

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Docket No. 2012-CP-38-00837
Appellant Case No. 2017-001790

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SC Court of Appeals

Jimmie Aiken, Leila Brown, Vermonda Cohen, Carla David, Anthony Sabb,
James Ginn, and Shirley Rice, as named Plaintiffs representing a class
of South Carolina Citizens.....Respondents,

v.

South Carolina Department of RevenueAppellant.

FINAL REPLY BRIEF OF APPELLANT

Jason P. Luther (Bar No. 78021)
General Counsel for Litigation
Dana R. Krajack (Bar No. 3608)
Counsel for Litigation
Sean G. Ryan
Counsel for Litigation
P.O. Box 12265
Columbia, SC 29211-9979
803-898-5172
Attorneys for Appellant
Jason.Luther@dor.sc.gov

Attorneys for Appellant

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Pursuant to Rule 208(a)(3), SCACR, the Appellant, South Carolina Department of Revenue (Department), files its Final Reply to the Initial Brief of Respondent(s).

ARGUMENTS

I. WHEN READ IN CONTEXT, THE “OTHER AMOUNTS” CLAUSE IN § 12-60-30(27) AND THE “OTHER CLASS ACTIONS” CLAUSE IN § 12-60-80(C) PLAINLY PROHIBIT RESPONDENTS’ CLASS ACTION AGAINST THE DEPARTMENT AND REQUIRE RESPONDENTS TO BRING THEIR CLAIM IN ACCORDANCE WITH THE RPA.

Respondents argue in their Brief that § 12-60-30 and § 12-60-80 must be read in context. The Department agrees. The two statutes should be read in concert, because the statutory prohibition against class actions in § 12-60-80 utilizes the term “taxes” as defined in § 12-60-30. Further, both statutes are contained in the Revenue Procedures Act (RPA), which establishes the process for resolving disputes with the Department in its administration and enforcement of all aspects of Title 12. Section 12-60-30 defines “taxes” broadly to include those amounts imposed by Title 12 or subject to collection by the Department; both the Government Enterprise Accounts Receivable (GEAR) and Setoff Debt Collections Act (SDCA) programs are contained in Title 12 and are administered and enforced by the Department, and the definition of delinquent debts collected by the Department under the GEAR and SDCA programs specifically includes outstanding medical debts like the ones at issue. Moreover, under § 12-56-120 (the SDCA) and § 12-4-580(E) (GEAR), the sole and exclusive appeal procedure for the set off of a debt or garnishment of wages is governed by the provisions of Chapter 60, Title 12 (the RPA).

In short, both the specific language of the relevant statutes and the overall statutory context demonstrates that the Department is authorized and directed to collect medical debts on behalf of claimant agencies, and that Respondents are barred from bringing a class action for the refund of these medical debts because those debts are defined as taxes. See Lightner v. Hampton Hall Club,

Inc., State of South Carolina et al., 419 S.C. 357, 798 S.E. 2d 555 (2017) (holding that the RPA governs disputes with the Department and that § 12-60-80(C) prohibited a class action against the Department); Drummond v. State of South Carolina et al., 378 S.C. 362, 365–69, 662 S.E.2d 587, 589–90 (2008) (dismissing claim for tax refund for failure to exhaust administrative remedies under the RPA, and finding plaintiff could not prosecute declaratory judgment action against the Department as a class action); Gardner v. S.C. Dep’t of Revenue, 353 S.C. 1, 577 S.E.2d 190 (2003) (approving propriety of the Department collecting outstanding medical indebtedness under the SDCA).

- a. The SDCA, GEAR, and RPA authorize the Department to use certain collection methods, including set-off and wage garnishment, to collect debts owed to the State and other governmental entities.

For decades, the Department has had the statutory authority to collect delinquent State taxes from a taxpayer by means of a set-off against payments (i.e. tax refunds) the State may owe to that delinquent taxpayer. See S.C. Code Ann. § 12-54-260.

