a parent is responsible for the support of his or her minor child"). Because his mother is legally responsible for paying any medical bills incurred before he reached adulthood, Darrell is not entitled for damages for costs incurred to date because this would amount to a double recovery. See generally Adams v. Grant, 292 S.C. 581, 585, 358 S.E.2d 142, 144 (Ct. App. 1986) ("The basic purpose of election of remedies is to prevent double recovery for a single wrong."). The Plaintiffs have provided no medical bills incurred since Darrell reached adulthood.

A plain reading of the Tort Claims Act and the limitations included therein are a complete bar to a portion of the damages sought by the Plaintiffs in this case as a matter of law. If the General Assembly wished to expand the liability of governmental entities to include these causes of action, such would have been expressly included in the provisions of the Tort Claims Act. By their very exclusion, the Tort Claims Act bars such claims. Accordingly, BCSD is entitled to partial summary judgment as to this issue.

CONCLUSION

For the reasons discussed herein, the District is entitled to summary judgment as to all causes of action.

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April 11, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

CASE NO. 2015-CP-07-1147

DARRELL J. ALSTON, JR. and
MABEL L. ALSTON,

Plaintiffs,

**POINTS AND AUTHORITIES IN
OPPOSITION TO DEFENDANTS'
MOTIONS FOR SUMMARY JUDGMENT
AND IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

BEAUFORT COUNTY SCHOOL
DISTRICT and SOUTH CAROLINA
HIGH SCHOOL LEAGUE,

Defendants.

1) LETTING A MINOR PLAY HIGH SCHOOL FOOTBALL WITHOUT REQUIRED PARENTAL PERMISSION AND A PHYSICAL EXAMINATION, AND THIS IS UNDISPUTED, WHO GOT SERIOUSLY INJURED AND NOW HIS HOPES FOR A MILITARY CAREER, FOLLOWING ROTC IN HIGH SCHOOL, ARE IN JEOPARDY, CLEARLY WAS GROSS NEGLIGENCE OR AT LEAST THERE ARE FACT QUESTIONS FOR THE JURY QUESTION ON THE ISSUE

2) AT THE LEAST THERE ARE TWO PLAINTIFFS WITH SEPARATE INJURIES AND DAMAGES AND THUS TWO \$300,000 CAPS PER PLAINTIFF, \$600,000 TOTAL CAP IN THIS CASE PER SC CODE 15-78-120 - BUT BASED ON BOITER THERE ARE ACTUALLY TWO \$600,000.00 CAPS IN THIS CASE FOR SEPARATE GROSSLY NEGLIGENT ACTIONS/OCCURRENCES OF EACH DEFENDANT CAUSING SEPARATE DAMAGE TO EACH PLAINTIFF: A) FOR SEPARATE DAMAGES TO DARRELL J. ALSTON, JR. AND MABEL L. ALSTON FOR SOUTH CAROLINA HIGH SCHOOL LEAGUE'S GROSS NEGLIGENCE IN TRAINING AND SUPERVISING A SPORT THEY CLAIM TO HAVE COMPLETE CONTROL OVER, AND B) FOR SEPARATE DAMAGES TO DARRELL J. ALSTON, JR. AND MABEL L. ALSTON FOR BEAUFORT COUNTY SCHOOL DISTRICT'S GROSS NEGLIGENCE IN, AS ADMITTED, LETTING A MINOR PLAY HIGH SCHOOL FOOTBALL WITHOUT PARENTAL PERMISSION AND A PHYSICAL EXAMINATION,

OR AT LEAST THERE ARE FACT QUESTIONS FOR THE JURY ON THESE ISSUES

Discovery answers, deposition testimony said claiming distress lost wages out of pocket med expenses, they could have subpoenaed Sodexo but never did. We just have to prove there is an issue, not resolve the issue, her affidavit sufficient for now on these points.

SCHOOL ADMINISTRATIVE BODIES UNDERTAKING CARE OF MINORS PARTICIPATING IN HIGH SCHOOL SPORTS SUBJECT TO HIGHEST DUTY OF CARE, IN LOCO PARENTIS, AND THUS LOWER STANDARDS FOR CAUSATION (IF IT WAS FORESEEABLE AND PREVENTABLE) AND GROSS NEGLIGENCE, NOT MERE REASONABLE PERSON STANDARDS, NOT CHECKING AND NOT EFFECTIVELY TRAINING, SUPERVISING AND MONITORING THE CHECKING OF WHETHER A MINOR PARTICIPATING IN FOOTBALL HAD PARENTAL PERMISSION AND A PHYSICAL EXAM CLEARANCE, TWO MOST FUNDAMENTAL THINGS, WITH SERIOUS KNEE INJURY AS A CONSEQUENCE, NOT SIMPLE NEGLIGENCE OBVIOUSLY GROSS, RIDICULOUS NEGLIGENCE BORDERING ON CRIMINAL BY PROFESSIONALS CAUSING A COMPLETELY FORESEEABLE AND PREVENTABLE INJURY, AND DOES NOT MATTER IF THIS MINOR WAS EGGSHELL PLAINTIFF OR NOT, WHICH THEY DIDN'T CHECK ANYWAY, if they had acted as they should have Plaintiff Darrell never would have practiced, never would have been injured, none of this ever would have happened but for what Defendants' did/didn't do here, so of course their gross negligence is proximate cause, their gross negligence created the circumstances which caused the damages to occur, set the situation into motion, see Schmidt v Courtney, 592 SE2d 326 (2003).

Under rule S.C.R.CIV.P. 56(c), summary judgment may be rendered only when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law Spencer v. Miller, 192 S.E.2d 863 (1972). Additionally, it must be shown that further inquiry into the facts of

the case is not desirable to clarify the application of the law. Abrams v. Wright, 262 S.C. 141202 S.E.2d 859 (1974) In ruling upon a motion for summary judgment, the hearing judge must construe all ambiguities, conclusions, and inferences arising in and from the evidence most strongly against the moving [290 S.C. 197] party. Tom Jenkins Realty, Inc. v. Hilton, 300 S.E.2d 594 (1983). see also Laurens Emergency Med. Specialists, 355 S.C. at 108, 584 S.E.2d at 377 (stating that in reviewing summary judgment motion, facts and circumstances must be viewed in light [357 S.C. 317] most favorable to non-moving party). If triable issues exist, those issues must go to the jury. Baril v. Aiken Reg'l Med. Ctrs., 573 S.E.2d 830 (Ct.App.2002); Young v. South Carolina Dep't of Corrections, 511 S.E.2d 413 (Ct.App.1999).

Many South Carolina cases point out summary judgment is a "drastic remedy" which should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. Cunningham v. Helping Hands, Inc., 575 S.E.2d 549 (2003); Lanham v. Blue Cross & Blue Shield, 563 S.E.2d 331 (2002); Conner v. City of Forest Acres, 560 S.E.2d 606 (2002); Redwend [592 S.E.2d 319].

Ltd. P'ship v. Edwards, 354 S.C. 459, 581 S.E.2d 496 (Ct.App. 2003); Baril v. Aiken Reg'l Med. Ctrs., 352 S.C. 271, 573 S.E.2d 830 (Ct.App.2002); Trivelas v. South Carolina Dep't of Transp., 348 S.C. 125, 558 S.E.2d 271 (Ct.App.2001); Murray v. Holnam, Inc., 344 S.C. 129, 542 S.E.2d 743 (Ct.App.2001); McNair v. Rainsford, 330 S.C. 332, 499 S.E.2d 488 (Ct.App. 1998). Because summary judgment is a drastic remedy, it must not be granted until the opposing party has had a "full and fair opportunity to complete discovery." Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003); Lanham, 349 S.C. at 363, 563 S.E.2d at 334; Doe v. Batson, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001); Baird v. Charleston County, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999); Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). Here, still waiting on verified discovery responses from Defendant BCSD to discovery served on March

10, 2017, responses critical to opposing summary judgment motions of both Defendants, so Rule 56(f) issue. Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Lanham, 349 S.C. at 362, 563 S.E.2d at 333; Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000); Mosteller v. County of Lexington, 336 S.C. 360, 520 S.E.2d 620

(1999); *Redwend Ltd. P'ship*, 354 S.C. at 468, 581 S.E.2d at 501; *Baril*, 352 S.C. at 280, 573 S.E.2d at 835; *Trivelas*, 348 S.C. at 130, 558 S.E.2d at 273; *Hall v. Fedor*, 349 S.C. 169, 561 S.E.2d 654 (Ct.App.2002); *Hedgepath v. American Tel. & Tel. Co.*, 348 S.C. 340, 559 S.E.2d 327 (Ct.App.2001); *Bayle v. South Carolina Dep't of Transp.*, 344 S.C. 115, 542 S.E.2d 736 (Ct.App.2001); *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 518 S.E.2d 301 (Ct.App.1999); *Middleborough Horizontal Prop. Regime Council v. Montedison*, 320 S.C. 470, 465 S.E.2d 765 (Ct.App.1995). "Summary judgment is inappropriate when further development of the facts is desirable to clarify the application of the law." *Lee v. Kelley*, 298 S.C. 155, 158, 378 S.E.2d 616, 617 (Ct.App.1989). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Redwend Ltd. P'ship*, 354 S.C. at 468, 581 S.E.2d at 501; *Baril*, 352 S.C. at 280, 573 S.E.2d at 835; *Hall*, 349 S.C. at 173-74, 561 S.E.2d at 656; *Glasscock, Inc. v. United States Fid. & Guar. Co.*, 348 S.C. 76, 557 S.E.2d 689 (Ct.App.2001); *Stewart v. State Farm Mut. Auto. Ins. Co.*, 341[592 S.E.2d 320] S.C. 143, 533 S.E.2d 597 (Ct.App.2000); see also *Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 584 S.E.2d 375 (2003) (noting that summary judgment should not be granted even when there is no dispute as to evidentiary facts, if there is dispute as to conclusions to be drawn therefrom).

Because these are negligence claims, it is important to note that, "[g]enerally, negligence claims are not susceptible of summary adjudication because of the many questions normally present in such cases concerning the reasonableness of a party's conduct, foreseeability, and proximate cause." *Folkens v. Hunt*, 290 S.C. 194, 199, 348 S.E.2d 839, 842 (Ct.App. 1986). This also applies to gross negligence claims. As noted by our Supreme Court in *Bryant v Babcock Center*, 638 SE2d 650 (2006) "in most cases, gross negligence is a factually controlled concept whose determination best rests with the jury." The standard of care here, with school administrators and a minor involved, is higher, not just a reasonable person standard, but in loco parentis, in place of the parents, like a fiduciary duty of care, and the higher the standard of care the lower the threshold here for gross negligence, e.g., *Stanley v Gary*, 116 SE2d 843 (1960). Likewise, the question of

proximate cause is ordinarily for the finder of fact, here the jury. Ballou v Sigma Nu, 352 SE2d 488 (1986).

Defendant South Carolina High School League (SCHSL) cites § 15-78-60(4) in support of their motion for summary judgment, which excepts from their waiver of immunity for: adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies.

But from what I have seen so far in this case, the BCSD is trying to blame the minor Plaintiff, but you obviously can't blame a minor for what he does or doesn't do. Meanwhile, the SCHSL claims to closely train, monitor and supervise the member high schools and the participating students, and if this training, monitoring, supervision goes seriously awry as it did here, was so obviously not effective, that's a failure to properly monitor and supervise others, not a failure by the entity to adopt, enforce or comply itself, so SC Code 15-78-60(4) does not apply here. My point is that liability is not legitimately at issue in this case, and with a young man's future involved, who now works in a kitchen instead of his dream of Air Force service, summary judgment should be entered in his favor against both Defendants, or at the least this matter must go to a jury.

The Beaufort County School District (BCSD) was objectively, ridiculously negligent, GROSSLY NEGLIGENT, not merely careless, in, as they have admitted, allowing a minor to get seriously injured playing high school football without parental permission and without a physical examination, blatant violation of their own rules, and the SCHSL, which says in its own operating documents it monitors, supervises and oversees high school football in the State, to among other things, make sure its member schools follow the eligibility rules, was thus also ridiculously negligent, GROSSLY NEGLIGENT, not merely careless, in their so obviously ineffective monitoring, supervision, oversight of the BCSD, i.e. if the School District was grossly negligent in their actions, then the SCHSL was grossly negligent in their monitoring, supervision, oversight of these actions, keeping in mind the higher duty (in loco parentis)/reduced causation and gross negligence standards, both school administrative bodies have in ensuring minors at schools are safe, at which both bodies here failed horribly, a systematic breakdown of the processes supposedly in place, failure to exercise any care, to make any effort to correct these systematic deficiencies.

Exposing a minor to what happened in this case borders on the criminal. The BCSD failed recklessly, indifferently to follow the rules, objective gross negligence, and the SCHSL undertook the duty to make sure the rules were being followed, and they did not do that either. Between this minor victim and these school bodies, any doubt whatsoever has to be resolved in favor of the minor victim, particularly with so many things being fact questions for a jury not the Court to decide, if the Court is not inclined to just enter summary judgment for Plaintiffs and against both Defendants now.

Because this was a student and a minor, and the school allowed him to play football, this is not a regular duty as it was not a regular person. It is the highest duty, in loco parentis, in place of the parent. With the highest duty, lower standard for causation, causation is was the injury preventable and foreseeable. If so, there was causation and liability attaches. The school district letting the child in their care play football and become injured, without parental permission and a physical, was preventable and foreseeable. Also if SCHSL had supervised properly and acted properly, there would have been no injury. Even if Plaintiff, with asthma, was particularly susceptible to injury, an eggshell Plaintiff does not matter, and Defendants did not check a physical anyway.

Making sure that the minor had both parental permission and a physical examination clearance would be the two most important, fundamental things that the BCSD had to do, and the SCHSL had to make sure the BCSD was doing, before allowing the minor to play football, there is nothing else more important than these two things, and of course they were grossly negligent and not just careless if they failed to do the two most important things involved! This is not his shoulder pads were on wrong, he didn't have the right shoes or socks, his chin strap was hanging down, these were the two most important things these adults who were responsible for this minor had to do, and they didn't do it! For them to try to blame the minor, or try to say this was just careless, not reckless disregard for the safety of the minor, is just outrageous!

SCHSL was grossly negligent in its monitoring and supervising of the Beaufort High School (BHS) football program, which program was grossly negligent (objectively not subjectively) in allowing a minor to play high school football without parental permission and a physical examination clearance. The minor cannot be blamed

in any way for what he did or didn't do, which both entities are trying desperately to do, and the parental permission and physical examination clearance being required by the written rules of both entities, the failure to obtain both is objective gross negligence, not subjective.

Under these circumstances, certainly summary judgment cannot be granted to the SCHSL or to BCSD. Further, there can be no summary judgment for the BCSD with discovery from them outstanding. Also, exceptions in statutes are to be construed strictly not broadly, so any doubt as to the application of an exception to the waiver of immunity will be against such an exception, and here there is doubt, as gross negligence in monitoring and supervising is not specifically mentioned in the statute. The enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded. Exceptions strengthen the force of the general law and enumeration weakens it as to things not expressed. Riverwoods, LLC v. County of Charleston, Op. No. 25462 (S.C. Sup. Ct. filed May 6, 2002) (Shearouse Adv. Sh. No. 14 at 58, 64) (quoting Hodges v. Rainey, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000)).

Although the SCHSL does make and enforce policy, as well as rules and regulations, that is not what is at issue here, they also train, monitor, supervise, oversee and are closely involved with the member high schools and participating students, as evidenced by the following statements excerpted from their own governing documents, all of which applies here and is outside the scope of 15-78-60(4):

In the SCHSL Constitution (plus see Bruce v. South Carolina High School League case, 189 SE2d 817 (1972) which makes clear the complete control SCHSL has over high school sports in this State, even the Court in this case could not interfere):

Pg. 3/A-3: "Article II – Mission Statement – The mission of the South Carolina High School League is to provide governance and leadership for interscholastic athletic programs that promote, support, and enrich the educational experience of students."

Pg. 3/A-3: "Article III – Purpose Statement - ... develop and direct a program which will promote, protect and conserve the health and physical welfare of all participants ..."

Pg. 3/A-3: "Article IV – Belief Statement – We believe the South Carolina High School League, governed by its

member schools, is the recognized state authority on interscholastic athletic programs.”

Pg. 4/A-4: “Article V – Membership. Public high schools ... agrees to conform to the rules and regulations of the league ...”

Pg. 12/A-12: “Section 2. Birth Certification. (A) Schools shall have on file a copy of an official birth document for all student athletes. Any questions on authenticity will be submitted to the League office.” *Speaks to oversight.*

Pg. 17/A-17: “Section 9. Transfers. (5) ... when there is doubt, the principal should present all facts to the League office. The League office will decide on each case individually, considering the facts of each case.” *Speaks to oversight/involvement.*

Pg. 20/A-20: “Section 16. Certificate of Eligibility and Other Forms. Eligibility is the responsibility of the principal. If in doubt about eligibility, the case should be presented in writing to the League Commissioner ... Fine \$50 ...” *Speaks to supervising.*

Pg. 21/A-21 **: “Eligibility forms ... a parents permission record properly filled out and a physical form properly completed by a licensed medical doctor or a certified physician’s assistant ... (1) These forms must be on file for all participating students regardless of level of competition; (2) Forms can be found on the League website; (3) A physical examination is valid from April 1 of the current school year through the following school year; **(F) Schools who violate any of the preceding sections of this Article shall be subject to a fine of not less than \$25.00 and not more than \$2,500.00, and/or suspension for not more than one calendar year.”

Pg. 25/A-25: Schools pay dues to SCHSL and an initiation fee. *Speaks to financial involvement - can't get money and set all the rules and then deny responsibility when things go awry as here.*

Pg. 26/A-26: SCHSL receives a percentage of the gross gate receipts from events. *Speaks to financial involvement.*

Pg. 30/A-30: “9. Violations of any of the above policies will warrant League discipline for the school or individual.” *Speaks to setting and enforcing rules.*

Pg. 41/A-41: "Fine of \$2,500 if ineligible plays."

Pg. 44/B-3: "Rules and Regulations for Athletic Contests Sponsored by SCHSL 2012-2013. No. 6. Never allow a student to practice without having a Parent's Permission Form, Physical Examination Form, and Insurance Coverage."

Pg. 119/B-78: "Athletic Officials Association. Certified officials, registered and approved by the League office, must be used in all varsity football contests." *Speaks to supervisory involvement.*

Pg. 119/B-78: "Booking. The Booking Office for football and basketball officials is located in the League office ... All associations must abide by the disciplinary action of the Commissioner of the League ... Associations will not book an official that has not be certified. The approval of the League office may be removed ..."

Speaks to supervisory involvement.

Pg. 123/B-82: "Officials' Clinics and Examinations. The League will conduct clinics in football, ... wrestling ... a testing program approved by the Executive Committee will be administered under the direction of the Commissioner." *Speaks to involvement and supervision.*

"The standard of care in a given case may be established and defined by the common law, statutes, administrative regulations, industry standards, or a defendant's own policies and guidelines." *Id.* (citing Peterson v. Natl. R.R. Passenger Corp., 365 S.C. 391, 397, 618 S.E.2d 903, 906 (2005)).

Have expert testimony of Dan Durbin (pertinent pages of his deposition testimony attached), former principal of Beaufort High School, that both Defendants are responsible for the injuries and damages sustained, not the Plaintiff nor his mother, that as to both Defendants the School District and the High School League their processes failed, and neither Defendant has presented this Court with any expert testimony of any kind, let alone expert testimony to the contrary.

Defendant SCHSL curiously cites the Boiter case for the proposition that, as both Defendants are contending, only one \$300,000 cap on damages exists in this case, when there is clearly two Plaintiffs who have plead and testified to separate injuries and separate damages and, as established by expert testimony, each Defendant was separately, independently grossly negligent (School District for letting minor play tackle football without

parental permission and physical exam clearance, High School League completely failing to properly train, monitor, supervise the School District resulting in something like happened in this case occurring, the process failed, doesn't matter if someone from the High School League was physically there or not, their process horribly failed, they claim to control high school football in the State, therefore they are as responsible as the School District if something they claim to control goes terribly awry as here. In *Boiter v. SCDOT and SCDPS* case, decided June 6, 2011 and still good law, the Supreme Court held that there are two "occurrences" under the South Carolina Tort Claims Act when there are two independent and separate acts of negligence committed by two separate agencies. This is exactly what Plaintiffs are contending that two caps apply for each of them, not one cap and only for one of them. There were two separate occurrences here, just like in the *Boiter* case, and two separate government agencies involved, just like the *Boiter* case, so the same result should apply here. **Two separate distinct acts of gross negligence, gross negligence in doing and gross negligence in training, monitoring, supervising the doing, two separate, distinct entities, two Plaintiffs with separate damages, two \$600,000 caps, \$1,200,000 total (which assumes, of course, that any such caps are constitutional).** In any event, there are two Plaintiffs with separate injuries and damages, so at the least there is a \$600,000 cap here, not a \$300,000 cap.

Plaintiffs also contend that two \$600,000 caps should apply as in the *Boiter* case – a jury could and should find both defendants grossly negligent in their own ways, but a jury could find one grossly negligent and not the other, meaning these are separate occurrences, separate caps, there being a separate cap for each occurrence sued upon, two Defendants, two, separate occurrences, two separate caps. Plaintiffs sued each Defendant here for separate acts, so a separate potential \$600,000 cap (\$300,000 per Plaintiff) must apply to each separate act sued upon, \$1,200,000 total. Attached hereto is the deposition testimony and/or interrogatory answers of both Plaintiffs, as to their injuries and damages, does not appear Defendants are denying that Plaintiff Darrell J. Alston, Jr. was injured and sustained damages, as they both admit there is one cap at issue, but without stating it directly, appear to be denying that Plaintiff Mabel Alston, Darrell's mother, sustained injuries and damages, but

her deposition testimony and interrogatory answers, now supplemented by her Affidavit, proves to the contrary, so a second cap applies to her also, plus two separate set of caps for each Defendant given their separate acts of gross negligence, in doing and in properly and effectively training, monitoring and supervising the doing. Further, I have cursorily reviewed SCHSL Memorandum in Support of their Motion and every point they make is flawed. First, they claim their belief that Plaintiff Darrell would have passed the physical (despite his asthma), but as no physical was administered that is total speculation whether he would have passed or not, and it completely ignores the parental permission side of things (the only thing that matters) and that his mom did not want him to get hurt (ROTC is not a tackle sport, but football certainly is). Also, every inference has to be resolved in favor of the non-moving parties, Plaintiffs, including the inference what would have happened if the physical was done.

Second, SCHSL ignores focusing on what Plaintiffs have contended for years, that their failure to properly and effectively train, monitor and supervise a member school put the minor Plaintiff in a position that he should not have been in, particularly without parental permission and not even caring about football, just wanting to be with his friends. He just never should have been out there that day his knee got torn up, and it is the reckless actions of both BCSD and SCHSL that resulted in him being out there. Regardless, proximate cause is a triable fact question for the jury, as is duty.

Third, there are two caps, not one, because of the failure of SCHSL to properly and effectively train the member schools, so what happened here was prevented, and the failure of the improperly and ineffectively trained member school here to get a parental permission and physical examination certificate from a minor who got seriously injured as a result and now can't pursue his career dreams, two separate grossly negligent acts, separate caps with two plaintiffs with damages under each cap.

Fourth, as to Dr. Durbin's deposition testimony, SCHSL cherry picks what they deem favorable to them and ignores what was unfavorable. For example, on page 93, Durbin says "I don't think the SCHSL trains their principals very well...But if you were to ask me is the High School League responsible for what goes on on the field, I would have to say yes, it is directly responsible for it because it trains the officials," thereby directly

implicating the SCHSL for what happened here. Likewise on page 159 "We are the adults. We have a responsibility to fulfill that responsibility; and at Page 160, in response to question who to assign blame to, the High School League and the school district, "Someone has to get the blame, something had happened." If SCHSL disputes this, fine, that is why we have trials, to resolve disputed issues.

Fifth, SCHSL mis-cites the Trident case, that is a contract case, not a tort case like here, of course in a tort case Plaintiff Darrell can recover his medical bills. And SCHSL mis-cites the Wright v Colleton County case, it does allow the medical bills of the minor child to be recovered, and further, does allow the mother to recover any medical bills she may have occurred on her own, with there being two caps for the minor's injuries and the mother's injuries, just like should be here. See, Doe v. Greenville County School District, mother could recover independently under Tort Claims Act for negligent infliction of emotional distress, just like when Plaintiff Mabel here, saw her son with a torn up knee with ice sitting on a golf cart, having played tackle football without her permission.

I have also cursorily reviewed the Affidavit of Gerald M. Linn, Jr., that BCSD submitted, and from my perspective it helps our case, not hurts it. If there really was all this training, and I question whether there was, and question who actually attended, and question how effective it was given what happened, then it was certainly grossly negligent for the coaches to have made such an egregious mistake that resulted in such serious consequences, it never should have happened. That if, as Mr. Linn contends, this was the only incident like this that ever happened, is completely irrelevant, it did happen here, and the result was horrible consequences.

For all the foregoing reasons, the summary judgment motions for South Carolina High School League and Beaufort County School District must be denied, and the summary judgment motion for Plaintiffs must be granted. Further, there are two \$600,000 caps in this case for the separate grossly negligent actions of the both

the School District and the High School League causing separate injuries and damages to two Plaintiffs.

Dated: April 11, 2017

s/Bruce R. Hoffman
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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

DARRELL J. ALSTON, JR. and
MABEL L. ALSTON,

Plaintiffs,

BEAUFORT COUNTY SCHOOL
DISTRICT and SOUTH CAROLINA
HIGH SCHOOL LEAGUE,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2015-CP-07-1147

**PLAINTIFFS' NOTICE AND MOTION
FOR RECONSIDERATION OF ORDER
GRANTING SOUTH CAROLINA HIGH
SCHOOL LEAGUE SUMMARY
JUDGMENT (RULE 59(e))**

TO ALL INTERESTED PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that Plaintiffs Darrell J. Alston, Jr. and Mabel L. Alston, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, will and do hereby move before Judge Carmen Mullen, on such date and place as the Court may appoint, for reconsideration of her Order granting Defendant South Carolina High School League (SCHSL) summary judgment in this case. More specifically, Plaintiffs 1) seek rulings on matters that the Court did not address in its Order; 2) seek the Court's reasons for deciding certain matters for which no reasons are given; and 3) seek for the Court to reconsider and reverse its ruling granting Defendant South Carolina High School League summary judgment (or by granting Plaintiffs summary judgment against SCHSL instead).

In this regard, respectfully Plaintiffs contend Judge Mullen misunderstood issues/failed to fully consider issues/drew erroneous conclusions from issues, presented in the pleadings and/or at the hearing on April 11, 2017; for example, and considering that all inferences, conclusions and ambiguities were to be resolved in favor of Plaintiffs, a) that SCHSL was grossly negligent in its supervision, training and monitoring of a member school, or otherwise, or at the least isn't this a fact question for the jury upon which summary judgment could not be granted; and b) that the gross negligence of SCHSL was a proximate cause of the injuries and damages suffered by the Plaintiffs, or at the least this is a fact question for the jury upon which summary judgment could not be granted. If Judge Mullen is not going to reconsider and reverse her ruling, by denying rather than granting SCHSL summary judgment (or granting Plaintiffs summary judgment against SCHSL instead), then,

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as Judge Mullen did not provide any explanation for her order granting SCHSL summary judgment, an explanation on the issues noted above, and otherwise, is needed so appellate review can be sought. Elam v SCDOT, 602 SE2d 772 (2004). This motion will also be based on such testimony, evidence and authority as may be presented at the hearing on the motion.

Dated: April 27, 2017

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

CASE NO. 2015-CP-07-1147

DARRELL J. ALSTON, JR. and
MABEL L. ALSTON,

Plaintiffs,

**SUPPLEMENT TO PLAINTIFFS'
MOTION FOR RECONSIDERATION
OF ORDER GRANTING SOUTH
CAROLINA HIGH SCHOOL LEAGUE
SUMMARY JUDGMENT (RULE 59(e))**BEAUFORT COUNTY SCHOOL
DISTRICT and SOUTH CAROLINA
HIGH SCHOOL LEAGUE,

Defendants.

To further clarify Plaintiffs' Motion for Reconsideration of Order Granting South Carolina High School League Summary Judgment (Rule 59(e)), filed April 27, 2017, the holding in Bruce v. South Carolina High School League, 189 SE2d 817 (1972), confirmed that the South Carolina High School League is in complete control of high school football in South Carolina. Therefore, putting aside all the arguments made previously for denial of the South Carolina High School League's motion for summary judgment, e.g. their own gross negligence, their own direct liability, in the monitoring, supervision and training of a member school and otherwise, which caused injury to the Plaintiffs, or at least there being disputed fact questions for the jury regarding same, further, deeming the South Carolina High School League the principal, and the member school here the agent, it is hornbook law that the principal is jointly and severally liable for grossly negligent acts of the agent committed in the course and scope of the agency, and a similar argument can be made here (or again there is a jury question presented).

This is also akin to vicarious liability/respondeat superior liability, i.e. the responsibility of the superior for the acts of their subordinate or, in a broader sense, the responsibility of any third party that had the "right, ability or duty to control" the activities of a violator, with the violator remaining jointly and severally liable. In this regard, the law has developed the view that some relationships by their nature require the person who engages others to accept responsibility for the wrongdoing of those others. See, e.g. Morrow v. Fundamental Long Term Care Holdings, 773 SE2d 144 (2015). And this would be an independent and further ground for holding Defendant South Carolina High School League jointly and severally liable in this case (or at least for there

being a jury question on the same), and for reconsidering the order granting, and instead denying, their motion for summary judgment (or granting the Plaintiffs' motion for summary judgment instead).

Dated: May 3, 2017

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

Darrell J. Alston, Jr., and Mabel L. Alston,)

Civil Action No. 2015-CP-07-1147

Plaintiffs,)

vs.)

Beaufort County School District,)
South Carolina High School)
League,)

Defendants.)

SOUTH CAROLINA HIGH SCHOOL
LEAGUE'S RESPONSE IN
OPPOSITION TO PLAINTIFFS'
MOTION TO ALTER OR AMEND

This matter is before the Court on plaintiffs' Motion to Alter or Amend the Order granting summary judgment in favor of the defendant, South Carolina High School League (the League). For the reasons set forth below, the Court should deny plaintiffs' motion.

As a preliminary matter, Elam v. South Carolina Department of Transportation, 361 S.C. 9, 602 S.E.2d 772 (2004), does not stand for the proposition for which it was cited in plaintiffs' motion. Although the Elam court confirmed that the losing party must file a Rule 59(e), SCRCP, motion to preserve matters for appellate review, nothing in that case requires this Court to explain its ruling in any detail for purposes of the appeal. Contrary to plaintiffs' contentions, the Court's Form 4 Order was perfectly acceptable in this case, and no further explanation is required because the parties have created an ample record for appellate review should that become necessary. See, e.g., Easterling v. Burger King Corp., 416 S.C. 437, 453-54, 786 S.E.2d 443, 452 (Ct. App. 2016) (concluding "[t]he circuit court acted within its discretion in issuing a Form 4 order" because "the parties provided an ample record for th[e] court to conduct meaningful review of the circuit court's grant of

summary judgment”); Woodson v. DLI Props., LLC, 406 S.C. 517, 527, 753 S.E.2d 428, 433 (2014) (noting appellate courts apply the same standard as the circuit court under Rule 56(c), SCRCF, and finding the court of appeals had “a sufficient record before it to permit meaningful appellate review and make a decision on the merits”); Porter v. Labor Depot, 372 S.C. 560, 568, 643 S.E.2d 96, 100 (Ct. App. 2007) (stating “not all situations require a detailed order, and the [circuit] court’s form order may be sufficient if the appellate court can ascertain the basis for the circuit court’s ruling from the record on appeal”).

Turning to the merits, for the reasons set forth in the League’s memorandum in support of summary judgment and at the hearing, the Court properly concluded the League is entitled to judgment as a matter of law in this case. Plaintiffs’ conclusory motion points out no issues of fact or law that the Court misapprehended or overlooked. Rather, plaintiffs merely rehash the outline of their arguments and seek specific rulings. As noted above, however, the Court is not required to explain its rulings as long as the appellate court has an ample record from which to conduct appellate review. The record is complete in this matter and speaks for itself. Based upon this complete record, the Court properly granted summary judgment in favor of the League.

With respect to plaintiffs’ “supplement” to their Motion to Alter or Amend filed on May 3, 2017, the League would once again note that the cases therein do not stand for the propositions for which they were cited. The court did not once mention the word “control” in Bruce v. South Carolina High School League, 258 S.C. 546, 189 S.E.2d 817 (1972). Nor did the court ever espouse the theory “that the South Carolina High School League is in complete control of high school football in South Carolina.” Rather, the Bruce court held that the League’s enforcement of an eligibility rule did not violate two students’ due

process and equal protection rights, and it did not arbitrarily deprive them of the right to participate in interscholastic athletics. Id. at 551–53, 189 S.E.2d at 819–20. Likewise, the court’s decision in Morrow v. Fundamental Long Term Care Holdings, 412 S.C. 534, 773 S.E.2d 144 (2015), does not serve as an example of a case that would support the notion that “some relationships by their nature require the person who engages others to accept responsibility for the wrongdoing of those others.” The issue in Morrow was whether the circuit court’s bifurcation order was immediately appealable. Id. at 537, 773 S.E.2d at 145. In the context of that discussion, our supreme court clarified that direct corporate liability and vicarious liability are distinct theories of recovery, and the circuit court’s misunderstanding of the claims in that case constituted an error of law that implicated a substantial right for purposes of appealability. Id. at 538–39, 773 S.E.2d at 146. Accordingly, the above cases cited in plaintiffs’ supplemental filing do not support the arguments raised in their Rule 59(e) motion.

Finally, plaintiffs’ argument that the League is vicariously liable for the acts of the Beaufort County School District (the District) is not preserved for this Court’s review because it was raised for the first time in plaintiffs’ Motion to Alter or Amend.¹ See, e.g., Gartside v. Gartside, 383 S.C. 35, 43, 677 S.E.2d 621, 625 (Ct. App. 2009) (asserting that “a party cannot use a Rule 59(e) motion to present to the . . . court an issue the party could

¹ Plaintiffs even appear to concede that these arguments are being raised for the first time in their Rule 59(e) motion. In their supplement, plaintiffs accompany these new arguments with phrases like “putting aside all the arguments made previously for denial of the . . . League’s motion for summary judgment” and “this would be an independent and further ground for” denying summary judgment. Moreover, and perhaps more importantly, plaintiffs’ new argument for respondeat superior is wholly inconsistent with their previous position that two damages caps should apply in this case due to two separate acts of gross negligence by the defendants.

have raised prior to judgment but did not”). The plaintiffs now contend that the member school was an agent of the League. A review of the Complaint, however, reveals that plaintiffs did not allege a theory of agency between the District—or the school for that matter—and the League, and plaintiffs did not allege a theory of vicarious liability stemming from this purported relationship. Therefore, plaintiffs cannot raise this new issue whole cloth for the first time after the entry of a final judgment. Even on the merits, though, plaintiffs’ claim must fail. The League’s enforcement of a rule does not amount to control over member schools for which vicarious liability would attach. As the League previously indicated, an analogy akin to the situation at hand is very instructive. Lawyers who are members of the South Carolina Bar agree to adhere to the rules set forth by the Supreme Court of South Carolina. Our supreme court likewise retains the authority to enforce its rules and levy penalties on members of the bar for failure to comply with the rules. But the supreme court, of course, is not liable to a client for the negligent acts of a member of the bar who commits malpractice. Similarly, plaintiffs find no refuge in suing the League for a member school’s alleged negligence in failing to comply with the rules regarding physicals and parental permission forms, particularly when only the schools are responsible for collecting these forms.

Based upon the foregoing, because the Court properly granted summary judgment in favor of the League, it should deny plaintiffs’ Motion to Alter or Amend.

