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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County
Court of Common Pleas
G. Thomas Cooper, Jr., Circuit Court Judge

Circuit Court Case No. 2014-CP-40-0313

Opinion No. 5562 (S.C. Ct. App. filed May 23, 2018)
Court of Appeals Case No. 2016-000192

Supreme Court Case No. 2018-002047

Raymond G. Farmer, as Director of the South Carolina Department of Insurance,	Petitioner,
v.	
CAGC Insurance Company, in Liquidation,	Respondent.
South Carolina Property and Casualty Insurance Guaranty Association,	Intervenor-Petitioner,
v.	
CAGC Insurance Company, in Liquidation; Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in Liquidation; and CompTrustAGC of South Carolina a/k/a CompTrustAGC of South Carolina, Inc.,	Intervenor-Respondents.
Of whom CompTrustAGC of South Carolina a/k/a CompTrust AGC of South Carolina, Inc., is	Petitioner,
And CAGC Insurance Company, in Liquidation; Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in Liquidation; and South Carolina Property and Casualty Insurance Guaranty Association are	Respondents.

APPENDIX
(VOLUME 1 OF 2)

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Company, in Liquidation

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2014-CP-40-0313

Appellate Case No. 2016-000192

Raymond G. Farmer, as Director of the South Carolina Department of Insurance, ... Petitioner,

v.

CAGC Insurance Company, In Liquidation, ... Respondent.

South Carolina Property and Casualty Insurance Guaranty Association, ... Appellant,

v.

CAGC Insurance Company, In Liquidation; Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in Liquidation; and CompTrustAGC of South Carolina a/k/a CompTrustAGC of South Carolina, Inc., ... Respondents.

RECORD ON APPEAL
VOLUME I

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4000313

Raymond G Farmer
South Carolina Dept of Insurance
PLAINTIFF(S)

CAGC Insurance Company
DEFENDANT(S)

Submitted by: _____ | **Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

RICHLAND COUNTY FILED 2014 MAR 13 P 4:10 CLERK OF COURT

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.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **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:

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC 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
		$
		$
		$

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.**

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 13 March 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Geoffrey Ross Bonham

ATTORNEY(S) FOR THE PLAINTIFF(S) | **ATTORNEY(S) FOR THE DEFENDANT(S)**

Court Reporter _____ **Clerk of Court** Jeanette W. McBride

SCRCP Form 4C (10/2011)

SCANNED

STATE OF SOUTH CAROLINA **RICHLAND COUNTY**	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
Raymond G. Farmer, as Director of the South Carolina Department of Insurance, Petitioner, vs. CAGC Insurance Company in Liquidation, Respondent.	Civil Action No. 2014-CP-40-0313 **ORDER APPOINTING ANCILLARY RECEIVER AND COMMENCING ANCILLARY PROCEEDINGS**

This matter comes before me upon Petition of Raymond G. Farmer, Director of the South Carolina Department of Insurance, seeking an Order as defined in the Petition filed on January 17, 2014, appointing him Ancillary Receiver of CAGC Insurance Company in Liquidation, and authorizing him to conduct formal ancillary proceedings. Respondent has been declared insolvent and ordered liquidated, "effective as of January 17, 2014" by a January 6, 2014 Order of Liquidation of the Wake County (North Carolina) ("the North Carolina Court"), and a domiciliary Liquidator and Special Deputy have been appointed in that state.

There are sufficient assets of the insurer located in this State to justify the commencement of formal ancillary proceedings. These proceedings are also required for the protection of creditors and policyholders of the Respondent in this State. The Respondent does not object to the Petition or to an Order granting the relief sought therein, and does not wish to be heard.

Based upon these facts, I find that the appointment of an Ancillary Receiver in this State is justified under the provisions of S. C. Code Ann. §§ 38-27-930 & -940 (2002).

IT IS THEREFORE ORDERED that pursuant to S.C. Code Ann. § 38-27-940 (2002), the Petitioner and his successors in office be appointed Ancillary Receiver of Respondent in this

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GENERAL COUNSEL
MAR 19 2014

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STATE OF SOUTH CAROLINA
DEPARTMENT OF INSURANCE

State.

IT IS FURTHER ORDERED that the Petitioner forthwith take possession of the assets of Respondent in this State and administer those assets under the general supervision of the court as Ancillary Receiver, in accordance with the provisions of S.C. Code Ann. § 38-27-10 *et seq.* (2002).

IT IS FURTHER ORDERED, under S.C. Code Ann. § 38-27-430(a) (2002), that full faith and credit shall be given to the order of liquidation entered by the North Carolina Court staying certain proceedings and enjoining certain any actions and against interference with the liquidation.

IT IS FURTHER ORDERED that no action in law or in equity, or any other action against the Ancillary Receiver shall be instituted or continued against Petitioner in his capacity as Ancillary Receiver, not shall anyone interfere with the ancillary receivership.

IT IS FURTHER ORDERED that Petitioner shall make an accounting to the court within six months after the date of this order and at six month intervals thereafter.

IT IS FURTHER ORDERED that Petitioner shall have full power to take all actions reasonably necessary and proper for the discharge of his responsibilities including, without limitation, those powers enumerated in S.C. Code Ann. § 38-27-400 and 38-27-940 (2002).

IT IS FURTHER ORDERED that all claims of any nature whatsoever against the assets of the Respondent held by the Petitioner in the State of South Carolina must be filed upon such forms and accompanied by such proof as shall be required by Petitioner not later than sixty (60) days subsequent to the date of this order.

IT IS FURTHER ORDERED, under S.C. Code Ann. § 38-27-80 (2002), that all present or former officers, managers, directors, trustees, owners, employees, and agents of Respondent,

and any other persons with authority over or in charge of any segment of Respondent's affairs, including attorneys at law now or previously retained to represent Respondent, shall cooperate with Petitioner in the discharge of his responsibilities, and shall, in addition to all other demands for cooperation, reply promptly in writing to any inquiry from Petitioner requesting such a reply and make available to Petitioner any books, accounts, documents, or other records or information or property of or pertaining to Respondent which may be in their possession, custody or control.

AND IT IS SO ORDERED this 5 day of March, 2014.

L. Casey Manning
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4000313

Raymond G Farmer
South Carolina Dept of Insurance
PLAINTIFF(S)

CAGC Insurance Company
DEFENDANT(S)

Submitted by: _____	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

RICHLAND COUNTY FILED
2014 JUN 11 A 10:03
JEANETTE W. McBRIDE C.C.P. & G.S.

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.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **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:

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC 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
		$
		$
		$
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.**

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 11 June 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Geoffrey Ross Bonham

Tara C Sullivan

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Raymond G. Farmer, as Director of the South Carolina Department of Insurance, Petitioner, vs. CAGC Insurance Company, In Liquidation, Respondent.	)	Civil Action No. 2014-CP-40-0313 **ORDER GRANTING MOTION TO INTERVENE AND FOR JOINDER OF INTERVENOR-RESPONDENTS**
South Carolina Property and Casualty Insurance Guaranty Association, Intervenor-Petitioner. vs. CAGC Insurance Company, in Liquidation; Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in Liquidation; and CompTrustAGC of SC a/k/a CompTrustAGC of SC, Inc., Intervenor-Respondents.	)	

RICHLAND COUNTY FILED
2014 JUN -9 PM 4:32
JEANNETTE W. McBRIDE C.C.P. & G.S.

This matter came before the court at 11:00 a.m. on Monday, June 9, 2014, for the purpose of hearing the Motion to Intervene, for Joinder of the Intervenor-Respondents, and for Declaratory Judgment filed by the Intervenor-Petitioner South Carolina Property and Casualty Insurance Guaranty Association (the "Association"). Upon review of the Motion and hearing

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arguments from counsel present at the hearing, the Association's Motion is hereby **GRANTED**. It is, therefore,

ORDERED, ADJUDGED AND DECREED that the Association is allowed to intervene in this action and is hereby recognized by this Court as the Intervenor-Petitioner in this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that CAGC Insurance Company, in Liquidation, Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in Liquidation, and CompTrustAGC of SC a/k/a CompTrustAGC of SC, Inc. are hereby joined as Intervenor-Respondents in this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Association is authorized to serve a Summons and Complaint for Declaratory Judgment on the Intervenor-Respondents in this ancillary receivership action.

AND IT IS SO ORDERED.

The Honorable DeAndrea G. Benjamin
Presiding Judge, Fifth Judicial Circuit

June 9, 2014.

FORM 4

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

JUDGMEN .N A CIVIL CASE

CASE NUMBER: 2014CP4000313

Raymond G Farmer South Carolina Dept of Insurance PLAINTIFF(S)	CAGC Insurance Company South Carolina Property and Casualty Insurance Guaranty Asso DEFENDANT(S)

Submitted by: _____	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

FILED
2015 SEP 30 PM 3:08
JEANETTE W. McBRIDE
C.C.P. & G.S.
RICHLAND COUNTY

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.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **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:

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC 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
		$
		$
		$

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.**

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 30 September 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Geoffrey Ross Bonham

Tara C Sullivan
Michael A. Molony

Jeffrey A. Jacobs

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Raymond G. Farmer, as Director of the South Carolina Department of Insurance,

Petitioner,

vs.

CAGC Insurance Company, in liquidation,

Respondent.

South Carolina Property and Casualty, Insurance Guaranty Association,

Intervenor-Petitioner,

vs.

CAGC Insurance Company, in liquidation, Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in liquidation, and CompTrustAGC of South Carolina, a/k/a CompTrustAGC of South Carolina, Inc.

Intervenor-Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No. 2014-CP-40-03113

RICHLAND COUNTY
FILED
2014 SEP 30 PM 2:55
JEANETTE W. McBRIDE
C.C.C.P. & G.S.

ORDER GRANTING MOTION TO QUASH DISCOVERY AND MOTION TO DISMISS AND DENYING MOTION FOR SUMMARY JUDGMENT

This matter comes before me on the Motion to Quash and the Motion to Dismiss of Intervenor-Respondent, CompTrustAGC of South Carolina, a/k/a CompTrustAGC of South Carolina, Inc., ("**CompTrust**") as well as on the Motion for Summary Judgment of Intervenor-Petitioner Intervenor-Petitioner South Carolina Property and Casualty Insurance Guaranty Association (the "**SC IGA**"). After hearing the arguments of the parties, it appears from the pleadings, supporting documentation, and affidavits on file in this case that CompTrust was

SCANNED

improperly added as a party on June 9, 2015, and I grant CompTrust's motions pursuant to Rules 12(b)(6), 21, and 26 SCRCP. It further appears that workers compensation insurance claims filed against Respondent CAGC Insurance Company ("**CAGC**") pursuant to CompTrust policies lawfully transferred to CAGC should be considered "covered claims" under § 38-31-20 (8), so I deny the SC IGA's Motion for Summary Judgment.

Factual Background

CompTrust was formed on May 14, 1982 in Charlotte, North Carolina as an unincorporated business trust. It transacted business solely in South Carolina before it voluntarily dissolved on March 31, 2011. While it existed, the sole purpose of CompTrust was to provide workers compensation coverage for its South Carolina employer members as a group self-insurance provider regulated by the South Carolina Workers Compensation Commission ("**SC WCC**") under the authority granted to that agency in §§ 42-5-20, *et seq.* of the South Carolina Code.

Respondent CAGC Insurance Company ("**CAGC**") was a North Carolina-domiciled workers compensation insurance company. The South Carolina Department of Insurance ("**SC DOI**") authorized CAGC to transact business in this state on September 3, 2008. In 2010, CompTrust negotiated the transfer of its entire portfolio of workers compensation policies from July 1, 1982 through June 30, 2009 (the "**Transferred Policies**") to CAGC through a loss portfolio transfer ("**LPT**"). Under the specific direction, guidance, supervision, and prior approval of both the SC WCC and the North Carolina Department of Insurance ("**NC DOI**"), CAGC's domestic regulator, CompTrust and CAGC entered into a Self-Insurance Loss Portfolio Transfer Assumption Agreement (the "**LPT Agreement**") effective December 30, 2010. Under the LPT Agreement, CompTrust transferred to CAGC not only all of its past, present, and future

SCANNED

workers compensation liabilities, but also over $3.5 million in loss reserves, essentially all CompTrust's assets, along with its books, and records. Having done this, on March 31, 2011, CompTrust underwent voluntarily dissolution and has transacted no business since.

CAGC was declared insolvent and placed into liquidation under the supervision of the NC DOI on January 6, 2014. Thereafter, the SC IGA assumed responsibility for payment of CAGC's South Carolina "covered claims" under the South Carolina Property and Casualty Insurance Guaranty Association Act, S.C. Code Ann. §§ 38-31-10, *et seq.* (the "**SC Act**"). The SC IGA asserted at the time that it should not be statutorily liable for payment of claims filed against CAGC based on approximately 70 Transferred Policies (the "**Contested Claims**"), but agreed to pay the Contested Claims under reservation of rights at the insistence of the South Carolina Director of Insurance (the "**Director**"). On March 5, 2014 this Court named the Director as South Carolina Ancillary Receiver of CAGC under S.C. Code Ann. § 38-27-940 so that he could facilitate the payment of CAGC's claims in South Carolina and preserve and administer CAGC's assets in this state for the benefit of CAGC's South Carolina policyholders. A copy of the Complaint was served upon the North Carolina Attorney General, as legal representative of CAGC, which chose to allow CAGC to go into default.

CAGC's principal insurance obligations in South Carolina are the Contested Claims arising from the Transferred Policies. On June 9, 2014, the Court granted the SC IGA permission to intervene in the Director's Ancillary Receivership as envisioned by § 38-27-430 of the South Carolina Code to contest its liability for payment of the Contested Claims, and the Court also added CompTrust as a party. As legal representative of CAGC, the North Carolina Attorney General had been notified of the SC IGA's request, but chose not to participate in the hearing. On June 17, 2014 the SC IGA filed a Complaint requesting a Declaratory Judgment

SCANNED

from the Court confirming that the Contested Claims are not "covered claims" as defined by § 38-31-20 (8) of the South Carolina Code because they are excluded from the SC Act under §38-31-30(6) so that the SC IGA had no statutory responsibility to pay the Contested Claims. A copy of the Complaint was served upon the North Carolina Attorney General, as legal representative of CAGC, which again went into default. A copy was also served upon one of CompTrust's former trustees. This was the first notice the CompTrust received that it had been formally added as a party to the Director's Ancillary Receivership. The CompTrust filed a Limited Answer on March 12, 2015, asserting among other things that the LPT Agreement accomplished a contractual novation under which the Transferred Policies should be considered CAGC policies *ab initio*, and that CompTrust itself is a dissolved, assetless entity immune from liability for the Contested Claims made under the Transferred Policies by virtue of South Carolina's statute of limitations.

The SC IGA served standard interrogatories on the CompTrust on May 22, 2015, and in response the CompTrust filed a Motion to Quash Discovery based on, and essentially reiterating, the allegations in its Limited Answer. On July 1, 2013, the SC IGA filed a Motion for Summary Judgment essentially reiterating the allegations and legal arguments in the Complaint. In light of the final results of CAGC's concurrent insolvency proceedings in its home state of North Carolina, the CompTrust filed a Motion to Dismiss on September 9, 2015. The Court ordered the parties to prepare legal memoranda supporting each of these motions and heard oral argument on all of them on September 18, 2015.

CAGC's liquidation also had been the subject of extensive litigation in North Carolina. There the North Carolina Property and Casualty Insurance Guaranty Association ("**NC IGA**") contested its claims liability for insurance policies assumed by CAGC as a result of

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a corporate merger with a workers compensation group self-insurer (the "**NC Trust**"). The merger had occurred with the full review and approval of NC DOI. On December 18, 2012 the NC IGA had been allowed to intervene in the CAGC insolvency proceedings and to seek to establish that it was not statutorily responsible under the North Carolina Insurance Guaranty Association Act, *N.C. Gen. Stat.* §§ 58-48-1, *et seq.* (the "**NC Act**") for payment of claims which had arisen under policies underwritten by the NC Trust prior to its merger with CAGC. On January 20, 2015 the North Carolina Court of Appeals decided the NC IGA should be "estopped from denying that it is obligated under the [NC Act] for any of the pre-merger workers' compensation claims made or incurred against [the NC Trust]" because a contractual novation of the policies had occurred, and it was not relevant whether that novation "was achieved through the execution of an assumption reinsurance agreement, or though the execution of a merger agreement. The responsibility for paying the relevant workers compensation claims was removed from [NC Trust] and assumed by CAGC." On June 10, 2015, the North Carolina Supreme Court denied the NC IGA's request for an appeal and dismissed the remaining claims in the case as moot. Finally, on July 27, 2015 the North Carolina court with primary jurisdiction over the CAGC insolvency proceedings issued the judgment against NC IGA directed by the North Carolina Court of Appeals.

Conclusions of Law

Section 38-27-60 of the South Carolina Code gives exclusive jurisdiction over South Carolina proceedings regarding the insolvency of insurance companies to the Richland County Court of Common Pleas. As stated above, § 38-27-430 grants the SC IGA the ability to intervene in these proceedings to present claim liability issues. Sections 33-53-40 and 33-53-50 confirm that unincorporated business trusts may sue and be sued in South Carolina and that

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service of process may be made on unincorporated business trusts in the same manner that domestic or foreign corporations are served. I therefore have full and proper jurisdiction over each of the parties and the subject matter in this case.

Motions to Quash and to Dismiss

These motions are best taken together, because the underlying legal arguments are very similar. In fact, at oral argument counsel for CompTrust asserted the Motion to Quash, though styled as a discovery motion, was best interpreted as a Motion to Dismiss.

South Carolina's statutory law on unincorporated business trusts is sparse, only five sections: S.C. Code Ann. §§ 33-53-10 through 33-53-50. There appears to be no South Carolina case law involving one, so the nature and structure of the CompTrust presents some novel issues to the Court. An unincorporated business trust is created by the voluntary act of the parties. 12A C.J.S. Business Trusts § 12. A written declaration of trust is often necessary; however there is no special form or language that is required to form a business trust other than the parties' intention to create a trust or by showing the intention to beneficially own another party's property. *Id.* South Carolina's Business Corporation Act of 1988 (the "**Corporation Act,**" S.C. Code Ann. §§ 33-1-101, *et seq.*), passed after the CompTrust was created, acknowledges the existence and operation of unincorporated business trusts in the state, but does not set any requirements for an unincorporated business trust's foundational trust agreement. Similarly, while the Corporation Act provides for suits and service of process on unincorporated business trusts, it is silent regarding the dissolution notice, liability timeline, or any other aspects of the dissolution of unincorporated business trusts. One important thing the Corporation Act does specify is that the declaration of trust may limit the individual liability of shareholders and trustees. S.C. Code Ann § 33-51-40. Article VI § 8 of the CompTrust's Declaration of Trust

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contains such a provision, and the CompTrust's Articles of Dissolution reiterate those limitations of shareholder and trustee liability.

The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible. Mitchell v. City of Greenville, 411 S.C. 632, 770 S.E.2d 391 (2015). Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect. Spectre, LLC v. South Carolina Dept. of Health and Environmental Control, 386 S.C. 357, 688 S.E.2d 844 (2010). Similarly, in the absence of a statute specifically applying South Carolina's corporate filing, dissolution or statute of limitation requirements to an unincorporated business trust, the Court should avoid the application of statutes by analogy and default instead to a specific statute that can be applied to achieve the intent of the General Assembly. Title 15, Chapter 3, of the South Carolina Code outlines and lists the time limits by which civil actions must be commenced in this state. Section 15-3-530 specifically requires "an action upon a contract, obligation, or liability, express or implied," like the LPT Agreement, to be brought with 3 years. The CompTrust is therefore correct in asserting that it could not lawfully be made liable for the Contested Claims, since the latest of the Transferred Policies was underwritten in 2009, and they were lawfully transferred to CAGC in 2010.

The Complaint makes no allegations against the CompTrust; it merely sets forth the facts outlined herein. The Complaint asserts no cause of action against the CompTrust and does not reference the CompTrust in its prayer for relief. Several affidavits attest that all of CompTrust's relevant books and records were transferred to CAGC. When CAGC became the subject of insolvency proceedings, those books and records were transferred to the NC DOI, which

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presumably transferred copies to the SC IGA when CAGC was declared insolvent so the SC IGA could begin paying claims under the SC Act.

In short, there does not appear to have been any legal or practical reason to add the CompTrust as a party to the Director's Ancillary Receivership. More specifically, neither the argument nor the resolution of the legal question presented in the Complaint would be prejudiced if the CompTrust were dismissed as a party. Misjoinder of parties is not ground for dismissal of an action. Rule 21, SCRCP. However, the windup and dissolution of CompTrust in 2010-2011 renders any grant of effectual relief impossible from either the CompTrust or its former trustees or shareholders in this case. Mere service does not create a proper cause of action. Even if the allegations in the Complaint are presumed true, any action by the Court against CompTrust would do no good, serve no purpose, or have any practical legal effect because CompTrust has not existed in over three years, has no assets, and was properly dissolved under the Corporation Act.

Motion for Summary Judgment

At oral argument, Counsel for the SC IGA essentially waived factual questions, such as whether the LPT Agreement constituted a contractual novation, which counsel the CompTrust raised in the attempt to show the Motion for Summary Judgment was premature. Instead, the SC IGA's argument relies solely on a strict statutory construction of provisions of the SC Act and supporting South Carolina case law establishing rules of statutory construction. Section § 38-31-30 of the SC Act limits its application, and consequently liability of the SC IGA, to a specific set of direct insurance situations. Subsection (6) specifically prohibits "insurance written on a retroactive basis to cover known losses which have resulted from an event with

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respect to which a claim has already been made, and the claim is known to the insurer at the time the insurance is bound." The language in this exception broadly describes the LPT.

When it existed, CompTrust was a qualified, registered group self-insurer under the South Carolina's Workers Compensation Act, effectively issued "insurance" policies, as defined by § 38-1-20 (25) of the South Carolina Code, and lawfully transferred those policies to CAGC via a contractual novation under the LPT Agreement. Accordingly, under South Carolina contract law the SC IGA should be required to consider the CompTrust's former group self-insurance policies as CAGC policies ab initio and evaluate claims made under those policies as "covered claims." S.C. Code Ann. § 38-31-20 (8) (Supp. 2015).

The South Carolina Supreme Court has distinguished workers compensation self-insurance programs like CompTrust's based on the effective transfer of risk and determined that such a self-insurer may be considered an "insurer" that issues a "policy" under S.C. Code Ann. § 38-1-33 based on factual findings regarding the program's operation and structure. South Carolina Prop. and Cas. Ins. Guar. Ass'n. v. Carolinas Roofing and Sheet Metal Contractors Self-Ins. Fund, 315 S.C. 555, 446 S.E.2d 442 (1994).

The cardinal rule of statutory construction is to discern and give effect to the intent of the legislature. Hodges v. Rainey, 341 S.C. 79 at 85, 533 S.E.2d 578 at 581. "In the absence of ambiguity and absurdity, a statute must be applied according to the clear meaning of its language." Insurance Services Office v. South Carolina Ins. Commission, 267 S.C. 54 at 62, 26 S.E.2d 33 at 36 (1976) quoting Boyd v. State Farm Mutual Automobile Insurance Company, 260 S.C. 316, 195 S.E.2d 706 (1973). If a statute is susceptible to two reasonable interpretations, though, it is ambiguous. South Carolina Dept. of Social Services v. Lisa C., 380 S.C. 406, 669 S.E.2d 647 (Ct. App. 2008).

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At oral argument it became clear that S.C. Code Ann. § 38-31-30 (6) can have multiple interpretations. The strict construction proposed by SC IGA would allow the court to declare the LPT to not be covered by the SC Act. A valid alternative interpretation, though, is to proscribe SC IGA coverage for underwriting fraud and other such matters that unfortunately become common as an insurance company veers into insolvency. Moreover, counsel for both the Director and CompTrust pointed out that the SC IGA's clear-cut interpretation would improperly reach the absurd result of preventing the SC IGA from covering claims for any policies lawfully transferred between insurance companies when that practice is so prevalent in the insurance industry. It also would lead to the tragic result of the loss of workers compensation benefits by at least 70 South Carolina policyholders despite the regulatory prior review and approval of the SC WCC and NC DOI and the express intentions of the parties and regulators in the LPT Agreement. Whatever the General Assembly may have intended in drafting § 38-31-30 (6) of the SC Act, it certainly was not to deprive innocent South Carolina policyholders of workers compensation benefits. The clear and unambiguous purpose of the SC Act is to ensure continuation of that coverage, particularly since insurance policies can only be transferred to a different insurer after prior regulatory review and approval by multiple state regulators.

The ultimate question to be decided in this case is whether the scope of the SC Act requires the SC IGA to evaluate as "covered claims" those claims arising under insurance policies which an insolvent insurance company had contractually acquired with the prior review and approval of its domestic regulator from a workers compensation group self-insurance entity. That question has not been addressed by a court in in South Carolina. Accordingly, the most persuasive authority to look to in this case is Bowles v. BCJ Trucking Servs. Inc., 172 N.C. App. 149, 615 S.E.2d 724 (Ct. App. 2005).

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In *Bowles*, the North Carolina Court of Appeals addressed whether a plaintiff's claim for insurance coverage rested within the statutory obligations of the NC IGA under the NC Act. The plaintiff was injured in the course of his employment and subsequently was awarded disability benefits from his employer's workers' compensation insurance company, North Carolina Selective. *Id.* at 151. Selective was comprised of various employers who pooled their workers' compensation liabilities to create a licensed self-insured group. Selective began experiencing financial trouble and entered into a NC DOI-approved assumption reinsurance agreement with another company, Reliance. *Id.* Selective transferred and Reliance assumed all of Selective's workers' compensation liability claims and obligations. Reliance was a member of the NC IGA by virtue of its licensure by NC DOI. Reliance became insolvent and, following liquidation, the NC IGA assumed payments of plaintiff's benefits. *Id.* at 152. The NC IGA commenced an action with the NC DOI requesting a determination of its responsibility for paying plaintiff's claim. The NC DOI held the NC IGA was responsible, and NC IGA appealed.

On appeal, the North Carolina Court of Appeals rejected the NC IGA's argument that the plaintiff's claim did not meet the definition of a "covered claim" per N.C. Gen. Stat. §58-48-20. *Id.* at 153. The court affirmed the NC DOI's conclusion that the NC IGA's liability for plaintiff's claim arose when Reliance assumed Selective's obligations, relying on the law of novation.[1] The North Carolina Court of Appeals found Reliance, through novation, became the employer's insurance company. When Reliance became insolvent, the NC IGA became liable for all covered claims issued as an insolvent direct insurer. Accordingly, the NC Court of

[1] *Id.*, noting:

> It is well established that '[t]he essential requisites of a novation are a previous valid obligation, the agreement of all the parties to the new contract, the extinguishment of the old contract, and the validity of the new contract'.... 'Ordinarily ... in order to constitute a novation the transaction must have been so intended by the parties.'"

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Appeals found the NC DOI correctly concluded plaintiff's claim met the definition of a "covered claim" under N.C. Gen. Stat. § 58-48-20 and held IGA was liable for plaintiff's claim. *Id.* at 155. The issue of whether the *Bowles* workers compensation policy transfer itself should have been excluded from the statutory scope of the NC Act appears to never have been even questioned.

Factually, this case closely resembles *Bowles*. A workers compensation self-insurer (CompTrust) entered into the LPT Agreement with an insurance company that became insolvent (CAGC). In *Bowles*, a workers compensation self-insurer entered into an assumption agreement with an insurance company that became insolvent. As in *Bowles*, the CompTrust transferred, and the CAGC assumed, all of its group workers' compensation self-insurance liability policies and obligations.

Perhaps most significantly, though, the statutory scope, definitions, and other provisions of the NC Act that the *Bowles* court relied upon in analyzing whether the plaintiff's claim was a "covered claim" are substantially similar to those under the SC Act. This is because the NC Act and the SC Act are based on the same model law developed by the National Association of Insurance Commissioners. For example, like the SC Act, the scope of the NC Act prohibits its application to:

> Insurance written on a retroactive basis to cover known or unknown losses which have resulted from an event with respect to which a claim has already been made, and the claim is known to the insurer at the time the insurance is bound."
>
> N.C. Gen. Stat. § 58-48-10 (10).

S.C. Code Ann. § 38-31-10 defines "covered claim" as:

> [A]n unpaid claim, including one of unearned premiums, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if the insurer is an insolvent

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> insurer and (a) the claimant or insured is a resident of this State at the time of the insured event, if for entities other than an individual, the residence of a claimant or insured is the state in which its principal place of business is located at the time of the insured event or (b) the claim is for first-party benefits for damage to property permanently located in this State.

The definition of "covered claim" under North Carolina insurance law is in N.C. Gen. Stat. § 58-48-20(4):

> [A]n unpaid claim, including one of unearned premiums, which is in excess of fifty dollars ($50.00) and arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Article applies as issued by an insurer, if such insurer becomes an insolvent insurer after the effective date of this Article and (i) the claimant or insured is a resident of this State at the time of the insured event; or (ii) the property from which the claim arises is permanently located in this State.

Similarly, S.C. Code Ann. § 38-31-10 (9) defines of an "insolvent insurer" as:

> [A]n insurer (a) licensed to transact insurance in this State either at the time the policy was issued or when the insured event occurred and (b) determined to be insolvent by a court of competent jurisdiction in the insurer's state of domicile or of this State and which the director or his designee has found fails to meet its obligation to policyholders in this State.

And the definition of "insolvent insurer" in North Carolina in N.C. Gen. Stat. § 58-48-20(5) is:

> "Insolvent insurer" means (i) an insurer licensed and authorized to transact insurance in this State either at the time the policy was issued or when the insured event occurred and (ii) against whom an order of liquidation with a finding of insolvency has been entered after the effective date of this Article by a court of competent jurisdiction in the insurer's state of domicile or of this State under the provisions of Article 30 of this Chapter, and which order of liquidation has not been stayed or been the subject of a writ of supersedeas or other comparable order.

Therefore, *Bowles* establishes a strong, very persuasive precedent in the liquidation of CAGC in South Carolina. CAGC, through novation, became the insurance company for the Transferred Policies *ab itinitio*. When CAGC was declared insolvent, the SC IGA became liable for all of CAGC's South Carolina claims, including Contested Claims made under the Transferred Policies.

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In addition to *Bowles*, there exists strong precedent in the recent North Carolina judicial decisions regarding CAGC. In reading South Carolina statutes regarding ancillary proceedings on insolvent, foreign insurance companies, S.C. Code Ann. §§ 38-27-910, *et seq.*, it is clear that this Court should give great deference and weight to the company's domestic regulator and judicial proceedings and to the Director as court-appointed Ancillary Receiver. The underlying facts and parties to the CAGC litigation in North Carolina are virtually identical to the one at hand. The NC IGA and SC IGA are represented by the same law firm, which presented essentially the same arguments against liability for pre-transfer CAGC policy claims at trial and on appeal. Like the NC IGA, the SC IGA is denying that it is statutorily obligated for any CAGC claims in South Carolina based on the CompTrust's worker compensation liabilities prior to their transfer to CAGC. The jurisdiction has changed, but little else. In short, the principal issues underlying the Complaint have been reviewed and decided by the court of final authority over the liquidation of CAGC in its state of domicile and principal regulation.

Order

The SC IGA's allegations in its Complaint have been effectively resolved by recent decisions of both the North Carolina Court of Appeals and the North Carolina Supreme Court. There is also very persuasive factual and legal precedent in *Bowles* to determine that Transferred Policies are properly CAGC policies by virtue of contractual novation and that the Contested Claims are properly "covered claims" under the SC Act. Therefore, SC IGA's Motion for Summary Judgment is hereby **DENIED**.

While SC IGA's Petition to Intervene may have been properly granted, its concurrent motion to add an extra, non-existent entity as a party to this case was not. It appearing that SCP&CIGA's claims against CompTrust are effectively moot, and the rights and obligations of

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the parties would not be prejudiced if the CompTrust were dismissed, the Comp Trust is hereby **DISMISSED** as a party from this action under Rules 12(b)(6) and 21, SCRCP.

And it is so ordered.

G. Thomas Cooper, Jr.
Circuit Judge

Columbia, South Carolina

Dated: September 30, 2015

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An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA14-445
NORTH CAROLINA COURT OF APPEALS

Filed: 20 January 2015

WAYNE GOODWIN, as Commissioner of Insurance of the State of North Carolina,
Petitioner-Appellee,

v.

Wake County
No. 12 CVS 1270

CAGC INSURANCE COMPANY,
Respondent-Appellee,

v.

NORTH CAROLINA INSURANCE GUARANTY ASSOCIATION,
Intervenor, Respondent, Counterclaimant, and Cross-Claimant,

v.

NORTH CAROLINA SELF-INSURANCE SECURITY ASSOCIATION,
Intervenor, Respondent, Counterclaimant, and Cross-Claimant-Appellant.

Appeal by Intervenor, Respondent, Counterclaimant, and Cross-Claimant North Carolina Self-Insurance Security Association from orders and judgment entered 6 January 2014 by Judge Shannon R. Joseph in Superior Court, Wake County. Heard in the Court of Appeals 25 September 2014.

Attorney General Roy Cooper, by Special Deputy Attorney General David W. Boone, and Assistant Attorney General M. Denise Stanford, for Wayne Goodwin, as Commissioner of Insurance of the State of North Carolina, Petitioner-Appellee.

Ragsdale Liggett PLLC, by James L. Conner, II and David K. Liggett, for CAGC Insurance Company, Respondent-Appellee.

Nelson Mullins Riley & Scarborough, LLP, by Christopher J. Blake and Joseph W. Eason, for Intervenor, Respondent, Counterclaimant, and Cross-Claimant-Appellee North Carolina Insurance Guaranty Association, Respondent-Appellee.

Stuart Law Firm, PLLC, by Catherine R. Stuart and Susan J. Vanderweert, for Intervenor, Respondent, Counterclaimant, and Cross-Claimant-Appellant North Carolina Self-Insurance Security Association, Respondent-Appellant.

Williams Mullen, by Christopher G. Browning, Jr., Garrick A. Seville, and C. Elizabeth Hall; Phillip A. Ellen; J. Michael Carpenter; and T. John Policastro, for North Carolina Retail Merchants Association, North Carolina Home Builders Association, North Carolina Forestry Association, North Carolina Automobile Dealers Association, First Benefits Insurance Mutual, Inc., Builders Mutual Insurance Company, Forestry Mutual Insurance Company, Dealers Choice Mutual Insurance, Incorporated, and Carolina Mutual Insurance, Inc., amicus curiae.

McGEE, Chief Judge.

CompTrustAGC ("CompTrust") was licensed by the North Carolina Department of Insurance ("DOI") as a group self-insurer pursuant to Article 47 of Chapter 58 of the North Carolina General Statutes. At all relevant times until 1 July 2008, CompTrust was a member of the North Carolina Self-Insurance Security Association ("SISA"), which "is an unincorporated

association existing pursuant to . . . Article 4 of Chapter 97 of the North Carolina General Statutes." SISA "is a 'domestic guaranty association' within the meaning of N.C. Gen. Stat. § 58-30-10(7)[,]" which means it is an "entity . . . created by the General Assembly for the payment of claims of insolvent insurers." N.C. Gen. Stat. § 58-30-10(7) (2013). As a group self-insurer, CompTrust was in the business of issuing workers' compensation insurance policies to employer-members who "pool their workers' compensation liabilities under the [Workers' Compensation] Act and are licensed under [N.C. Gen. Stat. § 58-47-60 to 58-47-140]." N.C. Gen. Stat. § 58-47-60(8) (2013). In late 2006, CompTrust initiated a process to convert itself into a North Carolina licensed direct insurance company. DOI informed CompTrust that it could create a new domestic insurance company pursuant to Article 7, Chapter 58 of the North Carolina General Statutes, and then merge CompTrust into that newly created entity. The CompTrust board of trustees took the appropriate actions and created CAGC Insurance Company ("CAGC"), which was incorporated effective 31 December 2007. CAGC was incorporated "pursuant to Chapter 55 of the North Carolina General Statutes, following certification by the Commissioner of Insurance, pursuant to Chapter 58 of the North Carolina General Statutes." CAGC's license "to transact the business of

insurance" became effective 31 May 2008. CompTrust and CAGC "filed Articles of Conversion and Merger with the North Carolina Secretary of State to be effective 1 July 2008[.]" As a direct insurer, CAGC was required to join the North Carolina Insurance Guaranty Association ("IGA"), which is "an unincorporated association existing pursuant to . . . Article 48 of Chapter 58 of the North Carolina General Statutes." IGA, like SISA, is also a "domestic guaranty association." IGA serves the same function for direct insurers that SISA serves for self-insurers. The merger of CompTrust into CAGC was completed on 1 July 2008.

The work-related injuries giving rise to the workers' compensation claims relevant to this appeal all occurred when CompTrust was still in business and responsible for the relevant insurance policies. "All of the compensable injuries giving rise to the workers' compensation claims incurred against CompTrust[] before its 1 July 2008 merger with CAGC occurred before 1 July 2008 when: (a) CompTrust[] was licensed by []DOI as a group self-insurer; and (b) CompTrust[] was a member of []SISA."

Following the merger, CAGC was the "surviving corporation," and CompTrust ceased operating in any manner as a going concern. "The members of CompTrust [were] converted into policyholders of CAGC[] and [were] at the effective date the only policyholders

of CAGC[], and [had] identical rights and benefits in CAGC[] as in CompTrust." CAGC assumed liability for all claims previously held by CompTrust, and CAGC immediately began paying those obligations pursuant to the same terms previously applicable to CompTrust. There is no dispute that CAGC was responsible for paying all ongoing workers' compensation claims, including all those incurred by CompTrust prior to the 1 July 2008 merger.

Had CAGC survived, it would have continued to pay these pre 1 July 2008 claims. However, on 26 January 2012, the trial court

> entered an Order of Rehabilitation and Order of Injunction against CAGC with the written consent of CAGC. The Order of Rehabilitation found that CAGC was in an impaired financial condition within the meaning of N.C. Gen. Stat. § 58-30-12(a)(2) and that CAGC was in such condition as to render the continuance of its business hazardous to its policyholders, creditors, or the public.

CAGC was liquidated by order entered 6 January 2014, which was effective 17 January 2014. At the time of liquidation, there was no dispute that IGA was responsible for covering all claims on CAGC policies issued on or after 1 July 2008 that remained unsettled at the time of liquidation.

IGA moved to intervene in this matter, and an order was entered on 18 December 2012 allowing IGA's motion. IGA

petitioned for declaratory relief on or after 10 December 2012, requesting the trial court, *inter alia*, to declare that

> the resulting liabilities of CAGC for claims made against members of CompTrust[] have arisen pursuant to the commercial agreements between CAGC and CompTrust[], and did not and do not arise under policies of direct insurance as issued by CAGC, and thus are outside of the scope of the Insurance Guaranty Association Act established by N.C. Gen. Stat. § 58-48-10; . . . or, alternately, that the claims against the self-insured members of CompTrust[] did not and do not arise out of "an insurance policy to which [Article 48 of Chapter 58] applies *as issued by an insurer*", but instead arose out of undertakings by the self-insured members of CompTrust[], contracts issued by CompTrust[], and the commercial agreements between CompTrust[] and CAGC, and thus are not "covered claims" under the North Carolina Insurance Guaranty Association Act; [and]
>
> . . . Adjudging and declaring that [IGA] has no obligation to accept custody of or administer claim files for workers' compensation claims which have arisen against the self-insured members of CompTrust[] for accidents or illnesses occurring before July 1, 2008, or to make payments to satisfy the liabilities for such claims under the Insurance Guaranty Association Act[.]

IGA further requested a ruling that it had no obligation for administering or paying claims arising from accidents or injuries occurring before 1 July 2008.

SISA moved to intervene and was allowed to do so by order entered 1 March 2013. SISA filed a cross-petition for

declaratory relief, requesting that the trial court deny IGA's prayers for relief set forth in IGA's petition and, *inter alia*, declare that, as a result of the merger between CompTrust and CAGC, that CAGC, as the surviving entity, was responsible for all of CompTrust's obligations, and declare "that the direct insurance obligations of the former CompTrust . . . became, by operation of law, direct insurance obligations of CAGC[], effective July 1, 2008, as the result of merger and consolidation[.]"

SISA filed a motion for summary judgment on 8 November 2013, arguing, *inter alia*, that it was "entitled to a summary judgment declaring that the workers' compensation claims incurred against the former CompTrust[] prior to its July 1, 2008 merger with CAGC . . . are not 'covered claims[.]'" SISA's motion for summary judgment was denied by order entered 6 January 2014, and the trial court concluded "that it [was] appropriate to render summary judgment against []SISA" and declare that the disputed claims were "'covered claims' within the meaning [of] N.C. Gen. Stat. § 97-130(4) in the event a determination of the insolvency of CAGC is made by [the trial court]." The trial court also entered a: "Judgment Pursuant to Rule 52" on 6 January 2014, ruling, *inter alia*, that IGA had no obligation "for any of the pre-merger workers' compensation

claims made or incurred against CompTrust[] . . . arising from events and occurrences before 1 July 2008[.]" Finally, the trial court entered an order of liquidation on 6 January 2014, ordering the liquidation of CAGC. SISA appeals.

Analysis

SISA argues that "the trial court erred by failing to rule that the pre-merger claims are 'covered claims' for IGA." We agree.

This Court's opinion in *Bowles v. BCJ Trucking Servs., Inc.*, 172 N.C. App. 149, 615 S.E.2d 724 (2005), informs our decision in this matter. The relevant facts from *Bowles* follow:

> Plaintiff was injured on 3 March 1998 in the course of his employment with BCJ Trucking Services ("BCJ"). On 11 April 2001, plaintiff was awarded ongoing temporary total disability benefits beginning 6 December 1999 from BCJ's workers' compensation insurance company, North Carolina Selective ("Selective"). Selective was comprised of various employers who pool their workers' compensation liabilities to create a licensed self-insured group.[1]
>
> Selective began experiencing financial trouble in early 1997. On 29 April 1997, the North Carolina Department of Insurance ("NCDOI") informed Selective of its financial concerns and by letter dated 21 January 1998 informed Selective of its need

[1] Selective, as a group insurer, was a member of The North Carolina Self-Insurance Guaranty Association, now The North Carolina Self-Insurance Security Association, or SISA. For clarity, we will refer to both the former and present entities as "SISA."

> to obtain additional capital or a commitment from a commercial insurance company to reinsure them. Shortly thereafter, NCDOI informed Selective it would be in the "best interest" of the public and Selective's members to transfer its obligations and liabilities to a commercial insurer.
>
> Selective entered into a NCDOI approved assumption reinsurance agreement with Reliance National Insurance Company ("Reliance") effective 31 December 1998. Selective transferred and Reliance assumed 100 percent of Selective's workers' compensation liability claims and obligations. Reliance began and continued to pay plaintiff's benefits per the assumption agreement.
>
> Reliance was an active member of IGA, which is a statutorily created reinsurance association which covers claims of insolvent insurance companies pursuant to N.C. Gen. Stat. § 58-48-1 *et seq.* On 3 October 2001, Reliance became insolvent and was ordered into liquidation by the Pennsylvania Commonwealth Court. After Reliance was liquidated, IGA assumed payments of plaintiff's benefits.
>
> IGA commenced this action by filing a Form 33 request with the Commission to determine its responsibility for paying plaintiff's claim. The Commission issued an opinion and award holding IGA responsible for paying plaintiff's workers' compensation claim. The Commission held: (1) the claim arose when Selective was the insurance carrier for BCJ; and (2) Reliance had assumed the insurance contract through novation and IGA was liable for the claim due to Reliance's insolvency.

Bowles, 172 N.C. App. at 151-52, 615 S.E.2d at 726. IGA argued the Industrial Commission erred in finding BCJ's claim, which

came into existence when Selective was BCJ's insurer and SISA was Selective's security association, was a "covered claim" pursuant to N.C. Gen. Stat. § 58-48-20(4). *Bowles*, 172 N.C. App. at 153, 615 S.E.2d at 727. This Court explained:

> N.C. Gen. Stat. § 58-48-20(4) (2003) defines a "covered claim" as
>
> > an unpaid claim, including one of unearned premiums, which is in excess of fifty dollars ($50.00) and arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Article applies as issued by an insurer, if such insurer becomes an insolvent insurer....
>
> An insolvent insurer is:
>
> > (i) an insurer licensed and authorized to transact insurance in this State either at the time the policy was issued or when the insured event occurred and (ii) against whom an order of liquidation with a finding of insolvency has been entered after the effective date of this Article by a court of competent jurisdiction in the insurer's state of domicile or of this State under the provisions of Article 30 of this Chapter, and which order of liquidation has not been stayed or been the subject of a writ of supersedeas or other comparable order.
>
> N.C. Gen. Stat. § 58-48-20(5) (2003).
>
> The Commission concluded IGA's liability for plaintiff's claim arose when Reliance assumed Selective's obligations and rested its conclusion on applying the law of novation.

