

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Perry M. Buckner, III, Circuit Court Judge

RECEIVED

JAN 20 2017

SC Court of Appeals

Case No. 2014-CP-15-135

Appellate Case No. 2016-001626

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

Respondent/
Appellant,

v.

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

Appellant/
Respondent.

Final Appellant's Brief of Appellant/Respondent

C. Mitchell Brown
Brian P. Crotty
Michael J. Anzelmo
NELSON MULLINS RILEY &
SCARBOROUGH, LLP
Post Office Box 11070
Columbia, South Carolina 20211-1070
(803) 799-2000

Attorneys for South Carolina Municipal Insurance and
Risk Financing Fund

Table of Contents

Table of Authorities	ii
Statement of Issues	1
Statement of the Case.....	2
Statement of the Facts.....	6
A. SCMIRF, the Intergovernmental Agreement and the Coverage Contract.....	7
B. The terms of the Coverage Contract.....	8
Argument	12
I. <u>There is only a total of \$1,000,000 of coverage under the SCMIRF Coverage Contract for the claims made against Craddock and the verdicts rendered against Cottageville and Price.</u>	12
A. The Coverage Contract provides two paths to coverage in Section IV, Coverage for “Bodily Injury” or coverage for “Personal Injury.”	14
1. Coverage for “Bodily Injury”	15
2. Coverage for “Personal Injury”	15
B. The Coverage Contract explicitly provides that “Personal Injury” coverage subsumes “Bodily Injury” under the facts here.	16
C. Numerous provisions of the Coverage Contract limit SCMIRF’s liability to the \$1,000,000 Coverage Limit under the circumstances present here.	18
1. The Coverage Contract prohibits duplication of coverage.	18
2. The Coverage Contract contains specific provisions prohibiting duplication of coverage for “Personal Injury” that are applicable to this matter.	20
II. <u>The relevant provisions of the Coverage Contract are not ambiguous.</u>	22
Conclusion	25

Table of Authorities

	Page(s)
 Cases	
<i>Boiter v. S.C. Dep't of Transp.</i> , 393 S.C. 123, 712 S.E.2d 401 (2011)	23, 24
<i>Diamond State Ins. Co. v. Homestead Indus., Inc.</i> , 318 S.C. 231, 456 S.E.2d 912 (1995)	13
<i>Engineered Products, Inc. v. AETNA Casualty & Surety Co.</i> , 295 S.C. 375, 368 S.E.2d 674 (Ct. App. 1988).....	24
<i>Horry County v. Ins. Reserve Fund</i> , 344 S.C. 493, 544 S.E.2d 637 (Ct. App. 2001).....	13
<i>McGill v. Moore</i> , 381 S.C. 179, 672 S.E.2d 571 (2009)	23
<i>Sloan Constr. Co. v. Cent. Nat'l Ins. Co. of Omaha</i> , 269 S.C. 183, 236 S.E.2d 818 (1977)	23
<i>Williams v. GEICO</i> , 409 S.C. 586, 762 S.E.2d 705 (2014)	23
 Statutes	
42 U.S.C. § 1983.....	2, 3, 16, 17
S.C. Code Ann. § 15-78-10 <i>et seq.</i>	4
S.C. Code Ann. § 15-78-30(g)	24
S.C. Code Ann. § 15-78-140.....	8
S.C. Code Ann. § 15-78-140(b)(4)	7
 Other Authorities	
S.C. CONST. art. VIII, § 13.....	7

Statement of Issues

1. Did the trial court err in finding that the claims made and the verdict rendered against the Town of Cottageville and Randall Price, and the claims made against John Craddock, relating to the hiring, retention, supervision and shooting death of Bert Reeves resulted in there being more than \$1,000,000.00 in indemnity coverage available under the terms of SCMIRF's Coverage Contract?
2. Did the trial court err in its denial of SCMIRF's summary judgment motion by failing to analyze the coverage issue solely under the Coverage Contract's provisions for "Personal Injury"?
3. Did the trial court err in holding that because there were separate wrongful death and survival action claims with different measures of damages, this resulted in their being more than \$1,000,000.00 in indemnity coverage available under the terms of SCMIRF's Coverage Contract?
4. Did the trial court err in finding that there was an ambiguity in the Coverage Contract as to whether "occurrence" is defined by different acts of negligence or the resulting damage, and that this ambiguity resulted in their being more than \$1,000,000.00 in indemnity coverage available under the terms of SCMIRF's Coverage Contract?

Statement of the Case

This action originated on February 18, 2014, when Respondent/Appellant Ashley Reeves (“Reeves”), as Personal Representative for the Estate of Albert Carl “Bert” Reeves (“Bert Reeves”), filed a declaratory judgment Complaint against the South Carolina Municipal Insurance and Risk Financing Fund (“SCMIRF”), the Town of Cottageville (“Cottageville”) and Randall Price (“Price”) seeking a declaration as to the interpretation of the 2011 Coverage Contract between the SCMIRF and the Cottageville. (Complaint filed 2/18/14, R. 41). SCMIRF filed its Answer and Declaratory Judgment Counterclaim on May 15, 2014, and Reeves filed a Reply on June 11, 2014. (SCMIRF’s Answer and Counterclaim, R. 60; Reply to Counterclaim, R. 66). On June 19, 2014, SCMIRF filed an Amended Answer and Counterclaim, and Reeves filed a Reply to this amended pleading on June 26, 2014. (Am. Answer and Counterclaim, R. 68; Reply to Am. Answer, R. 74).

This action stemmed from a lawsuit filed on August 28, 2012, by Reeves against Cottageville and Price, a police officer with the Cottageville Police Department, that was removed to the United States District Court for the District of South Carolina, Civil Action No. 2:12-02765-DCN (the “Cottageville Lawsuit”) on September 24, 2012. (Cottageville Complaint, R. 21; Notice of Removal filed 9/24/12, R. 15). The Cottageville Lawsuit related to the shooting death of Bert Reeves by Price. Specifically, Reeves alleged that Cottageville and Price were negligent in the death of Bert Reeves and that Cottageville was negligent in the hiring, supervision, and retention of Price. (Cottageville Complaint at ¶¶ 17-34, R. 25-28). Reeves further alleged that, based on the same incident, Price and Cottageville violated Bert Reeves’ civil rights in violation of 42 U.S.C. § 1983. (*Id.* at ¶¶ 44-59, R. 30-33). The Cottageville Lawsuit asserted both survival and wrongful death claims. (*Id.* at ¶¶ 60-71, R. 33-35).