(Signature page to follow)

Respectfully submitted,

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Columbia, South Carolina

May 4, 2017

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 BEAUFORT COUNTY
4 DEPOSITION OF DARRELL J. ALSTON, JR.
5 DARRELL J. ALSTON, JR., and MABEL L. ALSTON,
6 Plaintiffs,
7 vs. CASE NO. 2015-CP-07-1147
8 BEAUFORT COUNTY SCHOOL DISTRICT, SOUTH CAROLINA
9 HIGH SCHOOL LEAGUE,
10 Defendants.
11
12 DEPONENT: DARRELL J. ALSTON, JR.
13
14 DATE: MARCH 16, 2016
15
16 TIME: 2:00 PM
17
18 LOCATION: LAW OFFICE OF BRUCE HOFFMAN
19 ST. HELENA ISLAND, SOUTH CAROLINA
20
21 REPORTED BY: ANNE BOULEY MEYER, RPR
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8 ***NO EXHIBITS MARKED***

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19 Charleston, SC 29401
20 ALSO PRESENT:
21 MABEL L. ALSTON
22
23
24
25

1 DARRELL J. ALSTON, JR.,
2 having been first duly sworn, was examined and
3 testified as follows:
4 EXAMINATION
5 BY MR. MONTGOMERY:
6 Q. Good afternoon, Darrell. And I have seen in
7 some of your records, do you go by Darrell or DJ?
8 A. Darrell.
9 Q. Darrell, okay.
10 MR. HOFFMAN: Before -- all objections
11 reserved except as to form to the time of trial?
12 MR. MONTGOMERY: Absolutely.
13 MR. HOFFMAN: Okay.
14 Q. Darrell, please call me Michael. My name is
15 Michael Montgomery. I represent the South Carolina
16 High School League. I'm here today to take your
17 deposition and ask you some questions about this
18 incident and some background information about you.
19 A couple of ground rules that I'm required
20 to tell you by our court. If I ask you a question
21 today that's unclear in any way, please let me
22 know. Sometimes the questions may make sense in my
23 head, and when they come out they may not make
24 sense to you and that's quite all right.
25 I need you to work with me and any other

1 attorney that is asking you questions. You can't
2 talk to your attorney or ask maybe your mother,
3 who's sitting here, you know, what's he trying to
4 say.

5 We have got to work together, and it's my
6 job to ask you good questions so you can give me
7 truthful and accurate answers. So please don't
8 hesitate to let me know if I ask you a question
9 that doesn't make sense.

10 Another thing is our court reporter takes
11 down everything we say, so it's important to give
12 verbal responses, no uh-uhs or uh-hums. We may
13 know what you're saying now, but when we go back
14 and look at the transcript it may -- we don't want
15 to have to guess what you meant.

16 And so if we correct you we're not trying to
17 get on you, we just want to make sure your
18 transcript is accurate. You also hopefully see
19 that although you are under oath as if you were in
20 court, I'd like for this to be a little bit more
21 informal like a conversation between the two of us.

22 You may be able to tell where my question is
23 going and want to answer it before I finish; again,
24 it's a problem for our court reporter if we talk
25 over one another. She can only take down what one

1 person is saying at a time.

2 So if you will let me finish my question
3 before you answer, I will certainly let you finish
4 your answer before I ask you the next question.

5 Is that fair?

6 A. Yes.

7 Q. Okay. And then if you need to take a break
8 for any reason today, let me know. I'm not going
9 to keep you here all afternoon. But if you need to
10 take a break, that's completely up to you. So you
11 just let us know and we'll take a break.

12 Okay?

13 A. Uh-hum.

14 Q. Darrell, can I have your full name for the
15 record, please.

16 A. Darrell James Alston, Junior.

17 Q. And what's your date of birth?

18 A. February 12th -- no, Feb -- yeah,
19 February 12, 1997.

20 Q. And that makes you 19 years old?

21 A. Yes, sir.

22 Q. And what's your current address?

23 A. 38 Brindlewood Drive.

24 Q. And how long have you lived at that address?

25 A. I think five years.

1 Q. Okay. And who lives there with you?

2 A. My sister and my mother.

3 Q. And your mother is here, Mabel Alston,
4 correct?

5 A. Yes, sir.

6 Q. What's your sister's name that lives with
7 you?

8 A. Kiana Alston.

9 Q. Do you have any other siblings?

10 A. Yes.

11 Q. What are their names?

12 A. Erica Alston. Monica Alston.

13 Q. And what is your father's name?

14 A. Darrell Alston.

15 Q. Have you ever lived with your father?

16 A. Yes.

17 Q. Okay. When is the last time you would have
18 lived with your father?

19 A. It's been quite a few years ago. I can't
20 really remember.

21 Q. Okay. And it may not be that important. I
22 guess what I -- maybe let me narrow it. The time
23 that this incident occurred was back in May of
24 2013, so maybe if we can talk about the 2012-2013
25 school year which I believe would have been your

1 freshman year at Beaufort High School; is that
2 correct?

3 A. Yes.

4 Q. Did you live with your father at any point
5 in that time period?

6 A. No.

7 Q. The last time you lived with your father
8 would have been before that year?

9 A. Yes.

10 Q. And since your freshman year and the
11 incident that we're here to talk about today, have
12 you lived with your mom the whole time?

13 A. Yes.

14 Q. And can you generally tell me your
15 relationship with your father? Are you close? Do
16 you see him often?

17 A. No.

18 Q. Would that have been the case in the
19 2012-2013 school year?

20 A. Yes.

21 Q. And are your parents divorced?

22 A. Yes.

23 Q. And I take it you grew up in Beaufort
24 County?

25 A. Yes.

1 Q. Are you currently in school?
 2 A. Yes.
 3 Q. Tell me where you go to school and what year
 4 are you.
 5 A. I'm a senior at Beaufort High School.
 6 Q. Are you progressing towards a diploma?
 7 A. Yes.
 8 Q. And when do you anticipate finishing?
 9 What's the goal time to finish?
 10 A. 2016, this year.
 11 Q. This year. Congratulations. And let me, I
 12 guess, give you a little bit of a disclaimer too.
 13 It's not my intention to jump around and try
 14 and ask you misleading or confusing questions. I'm
 15 going to try to go in order as much as I can just
 16 because it helps me stay organized. So if I do
 17 jump around on you, I'm not trying to confuse you.
 18 I don't want you to think I'm here to trick you
 19 today.
 20 Some things I kind of need to know up front,
 21 which will then maybe let me know how much I need
 22 to ask you about it later when we go in that sort
 23 of organized order.
 24 So let me ask you this question. Did your
 25 school progression, or your academic progression,

1 have been the fall of 2013, were you able to start
 2 back on time?
 3 A. Yes.
 4 Q. Okay. And you didn't sit out a semester or
 5 -- I know you were doing physical therapy, but you
 6 didn't miss time that caused you to fail classes;
 7 is that accurate?
 8 A. No. Yes, sir.
 9 Q. Okay. You did not fail any classes in the
 10 fall due to a prolonged absence; is that fair to
 11 say?
 12 A. Could you repeat the question?
 13 Q. Sure. When you went back to school in the
 14 fall of 2013, I know you had your surgery and you
 15 were doing physical therapy from the records that
 16 we have been provided over the summer, and then you
 17 start back to school in the fall of 2013 on time,
 18 started back in August; is that right?
 19 A. I can't quite remember.
 20 Q. Okay. Do you remember if you failed any
 21 classes in the fall of 2013?
 22 A. No. I can't remember.
 23 Q. And other than maybe going to doctors'
 24 appointments or physical therapy appointments, did
 25 you miss any long periods of time because of the

1 was it in any way affected by this knee injury that
 2 you suffered in May of 2013?
 3 A. Yes.
 4 Q. Did you miss any time from school? And when
 5 I say time, I mean did you miss a semester? Or
 6 were you unable to complete certain course work?
 7 A. Not quite a semester, but I have missed
 8 time.
 9 Q. Did it affect -- as I understand, your
 10 injury was in May, I think May 13th of 2013. And I
 11 believe you had your knee surgery on May 31st of
 12 2013.
 13 Does that sound about right? I'm going by
 14 the records, so does that sound about right to you?
 15 A. Somewhat to me.
 16 Q. And, I guess, were you able to finish that
 17 semester in May after you had your injury while you
 18 were awaiting surgery?
 19 A. Barely.
 20 Q. Okay. Did you fail any classes or anything
 21 like that? Or were you able to finish the work and
 22 pass the class or classes?
 23 A. I think I may have failed one or two.
 24 Q. Okay. And we may get into that a little bit
 25 later. When you went back to school, which would

1 knee injury?
 2 A. Long periods of time? No.
 3 Q. More than five days?
 4 A. No.
 5 Q. Okay. And do you currently attend a church?
 6 A. No.
 7 Q. Do you belong to any social groups or clubs
 8 or anything like that?
 9 A. No.
 10 Q. Do you currently work anywhere?
 11 A. No.
 12 Q. Have you ever had a job? Summer job or
 13 part-time job?
 14 A. No.
 15 Q. Ever applied for a summer job or part-time
 16 job?
 17 A. Yes.
 18 Q. Tell me when you last applied for a job.
 19 A. Maybe three months ago.
 20 Q. And where was that; do you remember?
 21 A. Sonic.
 22 Q. And they did not hire you?
 23 A. I didn't hear anything back from them.
 24 Q. Didn't hear anything back. Maybe, let me
 25 ask you this way. Do you believe that you have

1 been unable to find a job because of your knee
2 injury?

3 A. Possibly.

4 Q. Possibly?

5 A. (Head nodding.)

6 Q. I guess tell me about that. Other than
7 Sonic, where else would you have applied?

8 A. I applied at Golden Corral.

9 Q. Where else that you can remember?

10 A. That's all I remember.

11 Q. And at Sonic and Golden Corral did you have
12 an interview with anybody there?

13 A. No.

14 Q. Just filled out an application?

15 A. Yes.

16 Q. And on that application were you ever asked
17 on the application or did you provide information
18 on the application about your knee injury?

19 A. No.

20 Q. Have you ever been in any other sort of
21 accidents? Automobile accidents, or any other sort
22 of serious injuries?

23 A. No.

24 Q. Are there any sort of recreational
25 activities or hobbies that you have? I don't know,

1 crime of any kind?

2 A. No.

3 Q. All right. Trying to stay organized. So
4 let me switch gears on you a little bit and ask you
5 about your medical history. Some of it may not be
6 relevant to this case, and I have got to ask you
7 about some of it just so I know. I don't know
8 unless I ask you.

9 So let me just ask you. Generally, I have
10 been provided some of your pediatric records. Have
11 you ever been hospitalized before this incident?

12 A. Yes.

13 Q. Tell me what that was for, if you remember.

14 A. I don't remember it myself, but for asthma.

15 Q. Okay. And that was when you were younger?

16 A. Yes.

17 Q. Okay. And it would have been -- you would
18 have been so young you don't remember?

19 A. Yes.

20 Q. You don't remember which hospital or
21 anything like that? Or what they did or anything
22 like that?

23 A. Yes.

24 Q. Okay. Since -- let's just say since age 10,
25 between the ages of 10 and when this happened --

1 Boy Scouts, anything that you do if you are not at
2 school?

3 A. No.

4 Q. Okay. Have you ever played like rec-league
5 sports or anything like that growing up?

6 A. Rec league?

7 Q. Right.

8 A. You mean like PALS? I have played PALS
9 before.

10 Q. PALS?

11 A. Yes.

12 Q. What is that?

13 A. I don't know. I just played baseball for
14 them.

15 Q. Baseball?

16 A. (Nodding head.)

17 Q. PALS is the name of the league?

18 A. I think so.

19 Q. And, Darrell, have you ever, to your
20 knowledge, been a party to a lawsuit before? Or
21 brought a claim against somebody like an insurance
22 company or anything like that?

23 A. No.

24 Q. And please don't be offended, we ask
25 everybody this. Have you ever been charged with a

1 guess you would have been 16 when this happened --

2 A. (Head nodding.)

3 Q. -- the knee injury happened, did you have
4 any -- ever go to the hospital for any sort of
5 serious medical condition between the ages of 10
6 and 16?

7 A. No.

8 Q. Never had any prior problems with your knees
9 before this incident?

10 A. No.

11 Q. No bone or joint issues that you had before
12 this?

13 A. No.

14 Q. Okay. Let me ask a little about your asthma
15 history. Let me maybe start now.

16 Do you currently suffer from asthma or
17 asthmatic symptoms?

18 A. Yes.

19 Q. How often do you have, I guess, flare-ups of
20 asthma?

21 A. Maybe once or twice a month.

22 Q. Once or twice a month. Okay. Do you see a
23 doctor specifically for the asthma?

24 A. No.

25 Q. Do you carry around an inhaler at all times?

1 A. No.

2 Q. As needed if you have a flare-up, do have an
3 inhaler or a nebulizer of some sort?

4 A. No.

5 Q. If you have a flare-up of asthma, what do
6 you do or what do you take? And let me be clear,
7 I'm talking about currently.

8 What do you do if you have a flare-up of
9 asthma?

10 A. I don't do anything.

11 Q. Does it, I guess, resolve on its own?

12 A. Yes.

13 Q. And the symptoms, can you tell me what kind
14 of symptoms you would have when you would have an
15 asthma attack, you know, once or twice a month as
16 you've told me?

17 A. Shortness of breath maybe.

18 Q. And how long does it typically last?

19 A. Short. It's very short.

20 Q. Less than a minute?

21 A. Yes.

22 Q. Okay. And I know this is -- this maybe
23 seems like a little bit of an odd question. But
24 the current sort of status that you've told me
25 about your asthma, once or twice a month, shortness

1 school?

2 A. No.

3 Q. Did you ever go see the school nurse when
4 you had an asthma flare-up?

5 A. No.

6 Q. Can you recall the last time you used an
7 inhaler or a nebulizer?

8 A. No.

9 Q. And I think I know the answer, but again,
10 let me ask it. As of the 2012-2013 school year,
11 were you on any daily medications for any
12 condition?

13 A. I can't remember.

14 Q. Okay. Sitting here, do you recall any daily
15 medications you would have ever taken as a
16 teenager?

17 A. Yes.

18 Q. What would that be?

19 A. Some ibuprofen, or whatever it was called,
20 for my knee.

21 Q. For pain relief?

22 A. Yes.

23 Q. Okay. Right. I think you were probably
24 prescribed some pain medication, and that you would
25 take that as prescribed during that time period; is

1 of breath for a minute or less, it resolved itself,
2 you don't take Albuterol or nebulizer, that sort of
3 picture that you've given me of your current asthma
4 condition, was that the same as of May of 2013?

5 A. Yes.

6 Q. Okay. And then maybe going back a little
7 bit further, would that have been the same as of
8 2012? The year 2012?

9 A. Yes.

10 Q. I guess -- and again, we have just met so I
11 kind of -- let me ask it this way. How long has
12 your asthma condition been that way?

13 Has it been that way -- you're 19 now, has
14 it been that way for 10 years where you don't
15 necessarily carry an inhaler, have, you know, a
16 doctor who sees you when you have these flare-ups,
17 has that been -- how long has it been like that?

18 A. Yes, 10 years.

19 Q. About 10 years?

20 A. (Nodding head.)

21 Q. Okay. And let's maybe -- just to be sure, I
22 will keep my focus on the 2012-2013 school year
23 which would have been your freshman year at
24 Beaufort High School.

25 Did you ever have an inhaler or nebulizer at

1 that accurate?

2 A. Yes.

3 Q. Okay. Can you recall any trips to the
4 hospital for any reason in the last five years
5 other than this knee injury?

6 A. Yes.

7 Q. What would that be for?

8 A. When I hurt my other knee.

9 Q. Okay. And tell me, how did you hurt your
10 other knee?

11 A. Well, when me and my mother was going to a
12 store we have a stoop in front of our house and I
13 was stepping down with my left knee. And as I was
14 stepping down with my left knee, my right knee
15 which was, you know, already hurt and healing or
16 whatever, I had a sudden twinge of pain and it
17 caught me off guard. So I kind of lost a little
18 bit of balance and fell backwards a little and
19 twisted my left knee.

20 Q. So did you miss a step? Or you stepped down
21 and you said your right knee hurt, and then
22 something caused you to sort of step differently on
23 your left knee or with your left leg?

24 A. No. I stepped correctly, it's just that I
25 fell back after my right knee had some twinge of

1 pain.
 2 Q. Did you fall down to the ground?
 3 A. Yes.
 4 Q. And your left knee hurt after that?
 5 A. Yes.
 6 Q. And had your left knee been hurting before
 7 that?
 8 A. No.
 9 Q. And do you remember when that was?
 10 A. No.
 11 Q. Okay. Would it have been in two thousand --
 12 would it have been this year, 2016?
 13 A. No.
 14 Q. Was it 2015?
 15 A. It may have been, yes.
 16 Q. And which hospital did you go to; do you
 17 recall?
 18 A. Beaufort Memorial.
 19 Q. Do you remember what they did for you?
 20 A. They did X-rays.
 21 Q. Did they find any problems with it?
 22 A. They said that it was swollen.
 23 Q. Did they prescribe any physical therapy? Or
 24 did you have any follow-up with an orthopaedist or
 25 anything like that?

1 A. Yes.
 2 Q. Did you go see Dr. Dean again, or somebody
 3 else?
 4 A. Someone else.
 5 Q. Do you remember who it was?
 6 A. Dr. Reese.
 7 Q. Dr. Reese: Do you know which practice he's
 8 with?
 9 A. No.
 10 Q. Do you remember what he did for you? Did he
 11 do any additional testing or anything like that?
 12 A. I think he was the one who ordered the
 13 X-ray.
 14 Q. And did that left knee pain resolve?
 15 A. Yes.
 16 Q. It eventually got back to normal?
 17 A. Yes.
 18 Q. To your knowledge you didn't tear any
 19 ligaments or break anything or anything like that?
 20 A. No.
 21 Q. And apart from your -- what you've now told
 22 me about your left knee and then your right knee
 23 back in 2013, do you recall ever having any other
 24 X-rays, MRIs, or any other diagnostic testing for
 25 any health issues?

1 A. Yes.
 2 Q. Tell me what you remember.
 3 A. When I was younger I had X-rays on my
 4 Q. Okay. Do you recall how old you were?
 5 A. No.
 6 Q. Okay. And what kind of problems were you
 7 having with your hips?
 8 A. I guess growth pain.
 9 Q. Okay. I guess that's -- is that what they
 10 told you, it was just typical growth pain?
 11 A. Yes.
 12 Q. And did that resolve?
 13 A. Yes.
 14 Q. You haven't had that problem since the time
 15 you got it checked out?
 16 A. No.
 17 Q. Okay. Good. Any other health problems that
 18 we haven't discussed, or doctors' visits or
 19 anything other than, you know, the common cold,
 20 nothing like that, but any major problems that we
 21 haven't discussed?
 22 A. No.
 23 Q. Okay. I'm going to switch gears on you a
 24 little bit now and ask you about your school and
 25 sort of your schooling history a little bit.

1 Have you always attended public schools in
 2 Beaufort County?
 3 A. Yes.
 4 Q. Can you just tell me which schools you've
 5 attended starting with elementary school up to
 6 Beaufort High?
 7 A. Mossy Oaks, Coosa, Beaufort Elementary. You
 8 said up until high school?
 9 Q. Yes.
 10 A. And Beaufort High.
 11 Q. Where did you go for middle school?
 12 A. Middle school, Lady's Island Middle and
 13 Intermediate.
 14 Q. And so I guess Lady's Island Middle takes
 15 you, what, through like 7th grade or 6th grade, and
 16 then you had Lady's Island Intermediate right
 17 before high school?
 18 A. Yes.
 19 Q. How were you as a student?
 20 A. I was pretty good.
 21 Q. What were your favorite subjects? Or what
 22 are your favorite subjects?
 23 A. Science.
 24 Q. Any discipline problems or issues in any of
 25 your schooling?

1 A. No.
 2 Q. And I kind of alluded to this earlier about
 3 -- I think you told me you played -- and when I say
 4 rec league, I mean like a city-sponsored or like a
 5 YMCA-sponsored athletic league.
 6 And I think you said you played baseball?
 7 A. Yes.
 8 Q. How long did you play baseball?
 9 A. One year.
 10 Q. Do you remember approximately how old you
 11 were or what year that was?
 12 A. I believe I was 14.
 13 Q. And maybe not just organized leagues, but
 14 did you ever play pick-up basketball or anything
 15 like that?
 16 A. No.
 17 Q. Is that a no?
 18 A. No.
 19 Q. Sorry, I didn't hear you.
 20 How about any other extracurricular
 21 activities in school? Any clubs or anything like
 22 that in middle school, intermediate school?
 23 A. I believe yes. I was in archery a little.
 24 Q. And if I understand you, you wouldn't have
 25 played on any sports team at any middle school or

1 intermediate school?
 2 A. No.
 3 Q. And while playing that one year of baseball
 4 or doing archery, did you ever have any injuries,
 5 minor injuries, sprained ankle, anything like that?
 6 A. No.
 7 Q. Are you a sports fan in general as a
 8 spectator?
 9 A. No.
 10 Q. Don't follow sports?
 11 A. No.
 12 Q. Don't have a favorite football team?
 13 A. No.
 14 Q. Don't watch it on TV?
 15 A. No.
 16 Q. Are there any sports that you watch on TV?
 17 A. No.
 18 Q. And would that have been true before this
 19 injury?
 20 A. Yes.
 21 Q. That's consistent as you've sort of grown
 22 up; is that fair?
 23 A. Yes.
 24 Q. Do you have any plans for after graduation?
 25 A. Yes.

1 Q. What would you like to do?
 2 A. I would like to join the Air Force.
 3 Q. Have you spoken to anybody, any recruiters
 4 with the Air Force?
 5 A. Yes.
 6 Q. And is that a possibility?
 7 A. Yes.
 8 Q. And has there been any discussion about your
 9 knee surgery or how that may impact it or not
 10 impact it?
 11 A. Yes.
 12 Q. Tell me what discussion you've had -- and I
 13 take it it has been with a recruiter with the Air
 14 Force?
 15 A. Yes.
 16 Q. Or is it somebody else?
 17 A. Recruiter.
 18 Q. And tell me what they have told you about
 19 that or how that discussion has come up.
 20 A. They told me that they would have to see my
 21 medical reports to tell me whether or not they
 22 would accept me.
 23 Q. And to this date they haven't told you that
 24 they wouldn't accept you, that they would just have
 25 to see the reports?

1 A. Yes.
 2 Q. Is that fair?
 3 A. Yes.
 4 Q. Okay. Let me ask you a little bit about
 5 some of the lead-up to this injury back in May of
 6 2013.
 7 I take it from what you've told me already
 8 that you would have never played football before
 9 this spring practice in May of 2013; is that true?
 10 A. Could you repeat the question?
 11 Q. Sure. I guess let me ask you this. Apart
 12 from the spring practice that you took part in
 13 where you got injured, had you played in any
 14 football activities before then?
 15 A. No.
 16 Q. Tell me sort of as somebody who hadn't
 17 played, sort of tell me how you became interested
 18 in playing in your freshman year, in the spring of
 19 your freshman year.
 20 A. My friends, they were playing, and they were
 21 telling me about how much fun they were having so I
 22 thought I would try it.
 23 Q. Do you recall during that school year -- and
 24 correct me if I'm wrong, that would have been your
 25 first school year at Beaufort High School?

1 A. Yes.

2 Q. Tell me at what point in that year that you
3 became interested in playing football.

4 A. Maybe halfway through the year.

5 Q. And when you say halfway I think Christmas
6 break.

7 A. Yes.

8 Q. Would that be accurate?

9 A. Yes.

10 Q. And who were your friends that played that
11 sort of -- and I'm not trying to put words in your
12 mouth, but it sounds like sort of encouraged you or
13 told you they were having fun and that sort of led
14 you to be interested?

15 A. Isaiah Brisbane.

16 Q. Can you spell Isaiah for us?

17 A. I don't know how to spell his name.

18 Q. Isaiah Brisbane. Who else?

19 A. Diamond Henderson.

20 Q. I believe your attorney provided these
21 names. And Cameron Jenkins?

22 A. Yes.

23 Q. Anybody else?

24 A. No.

25 Q. So did they play their freshman year?

1 A. Yes.

2 Q. And do you know if they played JV or
3 varsity?

4 A. I don't know.

5 Q. You just knew they were playing football?

6 A. Yes.

7 Q. And did you start working out? Or did you
8 tell the coach you were interested?

9 I'm trying to -- can you take me from the
10 point about midyear when you were interested until
11 spring practice?

12 And I guess what I'm trying to ask you is
13 did you just show up for the first day of spring
14 practice? Or did you start doing workouts and
15 talking to the coaching staff or anything like
16 that?

17 A. I think I just showed up the first day.

18 Q. And I guess I need to ask you a couple of
19 questions. You were aware -- were you aware of the
20 dangers of football when you went to the spring
21 practice?

22 A. Yes.

23 Q. Were you aware that you could get hurt?

24 A. Yes.

25 Q. You knew that it was a contact sport?

1 A. Yes.

2 Q. You knew that there was no guarantee for
3 your safety when you played?

4 A. Yes.

5 Q. Do you recall how you found out about spring
6 practice? Was it through your friends? Or was
7 there like an organizational meeting where -- it's
8 been a while since I have been in high school --
9 but where they say, everybody who wants to do
10 football practice meet, you know, in the library at
11 so-and-so. Do you remember anything like that?

12 A. Through my friends.

13 Q. Okay. Did you ever go to a meeting, you
14 know, that -- where the coaches were there, or the
15 assistants, that sort of told you when practice was
16 going to start and what to expect?

17 A. No.

18 Q. Okay. Did you ever speak to anyone on the
19 coaching staff before the first day of practice?

20 A. Yes.

21 Q. Tell me what you recall about those
22 discussions. Who did you speak with? Did you talk
23 to the head coach?

24 A. I don't know who the head coach is.

25 Q. Do you remember his name?

1 A. I don't know who he is.

2 Q. But it was somebody who you believed to be a
3 coach?

4 A. Yes.

5 Q. Tell me what you remember about that
6 conversation. Was it simply you going to tell him
7 that you wanted to try out?

8 A. Yes.

9 Q. Or wanted to participate?

10 A. Yes.

11 Q. Can you describe this person?

12 A. Older, tall, glasses.

13 Q. And where did this take place? Was this
14 like in a locker room? Or was this in a classroom?

15 A. It was in the hallway.

16 Q. And I take you probably didn't know all the
17 coaches because you hadn't played before; is that
18 fair?

19 A. Yes.

20 Q. But you for whatever reason, whether through
21 your friends or just through general knowledge,
22 understood that to be a member of the coaching
23 staff?

24 A. Yes.

25 Q. I mean, you had seen him before at Beaufort

1 High School?
 2 A. Yes.
 3 Q. And I don't want to assume what all you
 4 discussed, but did he give you, I guess,
 5 information about where to show up for the first
 6 day of practice?
 7 A. Yes.
 8 Q. Okay. And what time?
 9 A. Yes.
 10 Q. Okay. Do you recall that person who you
 11 spoke with about practice ever saying anything
 12 about a physical or a parental permission form?
 13 A. Physical.
 14 Q. A physical. What did he tell you?
 15 A. He said that I would have to go and get a
 16 physical first.
 17 Q. And do you remember how far in advance of
 18 the first day of practice you had this conversation
 19 with this coach?
 20 A. No.
 21 Q. And did the coach mention anything about
 22 where to go to get a physical?
 23 A. No.
 24 Q. And you were living with your mom at this
 25 time?

1 A. Yes.
 2 Q. Before you talked to that coach about your
 3 interest in maybe trying out for spring practice,
 4 had you discussed it with your mother?
 5 A. No.
 6 Q. After the coach said that you would need a
 7 physical, did you go talk to your mother about it
 8 at that point?
 9 A. Yes.
 10 Q. Would that have been that same day or
 11 shortly thereafter?
 12 A. Shortly.
 13 Q. And was part of that conversation asking her
 14 about going to get a physical?
 15 A. Yes.
 16 Q. Tell me about that conversation with your
 17 mom. Tell me what you remember.
 18 A. I remember asking for a physical.
 19 Q. And what was her response?
 20 A. No.
 21 Q. Did she tell you why?
 22 A. Yes.
 23 Q. What was that?
 24 A. Because she thought I would get hurt.
 25 Q. Did you -- what was your response?

1 A. I was upset.
 2 Q. And I take it you -- did you know by the
 3 time you talked with your mother that she would
 4 need to sign a permission form for you?
 5 A. Could you repeat the question?
 6 Q. Yes. Before you went to talk to your mom
 7 about the physical, were you also aware that you
 8 would have needed her to sign a permission form for
 9 you?
 10 A. No.
 11 Q. When -- did you ever learn that a permission
 12 form would have been needed?
 13 A. Yes.
 14 Q. Was that after your injury or before?
 15 A. After.
 16 Q. Okay. So is it your testimony that before
 17 your injury nobody at Beaufort High School
 18 mentioned to you that you would need a parental
 19 permission form?
 20 MS. ANDERSON: Object to the form. You
 21 can answer.
 22 A. Could you repeat the question?
 23 Q. Yeah. Let me back up a second. Is it your
 24 testimony that nobody at Beaufort High School --
 25 strike that. Let me ask it a better way.

1 Do you recall if anybody at Beaufort High
 2 School from the coaching staff or trainers or
 3 anybody told you that you would need a permission
 4 form signed by a parent before practice?
 5 A. Could you repeat the question?
 6 Q. Sure. Before you went to practice the first
 7 day of that spring, that spring football practice,
 8 had anyone told you you needed a permission form
 9 signed by a parent?
 10 A. No.
 11 Q. Did anybody ask you for one?
 12 A. Yes.
 13 Q. Okay. When was that; do you remember?
 14 Was it the first day of practice?
 15 A. Yes.
 16 Q. Do you recall what you said or --
 17 A. I said I didn't know I was supposed to have
 18 one.
 19 Q. Okay. Anything else you remember about that
 20 conversation?
 21 A. No.
 22 Q. Okay. I got off on a sidetrack. Let me
 23 back up a second.
 24 As a -- believe it or not, I was a
 25 16-year-old boy once. So when your mother said

1 you couldn't --

2 MR. HOFFMAN: I object. Still

3 unbelievable.

4 Q. So when your mother said she wasn't going to
5 support you or go get a physical for you, was it a
6 pretty big disagreement?

7 You know, I can imagine how I would have
8 responded so I sort of -- did y'all -- you know,
9 did you not talk for a while? Or were you upset or
10 angry?

11 A. Yes.

12 Q. Did you go talk to Dad about it or anything
13 like that?

14 A. No.

15 Q. Did you look into any other ways to get a
16 physical outside of talking with your mom about it?

17 A. No.

18 Q. You didn't ask any friends where they had
19 gotten physicals or anything like that?

20 A. No.

21 Q. And besides that conversation with the coach
22 in the hallway where I guess you had some
23 discussion about when practice would start and that
24 you would need a physical, did you ever talk with
25 the coaching staff before the first day of

1 Q. Okay. Did you tell him why you wanted the
2 cleats?

3 A. No.

4 Q. Did he ask?

5 A. No.

6 Q. You just asked him for a pair of cleats and
7 he bought them for you no questions asked?

8 A. Yes.

9 Q. And did you ever have any discussions with
10 your mom after that first one about needing a
11 physical or wanting to go get a physical?

12 A. Yes.

13 Q. How many times did you bring it up or try
14 and get your mom to agree to have you go get a
15 physical?

16 A. A few times.

17 Q. Did you ever discuss with her that you may
18 go try and practice without getting a physical?

19 A. No.

20 Q. Did you ever, I guess, threaten that or, you
21 know, mention that to her, that you would do that?

22 A. No.

23 Q. Okay. During this 2012-2013 school year,
24 how would you get to and from school?

25 A. By bus.

1 practice?

2 Any other conversations with coaches before
3 the first practice?

4 A. No.

5 Q. Did they give you -- before the first day
6 did you have to go get a locker or get equipment or
7 anything like that?

8 A. No.

9 Q. Did they -- did the school provide you with
10 cleats and a helmet and shoulder pads?

11 A. On the first day.

12 Q. On the first day. Did you have to provide
13 your own cleats?

14 A. Yes.

15 Q. Okay. You brought your own cleats?

16 A. Yes.

17 Q. Did you go out and buy some? Or did you
18 already have a pair? Or did you borrow a pair? Do
19 you remember?

20 A. My father bought me some.

21 Q. Your father bought you some?

22 A. Yes.

23 Q. Was your father aware that you were going to
24 go do spring practice?

25 A. No.

1 Q. By bus. And then when spring practice
2 started, do you remember what time of day practice
3 was?

4 A. Right after school.

5 Q. Right after school. How would you get home
6 from practice?

7 A. I would walk.

8 Q. Walk. How far away did you live from the
9 school?

10 A. I don't know.

11 Q. Okay. Was it more than a couple of miles?

12 A. Yes.

13 Q. Okay. Nobody would give you a ride or
14 anything?

15 A. No.

16 Q. Do you remember how many practices you were
17 able to get through before you got injured?

18 A. Three.

19 Q. And during -- and really just talking about
20 the time of spring practice, which would have been,
21 you know, the first part of May of 2013, was your
22 mom working at the time?

23 A. Yes.

24 Q. What hours would she keep?

25 A. I don't know.

1 Q. You don't know. Was your mom typically at
2 home when you got home from riding the bus?
3 A. No.
4 Q. Do you remember what time she would get home
5 in the afternoons?
6 A. No.
7 Q. Then those first couple of days of spring
8 practice, after practice would you -- what would
9 you wear home?
10 Would you wear your sweaty clothes home? Or
11 would you change? How would you --
12 A. I would change.
13 Q. And when you got home after practice, was
14 your mom home?
15 A. Yes.
16 Q. Did she ever ask where you had been or
17 question you about what you had been doing?
18 A. Yes.
19 Q. And what would you tell her?
20 A. I would tell her that I would be at football
21 practice.
22 Q. That you were at football practice?
23 A. Yes.
24 Q. And what did she say at that time?
25 Was she upset with you?

1 A. Yes.
2 Q. Did she tell you not to go back?
3 A. Yes.
4 Q. And you did go back?
5 A. Yes.
6 Q. Did that happen more than -- I know it was a
7 couple days before the injury, but did that happen
8 every day before this injury?
9 A. No.
10 Q. Do you know if your mom ever tried to call
11 the school or anything like that --
12 A. No.
13 Q. -- and complain to the coaches or -- did you
14 get any trouble for it?
15 A. No.
16 Q. And as I understand, again it has been long
17 time, but you wouldn't have worn full pads the
18 first day of practice; is that right?
19 A. No.
20 Q. You sort of gradually work up to wearing
21 full pads and then having contact; is that
22 accurate?
23 A. Yes.
24 Q. And had you had contact at practices before
25 the date you got injured?

1 A. Yes.
2 Q. In those first couple of practices before
3 your injury, had you had any flare-ups or problems
4 with shortness of breath or asthma?
5 A. No.
6 Q. Had you had any problems at practice, hurt,
7 nicks, bruises, sprained ankle or anything like
8 that?
9 A. Bruises.
10 Q. Anything that would have required medical
11 attention from the trainer?
12 A. No.
13 Q. Do you recall how long the practices would
14 last?
15 A. No.
16 Q. I take it, though, if it started after
17 school you were getting home before dark?
18 A. Yes.
19 Q. Darrell, can you sort of just tell me what
20 happened? I may ask you some follow-up questions,
21 but tell me what happened when you got injured.
22 A. Could you be more specific?
23 Q. Yeah. I guess let me start, that practice
24 where this happened, did it happen at the
25 beginning, the middle, or the end of practice?

1 A. I can't really answer that.
2 Q. That's fine. And I guess let me give you
3 another little disclaimer. I'm probably going to
4 be asking you some minor details. I realize it was
5 almost three years ago, but I don't know if you
6 remember unless I ask.
7 So if you don't remember, that's perfectly
8 fine. I don't expect you to remember every little
9 detail, but I kind of need to ask just to make sure
10 of, and I can prompt you if that helps.
11 Do you remember what y'all were doing? Were
12 you doing a team drill? Or what the team was doing
13 at the time you got injured?
14 A. We were practicing -- we were practicing --
15 the offensive line was practicing, I think. I
16 think that was it.
17 Q. And what position did they have you playing
18 during that spring practice?
19 A. I'm not sure.
20 Q. Okay. When they did like position drills,
21 did you go with running backs or wide receivers or
22 linemen; do you remember?
23 A. I'm not sure.
24 Q. Were you -- I guess let me ask it this way.
25 Your friends Cameron and Isaiah and Diamond, do you

1 know what positions they played?
 2 A. No.
 3 Q. Did you have the same sort of coach who was
 4 with you most of the time during practice?
 5 A. Yes.
 6 Q. Do you remember that coach's name?
 7 A. No.
 8 Q. Do you remember what he looked like?
 9 A. No.
 10 Q. Was he older or younger?
 11 A. I don't remember.
 12 Q. You don't remember. Don't remember
 13 anything?
 14 A. (Head shake.)
 15 Q. Is that a no?
 16 A. No.
 17 Q. Do you remember the actual play that caused
 18 your injury?
 19 A. No.
 20 Q. Do you recall if you were running the ball
 21 or how you got hit? Or somebody hit you from the
 22 side, the back, or the front?
 23 A. I was running the ball and two people hit
 24 me.
 25 Q. Okay. And I think you said something about

1 offensive line, they were doing offensive line
 2 drills. So the offensive line was trying to block
 3 and you were running behind them?
 4 A. Yes.
 5 Q. And then you got tackled?
 6 A. Yes.
 7 Q. And I take it immediately your knee was
 8 hurting?
 9 A. Yes.
 10 Q. Tell me what you remember, if anything,
 11 about the incident when your knee got hurt.
 12 A. I don't remember.
 13 Q. Okay. Do you remember the trainer coming
 14 over?
 15 A. Yes.
 16 Q. Okay. Were you crying, screaming, or you
 17 just knew you'd hurt your knee?
 18 A. I knew I hurt my knee.
 19 Q. But you weren't crying or screaming or
 20 anything like that?
 21 A. No.
 22 Q. Could you put any weight on it?
 23 A. A little.
 24 Q. Just a little?
 25 A. (Nodding head.)