Bowles, 172 N.C. App. at 153, 615 S.E.2d at 727. This Court held that Reliance had assumed all of Selective's workers' compensation claims obligations through the statutory novation effected by the execution of the assumption reinsurance agreement on 31 December 1998. *Id.* at 154, 615 S.E.2d at 728. When a novation occurs through the execution of an assumption reinsurance agreement, "the result [is] that the transferring insurer is thereby relieved of all insurance obligations or risks transferred under the assumption reinsurance agreement and the assuming insurer is directly and solely liable to the policyholder for those insurance obligations or risks." N.C. Gen. Stat. § 58-10-40 (2013). This Court held: "The [assumption reinsurance] agreement did not create a new contract for insurance coverage but solely substituted a new party, Reliance for Selective, to the contract." *Bowles*, 172 N.C. App. at 154, 615 S.E.2d at 728. "Reliance [was] deemed to have replaced Selective as if Reliance had issued the original contract of insurance to BCJ." *Id.* This Court therefore affirmed the ruling of the Commission that IGA was the obligated organization upon the insolvency of Reliance, even though the workers' compensation obligations originated when Selective was the responsible self-insurer, and SISA was the organization

responsible for paying Selective's covered claims in the event of Selective's insolvency:

> The original insurance policy between BCJ and Selective became a direct insurance obligation when Reliance expressly assumed Selective's book of business. Through novation, Reliance is deemed to have issued the insurance policy. Reliance is a "direct insurer" placing it within the obligations of IGA by N.C. Gen. Stat. § 58-48-35. Reliance became insolvent triggering the application of N.C. Gen. Stat. § 58-48-1 *et seq.* to IGA. Plaintiff's claim is a "covered claim" issued by an "insolvent insurer" and became IGA's obligation. The Commission properly concluded plaintiff's claim is within the statutory obligations of IGA.

Id. at 156, 615 S.E.2d at 728-29.

In the present case, IGA argues that *Bowles* does not control on the current facts because there was no statutory novation in the present case. However, the result of a statutory novation is "that the transferring insurer is thereby relieved of all insurance obligations or risks transferred under the assumption reinsurance agreement and the assuming insurer is directly and solely liable to the policyholder for those insurance obligations or risks." N.C. Gen. Stat. § 58-10-40. The merger agreement between CompTrust and CAGC achieved precisely this result. The merger agreement states:

> On the Effective Date [of the merger] the

> separate existence of CompTrust shall cease, and CompTrust shall be transferred into CAGC[] which, as the Surviving Corporation, shall possess all the right, privileges, powers, and franchises, of a public as well as of a private nature, and be subject to all the restrictions, disabilities, and duties of CompTrust; and, all the rights, privileges, powers, and franchises of CompTrust and all property, real, personal, and mixed, and all debts due to CompTrust on whatever account, shall be vested in [CAGC.] [And] all debts, liabilities, and duties of CompTrust shall thenceforth attach to [CAGC] and may be enforced against it *to the same extent as if said debts, liabilities, and duties had been incurred or contracted by it.* (Emphasis added).

As in *Bowles*, 172 N.C. App. at 156, 615 S.E.2d at 728-29, in the present case all of the self-insurer's (CompTrust's) debts and obligations were transferred to the direct insurer (CAGC) "to the same extent as if said debts, liabilities, and duties had been incurred or contracted by [CAGC,]" the direct insurer. We do not believe it is relevant on these facts whether this result was achieved through the execution of an assumption reinsurance agreement, or through the execution of a merger agreement. The responsibility for paying the relevant workers' compensation claims was removed from CompTrust and assumed by CAGC. According to the merger agreement, CAGC was "deemed to have issued the insurance polic[ies]." *Id.* at 156, 615 S.E.2d at 728. Further:

> [CAGC] is a "direct insurer" placing it

> within the obligations of IGA by N.C. Gen. Stat. § 58-48-35. [CAGC] became insolvent triggering the application of N.C. Gen. Stat. § 58-48-1 *et seq.* to IGA. [The relevant claims are] "covered claim[s]" issued by an "insolvent insurer" and became IGA's obligation.

Id. at 156, 615 S.E.2d at 728-29. In *Bowles*, neither SISA nor IGA were parties to the assumption reinsurance agreement, and neither had any ability to shape that agreement. In the present case, neither SISA nor IGA were parties to the merger agreement, and neither had any ability to shape that agreement. We can see no equitable nor policy differences between the outcome in *Bowles* and our holding in the present case.

We reverse and remand to the trial court to enter judgment ruling that IGA is estopped from denying that it is obligated under the North Carolina Insurance Guaranty Association Act for any of the pre-merger workers' compensation claims made or incurred against CompTrust before 1 July 2008.

Reversed and remanded.

Judges GEER and STROUD concur.

Report per Rule 30(e).

FORM 4

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

JUDGMI ' IN A CIVIL CASE

CASE NUMBER: 2014CP4000313

Raymond G Farmer
South Carolina Dept of Insurance
PLAINTIFF(S)

CAGC Insurance Company
South Carolina Property and Casualty Insurance Guaranty Asso
DEFENDANT(S)

Submitted by: _____ | Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

FILED
RICHLAND COUNTY
2015 SEP 30 PM 3:16
JEANETTE W. McBRIDE
C.C.P. & G.S.

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.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Other _____
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;

☐ **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:

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC 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
		$
		$
		$

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.**

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 30 September 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Geoffrey Ross Bonham

Tara C Sullivan
Michael A. Molony

Jeffrey A. Jacobs

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

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ROA_000038

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Raymond G. Farmer, as Director of the South Carolina Department of Insurance,

Petitioner,

vs.

CAGC Insurance Company, in Liquidation,

Respondent.

South Carolina Property and Casualty Insurance Guaranty Association,

Intervenor-Petitioner,

vs.

CAGC Insurance Company, in Liquidation, Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in Liquidation; and CompTrustAGC of South Carolina a/k/a CompTrustAGC of South Carolina, Inc.,

Intervenor-Respondents.

Civil Action No. 2014-CP-40-03133

ORDER DENYING MOTION FOR SUMMARY JUDGMENT OF INTERVENOR-PETITIONER SOUTH CAROLINA PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION

RICHLAND COUNTY FILED SEP 10 2014

This matter comes before me on the Motion for Summary Judgment of the Intervenor-Petitioner, South Carolina Property and Casualty Insurance Guaranty Association ("the Association"). In its motion, the Association contends that there is no genuine issue of material fact and, as a matter of law, it is entitled to a declaration that it is not responsible for certain workers' compensation claims assumed by CAGC Insurance Company in Liquidation ("CAGC"), the company that is the subject of this ancillary receivership. Specifically, the Association maintains

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that it is not obligated to pay approximately seventy (70) assumed claims that were the subject of a Loss Portfolio Transfer agreement ("LPT") between CAGC and an authorized South Carolina workers' compensation group self-insured fund, CompTrust AGC of South Carolina ("CompTrust SC").

CAGC was a North Carolina property and casualty insurance company writing business in North and South Carolina. On July 1, 2008, it merged with CompTrust AGC of North Carolina ("CompTrust NC"), a North Carolina group self-insurer under Article 47 of Chapter 58 of the North Carolina General Statutes. CAGC was authorized to conduct the business of insurance in this State on or about October 27, 2008, and commenced writing policies of workers' compensation insurance in South Carolina to members of CompTrust SC from July 1, 2009 forward.

On or about December 28, 2010, CAGC entered into the LPT with CompTrust SC, with the effective transfer date of December 30, 2010. (Pet. to Intervene Exh. B.) Under the terms of the LPT, CompTrust SC transferred and CAGC assumed all of the liabilities and obligations of CompTrust in South Carolina for consideration paid by CompTrust SC to CAGC in the amount of $3,586,527.01[1], with CompTrust to deliver all relevant policy records and claims files to CAGC. The LPT was based on a form provided by the South Carolina Workers' Compensation Commission and was approved by both the Commission and the North Carolina Department of Insurance. (WCC Doc., emails of W.C. Smith; NCDOI Letter dated Dec. 22, 2010.) In a message to the Association dated January 10, 2014, the Director of the Commission's Self-Insurance Division wrote, "The . . .

1 An earlier draft ("5-6-10") placed consideration at approximately $5,863,000; however, the record does not reveal the significance, if any, of this difference. The record does establish that North Carolina's final approval was not given until about a week before the LPT was executed in late December 2010, that in its approval letter North Carolina requested a report of the "total . . . assets, liabilities and surplus" actually transferred and that the South Carolina Workers' Compensation Commission confirmed in January 2014 that it had reviewed the signed LPT. (WCC Doc., emails of W.C. Smith; NCDOI Letter dated Dec. 22, 2010.) The Commission documents were produced in response to a subpoena issued by the Association.

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Commission places only one requirement on Loss Portfolio Transfers involving a former self-insured employer or fund . . . that the transfer is a 100% transfer of **ALL** past, present and future liability," and "the signed CompTrust AGC/CAGC Loss Portfolio Transfer document . . . met this one requirement." (WCC Doc., emails of W.C. Smith.) (Emphasis in original.) CompTrust was formally dissolved on April 1, 2011. (Articles of Dissolution.)

On or about January 26, 2012, North Carolina placed CAGC into rehabilitation on the grounds that CAGC was in a hazardous financial condition. On December 18, 2012, the North Carolina Insurance Guaranty Association ("NCIGA") intervened in the rehabilitation proceedings, seeking a declaration that it was not liable for claims against CAGC incurred before the July 2008 merger with CompTrust NC, on the ground that such claims were not "covered claims" under the North Carolina guaranty association statutes. On or about November 18, 2013, the parties in the domiciliary receivership proceeding agreed to the liquidation of CAGC, and the North Carolina court entered an order placing CAGC into liquidation effective January 17, 2014, with the North Carolina Commissioner of Insurance appointed as Liquidator.

On January 6, 2014, the North Carolina court granted NCIGA's petition for declaratory relief, finding that NCIGA was not liable for the pre-July 2008 claims ("pre-merger claims"), on the ground that they were not "covered claims" as defined under the applicable North Carolina guaranty association statute. An appeal was filed, and on January 20, 2015, the North Carolina Court of Appeals reversed the lower court, holding that the pre-merger claims were in fact "covered claims" for which the NCIGA was responsible. *Goodwin v. CAGC*, No. COA14-445 (N.C. Ct. App. Jan. 20, 2015). The NCIGA filed a petition for discretionary review to the North Carolina Supreme Court, which was denied on June 10, 2015. *Goodwin v. CAGC*, No. 70P15 (N.C. June 10,

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2015).

Meanwhile, on January 17, 2014, the Director of the South Carolina Department of Insurance filed the Petition that led to this ancillary proceeding after finding there were sufficient assets of the insurer located in this State to justify the appointment of an ancillary receiver and the protection of creditors or policyholders in this State so required. *See* S.C. Code Ann. § 38-27-940 (2015). The North Carolina liquidator has reported that, as of December 31, 2013, South Carolina residents had filed workers' compensation claims against CAGC of approximately $6,500,000.00. With the entry of the order of liquidation, however, the North Carolina liquidator ceased payment on all South Carolina claims. In January 2014, at the request of the Petitioner, the Association assumed administration and payment of all South Carolina claims, subject to an express reservation of rights as to any claim "arising under [the] CompTrust AGC of South Carolina., Inc., Self-Insured Program." (Reservation of Rights.)

As security in the event of its failure to pay claims arising out of obligations it incurred in South Carolina, CAGC deposited certain assets with the Department of Insurance pursuant to S. C. Code Ann. §§ 38-9-80 & -90 (2015). The assets have a par value of $175,000 and are in the form of marketable securities. (Certification of Securities.) The Association is entitled to these securities once the Director determines that the conditions for release prescribed by S.C. Code Ann. § 38-9-150 (2015) have been met or upon appropriate order of the Court authorizing the Department to release them.

The Association's Motion to Intervene in this ancillary receivership was filed in May 2014 and granted on June 9, 2014. The Intervenor-Petitioner filed the instant dispositive motion on July 6, 2015, and a hearing on that motion was held before this Court on September 18, 2015.

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Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP; *see Evening Post Pub. Co. v. Berkeley Cnty. Sch. Dist.*, 392 S.C. 76, 81–82, 708 S.E.2d 745, 748 (2011). In determining whether any triable issues of fact exist, the Court views the evidence and all reasonable inferences that may be drawn in the light most favorable to the non-moving party. *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011). To withstand a summary judgment motion in cases applying the preponderance of the evidence burden of proof, the nonmoving party is only required to submit a mere scintilla of evidence. *Lord v. D & J Enterprises, Inc.*, 407 S.C. 544, 553, 757 S.E.2d 695, 699 (2014). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Id.* at 553, 757 S.E.2d at 699; *Evening Post Pub. Co.*, 392 S.C. at 81–82, 708 S.E.2d at 748. Moreover, because summary judgment is a drastic remedy, it should be cautiously invoked to ensure a litigant is not improperly deprived of a trial on disputed factual issues. *Lord*, 407 S.C. at 553, 757 S.E.2d at 699.

The Association is a creature of statute, specifically, the South Carolina Property and Casualty Insurance Guaranty Association Act, S.C. Code Ann. §§ 38-31-10 *et seq.* Like its North Carolina counterpart, this Act is based on the Post-Assessment Property and Liability Insurance Model Act developed by the National Association of Insurance Commissioners (NAIC), and both laws set forth the associations' liabilities. Under N.C. Gen. Stat. § 58-48-35, the North Carolina Guaranty Association is "obligated to the extent of . . . covered claims" in the event of an insolvency, but only for the amount of each claim "in excess of fifty dollars ($50.00) and less than three hundred thousand dollars ($300,000)," except that it "shall pay the full amount of a covered claim for benefits under a workers' compensation insurance coverage." *Id.* Similarly, the North Carolina association

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has no obligation to pay a claim in the event of primary coverage by a solvent insurer or self-insured retention equal to or in excess of $300,000, except in the case of a workers' compensation claim. *Id.* S.C. Code Ann. § 38-31-60 (2015) contains almost identical provisions, reading, "The association . . . is obligated to the extent of claims" in the event of an insolvency and, "except in the case of a claim for benefits under workers' compensation coverage, any obligation . . . on . . . covered claims combined shall cease when ten million dollars shall have been paid in the aggregate." The Association's "obligation includes only the amount each covered claim is in excess of two hundred fifty dollars and is less than three hundred thousand dollars," except that the Association "shall pay the full amount of any covered workers' compensation claim." *Id.* As in North Carolina, the South Carolina Association has "no obligation to pay a claimant's covered claim" in the event of primary coverage by a solvent insurer or self-insured retention equal to or in excess of $300,000, except in the case of a "workers' compensation claim." *Id.*

The exclusion of workers' compensation claims from the above-described limitations on the statutory obligations of these two states' associations reflects a common legislative intent "[w]ith regard to workers' compensation claims . . . that employees will be compensated in a timely manner even when the employer's insurer becomes insolvent." *See North Carolina Ins. Guaranty Ass'n v. Board of Trustees of Guilford Technical College*, 691 S.E.2d 694, 700 (N.C. 2010). The underlying purpose of workers' compensation is to give relief to workers by providing a timely, minimally adequate but exclusive means for employees to recover for work-related injuries and illness. *Id.* at 699-700; S.C. Code Ann. § 42-1-540 (2015) ("The rights and remedies granted by this title to an employee . . . shall exclude all other rights and remedies of such employee . . . as against his employer, at common law or otherwise . . . ."). The provisions in the guaranty association laws

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affording greater protection for workers' compensation claims evince legislative recognition of the importance of protecting workers' compensation benefits in these laws, thereby promoting the advancement of the public welfare and of important and beneficial public objectives. *See Curtis Green & Clay Green, Inc. v. Clark*, 318 S.W.3d 98, 104 (Ky. Ct. App. 2010).

The Association, however, maintains that the workers' compensation claims encompassed by the LPT between CAGC and the dissolved CompTrust SC are not "covered claims" under the South Carolina Guaranty Act. In pertinent part, S.C. Code Ann. § 38-31-20(8) (2015) defines "covered claim" as "an unpaid claim . . . which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if the insurer is an insolvent insurer." It does not include any amount due an insurer. *Id.* The Association covers only "direct" insurance, as opposed to, e.g., reinsurance. S.C. Code Ann. § 38-31-30 (2015). The Association also argues that these claims are not against an "insolvent insurer," i.e., "an insurer (a) licensed to transact insurance in this State either at the time the policy was issued or when the insured event occurred and (b) determined to be insolvent by a court of competent jurisdiction in the insurer's state of domicile or of this State and which the director or his designee has found fails to meet its obligation to policyholders in this State." S.C. Code Ann. § 38-31-30(9) (2015).

In the North Carolina proceedings against CAGC, the Association's counterpart in that state, NCIGA, similarly argued that claims arising prior to the merger with CompTrust NC were not "covered claims" under that state's definition, which is practically identical to South Carolina's. In N.C. Gen. Stat. § 58-48-20(4), a "covered claim" is defined, in relevant part, as "an unpaid claim . . . which . . . arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Article applies as issued by an insurer, if such insurer becomes an

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insolvent insurer." Also as in South Carolina, the North Carolina association does not cover amounts due any reinsurer or insurer, but covers only direct insurance. N.C. Gen. Stat. § 58-48-10 & -20(4).

NCIGA also asserted that the pre-merger claims were not against an "insolvent insurer." North Carolina law defines an "insolvent insurer" as "an insurer licensed and authorized to transact insurance in this State either at the time the policy was issued or when the insured event occurred and (ii) against whom an order of liquidation with a finding of insolvency has been entered." N.C. Gen. Stat. § 58-48-20(5). In other words, the definition of "insolvent insurer" under the laws of both North and South Carolina is essentially the same.

The North Carolina Court of Appeals rejected the NCIGA's position, holding that CompTrust's debts and obligations were transferred to the direct insurer (CAGC) to the same extent as if said debts, liabilities, and duties had been incurred or contracted by CAGC." *CAGC Ins. Co.*, No. COA14-445 at 5 (N.C. Ct. App. Jan. 20, 2015) (internal quotes and brackets omitted). "We do not believe it is relevant," the court continued, "whether this result was achieved through the execution of an assumption reinsurance agreement, or through the execution of a merger agreement." *Id.* "The responsibility for paying the relevant workers' compensation claims, the court explained, "was removed from CompTrust and assumed by CAGC" under "the merger agreement." *Id.* Accordingly, CAGC was deemed to have issued the insurance policies. *Id., citing Bowles v. BCJ Trucking Servs., Inc.*, 615 S.E.2d 724, 728 (N.C. Ct. App. 2005). As CAGC was a "direct insurer" as defined by N.C. Gen. Stat. § 58–48–35, the pre-merger claims it had assumed and was deemed to have issued were "covered claims" issued by an "insolvent insurer" and the lawful obligation of the NCIGA. *Id.*

In the *Bowles* case relied upon the North Carolina Court of Appeals in the CAGC

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proceedings in that state, the court held that an assumption reinsurance agreement approved by the North Carolina Department of Insurance effected a novation, "substitut[ing] a new party . . . to the [insurance] contract, with the assuming insurer deemed to have replaced" the original party "as if [the former] had issued the original contract of insurance." *Bowles*, 615 S.E.2d at 728-729. The *Bowles* court therefore held that NCIGA was obligated to cover these claims as the direct insurance obligation of the assuming insurer upon the insolvency of the assuming insurer, notwithstanding that the workers' compensation obligations had originated with a responsible self-insurer. *Id.*

The law of both North and South Carolina defines a novation as a substitution of a new obligation for an old one thereby extinguishing the old obligation. *Moore v. Weinberg*, 373 S.C. 209, 218, 644 S.E.2d 740, 745 (Ct. App. 2008); *Zinn v. Walker*, 361 S.E.2d 314, 319 (N.C. Ct. App. 1987). More specifically, novation is the substitution by mutual agreement of one obligor for another, whereby the old obligation is extinguished. *Id.* Both states also require that the circumstances attending the transaction must show the intention to create a novation. *Id.* Accordingly, where North Carolina law finds a novation, South Carolina law should follow suit under the same or similar circumstances.

The Association attempts to distinguish the South Carolina claims assumed by CACG from the similar North Carolina claims by pointing to S.C. Code Ann. § 38-31-30(6) (2015), which excludes "retroactive insurance" from the Act's protection. Although the Association has admitted that the North Carolina guaranty law has a nearly identical provision at N.C. Gen. Stat. § 58-48-10(10), it contends that because the North Carolina Court of Appeals opinion does not mention this provision, the parallel South Carolina Code section somehow provides ground for a distinction. The Association admitted at oral argument that it could cite no precedent in support of its position even

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though a number of other states, in addition to both Carolinas, have similar provisions regarding retroactive insurance in their guaranty association laws. *E.g.*, Alaska Stat. § 21.80.020; Idaho Code § 41-3603; 215 Ill. Comp. Stat. Ann. § 5/533; Ind. Code § 27-6-8-3. A further defect in the Association's argument is that the North Carolina courts obviously know what is in their state's code of laws and yet did not find this section to be an obstacle to their rulings in either the CAGC proceedings or in *Bowles*.

This should really come as no surprise: in a novation, the assuming party is substituted for the original obligor, "to the same extent as if said debts, liabilities, and duties had been incurred or contracted by CAGC." *CAGC Ins. Co.*, No. COA14-445 at 5 (N.C. Ct. App. Jan. 20, 2015); *Bowles*, 615 S.E.2d at 728-729. In other words, CAGC was not insuring the assumed claims retroactively; rather, with the novation it became the direct obligor on them. *See Bowles*, 615 S.E.2d at 728-729 ("Through novation, [insurer] is deemed to have replaced [self-insurer] as if [the former] had issued the original contract of insurance," the approved assumption reinsurance agreement "did not operate retroactively"" and [the insurer] is a direct insurance company [that] is deemed to have issued an insurance policy" to the employer.) This was the conclusion of the North Carolina courts in the parallel CAGC proceedings, and it is one supported by the record in the instant case.

Prior to dissolving, CompTrust SC sought and obtained the approval of the two relevant jurisdictions, using a form prescribed by the relevant agency of this State, to transfer its workers' compensation obligations to a workers' compensation carrier approved to write business in that state. (WCC Doc., emails of W.C. Smith; NCDOI Letter dated Dec. 22, 2010.) Under the terms of the final agreement, it transferred approximately 3.5 million dollars and delivered all relevant policy records and claims files to the same carrier. (LPT.) The carrier, CAGC, "assume[d] 100% of the

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liabilities and obligations" of CompTrust SC for workers' compensation in in South Carolina, and CompTrust SC ceased to exist, leaving CAGC in its place. (*Id.*; *see* WCC Doc., emails of W.C. Smith.) Clearly, a reasonable trier of fact could conclude that the parties intended to create a novation, substituting a new obligor, CAGC, for the old one. *See Moore*, 373 S.C. at 218, 644 S.E.2d at 745 (a novation may be accomplished by substituting a new obligor in the place of the old one, with the intent to release the latter). Indeed, the Commission specifically found that the LPT, which was also approved by North Carolina, effected a "100% transfer" of *all* "past, present and future liability" from CompTrust to CAGC. (*See* WCC Doc., emails of W.C. Smith.)

Despite the approval of the LPT by the governments of the two states whose citizens were affected, at oral argument the Association assailed the legitimacy of the LPT as "not an arms-length" transaction. As a result, the Association argues, it should not be held responsible for the claims assumed therein, and either CAGC or CompTrust should suffer the consequences of their alleged misdeeds by paying these claims, serving as cautionary example to others. The Association, however, falls far short of producing evidence of its allegations sufficient to eliminate any genuine issue of material fact. It also fails to explain how the insolvent CAGC or the long-dissolved CompTrust would administer claims, much less pay them. Certainly, it is foreseeable that the affected workers' compensation benefits might be interrupted or terminated altogether, with litigation and disruption in both the private and public sphere likely to follow as well. The Association also overlooks the fact that injured workers, who under any circumstances are blameless, would be the ones at the center of the object lesson the Association wants to present any other self-insured funds contemplating an LPT or similar transaction with an insurance carrier.

It is no small matter that if the Association's motion were granted, the affected CAGC

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workers' compensation claimants would be subject to disparate treatment, and through no fault of their own. Workers' compensation claimants in South Carolina would be divided between those with claims assumed by CAGC, who would likely be deprived further benefits, and all other claimants, whose benefits would be unaffected. In addition, the benefits of some claimants with older CAGC claims would suddenly be denied guaranty association protection, while those of other such claimants would not. CAGC claimants whose workers' compensation claims were once covered by CompTrust would be divided along state lines, with coverage of North Carolina claimants continuing while coverage for South Carolina workers would falter.

The Association, however, maintains that it would be an unjust depletion of its own resources to hold it responsible for the assumed claims, as these originated with a non-member group self-insurer which was not paying assessments into the Association. Notwithstanding its apparent lack of similar concern over the potential injustice to injured workers who stand to lose access to benefits through no fault of their own, the Association is correct in maintaining that any basis for liability on its part must be consistent with the provisions of the Guaranty Act. *See Franklin v. Superior Casting*, 24 A.3d 1233, 1238 (Conn. 2011). The Association also correctly points out that its liability under the Act is limited to covered claims on policies issued by an insurer. *See* S.C. Code Ann. § 38-31-20(8) (2015). *See also Hudson ex rel. Hudson v. Lancaster Convalescent Center*, 407 S.C. 112, 124, 754 S.E.2d 486, 492 (2014) (association liability "derivative of the insolvent insurance company's direct liability to the consumer" for statutorily-defined defined covered claims).

The legislative desire to assist claimants by providing guaranty association protection "cannot be, and is not intended to be, bureaucratic benevolence." *See Benson v. New Hampshire Ins. Guaranty Ass'n*, 864 A.2d 359, 367-368 (N.H. 2004). The Act also was "not designed to be a

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panacea" for all problems caused by insurance company insolvencies or to require the Association to assume any and all obligations of an insolvent insurer, nor is the Association intended to be a form of reinsurance for every insurer that happens to become insolvent. *See Carpenter Tech. Group v. Admiral Ins. Co.*, 800 A.2d. 54, 66 (N.J. 2002). Rather, the Association's function "is to provide . . . a limited form of protection from financial loss occasioned by the insolvency of [an] insurer." *Benson*, 864 A.2d at 367-368.

On the other hand, a group self-insurance fund like CompTrust SC has been held to be an "insurer" within the meaning of the Guaranty Act. *South Carolina Property and Cas. Guar. Ass'n v. Carolinas Roofing and Sheet Metal Contractors Self-Insurance Fund*, 315 S.C. 555, 559, 446 S.E.2d 422, 425 (1994). Moreover, the Association does not contend that CAGC is not an "insurer," and it acknowledges its obligations on CAGC's non-LPT claims. It also has yet to identify any meaningful distinction between its situation and that of the North Carolina guaranty association, which also sought to avoid responsibility for CAGCs assumed claims, to no avail. In any event, the Act must "be interpreted in the light of [its] purpose and logic" in order to effectuate the legislature's intent. *See New Jersey Property-Liability Ins. Guaranty Ass'n v. Sheeran*, 349 A.2d 92, 95 (N.J. Super. Ct. App. Div. 1975) *citing* 2A Sutherland Statutory Construction § 45.05.

The South Carolina Act is not unique. It is based on the Post Assessment and Liability Insurance Guaranty Model Act drafted by the National Association of Insurance Commissioners ("NAIC"). *See Benson*, 864 A.2d at 364; *see also Tri-State Motor Transit Co., Inc. v. Intermodal Transportation, Inc.*, 1991 WL 1172907 *1, *8 (Del. Super. Ct June 3, 1991). Nearly every state has adopted some variation of this Model, and the South Carolina version is similar in both purpose and language to statutes in numerous other jurisdictions. *See Benson*, 864 A.2d at 364; *see also Olivier*

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v. Merritt Dredging Company, Inc., 979 F.2d 827, 830-832 & nn. 5-7 (11th Cir. 1992). It has been held in other jurisdictions that the various insurance guaranty association acts were enacted to protect policyholders and claimants and must be interpreted to advance their interests rather than the interests of the guaranty association. *See Bowens v. General Motors Corp.*, 608 So.2d 999, 1004 (La. 1992); *Senac v. Sandefer*, 418 So.2d 543 (La. 1982); *Arnóne v. Murphy*, 380 A.2d 734 (N.J. Super. Ct. Law Div. 1977); *Tri-State Motor Transit Co.*, 1991 WL 1172907 at *8.

The protection that the Association provides is intended for the benefit of consumers and is funded by the public. *See Hunnihan v. Mattatuck Mfg. Co.*, 705 A.2d 1012, 1018-1019 (Conn. 1997). In order to maintain funds adequate to meet its obligations to pay claims of insolvent insurers, the Association assesses member insurers in the manner authorized by S.C. Code Ann. § 38-31-60 (2015); *see also Hunnihan*, 705 A.2d at 1019. These insurers, in turn, charge their policyholders premiums at rates sufficient to recoup the assessments levied upon insurers by the Association. *See* S.C. Code Ann. § 38-31-140 (2015). Because insurers thus pass on the costs of the assessments made against them by the Association, it is in reality policyholders who pay for the protections afforded by the Association. *See Hunnihan*, 705 A.2d at 1019. These statutes thereby provide the means for assessed insurance companies to place the costs on and spread the risk among resident policyholders of this State, and not the Association, its members or the industry. This is why, for example, the definition of "covered claim" in S.C. Code Ann. § 38-31-20(8) (2015) excludes claims by insurers: excluding such claims leaves the risk of unpaid insurer claims with the insurance industry, while the State's policyholders, who effectively fund the Association, pay only for the protection of claimants on policies in the event an insurer becomes insolvent. *See Hunnihan*, 705 A.2d at 1019.

The claimants in the instant case, of course, are injured workers entitled to benefits under the

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State's workers' compensation law. The workers' compensation laws adopted by the states have been described as "social legislation passed for the joint benefit of labor and management." *Senac*, 418 So.2d at 545. The legislature provided for sacrifices to be made by both employers and employees: employees were required to waive the right to bring a civil action, in return for receiving a fixed percentage of their wages during the period of their disability and other compensation, while employers were "deprived of the defenses afforded to [them] by . . . law" while being assured that injured employees "would be entitled to no more than the amount stipulated in the statute as compensation." *Id.* In other words, "as between the employee and . . . employer, the employee surrenders [the] former right to full damages and accepts, instead, compensation measured as a percentage of . . . wages." *Id. citing* 1A. Larson, The Law of Workmen's Compensation § 1.10. *See also Peay v. U.S. Silica Co.*, 313 S.C. 91, 94, 437 S.E.2d 64, 65 (1993) (workers' compensation laws are intended to relieve workers of the uncertainties of a trial for damages by providing sure, swift recovery for workplace injuries regardless of fault and are construed liberally in favor of coverage).

The assumption, under the supervision of the workers' compensation regulatory body, by an insurer of the liabilities of self-insurer that then dissolves is a recognized means of transferring workers' compensation obligations. *E.g.*, *Risius v. W.C.A.B. (Penn State Univ.)*, 922 A.2d 72 (Pa. 2007); *Application of Reciprocal of America*, 2005 S.C.C. Ann. Rept. 69 (Va. State Corp. Comm'n August 24, 2005), 2005 WL 2104858, and (Va. State Corp. Comm'n Examiner Rep. April 21, 2005) 27-30, 85-86 & 91; 2005 WL 7980495 (VSCCHEXR). These types of transactions between a workers' compensation self-insurance fund and an insurer are not uncommon. *Id.* In fact, at least two other jurisdictions (in addition to North Carolina) have found that a loss portfolio transfer, assumption reinsurance agreement or similarly-named agreement of the kind at issue here constituted

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a novation, with the guaranty association responsible for all claims assumed by the insolvent insurer.

In *Mississippi Insurance Guaranty Association v. MS Cas. Ins. Co.*, 947 So.2d 865 (Ms. 2006), the Mississippi Supreme Court determined that certain workers' compensation claims were "covered claims" under the Mississippi guaranty law where sole responsibility for those claims had been transferred to Legion Insurance Company under several "assumption reinsurance agreements" and Legion had subsequently been declared insolvent.

The court held that the assumption reinsurance agreements constituted a novation, even though the parties had not signed "novation agreements." *Id.* at 871. "Novation," the court explained, "was accomplished through implied assent." *Id.* at 871-872. Because Legion agreed to be liable for any claims under the policies, the other insurers transferred all of their reserves and all premiums were thereafter paid to Legion, the court reasoned that "Legion was substituted" as the insurer and that "the parties obviously intended novation [and] no doubt intended for Legion to be liable for any claims." *Id.* at 872.

The court characterized the title "assumption reinsurance agreements" as "misleading," explaining that "[i]n the case of assumption reinsurance, the reinsurer steps into the shoes of the ceding company with respect to the reinsured policy, assuming all its liabilities and its responsibility to maintain required reserves against potential claims" and that "[t]he assumption reinsurer thereafter receives all premiums directly and becomes directly liable to the holders of the policies it has reinsured." *Id.* at 873 *quoting Colonial Am. Life Ins. Co. v. Commissioner*, 491 U.S. 244, 247 (1989) (internal quotations omitted). The court found that these agreements were "clearly direct insurance," in that Legion "stepped into the shoes" of the prior insurers. *Id.* at 873. *Accord Koken v. Reliance Ins. Co.*, 846 A.2d 167, 171-172 (Pa. 2004) (when novation occurs, insured "stands in the shoes of

the primary insurer and . . . recover[s] under the reinsurance agreement"), *vacated on other grounds* 891 A.2d 704 (Pa. 2006). "None of the terms and conditions of the contracts changed; but instead, the names of the parties were simply substituted." *MS Cas.*, 947 So.2d at 873. Therefore, the court concluded, "Legion was *directly liable*" and "the agreements constituted direct insurance." *Id.* (italics in original).

The court also specifically found that the claims at issue were "covered claims." *Id.* at 873-874. Based on the statutory definition quoted by the court, Mississippi defines "covered claim" in much the same way as does South Carolina:

> "'Covered claim' means an unpaid claim, including one of unearned premiums, which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this article applies issued by an insurer, if such insurer becomes an insolvent insurer and (1) the claimant or insured is a resident of this state at the time of the insured event, provided that for entities other than an individual, the residence of a claimant or insured is the state in which its principal place of business is located at the time of the insured event; or (2) the property from which the claim arises is permanently located in this state. 'Covered claim' shall not include any amount awarded as punitive or exemplary damages; or sought as a return of premium under any retrospective rating plan; *or due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise and shall preclude recovery thereof from the insured of any insolvent carrier to the extent of the policy limits.*"

Id. at 873-874 *citing* Miss. Code Ann. § 83-23-109(f) (italics supplied in original). "Legion is the direct insurer because novation occurred," the court emphasized, and the assumed claims were "covered claims" for which the Mississippi guaranty association was responsible by statute. *Id.* at 874.

In Georgia, the legislature has gone so far as to extend guaranty association protection for workers' compensation claims even where those claims had not been assumed by a member of the state guaranty association. At the time of its liquidation, Southeastern US Insurance Co. ("SEUS"), a

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Georgia captive insurance company, advertised itself as that state's eighth largest workers' compensation carrier. *See Georgia Workers' Compensation Insurer Southeastern US Faces Liquidation*, Insurance Journal (Oct. 29, 2009) <http://www.insurancejournal.com/news/southeast/2009/10/29/104913.htm>. To avoid Georgia workers being denied workers' compensation benefits for reasons well beyond their control, the Georgia legislature amended its guaranty association laws in 2010 to ensure that the claims of injured workers affected by the SEUS insolvency were paid by the Georgia guaranty association. *See Georgia Insurers Insolvency Pool v. Hulsey Envtl. Servs., Inc.*, 748 S.E.2d 380, 381 (Ga. 2013). The effect of this 2010 amendment was to provide retroactive guaranty association coverage for the previously excluded claims of SEUS insureds. *Id.*

The Georgia guaranty association, which opposed this measure, sought a declaratory judgment that the 2010 amendment was unconstitutional. *Id.* Not unlike the Intervenor-Petitioner, the Georgia association asserted that the extension of coverage would decrease its reserves and increase the assessments levied on member insurance companies. *Id.* The Georgia Supreme Court held the Georgia association did not have standing to challenge the 2010 amendment on constitutional grounds and upheld the dismissal of the guaranty association's action. *Id.* The association "was not given the power to challenge its own enabling legislation or amendments to it, the court explained, "Nor was it given the power to question the wisdom of statutes designed to accomplish its remedial purpose." *Id.*

In each of the above insolvencies involving workers' compensation coverage and disputes over the applicable guaranty association's obligations, the action taken by the domiciliary state – whether through its executive, judicial or legislative branch – resulted in the payment of all workers' compensation claims by the relevant guaranty association and over its objections. Importantly, in all

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of these cases, injured workers faced the loss or denial of a unique, essential and legislatively-mandated benefit due to facts and circumstances completely out of their control. In each such instance, the state recognized the importance, if not the necessity, of maintaining an important social benefit for workers and employers alike, utilizing both the claims and assessment mechanisms of their states' guaranty association laws to transfer and distribute the associated risks among the public. And, in those situations involving a loss portfolio transfer, assumption reinsurance agreement or similar transfer from a self-insurer to an insurance company, each jurisdiction has found a novation creating a direct obligation of the insurer which became the responsibility of the guaranty association upon that insurer's insolvency.

Applying this State's Act to the instant case, this Court has no difficulty in concluding that a reasonable trier of fact could find in the LPT a novation making CAGC the direct obligor on the assumed claims and determine that the Association, like its corresponding entity in North Carolina, is responsible for all workers' compensation claims against CGAC, assumed or otherwise. Therefore, based on all the evidence presented, and drawing all inferences from those facts most favorable to the non-moving parties, the Court finds that there are genuine issues of material fact as to whether the Association is responsible for the assumed claims and that the Association is not entitled to judgment as a matter of law pursuant to Rule 56, SCRCP.

For all the foregoing reasons, the Intervenor-Petitioner's Motion for Summary Judgment must be and hereby is **DENIED**.

AND IT IS SO ORDERED.

G. Thomas Cooper, Jr.
Judge of the Fifth Judicial Circuit

September 30, 2015
Columbia, South Carolina

SCANNED

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4000313

Raymond G Farmer	CAGC Insurance Company
South Carolina Dept of Insurance	South Carolina Property and Casualty Insurance Guaranty Asso
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: _____	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

JEANETTE W. WALKER CLERK OF COURT RICHLAND COUNTY FILED 2015 JAN 26 P 2:46

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.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCROP; ☐ Vol. Nonsuit; ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **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:

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
		$
		$
		$
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.**

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 27 day of Jan, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Geoffrey Ross Bonham

Tara C Sullivan
Michael A. Molony

Jeffrey A. Jacobs

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. Walker

SCRCP Form 4C (10/2011)

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Raymond G. Farmer, as Director of the South Carolina Department of Insurance, Petitioner, vs. CAGC Insurance Company, In Liquidation, Respondent.	Case No. 2014-CP-40-0313 **ORDER DENYING INTERVENOR-PETITIONER SOUTH CAROLINA PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATIONS' MOTION TO RECONSIDER**
South Carolina Property and Casualty Insurance Guaranty Association, Intervenor-Petitioner, vs. CAGC Insurance Company, in Liquidation; Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in Liquidation; and CompTrust AGC of South Carolina a/k/a CompTrustAGC of South Carolina, Inc., Intervenor-Respondents.	

RICHLAND COUNTY
FILED
2016 JAN 26 PM 2:35
JEANETTE W. McBRIDE
C.C.P. & G.S.

This matter comes before the Court by way of Intervenor-Petitioner South Carolina Property and Casualty Insurance Guaranty Association's ("Association") Motion to Alter or Amend the Judgment pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. Specifically, the Association asks this Court to reconsider its Orders Denying the Association's Motion for Summary Judgment, Denying the Association's Motion for Summary Judgment, and Granting Intervenor-Respondent CompTrustAGC of South Carolina a/k/a CompTrust AGC of South Carolina, Inc.'s Motion to Quash Discovery and Motion to Dismiss filed on September 30, 2015.

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After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or facts not appropriately considered. In addition, the Court was not served with a copy of the Association's Motion to Alter or Amend the Judgment filed October 13, 2015, as is required under Rule 59(g) of the South Carolina Rules of Civil Procedure.

Accordingly, this Court hereby **DENIES** Defendants' Motion under Rule 59(e) of the South Carolina Rules of Civil Procedure, to reconsider this Court's Orders Denying the Association's Motion for Summary Judgment, Denying the Association's Motion for Summary Judgment, and Granting Intervenor-Respondent CompTrustAGC of South Carolina a/k/a CompTrust AGC of South Carolina, Inc.'s Motion to Quash Discovery and Motion to Dismiss filed on September 30, 2015. Furthermore, pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

Columbia, South Carolina
January 26, 2016

G. Thomas Cooper, Jr., Judge
Fifth Judicial Circuit

SCANNED

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Raymond G. Farmer, etc.)
Plaintiff(s))
)
vs.)
)
CAGC Insurance Company in Liquidation)
Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP - 40- 0313

Submitted By: Geoffrey R. Bonham, Assoc. Gen'l Counsel
Address: SC Department of Insurance
P.O. Box 100105
Columbia, SC 29202-3105

SC Bar #: 13058
Telephone #: 803-737-6132
Fax #: 803-737-6227
Other:
E-mail: gbonham@doi.sc.gov

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

FILED
C.C.P.
2014 JAN 17 PM 12:11

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

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

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-CP-_____-_____

- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☒ Other (699)

Ancillary Receivership

- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: _____ **Date:** 01/17/2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

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

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

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

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

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND** Raymond G. Farmer, Director of the South Carolina Department of Insurance, Petitioner, vs. CAGC Insurance Company, in Liquidation, Respondent.	**IN THE COURT OF COMMON PLEAS** **FOR THE FIFTH JUDICIAL CIRCUIT** C.A. No. 2014-CP-40 - **SUMMONS**

2014 JAN 17 PM 12:11

TO THE RESPONDENT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Petition in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer thereto on the undersigned at their office located at 1201 Main Street, Suite 1000 (P.O. Box 100105), Columbia, South Carolina (29202-3105) within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Petition within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Petition. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

January 17, 2014

DIRECTOR OF THE SOUTH CAROLINA
DEPARTMENT OF INSURANCE

By: _____

Jeffrey A. Jacobs
Chief Legal Counsel
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Geoffrey R. Bonham
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F: 803-737-6229

Attorneys for Petitioner

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND	**FOR THE FIFTH JUDICIAL CIRCUIT**
Raymond G. Farmer, Director of the South Carolina Department of Insurance, Petitioner, vs. CAGC Insurance Company in Liquidation, Respondent.	C.A. No. 2014-CP-40-_____ **PETITION FOR APPOINTMENT OF ANCILLARY RECEIVER AND TO COMMENCE FORMAL ANCILLARY PROCEEDINGS**

2014 JAN 17 PM 12
S.C.P. & G.S.

COMES NOW, Petitioner, Raymond G. Farmer, Director of the South Carolina Department of Insurance, by and through counsel, who would respectfully show unto the Court the following:

1. Petitioner is the duly appointed Director of the South Carolina Department of Insurance with such powers, duties and responsibilities as are prescribed under the insurance laws of this State to him or his designee for insurance company licensing, insolvency and receivership matters.

2. Petitioner is the Director of Insurance of the State of South Carolina, and initiates this action in his official capacity on behalf of the State of South Carolina pursuant to South Carolina Code of Laws §§ 38-27-10 *et seq*.

3. This action is brought by Petitioner, pursuant to the Insurers Rehabilitation and Liquidation Act, S.C. Code Ann. §§ 38-27-10 *et seq.*, requesting appointment of Petitioner as the Ancillary Receiver for Respondent in this State under the provisions of S.C. Code Ann. § 38-27-940 (2002), and the commencement of formal ancillary proceedings against Respondent.

4. Respondent CAGC is a licensed property and casualty insurance company domiciled in

North Carolina which has operated since July 1, 2008, having merged with CompTrust AGC of North Carolina, a North Carolina group self-insurer under Article 47 of Chapter 58 of the North Carolina General Statutes, on that date.

5. CAGC is incorporated under the laws of the State of North Carolina and has its registered office in Mecklenburg County, North Carolina. CAGC wrote workers' compensation insurance coverage.

6. CAGC was authorized to conduct the business of insurance in South Carolina on or about October 27, 2008.

7. Subsequently, CAGC commenced writing policies of workers' compensation insurance in South Carolina to members of CompTrustAGC of South Carolina, Inc. ("CompTrust SC"), a group self-insurer, for the periods of July 1, 2009 forward.

8. On or about December 28, 2010, CAGC entered into a Loss Portfolio Transfer Agreement with CompTrust SC, with the effective transfer date of December 30, 2010, and contractually assumed the liabilities of CompTrust SC for self-insured workers' compensation claims predating that transfer.

9. On or about January 18, 2012, CAGC reported to the North Carolina Department of Insurance that its admitted assets were less than its liabilities by the amount of $146,510 and CAGC had a negative surplus as of November 30, 2011.

10. On January 26, 2012, the North Carolina Court of General Justice issued an Order of Rehabilitation and Order of Injunction against CAGC with written consent of CAGC. The Order of Rehabilitation found that CAGC was in an impaired financial condition with the meaning of N.C. Gen. Stat. § 58-30-12(a)(2) and that CAGC was in such condition as to render the continuance of its business hazardous to its policyholders, creditor or the public.