On May 14, 2014, Reeves filed a separate lawsuit also related to the death of Bert Reeves against John Craddock (“Craddock”), the Cottageville Police Department Chief of Police, in the United States District Court for the District of South Carolina, Civil Action No. 2:14-01918-DCN (the “Craddock Lawsuit”). (Craddock Complaint, R. 48). The Craddock Lawsuit asserted survival and wrongful death claims based on 42 U.S.C. § 1983 alleging that Craddock failed to properly train and supervise Price, failed to intervene in the altercation between Price and Bert Reeves and failed to render medical care to Bert Reeves. (*Id.*, R. 53-58).

The present action resulted from SCMIRF’s position that its Coverage Contract with Cottageville provided a total of \$1,000,000 in indemnity coverage for Reeves’ claims in both the Cottageville Lawsuit and the Craddock Lawsuit. Reeves disputed SCMIRF’s position and filed this declaratory judgment action.

On October 15, 2014, the jury in the Cottageville Lawsuit rendered a verdict in Reeves’ favor finding that Cottageville and Price were liable for negligence and violation of 42 U.S.C. § 1983. (Verdict Forms 1 & 2, R. 87-91). The jury in the Cottageville Lawsuit awarded actual damages of \$7,500,000 against both Cottageville and Price, and punitive damages of \$60,000,000 against Cottageville and \$30,000,000 against Price. (Verdict Form 3, R. 92-93). On October 21, 2014, a Judgment was entered in the Cottageville Lawsuit based on that verdict. (Judgment entered 10/21/14, R. 94).

On February 26, 2015, the Parties entered into a universal settlement agreement which settled the both the Cottageville Lawsuit and the Craddock Lawsuit (which had not yet gone to trial). (Settlement Agreement dated 2/26/15, R. 351). On April 20, 2015, and as part of the settlement, a partial stipulation of dismissal was filed leaving SCMIRF as the only defendant in

the present action. (Partial Stipulation of Dismissal, R. 365). One of the material terms of the Parties' settlement was an agreement to litigate two declaratory judgment questions:

- (1) Do the claims made and the verdict rendered against the Town of Cottageville and Randall Price, relating to the hiring, retention, supervision and shooting death of Bert Reeves result in there being more than \$1,000,000.00 in indemnity coverage available under the terms of the Coverage Contract with respect to all such claims including the claims made against John Craddock in the separately styled action referenced above? Reeves asserts that there is more than one occurrence based on the facts and claims and the jury's verdict relating to the hiring, retention, supervision and shooting death of Bert Reeves, and, thus, there is more than \$1,000,000 in indemnity coverage available under the Coverage Contract. SCMIRF asserts the Coverage Contract is limited to a total of \$1,000,000 in indemnity coverage.
- (2) Allegations have been made that SCMIRF has engaged in bad faith with regard to its handling of the claims relating to the shooting death of Bert Reeves. SCMIRF denies it has engaged in bad faith. SCMIRF was informed that any bad faith claims that exist in favor of Cottageville would be assigned to Reeves. Would a tort claim for bad faith brought against SCMIRF be subject to the South Carolina Tort Claims Act (S.C. Code. Ann. § 15-78-10 *et seq.*), assuming such a claim were otherwise valid? Petitioner [SCMIRF] asserts it would. Respondent Reeves asserts otherwise.

(Stipulation of Facts and Issues dated 10/7/2015, R. 83-86; Settlement Agreement dated 2/26/15 at ¶ 4.(a), R. 354-355). Under the universal settlement agreement, Reeves would receive an additional \$1 million payment for each question upon which Reeves prevails. (R. 356). If Reeves prevails on neither question, Reeves receives no further money aside from the \$10 million settlement payment already paid to Reeves pursuant to the settlement. (*Id.*).

On June 3, 2015, the Parties jointly petitioned the South Carolina Supreme Court to hear and decide both questions in its original jurisdiction. (Consent Petition for Original Jurisdiction filed 6/3/15, R. 368). On July 24, 2015, the South Carolina Supreme Court declined the Petition

and the Parties proceeded, in accordance with the terms of their settlement agreement before this Court. (Order denying Petition, R. 14).

Following the denial of the Petition to the South Carolina Supreme Court, on October 19, 2015, Reeves, with the consent of SCMIRF, filed an Amended Complaint setting forth the two declaratory judgment issues agreed upon by the Parties in their settlement. (Amended Complaint, R. 76). This Amended Complaint included as an exhibit a Stipulation of Facts and Issues. (Stipulation of Facts and Issues, R. 83). The Stipulation of Facts and Issues included, as exhibits, the Verdict Form and Judgment in the Cottageville Lawsuit (R. 87), the SCMIRF Bylaws (R. 95), the Intergovernmental Agreement for an Insurance and Risk Financing Fund for Risk Sharing (R. 99), and the 2011 Coverage Contract between SCMIRF and Cottageville. (R. 106). SCMIRF, filed its Answer to the Amended Complaint on October 30, 2015. (Answer to Amended Complaint, R. 244).

On December 15, 2015, both SCMIRF and Reeves filed their motions for summary judgment on the stipulated issues. (SCMIRF's Mot. for Sum. Judgment., R. 376; SCMIRF's Memo. in Supp. of Mot. for Sum. Judgment., R. 378; Reeves' Mot. for Sum. Judgment., R. 400; Reeves' Memo. in Supp. of Mot. for Sum. Judgment., R. 401). Opposition memoranda were filed by SCMIRF on January 15, 2016, and by Reeves on January 19, 2016. (SCMIRF's Memo. in Opp. to Reeves' Sum. Judgment. Mot., R. 530; Reeves' Memo. in Opp. to SCMIRF's Sum. Judgment. Mot., R. 521). Reeves filed a supplemental memorandum on May 19, 2016. (Reeves' Supp. Memo. filed 5/19/16, R. 553).