1 Q. And then I guess did they take you off to
 2 the side?
 3 A. Yes.
 4 Q. Put ice on it?
 5 A. Yes.
 6 Q. Do you recall anything else the trainer did
 7 for you after your injury that day?
 8 A. Yes.
 9 Q. What did he do?
 10 A. He checked if my knee was out of place.
 11 Q. I guess kind of felt your kneecap and things
 12 like that?
 13 A. Yes.
 14 Q. Did he tell you what he thought?
 15 A. Yes.
 16 Q. He told you he thought you may have torn
 17 your ACL?
 18 A. Yes.
 19 Q. Anything else he thought you may have done?
 20 A. No.
 21 Q. How did you get home that night?
 22 A. I can't remember.
 23 Q. You don't remember?
 24 A. (Head shake.)
 25 Q. Do you remember -- and I take it you didn't

1 walk home?
 2 A. No.
 3 Q. Do you know if either one of your parents
 4 came and got you?
 5 A. Yes.
 6 Q. Do you remember which one?
 7 A. No.
 8 Q. Let me ask you this, Darrell. While you
 9 were at those practices before your injury, did you
 10 ever see anyone there who was from the South
 11 Carolina High School League?
 12 A. I don't know anybody from the High School
 13 League.
 14 Q. And maybe let me ask you this way. Did you
 15 ever see anybody at practice who was not either
 16 someone you recognized as a coach or a trainer?
 17 A. No.
 18 Q. No one ever identified themselves with you
 19 as from the South Carolina High School League?
 20 MR. HOFFMAN: I would object to form.
 21 But go ahead and answer.
 22 Q. Nobody identified himself to you as being
 23 member of the staff of the South Carolina High
 24 School League?
 25 MR. HOFFMAN: Same objection.

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1 A. No.
 2 Q. Have you ever had a physical before this
 3 incident?
 4 A. No.
 5 Q. Have you ever had one since this incident?
 6 A. No.
 7 Q. Darrell, your attorney has provided us most
 8 of your hospital records, your surgery records, and
 9 PT and things like that. I'm not going -- I can
 10 read the records, so I'm not going to go through
 11 them one by one with you.
 12 But it is important for me to sort of make
 13 sure your recollection, if it's different I want
 14 you to let me know. But I just kind of generally
 15 want to talk about your rehab and your treatment
 16 after this injury.
 17 Is that fair?
 18 A. Yes.
 19 Q. Okay. And it looked like to me that this
 20 happened on May 13th, which was the date of
 21 practice. And then your surgery, I think, was May
 22 31st of 2013 where they fixed your ACL.
 23 Do you recall why they waited a couple weeks
 24 before doing your surgery?
 25 A. No.

1 worse, or that they had trouble fixing it?
 2 Do you recall any conversations with him
 3 about any complications?
 4 A. No.
 5 Q. I didn't see any, but I just want to make
 6 sure that you don't have a different recollection.
 7 And can you -- what did you do for your
 8 rehabilitation process? Was it just physical
 9 therapy?
 10 A. Yes.
 11 Q. And how would you get to physical therapy?
 12 A. My mother.
 13 Q. Your mom would take you. And I think you
 14 had -- it looks like from the records we got I
 15 think you started the day after your surgery, which
 16 was June 1st, and I think you had about 24, 25
 17 visits up through October of 2013.
 18 Does that sound about right?
 19 A. Yes.
 20 Q. Okay. Can you tell me what the rehab
 21 process was like? I mean, did you have any
 22 setbacks? Or did your knee -- I mean, was the
 23 therapy helpful?
 24 And sort of tell me in your own words about
 25 the rehab process.

1 Q. I assume it was either swelling or to let
 2 you get done with school. Do you recall any reason
 3 why?
 4 A. No.
 5 Q. Did you ever go back to the practices after
 6 your injury on crutches and watch practice?
 7 A. No.
 8 Q. Did you go back to school after your injury
 9 for the last couple weeks of the school year?
 10 A. Yes.
 11 Q. And were you on crutches?
 12 A. Yes.
 13 Q. And had a brace on, I imagine?
 14 A. Yes.
 15 Q. And then after your surgery, did you have
 16 any complications to your knowledge during the
 17 surgery?
 18 A. Could you repeat the question?
 19 Q. Yeah. Maybe let me be a little bit clearer.
 20 Do you recall the surgeon, and I think it
 21 was Dr. Dean, was he the doctor who you saw for
 22 most of your treatment? Mark Dean?
 23 A. Yes.
 24 Q. Did he ever tell you that, you know, they
 25 got in for surgery and saw that your knee was much

1 A. Could you be more specific?
 2 Q. Sure. Was it -- were you able to meet all
 3 of the goals that they set for you?
 4 A. Yes.
 5 Q. Okay. Did you ever have any setbacks where
 6 you made a bunch of progress and then, you know,
 7 you kind of hurt it again and you had to start
 8 over? Anything like that happen?
 9 A. Yes.
 10 Q. Okay. Do you remember what happened that
 11 caused you to have a setback?
 12 A. No.
 13 Q. Okay. Other than the physical therapist and
 14 Dr. Dean, did you see any other medical providers
 15 to help you recover from your knee injury?
 16 A. No.
 17 Q. And I believe Dr. Dean, one of the last
 18 records I have -- and I'm going to sort of flip
 19 through these to make sure before I finish my
 20 questions -- it looks like the last time he would
 21 have seen you sort of after the surgery was in
 22 November or December of 2013. And then I think you
 23 went back because you were having some pain in
 24 2014.
 25 Do you remember going back about a year and

1 a half afterwards with some pain that was coming
2 up?

3 A. Yes.

4 Q. Okay. Was there something that happened?

5 Like, you know, you told me about the incident
6 where you sort of stepped and -- stepped wrong and
7 fell.

8 Did anything else like that happen that sort
9 of caused this pain to come back?

10 A. No.

11 Q. It just would sort of come out of nowhere?

12 A. Yes.

13 Q. And it looks like he did some more MRIs and
14 checked it out and everything looked to be intact
15 from his examination.

16 Is that your understanding?

17 A. Yes.

18 Q. Okay. In 2015, so last year, did you ever
19 see Dr. Dean or any other medical provider for your
20 right knee, for any pain in your right knee?

21 A. Yes.

22 Q. Who do you recall seeing? Was it somebody
23 different than Dr. Dean?

24 A. Dr. Reese.

25 Q. Dr. Reese. And that was for your right

1 Q. Okay. And do you still see Dr. Reese on a
2 regular basis? Or did you just go get it checked
3 out that time you were having some pain?

4 A. Could you repeat the question?

5 Q. Yeah. You told me you had seen Dr. Reese in
6 2015 when you were having some more pain.

7 Do you still see Dr. Reese on a regular
8 basis?

9 A. No.

10 Q. But if you had pain you might go back and
11 see him?

12 A. Yes.

13 Q. Have you seen Dr. Reese at all in 2016?

14 A. No.

15 Q. It's kind of on as needed? If you have
16 problems you can go see him, but you don't have an
17 appointment at any time in the future to go see
18 him?

19 A. No.

20 Q. Darrell, we have been going about an hour.

21 Do you want to take a quick break? I'm almost done
22 in the sense I want to go through a couple
23 documents.

24 Do you want to take a quick break?

25 A. Yes.

1 knee?

2 A. Yes.

3 Q. Okay. Is he in a different practice than
4 Dr. Dean?

5 A. I don't know.

6 Q. Don't know. And did he tell you what he
7 found, if anything, was wrong with your knee?

8 A. He found that my right knee was loose or,
9 you know, it wasn't as -- I forgot exactly the way
10 he put it, but it wasn't the same as my left knee.

11 Q. Do you recall if he did any X-rays or MRIs
12 that showed some abnormality in the knee?

13 A. I believe he did an MRI.

14 Q. Okay. And you think he saw something in
15 there that made him think it may not be as good as
16 it should be?

17 A. Not in the MRI, but he did a physical test
18 with my knee.

19 Q. Okay. And what kind of test did he do?

20 A. I don't know.

21 Q. Did he make you like run on a treadmill?

22 A. No.

23 Q. Or was he just touching it and manipulating
24 your knee?

25 A. Yes.

1 Q. Okay.

2 MR. MONTGOMERY: We're off the record.
3 (A recess was taken.)

4 MR. MONTGOMERY: We are back on the
5 record.

6 Q. Darrell, I am sort of getting towards the
7 end of my questions. As you can see, I have a
8 stack of papers here that I have tabbed. I'm just
9 going to flip through them.

10 I think we have probably talked about most
11 everything, but I have got copies. If I need to
12 mark something and show it to you, I will. If you
13 want see it, just let me know.

14 I'm not trying to trick you, but I just kind
15 of want to go through these real quick and touch on
16 anything we may not have covered. And so I kind of
17 say that I will be jumping around on you a little
18 bit just trying to fill in some gaps.

19 Isaiah Brisbane, Diamond Henderson and
20 Cameron Jenkins, do you still keep in touch with
21 them? Are you still friends with them?

22 A. Yes.

23 Q. Okay. You would be able to get in contact
24 with them if needed?

25 A. One of them.

1 Q. One of them?
 2 A. Yes.
 3 Q. Who do you still keep in contact with?
 4 A. Diamond Henderson.
 5 Q. And then just to make sure I understood you
 6 correctly, during those first few spring practices
 7 before you got injured, you said today at some
 8 point you went home and either your mother asked or
 9 you told her you had been at football practice and
 10 she wasn't happy about it but you still went back;
 11 is that correct?
 12 A. No.
 13 Q. All right. I may have misheard that.
 14 Before this injury, had you gone home from football
 15 practice and your mom was there and asked where
 16 you'd been?
 17 A. Before? Yes.
 18 Q. Yeah. And did you tell her you'd been at
 19 football practice?
 20 A. Yes.
 21 Q. Okay. And then did she say, don't go back,
 22 or, I don't want you going back?
 23 A. Yes.
 24 Q. Okay. But you did go back and go to another
 25 practice?

1 A. Yes.
 2 Q. And then got injured?
 3 A. Yes.
 4 Q. Okay. If you'll bear with me just one
 5 second, Darrell. I'm trying to make sure and see
 6 if I have any records from Dr. Reese.
 7 There was a record from Dr. Dean in October
 8 of 2013, and I think probably you were at the tail
 9 end of your physical therapy after the surgery.
 10 And he's got a note where it says, Tony did a nice
 11 job with the rehab.
 12 But I take it you've never gone by Tony?
 13 A. No.
 14 Q. And it says, he plays football strictly so
 15 he is going to lose some season, but we will see
 16 him back in six weeks for a final recheck.
 17 I take it you never went back out for
 18 football again?
 19 A. No.
 20 Q. And I see where he gave a note to allow you
 21 to participate in ROTC?
 22 A. Yes.
 23 Q. Had you participated in -- I guess it's
 24 Junior ROTC?
 25 A. Yes.

1 Q. Had you participated in that before spring
 2 practice?
 3 A. Yes.
 4 Q. Did you start that in your 9th grade year?
 5 A. Yes.
 6 Q. And have you continued to do that since
 7 then?
 8 A. Yes.
 9 Q. And ever had any problems with Junior ROTC
 10 due to your knee?
 11 A. Yes.
 12 Q. Tell me what kind of problems you've had.
 13 A. Starting this year they haven't let me do
 14 any PT.
 15 Q. Had you done any before this year?
 16 A. Yes.
 17 Q. And is it because your knee has been
 18 bothering you? Or other reasons?
 19 A. Could you repeat the question?
 20 Q. Yeah. You said they wouldn't let you do PT
 21 this year but you had done it in previous years?
 22 A. Yes.
 23 Q. Is the reason they have not let you do PT
 24 due to your right knee?
 25 A. Yes.

1 Q. Or is there some other health issue, or left
 2 knee, or asthma, or whatever, that's caused them to
 3 not let you do PT?
 4 A. My right knee and my asthma.
 5 Q. But your asthma is still about once or twice
 6 a month, shortness of breath for about a minute?
 7 A. Yes.
 8 Q. Have you had an asthma attach during Junior
 9 ROTC?
 10 A. No.
 11 Q. I think we've covered all this, so that's
 12 why I'm flipping through it as quickly as I can.
 13 Darrell, in some of the documents produced
 14 by the Beaufort County School District it looks
 15 like this year you're taking math and English,
 16 biology.
 17 You're taking a full load of classes this
 18 year; is that correct?
 19 A. Yes.
 20 Q. And the plan is to graduate in May?
 21 A. Yes.
 22 Q. Have you read the statement by the athletic
 23 trainer who was present at the time of your injury?
 24 A. No.
 25 Q. And if you wanted to look at it, really the

1 question I wanted to ask is, in his statement he
2 mentions that your dad came and picked you up?

3 MR. HOFFMAN: I think he should -- let
4 him read it.

5 MR. MONTGOMERY: I'll be glad to. I
6 have got a copy right here.

7 MR. HOFFMAN: Go ahead and take your
8 time and give it a read.

9 MR. MONTGOMERY: We will mark this --
10 well, we don't need to mark it quite yet.

11 Bruce, I will give you a copy too.

12 MR. HOFFMAN: Thank you.

13 A. And Joshua said this?

14 Q. I'm sorry?

15 A. You said that this is from the -- the
16 certified athletic trainer.

17 Q. Right. That is a document that has been
18 produced in the case. I didn't write it, and we
19 haven't talked to Mr. Ferguson. But, yeah, that's
20 a statement that I believe to be from Mr. Ferguson.

21 Do you know Josh, the trainer?

22 A. I've only seen him the time that I got --

23 Q. Okay. You haven't had any interaction with
24 him after this incident?

25 A. No.

1 Q. But do you remember him pretty clearly?

2 A. Yes.

3 Q. And the reason I wanted to ask you about
4 that statement is that he wrote -- writes a
5 statement, and it's dated 10/14/13, that your
6 father had come and picked you up. And I think you
7 had told me you couldn't remember if your mom or
8 your dad came and got you.

9 I'm not asking you to agree or disagree with
10 his statement. I just wanted to show you that to
11 see if that may, you know, refresh your
12 recollection any as to whether your mom or your dad
13 picked you up after the practice where you got
14 hurt.

15 A. Yes, it refreshes my memory.

16 Q. Okay. And so you do remember it was your
17 father?

18 A. No, it wasn't my father.

19 Q. It wasn't. It was your mother?

20 A. Yes.

21 Q. Okay. Do you remember if your mother said
22 anything about -- or, you know, why you were at
23 football practice, or questioned the athletic
24 trainer about what you were doing at football
25 practice?

1 A. Yes.

2 Q. Okay. Tell me what you remember about that
3 conversation.

4 A. She was wondering -- actually, I know she
5 was asking about it, but I can't exactly remember
6 what she was asking.

7 Q. And I guess maybe my question may need --
8 because when I first asked you if your mother or
9 your dad picked you up you said you couldn't
10 remember if it was your mom or your dad.

11 Do you believe your mom may have come back
12 to school at a separate time and questioned why you
13 had been allowed to play? Or do you think it was
14 the day you got hurt?

15 A. The day I got hurt.

16 Q. And do you recall who she talked to, whether
17 it was the trainer or any of the coaching staff?

18 A. I can't recall. I know she talked to the
19 trainer.

20 Q. Okay. Let me ask you, currently, as we sit
21 here today, do you have occasional flare-ups of
22 right knee pain?

23 A. Yes.

24 Q. How often does that happen? Can you give me
25 any sort of indication?

1 Is it a monthly thing? Is it less than
2 that? More than that?

3 A. It's monthly.

4 Q. Okay. And is it just general soreness? Or
5 is there a certain type of pain or problem that you
6 have?

7 A. I can't bend it and put weight on it at the
8 same time. Like if I was to squat down, I could
9 only do that for a certain period of time.

10 Q. So when you squat -- the problem that you
11 notice is that when you squat, if you're in that
12 squatting position for too long you can tell, you
13 get some pain in your right knee?

14 A. Yes.

15 Q. But if you're just standing straight up and
16 down, does that cause pain, or walking cause pain?
17 Or is it typically just the squatting?

18 A. Just the squatting.

19 Q. And is there anything -- you mentioned a
20 little bit about Junior ROTC. Is there anything
21 else that you are not able to do that you were able
22 to do beforehand besides the squatting and -- I'm
23 trying to get a sense of what you had to stop
24 doing, or anything that you can't do now that you
25 could do before this incident?

1 A. I believe I've already answered this. I
2 can't do PT.

3 Q. Right. And you did. And I guess what I
4 wanted to be clear, is there anything other than
5 what we've talked about, the PT and the squatting,
6 that you would say is something you can't do now
7 that you could do beforehand?

8 A. No.

9 Q. Okay. Do you have a Facebook page,
10 Instagram account, or anything like that? Social
11 media?

12 A. No.

13 Q. Have you ever had one? Or back in 2013?

14 A. I've had one before, but I haven't seen or
15 been on it in a while.

16 Q. Do you know if you ever put anything about
17 this incident on Facebook or Instagram or any
18 social media accounts?

19 A. No.

20 Q. Darrell, I ask everybody these last couple
21 questions.

22 Is there any medical treatment that you did
23 not do because either you or your mother could not
24 pay for it or could not afford it?

25 A. No.

1 Q. Do you believe you've understood all my
2 questions?

3 A. Yes.

4 Q. Okay. Are you on any medication that would
5 impact your ability to understand and answer
6 truthfully?

7 A. No.

8 Q. Have I been nice to you today?

9 A. Yes.

10 Q. Okay.

11 MR. MONTGOMERY: That's all the
12 questions I have. Thank you.

13 Ms. Anderson may have some questions
14 for you.

15 EXAMINATION

16 BY MS. ANDERSON:

17 Q. Hey, Mr. Alston,

18 A. Hi.

19 Q. My name is Tori Anderson, and I represent
20 the Beaufort County School District as part of this
21 lawsuit that we're here about today.

22 I do have a couple questions for you. I
23 won't have nearly as many as Mr. Montgomery here,
24 that's because he asked them all. I just have a
25 few things.

1 So it will feel like I'm jumping around a
2 little bit, it's just because I've got just a few
3 questions here or there. So just bear with me.

4 And if you have any questions about what I'm
5 asking, just let me know. Okay?

6 A. Okay.

7 Q. When you were talking about the asthma that
8 you have once or twice a month, the shortness of
9 breath that will resolve on its own, is there any
10 particular activity that will bring that on? Or
11 does it just kind of happen on its own?

12 A. Running.

13 Q. Just running?

14 A. (Nodding head.)

15 Q. And what do you do to get it to stop?

16 A. I rest.

17 Q. You rest?

18 A. Yes.

19 Q. And then you just keep running?

20 A. Yes.

21 Q. After you hurt your knee on the football
22 field that day, how do you recall getting off of
23 the field?

24 A. Josh helped me.

25 Q. Did he put his arm under yours to help you

1 walk off the field? Or did he drive you off on the
2 little golf cart thing? How did he get you off?

3 A. He took me to the sideline by, you know,
4 holding me up with his arms. And then he went to
5 go get ice. And then, you know, he put it on my
6 knee. And then he helped me to the golf cart thing
7 and we drove to the boys' locker room, I think.

8 Q. Okay. And what happened once you got to the
9 boys' locker room?

10 A. He helped me in there and did some kind of
11 concussion evaluation on me.

12 Q. And he checked your knee out at the same
13 time?

14 A. He did that on the field.

15 Q. On the field. And when he got you inside he
16 did a concussion evaluation?

17 A. Yes.

18 Q. How did your -- you said your mom came and
19 picked you up that day?

20 A. Yes.

21 Q. How did she know to come get you?

22 A. While we were driving to the boys' locker
23 room he asked if there was any kind of number that
24 he could contact for someone to come get me.

25 Q. And did he call her right there?

1 A. I don't believe so.
 2 Q. When did he call her?
 3 A. I don't know.
 4 Q. Was it after he checked you for the
 5 concussion or before?
 6 A. Before.
 7 Q. Were you there when he made the phone call?
 8 A. No.
 9 Q. How long after the phone call did it take
 10 for your mom to get there?
 11 A. I don't know.
 12 Q. Was it within 30 minutes, do you think? Did
 13 it take longer than that?
 14 A. I don't know.
 15 Q. What did you do after he checked you for the
 16 concussion?
 17 A. I can't remember.
 18 Q. Did you go in the locker room and change?
 19 A. Yes.
 20 Q. And then you came out. Was your mom waiting
 21 for you when you got out?
 22 A. Yes.
 23 Q. Okay. Did you -- were they having a
 24 conversation when you got out there?
 25 A. Yes.

1 Q. Do you recall what they were talking about?
 2 A. No.
 3 Q. Did you ever feel like at any time you
 4 needed an ambulance that day?
 5 A. Yes.
 6 Q. Did you ask for an ambulance?
 7 A. No.
 8 Q. Did you just go home with your mom and
 9 decide what to do from there?
 10 A. My mother called my father and then he came.
 11 And she said that the next day we would go to the
 12 hospital.
 13 Q. Did your dad come to the school, or came to
 14 your house?
 15 A. He came to the school.
 16 Q. So both your mom and your dad were at the
 17 school?
 18 A. Yes.
 19 Q. What did your dad say when he got to the
 20 school?
 21 A. Nothing.
 22 Q. Nothing?
 23 A. No.
 24 Q. Just walked up, didn't open his mouth at
 25 all?

1 A. I don't believe so.
 2 Q. Okay. Did you ride home in your mom's car
 3 or in your dad's car?
 4 A. My father's car.
 5 Q. And did you go straight to your house?
 6 A. Yes.
 7 Q. What did you do that night?
 8 A. I just put my knee up.
 9 Q. Did you put ice on it?
 10 A. Yes.
 11 Q. Were you taking anything that night?
 12 A. No.
 13 Q. What did the trainer recommend for you?
 14 A. To just ice it.
 15 Q. Did he give you the recommendation for
 16 Dr. Dean, to go see Dr. Dean?
 17 A. Yes.
 18 Q. Did you go to the hospital, or did you go to
 19 see Dr. Dean? How did that happen?
 20 A. I don't remember.
 21 Q. Did you go to the hospital first?
 22 A. I don't remember.
 23 Q. Had your dad ever been out there watching
 24 you at practice before?
 25 A. No.

1 Q. You don't recall seeing him out there?
 2 A. No.
 3 Q. Had your mom come out and seen you at
 4 practice?
 5 A. No.
 6 Q. I thought that might be the answer.
 7 But before you went to practice, I know you
 8 said you talked to an older gentleman who was one
 9 of the coaches, correct?
 10 A. Yes.
 11 Q. And he told you that you needed a physical
 12 before going to practice, correct?
 13 A. Yes.
 14 Q. Did anybody else tell you that you needed a
 15 physical before practice?
 16 A. My friends.
 17 Q. Would that be Cameron, Diamond and Isaiah?
 18 A. Yes.
 19 Q. What did they tell you?
 20 A. Could you repeat the question?
 21 Q. What did they tell you about needing a
 22 physical?
 23 A. That I would need one to be on the field.
 24 Q. And what did you say to them?
 25 A. That I would see if my mother would get me

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1 one.

2 Q. Did they tell you that you needed a
3 permission slip?

4 A. No.

5 Q. They didn't tell you that?

6 A. No.

7 Q. When did you have this conversation with
8 them?

9 A. I don't remember.

10 Q. Was it before the first day of practice?

11 A. Yes.

12 Q. Do you think it was the day before practice
13 started, or was it a couple of days?

14 A. I'm not sure.

15 Q. Was it enough time that you could have
16 gotten a physical if your mom would have let you?

17 A. I'm not sure.

18 Q. Before you started football practice, was
19 there any kind of, I guess for lack of a better
20 word, a meeting where everybody sat down and the
21 coaches said, okay, this is what the plan is. This
22 is what we're doing on day one, day two?

23 A. No.

24 Q. Walk me through what happened on your first
25 day of practice, because it was your first day

1 Q. How would people know? If they didn't have
2 friends on the team, how would people know to show
3 up?

4 A. I'm not sure.

5 Q. You just knew because your friends were
6 going?

7 A. Yes.

8 Q. Were there any posters or signs in the gym
9 about practice or physicals or anything like that?

10 A. No.

11 Q. Do you recall seeing them? Or you just
12 don't recall if there were any up there?

13 A. I don't recall.

14 Q. Do you recall if there were any signs or
15 posters in the locker room about needing a physical
16 or a permission slip?

17 A. No.

18 Q. That's just not something you were paying
19 attention to? You didn't see anything like that?

20 A. No.

21 Q. Did you ever tell any of the coaches that
22 you had a physical?

23 A. No.

24 Q. Did you ever tell any of the coaches that
25 you had a permission slip?

1 walking in there, right?

2 A. Yes.

3 Q. Was that a yes?

4 A. Yes.

5 Q. What happened that first day when you walked
6 in there?

7 A. I think right after school we went to the
8 gym. And he said, everybody get changed, and so I
9 did. And we just went outside from there.

10 Q. Who said, everybody get changed?

11 A. I'm not sure. I think it was the coach that
12 I had originally talked to.

13 Q. That very first one, the older gentleman
14 with the glasses?

15 A. Yes.

16 Q. How did you know where to go that first day?

17 A. I followed my friends.

18 Q. Were there any posters up in the school
19 talking about when spring practice was?

20 A. No.

21 Q. Were there any announcements over the
22 intercom? Or I don't know if you guys have a
23 morning TV show, or anything like that, about when
24 spring practice would start?

25 A. No.

1 A. No.

2 Q. Had you ever worked out with the football
3 team before practice?

4 A. Before the first day?

5 Q. Yes.

6 A. No.

7 Q. Did you do any weight training with the
8 football team before the first day of practice?

9 A. No.

10 Q. Never?

11 A. No.

12 Q. Did you do weight training before practice?

13 A. No.

14 Q. Have you ever been in weight training?

15 A. Yes. But my sophomore year.

16 Q. And this happened your freshman year?

17 A. Yes.

18 Q. Did you ever do any after-school weight
19 training?

20 A. No.

21 Q. Did you ever tell your mom that you were
22 doing weight training instead of football?

23 A. No.

24 Q. That never happened?

25 A. No.

1 Q. When your mom asked you where you were, you
2 told her you were at football?
3 A. Yes.
4 Q. And that's when she wasn't happy with you?
5 A. Yes.
6 Q. Did your friends know that you did not have
7 a physical before you went on the field?
8 A. I'm not sure.
9 Q. Did you tell them that?
10 A. I'm not sure.
11 Q. Did you tell anybody that you didn't have a
12 physical before you went on the football field?
13 A. No.
14 Q. Did you tell anybody you didn't have a
15 permission slip before you went on the football
16 field?
17 A. No.
18 Q. Did you know that you were supposed to have
19 both before you went out there?
20 A. No.
21 Q. You didn't know you needed a physical before
22 you went out there?
23 A. I -- no.
24 Q. Didn't the coach tell you? Did I
25 misunderstand that?

1 MR. HOFFMAN: You can try to answer.
2 A. Could you repeat the question?
3 Q. Yeah. If you did not have a physical
4 form -- let me strike that. Let me start over.
5 If when you had asked your mom, hey, can I
6 get a physical, and she said yes, you got a
7 physical, she signed a permission slip, if you had
8 both of those papers, you would have also been on
9 the football field the day that you got hurt,
10 right?
11 MR. HOFFMAN: Same objection. But go
12 ahead and answer if you can answer.
13 A. By that do you mean me being on the team?
14 Q. You would have been on the practice field
15 that day?
16 A. Could you repeat that question again?
17 Q. Absolutely. The day that you were injured
18 on the football field, we have talked about you not
19 having a physical because your mom didn't give you
20 permission to get one, right?
21 A. (Nodding head.)
22 Q. Is that a yes?
23 A. Yes.
24 Q. And you didn't have a permission slip signed
25 as well, correct?

1 A. I think I -- I can't really recall, but I
2 think I thought that I would need one or the other,
3 but I never got any of them.
4 Q. Okay. So you knew you needed something
5 before you went out there, you just didn't know you
6 needed both? Is that what you said?
7 A. Yes.
8 Q. Okay. Did you ask your dad if you could get
9 a physical for the practice?
10 A. Yes.
11 Q. What did he say?
12 A. No.
13 Q. Why did he say no?
14 A. I'm not sure.
15 Q. Did you ask him more than once?
16 A. No.
17 Q. Did you ask him after your mom said no?
18 A. No.
19 Q. You asked him before you asked your mom?
20 A. Yes.
21 Q. If you had had a physical and a permission
22 slip, would you have still been on the football
23 field the day that you got hurt?
24 MR. HOFFMAN: Object to form.
25 Q. You can answer.

1 A. Yes.
2 Q. If when you went to her and asked her, hey,
3 Mom, can I have a physical for football? If she
4 had said yes, and you got all the forms that you
5 needed and turned them in, you would have still
6 been on the football field that day, correct?
7 MR. HOFFMAN: Same objection.
8 A. Yes.
9 Q. To the best of your knowledge would you
10 still have been running that same drill that same
11 day regardless?
12 MR. HOFFMAN: Same objection.
13 A. I'm not sure.
14 Q. You don't know?
15 A. No. I'm not sure.
16 Q. When did you stop doing PT for ROTC this
17 year?
18 A. Start?
19 Q. Yeah. When did you stop doing PT?
20 A. Start or stop?
21 Q. Stop.
22 A. This year?
23 Q. Yes.
24 A. Since the beginning. I never started.
25 Q. You never started at the beginning of the

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1 school year?

2 A. From this year, yes.

3 Q. Starting in August of 2015?

4 A. Well, I had -- I started PT in the second
5 semester. So and I never started from the --

6 Q. So you did not do PT your first semester?

7 A. I didn't have ROTC the first semester.

8 Q. So it just started your second semester?

9 A. Yes.

10 Q. Did your mom write you a note to get out of
11 PT? Or did a doctor write you a note to get out of
12 PT?

13 A. ROTC has a form that allows you to do PT,
14 and she signed it. But she signed it in a way that
15 excluded me from PT, but I could still participate
16 in ROTC.

17 Q. So that came from your mom?

18 A. Yes.

19 Q. Has a doctor told you that you cannot
20 participate in PT?

21 A. Could you repeat the question?

22 Q. Yeah. Has a doctor restricted you from
23 participating in PT?

24 A. Yes.

25 Q. Which doctor?

1 A. I believe it was Dr. Reese.

2 Q. Was that this year, in 2016?

3 A. I'm not sure.

4 Q. When would that have happened?

5 A. Summertime last year.

6 Q. Do you see Dr. Reese in the same office that
7 you saw Dr. Dean?

8 A. No.

9 Q. It's a different office?

10 A. Yes.

11 Q. Do you know where their office is located?

12 A. No.

13 Q. Is it on Ribaut Road next to all the other
14 doctors' offices, or is it somewhere else?

15 A. I'm not sure.

16 Q. Why did Dr. Reese tell you you could not do
17 PT?

18 A. He said that even though my knee was normal,
19 I should still be careful.

20 Q. Are you doing physical therapy still?

21 A. No.

22 Q. Do you have home exercises that you are
23 supposed to be doing with your knee?

24 A. Yes.

25 Q. What are you supposed to be doing with your

1 knee?

2 A. I couldn't recall them.

3 Q. How often are you supposed to do your home
4 exercises?

5 A. Every day.

6 Q. Do you do them every day?

7 A. No.

8 Q. How often would you say that you do them?

9 A. Maybe once every other day.

10 Q. Do they help you when you do them?

11 A. Yes.

12 Q. Do you see a difference when you do them the
13 way that you're supposed to?

14 A. Yes.

15 Q. This is a good thing when you see us
16 flipping pages like this.

17 Are you aware of any other kids playing
18 sports without a physical or permission slip and
19 getting hurt?

20 A. No.

21 Q. You're the only one that you know of?

22 A. Yes.

23 Q. Do you go to a gym anywhere?

24 A. No.

25 Q. All right. That's all I have for you.

1 MR. HOFFMAN: I have no questions.

2 MR. MONTGOMERY: No further questions
3 here.

4 (The deposition was concluded at
5 3:38 PM.)

1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF CHARLESTON

4 I, Anne Bouley Meyer, Registered
5 Professional Reporter and Notary Public for the
6 State of South Carolina at Large, do hereby certify
7 that the witness in the foregoing deposition was by
8 me duly sworn to testify to the truth, the whole
9 truth and nothing but the truth in the
10 within-entitled cause; that said deposition was
11 taken at the time and location therein stated; that
12 the testimony of the witness and all objections
13 made at the time of the examination were recorded
14 stenographically by me and were thereafter
15 transcribed by computer-aided transcription; that
16 the foregoing is a full, complete and true record
17 of the testimony of the witness and of all
18 objections made at the time of the examination; and
19 that the witness was given an opportunity to read
20 and correct said deposition and to subscribe the
21 same.

22 Should the signature of the witness not
23 be affixed to the deposition, the witness shall not
24 have availed himself/herself of the opportunity to
25 sign or the signature has been waived.

26 I further certify that I am neither
27 related to nor counsel for any party to the cause
28 pending or interested in the events thereof.

29 Witness my hand, I have hereunto
30 affixed my official seal on 28th day of March, 2016
31 at Charleston, Charleston County, South Carolina.

32 Anne Bouley Meyer
33 NCRA
34 REGISTERED PROFESSIONAL REPORTER
35 My Commission expires
February 5, 2023

1 DEPONENT CORRECTION SHEET
2 I, the undersigned, DARRELL J. ALSTON, JR., do
3 hereby certify that I have read the foregoing
4 deposition and wish to make the following
5 clarifications and/or corrections, if any.

6 PAGE LINE CHANGE REASON
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DARRELL J. ALSTON, JR. Date

AM

DEPOSITION OF DANIEL H. DURBIN, ED.D.

DARRELL J. ALSTON, JR., and
MABEL L. ALSTON,

Plaintiffs,

vs. Case No. 2015-CP-07-1147

BEAUFORT COUNTY SCHOOL
DISTRICT, SOUTH CAROLINA
HIGH SCHOOL LEAGUE,

Defendants.

DEPONENT: DANIEL H. DURBIN, ED.D.

DATE: FEBRUARY 16, 2017

TIME: 10:00 AM

LOCATION: LAW OFFICE OF BRUCE R. HOFFMAN
ST. HELENA ISLAND, SOUTH
CAROLINA

REPORTED BY: JULIE K. LYLE, RPR/RMR/CRR
Registered Merit Reporter
Certified Realtime Reporter

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SCHOOL LEAGUE:

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APPEARING ON BEHALF OF BEAUFORT COUNTY SCHOOL
DISTRICT:

YOUNG CLEMENT RIVERS
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ALSO PRESENT: DREW DAVIS
MABEL ALSTON
DARRELL ALSTON

1

EXAMINATION

2

BY MR. MONTGOMERY

4

3

BY MS. ANDERSON

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BY MR. HOFFMAN

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4

5

6

EXHIBITS

7

No. 1 Dr. Durbin's file materials

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1 (Exhibit No. 1 was marked for
2 identification.)

3 DANIEL H. DURBIN, ED.D.,
4 having been first duly sworn, was examined
5 and testified as follows:

6 EXAMINATION

7 BY MR. MONTGOMERY:

8 Q Good morning, Dr. Durbin. How are
9 you?

10 A Just fine.

11 Q My name is Michael Montgomery. We
12 just met. I represent the South Carolina
13 High School League, here today to take your
14 deposition. You've been identified as an
15 expert in this case, and so here today to get
16 to know a little bit about you and your
17 opinions that you intend to offer in this
18 case.

19 Have you ever given a deposition
20 before?

21 A Yes.

22 Q Have you ever given a deposition as
23 an expert witness before?

24 A No.

25 Q Okay. A couple ground rules that

1 I'm required to tell you to make sure our
2 process goes smoothly today.

3 If I ask you a question that's
4 unclear in any way, please let me know, and
5 I'll be glad to rephrase it. Sometimes it
6 sounds good in my head, and when it comes
7 out, it may not make any sense to you. So
8 please let me know if a question of mine
9 needs clarification. I'll be happy to do so.

10 A Yes.

11 Q Our court reporter is taking down
12 everything we say, so please give verbal
13 responses. No uh-uhs or uh-huhs. We just
14 want to make sure our record is accurate.

15 If you need to take a break for any
16 reason today, please let me know. Not an
17 endurance contest, so you let us know if you
18 need a break.