In 1995, the General Assembly enacted the SDCA, which expanded the Department’s set-off authority to include the collection of delinquent debts owed by a taxpayer to a claimant agency. See 1995 Act No. 76 (eff. June 12, 1995). The statute broadly defined delinquent debts to include not only State taxes but also (among other things) outstanding medical debts owed to county hospitals. In addition, it authorized the Department to collect debts owed to the State and to any government entity or political subdivision that met the statutory definition of “claimant agency.” See S.C. Code Ann. § 12-56-60.¹

¹That same year, the General Assembly also enacted the Revenue Procedures Act, with the stated intent of providing South Carolinians a “straightforward procedure to determine *any disputed revenue liability*.” See 1995 Act No. 60 (eff. June 12, 1995), *codified at* S.C. Code Ann. § 12-60-20.

The following year, the General Assembly again expanded the Department's collection authority and responsibilities by enacting the GEAR program, which gave certain governmental entities the right to contract with the Department to collect "liabilities owed the governmental entity." See 1996 Act No. 458 (eff. June 19, 1996), *codified at* S.C. Code Ann. § 12-4-580. The GEAR statute was subsequently amended to define "liabilities owed the governmental entity" to have the same meaning as "delinquent debts" defined in the SDCA. See S.C. Code Ann. § 12-4-580 (further providing that the notice, hearing, appeals, and other provisions contained in the SDCA also apply to the GEAR statute). The GEAR statute granted the Department the same collection rights and powers for liabilities owed the governmental entities that the Department already possessed for collecting taxes. Id. Both share a single and common appeal process under the RPA (see 12-56-120 and 12-4-580(E)).

Thus, the statutes and Acts at issue in the case give the Department the clear and explicit statutory authority to use a variety of collections methods (including the wage garnishments complained of by Respondents) to collect certain debts owed to the State or governmental entities.²

- b. Section 12-60-30(27) of the RPA statutorily defines "taxes" broadly to include amounts like the medical debts the Department collects under the GEAR program.

Respondents' Initial Brief correctly identifies the dispositive question for the instant appeal: What does the term "taxes" mean? (Resp. Br. P. 11). As Respondents rightfully concede, if the medical debts at issue are taxes, then § 12-60-80 applies to bar this class action suit and requires Respondents to bring any action against the Department in accordance with the procedures of the RPA.

²The fact that wage garnishments is typically a crime is a *non sequitur*. The General Assembly has the legislative authority both to statutorily prohibit wage garnishments and to make them permissible. It is not surprising that the General Assembly would authorize wage garnishments where the amounts being garnished are for debts owed to a government.

1. The ordinary meaning of “taxes” is inconsequential when the relevant statute has specifically defined the term.

Here, Section 12-60-30(27) gives the straightforward answer to Respondent’s question by providing a statutory definition of “taxes” for purposes of the RPA. The definition applies to all of Chapter 60, including the exclusivity provision in § 12-60-80. Yet Respondents inexplicably ignore this plain, statutory definition provided by the General Assembly and instead rely exclusively on what they believe is the ordinary meaning of the term “taxes.”

Although it is a fundamental canon of statutory construction that a court may consider the ordinary, contemporary, or common meaning of a word, this canon applies **only if that word is not defined in the relevant statutory provisions**. See Perrin v. United States, 444 U.S. 37, 42, 100 S. Ct. 311, 314, 62 L. Ed. 2d 199 (1979); see also Johnson v. Zimmer, 686 F.3d 224, 232 (4th Cir. 2012) (noting that words that are *not defined* in the relevant statutory provisions can be interpreted as taking their ordinary meaning); see Cowan v. Allstate Ins. Co., 351 S.C. 626, 631, 571 S.E.2d 715, 717 (Ct.App.2002); Olson v. Faculty House of Carolina, Inc., 344 S.C. 194, 544 S.E.2d 38 (Ct. App. 2001); see also City of Camden v. Brassell, 326 S.C. 556, 486 S.E.2d 492 (Ct. App. 1997) (“Where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature’s language.”). Thus, where the statute provides a definition, as 12-60-30(27) does here, there is no need to rely on canons of statutory construction or ordinary meaning to supply a definition.

2. The Great Games case is irrelevant because it examined a prior version of Section 12-60-30 that was subsequently amended and expanded to the version at issue in this case.

Respondents (and the trial court) rely heavily on the language and reasoning from Great Games, Inc. v. S.C. Dep’t of Revenue, 339 S.C. 79, 529 S.E.2d 6 (2000), in support of their argument that the ordinary meaning of the word “taxes” should trump the clear and unambiguous

statutory definition provided by the General Assembly. However, the Great Games court analyzed a prior iteration of § 12-60-20 and § 12-60-30(27), both of which have since been amended, and therefore the reasoning in Great Games is largely irrelevant to this Court's analysis of the current version of these statutes.