A hearing on the cross-summary judgment motions was held on May 17, 2016. (Transcript of 5/17/16 Hearing, R. 252). Proposed orders were submitted to the trial court by Reeves on June 14, 2016, and by SCMIRF on June 16, 2016. (Reeves' Proposed Order, R. 577; SCMIRF's

Proposed Order, R. 611). On June 29, 2016, the trial court filed its summary judgment Order. (Order filed 6/29/16, R. 1). In this Order, as to the first stipulated issue addressing whether more than \$1,000,000 in indemnity coverage was available under SCMIRF's Coverage Contract, the trial court granted Reeves' motion for summary judgment and denied SCMIRF's motion. (*Id.* at pp. 3-7, R. 3-7). Specifically, the trial court held "there is ambiguity as to whether 'occurrence' is defined by different acts of negligence or the resulting damage." (*Id.* at p. 6, R. 6). The trial court then noted that the Cottageville Lawsuit "sought to recover damages for wrongful death, as well as conscious pain and suffering" and that "the measure of damages for a wrongful death claim and a claim for conscious pain and suffering are different." (*Id.* at pp. 6-7, R. 6-7). The trial court then concluded that Reeves "suffered separate and distinct damages which could lead to additional coverage under the separate causes of action." (*Id.* at p. 7, R. 7). As to the second stipulated issue addressing whether a tort claim for bad faith brought against SCMIRF would be subject to the South Carolina Tort Claims Act, the trial court granted SCMIRF's motion for summary judgment and denied Reeves' motion. (*Id.* at pp. 8-10, R. 8-10).

On July 13, 2016, SCMIRF filed a timely motion to alter or amend the June 29, 2016 Order with respect to the coverage ruling. (SCMIRF's Mot. to Alter or Amend, R. 652). Reeves also filed a motion to alter or amend. (Reeves' Mot. to Alter or Amend, R. 639). Both motions were denied by the trial court's Order filed July 25, 2016. (Order filed July 25, 2016, R. 11). SCMIRF then filed this appeal on August 4, 2016. (Notice of Appeal, R. 660).

Statement of the Facts

As part of the universal settlement of the Cottageville and Craddock matters, the Parties agreed that the determination of the two agreed upon declaratory judgment issues would be governed by a Stipulation of Facts that was incorporated into the Amended Complaint in this

action. (Stipulation of Facts, R. 83). This stipulation expressly provided that “[t]he Parties agree that no other facts are necessary for the Court to answer the stipulated issues, that no discovery is needed for the case, and that the stipulated issues are purely legal in nature.” (*Id.* at ¶ 11, R. 85).

Cottageville is a South Carolina municipality located in Colleton County, South Carolina. (*Id.* at ¶ 2, R. 83). Both Price and Craddock, at all relevant times, were policemen for Cottageville, and were acting within the scope of their employment as Cottageville police officers. (*Id.* at ¶¶ 2, 5, R. 83-84). On May 16, 2011, while acting in the scope of his employment as a police officer for Cottageville, Price shot and killed Bert Reeves. (*Id.* at ¶¶ 2-3, R. 83). The death of Bert Reeves led to the filing of the Cottageville Lawsuit and the Craddock Lawsuit.

A. SCMIRF, the Intergovernmental Agreement and the Coverage Contract.

SCMIRF, an agency of the State, asserts that it is an unincorporated voluntary, self-insurance pool in the State of South Carolina. (*Id.* at ¶ 6, R. 84). SCMIRF was established in accordance with Article VIII, section 13 of the South Carolina Constitution, which authorizes governmental entities to enter into interlocal contracts or agreements to undertake action collectively that each entity could otherwise undertake alone. S.C. CONST. art. VIII, § 13. SCMIRF was also established in accordance with S.C. Code Ann. § 15-78-140(b)(4), which requires the political subdivisions of this State to procure tort liability insurance to cover the risks for which immunity has been waived, and which identifies as an option for such coverage the establishment of “pooled self-insurance liability funds, by intergovernmental agreement....” S.C. Code Ann. § 15-78-140(b)(4).

Membership in SCMIRF is limited to municipal government units and institutions or agencies in the State of South Carolina in accordance with the terms of an Intergovernmental Agreement. (SCMIRF Bylaws at Sec. II, R. 95; Intergovernmental Agreement at ¶ 9, R. 102).

SCMIRF's Bylaws describe it as "a Fund created by and comprised of South Carolina municipalities and their agencies which are parties to an Intergovernmental Agreement which establishes a pool for the payment of property losses and liability claims on behalf of its members pursuant to the provisions of the Code of Laws of South Carolina, 1976, Section 15-78-140." (SCMIRF Bylaws at Sec. I., R. 95; Stipulation of Facts at ¶ 7, R. 84). The Intergovernmental Agreement that all SCMIRF members are required to enter into describes SCMIRF as "a joint interlocal agency to operate a fund for liability risk sharing." (Intergovernmental Agreement at ¶ 1, R. 100).

On February 4, 2008, Cottageville entered into an Intergovernmental Agreement for an Insurance and Risk Financing Fund with SCMIRF and, thus, Cottageville became a member and participant in SCMIRF. (Intergovernmental Agreement, R. 99; Stipulation of Facts at ¶ 7; R. 84). During the period of January 1, 2011 to January 1, 2012 SCMIRF provided coverage to Cottageville for certain risks as set forth in the 2011 Coverage Contract between SCMIRF and Cottageville ("Coverage Contract"). (Stipulation of Facts at ¶ 8, R. 84; 2011 Coverage Contract, R. 106). The Coverage Contract represents the complete agreement between SCMIRF and Cottageville regarding coverage. (Stipulation of Facts at ¶ 8, R. 84).