19 Is that okay?

20 A That's fine.

21 MR. HOFFMAN: Mike, normal
22 stipulations as to objections?

23 MR. MONTGOMERY: All reserved,
24 yeah.

25 MR. HOFFMAN: Okay. Thanks.

1 Q Dr. Durbin, may I get your full
2 name for the record, please.

3 A Daniel Hugharl, H-U-G-H-A-R-L.

4 Q And what's your date of birth,
5 Dr. Durbin?

6 A May 28th, 1958.

7 Q Tell me your current occupation or
8 line of work.

9 A I am the director of youth and
10 family ministries at Sea Island Presbyterian
11 Church.

12 Q All right. Let me show you what I
13 have marked as Exhibit 1 to your deposition.
14 And I'll be referring to that at various
15 times today.

16 I'll just represent to you that
17 this was -- we sent a subpoena to Mr. Hoffman
18 for your file materials. This was what we
19 received in response, and I just want you to
20 have a chance to look at it to make sure that
21 that -- what I've marked as Exhibit 1 is the
22 entirety of your file for this particular
23 case.

24 A Yeah, it appears to be correct.

25 Q Okay. And I know that it's been

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1 nine months or so -- well, maybe not that.
2 long. July, so it's been a while.

3 I just want to ask you, are there
4 any other materials that you've looked at or
5 consulted that would not be in Exhibit 1?

6 A The only thing would be the
7 constitution, High School League
8 constitution, bylaws, and the handbook for
9 the Beaufort County School District.

10 Q And those are things you referenced
11 in there that you just didn't physically
12 print and make a copy of?

13 A Right. Yeah. Correct.

14 Q Has any documents been provided to
15 you by Mr. Hoffman?

16 A No.

17 Q Okay. Let me go over -- I'm going
18 to go over Exhibit 1. I want to go over your
19 CV briefly that's in here. And I apologize
20 that I don't have the pages numbered. I
21 didn't number these when they came in.

22 But just in general, will you tell
23 me a little bit about your educational
24 background.

25 A As far as my degree, doctorate,

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1 those kind of things?

2 Q Yes.

3 A I got my doctorate in educational
4 leadership, with an emphasis on
5 organizational development. And my
6 dissertation and research was all on
7 organizations, how they're organized,
8 responsibility of organizations, missions,
9 responsibility of organizations on how they
10 fulfill their mission.

11 That has turned -- has been
12 representative through working with
13 businesses, mainly small businesses, and
14 education systems to make sure that --
15 usually that they have everything in place,
16 the training that's required to represent
17 what they put into their handbooks, those
18 types of things.

19 Q Okay. Is it more process oriented?

20 A I'm a process guy.

21 Q Okay.

22 A And, as a matter of fact, I think
23 that I'm really here just because of process.
24 I don't --

25 Q When you mean "here," you mean in

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1 this case?

2 A Yes, involved, involved in this
3 case.

4 Q Gotcha.

5 And Oakland City University was
6 where you did your undergrad?

7 A I did my undergrad and got my
8 doctorate from Oakland City. I did my
9 undergrad actually at Indiana State.

10 Q I'm sorry. That's right.

11 And you finished your -- your
12 doctorate in 2008?

13 A 2008.

14 Q Okay. And did you -- was that
15 distance -- by distance, or was that --

16 A Both.

17 Q -- physically?

18 A Both. I started in 1998. It
19 actually took me a good six years to get it
20 done because I'd have to fly back to Indiana
21 and --

22 Q Gotcha.

23 In, I guess, particularly your
24 pursuit of your doctorate, did any of your
25 classwork or coursework include involvement

1 with state high school athletic associations?

2 A Yes.

3 Q Tell me a little bit about that,
4 what your involvement was in your education
5 background with your doctorate.

6 A The leadership part of it was for
7 all things that principals and
8 superintendents would be responsible for as
9 far as being the leader of a school district,
10 the leader of a school. And that included
11 the principal being the -- being the
12 extension of the school district and those
13 requirements. The principal, being the
14 extension, if you're involved in a voluntary
15 organization, what your responsibilities are.

16 Normally when you get your EdD in
17 leadership, they cover all the different
18 aspects that you need to know in order to run
19 a school or a school district.

20 Q Right. And I may be looking at it
21 a little bit differently as I'm looking at it
22 from the High School League.

23 A Right.

24 Q That's who I represent, mainly who
25 my questions are going to be focused on.

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1 And I understand what you're saying
2 about from a district or a school up, but I'm
3 asking if you've looked at or any of your
4 coursework included high school athletic
5 organizations, state organizations going
6 down.

7 A We had to study case studies of
8 organizations, and because it's in Indiana,
9 most of our case studies were done at
10 Indiana.

11 Q Right. The Indiana High School --

12 A High School League.

13 Q Right.

14 A High School Association. So we did
15 lots of case studies on A and B did this and
16 what is C responsible for.

17 Is that kind of what you're --

18 Q Yeah, what I'm asking. That's
19 exactly what I'm asking from the perspective
20 of the high school --

21 A Yes.

22 Q -- an athletic organization, a
23 voluntary organization, such as a state high
24 school.

25 A Right.

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athletes on a particular team at the member school. This was also true in the present case. *See* Beaufort County High School's Responses to the SCHSL's Request for Admission, attached as Exhibit E.

Additionally, it should be noted that contrary to some of the arguments posited by plaintiffs in this case, the SCHSL does not have total authority over every aspect of interscholastic activities in South Carolina. Just like many other regulatory bodies in South Carolina, the SCHSL promulgates rules and regulations through the legislative process set forth in its constitution and bylaws. The SCHSL gives discretion to member schools as to how the schools comply with the various rules and regulations adopted by the members of the League. For example, with respect to the sport of football, once the eligibility rules have been met, the SCHSL does not decide who plays on the team, which equipment is used, what uniforms are purchased, the number of coaches, the schedule of games, how practice is organized, etc. And, with respect to the school's process of obtaining physicals and parental permission forms for each male and female sport, the SCHSL does not control (a) how the requirements for participation are communicated to students and parents; (b) when and if member schools coordinate physicals for athletes; (c) how a member school internally assigns responsibility for the collection of these forms; and (d) how a member school maintains the paperwork at its physical location. Again, not only has the SCHSL never undertaken a duty to ensure these forms have been properly collected before a student participates in a practice, but it would also be administratively impossible for the SCHSL staff to fulfill such a duty.

Finally, the SCHSL's role as a regulatory body with rule-making authority over its members is akin to a number of other state agencies or associations for which it would be absurd to impose a duty or liability in an analogous situation. For example:

- The Supreme Court of South Carolina promulgates various rules for South Carolina lawyers that regulate advertising and solicitation, and there are rules requiring a certain amount of continuing education credits per year. If a lawyer does not certify every year that he/she obtained the required amount of CLE credits, he/she is immediately suspended. Suppose the Court fails to suspend a lawyer who has misrepresented the amount of CLE credits obtained, and the lawyer then commits legal malpractice when he should have been suspended. Certainly, the aggrieved client would have not cause of action against the Supreme Court of South Carolina.
- The Department of Social Services (DSS) promulgates rules and regulations for the licensing of child care centers. Some of these rules require certain ratios for adult to child based upon age. If a child falls and breaks his arm while the classroom has a ratio in violation of the DSS regulations, DSS is not liable for the child care center's violation of its rule.
- The Department of Health and Environmental Control (DHEC) is the entity that regulates licensing of pharmacists and the manner in which controlled substances are dispensed. If a pharmacist at CVS fails to store a controlled substance at the appropriate temperature in violation of DHEC regulations and then dispenses the drug to a customer, thereby making him sick, DHEC would not be liable for the pharmacist's conduct.

Just as these entities would not be tasked with the duty to monitor compliance with every rule and regulation, neither is the SCHSL. Therefore, plaintiffs' gross negligence claim fails as a matter of law based on the failure to establish a duty.

B. Breach of Duty

If the Court finds that plaintiffs have set forth sufficient evidence of a duty owed by the SCHSL to monitor compliance by member schools with the physical and parental permission form requirements, the SCHSL respectfully submits that plaintiffs have set forth no evidence that the SCHSL has acted without slight care. Therefore, summary judgment is still appropriate.

In the SCHSL's verified Responses to Plaintiff's Fourth Set of Interrogatories and Requests for Production,⁹ the SCHSL set forth detailed descriptions and supporting documentation of how the League staff encouraged compliance with Article VII, Section 16 of the League's Constitution. For the sake of brevity, the League would summarize its efforts as follows: (a) the SCHSL held two workshop meetings per year for new principals and new athletic directors, with the primary focus being student eligibility issues and eligibility forms, including the Certificate of Eligibility form that required the attestation by the principal about the parental permission form and physical form being kept at the school; (b) the SCHSL held four meetings per year to certify head coaches who are not employed by the school, and parts of these meetings including discussions about safety rules, including the rule requiring a pre-participation physical exam; (c) the SCHSL held two meetings per year for each classification, which required attendance by every principal and athletic director in Class AAAA, of which Beaufort High School was a member, and eligibility form requirements were discussed in these meetings; (d) the SCHSL held five regional meetings per year with coaches and officials for the purpose of discussing football rules and rule changes, and in these meetings, the League's Football Pre-Season Practice Plan would have been discussed, which includes the statement, "All athletes must have a pre-participation physical exam before athletic participation;" (e) during the 2012-2013 school year, the SCHSL's Executive Committee approved a new physical form that could be used in addition to the existing physical form, and information was disseminated to member schools about the adoption of the new physical form; and (f) during the 2012-2013

⁹ These Responses are attached as Exhibit F. To the extent the Court would like to see all or part of the supporting documentation produced and Bates labeled 143-441, the SCHSL will gladly supplement this memorandum.

school year and in previous years, the SCHSL staff would periodically publish a newsletter entitled "League Update," and this newsletter often encouraged attendance at the various meetings described above; furthermore, these newsletters would encourage member schools to confirm the accuracy of the Certificate of Eligibility forms.

Therefore, in light of all of these efforts by the SCHSL to ensure compliance with the rule requiring pre-participation physicals and parental permission forms, there is no genuine issue of material fact as to the claim that the SCHSL acted without slight care.

The SCHSL anticipates that the plaintiffs will argue that their retained expert, Dan Durbin, has provided testimony that defeats summary judgment. However, Dr. Durbin's testimony is not sufficient to overcome the SCHSL's motion for three reasons.¹⁰ First, Dr. Durbin admitted that he has not looked at the specifics of this case, and he acknowledged that he could not offer an opinion specific to the SCHSL. Dr. Durbin testified:

A: All I've said today is are there processes in place to make sure your representatives can do that. If you can prove that, then—then there's no discussion for me. If that can't be proven, then the discussion is, after you're done with this case, what are you going to do to make sure it is?

Q: All right. And then I guess my follow-up is, then, you do not have an opinion in this case as to whether or not there are appropriate processes in place?

A: That's because I don't—I intentionally haven't got involved in the details of the case.

(Deposition of Dan Durbin, pp. 75-76, ll. 13-25; 1-2; portions of Dr. Durbin's deposition transcript are attached as Exhibit G). Dr. Durbin repeated similar testimony at other points in his deposition. *See* Ex. J, p. 71, ll. 2-19; p. 92, ll. 9-24; p. 148, ll. 3-14; p. 150, ll. 12-22.

¹⁰ The SCHSL would also note that Dr. Durbin's testimony does not impact the proximate cause issue or the Tort Claims Act immunity defense.

Secondly, Dr. Durbin's thoughts on the appropriate processes in place for responsibility to collect physical forms and parental permission forms do not establish credible evidence of a standard of care for a state high school athletic association. Dr. Durbin admitted that he only checked to see how one other state association handled similar situations, and it was consistent with the SCHSL requirements. Ex. J, pp. 34-35, ll. 9-25; 1-3. Therefore, his testimony is insufficient to raise a question about the "processes" of the SCHSL with respect to an accepted standard of care. See Guinan v. Tenet Healthsystems of Hilton Head, Inc., 383 S.C. 48, 56, 677 S.E.2d 32, 37-38 (holding expert's testimony was insufficient to survive summary judgment because the testimony, at most, showed the defendant deviated from the expert's personal standard of care rather than the generally recognized and accepted standard of care). Additionally, given that the standard in this case is one of gross negligence, it should be noted that Dr. Durbin agreed that the SCHSL had processes in place to make sure that member schools were complying with the rule concerning parental permission and pre-participation physicals. The fact that he believes additional steps could be taken does not negate the fact that the SCHSL was exercising slight care. See Pack v. Assoc. Marine Institutes, Inc., 362 S.C. 239, 608 S.E.2d 134 (holding the fact that more could have been done does not negate a finding that defendant exercised at least slight care).

Finally, with respect to Dr. Durbin's testimony, his main questions about "processes" included whether there was communication about eligibility form requirements between the SCHSL and school personnel. As previously stated, the SCHSL has since produced approximately 300 pages of documents outlining meetings, workshops, and communications between the SCHSL staff and principals, athletic directors, and

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coaches that would have taken place before Alston's incident. Therefore, any "potential" concerns he raised in his deposition have been answered.

C. Proximate Cause

The defendant, SCHSL, would refer to its prior analysis on proximate cause as to why plaintiffs cannot meet this element of gross negligence. Accordingly, plaintiffs cannot establish the elements of gross negligence as to the SCHSL, and the SCHSL's motion for summary judgment should be granted.

IV. Partial Summary Judgment is Appropriate as to Certain Damages

Finally, in the alternative, the Court should grant SCHSL's motion for partial summary judgment as to the damages recoverable in this case.

The General Assembly has set forth the following cap on damages recoverable for claims brought pursuant to the South Carolina Tort Claims Act:

(a) For any action or claim for damages brought under the provisions of this chapter, the liability shall not exceed the following limits:

(1) Except as provided in Section 15-78-120(a)(3), no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved.

(2) Except as provided in Section 15-78-120(a)(4), the total sum recovered hereunder arising out of a single occurrence shall not exceed six hundred thousand dollars regardless of the number of agencies or political subdivisions or claims or actions involved.

S.C. Code Ann. § 15-78-120(a)(1)–(2). Under the Tort Claims Act, an occurrence is defined as “an unfolding sequence of events which proximately flow from a single act of negligence.” S.C. Code Ann. § 15-78-30(g).

“Ordinarily, the parents of an injured child have the right to bring an action against the tortfeasor for expenses incurred in caring for the child.” Endres v. Greenville Hosp., Sys., 312 S.C. 64, 66, 439 S.E.2d 261, 262 (1993). In Wright v. Colleton County School District, our supreme court concluded that a “parent’s claims for loss of services and medical expenses are within the statutory definition of ‘loss’ as contained in [s]ection 15-78-30(g) and are therefore recoverable.” 301 S.C. 282, 289, 391 S.E.2d 564, 569 (1990). However, a parent does not have the right to sue for loss of filial consortium under South Carolina law. See Doe v. Greenville County Sch. Dist., 375 S.C. 63, 69, 651 S.E.2d 305, 308 (2007).

In the instant case, the plaintiffs argue two occurrences stemmed from the single act of Darrell Alston being tackled on the football field during practice. Our appellate courts have admittedly recognized the ability of a parent to bring a separate claim under the Act. While the SCHSL would argue those cases are distinguishable, even when accepting this as true, the plaintiffs’ damages are still limited in the instant case. First, Darrell’s damages cannot include a recovery for medical expenses incurred. See Trident Reg’l Med. Ctr. v. Evans, 317 S.C. 346, 352, 454 S.E.2d 343, 346–47 (Ct. App. 1995) (holding that parents were “liable for the medical expenses incurred by [their child]” because “[u]nder the common law, a parent is responsible for the support of his or her minor child”). Because his mother is legally responsible for paying his medical bills, Darrell may not receive damages for costs incurred to date because this would amount to a

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double recovery. See generally Adams v. Grant, 292 S.C. 581, 585, 358 S.E.2d 142, 144 (Ct. App. 1986) (“The basic purpose of election of remedies is to prevent double recovery for a single wrong.”).

Similarly, the mother’s damages are limited to Darell’s medical bills and lost services. See Wright, 301 S.C. at 289, 391 S.E.2d at 569. The SCHSL would submit that plaintiffs have set forth no evidence of lost services as they relate to mother. Furthermore, to the extent mother seeks any damages beyond those mentioned above, such as her lost wages, pain and suffering, mental anguish, etc., they are not recoverable under the Tort Claims Act. Our appellate courts have not recognized loss of filial consortium as a cause of action in South Carolina. See Doe, 375 S.C. at 69, 651 S.E.2d at 308. Indeed, when faced with the question of what kinds of damages a parent may recover under the Act, our supreme court limited them to medical bills and lost services. See Wright, 301 S.C. at 289, 391 S.E.2d at 569. Moreover, no court has recognized the ability of a parent to recover her own medical expenses allegedly stemming from her child’s injury in a claim brought pursuant to the Tort Claims Act, and the Court should reject the plaintiffs’ attempt to do so here, particularly given that the mother asserted these medical expenses for the first time in an affidavit filed on April 7, 2017.¹¹ A plain reading of the Tort Claims Act compels the conclusion that these damages are not recoverable as a matter of law. If the General Assembly wished to expand the liability of governmental entities to include these damages, then it would have expressly done so. In the absence of the expression of such legislative

¹¹ The plaintiffs have yet to produce any alleged medical bills for Ms. Alston, despite their continuing obligation to respond to the SCHSL’s Interrogatories and Requests for Production. Thus, they cannot seek to defeat partial summary judgment as to the damages portion of their claim at the eleventh hour by alleging she has medical issues purportedly stemming from her son tearing an ACL.

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intent, however, the SCHSL's liability should be limited. See S.C. Code Ann. § 15-78-20 (providing that the provisions of the Tort Claims Act "must be liberally construed in favor of limiting the liability of the State").

Accordingly, because most of the damages the plaintiffs seek to recover are not recognized under the common law or the Tort Claims Act, the SCHSL is entitled to partial summary judgment as to this issue.

CONCLUSION

As previously stated, each of the grounds raised by the defendant, SCHSL, are independent reasons for which summary judgment is appropriate. Therefore, for the foregoing reasons, the defendant, SCHSL, respectfully requests that this Court dismiss plaintiffs' claims against it.

Respectfully submitted,

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1 Q Did any of that work with the
2 Indiana association involve issues that you
3 have seen in this case?

4 A The issues are usually the same for
5 me experiencewise state for state. A
6 voluntary organization having the right to
7 make its rules and execute those rules, which
8 they do, and people not liking that
9 particular authority.

10 In this particular case, you know,
11 Bruce, 1972, Bruce, Bruce - High School
12 League basically answered that question.

13 Q Right. And in this case, we're
14 talking about the enforcement of a rule.

15 A Uh-huh.

16 Q Would you agree with that?

17 A Yes.

18 Q We're not really talking about the
19 authority to make a rule in this case; that's
20 not an issue?

21 A It's not just -- it's not just the
22 authority to make a rule. It's the
23 responsibility to enforce the rule.

24 Q Right. And for members to follow
25 the rule?

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1 A Uh-huh.

2 Q Is that a yes?

3 A That is a yes.

4 Q Okay. Have you ever authored any
5 articles or been published when talking
6 about --

7 A No.

8 Q -- high school organizations?

9 A No.

10 Q Let me ask you a little bit about
11 your background as -- when I say an expert
12 witness, I mean involvement in litigation and
13 not necessarily a lawsuit but in any
14 adversarial proceeding.

15 Have you ever testified in court as
16 an expert witness before?

17 A I've testified several times but
18 not as an expert witness.

19 Q Never gone through the process of
20 being qualified by a court to provide an
21 expert opinion on a topic?

22 A No. Most of mine have been in
23 specific cases against a school district.

24 Q Right. You would be a fact witness
25 of some sort?

1 A Fact witness, and I've been
2 involved in murder cases that involve school
3 districts with students who have committed
4 crimes.

5 Q Sure. On your CV and, again, this
6 is dated a little bit, but it's got Cycles
7 Consulting. Is that an active company?

8 A It's no longer active now, no.

9 Q Okay. On your CV it has -- at the
10 time, I guess, this was provided, it says
11 "Present."

12 Were you doing -- tell me about
13 Cycles Consulting and what that --

14 A Cycles, we -- well, me, basically
15 me, I would work with small businesses, most
16 locally, and mainly school boards. And most
17 of that had to do with their curriculum,
18 their training, their processes, what it is
19 that they were required to do.

20 The example -- my last one in that
21 area was Louisville and the school district
22 there, and I did board retreats.

23 Q You would come in and speak and --

24 A Yes. I would speak or they'd give
25 me a specific area that they're having a

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1 difficulty with, and then we would plan a
2 one- or two-day retreat.

3 Q Okay. And did any of your work
4 from -- I guess it would be 2012 to 2016 --
5 Cycles Consulting no longer is a --

6 A We're not soliciting business right
7 now.

8 Q Right. Gotcha.

9 But from 2012 to 2016, that would
10 be an avenue for you where you would go and
11 contract with groups or organizations?

12 A Correct.

13 Q Okay. Any time in that with
14 Cycles, did you ever work with a state high
15 school athletic organization?

16 A No. I did -- not through Cycles.
17 But I was a principal, and I did work as a
18 regional chair, very active in the High
19 School League.

20 Q All right. Tell me -- we'll go
21 ahead and get there. Tell me about that.

22 You were at Beaufort High School
23 from 2003 to 2012?

24 A I was at Beaufort High School,
25 correct. And I was a coach as a teacher, so

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1 my --

2 Q Was this at Beaufort High School?

3 A No.

4 Q Before that.

5 A But from mid-1980s on, I was a

6 basketball coach, a wrestling coach.

7 Whatever I could coach I coached. So I'm

8 very familiar with the responsibilities of

9 being a coach and the responsibilities of

10 being accountable to the athletic director

11 and the principal-type thing.

12 When I became a principal here, I

13 was fortunate enough to have a very good

14 athletic director.

15 Q And who was your AD?

16 A Jerry Lynn. And he was very

17 effective at what he did. And he -- he made

18 sure that I knew that I needed to go to the

19 conferences, to the education, to the

20 meetings.

21 And he was also very good at making

22 sure that I understood that I, as the

23 principal, was the arm. I always laughed

24 when he would say, People think it's the

25 athletic director, but it's really you.

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1 Q Right. And that's set out in the
2 bylaws or the constitution at the time that
3 the principal is ultimately --

4 A That's right. So he makes -- I
5 don't know if he was defending himself or me,
6 but he made sure I understood it.

7 Q Right. And then tell me about
8 your -- in general -- we may get to more
9 specific issues but, in general, what was
10 your involvement with High School League
11 staff?

12 And I'm talking about the office in
13 Columbia. What was your involvement with
14 them from 2003 to 2012 as principal of
15 Beaufort High School?

16 A Well, I -- I served on several
17 committees.

18 Q Which committees did you serve on?

19 A Rules. I was on a rules committee.
20 I also served competition committees. Always
21 on the regional committees.

22 Q Peer classification committee,
23 things like that?

24 A Yeah, those types of things. And
25 because I'm very interested in high school

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1 athletics, I probably volunteered a little
2 more than most principals would.

3 Q And did you ever run for or serve
4 on the executive committee?

5 A No.

6 Q Are you familiar with the role the
7 executive committee plays?

8 A Yes.

9 Q Tell me what your understanding of
10 their role is.

11 A Well, basically, the executive
12 committee is they are the appeals -- both the
13 appeals and they're both the governing body
14 of what the constitution and what the bylaws,
15 and so their basic responsibility is to make
16 sure that those are executed properly.

17 Q Right. And are you aware of what
18 the purpose of the legislative assembly is --

19 A Yes.

20 Q -- for the High School League?

21 Tell me what your understanding of
22 that is.

23 A Well, I know that it was ironic
24 that, every time we turned around, they were
25 talking about taking it over, and as

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1 principals and coaches and athletic
2 directors, we were always worried.

3 Q Right. And let me clarify my
4 question. I'm talking about the legislative
5 assembly of the High School League, the
6 process by which the constitution and bylaws
7 were modified and -- were you ever involved
8 with that?

9 A No, was not.

10 Q Are you aware that every March
11 representatives meet to discuss changes to
12 the bylaws?

13 A Yes.

14 Q You're aware that the executive
15 committee doesn't actually change bylaws or
16 constitutional provisions?

17 A It's -- yes, I am.

18 Q Gotcha.

19 They execute what the membership
20 has decided to do. Would you agree with
21 that?

22 A I agree with that. I agree that
23 that is always the intent.

24 Q Right. And that's the way that the
25 organization is set up and established,

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1 designed to run?

2 A Yes.

3 Q Okay. In your time -- and I may
4 have asked you this -- you've never served on
5 the executive committee?

6 A No.

7 Q Did you ever seek to serve on the
8 executive committee?

9 A No. I'm a much better servant.

10 Q And in the day-to-day, I guess,
11 administration of the athletic program at
12 Beaufort High School while you were
13 principal, what involvement did you have with
14 High School League officials, if any?

15 A Well, quite a bit actually. I met
16 with -- I met with my athletic director at
17 least twice a week --

18 Q Sure.

19 A -- beginning and end. We always
20 discussed where we were at, what was coming
21 up, what issues might be coming up that I
22 needed to be aware of.

23 Those meetings -- sometimes, you
24 know, we had our own issues. You know, we
25 once had a student who didn't live in our

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1 district, and he and I actually went to the
2 home ourselves to verify it. And I would --
3 I usually tried to stay out of the middle of
4 the athletic director being the spokesman.

5 Q Or having the direct contact with
6 the league?

7 A That's right, having the direct
8 contact, unless I felt it important that he
9 needed support. And then I would allow him
10 to make that initial contact, and then we
11 would say Dr. Durbin is probably going to
12 call you later to verify some things.

13 Q Sure. And, I guess, let me follow
14 up on that a little bit.

15 And when I'm talking about
16 day-to-day administration of your program,
17 I'm talking about scheduling, practices,
18 games. What involvement are you aware of
19 that the High School League had with
20 day-to-day administration of your athletic
21 program?

22 A The High School League?

23 Q The High School League.

24 A I don't think I had much
25 involvement with them actually doing our job.

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1 Q Right.

2 A Our job, if that's what you're
3 talking about.

4 Q And I understand what you're
5 talking about when you have an eligibility
6 issue come up or something that may implicate
7 a rule or eligibility concerns.

8 A We had an understanding that we
9 were a part of an organization and we were
10 under that umbrella. In order to be a part
11 of the organization, you had rules and
12 regulations. You had processes.

13 Q Sure.

14 A You fulfilled your part of that
15 process. If you didn't fulfill it, then you
16 had to answer the question as to why.

17 Q Right. Let me move forward a
18 little bit and ask you about sort of this
19 case and how you came to be involved.

20 The letter that you provided in the
21 material -- or the letter I received in the
22 materials is dated -- I believe it's April
23 the 1st.

24 Do you recall when you were first
25 contacted by Mr. -- and I assume it was by

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1 Mr. Hoffman, but when you were first
2 contacted to be involved in this case?

3 A Yes, I think I do. It was about my
4 understanding of the High School League
5 because I had been involved with it and
6 worked directly as a part of the process.

7 But it was also because I was known
8 a little bit as understanding processes. And
9 that's -- I've never been known to be the guy
10 who is going to march up the hill for
11 process, but I love them and I study them.
12 And that's the reason why I chose the
13 operational development and all those kinds
14 of things.

15 Q When you say "march up the hill,"
16 what do you mean by that?

17 A Well, it's -- there's a whole lot
18 of folks who don't like -- you know, you join
19 something, and then you don't like what you
20 joined. Then you have a choice.

21 Q Right.

22 A You know, you have a choice whether
23 or not you're going to remain a part of it or
24 not be a part of it. And my philosophy, even
25 as a principal in the High School League,

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1 was, you know what? You know what you're in.
2 You played a player that shouldn't have
3 played so, therefore, you're going to have to
4 face that. And I always told coaches, if you
5 deserve the fine, you'll pay the fine.

6 Q Do you remember what time period --
7 let me -- that was going to be my next
8 question, so that's perfectly fine.

9 But how long in advance of this
10 letter were you contacted? Was it a month
11 before?

12 A Maybe -- yeah, I usually get things
13 done very quickly.

14 Q Okay.

15 A My wife says if you call me today
16 about whether or not the grass needs to be
17 cut, before she hangs the phone up, I've cut
18 the grass.

19 Q What information were you provided
20 by Mr. Hoffman in that first contact?

21 MR. HOFFMAN: You don't mean
22 what I said to him?

23 MR. MONTGOMERY: Yes.

24 MR. HOFFMAN: That would be
25 privileged.

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1 MR. MONTGOMERY: There's -- I
2 don't understand there to be any privilege
3 between -- in terms of what factual
4 information you provided to him about the
5 case.

6 MR. HOFFMAN: Factual
7 information, that's true. My opinions about
8 the case would be.

9 THE WITNESS: I don't -- yeah,
10 I --

11 MR. MONTGOMERY: Well, let me
12 rephrase my question, and if you want to
13 instruct him not to answer, we'll take it up.

14 Q But my question is, what
15 information, factual information, were you
16 provided about this case when you were
17 contacted by Mr. Hoffman?

18 A I think the first time it wasn't a
19 whole lot about a case. It was more about
20 responsibility, how the High School League --
21 do you understand its processes? Can you
22 verify for me what those processes are? How
23 did you handle those when you were at
24 Beaufort High School? Those types of
25 questions.

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1 I think it wasn't until later that
2 I was told that we have a case.

3 Q And then what the issue was about
4 in the case?

5 A Yeah. And my initial response to
6 all of that, the case itself really isn't my
7 venue.

8 Q Right.

9 A You know, my venue is do -- are the
10 processes in place? Were they taken care of
11 properly, and are the people that are
12 responsible being held responsible?

13 Q And let me maybe ask to make sure I
14 have a better understanding because this can
15 sort of guide some of the questions I ask
16 you.

17 I understand your background is you
18 worked at Beaufort High School.

19 A Uh-huh.

20 Q And when we talk about processes or
21 what you're here to testify about -- and,
22 again, I'm sort of trying to flesh this out
23 with you.

24 A I got you.

25 Q I'm not trying to sway you any

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1 single way. But I understand one issue of
2 the process in this case is the process by
3 Beaufort High School with respect to
4 physicals and permission forms with
5 student-athletes competing?

6 A Correct.

7 Q And I completely understand that
8 you have come from Beaufort High School,
9 you've worked there, you've been in school
10 districts and worked in the school. You've
11 been a coach in a school. And that's one
12 side of the process.

13 The other side of the process is
14 the High School League, how it implements a
15 rule and then how it enforces a rule.

16 Are you here today to testify about
17 the High School League arm and how -- what
18 processes they have in place to enforce this
19 rule?

20 A I'm here to give insight into what
21 process -- you have a hierarchy in the High
22 School League.

23 Q Sure.

24 A No one rules above them except for
25 legal standards.

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1 Q Right.

2 A If, for example -- I'll just give
3 some examples that don't necessarily apply to
4 this particular case.

5 If, for example, you say in your
6 constitution or your bylaws our ultimate
7 responsibility is the physical and mental
8 welfare of a student, then the expectation
9 from that particular stance is that your
10 processes, your rules, your regulations,
11 everything takes care of that. That will
12 fall into that -- that dimension.

13 So if -- if you are -- if you have
14 processes that are supposed to represent that
15 and you have people that are extensions to
16 the organization, which in this case you
17 have -- there's a lot of extensions to the
18 High School League. The principal is an
19 extension to the High School League. The
20 school district is an extension to the High
21 School League. The coach is, the athletic
22 directors. But in this particular case, the
23 principal of the high school is -- is what's
24 said in the bylaws.

25 Q And when you talk about the High

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1 School League promoting physical and mental
2 well-being --

3 A Oh, I'm not sure if they do. I'm
4 not saying they did.

5 Q I'm saying the provision in there.

6 A Yeah.

7 Q I hear what you're saying, but you
8 also would concede that the High School
9 League can't guarantee the physical
10 well-being of any student?

11 A They can only guarantee that each
12 of their representatives have been well
13 trained to complete their mission.

14 Q Well, I'm trying to understand,
15 well trained in what way?

16 A If -- if I am -- I'll use it from a
17 principal's standpoint because that's the
18 only thing I've actually done.

19 Q Right. And I don't want to cut you
20 off, but I --

21 A No, I understand.

22 Q I'm looking at it from the High
23 School League perspective, so that's kind of
24 where -- I'm trying to make sure I don't get
25 lost.

1 A Let's start with the coach, as I
2 use the analogy.

3 The coach, under most
4 circumstances, is responsible for collecting
5 at a practice all of those forms. The
6 athletic director has given him that edict.

7 The athletic director is then
8 responsible for making sure that everything
9 that coach turned in is there and it's
10 properly done and so on.

11 But the guy that is actually being
12 held accountable for that at the High School
13 League is the principal. And he -- I looked
14 at every paper that ever went through that
15 athletic department when it had my
16 responsibility for it. I didn't leave it up
17 to the athletic director.

18 I was trained extremely well. I
19 went to all the things the High School League
20 offered. I went to the things that I felt I
21 was responsible for. The athletic director
22 was smarter than I, more experienced than I.
23 I asked for his judgment, Okay, what do I
24 need to do here, here, and here?

25 The reason why that happened was

1 because if I'm to be an arm of the High
2 School League, then there is a responsibility
3 that I both understand the mission and the
4 rules and the regulations and that I am
5 capable of fulfilling that responsibility.

6 Does that make sense?

7 Q Yeah. And what I pick up on is it
8 sounds like, from your personal experience,
9 you went to things that were offered by the
10 High School League to make sure you were
11 educated on rules and what your requirements
12 and responsibilities were?

13 A Just as I know the Beaufort County
14 School District held things for coaches every
15 year to make sure they understood changes in
16 their particular policies. And we never
17 would let anyone say I've got a practice.
18 You just cancel practice today.

19 Because that ultimate mission of
20 the security/safety of our athletes, it drove
21 everything we did. If we won -- if we won at
22 the end of the day, that was great. But we
23 had a safe game, we had good sportsmanship.
24 And we were very proud of the fact that we
25 won that year after year.

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1 And my point of that was -- is that
2 the welfare of the athlete, the
3 student-athlete, was our primary focus. And
4 we understood that educating our coaches,
5 educating our athletic director, making sure
6 that the extension to the High School League
7 was educated enough to make good decisions
8 about what was happening.

9 I don't think that my time -- and
10 this isn't just to say, Well, I was there and
11 it didn't happen, but I don't think we ever
12 had those issues of any kind like that. We
13 might have been turned in for having a kid
14 playing out of district, you know, that kind
15 of stuff.

16 Q Well, and that maybe raises a point
17 that we'll probably get into a little bit
18 later. But despite your good training and
19 your staying on top of it, you can still have
20 an issue that comes up where you may be in
21 violation of the rule?

22 A That's always the issue. The
23 question from an organizational standpoint
24 isn't whether or not I voluntarily will take
25 care of having training, which I would

1 because I believe in it. The question is,
2 does the organization that I represent have a
3 process in place that requires me to be able
4 to represent them to a standard?

5 Not just do they have the process
6 in place that says we offer you, if you
7 choose to come -- which, by the way, not many
8 principals choose to come, and that's
9 something I'd always complained about. I
10 don't know how you can be a representative if
11 you don't. We offer it to you, but if you
12 choose not to come, then it's up to you.

13 I don't think many of us would say
14 we want someone to represent us that doesn't
15 represent us to the standard in which we want
16 to be represented. And I've not read what
17 the requirements are for the High School
18 League, so I can't really tell you. Do they
19 require the principal, for example, to come
20 and have training?

21 If you are dealing with the
22 Beaufort County School District, when I was
23 trained on anything, I signed off that I
24 understood it and that that training was done
25 for a purpose.

1 Q Let me -- the letter that you
2 provided in this case, you've got some
3 material behind that, and then you talked
4 about earlier you looked at the Beaufort
5 County Athletic Handbook.

6 Was there any other -- any other
7 research that you did before authoring this
8 letter?

9 A Actually, I called my athletic
10 director in Indiana that I had last. And I
11 didn't tell him what it was or any of that.
12 I just said, I've got a case.

13 And the reason why I called him is
14 because he was -- he had served on many
15 committees in Indiana. And I asked him, Does
16 Indiana require you to be trained? Does
17 Indiana require this and that? And basically
18 it was exactly the same.

19 Q Gotcha. You're saying the Indiana
20 High School Association?

21 A Yes. Yeah.

22 Q Okay.

23 A I was trying to compare what's
24 expected in one state, but it's all kind of
25 connected.

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1 Q Right. And you found them to be
2 consistent?

3 A They were consistent.

4 Q Okay.

5 A His only comment that he had to me
6 was the who, what, when, and where. Who knew
7 what when? And did -- at the time he said,
8 Did the athletic director know at a certain
9 time? Did they self-report? Did they do the
10 things they're supposed to do based on the
11 guidelines? Because in Indiana, the minute
12 you know it, you have to self-report.

13 Q Right. And I think in this case,
14 as far as I understand, the minute -- it
15 wasn't discovered until the student had an
16 injury.

17 A Yeah, I don't really know that.

18 Q Okay.

19 A Yeah.

20 Q Let me do this. In any of your --
21 I wanted to ask you about your familiarity
22 with -- we talked about the High School
23 League as a voluntary organization, but we've
24 also talked about that it has -- that it
25 basically, from your letter, sort of

1 promulgates rules and regulations for
2 interscholastic athletics in the State of
3 South Carolina?