11. Under the Order of Rehabilitation, the Commissioner of the North Carolina Department of Insurance was charged with the responsibility to administer the assets of CAGC in accordance with N.C. Gen. Stat. §§ 58-30-80 *et seq*. Ultimately, the Rehabilitator would determine that CAGC was in such condition as to render further transaction of its business hazardous to its policyholders, creditors or the public within the meaning of N.C. Gen. Stat. § 58-30-100(3) and that further attempts to rehabilitate CAGC would substantially increase the risk of loss to creditors, policyholders or the public, or such further attempts to rehabilitate CAGC would be futile, and seek a court order placing CAGC into liquidation.

12. On December 18, 2012, the North Carolina court allowed the North Carolina Insurance Guaranty Association ("NCIGA") to intervene in the pending North Carolina action and file its petition for declaratory relief, seeking, *inter alia*, that the court declare that NCIGA was not liable for claims against CAGC incurred before the July 2008 CompTrustAGC merger ("the pre-July 2008 claims").

13. On March 1, 2013, the North Carolina court entered an order allowing the North Carolina Self Insurance Security Association (NCSISA) to intervene, to file responsive pleadings and to cross-petition for declaratory relief, asking, *inter alia*, that the court declare that the NCSISA was not liable for pre-July 2008 claims against CAGC and that NCIGA should be liable for those claims.

14. On or about November 18, 2013, counsel for the parties involved in the North Carolina receivership proceedings agreed that an Order of Liquidation would be appropriate. The North Carolina Court of General Justice agreed to enter an Order of Liquidation after the parties had the opportunity to confer as to its specific terms.

15. Accordingly, on or about January 6, 2014, after trial on the Interveners' petitions, the

General Court of Justice for Wake County, North Carolina entered an Order of Liquidation effective January 17, 2014 placing CAGC into liquidation, appointing the Commissioner of Insurance for the State of North Carolina as Liquidator and vesting title to as well as possession and control of all assets, records, documents and rights of CAGC in the Liquidator. A copy of the Order of Liquidation is attached hereto as Exhibit A and is incorporated by reference as if fully stated verbatim herein.

16. In a Judgment dated January 6, 2014, the North Carolina court determined that the NCIGA was not liable for the pre-July 2008 claims against CAGC and/or CompTrustAGC of North Carolina or the members of the CompTrustAGC of North Carolina. These claims were considered covered claims within the meaning of the North Carolina statute for the NCSISA and were to be covered by NCSISA.

17. There are a substantial number of families and individuals in South Carolina who, up to the present date, have been receiving payments of workers' compensation benefits and emergency medical benefits under policies of workers' compensation insurance issued by CAGC and/or claims arising under the self-insured agreements of CompTrustAGC of North Carolina from the Rehabilitator for Respondent. The January 6, 2014 Order of the North Carolina Court of General Justice Superior Court Division will cause the Rehabilitator to stop all payments of those benefits to the South Carolina claimants effective January 17, 2014.

18. Upon information and belief, non-workers' compensation benefit claims of South Carolina residents against Respondent are not being paid as no such non-workers' compensation policies or claims are known to exist. As of December 31, 2013, the North Carolina Receiver reported that South Carolina residents had filed workers' compensation claims, against Respondent, resulting in a case reserve amount of about $6,500,000.00.

19. Respondent's license to transact the business of insurance in South Carolina has been restricted; and, upon information and belief, Respondent's license to transact business in other states has been restricted, suspended or revoked. As a result of the aforesaid Order of Liquidation, the insurance commissioner of the State of South Carolina issued an order revoking the certificate of authority of Respondent to transact the business of insurance in the State of South Carolina. A copy of this order is attached hereto as Exhibit B.

20. Petitioner is further informed and believes that there are actual or potential creditors and policyholders in this State with valid claims against Respondent. Petitioner believes this ancillary estate must be opened for the protection of policyholders and creditors in this State.

21. Petitioner has control of certain assets of Respondent that Petitioner had required Respondent to deposit as security in the event of its failure to pay claims arising out of obligations it incurred in South Carolina. The deposit of the assets was required pursuant to S.C. Code Ann. §§ 38-9-80 and 38-9-90 (2002). Petitioner has not made any disbursement from any assets to date.

22. The assets have a par value of approximately $175,000 and are in the form of marketable securities.

23. In view of the allegations contained in the preceding paragraph, and pursuant to S.C. Code Ann. § 38-27-940(a) (2002), Petitioner finds that there are sufficient assets of the insurer located in this State to justify the appointment of an ancillary receiver and that the protection of creditors or policyholders in this State so requires; and, therefore a petition for an order commencing formal ancillary proceedings against Respondent pursuant to S.C. Code Ann. § 38-27-940(b) (2002) is necessary and appropriate.

WHEREFORE, Petitioner prays that this Court issue its Order appointing him as Ancillary Receiver and authorizing him to commence formal ancillary proceedings against Respondent in accordance with S.C. Code Ann. § 38-27-940 on such terms as the Court shall deem appropriate, and that the Court grant such other and further relief as shall seem just and equitable.

Respectfully submitted,

January 17, 2014

Jeffrey A. Jacobs
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Attorneys for Petitioner

NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
12 CVS 001270

WAYNE GOODWIN, as Commissioner of Insurance of the State of North Carolina,
Petitioner,

v.

CAGC INSURANCE COMPANY,
Respondent,

v.

NORTH CAROLINA INSURANCE GUARANTY ASSOCIATION,
Intervenor, Respondent, Counterclaimant, and Cross-Claimant,

v.

NORTH CAROLINA SELF-INSURANCE SECURITY ASSOCIATION,
Intervenor, Respondent, Counterclaimant, and Cross-Claimant.

ORDER OF LIQUIDATION

THIS CAUSE came on to be heard by the undersigned Special Superior Court Judge, Honorable Shannon R. Joseph, presiding in this case by designation pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts, at the 18 November 2013 session of Wake County Superior Court upon the Verified Petition filed herein on behalf of the State of North Carolina by the Honorable Wayne Goodwin in his capacity as Commissioner of Insurance of the State of North Carolina ("Commissioner") seeking the entry of an Order of Liquidation against CAGC Insurance Company ("CAGC"), and for injunctive relief. The Commissioner was

EXHIBIT A

represented by David W. Boone and M. Denise Stanford of the North Carolina Attorney General's office, CAGC was represented by David Liggett and Jim Conner, Attorneys at Law of Raleigh, North Carolina, the North Carolina Insurance Guaranty Association (NCIGA) was represented by Chris Blake, Attorney at Law of Raleigh, North Carolina, and the North Carolina Self-Insurance Security Association (NCSISA) was represented by Cathy Stuart and Sandhya Gopal, Attorneys at Law of Raleigh, North Carolina. After reviewing the file and the Verified Petition and considering the representations of counsel on the record that no evidence would be presented in opposition to liquidation, the Court finds and concludes as set forth below.

FINDINGS OF FACT

1. Petitioner is the Commissioner of Insurance of the State of North Carolina.

2. Respondent CAGC is a property and casualty insurance company since 1 July 2008, having merged with CompTrust AGC, a North Carolina group self-insurer under Article 47 of Chapter 58 of the North Carolina General Statutes, and CAGC is incorporated under the laws of the State of North Carolina. On or about 18 January 2012, CAGC reported to the North Carolina Department of Insurance that its admitted assets were less than its liabilities by the amount of $146,510 and CAGC had a negative surplus as of 30 November 2011.

3. On 26 January 2012, this Court entered an Order of Rehabilitation and Order of Injunction against CAGC with the written consent of CAGC. The Order of Rehabilitation found that CAGC was in an impaired financial condition within the meaning of N.C. Gen. Stat. § 58-30-12 (a) (2) and that CAGC was in such condition as to render the continuance of its business hazardous to its policyholders, creditors, or the public.

4. Under the Order of Rehabilitation, the Commissioner has administered the assets of CAGC in accordance with N.C. Gen. Stat. § 58-30-80, *et seq.* Under the Order of Rehabilitation,

the Commissioner, through his Special Deputy Insurance Commissioner, has filed Verified Quarterly Reports that show that CAGC is insolvent and evidence has been presented to show that CAGC is insolvent within the meaning of N.C. Gen. Stat. § 58-30-10(13).

5. CAGC is in such condition as to render the further transaction of its business hazardous to its policyholders, creditors or the public within the meaning of N.C. Gen. Stat. § 58-30-100(3).

6. Further attempts to rehabilitate CAGC would substantially increase the risk of loss to creditors, policyholders or the public, or such further attempts to rehabilitate CAGC would be futile.

7. The Commissioner is entitled to be appointed as Liquidator of CAGC under the provisions of Article 30 of Chapter 58 of the North Carolina General Statutes.

CONCLUSIONS OF LAW

1. The Commissioner has initiated this proceeding in his official capacity on behalf of the State of North Carolina pursuant to N.C. Gen. Stat. §§ 58-30-15, 58-30-20, 58-30-65, 58-30-95, 58-30-100, 58-30-105, and Article 38 of Chapter 1 of the North Carolina General Statutes by filing a Verified Petition for an Order of Liquidation with the Clerk of Superior Court of Wake County.

2. This proceeding is now subject to the provisions of Article 30 of Chapter 58 of the North Carolina General Statutes.

3. Grounds for the entry of an Order of Liquidation and Order of Injunction exist.

4. The Commissioner is entitled to be appointed as the Liquidator of CAGC under the provisions of Article 30 of Chapter 58 of the North Carolina General Statutes.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

COMMISSIONER APPOINTED AS LIQUIDATOR

1. The Honorable Wayne Goodwin, in his capacity as Commissioner of Insurance of the State of North Carolina, is appointed as Liquidator of CAGC pursuant to the provisions of Article 30 of Chapter 58 of the North Carolina General Statutes.

TITLE OF ASSETS AND RECORD NOTICE OF TITLE

2. This Order of Liquidation shall, by operation of law, vest title of all assets of CAGC in the Liquidator and the filing or recording of this Order with the Clerk of the Superior Court and the Register of Deeds of the county in which CAGC's principal office or place of business is located, or, in the case of real estate, with the Register of Deeds of the county where the real estate is located, shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that Register of Deeds would have imparted.

POSSESSION AND CONTROL OF ASSETS

3. As liquidator, the Commissioner is hereby authorized, empowered and directed to take into his possession and control all property, stocks, bonds, securities, accounts, monies, books, papers, records, microfilm, electronic files or electronic data, information technology programs, any data base or data base program, printouts and computations (both tangible and stored in memory), electronic, optical or magnetic storage devices or media, tapes, disks, or drives, and all other assets of any and all kinds and nature whatsoever belonging to CAGC, wherever located, to which the liquidator may be entitled by virtue of the provisions of Article 30 of Chapter 58 of the North Carolina General Statutes, and to administer them under the general supervision of this Court.

OTHER POWERS OF LIQUIDATOR

4. The Commissioner shall be vested with such other duties, powers, authorities, and obligations as are provided by Article 30 of Chapter 58 of the North Carolina General Statutes.

APPOINTMENT OF SPECIAL DEPUTY COMMISSIONER AND EMPLOYEES

5. Pursuant to N.C. Gen. Stat. § 58-30-120, the Commissioner is authorized to appoint a Special Deputy Insurance Commissioner to act for the liquidator in connection with this proceeding, and the liquidator or said Special Deputy Insurance Commissioner is authorized to employ and to discharge such counsel, clerks or assistants as the liquidator or said Special Deputy Insurance Commissioner deems to be necessary, or to utilize State employees for said purposes if he has determined that the use of State employees to conduct certain aspects of the liquidation is the most cost effective method of administering the delinquency proceeding and that this action benefits the estate and its creditors, to fix the reasonable compensation for counsel, clerks or assistants or other such personnel, other than State employees, at customary rates, and to obtain such bonds, errors and omissions insurance, or excess liability insurance, in addition to that already provided for employees of the North Carolina Department of Insurance, as a reasonably prudent person would deem to be appropriate, that the compensation for the services of the Special Deputy Insurance Commissioner, and for counsel, clerks or assistants and employees, and all expenses of taking possession of CAGC and of conducting the delinquency proceedings against CAGC to be paid out of the funds of CAGC.

LIQUIDATOR'S EXPENSES

6. The Commissioner, acting as the liquidator, is authorized, empowered and directed to incur such expenses for communication and traveling expenses for himself, his agents or attorneys as may be necessary in the proper administration of his duties as liquidator and also to

incur such other expenses as the liquidator may deem advisable or necessary in order to properly conduct and perform his duties as liquidator.

INJUNCTION AGAINST INTERFERING WITH LIQUIDATION

7. All persons, firms, corporations, municipalities, counties and the State of North Carolina are hereby enjoined and restrained from interfering in any manner with the property or assets of CAGC or with the Commissioner, acting as liquidator, in the exercise of his duties, and they are further enjoined and restrained from instituting any suit or other action against the liquidator or CAGC's property except by the permission of this Court first had and obtained.

STAY OF PENDING ACTIONS

8. Any and all pending actions against CAGC are hereby stayed effective as of the date of this Order.

INJUNCTION AGAINST ACTIONS BY CREDITORS

9. All persons, firms and corporations receiving actual notice of this Order are hereby stayed from the obtaining of preferences, judgments, attachments, garnishments, or liens against CAGC or its assets, or the levying of execution or foreclosure against CAGC or its assets, until further Order of the Court.

INJUNCTION AGAINST WASTE, TRANSACTION OF BUSINESS

10. CAGC, its trustees, officers, directors, agents, employees and all other persons are hereby enjoined and restrained from the disposition, waste or impairment of any of CAGC's property or the transaction of further business unless supervised and approved by the liquidator or his agents or deputies until further order of the Court, and all such persons are hereby required to transfer to the liquidator any and all property of CAGC wheresoever situated.

INJUNCTION AGAINST ALLOWING OBTAINMENT OF PREFERENCES

11. CAGC, its trustees, officers, agents, servants, employees, directors and attorneys are hereby enjoined and restrained from doing or permitting to be done anything which may allow or suffer the obtainment of preferences, judgments, attachments or other liens, or the initiation of a levy against CAGC, without prior permission of this Court.

ACCOUNTING AND REPORTING

12. Pursuant to N.C. Gen. Stat. § 58-30-105(e), the liquidator shall make a quarterly report to the Wake County Superior Court and the liquidator shall include in said report a statement of receipts and disbursements to date and a balance sheet, that one original be filed with the Clerk of Superior Court and a copy shall be submitted to the Judge presiding over the liquidation, that the requirement of this Order shall be satisfied by filing the accounting as provided and the liquidator shall not be required to seek the Court's approval of said accounting, that this accounting may be amended or supplemented in the liquidator's discretion.

COMMISSIONER'S BOND

13. The official bond of the Commissioner of Insurance of the State of North Carolina shall be sufficient to serve for the faithful performance of his duties and obligations herein imposed.

EFFECTIVE DATE OF ORDER OF LIQUIDATION

14. This Order shall be effective as of 17 January 2014.

15. The Court references: (a) the Order on Motion for Summary Judgment pursuant to Rule 56 of the North Carolina Rules of Civil Procedure; and (b) the Judgment pursuant to Rule 52 of the North Carolina Rules of Civil Procedure on other claims and defenses that were tried before the Court at the 18 November 2013 session of the Wake County Superior Court, which

written rulings of the Court have been signed on the same date as this Order of Liquidation.

16. The Court retains jurisdiction of this matter for the determination of such further matters in connection with this liquidation that may properly come before the Court.

This the 6th day of January, 2014.

Shannon R. Joseph
Superior Court Judge Presiding

BEFORE THE STATE OF SOUTH CAROLINA
DEPARTMENT OF INSURANCE

In the Matter of:	)	
	)	
	)	Order of Revocation
CAGC Insurance Company,		
1100 Euclid Avenue	)	of Certificate of Authority
Charlotte, NC 28203	)	
	)	
	)	

S.C. Code Ann. § 38-5-120(A) (2002) requires "(t)he director or his designee of the State of South Carolina Department of Insurance shall revoke or suspend certificates of authority granted to an insurer and its officers and agents if he is of the opinion upon examination or other evidence" that "(t)he insurer is in an unsound condition" or "(t)he insurer's condition renders its proceedings hazardous to the public or to its policyholders." S.C. Code Ann. § 38-5-120(B) (2002) goes on to require that "(n)o new business may then be done by the insurer or its agents in this State while the default or disability continues nor until its authority to transact business is restored by the director or his designee."On January 6, 2014, an order was entered placing CAGC Insurance Company into liquidation effective January 17, 2014 by the General Court of Justice for Wake County, North Carolina The Court found CAGC Insurance Company to be insolvent. A copy of that order is attached as Exhibit A.

Based on this information, I have determined CAGC Insurance Company be in an unsound condition and its further proceedings to be hazardous to the public and its State of South Carolina policyholders. It is, therefore, ordered that the Certificate of Authority of CAGC Insurance Company to transact insurance business within the State of South Carolina should be, and is hereby, revoked. No new business may be transacted by CAGC Insurance Company within this State. A copy of this Order of Revocation must be transmitted by the Department of Insurance to the National Association of Insurance Commissioners for its distribution to its member states, and it must be published in a newspaper of general, statewide circulation. Further, all licensed State of South Carolina resident and non-resident insurance agents of CAGC Insurance Company, if any, must be given notice by the Department of Insurance, by regular mail, of this Order of Revocation, and no new licenses or appointments may be issued by the Department to agents of CAGC Insurance Company.

This order becomes effective upon the date of my signature below.

Raymond Farmer
Director of Insurance

January 17, 2014 at
Columbia, South Carolina.

EXHIBIT B

Exhibit A

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
12 CVS 001270

WAYNE GOODWIN, as Commissioner of Insurance of the State of North Carolina,
Petitioner,

v.

CAGC INSURANCE COMPANY,
Respondent,

v.

NORTH CAROLINA INSURANCE GUARANTY ASSOCIATION,
Intervenor, Respondent, Counterclaimant, and Cross-Claimant,

v.

NORTH CAROLINA SELF-INSURANCE SECURITY ASSOCIATION,
Intervenor, Respondent, Counterclaimant, and Cross-Claimant.

ORDER OF LIQUIDATION

THIS CAUSE came on to be heard by the undersigned Special Superior Court Judge, Honorable Shannon R. Joseph, presiding in this case by designation pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts, at the 18 November 2013 session of Wake County Superior Court upon the Verified Petition filed herein on behalf of the State of North Carolina by the Honorable Wayne Goodwin in his capacity as Commissioner of Insurance of the State of North Carolina ("Commissioner") seeking the entry of an Order of Liquidation against CAGC Insurance Company ("CAGC"), and for injunctive relief. The Commissioner was

represented by David W. Boone and M. Denise Stanford of the North Carolina Attorney General's office, CAGC was represented by David Liggett and Jim Conner, Attorneys at Law of Raleigh, North Carolina, the North Carolina Insurance Guaranty Association (NCIGA) was represented by Chris Blake, Attorney at Law of Raleigh, North Carolina, and the North Carolina Self-Insurance Security Association (NCSISA) was represented by Cathy Stuart and Sandhya Gopal, Attorneys at Law of Raleigh, North Carolina. After reviewing the file and the Verified Petition and considering the representations of counsel on the record that no evidence would be presented in opposition to liquidation, the Court finds and concludes as set forth below.

FINDINGS OF FACT

1. Petitioner is the Commissioner of Insurance of the State of North Carolina.

2. Respondent CAGC is a property and casualty insurance company since 1 July 2008, having merged with CompTrust AGC, a North Carolina group self-insurer under Article 47 of Chapter 58 of the North Carolina General Statutes, and CAGC is incorporated under the laws of the State of North Carolina. On or about 18 January 2012, CAGC reported to the North Carolina Department of Insurance that its admitted assets were less than its liabilities by the amount of $146,510 and CAGC had a negative surplus as of 30 November 2011.

3. On 26 January 2012, this Court entered an Order of Rehabilitation and Order of Injunction against CAGC with the written consent of CAGC. The Order of Rehabilitation found that CAGC was in an impaired financial condition within the meaning of N.C. Gen. Stat. § 58-30-12 (a) (2) and that CAGC was in such condition as to render the continuance of its business hazardous to its policyholders, creditors, or the public.

4. Under the Order of Rehabilitation, the Commissioner has administered the assets of CAGC in accordance with N.C. Gen. Stat. § 58-30-80, *et seq.* Under the Order of Rehabilitation,

the Commissioner, through his Special Deputy Insurance Commissioner, has filed Verified Quarterly Reports that show that CAGC is insolvent and evidence has been presented to show that CAGC is insolvent within the meaning of N.C. Gen. Stat. § 58-30-10(13).

5. CAGC is in such condition as to render the further transaction of its business hazardous to its policyholders, creditors or the public within the meaning of N.C. Gen. Stat. § 58-30-100(3).

6. Further attempts to rehabilitate CAGC would substantially increase the risk of loss to creditors, policyholders or the public, or such further attempts to rehabilitate CAGC would be futile.

7. The Commissioner is entitled to be appointed as Liquidator of CAGC under the provisions of Article 30 of Chapter 58 of the North Carolina General Statutes.

CONCLUSIONS OF LAW

1. The Commissioner has initiated this proceeding in his official capacity on behalf of the State of North Carolina pursuant to N.C. Gen. Stat. §§ 58-30-15, 58-30-20, 58-30-65, 58-30-95, 58-30-100, 58-30-105, and Article 38 of Chapter 1 of the North Carolina General Statutes by filing a Verified Petition for an Order of Liquidation with the Clerk of Superior Court of Wake County.

2. This proceeding is now subject to the provisions of Article 30 of Chapter 58 of the North Carolina General Statutes.

3. Grounds for the entry of an Order of Liquidation and Order of Injunction exist.

4. The Commissioner is entitled to be appointed as the Liquidator of CAGC under the provisions of Article 30 of Chapter 58 of the North Carolina General Statutes.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

COMMISSIONER APPOINTED AS LIQUIDATOR

1. The Honorable Wayne Goodwin, in his capacity as Commissioner of Insurance of the State of North Carolina, is appointed as Liquidator of CAGC pursuant to the provisions of Article 30 of Chapter 58 of the North Carolina General Statutes.

TITLE OF ASSETS AND RECORD NOTICE OF TITLE

2. This Order of Liquidation shall, by operation of law, vest title of all assets of CAGC in the Liquidator and the filing or recording of this Order with the Clerk of the Superior Court and the Register of Deeds of the county in which CAGC's principal office or place of business is located, or, in the case of real estate, with the Register of Deeds of the county where the real estate is located, shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that Register of Deeds would have imparted.

POSSESSION AND CONTROL OF ASSETS

3. As liquidator, the Commissioner is hereby authorized, empowered and directed to take into his possession and control all property, stocks, bonds, securities, accounts, monies, books, papers, records, microfilm, electronic files or electronic data, information technology programs, any data base or data base program, printouts and computations (both tangible and stored in memory), electronic, optical or magnetic storage devices or media, tapes, disks, or drives, and all other assets of any and all kinds and nature whatsoever belonging to CAGC, wherever located, to which the liquidator may be entitled by virtue of the provisions of Article 30 of Chapter 58 of the North Carolina General Statutes, and to administer them under the general supervision of this Court.

OTHER POWERS OF LIQUIDATOR

4. The Commissioner shall be vested with such other duties, powers, authorities, and obligations as are provided by Article 30 of Chapter 58 of the North Carolina General Statutes.

APPOINTMENT OF SPECIAL DEPUTY COMMISSIONER AND EMPLOYEES

5. Pursuant to N.C. Gen. Stat. § 58-30-120, the Commissioner is authorized to appoint a Special Deputy Insurance Commissioner to act for the liquidator in connection with this proceeding, and the liquidator or said Special Deputy Insurance Commissioner is authorized to employ and to discharge such counsel, clerks or assistants as the liquidator or said Special Deputy Insurance Commissioner deems to be necessary, or to utilize State employees for said purposes if he has determined that the use of State employees to conduct certain aspects of the liquidation is the most cost effective method of administering the delinquency proceeding and that this action benefits the estate and its creditors, to fix the reasonable compensation for counsel, clerks or assistants or other such personnel, other than State employees, at customary rates, and to obtain such bonds, errors and omissions insurance, or excess liability insurance, in addition to that already provided for employees of the North Carolina Department of Insurance, as a reasonably prudent person would deem to be appropriate, that the compensation for the services of the Special Deputy Insurance Commissioner, and for counsel, clerks or assistants and employees, and all expenses of taking possession of CAGC and of conducting the delinquency proceedings against CAGC to be paid out of the funds of CAGC.

LIQUIDATOR'S EXPENSES

6. The Commissioner, acting as the liquidator, is authorized, empowered and directed to incur such expenses for communication and traveling expenses for himself, his agents or attorneys as may be necessary in the proper administration of his duties as liquidator and also to

incur such other expenses as the liquidator may deem advisable or necessary in order to properly conduct and perform his duties as liquidator.

INJUNCTION AGAINST INTERFERING WITH LIQUIDATION

7. All persons, firms, corporations, municipalities, counties and the State of North Carolina are hereby enjoined and restrained from interfering in any manner with the property or assets of CAGC or with the Commissioner, acting as liquidator, in the exercise of his duties, and they are further enjoined and restrained from instituting any suit or other action against the liquidator or CAGC's property except by the permission of this Court first had and obtained.

STAY OF PENDING ACTIONS

8. Any and all pending actions against CAGC are hereby stayed effective as of the date of this Order.

INJUNCTION AGAINST ACTIONS BY CREDITORS

9. All persons, firms and corporations receiving actual notice of this Order are hereby stayed from the obtaining of preferences, judgments, attachments, garnishments, or liens against CAGC or its assets, or the levying of execution or foreclosure against CAGC or its assets, until further Order of the Court.

INJUNCTION AGAINST WASTE, TRANSACTION OF BUSINESS

10. CAGC, its trustees, officers, directors, agents, employees and all other persons are hereby enjoined and restrained from the disposition, waste or impairment of any of CAGC's property or the transaction of further business unless supervised and approved by the liquidator or his agents or deputies until further order of the Court, and all such persons are hereby required to transfer to the liquidator any and all property of CAGC wheresoever situated.

INJUNCTION AGAINST ALLOWING OBTAINMENT OF PREFERENCES

11. CAGC, its trustees, officers, agents, servants, employees, directors and attorneys are hereby enjoined and restrained from doing or permitting to be done anything which may allow or suffer the obtainment of preferences, judgments, attachments or other liens, or the initiation of a levy against CAGC, without prior permission of this Court.

ACCOUNTING AND REPORTING

12. Pursuant to N.C. Gen. Stat. § 58-30-105(e), the liquidator shall make a quarterly report to the Wake County Superior Court and the liquidator shall include in said report a statement of receipts and disbursements to date and a balance sheet, that one original be filed with the Clerk of Superior Court and a copy shall be submitted to the Judge presiding over the liquidation, that the requirement of this Order shall be satisfied by filing the accounting as provided and the liquidator shall not be required to seek the Court's approval of said accounting, that this accounting may be amended or supplemented in the liquidator's discretion.

COMMISSIONER'S BOND

13. The official bond of the Commissioner of Insurance of the State of North Carolina shall be sufficient to serve for the faithful performance of his duties and obligations herein imposed.

EFFECTIVE DATE OF ORDER OF LIQUIDATION

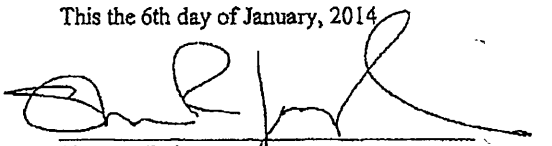
14. This Order shall be effective as of 17 January 2014.

15. The Court references: (a) the Order on Motion for Summary Judgment pursuant to Rule 56 of the North Carolina Rules of Civil Procedure; and (b) the Judgment pursuant to Rule 52 of the North Carolina Rules of Civil Procedure on other claims and defenses that were tried before the Court at the 18 November 2013 session of the Wake County Superior Court, which

written rulings of the Court have been signed on the same date as this Order of Liquidation.

16. The Court retains jurisdiction of this matter for the determination of such further matters in connection with this liquidation that may properly come before the Court.

This the 6th day of January, 2014.



Shannon R. Joseph
Superior Court Judge Presiding

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	
	)	PROOF OF ADR OR EXEMPTION
Raymond G. Farmer, etc. Plaintiff,	)	
	)	
vs.	)	FILE NO.: 2014-CP-40-_____
	)	
CAGC Insurance Company in Liquidation Defendant.	)	
	)	

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

PURSUANT to the South Carolina Alternative Dispute Resolution Rules (SCADR):

A. X I certify that this case is exempt from ADR for the following reason and the parties wish to exercise that exemption:

Ins. Co. Ancillary Receivership	NA
Plaintiff/Attorney for Plaintiff	Defendant/Attorney for Defendant
Geoffrey R. Bonham	NA
Print Name	Print Name
803-737-6132/803-737-6227	NA
Phone/Fax	Phone/Fax
Date: January 17, 2014	

B. NA 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

NA

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

NA

3. The ADR was conducted on NA , 20 NA

SCADR 104A (11/2012)

4. As a result of ADR, this case should be considered (please check one);

(NA) Fully Settled.

( ) by Consent Judgment, to be filed by _____

or ( ) Voluntary Dismissal to be filed by _____

(NA) Partially Settled.

(NA) At an Impasse.

(NA) In need of further ADR I ☐ am ☐ am not willing to continue as a neutral. I recommend that ADR resume as of _____.

5. Plaintiff ☐ was present ☐ was not present
Defendant ☐ was present ☐ was not present

6. Other partcipants were:

NA Lawyer for Defendant _____
NA Lawyer for Plaintiff _____
NA Representative for Insurance Carrier _____
NA Guardian *ad Litem* _____
NA Experts
NA Others _____

7. Choice of the neutral was by:

NA Stipulation
NA Court Order

8. The total number of hours spent in ADR was: NA hours.

9. Further comments of the neutral:

_____

_____
Neutral's Signature

Date: NA

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Raymond G. Farmer, as Director of the South Carolina Department of Insurance,
Petitioner)

vs.

CAGC Insurance Company, In Liquidation,
Resondent.)

South Carolina Property and Casualty Insurance Guaranty Association,
Intervenor- Petitioner,)

vs.

CAGC Insurance Company, in Liquidation; Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in Liquidation; and CompTrustAGC of South Carolina a/k/a CompTrustAGC of South Carolina, Inc.,
Intervenor- Respondents.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP - 40- 0313

RICHLAND COUNTY
FILED
2014 JUN 17 PM 3:02
JEANNETTE W. WALTERS
CLERK OF COURT

Submitted By: Tara C. Sullivan, Esq.
Address: 1320 Main Street
17th Floor
Columbia, SC 29201

SC Bar #: 79806
Telephone #: 803-255-9591
Fax #: 803-255-9079
Other:
E-mail: tara.sullivan@nelsonmullins.com

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

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

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

NATURE OF ACTION *(Check One Box Below)*

Contracts	Torts - Professional Malpractice	Torts – Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	Previous Notice of Intent Case #	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	20___-CP-____-_____	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)	☐ Notice/ File Med Mal (230)	☐ Personal Injury (350)	☐ Possession (450)
	☐ Other (299)	☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☐ Other (499)

Inmate Petitions	Administrative Law/Relief	Judgments/Settlements	Appeals
☐ PCR (500)	☐ Reinstate Drv. License (800)	☐ Death Settlement (700)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Judicial Review (810)	☐ Foreign Judgment (710)	☐ Magistrate-Civil (910)
☐ Habeas Corpus (530)	☐ Relief (820)	☐ Magistrate's Judgment (720)	☐ Magistrate-Criminal (920)
☐ Other (599)	☐ Permanent Injunction (830)	☐ Minor Settlement (730)	☐ Municipal (930)
	☐ Forfeiture-Petition (840)	☐ Transcript Judgment (740)	☐ Probate Court (940)
	☐ Forfeiture—Consent Order (850)	☐ Lis Pendens (750)	☐ SCDOT (950)
	☐ Other (899)	☐ Transfer of Structured	☐ Worker's Comp (960)

Special/Complex /Other

- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☒ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)
- ☐ Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☑ Other (799)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Submitting Party Signature: Isaac Sullivan **Date:** 06/16/2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

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

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

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

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

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Raymond G. Farmer, as Director of the South Carolina Department of Insurance, Petitioner, vs. CAGC Insurance Company, In Liquidation, Respondent.	)	Civil Action No. 2014-CP-40-0313 **SUMMONS**
South Carolina Property and Casualty Insurance Guaranty Association, Intervenor-Petitioner. vs. CAGC Insurance Company, in Liquidation; Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in Liquidation; and CompTrustAGC of South Carolina a/k/a CompTrustAGC of South Carolina, Inc., Intervenor-Respondents.	)	

RICHLAND COUNTY
FILED
2014 JUN 17 PM 3:02
JEANNETTE W. McBRIDE
C.C.P. & G.S.

TO: THE INTERVENOR-RESPONDENTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint for Declaratory Judgment in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint upon the subscribers at 1320 Main Street, Post Office Box 11070, Columbia, South Carolina 29211, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the

time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Tara C. Sullivan

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(803) 799-2000

Attorneys for South Carolina Property and Casualty Insurance Guaranty Association

Columbia, South Carolina

June 16, 2014.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Raymond G. Farmer, as Director of the South Carolina Department of Insurance, Petitioner, vs. CAGC Insurance Company, In Liquidation, Respondent.	)	Civil Action No. 2014-CP-40-0313 **COMPLAINT FOR DECLARATORY JUDGMENT**
South Carolina Property and Casualty Insurance Guaranty Association, Intervenor-Petitioner. vs. CAGC Insurance Company, in Liquidation; Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in Liquidation; and CompTrustAGC of South Carolina a/k/a CompTrustAGC of South Carolina, Inc., Intervenor-Respondents.	)	

RICHLAND COUNTY FILED
2014 JUN 17 PM 2:02
JEANNETTE W. WALKER C.C.P. & G.S.

The Intervenor-Petitioner South Carolina Property and Casualty Insurance Guaranty Association (the "Association"), complaining of the Intervenor-Respondents CAGC Insurance Company, in Liquidation ("CAGC"); Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in Liquidation ("Receiver"); and CompTrustAGC of

South Carolina a/k/a CompTrustAGC of South Carolina, Inc. ("CompTrust") herein, would respectfully show unto this Court as follows:

PARTIES

1. The Association is an unincorporated legal entity arising and existing under the provisions of the South Carolina Property and Casualty Insurance Guaranty Association Act, Chapter 31 of Article 38 of the South Carolina Code of Laws, S.C. Code § 38-31-10 et seq. (the "Act").

2. CAGC is a corporation formed and organized as an insurance company under Chapters 58 and 55 of the North Carolina General Statutes under the name CAGC Insurance Company, as shown by a certified copy of its Articles of Incorporation issued on December 31, 2007, which are appended as **Exhibit A**, and incorporated herein by reference as if fully set out.

3. On or about October 27, 2008, CAGC became a licensed insurer in South Carolina pursuant to Chapter 5 of Title 38 of the South Carolina Code of Laws, S.C. Code § 38-5-10 et seq.

4. Raymond G. Farmer is the Director of the South Carolina Department of Insurance and was appointed as the Ancillary Receiver of CAGC by Order of this Court filed March 10, 2014.

5. CompTrust is on information and belief an unincorporated workers' compensation self-insurance trust, and CompTrustAGC of South Carolina is one and the same as the entity identified as CompTrustAGC of South Carolina, Inc.

6. On information and belief, CompTrust is not and has never been a licensed insurer in South Carolina pursuant to Chapter 5 of Title 38 of the South Carolina Code of Laws, S.C. Code § 38-5-10 et seq.

FACTUAL BACKGROUND

7. From July 1, 1982, through December 28, 2010, CompTrust, as a licensed self-insured organization, issued workers' compensation coverage (the "Self-Insured Coverage") to its self-insured members.

8. On or after October 27, 2008, after becoming licensed as an insurer in South Carolina, CAGC began issuing new South Carolina workers' compensation liability insurance policies to prior participants in CompTrust (the "Licensed Policies").

9. On December 28, 2010, CompTrust and CAGC executed an agreement titled Self-Insurance Loss Portfolio Transfer Assumption Agreement (the "LPT Agreement"). A true and correct copy of the LPT Agreement is attached hereto as **Exhibit B.**

10. Under the terms of the LPT Agreement, CompTrust paid $3,586,527.01 for CAGC to assume all of CompTrust's liabilities arising out of the Self-Insured Coverage.

11. On November 30, 2011 — less than a year after the execution of the LPT Agreement — a review by the South Carolina Department of Insurance (the "Department") determined that CAGC was financially unsound.

12. On January 18, 2012, pursuant to its authority under S.C. Code § 38-5-120(B), the Department suspended CAGC's authority to transact insurance business in South Carolina.

13. Also in January 2012, CAGC was placed into receivership in its state of domicile, North Carolina.

14. CAGC was declared insolvent by a court of competent jurisdiction in its state of domicile, North Carolina, when it became the subject of an Order of Liquidation entered and filed with the Clerk of Superior Court of Wake County, North Carolina, on January 6, 2014.

15. There is no dispute that all injuries covered by the Licensed Policies issued by CAGC are "covered claims" which are the responsibility of the Association.

16. The Association denies any responsibility related to claims related in any way to the Self-Insured Coverage provided by CompTrust, including, but not limited to, any liabilities purportedly transferred from CompTrust to CAGC.

17. Although the Association disputes any liability on the Self-Insured Coverage as set forth in more detail below, it has paid and continues to pay those workers' compensation claims under a reservation of rights that it is not responsible for such payments of claims arising under the Self-Insured Coverage.

18. No workers' compensation claimants will be without protection during the pendency of this Motion.

DECLARATORY RELIEF SOUGHT

19. The Association requests, and interests of the parties to this action require, a judicial determination, in accordance with the Act and the Uniform Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10 to -140, as to whether the Association is obligated to pay the self-insured claims brought under and pursuant to any Self-Insured Coverage issued by CompTrust.

20. There is an actual controversy between the Association and CAGC, the Receiver, and CompTrust as to the Association's statutory obligations, and a declaratory judgment is necessary for the purpose of settling and affording relief from uncertainty with

respect to the rights, status, and future legal responsibilities between the Association and CAGC, the Receiver, and CompTrust.

21. Under the Act, the Association is obligated to pay only covered claims pursuant to S.C. Code Ann. § 38-31-60.

22. A "covered claim" is defined in the Act as follows:

> [A]n unpaid claim, including one of unearned premiums, which arises out of and is within the coverage and is subject to the applicable limits on an **insurance policy to which this chapter applies issued by an insurer, if the insurer is an insolvent insurer** and (a) the claimant or insured is a resident of this State at the time of the insured event, if for entities other than an individual, the residence of a claimant or insured is the state in which its principal place of business is located at the time of the insured event or (b) the claim is for first-party benefits for damage to property permanently located in this State.

S.C. Code Ann. § 38-31-20(8) (emphasis added).

23. Importantly, a covered claim must arise out of: (1) an insurance policy; (2) to which the Act applies; and (3) which is issued by an "insolvent insurer." S.C. Code Ann. § 38-31-20(8).

24. First, the Self-Insured Coverage did not arise out an insurance policy because self-insured coverage does not constitute a "policy" by its very nature as defined by S.C. Code Ann. § 38-1-20 (defining "policy" as a "contract of insurance").

25. Second, the Act does not apply to self-insured coverage pursuant to S.C. Code Ann. § 38-31-30 and, as a result, self-insurers are not members of the Association and are not subject to any assessments by the Association.

26. Finally, the Self-Insured Coverage was not issued by an "insolvent insurer," which is defined in the Act as follows:

> [A]n insurer (a) **licensed to transact insurance in this State either at the time the policy was issued or when the insured event occurred** and (b) **determined**

> **to be insolvent by a court of competent jurisdiction in the insurer's state of domicile or of this State** and which the director or his designee has found fails to meet its obligation to policyholders in this State.

S.C. Code Ann. § 38-31-20(9) (emphasis added).

27. The Self-Insured Coverage was issued by CompTrust which has never been licensed to transact insurance in South Carolina and has not been declared to be insolvent or found to be failing to meet its obligation to policyholders in this State.

28. Further, as noted above, CompTrust did not issue any "policy" of insurance as self-insured coverage does not constitute an insurance policy by its very nature.

29. Therefore, the Self-Insured Coverage does not meet the definition of "covered claim," and the Association is not liable for the Self-Insured Coverage.

30. The LPT Agreement did not convert the nature of the Self-Insured Coverage into a "covered claim."

31. CAGC's assumption of CompTrust's liabilities under the Self-Insured Coverage does not amount to issuing a policy within the meaning of the Act, and the Association has no statutory obligations for any claims arising out of the Self-Insured Coverage previously issued by CompTrust.

32. Alternatively, even assuming that the assumption of the Self-Insured Coverage can be interpreted as a policy of insurance issued by CAGC, the Association would not be liable for the Self-Insured Coverage.

33. The Act "does not apply to" "insurance written on a retroactive basis to cover known losses which have resulted from an event with respect to which a claim has already been made, and the claim is known to the insurer at the time the insurance is bound." S.C. Code Ann. § 38-31-30(6).

34. At the time of the LPT Agreement, the losses incurred under the Self-Insured Coverage were known by CompTrust and CAGC because the events giving rise to the claims under the Self-Insured Coverage had already occurred, and the claims and reserves were already being carried on the books and financial records of CompTrust.

35. Therefore, such insurance would be "insurance written on a retroactive basis to cover known losses" for which the Association is not responsible.

WHEREFORE, the Association respectfully prays that the Court declare that it has no statutory obligation for any claims arising out of the Self-Insured Coverage because such claims are not "covered claims" as defined by the Act; CACG did not issue any policy of insurance by assuming the Self-Insured Coverage under the LPT Agreement; and/or the LPT Agreement would be "insurance written on a retroactive basis to cover known losses" for which the Association is not responsible.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Tara C. Sullivan

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(803) 799-2000

Attorneys for South Carolina Property and Casualty Insurance Guaranty Association

Columbia, South Carolina

June 16, 2014.

NORTH CAROLINA
Department of The Secretary of State

Be it known that, whereas Stephen Paul Gennett, Samuel Mark Hood, Robert Faison Hester, Julian Mobley Langston, Jr., Hugh K. Leatherman, Sr., Harry Lee Marshburn, William Mattox Marshburn, Thomas Michael Murphy, Charles Thomas Tagman, James Thomas Tharp, Sandhya Gopal Patel, Catherine Rosenthal Stuart, James Lee Stuart have associated themselves with the intention of forming a corporation under the name of CAGC INSURANCE COMPANY, for the purpose of engaging in a Fire Insurance, Miscellaneous Property Insurance, Water Damage Insurance, Burglary and Theft Insurance, Glass Insurance, Boiler and Machinery Insurance, Elevator Insurance, Collision Insurance, Personal Injury Liability Insurance, Property Damage Liability Insurance, Workers' Compensation and Employer's Liability Insurance, Fidelity and Surety Insurance, Motor Vehicle and Aircraft Insurance, Marine Insurance, Marine Protection and Indemnity Insurance, and Miscellaneous Insurance business, with a capital of $4,500,000, and have complied with the provisions of the statute of this State in such case made and provided, as appears from the following certified articles of incorporation:

EXHIBIT
A

C200736200034

SOSID: 1019329
Date Filed: 12/31/2007 12:31:00 PM
Elaine F. Marshall
North Carolina Secretary of State
C200736200034

ARTICLES OF INCORPORATION OF CAGC INSURANCE COMPANY

The undersigned, being natural persons of the age of eighteen (18) years or more and being the incorporators ("Incorporators") identified on Exhibit A, which is appended hereto and is incorporated herein by reference, hereby associate to form a corporation pursuant to Chapter 58 of the North Carolina General Statutes, entitled "Insurance" and Chapter 55 of the North Carolina General Statutes, entitled "Corporations," and any amendments thereto; and,

NOW, THEREFORE, in order to comply with N.C.G.S. § 58-7-35, the Incorporators submit the following Articles as a certificate as contemplated by the statute:

ARTICLE I

The name of the corporation is CAGC INSURANCE COMPANY.

ARTICLE II

Unless the period of duration of the corporation is subsequently amended the corporation shall terminate February 29, 2008.

ARTICLE III

The purposes for which the corporation is organized are to engage in all kinds of insurance business that stock fire and marine and stock casualty companies and stock fidelity and surety companies are now or may be hereafter authorized to do under the laws of North Carolina, and without limiting said authority, to do all such kinds of insurance business described in N.C.G.S.§ 58-7-15 (4), (5), (6), (7), (8), (9), (10), (12), (13), (14), (15), (16), (19), (20), (21), & (22) or any successor statute(s), namely:

(4) "Fire insurance," meaning insurance against loss of or damage to any property resulting from fire, including loss or damage incident to the extinguishment of a fire or to the salvaging of property in connection therewith.