B. The terms of the Coverage Contract.

The Coverage Contract between SCMIRF and Cottageville is comprised of the following ten sections:

- Section I – General Provisions
- Section II – Property Coverage
- Section III – General Liability Coverage
- Section IV – Law Enforcement Liability
- Section V – Public Official Liability
- Section VI – Business Auto Coverage
- Section VII – Commercial Crime
- Section VIII – Excess Casualty Coverage

Section IX – Equipment Breakdown Coverage
Section X – Endorsements

(Coverage Contract, R. 106-243). The claims raised in the Cottageville and Craddock lawsuits fall exclusively under the Law Enforcement Liability Section (Section IV) and, to the extent they are not supplanted by Section IV, the General Provisions of Section I. Specifically, under Section IV, SCMIRF provides coverage for members or covered persons while they are acting both in the course and scope of their official duties to provide law enforcement. (*Id.* at Sec. IV., ¶ A.1., R. 156). The exclusive coverage of Section IV to this situation is reiterated by Section I’s General Provisions, which expressly provide that there is no duplication of coverage or coverage limits, and that “[n]o liability that is covered under any Coverage Section of This Contract will be deemed to be separately covered under any other Coverage Section.”¹ (*Id.* at Sec. I., ¶ C.9, R. 112). Section IV governs the “Member” named in the declarations page, *i.e.*, Cottageville, “the law enforcement department of the Member named,” and “each of the individual law enforcement officers,” *i.e.*, Price and Craddock. (*Id.* at Sec. IV., ¶ A.1. and ¶ G.9., R. 156, 167-168). Here the parties have stipulated that the actions or omissions of Price and Craddock occurred while they were acting within the scope of their employment as Cottageville police officers. (Stipulation of Facts at ¶¶ 3, 5, R. 83-84).

The declaration page for Section IV of the Coverage contract provides for a “Liability Limit” of \$1,000,000 “Per Occurrence.” (Coverage Contract at Sec. IV., R. 155). “Occurrence” is not specifically defined within Section IV. Rather “Occurrence” is defined in Section I as “an

¹ Additionally, Section III of the Coverage Contract, governing General Liability Coverage, and Section V, governing Public Official Liability, specifically exclude any Law Enforcement Liability that is covered in Section IV, including any claims based on hiring, training, monitoring, supervising, or control of law enforcement employees. (Coverage Contract at Sec. III., ¶ J.24, R. 142; Sec. V., ¶ E.21., R. 176).

accident which results in Bodily Injury ... the original cause of which and the initial damage from which happened during the Contract Period set forth in the Declarations.” (*Id.* at Sec. I., ¶ B.4., R. 108). Additionally, “‘Occurrence’ includes continuing exposure to the same harmful conditions” and “[a]ll such continuing exposure, damage, or injury shall be treated as one Occurrence.” (*Id.*).

Under Section IV, subject to the Coverage Contract’s limitations, terms and conditions, SCMIRF agreed to pay on behalf of the member or covered person sums those person(s) shall be obligated to pay exclusively as “Money Damages” because of a “Wrongful Act” by those person(s) which results in either “Bodily Injury” where the “Wrongful Act” amounts to an “Occurrence,” or a “Personal Injury.” (*Id.* at Sec. IV., ¶ A.1., R. 156). Sections I and IV provide definitions for the key terms involved with this coverage section. Specifically:

“**Wrongful Act**” is defined to mean: “any actual or alleged error in the performance or failure to perform an official duty ... or any omission or neglect in performing an official duty; or any breach of an official duty, including misfeasance, malfeasance and nonfeasance....” (*Id.* at Sec. IV., ¶ G.27., R. 169-170);

“**Bodily Injury**” is defined as “physical injury to any person (including death) and any mental anguish or mental suffering associated with or arising from such physical injury.” (*Id.* at Sec. IV., ¶ G.4., R. 166);

“**Personal Injury**” is defined to include certain “Offenses” committed in the course of the Member’s law enforcement activities, including: “assault and battery;” “violation of civil rights;” and “false arrest, detention or imprisonment.” (*Id.* at Sec. IV., ¶ G.18., R. 169); and

“**Offense**” is defined as “conduct constituting Personal Injury ... that happens in the course and scope of the Member’s or Covered Person’s official duties as described in The South Carolina Tort Claims Act.” (*Id.* at Sec. I., ¶ B.5., R. 108-109).

Significantly, Section IV’s definition of “Bodily Injury” clarifies the distinction between “Bodily Injury” and “Personal Injury” by providing that: “for the purposes of this Section IV, **Bodily Injury** does not include such injuries if they result directly and immediately from the infliction of

Personal Injury, including without limitation assault and battery; any such resulting injuries shall be deemed to be part of the **Personal Injury**. (*Id.* at Sec. IV., ¶ G.4., R. 166) (emphasis in original).

The Coverage Contract also contains numerous provisions designed to limit SCMIRF's liability to the \$1,000,000 liability limit. Paragraph D of Section IV addresses "Limit of Liability" and, more specifically, "SCMIRF's Limit of Liability." This sections provides:

"Only a single limit or Annual Aggregate from a single **Contract** for a single **Coverage Period** will apply, regardless of the number of persons or organizations injured or making claims, or the number of **Covered Persons** who allegedly caused them, or whether the damage or injuries were continuing or were repeated over the course of more than one **Coverage Period**." (*Id.* at Sec. IV., ¶ D.1., R. 156-157) (emphasis in original).

"[T]he total liability of [SCMIRF] [for] any one occurrence/accident/wrongful act will be \$1,000,000 per **Member** excluding expenses and defense costs...." (*Id.* at Sec. IV., ¶ D.2., R. 157) (emphasis in original).

"SCMIRF's liability for any one occurrence/wrongful act will be limited to \$1,000,000 per **Member** regardless of the number of **Covered Persons**, number of claimants or claims made, or the number of covered vehicles involved whether or not covered in one or more than one capacity under **This Contract** or under both **This Contract** and any SCMIRF coverage available to other SCMIRF Members." (*Id.*) (emphasis in original).

"... all continuing, serial, or repeated instances of **Personal Injury** ... will be considered as one occurrence/wrongful act, regardless of the number of **Covered Persons** involved in causing or failing to permit [sic] such injuries or the number of persons injured, and only a single Coverage Limit or Aggregate for one year will apply to all claims arising from such continuing, serial, or repeated conduct, regardless of the number of **Coverage Periods** during which such conduct occurred or continued." (*Id.*) (emphasis in original).

"In no event shall coverage under any liability Section of **This Contract** combine with any other Section, to increase the per occurrence/accident/wrongful act limit of liability of \$1,000,000 as set out above." (*Id.*) (emphasis in original).