4 A Uh-huh.

5 Q Is that a yes?

6 A That's a yes. I'm sorry.

7 Q No, that's all right.

8 And I kind of wanted to ask you
9 your familiarity with other regulatory bodies
10 and how those sort of interact with the
11 entities that they oversee or that they
12 govern certain aspects.

13 Have you ever done any -- any work,
14 either as a consultant or any kind of work,
15 with state agencies like DSS or DHEC or any
16 of these sort of -- I call them regulatory
17 bodies, government agencies?

18 A Uh-huh. Sure. Normally, more
19 recent stuff is charter stuff. My most
20 recent stuff is charter schools and
21 helping -- there's a little bit of a
22 confusion with charter schools on what
23 they're really responsible for. So folks
24 will send me their charters before they're
25 actually turned in. I will compare those to

1 what the law actually says they're
2 responsible for, and then I will give them
3 feedback on how they strengthen that
4 particular thing.

5 The National Forensic League, I was
6 on the executive council for the National
7 Forensic League, which is the equivalent to
8 the High School League in sports. And we
9 dealt directly with all issues on speech and
10 debate that were the same -- same type of
11 issues.

12 Q Which would be rules and
13 regulations for competition?

14 A Rules, regulations, competition,
15 who can participate, who can't participate.
16 And that particular experience was 13 years.

17 Now, a lot of the rules and
18 regulations in that particular organization,
19 they did the same thing. They reviewed them
20 every year. They made sure that any issue
21 that they could look at -- for example, if we
22 found that there was one spot in the
23 constitution or the bylaws that might be a
24 problem, I would always suggest to them, for
25 example, if you don't have a document that

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1 says that anybody representing you has
2 actually been trained to your standard and
3 they sign off that they understand that, then
4 I encourage them to put that in there.
5 Because now our organization was covered in
6 the sense that we didn't just invite you in;
7 we invited you in to a mission, to a vision
8 and to a process, and we wanted you to have
9 to say later, I understood the mission and
10 the vision, I understood the processes, and I
11 chose not to practice it properly.

12 Where some of the issues we had
13 involved more of a, Well, I just didn't know.
14 But you represented us.

15 Q And there could be situations where
16 you do know and there's an inadvertent
17 oversight or an inadvertent occurrence where
18 that happens?

19 A I agree that that -- that's --
20 those issues happen all the time.

21 Q And I guess my question to you as a
22 process guy would be, if you had training in
23 place and you feel like your people are
24 educated on what's expected and then you have
25 a situation where something goes awry, is it

1 always reflective of the process?

2 A It's -- the key is -- there are
3 lots of processes out there that we go
4 through. The key is -- and I can't remember
5 her name that used to work for the school
6 district that I loved. She was on risk
7 management and all that, but she taught me a
8 lot about processes. They mean nothing if
9 you can't legally prove that people have been
10 through them.

11 And so for the National Forensic
12 League and all those places that I've dealt
13 with that, we always felt that process really
14 isn't a process unless the accountability
15 part is included in it.

16 So if I were sitting on the other
17 side of the table right now and said to the
18 High School League, Where do you need to
19 improve things? Nobody ever asked me that,
20 you know.

21 Well, you need to improve the sense
22 that you've got the right frame of mind, you
23 have the right kind of rules and regulations.

24 I think the process falls short
25 when you release it to your person who's

1 going to take care of it for you. And that's
2 just a -- from being a principal, I just
3 watched too many principals never attend any
4 kind of training. And yet, when it came to
5 taking care of the message and the vision of
6 that particular -- of the High School League,
7 they were the people that were ultimately
8 responsible for it. That comes from a guy
9 who is a staff development training guy.

10 Does that make any sense at all?

11 Q Let me try and flesh it out.

12 A Yeah.

13 Q And let me start talking a little
14 bit about this case.

15 A Yeah.

16 Q In this case, the High School
17 League has a rule that requires
18 preparticipation physicals?

19 A Correct.

20 Q And do you know how many schools
21 are in the High School League?

22 A It's 200-and-something, isn't it?

23 Q Well, it's 200-plus high schools
24 and 200-plus middle schools. So it's over
25 400 schools.

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1 A Yeah.

2 Q Do you have any idea how many
3 student-athletes?

4 A Many.

5 Q And you understand that the High
6 School League cannot, as a body itself or as
7 a staff itself, personally handle every
8 single physical form collection for every
9 single athlete in the State of South
10 Carolina?

11 A I would concede that. However, if
12 any organization -- I happen to be a fan of
13 the High School League. Okay? So if any
14 organization were to establish itself as the
15 authority of something, even if it's
16 voluntary, and it were to release parts of
17 their decision making to someone else at a
18 different level, that organization would be
19 responsible for making sure that the
20 training, the acknowledgment, is there.

21 So if everybody is doing what
22 they're supposed to do, there's been proper
23 training, your principal understands how to
24 do these things and is involved in that, then
25 I would agree with that statement. However,

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1 it is always the responsibility of the
2 governing organization to make sure whomever
3 represents them understands the vision,
4 mission, so on.

5 Q All right. And in this case, there
6 is an acknowledgment of this responsibility
7 because the school has to submit a
8 certificate of eligibility that the school is
9 certifying to the High School League that all
10 the forms are in place, physical forms,
11 permission forms?

12 A I understand that.

13 Q You would agree that that is a
14 process in place to --

15 A That's a process. What -- if I
16 were an attorney, which I am not and don't
17 ever want to be -- my son, however, does --
18 my first question would say, Prove to me that
19 the people who represent you have been
20 properly trained to fulfill the mission that
21 you have stated.

22 That would be the only thing I
23 would ask, because I understand the processes
24 enough of the High School League. I've been
25 around the folks, and I know what their

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1 intentions are. I've never been one that
2 felt like the High School League was trying
3 to screw me over because.

4 Q Sure.

5 A No. The rules, the standards, have
6 been put out there. The only question that I
7 would have is, Did you properly and can
8 accountability state, actually handed over
9 that responsibility to someone who was
10 certified that they could take care of that?

11 That would be my question. And
12 that's rhetorical.

13 Q And I guess my question back to you
14 would be, what do you think would be needed
15 to be trained to an athletic director or
16 principal to let them know that a student
17 needs a physical?

18 A Well, it's not whether -- there
19 have been too many times when I've dealt with
20 school law where someone will say that's
21 common sense. No, it's not common sense.
22 There's nothing about -- I can get sued for
23 something that's common sense. It's what's
24 in place.

25 So if I look at the constitution

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1 and the bylaws and it says -- well, I think
2 you said it said that the principal is the
3 guy that's in charge, then I would look at
4 that and ask the question, Does he know his
5 job?

6 As a principal, for example, I've
7 got to pass a test that says I'm able to walk
8 into a school building and take care of the
9 young lives that are in that school building.
10 I can't take care of special-ed unless I have
11 signed something that says I've been trained
12 and I understand what happens there.

13 So my point to all that is, all the
14 processes in the world mean absolutely
15 nothing if the person who -- or persons who
16 are going to take care of those processes
17 don't really understand them or they don't
18 really -- really get -- reading the
19 constitution, that seems like common sense.
20 But there have been too many parents who have
21 read that constitution as well and sued -- I
22 was getting ready to say sued us, but sued
23 the High School League.

24 Q Let me ask you, have you seen any
25 evidence in this case that the principal of

1 Beaufort High School at the time of this
2 incident did not know what his responsibility
3 was?

4 A I --

5 Q Let me just finish my question for
6 the record.

7 A Yeah.

8 Q -- did not know what his
9 responsibility was with respect to physical
10 forms and permission slips?

11 A I can't tell you that I do because
12 I -- I just -- I worked with the principal at
13 Beaufort High as a volunteer. My son goes
14 there, and he's an athlete.

15 And as -- as a matter of fact, I
16 met with the principal of Beaufort High
17 yesterday to set up volunteers for testing
18 proctoring. So I get it.

19 I think he's a great principal. I
20 don't have a problem with him as a principal,
21 but I don't know what he was taught or told.
22 He came in right after me, and his plate was
23 full. So another question I would have asked
24 right off the bat is, Did he attend anything
25 the High School League offered from the time

1 he took place to the time the incident took
2 place?

3 Q Let me ask you this. Was it the
4 same athletic director? Jerry Lynn, was he
5 still there after you left?

6 A I think he was, yes.

7 Q Were you ever personally involved
8 in the obtaining of physical forms for
9 student-athletes?

10 A Was I personally? I was personally
11 involved in the chewing out of the person who
12 didn't do it on time. We had -- Jerry would
13 bring a coach in and say, We gave them until
14 Monday; it did not happen.

15 Q Right.

16 A And he would -- and that coach
17 would come in and I would say, Coach, we both
18 understand what our responsibilities are;
19 don't let it happen again.

20 Q And I guess the answer would be,
21 no, you weren't personally involved, but
22 people who reported to you were personally
23 involved?

24 A Uh-huh.

25 Q Is that a fair -- is that a yes?

1 A That's right.

2 Q Did you ever feel that Jerry Lynn
3 didn't understand what the requirements were
4 for him as the athletic director, 'who I'm
5 assuming was -- who was right below you who
6 was then also involved, personally involved,
7 in obtaining physical forms and permission
8 slips?

9 A I didn't, but I didn't because I
10 had taken the time -- and basically to train
11 myself -- I had taken the time to understand
12 all the deadlines.

13 If you would come into my office,
14 you would have seen a big board that said,
15 Physicals due for fall, winter, so on. Jerry
16 Lynn just happened to be an extremely
17 qualified individual in that area, so I
18 didn't -- well, to be honest, I've always had
19 great athletic directors.

20 Q Right.

21 A You know, and they seem to be --
22 they're like marching order people, the ones
23 that I liked. But Jerry Lynn was well
24 qualified, but that didn't mean that I didn't
25 constantly keep in contact with him and ask

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1 him, Are we covered here; are we covered
2 here? Because, from a personal standpoint, I
3 didn't want to win the state championship and
4 then be told I lost it because we didn't fill
5 out a form.

6 Q Sure. Are you aware in this case
7 that there was -- that this was a situation
8 where nobody had a physical form on the team,
9 or is it your understanding --

10 A I know really no details of your
11 case. I know someone was injured.

12 Q Right.

13 A There have been very little
14 discussion about the who, what, when, and
15 where. Just injured athlete, no physical
16 form, so on.

17 Q Okay. And just before I move on,
18 if I thought I heard you correctly, at least
19 with respect to obtaining physicals and
20 permission slips, you felt that Jerry Lynn
21 had the proper knowledge to be able to
22 administer those or obtain those and conduct
23 those on behalf of the various sports teams
24 at Beaufort High School?

25 A I can say yes to that. But I also

1 point out that, from a legal standpoint,
2 Jerry Lynn was not -- he is an extension of
3 the principal. He is not the person that is
4 ultimately responsible for what goes on.

5 And I'm not saying the principal
6 didn't either, okay? I want to make that
7 clear. I'm just saying the fact that Jerry
8 Lynn had that skill meant he had a good
9 principal, is what it should mean.

10 Q Right. And I guess what I -- maybe
11 my point or my question to you is, do you
12 think he lost that skill because you left and
13 then a new principal came in?

14 A I'm not sure what happened, to be
15 honest with you. I -- I'm not sure if he
16 kept meeting with the principal, if there was
17 any of that type of stuff that went wrong.

18 Q And maybe to put it another way,
19 you don't intend to offer any opinions as to
20 the conduct of the principal who was there at
21 the time of this incident?

22 A Oh, no, no, no. That's -- I
23 don't -- my only opinion is what's the
24 structure, what's required of the structure,
25 and how do -- how is it executed.

1 Q Okay. Let me give you some other
2 examples as I've tried to think of some
3 correlations to this case, and I think it
4 would be helpful for me to maybe get your
5 perspective on some of these, particularly
6 when we're talking about a body that promotes
7 rules and regulations.

8 And so -- and I'm trying to
9 distinguish why you think that the governing
10 body may have -- be responsible or liable
11 when there's a shortcoming, alleged
12 shortcoming, by the people that regulate.
13 Does that make sense?

14 A It does.

15 Q And, I guess, let me just put it
16 out there. In this case, the claims are
17 being made against the High School League
18 because there was an alleged failure to
19 follow a rule that the High School League
20 promulgates; is that correct?

21 MR. HOFFMAN: Objection.
22 That's not what we're alleging. We're
23 alleging failure to monitor and supervise.
24 But go ahead.

25 MR. MONTGOMERY: Please

1 don't lead --

2 MR. HOFFMAN: Well, you're
3 misstating what we're alleging.

4 MR. MONTGOMERY: You can state
5 your objection. No speaking objections,
6 please.

7 Q Do you want me to rephrase it?

8 A No, you can continue. I get it.

9 Q Well, I need an answer.

10 A I understand that that is the
11 allegation. The details of this type of case
12 for a person like me means nothing.

13 Q Okay.

14 A It only means, if I were looking
15 back, I would -- I would say, What was your
16 mission and were you prepared to execute the
17 mission and were all the people that
18 represent you prepared to execute the
19 mission?

20 In fact, for example, that Jerry
21 Lynn was a good athletic director still means
22 nothing if the person that is supposed to be
23 in charge of it is not also prepared to do
24 that job.

25 So if, for example, the High School

1 League has processes in place and there is
2 training for their extended authority,
3 then -- and that can be proven, then you
4 really don't have a case against the High
5 School League because everything they said
6 they did. And that is an important part of
7 this. Whether the principal was a good
8 principal or not, it really is neither here
9 nor there.

10 Q Well, and I'm not going to argue
11 with you. But if we're talking about this
12 particular incident and if you had some
13 people who -- I know you're a process guy,
14 but if the athletic director and the
15 principal at the time knew the requirements,
16 knew their responsibilities, and simply
17 failed to do it, isn't that what's important,
18 is what they knew their responsibility to be
19 at the time?

20 MS. ANDERSON: Object to the
21 form.

22 Answer if you can.

23 THE WITNESS: Say that again.

24 MS. ANDERSON: I just objected
25 to the form. Go ahead and answer the

1 question.

2 Q And, Dr. Durbin, let me just say,
3 from time to time, people will object to my
4 question.

5 A Okay.

6 Q You still have to answer --

7 A That's all right.

8 Q -- have to answer unless somebody
9 tells you not to answer or instructs you not
10 to answer.

11 A Could you just repeat the last part
12 again?

13 Q Let me try and --

14 A See now how I turned it on him? It
15 gives me a moment to think.

16 Q That's right. And I forgot how I
17 worded it.

18 A That at the time the two, the
19 athletic director and the principal, knew.

20 Q Right.

21 A And my answer to that is, how did
22 you know? How does anyone know what they
23 knew? Is there documentation and paperwork
24 that says that a new principal who walked
25 into the building was properly trained,

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1 advised in order to exercise that authority
2 and those duties?

3 Q Right. And if you -- and just if
4 I've heard you correctly, you haven't looked
5 in to see as to whether or not that happened,
6 but if it can be shown, then you agree that
7 there would be no case against the High
8 School League?

9 A There are two points of litigation
10 in that with me. One is does the -- has the
11 High School League -- and I haven't studied
12 it, so I can't tell you yes or no. But does
13 the High School League's constitution and
14 bylaws actually have in it processes?
15 Sometimes it's not just did you follow the
16 process you put in there, but do you have the
17 processes necessary in order to fulfill the
18 mission and your requirements?

19 So if there's nothing that the High
20 School League does that actually requires
21 training and documentation, then I would say
22 there's a problem there. But if there's
23 proof that here's what we stand for, here's
24 what we do, and here's how we train those
25 people that represent us, it is a signed

1 document that says we did our part, you said
2 we did our part as the principal or athletic
3 director, then I would say everybody's done
4 what they're supposed to do.

5 Q And isn't that the certificate of
6 eligibility?

7 A Not necessarily. Because if the
8 high school -- if the athletic director, as
9 is done in lots of schools, simply went in
10 and said, We've done all this and this; let's
11 sign off on it, that doesn't mean that the
12 high school -- the High School League's
13 representative, in this case the principal,
14 has actually been trained. There's nothing
15 that shows that in their particular
16 constitution, bylaws, so on.

17 Now, there may be. But I'm just
18 saying that it's all about not what we think
19 the principal knows. It's what we have
20 already documented. And I learned that --
21 actually learned that from someone I couldn't
22 stand, a superintendent I had. But she was
23 good at saying, It's the documentation that
24 proves it. We can't just say we thought we
25 knew it. We've got to prove that we did it.

1 Q Right. But isn't the certificate
2 of eligibility proving that you got the
3 physical form and you got all the permission
4 slips?

5 A It might have. But it still
6 doesn't prove that -- the unspoken part of
7 the constitution and the bylaws actually
8 shows that when you say we believe that the
9 welfare of that athlete is the most important
10 thing, then the next question from an
11 organizational standpoint is, What processes
12 do you do that makes that mission -- fulfills
13 the mission and how do you ensure that all
14 extensions of the High School League actually
15 fulfill the mission, they understand it, and
16 they know how to fulfill the mission itself?

17 To me, it comes back to have you
18 been trained? Do you accept the training and
19 the responsibility that goes with it?

20 Q Well, let me then sort of flip that
21 on its head a little bit. Let's say there is
22 that in place, that there's training and
23 they're signing off and all those pretty
24 things for the process, and a school still
25 leaves a kid off their certificate of

1 eligibility. Is the High School League still
2 responsible for that?

3 A I wouldn't say, no. I'd say no.
4 And that's because they -- they not only
5 provided -- they not only provided the
6 paperwork that shows that the person's been
7 trained, but they also said upfront what that
8 training was and they said upfront what the
9 standard of the expectations were.

10 To be honest with you, I don't ever
11 remember receiving that training, nor do I
12 remember receiving what the standard was.
13 Here's your constitution, and there will be
14 some meetings on, you know, we got this
15 particular issue this year and we'll do that.

16 But I don't -- other than we're
17 going to have a new -- a new member whatever,
18 do you have any questions, that's a different
19 kind of training than this is what we expect,
20 do you understand what we expect, sign on the
21 dotted line.

22 Now, if you had those things in
23 place, then that means that it's -- it
24 fulfills the mission of your vision.

25 Q Are you aware of any other state

1 high school athletic association that has
2 that process in place?

3 A That has training?

4 Q Where you make -- I mean, you've
5 said that it's not -- from what I've heard,
6 you said it's not the training; it's making
7 somebody sign on the dotted line
8 acknowledging it.

9 A No, I'm not really saying that.
10 I'm saying the training didn't count in a
11 legal standpoint if they haven't signed on
12 the dotted line acknowledging it.

13 Q Why do you say "from a legal
14 standpoint"? What distinction are you
15 making?

16 A I make a distinction if we're going
17 to have -- if we're going to have a
18 discussion about the training that I
19 received, just because I sat in the room
20 doesn't mean that I understood it. But the
21 minute I sign off that I understood it, I'm
22 now personally responsible for it.

23 And I constantly will ask my -- I
24 ask my teachers -- I did most of the staff
25 development at Beaufort High because I came

1 from that background. And even there, we had
2 forms that you signed, and I had the ten
3 things that I wanted them to get out of that
4 training that I thought was the most
5 important. And if our training was on sexual
6 harassment, I guarantee you, there were ten
7 things that everyone had to say they
8 understood and they knew, and at the end of
9 that, they signed off on it.

10 I knew later that they weren't
11 going to come back to me and say, Well, we
12 went through it so quickly or we just kind of
13 talked about it. So I always required them
14 to make sure that they legally accepted the
15 responsibility that I was handing to them,
16 just as the High School League legally gives
17 over the responsibility as their extension in
18 the high school to the principal.

19 And I can't tell you if it's
20 set -- if training is effective or not
21 effective, but from a legal standpoint, in my
22 opinion, it really doesn't -- it's nice that
23 we have it, but when we end up in court, if
24 that is not signed down there, I can't really
25 see that it took place.

1 Q Yeah. And I guess what maybe I'm
2 struggling with is you seem to place an
3 emphasis on somebody signing off on
4 something, and I guess my question would be,
5 if the principal of Beaufort High School and
6 the athletic director testified in court, We
7 knew what our responsibility was; we had
8 adequate training; we knew what we were
9 supposed to do, you still would say that
10 there was some deficiency there?

11 A In the process. I didn't say in
12 your situation, but in the process, there's a
13 deficiency there because you are -- you
14 are -- you're allowing me, the principal, to
15 represent you. So from a -- just a
16 perspective of, Okay, do a good job for me, I
17 want to make sure that you understand what it
18 is that you're doing for me and what you're
19 supposed to do, both from an abstract point
20 of view, which is protect all athletes, and
21 from a technical standpoint, which is the
22 processes in which we do.

23 When this case is over, my
24 suggestion for the High School League would
25 be to go back and have a discussion on how do

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1 we know -- how do we know that athletic
2 directors and principals understand what we
3 want? Is there something in our process that
4 proves that versus -- and I don't think --
5 for years I've thought about how the High
6 School League -- for example, people sue you
7 guys all the time. They're never going to
8 win until they ask the question -- they keep
9 asking the wrong questions.

10 The questions that they're asking
11 is, Do you have the right to make rules and
12 enforce them?

13 Q Yeah, this case isn't about that.

14 A But I'm saying --

15 Q Yeah.

16 A -- from this perspective, no, '72
17 already proved that. And everyone keeps
18 pointing to '72 and saying -- well, any judge
19 is going to look at that and say, Well, yes,
20 it says they can.

21 The question that's not asked is,
22 Do you have processes and things in place to
23 fulfill? You get to put these rules and
24 regulations in, these processes in, but how
25 do you make sure that they're understood and

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1 that they take place under a guidance of
2 somebody who is qualified to enforce them?
3 That would have been my question.

4 Q How the High School League enforces
5 their rules?

6 A Yeah, how they enforce -- any
7 organization. How do you enforce them? How
8 do you -- what's the leadership training that
9 takes place with, in this case, a principal
10 who just came into a hornet's nest situation
11 and has all this other stuff to deal with,
12 how do you show that he was prepared to
13 handle that situation?

14 We could say, Well, he was prepared
15 because we gave him the best athletic
16 director in the district. It doesn't matter.
17 He's not the one that's handed the baton.
18 The principal is, not the athletic director.

19 So -- and I am not making any
20 stipulation that -- that that didn't all
21 happen. I'm just saying that, from a process
22 standpoint, it is a gap, I believe, a gap in
23 the High School League's formality of what is
24 the leadership training doing to prepare.

25 And I can tell you what it's not

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1 doing. It is not preparing principals to be
2 the leaders in that organization if you're
3 not required to even show up. You can have a
4 conference in the fall and one in the spring,
5 but you don't have to go. Your athletic
6 director can go and come back and tell you
7 about it.

8 Q Right. And what I'm asking you is,
9 would you not concede that even if there's no
10 requirement to go, you can still have people
11 such as yourself who are competent and able
12 to carry out -- are you saying that you, when
13 you were the principal of Beaufort High, were
14 not properly trained and could not carry out
15 the job requirements with the High School
16 League rules and regulations?

17 A I'm so anal-retentive with my
18 rules, which, with my history, you wouldn't
19 think that, but I am. I am anal-retentive
20 about rules and I do those things.

21 The question isn't, Do you have
22 anybody? Well, it is, but the question is,
23 Do you have the processes to ensure? See, it
24 would be fraudulent for me to say to a
25 parent, Your child is protected; that is our

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1 ultimate responsibility, and then not provide
2 the people that are going to execute that for
3 you with the training, with the expectation
4 and the standards. As long as you can prove
5 that, then what you say your mission is and
6 what your processes and your expectations
7 are, then they jibe.

8 Q Right. And with the High School
9 League, you're not critical that a school --
10 a school is not required to send physical
11 forms and permission slips to the High School
12 League?

13 A A summary form is enough.

14 Q You're talking about like the
15 certificate of eligibility where you -- the
16 school principal -- the principal signs off
17 and says, Here's the list of players for the
18 team, and when we send this to you, we're
19 certifying that we have physicals; we have
20 permission slips; transfer forms, if needed;
21 things like that?

22 A It's part of the process. It's
23 part of what is a known entity.

24 Q Right. And you would agree that
25 that is a process in place for the High

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1 School League?

2 A That is a process.

3 Q Okay. And you would agree that --

4 if a school, for whatever reason, certifies

5 that somebody's had a physical form and they

6 haven't or they leave a student off the list,

7 is there any way for the High School League

8 to know that?

9 A You're trying to do a

10 rationalization here, and I get that. The

11 rationalization, you would agree that if you

12 did this and this and this.

13 From my standpoint as a principal,

14 I would have argued that all day. But as a

15 process person, I would look at that and say,

16 You lucked out this time. You don't have in

17 place what you need in order to ensure, from

18 both a legal and an expectation point from a

19 parent, that that principal, that athletic

20 director, that coach --

21 Now, I can tell you the school

22 district does training, and having -- and

23 knowing about that training, I can say that

24 I've sat in on it, and you sign off that you

25 were there. But that doesn't happen with the

1 High School League.

2 And I'm not saying it's right,
3 wrong, or indifferent. I'm just saying
4 there's really a difference from trying to
5 say that, Well, you will agree that they
6 could. No, as far as the process is
7 concerned, does it start from the top and go
8 all the way to the bottom, to that last
9 person and whose responsibility is it for
10 making that happen? That would be my -- my
11 conjuncture on that.

12 Q It sounds like, from what I've
13 heard so far, your main complaint is that the
14 training -- and you also have acknowledged
15 that there is training on what the rules
16 require by the league?

17 A There is. But the -- to clarify
18 that, I don't have a complaint at all. I'm
19 just giving you my insight into that. But
20 the training may not -- and we'd have to look
21 at their -- I haven't been to one in five
22 years, but you would have to look at, do you
23 have new principal training and is that
24 something -- is that with conference? Is
25 that in -- is that your conference or is that

1 something we do and bring them to the league
2 office? What is happening, that when a new
3 guy gets there, he is capable of managing the
4 situation?

5 And for principals, they're not
6 only managing academics and facilities and
7 hiring new teachers during the particular
8 time of the year we're talking about; they're
9 also having to get ready for the next year
10 and do those things.

11 So just saying that they're smart
12 enough to do it from a legal standpoint I
13 don't think is enough. There has to be
14 something that verifies --

15 Q And maybe let me ask you this way.
16 I understand what your opinion is.

17 A Yes.

18 Q I'm trying to -- one part of what I
19 want to know today is, have you looked at
20 other state organizations to determine as to
21 whether what the High School League is doing
22 in this arena with physical forms and
23 permission slips is any greater or less than
24 any other high school association?

25 A I've not taken the time to go

1 outside of South Carolina for athletics. But
2 I can tell you from speech and debate, which
3 is my world, there is a new coaches/a new
4 administrative training that takes place that
5 says you have to say that you've been through
6 the training, you have to verify that you
7 understood the training, and that you will
8 fulfill your responsibilities.

9 And I have not -- not had to have
10 this type of situation before because, to be
11 quite honest with you, I've never been at a
12 school where I had this situation.

13 Q That's what I was going to ask you.
14 In the ten years that you were at Beaufort
15 High School, did you ever have another
16 situation with a student not having a
17 physical form before participating in a
18 sport?

19 A I don't think we did. Not that I
20 can recall. But I will tell you that as nice
21 as I was to teachers and coaches, because I
22 understood they worked hard, don't -- don't
23 screw up on breaking what we have agreed on
24 when it comes to a kid. Don't do it. We
25 are -- our credibility lies in our ability to

1 make good on what we say we're going to do.

2 In a school district, the school
3 district says, Here's what we stand for and
4 what we do. And then they delegate that
5 responsibility to the principal. And the
6 principal in Beaufort High's case when I was
7 there, we were site-based, and being
8 site-based, we got to make a lot of
9 decisions.

10 But I couldn't make those decisions
11 without first taking it through our advisory
12 council and then taking it to the man, which
13 was Herman Gaither at the time, and saying,
14 Here's what we're going to do and here's how
15 we're going to do it and everyone understands
16 and agrees.

17 And I showed him 150, including
18 custodians, signature's that said this is
19 exactly what we understand that we're going
20 to do and how we're going to do it.

21 Q Okay. And to try to put a little
22 bow on what opinions you're offering in this
23 case, it sounds like to me that you would
24 acknowledge, with respect to physicals and
25 permission slips, that the High School

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1 League, in terms of actually getting the
2 physical done, collecting the form that's
3 used, the High School League is not directly
4 involved with that?

5 In other words, the High School
6 League doesn't come to your school -- the
7 High School League staff doesn't come to your
8 school, organize physicals --

9 A They're not involved, but they're
10 still responsible because -- and let me just
11 give you why I think that's the case.

12 Q And what I'm asking, when you say
13 "they're still responsible," who are -- I
14 mean, it's a rule that's in place. Are you
15 talking about responsibility for enforcing
16 that rule?

17 A Not just enforcing the rule, but if
18 I put -- if we walk out of this room and you
19 say to me, Dan, you did such a great job; I'm
20 going to give you my credit card and I want
21 you to go buy such-and-such.

22 And I walk out and I spend ten
23 times more than you said, you would be an
24 idiot for handing me your credit card because
25 you didn't put any guidelines on what you

1 wanted me to do, how you wanted me to do it.

2 I'm not saying that the High School
3 League didn't do those things in this case.
4 I'm simply saying that are you sure that your
5 principal in particular in this case was
6 prepared?

7 If you can say yes and prove that,
8 that's one thing. But to say, Well, no, it's
9 just kind of common sense; you had a good
10 athletic director. You don't say to the
11 athletic director you're the one ultimately
12 responsible for it. We say it to the
13 principal.

14 And I happen to like the principal,
15 so I don't have an opinion about that. I'm
16 just wanting you to see that there is a
17 difference between saying we've got a process
18 and having the trained people that fulfill
19 the process.

20 Who is it that you're going to
21 call -- the athletic -- athletic league calls
22 when they're going to fine? They send a
23 letter, and that letter is sent to the
24 principal. And if I had ever known that a
25 letter -- if I didn't know a letter was

250

1 coming, that athletic director knew that
2 there would be hell to pay.

3 Q Let me give you an example and see
4 if -- are you aware that DSS regulates
5 daycares?

6 A Uh-huh.

7 Q For-profit daycares?

8 A Yes.

9 Q Are you aware that DSS has a whole
10 bunch of regulations as to what daycares can
11 do?

12 A Yes.

13 Q Okay. One of those regulations,
14 I'm not sure if you're aware of, but I'll
15 represent to you, and I can show you if you
16 need to, is ratio of staff to children based
17 on age.

18 A Yes.

19 Q So for two- to three-years-old,
20 you've got to have one staff for nine
21 children.

22 A Uh-huh.

23 Q Are you familiar with that sort of
24 concept?

25 A I'm familiar.

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1 Q So let's say we have a situation
2 where you've got a daycare facility. You've
3 got two teachers. You've got 18 kids. One
4 of the teachers gets sick. They rearrange
5 kids, but they end up with ten kids in the
6 class in violation of the DSS rules. One of
7 those kids gets hurt. Is DSS liable for
8 that?

9 A Is DSS liable for one of the kids
10 getting hurt?

11 Q Yes.

12 A Not if DSS has already given the
13 training and that institution already
14 understands exactly what it is they're
15 supposed to be doing and they chose to go
16 ahead and do it without the -- following the
17 process.

18 Q And I guess my question is, there's
19 a -- to me, there's two separate aspects to
20 what you've just said. You say, one, there's
21 the training and, two, that the daycare
22 understands what its role is.

23 And it seems to me that you have
24 sort of said today that there can't be an
25 understanding without training that requires

1 some sort of sign-off or -- and I guess what
2 I'm trying to do is marry those two.

3 A But also remember, we have --
4 daycare is a big thing in this community, so
5 I'm quite familiar with it and the parents
6 and their opinions of it.

7 Those teachers actually do get
8 trained and have to sign off on things.

9 Q Are you aware that they have to
10 sign off that they know that the ratio is --

11 A Yeah.

12 Q Okay.

13 A All of that takes place. And I
14 think I said from the very beginning, if all
15 of that process is in there and it can be
16 proven and people have been trained to do
17 what they're supposed to do, then it's a
18 whole different conversation. But it's not
19 as easy as saying we've got it in our
20 constitution or our bylaws and here it is,
21 read that, and tell me you can go and do it.

22 Q Sure. And in this case, there's --
23 the High School League, as a body, could have
24 just said you've got to have a physical form
25 on file and that would be it? I mean, that

1 could have been -- that would have been the
2 very basic of rules on physicals?

3 A I'm not disagreeing with that, but
4 let's think of it this way. Think about the
5 High School League is a well-respected
6 institute in South Carolina. And I don't
7 think -- there will be some people who will
8 disagree with it, but it really is well
9 respected. It's a sports state.

10 In order to remain respected,
11 everyone who represents that league has to
12 represent the same mission, the same
13 commitment. All I've said today is are there
14 processes in place to make sure that your
15 representatives can do that.

16 If you can prove that, then -- then
17 there's no discussion for me. If that can't
18 be proven, then the discussion is, after
19 you're done with this case, what are you
20 going to do to make sure it is?

21 Q All right. And then I guess my
22 follow-up is, then, you do not have an
23 opinion in this case as to whether or not
24 there are appropriate processes in place?

25 A That's because I don't -- I

1 intentionally haven't got involved in the
2 details of the case.

3 Q Okay.

4 A Now, if someone said to me, would
5 you do this and this and this, and I knew
6 more details in the case, then I would -- I'd
7 give what my opinion is.

8 Q Right.

9 A But from a process point only,
10 there are certain steps that have to take
11 place.

12 Q Right. And I guess my question,
13 then -- and maybe -- I'm trying to ask it in
14 a way that maybe wasn't as clear the first
15 time I asked it.

16 But if you had the principal and
17 the athletic director testify under oath that
18 they understood what was expected, they knew
19 what to do, they'd been doing it for a long
20 time, you would not think that would fulfill
21 the appropriate process because there was no
22 sign-off on training?

23 A I would have asked. The first
24 thing I would have asked if I were doing the
25 cross-examination is, Explain to me how you

1 got to this point. How did you get to this
2 point? And most principals will tell you,
3 Well, I've got a great athletic director or I
4 did this.

5 So I wouldn't -- just because that
6 principal says, I understood, I'd want to
7 know what you understand and how you got to
8 the point that you understood it.

9 Q And you would agree that the simple
10 fact that there's no signed paperwork from a
11 training doesn't mean they aren't properly
12 trained?

13 A It doesn't necessarily mean it, but
14 there would be something that showed that
15 I've had the training.

16 Q Right. And would the fact that for
17 ten years you didn't have any problem, at
18 least while you were there, wouldn't that be
19 some indication that the school, the athletic
20 director, the principal knew what they were
21 doing?

22 MR. HOFFMAN: Object to form.

23 A Well, I -- just because it didn't
24 happen at Beaufort High during that --
25 whatever years it was doesn't mean that I

1 didn't hear on a monthly basis a school that
2 didn't get it right and hadn't been called by
3 a principal that said, Hey, we're facing
4 such-and-such. Oh, man, I didn't realize,
5 that type of response.

6 So to say -- to say because you
7 don't have a problem doesn't mean there
8 doesn't need to be some kind of training, and
9 sign. Really is a moot point because they
10 represent. In this case, they represent
11 the High School League.

12 I'm not going to let anyone
13 represent me that doesn't follow my --
14 everything about what my mission is. If they
15 don't believe in my mission, they don't get
16 to represent me. If they can't prove they
17 understand how we do things and the legal
18 ramifications of their actions, they don't
19 get to represent me.

20 Q And I'm sort of trying to figure
21 out why you say they represent the High
22 School League. In my DSS analogy, the
23 daycare workers aren't representing DSS.

24 A Because it says in your -- not your
25 constitution -- bylaws that the

1 responsibility is handed over to the
2 principal, so they now represent you.

3 Q And so do you think the daycare
4 workers represent DSS who has to license the
5 facility before it can open its doors?

6 A Actually, DSS and the High School
7 League are not quite the same entity.

8 Q What distinction are you making?

9 A I'm making it very distinct, the
10 voluntary part of it. See, you really
11 can't -- we can't have it both ways. We
12 can't say on one hand you can't really
13 participate in a state championship in the
14 State of South Carolina unless you follow --
15 yeah, there's other little things you could
16 do, but in order to actually participate in
17 what this state considers to be sanctioned
18 athletics, the High School League is the
19 highest standard of that.

20 From a legal standpoint, the -- the
21 people at the child care center, they have
22 already signed off that they understand it,
23 that it has been verified they understand it,
24 and they chose -- in your example, they chose
25 to ignore it. So unless we want to say that

1 the representative at the school level for
2 the High School League chose to ignore it,
3 now that turns the whole case around.