(5) "Miscellaneous property insurance," meaning loss of or damage to property resulting from:

(a) Lightning, smoke or smudge, windstorm, tornado, cyclone, earthquake, volcanic eruption, rain, hail, frost and freeze, weather or climatic conditions, excess or deficiency of moisture, flood, the rising of the waters of the ocean or its tributaries, or

(b) Insects, or blights, or from disease of such property other than animals, or

(c) Electrical disturbance causing or concomitant with a fire or an explosion in public service or public utility property, or

(d) Bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe, vandalism or malicious mischief, strike or lockout, or explosion; but not including any kind of insurance specified in subdivision (9), except insurance against loss or damage to property resulting from:

1. Explosion of pressure vessels (except steam boilers of more than 15 pounds pressure) in buildings designed and used solely for residential purposes by not more than four families,

2. Explosion of any kind originating outside of the insured building or outside of the building containing the property insured,

3. Explosion of pressure vessels that do not contain steam or that are not operated with steam coils or steam jackets,

4. Electrical disturbance causing or concomitant with an explosion in public service or public utility property.

(6) "Water damage insurance," meaning insurance against loss or damage by water or other fluid or substance to any property resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires or of water pipes or other conduits or containers; or resulting from casual water entering through leaks or openings in buildings or by seepage through building walls; but not including loss or damage resulting from flood or the rising of the waters of the ocean or its tributaries; and including insurance against accidental injury of such sprinklers, pumps, fire apparatus, conduits, or containers.

(7) "Burglary and theft insurance," meaning:

(a) Insurance against loss of or damage to any property resulting from burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation, or wrongful conversion, disposal or concealment by any person or persons, or from any attempt at any of the foregoing, and

(b) Insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers or documents, resulting from any cause, except while in the custody or possession of and being transported by any carrier for hire or in the mail.

(8) "Glass insurance," meaning insurance against loss of or damage to glass and its appurtenances resulting from any cause.

(9) "Boiler and machinery insurance," meaning insurance against loss of or damage to any property of the insured, resulting from the explosion of or injury to:

(a) Any boiler, heater or other fired pressure vessel;

(b) Any unfired pressure vessel;

(c) Pipes or containers connected with any of said boilers or vessels;

(d) Any engine, turbine, compressor, pump or wheel;

(e) Any apparatus generating, transmitting or using electricity;

(f) Any other machinery or apparatus connected with or operated by any of the previously named boilers, vessels or machines; and including the incidental power to make inspections of and to issue certificates of inspection upon, any such boilers, apparatus, and machinery, whether insured or otherwise.

(10) "Elevator insurance," meaning insurance against loss of or damage to any property of the insured, resulting from the ownership, maintenance or use of elevators, except loss or damage by fire.

(12) "Collision insurance," meaning insurance against loss of or damage to any property of the insured resulting from collision of any other object with the property, but not including collision to or by elevators or to or by vessels, craft, piers, or other instrumentalities of ocean or inland navigation.

(13) "Personal injury liability insurance," meaning insurance against legal liability of the insured, and against loss, damage, or expense incident to a claim of such liability; and including an obligation of the insurer to pay medical, hospital, surgical, or funeral benefits; and in the case of automobile liability insurance including also disability and death benefits to injured persons, irrespective of legal liability of the insured,

arising out of the death or injury of any person, or arising out of injury to the economic interests of any person as a result of negligence in rendering expert, fiduciary, or professional service; but not including any kind of insurance specified in subdivision (15).

(14) "Property damage liability insurance," meaning insurance against legal liability of the insured, and against loss, damage or expense incident to a claim of such liability, arising out of the loss or destruction of, or damage to, the property of any other person, but not including any kind of insurance specified in subdivisions (13) or (15).

(15) "Workers' compensation and employer's liability insurance," meaning insurance against the legal liability, whether imposed by common law or by statute or assumed by contract, of any employer for the death or disablement of, or injury to, the employer's employee.

(16) "Fidelity and surety insurance," meaning:

(a) Guaranteeing the fidelity of persons holding positions of public or private trust;

(b) Becoming surety on, or guaranteeing the performance of, any lawful contract except the following:

(1) A contract of indebtedness secured by title to, or mortgage upon, or interest in, real or personal property;

(2) Any insurance contract except reinsurance;

(c) Becoming surety on, or guaranteeing the performance of, bonds and undertakings required or permitted in all judicial proceedings or otherwise by law allowed, including surety bonds accepted by states and municipal

authorities in lieu of deposits as security for the performance of insurance contracts;

(d) Guaranteeing contracts of indebtedness secured by any title to, or interest in, real property, only to the extent required for the purpose of refunding, extending, refinancing, liquidating or salvaging obligations heretofore lawfully made and guaranteed;

(e) Indemnifying banks, bankers, brokers, financial or moneyed corporations or associations against loss resulting from any cause of bills of exchange, notes, bonds, securities, evidences of debts, deeds, mortgages, warehouse receipts, or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semiprecious stones, including any loss while the same are being transported in armored motor vehicles, or by messenger; but not including any other risks of transportation or navigation; also against loss or damage to such an insured's premises, or to the insured's furnishings, fixtures, equipment, safes and vaults therein, caused by burglary, robbery, theft, vandalism or malicious mischief, or any attempt thereat.

(19) "Motor vehicle and aircraft insurance," meaning insurance against loss of or damage resulting from any cause to motor vehicles or aircraft and their equipment, and against legal liability of the insured for loss or damage to another's property resulting from the ownership, maintenance or use of motor vehicles or aircraft and against loss, damage or expense incident to a claim of such liability.

(20) "Marine insurance," meaning insurance against any and all kinds of loss or damage

to:

(a) Vessels, craft, aircraft, cars, automobiles and vehicles of every kind, as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same or during any delays, storage, transshipment, or reshipment incident thereto, including marine builder's risks and all personal property floater risks, and

(b) Person or to property in connection with or appertaining to a marine, inland marine, transit or transportation insurance, including liability for loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance, or use of the subject matter of the insurance (but not including life insurance or surety bonds nor insurance against loss because of bodily injury to the person arising out of the ownership, maintenance or use of automobiles), and

(c) Precious stones, jewels, jewelry, gold, silver, and other precious metals, whether used in business or trade or otherwise and whether the same be in course of transportation or otherwise, and

(d) Bridges, tunnels and other instrumentalities of transportation and

communication (excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage) unless fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion are the only hazards to be covered; piers, wharves, docks and slips, excluding the risks of fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion; other aids to navigation and transportation, including dry docks and marine railways against all risks.

(21) "Marine protection and indemnity insurance," meaning insurance against, or against legal liability of the insured for, loss, damage, or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person.

(22) "Miscellaneous insurance," meaning insurance against any other casualty authorized by the charter of the company, not included in subdivisions (1) to (21) of this section, which is a proper subject of insurance.

ARTICLE IV

The business of the corporation will be operated as follows:

(a) The Corporation will be operated as a stock company

and in accordance with the applicable provisions of Article 7, Chapter 58 of the North Carolina General Statutes.

(b) The Corporation shall have the right to issue "participating policies" of insurance entitling the holders of such policies to receive policy dividends or other such premium refunds from the Corporation's unassigned surplus when declared by the Board of Directors and permitted by applicable law. The holder of any such policy shall not thereby be a member or shareholder of the Corporation and shall have no right to vote at any meeting of the shareholders by reason of such status.

(c) The Corporation shall engage in the business of insurance when: (1) pursuant to N.C.G.S. §58-7-35, these Articles have been approved by the Commissioner of Insurance and accepted for recording by the Secretary of State; and, (2) the Commissioner of Insurance has duly licensed the Corporation to do business in the State of North Carolina.

(d) In order to effectuate its corporate purposes, the Corporation, acting pursuant Article VII, shall have full power and authority to purchase, lease and otherwise acquire, hold, mortgage, pledge, assign, convey, and otherwise dispose of all kinds of property, both real and personal, both in this state and in all other states, territories and dependencies of the United States, and in foreign countries as may be authorized by law; to purchase the business, good will and all other property of any individual, firm or corporation as a going concern and assume all its debts, contracts, and obligations, provided said business is authorized by the powers contained herein; to invest the assets of the Corporation in any and every sort of kind of property both real and personal, wherever situated, subject to the laws of the State of North Carolina;

and, generally to perform all acts which may be deemed necessary or expedient for the proper and successful prosecution of the objects and purposes for which the Corporation is created.

ARTICLE V

The corporation shall have authority to issue two hundred fifty (250) shares of common stock with par value of One Thousand and no/100's Dollars ($1,000.00) per share. The shares of common stock so issued shall be of one class. "Par value" means the dollar amount fixed as the nominal or face value, as contrasted with the market value, of each share, and the par value shall appear on each share certificate.

ARTICLE VI

The corporation shall be authorized to write and issue such policies of insurance as are authorized and described in Article III above when and after it shall have a total paid-in capital of not less than One Million Eight Hundred Thousand Dollars ($1,800,000) and a paid-in initial surplus of Two Million Seven Hundred Thousand Dollars ($2,700,000), and shall have been duly licensed to do business by the North Carolina Commissioner of Insurance.

ARTICLE VII

The names and addresses of the Incorporators are set forth on Exhibit A which is attached hereto and incorporated herein by reference.

ARTICLE VIII

The Corporation shall be managed by a Board of Directors, said directors of such number and of such classifications as may be provided by the bylaws of the Corporation, which bylaws shall prescribe the rules for the government of the Corporation.

ARTICLE IX

The address of the initial registered office of the Corporation is 1100 Euclid Avenue, Charlotte, North Carolina, Mecklenburg County, 28203 and the name of the registered agent at such address is Stephen P. Gennett.

ARTICLE X

The initial Board of Directors shall consist of the Incorporators, who shall serve only until the first organizational meeting which will be held pursuant to N.C.G.S. § 58-7-40.

ARTICLE XI

Directors of the Corporation shall not be personally liable for monetary damages for breach of their duty as a Director, except for (1) acts or omissions not made in good faith that the Director at the time of such breach knew or believed were in conflict with the best interests of the Corporation, (ii) any liability under N.C.G.S. § 55-8-33, relating to unlawful distributions, or (iii) any transaction from which the Director derived an improper personal benefit. As used herein, the term "improper personal benefit" does not include a Director's compensation, or other incidental benefit for or on account of his service as a director, officer, employee, independent contractor, attorney, or consultant of the corporation.

If the North Carolina Business Corporation Act is amended to authorize corporate action that eliminates or limits the personal liability of directors that goes beyond the limitations contained in the foregoing provision of these Articles; then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the North Carolina Business Corporation Act, as so amended. Any repeal or modification of the foregoing provision eliminating and limiting the liability of directors shall not adversely affect any right or protection of a director of the corporation existing at the time of such repeal or modification.

ARTICLE XII

North Carolina, General Statutes Chapter 55, Article 9, entitled "Shareholder Protection Act" and Chapter 55, Article 9A, entitled "Control Share Acquisition" shall not apply to this corporation.

The Incorporators have set their hands and seals to ten (10 separate signature pages that follow.

This the 1st day of March, 2007.

[The rest of this page is intentionally left blank.]

Exhibit A
to
the Articles of Incorporation of
CAGC Insurance Company

List of Incorporators

The following are the Incorporators of CGAC Insurance Company:

Name	Residence	Professional Designation
Stephen Paul Gennett	Charlotte, NC	Association Executive
Samuel Mark Hood	Columbia, SC	Contractor
Robert Faison Hester	Asheville, NC	CPA
Julian Mobley Langston, Jr.*	Piedmont, SC	Contractor
Hugh K. Leatherman, Sr.*	Florence, SC	Contractor
Harry Lee Mashburn*	Columbia, SC	Contractor
William Mattox Marshburn*	Rocky Mount, NC	Contractor
Thomas Michael Murphy	Rock Hill, SC	Contractor
Charles Thomas Tagman	Charlotte, NC	CAGC Officer
James Thomas Tharp*	Columbia, SC	Contractor
Sandhya Gopal Patel	Raleigh, NC	Attorney
Catherine Rosenthal Stuart	Raleigh, NC	Attorney
James Lee Stuart	Raleigh, NC	Attorney

Signature Page
of
Catherine Rosenthal Stuart

Subscribing to the March 1, 2007 Articles of Incorporation of CAGC Insurance Company

(SEAL)
Catherine Rosenthal Stuart

State of North Carolina

Wake County

I, Esther Ehizuelen, a Notary Public, am authorized to administer oaths and take acknowledgments of deed and I do hereby certify that Catherine Rosenthal Stuart, an adult of over 18 years of age and a resident of Raleigh, Wake County, North Carolina, being duly sworn, appeared before me and signed the foregoing Articles of Incorporation of CAGC Insurance Company.

WITNESS my hand & seal, this the 28th day of December, 2007.

ESTHER EHIZUELEN NOTARY *** PUBLIC WAKE COUNTY, N.C.

Notary Public

My Commission Expires:

3/26/2010

Signature Page
of
James Lee Stuart

Subscribing to the March 1, 2007 Articles of Incorporation of CAGC Insurance Company

James Lee Stuart (SEAL)

State of North Carolina

Wake County

I, ESTHER EHIZUELEN, a Notary Public, am authorized to administer oaths and take acknowledgments of deed and I do hereby certify that James Lee Stuart, Patel, an adult over 18 years of age and a resident of Raleigh, Wake County, North Carolina, being duly sworn, appeared before me and signed the foregoing Articles of Incorporation of CAGC Insurance Company.

WITNESS my hand & seal, this the 28th day of December, 2007.

ESTHER EHIZUELEN NOTARY *** PUBLIC WAKE COUNTY, N.C.

Notary Public

My Commission Expires:

3/26/2010

Signature Page
of
Sandhya Gopal Patel

Subscribing to the March 1, 2007 Articles of Incorporation of CAGC Insurance Company

Sandhya Gopal Patel (SEAL)
Sandhya Gopal Patel

State of North Carolina

Wake County

I, Esther Ehizuelen, a Notary Public, am authorized to administer oaths and take acknowledgments of deed and I do hereby certify that Sandhya Gopal Patel, an adult being over 18 years of age and a resident of Raleigh, Wake County, North Carolina, being duly sworn, appeared before me and signed the foregoing Articles of Incorporation of CAGC Insurance Company.

WITNESS my hand & seal, this the 28th day of December, 2007.

ESTHER EHIZUELEN NOTARY *** PUBLIC WAKE COUNTY, N.C.

Notary Public

My Commission Expires:
3/26/2010

Signature Page
of
Stephen Paul Gennett, Sr.

Subscribing to the March 1, 2007 Articles of Incorporation of CAGC Insurance Company

Stephen P. Gennett (SEAL)

State of N.C.

UNION County

I, DAVID R. BADIE, JR, a Notary Public, am authorized to administer oaths and take acknowledgments of deed and I do hereby certify that Stephen Paul Gennett, Sr., being duly sworn, appeared before me and signed the foregoing Articles of Incorporation of Carolinas CAGC Insurance Company

WITNESS my hand & seal, this the 27th day of FEBRUARY, 2007.

Notary Public

My Commission Expires:

9/18/2009

Signature Page
of
Robert Faison Hester

Subscribing to the March 1, 2007 Articles of Incorporation of CAGC Insurance Company

R Faison Hester (SEAL)

State of N.C.

BUNCOMBE County

I, CAROLYN ADKINS, a Notary Public, am authorized to administer oaths and take acknowledgments of deed and I do hereby certify that Robert Faison Hester, being duly sworn, appeared before me and signed the foregoing Articles of Incorporation of CAGC Insurance Company

WITNESS my hand & seal, this the 27th day of FEBRUARY, 2007.

Carolyn Adkins
Notary Public

My Commission Expires:

3/19/10

C20073 6200034

Signature Page
of
Samuel Mark Hood

Subscribing to the March 1, 2007 Articles of Incorporation of CAGC Insurance Company

Samuel Mark Hood (SEAL)

State of SC

Lexington County

I, Lynn Rabenstein, a Notary Public, am authorized to administer oaths and take acknowledgments of deed and I do hereby certify that Samuel Mark Hood, being duly sworn, appeared before me and signed the foregoing Articles of Incorporation of CAGC Insurance Company

WITNESS my hand & seal, this the 27th day of February, 2007.

Lynn Rabenstein
Notary Public

My Commission Expires:

June 7, 2015

C200736200034

Signature Page
of
Julian Mobley Langston, Jr.

Subscribing to the March 1, 2007 Articles of Incorporation of CAGC Insurance Company

Julian Mobley Langston Jr. (SEAL)

State of South Carolina

Greenville County

I, Julie L. Owens, a Notary Public, am authorized to administer oaths and take acknowledgments of deed and I do hereby certify that Julian Mobley Langston, Jr., being duly sworn, appeared before me and signed the foregoing Articles of Incorporation of CAGC Insurance Company

WITNESS my hand & seal, this the 27 day of February, 2007.

Julie L. Owens
Notary Public

My Commission Expires:

Sept. 12, 2007

Signature Page
of
Hugh K. Leatherman, Sr.

Subscribing to the March 1, 2007 Articles of Incorporation of CAGC Insurance Company

Hugh K. Leatherman (SEAL)

State of SOUTH CAROLINA

RICHLAND County.

I, DIANNE S. MULLIS, a Notary Public, am authorized to administer oaths and take acknowledgments of deed and I do hereby certify that Hugh K. Leatherman, Sr., being duly sworn, appeared before me and signed the foregoing Articles of Incorporation of CAGC Insurance Company

WITNESS my hand & seal, this the 1st day of MARCH, 2007.

Dianne S. Mullis
Notary Public

My Commission Expires:

1-17-10

C20073620003-4

Signature Page
of
Harry Lee Mashburn

Subscribing to the March 1, 2007 Articles of Incorporation of CAGC Insurance Company

(SEAL)

State of SOUTH CAROLINA

RICHLAND County

I, JANE C. ANDREWS, a Notary Public, am authorized to administer oaths and take acknowledgments of deed and I do hereby certify that Harry Lee Mashburn, being duly sworn, appeared before me and signed the foregoing Articles of Incorporation of CAGC Insurance Company

WITNESS my hand & seal, this the 1ST day of MARCH, 2007.

Notary Public

My Commission Expires:

3/06/2010

Signature Page
of
William Mattox Marshburn

Subscribing to the March 1, 2007 Articles of Incorporation of CAGC Insurance Company

William Mattox Marshburn (SEAL)

State of N.C

NASH County

I, Christina L. Augst, a Notary Public, am authorized to administer oaths and take acknowledgments of deed and I do hereby certify that William Mattox Marshburn, being duly sworn, appeared before me and signed the foregoing Articles of Incorporation of CAGC Insurance Company

WITNESS my hand & seal, this the 27 day of February, 2007.

Christina L. Augst
Notary Public

CHRISTINA L. AUGST NOTARY PUBLIC EDGECOMBE COUNTY, NC

My Commission Expires:

11-14-2010

C20073620034

Signature Page
of
Thomas Michael Murphy

Subscribing to the March 1, 2007 Articles of Incorporation of CAGC Insurance Company

Thomas Michael Murphy (SEAL)

State of South Carolina

York County

I, Linda F. Patterree, a Notary Public, am authorized to administer oaths and take acknowledgments of deed and I do hereby certify that Thomas Michael Murphy, being duly sworn, appeared before me and signed the foregoing Articles of Incorporation of CAGC Insurance Company

WITNESS my hand & seal, this the 27th day of February, 2007.

Linda F. Patterree
Notary Public

My Commission Expires:
March 22, 2010

Signature Page
of
Charles Thomas Tagman, Jr.

Subscribing to the March 1, 2007 Articles of Incorporation of CAGC Insurance Company

(SEAL)
Charles Thomas Tagman, Jr.

State of FL

Orange County

I, Maria T. Moscoso, a Notary Public, am authorized to administer oaths and take acknowledgments of deed and I do hereby certify that Charles Thomas Tagman, Jr., being duly sworn, appeared before me and signed the foregoing Articles of Incorporation of CAGC Insurance Company

WITNESS my hand & seal, this the 5th day of March, 2007.

Notary Public

Notary Public State of Florida
Maria Teresa Moscoso
My Commission DD486136
Expires 10/27/2009

My Commission Expires:
10/27/09

C200736200034

Signature Page
of
James Thomas Tharp

Subscribing to the March 1, 2007 Articles of Incorporation of CAGC Insurance Company

(SEAL)

State of South Carolina

Richland County

I, Jan J. Marshall, a Notary Public, am authorized to administer oaths and take acknowledgments of deed and I do hereby certify that James Thomas Tharp, being duly sworn, appeared before me and signed the foregoing Articles of Incorporation of CAGC Insurance Company

WITNESS my hand & seal, this the 27th day of February, 2007.

Notary Public for South Carolina

My Commission Expires: 02/21/12

C200736200034

DEPARTMENT OF INSURANCE

State of North Carolina

1201 MAIL SERVICE CENTER
RALEIGH, NC 27699-1201

JIM LONG
COMMISSIONER OF INSURANCE

COMPANY SERVICES GROUP
FINANCIAL EVALUATION DIVISION
(919) 733-5633
FAX: (919) 715-7230

I, James E. Long, Commissioner of Insurance in and for the State of North Carolina, do hereby certify that:

I have carefully examined the annexed Articles of Incorporation of CAGC Insurance Company, Charlotte, North Carolina, and I find said Articles of Incorporation in compliance with the requirements of the laws pertaining thereto and I accordingly approve said Articles of Incorporation and certify same unto the Office of the Secretary of State of the State of North Carolina as required by law.

In testimony whereof I have hereunto set my hand and affixed my official seal at the city of Raleigh, this 27th day of December, A.D. 2007.

James E. Long

Commissioner of Insurance

By Anne M. Morgan

Anne M. Morgan
Company Admissions Manager
Financial Evaluation Division

Now, therefore, I, Elaine F. Marshall, Secretary of State, hereby certify that Stephen Paul Gennett, Samuel Mark Hood, Robert Faison Hester, Julian Mobley Langston, Jr., Hugh K. Leatherman, Sr., Harry Lee Marshburn, William Mattox Marshburn, Thomas Michael Murphy, Charles Thomas Tagman, James Thomas Tharp, Sandhya Gopal Patel, Catherine Rosenthal Stuart, James Lee Stuart, their associates and successors, are legally organized and established as, and are hereby made, an existing corporation under the name of CAGC INSURANCE COMPANY, with such articles of incorporation, and have all the powers, rights, and privileges and are subject to the duties, liabilities, and restrictions which by law appertain thereto.

Witness my official signature hereunto subscribed, and the seal of the State of North Carolina hereunto affixed, this the 31st day of December, 2007.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 31st day of December, 2007

Elaine F. Marshall

Secretary of State

Document Id: C200736200034

SELF-INSURANCE
LOSS PORTFOLIO TRANSFER
ASSUMPTION AGREEMENT
(Hereinafter referred to as the "Agreement")

between

CompTrustAGC of South Carolina, Inc.
(Hereinafter referred to as the "Self-Insurer")

and

CAGC Insurance Company
(Hereinafter referred to as the "Company")

ARTICLE 1 – BUSINESS COVERED

A. The Self-Insurer hereby transfers and the Company hereby assumes 100% of the liabilities and obligations of the Self-Insurer for operations in the state of South Carolina, thereby assuming the joint and several liability of the Self-Insurer's members, for its retained amounts of specific and aggregate liability for workers' compensation and employer's liability losses, including unpaid losses and loss adjustment expenses, during the time period July 1, 1982 through June 30, 2009 including all existing and incurred but not reported ("IBNR") claims (hereinafter "Assumed Claims"), pertaining to the Policies set forth below, and subject to the terms and conditions contained herein.

B. The term "Policies" shall mean all specific and aggregate excess worker's compensation and employers' liability agreements issued by the Company, and all other agreements, policies, binders, contracts, certificates and other obligations, whether oral or written, of insurance issued by other insurers, pertaining to the liabilities assumed hereunder, including the following agreements or policies:

INSURER & AGREEMENT NO.	PERIOD OF AGREEMENT
No applicable policies	No applicable policies

C. The Self-Insurer hereby transfers to the Company all rights the Self-Insurer may have now or in the future with respect to the Self-Insurer's retained liability for workers' compensation, employers' liability and/or related losses, or under or with respect to the Policies.

*Subject to adjustment for outstanding claims checks issued as of the Effective Date, bank charges and other miscellaneous expenses to wind up the business affairs of and terminate the Self-Insurer.

EXHIBIT B

ARTICLE 2–EFFECTIVE DATE

This Agreement shall be effective as of 12:01 a.m., December 30, 2010.

ARTICLE 3–CONSIDERATION

In consideration of the Company's agreement to assume the liabilities of the Self-Insurer, as set forth in Article 1 above, and subject to the terms and conditions of this Agreement, the Self-Insurer shall pay the sum of THREE MILLION FIVE HUNDRED EIGHTY-SIX THOUSAND FIVE HUNDRED TWENTY-SEVEN AND 01/100 DOLLARS ($3,586,527.01)* to the Company by the Effective Date.

ARTICLE 4–COOPERATION AMONG PARTIES; TRANSFER OF DOCUMENTS

A. The parties hereto agree to act in good faith and cooperate with each other in effecting the assumption of the Assumed Claims provided for in this Agreement. The parties shall take all action necessary to assist each other in obtaining all regulatory approvals or responding to information requests of those insurance regulatory authorities asserting jurisdiction over the transactions herein described.

B. Upon demand by, and in accordance with instructions of the Company, the Self-Insurer shall deliver originals or copies of all policy records and claims files pertaining to the Assumed Claims and all other files and records incidental to the Assumed Claims to the Company or its designated representative, as are necessary for the Company to perform its obligations under this Agreement. The Company or its designated representative shall retain all policy records, claim files, and other documents received by it from the Self-Insurer as required by applicable law. Upon reasonable notice, each of the Company and the Self-Insurer will be entitled to reasonable access to the books and records of the other party at any reasonable time, but only to the extent such materials pertain to the business assumed under this Agreement. Each party will pay its own expense associated with any such review of books and records. The Self-Insurer will retain as its property all its original records, including, without limitation, articles of incorporation, bylaws, minute books, and certificates of authority; provided, however, that the Self-Insurer shall promptly provide the Company with copies of all such documents, if so requested by the Company.

C. Whenever the Self-Insurer receives any communications, including notices of claims and proofs of loss, pertaining to the Assumed Claims, it will forward such communications promptly to the Company or its designated representative.

ARTICLE 5–NOTICE OF ASSUMPTION

The Self-Insurer will cooperate fully with the Company in implementing the assumption which is the subject of this Agreement, including, without limitation, executing any documents reasonably necessary to evidence the completion of the transactions contemplated by this Agreement.

*Subject to adjustment for outstanding claims checks issued as of the Effective Date, bank charges and other miscellaneous expenses to wind up the business affairs of and terminate the Self-Insurer.

ARTICLE 6 – ADMINISTRATION AND CLAIM PAYMENTS

A. From and after the Effective Date, the Company will be solely liable for the administration and disposition of all aspects of the Assumed Claims, including, without limitation, the defense, adjustment, settlement, and payment of all losses and expenses arising under or relating to the Assumed Claims. The Self-Insurer hereby grants and assigns to the Company authority to administer such losses, claims, expenses, defenses, adjustments, settlements, and payments, and such matters will be under the Company's control and within its sole discretion. The Company will bear all expenses and costs incurred by it in connection with the administration and disposition of such losses, claims, expenses, defenses, adjustments, settlements, and payments.

B. In its sole discretion, the Company shall have the right to select a third party administrator to perform claims administration services pertaining to the Assumed Claims.

C. The Self-Insurer will cause all information and notices regarding the Assumed Claims, actually received by the Self-Insurer after the Effective Date to be promptly reported to the Company or the Company's designated representative, and will undertake reasonable measures to ensure that all such notices are promptly delivered to the Company or to its designated representative.

D. All losses and expenses regarding the Assumed Claims that the Company determines to be payable will be paid directly and promptly by the Company.

ARTICLE 7 – ASSESSMENTS

After the Effective Date of this Agreement, in the event that an assessment is made against any present or former members of the Self-Insurer pursuant to statute or regulation, the Company agrees to pay the assessment on behalf of said Self-Insurer members.

ARTICLE 8 – REQUIRED REGULATORY APPROVAL

This Agreement remains subject to the approval of the South Carolina Workers' Compensation Commission, Self-Insurance Division, the Self-Insurer and the Company shall take all steps necessary to obtain requisite regulatory approval of this Agreement, if any, and the transaction described herein.

ARTICLE 9 – SUBORDINATION AND REINSURANCE RECEIVEABLES

A. The Company shall be subrogated to all of the rights of the Self-Insurer against any responsible person or entity. The Company is hereby authorized and empowered to bring any appropriate action in its own name or in the name of the Self-Insurer to enforce such rights.

B. Any payments received by or due to the Self-Insurer from any reinsurer of the Self-Insurer which is payable on an Assumed Claim shall become the property of and paid to the Company. If any payment is received by the Self-Insurer which is to be credited to the Company

under or with respect to any of the Assumed Claims, the Self-Insurer will immediately endorse (without warranty or recourse) and deliver to the Company such checks, drafts, or money intended as such payment, and until delivery of such items to the Company, the Self-Insurer will treat any such checks, drafts, or money as the property of the Company held for the account of the Company. The Company and the Self-Insurer will each use all commercially reasonable efforts to cause the transfer and assignment, as of the Effective Date to the Company of all the Self-Insurer's rights, interest, and obligations under the Self-Insurer's reinsurance agreement, if any, covering the risks, liabilities, and obligations of the Self-Insurer under or with respect to Assumed Claims including, without limitation, obtaining any necessary consents or approvals to such transfer and assignment by the reinsurer under any such reinsurance agreements effective as of the Effective Date. Any failure to receive the consents referred to herein will not relieve or diminish in any manner the Company's obligation under this Agreement.

C. The Company shall be authorized and entitled to file and pursue the collection of claims against the South Carolina Second Injury Fund and all other collateral sources, arising out of or resulting from Assumed Claims (hereinafter "Collateral Sources Claims"); to pursue the collection of Collateral Sources Claims filed by the Self-Insurer prior to the Effective Date; and to collect, receive, and retain any monies paid in settlement of satisfaction of any Collateral Sources Claims filed by either the Company or the Self-Insurer.

ARTICLE 10 – ERRORS OR OMISSIONS

Inadvertent delays, errors or omissions made in connection with this Agreement or any transaction hereunder will not relieve either party from any liability that would otherwise have attached had such delay, error, or omission not occurred. Regardless, the responsible party will rectify each such delay, error, or omission as promptly as practicable after discovery.

ARTICLE 11 – ARBITRATION

A. Any dispute or other matters in question between the Self-Insurer and the Company arising out of or relating to the formation, interpretation, performance, or breach of this Agreement, whether such dispute arises before or after termination of this Agreement, shall be settled by arbitration if the parties are unable to resolve the dispute through negotiation. Arbitration shall be initiated by the delivery of a written notice of demand for arbitration by one party to the other.

B. Each party shall appoint an individual as arbitrator and the two so appointed shall then appoint a third arbitrator. If either party refuses or neglects to appoint an arbitrator within sixty (60) days of receipt of written notice of demand for arbitration, the other party may appoint the second arbitrator. If the two arbitrators do not agree on a third arbitrator within sixty (60) days of their appointment, each of the arbitrators shall nominate three individuals. Each arbitrator shall then decline two of the nominations presented by the other arbitrator. The third arbitrator shall then be chosen from the remaining two nominations by drawing lots and the name of the individual first drawn shall be the umpire. The arbitrators shall be disinterested active or former executive officers of insurance or reinsurance companies or disinterested individuals with significant knowledge and experience with respect to insurance or reinsurance.

C. Arbitration hearing shall be held in Charlotte, North Carolina or such other place as may be mutually agreed. Each party shall submit its case to the arbitrators within sixty (60) days of the selection of the third arbitrator or within such longer period as may be agreed by the arbitrators. The arbitrators shall not be obliged to follow judicial formalities or the rules of evidence except to the extent required by governing law; they shall make their decisions according to the custom and practice of the reinsurance business. The decision rendered by a majority of the arbitrators shall be final and binding on both parties. Such decision shall be a condition precedent to any right to legal action arising out of the arbitrated dispute which either party may have against the other. Judgment upon the award rendered may be entered in any court having jurisdiction thereof.

D. Each party shall pay the fees and expenses of its arbitrator and attorneys and one-half of the fees and expenses of the third arbitrator. All other expenses of the arbitration shall be equally divided between the parties.

ARTICLE 12 – HONORABLE UNDERTAKING

This Agreement shall be construed as an honorable undertaking between the parties hereto not to be defeated by technical legal constructions.

ARTICLE 13 – GENERAL PROVISIONS

A. Successor and Assigns. This Agreement shall inure to the benefit of and bind the Self-Insurer and its successors and assigns and the Company and its successors and assigns. Neither this Agreement nor any right hereunder nor any part hereof may be assigned by any party hereto without the prior written consent of the other party hereto. Prior to any such assignment, the consent of all necessary regulatory authorities must be obtained.

B. Governing Law. Company is a North Carolina corporation, licensed to do business in States of North Carolina and South Carolina and is subject to the laws governing both states. This Agreement shall be governed by and construed in accordance with the laws of either State as controlled by the nature of the dispute. Specifically, but not necessarily limited to, disputes related to an alleged breach of this Agreement shall be governed by North Carolina except that disputes related to the Assumed Claims and Collateral Sources Claims shall be governed by South Carolina law.

C. Entire Agreement. This Agreement supersedes all prior discussions and agreements between the parties, and contains the sole and entire agreement between the Self-Insurer and the Company with respect to the subject matter hereof.

D. Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument.

E. Headings, etc. The headings used in this Agreement have been inserted for convenience and do not constitute matter to be construed or interpreted in connection with this Agreement. Unless the context of this Agreement otherwise requires, (a) words of any gender will be deemed to include each other gender, (b) words using singular or plural number will also include the plural or singular number, respectively, (c) the terms "hereof," "herein," "hereby," and derivative or similar words will refer to this entire Agreement, and (d) the conjunction "or" will denote any one or more, or any combination or all, of the specified items or matter involved in the respective list.

F. Non-waiver. The failure of either party hereto at any time to enforce any provision of this Agreement shall not be construed as a waiver of that provision and shall not effect the right of either party thereafter to enforce each and every provision of this Agreement in accordance with its terms.

G. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present of future law, and if the rights or obligations of any party under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance here form, and (d) in lieu of such illegal, invalid, or unenforceable provision or by its severance added automatically as part of this Agreement, a legal,, invalid, and enforceable provision as similar in terms to such illegal, valid, or unenforceable provision as may be possible.

H. Notices. Any notice or communication given pursuant to this Agreement must be in writing and will be deemed to have been duly given if mailed (by registered or certified mail, postage prepaid, return receipt requested), or if transmitted by facsimile or if delivered by courier as follows:

To the Self Insurer:

CompTrustAGC of South Carolina
1100 Euclid Avenue
Charlotte, NC 28203
Facsimile: 704-347-0627

To the Company:

CAGC Insurance Company
1100 Euclid Avenue
Charlotte, NC 28203
Facsimile: 704-347-0627

Copy to:

James L. Stuart
Stuart Law Firm, PLLC
1033 Wade Avenue, Suite 202
Raleigh, NC 27605
Facsimile: 919-787-9988

All notices and other communications required or permitted under this Agreement that are addressed as provided in this paragraph will, whether sent by mail, facsimile, or courier, be deemed given upon the first business day after actual delivery to the party to whom such notice or other communication is sent (as evidenced by the return receipt or shipping invoice signed by a representative of such party or by the facsimile confirmation). Any party from time to time may change its address for the purpose of notices to that party by giving a similar notice specifying a new address, but no such notice will be deemed to have been given until it is actually received by the party sought to be charged with the contents thereof.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized representatives this 28th day of December, 2010.

CompTrustAGC of South Carolina

ATTEST: _____ By: _____
Secretary Jim Tharp
Harry Mashburn
Chairman, Board of Trustees

CAGC Insurance Company

ATTEST: Cindy Taylor By: _____
Asst. Secretary
Charles T. Tagman, Jr.
President/CEO

Copy to:

James L. Stuart
Stuart Law Firm, PLLC
1033 Wade Avenue, Suite 202
Raleigh, NC 27605
Facsimile: 919-787-9988

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IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized representatives this 28th day of December, 2010.

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Secretary
Harry Mashburn
Chairman, Board of Trustees

CAGC Insurance Company

ATTEST: _____ By: _____
Secretary
Charles T. Tagman, Jr.
President/CEO

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
Raymond G. Farmer, as Director of the South Carolina Department of Insurance, Petitioner, vs. CAGC Insurance Company, in Liquidation, Respondent. South Carolina Property and Casualty Insurance Guaranty Association, Intervenor-Petitioner, vs. CAGC Insurance Company, in Liquidation, Raymond G. Farmer, in his capcity as Ancillary Receiver of CAGC Insurance Company, in Liquidation; and CompTrustAGC of South Carolina a/k/a CompTrustAGC of South Carolina, Inc., Intervenor-Respondents.	Civil Action No. 2014-CP-40-0313 **ANSWER OF THE ANCILLARY RECEIVER TO COMPLAINT FOR DECLARATORY JUDGMENT OF INTERVENOR-PETITIONER SOUTH CAROLINA PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION**

The Intervenor-Respondent Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in Liquidation ("the Ancillary Receiver"), not waiving but specifically reserving all rights and answering the Intervenor-Petitioner's Complaint for Declaratory Judgment ("Complaint"), states the following.

1. Except as is herein specifically admitted, each and every allegation in the Complaint is expressly denied.

2. The Ancillary Receiver admits, upon information and belief, the allegations of paragraphs 1-20 of the Complaint.

3. As to paragraphs 21-35, the Ancillary Receiver admits only that S.C. Code Ann. § 38-31-10 *et seq.*, a/k/a, the South Carolina Property and Casualty Insurance Guaranty Act, governs the rights, obligations and duties of the Intervenor-Petitioner. The Ancillary Receiver does admit that the Intervenor-Petitioner previously notified him that it did not consider the self-insured workers compensation claims but, at his request, Intervenor-Petitioner agreed on an interim basis to process and pay claims as appropriate, subject to a denial of assumption of or responsibility for such claims and full reservation of rights, including but not limited to the right of recovery against the party or parties responsible for the claims.

4. The Ancillary Receiver intends that no admission or denial herein shall operate contrary to the objectives of this ancillary receivership, to wit, to protect the assets of the insurer located in this State and to protect the creditors or policyholders of the insurer in this State.

WHEREFORE, having fully answered the Complaint, the Defendant requests the Court to grant no relief to the extent it shall prejudice the South Carolina assets of the insurer and any South Carolina policyholder and/or creditor or that the Court otherwise issue an order protecting same, and to grant this Intervenor-Respondent such other and further relief as may be just and proper.

Respectfully submitted,

August 22, 2014

Jeffrey A. Jacobs
Chief Legal Counsel
jjacobs@doi.sc.gov

Geoffrey R. Bonham
Associate General Counsel
gbonham@doi.sc.gov

South Carolina Department of Insurance
Post Office Box 100105
Columbia, South Carolina 29202
T: (803) 737-6132
F: (803) 737-6229

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Answer of the Ancillary Receiver to Complaint for Declaratory Judgment of Intervenor-Petitioner South Carolina Property and Casualty Insurance Guaranty Association* has been served upon the following counsel of record for the Intervenor-Petitioner, by First Class U.S. Mail, postage prepaid, this 22 day of August, 2014, addressed as follows:

Tara C. Sullivan, Esq.
Nelson Mullins Riley & Scarborough LLP
1320 Main Street, 17th Floor
Columbia, SC 29201

Christiline P. Lewis

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Raymond G. Farmer, as Director of the South Carolina Department of Insurance, Petitioner, vs. CAGC Insurance Company, in liquidation, Respondent.	Civil Action No. 2014-CP-40-0313 **LIMITED ANSWER AND AFFIRMATIVE DEFENSES OF INTERVENOR-RESPONDENT COMPTRUST AGC OF SC**
South Carolina Property and Casualty, Insurance Guaranty Association, Intervenor-Petitioner, vs. CAGC Insurance Company, in liquidation, Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in liquidation, and CompTrustAGC of South Carolina, a/k/a CompTrustAGC of South Carolina, Inc. Intervenor-Respondent.	

TO: GEOFFREY R. BONHAM and JEFFREY A. JACOBS, attorneys for the Petitioner, DAVID W. BOONE, North Carolina Attorney General, as counsel for the Commissioner of Insurance of the State of North Carolina, the court-appointed Liquidator of the Respondent, and HOWARD A. VAN DINE, III, ERIK T. NORTON, and TARA C. SULLIVAN, attorneys for the Intervenor-Petitioner:

On February, 2015, the South Carolina Director of Insurance, in his capacity as agent for service of process on insurance companies in South Carolina under §§ 15-9-270, et seq. and 38-5-70 of the South Carolina Code, accepted service of the Intervenor-Petitioner's Summons and Complaint for Declaratory Judgment (the "**Complaint**") on behalf of CompTrustAGC of South Carolina (the "**CompTrust**"), an entity which voluntarily dissolved March 31, 2011, no longer exists, and holds no assets. The Petitioner accepted service of the Complaint solely as part of a compromise to resolve a procedural dispute, and his doing so did not waive any rights, claims, or defenses of the CompTrust.

The CompTrust, by and through its undersigned counsel, hereby provides the following in response to the Complaint, without waiving any defenses regarding personal or subject matter or other jurisdictional matters and otherwise preserving any and all of its due process rights, solely for the limited purpose of apprising the Court of its legal status and position on issues raised in the Complaint. Any allegation not explicitly admitted is denied. Moreover, the headings contained within the Complaint are not substantive allegations to which an answer is required. To the extent those headings are substantive allegations to which an answer is required, the CompTrust denies the allegations.

PARTIES

1. The CompTrust is informed and believes the allegations contained in Paragraphs 1 through 4 reiterate matters of public record, and that no response is required.

2. Responding to Paragraph 5, the CompTrust admits that it was formed on May 14, 1982 as an unincorporated business trust pursuant to §§ 33-53-10, *et seq.* of the South Carolina Code pursuant to an Agreement and Declaration of Trust, a copy of which (as amended through July 1, 2000) is appended as **Exhibit A**, for the purposes listed therein, and that the CompTrust

underwent voluntarily dissolution and liquidation pursuant to Articles of Dissolution executed on March 31, 2011, a copy of which is appended as **Exhibit B**.

3. Responding to Paragraph 6, the CompTrust admits that it never received any license or other regulatory approval from the South Carolina Department of Insurance (the "**SC DOI**"). To the extent Paragraphs 6 can be construed as an allegation that South Carolina law in any way required the CompTrust to be so licensed and regulated by the SC DOI, that allegation is denied.

FACTUAL BACKGROUND

4. The CompTrust denies Paragraph 7 as written. The CompTrust admits that its approval as a self-insurance fund by the Self Insurance Division of the South Carolina Workers Compensation Commission ("**SC WCC**") allowed the CompTrust's former employer members to qualify for a self-insurance exemption under §§ 42-5-10, *et seq.* of the South Carolina Code and transfer the risk associated with their obligations and liabilities under South Carolina's workers compensation laws to the CompTrust pursuant to individual employer member agreements.

5. The CompTrust is informed and believes the statements comprising Paragraph 8 are true. However, Paragraphs 8 does not make any allegations against the CompTrust. To the extent Paragraph 8 can be construed as allegations against the CompTrust the same are denied.

6. Responding to Paragraph 9, the CompTrust admits only that, with the prior review and approval of both the SC WCC and the North Carolina Department of Insurance ("**NC DOI**"), the CompTrust transferred its entire portfolio of member employer workers compensation risk to the Respondent, CAGC Insurance Company ("**CAGC**"), via a contractual novation effective July 1, 2009, and to that end, the parties were required to document the

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transaction in the via the form Self-Insurance Loss Portfolio Transfer Assumption Agreement (the "**LPT Agreement**") provided by SC WCC and referenced in the Complaint. A copy of the executed LPT Agreement is appended as **Exhibit C**.

7. In response to Paragraph 10, it was the intention and understanding of CAGC, the CompTrust, NC DOI, and particularly SC WCC that the loss portfolio transfer would effect a contractual novation. Accordingly, the terms of the LPT Agreement state that CAGC replaced the CompTrust as the party responsible for all past, present and future joint and several liability of the CompTrust's employee members under South Carolina workers compensation law in exchange for all of the CompTrust's assets. Upon completion of the loss portfolio transfer, CAGC issued replacement policies of insurance to the CompTrust's former member employers to document the substitution of contractual parties ab initio, reflecting the requirement of workers compensation insurance coverage to respond to claims that come in – even after the policy has been canceled – so long as the incident occurred during the period in which coverage was in force.

8. The CompTrust lacks sufficient knowledge or information to form a belief as to the truth of those allegations contained in Paragraph 11 of the Complaint, and therefore denies the same.

9. Regarding Paragraphs 12, 13, and 14 of the Complaint, the CompTrust is informed and believes those allegations merely reiterate matters of public record, and that no response is required.

10. The CompTrust lacks sufficient knowledge or information to form a belief as to the truth of those allegations contained in Paragraphs 15 through 18 of the Complaint, and

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therefore denies the same. To the extent Paragraphs 15 through 18 can be construed as allegations against the CompTrust the same are denied with strict proof demanded thereof.

DECLARATORY ACTION

11. Paragraphs 19 through 35 present legal arguments and conclusions. The CompTrust is informed and believes these would be more appropriately presented in a legal memorandum than in the Complaint, but to the extent a response is required, the CompTrust denies the same as outline below.