The issue in Great Games was whether a litigant in a regulatory licensing case must pay an appeal bond for the regulatory fine imposed by the Administrative Law Court (ALC) prior to appealing the ALC's decision. At the time, S.C. Code Ann. § 12-60-3370 (Supp. 1998) required a taxpayer to post a bond "for all taxes, including interest, penalties or other amounts determined to be due by the [ALC] . . . before appealing the decision" The circuit court (which, at the time, heard appeals from the ALC) found that the term "other amounts" in § 12-60-3370 included the regulatory fine imposed by the ALC.

The Supreme Court reversed. The Court noted that the stated purpose of the RPA was to provide a mechanism for determining "disputed revenue liability." S.C. Code Ann. § 12-60-20 (Supp. 1998). The Court concluded that the phrase "other amounts" in § 12-60-3370 did not mean the regulatory fine imposed by the ALC was a tax because the RPA was limited to revenue liabilities (i.e. taxes), and because the definition of "tax" in § 12-60-30(27) did not include regulatory fines. The Court also considered whether the regulatory fine was a tax within the ordinary definition of the term, but resorted to this ordinary meaning analysis only because it had concluded that the fine was not a "tax" within the meaning of the RPA.

Importantly, Great Games was decided on March 6, 2000. Just five months later, in direct response to the Great Games decision, the General Assembly amended § 12-60-20 to apply not only to disputed revenue liabilities, but to "*any dispute* with the Department of Revenue." Further,

the legislature also amended the definition of “taxes” to include “regulatory and other penalties, and civil fines.”

Statutes at the time of <u>Great Games</u>:	Statutes as amended by the General Assembly five months after <u>Great Games</u>:
<p>Section 12-60-20: It is the intent of the General Assembly to provide the people of this State with a straightforward procedure to determine any <i>disputed revenue liability</i>. The South Carolina Revenue Procedures Act must be interpreted and construed in accordance with, and in furtherance of, that intent.</p>	<p>Section 12-60-20: It is the intent of the General Assembly to provide the people of this State with a straightforward procedure to determine any <i>dispute with the Department of Revenue</i>. The South Carolina Revenue Procedures Act must be interpreted and construed in accordance with, and in furtherance of, that intent.</p>
<p>Section 12-60-30(27): ‘Tax’ or ‘taxes’ means all taxes, licenses, permits, fees, or other amounts, including interest and penalties, imposed by this title, or subject to assessment or collection by the department.</p>	<p>Section 12-60-30(27): “Tax” or “taxes” means all taxes, licenses, permits, fees, or other amounts, including interest, <i>regulatory and other penalties, and civil fines</i>, imposed by this title, or subject to assessment or collection by the department, <i>including property subject to collection pursuant to Chapter 18 of Title 27</i>.</p>

The import of this legislative change is clear: by replacing “any disputed revenue liability” with “any dispute” and expanding the definition of tax to also include the regulatory amounts assessed and collected by the Department, the General Assembly signaled its intent that all disputes with the Department of Revenue—whether over taxes as ordinarily understood or as defined by the General Assembly in the statute—are to be handled in accordance with the RPA.

Respondents argue that the General Assembly has never amended § 12-60-30(27) to specifically incorporate the liabilities or debts that Department is collecting under § 12-4-580, so therefore those liabilities and debts cannot be taxes. Again, this argument ignores the context and legislative history of the statutory provisions at issue.

The SDCA and RPA were both enacted in 1995. The SDCA authorized the Department to collect debts on behalf of claimant agencies, while the RPA created a process for resolving tax disputes with the Department and defined “taxes” to include *any amounts collected* by the Department. By enacting both statutes at the same time, the General Assembly understood and intended the RPA to govern any dispute related to the Department’s collection of SDCA debts. Moreover, when the General Assembly enacted the GEAR program one year later, it chose to define the GEAR liabilities subject to collection by the Department to have the same meaning as the debts collected under the SDCA program.

In other words, the General Assembly has never needed to amend § 12-60-30(27) to incorporate the liabilities or debts of § 12-4-580 because the plain language of § 12-60-30(27) already does so.

3. The *ejusdem generis* canon does not limit Section 12-60-80(C) only to taxes as Respondents commonly understand the term to mean.