4 Q Right. That's not what we have
5 here?

6 A That's a whole different kind of
7 situation. If we want to say that that
8 representative for the High School League, he
9 was -- he was trained and he understands
10 everything about what he's supposed to be
11 doing, which I can't see how any organization
12 with any kind of self-respected pride doesn't
13 make sure that that happens, because when
14 these type of things happen, people don't
15 look at George over here; they look at the
16 High School League and say, Why did you not?

17 Q Well, don't they look at the
18 school?

19 MS. ANDERSON: Object to the
20 form.

21 Go ahead.

22 A They can look at the school, but
23 we've got to understand how public perception
24 is about the High School League.

25 Q Well, tell me what you're basing

1 the public perception on the High School
2 League on.

3 A Sitting in stands, listening to
4 parents talk about the fact that George
5 didn't get to play tonight. They don't say
6 the coach did something. They say Bluffton's
7 kid didn't get to play because the High
8 School League. Now, that's not fair.

9 Q Right.

10 A But it is the public perception.

11 Q Well, let me ask you this. Do you
12 think college coaches are the extension or
13 representatives of the NCAA?

14 A Are an extension? Oh, yes, no
15 doubt.

16 Q So you think they represent the
17 NCAA?

18 A Yes, I do.

19 Q Okay. Tell me why do you think, as
20 a lawyer, that I represent the bar in all my
21 activities, that I'm a representative of the
22 bar?

23 A You're a representative of the
24 processes and the legal concepts that the bar
25 represents. And when they sign off and they

1 say you're ready and you're prepared, what
2 the bar is saying is you're now an attorney
3 that can be trusted, that can so on.

4 Q And if I commit malpractice, does
5 my client have a case against the bar?

6 MR. HOFFMAN: Objection.

7 A I -- we're back to process again.
8 If you did everything the bar expected of you
9 and it fulfilled everything that was supposed
10 to be done, no, because you made a choice to
11 do that against what you have already signed
12 off was your responsibility.

13 Q What if it was inadvertent and I
14 didn't make -- I mean, I didn't make a
15 conscious choice to violate anything the bar
16 requires?

17 A And the bar would have dealt with
18 you. They've got rules and regulations and
19 processes in place on how to deal with it.

20 This whole conversation always
21 comes back to the same thing for me.

22 Q So I guess what I'm saying is you
23 would say if the bar didn't have the right
24 process in place to make sure that I was
25 getting the right education or training, then

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1 the bar should be liable for my malpractice?

2 A It's not the education and the
3 training as much as the fulfillment of your
4 understanding of what you're doing.

5 When you take your bar in New York,
6 that long process is meant to sort out your
7 knowledge, not just facts you can quote about
8 cases, but the knowledge that you can
9 comprehend and apply. So there is a process
10 in place that automatically makes you
11 responsible, and if you pass it and you make
12 a whatever it is you have to pass, that's a
13 document that says that you are now qualified
14 to practice law.

15 Q Let me give you a different example
16 with the bar. Are you aware that the bar has
17 rules in place as to how lawyers can solicit
18 business?

19 A Yes.

20 Q And how we can advertise?

21 A Yes.

22 Q Are you aware that the bar does not
23 require me to take any continuing education
24 on those particular rules?

25 MR. HOFFMAN: Object to form.

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1 A No, I'm not aware of that. But
2 you're not an organization. You're not
3 representing the bar. You're representing
4 the results of a test that you took that the
5 bar gives. You're not representing the South
6 Carolina Bar Association when you're out
7 there practicing that. You've already been
8 established as a trained lawyer.

9 When you inadvertently or
10 deliberately do something, you are now
11 responsible for your own action, and you've
12 got through a pretty rigorous process to be
13 responsible for your own action. That
14 principal does not.

15 For most cases in the State of
16 South Carolina, the principal does not go
17 through that rigorous -- maybe it's because
18 when we say the welfare -- safety and welfare
19 of a young person, it's just kind of expected
20 that that's going to happen, but it's -- in
21 my opinion, it's the extension of the High
22 School League.

23 Q Let me go through your -- we've
24 talked about it. We've been going about an
25 hour and a half. Do you need a break?

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1 (A recess was taken.)

2 Q We're back on the record.

3 Dr. Durbin, before I move on and go
4 over your letter, I think we've discussed
5 most of the general principles, but a couple
6 things I want to be sure.

7 With respect to student-athletes in
8 South Carolina needing a physical before
9 participation, would you agree with me that
10 there are some processes in place by the High
11 School League to make sure that that is done?

12 A Yes.

13 Q Okay. And then I think you've said
14 this, but let me maybe give it with an
15 example. Let's say there's 100 players on a
16 football team. Certificate of eligibility
17 comes in and there's a clerical error and
18 they only put 99 on there.

19 If there are processes in place
20 that you believe are adequate, the fact that
21 that one kid was missed due to some sort of
22 clerical error, you would not find the High
23 School League responsible for that?

24 A Find the High School League
25 responsible for a clerical error?

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1 Q Right.

2 A Not if everything that we've talked
3 about before has always been there.

4 Q Right. And maybe a clerical error
5 was my example. Some sort of inadvertent
6 error.

7 A Well, see, the hard part about any
8 volunteer organization, no matter what area
9 it's in, setting the constitution, the rules
10 and the regulations, that's the easy part.

11 The follow-up, the checking on to
12 make sure that at the local level it's
13 happening, that still doesn't -- that still
14 doesn't relieve me as the organization of the
15 responsibility because I've accepted you as
16 members. I've accepted your money. I've
17 accepted your whatever.

18 And it's -- it's difficult being a
19 volunteer organization, I believe, in the
20 sense that you, in your case, govern so much
21 and have so many athletes and so many schools
22 to take care of, but still within your
23 structure, you are ultimately responsible for
24 what you say you believe and what your
25 mission is and what your --

1 Q Rules are.

2 A -- rules are. And the follow-up is
3 the most difficult part. After something has
4 happened, that's easy to say, You go to page
5 3 and it says. But trying to prevent those
6 things, the preventative maintenance, is the
7 difficult part.

8 Q We touched on this at the very
9 beginning. Would you agree that if there
10 is -- and I'm not necessarily saying in this
11 case, but in general, if there is an
12 inadvertent oversight or failure to follow a
13 rule, does that always mean that the process
14 is flawed?

15 A Not necessarily, no.

16 Q Okay.

17 A No.

18 Q I'm going to go through your
19 letter. It may be helpful. I'm just going
20 to go through by paragraph. I think we've
21 talked about most of it.

22 In that first paragraph, you've
23 already talked about you looked at the
24 constitution, bylaws, rules and regulations,
25 the Beaufort County School District Athletic

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1 Parent Handbook.

2 Let me just ask you -- because I
3 saw down later in here it talks about the
4 2015-2016 version, and I just -- is that what
5 you looked at for the league's rules or
6 constitution?

7 A I went online, pulled it up, found
8 the most recent that I could find.

9 Q Okay. Would you agree that if
10 there are differences between what you looked
11 at and the way that it was back in 2012-2013,
12 that we would be governed by what the rules
13 said in 2012-2013?

14 A The most -- yeah. And --

15 Q And I'll just represent to you that
16 this injury happened in May of 2013.

17 A Yeah, and I understand that. Which
18 really highlights the importance of having a
19 new principal or a new person updated and
20 trained. I could have been trained on an old
21 version.

22 If I say I was at high school A
23 back in 1909, and I was trained, and then I
24 took some time off, a few years, and then I
25 come back into it and suddenly all those

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1 rules have changed, you can't say that I was
2 properly trained because I was trained on a
3 different time or a different structure, so
4 on.

5 Q Right. And I'm just saying, for
6 purposes of judging the defendants in this
7 case, what's important is what would have
8 been in the rules in place at the time of the
9 accident?

10 A Whatever's in those rules, that's
11 exactly right.

12 Q And so did you go back and pull
13 what would have been in the Beaufort County
14 School District Athletic Parent Handbook for
15 the 2012-2013?

16 A No, I did not.

17 Q I have not seen a copy of that, and
18 I know you didn't put it in here.

19 From memory, can you tell me what
20 you looked at that was important or what you
21 recall from that handbook?

22 A I think I got that from my son, to
23 be honest with you, the -- and what I was
24 looking for is deadlines, what you have to
25 have in. I already knew it, but I wanted to

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1 make sure that parents were told that you had
2 to have certain things. That was the real
3 reason I was looking at that.

4 How did the school district -- how
5 did the school district become an extension
6 of the High School League? Because the
7 school district is still responsible for
8 making sure that the High School League rules
9 are implemented. That's part of their -- and
10 I'm never working for them again so I can
11 tell you, they did a fairly decent job of
12 making sure that you understood those things.

13 So I wanted to, just by looking
14 back on those things, say, All right, are we
15 still trying to make sure that parents
16 understand that these things are our
17 responsibility?

18 Q And when you say "these things,"
19 are you solely looking at physical forms and
20 permission slips, or are you looking at
21 everything?

22 A All processes.

23 Q You were looking globally?

24 A Yes, globally. The processes in
25 place. As a parent, I look at that, do I

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1 have a good understanding of the
2 responsibility -- of not only what the rules
3 and regulations were, but what are the
4 responsibilities of the school district, what
5 are the responsibilities of my principal, so
6 on.

7 As a principal, I just made parents
8 come in. We went through it together, and we
9 talked about it. And if you didn't agree to
10 it, your kid just didn't participate. And I
11 had only one or two that went to the
12 superintendent and said, He's being mean, and
13 I just accepted whatever came along.

14 Q Do you recall anything in the
15 athletic parent handbook for Beaufort County
16 School District about physical forms and
17 permission slips? Do you recall looking at
18 anything germane to your opinion in this
19 case?

20 A Processwise. See, physical forms
21 are germane directly to the case. And
22 really, I'm a thousand feet up looking down
23 at the process that needs to take place in
24 organizational development.

25 Q Mr. Hoffman may disagree with me,

1 but if you find a -- in the process related
2 to eligibility for transfer students, well, I
3 may not agree that that has any impact for
4 processes for physical forms and permission
5 slips which is in this case.

6 So that's why I'm asking you, did
7 you see anything specific to permission slips
8 and physical forms in the handbook?

9 A If you're asking do I think the
10 process is legit, yes, it's a legit process.
11 The real -- there are two factors if you were
12 asking me what's your opinion.

13 Factor one is is there follow-up to
14 the people that represent us. How do we
15 monitor that what they're representing is
16 proper?

17 And the other thing is, is it
18 articulated in such a way that, when we go
19 back to it, it's a clear path from A to B?

20 Q Okay. You haven't formed an
21 opinion as to the specific whether the High
22 School League is meeting those two
23 criteria --

24 A No.

25 Q -- a thousand feet?

1 A I've intentionally tried to be
2 general so that, as both sides look at their
3 evidence, their processes, you know -- if you
4 said to me -- for example, if you said, Do
5 you think the High School League does a good
6 job of monitoring its extensions in the
7 schools? From a personal standpoint, I could
8 answer that question one way.

9 Q Which would be?

10 A I don't think they trained their
11 principals very well, but that's just a
12 personal standpoint. That doesn't mean that
13 what they're doing isn't -- doesn't meet a
14 criteria.

15 But if you were to ask me is the
16 High School League responsible for what goes
17 on on the field, I would have to say yes, it
18 is directly responsible for it because it
19 trains the officials. They have to be
20 trained. They have to be verified. There's
21 all kinds of things that have to happen
22 before you can represent the High School
23 League.

24 The High School League can -- as an
25 official, I can be told I can't officiate any

1 more games or be told that I can't be at any
2 more with Bluffton and Beaufort High. The
3 ultimate power with the High School League is
4 pretty strong.

5 Q When you say "officials," you're
6 talking about referees, or are you talking
7 about --

8 A Referees. I just used that as an
9 example.

10 Q Okay. So I kind of sidetracked. I
11 think you were saying if something happens on
12 the field with the officials, it's the High
13 School --

14 A Yeah.

15 Q What do you mean by that?

16 A The High School League is
17 ultimately responsible for the training of
18 those officials to make sure those officials
19 do what they're supposed to. And when they
20 don't, the high school league -- and I've
21 seen it happen -- are very good at moving in
22 and saying, Okay, that official did this and
23 this.

24 Q Gotcha.

25 What I want to be sure you weren't

1 saying is the High School League doesn't tell
2 coaches who to play --

3 A No.

4 Q -- and how to practice, and so if a
5 coach plays a seventh grader who gets hurt,
6 that's not the High School League's
7 responsibility?

8 A It's not the High School League's
9 responsibility if all of the rules and
10 regulations have been covered and that
11 coach -- see, it always goes back to what
12 happened on that field that coach did.

13 Now, my first question to the coach
14 is, What did you know about those rules?

15 And the coach says, Well, I
16 thought...

17 Well, no, I don't care what you
18 thought. I want to know what you knew.

19 I know this, this, and this.

20 Well, how did you know that?

21 I'm going to go back to the
22 athletic director and say, Why did you not
23 train your coach properly?

24 And the athletic director says to
25 me, Well, we didn't know, blah, blah.

1 I'm going to go back to the
2 principal and have that same conversation
3 until we find where that gap is. Because
4 we're in not just the business of protecting
5 children; we're in the business of protecting
6 institutions. And when I say "protecting,"
7 being fair to them.

8 Q Competition, fair competition?

9 A That's right. That's exactly
10 right.

11 Q I guess what I'm saying is, assume
12 that there is no rule or regulation that
13 governs a situation. My example, there's no
14 rule or regulation that requires only big
15 kids to play on the defensive line, correct?

16 A Correct.

17 Q All right. So let's say a coach
18 puts a very tiny kid on the defensive line
19 and he gets hurt and, for whatever reason,
20 there's a claim or a lawsuit. The High
21 School League doesn't have any responsibility
22 in that situation where there's no rule or
23 regulation as to where a kid and what size
24 kid should play where?

25 A And the best way to answer that

1 would be to go back to if the High School
2 League, for example, had a conference and
3 they looked at the health and welfare of
4 athletes and that was an example that was
5 brought up in that conference and they
6 accepted that, then whose responsibility is
7 it to make sure that coaches know that?

8 I'm not saying it's the High School
9 League, but I am saying once we adopt
10 something and once we sell that as our
11 belief, then how do our members know that
12 that's our belief? How do they know that
13 that is a priority that we have?

14 And I don't know the answer to
15 that. I'm just saying, from an
16 organizational standpoint, how does the
17 updated information get out there? How does
18 the updated information on the constitution
19 that gets revised constantly, how does the
20 principal, who never shows up to anything,
21 get that?

22 Q Would you agree that there are some
23 things in the broad thousand-foot view of
24 high school athletics that are going to be
25 solely in the discretion of the school?

1 MS. ANDERSON: Objection to
2 form.

3 Answer if you can.

4 A Solely in the discretion of the
5 school? When it comes to competition --
6 you're talking about competition and
7 participation and those kinds of things?

8 Q Yeah.

9 A Because there are obviously some
10 things that matter.

11 Q I'm talking about who plays on the
12 field.

13 A Well, that's really not up to the
14 discretion. There's an example you could
15 give that would say it's up to the
16 discretion. But there's many more examples
17 that say the High School League must believe
18 that it's important because they have rules
19 and regulations that actually say this person
20 can or can't under these circumstances.

21 Q Eligibility aside. I'm talking
22 about eligible players. The High School
23 League doesn't have a say as to who the coach
24 puts on the field to play if they're all
25 eligible versus --

1 A As long as they meet the standards
2 that have been established and those
3 standards have --

4 Q For eligibility?

5 A That's right.

6 Q And we don't -- the High School
7 League doesn't decide who's on the team? The
8 school has tryouts, if they wish, assuming
9 eligibility criteria is met.

10 You would agree with that?

11 A That's why you have a constitution
12 and bylaws that spell that out. It's not --
13 it's not subjective at your level.

14 I keep saying "you," and I'm sorry
15 for doing that.

16 Q That's okay. When you say "you,"
17 you mean the High School League?

18 A The High School League.

19 Q Right.

20 A It's not subjective at the High
21 School League level. They -- from dealing
22 with folks and having lots of friends at that
23 level, I can tell you that they try to be as
24 objective as possible unless, of course,
25 you're losing to Summerville every year and

1 you think that the school is only -- you
2 know, that silliness that takes place.

3 But everything that the High School
4 League does goes in their constitution; it's
5 updated. Why? To make it objective, not
6 subjective so that there's this little crack
7 in there that says yesterday we ruled this
8 way and tomorrow we'll rule that way.

9 So as long as it's objective and
10 it's going downward and the information is
11 flowing and the understanding is flowing
12 downward, then that's when we have no issues.
13 But when there's a gap of information, when
14 there's a gap of understanding -- I don't
15 think I've ever seen the High School League
16 back away from something unless it was that.

17 Q Unless it was what? A gap of
18 understanding?

19 A A gap of understanding or a gap of
20 misinformation or something. But very rarely
21 have I seen the High School League make a
22 ruling and go, Oh, we're sorry about that,
23 because they're usually able to point to
24 something that is very specific --

25 Q And hopefully clear?

1 A -- and clear that makes that
2 happen.

3 But, for me, listening to this
4 particular kind of case is we can't have it
5 both ways. We can't say that this objective
6 point of view up here for this organization
7 is meant to be objective, not everyone within
8 the flow of information and authority
9 understands it and can execute it.

10 Q Right. And when we're talking
11 about being objective, a rule that basically
12 says everybody has got to have a physical,
13 we're talking about that objective rule? Is
14 that what we're talking about?

15 A Those are the kind -- those are
16 rules, and the rules -- personally, I've
17 never seen a rule that the High School League
18 had that I didn't agree with. So that was
19 not -- wouldn't be my issue.

20 My issue on everything -- and my
21 wife will tell you, it's the same way at my
22 house -- is did -- before I yell at my son,
23 did he understand that he was supposed to
24 have his license on him? Did we go through
25 that when he -- well, yes, he did because he

1 took it on his driver's test. We had a
2 conversation about that. I drove with him
3 for so many weeks before he was allowed to go
4 out on his own. I was assured as a parent
5 that he understood.

6 Now, when he gets in my car that I
7 pay the insurance for, he represents me, and
8 when he speeds, I take great offense to that
9 because you just got a ticket and it raised
10 my insurance \$300.

11 So the accountability portion is
12 what I'm looking at. How are we accountable
13 and how -- if you could -- if anybody could
14 say to me, We all knew; we all know; I went
15 through whatever process it was that's
16 established, and when it was over, I could
17 look them in the eyes and say, I got it,
18 that's one thing. But to not be able to say
19 that means there's a gap.

20 Q And the example you gave is
21 interesting because I imagine your son would
22 say that he was aware he wasn't supposed to
23 speed; he'd taken the test on not speeding
24 and yet he still sped.

25 A However, I can still tell you how

1 many kids who take that test, guess at the
2 answers, no adult has ever said what did you
3 really understand about that, and still is
4 driving.

5 Whose responsibility is it to make
6 sure that the vision and the mission is
7 fulfilled in any organization and who does
8 the follow-up? Who makes sure that it's
9 actually happening?

10 I told Jerry Lynn one time, I said,
11 When I retire, I'm going to work for the High
12 School League, and I'm going to be the guy
13 that goes and visits every coach and every
14 athletic director and just has that
15 conversation. Not because I wanted to do
16 that, but because I just like being around
17 coaches, you know.

18 But even then our conversations
19 were about, who is keeping track of what's
20 going on, who's keeping track. And if I'm on
21 the other side of it, I say, Who prepared you
22 to be here today? Who prepared you to be the
23 principal of Beaufort High School? Who
24 prepared you to understand what the vision
25 and expectations of the High School League

1 are?

2 And if that's answered properly,
3 then you are responsible for your actions.

4 Q And not just the vision and
5 expectations but the rules?

6 A The rules.

7 Q Right. That's what we're talking
8 about.

9 A But it's more than just rule on a
10 page. It's do you have a complete grasp of
11 what the High School League is, what it
12 stands for.

13 What's important, I think, in this
14 case -- and this is kind of coming to my
15 mind -- is our ultimate goal is to make sure
16 and take care of the health and safety and
17 welfare of those student-athletes.

18 So if I were investigating this,
19 which I used to do in the military, I would
20 start going backwards and saying, What did
21 everyone know? And throughout that flow of
22 information, did everyone have enough
23 information to do what the mission says we're
24 going to do?

25 And it's a simple thing. It's not

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1 a, Did I mean to screw up? Because a lot of
2 the times most of the things that happen in
3 any organization isn't intentional. It's did
4 I have enough information and enough
5 understanding in order to apply it and to do
6 what was expected of me.

7 Q All right. Let me go back to your
8 letter here.

9 You talked about interviewing South
10 Carolina athletic directors. Who did you
11 interview?

12 A Let's see. Jeremy Huff.

13 Q And where is he the AD?

14 A He was the assistant AD at Beaufort
15 High.

16 Q Is he still there now?

17 A He's still there.

18 Q And what did you ask him? Or tell
19 me what that interview consisted of.

20 A I asked him about who -- it was for
21 clarification. It was who is really
22 responsible for making sure that these forms
23 are turned in, is there some kind of change
24 now that says coaches do it, so on.

25 When I was a basketball coach, I

1 always had an assistant parent who would
2 collect all the forms that needed to be
3 collected. There was a checklist. He or she
4 would hand me that list. I would take it
5 home at night, verify that it was done, that
6 everything was signed at the end of it, and
7 then I would turn it in to the athletic
8 director.

9 The athletic director always held
10 me responsible.

11 Q As the coach?

12 A As the coach --

13 Q Right.

14 A -- for what I turned in.

15 Q Right.

16 A Just as the principal holds the
17 athletic director responsible when he brings
18 in the form to be signed that says it's all
19 done.

20 The question in this incident is if
21 the principal was prepared to do that, then
22 we -- we have a case of people not paying
23 attention. Not just a mistake, but people
24 not paying attention.

25 But if the principal wasn't

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1 prepared to do that -- and I'm only saying
2 the principal's name because he or she is the
3 one that has been identified. It doesn't say
4 the superintendent. It says the principal of
5 the school becomes that extension, and
6 they're responsible for signing off and doing
7 those things. So we're back into that
8 discussion.

9 So what I wanted to know from
10 athletic directors was, Is that your process?
11 Do you do it that way? And most of them
12 agree, yeah, we still do it that way.

13 Q For physical -- and was this just
14 for physical forms and permission slips?

15 A Yeah. And one of the things that I
16 got from the district -- not -- the district
17 didn't tell me, but that a lot of times
18 their -- or what do you call them? I'm
19 forgetting the name that you call them by.
20 Not managers, but the person who takes care
21 of the health and welfare of the students.

22 Q Trainers.

23 A Trainers, that's it. A lot of the
24 times the trainers will have a list, and they
25 will go to the coaches and say, That kid

1 cannot participate because he hasn't turned
2 in his physical yet.

3 So it was verified to me that at
4 the level, the school level, there were
5 processes.

6 Q Gotcha.

7 And you don't -- and what was your
8 understanding from Mr. Huff as to what the
9 process was? Was it --

10 A The coaches were responsible for
11 collecting and getting that information
12 together, working with the trainer, making
13 sure that everybody had it. They had
14 deadlines on when to turn it in, those types
15 of things.

16 Q And are you critical of that
17 process at the school level?

18 A Not as long as there are deadlines
19 that somebody's looking at it and signing off
20 that it's done.

21 Q And do you think that the coaches,
22 assistant coaches, trainers, ADs need to be
23 trained at the school level, that the school
24 needs to train them as to how that chain
25 works, that process works?

1 A I'm not sure what they've done for
2 five years, but they trained. They did that
3 process when I was a principal. They had
4 mandatory you've got to come in, we're going
5 to go over this again type stuff. And if
6 you'd been around long enough, you were like
7 one of those guys --

8 You'd hear the coaches going, I
9 hear this stuff every year. And the reality
10 was there were people who didn't hear it
11 every year. And so we're really back to how
12 do we know that people are -- we have moving
13 pieces. How do we read in new people into
14 our processes? How do we read in the new
15 principal into the processes?

16 And that, to me, is the most
17 important part. When they're read into it
18 and you say you understand it and you have
19 demonstrated an understanding, then what
20 you've said is I take responsibility for my
21 part of this.

22 Does that make sense?

23 Q I guess. And maybe my follow-up
24 question would be, it sounds like if we take
25 this issue of physical forms and we start --

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1 the High School League is at the top, and at
2 the very bottom would be the assistant coach
3 or the trainer who's boots on the ground
4 getting that form.

5 A Uh-huh.

6 Q If there's -- and I think you've
7 said you don't have an opinion, but if
8 there's a gap between the High School League
9 and the principal but there's no gap between
10 the principal down to the assistant coach,
11 who understand their role, they've been
12 trained, they know what they're supposed to
13 do, then this gap here doesn't really matter?

14 A We can't say that because the coach
15 who's down at the bottom here -- yes, that
16 principal has a responsibility for making
17 sure that that's being done. And, of course,
18 most principals use the athletic director in
19 order to do that. But there's still that
20 connection because --

21 And here's where it makes it harder
22 to deal with. It's specifically stated in
23 the High School League's bylaws. That's why
24 the principal becomes a highlight, because it
25 specifically states that that's the person

1 who will represent them at the building
2 level.

3 Q That's the person who will make the
4 certification --

5 A That's right.

6 Q -- that the rule has been followed?

7 A That's right. So his -- he's not
8 as -- there's nothing that really requires
9 coaches to go to the High School League and
10 be trained, but it does require the athletic
11 director to make sure their coaches
12 understand it, just like nothing says that
13 the principal has to attend the conferences
14 in order to be the principal and sign off on
15 it, but it does require the principal to be
16 the person between the High School League and
17 the athletic director.

18 Q Right. And there's required
19 training for the athletic directors as well,
20 correct?

21 A And then the irony is, the guy
22 signing off on it doesn't have required
23 training, but the guy who's supposed to
24 enforce it does.

25 Q That would be the athletic

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1 director?

2 A The athletic director.

3 Q In your second paragraph of your
4 letter, it talks about -- and we've talked
5 about this -- just being a member of the High
6 School League. And you've talked about how
7 the voluntary nature of the association may,
8 I guess, impact some of your opinions here,
9 or at least that's how you've distinguished
10 the DSS example and things like that.

11 A Uh-huh.

12 Q Is that sort of how you would
13 distinguish those examples of the bar and the
14 DSS and those sort of things where you have
15 other regulatory -- or bodies that promulgate
16 rules for a subset of --

17 MR. HOFFMAN: Objection. I
18 mean, that's like 16 questions in one
19 question.

20 A Well, professional organizations
21 which have professional certifications are a
22 little bit different than a voluntary
23 organization that has no certification.

24 So do you understand what I'm
25 saying? You're accepting the

1 responsibilities, the authority to set rules,
2 enforce rules, and to actually do something
3 when they're not done. And there's nothing
4 that certifies any of the people dealing with
5 you to be -- to be actually qualified to do
6 those things.

7 Q By nature of the association?

8 A By nature of the association.

9 Q Correct.

10 A It doesn't do that. So if you had
11 a professional kind of evaluation to say I'm
12 ready to do something, that would be one
13 thing. But here the thing is, you pay your
14 money; you become a member. Your athletic
15 director, most of the time, goes to some
16 conferences; he serves on some committees.
17 Everyone is handed constitution and bylaws.
18 There might be an opportunity, if you don't
19 think you understand something, to go to a
20 roundtable discussion about things.

21 But there's really nothing in that
22 process -- and this is personal opinion
23 now -- there's nothing in that process that
24 really should give the High School League any
25 authority on punishment or anything because,

1 in order to make that punishment, you have to
2 be able to ensure that everyone that is in
3 the process has been trained, understands, so
4 on and so on.

5 There's nothing there that says
6 that that -- the principal, the guy that you
7 have put in your bylaws as the primary person
8 that's your extension, has to do anything to
9 prove that he or she can handle that
10 responsibility.

11 And I know it sounds silly because
12 these are educated people with degrees and so
13 on, but to a courtroom full of people sitting
14 there, the question always is, How do you
15 know? How do you know that that person is
16 prepared? How do you know that they made the
17 right decision, so on and so on.

18 Q And you certainly would concede
19 that the High School League can't guarantee
20 that everyone will be prepared and will
21 always act appropriately under the rules?

22 A You cannot --

23 MR. HOFFMAN: Object to form.

24 A You can't guarantee that. But
25 let's make sure we understand. Just like

1 we -- we know that there are processes and
2 things put in place that the High School
3 League has, that doesn't mean that the High
4 School League is not still responsible for
5 the things that haven't come up yet that have
6 been neglected. And I'm saying neglected not
7 in a negative way, but it's just not
8 something we've dealt with before, and so now
9 we're going to have to take care of that.

10 Q And you haven't done any sort of
11 survey of other state associations as to what
12 their processes are to compare?

13 A Indiana was the only one that I
14 went through, and the reason why, I truly
15 wanted to be as objective as possible.

16 Q And I think you said they were
17 the -- they were the same?

18 A Yeah.

19 Q The fact that it's a voluntary
20 organization, doesn't that, by nature, give
21 the members more autonomy?

22 A I'm not sure it gives them autonomy
23 because, if I had autonomy, you wouldn't be
24 finding me if I broke one of your rules.
25 There's really no autonomy to what the High

1 School League says. It's the process.

2 Q Well, and I guess what I'm saying
3 is, if I'm a nursing home and I'm licensed by
4 DHEC, I can't open my doors unless DHEC says
5 I can.

6 Here, if you're voluntary, if you
7 don't like the rules, you can leave and you
8 can still operate a school; you can still
9 have sports. Now, I may not be able to play
10 for a South Carolina High School League state
11 championship, but you have that option as a
12 voluntary member, correct?

13 A You do have that option.

14 Q Okay. And then when we're -- I'm
15 going down in your letter where you talk
16 about -- I read your sentence here that says,
17 "The High School League assumes total
18 authority over the participation of a member,
19 school, and its students."

20 And I may take a little issue with
21 "total authority" because, we've talked about
22 it a little bit, there are things that a
23 school has discretion in terms of sports
24 competition, uniforms, correct?

25 A But I'm going by what's in your

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1 constitution. It doesn't state that in your
2 constitution or your bylaws. Therefore, it
3 means nothing to me.

4 Q It means that the High School
5 League doesn't control what uniforms you get?

6 A But from a legal standpoint, I have
7 intentionally put myself over here so that
8 only what's in that constitution that I read
9 and those bylaws do I consider. Any kind of
10 thing around that, it's not -- it's not
11 relevant.

12 Q Okay. Tell me, do you have legal
13 background or training?

14 A Well, I actually was going to go to
15 law school, and I -- a lot of legal stuff and
16 education I've been a part of. So I don't --
17 but I am trained in communications,
18 objectivity, all that. That was my first
19 degree.

20 Q Right. And I guess what I'm asking
21 you, when you say "total authority," you
22 know, you're talking about as to what's
23 covered under the rules and regulations in
24 the bylaws?

25 A That's right.

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1 Q And you would agree that if it's
2 not covered as a rule or regulation in the
3 bylaw, the school would have the ability to
4 make those decisions provided they don't
5 conflict with some other rule or regulation?

6 MR. HOFFMAN: Object to form.

7 A I can't see -- if it's in the
8 constitution and those bylaws, you are
9 responsible for them.

10 Q Sure. Did you see --

11 A Yeah, I got where you're going.
12 And you're -- being responsible for it, you
13 have -- you have the responsibility to uphold
14 what you bought into.

15 Q Okay.

16 A Once I join there, I've bought into
17 that. However, the organization -- and it
18 doesn't have to be the High School League --
19 that I bought into also has a responsibility
20 to uphold another side of that.

21 The two lines that got my attention
22 when I first read it was we are ultimately
23 taking care of the physical and mental
24 well-being of these student-athletes. If
25 that is the goal, then the High School

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1 League, or any organization who says that,
2 has the responsibility to making sure that
3 whatever process is necessary to accomplish
4 that are in place. And one of the processes
5 that they use is the physical form.

6 Q Right. But some of those processes
7 that may be used are also solely at the
8 discretion of the school? I'll give you the
9 example of a physical trainer.

10 MR. HOFFMAN: Object to form.

11 Q Did you see anything in the High
12 School League constitution that required a
13 school to have a trainer at a practice or a
14 game?

15 A Uh-uh.

16 Q Okay. That is something that would
17 be the discretion of a particular school?

18 A I would assume. But as far as
19 schools are concerned -- I know that in
20 Beaufort County football, things that
21 involved physical sports, we were required to
22 have them there.

23 Q The county made that decision, the
24 school district?

25 A They made that decision --

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1 Q Right.

2 A -- because -- and if you were to
3 ask me how does that go with the High School
4 League, the irony here is that there's the
5 school district and the High School League,
6 and we're talking about the same thing. And
7 the school district, probably not for this
8 reason but it fits, went ahead and put those
9 precautions in to fulfill the mission that
10 the High School League says they have of
11 protecting those athletes. So they are
12 requiring that there is a trainer there and
13 that --

14 Q The school district is?

15 A The school district is.

16 Q Right. And there are some school
17 districts that don't require that?

18 A Right.

19 Q That doesn't mean they're violating
20 the rule of promoting health and well-being
21 of students?

22 A Not necessarily. The key is -- it
23 would be like you saying -- I say to you I
24 wasn't there at that drug deal and you say to
25 me, But your name is written on this piece of

1 paper and it says you've got 25 kilos.

2 The minute my name was inserted in
3 there, I'm now a part of that investigation
4 no matter what. The minute you said the
5 principal is responsible for it, he is now a
6 part of the process, and he represents the
7 person who put him in charge of that process.

8 Q Only with respect to that rule?

9 A To whatever that constitution says.

10 Q Right. I mean, when you're
11 principal of Beaufort High School dealing
12 with a curriculum issue, you're not a
13 representative of the High School League at
14 that point?

15 A No, only what that constitution and
16 those bylaws spell out.

17 And I repeat again, also
18 responsible for fulfilling the vision and
19 mission. So I could do everything that the
20 constitution says I'm supposed to do, but I
21 go out and I start yelling and screaming and
22 I kick a kid, the police are probably going
23 to be there. That's one thing that's going
24 to happen.

25 But the minute the High School

1 League hears about that, the High School
2 League is also going to write a letter to say
3 that that's not appropriate behavior.

4 Q Be punished and --

5 A Because you are representing the
6 High School League.

7 Q So do you think if that student
8 then sues the coach for kicking him and
9 hurting him, that the High School League
10 should be liable as well?

11 A Not if the High School League and
12 all the processes that should be training
13 that principal, that superintendent, all that
14 training has taken place.

15 If training isn't important -- if
16 training isn't important, why do we spend
17 millions of dollars doing it? It's either
18 one of two reasons. It's important to
19 fulfill the mission or it's important to keep
20 from getting sued all the time.

21 Q Right. And I guess that goes back
22 to what we talked about earlier. It would
23 seem to me that signing a piece of paper to
24 say you understand something is to prevent
25 you from getting sued, but you have an AD who

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1 says, I've been here for ten years; I know
2 the rule; I know what I'm supposed to do.
3 That's to make sure that they are properly
4 trained and they know what they're doing?

5 A And that's nice that he says that,
6 but I -- in 20-some years of administration,
7 I've had a lot of people tell me they know
8 what they're doing, and I understand that.
9 And guess what? A lot of them didn't.

10 Because, just as you said -- I
11 loved your point about you used the 2016 --
12 '15-'16, but things have changed since then.
13 We've got -- if we don't keep training and
14 updating, then what applied five years ago
15 may not apply today.

16 And I'm just a firm believer that
17 if you're going to represent the mission of
18 an organization, you have a responsibility as
19 an organization to make sure that everyone
20 who represents you is updated, that the lines
21 of communication remain open.

22 Q Right. And then I'm going on to
23 your next paragraph about delegating,
24 execution, enforcement, and talking about
25 surrogates.

1 And I'm trying to -- there may not
2 be a distinction there, but I give you the
3 example that if you've reviewed the High
4 School League rules and regulations, there
5 are certain baseline limitations as to
6 practice. You know, obviously for heat, they
7 don't want you to start until a certain time
8 or they want you to acclimate.

9 A Right.

10 Q And so there's a rule about
11 acclimation with practices. So would you say
12 that a coach in that practice is a High
13 School League surrogate when he's coaching a
14 practice? I'm trying to determine --

15 A He has to be a surrogate.
16 Otherwise you can't fine him or punish him.

17 Q Well, he's a member. You can
18 punish members.

19 A Yeah, but I'm saying, he is an
20 extension of those rules and those
21 regulations, which is why it is very
22 dangerous that coaches -- if coaches are in a
23 school district that doesn't get trained
24 properly, that's bad for all of us, the
25 citizens, the school district, and the High

1 School League, because that person really
2 represents -- we're members of the High
3 School League, and by being members of the
4 High School League, we have accepted the
5 rules, the regulations, so on, which means
6 that coach has to be trained what to do and
7 how to do it based on what those rules and
8 regulations are.