12. The CompTrust lacks sufficient knowledge or information to form a belief as to the truth of those allegations contained in Paragraph 19 of the Complaint and therefore denies the same.

13. The CompTrust denies the allegations of Paragraph 20 of the Complaint. There can be no justiciable controversy since the CompTrust dissolved entirely as an entity in 2011, as mentioned in Paragraph 2 above, and transferred all of its assets to the Respondent in 2010, as mentioned in Paragraphs 6 and 7, so any claim the Intervenor-Petitioner may have against the CompTrust would be moot.

14. Paragraph 21 of the Complaint presents the Intervenor-Petitioner's own legal conclusion, to which the CompTrust is informed and believes no response is required, but to the extent a response is required, the CompTrust denies the same.

15. Paragraph 22 of the Complaint reiterates the text of a South Carolina statute, to which no response is required.

16. Paragraph 23 of the Complaint also presents the Intervenor-Petitioner's own legal conclusion, to which the CompTrust is informed and believes no response is required, but to the extent a response is required, the CompTrust denies the same.

17. The CompTrust denies Paragraph 24 entirely, since S.C. Code Ann. § 38-1-20 defines "insurance policy" as a contract "where one undertakes to indemnify another or pay a specified amount upon determinable contingencies," a precise description of the CompTrust's essential agreements with its member employers and the basis of their being granted self-insured employer workers compensation exemptions from the SC WCC.

18. The CompTrust also denies Paragraph 25 entirely, since S.C. Code Ann. § 38-31-30 (9) does not generally prohibit the South Carolina Property and Casualty Insurance Guaranty Association Act (the "**Act**") from applying to self-insurance; rather it specifically prohibits the Act only from applying to transactions which do not effectively transfer risk, and the very purpose of the CompTrust was to allow its employer members to transfer their statutory workers compensation and liability risk.

19. The CompTrust denies the allegations of Paragraphs 26 and 27 of the Complaint; the CompTrust's regulatory licensure and financial status became irrelevant upon the contractual novation ab initio of its member workers compensation risk with CAGC. Moreover, as alleged in the Complaint, CAGC was licensed to transact business in South Carolina as an insurance company when the LPT Agreement was negotiated, approved, and consummated.

20. The CompTrust denies Paragraph 28 of the Complaint; since S.C. Code Ann. § 38-1-20 defines "insurance policy" as a contract "where one undertakes to indemnify another or pay a specified amount upon determinable contingencies," a precise description of the CompTrust's agreements with its member employers and again the basis of the SC WCC's self-insured employer workers compensation exemption. Moreover, South Carolina case law has determined self-insurance worker compensation programs do in fact effectively constitute

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insurance "policies" issued by "insurers." S.C. Prop. & Cas. Ins. Guar. Assn. v. Carolinas Roofing and Sheet Metal Contractors Self-Insurers Fund, 315 S.C. 555, 446 S.E.2d 422 (1994).

21. The CompTrust denies the legal conclusion presented in Paragraphs 29, 30, and 31 of the Complaint regarding "covered claims." A novation is an agreement between all parties concerned for the substitution of a new obligation between the parties with the intent to extinguish the old obligation. In this case, the CompTrust's agreements with its employee members constituted a prior valid obligation to pay workers compensation claims; all of the parties affected by the LPT Agreement agreed to the new contract; the new contract shows the intention by the parties to discharge the prior obligation; and the LPT Agreement itself has all of the elements of a valid contract. By effecting a contractual novation, the LPT Agreement converted the CompTrust member employer workers compensation self-insurance programs into "insurance policies" issued by a "licensed insurer" and "covered claims" for which the Intervenor-Petitioner should be statutorily responsible.

22. The CompTrust similarly denies the legal conclusions presented in Paragraphs 32 of the Complaint since it contradicts South Carolina law regarding the effects of a contractual novation and would effectively negate the requirement that workers compensation insurance policies offer "permanent" coverage for incidents that occur during the policy period.

23. The CompTrust specifically denies the legal conclusion presented Paragraph 33, 34, and 35 of the Complaint to the extent that it can be construed to allege that any of its employer member agreements were underwritten fraudulently or retroactively. Moreover, the CompTrust disagrees with the Intervenor-Petitioner's attempt through those Paragraphs to convert a statutory insurance fraud protection into a broad ground for claim denial by misapplying it to loss portfolio transfers generally, and the LPT Agreement specifically.

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24. The CompTrust denies that the Intervenor-Petitioner is entitled to any of the relief prayed for on page 7 of the Complaint.

AFFIRMATIVE DEFENSES

For a First Affirmative Defense
(Mootness)

25. The CompTrust was voluntarily dissolved and liquidated as an entity almost five years ago. Even if the Intervenor-Petitioner's allegations in the Complaint are presumed true, any action by the Court in the Intervenor-Petitioner's favor would do no good, serve no purpose, or have any practical legal effect because the dissolution of the CompTrust renders any grant of effectual relief impossible. Therefore, Intervenor-Petitioner's claims against the CompTrust should be dismissed with prejudice as moot under Rule 12(b)(1), SCRCP.

For a Third Affirmative Defense
(Lack of Personal Jurisdiction)

26. The CompTrust was voluntarily dissolved and liquidated as an entity almost five years ago. It can no longer sue or be sued under South Carolina law. Therefore, the CompTrust should be dismissed as a party to the above-captioned action, and the Intervenor-Petitioner's claims against the CompTrust should be dismissed under Rule 12(b)(2), SCRCP with prejudice.

For a Fourth Affirmative Defense
(Insufficiency of Service of Process)

27. The South Carolina Director of Insurance accepted service of the Complaint on behalf of the CompTrust in his capacity as agent for service of process on insurance companies in South Carolina. This attempt at service of process is deficient in at least two respects.

a. As mentioned above, the CompTrust no longer exists as an entity. As such it is no longer capable of either suing or being sued. Counsel for the Intervenor-Petitioner previously attempted to serve a copy of the Complaint upon a former trustee of

the CompTrust, who returned it with a letter informing the Intervenor-Petitioner of the non-existence of the CompTrust and his inability to accept service on its behalf. A copy of the former trustee's affidavit to that effect is attached as **Exhibit D** and incorporated herein by reference.

b. As alleged in the Complaint, the CompTrust never received any license or other regulatory approval from the South Carolina Director of Insurance which would enable him lawfully to accept service of process on behalf of the CompTrust under either § 15-9-270 or § 38-5-70 of the South Carolina Code.

Therefore, the CompTrust should be dismissed as a party to the above-captioned action, and the Intervenor-Petitioner's claims against the CompTrust should be dismissed under Rule 12 (b)(5) SCRCP.

For a Fifth Affirmative Defense
(Failure to State a Claim)

28. The Intervenor-Petitioner's claims fails to state facts sufficient to constitute a specific cause of action against the CompTrust. Therefore, Intervenor-Petitioner's claims against the CompTrust should be dismissed under Rule 12(b)(6), SCRCP.

For a Sixth Affirmative Defense
(Failure to Joint Necessary Parties)

29. The Intervenor-Petitioner's dispute as outlined in the Complaint is not with the CompTrust, but with the SC WCC, the NC DOI, and other regulatory persons or entities not related to the CompTrust who reviewed and approved the LPT Agreement and allowed the loss portfolio transfer to CAGC to take effect. These entities should be named in the Complaint under Rule 12(b)(7), SCRCP.

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For a Seventh Affirmative Defense
(Statute of Limitations)

30. The LPT Agreement was negotiated, approved, and consummated over 5 years ago. The Complaint and the legal claims and causes of action therein are barred by the applicable statute of limitations. Accordingly, the Intervenor-Petitioner's claims against the CompTrust should be dismissed.

For an Eighth Affirmative Defense
(Misjoinder)

31. Again, the Intervenor-Petitioner's dispute is not with the CompTrust, but with the SC WCC, the NC DOI, and other regulatory persons or entities not related to the CompTrust and who reviewed and approved the LPT Agreement and loss portfolio transfer and who should be named in the Complaint. Moreover, as outlined above, the CompTrust no longer exists as an entity. Therefore, the CompTrust should be dismissed as a party to the above-captioned action, and the Intervenor-Petitioner's claims against the CompTrust should be dismissed under Rule 21, SCRCP.

PRAYER FOR RELIEF

WHEREFORE, having fully answered Intervenor-Petitioner's Complaint and asserted these affirmative defenses, the CompTrust respectfully requests the Court to dismiss the Intervenor-Petitioner's Complaint as to the CompTrust, dismiss the CompTrust as a party to this action as a non-entity, declare that the CompTrust has no obligation for any claims arising under LPT Agreement as a result of the resulting novation of that risk with CAGC, and for such other and further relief as the Court deems proper.

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YOUNG CLEMENT RIVERS, LLP

By: _____

Michael A. Molony, SC Bar No.: 004026
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T. Douglas Concannon, SC Bar No. 066316
E-Mail: dconcannon@ycrlaw.com
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
(843) 724-6640

Attorneys for Intervenor-Respondent
CompTrustAGC of South Carolina

Charleston, South Carolina

Dated: March 11, 2015

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this _____ day of _____, 20___.

_____

Exhibit A

July 1, 2000

AGREEMENT AND DECLARATION OF TRUST
OF CompTrustAGC OF SOUTH CAROLINA

(As Amended Through July 1, 2000)

THIS AGREEMENT AND DECLARATION OF TRUST, made and entered into as of May 14, 1982, amended June 23, 1983, May 21, 1992, April 28, 1993 and further amended July 1, 2000 by and between Carolinas AGC, Inc. (hereinafter sometimes referred to as "AGC") and the Trustees who have heretofore, or who may hereafter, be appointed to serve as provided herein.

WITNESSETH;

WHEREAS, AGC wishes to create a group workers' compensation fund for the purpose of providing a program of workers' compensation coverage in South Carolina, with the approval of, and pursuant to the rules and regulations of the South Carolina Workers' Compensation Commission; and

WHEREAS, it is considered to be in the best interest of the parties hereto that an Agreement and Declaration of Trust fully setting forth the duties and responsibilities of the Trustees be entered into.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, CompTrustAGC of South Carolina is hereby established, as follows;

ARTICLE I.

DEFINITIONS

Administrator - Carolinas AGC, Inc., or such other individual or legal entity appointed by the Trustees. The Administrator shall administer the financial affairs of the Fund (hereinafter defined), and carry on the day to day operations and activities of the Fund as directed by the Trustees.

Fund – CompTrustAGC of South Carolina.

Agreement - That certain Agreement entered into by parties who become members of the Fund, which Agreement sets forth their obligations and responsibilities.

Member - A company, firm, corporation, individual, partnership or other legal entity which operates a business similar in nature to the businesses in the Fund and which is a participating member in this Fund and a member or an associated member in good standing of

Carolinas AGC, Inc. or a parent, subsidiary or affiliate of such member or associate member of Carolinas AGC, Inc. who meets the qualifications set forth herein.

Service Company - Any individual, co-partnership, corporation, firm or other legal entity engaged in the business of servicing approved workers' compensation programs which, if required, has made application to, and been approved by the South Carolina Workers' Compensation Commission.

Trustees - The Trustees appointed to serve on the Board of Trustees of this Trust Fund as provided herein.

ARTICLE II.

CREATION OF THE TRUST

There is hereby established and created a Trust and Trust Fund which shall be known as "CompTrustAGC of South Carolina" (hereinafter sometimes referred to as the "Fund" or the "Trust") and the Trustees may hold property, enter into contracts and in all matters as hereinafter set forth act in behalf of the Fund in that name. The Fund shall be used for the purposes as hereinafter set forth.

ARTICLE III.

PURPOSE

This Trust Agreement is made and executed for the purpose of meeting and fulfilling the members' obligations and liabilities under the South Carolina Workmen's Compensation Act; to form an overall group workers' compensation fund pursuant to the laws of said states for the purpose of providing workers' compensation coverage and benefits; to provide maximum allowable advance discounts on premium payments made by members for workers' compensation coverage; and to minimize the cost of providing workers' compensation coverage by developing and refining specialized claim services and a loss prevention program within the construction trade industry.

ARTICLE IV.

DESIGNATION OF TRUSTEES

SECTION 1. NUMBER OF TRUSTEES.

The operation and administration of the Trust Fund shall be the joint responsibility of a Board of Trustees consisting of a number not more than nine (9) nor less than three (3).

SECTION 2. APPOINTMENT OF TRUSTEES.

The Board of Directors of AGC will appoint members to serve on the Board of Trustees of the Fund. Any Trustee so appointed must be an executive representative of a member or an associate in good standing in AGC or a parent, subsidiary or affiliate of such member or associate member, and a member in good standing in the Fund, and no Trustee may be appointed who is, or continues to serve as a Trustee after becoming, an owner, officer of employee of a Service Company.

Each and every Trustee heretofore or hereafter named and each successor Trustee shall acknowledge and consent to their appointment *as* Trustees by giving written notice of acceptance of such appointment to the Chairman or acting chairman of the Board of Trustees of this Fund.

The Board of Directors of AGC has appointed an initial Board of Trustees to act on behalf of the Fund. Members of the initial Board of Trustees do not have to be members of the Fund. The Board of Directors of AGC has fully authorized the initial Board of Trustees to conduct the affairs of the Fund to include but not be limited to the appointment of, and entering into a contract with, a Service Company; the appointment of an Administrators preparation of all applications and other papers required by the South, Carolina Workers' Compensation Commission for the purpose of establishing a group self-insurance fund which will administer a program of workers' compensation in South Carolina; etc. The initial Board of Trustees will serve until replaced by a first Board of Trustees, appointed as set forth in Section 4 below.

SECTION 3. RESIGNATION OF A TRUSTEE.

A Trustee may resign and become and remain fully discharged from all further duties or responsibility hereunder, by giving at least sixty (60) days prior notice in writing sent by registered mail to the chairman or acting chairman of the Board of Trustees of this Fund, and to AGC. Such notice shall state the date said resignation shall take effect and such resignation shall take effect on such date unless a successor Trustee shall have been appointed at an earlier date by AGC, in which event resignation shall take effect immediately upon the appointment of such successor Trustee.

Any Trustee, upon leaving office, shall forthwith turn over and deliver to the chairman or the secretary of the Trustees, at the principal office of the Fund, any and all records, books, documents or other property in his possession or under his control which belongs to the Fund.

SECTION 4. LENGTH OF APPOINTMENT AND REMOVAL OF A TRUSTEE.

Each Trustee, and each successor Trustee, shall serve for a term of three (3) years, subject to the provisions of the Section in this Article regarding resignation, death, incapacity or refusal of a Trustee to act. The first Board of Trustees, which will replace the initial Board of Trustees, shall consist of no more than three Trustees serving a term of one (1) year, no more than three Trustees serving for a term of two (2) years, and no more than three Trustees serving for a term of three (3) years.

A Trustee may be removed by AGC. Notice of removal of a Trustee shall be furnished to the Trustee and the chairman or acting chairman of the Trustees by certified mail and shall set forth the effective date of such removal, and said notice shall name the Trustee or Trustees removed.

SECTION 5. APPOINTMENT OF A SUCCESSOR TRUSTEE.

In the event any Trustee duly appointed to serve on the Board of Trustees of this Fund shall die, resign, become incapacitated, refuse to act, or be removed, a successor Trustee shall be appointed forthwith by AGC. The notice of appointment of a successor Trustee shall be in writing to the chairman or acting chairman of the Board of Trustees by certified mail.

SECTION 6. TRUSTEE'S AUTHORITY.

In case of death, resignation, removal, refusal or inability to act by any one or more of the Trustees, the remaining Trustees shall have all of the powers, rights, estates and interest of this Trust and shall be charged with its duties, provided that, in such cases, no action may be taken unless it is concurred in by a majority of three (3) or more of the remaining Trustees.

SECTION 7. TRUSTEE OFFICERS.

The Trustees shall meet as promptly as possible after their appointment and elect from among the Trustees a Chairman and a Secretary and such other officers as they deem appropriate. The term of such officers shall commence on the date of their election and continue to the end of the fiscal year. Thereafter such officers shall be elected annually.

The initial Board of Trustees shall elect from among the Trustees a Chairman and a Secretary and such other officers as they deem appropriate. Said officers shall serve until their successors have been elected by the first Board of Trustees.

ARTICLE V.

ADMINISTRATION OF FUND

SECTION 1. MEETINGS.

The Trustees shall meet at least quarterly, and more often if required, at the principal office of the Fund or at such other location as may be acceptable to a majority of the Trustees. The chairman of the Trustees shall set the date, time and location of each meeting, and notice thereof shall be furnished to each Trustee by the secretary or Administrator not less than ten (10) days prior to the date of such meeting. Such notice shall specify the date, time and location of such meeting and may specify the purpose thereof and any action proposed to be taken.

Special meetings of the Trustees may be held at any time and place without notice, provided all Trustees execute a waiver of notice and consent to the said meeting.

For the purpose of a duly called and noticed meeting of the Trustees, a quorum shall consist of at least fifty (50) percent of the Trustees.

The secretary, acting secretary, or his designee shall keep, minutes of all meetings, proceedings and acts of the Trustees, but such minutes need not be verbatim. Copies of all minutes of the meeting of the Trustees shall be sent by the secretary, acting secretary or a designee to all Trustees.

SECTION 2. VOTING.

All actions by, and decisions of, the Trustees shall be by the vote of a majority of the number of Trustees attending a duly called meeting of the Trustees at which a quorum is present; provided, however, that actions by, and decisions of, the Trustees may be taken by a vote of a majority of the number of Trustees attending a special meeting without notice when a proper waiver and consent has been obtained as provided in Section 1 above and at which a quorum is present.

SECTION 3. OFFICE OF THE FUND.

The Trustees shall establish and maintain an office of the Fund. The books and records pertaining to the Fund and its administration shall be kept and maintained at the office of the Fund.

SECTION 4. EXECUTION OF DOCUMENTS.

A certificate signed by the chairman and secretary of the Trustees or those duly acting in their stead shall be evidence of the action of the Trustees. All facts and matters so certified shall conclusively be presumed true.

SECTION 5. APPOINTMENT OF ADMINISTRATOR.

The Trustees may designate an Administrator to administer the financial affairs of the Fund, and to carry on the day-to-day operations and activities of the Fund, provided, however, such Administrator shall not be an owner, officer, or employee of a Service Company. The Trustees may assign to the Administrator such powers and authorities as they deem appropriate, to include but not limited to the authority to establish bank accounts, sign checks, determine appropriate depositories for Fund assets, approval of new members, etc.

If requested, any Administrator so appointed shall furnish a fidelity bond with the Trustees as obligee, in an amount sufficient to protect the Fund against the misappropriation or misuse of any monies or securities held by or in the name of the Fund. The amount of the bond shall be determined by the Trustees and evidence of such bond shall be filed with the appropriate governmental agencies and departments.

SECTION 6. COMPENSATION AND REIMBURSEMENT OF TRUSTEES.

The Trustees may establish from time to time, a reasonable amount of compensation to cover attendance at meetings of the Trustees and the performance of the normal duties of a Trustee, which compensation may include reimbursement for necessary expenses incurred herein.

SECTION 7. SERVICE COMPANY.

The Trustees may engage a Service Company to carry out certain operations of the Fund, including but not limited to the processing and payment of claims. If required, the Service Company shall be approved by the South Carolina Workers' Compensation Commission.

SECTION 8. COMPENSATION AND REIMBURSEMENT OF ADMINISTRATOR.

The Trustees may establish from time to time a reasonable amount of compensation to be paid the Administrator for services rendered to and expenses incurred on behalf of the Fund, including, but not limited to, services in connection with recruiting of new members to participate in the self-insurance program, monitoring safety programs instituted by the Fund or by the Service Company, serving as liaison between the participating members of AGC and the Service Company, education of participating members as to their responsibilities under the Fund and the self-insurance program, and collection and depositing of premiums and assessments due from members of the Fund. Payment of any such compensation shall be in the sole discretion of the Trustees, subject to the approval of the South Carolina Workers' Compensation Commission, if required.

ARTICLE VI.

POWERS AND DUTIES OF THE TRUSTEES

SECTION 1. AUTHORITY OF TRUSTEES.

The Trustees shall have full power and authority and shall be charged with the duty of general supervision and operation of the Fund, and shall conduct the business and activities of the Fund in accordance with this Agreement and Declaration of Trust, applicable federal and/or state statutes, and applicable governmental rules and regulations. The power and authority of the Trustees shall include but not be limited to the power and authority to acquire, lease, sell, exchange or otherwise deal in property, both real and personal; to invest and reinvest in stocks (common or preferred), bonds, debentures, notes, mortgages or other securities; to pay taxes, assessments, compensation and other expenses incurred in the operation of the Fund; to borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the Trustees deem advisable; and generally to do all things and carry on all activities necessary for the operation of the Fund.

SECTION 2. APPROVAL OF NEW MEMBERS.

The Trustees, after the inception date of the Fund, shall receive applications for memberships from prospective new members to the Fund and shall approve such application for membership in accordance with the rules and regulations for self-insurers established by the South Carolina Workers' Compensation Commission (hereinafter sometimes referred to as the Rules for Self-Insurers), the terms of the Agreement to be entered into by perspective new members, and the rules and regulations established and promulgated by the Trustees for the admission of new members to the Fund. The Trustees may delegate the ministerial authority for membership approval to the Administrator or such other person as they select, provided that such Administrator or person designated is not an owner, officer, or employee of a Service Company.

SECTION 3. ESTABLISHMENT OF FUNDS.

The Trustees shall be responsible for establishing such Trustee funds, loss funds, or other funds which may be required by law, or the Rules for Self-Insurers or the rules of conduct and administration of this Fund as may be established by the Trustees from time to time.

SECTION 4. POSTING OF SECURITY.

The Trustees shall be responsible for and shall undertake the posting of such security deposit and/or security bonds as may be required to be posted with the South Carolina Workers' Compensation Commission, or the Rules for Self-Insurers or such other legislative enactments or administrative regulations which may be established from time to time.

SECTION 5. REPORTS.

The Trustees shall be responsible for and shall cause to be filed such annual or other periodic audits, reports, and disclosures as may be required from time to time pursuant to applicable federal or state statutes or governmental regulations, including, but not limited to, periodic payroll audits, periodic summary loss reports, periodic statements of financial condition, certified audits, appropriate applications filed by prospective new members, reports as to financial standing, payroll records, coverage, accident experience and compensation payments, summary loss data statements, periodic status reports, and any other such reports as may be required from time to time.

SECTION 6. ASSET SAFEGUARDS.

The Trustees shall take all necessary precautions to safeguard the assets of the Fund including, but not limited to, the following;

a. The designation of an Administrator to administer the financial affairs of the Fund provided, however, such, Administrator shall not be an owner, officer or employee of a Service Company. Further, the Trustees may require the Administrator to furnish a fidelity bond with the Trustees as obligee in an amount sufficient to protect the Fund against the misappropriation or misuse of any

monies or securities. The amount of such bond shall be determined by the Trustees and evidence of the said bond shall be filed with the appropriate governmental agencies and departments.

b. Retaining control of all monies collected or disbursed for the Fund; all loss funds or funds of any type shall remain in the custody of the Trustees or the authorized Administrator; provided, however, that a revolving fund for payment of compensation benefits due and other related expenses may be established for the use of the authorized service Company.

c. Designation of a Service Company which shall be required to furnish a fidelity bond covering its employees, with the Fund as obligee, and in an amount sufficient to protect all monies placed in any revolving fund made available to such Service Company for the payment of compensation benefits due and other related expenses; provided, however, in the event the bond required of the fiscal agent and/or the Administrator also covers monies deposited in the revolving fund, then and in that event, a separate bond shall not be required of the Service Company if the Service Company is already covered by sufficient bonds.

d. Having the accounts and records of the Fund audited annually or at any time which may be required by the South Carolina Workers, Compensation Commission or other governmental agency, such audits to be made by a certified public accountant, approved by the said Commission, if such approval is required; to implement any uniform accounting system prescribed by the South Carolina Workers' Compensation commission for use by self insurance funds and/or Service Companies.

e. Collect delinquent accounts which result from unpaid premiums by members.

f. Utilize monies collected as premiums only for purposes related to workers' compensation insurance and related purposes set forth herein.

g. Invest surplus monies in banks, money market funds, or such other investments which shall, in the judgement of the Trustees, constitute a sound investment with the highest rate of return, all in accordance with applicable federal and state statutes and regulations. With respect to investments, the Trustee shall have such other powers as are provided by law, and as set forth herein (reference Article VI).

h. Take all reasonable and necessary precautions to protect the members from losses and provide for excess insurance coverage designed to protect said members against excess losses.

i. Abide by all applicable federal and state statutes and administrative regulations.

SECTION 7. RULES, REGULATIONS AND BY-LAWS.

The Trustees may prescribe such rules, regulations and by-laws as may, in their discretion, be proper and necessary for the sound and efficient administration of the Trust, provided the rules and regulations shall not be inconsistent with the provisions of this Agreement and Declaration of Trust, the Agreement entered into by members of the Fund, the Rules for Self-Insurers, applicable federal and/or state statutes and applicable governmental regulations.

As part of their rule making authority, the Trustees may authorize distribution to participating members of excess monies in a manner consistent with the foregoing rules and regulations. Such distribution shall be made solely within the discretion of the Trustees, and shall be equitable as between participating members of the Fund.

SECTION 8. TRUSTEES' LIABILITIES-INDEMNIFICATION.

No Trustees shall be liable for any action taken pursuant to this Trust Agreement in good faith or for an omission, except gross negligence, or for any act of omission or commission by any other Trustee or by an employee of Trustee.

The Trustees are hereby authorized and empowered to obtain, at the expense of the Fund, liability insurance fully protecting the Trustees and the Fund from any loss or expense incurred, including reasonable attorney's fees for all acts of the Trustees except willful misconduct and gross negligence on the part of the Trustees. The Fund hereby agrees to save, hold harmless and indemnify the Trustees from any loss, damage or expense incurred by said Trustees while acting in the capacity of Trustees excepting willful misconduct and gross negligence.

In amplification of the foregoing, every person, his heirs, Executors and Administrators, who was or is a party or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding of any kind, whether civil, criminal, administrative, arbitrative or investigative, or was or is the subject of any claim, and whether or not by or in the right of the Fund, by reason of his being or having been a Trustee of the Fund, shall be indemnified by the Fund against expenses (including attorneys' fees), judgments, fines, penalties, awards, damages, costs, amounts paid in settlement and liabilities of all kinds, actually and reasonably incurred by him in connection with, or resulting from, such action, suit, proceeding, or claim, provided that no indemnification shall be made against his gross negligence or willful misconduct.

SECTION 9. RELIANCE ON COUNSEL'S OPINION.

The Trustees may consult with legal counsel concerning any questions which may arise with reference to the duties and powers or with reference to any other matter pertaining to this Agreement or the Trust created hereby. The opinion of such counsel shall be full and complete authorization and protection in respect to any action taken or suffered by the Trustees hereunder in good faith in accordance with the opinion of such counsel. The Trustees shall not be liable for such actions.

ARTICLE VII.

MISCELLANEOUS

SECTION 1. AMENDMENTS.

This Agreement and Declaration of Trust may be amended in writing at any time upon vote of a majority of the Trustees. However, this Agreement may not be amended so as to change its purpose as set forth in Article III above or to permit the diversion or application of any of the funds of the Trust for any purpose other than those specified herein. The Trustees, upon amending this Agreement, shall send a copy of any such amendment to AGC.

SECTION 2. FISCAL YEAR.

The Fund shall operate on a fiscal year from July 1 to June 30.

SECTION 3. TERMINATION OF TRUST.

This Trust may be terminated at any time by the parties to this Agreement. This Trust shall not operate for a period of time which will place it in violation of the rule against perpetuities.

In the event of termination, the remaining funds in the Trust, after providing for all outstanding obligations, shall be distributed, through a formula determined by the Trustees, to the participating members.

SECTION 4. SITUS OF THE TRUST.

This Trust Agreement is executed by the parties hereto- and accepted by the Trustees in South Carolina. All questions pertaining to the validity, construction and administration of the Trust in connection with its operation in the State of South Carolina shall be determined in accordance with the laws of the State of South Carolina.

SECTION 5. CONSTRUCTION.

Whenever any words are used in this Agreement in the masculine gender, they shall be construed as though they were also used in the feminine or neuter gender in all situations where they would so apply, and whenever any words are used in this Agreement in the singular form, they shall be construed as though they were also used in the plural form in all situations where they would so apply, and whenever any words were used in this Agreement in the plural form, they shall be construed as though they were also used in the singular form in all situations where they would so apply.

SECTION 6. SUCCESSORS AND ASSIGNS.

When reference is made herein to parties to this Agreement, said reference shall be deemed to include the respective heirs, personal representatives, successors and assigns of said parties.

IN WITNESS WHEREOF, this Agreement and Declaration of Trust has been executed the day and year first above written.

CAROLINAS AGC, INC.
(formerly known as THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, CAROLINAS BRANCH, INCORPORATED)

By; /s/ Robert L Davis
Title; President

Attest; /s/ R. Gene Ellis
Secretary

(CORPORATE SEAL)

/s/ Edward C. Finch (SEAL)
Trustee - Edward C. Finch – Chairman

/s/ Furman R. Cullum (SEAL)
Trustee - Furman R. Cullum

/s/ Henry B. Rowe (SEAL)
Trustee - Henry B. Rowe

/s/ Graham T. Allison (SEAL)
Trustee - Graham T. Allison

/s/ Luther Barringer (SEAL)
Trustee - Luther Barringer

/s/ John C. Laughridge (SEAL)
Trustee - John C. Laughridge

/s/ Harry Mashburn (SEAL)
Trustee - Harry Mashburn

/s/ Robert Sherman (SEAL)
Trustee - Robert Sherman

Exhibit B

ARTICLES OF DISSOLUTION

COMPTRUSTAGC OF SOUTH CAROLINA
(A South Carolina Business Trust)

WHEREAS, pursuant to that certain Agreement and Declaration of Trust, made and entered into as of May 14, 1982, and subsequently amended June 23, 1983, May 21, 1992, April 28, 1993 and July 1, 200 (hereinafter the "Trust Agreement") Carolinas AGC, Inc, (hereinafter "CAGC") as grantor and the original trustees duly appointed by CAGC established CompTrustAGC of South Carolina (hereinafter "CompTrustAGC-SC") as a South Carolina business trust to fulfill the obligations and liabilities pursuant to the South Carolina workers' compensation laws of employers that were members of CompTrustAGC-SC;

WHEREAS, Harry Lee Mashburn, James Thomas Tharp and Hugh K. Leatherman, Sr., are the current Trustees of CompTrustAGC-SC (hereinafter the "Trustees"), duly appointed as trustees pursuant to the Trust Agreement;

WHEREAS, CompTrustAGC-SC is duly qualified as a workers' compensation self-insurance group pursuant to the laws of the state of South Carolina and is subject to regulation by the South Carolina Workers' Compensation Commission;

WHEREAS, CAGC and the Trustees have entered into and consummated that certain December 28, 2010 Loss Portfolio Transfer and Assumption Agreement wherein all of the workers' compensation claims liabilities of CompTrustAGC-SC and all other liabilities and obligations of CompTrustAGC-SC were transferred to and assumed by CAGC Insurance Company (hereinafter "CAGCIC") in exchange for the transfer of all of the assets of CompTrustAGC-SC to CAGCIC;

WHEREAS, CompTrustAGC-SC has provided a final financial accounting to CAGC pursuant to Article VI, Section 5 of the Trust Agreement; and,

WHEREAS, CAGC and the Trustees now desire to terminate and dissolve CompTrustAGC-SC by entering into these Articles of Dissolution (hereinafter "Articles") and to hold the Trustees harmless for any claims, liabilities or obligations of CompTrustAGC-SC that may arise following the termination and dissolution of CompTrustAGC-SC.

NOW, THEREFORE, CAGC and the Trustees agree as follows:

1. Capitalized terms in these Articles have the same meaning as in the Trust Agreement.

2. These Articles shall become effective at 12:01 a.m. on April 1, 2011.

3. The Trustees are hereby indemnified against and held harmless for any alleged debts, liabilities or obligations asserted against CompTrustAGC-SC after the effective date of

these Articles; and, all post-dissolution alleged debts, liabilities and obligations of CompTrustAGC-SC shall be referred to CAGCIC.

4. An executed copy of these Articles shall be delivered to the South Carolina Workers' Compensation Commission.

IN WITNESS WHEREOF, these Articles have been executed this the 31st day of March, 2011.

CAROLINAS AGC, INC.

By: _____ (Seal)
S. Mark Hood,
Chair of the Board

Attest: _____
Cynthia Mills, CAE, CMC,
Secretary

COMPTRUSTAGC of SOUTH CAROLINA
TRUSTEES

By: _____ (Seal)
Hugh C. Leatherman, Sr. Trustee

By: _____ (Seal)
Harry Lee Madsen, Trustee

By: _____ (Seal)
James Thomas Tharp, Trustee

Exhibit C

SELF-INSURANCE
LOSS PORTFOLIO TRANSFER
ASSUMPTION AGREEMENT
(Hereinafter referred to as the "Agreement")

between

CompTrustAGC of South Carolina, Inc.
(Hereinafter referred to as the "Self-Insurer")

and

CAGC Insurance Company
(Hereinafter referred to as the "Company")

ARTICLE 1 – BUSINESS COVERED

A. The Self-Insurer hereby transfers and the Company hereby assumes 100% of the liabilities and obligations of the Self-Insurer for operations in the state of South Carolina, thereby assuming the joint and several liability of the Self-Insurer's members, for its retained amounts of specific and aggregate liability for workers' compensation and employer's liability losses, including unpaid losses and loss adjustment expenses, during the time period July 1, 1982 through June 30, 2009 including all existing and incurred but not reported ("IBNR") claims (hereinafter "Assumed Claims"), pertaining to the Policies set forth below, and subject to the terms and conditions contained herein.

B. The term "Policies" shall mean all specific and aggregate excess worker's compensation and employers' liability agreements issued by the Company, and all other agreements, policies, binders, contracts, certificates and other obligations, whether oral or written, of insurance issued by other insurers, pertaining to the liabilities assumed hereunder, including the following agreements or policies:

INSURER & AGREEMENT NO.	PERIOD OF AGREEMENT
No applicable policies	No applicable policies

C. The Self-Insurer hereby transfers to the Company all rights the Self-Insurer may have now or in the future with respect to the Self-Insurer's retained liability for workers' compensation, employers' liability and/or related losses, or under or with respect to the Policies.

*Subject to adjustment for outstanding claims checks issued as of the Effective Date, bank charges and other miscellaneous expenses to wind up the business affairs of and terminate the Self-Insurer.

ARTICLE 2 – EFFECTIVE DATE

This Agreement shall be effective as of 12:01 a.m., December 30, 2010.

ARTICLE 3 – CONSIDERATION

In consideration of the Company's agreement to assume the liabilities of the Self-Insurer, as set forth in Article 1 above, and subject to the terms and conditions of this Agreement, the Self-Insurer shall pay the sum of THREE MILLION FIVE HUNDRED EIGHTY-SIX THOUSAND FIVE HUNDRED TWENTY-SEVEN AND 01/100 DOLLARS ($3,586,527.01)* to the Company by the Effective Date.

ARTICLE 4 – COOPERATION AMONG PARTIES; TRANSFER OF DOCUMENTS

A. The parties hereto agree to act in good faith and cooperate with each other in effecting the assumption of the Assumed Claims provided for in this Agreement. The parties shall take all action necessary to assist each other in obtaining all regulatory approvals or responding to information requests of those insurance regulatory authorities asserting jurisdiction over the transactions herein described.

B. Upon demand by, and in accordance with instructions of the Company, the Self-Insurer shall deliver originals or copies of all policy records and claims files pertaining to the Assumed Claims and all other files and records incidental to the Assumed Claims to the Company or its designated representative, as are necessary for the Company to perform its obligations under this Agreement. The Company or its designated representative shall retain all policy records, claim files, and other documents received by it from the Self-Insurer as required by applicable law. Upon reasonable notice, each of the Company and the Self-Insurer will be entitled to reasonable access to the books and records of the other party at any reasonable time, but only to the extent such materials pertain to the business assumed under this Agreement. Each party will pay its own expense associated with any such review of books and records. The Self-Insurer will retain as its property all its original records, including, without limitation, articles of incorporation, bylaws, minute books, and certificates of authority; provided, however, that the Self-Insurer shall promptly provide the Company with copies of all such documents, if so requested by the Company.

C. Whenever the Self-Insurer receives any communications, including notices of claims and proofs of loss, pertaining to the Assumed Claims, it will forward such communications promptly to the Company or its designated representative.

ARTICLE 5 – NOTICE OF ASSUMPTION

The Self-Insurer will cooperate fully with the Company in implementing the assumption which is the subject of this Agreement, including, without limitation, executing any documents reasonably necessary to evidence the completion of the transactions contemplated by this Agreement.

*Subject to adjustment for outstanding claims checks issued as of the Effective Date, bank charges and other miscellaneous expenses to wind up the business affairs of and terminate the Self-Insurer.

ARTICLE 6 – ADMINISTRATION AND CLAIM PAYMENTS

A. From and after the Effective Date, the Company will be solely liable for the administration and disposition of all aspects of the Assumed Claims, including, without limitation, the defense, adjustment, settlement, and payment of all losses and expenses arising under or relating to the Assumed Claims. The Self-Insurer hereby grants and assigns to the Company authority to administer such losses, claims, expenses, defenses, adjustments, settlements, and payments, and such matters will be under the Company's control and within its sole discretion. The Company will bear all expenses and costs incurred by it in connection with the administration and disposition of such losses, claims, expenses, defenses, adjustments, settlements, and payments.

B. In its sole discretion, the Company shall have the right to select a third party administrator to perform claims administration services pertaining to the Assumed Claims.

C. The Self-Insurer will cause all information and notices regarding the Assumed Claims, actually received by the Self-Insurer after the Effective Date to be promptly reported to the Company or the Company's designated representative, and will undertake reasonable measures to ensure that all such notices are promptly delivered to the Company or to its designated representative.

D. All losses and expenses regarding the Assumed Claims that the Company determines to be payable will be paid directly and promptly by the Company.

ARTICLE 7 – ASSESSMENTS

After the Effective Date of this Agreement, in the event that an assessment is made against any present or former members of the Self-Insurer pursuant to statute or regulation, the Company agrees to pay the assessment on behalf of said Self-Insurer members.

ARTICLE 8 – REQUIRED REGULATORY APPROVAL

This Agreement remains subject to the approval of the South Carolina Workers' Compensation Commission, Self-Insurance Division, the Self-Insurer and the Company shall take all steps necessary to obtain requisite regulatory approval of this Agreement, if any, and the transaction described herein.

ARTICLE 9 – SUBORDINATION AND REINSURANCE RECEIVEABLES

A. The Company shall be subrogated to all of the rights of the Self-Insurer against any responsible person or entity. The Company is hereby authorized and empowered to bring any appropriate action in its own name or in the name of the Self-Insurer to enforce such rights.

B. Any payments received by or due to the Self-Insurer from any reinsurer of the Self-Insurer which is payable on an Assumed Claim shall become the property of and paid to the Company. If any payment is received by the Self-Insurer which is to be credited to the Company

under or with respect to any of the Assumed Claims, the Self-Insurer will immediately endorse (without warranty or recourse) and deliver to the Company such checks, drafts, or money intended as such payment, and until delivery of such items to the Company, the Self-Insurer will treat any such checks, drafts, or money as the property of the Company held for the account of the Company. The Company and the Self-Insurer will each use all commercially reasonable efforts to cause the transfer and assignment, as of the Effective Date to the Company of all the Self-Insurer's rights, interest, and obligations under the Self-Insurer's reinsurance agreement, if any, covering the risks, liabilities, and obligations of the Self-Insurer under or with respect to Assumed Claims including, without limitation, obtaining any necessary consents or approvals to such transfer and assignment by the reinsurer under any such reinsurance agreements effective as of the Effective Date. Any failure to receive the consents referred to herein will not relieve or diminish in any manner the Company's obligation under this Agreement.

C. The Company shall be authorized and entitled to file and pursue the collection of claims against the South Carolina Second Injury Fund and all other collateral sources, arising out of or resulting from Assumed Claims (hereinafter "Collateral Sources Claims"); to pursue the collection of Collateral Sources Claims filed by the Self-Insurer prior to the Effective Date; and to collect, receive, and retain any monies paid in settlement of satisfaction of any Collateral Sources Claims filed by either the Company or the Self-Insurer.

ARTICLE 10 – ERRORS OR OMISSIONS

Inadvertent delays, errors or omissions made in connection with this Agreement or any transaction hereunder will not relieve either party from any liability that would otherwise have attached had such delay, error, or omission not occurred. Regardless, the responsible party will rectify each such delay, error, or omission as promptly as practicable after discovery.

ARTICLE 11 – ARBITRATION

A. Any dispute or other matters in question between the Self-Insurer and the Company arising out of or relating to the formation, interpretation, performance, or breach of this Agreement, whether such dispute arises before or after termination of this Agreement, shall be settled by arbitration if the parties are unable to resolve the dispute through negotiation. Arbitration shall be initiated by the delivery of a written notice of demand for arbitration by one party to the other.

B. Each party shall appoint an individual as arbitrator and the two so appointed shall then appoint a third arbitrator. If either party refuses or neglects to appoint an arbitrator within sixty (60) days of receipt of written notice of demand for arbitration, the other party may appoint the second arbitrator. If the two arbitrators do not agree on a third arbitrator within sixty (60) days of their appointment, each of the arbitrators shall nominate three individuals. Each arbitrator shall then decline two of the nominations presented by the other arbitrator. The third arbitrator shall then be chosen from the remaining two nominations by drawing lots and the name of the individual first drawn shall be the umpire. The arbitrators shall be disinterested active or former executive officers of insurance or reinsurance companies or disinterested individuals with significant knowledge and experience with respect to insurance or reinsurance.

C. Arbitration hearing shall be held in Charlotte, North Carolina or such other place as may be mutually agreed. Each party shall submit its case to the arbitrators within sixty (60) days of the selection of the third arbitrator or within such longer period as may be agreed by the arbitrators. The arbitrators shall not be obliged to follow judicial formalities or the rules of evidence except to the extent required by governing law; they shall make their decisions according to the custom and practice of the reinsurance business. The decision rendered by a majority of the arbitrators shall be final and binding on both parties. Such decision shall be a condition precedent to any right to legal action arising out of the arbitrated dispute which either party may have against the other. Judgment upon the award rendered may be entered in any court having jurisdiction thereof.

D. Each party shall pay the fees and expenses of its arbitrator and attorneys and one-half of the fees and expenses of the third arbitrator. All other expenses of the arbitration shall be equally divided between the parties.

ARTICLE 12 – HONORABLE UNDERTAKING

This Agreement shall be construed as an honorable undertaking between the parties hereto not to be defeated by technical legal constructions.

ARTICLE 13 – GENERAL PROVISIONS

A. Successor and Assigns. This Agreement shall inure to the benefit of and bind the Self-Insurer and its successors and assigns and the Company and its successors and assigns. Neither this Agreement nor any right hereunder nor any part hereof may be assigned by any party hereto without the prior written consent of the other party hereto. Prior to any such assignment, the consent of all necessary regulatory authorities must be obtained.

B. Governing Law. Company is a North Carolina corporation, licensed to do business in States of North Carolina and South Carolina and is subject to the laws governing both states. This Agreement shall be governed by and construed in accordance with the laws of either State as controlled by the nature of the dispute. Specifically, but not necessarily limited to, disputes related to an alleged breach of this Agreement shall be governed by North Carolina except that disputes related to the Assumed Claims and Collateral Sources Claims shall be governed by South Carolina law.

C. Entire Agreement. This Agreement supersedes all prior discussions and agreements between the parties, and contains the sole and entire agreement between the Self-Insurer and the Company with respect to the subject matter hereof.

D. Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument.

E. Headings, etc. The headings used in this Agreement have been inserted for convenience and do not constitute matter to be construed or interpreted in connection with this Agreement. Unless the context of this Agreement otherwise requires, (a) words of any gender will be deemed to include each other gender, (b) words using singular or plural number will also include the plural or singular number, respectively, (c) the terms "hereof," "herein," "hereby," and derivative or similar words will refer to this entire Agreement, and (d) the conjunction "or" will denote any one or more, or any combination or all, of the specified items or matter involved in the respective list.

F. Non-waiver. The failure of either party hereto at any time to enforce any provision of this Agreement shall not be construed as a waiver of that provision and shall not effect the right of either party thereafter to enforce each and every provision of this Agreement in accordance with its terms.

G. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present of future law, and if the rights or obligations of any party under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance here form, and (d) in lieu of such illegal, invalid, or unenforceable provision or by its severance added automatically as part of this Agreement, a legal, invalid, and enforceable provision as similar in terms to such illegal, valid, or unenforceable provision as may be possible.