As an initial matter, the *ejusdem generis* canon is only a rule of construction to be applied as an aid in ascertaining legislative intent; it has “no application where it clearly appears that no such limitation was intended.” State v. Wilson, 274 S.C. 352, 355, 264 S.E.2d 414, 415 (1980). As the Department explained more fully in its Initial Brief, the plain language of Section 12-60-80 is clear and unambiguous, so there is no need for the court to employ canons of statutory construction. Parsons v. Georgetown Steel, 318 S.C. 63, 456 S.E.2d 366 (1995) (“Where the terms of a relevant statute are clear, there is no room for construction.”). *see also* Cowan v. Allstate Ins. Co., 351 S.C. 626, 631, 571 S.E.2d 715, 717 (Ct.App.2002); Olson v. Faculty House of Carolina, Inc., 344 S.C. 194, 544 S.E.2d 38 (Ct. App. 2001); *see also* City of Camden v. Brassell, 326 S.C. 556, 486 S.E.2d 492.

Respondents argue that the *ejusdem generis* canon limits the “other” clauses to items of the same kind or type as the items or items specified. However, Respondents’ own argument is internally inconsistent. On the one hand, Respondents argue that “taxes” must be limited to its ordinary definition, meaning it is involuntary, an enforced contribution, and imposed for the purpose of raising revenue. (Resp. Brief, p. 11–12). On the other hand, Respondents argue the phrase “other amounts” should be limited to the same kind or type of items in the preceding adjoining clause: “taxes, licenses, permits, fees” (Resp. Br., p. 17). But licenses, permits, and fees are not “taxes” as commonly understood—they are not involuntary or enforced contributions, but are largely voluntary and optional.³ Likewise, they are not imposed for the purpose of raising revenue, but instead are required for purposes of regulating the licensed or permitted activity and the associated administrative costs. Thus, the “other” clause cannot be limited to the same type or kind as the preceding items, because by Respondent’s own definitions the preceding items are necessarily dissimilar.

Moreover, even if the doctrine of *ejusdem generis* were to apply, Respondents focus on the wrong adjoining clause to limit the “other” clause. Under a plain reading of the statute, the correct limiting phrase is “imposed by this title, or subject to assessment or collection by the department.” This is the kind or type (the genus) that actually restricts the scope of “other amounts” in the statute. In other words, Section 12-60-30(27) lists eight distinct items that are properly considered “taxes”

³For example, the Department devotes a considerable amount of time and resources administering and enforcing the Alcohol and Beverage Licensing laws. Obtaining a beer, wine, or liquor license or permit is not an involuntary, enforced requirement on all taxpayers; it is a privilege extended only to those who meet the prerequisite requirements. Notably, disputes with the Department over ABL licenses or permits are governed by the RPA, even though the ABL laws are located in Title 61 (and not Title 12).

within the statutory definition. Contrary to Respondent's strikethrough version, Section 12-60-30 is properly diagramed like this:

“Tax” or “taxes” means:

- (1) Taxes imposed by this title, or subject to assessment or collection by the department.
 - (2) Licenses imposed by this title, or subject to assessment or collection by the department.
 - (3) Permits imposed by this title, or subject to assessment or collection by the department.
 - (4) Fees imposed by this title, or subject to assessment or collection by the department.
 - (5) Other amounts imposed by this title, or subject to assessment or collection by the department, including
 - (6) interest,
 - (7) regulatory and other penalties, and
 - (8) civil fines.
- c. The RPA's exclusivity provision includes claims for refunds of medical debts collected by the Department pursuant to the GEAR statute, and it bars bringing those claims as a class action.

Respondents concede that Section 12-60-80 acts as an exclusivity provision that requires any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes, to be brought solely in accordance with the RPA.

As discussed above, the term “taxes” is broadly defined by the RPA, so the RPA is the sole procedure by which a taxpayer can proceed with a claim against the Department regarding a dispute over amounts subject to collection by the Department. GEAR and SDCA debts and liabilities are amounts that the Department is statutorily mandated to collect. Therefore, when § 12-60-80(C) states definitively that “a claim or action for the refund of taxes [as defined in § 12-60-30(27)] may not be brought as a class action in the Administrative Law Judge Division or any court of law in this State,” this includes a claim for the refund of medical debts the Department collected pursuant to the GEAR program.