9 He might -- he might have said, I
10 know -- I remember the football coach at
11 Beaufort High School. He wanted to go out
12 and practice because it's been hot for, you
13 know, so many days in a row. And they came
14 in, the trainer and the athletic director and
15 the coach: Well, I don't understand. And I
16 looked at him and said, What does the rule
17 say?

18 And he couldn't quote it to me.
19 And I remember looking at him and saying the
20 fact you can't quote that to me tells me
21 you're not ready to have practice. Because
22 the coach is just as responsible for the
23 health and welfare as the trainer is
24 responsible, as the athletic director is
25 responsible. But they're not the person --

1 those people are not the ones that are in
2 your bylaws stating they represent you.

3 Q The coaches aren't?

4 A The coaches aren't.

5 Q Right.

6 A The school district still has --
7 who allows the school to sign up for the High
8 School League? I couldn't just sign up for
9 the High School League without the school
10 district saying okay. The moment they give
11 me permission to do that, the High School
12 League -- they also say, We agree with the
13 High School League; we're going to follow
14 those particular things.

15 Q All right. You draw the same
16 correlation with colleges in the NCAA?

17 A Once you join the -- well, I
18 guarantee the NCAA does.

19 Q Right. And they train coaches and
20 coaches are NCAA surrogates?

21 A Yeah. Yes, they -- but they do
22 have to go through training.

23 Q Right.

24 A I mean, when we talk about Title 9,
25 I did that training, so I can tell you that's

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1 bigtime stuff. If there is a gap, and I'm
2 not saying there is, but if there is a gap,
3 it is the -- the logical expectation that
4 everyone in the communications line of
5 fulfilling those rules, regulations, and
6 mission understand and are prepared to enact
7 it.

8 Q And I'll give you an example with
9 the NCAA that they now have rules with you
10 can't have more than 20 hours of an organized
11 football team activity per week. So if the
12 NCAA is not training their coaches on that
13 and somebody -- a player gets hurt in the
14 21st hour, you think the NCAA is liable as
15 well?

16 MR. HOFFMAN: Object to the
17 form.

18 A Who does the NCAA appoint as the
19 person who makes sure that this gets out? Is
20 it the athletic director of that university?
21 I have a feeling it probably is. And if they
22 have said this is our process, follow it.
23 And they trained the athletic director to
24 make sure that -- and actually provided
25 samples of --

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1 Q In my hypothetical they didn't.
2 They just said the rule is you can't do more
3 than 20 hours. They don't provide any
4 training, no sign-off, and the player gets
5 hurt in the 21st hour, the NCAA is liable.
6 Is that your opinion?

7 MR. HOFFMAN: Same objection.

8 A No. I wouldn't necessarily say the
9 NCAA is liable because you've got two -- the
10 NCAA is not -- in my perspective, the NCAA is
11 not a voluntary type of thing.

12 How many organizations are there in
13 high school -- I'm trying to figure out in my
14 mind as I'm saying this. How many
15 organizations take care of college athletics?
16 The NCAA takes care of it, the NIA, the
17 NI-something takes care of it over here.

18 Q Yeah, I don't know.

19 A But I'm saying there's more than
20 one. There's more than one depending on
21 levels and private schools and those type of
22 things.

23 The processes that the NCAA has in
24 there, I think they're about that thick
25 (indicating), and it spells out what athletic

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1 directors are responsible for and whose
2 responsible for making sure those things get
3 out there.

4 You don't have that, which means
5 you've given -- delegated your authority and
6 your responsibility to whomever it is that
7 you put in writing that says this person is
8 the expert in your area at fulfilling this
9 mission.

10 And that's how I would argue that,
11 because the principal -- and please make sure
12 you understand. I'm not saying this
13 principal didn't know his stuff. He probably
14 did. But once you put him down as the
15 person, then as an organization, you are
16 responsible for making sure he is fully
17 qualified. It doesn't matter what happens
18 over here or over here. Did you make sure he
19 was fully qualified and having --

20 We keep going back to this if the
21 NCAA did this and they did that. Well, I
22 don't know all the particulars about the
23 NCAA, but I do know that they've got
24 guidelines for just about everything.

25 Q But if they're not training on

1 them, they're no good, right?

2 A But if I remember correctly -- I
3 was the sports information director at a
4 small college in Indiana, and we were
5 required to train them on what they can say,
6 how they can do it, what they can have. And
7 it says in the guidelines that you will have
8 to fulfill this training.

9 So there are guidelines that the
10 NCAA is actually saying you must follow
11 these. So there's a full communications line
12 that goes down to that particular situation.

13 I don't know if they do or not, but
14 does the High School League have that same
15 kind of thing? They may. They may tell the
16 principal, We have a -- you're representing
17 us. It's your responsibility. Read the
18 constitution, do this and this and this and
19 this, and then we're going to have a
20 conversation about your responsibilities.

21 I don't know if they do that or
22 not. They didn't with me 13, 14 years ago.
23 But the High School League's representative,
24 according to their documentation, is the
25 principal.

1 Q And --

2 A And you know what the irony about
3 all that is again? If the school district
4 didn't agree with that, they'd have a really
5 tough time creating any kind of policies that
6 went against the High School League, which is
7 reason -- probably why a lot of school
8 districts go almost overboard because they've
9 got two things they have to be responsible
10 for, the physical safety of that student,
11 which, if he didn't even play sports, you
12 would still be responsible for, and making
13 sure that whatever policy you have fulfills
14 what the High School League requires.

15 Q In looking at your letter, you have
16 in bold in that first page a sentence in that
17 paragraph talking basically about the
18 hierarchy structure.

19 Do you see that?

20 A Yeah, I see it.

21 Q I mean, that's not unusual, is it?

22 A Oh, no, no, no.

23 Q You're not critical of that?

24 A His question to me is what type of
25 organizational structure, and it's very much

1 a hierarchy structure.

2 Q And that's not unusual?

3 A That is not an unusual structure
4 for, well, most organizations.

5 Q You're not critical of that?

6 A No, no, no, no.

7 Q Okay. And then I think when we --
8 you've highlighted and, again, it's from the
9 2015-'16 version. I don't think there are
10 any changes, substantive changes, from what
11 you've cited --

12 MR. HOFFMAN: Object to form.

13 Q -- are in here, just so you know.
14 But these sections, I don't think there's any
15 dispute that these were in place and that the
16 High School League -- the membership of the
17 body had the right to adopt these?

18 A No. Actually, the reason why I
19 bolded that was because his inquiry was what
20 kind of -- not hierarchy, but what kind of
21 structure do they have and do they have on
22 the books things that cover these things.

23 Q Right.

24 A And I wanted him to see that, yes,
25 these things are things that you could see

1 and feel.

2 Q Right. That it requires the school
3 to keep on file the forms?

4 A And they have to be so -- and then
5 it gets to the -- it always gets us back to
6 that same comment of who's making sure.

7 If Dan up here is in charge of his
8 own business and corporation and I give a
9 manager responsibility for doing certain
10 things, who is going to be held responsible
11 when those things aren't done? And once I
12 tell my manager -- I'll use assistant
13 principal as I did away with assistant
14 principals and I had heads of schools because
15 we had a small schools model. I gave the
16 responsibility of budgeting the students they
17 had in that small school to them. We just
18 automatically went to the school district's
19 discipline policies so that was already a
20 common thing.

21 But I also spent the entire summer
22 training assistant principals in school
23 budgeting and training assistant principals
24 in curriculum development so that when I
25 turned it over to them and I gave them a

1 packet that reminded me of everything I
2 taught them so that if they were getting
3 ready to give me a budget for their small
4 school for the next year, the code numbers
5 were there, everything that they needed to
6 know to do that was present.

7 And it's kind of important to
8 understand that it flows down. And the High
9 School League -- I just don't think that
10 the -- the High School League can say we're
11 not totally accountable if they don't have
12 knowledgeable people. If they have
13 knowledgeable people that have been trained,
14 you have certified that they get it, then you
15 can rest upon that person's decision-making.

16 If the decision-making is to defy
17 what I have been trained and I've said that I
18 know, if I defy that, then that's at my
19 level. If I look at you and say, You never
20 really trained me; I really didn't understand
21 this and that, then the first question out of
22 my mouth is, Show me the schedule, the
23 paperwork, where you were trained about
24 school budgeting. And every one of my heads
25 of schools had it in a file that said this

1 summer I went through school budgeting and
2 now I know how to do it.

3 I know that's a lot of pain to do
4 those kinds of things --

5 Q Well, and I guess you're being set
6 forth as an expert, and I understand -- and I
7 don't mean this flippantly but processes
8 according to Dr. Durbin.

9 Part of what my concern is is I
10 want to know if this is something that all
11 state high school athletic associations are
12 doing, if it's what we call a standard of
13 care, that you can look at it and say it
14 should be done this way, I can look at it and
15 say it can be done this way. I'm sort of
16 also interested in an industry standard.

17 And I take it that's not something
18 you're prepared to testify on?

19 MR. HOFFMAN: Object to form.

20 A Well, I'm not -- I have not done a
21 lot of research to compare and contrast what
22 they're doing because I truly didn't want to
23 get into whether or not you should or you
24 shouldn't.

25 I'm really in the frame of mind

1 when I was doing this is, if you asked me
2 what their structure is, then as objective as
3 I can, based on what I think you need, I'm
4 going to give you the information of what
5 they say.

6 And then your next question to me
7 is, What is the responsibility and who is
8 responsible for fulfilling that in this
9 constitution and this other document?

10 Q Right. And some of the things you
11 cited here -- and I guess what I want to be
12 sure you aren't critical about is -- for
13 example, I'm on the second page of your
14 letter where it says each school shall keep
15 on file certain records.

16 A That's right.

17 Q Are you critical that the league
18 doesn't --

19 A No.

20 Q Are you critical that the league
21 doesn't tell the school how to keep those
22 records?

23 A How to keep them? Well, they
24 basically say they have to be -- they do kind
25 of tell them that you have to have them and

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1 you have to have them on file and we'll come
2 in and inspect them.

3 Q But we don't tell you where to keep
4 them; we don't tell you whether they have to
5 be in a safe?

6 A They have to be readily available.

7 Q Right. And how the school chooses
8 to keep them readily available, that's up to
9 the school?

10 A If given that leeway by the High
11 School League, yeah, it would be up to the
12 school.

13 Q So --

14 A But the key, the source -- I mean,
15 the core to what you're saying is how it's
16 stored is a secondary issue to how it is
17 collected and verified.

18 Q Absolutely.

19 A Yeah.

20 Q And I want to be sure you're not
21 critical of the fact that there may not --
22 assume that there's no training or direction
23 given to the school.

24 A The training isn't in how do I put
25 it in a file. The training is in why is it

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1 important; when do I collect it.

2 Q Right.

3 A So on. The oversight of that is
4 who is -- who is responsible for making sure
5 there is oversight to the process.

6 Q Are you aware that the High School
7 League provides sample physical forms to the
8 schools?

9 A Yeah.

10 Q And that would be one way to -- one
11 process to ensure that physicals are being
12 done?

13 A And it could very well be.
14 However, if I am a new principal and I've
15 just walked into a situation and I'm not
16 really part of sports -- because I know a lot
17 of principals who have never been on a field
18 in their life; they like band, which is
19 great -- my next question will be, You've
20 just hired a principal who is now a part of
21 the High School League, and I don't have an
22 opinion one way or the other, but who is
23 responsible for making sure that person is up
24 to date on what he or she is responsible for?

25 Q And let me ask you, if they are up

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1 to date -- if they are brought up to date by
2 the school district as opposed to the High
3 School League, do you have an issue with
4 that?

5 A Do I have an issue with it?

6 Q Or are you critical of that?

7 A I'm not critical, but I think you
8 two have -- the two have different
9 responsibilities. One is they fit under the
10 umbrella of the High School League when it
11 comes to athletics that they've chosen to be
12 a part of, so the ultimate responsibility for
13 what's happening there -- if you have in your
14 bylaws that the school district will train
15 and will do these things with, then that
16 relieves the High School League of that
17 responsibility and gives it back to -- but it
18 doesn't say that. They offer workshops; they
19 offer lots of things, which shows that the
20 High School League is directly involved in
21 the preparation of the people who run it and
22 the people who do those things.

23 Q And it sounds like the biggest
24 criticism that you've sort of indicated so
25 far is that it's not required; it's

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1 voluntary, those workshops?

2 MR. HOFFMAN: Object to the
3 form.

4 A Well, I haven't paid attention to
5 what they've been offering. I could be
6 critical that they don't offer enough to
7 actually prepare someone if I studied those.

8 Q But you haven't looked at it?

9 A I haven't looked at it. The fact
10 that a new young principal could come in and
11 be handed that responsibility without
12 preparation is going to lead to problems
13 eventually.

14 Q Let me follow up. Who succeeded
15 you as principal?

16 A The first year was Terry Bennett.

17 Q That would have been 2012-2013?

18 A '12, Terry was there until the end
19 of the year. So Mr. Murphy.

20 Q When did you leave?

21 A '12.

22 Q The spring or the fall?

23 A Spring.

24 Q Okay. So you would not have been
25 there for the 2012 --

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1 A No, it would have been Corey
2 Murphy.

3 Q Was the president -- excuse me, was
4 the principal in the 2012-2013 school year?

5 A I'm pretty sure he would have been.

6 Q Had you ever worked with him
7 before?

8 A Never.

9 Q Do you know where he came from?

10 A I think a small school. I know
11 he's a military guy and had been in the
12 military for a period of time and then got
13 back into it.

14 Q I'm sure they probably know. I
15 don't know. That's why I'm -- you've been
16 talking about the principal who came, and
17 that would have been this school year, so
18 that's why I wasn't sure if you knew that
19 person.

20 I forgot to finish, did you
21 interview anybody else besides Jeremy Huff?

22 A I -- Greg Fisher.

23 Q Who is Greg Fisher?

24 A Greg Fisher is in Indiana.

25 Q Right. He's not a South Carolina

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1 athletic director?

2 A No.

3 Q He was your AD when you coached
4 back in the --

5 A Logansport.

6 Q Any other South Carolina ADs?

7 A No. And I specifically just wanted
8 to get the references.

9 Q And they were both consistent?

10 A They were -- they were consistent.

11 Q Okay.

12 A When you think about a school
13 having several hundred athletes, the process
14 has to be close to the ground and pretty
15 simple and short.

16 Q You're not critical that the High
17 School League didn't come in and handle that
18 undertaking for all its member schools?

19 A You can't be critical of that. The
20 only criticism that any process in any
21 organization has is the lack of proper
22 preparation. And that's not saying it is or
23 it isn't. But if you wanted me to sell cars
24 for Honda and I don't know what a Honda van
25 Odyssey can do, I'm really not representing

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1 very well Honda.

2 And when I sold cars for Honda, I
3 went through training that I had to go
4 through and pass certain things that said I
5 understand what this car can do and how it
6 does it and what I'm supposed to do.

7 Now, if we require someone to go
8 through some kind of training to sell a car
9 but we don't to people who are responsible
10 for the health and welfare of kids, there
11 seems to be a little bit of an issue there.

12 Q Well, but you don't know what
13 training -- well, let me ask you this. What
14 training should take place? Is it simply
15 actually training principals and schools on
16 how to obtain a physical form, or is it
17 simply reminding them of the rule and their
18 responsibility to follow the rule?

19 A If I were -- weren't a thousand
20 feet in the air, we could use the physical
21 form. It's not as simple as just one little
22 basic rule. It's the overall objective and
23 responsibility of what I am.

24 Athletic directors are required to
25 know everything about the rules and

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1 regulations. I made sure mine did because I
2 made him teach them to me. And then when
3 he -- I read that thing. He came in: Teach
4 it to me. Tell me what it is. What does
5 that mean? How does it mean that?

6 We met together for two or three
7 weeks. And then we -- I used that tactic
8 because I wanted the two of us to have
9 comradery, but I also wanted us to have a
10 common understanding about what it is that we
11 were going to do and how we were going to do
12 it.

13 So from that point on, Jerry and I
14 never really had -- we never had an argument
15 because we had a common agreement about what
16 things meant and how we were going to do it
17 from that point on.

18 And what do I think the training
19 ought to be? I'm not sure. If you want me
20 to train a principal, it's going to be some
21 way. If I'm training a school board, we're
22 going to talk about other kinds of issues.

23 I'm just saying that it's not
24 necessarily the principal's fault that that
25 happened, but he is the spokesman. He is the

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1 guy in the document that says he represents
2 us. He's the guy that we have sent him to do
3 that job.

4 Q Right. And I guess, as the process
5 guy, what I'm trying to understand is if I
6 were to say to you what should the High
7 School League do to make sure that schools
8 know about the requirement and principals
9 know about the requirement for physicals, I'm
10 trying to get an understanding --

11 A I would develop a curriculum for
12 you that divided it up into areas which would
13 be the physicals, paperwork, so on and so on,
14 this and this.

15 Trainers come in and present it to
16 you in the most efficient way possible so
17 that it doesn't last a hundred years. We
18 would have coaches and athletic directors
19 come in and answer questions that you had
20 specific things on.

21 We would then have you take what I
22 call the mock test. And the mock test is the
23 basic information that is critical. We would
24 then have you go through like a little quiz
25 that says this and this, and we'd give you

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1 situation-type things.

2 And then once that training was
3 done, we would have a document there that
4 said I have -- basically this is what our
5 training was about, so on and so on; I
6 understand completely what this is; I've been
7 allowed to ask questions, so on and so on.
8 Then we sign off on it. And that's just a
9 practical way of making sure that the person
10 is taking responsibility.

11 Q Do you know of any high school
12 athletic association that does it that way?

13 A No.

14 Q Do you know of any other
15 organization besides one that you've been
16 involved in that does it that way?

17 A Not that I've researched, no.

18 Q Let me be sure -- I'm going to try
19 to finish up here.

20 Are there any other opinions
21 that -- that you intend to offer that we have
22 not discussed?

23 A I don't think so. I'm pretty much
24 a broken record. You've heard the same
25 speech.

1 Q Well, let me -- and let me just
2 clarify a couple things.

3 Are you familiar with the legal
4 term "proximate cause"?

5 A No.

6 Q You don't intend to give any
7 opinions on proximate cause in this case?

8 A If I knew what that was, I probably
9 would tell you yes or no. But what is
10 proximate cause?

11 Q Well, that tells me you're not
12 going to give an opinion.

13 A But I am the kind of person that,
14 once we leave here, by the time we see each
15 other again, I'm going to understand
16 proximate cause.

17 Q Sure. Sure.

18 Have you -- are you planning to
19 give any opinion on the applicability of any
20 of the South Carolina tort claim defenses?

21 A No.

22 Q Okay. Are you familiar with the
23 Tort Claims Act?

24 A Yes.

25 Q Okay. Are you familiar with the

1 term "gross negligence"?

2 A Yes.

3 Q Okay. Do you intend to give any
4 opinions in this case about gross negligence?

5 A I would have to -- I would have to
6 check -- look at the mission statement of the
7 constitution and the bylaws, and if something
8 were in that that -- for example, if you say
9 you're going to do X and X and X and you
10 didn't come up with a process to complete
11 that --

12 Q Right.

13 A -- then you could ask me that
14 question.

15 Q Right. We've established in this
16 case that there are processes in place. You
17 may -- if you looked at it, you may find them
18 to be inadequate, but we've talked about some
19 of those processes that are in place.

20 A Right. But if someone were to ask
21 me -- if I were on the stand and they said,
22 Could there have been this and this and this
23 and is that in that constitution? No, it's
24 not. That doesn't mean that it should have
25 been or shouldn't have, but it's not there.

1 Could it have prevented such and such at
2 100 percent? Probably not, you know.

3 Q Right. What is the hourly rate
4 that you charge for your work in this matter?

5 A \$200.

6 Q Have you sent -- have you kept time
7 of how much -- kept track of how much time
8 you've expended?

9 A Not really. I haven't done a whole
10 lot of keeping track. I basically got
11 involved in this from the beginning because
12 I'm a Beaufort High fan, and I'm one of the
13 only guys in town that understands schools
14 and has worked with organizations. I
15 probably have spent four or five hours
16 talking, doing those kinds of things.

17 Q Doing research-type things?

18 A Doing research, trying to make sure
19 that, as objectively as possible -- what I
20 didn't want to do is get involved in
21 something that was based on emotion. That's
22 more based on what do the facts tell us,
23 what -- we get in trouble when we don't have
24 process, and I know that sounds like a broken
25 record, but I believe that.

1 Q Have you submitted a bill to
2 Mr. Hoffman to date?

3 A No.

4 Q Okay. At this time, do you intend
5 to supplement your opinions or provide any
6 additional opinions?

7 A I really don't unless I'm asked.

8 Q Right. And maybe that's the way I
9 should ask it. Have you been asked to date
10 to --

11 A No.

12 Q Okay. And I take it that, since
13 you authored that letter, you haven't done
14 any initial -- any additional work to
15 supplement or support your opinions?

16 A No. No. That letter was simply to
17 say they have -- they're a voluntary
18 organization; they have a hierarchy in place;
19 they have these things written down about
20 this particular issue, and I've left the
21 "what did they not have" stuff out of my
22 thought.

23 MR. MONTGOMERY: All right. I
24 think that's all the questions I have. I may
25 have some follow-ups. Thank you for your

1 time.

2 (A recess was taken.)

3 EXAMINATION

4 BY MS. ANDERSON:

5 Q Dr. Durbin, my name is Victoria
6 Anderson. We met a little bit earlier this
7 morning. And I represent the Beaufort County
8 School District in this case.

9 We've talked -- or you and Mr. --

10 MR. MONTGOMERY: Montgomery.

11 Q -- you and Mr. Montgomery have been
12 talking for quite some time about the High
13 School League and various opinions in that
14 regard. But at the district and the school
15 level at Beaufort High School, your
16 experience and your knowledge, just based on
17 what you know, particularly with Jerry Lynn,
18 who you said is a very well-qualified and
19 very knowledgeable athletic director, there
20 were processes and procedures in place at
21 Beaufort High School for the collection of
22 physicals and permission slips; is that fair
23 to say?

24 A That it -- at that time there still
25 should have been. He was still there, and he

1 had a -- he required his coaches to collect
2 them at a certain time, be in on a certain
3 date.

4 Q Okay. And the district, on the
5 district level, also offered training on what
6 was expected for coaches in athletics as
7 well? I think you mentioned that earlier as
8 well.

9 A Yes, I did.

10 Q And in this particular case, if the
11 football coach had actually told Mr. Alston
12 that he needed a physical before
13 participating in sports, would that be
14 indicative of those processes, that there was
15 something in place to make students aware of
16 and to collect those forms?

17 A That could be. However, we're back
18 to the premise that a process is only as
19 effective as its oversight.

20 Q So -- and based on what you
21 observed and what you know, there was
22 oversight at Beaufort High School for that
23 particular issue?

24 A In years past there had been.

25 Q Okay. And I believe you spoke with

1 Jeremy Huff, who told you that there were
2 still processes in place for collection of
3 forms.

4 MR. HOFFMAN: Object to form.

5 Q Is that correct?

6 A That's correct.

7 Q You don't have any information to
8 suggest that at the time this accident
9 occurred that there were not processes and
10 supervision of those processes in place,
11 correct?

12 A I can't -- I can't speak to the
13 supervision of the process.

14 Q Okay.

15 A The fact that if they were doing
16 the same types of things they were doing
17 before, then the processes were there. But
18 coaches change each year, and we're back to
19 this, were the coaches trained? Did they do
20 their thing? And it's the same illustration
21 as I gave him.

22 The school district, from what I
23 observed in the past, is fairly decent at
24 correcting an issue as they face it. So
25 having the physical on file has been a

1 priority.

2 Q Absolutely. And the head football
3 coach at Beaufort High had been there for a
4 number of years, correct?

5 A Yes.

6 Q And I believe that you had said
7 that you were unaware of there ever being an
8 issue where a student did not have a physical
9 or permission slip before participating in
10 athletics?

11 A I was aware of many times that they
12 didn't get to play for not having it. I can
13 tell you that part.

14 The real key is, when something
15 happens, we're back to backtracking and
16 finding out where was the gap, you know, and
17 how far back up that line does it go.

18 Q Okay. And while you're aware of
19 students who were not allowed to play because
20 of not having a permission slip or a
21 physical, kind of in line with that, you're
22 also not aware of a student who actually did
23 play without a physical or permission slip --

24 A No.

25 Q -- prior?

1 Okay. Would you agree with me
2 that, with your knowledge of the procedures
3 that were in place and if those same
4 procedures, supervision of those procedures
5 continued into that following school year,
6 that at least on the school level, that there
7 was at least some care, even if it was very
8 slight --

9 MR. HOFFMAN: Objection to
10 form.

11 Q -- exercise with regard to that
12 process?

13 A I don't think the question is about
14 the care as much as it is the actual
15 supervision of who's going to do what, when,
16 and where. If we don't have -- the process
17 may be there. However, did the athletic
18 director and the principal have a cut-off
19 date for when those things were supposed to
20 be done; who was responsible for making sure
21 that they were in and they were checked off
22 before we started, those types of actual
23 boots on the ground type of things to
24 execute.

25 Q And, to your knowledge, the school

1 did have that boots-on-the-ground process and
2 you're not here to say otherwise today,
3 correct?

4 A That's right. But what I can't say
5 for sure is the people who were taking care
6 of the process -- this is more of an
7 observation than it is anything else.
8 Something happened somewhere, something
9 happened to where a student didn't have one.

10 So I don't want to get into today's
11 politics, but my question wasn't the student
12 was always hurt. I also want to make sure
13 he's okay, but I now want to make sure that
14 whatever happened in that, where did it
15 happen, who was responsible for it, and how
16 do we make sure it doesn't happen again.

17 Q Okay. And, to your knowledge,
18 there was nothing -- no similar incident
19 prior to that event, to your knowledge?

20 A Had no knowledge of that. I
21 hadn't --

22 Q And what you've stated today is
23 that there were at least some processes in
24 place, and based on the knowledge of what
25 you've observed personally, they were good

1 processes and were followed to the extent of
2 your knowledge?

3 MR. HOFFMAN: Object to form.

4 A I can't tell you that because a lot
5 of the processes we used at Beaufort High,
6 Jerry Lynn and I sat down, we agreed on them.
7 Now, he was still there, and it would be
8 natural to assume that, with a new principal,
9 Jerry took the lead and he used the same
10 processes, but I can't say for sure that that
11 happened.

12 Q You can't say that it did not
13 happen?

14 A I can't say that either.

15 Q You don't intend to offer an expert
16 opinion that Beaufort High School and the
17 district did not have proper processes in
18 place at that particular time?

19 A Processes, I -- I can't offer that.
20 And I can't even -- all I could offer is
21 whether or not the processes that have
22 already been adopted and so on were handed
23 down and people were trained to implement
24 them properly.

25 Q Okay. And you are not here today

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1 to offer an expert opinion on that particular
2 fact for the school?

3 A (Shakes head.)

4 Q Is that a no?

5 A No.

6 Q That's correct.

7 A Yeah, I got you.

8 MS. ANDERSON: All right. No
9 further.

10 MR. MONTGOMERY: I don't think
11 I have any follow-ups.

12 EXAMINATION

13 BY MR. HOFFMAN:

14 Q One question. Something
15 happened -- you said something happened, so
16 there had to be a breakdown in the process
17 somewhere?

18 MS. ANDERSON: Object to the
19 form.

20 A Well, I think I was making that
21 point. There's -- regardless of degree,
22 regardless of who, what, when, and where,
23 something did happen. There are processes in
24 place something happened, and there's going
25 to be someone in there somewhere who didn't

1 oversee it.

2 Q Was it the minor's fault? Is the
3 minor at fault?

4 MS. ANDERSON: Object to the
5 form.

6 A We can't blame the minor.

7 Q So who do we blame then if we can't
8 blame a minor?

9 MS. ANDERSON: Object to the
10 form.

11 A From an organizational
12 standpoint -- from an organizational
13 standpoint, the obvious thing is something
14 happened. There was a breakdown somewhere.
15 We have to backtrack.

16 If I were investigating this, I'd
17 have already been talking to the coaches and
18 all those guys and we'd have backtracked it
19 to a certain point that would have identified
20 how did this student get in this situation.

21 And, no, I wouldn't have said the
22 student lied to me or the student -- I don't
23 know what happened. But, no, not blaming the
24 student. We are the adults. We have a
25 responsibility to fulfill our responsibility.

1 If we want to -- I don't know if it
2 was the coach. I see what coaches go through
3 and how they get out there and they're ready
4 to start practicing. I don't know, based on
5 anything that has been told to me, if it
6 was -- whose responsibility it was to collect
7 those forms, you know.

8 But I will tell you this: Based on
9 experience as a principal and as a head
10 coach, I never allowed someone else to do
11 something that involved either my reputation
12 or my legal responsibility that I didn't
13 check.

14 Q Okay. You said the adults. The
15 adults are the ones that are responsible.
16 The adults here are the school district and
17 the High School League, correct?

18 MS. ANDERSON: Object to the
19 form.

20 A When it comes to processes, yes,
21 the adults are responsible for fulfilling the
22 processes.

23 Q The ones I cited?

24 MS. ANDERSON: Object to the
25 form.

1 Q Correct, the ones I cited?

2 MS. ANDERSON: Same objection.

3 A What the -- cited as in --

4 Q The ones I just said, High School
5 League and the school district.

6 MS. ANDERSON: Same objection.

7 Q That's who you have to assign blame
8 to? Someone has to get the blame. Something
9 bad happened.

10 MS. ANDERSON: Object to the
11 form.

12 A Okay. There will be adults at some
13 level somewhere who did not either
14 intentionally or unintentionally fulfill the
15 responsibility that was needed to take place
16 to collect a form and to make that student go
17 home and say, You're not coming back here
18 until you have one.

19 Q You're talking about the physical
20 form?

21 A The physical form.

22 Q What about the parental permission
23 form? Is that the same issue?

24 A It's the same issue, that what --
25 when you deal with high schools and high

1 school students and their parents, the
2 reality for everyone is we have to protect
3 our kids against themselves sometimes and
4 say, no, you can't do that. Well, my mom
5 said. But your mom has not been the one who
6 has been trained and has been held -- given
7 the responsibility to not let you be involved
8 until this happens.

9 MR. HOFFMAN: Okay. Thank
10 you.

11 (Deposition concluded at 12:57
12 PM)

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1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF CHARLESTON

4 I, Julie K. Lyle, Notary Public for the
5 State of South Carolina at Large, do hereby
6 certify that the witness in the foregoing
7 deposition was by me duly sworn to testify to
8 the truth, the whole truth, and nothing but
9 the truth in the within-entitled cause; that
10 said deposition was taken at the time and
11 location therein stated; that the testimony
12 of the witness and all objections made at the
13 time of the examination were recorded
14 stenographically by me and were thereafter
15 transcribed by computer-aided transcription;
16 that the foregoing is a full, complete, and
17 true record of the testimony of the witness
18 and of all objections made at the time of the
19 examination; and that the witness was given
20 an opportunity to read and correct said
21 deposition and to subscribe the same.

22 Should the signature of the witness not
23 be affixed to the deposition, the witness
24 shall not have availed himself of the
25 opportunity to sign or the signature has been
waived.

I further certify that I am neither
related to nor counsel for any party to the
cause pending or interested in the events
thereof.

Witness my hand, I have hereunto affixed
my official seal on February 27, 2017, at
Charleston, Charleston County, South
Carolina.

Julie K. Lyle, RPR/RMR/CRR
REGISTERED PROFESSIONAL REPORTER
REGISTERED MERIT REPORTER
CERTIFIED REALTIME REPORTER
My commission expires 7/22/2024

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF BEAUFORT) CASE NO.: 2015-CP-07-1147

DARRELL J. ALSTON, JR. AND)
MABEL L. ALSTON,)

PLAINTIFFS,)

v.)

TRANSCRIPT OF RECORD

BEAUFORT COUNTY SCHOOL DISTRICT)
and SOUTH CAROLINA HIGH SCHOOL)
LEAGUE,)
DEFENDANTS.)

APRIL 11TH, 2017
COMMENCING AT
BEAUFORT, SOUTH CAROLINA
BEAUFORT COUNTY COURTHOUSE
BEFORE THE HONORABLE CARMEN T. MULLEN, JUDGE.

APPEARANCES:

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Rebecca H. Hill
Official Court Reporter

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1 MR. MONTGOMERY: My name is Michael Montgomery. I
2 represent the High School League. We filed a motion for
3 summary judgment, and then we filed an amended motion
4 because we inadvertently left out a ground, so it's really
5 three motions.

6 The plaintiffs have a motion. If I could approach?

7 THE COURT: Okay. Who filed their motion first?

8 MR. HOFFMAN: I did. Well, I mean, I'm the plaintiff.

9 MR. MONTGOMERY: Your Honor, I believe I filed my
10 motion first, because it's first on the roster. Whatever
11 suits you, I have no preference.

12 THE COURT: Well, we do it in order of filing, so I'm
13 going to go ahead and let you argue first and we will go
14 from there. I need a background.

15 MR. MONTGOMERY: Yes, Your Honor. I did file a memo on
16 Friday, if you would like a copy.

17 THE COURT: I would; I do not have one.

18 MR. MONTGOMERY: If I may approach.

19 THE COURT: Okay.

20 MR. MONTGOMERY: Thank you, Your Honor. Again, my name
21 is Michael Montgomery. Lyle Trawick and I represent the
22 South Carolina High School League. Basic background about
23 this case involves the plaintiff who was a freshman in high
24 school at the time and went out for spring practice in May
25 of 2013. On the sixth day of practice, he tore his ACL. He

1 was tackled, tore his ACL.

2 At that point in time, Beaufort County High School
3 realized he had not had a pre-participation physical or
4 parental permission form signed for it, and started maybe
5 five or six days earlier.

6 There is a rule in the High School League Constitution,
7 and again, when I talk about the Constitution, I'm meaning
8 as it existed in the 2012 - 2013 school year that required
9 each school to keep on file for all student athletes certain
10 forms, a birth certificate, physical form, a parental
11 permission form. If they've transferred, a transcript form,
12 and so the school keeps those forms on file.

13 At some point, the school certifies to the High School
14 League that they have all those forms. The principal signs
15 it. On that certification form it says, "We have a copy of
16 a physical form and permission form on file."

17 And so, again, I think the student testified that he
18 was aware of that requirement. He talked to a coach, but he
19 didn't have one before being allowed to practice and the
20 school district has some arguments as to why that happened
21 and how that happened.

22 We have raised, the High School League, has raised
23 three separate grounds for summary judgment and each one of
24 those are independent and they stand alone. We don't have
25 to prove all three grounds, but each one is a sufficient

1 ground for summary judgment in and of itself.

2 The first issue we've raised is proximate cause. As
3 you're aware, proximate cause requires but-for causation,
4 but also legal causation, which is the probable and natural
5 consequence of the complained of act.

6 In this case, tearing an ACL, some sort of acute
7 injury, is not the natural and probable consequence of
8 failing to have some forms. The failure of this student to
9 have a physical form did not increase his risk.

10 Every student who goes on the practice field has that
11 risk. And to put it another way, if there were 50 students
12 on that practice field and 49 had had a physical and one had
13 not, the one who did not have a physical has no greater risk
14 than the others.

15 Football is not safer when it comes to an acute injury
16 like this, because if you had had a physical it would not
17 have been any safer for him. And the case that I think is
18 really on all fours with this situation is Shepherd v. the
19 South Carolina Department of Corrections. The holding, and
20 I think the important causation piece from that case is that
21 an act or omission that does no more than furnish the
22 condition or give rise to the occasion by which the injury
23 is made possible is not the proximate cause.

24 In Shepherd, there was a prisoner who was allowed on
25 work detail with the highway department; the litter crew

1 goes on the highway. He escapes as he is out doing the
2 litter one day and he goes and unfortunately murders
3 someone. And the family of the decedent brought suit
4 against the highway department and the department of
5 corrections because they had identified two separate
6 policies that had been violated.

7 The Department of Corrections had violated one of their
8 internal policies by not -- or by approving him for this
9 work detail, and the highway department who supervised the
10 detail had violated their own internal policy by not having
11 supervision on him.

12 The Court, on a motion to dismiss in that case, said
13 that is not sufficient to establish proximate cause as a
14 matter of law because all it did was furnish the condition
15 or give rise to the occasion by which the injury was made
16 possible.

17 It's the same thing here that the argument the
18 plaintiffs can make in this case is he shouldn't have been
19 on the field because he didn't have the forms. That is not
20 enough to establish the legal causation which is the very
21 thing that causes the injury, which in this case was him
22 being tackled by another student in some independent act.

23 The other case that we cite in our memo, that's worth
24 pointing out, it's a North Carolina case involving the High
25 School League and a school up there. A student was allowed

1 to play. He was 20 years old. He was beyond his eight
2 semesters and the age rule and he ended up hurting another
3 student who actually died. And the family of the student
4 who died actually sued the North Carolina High School
5 Association and the school because he was allowed to play in
6 violation of the rules. The Court there again granted
7 summary judgment saying violation of the rules is not
8 proximate cause.