H. Notices. Any notice or communication given pursuant to this Agreement must be in writing and will be deemed to have been duly given if mailed (by registered or certified mail, postage prepaid, return receipt requested), or if transmitted by facsimile or if delivered by courier as follows:

To the Self Insurer:

CompTrustAGC of South Carolina
1100 Euclid Avenue
Charlotte, NC 28203
Facsimile: 704-347-0627

To the Company:

CAGC Insurance Company
1100 Euclid Avenue
Charlotte, NC 28203
Facsimile: 704-347-0627

Copy to:

James L. Stuart
Stuart Law Firm, PLLC
1033 Wade Avenue, Suite 202
Raleigh, NC 27605
Facsimile: 919-787-9988

All notices and other communications required or permitted under this Agreement that are addressed as provided in this paragraph will, whether sent by mail, facsimile, or courier, be deemed given upon the first business day after actual delivery to the party to whom such notice or other communication is sent (as evidenced by the return receipt or shipping invoice signed by a representative of such party or by the facsimile confirmation). Any party from time to time may change its address for the purpose of notices to that party by giving a similar notice specifying a new address, but no such notice will be deemed to have been given until it is actually received by the party sought to be charged with the contents thereof.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized representatives this 28th day of December, 2010.

CompTrustAGC of South Carolina

ATTEST: _____ By: _____
Secretary Jim Sharp
Harry Mashburn
Chairman, Board of Trustees

Copy to:

James L. Stuart
Stuart Law Firm, PLLC
1033 Wade Avenue, Suite 202
Raleigh, NC 27605
Facsimile: 919-787-9988

All notices and other communications required or permitted under this Agreement that are addressed as provided in this paragraph will, whether sent by mail, facsimile, or courier, be deemed given upon the first business day after actual delivery to the party to whom such notice or other communication is sent (as evidenced by the return receipt or shipping invoice signed by a representative of such party or by the facsimile confirmation). Any party from time to time may change its address for the purpose of notices to that party by giving a similar notice specifying a new address, but no such notice will be deemed to have been given until it is actually received by the party sought to be charged with the contents thereof.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized representatives this 28th day of December, 2016.

CompTrustAGC of South Carolina

ATTEST: _____ By: _____
Secretary
Harry Mashburn
Chairman, Board of Trustees

CAGC Insurance Company

ATTEST: _____ By: _____
Assistant Secretary
Charles T. Tagmair, Jr.
President/CEO

Exhibit D

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Raymond G. Farmer, as Director of the South Carolina Department of Insurance, Petitioner, vs. CAGC Insurance Company, in liquidation, Respondent.	Civil Action No. 2014-CP-40-0313 **AFFIDAVIT**
South Carolina Property and Casualty Insurance Guaranty Association, Intervenor-Petitioner, vs. CAGC Insurance Company, in liquidation, Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in liquidation, and CompTrustAGC of South Carolina, a/k/a CompTrustAGC of South Carolina, Inc. Intervenor-Respondent.	

Personally appeared before me Harry L. Mashburn, who being duly sworn, deposes and respectfully shows the Court the following for the limited purpose of apprising the Court of the nature and status of CompTrustAGC of South Carolina ("**CompTrust**") and clarifying its relationship with the Respondent, CAGC Insurance Company ("**CAGC**").

Service of Process

1. I am CEO and chairman of Mashburn Construction Company, Inc. I was a trustee for the Intervenor-Respondent CompTrustAGC of South Carolina ("**CompTrust**") when that entity dissolved April 1, 2011. I am not a party to the above-captioned action. I am not mentioned or otherwise referenced in any of the pleadings in the above-captioned action. I am not authorized to accept service of process or otherwise represent any of the parties named in the above-referenced action.

2. A copy of the Intervenor-Petitioner's complaint was hand delivered to my office on July 1, 2014 without any cover letter or other explanation. On August 19, 2014 I returned the document to the Intervenor-Petitioner's counsel of record with a cover letter explaining that I am not authorized to accept service of process or otherwise represent the CompTrust. A copy of that letter is attached as **Exhibit A**.

3. I am informed and believe that the Intervenor-Petitioner is attempting to have CompTrust improperly placed in default as a result of its delivering a copy of the complaint to me. A copy of my October 9, 2014 letter apprising the Court outlining this is attached as **Exhibit B**.

CompTrust and CAGC

4. CompTrust was created as an unincorporated South Carolina common law business trust under §§ 33-53-10, *et seq.* of the South Carolina Code on May 14, 1982 by Carolinas AGC, Inc. ("AGC"). I was one of the original trustees named by AGC to administer CompTrust. A copy of the CompTrust's Agreement and Declaration of Trust is attached as **Exhibit C**.

5. The CompTrust was a duly qualified workers compensation self-insurance group, subject to regulation by the South Carolina Workers Compensation Commission ("**SC WCC**") under § 42-5-20 of the South Carolina Code to fulfill the obligations and liabilities pursuant to the South Carolina workers compensation laws of the employers that were members of the CompTrust.

6. I am informed and believe the Respondent, CAGC Insurance Company ("**CAGC**"), was a workers' compensation insurance company incorporated on December 31, 2007 under the laws of the State of North Carolina and principally governed by the North Carolina Department of Insurance ("**NC DOI**").

7. I am informed and believe the South Carolina Department of Insurance ("**SC DOI**") issued CAGC a certificate of authority to transact the business of insurance in this state on or about October 27, 2008.

8. With the prior review and approval of both the NC DOI and SC WCC, the CompTrust transferred its entire portfolio of self-insured workers compensation risk (the "**Policies**") into CAGC via a loss portfolio transfer ("**LPT**") effective July 1, 2009. I was one of the trustees who authorized the LPT on behalf of CompTrust.

9. It was the intention and understanding of CAGC, CompTrust, NC DOI, and particularly SC WCC that when the LPT would effect a contractual novation would occur. To that end, the parties were required to document the LPT in the Self-Insurance Loss Portfolio Transfer Assumption Agreement (the "**Agreement**") provided by SC WCC and attached as Exhibit D. The terms of the Agreement state that CAGC replaced the CompTrust as the party responsible for all past, present and future rights, liabilities, and losses under the Policies in exchange for all of CompTrust's assets.

10. Upon completion of the LPT, CAGC issued replacement policies to the CompTrust member employers, who ceased being self-insured employers under South Carolina Workers' Compensation law, and the SC WCC's jurisdiction over the CompTrust ceased.

11. Once all assets and records had been transferred to CAGC, the CompTrust voluntarily dissolved effective April 1, 2011. A copy of CompTrust's Articles of Dissolution is attached as **Exhibit E**. I was one of the trustees who authorized the dissolution.

The Case At Hand

12. I am informed and believe that, on January 6, 2014, the General Court of Justice Superior Court Divisions, Wake County, North Carolina (the "**NC Court**") issued an order (the "**Liquidation Order**") formally declaring CAGC insolvent and placing CAGC into liquidation and appointing NC DOI to supervise the satisfaction of CAGC's obligations, including the CompTrust Policies pursuant to the LPT Agreement.

13. I am informed and believe that, with the consent of the NC DOI, the SC DOI commenced the above-captioned action to be named Ancillary Liquidator of CAGC. In that role, SC DOI currently is facilitating the ongoing payment of CAGC's South Carolina claims, including the CompTrust Policies pursuant to the LPT Agreement.

14. It is my understanding that, upon the entry of the Liquidation Order, CAGC's claim liability statutorily shifted to the Property and Casualty Guaranty Associations in North Carolina and South Carolina, and that liability for CAGC's South Carolina claims, including the CompTrust Policies pursuant to the LPT Agreement, shifted to the Intervenor-Petitioner.

IN WITNESS OF THE FOREGOING, the undersigned has executed this Affidavit as of this 11th day of MARCH 2015.

Harry L. Mashburn

SWORN to before me this 11th day of March, 2015

Barbara A. Williams.
Notary Public for South Carolina

My commission expires: 6/29/21

Exhibit A

MASHBURN Construction

Building with Integrity

August 19, 2014

Tara C. Sullivan, Esquire
Nelson Mullins Riley & Scarborough, LLP
Post Office Box 10070
Columbia, South Carolina 29211.

Dear Ms. Sullivan:

The enclosed pleadings were delivered to me at my office.

CompTrust of South Carolina ceased transacting business and dissolved as an entity years ago. I am not authorized to accept service on its behalf, so I am returning these pleadings to you. I suggest you contact the South Carolina Workers Compensation Commission regarding this matter if you have any questions.

Sincerely,

MASHBURN CONSTRUCTION COMPANY, INC.

Harry L. Mashburn, CEO & Chairman

Enclosure

HLM/jca

COLUMBIA
1820 Sumter Street (29201)
Post Office Box 2466
Columbia, SC 29202-2466
803-400-1000
803-400-1010 Fax

CHARLESTON
1202 Chuck Dawley Blvd.
Mt. Pleasant, SC 29464
843-853-4303
843-853-4304 Fax

GREENVILLE
20 Brezzini Court
Greenville, SC 29615
864-660-8528
864-213-8092 Fax

www.mashburnconstruction.com

Exhibit B

MASHBURN Construction

Building with Integrity

October 9, 2014

The Honorable Jeanette W. McBride
Clerk of Court
Fifth Judicial Circuit of South Carolina
PO Box 2766
Columbia, SC 29202-2766

Re: Raymond G. Farmer v. CAGC Ins. Co.
Case No.: 2014-CP-40-0313

Dear Madam Clerk,

It has come to my attention that the law firm of Nelson Mullins has filed an affidavit of default in the above reference matter based on an attempt to serve me on behalf of an entity that I have no responsibility for and which ceased to exist over 3 years ago.

I forwarded the enclosed letter to that firm advising them that I was not in a position to accept these documents and returned the documents to them. I am very surprised that they have used this attempt to serve me as a basis for obtaining an order from the Court.

Please file these documents so that the Court is aware that I am not in a position to accept service nor do either of these entities exist.

I am sending another copy of this letter to this law firm asking that they cease their attempt to bother me in this matter.

With kind regards, I am

Sincerely,

Harry Mashburn

Enclosure
cc: Tara C. Sullivan

COLUMBIA
1620 Sumter Street (29201)
Post Office Box 2486
Columbia, SC 29202-2486
803-400-1000
803-400-1010 Fax

CHARLESTON
1202 Chuck Dawley Blvd.
Mt. Pleasant, SC 29464
843-853-4303
843-853-4304 Fax

GREENVILLE
20 Brozzini Court
Greenville, SC 29615
864-660-8628
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www.mashburnconstruction.com

MASHBURN Construction

Building with Integrity

August 19, 2014

Tara C. Sullivan, Esquire
Nelson Mullins Riley & Scarborough, LLP
Post Office Box 10070
Columbia, South Carolina 29211.

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The enclosed pleadings were delivered to me at my office.

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Sincerely,

MASHBURN CONSTRUCTION COMPANY, INC.

Harry L. Mashburn, CEO & Chairman

Enclosure

HLM/jca

COLUMBIA
1820 Sumter Street (29201)
Post Office Box 2468
Columbia, SC 29202-2468
803-400-1000
803-400-1010 Fax

CHARLESTON
1202 Chuck Dawley Blvd.
Mt. Pleasant, SC 29464
843-853-4303
843-853-4304 Fax

GREENVILLE
20 Brezzini Court
Greenville, SC 29615
864-660-9528
864-213-8092 Fax

www.mashburnconstruction.com

Exhibit C

July 1, 2000

AGREEMENT AND DECLARATION OF TRUST
OF CompTrustAGC OF SOUTH CAROLINA

(As Amended Through July 1, 2000)

THIS AGREEMENT AND DECLARATION OF TRUST, made and entered into as of May 14, 1982, amended June 23, 1983, May 21, 1992, April 28, 1993 and further amended July 1, 2000 by and between Carolinas AGC, Inc. (hereinafter sometimes referred to as "AGC") and the Trustees who have heretofore, or who may hereafter, be appointed to serve as provided herein.

WITNESSETH;

WHEREAS, AGC wishes to create a group workers' compensation fund for the purpose of providing a program of workers' compensation coverage in South Carolina, with the approval of, and pursuant to the rules and regulations of the South Carolina Workers' Compensation Commission; and

WHEREAS, it is considered to be in the best interest of the parties hereto that an Agreement and Declaration of Trust fully setting forth the duties and responsibilities of the Trustees be entered into.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, CompTrustAGC of South Carolina is hereby established, as follows;

ARTICLE I.

DEFINITIONS

Administrator - Carolinas AGC, Inc., or such other individual or legal entity appointed by the Trustees. The Administrator shall administer the financial affairs of the Fund (hereinafter defined), and carry on the day to day operations and activities of the Fund as directed by the Trustees.

Fund – CompTrustAGC of South Carolina.

Agreement - That certain Agreement entered into by parties who become members of the Fund, which Agreement sets forth their obligations and responsibilities.

Member - A company, firm, corporation, individual, partnership or other legal entity which operates a business similar in nature to the businesses in the Fund and which is a participating member in this Fund and a member or an associated member in good standing of

Carolinas AGC, Inc. or a parent, subsidiary or affiliate of such member or associate member of Carolinas AGC, Inc. who meets the qualifications set forth herein.

Service Company - Any individual, co-partnership, corporation, firm or other legal entity engaged in the business of servicing approved workers' compensation programs which, if required, has made application to, and been approved by the South Carolina Workers' Compensation Commission.

Trustees - The Trustees appointed to serve on the Board of Trustees of this Trust Fund as provided herein.

ARTICLE II.

CREATION OF THE TRUST

There is hereby established and created a Trust and Trust Fund which shall be known as "CompTrustAGC of South Carolina" (hereinafter sometimes referred to as the "Fund" or the "Trust") and the Trustees may hold property, enter into contracts and in all matters as hereinafter set forth act in behalf of the Fund in that name. The Fund shall be used for the purposes as hereinafter set forth.

ARTICLE III.

PURPOSE

This Trust Agreement is made and executed for the purpose of meeting and fulfilling the members' obligations and liabilities under the South Carolina Workmen's Compensation Act; to form an overall group workers' compensation fund pursuant to the laws of said states for the purpose of providing workers' compensation coverage and benefits; to provide maximum allowable advance discounts on premium payments made by members for workers' compensation coverage; and to minimize the cost of providing workers' compensation coverage by developing and refining specialized claim services and a loss prevention program within the construction trade industry.

ARTICLE IV.

DESIGNATION OF TRUSTEES

SECTION 1. NUMBER OF TRUSTEES.

The operation and administration of the Trust Fund shall be the joint responsibility of a Board of Trustees consisting of a number not more than nine (9) nor less than three (3).

SECTION 2. APPOINTMENT OF TRUSTEES.

The Board of Directors of AGC will appoint members to serve on the Board of Trustees of the Fund. Any Trustee so appointed must be an executive representative of a member or an associate in good standing in AGC or a parent, subsidiary or affiliate of such member or associate member, and a member in good standing in the Fund, and no Trustee may be appointed who is, or continues to serve as a Trustee after becoming, an owner, officer of employee of a Service Company.

Each and every Trustee heretofore or hereafter named and each successor Trustee shall acknowledge and consent to their appointment *as* Trustees by giving written notice of acceptance of such appointment to the Chairman or acting chairman of the Board of Trustees of this Fund.

The Board of Directors of AGC has appointed an initial Board of Trustees to act on behalf of the Fund. Members of the initial Board of Trustees do not have to be members of the Fund. The Board of Directors of AGC has fully authorized the initial Board of Trustees to conduct the affairs of the Fund to include but not be limited to the appointment of, and entering into a contract with, a Service Company; the appointment of an Administrators preparation of all applications and other papers required by the South, Carolina Workers' Compensation Commission for the purpose of establishing a group self-insurance fund which will administer a program of workers' compensation in South Carolina; etc. The initial Board of Trustees will serve until replaced by a first Board of Trustees, appointed as set forth in Section 4 below.

SECTION 3. RESIGNATION OF A TRUSTEE.

A Trustee may resign and become and remain fully discharged from all further duties or responsibility hereunder, by giving at least sixty (60) days prior notice in writing sent by registered mail to the chairman or acting chairman of the Board of Trustees of this Fund, and to AGC. Such notice shall state the date said resignation shall take effect and such resignation shall take effect on such date unless a successor Trustee shall have been appointed at an earlier date by AGC, in which event resignation shall take effect immediately upon the appointment of such successor Trustee.

Any Trustee, upon leaving office, shall forthwith turn over and deliver to the chairman or the secretary of the Trustees, at the principal office of the Fund, any and all records, books, documents or other property in his possession or under his control which belongs to the Fund.

SECTION 4. LENGTH OF APPOINTMENT AND REMOVAL OF A TRUSTEE.

Each Trustee, and each successor Trustee, shall serve for a term of three (3) years, subject to the provisions of the Section in this Article regarding resignation, death, incapacity or refusal of a Trustee to act. The first Board of Trustees, which will replace the initial Board of Trustees, shall consist of no more than three Trustees serving a term of one (1) year, no more than three Trustees serving for a term of two (2) years, and no more than three Trustees serving for a term of three (3) years.

A Trustee may be removed by AGC. Notice of removal of a Trustee shall be furnished to the Trustee and the chairman or acting chairman of the Trustees by certified mail and shall set forth the effective date of such removal, and said notice shall name the Trustee or Trustees removed.

SECTION 5. APPOINTMENT OF A SUCCESSOR TRUSTEE.

In the event any Trustee duly appointed to serve on the Board of Trustees of this Fund shall die, resign, become incapacitated, refuse to act, or be removed, a successor Trustee shall be appointed forthwith by AGC. The notice of appointment of a successor Trustee shall be in writing to the chairman or acting chairman of the Board of Trustees by certified mail.

SECTION 6. TRUSTEE'S AUTHORITY.

In case of death, resignation, removal, refusal or inability to act by any one or more of the Trustees, the remaining Trustees shall have all of the powers, rights, estates and interest of this Trust and shall be charged with its duties, provided that, in such cases, no action may be taken unless it is concurred in by a majority of three (3) or more of the remaining Trustees.

SECTION 7. TRUSTEE OFFICERS.

The Trustees shall meet as promptly as possible after their appointment and elect from among the Trustees a Chairman and a Secretary and such other officers as they deem appropriate. The term of such officers shall commence on the date of their election and continue to the end of the fiscal year. Thereafter such officers shall be elected annually.

The initial Board of Trustees shall elect from among the Trustees a Chairman and a Secretary and such other officers as they deem appropriate. Said officers shall serve until their successors have been elected by the first Board of Trustees.

ARTICLE V.

ADMINISTRATION OF FUND

SECTION 1. MEETINGS.

The Trustees shall meet at least quarterly, and more often if required, at the principal office of the Fund or at such other location as may be acceptable to a majority of the Trustees. The chairman of the Trustees shall set the date, time and location of each meeting, and notice thereof shall be furnished to each Trustee by the secretary or Administrator not less than ten (10) days prior to the date of such meeting. Such notice shall specify the date, time and location of such meeting and may specify the purpose thereof and any action proposed to be taken.

Special meetings of the Trustees may be held at any time and place without notice, provided all Trustees execute a waiver of notice and consent *to* the said meeting.

For the purpose of a duly called and noticed meeting of the Trustees, a quorum shall consist of at least fifty (50) percent of the Trustees.

The secretary, acting secretary, or his designee shall keep, minutes of all meetings, proceedings and acts of the Trustees, but such minutes need not be verbatim. Copies of all minutes of the meeting of the Trustees shall be sent by the secretary, acting secretary or a designee to all Trustees.

SECTION 2. VOTING.

All actions by, and decisions of, the Trustees shall be by the vote of a majority of the number of Trustees attending a duly called meeting of the Trustees at which a quorum is present; provided, however, that actions by, and decisions of, the Trustees may be taken by a vote of a majority of the number of Trustees attending a special meeting without notice when a proper waiver and consent has been obtained as provided in Section 1 above and at which a quorum is present.

SECTION 3. OFFICE OF THE FUND.

The Trustees shall establish and maintain an office of the Fund. The books and records pertaining to the Fund and its administration shall be kept and maintained at the office of the Fund.

SECTION 4. EXECUTION OF DOCUMENTS.

A certificate signed by the chairman and secretary of the Trustees or those duly acting in their stead shall be evidence of the action of the Trustees. All facts and matters so certified shall conclusively be presumed true.

SECTION 5. APPOINTMENT OF ADMINISTRATOR.

The Trustees may designate an Administrator to administer the financial affairs of the Fund, and to carry on the day-to-day operations and activities of the Fund, provided, however, such Administrator shall not be an owner, officer, or employee of a Service Company. The Trustees may assign to the Administrator such powers and authorities as they deem appropriate, to include but not limited to the authority to establish bank accounts, sign checks, determine appropriate depositories for Fund assets, approval of new members, etc.

If requested, any Administrator so appointed shall furnish a fidelity bond with the Trustees as obligee, in an amount sufficient to protect the Fund against the misappropriation or misuse of any monies or securities held by or in the name of the Fund. The amount of the bond shall be determined by the Trustees and evidence of such bond shall be filed with the appropriate governmental agencies and departments.

SECTION 6. COMPENSATION AND REIMBURSEMENT OF TRUSTEES.

The Trustees may establish from time to time, a reasonable amount of compensation to cover attendance at meetings of the Trustees and the performance of the normal duties of a Trustee, which compensation may include reimbursement for necessary expenses incurred herein.

SECTION 7. SERVICE COMPANY.

The Trustees may engage a Service Company to carry out certain operations of the Fund, including but not limited to the processing and payment of claims. If required, the Service Company shall be approved by the South Carolina Workers' Compensation Commission.

SECTION 8. COMPENSATION AND REIMBURSEMENT OF ADMINISTRATOR.

The Trustees may establish from time to time a reasonable amount of compensation to be paid the Administrator for services rendered to and expenses incurred on behalf of the Fund, including, but not limited to, services in connection with recruiting of new members to participate in the self-insurance program, monitoring safety programs instituted by the Fund or by the Service Company, serving as liaison between the participating members of AGC and the Service Company, education of participating members as to their responsibilities under the Fund and the self-insurance program, and collection and depositing of premiums and assessments due from members of the Fund. Payment of any such compensation shall be in the sole discretion of the Trustees, subject to the approval of the South Carolina Workers' Compensation Commission, if required.

ARTICLE VI.

POWERS AND DUTIES OF THE TRUSTEES

SECTION 1. AUTHORITY OF TRUSTEES.

The Trustees shall have full power and authority and shall be charged with the duty of general supervision and operation of the Fund, and shall conduct the business and activities of the Fund in accordance with this Agreement and Declaration of Trust, applicable federal and/or state statutes, and applicable governmental rules and regulations. The power and authority of the Trustees shall include but not be limited to the power and authority to acquire, lease, sell, exchange or otherwise deal in property, both real and personal; to invest and reinvest in stocks (common or preferred), bonds, debentures, notes, mortgages or other securities; to pay taxes, assessments, compensation and other expenses incurred in the operation of the Fund; to borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the Trustees deem advisable; and generally to do all things and carry on all activities necessary for the operation of the Fund.

SECTION 2. APPROVAL OF NEW MEMBERS.

The Trustees, after the inception date of the Fund, shall receive applications for memberships from prospective new members to the Fund and shall approve such application for membership in accordance with the rules and regulations for self-insurers established by the South Carolina Workers' Compensation Commission (hereinafter sometimes referred to as the Rules for Self-Insurers), the terms of the Agreement to be entered into by perspective new members, and the rules and regulations established and promulgated by the Trustees for the admission of new members to the Fund. The Trustees may delegate the ministerial authority for membership approval to the Administrator or such other person as they select, provided that such Administrator or person designated is not an owner, officer, or employee of a Service Company.

SECTION 3. ESTABLISHMENT OF FUNDS.

The Trustees shall be responsible for establishing such Trustee funds, loss funds, or other funds which may be required by law, or the Rules for Self-Insurers or the rules of conduct and administration of this Fund as may be established by the Trustees from time to time.

SECTION 4. POSTING OF SECURITY.

The Trustees shall be responsible for and shall undertake the posting of such security deposit and/or security bonds as may be required to be posted with the South Carolina Workers' Compensation Commission, or the Rules for Self-Insurers or such other legislative enactments or administrative regulations which may be established from time to time.

SECTION 5. REPORTS.

The Trustees shall be responsible for and shall cause to be filed such annual or other periodic audits, reports, and disclosures as may be required from time to time pursuant to applicable federal or state statutes or governmental regulations, including, but not limited to, periodic payroll audits, periodic summary loss reports, periodic statements of financial condition, certified audits, appropriate applications filed by prospective new members, reports as to financial standing, payroll records, coverage, accident experience and compensation payments, summary loss data statements, periodic status reports, and any other such reports as may be required from time to time.

SECTION 6. ASSET SAFEGUARDS.

The Trustees shall take all necessary precautions to safeguard the assets of the Fund including, but not limited to, the following;

a. The designation of an Administrator to administer the financial affairs of the Fund provided, however, such, Administrator shall not be an owner, officer or employee of a Service Company. Further, the Trustees may require the Administrator to furnish a fidelity bond with the Trustees as obligee in an amount sufficient to protect the Fund against the misappropriation or misuse of any

monies or securities. The amount of such bond shall be determined by the Trustees and evidence of the said bond shall be filed with the appropriate governmental agencies and departments.

b. Retaining control of all monies collected or disbursed for the Fund; all loss funds or funds of any type shall remain in the custody of the Trustees or the authorized Administrator; provided, however, that a revolving fund for payment of compensation benefits due and other related expenses may be established for the use of the authorized service Company.

c. Designation of a Service Company which shall be required to furnish a fidelity bond covering its employees, with the Fund as obligee, and in an amount sufficient to protect all monies placed in any revolving fund made available to such Service Company for the payment of compensation benefits due and other related expenses; provided, however, in the event the bond required of the fiscal agent and/or the Administrator also covers monies deposited in the revolving fund, then and in that event, a separate bond shall not be required of the Service Company if the Service Company is already covered by sufficient bonds.

d. Having the accounts and records of the Fund audited annually or at any time which may be required by the South Carolina Workers, Compensation Commission or other governmental agency, such audits to be made by a certified public accountant, approved by the said Commission, if such approval is required; to implement any uniform accounting system prescribed by the South Carolina Workers' Compensation commission for use by self insurance funds and/or Service Companies.

e. Collect delinquent accounts which result from unpaid premiums by members.

f. Utilize monies collected as premiums only for purposes related to workers' compensation insurance and related purposes set forth herein.

g. Invest surplus monies in banks, money market funds, or such other investments which shall, in the judgement of the Trustees, constitute a sound investment with the highest rate of return, all in accordance with applicable federal and state statutes and regulations. With respect to investments, the Trustee shall have such other powers as are provided by law, and as set forth herein (reference Article VI).

h. Take all reasonable and necessary precautions to protect the members from losses and provide for excess insurance coverage designed to protect said members against excess losses.

i. Abide by all applicable federal and state statutes and administrative regulations.

SECTION 7. RULES, REGULATIONS AND BY-LAWS.

The Trustees may prescribe such rules, regulations and by-laws as may, in their discretion, be proper and necessary for the sound and efficient administration of the Trust, provided the rules and regulations shall not be inconsistent with the provisions of this Agreement and Declaration of Trust, the Agreement entered into by members of the Fund, the Rules for Self-Insurers, applicable federal and/or state statutes and applicable governmental regulations.

As part of their rule making authority, the Trustees may authorize distribution to participating members of excess monies in a manner consistent with the foregoing rules and regulations. Such distribution shall be made solely within the discretion of the Trustees, and shall be equitable as between participating members of the Fund.

SECTION 8. TRUSTEES' LIABILITIES-INDEMNIFICATION.

No Trustees shall be liable for any action taken pursuant to this Trust Agreement in good faith or for an omission, except gross negligence, or for any act of omission or commission by any other Trustee or by an employee of Trustee.

The Trustees are hereby authorized and empowered to obtain, at the expense of the Fund, liability insurance fully protecting the Trustees and the Fund from any loss or expense incurred, including reasonable attorney's fees for all acts of the Trustees except willful misconduct and gross negligence on the part of the Trustees. The Fund hereby agrees to save, hold harmless and indemnify the Trustees from any loss, damage or expense incurred by said Trustees while acting in the capacity of Trustees excepting willful misconduct and gross negligence.

In amplification of the foregoing, every person, his heirs, Executors and Administrators, who was or is a party or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding of any kind, whether civil, criminal, administrative, arbitrative or investigative, or was or is the subject of any claim, and whether or not by or in the right of the Fund, by reason of his being or having been a Trustee of the Fund, shall be indemnified by the Fund against expenses (including attorneys' fees), judgments, fines, penalties, awards, damages, costs, amounts paid in settlement and liabilities of all kinds, actually and reasonably incurred by him in connection with, or resulting from, such action, suit, proceeding, or claim, provided that no indemnification shall be made against his gross negligence or willful misconduct.

SECTION 9. RELIANCE ON COUNSEL'S OPINION.

The Trustees may consult with legal counsel concerning any questions which may arise with reference to the duties and powers or with reference to any other matter pertaining to this Agreement or the Trust created hereby. The opinion of such counsel shall be full and complete authorization and protection in respect to any action taken or suffered by the Trustees hereunder in good faith in accordance with the opinion of such counsel. The Trustees shall not be liable for such actions.

ARTICLE VII.

MISCELLANEOUS

SECTION 1. AMENDMENTS.

This Agreement and Declaration of Trust may be amended in writing at any time upon vote of a majority of the Trustees. However, this Agreement may not be amended so as to change its purpose as set forth in Article III above or to permit the diversion or application of any of the funds of the Trust for any purpose other than those specified herein. The Trustees, upon amending this Agreement, shall send a copy of any such amendment to AGC.

SECTION 2. FISCAL YEAR.

The Fund shall operate on a fiscal year from July 1 to June 30.

SECTION 3. TERMINATION OF TRUST.

This Trust may be terminated at any time by the parties to this Agreement. This Trust shall not operate for a period of time which will place it in violation of the rule against perpetuities.

In the event of termination, the remaining funds in the Trust, after providing for all outstanding obligations, shall be distributed, through a formula determined by the Trustees, to the participating members.

SECTION 4. SITUS OF THE TRUST.

This Trust Agreement is executed by the parties hereto- and accepted by the Trustees in South Carolina. All questions pertaining to the validity, construction and administration of the Trust in connection with its operation in the State of South Carolina shall be determined in accordance with the laws of the State of South Carolina.

SECTION 5. CONSTRUCTION.

Whenever any words are used in this Agreement in the masculine gender, they shall be construed as though they were also used in the feminine or neuter gender in all situations where they would so apply, and whenever any words are used in this Agreement in the singular form, they shall be construed as though they were also used in the plural form in all situations where they would so apply, and whenever any words were used in this Agreement in the plural form, they shall be construed as though they were also used in the singular form in all situations where they would so apply.

SECTION 6. SUCCESSORS AND ASSIGNS.

When reference is made herein to parties to this Agreement, said reference shall be deemed to include the respective heirs, personal representatives, successors and assigns of said parties.

IN WITNESS WHEREOF, this Agreement and Declaration of Trust has been executed the day and year first above written.

CAROLINAS AGC, INC.
(formerly known as THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, CAROLINAS BRANCH, INCORPORATED)

By; /s/ Robert L Davis
Title; President

Attest; /s/ R. Gene Ellis
Secretary

(CORPORATE SEAL)

/s/ Edward C. Finch (SEAL)
Trustee - Edward C. Finch – Chairman

/s/ Furman R. Cullum (SEAL)
Trustee - Furman R. Cullum

/s/ Henry B. Rowe (SEAL)
Trustee - Henry B. Rowe

/s/ Graham T. Allison (SEAL)
Trustee - Graham T. Allison

/s/ Luther Barringer (SEAL)
Trustee - Luther Barringer

/s/ John C. Laughridge (SEAL)
Trustee - John C. Laughridge

/s/ Harry Mashburn (SEAL)
Trustee - Harry Mashburn

/s/ Robert Sherman (SEAL)
Trustee - Robert Sherman

Exhibit D

SELF-INSURANCE
LOSS PORTFOLIO TRANSFER
ASSUMPTION AGREEMENT
(Hereinafter referred to as the "Agreement")

between

CompTrustAGC of South Carolina, Inc.
(Hereinafter referred to as the "Self-Insurer")

and

CAGC Insurance Company
(Hereinafter referred to as the "Company")

ARTICLE 1 – BUSINESS COVERED

A. The Self-Insurer hereby transfers and the Company hereby assumes 100% of the liabilities and obligations of the Self-Insurer for operations in the state of South Carolina, thereby assuming the joint and several liability of the Self-Insurer's members, for its retained amounts of specific and aggregate liability for workers' compensation and employer's liability losses, including unpaid losses and loss adjustment expenses, during the time period July 1, 1982 through June 30, 2009 including all existing and incurred but not reported ("IBNR") claims (hereinafter "Assumed Claims"), pertaining to the Policies set forth below, and subject to the terms and conditions contained herein.

B. The term "Policies" shall mean all specific and aggregate excess worker's compensation and employers' liability agreements issued by the Company, and all other agreements, policies, binders, contracts, certificates and other obligations, whether oral or written, of insurance issued by other insurers, pertaining to the liabilities assumed hereunder, including the following agreements or policies:

INSURER & AGREEMENT NO.	PERIOD OF AGREEMENT
No applicable policies	No applicable policies

C. The Self-Insurer hereby transfers to the Company all rights the Self-Insurer may have now or in the future with respect to the Self-Insurer's retained liability for workers' compensation, employers' liability and/or related losses, or under or with respect to the Policies.

*Subject to adjustment for outstanding claims checks issued as of the Effective Date, bank charges and other miscellaneous expenses to wind up the business affairs of and terminate the Self-Insurer.

ARTICLE 2 – EFFECTIVE DATE

This Agreement shall be effective as of 12:01 a.m., December 30, 2010.

ARTICLE 3 – CONSIDERATION

In consideration of the Company's agreement to assume the liabilities of the Self-Insurer, as set forth in Article 1 above, and subject to the terms and conditions of this Agreement, the Self-Insurer shall pay the sum of THREE MILLION FIVE HUNDRED EIGHTY-SIX THOUSAND FIVE HUNDRED TWENTY-SEVEN AND 01/100 DOLLARS ($3,586,527.01)* to the Company by the Effective Date.

ARTICLE 4 – COOPERATION AMONG PARTIES; TRANSFER OF DOCUMENTS

A. The parties hereto agree to act in good faith and cooperate with each other in effecting the assumption of the Assumed Claims provided for in this Agreement. The parties shall take all action necessary to assist each other in obtaining all regulatory approvals or responding to information requests of those insurance regulatory authorities asserting jurisdiction over the transactions herein described.

B. Upon demand by, and in accordance with instructions of the Company, the Self-Insurer shall deliver originals or copies of all policy records and claims files pertaining to the Assumed Claims and all other files and records incidental to the Assumed Claims to the Company or its designated representative, as are necessary for the Company to perform its obligations under this Agreement. The Company or its designated representative shall retain all policy records, claim files, and other documents received by it from the Self-Insurer as required by applicable law. Upon reasonable notice, each of the Company and the Self-Insurer will be entitled to reasonable access to the books and records of the other party at any reasonable time, but only to the extent such materials pertain to the business assumed under this Agreement. Each party will pay its own expense associated with any such review of books and records. The Self-Insurer will retain as its property all its original records, including, without limitation, articles of incorporation, bylaws, minute books, and certificates of authority; provided, however, that the Self-Insurer shall promptly provide the Company with copies of all such documents, if so requested by the Company.

C. Whenever the Self-Insurer receives any communications, including notices of claims and proofs of loss, pertaining to the Assumed Claims, it will forward such communications promptly to the Company or its designated representative.

ARTICLE 5 – NOTICE OF ASSUMPTION

The Self-Insurer will cooperate fully with the Company in implementing the assumption which is the subject of this Agreement, including, without limitation, executing any documents reasonably necessary to evidence the completion of the transactions contemplated by this Agreement.

*Subject to adjustment for outstanding claims checks issued as of the Effective Date, bank charges and other miscellaneous expenses to wind up the business affairs of and terminate the Self-Insurer.

ARTICLE 6 – ADMINISTRATION AND CLAIM PAYMENTS

A. From and after the Effective Date, the Company will be solely liable for the administration and disposition of all aspects of the Assumed Claims, including, without limitation, the defense, adjustment, settlement, and payment of all losses and expenses arising under or relating to the Assumed Claims. The Self-Insurer hereby grants and assigns to the Company authority to administer such losses, claims, expenses, defenses, adjustments, settlements, and payments, and such matters will be under the Company's control and within its sole discretion. The Company will bear all expenses and costs incurred by it in connection with the administration and disposition of such losses, claims, expenses, defenses, adjustments, settlements, and payments.

B. In its sole discretion, the Company shall have the right to select a third party administrator to perform claims administration services pertaining to the Assumed Claims.

C. The Self-Insurer will cause all information and notices regarding the Assumed Claims, actually received by the Self-Insurer after the Effective Date to be promptly reported to the Company or the Company's designated representative, and will undertake reasonable measures to ensure that all such notices are promptly delivered to the Company or to its designated representative.

D. All losses and expenses regarding the Assumed Claims that the Company determines to be payable will be paid directly and promptly by the Company.

ARTICLE 7 – ASSESSMENTS

After the Effective Date of this Agreement, in the event that an assessment is made against any present or former members of the Self-Insurer pursuant to statute or regulation, the Company agrees to pay the assessment on behalf of said Self-Insurer members.

ARTICLE 8 – REQUIRED REGULATORY APPROVAL

This Agreement remains subject to the approval of the South Carolina Workers' Compensation Commission, Self-Insurance Division, the Self-Insurer and the Company shall take all steps necessary to obtain requisite regulatory approval of this Agreement, if any, and the transaction described herein.

ARTICLE 9 – SUBORDINATION AND REINSURANCE RECEIVEABLES

A. The Company shall be subrogated to all of the rights of the Self-Insurer against any responsible person or entity. The Company is hereby authorized and empowered to bring any appropriate action in its own name or in the name of the Self-Insurer to enforce such rights.

B. Any payments received by or due to the Self-Insurer from any reinsurer of the Self-Insurer which is payable on an Assumed Claim shall become the property of and paid to the Company. If any payment is received by the Self-Insurer which is to be credited to the Company

under or with respect to any of the Assumed Claims, the Self-Insurer will immediately endorse (without warranty or recourse) and deliver to the Company such checks, drafts, or money intended as such payment, and until delivery of such items to the Company, the Self-Insurer will treat any such checks, drafts, or money as the property of the Company held for the account of the Company. The Company and the Self-Insurer will each use all commercially reasonable efforts to cause the transfer and assignment, as of the Effective Date to the Company of all the Self-Insurer's rights, interest, and obligations under the Self-Insurer's reinsurance agreement, if any, covering the risks, liabilities, and obligations of the Self-Insurer under or with respect to Assumed Claims including, without limitation, obtaining any necessary consents or approvals to such transfer and assignment by the reinsurer under any such reinsurance agreements effective as of the Effective Date. Any failure to receive the consents referred to herein will not relieve or diminish in any manner the Company's obligation under this Agreement.

C. The Company shall be authorized and entitled to file and pursue the collection of claims against the South Carolina Second Injury Fund and all other collateral sources, arising out of or resulting from Assumed Claims (hereinafter "Collateral Sources Claims"); to pursue the collection of Collateral Sources Claims filed by the Self-Insurer prior to the Effective Date; and to collect, receive, and retain any monies paid in settlement of satisfaction of any Collateral Sources Claims filed by either the Company or the Self-Insurer.

ARTICLE 10 – ERRORS OR OMISSIONS

Inadvertent delays, errors or omissions made in connection with this Agreement or any transaction hereunder will not relieve either party from any liability that would otherwise have attached had such delay, error, or omission not occurred. Regardless, the responsible party will rectify each such delay, error, or omission as promptly as practicable after discovery.

ARTICLE 11 – ARBITRATION

A. Any dispute or other matters in question between the Self-Insurer and the Company arising out of or relating to the formation, interpretation, performance, or breach of this Agreement, whether such dispute arises before or after termination of this Agreement, shall be settled by arbitration if the parties are unable to resolve the dispute through negotiation. Arbitration shall be initiated by the delivery of a written notice of demand for arbitration by one party to the other.

B. Each party shall appoint an individual as arbitrator and the two so appointed shall then appoint a third arbitrator. If either party refuses or neglects to appoint an arbitrator within sixty (60) days of receipt of written notice of demand for arbitration, the other party may appoint the second arbitrator. If the two arbitrators do not agree on a third arbitrator within sixty (60) days of their appointment, each of the arbitrators shall nominate three individuals. Each arbitrator shall then decline two of the nominations presented by the other arbitrator. The third arbitrator shall then be chosen from the remaining two nominations by drawing lots and the name of the individual first drawn shall be the umpire. The arbitrators shall be disinterested active or former executive officers of insurance or reinsurance companies or disinterested individuals with significant knowledge and experience with respect to insurance or reinsurance.

C. Arbitration hearing shall be held in Charlotte, North Carolina or such other place as may be mutually agreed. Each party shall submit its case to the arbitrators within sixty (60) days of the selection of the third arbitrator or within such longer period as may be agreed by the arbitrators. The arbitrators shall not be obliged to follow judicial formalities or the rules of evidence except to the extent required by governing law; they shall make their decisions according to the custom and practice of the reinsurance business. The decision rendered by a majority of the arbitrators shall be final and binding on both parties. Such decision shall be a condition precedent to any right to legal action arising out of the arbitrated dispute which either party may have against the other. Judgment upon the award rendered may be entered in any court having jurisdiction thereof.

D. Each party shall pay the fees and expenses of its arbitrator and attorneys and one-half of the fees and expenses of the third arbitrator. All other expenses of the arbitration shall be equally divided between the parties.

ARTICLE 12 – HONORABLE UNDERTAKING

This Agreement shall be construed as an honorable undertaking between the parties hereto not to be defeated by technical legal constructions.

ARTICLE 13 – GENERAL PROVISIONS

A. Successor and Assigns. This Agreement shall inure to the benefit of and bind the Self-Insurer and its successors and assigns and the Company and its successors and assigns. Neither this Agreement nor any right hereunder nor any part hereof may be assigned by any party hereto without the prior written consent of the other party hereto. Prior to any such assignment, the consent of all necessary regulatory authorities must be obtained.

B. Governing Law. Company is a North Carolina corporation, licensed to do business in States of North Carolina and South Carolina and is subject to the laws governing both states. This Agreement shall be governed by and construed in accordance with the laws of either State as controlled by the nature of the dispute. Specifically, but not necessarily limited to, disputes related to an alleged breach of this Agreement shall be governed by North Carolina except that disputes related to the Assumed Claims and Collateral Sources Claims shall be governed by South Carolina law.

C. Entire Agreement. This Agreement supersedes all prior discussions and agreements between the parties, and contains the sole and entire agreement between the Self-Insurer and the Company with respect to the subject matter hereof.

D. Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument.

E. Headings, etc. The headings used in this Agreement have been inserted for convenience and do not constitute matter to be construed or interpreted in connection with this Agreement. Unless the context of this Agreement otherwise requires, (a) words of any gender will be deemed to include each other gender, (b) words using singular or plural number will also include the plural or singular number, respectively, (c) the terms "hereof," "herein," "hereby," and derivative or similar words will refer to this entire Agreement, and (d) the conjunction "or" will denote any one or more, or any combination or all, of the specified items or matter involved in the respective list.

F. Non-waiver. The failure of either party hereto at any time to enforce any provision of this Agreement shall not be construed as a waiver of that provision and shall not effect the right of either party thereafter to enforce each and every provision of this Agreement in accordance with its terms.

G. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present of future law, and if the rights or obligations of any party under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance here form, and (d) in lieu of such illegal, invalid, or unenforceable provision or by its severance added automatically as part of this Agreement, a legal, invalid, and enforceable provision as similar in terms to such illegal, valid, or unenforceable provision as may be possible.

H. Notices. Any notice or communication given pursuant to this Agreement must be in writing and will be deemed to have been duly given if mailed (by registered or certified mail, postage prepaid, return receipt requested), or if transmitted by facsimile or if delivered by courier as follows:

To the Self Insurer:

CompTrustAGC of South Carolina
1100 Euclid Avenue
Charlotte, NC 28203
Facsimile: 704-347-0627

To the Company:

CAGC Insurance Company
1100 Euclid Avenue
Charlotte, NC 28203
Facsimile: 704-347-0627

Copy to:

James L. Stuart
Stuart Law Firm, PLLC
1033 Wade Avenue, Suite 202
Raleigh, NC 27605
Facsimile: 919-787-9988

All notices and other communications required or permitted under this Agreement that are addressed as provided in this paragraph will, whether sent by mail, facsimile, or courier, be deemed given upon the first business day after actual delivery to the party to whom such notice or other communication is sent (as evidenced by the return receipt or shipping invoice signed by a representative of such party or by the facsimile confirmation). Any party from time to time may change its address for the purpose of notices to that party by giving a similar notice specifying a new address, but no such notice will be deemed to have been given until it is actually received by the party sought to be charged with the contents thereof.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized representatives this 28th day of December, 2010.

CompTrustAGC of South Carolina

ATTEST: _____ By: _____
Secretary Jim Sharp
Harry Mashburn
Chairman, Board of Trustees

Copy to:

James L. Stuart
Stuart Law Firm, PLLC
1033 Wade Avenue, Suite 202
Raleigh, NC 27605
Facsimile: 919-787-9088

All notices and other communications required or permitted under this Agreement that are addressed as provided in this paragraph will, whether sent by mail, facsimile, or courier, be deemed given upon the first business day after actual delivery to the party to whom such notice or other communication is sent (as evidenced by the return receipt or shipping invoice signed by a representative of such party or by the facsimile confirmation). Any party from time to time may change its address for the purpose of notices to that party by giving a similar notice specifying a new address, but no such notice will be deemed to have been given until it is actually received by the party sought to be charged with the contents thereof.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized representatives this 28th day of December, 2016.