If the first clause of § 12-60-80(C) was not clear enough to bar the instant action, the broad scope of the second clause acts as an additional, or alternative, bar to Respondents' class action in this case. Even if Respondents were correct—that medical debts owed to governmental entities are not “taxes”—the second would nonetheless bar “any other” class action against the Department because the clause plainly states that the “department ... may not be named or made a defendant in *any other class action* brought in this State.” The phrase “any other” is meant to distinguish the class actions in the second clause from the class actions in the first clause—not to limit them to the same kind or type. If § 12-60-80(C) is interpreted as Respondents contend, the statute would read:

(C) Notwithstanding subsections (A) and (B), a claim or action for the refund of taxes may not be brought as a class action in the Administrative Law Judge Division or any court of law in this State, and the department, political subdivisions, or their instrumentalities may not be named or made a defendant in any other class action *[for the refund of taxes]* brought in this State.

This reading is nonsensical, and essentially renders the second clause of the provision superfluous, redundant, and unnecessary.

As the Department argued in its Initial Brief, the plain language of § 12-60-80(C), on its face, imposes a blanket prohibition against *any class action* against the Department, in *any case*. However, even if the Court were to find that the prohibition against “any other class action” were somehow limited in scope,⁴ at a minimum the limited scope would still include disputes involving

⁴For example, Respondents suggested a hypothetical involving a slip and fall on the Department's premises, or a car wreck caused by one of its employees, as justification to ignore the plain language of the statute's bar to any class actions. However, both of these types of claims would not come within the scope of the RPA, because they do not involve *disputes with* the Department over its administration and enforcement of Title 12, but instead involve *claims against* the Department for acts or omissions done outside the scope of its legislative and statutory authority. Those actions would have their own specific statutory remedies, e.g. workman's compensation laws or the S.C. Torts Claim Act.

taxes (as Respondents argue) and disputes with the Department's administration and enforcement of Title 12. Because outstanding medical debts fall within the statutory definition of "taxes," even if the Legislature added the words "involving taxes" after the second clause (as Respondents contend is implied), the statutory bar would still be applicable in the present case.

In addition, the fact that § 12-60-80(C) includes reference to "political subdivisions, or their instrumentalities" further underscores the applicability of the statutory bar to the instant class action case. The General Assembly inserted subsections (B) and (C) into § 12-60-80 immediately following the Supreme Court's decision in Gardner v. S.C. Dep't of Revenue, 353 S.C. 1, 577 S.E.2d 190 (2003), which involved an appeal concerning the collection of outstanding medical debts pursuant to the SDCA. See 2003 Act No. 69 (eff. June 18, 2003). In Gardner, the putative class plaintiffs named more than a dozen medical facilities owned and operated by the State's political subdivisions and their instrumentalities, as well as the Municipal Association and the S.C. Association of Counties. It stretches credulity to suggest that the statutory bar in § 12-60-80(C) cannot entail claims regarding medical debts, when the statute was added by the General Assembly months after a claim involving medical debts—especially when the General Assembly went out of its way to include specific reference to the Department and other entities (political subdivisions or instrumentalities) that had just been sued in Gardner.

At the end of the day, Respondents' are overly concerned with whether something is labeled a "taxes" and the perceived conflict between the statutory definition and what Respondents argue is the ordinary meaning, but Respondents miss the underlying reason the General Assembly has chosen to define "taxes" broadly like it did. The issue is not whether the Department can magically transform medical debts into taxes; the issue is whether the General Assembly has established a process and procedure for resolving any disputes with the Department with respect

to its administration and enforcement of its statutory duties under Title 12. The RPA is the process the General Assembly has created, and for purposes of determining what types of matters are included within the scope of the RPA, the General Assembly chose to define “taxes” broadly to encompass any amount that Title 12 imposes, or which the Department assesses or collects. This includes the medical debts at issue here.

II. There Are No S.C. Const. art. III, § 17 Concerns with Section 12-60-80(C) if Taxes” Are Defined Broadly as Provided in Section 12-60-30(27).

The clearest way to reconcile the provisions of the RPA, GEAR, and the SDCA to avoid any constitutionality concerns—without striking or ignoring portions of the relevant statutes or inserting phrases into the statutes—is to define “tax” broadly as the RPA does, and to construe the RPA as applying broadly to encompass disputes involving the Department’s statutorily mandated administration and enforcement of Title 12.