9 So the second issue is tort claims immunity. Under
10 South Carolina section 15-78-60, paragraph 4, that's the
11 Tort claims Immunity that says no liability for loss
12 resulting from failure to enforce any law, provision, rule,
13 ordinance, etc.

14 The sole basis in this claim against the High School
15 League is his failure to -- or allowing the plaintiff to
16 participate in violation of the rules. The memo that has
17 been filed and the argument that we've had is that well, we
18 have to monitor and supervise and you can't divorce the buzz
19 words of monitor and supervision apart from the rule.

20 The High School League does not do anything to control
21 how these physicals and forms are gathered. We don't
22 undertake any obligation to do them. We simply have passed
23 a rule that requires the schools to do it. They decide and
24 have the discretion of how they are going to implement their
25 process for doing that, so we are not a boots on the ground

1 -- I mean, we are a rule-making entity who it would be
2 impossible to have our staff of nine people be at a practice
3 to determine if there is a permission form and a physical
4 form when there are over 400 member schools and hundreds of
5 thousands of students.

6 We don't know who is going out for what team. So to
7 say that we monitor and supervise this process of collecting
8 physicals is just not true. It's not in our bylaws. We
9 simply say, here's the rule. You have to certify that
10 you've gotten a physical and the schools do it how they
11 wish, and they certify that it's been done.

12 So the monitoring and the supervision is for compliance
13 with a rule. We certainly do things to make sure our rules
14 are complied with. They affect eligibility. If you don't
15 have all the forms, physical, permission, birth certificate,
16 etc.

17 And the case we cited, I think that squares with that
18 is Atkins v. Varn, that's 439, S.E. 2d 822. In that case,
19 there was a girl in Greenville who was attacked by some
20 dogs. She was on a bicycle and ended up being hit by a car.
21 Her family sued Greenville County because the responsibility
22 for dog control, animal control, had not sort of addressed
23 these dogs that caused her incident.

24 And they actually had -- the plaintiff had affidavits
25 from people in the community who had complained about these

1 specific dogs and they argued well, you were on notice. You
2 didn't properly address these concerns that were raised to
3 you and the Court, the Circuit Court granted summary
4 judgment which was affirmed that said, "No, this is still
5 enforcement of a rule, a leash law ordinance. You're
6 claiming that the County of Greenville didn't enforce the
7 ordinance."

8 No matter how what sort of buzz words and how you want
9 to color it, the claim against the High School League is
10 about compliance with a rule and there is tort claim
11 immunity for that, as well.

12 When we deposed Dr. Dan Durbin, who the plaintiff is
13 proposing as an expert, one of the very first questions we
14 talked about was this case is about enforcement of a rule
15 and he said, "Yeah, it is." So he acknowledges it and there
16 is limited resources in talking about compliance with the
17 rule and there is Tort Claims Immunity for that.

18 Then, the final ground that we've raised for summary
19 judgment is that the plaintiff hasn't met his burden of
20 proving gross negligence. That was the claim pled against
21 the High School League. As you know, he has to show a duty
22 absence of slight care, proximate cause, and so forth.

23 As to the duty, again, there is not duty to monitor or
24 supervise physicals or permission forms at the school level.
25 It's not any responsibility that we undertake in the high

1 school by-laws, that the High School League staff is going
2 to do that. It's not a duty that we've assumed. We don't
3 get the forms. We don't collect them. We simply make the
4 school certify them that it's been done.

5 Again, it wouldn't be possible. We have a staff of
6 nine and with all the schools, we don't know who is
7 practicing for what. We are basically two to three steps
8 removed from that process. The coach of the team, the
9 athletic director, the principal, and we only get involved
10 once it's certified to us that it's been done.

11 We have no way to know who is going out for the team
12 and if someone is going out, who hasn't had a physical. We
13 don't go to practice and check that. It would be impossible
14 to do and the Beaufort County High School District has
15 acknowledged in this case that we don't go to those
16 practices; we're not involved with that process.

17 And I think what plaintiff has argued in this case is
18 that we assume this total authority over football and this
19 is just not true. The members establish rules and then there
20 is discretion, and obviously, there are eligibility rules to
21 make sure integrity of contest, but we don't decide how long
22 you practice, who makes the team, who plays what position,
23 and so we don't require schools to have trainers at
24 practices or games.

25 The schools can have the discretion as long as they

1 comply with our rules, and our rules in this case is a
2 physical. I think what has recently been produced by the
3 school district is they have their own separate pre-
4 participation physical policy, which is a little more
5 stringent or has more specifics. It talks about who is
6 going to get the form, when they're going to get it, what
7 they're going to do with it. We have no involvement in that
8 process. The High School League has never inserted itself
9 in that process, so there is no duty to sort of guarantee
10 compliance with this rule.

11 The other thing that I've raised in my memo is, you
12 know, our rule is somewhat similar to other regulatory
13 bodies who have rule-making authority. I gave some examples
14 of how the Supreme Court requires that lawyers certify that
15 they've had CLE; that they've met their CLE requirements.
16 Well, if I don't and I commit malpractice, the plaintiff
17 doesn't have a claim against the Supreme Court for failure -
18 - this improper rule that wasn't followed, and there are
19 certainly other examples that I've set forth as well.

20 And even a similar one would be by the Department of
21 Education. They've got rules and requirements and permission
22 forms for work release programs. If a student goes and
23 doesn't have the required form and gets injured, they don't
24 have a claim against the Department of Education. We simply
25 provide rules and the schools have the discretion as to how

1 they are going to comply.

2 Then, finally, on the gross negligence claim, there has
3 to be a breach of duty shown even if there is some duty to
4 monitor and supervise compliance with the rules, the High
5 School League is doing that. We are exercising at least
6 light care set forth recently the efforts that the High
7 School League does to make sure schools are aware of these
8 requirements and are complying with them.

9 And just to briefly touch on them, I've set them forth
10 in my brief, but they have a workshop twice a year for new
11 principals and new athletic directors where the focus is on
12 eligibility forms and the certificate of eligibility which
13 has the confirmation that you have the permission form and
14 the physical form.

15 The High School League requires head coaches who are
16 not employed by schools to go through a certification
17 process where they provide training that includes student
18 safety. There are classification meetings twice a year.
19 I've produced the 4-A classification handbook which mandates
20 that the principal and the AD of the school will attend
21 these meetings at the league office in Columbia where these
22 forms are discussed.

23 Every year there are four or five regional meetings
24 across the state for football coaches that are specific to
25 football that the football coach has to come to and has to

1 come to these meetings before the season, and it's mainly
2 for rules, updates, points of emphasis for the new year, but
3 it also includes a discussion of the pre-season practice
4 plan, which says in there, "All students must have a
5 physical or make sure students have a physical before
6 practicing."

7 The other thing that is in this case, there was a new
8 physical form adopted during this school year, so there was
9 new, additional information disseminated to the member
10 schools about that form.

11 Then there were periodical lead newsletters that go to
12 all of the member schools, go to the League's website called
13 The League Update and there are a number of items in those
14 newsletters that encourage attendance at these workshops.

15 They are required or asked to double check your
16 certificate of abilities. They talk about how you have to
17 sign in for these meetings or you don't get credit. So
18 there's a number of things that the League did during this
19 time period to make sure schools were aware of these rules
20 and provisions and were meeting them. So we think there is
21 clear evidence that at least light care was being undertaken
22 at the time to make sure schools complied with the rule.

23 Again, we think there is Tort Claim immunity for that
24 sort of claim, but even if not, we are still doing things to
25 make sure the schools comply with the rules. I think the

1 other point I would raise, the affidavit that was recently
2 filed by the Beaufort High School Athletic Director at the
3 time and some of their information, if you take what he has
4 said in his affidavit, he was clearly aware of what the
5 rules required, that the school had to get a physical and
6 get it done and certified and they had processes in place.

7 So even if there is some evidence that we didn't do
8 what we were supposed to do with encouraging compliance with
9 the rule, the school has said, we knew what to do and has
10 explained what happened in this case. So that sort of, the
11 three grounds, the proximate cause, the tort claims
12 immunity, and the failure to present any evidence or a
13 genuine issue of material of fact as to gross negligence.

14 MR. HOFFMAN: Your Honor, if I could respond?

15 THE COURT: Yes, sir.

16 MR. HOFFMAN: I don't agree with almost everything that
17 Mr. Montgomery just said, and I have my own motion for
18 summary judgment pending. But he referenced -- I'm going to
19 try to -- I tried to take notes while he was talking. He
20 referenced the Shepherd case; that is with an adult. He
21 referenced another case that deals with an adult. We're
22 talking about a minor in school. There is a special duty for
23 a minor in school on the part of school administrators, in
24 *loco parentis*. They step into the shoes of the parent. So
25 we're talking about a completely different situation when it

1 comes to a minor in school as far as the degree of duty that
2 they have to the minor. It's the highest possible duty, and
3 therefore, the causation for damages is lower because of the
4 fact that the duty is so great.

5 So everything he cited had to do with adults, like he
6 talked about the NCAA and he talked about some other
7 organizations, and again, you can't compare adult cases or
8 adult situations with a minor in school. That's a special
9 duty.

10 THE COURT: Mr. Montgomery represents the High School
11 League. We haven't even gotten to the Beaufort County
12 School District. I need you to direct it to the High School
13 League.

14 MR. HOFFMAN: The High School League, he says that the
15 High School League does not have complete control over high
16 school football in the state. I've attached to my paperwork
17 the Bruce case, Bruce v. South Carolina High Schools. They
18 do have complete control over football in the state.

19 And I also acknowledged in his argument that they train
20 people on the rules regarding parental permission and
21 physicals. Once you train somebody, you undertake an
22 obligation to do it properly. Obviously, they don't do it
23 properly. If they did it properly, this incident wouldn't
24 have happened.

25 The problem is you're getting a distorted view of the

1 facts as far as what Mr. Montgomery told you because you
2 don't know exactly what happened. I mean, you only know
3 part of what happened. He kept focusing on the physical,
4 but there was no parental permission to let a minor play
5 high school football and the physical is one issue, but the
6 parental permission is the other issue.

7 When you have such a high duty and they breached in
8 training, monitoring, and supervising their member schools,
9 who they have complete control over, if you say you have
10 complete control over an activity in the state and something
11 goes wrong in that activity, you're responsible. You can't
12 have it both ways. You can't have your cake and eat it, too.
13 If you say you have complete control, something goes wrong,
14 you're on the hook for it. That's kind of what the
15 situation is here.

16 And what Dr. Durbin said, and it's attached to my
17 opposition, his deposition testimony. There was a breakdown
18 in the system. There was a systematic breakdown here of the
19 processes that were supposedly in place to take care of this
20 minor. It's like he keeps minimizing the fact that this was
21 a minor who didn't -- and the parent did not give permission
22 for him to play football, and the result was that he got
23 seriously injured.

24 He got a torn ACL and meniscus. He wanted to be in the
25 Air Force. The Air Force won't take him now. He now works

1 in a kitchen. So this had a serious effect on this guy's
2 life is my point and also on the mother who understandably
3 was distressed when she showed up at school and there was
4 her son on a golf cart with ice on his knee after she hadn't
5 give him permission to play football.

6 So to refer to adult cases and adult situations is
7 completely inappropriate, and they have complete control
8 over football in the state. That's why their constitution,
9 by their rules and regulations, by the Bruce case, you can't
10 say you have complete control over something and then when
11 something goes awry say, "Oh, we didn't do anything." They
12 were training these people. If you're training, you have to
13 do it properly. I have my own arguments in regards to my
14 motion, but ---

15 THE COURT: Let me ask you, who filed the next motion?
16 Is it now appropriate, Mr. Hoffman, to go ahead and argue
17 his summary judgment motion or ---

18 MS. ANDERSON: If the Court would like to hear his
19 first, that's fine.

20 THE COURT: Mr. Hoffman, why don't you go ahead and
21 argue your motion for summary judgment.

22 MR. HOFFMAN: All right. The reference to physicals is
23 a red herring is my point. It's like, there was no parental
24 permission for a minor in school, which has the highest
25 level of duty to take care of a minor.

1 THE COURT: And so I'm clear, is your motion for
2 summary judgment directed to both defendants?

3 MR. HOFFMAN: Yes.

4 THE COURT: Okay.

5 MR. HOFFMAN: It's undisputed, undisputed, that in
6 violation of their own written rules, and I attached the
7 written rules to my paperwork, that the defendant let a
8 minor play high school football without parental permission
9 and without a physical examination clearance.

10 Now, to me, as far as I'm concerned, that's gross
11 negligence. To have let that occurred is messing with a
12 minor who ends up getting seriously injured, or at the
13 worst, if you don't agree with me that that is gross
14 negligence, then certainly there is a jury question on the
15 issue, gross negligence or proximate cause being fact
16 questions for a jury.

17 I've cited cases, South Carolina cases to that effect,
18 that that can't be summarily decided unless you agree with
19 me that it's so obvious that it's gross negligence then
20 there's no reason for a trial.

21 Again, the High School League, they trained people and
22 once you start training people, you're responsible for doing
23 it correctly, effectively, and properly, and they obviously
24 didn't do that if this happened in this case where this
25 minor was allowed to play football with no permission and no

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1 physical, especially when he had asthma, and that was
2 testified to in his deposition.

3 But careless training and monitoring and supervision by
4 the High School League and careless supervision of the minor
5 by the school district placed the minor in a situation that
6 he should not have been placed, which was being out on a
7 football field. He should not have been there.

8 So of course it was proximate cause when he is tackled
9 high and low, suffers the torn ACL and meniscus in his right
10 knee. He's had one surgery; he's gonna have another
11 surgery, and the big problem is that he had been in ROTC and
12 he wanted to be in the Air Force; that has been his dream
13 all along.

14 The Air Force won't take him now. And like I said, now
15 he works in a kitchen. And so he has his damages and his
16 injuries, and likewise, the mother has her damages and her
17 injuries. She was understandably distressed when she showed
18 up and there was her son in a golf cart with a torn up knee
19 and ice on his knee, and she has had out of pocket expenses
20 and lost wages and has otherwise lost substantial time and
21 money.

22 So they both have their own injuries and their own
23 damages. There are two caps here and there are two
24 plaintiffs. They seem to imply that there is one \$300,000
25 cap. No, there are two caps and two plaintiffs. The cap

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1 total is \$1.2 million, not \$300,000.

2 Now, with all due respect as far as the school district
3 is concerned, I can't think of anything more fundamental for
4 a minor to have parental permission and a physical for a
5 minor to play high school tackle football. I can't think of
6 anything more fundamental than that. It's just a complete
7 absence of care to have not gotten either of those things.
8 To the extent that it resulted in a serious injury. I can't
9 think of anything more negligent than that in the context of
10 a minor playing high school football.

11 Again, as I said, the High School League, read the
12 Bruce case. They control football in the state. They train
13 people in what they're supposed to do, member schools, what
14 they're supposed to do as far as the paperwork if somebody
15 wants to play high school football; and if there is a
16 problem with that and if something goes awry, like it did
17 here, and you claim to have complete control over something,
18 then you're on the hook if something goes wrong. That's
19 exactly what happened here. That's what the Bruce case
20 says.

21 Now, I do think that there is a qualitative difference
22 here between what Mr. Montgomery was saying and a minor in
23 school because like I said, the *in loco parentis* standard as
24 far as duty. You can't compare anything he said to the
25 situation here. And I can cite the cases to you about --

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1 like I said, either you agree with me that nothing could be
2 more grossly negligent than what happened here or if you
3 don't agree with me, then gross negligence in the Brian v.
4 Babcock Center case is a question that's best left with a
5 jury. Likewise, proximate cause is a question of fact best
6 left to the jury. That's the Ballew v. Signa New (sic) case.
7 I also cited that in my paperwork.

8 So either you agree with the plaintiff that this was
9 gross negligence on the part of both defendants, the High
10 School League because they undertook a duty to train and
11 they did a terrible job and something horrific happened and
12 now this kid works in a kitchen instead of being in the Air
13 Force. And then the school district, the same thing. How
14 come they let this kid play with no permission and no
15 physical? When he had asthma for one thing. I had a
16 daughter who went to the Beaufort High School and it's like
17 I can't tell you how angry I would have been if that had
18 happened to me, and that's how angry the mother is here.
19 That's how disappointed she is that this has happened to her
20 son who had dreams of being in the Air Force. He was in the
21 ROTC all those years and now he is working in a kitchen
22 because of what they did. I think you've got to look at
23 what they did and I think it's gross negligence on the part
24 of both of them. Or as a jury question, let's let a jury
25 decide what they think of what I just said. Thank you.

1 MR. MONTGOMERY: Your Honor, if I may, if you're
2 interested, I would like to respond to a couple of things

3 THE COURT: Actually, I think I want to go ahead and
4 hear from Ms. Anderson.

5 MS. ANDERSON: Thank you, Your Honor. Victoria
6 Anderson on behalf of the Beaufort County School District
7 and Drew Davis, as general counsel, is also here as well.
8 My response to Mr. Hoffman is essentially our same argument
9 for summary judgment.

10 You heard in his argument and in his brief and
11 throughout the case, the thrust of his complaint against the
12 school district is that this student is 16 years old and
13 somehow ended up on the Spring football practice field
14 without the requisite forms to be there.

15 Also, a little more background just specific to the
16 Beaufort County School District; I don't want to rehash
17 anything that has already been said. But Daryl decided he
18 wanted to play football with his friends encouraging him to
19 do so. They told him he needed a physical and a permission
20 slip to play. He walked up to one of the coaches in the
21 hall who also told him the same; that he needed a physical
22 to play. His mom wouldn't give him one. She just didn't
23 give her permission to do so. And so, despite all of that,
24 he somehow ended upon the field playing football and they
25 didn't discover that until afterwards.

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1 THE COURT: Just so I'm clear, does the high school
2 offer the physicals?

3 MS. ANDERSON: They do from time to time, but they did
4 not in this particular case. But they did tell him, "You
5 need to go get a physical." They made him aware.

6 THE COURT: Okay.

7 MS. ANDERSON: The affidavits of Jerry Linn who was a
8 veteran athletic director. He was there for 12 years. Just
9 retired about a year and a half ago. That's one of the
10 exhibits, Exhibit F, attached to our memorandum. He
11 outlined the processes that Beaufort High School had in
12 place and the district as well.

13 Generally, at the school level, he would have coach's
14 meetings three times a year at the beginning of each season
15 and would tell the coaches, "You need to get physicals. You
16 need to get permission slips." And he would outline the
17 procedure for collecting them. Give them deadlines; had
18 everything in place for them to do that. To the point that
19 they were grumbling, "We hear this so often. We know what
20 we need to do."

21 There was a district athletic participation handbook
22 which exercised the same thing. There was a yearly coach's
23 convocation put on by the Beaufort County School District at
24 the district level for athletic directors and all coaches,
25 which was mandatory and discussed various aspects, but also

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1 emphasized the importance of physicals and permission slips.
2 There were policies on file. They are the last exhibit to
3 our memorandum, district wide, that parents were made aware
4 of. And again, coaches and faculty and staff members had
5 these policies in place.

6 At the beginning of each school year, freshmen
7 orientation, Jerry Linn, would talk to the parents and tell
8 them, "Hey, we have this policy in place. If your child
9 wants to play sports, they need a physical and a permission
10 slip."

11 He would meet with the principal on a regular basis.
12 Tell them what was going on if there was an issue. He would
13 bring that up with them. And with the football team,
14 specifically, the coaches were responsible for collecting
15 them, but he had additional help from the athletic trainer
16 as well to keep an eye out and make sure the forms were
17 collected.

18 So at the school level and the district level, there
19 were policies in place. There were procedures in place. We
20 took the deposition of Dan Durbin and he didn't have
21 anything critical to say about the district. He said, "When
22 I was there for 10 years, it was great. It was fantastic.
23 The processes were perfect. This happened the year after I
24 left, but, you know, I didn't have any problem while I was
25 there." Jerry Linn filled in for the year afterwards and

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1 the same processes were in place. He spoke very highly of
2 Jerry Linn as well.

3 THE COURT: I'm seeing attached to Mr. Hoffman's Brief,
4 it's portions of Dan Durbin's deposition and he is saying,
5 he's saying he believes the High School League is directly
6 responsible.

7 MR. HOFFMAN: And there's no -- they don't have any
8 experts. There is nothing contradicting that. It's right in
9 the deposition transcript. He blamed the both of them.

10 THE COURT: Okay.

11 MS. ANDERSON: And I'll respond to that in just a
12 second.

13 THE COURT: I don't have the whole deposition, so I
14 don't know, but I'm assuming he is an expert witness for the
15 plaintiffs for a reason, so I'm going to assume, from what
16 I've seen, he was definitely critical of the High School
17 League. Whether or not he's the perfect person to be
18 critical of the High School League is a whole other issue
19 whether or not -- I mean, you say he was the Athletic
20 Director for years, right?

21 MS. ANDERSON: Dan Durbin was the principal of Beaufort
22 High School for 10 years.

23 THE COURT: Oh, I'm sorry.

24 MS. ANDERSON: Jerry Linn, who signed the affidavit
25 that we submitted as part of our Brief, was the Athletic

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1 Director. And he was the Athletic Director while Dan Durbin
2 was the principal and he continued as Athletic Director for
3 a few years afterwards as well.

4 We have attached, it's Exhibit G, to our motion, some
5 excerpts from Dr. Durbin's deposition as well. I asked him
6 if he had any criticisms of the Beaufort County School
7 District and he said that he did not. He said he was not
8 offering those opinions, at least not at this time.

9 MR. HOFFMAN: Well, if you look at page 93 that I
10 attached, he said, "I don't think they train their
11 principals very well."

12 MS. ANDERSON: That is not the Beaufort County School
13 District.

14 MR. HOFFMAN: It's the only place with principals.
15 There are no principals at the High School League. He was
16 talking about the Beaufort School District. Page 93, line
17 10.

18 MS. ANDERSON: I appreciate that, Mr. Hoffman. I will
19 finish my argument.

20 THE COURT: Thank you.

21 MS. ANDERSON: So under the Tort Claims Act, the only
22 way the Beaufort County School District would be liable for
23 any loss resulting from responsibility or duty, including,
24 but not limited to supervision, protection, control,
25 confinement, or custody of any student, except when that

1 responsibility or duty is exercised in a grossly negligent
2 manner.

3 The plaintiff's argument in this case is that
4 essentially because this incident occurred, that in and of
5 itself is proof of grossly negligent conduct, and while I
6 understand why they would want to make an argument, it would
7 make every plaintiff's case against the school district very
8 easy going forward. That is not what the Tort Claims Act
9 contemplates and that is not what our case law that our
10 courts have developed with regard to the definition of gross
11 negligence.

12 Our courts have held that gross negligence essentially
13 involves an intentional conscious failure to do something
14 which it is incumbent upon someone to do when the doing of a
15 thing intentionally that one is not supposed to do. And
16 this degree of negligence connotes the failure to exercise
17 even a slight degree of care. So conversely, if there has
18 been even the slightest of care, then the Beaufort County
19 School District has fulfilled its duty, at least according
20 to the Tort Claims Act and the provisions under the same.

21 Mr. Hoffman has made reference to the fact that Daryl
22 was a minor at the time of this incident, and he was, he was
23 16 years old. Our courts have considered that in a number
24 of cases. The case that is most on point and is very
25 similar to the factual scenario of this case is the case of

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1 Richardson v. Hambright 296, SC 504.

2 In this case, the plaintiffs sued because the minor,
3 Terry Richardson was involved in a car accident. The school
4 and the vocational school had a policy, a driver/rider
5 policy, that the student had to have parental permission to
6 ride in a personal vehicle to the vocational school as
7 opposed to riding the district-provided bus.

8 They had policies in place. They made efforts to make
9 the parents and the children aware of this policy, and they
10 had a policy -- part of the policy called for a car check,
11 checking for this parental permission at various times of
12 the year at the school or the vocational school just to make
13 sure that those were in place.

14 During the first week of the school year, they didn't
15 perform any of these checks, and the accident happened. The
16 child was injured in that accident.

17 I'll tell you what the Court found was slight care in
18 that particular case. They said that the district in
19 Richardson took steps to make sure all students were aware
20 of the policy, and in this case, we have it as well. We
21 have a student orientation assembly.

22 The coach told Daryl to his face that he needed to get
23 a physical, and Daryl and his mother have both acknowledged
24 that they were aware of this policy. They knew it existed.
25 So not only were efforts made to make them aware, they were

1 actually aware of what this policy was.

2 Copies of the policy were sent home to the parents as
3 part of the handbook, as part of the district's policy, and
4 again, they were told directly that this is what the policy
5 is and both of them knew what it was. They included in this
6 policy a statement on safety and outlined enforcement
7 procedures. The district has outlined in the affidavit of
8 Jerry Linn past procedures of enforcement for this
9 requirement. They have policies in place and procedures and
10 they follow them.

11 Jerry Linn said he has never been aware of another
12 student who had been allowed to participate in a practice or
13 a sport without the required forms. Dan Durbin said the
14 same thing. This is -- as far as anyone can tell in the
15 last decade, this is the one and only time this has
16 happened, but it hasn't been initiated because they have
17 these policies in place.

18 Further, the following case which cited, Hollings v.
19 the Richland County School District. In that case, the
20 child was suspended from school and the way they informed
21 the parent was to send a note with the child and she ended
22 up riding the bus because she was suspended and hit by a
23 vehicle. The question there, the Court held that that was a
24 jury question as to whether the school would exercise slight
25 care, but distinguished it from the Richardson case, because

1 in Richardson, the school district took measures to ensure
2 that those students and parents had notification of the
3 policy; and two, that the students involved in this
4 Richardson case were high school age, not grade school. So
5 while he was a minor, the Court recognizes that there is a
6 difference between a six year old and a sixteen year old.

7 THE COURT: What year was he in, in school?

8 MS. ANDERSON: He was a freshman. I believe he was
9 held back a year, but he is a year older than the rest of
10 his class.

11 THE COURT: Okay.

12 MS. ANDERSON: So based on the case law and based on
13 the structure of the tort claims act, the district did
14 exercise slight care. It had all of these plans in places
15 that the Court found was slight care, as in this Richardson
16 case, and in addition to that, the district took additional
17 levels and had district wide training on those policies.
18 They had on the school level, the coach's meetings three
19 times a year. Speaking with Jerry Linn, I know he had an
20 open door policy that if anyone had a question, he was
21 there.

22 THE COURT: Let me ask you a question, just thumbing
23 through, I see the deposition of Ms. Mabel Alston, is that
24 his mother?

25 MS. ANDERSON: Yes.

1 THE COURT: And I think she does state that he said he
2 wanted to go get a physical, but she said no, and he wanted
3 her to sign that permission slip and she said no. And does
4 Mr. Alston say the same thing? Is he understood that it
5 required a permission slip and a physical and does he say
6 the same thing that his mother refused it?

7 MS. ANDERSON: Yes. And he also testifies, as Mr.
8 Montgomery said, that he was aware that he could be injured
9 on the football field.

10 THE COURT: Let me ask you a question, does ROTC not
11 require parental permission and a physical?

12 MS. ANDERSON: No, but they require parental
13 permission. I know that she had signed off on a physical
14 for PT.

15 THE COURT: What's PT?

16 MS. ANDERSON: For physical training.

17 THE COURT: Okay. So they are required for ROTC. And
18 he was in the high school ROTC program? I mean, was that
19 something he was in?

20 MS. ANDERSON: He was.

21 MR. HOFFMAN: But his participation now has been
22 limited and was limited in ROTC once he got injured because
23 he couldn't do PT anymore.

24 THE COURT: That's not my question. My question was is
25 he did participate in ROTC and he did -- his mother did

1 allow him to have a physical for that program?

2 MS. ANDERSON: That is my understanding.

3 THE COURT: And again, is that something that -- I know
4 some high schools provide physicals. They will have a
5 doctor who volunteers their time and the kids can sign up
6 and get their physical that way; and that way, it doesn't
7 cost money to the athlete or the parents.

8 MS. ANDERSON: I'm told that they do that generally at
9 the beginning of the school year and this was a spring
10 football practice in May.

11 THE COURT: And I'm talking also about ROTC and whether
12 or not a doctor saw him and released him to do PT in ROTC?
13 Is that personal training?

14 MS. ANDERSON: Physical training, I believe.

15 THE COURT: Physical training, okay.

16 MS. ANDERSON: And to add another layer to this, his
17 mother in her affidavit, and you will notice Mr. Hoffman
18 filed that on Friday, stated that she was aware that he was
19 weight lifting after school with his friends and did give
20 him permission to do that. And that may have been where
21 some of the mix-up came in because his friends were on the
22 football team and that is when they were generally lifting
23 as well. And so, you know ---

24 THE COURT: I see here also where she states that
25 before this injury occurred, he did come home one day and

1 say he was playing football, but she didn't realize it was
2 with the high school and for the high school. She just
3 thought it was ---

4 MR. HOFFMAN: With friends in a field somewhere.

5 THE COURT: Yes, I guess a pickup game of football; it
6 would be the same thing.

7 MR. HOFFMAN: All I have to show is -- there's
8 obviously a million disputes here. This case should go to
9 trial at the worst. I mean, ROTC is not active football.
10 Weight lifting is not tackle football. There's a
11 qualitative difference between giving permission for those
12 things and giving permission for tackle football; and she
13 didn't.

14 THE COURT: Hold on a second. (to Ms. Anderson) Why
15 don't you go ahead and finish up your argument and then I'll
16 let Mr. Hoffman respond.

17 MS. ANDERSON: Thank you, Your Honor. What the
18 plaintiff has argued in this case is just because something
19 has occurred that automatically that qualifies as gross
20 negligence. And again, I appreciate why he would want that
21 to be the argument, but essentially, he is asking you to
22 rewrite the definition of what gross negligence is and what
23 it requires. What the record does not show is any
24 intentional, conscious failure to do something. Taking all
25 of these facts in the light most favorable to the plaintiff,

1 the most he can say is there was an accident.

2 THE COURT: Let me ask you a question. What do your
3 people say? What does your trainer, what does your athletic
4 director, and what does your football coach say as to why
5 this happened? Do they give a reason? Do they look at it
6 and checkmark it before the kids go out on the field before
7 the first practice?

8 MS. ANDERSON: They said that they checked -- don't
9 know if I put this in my Brief, but Daryl recalled being
10 asked for a permission slip, and he just didn't know that he
11 was supposed to have one, if I'm recalling that correctly
12 from his testimony.

13 What the coach says, and I can hand this up to you if
14 you would like to see it, is that Daryl started lifting
15 weights with us after school during the winter and spring of
16 2013 and he figured that he had a physical because it was
17 posted in the weight room and preached to all newcomers that
18 he must have it for spring practice. He was not a player
19 that had played in the fall, but the majority of the people
20 at the spring practice had played in the fall. This is a
21 veteran football coach. He has been there for years. We
22 have veteran people out there -- there aren't people who are
23 brand new and just don't think to check and just didn't.

24 THE COURT: This was during spring training?

25 MS. ANDERSON: Yes, ma'am.

1 THE COURT: Okay.

2 MS. ANDERSON: So if the Court would like to see these,
3 I'm happy to pass them up. To the best they've been able to
4 figure out, they shake their head saying it's never happened
5 before and I can tell you they've beefed things up because
6 they don't want these things to happen. Everyone cares for
7 Daryl; no one wanted to see him hurt. But stepping back
8 from that, the very fact that he was hurt does not mean that
9 the district has not exercised at least the slightest care
10 as required under the Tort Claims Act.

11 THE COURT: So my question is does the school district
12 require for spring training, if someone hadn't played
13 before, does someone go through to make sure and double
14 check that new players -- is there any policy about new
15 players and making sure they have -- I'm assuming they have
16 to have an updated physical once a year?

17 MS. ANDERSON: They do. We have in here and it's
18 attached as the last exhibit in our motion the pre-
19 participation physical policy. It is in place that coaches
20 must ensure that all players being placed on a team has
21 received medical clearance by a physician prior to actively
22 participating in any manner with sport activities.

23 They have the policy in place and our coaches knew, and
24 you know, it's one of those things that just because
25 something happened doesn't mean that it's gross negligence.

1 He doesn't have to prove just that something happened. He
2 doesn't have to prove just even simple negligence. It's
3 grossly negligent conduct. It's an actual and conscious and
4 intentional failure to do something that they shouldn't do,
5 and just because something wasn't done does not mean that it
6 was not intentional and he has produced nothing on the
7 record to say that it was.

8 So given that and given the fact that there is no
9 notice and all of the care that the district took, we argue
10 that the district is entitled to summary judgment on those
11 claims. We ask that you deny the plaintiff's motion for
12 summary judgment and we do join in with Mr. Montgomery's
13 argument on the proximate cause issues.

14 THE COURT: Okay.

15 MR. HOFFMAN: They care about Daryl so much, but
16 they've been fighting with Daryl for years about this and
17 they keep saying we spoke to Daryl about this; Daryl is a
18 kid, okay? Speaking to a kid is nothing. They never spoke
19 to the parent about this. They never inquired with the
20 parent what the situation was. That they spoke to a 16 year
21 old kid who just wanted to be with his friends and knew
22 nothing about football. He wasn't even into football. He
23 just wanted to be with his friends. It's shocking to me
24 that they can stand up here and say that we care about poor
25 Daryl. They don't care about Daryl. If they did, they

1 wouldn't be biting us so hard. In addition, this gross
2 negligence is not intentional conduct. Gross negligence is
3 a failure to exercise slight care. Here they exercise no
4 care.

5 THE COURT: That's what she said.

6 MR. HOFFMAN: No, she said intentional.

7 THE COURT: And she said "or slight care."

8 MR. HOFFMAN: They say no care here. They had
9 processes in place but they didn't follow any of the
10 processes. There was no care exercised here. So at the
11 very least, if you don't agree with me that it's gross
12 negligence, then fine, it goes to a jury. Those are fact
13 questions. And proximate cause is also a fact question.
14 You know, the point is you have the affidavit of the mother
15 like you said. She specifically said, "I don't want him to
16 play football." and that's why she didn't give him
17 permission or take him to get a physical and he knew that.
18 The fact that the school, if they had exercised slight care,
19 they would have maybe called the mother. They didn't do
20 that. And you can see that from her affidavit.

21 And whether this is the one instance where this happens
22 or there was a hundred instances doesn't matter. It's a red
23 herring. It's like if it happens once and it resulted in
24 such a horrific situation where this kid's life dream is
25 basically ruined and he's working in a kitchen, I think

1 that's pretty serious consequences of what they did and I
2 think that's gross negligence. I don't think that's a
3 mistake. That's not an accident. That's not like they gave
4 him shoulder pads that was too small or shoes that didn't
5 have laces. I mean, this is a serious thing. The parent
6 didn't give permission for this kid to be out there playing
7 tackle football and he got his knee torn up and now he can't
8 get in the Air Force and now he works in a kitchen. That's
9 pretty serious. And if they care about Daryl so much, I
10 think they need to look at the case a little differently.

11 And the point is, I have an expert, like I said, that
12 says they're at fault. They don't. They have no expert;
13 neither of them.

14 THE COURT: I would like a complete copy of Durbin's
15 deposition if you don't mind; a condensed one is fine with
16 me. Whatever you've got is perfect.

17 MR. MONTGOMERY: Your Honor, if you would like to read
18 it through yourself or if I can address why I don't think
19 Durbin's testimony ---

20 THE COURT: Let me just read it.

21 MR. MONTGOMERY: Perfect.

22 MR. HOFFMAN: I've also attached the Border case to my
23 paperwork is the one that talks about there being two caps.

24 THE COURT: I can read it.

25 MR. HOFFMAN: Okay. Thank you.

1 THE COURT: Thank you all. I am going to take it under
2 advisement. I am going to read Durbin's deposition and I
3 will let y'all know.

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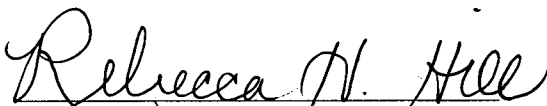
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STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON) CERTIFICATE

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 Beaufort County, South Carolina, on the 11th
day of April 2017.

I do further certify that I am neither of kin, counsel,
nor interest to any party hereto.

August 15, 2017.


Rebecca H. Hill,
Official Court Reporter

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Carmen T. Mullen, Circuit Court Judge

Darrell J. Alston, Jr. and Mabel L. Alston, Appellants

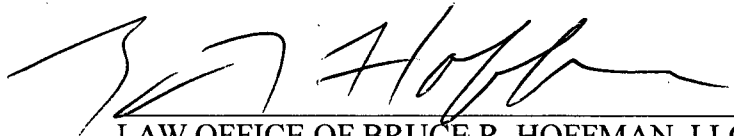
v.

Beaufort County School District and South Carolina High School League, Defendants
of which South Carolina High School League is the Respondent

CERTIFICATE OF COUNSEL

I, Bruce R. Hoffman, hereby certify that this Record on Appeal contains all material proposed to be included by both parties and no other material.

April 13, 2018



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