CompTrustAGC of South Carolina

ATTEST: _____ By: _____
Secretary
Harry Mashburn
Chairman, Board of Trustees

CAGC Insurance Company

ATTEST: _____ By: _____
Assistant Secretary
Charles T. Tagmail, Jr.
President/CEO

Exhibit E

ARTICLES OF DISSOLUTION

COMPTRUSTAGC OF SOUTH CAROLINA
(A South Carolina Business Trust)

WHEREAS, pursuant to that certain Agreement and Declaration of Trust, made and entered into as of May 14, 1982, and subsequently amended June 23, 1983, May 21, 1992, April 28, 1993 and July 1, 200 (hereinafter the "Trust Agreement") Carolinas AGC, Inc, (hereinafter "CAGC") as grantor and the original trustees duly appointed by CAGC established CompTrustAGC of South Carolina (hereinafter "CompTrustAGC-SC") as a South Carolina business trust to fulfill the obligations and liabilities pursuant to the South Carolina workers' compensation laws of employers that were members of CompTrustAGC-SC;

WHEREAS, Harry Lee Mashburn, James Thomas Tharp and Hugh K. Leatherman, Sr., are the current Trustees of CompTrustAGC-SC (hereinafter the "Trustees"), duly appointed as trustees pursuant to the Trust Agreement;

WHEREAS, CompTrustAGC-SC is duly qualified as a workers' compensation self-insurance group pursuant to the laws of the state of South Carolina and is subject to regulation by the South Carolina Workers' Compensation Commission;

WHEREAS, CAGC and the Trustees have entered into and consummated that certain December 28, 2010 Loss Portfolio Transfer and Assumption Agreement wherein all of the workers' compensation claims liabilities of CompTrustAGC-SC and all other liabilities and obligations of CompTrustAGC-SC were transferred to and assumed by CAGC Insurance Company (hereinafter "CAGCIC") in exchange for the transfer of all of the assets of CompTrustAGC-SC to CAGCIC;

WHEREAS, CompTrustAGC-SC has provided a final financial accounting to CAGC pursuant to Article VI, Section 5 of the Trust Agreement; and,

WHEREAS, CAGC and the Trustees now desire to terminate and dissolve CompTrustAGC-SC by entering into these Articles of Dissolution (hereinafter "Articles") and to hold the Trustees harmless for any claims, liabilities or obligations of CompTrustAGC-SC that may arise following the termination and dissolution of CompTrustAGC-SC.

NOW, THEREFORE, CAGC and the Trustees agree as follows:

1. Capitalized terms in these Articles have the same meaning as in the Trust Agreement.

2. These Articles shall become effective at 12:01 a.m. on April 1, 2011.

3. The Trustees are hereby indemnified against and held harmless for any alleged debts, liabilities or obligations asserted against CompTrustAGC-SC after the effective date of

these Articles; and, all post-dissolution alleged debts, liabilities and obligations of CompTrustAGC-SC shall be referred to CAGCIC.

4. An executed copy of these Articles shall be delivered to the South Carolina Workers' Compensation Commission.

IN WITNESS WHEREOF, these Articles have been executed this the 31st day of March, 2011.

CAROLINAS AGC, INC.

By: _____ (Seal)
S. Mark Hood,
Chair of the Board

Attest: _____
Cynthia Mills, CAE, CMC,
Secretary

COMPTRUSTAGC of SOUTH CAROLINA
TRUSTEES

By: _____ (Seal)
Hugh K. Leatherman, Sr., Trustee

By: _____ (Seal)
Harry Lee Mashburn, Trustee

By: _____ (Seal)
James Thomas Tharp, Trustee

(5)

RECEIVED
AUG 25 2016
SC Court of Appeals
RECEIVED
SEP 01 2016
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2014-CP-40-0313

Appellate Case No. 2016-000192

Raymond G. Farmer, as Director of the South Carolina Department of Insurance, ... Petitioner,

v.

CAGC Insurance Company, In Liquidation, ... Respondent.

South Carolina Property and Casualty Insurance Guaranty Association, ... Appellant,

v.

CAGC Insurance Company, In Liquidation; Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in Liquidation; and CompTrustAGC of South Carolina a/k/a CompTrustAGC of South Carolina, Inc., ... Respondents.

RECORD ON APPEAL
VOLUME II

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Erik T. Norton
Tara C. Sullivan
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Attorneys for Respondent CompTrustAGC of South Carolina a/k/a CompTrustAGC of South Carolina, Inc.

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Attorney for Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in Liquidation

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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Raymond. G Farmer, as Director of the South Carolina Department of Insurance,
Petitioner,
vs.

CAGA Insurance Company, In Liquidation,
Respondent.

South Carolina Property and Casualty Insurance Guaranty Association,
Intervenor-Petitioner,
vs.

CAGA Insurance Company, In Liquidation; Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in Liquidation; and ComptrustAGC of SC a/k/a ComptrustAGC of SC, Inc.,
Intervenor-Respondent.

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

CASE NO.: 2014-CP-40-0313

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

RICHLAND COUNTY FILED
2014 MAY -7 AM 10:49
JEANNETTE W. McBRIDE C.C.P. & G.S.

Plaintiff's Attorney: Geoffrey R. Bonham, Esq., Address: PO Box 100105 Columbia, SC 29202 Phone: 803-737-6132 Fax 803-737-6227 E-mail: gbonham@doi.sc.gov	Defendant's Attorney: Tara C. Sullivan, Bar No. 79806 Address: 1320 Main Street, Columbia, SC 29201 Phone: 803-255-9591 E-mail: tara.sullivan@nelsonmullins.com

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Intervene, for Joinder of Intervenor-Respondents, and for Declaratory Judgment
Estimated Time Needed: 20 min Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Tara C. Sullivan 5/5/14
Signature of Attorney for ☐ Plaintiff /☐ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____

☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: $ _____ ☐ CONTESTED – AMOUNT DUE: $ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS JUDICIAL CIRCUIT
Raymond G. Farmer, as Director of the South Carolina Department of Insurance, Petitioner, vs. CAGC Insurance Company, In Liquidation, Respondent.	)	Civil Action No. 2014-CP-40-0313 **MOTION TO INTERVENE, FOR JOINDER OF INTERVENOR-RESPONDENTS, AND FOR DECLARATORY JUDGMENT**
South Carolina Property and Casualty Insurance Guaranty Association, Intervenor-Petitioner. vs. CAGC Insurance Company, in Liquidation; Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in Liquidation; and CompTrustAGC of SC a/k/a CompTrustAGC of SC, Inc., Intervenor-Respondents.	)	

RICHLAND COUNTY
FILED
2014 MAY -7 AM 10:49
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

The Intervenor-Petitioner South Carolina Property and Casualty Insurance Guaranty Association (the "Association"), bringing this Motion to Intervene, for Joinder of the Intervenor-Respondents, and for Declaratory Judgment against CAGC Insurance Company, in Liquidation ("CAGC"); Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC

Insurance Company, in Liquidation ("Receiver"); and CompTrustAGC of SC a/k/a CompTrustAGC of SC, Inc. ("CompTrust"), alleges and states as follows:

PARTIES

1. The Association is an unincorporated legal entity arising and existing under the provisions of the South Carolina Property and Casualty Insurance Guaranty Association Act, Chapter 31 of Article 38 of the South Carolina Code of Laws, S.C. Code § 38-31-10 et seq. (the "Act").

2. The Association has a right to intervene in this action under S.C. R. Civ. P. 24.

3. CAGC is a corporation formed and organized as an insurance company under Chapters 58 and 55 of the North Carolina General Statutes under the name CAGC Insurance Company, as shown by a certified copy of its Articles of Incorporation issued on December 31, 2007, which are appended as **Exhibit A**, and incorporated herein by reference as if fully set out.

4. On or about October 27, 2008, CAGC became a licensed insurer in South Carolina pursuant to Chapter 5 of Title 38 of the South Carolina Code of Laws, S.C. Code § 38-5-10 et seq.

5. Raymond G. Farmer is the Director of the South Carolina Department of Insurance and was appointed as the Ancillary Receiver of CAGC by Order of this Court filed March 10, 2014.

6. CompTrust is on information and belief an unincorporated workers' compensation self-insurance trust, and CompTrustAGC of SC is one and the same as the entity identified as CompTrustAGC of SC, Inc.

7. On information and belief, CompTrust is not and has never been a licensed insurer in South Carolina pursuant to Chapter 5 of Title 38 of the South Carolina Code of Laws, S.C. Code § 38-5-10 et seq.

8. Comptrust should be joined to this action under S.C. R. Civ. P. 19. and/or S.C. R. Civ. P. 20.

FACTUAL BACKGROUND

9. From July 1, 1982, through December 28, 2010, CompTrust, as a licensed self-insured organization, issued workers' compensation coverage (the "Self-Insured Coverage") to its self-insured members.

10. On or after October 27, 2008, after becoming licensed as an insurer in South Carolina, CAGC began issuing new South Carolina workers' compensation liability insurance policies to prior participants in CompTrust (the "Licensed Policies").

11. On December 28, 2010, CompTrust and CAGC executed an agreement titled Self-Insurance Loss Portfolio Transfer Assumption Agreement (the "LPT Agreement"). A true and correct copy of the LPT Agreement is attached hereto as **Exhibit B**.

12. Under the terms of the LPT Agreement, CompTrust paid $3,586,527.01 for CAGC to assume all of CompTrust's liabilities arising out of the Self-Insured Coverage.

13. On November 30, 2011 — less than a year after the execution of the LPT Agreement — a review by the South Carolina Department of Insurance (the "Department") determined that CAGC was financially unsound.

14. On January 18, 2012, pursuant to its authority under S.C. Code § 38-5-120(B), the Department suspended CAGC's authority to transact insurance business in South Carolina.

15. Also in January 2012, CAGC was placed into receivership in its state of domicile, North Carolina.

16. CAGC was declared insolvent by a court of competent jurisdiction in its state of domicile, North Carolina, when it became the subject of an Order of Liquidation entered and filed with the Clerk of Superior Court of Wake County, North Carolina, on January 6, 2014.

17. There is no dispute that all injuries covered by the Licensed Policies issued by CAGC are "covered claims" which are the responsibility of the Association.

18. The Association denies any responsibility related to claims related in any way to the Self-Insured Coverage provided by CompTrust, including, but not limited to, any liabilities purportedly transferred from CompTrust to CAGC.

19. Although the Association disputes any liability on the Self-Insured Coverage as set forth in more detail below, it has paid and continues to pay those workers' compensation claims under a reservation of rights that it is not responsible for such payments of claims arising under the Self-Insured Coverage.

20. No workers' compensation claimants will be without protection during the pendency of this Motion.

DECLARATORY RELIEF SOUGHT

21. The Association requests, and interests of the parties to this action require, a judicial determination, in accordance with the Act and the Uniform Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10 to -140, as to whether the Association is obligated to pay the self-insured claims brought under and pursuant to any Self-Insured Coverage issued by CompTrust.

22. There is an actual controversy between the Association and CAGC, the Receiver, and CompTrust as to the Association's statutory obligations, and a declaratory judgment is necessary for the purpose of settling and affording relief from uncertainty with respect to the rights, status, and future legal responsibilities between the Association and CAGC, the Receiver, and CompTrust.

23. Under the Act, the Association is obligated to pay only covered claims pursuant to S.C. Code Ann. § 38-31-60.

24. A "covered claim" is defined in the Act as follows:

> [A]n unpaid claim, including one of unearned premiums, which arises out of and is within the coverage and is subject to the applicable limits on an **insurance policy to which this chapter applies issued by an insurer, if the insurer is an insolvent insurer** and (a) the claimant or insured is a resident of this State at the time of the insured event, if for entities other than an individual, the residence of a claimant or insured is the state in which its principal place of business is located at the time of the insured event or (b) the claim is for first-party benefits for damage to property permanently located in this State.

S.C. Code Ann. § 38-31-20(8) (emphasis added).

25. Importantly, a covered claim must arise out of: (1) an insurance policy; (2) to which the Act applies; and (3) which is issued by an "insolvent insurer." S.C. Code Ann. § 38-31-20(8).

26. First, the Self-Insured Coverage did not arise out an insurance policy because self-insured coverage does not constitute a "policy" by its very nature as defined by S.C. Code Ann. § 38-1-20 (defining "policy" as a "contract of insurance").

27. Second, the Act does not apply to self-insured coverage pursuant to S.C. Code Ann. § 38-31-30 and, as a result, self-insurers are not members of the Association and are not subject to any assessments by the Association.

28. Finally, the Self-Insured Coverage was not issued by an "insolvent insurer," which is defined in the Act as follows:

> [A]n insurer (a) **licensed to transact insurance in this State either at the time the policy was issued or when the insured event occurred** and (b) **determined to be insolvent by a court of competent jurisdiction in the insurer's state of domicile or of this State** and which the director or his designee has found fails to meet its obligation to policyholders in this State.

S.C. Code Ann. § 38-31-20(9) (emphasis added).

29. The Self-Insured Coverage was issued by CompTrust which has never been licensed to transact insurance in South Carolina and has not been declared to be insolvent or found to be failing to meet its obligation to policyholders in this State.

30. Further, as noted above, CompTrust did not issue any "policy" of insurance as self-insured coverage does not constitute an insurance policy by its very nature.

31. Therefore, the Self-Insured Coverage does not meet the definition of "covered claim," and the Association is not liable for the Self-Insured Coverage.

32. The LPT Agreement did not convert the nature of the Self-Insured Coverage into a "covered claim."

33. CAGC's assumption of CompTrust's liabilities under the Self-Insured Coverage does not amount to issuing a policy within the meaning of the Act, and the Association has no statutory obligations for any claims arising out of the Self-Insured Coverage previously issued by CompTrust.

34. Alternatively, even assuming that the assumption of the Self-Insured Coverage can be interpreted as a policy of insurance issued by CAGC, the Association would not be liable for the Self-Insured Coverage.

35. The Act "does not apply to" "insurance written on a retroactive basis to cover known losses which have resulted from an event with respect to which a claim has already been made, and the claim is known to the insurer at the time the insurance is bound." S.C. Code Ann. § 38-31-30(6).

36. At the time of the LPT Agreement, the losses incurred under the Self-Insured Coverage were known by CompTrust and CAGC because the events giving rise to the claims under the Self-Insured Coverage had already occurred, and the claims and reserves were already being carried on the books and financial records of CompTrust.

37. Therefore, such insurance would be "insurance written on a retroactive basis to cover known losses" for which the Association is not responsible.

CONCLUSION

The Association respectfully prays that the Court declare that it has no statutory obligation for any claims arising out of the Self-Insured Coverage because such claims are not "covered claims" as defined by the Act; CACG did not issue any policy of insurance by assuming the Self-Insured Coverage under the LPT Agreement; and/or the LPT Agreement would be "insurance written on a retroactive basis to cover known losses" for which the Association is not responsible.

<signature block next page>

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Tara C. Sullivan

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Columbia, SC 29201
(803) 799-2000

Attorneys for South Carolina Property and Casualty Insurance Guaranty Association

Columbia, South Carolina

May 5, 2014.

NORTH CAROLINA
Department of The Secretary of State

Be it known that, whereas Stephen Paul Gennett, Samuel Mark Hood, Robert Faison Hester, Julian Mobley Langston, Jr., Hugh K. Leatherman, Sr., Harry Lee Marshburn, William Mattox Marshburn, Thomas Michael Murphy, Charles Thomas Tagman, James Thomas Tharp, Sandhya Gopal Patel, Catherine Rosenthal Stuart, James Lee Stuart have associated themselves with the intention of forming a corporation under the name of CAGC INSURANCE COMPANY, for the purpose of engaging in a Fire Insurance, Miscellaneous Property Insurance, Water Damage Insurance, Burglary and Theft Insurance, Glass Insurance, Boiler and Machinery Insurance, Elevator Insurance, Collision Insurance, Personal Injury Liability Insurance, Property Damage Liability Insurance, Workers' Compensation and Employer's Liability Insurance, Fidelity and Surety Insurance, Motor Vehicle and Aircraft Insurance, Marine Insurance, Marine Protection and Indemnity Insurance, and Miscellaneous Insurance business, with a capital of $4,500,000, and have complied with the provisions of the statute of this State in such case made and provided, as appears from the following certified articles of incorporation:

EXHIBIT
A
ROA 000223

C200736200034

SOSID: 1019329
Date Filed: 12/31/2007 12:31:00 PM
Elaine F. Marshall
North Carolina Secretary of State
C200736200034

ARTICLES OF INCORPORATION OF CAGC INSURANCE COMPANY

The undersigned, being natural persons of the age of eighteen (18) years or more and being the incorporators ("Incorporators") identified on Exhibit A, which is appended hereto and is incorporated herein by reference, hereby associate to form a corporation pursuant to Chapter 58 of the North Carolina General Statutes, entitled "Insurance" and Chapter 55 of the North Carolina General Statutes, entitled "Corporations," and any amendments thereto; and,

NOW, THEREFORE, in order to comply with N.C.G.S. § 58-7-35, the Incorporators submit the following Articles as a certificate as contemplated by the statute:

ARTICLE I

The name of the corporation is CAGC INSURANCE COMPANY.

ARTICLE II

Unless the period of duration of the corporation is subsequently amended the corporation shall terminate February 29, 2008.

ARTICLE III

The purposes for which the corporation is organized are to engage in all kinds of insurance business that stock fire and marine and stock casualty companies and stock fidelity and surety companies are now or may be hereafter authorized to do under the laws of North Carolina, and without limiting said authority, to do all such kinds of insurance business described in N.C.G.S.§ 58-7-15 (4), (5), (6), (7), (8), (9), (10), (12), (13), (14), (15), (16), (19), (20), (21), & (22) or any successor statute(s), namely:

(4) "Fire insurance," meaning insurance against loss of or damage to any property resulting from fire, including loss or damage incident to the extinguishment of a fire or to the salvaging of property in connection therewith.

(5) "Miscellaneous property insurance," meaning loss of or damage to property resulting from:

(a) Lightning, smoke or smudge, windstorm, tornado, cyclone, earthquake, volcanic eruption, rain, hail, frost and freeze, weather or climatic conditions, excess or deficiency of moisture, flood, the rising of the waters of the ocean or its tributaries, or

(b) Insects, or blights, or from disease of such property other than animals, or

(c) Electrical disturbance causing or concomitant with a fire or an explosion in public service or public utility property, or

(d) Bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe, vandalism or malicious mischief, strike or lockout, or explosion; but not including any kind of insurance specified in subdivision (9), except insurance against loss or damage to property resulting from:

1. Explosion of pressure vessels (except steam boilers of more than 15 pounds pressure) in buildings designed and used solely for residential purposes by not more than four families,

2. Explosion of any kind originating outside of the insured building or outside of the building containing the property insured,

3. Explosion of pressure vessels that do not contain steam or that are not operated with steam coils or steam jackets,

4. Electrical disturbance causing or concomitant with an explosion in public service or public utility property.

(6) "Water damage insurance," meaning insurance against loss or damage by water or other fluid or substance to any property resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires or of water pipes or other conduits or containers; or resulting from casual water entering through leaks or openings in buildings or by seepage through building walls; but not including loss or damage resulting from flood or the rising of the waters of the ocean or its tributaries; and including insurance against accidental injury of such sprinklers, pumps, fire apparatus, conduits, or containers.

(7) "Burglary and theft insurance," meaning:

(a) Insurance against loss of or damage to any property resulting from burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation, or wrongful conversion, disposal or concealment by any person or persons, or from any attempt at any of the foregoing, and

(b) Insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers or documents, resulting from any cause, except while in the custody or possession of and being transported by any carrier for hire or in the mail.

(8) "Glass insurance," meaning insurance against loss of or damage to glass and its appurtenances resulting from any cause.

(9) "Boiler and machinery insurance," meaning insurance against loss of or damage to any property of the insured, resulting from the explosion of or injury to:

(a) Any boiler, heater or other fired pressure vessel;

(b) Any unfired pressure vessel;

(c) Pipes or containers connected with any of said boilers or vessels;

(d) Any engine, turbine, compressor, pump or wheel;

(e) Any apparatus generating, transmitting or using electricity;

(f) Any other machinery or apparatus connected with or operated by any of the previously named boilers, vessels or machines; and including the incidental power to make inspections of and to issue certificates of inspection upon, any such boilers, apparatus, and machinery, whether insured or otherwise.

(10) "Elevator insurance," meaning insurance against loss of or damage to any property of the insured, resulting from the ownership, maintenance or use of elevators, except loss or damage by fire.

(12) "Collision insurance," meaning insurance against loss of or damage to any property of the insured resulting from collision of any other object with the property, but not including collision to or by elevators or to or by vessels, craft, piers, or other instrumentalities of ocean or inland navigation.

(13) "Personal injury liability insurance," meaning insurance against legal liability of the insured, and against loss, damage, or expense incident to a claim of such liability; and including an obligation of the insurer to pay medical, hospital, surgical, or funeral benefits; and in the case of automobile liability insurance including also disability and death benefits to injured persons, irrespective of legal liability of the insured,

arising out of the death or injury of any person, or arising out of injury to the economic interests of any person as a result of negligence in rendering expert, fiduciary, or professional service; but not including any kind of insurance specified in subdivision (15).

(14) "Property damage liability insurance," meaning insurance against legal liability of the insured, and against loss, damage or expense incident to a claim of such liability, arising out of the loss or destruction of, or damage to, the property of any other person, but not including any kind of insurance specified in subdivisions (13) or (15).

(15) "Workers' compensation and employer's liability insurance," meaning insurance against the legal liability, whether imposed by common law or by statute or assumed by contract, of any employer for the death or disablement of, or injury to, the employer's employee.

(16) "Fidelity and surety insurance," meaning:

(a) Guaranteeing the fidelity of persons holding positions of public or private trust;

(b) Becoming surety on, or guaranteeing the performance of, any lawful contract except the following:

(1) A contract of indebtedness secured by title to, or mortgage upon, or interest in, real or personal property;

(2) Any insurance contract except reinsurance;

(c) Becoming surety on, or guaranteeing the performance of, bonds and undertakings required or permitted in all judicial proceedings or otherwise by law allowed, including surety bonds accepted by states and municipal

authorities in lieu of deposits as security for the performance of insurance contracts;

(d) Guaranteeing contracts of indebtedness secured by any title to, or interest in, real property, only to the extent required for the purpose of refunding, extending, refinancing, liquidating or salvaging obligations heretofore lawfully made and guaranteed;

(e) Indemnifying banks, bankers, brokers, financial or moneyed corporations or associations against loss resulting from any cause of bills of exchange, notes, bonds, securities, evidences of debts, deeds, mortgages, warehouse receipts, or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semiprecious stones, including any loss while the same are being transported in armored motor vehicles, or by messenger; but not including any other risks of transportation or navigation; also against loss or damage to such an insured's premises, or to the insured's furnishings, fixtures, equipment, safes and vaults therein, caused by burglary, robbery, theft, vandalism or malicious mischief, or any attempt thereat.

(19) "Motor vehicle and aircraft insurance," meaning insurance against loss of or damage resulting from any cause to motor vehicles or aircraft and their equipment, and against legal liability of the insured for loss or damage to another's property resulting from the ownership, maintenance or use of motor vehicles or aircraft and against loss, damage or expense incident to a claim of such liability.

(20) "Marine insurance," meaning insurance against any and all kinds of loss or damage

to:

(a) Vessels, craft, aircraft, cars, automobiles and vehicles of every kind, as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same or during any delays, storage, transshipment, or reshipment incident thereto, including marine builder's risks and all personal property floater risks, and

(b) Person or to property in connection with or appertaining to a marine, inland marine, transit or transportation insurance, including liability for loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance, or use of the subject matter of the insurance (but not including life insurance or surety bonds nor insurance against loss because of bodily injury to the person arising out of the ownership, maintenance or use of automobiles), and

(c) Precious stones, jewels, jewelry, gold, silver, and other precious metals, whether used in business or trade or otherwise and whether the same be in course of transportation or otherwise, and

(d) Bridges, tunnels and other instrumentalities of transportation and

communication (excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage) unless fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion are the only hazards to be covered; piers, wharves, docks and slips, excluding the risks of fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion; other aids to navigation and transportation, including dry docks and marine railways against all risks.

(21) "Marine protection and indemnity insurance," meaning insurance against, or against legal liability of the insured for, loss, damage, or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person.

(22) "Miscellaneous insurance," meaning insurance against any other casualty authorized by the charter of the company, not included in subdivisions (1) to (21) of this section, which is a proper subject of insurance.

ARTICLE IV

The business of the corporation will be operated as follows:

(a) The Corporation will be operated as a stock company

and in accordance with the applicable provisions of Article 7, Chapter 58 of the North Carolina General Statutes.

(b) The Corporation shall have the right to issue "participating policies" of insurance entitling the holders of such policies to receive policy dividends or other such premium refunds from the Corporation's unassigned surplus when declared by the Board of Directors and permitted by applicable law. The holder of any such policy shall not thereby be a member or shareholder of the Corporation and shall have no right to vote at any meeting of the shareholders by reason of such status.

(c) The Corporation shall engage in the business of insurance when: (1) pursuant to N.C.G.S. §58-7-35, these Articles have been approved by the Commissioner of Insurance and accepted for recording by the Secretary of State; and, (2) the Commissioner of Insurance has duly licensed the Corporation to do business in the State of North Carolina.

(d) In order to effectuate its corporate purposes, the Corporation, acting pursuant Article VII, shall have full power and authority to purchase, lease and otherwise acquire, hold, mortgage, pledge, assign, convey, and otherwise dispose of all kinds of property, both real and personal, both in this state and in all other states, territories and dependencies of the United States, and in foreign countries as may be authorized by law; to purchase the business, good will and all other property of any individual, firm or corporation as a going concern and assume all its debts, contracts, and obligations, provided said business is authorized by the powers contained herein; to invest the assets of the Corporation in any and every sort of kind of property both real and personal, wherever situated, subject to the laws of the State of North Carolina;

and, generally to perform all acts which may be deemed necessary or expedient for the proper and successful prosecution of the objects and purposes for which the Corporation is created.

ARTICLE V

The corporation shall have authority to issue two hundred fifty (250) shares of common stock with par value of One Thousand and no/100's Dollars ($1,000.00) per share. The shares of common stock so issued shall be of one class. "Par value" means the dollar amount fixed as the nominal or face value, as contrasted with the market value, of each share, and the par value shall appear on each share certificate.

ARTICLE VI

The corporation shall be authorized to write and issue such policies of insurance as are authorized and described in Article III above when and after it shall have a total paid-in capital of not less than One Million Eight Hundred Thousand Dollars ($1,800,000) and a paid-in initial surplus of Two Million Seven Hundred Thousand Dollars ($2,700,000), and shall have been duly licensed to do business by the North Carolina Commissioner of Insurance.

ARTICLE VII

The names and addresses of the Incorporators are set forth on Exhibit A which is attached hereto and incorporated herein by reference.

ARTICLE VIII

The Corporation shall be managed by a Board of Directors, said directors of such number and of such classifications as may be provided by the bylaws of the Corporation, which bylaws shall prescribe the rules for the government of the Corporation.

ARTICLE IX

The address of the initial registered office of the Corporation is 1100 Euclid Avenue, Charlotte, North Carolina, Mecklenburg County, 28203 and the name of the registered agent at such address is Stephen P. Gennett.

ARTICLE X

The initial Board of Directors shall consist of the Incorporators, who shall serve only until the first organizational meeting which will be held pursuant to N.C.G.S. § 58-7-40.

ARTICLE XI

Directors of the Corporation shall not be personally liable for monetary damages for breach of their duty as a Director, except for (1) acts or omissions not made in good faith that the Director at the time of such breach knew or believed were in conflict with the best interests of the Corporation, (ii) any liability under N.C.G.S. § 55-8-33, relating to unlawful distributions, or (iii) any transaction from which the Director derived an improper personal benefit. As used herein, the term "improper personal benefit" does not include a Director's compensation, or other incidental benefit for or on account of his service as a director, officer, employee, independent contractor, attorney, or consultant of the corporation.

If the North Carolina Business Corporation Act is amended to authorize corporate action that eliminates or limits the personal liability of directors that goes beyond the limitations contained in the foregoing provision of these Articles, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the North Carolina Business Corporation Act, as so amended. Any repeal or modification of the foregoing provision eliminating and limiting the liability of directors shall not adversely affect any right or protection of a director of the corporation existing at the time of such repeal or modification.

ARTICLE XII

North Carolina, General Statutes Chapter 55, Article 9, entitled "Shareholder Protection Act" and Chapter 55, Article 9A, entitled "Control Share Acquisition" shall not apply to this corporation.

The Incorporators have set their hands and seals to ten (10 separate signature pages that follow.

This the 1st day of March, 2007.

[The rest of this page is intentionally left blank.]

Exhibit A
to
the Articles of Incorporation of
CAGC Insurance Company

List of Incorporators

The following are the Incorporators of CGAC Insurance Company:

Name	Residence	Professional Designation
Stephen Paul Gennett	Charlotte, NC	Association Executive
Samuel Mark Hood	Columbia, SC	Contractor
Robert Faison Hester	Asheville, NC	CPA
Julian Mobley Langston, Jr.*	Piedmont, SC	Contractor
Hugh K. Leatherman, Sr.*	Florence, SC	Contractor
Harry Lee Mashburn*	Columbia, SC	Contractor
William Mattox Marshburn*	Rocky Mount, NC	Contractor
Thomas Michael Murphy	Rock Hill, SC	Contractor
Charles Thomas Tagman	Charlotte, NC	CAGC Officer
James Thomas Tharp*	Columbia, SC	Contractor
Sandhya Gopal Patel	Raleigh, NC	Attorney
Catherine Rosenthal Stuart	Raleigh, NC	Attorney
James Lee Stuart	Raleigh, NC	Attorney

Signature Page
of
Catherine Rosenthal Stuart

Subscribing to the March 1, 2007 Articles of Incorporation of CAGC Insurance Company

(SEAL)
Catherine Rosenthal Stuart

State of North Carolina

Wake County

I, ESTHER EHIZUELEN, a Notary Public, am authorized to administer oaths and take acknowledgments of deed and I do hereby certify that Catherine Rosenthal Stuart, an adult of over 18 years of age and a resident of Raleigh, Wake County, North Carolina, being duly sworn, appeared before me and signed the foregoing Articles of Incorporation of CAGC Insurance Company.

WITNESS my hand & seal, this the 28th day of December, 2007.

ESTHER EHIZUELEN NOTARY *** PUBLIC WAKE COUNTY, N.C.

Notary Public

My Commission Expires:

3/26/2010

Signature Page
of
James Lee Stuart

Subscribing to the March 1, 2007 Articles of Incorporation of CAGC Insurance Company

James Lee Stuart (SEAL)
James Lee Stuart

State of North Carolina

Wake County

I, ESTHER EHIZUELEN, a Notary Public, am authorized to administer oaths and take acknowledgments of deed and I do hereby certify that James Lee Stuart, Patel, an adult over 18 years of age and a resident of Raleigh, Wake County, North Carolina, being duly sworn, appeared before me and signed the foregoing Articles of Incorporation of CAGC Insurance Company.

WITNESS my hand & seal, this the 28th day of December, 2007.

ESTHER EHIZUELEN NOTARY *** PUBLIC WAKE COUNTY, N.C.

Notary Public

My Commission Expires:
3/26/2010

Signature Page
of
Sandhya Gopal Patel

Subscribing to the March 1, 2007 Articles of Incorporation of CAGC Insurance Company

Sandhya Gopal Patel (SEAL)
Sandhya Gopal Patel

State of North Carolina

Wake County

I, Esther Ehizuelen, a Notary Public, am authorized to administer oaths and take acknowledgments of deed and I do hereby certify that Sandhya Gopal Patel, an adult being over 18 years of age and a resident of Raleigh, Wake County, North Carolina, being duly sworn, appeared before me and signed the foregoing Articles of Incorporation of CAGC Insurance Company.

WITNESS my hand & seal, this the 28th day of December, 2007.

ESTHER EHIZUELEN NOTARY *** PUBLIC WAKE COUNTY, N.C.

Notary Public

My Commission Expires:

3/26/2010

Signature Page
of
Stephen Paul Gennett, Sr.

Subscribing to the March 1, 2007 Articles of Incorporation of CAGC Insurance Company

Stephen P. Gennett (SEAL)

State of N.C.

UNION County

I, DAVID R. BADIE, JR, a Notary Public, am authorized to administer oaths and take acknowledgments of deed and I do hereby certify that Stephen Paul Gennett, Sr., being duly sworn, appeared before me and signed the foregoing Articles of Incorporation of Carolinas CAGC Insurance Company.

WITNESS my hand & seal, this the 27th day of FEBRUARY, 2007.

Notary Public

My Commission Expires:

9/18/2009

Signature Page
of
Robert Faison Hester

Subscribing to the March 1, 2007 Articles of Incorporation of CAGC Insurance Company

R Faison Hester (SEAL)

State of N.C.

BUNCOMBE County

I, CAROLYN ADKINS, a Notary Public, am authorized to administer oaths and take acknowledgments of deed and I do hereby certify that Robert Faison Hester, being duly sworn, appeared before me and signed the foregoing Articles of Incorporation of CAGC Insurance Company

WITNESS my hand & seal, this the 27th day of FEBRUARY, 2007.

Carolyn Adkins
Notary Public

My Commission Expires:

3/19/10

C200736200034

Signature Page
of
Samuel Mark Hood

Subscribing to the March 1, 2007 Articles of Incorporation of CAGC Insurance Company

Samuel Mark Hood (SEAL)

State of SC.

Lexington County

I, Lynn Rabenstein, a Notary Public, am authorized to administer oaths and take acknowledgments of deed and I do hereby certify that Samuel Mark Hood, being duly sworn, appeared before me and signed the foregoing Articles of Incorporation of CAGC Insurance Company

WITNESS my hand & seal, this the 27th day of February, 2007.

Lynn Rabenstein
Notary Public

My Commission Expires:

June 7, 2015

C200736200034

Signature Page
of
Julian Mobley Langston, Jr.

Subscribing to the March 1, 2007 Articles of Incorporation of CAGC Insurance Company

Julian Mobley Langston Jr (SEAL)

State of South Carolina

Greenville County

I, Julie L. Owens, a Notary Public, am authorized to administer oaths and take acknowledgments of deed and I do hereby certify that Julian Mobley Langston, Jr., being duly sworn, appeared before me and signed the foregoing Articles of Incorporation of CAGC Insurance Company

WITNESS my hand & seal, this the 27 day of February, 2007.

Julie L Owens
Notary Public

My Commission Expires:

Sept. 12, 2007

Signature Page
of
Hugh K. Leatherman, Sr.

Subscribing to the March 1, 2007 Articles of Incorporation of CAGC Insurance Company

(SEAL)

State of SOUTH CAROLINA

RICHLAND County

I, DIANNE S. MULLIS, a Notary Public, am authorized to administer oaths and take acknowledgments of deed and I do hereby certify that Hugh K. Leatherman, Sr., being duly sworn, appeared before me and signed the foregoing Articles of Incorporation of CAGC Insurance Company

WITNESS my hand & seal, this the 1st day of MARCH, 2007.

Notary Public

My Commission Expires:

2-17-10

C200736200034

Signature Page
of
Harry Lee Mashburn

Subscribing to the March 1, 2007 Articles of Incorporation of CAGC Insurance Company

(SEAL)

State of SOUTH CAROLINA

RICHLAND County

I, JANE C. ANDREWS, a Notary Public, am authorized to administer oaths and take acknowledgments of deed and I do hereby certify that Harry Lee Mashburn, being duly sworn, appeared before me and signed the foregoing Articles of Incorporation of CAGC Insurance Company

WITNESS my hand & seal, this the 1ST day of MARCH, 2007.

Notary Public

My Commission Expires:

3/06/2010

Signature Page
of
William Mattox Marshburn

Subscribing to the March 1, 2007 Articles of Incorporation of CAGC Insurance Company

William Mattox Marshburn (SEAL)

State of N.C

NASH County

I, Christina L. Augst, a Notary Public, am authorized to administer oaths and take acknowledgments of deed and I do hereby certify that William Mattox Marshburn, being duly sworn, appeared before me and signed the foregoing Articles of Incorporation of CAGC Insurance Company

WITNESS my hand & seal, this the 27 day of FEBRUARY, 2007.

Christina L. Augst
Notary Public

CHRISTINA L. AUGST NOTARY PUBLIC EDGECOMBE COUNTY, NC

My Commission Expires:

11-14-2010

C200736200034

Signature Page
of
Thomas Michael Murphy

Subscribing to the March 1, 2007 Articles of Incorporation of CAGC Insurance Company

Thomas Michael Murphy (SEAL)

State of South Carolina

York County

I, Linda F. Patterree, a Notary Public, am authorized to administer oaths and take acknowledgments of deed and I do hereby certify that Thomas Michael Murphy, being duly sworn, appeared before me and signed the foregoing Articles of Incorporation of CAGC Insurance Company

WITNESS my hand & seal, this the 27th day of February, 2007.

Linda F. Patterree
Notary Public

My Commission Expires:
March 22, 2010

Signature Page
of
Charles Thomas Tagman, Jr.

Subscribing to the March 1, 2007 Articles of Incorporation of CAGC Insurance Company

(SEAL)
Charles Thomas Tagman, Jr.

State of FL

Orange County

I, Maria T. Moscoso, a Notary Public, am authorized to administer oaths and take acknowledgments of deed and I do hereby certify that Charles Thomas Tagman, Jr., being duly sworn, appeared before me and signed the foregoing Articles of Incorporation of CAGC Insurance Company

WITNESS my hand & seal, this the 5th day of March, 2007.

Notary Public

Notary Public State of Florida
Maria Teresa Moscoso
My Commission DD486136
Expires 10/27/2009

My Commission Expires:
10/27/09

Signature Page
of
James Thomas Tharp

Subscribing to the March 1, 2007 Articles of Incorporation of CAGC Insurance Company

(SEAL)

State of South Carolina

Richland County

I, Jan J. Marshall, a Notary Public, am authorized to administer oaths and take acknowledgments of deed and I do hereby certify that James Thomas Tharp, being duly sworn, appeared before me and signed the foregoing Articles of Incorporation of CAGC Insurance Company

WITNESS my hand & seal, this the 27th day of February, 2007.

Notary Public for South Carolina

My Commission Expires: 02/21/12

C200736200034

DEPARTMENT OF INSURANCE

State of North Carolina

1201 Mail Service Center
Raleigh, NC 27699-1201

JIM LONG
Commissioner of Insurance

Company Services Group
Financial Evaluation Division
(919) 733-5833
Fax: (919) 715-7230

I, James E. Long, Commissioner of Insurance in and for the State of North Carolina, do hereby certify that:

I have carefully examined the annexed Articles of Incorporation of CAGC Insurance Company, Charlotte, North Carolina, and I find said Articles of Incorporation in compliance with the requirements of the laws pertaining thereto and I accordingly approve said Articles of Incorporation and certify same unto the Office of the Secretary of State of the State of North Carolina as required by law.

In testimony whereof I have hereunto set my hand and affixed my official seal at the city of Raleigh, this 27th day of December, A.D. 2007.

James E. Long

Commissioner of Insurance

By Anne M. Morgan

Anne M. Morgan
Company Admissions Manager
Financial Evaluation Division

Now, therefore, I, Elaine F. Marshall, Secretary of State, hereby certify that Stephen Paul Gennett, Samuel Mark Hood, Robert Faison Hester, Julian Mobley Langston, Jr., Hugh K. Leatherman, Sr., Harry Lee Marshburn, William Mattox Marshburn, Thomas Michael Murphy, Charles Thomas Tagman, James Thomas Tharp, Sandhya Gopal Patel, Catherine Rosenthal Stuart, James Lee Stuart, their associates and successors, are legally organized and established as, and are hereby made, an existing corporation under the name of CAGC INSURANCE COMPANY, with such articles of incorporation, and have all the powers, rights, and privileges and are subject to the duties, liabilities, and restrictions which by law appertain thereto.

Witness my official signature hereunto subscribed, and the seal of the State of North Carolina hereunto affixed, this the 31st day of December, 2007.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 31st day of December, 2007

Elaine F. Marshall

Secretary of State

Document Id: C200736200034

SELF-INSURANCE
LOSS PORTFOLIO TRANSFER
ASSUMPTION AGREEMENT
(Hereinafter referred to as the "Agreement")

between

CompTrustAGC of South Carolina, Inc.
(Hereinafter referred to as the "Self-Insurer")

and

CAGC Insurance Company
(Hereinafter referred to as the "Company")

ARTICLE 1 – BUSINESS COVERED

A. The Self-Insurer hereby transfers and the Company hereby assumes 100% of the liabilities and obligations of the Self-Insurer for operations in the state of South Carolina, thereby assuming the joint and several liability of the Self-Insurer's members, for its retained amounts of specific and aggregate liability for workers' compensation and employer's liability losses, including unpaid losses and loss adjustment expenses, during the time period July 1, 1982 through June 30, 2009 including all existing and incurred but not reported ("IBNR") claims (hereinafter "Assumed Claims"), pertaining to the Policies set forth below, and subject to the terms and conditions contained herein.

B. The term "Policies" shall mean all specific and aggregate excess worker's compensation and employers' liability agreements issued by the Company, and all other agreements, policies, binders, contracts, certificates and other obligations, whether oral or written, of insurance issued by other insurers, pertaining to the liabilities assumed hereunder, including the following agreements or policies:

INSURER & AGREEMENT NO.	PERIOD OF AGREEMENT
No applicable policies	No applicable policies

C. The Self-Insurer hereby transfers to the Company all rights the Self-Insurer may have now or in the future with respect to the Self-Insurer's retained liability for workers' compensation, employers' liability and/or related losses, or under or with respect to the Policies.

*Subject to adjustment for outstanding claims checks issued as of the Effective Date, bank charges and other miscellaneous expenses to wind up the business affairs of and terminate the Self-Insurer.

EXHIBIT B

ROA_000252

ARTICLE 2–EFFECTIVE DATE

This Agreement shall be effective as of 12:01 a.m., December 30, 2010.

ARTICLE 3–CONSIDERATION

In consideration of the Company's agreement to assume the liabilities of the Self-Insurer, as set forth in Article 1 above, and subject to the terms and conditions of this Agreement, the Self-Insurer shall pay the sum of THREE MILLION FIVE HUNDRED EIGHTY-SIX THOUSAND FIVE HUNDRED TWENTY-SEVEN AND 01/100 DOLLARS ($3,586,527.01)* to the Company by the Effective Date.

ARTICLE 4–COOPERATION AMONG PARTIES; TRANSFER OF DOCUMENTS

A. The parties hereto agree to act in good faith and cooperate with each other in effecting the assumption of the Assumed Claims provided for in this Agreement. The parties shall take all action necessary to assist each other in obtaining all regulatory approvals or responding to information requests of those insurance regulatory authorities asserting jurisdiction over the transactions herein described.

B. Upon demand by, and in accordance with instructions of the Company, the Self-Insurer shall deliver originals or copies of all policy records and claims files pertaining to the Assumed Claims and all other files and records incidental to the Assumed Claims to the Company or its designated representative, as are necessary for the Company to perform its obligations under this Agreement. The Company or its designated representative shall retain all policy records, claim files, and other documents received by it from the Self-Insurer as required by applicable law. Upon reasonable notice, each of the Company and the Self-Insurer will be entitled to reasonable access to the books and records of the other party at any reasonable time, but only to the extent such materials pertain to the business assumed under this Agreement. Each party will pay its own expense associated with any such review of books and records. The Self-Insurer will retain as its property all its original records, including, without limitation, articles of incorporation, bylaws, minute books, and certificates of authority; provided, however, that the Self-Insurer shall promptly provide the Company with copies of all such documents, if so requested by the Company.

C. Whenever the Self-Insurer receives any communications, including notices of claims and proofs of loss, pertaining to the Assumed Claims, it will forward such communications promptly to the Company or its designated representative.

ARTICLE 5–NOTICE OF ASSUMPTION

The Self-Insurer will cooperate fully with the Company in implementing the assumption which is the subject of this Agreement, including, without limitation, executing any documents reasonably necessary to evidence the completion of the transactions contemplated by this Agreement.

*Subject to adjustment for outstanding claims checks issued as of the Effective Date, bank charges and other miscellaneous expenses to wind up the business affairs of and terminate the Self-Insurer.

ARTICLE 6 – ADMINISTRATION AND CLAIM PAYMENTS

A. From and after the Effective Date, the Company will be solely liable for the administration and disposition of all aspects of the Assumed Claims, including, without limitation, the defense, adjustment, settlement, and payment of all losses and expenses arising under or relating to the Assumed Claims. The Self-Insurer hereby grants and assigns to the Company authority to administer such losses, claims, expenses, defenses, adjustments, settlements, and payments, and such matters will be under the Company's control and within its sole discretion. The Company will bear all expenses and costs incurred by it in connection with the administration and disposition of such losses, claims, expenses, defenses, adjustments, settlements, and payments.