S.C. Const. art. III, § 17 provides: “Every Act or resolution having the force of law shall relate to but one subject, and that shall be expressed in the title.” The three objectives of article III, § 17 are (1) to apprise the members of the General Assembly of the contents of an act by reading the title, (2) to prevent legislative log-rolling, and (3) to inform the people of the state of the matters with which the General Assembly concerns itself. Carll v. South Carolina Jobs-Economic Development Authority, 284 S.C. 438, 327 S.E.2d 331 (1985).

S.C. Const. art. III, § 17 is to be liberally construed so as to uphold an act if practicable. Keyserling v. Beasley, 322 S.C. 83, 470 S.E.2d 100 (1996). A title meets the requirements of Article III, § 17 when it states the general subject of the legislation and when the provisions of the Act are germane to that subject; the title need not be an index to every provision of the Act. American Petroleum Institute v. S.C. Dept. of Revenue, et al., 382 S.C. 572, 677 S.E. 2d 16 (2009);

Carll v. South Carolina Jobs-Economic Development Authority, 284 S.C. 438, 327 S.E.2d 331
(1985).

Respondents wrongly assert that “[t]he Department does not dispute that the 201-line title of the act that created the class action bar lacks reasonable notice that the class action bar could apply to claims over garnishing wages to pay non-tax debt.” (Resp. Br., p. 20). The Department does dispute this assertion. The 201-line title to the 2003 Act No. 69, which included the amendment to § 12-60-80(C), includes the following relevant sections:

TO AMEND ARTICLE 1, CHAPTER 60 OF TITLE 12,
RELATING TO SOUTH CAROLINA REVENUE PROCEDURES
ACT, SO AS TO REVISE THE MANNER IN WHICH AND
CONDITIONS UNDER WHICH DISPUTES OR CLAIMS WITH
THE DEPARTMENT OF REVENUE ARE DETERMINED AND
RESOLVED.

This language sufficiently apprised the General Assembly of the contents of an act, and it provided reasonable notice to the public that the Legislature is “revis[ing] the manner in which and conditions under which disputes or claims with the Department are determined and resolved.” The public is charged with knowledge of existing law, and this title is sufficiently informative and broad enough to advise the public that the bill would amend existing law to clarify how “a dispute with the Department” is resolved, which may involve a dispute involving liabilities or debts owed to the State, its political subdivisions, etc. that have been submitted to the Department for collection. Contrary to Respondents’ suggestion, the General Assembly does not need to state its intentions with the degree of specificity that Respondents suggest in order for the legislation to avoid any one-subject rule concerns.


CONCLUSION

For the reasons set forth above and in the Department’s Initial Brief, the statutory context of the SDCA, GEAR, and RPA and the plain language of § 12-60-30(27) and § 12-60-80 bar

Respondents class action for a refund of the medical debts collected by the Department. The Department is authorized and directed to collect these medical debts on behalf of claimant agencies, and any disputes with the Department regarding these collection efforts must be brought in accordance with the RPA.

The trial court erred as a matter of law in holding otherwise, and the Department respectfully requests this Court reverse and remand the case to the circuit court to dismiss the action.

Respectfully Submitted,



Jason P. Luther (Bar No. 78021)
General Counsel for Litigation
Dana R. Krajack (Bar No. 3608)
Counsel for Litigation P.O. Box 12265
Columbia, SC 29211-9979
803-898-5172
Attorneys for Appellant
Jason.Luther@dor.sc.gov

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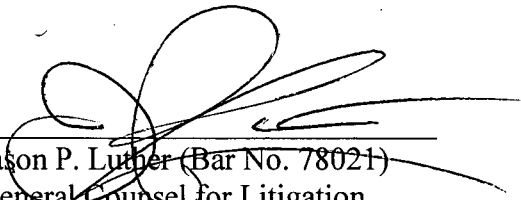
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CERTIFICATE OF COUNSEL

I certify that this Final Reply Brief complies with Rule 211(b), SCACR.


Jason P. Luther (Bar No. 78021)
General Counsel for Litigation
Dana R. Krajack (Bar No. 3608)
Counsel for Litigation
P.O. Box 12265
Columbia, SC 29211-9979
803-898-5172
Attorneys for Appellant

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