Section I's General Provisions also provide that the same conduct or wrongful act(s) cannot separately constitute both an "Offense" and an "Occurrence." Specifically, the Section I provides that "[n]o **Offense** will be deemed also to constitute separately an **Occurrence** for coverage

purposes, or vice versa. ... Any act(s) or omission(s) that might be described under more than one **Coverage Section** or more than one category as an **Offense(s)** or an **Occurrence(s)** will be treated as a single event for coverage purposes, subject to a single Coverage Limit.” (*Id.* at Sec. I., ¶ C.9., R. 112) (emphasis in original). Additionally, Section I of the Contract provides that “[a]ll repetitions of the same basic **Offense** involving an offended person and/or ... group of persons ..., whether or not there are different witnesses to the **Offense** or there is a variation in the conduct constituting the **Offense**, will be treated as one **Offense**, subject to a single Coverage Limit, even if the **Offense** occurs over more than one Contract Period.” (*Id.* at Sec. I., ¶ B.5., R. 108-109) (emphasis in original). Section I further expressly provides that: (1) “[a] single Coverage Limit applies to any **Offense** or **Occurrence**, regardless of the number of claimants, suits, or claims”; and (2) “[a] single Coverage Limit applies to all claims or suits involving substantially the same injury or damage, or progressive injury or damage.” (*Id.* at Sec. I., ¶ C.9., R. 112) (emphasis in original).

Argument

I. There is only a total of \$1,000,000 of coverage under the SCMIRF Coverage Contract for the claims made against Craddock and the verdicts rendered against Cottageville and Price.

In its Order granting Reeves’ motion for summary judgment and denying SCMIRF’s cross-motion, the trial court misinterpreted the terms of the Coverage Contract and failed to recognize the interplay between key provisions that explicitly limit coverage in situations such as those present in this case. The trial court incorrectly concluded that “ambiguities exist that create uncertainty as to coverage within the contract.” (Order filed 6/29/2016 at p. 6, R. 6). More specifically, the trial court improperly focused on the term “occurrence” resulting in the erroneous ruling that “there is ambiguity as to whether ‘occurrence’ is defined by different acts of negligence

or the resulting damage.” (*Id.*). The trial court incorrectly cast the issue as whether the Coverage Contract is a “negligent acts policy” or a “damages policy.” (*Id.* at pp. 6-7, R. 6-7). Additionally, the trial court misinterpreted SCMIRF’s position as being that where there was only one “wrongful death,” there was only one “‘occurrence’ under the policy,” and mischaracterized SCMIRF’s position as being that “the Coverage Contract is viewed as a damages policy for purposes of coverage determination.” (*Id.*). This misinterpretation then led the trial court to conclude that, because there were separate claims for wrongful death and conscious pain and suffering in the underlying actions, and because those claims had different measures of damages, even if the Coverage Contract is viewed as a “damages policy,” the existence of separate and distinct damages suffered by Reeves and his statutory beneficiaries “could lead to additional coverage under these separate causes of action.” (*Id.*).

In reaching this conclusion, the trial court failed to consider the Coverage Contract’s distinction between “Bodily Injury” and “Personal Injury” and the limitations imposed when both types of injuries are present. Additionally, the trial court failed to apply the Coverage Contract limitation of coverage where a “Personal Injury” involves multiple injured persons or multiple wrongful actors.

Where the question before a court is one of coverage, “the policy itself should be examined to see whether coverage is provided by its terms.” *Horry County v. Ins. Reserve Fund*, 344 S.C. 493, 499, 544 S.E.2d 637, 640 (Ct. App. 2001). “Insurance policies,” similar to the SCMIRF Coverage Contract, “are subject to general rules of contract construction,” and courts “must give policy language its plain, ordinary and popular meaning.” *Diamond State Ins. Co. v. Homestead Indus., Inc.*, 318 S.C. 231, 236, 456 S.E.2d 912, 915 (1995). When the Coverage Contract is viewed in its entirety, the plain meaning of the provisions applicable to coverage under Section IV

unambiguously establish that there is a \$1,000,000 liability limit that applies to all of Reeves' claims.

A. The Coverage Contract provides two paths to coverage in Section IV, Coverage for “Bodily Injury” or coverage for “Personal Injury.”

As previously stated, the claims raised in the Cottageville and Craddock Lawsuits fall exclusively under the Section IV of the Coverage Contract governing Law Enforcement Liability. Section IV provides that SCMIRF agrees to pay the sums a member or covered person becomes obligated to pay because of a “**Wrongful Act** ... which results in:

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

(Coverage Contract at Sec. IV., ¶ A.1., R. 156) (emphasis in original). Thus, Section IV provides two separate and distinct paths to coverage – coverage for “Bodily Injury” or coverage for “Personal Injury.”² The starting point for both paths is that there must be a “Wrongful Act.” A “Wrongful Act” includes “any actual or alleged error in the performance or failure to perform an official duty,” such as negligence, “when committed by a **Member** or by a **Covered Person(s)** while acting within both the course and scope of his or her official duties, as provided under the ‘South Carolina Tort Claims Act.’” (*Id.* at Sec. IV., ¶ G.27., R. 169-170) (emphasis in original). In this case, the actions and/or omissions of Price and Craddock constituted the required “Wrongful

² In Section IV, “Bodily Injury” is coupled with “Property Damage” and “Personal Injury” is coupled with “Advertising Injury.” This case does not involve claims for either “Property Damage” or “Advertising Injury.” Therefore, those categories of coverage are not discussed herein.

Act.” The proper analysis then moves to whether the “Wrongful Act” resulted in either “Bodily Injury” or “Personal Injury.”

1. Coverage for “Bodily Injury”

“Bodily Injury” is defined as “physical injury to any person (including death) and any mental anguish or mental suffering associated with or arising from such physical injury.” (*Id.* at Sec. IV., ¶ G.4., R. 166). In order for coverage to exist under this path, however, the “Wrongful Act” that caused it must “amount[] to an **Occurrence.**” (*Id.* at Sec. IV., ¶ A.1.a., R. 156) (emphasis in original). “Occurrence” is defined by the Coverage Contract to mean “an accident which results in **Bodily Injury....**” (*Id.* at Sec. I., ¶ B.4., R. 108) (emphasis in original).

It is not contested that “Bodily Injury” exists in this case. Nor is it contested that the “Wrongful Act” that resulted in the “Bodily Injury” in this matter would amount to an “Occurrence.” This, however, is not the end of the analysis, and the Court must look to the provisions in the Coverage Contract for “Personal Injury” and the interplay between these two paths for coverage.

2. Coverage for “Personal Injury”

The second possible path to coverage is where the “Wrongful Act” results in a “Personal Injury.” “Personal Injury” is defined to include certain “Offenses” committed in the course of a Member’s law enforcement activities, including: “assault and battery;” “violation of civil rights;” and “false arrest, detention and imprisonment.” (*Id.* at Sec. IV., ¶ G.18., R. 169). The term “Offense” is defined as “conduct constituting **Personal Injury** ... that happens in the course and scope of the **Member’s** or **Covered Person’s** official duties as described in the South Carolina Tort Claims Act.” (*Id.* at Sec. I., ¶ B.5., R. 108-109) (emphasis in original). Therefore, for coverage to exist based on “Personal Injury,” the “Wrongful Act” must constitute a qualifying

“Offense.” Significantly, whether coverage exists for “Personal Injury” does not involve any determination as to whether the underlying “Wrongful Act” amounts to an “Occurrence.”

Both the Cottageville and Craddock Lawsuits involved claims based on 42 U.S.C. § 1983. It is not contested that the “Wrongful Act” in this case included “Offenses,” such that the “Wrongful Act” resulted in “Personal Injury.” Thus, in this case, coverage appears to exist under both the “Bodily Injury” and the “Personal Injury” provisions of Section IV. ¶ A.1. However, The Coverage Contract has clear provisions limiting the application of duplicate coverage in such a situation.

B. The Coverage Contract explicitly provides that “Personal Injury” coverage subsumes “Bodily Injury” under the facts here.

As discussed above, Reeves’ negligence claims support coverage for “Bodily Injury,” while Reeves’ Section 1983 claims support coverage for “Personal Injury.” These two types of injury, however, are both the direct result of the shooting death of Bert Reeves. Under the clear terms of the Coverage Contract, both types of injuries cannot co-exist in these circumstances. Rather, where the injuries supporting both the “Bodily Injury” and the “Personal Injury” coverages stem from the same source, those injuries are deemed to be part of the “Personal Injury” and cannot also constitute a separate “Bodily Injury.” Specifically, the definition of “Bodily Injury” in Section IV. ¶ G.4. of the Coverage Contract provides:

However, for purposes of this Section IV, **Bodily Injury** does not include such injuries if they result directly or immediately from the infliction of **Personal Injury**, including without limitation assault and battery; any such resulting injuries shall be deemed to be part of the **Personal Injury**.

(*Id.* at Sec. IV., ¶ G.4., R. 166) (bold emphasis in original; underline added). The General Provisions in Section I of the Coverage Contract also preclude duplication of “Personal Injury” and “Bodily Injury.” Paragraph C.9. of Section I provides that “[n]o **Offense** will be deemed also

to constitute separately an **Occurrence** for coverage purposes, or vice-versa.” (*Id.* at Sec. I., ¶ C.9., R. 112) (emphasis in original). The term “Offense” relates only to “Personal Injury” and the term “Occurrence,” in this usage, relates only to “Bodily Injury.” Thus, under Section I, the basis for a “Personal Injury” cannot also be the basis for a “Bodily Injury,” or vice versa. Section IV then provides that where there is such a shared basis, the only available coverage is for “Personal Injury.”

Here, under both the negligence claims and the Section 1983 claims, the resulting injury is the same—that the conduct of Cottageville, Price and Craddock “proximately caused the death of Bert Reeves.” (Reeves’ Memo. in Supp. of Sum. Judgment. at 3, R. 403) Thus, the claimed “Bodily Injury” in this case (the death of Bert Reeves and the mental anguish and suffering arising from that death) “result[ed] directly or immediately” from the claimed “Personal Injury” (the § 1983 violations), as well as the negligence. In such circumstances, the Coverage Contract expressly provides that the resulting injury is “deemed to be part of the **Personal Injury**” and can no longer constitute a separate “Bodily Injury.” (Coverage Contract at Sec. I., ¶ C.9. and Sec. IV., ¶ G.4., R. 112, 166). (emphasis in original). Therefore, the only coverage in these circumstances is under Section IV’s provisions for “Personal Injury.” The trial court failed to recognize that the coverage analysis in this case involved solely coverage for “Personal Injury.” Having established that the analysis properly focuses only on “Personal Injury,” the proper inquiry at this point is whether the actions of Cottageville, Price and Craddock, and the injuries suffered by Bert Reeves and his statutory beneficiaries, constitute more than one “Personal Injury.” Under the terms of the Coverage Contract, they do not.

C. Numerous provisions of the Coverage Contract limit SCMIRF's liability to the \$1,000,000 Coverage Limit under the circumstances present here.

In granting Reeves' motion for summary judgment and denying SCMIRF's motion, the trial court focused upon the fact that "[Reeves] sought to recover damages for wrongful death, as well as conscious pain and suffering, among other things." (Order filed 6/29/16 at p. 6, R. 6). The trial court then reasoned that because "the measure of damages for a wrongful death claim and a claim for conscious pain and suffering are different ... [t]hey clearly are not substantially the same injury or damage." (*Id.*). The trial court then concluded that "[Reeves] suffered separate and distinct damages which could lead to additional coverage under these separate causes of action." (*Id.* at p. 7, R. 7). The trial court's focus on the fact that there were different legal claims asserted which had different measures of damages was misplaced. Rather, the terms of the Coverage Contract establish that there is no duplication of coverage, and that, under these circumstances, there is only one "Personal Injury" for liability limitation purposes.

1. The Coverage Contract prohibits duplication of coverage.

The stated "Liability Limit" for coverage under Section IV of the Coverage contract is "\$1,000,000 Per Occurrence." (Coverage Contract at Sec. IV., R. 155). Numerous provisions within the Coverage Contract establish that there is no duplication of coverage in various scenarios. First, the General Provisions set forth in Section I provide that there is no duplication among the separate coverage sections:

No liability that is covered under any Coverage Section of **This Contract** will be deemed to be separately covered under any other Coverage Section....

(*Id.* at Sec. I., ¶ C.9., R. 112) (emphasis in original). Duplication of coverage based on the form of injury is also prohibited. Specifically, as previously discussed, duplication of "Personal Injury" and "Bodily Injury" is avoided through the provision stating:

... No **Offense** will be deemed also to constitute an **Occurrence** for coverage purposes, or vice-versa....

(*Id.*) (emphasis in original). Additionally, duplication of coverage is prohibited based on the underlying act or omission through the provision stating:

... Any act(s) or omission(s) that might be described under more than one Coverage Section or more than one category as an **Offense(s)** or an **Occurrence(s)** will be treated as a single event for coverage purposes, subject to a single Coverage Limit....

(*Id.*) (emphasis in original). Moreover, where there are multiple claims or suits which involve the substantially the same injury or damage, only a single Coverage Limit applies, as provided by this provision:

... A single Coverage Limit applies to all claims or suits involving substantially the same injury or damage, or progressive injury or damage. There is no duplication of coverage or benefits under **This Contract**.

(*Id.*) (bold emphasis in original, underline emphasis added).

Section IV of the Coverage Contract reiterates and expands its provisions avoiding duplication of coverage. Specifically, Section IV. ¶ D.1. provides:

... Only a single limit or Annual Aggregate from a single **Contract** for a single **Coverage Period** will apply, regardless of the number of persons or organizations injured or making claims, or the number of **Covered Persons** who allegedly caused them, or whether the damage or injuries at issue were continuing or were repeated over the course of more than one **Coverage Period**.

(*Id.* at Sec. IV., ¶ D.1., R. 157) (bold emphasis in original, underline emphasis added). Thus, the Coverage Contract's \$1,000,000 Liability Limit applies regardless of whether there are multiple persons injured (Bert Reeves and his statutory beneficiaries) or whether multiple covered persons caused the injuries (Cottageville, Price and Craddock). This limitation is further emphasized under the very next subsection, titled "SCMIRF's Limit of Liability," which provides:

... SCMIRF's liability for any one occurrence/wrongful act will be limited to \$1,000,000 per **Member** regardless of the number of **Covered Persons**, number of claimants or claims made . . .

(*Id.* at Sec. IV., ¶ D.2., R. 157) (bold emphasis in original, underline emphasis added).

2. The Coverage Contract contains specific provisions prohibiting duplication of coverage for “Personal Injury” that are applicable to this matter.

The non-duplication provisions of the Coverage Contract also focus specifically on “Personal Injury” and its sub-component “Offenses.” With regard to “Offenses,” Section I explicitly provides:

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

(*Id.* at Sec. I., ¶ B.5., R. 108-109) (bold emphasis in original, underline emphasis added). Thus, when addressing the issue of coverage for “Personal Injury,” if the same basic “Offense” offends multiple people, it is treated as only one “Offense” and is subject to the \$1,000,000 Coverage Limit, even if there is some variation in the conduct that constitutes the “Offense.” Applied to the facts of this case, the “Offense” was the violation of Bert Reeves’ civil rights. While it involved Cottageville, Price and Craddock as the offenders, their repetition of this same basic offense does not result in their being multiple offenses. Similarly, the fact that there are multiple offended parties (Bert Reeves and his statutory beneficiaries) does not result in duplication of coverage. Rather, the Coverage Contract requires that this be treated as one “Offense” subject to a single Coverage Limit.

In addition to the provisions in Section I that are specific to “Personal Injury,” Section IV provides:

... all continuing, serial, or repeated instances of **Personal Injury** or **Advertising Injury** will be considered as one occurrence/wrongful act, regardless of the number of **Covered Persons** involved in causing or failing to permit such injuries or the number of persons injured and only a single Coverage Limit . . . will apply to all claims arising from such continuing, serial, or repeated conduct, regardless of the number of Coverage Periods during which such conduct occurred or continued.

(*Id.* at Sec. IV., ¶ D.2., R. 157) (bold emphasis in original, underline emphasis added). As was previously discussed, the coverage analysis under Section IV begins with a “Wrongful Act.” Here, because the “Wrongful Act” results in a “Personal Injury,” any potential coverage for “Bodily Injury” is subsumed into the “Personal Injury” coverage by operation of the Coverage Contract’s provisions. (*Id.* at Sec. IV., ¶ G.4., R. 166). Under the above provision, where there are continuing, serial, or repeated instances of “Personal Injury” they are treated as only one “Wrongful Act.” This applies whether or not there are multiple persons causing the injuries, or multiple persons injured. The result remains that only a single Coverage Limit will apply in this situation.

Here, there was only one “Wrongful Act” giving rise to the “Personal Injury” – the violation of Bert Reeves’ civil rights resulting in his death. However, even if the different actions or omissions of Cottageville, Price and Craddock are considered, they are repetitions of the same basic “Offense,” or constitute continuing, serial or repeated instances of “Personal Injury.” Thus, under the terms of the Coverage Contract they are treated as one “Offense” and one “Wrongful Act,” and remain subject to the \$1,000,000 Coverage Limit.

The trial court’s emphasis on the fact Reeves’ claims involved both wrongful death and conscious pain and suffering, and that those claims had different measures of damages was misplaced. (Order filed 6/29/16 at pp. 6-7, R. 6-7). The trial court focused on the provision in Section I of the Coverage Contract that “[a] single Coverage Limit applies to all claims or suits involving substantially the same injury or damage, or progressive injury or damage”, and

concluded that because the measure of damages for these claims differed, they did not involve “substantially the same” injury of damage. (*Id.* at p. 6, R. 6; Coverage Contract at Sec. I., ¶ C.9., R. 112). This was incorrect. It is of no significance that the wrongful death claim and the survival action related to different persons and have different measures of damages. Both claims involve the same “Personal Injury” that is based on the same “Offense” (the violation of Bert Reeves’ civil rights). When the provision in Section I., ¶ C.9. addressing “substantially the same injury of damage,” is read in conjunction with the provisions of Section I., ¶ B.5. and Section IV., ¶ D.2., discussed above, which specifically contemplate multiple “offended persons” and multiple “injured persons,” the result is that there is but one “Offense” and “Wrongful Act” and it is subject to a single Coverage Limit.

Therefore, when a complete analysis of the facts of this matter is performed, considering all applicable provisions of the Coverage Contract, the proper conclusion is that Reeves’ claims, in both the Cottageville and Craddock Lawsuits, fall solely within Section IV’s coverage for “Personal Injury.” It does not matter if multiple persons or entities caused the injuries or committed the offenses, and it does not matter if multiple people were offended or suffered different injuries. Thus, when the terms of the Coverage Contract are applied to the facts of this case, there is only a single applicable \$1,000,000 Coverage Limit.

II. The relevant provisions of the Coverage Contract are not ambiguous.

The trial court held that “there is ambiguity as to whether ‘occurrence’ is defined by different acts of negligence or the resulting damage.” (Order filed 6/29/16 at p. 6, R. 6). This was in error. The trial court’s emphasis on the term “occurrence” was misplaced and its finding of an ambiguity as to the meaning of that term was incorrect. The Coverage Contract provides an unambiguous definition for this term – “**Occurrence**’ means an accident which results in **Bodily**

Injury or Property Damage, the original cause of which and the initial damage from which happened during the **Contract Period** set forth in the Declarations.” (Coverage Contract at Sec. I., ¶ B.4., R. 108).

"A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business." *Williams v. GEICO*, 409 S.C. 586, 595, 762 S.E.2d 705, 710 (2014). A contract is read as a whole document so that one may not create an ambiguity by pointing out a single sentence or clause." *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009). "Courts must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary and popular meaning." *Sloan Constr. Co. v. Cent. Nat'l Ins. Co. of Omaha*, 269 S.C. 183, 185, 236 S.E.2d 818, 819 (1977). The definition provided in the Contract does not create any ambiguity. Moreover, the meaning of the term "Occurrence" has no effect on the existence or amount of coverage in this matter.

As discussed previously, the coverage under the Coverage Contract in this situation was coverage for "Personal Injury." The term "Occurrence" in the Coverage Contract, as it applies in this case, relates to coverage for "Bodily Injury." (Coverage Contract at Sec. IV., ¶ A.1.a., R. 156) In contrast, the term "Occurrence" is **not** part of the coverage for "Personal Injury." (*Id.* at Sec. IV., ¶ A.1.b., R. 156) (providing coverage for a "Wrongful Act" that results in "Personal Injury"). Thus, even if there existed ambiguity as to how "Occurrence" was defined, which is denied, such ambiguity has no effect on the "Personal Injury" coverage here.³

³ Similarly, Reeves' attempt to change the definition of "Occurrence" from that stated in Section I of the Coverage Contract based on *Boiter v. S.C. Dep't of Transp.*, 393 S.C. 123, 131–135, 712 S.E.2d 401, 405–407 (2011), was improper. Reeves sought to create an ambiguity with regard to

The trial court also suggested that the Coverage Contract was ambiguous based on its inclusion of an unambiguous single aggregate limit for incidents involving “sexual abuse” elsewhere in its provisions. (Order filed 6/29/16 at p. 7, R. 7). The Court states that “[t]here is no uncertainty or ambiguity in the policy ... on the issue of coverage involving ‘sexual abuse’” and noted that SCMIRF could have provided a similar aggregate limit for law enforcement coverage. (*Id.*). This comparison, however, is improper. The fact that SCMIRF choose to impose an aggregate limit for situations involving sexual abuse does not change, in any way, the numerous provisions in Sections I and IV that limit the coverage under these facts. This situation is analogous to separate exclusions in an insurance policy. One such exclusion cannot be used to create an ambiguity in a different exclusion. The settled rule in South Carolina is that “[e]xclusions in an insurance policy are to be read independently of each other; they are not to be read cumulatively.” *Engineered Products, Inc. v. AETNA Casualty & Surety Co.*, 295 S.C. 375, 378, 368 S.E.2d 674, 675 (Ct. App. 1988). Rather, an exclusion must be “read with the insuring agreement independently of every other exclusion.” *Id.* at 379, 368 S.E.2d at 676. Here, the separate inclusion of an aggregate limit for sexual abuse situations does not make ambiguous or nullify the other provisions of the Coverage Contract that limit the coverage for a “Personal Injury” under these facts.

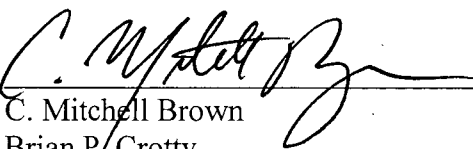
the meaning of “Occurrence” by relying on *Boiter*. In the *Boiter* case, the South Carolina Supreme Court held that the plaintiff in an action stemming from a vehicle accident caused by burned out traffic signals could recover from two separate government agencies under the S.C. Tort Claims Act (“TCA”) for their separate acts of negligence. *Id.* at 134, 712 S.E.2d at 406. The issue was whether the two separate acts of negligence by the separate agencies constituted two “occurrences” under the TCA. To reach its conclusion, the *Boiter* Court looked to S.C. Code Ann. § 15-78-30(g), defining “occurrence” under the TCA as an “unfolding sequence of events which proximately flow from a single act of negligence.” *Id.* at 132, 712 S.E.2d 405. *Boiter* has no relevance in a situation such as this where a Coverage Contract defines the meaning of the term “Occurrence.”

Conclusion

For the foregoing reasons, this Court should reverse the judgment entered below regarding the amount of coverage available under SCMIRF's Coverage Contract, and enter judgment in favor of SCMIRF as to that issue. The judgment was correct and should be affirmed as to the second issue relating to SCMIRF's protection under the Tort Claims Act.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

C. Mitchell Brown

Brian P. Crotty

Michael J. Anzelmo

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

Attorneys for South Carolina Municipal Insurance and Risk
Financing Fund

Columbia, South Carolina

January 20, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Perry M. Buckner, III, Circuit Court Judge

Case No. 2014-CP-15-135

Appellate Case No. 2016-001626

RECEIVED
JAN 20 2017
SC Court of Appeals

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

Respondent/
Appellant,

v.

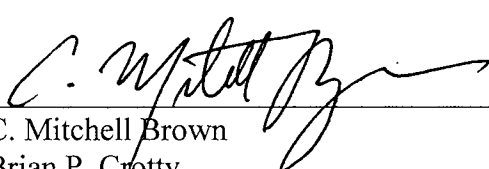
South Carolina Municipal Insurance and Risk Financing
Fund,

Appellant/
Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Appellant's Brief of
Appellant/Respondent complies with Rule 211(b) SCACR.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

C. Mitchell Brown
Brian P. Crotty
Michael J. Anzelmo
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Appellant/Respondent South Carolina
Municipal Insurance and Risk Financing Fund

Columbia, South Carolina

January 20, 2017