B. In its sole discretion, the Company shall have the right to select a third party administrator to perform claims administration services pertaining to the Assumed Claims.

C. The Self-Insurer will cause all information and notices regarding the Assumed Claims, actually received by the Self-Insurer after the Effective Date to be promptly reported to the Company or the Company's designated representative, and will undertake reasonable measures to ensure that all such notices are promptly delivered to the Company or to its designated representative.

D. All losses and expenses regarding the Assumed Claims that the Company determines to be payable will be paid directly and promptly by the Company.

ARTICLE 7 – ASSESSMENTS

After the Effective Date of this Agreement, in the event that an assessment is made against any present or former members of the Self-Insurer pursuant to statute or regulation, the Company agrees to pay the assessment on behalf of said Self-Insurer members.

ARTICLE 8 – REQUIRED REGULATORY APPROVAL

This Agreement remains subject to the approval of the South Carolina Workers' Compensation Commission, Self-Insurance Division, the Self-Insurer and the Company shall take all steps necessary to obtain requisite regulatory approval of this Agreement, if any, and the transaction described herein.

ARTICLE 9 – SUBORDINATION AND REINSURANCE RECEIVEABLES

A. The Company shall be subrogated to all of the rights of the Self-Insurer against any responsible person or entity. The Company is hereby authorized and empowered to bring any appropriate action in its own name or in the name of the Self-Insurer to enforce such rights.

B. Any payments received by or due to the Self-Insurer from any reinsurer of the Self-Insurer which is payable on an Assumed Claim shall become the property of and paid to the Company. If any payment is received by the Self-Insurer which is to be credited to the Company

under or with respect to any of the Assumed Claims, the Self-Insurer will immediately endorse (without warranty or recourse) and deliver to the Company such checks, drafts, or money intended as such payment, and until delivery of such items to the Company, the Self-Insurer will treat any such checks, drafts, or money as the property of the Company held for the account of the Company. The Company and the Self-Insurer will each use all commercially reasonable efforts to cause the transfer and assignment, as of the Effective Date to the Company of all the Self-Insurer's rights, interest, and obligations under the Self-Insurer's reinsurance agreement, if any, covering the risks, liabilities, and obligations of the Self-Insurer under or with respect to Assumed Claims including, without limitation, obtaining any necessary consents or approvals to such transfer and assignment by the reinsurer under any such reinsurance agreements effective as of the Effective Date. Any failure to receive the consents referred to herein will not relieve or diminish in any manner the Company's obligation under this Agreement.

C. The Company shall be authorized and entitled to file and pursue the collection of claims against the South Carolina Second Injury Fund and all other collateral sources, arising out of or resulting from Assumed Claims (hereinafter "Collateral Sources Claims"); to pursue the collection of Collateral Sources Claims filed by the Self-Insurer prior to the Effective Date; and to collect, receive, and retain any monies paid in settlement of satisfaction of any Collateral Sources Claims filed by either the Company or the Self-Insurer.

ARTICLE 10 – ERRORS OR OMISSIONS

Inadvertent delays, errors or omissions made in connection with this Agreement or any transaction hereunder will not relieve either party from any liability that would otherwise have attached had such delay, error, or omission not occurred. Regardless, the responsible party will rectify each such delay, error, or omission as promptly as practicable after discovery.

ARTICLE 11 – ARBITRATION

A. Any dispute or other matters in question between the Self-Insurer and the Company arising out of or relating to the formation, interpretation, performance, or breach of this Agreement, whether such dispute arises before or after termination of this Agreement, shall be settled by arbitration if the parties are unable to resolve the dispute through negotiation. Arbitration shall be initiated by the delivery of a written notice of demand for arbitration by one party to the other.

B. Each party shall appoint an individual as arbitrator and the two so appointed shall then appoint a third arbitrator. If either party refuses or neglects to appoint an arbitrator within sixty (60) days of receipt of written notice of demand for arbitration, the other party may appoint the second arbitrator. If the two arbitrators do not agree on a third arbitrator within sixty (60) days of their appointment, each of the arbitrators shall nominate three individuals. Each arbitrator shall then decline two of the nominations presented by the other arbitrator. The third arbitrator shall then be chosen from the remaining two nominations by drawing lots and the name of the individual first drawn shall be the umpire. The arbitrators shall be disinterested active or former executive officers of insurance or reinsurance companies or disinterested individuals with significant knowledge and experience with respect to insurance or reinsurance.

C. Arbitration hearing shall be held in Charlotte, North Carolina or such other place as may be mutually agreed. Each party shall submit its case to the arbitrators within sixty (60) days of the selection of the third arbitrator or within such longer period as may be agreed by the arbitrators. The arbitrators shall not be obliged to follow judicial formalities or the rules of evidence except to the extent required by governing law; they shall make their decisions according to the custom and practice of the reinsurance business. The decision rendered by a majority of the arbitrators shall be final and binding on both parties. Such decision shall be a condition precedent to any right to legal action arising out of the arbitrated dispute which either party may have against the other. Judgment upon the award rendered may be entered in any court having jurisdiction thereof.

D. Each party shall pay the fees and expenses of its arbitrator and attorneys and one-half of the fees and expenses of the third arbitrator. All other expenses of the arbitration shall be equally divided between the parties.

ARTICLE 12 – HONORABLE UNDERTAKING

This Agreement shall be construed as an honorable undertaking between the parties hereto not to be defeated by technical legal constructions.

ARTICLE 13 – GENERAL PROVISIONS

A. Successor and Assigns. This Agreement shall inure to the benefit of and bind the Self-Insurer and its successors and assigns and the Company and its successors and assigns. Neither this Agreement nor any right hereunder nor any part hereof may be assigned by any party hereto without the prior written consent of the other party hereto. Prior to any such assignment, the consent of all necessary regulatory authorities must be obtained.

B. Governing Law. Company is a North Carolina corporation, licensed to do business in States of North Carolina and South Carolina and is subject to the laws governing both states. This Agreement shall be governed by and construed in accordance with the laws of either State as controlled by the nature of the dispute. Specifically, but not necessarily limited to, disputes related to an alleged breach of this Agreement shall be governed by North Carolina except that disputes related to the Assumed Claims and Collateral Sources Claims shall be governed by South Carolina law.

C. Entire Agreement. This Agreement supersedes all prior discussions and agreements between the parties, and contains the sole and entire agreement between the Self-Insurer and the Company with respect to the subject matter hereof.

D. Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument.

E. Headings, etc. The headings used in this Agreement have been inserted for convenience and do not constitute matter to be construed or interpreted in connection with this Agreement. Unless the context of this Agreement otherwise requires, (a) words of any gender will be deemed to include each other gender, (b) words using singular or plural number will also include the plural or singular number, respectively, (c) the terms "hereof," "herein," "hereby," and derivative or similar words will refer to this entire Agreement, and (d) the conjunction "or" will denote any one or more, or any combination or all, of the specified items or matter involved in the respective list.

F. Non-waiver. The failure of either party hereto at any time to enforce any provision of this Agreement shall not be construed as a waiver of that provision and shall not effect the right of either party thereafter to enforce each and every provision of this Agreement in accordance with its terms.

G. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present of future law, and if the rights or obligations of any party under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance here form, and (d) in lieu of such illegal, invalid, or unenforceable provision or by its severance added automatically as part of this Agreement, a legal, invalid, and enforceable provision as similar in terms to such illegal, valid, or unenforceable provision as may be possible.

H. Notices. Any notice or communication given pursuant to this Agreement must be in writing and will be deemed to have been duly given if mailed (by registered or certified mail, postage prepaid, return receipt requested), or if transmitted by facsimile or if delivered by courier as follows:

To the Self Insurer:

CompTrustAGC of South Carolina
1100 Euclid Avenue
Charlotte, NC 28203
Facsimile: 704-347-0627

To the Company:

CAGC Insurance Company
1100 Euclid Avenue
Charlotte, NC 28203
Facsimile: 704-347-0627

Copy to:

James L. Stuart
Stuart Law Firm, PLLC
1033 Wade Avenue, Suite 202
Raleigh, NC 27605
Facsimile: 919-787-9988

All notices and other communications required or permitted under this Agreement that are addressed as provided in this paragraph will, whether sent by mail, facsimile, or courier, be deemed given upon the first business day after actual delivery to the party to whom such notice or other communication is sent (as evidenced by the return receipt or shipping invoice signed by a representative of such party or by the facsimile confirmation). Any party from time to time may change its address for the purpose of notices to that party by giving a similar notice specifying a new address, but no such notice will be deemed to have been given until it is actually received by the party sought to be charged with the contents thereof.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized representatives this 28th day of December, 2010.

CompTrustAGC of South Carolina

ATTEST: _____ By: _____
Secretary Jim Tharp
Harry Mashburn
Chairman, Board of Trustees

CAGC Insurance Company

ATTEST: Cindy Taylor By: _____
Asst. Secretary
Charles T. Tagman, Jr.
President/CEO

Copy to:

James L. Stuart
Stuart Law Firm, PLLC
1033 Wade Avenue, Suite 202
Raleigh, NC 27605
Facsimile: 919-787-9988

All notices and other communications required or permitted under this Agreement that are addressed as provided in this paragraph will, whether sent by mail, facsimile, or courier, be deemed given upon the first business day after actual delivery to the party to whom such notice or other communication is sent (as evidenced by the return receipt or shipping invoice signed by a representative of such party or by the facsimile confirmation). Any party from time to time may change its address for the purpose of notices to that party by giving a similar notice specifying a new address, but no such notice will be deemed to have been given until it is actually received by the party sought to be charged with the contents thereof.

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CompTrustAGC of South Carolina

ATTEST: _____ By: _____
Secretary Jim Tharp
Harry Mashburn
Chairman, Board of Trustees

CAGC Insurance Company

ATTEST: _____ By: _____
Secretary
Charles T. Tagman, Jr.
President/CEO

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for SC Property and Casualty Insurance Guaranty Association , 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:

Motion to Intervene, for Joinder of Intervenor-Respondents, and for Declaratory Judgment

Counsel Served:

Geoffrey Ross Bonham, Esq.
PO Box 100105
Columbia, SC 29202

ComptrustAGC of SC
1100 Euclid Ave.
Charlotte, NC 28203

Wayne Goodwin
NC Department of Insurance
401 Glenwood Ave.
Raleigh, NC 27603

James L. Stuart, Esq.
Stuart Law Firm, PLLC
1033 Wade Ave, Suite 202
Raleigh, NC 27605

RICHLAND COUNTY
FILED
2014 MAY -7 AM 10:49
JEANNETTE W. McBRIDE
C.C.P. & G.S.

Maria Weiland
Administrative Assistant

S/S, 2014

STATE OF SOUTH CAROLINA COUNTY OF Richland Raymond G. Farmer, as Director of the South Carolina Department of Insurance, Petitioner, vs. CAGC Insurance Company, in liquidation, Respondent. South Carolina Property and Casualty Insurance Guaranty Association, Intervenor-Petitioner, vs. CAGC Insurance Company, in liquidation, Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in liquidation, and CompTrustAGC of South Carolina, a/k/a CompTrustAGC of South Carolina, Inc. Intervenor-Respondent.	)	IN THE COURT OF COMMON PLEAS CASE NO.: 14-CP-40-0313 MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Name, SC Bar No. and Address of Plaintiff's Attorney	Name, SC Bar No. and Address of Intervenor-RespondentCompTrustAGC of South Carolina, a/k/a CompTrustAGC of South Carolina, Inc. Attorney
Howard A. VanDine, III Meridian, 17th Floor 1320 Main Street Columbia, SC 29201 Telephone: 803.255.9466 fax: 803.256.7500 e-mail: howard.vandine@nelsonmullins.com other:	T. Douglas Concannon SC Bar #:066316 Address: Young Clement Rivers, LLP Post Office Box 993 Charleston, SC 29402-0993 Telephone: (843) 724-6640 fax: (843) 579-1377 e-mail: dconcannon@yerlaw.com

☒ MOTION HEARING REQUESTED (attach *written* motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (COMPLETE SECTIONS II and III)

SECTION I: HEARING INFORMATION

Nature of Motion: Motion to Quash Intervenor-Petitioner South Carolina Property and Casualty, Insurance Guaranty Association, Request for Production and Interrogatories
Estimated Time Needed: 30 Minutes Court Reporter Needed?: ☒ YES ☐ NO

SECTION II: MOTION TYPE

☒ Written Motion Attached
☐ Form Motion

I hereby move for relief or action by the Court as set forth in the attached proposed order.

Dated: 19 Jan 2015

Signature of Attorney for ☐ Plaintiff (s) ☒ Intervenor-RespondentCompTrustAGC of South Carolina, a/k/a

SCCA/233 (11/03)

CompTrustAGC of South Carolina, Inc.

SECTION III: MOTION FEE

☐ PAID – AMOUNT $ 25.00

☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency w. Indigent Party
- ☐ Sexually Violent Predator Act
- ☐ Post-Conviction Relief
- ☐ Motion for Stay Bankruptcy
- ☐ Motion for Publication
- ☐ Motion for Execution (Rule 69, *SCRCP*)
- ☐ Proposed order submitted at request of the Court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order

☐ Other: _____

JUDGE: _____

CODE: _____ DATE: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
(print name)

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED – AMOUNT DUE:

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Raymond G. Farmer, as Director of the South Carolina Department of Insurance, Petitioner, vs. CAGC Insurance Company, in liquidation, Respondent.	Civil Action No. 2014-CP-40-0313 **MOTION TO QUASH**
South Carolina Property and Casualty Insurance Guaranty Association, Intervenor-Petitioner, vs. CAGC Insurance Company, in liquidation, Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in liquidation, and CompTrustAGC of South Carolina, a/k/a CompTrustAGC of South Carolina, Inc. Intervenor-Respondent.	

The Intervenor-Respondent, CompTrustAGC of South Carolina, a/k/a CompTrustAGC of South Carolina, Inc., ("**CompTrust**") by and through its undersigned counsel hereby moves this honorable court pursuant to Rule 26(c) of the South Carolina Rules of Civil Procedure for a protective order or order quashing the Request for Production and Standard Interrogatories by the Intervenor-Petitioner, South Carolina Property and Casualty Insurance Guaranty Association which we received on May 22, 2015. This motion is made upon the grounds that the discovery requests seek information from an entity that no longer exists, since it was voluntarily dissolved and liquidated over four years ago, and can no longer sue or be sued under South Carolina

law. As such, the discovery requests are moot, harassing in nature, and not reasonably calculated to lead to the discovery of admissible evidence.

CompTrust was formed on May 14, 1982 as an unincorporated business trust pursuant to an Agreement and Declaration of Trust, a copy of which (as amended through July 1, 2000) is attached as **Exhibit A**. Effective December, 2010, CompTrust transferred all of its assets, liabilities, and business records to Defendant CAGC Insurance Company ("**CAGC**") in compliance with the terms of a Loss Portfolio Agreement between the parties. Having done this, on March 31, 2011, CompTrust underwent voluntarily dissolution and liquidation pursuant to Articles of Dissolution adopted by its former trustees, a copy of which is attached as **Exhibit B**. CompTrust has been dissolved for over 4 years and no longer retains the records or documentation requested by the Intervenor-Petitioner. If these records and documents still exist, they must come from Respondent CAGC.

CompTrust requests a hearing on this motion on the tenth (10th) day after service hereof or as soon as counsel may be heard.

YOUNG CLEMENT RIVERS, LLP

By: _____

Michael A. Molony, SC Bar No.: 04026
E-Mail: mmolony@ycrlaw.com
T. Douglas Concannon, SC Bar No. 066316
E-Mail: dconcannon@ycrlaw.com
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
(843) 724-6640
Attorneys for Intervenor-Respondent
CompTrustAGC of South Carolina

Charleston, South Carolina
Dated: 19 June 2015

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this 19th day of June 2015.

_____

Exhibit A

July 1, 2000

AGREEMENT AND DECLARATION OF TRUST
OF CompTrustAGC OF SOUTH CAROLINA

(As Amended Through July 1, 2000)

THIS AGREEMENT AND DECLARATION OF TRUST, made and entered into as of May 14, 1982, amended June 23, 1983, May 21, 1992, April 28, 1993 and further amended July 1, 2000 by and between Carolinas AGC, Inc. (hereinafter sometimes referred to as "AGC") and the Trustees who have heretofore, or who may hereafter, be appointed to serve as provided herein.

WITNESSETH:

WHEREAS, AGC wishes to create a group workers' compensation fund for the purpose of providing a program of workers' compensation coverage in South Carolina, with the approval of, and pursuant to the rules and regulations of the South Carolina Workers' Compensation Commission; and

WHEREAS, it is considered to be in the best interest of the parties hereto that an Agreement and Declaration of Trust fully setting forth the duties and responsibilities of the Trustees be entered into.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, CompTrustAGC of South Carolina is hereby established, as follows;

ARTICLE I.

DEFINITIONS

Administrator - Carolinas AGC, Inc., or such other individual or legal entity appointed by the Trustees. The Administrator shall administer the financial affairs of the Fund (hereinafter defined), and carry on the day to day operations and activities of the Fund as directed by the Trustees.

Fund – CompTrustAGC of South Carolina.

Agreement - That certain Agreement entered into by parties who become members of the Fund, which Agreement sets forth their obligations and responsibilities.

Member - A company, firm, corporation, individual, partnership or other legal entity which operates a business similar in nature to the businesses in the Fund and which is a participating member in this Fund and a member or an associated member in good standing of

Carolinas AGC, Inc. or a parent, subsidiary or affiliate of such member or associate member of Carolinas AGC, Inc. who meets the qualifications set forth herein.

Service Company - Any individual, co-partnership, corporation, firm or other legal entity engaged in the business of servicing approved workers' compensation programs which, if required, has made application to, and been approved by the South Carolina Workers' Compensation Commission.

Trustees - The Trustees appointed to serve on the Board of Trustees of this Trust Fund as provided herein.

ARTICLE II.

CREATION OF THE TRUST

There is hereby established and created a Trust and Trust Fund which shall be known as "CompTrustAGC of South Carolina" (hereinafter sometimes referred to as the "Fund" or the "Trust") and the Trustees may hold property, enter into contracts and in all matters as hereinafter set forth act in behalf of the Fund in that name. The Fund shall be used for the purposes as hereinafter set forth.

ARTICLE III.

PURPOSE

This Trust Agreement is made and executed for the purpose of meeting and fulfilling the members' obligations and liabilities under the South Carolina Workmen's Compensation Act; to form an overall group workers' compensation fund pursuant to the laws of said states for the purpose of providing workers' compensation coverage and benefits; to provide maximum allowable advance discounts on premium payments made by members for workers' compensation coverage; and to minimize the cost of providing workers' compensation coverage by developing and refining specialized claim services and a loss prevention program within the construction trade industry.

ARTICLE IV.

DESIGNATION OF TRUSTEES

SECTION 1. NUMBER OF TRUSTEES.

The operation and administration of the Trust Fund shall be the joint responsibility of a Board of Trustees consisting of a number not more than nine (9) nor less than three (3).

SECTION 2. APPOINTMENT OF TRUSTEES.

The Board of Directors of AGC will appoint members to serve on the Board of Trustees of the Fund. Any Trustee so appointed must be an executive representative of a member or an associate in good standing in AGC or a parent, subsidiary or affiliate of such member or associate member, and a member in good standing in the Fund, and no Trustee may be appointed who is, or continues to serve as a Trustee after becoming, an owner, officer of employee of a Service Company.

Each and every Trustee heretofore or hereafter named and each successor Trustee shall acknowledge and consent to their appointment *as* Trustees by giving written notice of acceptance of such appointment to the Chairman or acting chairman of the Board of Trustees of this Fund.

The Board of Directors of AGC has appointed an initial Board of Trustees to act on behalf of the Fund. Members of the initial Board of Trustees do not have to be members of the Fund. The Board of Directors of AGC has fully authorized the initial Board of Trustees to conduct the affairs of the Fund to include but not be limited to the appointment of, and entering into a contract with, a Service Company; the appointment of an Administrators preparation of all applications and other papers required by the South, Carolina Workers' Compensation Commission for the purpose of establishing a group self-insurance fund which will administer a program of workers' compensation in South Carolina; etc. The initial Board of Trustees will serve until replaced by a first Board of Trustees, appointed as set forth in Section 4 below.

SECTION 3. RESIGNATION OF A TRUSTEE.

A Trustee may resign and become and remain fully discharged from all further duties or responsibility hereunder, by giving at least sixty (60) days prior notice in writing sent by registered mail to the chairman or acting chairman of the Board of Trustees of this Fund, and to AGC. Such notice shall state the date said resignation shall take effect and such resignation shall take effect on such date unless a successor Trustee shall have been appointed at an earlier date by AGC, in which event resignation shall take effect immediately upon the appointment of such successor Trustee.

Any Trustee, upon leaving office, shall forthwith turn over and deliver to the chairman or the secretary of the Trustees, at the principal office of the Fund, any and all records, books, documents or other property in his possession or under his control which belongs to the Fund.

SECTION 4. LENGTH OF APPOINTMENT AND REMOVAL OF A TRUSTEE.

Each Trustee, and each successor Trustee, shall serve for a term of three (3) years, subject to the provisions of the Section in this Article regarding resignation, death, incapacity or refusal of a Trustee to act. The first Board of Trustees, which will replace the initial Board of Trustees, shall consist of no more than three Trustees serving a term of one (1) year, no more than three Trustees serving for a term of two (2) years, and no more than three Trustees serving for a term of three (3) years.

A Trustee may be removed by AGC. Notice of removal of a Trustee shall be furnished to the Trustee and the chairman or acting chairman of the Trustees by certified mail and shall set forth the effective date of such removal, and said notice shall name the Trustee or Trustees removed.

SECTION 5. APPOINTMENT OF A SUCCESSOR TRUSTEE.

In the event any Trustee duly appointed to serve on the Board of Trustees of this Fund shall die, resign, become incapacitated, refuse to act, or be removed, a successor Trustee shall be appointed forthwith by AGC. The notice of appointment of a successor Trustee shall be in writing to the chairman or acting chairman of the Board of Trustees by certified mail.

SECTION 6. TRUSTEE'S AUTHORITY.

In case of death, resignation, removal, refusal or inability to act by any one or more of the Trustees, the remaining Trustees shall have all of the powers, rights, estates and interest of this Trust and shall be charged with its duties, provided that, in such cases, no action may be taken unless it is concurred in by a majority of three (3) or more of the remaining Trustees.

SECTION 7. TRUSTEE OFFICERS.

The Trustees shall meet as promptly as possible after their appointment and elect from among the Trustees a Chairman and a Secretary and such other officers as they deem appropriate. The term of such officers shall commence on the date of their election and continue to the end of the fiscal year. Thereafter such officers shall be elected annually.

The initial Board of Trustees shall elect from among the Trustees a Chairman and a Secretary and such other officers as they deem appropriate. Said officers shall serve until their successors have been elected by the first Board of Trustees.

ARTICLE V.

ADMINISTRATION OF FUND

SECTION 1. MEETINGS.

The Trustees shall meet at least quarterly, and more often if required, at the principal office of the Fund or at such other location as may be acceptable to a majority of the Trustees. The chairman of the Trustees shall set the date, time and location of each meeting, and notice thereof shall be furnished to each Trustee by the secretary or Administrator not less than ten (10) days prior to the date of such meeting. Such notice shall specify the date, time and location of such meeting and may specify the purpose thereof and any action proposed to be taken.

Special meetings of the Trustees may be held at any time and place without notice, provided all Trustees execute a waiver of notice and consent to the said meeting.

For the purpose of a duly called and noticed meeting of the Trustees, a quorum shall consist of at least fifty (50) percent of the Trustees.

The secretary, acting secretary, or his designee shall keep, minutes of all meetings, proceedings and acts of the Trustees, but such minutes need not be verbatim. Copies of all minutes of the meeting of the Trustees shall be sent by the secretary, acting secretary or a designee to all Trustees.

SECTION 2. VOTING.

All actions by, and decisions of, the Trustees shall be by the vote of a majority of the number of Trustees attending a duly called meeting of the Trustees at which a quorum is present; provided, however, that actions by, and decisions of, the Trustees may be taken by a vote of a majority of the number of Trustees attending a special meeting without notice when a proper waiver and consent has been obtained as provided in Section 1 above and at which a quorum is present.

SECTION 3. OFFICE OF THE FUND.

The Trustees shall establish and maintain an office of the Fund. The books and records pertaining to the Fund and its administration shall be kept and maintained at the office of the Fund.

SECTION 4. EXECUTION OF DOCUMENTS.

A certificate signed by the chairman and secretary of the Trustees or those duly acting in their stead shall be evidence of the action of the Trustees. All facts and matters so certified shall conclusively be presumed true.

SECTION 5. APPOINTMENT OF ADMINISTRATOR.

The Trustees may designate an Administrator to administer the financial affairs of the Fund, and to carry on the day-to-day operations and activities of the Fund, provided, however, such Administrator shall not be an owner, officer, or employee of a Service Company. The Trustees may assign to the Administrator such powers and authorities as they deem appropriate, to include but not limited to the authority to establish bank accounts, sign checks, determine appropriate depositories for Fund assets, approval of new members, etc.

If requested, any Administrator so appointed shall furnish a fidelity bond with the Trustees as obligee, in an amount sufficient to protect the Fund against the misappropriation or misuse of any monies or securities held by or in the name of the Fund. The amount of the bond shall be determined by the Trustees and evidence of such bond shall be filed with the appropriate governmental agencies and departments.

SECTION 6. COMPENSATION AND REIMBURSEMENT OF TRUSTEES.

The Trustees may establish from time to time, a reasonable amount of compensation to cover attendance at meetings of the Trustees and the performance of the normal duties of a Trustee, which compensation may include reimbursement for necessary expenses incurred herein.

SECTION 7. SERVICE COMPANY.

The Trustees may engage a Service Company to carry out certain operations of the Fund, including but not limited to the processing and payment of claims. If required, the Service Company shall be approved by the South Carolina Workers' Compensation Commission.

SECTION 8. COMPENSATION AND REIMBURSEMENT OF ADMINISTRATOR.

The Trustees may establish from time to time a reasonable amount of compensation to be paid the Administrator for services rendered to and expenses incurred on behalf of the Fund, including, but not limited to, services in connection with recruiting of new members to participate in the self-insurance program, monitoring safety programs instituted by the Fund or by the Service Company, serving as liaison between the participating members of AGC and the Service Company, education of participating members as to their responsibilities under the Fund and the self-insurance program, and collection and depositing of premiums and assessments due from members of the Fund. Payment of any such compensation shall be in the sole discretion of the Trustees, subject to the approval of the South Carolina Workers' Compensation Commission, if required.

ARTICLE VI.

POWERS AND DUTIES OF THE TRUSTEES

SECTION 1. AUTHORITY OF TRUSTEES.

The Trustees shall have full power and authority and shall be charged with the duty of general supervision and operation of the Fund, and shall conduct the business and activities of the Fund in accordance with this Agreement and Declaration of Trust, applicable federal and/or state statutes, and applicable governmental rules and regulations. The power and authority of the Trustees shall include but not be limited to the power and authority to acquire, lease, sell, exchange or otherwise deal in property, both real and personal; to invest and reinvest in stocks (common or preferred), bonds, debentures, notes, mortgages or other securities; to pay taxes, assessments, compensation and other expenses incurred in the operation of the Fund; to borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the Trustees deem advisable; and generally to do all things and carry on all activities necessary for the operation of the Fund.

SECTION 2. APPROVAL OF NEW MEMBERS.

The Trustees, after the inception date of the Fund, shall receive applications for memberships from prospective new members to the Fund and shall approve such application for membership in accordance with the rules and regulations for self-insurers established by the South Carolina Workers' Compensation Commission (hereinafter sometimes referred to as the Rules for Self-Insurers), the terms of the Agreement to be entered into by perspective new members, and the rules and regulations established and promulgated by the Trustees for the admission of new members to the Fund. The Trustees may delegate the ministerial authority for membership approval to the Administrator or such other person as they select, provided that such Administrator or person designated is not an owner, officer, or employee of a Service Company.

SECTION 3. ESTABLISHMENT OF FUNDS.

The Trustees shall be responsible for establishing such Trustee funds, loss funds, or other funds which may be required by law, or the Rules for Self-Insurers or the rules of conduct and administration of this Fund as may be established by the Trustees from time to time.

SECTION 4. POSTING OF SECURITY.

The Trustees shall be responsible for and shall undertake the posting of such security deposit and/or security bonds as may be required to be posted with the South Carolina Workers' Compensation Commission, or the Rules for Self-Insurers or such other legislative enactments or administrative regulations which may be established from time to time.

SECTION 5. REPORTS.

The Trustees shall be responsible for and shall cause to be filed such annual or other periodic audits, reports, and disclosures as may be required from time to time pursuant to applicable federal or state statutes or governmental regulations, including, but not limited to, periodic payroll audits, periodic summary loss reports, periodic statements of financial condition, certified audits, appropriate applications filed by prospective new members, reports as to financial standing, payroll records, coverage, accident experience and compensation payments, summary loss data statements, periodic status reports, and any other such reports as may be required from time to time.

SECTION 6. ASSET SAFEGUARDS.

The Trustees shall take all necessary precautions to safeguard the assets of the Fund including, but not limited to, the following:

a. The designation of an Administrator to administer the financial affairs of the Fund provided, however, such, Administrator shall not be an owner, officer or employee of a Service Company. Further, the Trustees may require the Administrator to furnish a fidelity bond with the Trustees as obligee in an amount sufficient to protect the Fund against the misappropriation or misuse of any

monies or securities. The amount of such bond shall be determined by the Trustees and evidence of the said bond shall be filed with the appropriate governmental agencies and departments.

b. Retaining control of all monies collected or disbursed for the Fund; all loss funds or funds of any type shall remain in the custody of the Trustees or the authorized Administrator; provided, however, that a revolving fund for payment of compensation benefits due and other related expenses may be established for the use of the authorized service Company.

c. Designation of a Service Company which shall be required to furnish a fidelity bond covering its employees, with the Fund as obligee, and in an amount sufficient to protect all monies placed in any revolving fund made available to such Service Company for the payment of compensation benefits due and other related expenses; provided, however, in the event the bond required of the fiscal agent and/or the Administrator also covers monies deposited in the revolving fund, then and in that event, a separate bond shall not be required of the Service Company if the Service Company is already covered by sufficient bonds.

d. Having the accounts and records of the Fund audited annually or at any time which may be required by the South Carolina Workers, Compensation Commission or other governmental agency, such audits to be made by a certified public accountant, approved by the said Commission, if such approval is required; to implement any uniform accounting system prescribed by the South Carolina Workers' Compensation commission for use by self insurance funds and/or Service Companies.

e. Collect delinquent accounts which result from unpaid premiums by members.

f. Utilize monies collected as premiums only for purposes related to workers' compensation insurance and related purposes set forth herein.

g. Invest surplus monies in banks, money market funds, or such other investments which shall, in the judgement of the Trustees, constitute a sound investment with the highest rate of return, all in accordance with applicable federal and state statutes and regulations. With respect to investments, the Trustee shall have such other powers as are provided by law, and as set forth herein (reference Article VI).

h. Take all reasonable and necessary precautions to protect the members from losses and provide for excess insurance coverage designed to protect said members against excess losses.

i. Abide by all applicable federal and state statutes and administrative regulations.

SECTION 7. RULES, REGULATIONS AND BY-LAWS.

The Trustees may prescribe such rules, regulations and by-laws as may, in their discretion, be proper and necessary for the sound and efficient administration of the Trust, provided the rules and regulations shall not be inconsistent with the provisions of this Agreement and Declaration of Trust, the Agreement entered into by members of the Fund, the Rules for Self-Insurers, applicable federal and/or state statutes and applicable governmental regulations.

As part of their rule making authority, the Trustees may authorize distribution to participating members of excess monies in a manner consistent with the foregoing rules and regulations. Such distribution shall be made solely within the discretion of the Trustees, and shall be equitable as between participating members of the Fund.

SECTION 8. TRUSTEES' LIABILITIES-INDEMNIFICATION.

No Trustees shall be liable for any action taken pursuant to this Trust Agreement in good faith or for an omission, except gross negligence, or for any act of omission or commission by any other Trustee or by an employee of Trustee.

The Trustees are hereby authorized and empowered to obtain, at the expense of the Fund, liability insurance fully protecting the Trustees and the Fund from any loss or expense incurred, including reasonable attorney's fees for all acts of the Trustees except willful misconduct and gross negligence on the part of the Trustees. The Fund hereby agrees to save, hold harmless and indemnify the Trustees from any loss, damage or expense incurred by said Trustees while acting in the capacity of Trustees excepting willful misconduct and gross negligence.

In amplification of the foregoing, every person, his heirs, Executors and Administrators, who was or is a party or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding of any kind, whether civil, criminal, administrative, arbitrative or investigative, or was or is the subject of any claim, and whether or not by or in the right of the Fund, by reason of his being or having been a Trustee of the Fund, shall be indemnified by the Fund against expenses (including attorneys' fees), judgments, fines, penalties, awards, damages, costs, amounts paid in settlement and liabilities of all kinds, actually and reasonably incurred by him in connection with, or resulting from, such action, suit, proceeding, or claim, provided that no indemnification shall be made against his gross negligence or willful misconduct.

SECTION 9. RELIANCE ON COUNSEL'S OPINION.

The Trustees may consult with legal counsel concerning any questions which may arise with reference to the duties and powers or with reference to any other matter pertaining to this Agreement or the Trust created hereby. The opinion of such counsel shall be full and complete authorization and protection in respect to any action taken or suffered by the Trustees hereunder in good faith in accordance with the opinion of such counsel. The Trustees shall not be liable for such actions.

ARTICLE VII.

MISCELLANEOUS

SECTION 1. AMENDMENTS.

This Agreement and Declaration of Trust may be amended in writing at any time upon vote of a majority of the Trustees. However, this Agreement may not be amended so as to change its purpose as set forth in Article III above or to permit the diversion or application of any of the funds of the Trust for any purpose other than those specified herein. The Trustees, upon amending this Agreement, shall send a copy of any such amendment to AGC.

SECTION 2. FISCAL YEAR.

The Fund shall operate on a fiscal year from July 1 to June 30.

SECTION 3. TERMINATION OF TRUST.

This Trust may be terminated at any time by the parties to this Agreement. This Trust shall not operate for a period of time which will place it in violation of the rule against perpetuities.

In the event of termination, the remaining funds in the Trust, after providing for all outstanding obligations, shall be distributed, through a formula determined by the Trustees, to the participating members.

SECTION 4. SITUS OF THE TRUST.

This Trust Agreement is executed by the parties hereto- and accepted by the Trustees in South Carolina. All questions pertaining to the validity, construction and administration of the Trust in connection with its operation in the State of South Carolina shall be determined in accordance with the laws of the State of South Carolina.

SECTION 5. CONSTRUCTION.

Whenever any words are used in this Agreement in the masculine gender, they shall be construed as though they were also used in the feminine or neuter gender in all situations where they would so apply, and whenever any words are used in this Agreement in the singular form, they shall be construed as though they were also used in the plural form in all situations where they would so apply, and whenever any words were used in this Agreement in the plural form, they shall be construed as though they were also used in the singular form in all situations where they would so apply.

SECTION 6. SUCCESSORS AND ASSIGNS.

When reference is made herein to parties to this Agreement, said reference shall be deemed to include the respective heirs, personal representatives, successors and assigns of said parties.

IN WITNESS WHEREOF, this Agreement and Declaration of Trust has been executed the day and year first above written.

CAROLINAS AGC, INC.
(formerly known as THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, CAROLINAS BRANCH, INCORPORATED)

By; /s/ Robert L. Davis
Title; President

Attest; /s/ R. Gene Ellis
Secretary

(CORPORATE SEAL)

/s/ Edward C. Finch (SEAL)
Trustee - Edward C. Finch -- Chairman

/s/ Furman R. Cullum (SEAL)
Trustee - Furman R. Cullum

/s/ Henry B. Rowe (SEAL)
Trustee - Henry B. Rowe

/s/ Graham T. Allison (SEAL)
Trustee - Graham T. Allison

/s/ Luther Barringer (SEAL)
Trustee - Luther Barringer

/s/ John C. Laughridge (SEAL)
Trustee - John C. Laughridge

/s/ Harry Mashburn (SEAL)
Trustee - Harry Mashburn

/s/ Robert Sherman (SEAL)
Trustee - Robert Sherman

Exhibit B

ARTICLES OF DISSOLUTION

COMPTRUSTAGC OF SOUTH CAROLINA
(A South Carolina Business Trust)

WHEREAS, pursuant to that certain Agreement and Declaration of Trust, made and entered into as of May 14, 1982, and subsequently amended June 23, 1983, May 21, 1992, April 28, 1993 and July 1, 200 (hereinafter the "Trust Agreement") Carolinas AGC, Inc, (hereinafter "CAGC") as grantor and the original trustees duly appointed by CAGC established CompTrustAGC of South Carolina (hereinafter "CompTrustAGC-SC") as a South Carolina business trust to fulfill the obligations and liabilities pursuant to the South Carolina workers' compensation laws of employers that were members of CompTrustAGC-SC;

WHEREAS, Harry Lee Mashburn, James Thomas Tharp and Hugh K. Leatherman, Sr., are the current Trustees of CompTrustAGC-SC (hereinafter the "Trustees"), duly appointed as trustees pursuant to the Trust Agreement;

WHEREAS, CompTrustAGC-SC is duly qualified as a workers' compensation self-insurance group pursuant to the laws of the state of South Carolina and is subject to regulation by the South Carolina Workers' Compensation Commission;

WHEREAS, CAGC and the Trustees have entered into and consummated that certain December 28, 2010 Loss Portfolio Transfer and Assumption Agreement wherein all of the workers' compensation claims liabilities of CompTrustAGC-SC and all other liabilities and obligations of CompTrustAGC-SC were transferred to and assumed by CAGC Insurance Company (hereinafter "CAGCIC") in exchange for the transfer of all of the assets of CompTrustAGC-SC to CAGCIC;

WHEREAS, CompTrustAGC-SC has provided a final financial accounting to CAGC pursuant to Article VI, Section 5 of the Trust Agreement; and,

WHEREAS, CAGC and the Trustees now desire to terminate and dissolve CompTrustAGC-SC by entering into these Articles of Dissolution (hereinafter "Articles") and to hold the Trustees harmless for any claims, liabilities or obligations of CompTrustAGC-SC that may arise following the termination and dissolution of CompTrustAGC-SC.

NOW, THEREFORE, CAGC and the Trustees agree as follows:

1. Capitalized terms in these Articles have the same meaning as in the Trust Agreement.

2. These Articles shall become effective at 12:01 a.m. on April 1, 2011.

3. The Trustees are hereby indemnified against and held harmless for any alleged debts, liabilities or obligations asserted against CompTrustAGC-SC after the effective date of

these Articles; and, all post-dissolution alleged debts, liabilities and obligations of CompTrustAGC-SC shall be referred to CAGCIC.

4. An executed copy of these Articles shall be delivered to the South Carolina Workers' Compensation Commission.

IN WITNESS WHEREOF, these Articles have been executed this the 31st day of March, 2011.

CAROLINAS AGC, INC.

By: _____ (Seal)
S. Mark Dodd,
Chair of the Board

Attest: _____, CAE, CMC
Cynthia Mills, CAE, CMC,
Secretary

COMPTRUSTAGC of SOUTH CAROLINA
TRUSTEES

By: _____ (Seal)
Russell E. Lee, Jr., Trustee

By: _____ (Seal)
Harry Lee Washburn, Trustee

By: _____ (Seal)
James Thomas Tharp, Trustee

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) JUDICIAL CIRCUIT
)
) CASE NO.: 2014-CP-40-0313
)
Raymond. G Farmer, as Director of the South Carolina Department of Insurance,) **MOTION AND ORDER INFORMATION**
Petitioner,)
vs.) **FORM AND COVERSHEET**
)
CAGC Insurance Company, In Liquidation,)
Respondent.)
)
South Carolina Property and Casualty Insurance Guaranty Association,)
Intervenor-Petitioner,)
vs.)
)
CAGC Insurance Company, In Liquidation; Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in Liquidation; and ComptrustAGC of South Carolina a/k/a ComptrustAGC of South Carolina, Inc.,)
Intervenor-Respondent.)

RICHLAND COUNTY FILED
2015 JUL -6 PM 12: 22
JEANETTE W. WALKER C.C.P. & G.S.

Plaintiff's Attorney:	Intervenor- Petitioner's Attorney:
Geoffrey R. Bonham, Esq.,	Tara C. Sullivan, Bar No. 79806
Address:	Address:
PO Box 100105 Columbia, SC 29202	1320 Main Street, Columbia, SC 29201
Phone: 803-737-6132 Fax 803-737-6227	Phone: 803-255-9591
E-mail: gbonham@doi.sc.gov	E-mail: tara.sullivan@nelsonmullins.com

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Intervenor-Petitioner's Motion for Summary Judgment
Estimated Time Needed: 20 min Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Tara C. Sullivan Date 07/01/15
Signature of Attorney for ☐ Plaintiff /☐ Defendant ☒ Intervenor-Petitioner

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: $ _____ ☐ CONTESTED – AMOUNT DUE: $ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Raymond G. Farmer, as Director of the South Carolina Department of Insurance,

Petitioner,

vs.

CAGC Insurance Company, In Liquidation,

Respondent.

South Carolina Property and Casualty Insurance Guaranty Association,

Intervenor-Petitioner.

vs.

CAGC Insurance Company, in Liquidation; Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in Liquidation; and CompTrustAGC of South Carolina a/k/a CompTrustAGC of South Carolina, Inc.,

Intervenor-Respondents.

Civil Action No. 2014-CP-40-0313

INTERVENOR-PETITIONER'S MOTION FOR SUMMARY JUDGMENT

RICHLAND COUNTY FILED
2015 JUL -6 PM 12: 22
JEANETTE W. McBRIDE C.C.P. & G.S.

TO: DAVID W. BOONE, ESQUIRE, ATTORNEY FOR INTERVENOR-RESPONDENT CAGC INSURANCE COMPANY, IN LIQUIDATION;

GEOFFREY ROSS BONHAM, ESQUIRE, ATTORNEY FOR INTERVENOR-RESPONDENT RAYMOND G. FARMER, IN HIS CAPACITY AS ANCILLARY RECEIVER OF CAGC INSURANCE COMPANY, IN LIQUIDATION; AND

MICHAEL A. MOLONY, ESQUIRE, AND T.. DOUGLAS CONCANNON, ESQUIRE, ATTORNEYS FOR INTERVENOR-RESPONDENT

COMPTRUSTAGC OF SOUTH CAROLINA A/K/A COMPTRUSTAGC OF SOUTH CAROLINA, INC.:

YOU WILL PLEASE TAKE NOTICE that Intervenor-Petitioner South Carolina Property and Casualty Insurance Guaranty Association (hereinafter "Association") will move before the Court of Common Pleas for Richland County for an Order granting summary judgment in its favor on its Complaint for Declaratory Judgment in this matter.

The grounds for this Motion are that the only issue before the Court is the legal determination of the statutory obligation of the Association to pay claims related to the Self-Insured Coverage provided by CompTrustAGC of South Carolina a/k/a CompTrustAGC of South Carolina, Inc. ("CompTrust"), including any liabilities purportedly transferred from CompTrust to CAGC Insurance Company ("CAGC").

The Association's Motion will be further based on pleadings filed with the Court, relevant affidavits, other documents as permitted by the Rules, and the Memorandum of Law, which will be filed and served under separate cover.

<signature block next page>

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Tara C. Sullivan

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Columbia, SC 29201
(803) 799-2000

Attorneys for Intervenor-Petitioner South Carolina Property and Casualty Insurance Guaranty Association

Columbia, South Carolina

July 1, 2015

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for SC Property and Casualty Insurance Guaranty Association, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Document(s):

Intervenor-Petioner's Motion for Summary Judgment

RICHLAND COUNTY
FILED
2015 JUL -6 PM 12: 22
JEANETTE W. McBRIDE
C.C.P. & G.S.

Counsel Served:

Geoffrey Ross Bonham, Esquire
PO Box 100105
Columbia, SC 29202

David W. Boone, Esquire
PO Box 629
Raleigh, NC 27602

Michael A. Molony, Esq.
T. Douglas Concannon, Esq.
Young Clement Rivers, LLP
25 Calhoun Street, Suite 400
Charleston, SC 29401

Maria Keeve
Administrative Assistant

July 1, 2015

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Raymond G. Farmer, as Director of the South Carolina Department of Insurance, Petitioner, vs. CAGC Insurance Company, In Liquidation, Respondent.	)	Civil Action No. 2014-CP-40-0313 **INTERVENOR-PETITIONER'S MEMORANDUM IN OPPOSITION TO COMPTRUST'S MOTION TO QUASH**
South Carolina Property and Casualty Insurance Guaranty Association, Intervenor-Petitioner. vs. CAGC Insurance Company, in Liquidation; Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in Liquidation; and CompTrustAGC of South Carolina a/k/a CompTrustAGC of South Carolina, Inc., Intervenor-Respondents.	)	

RICHLAND COUNTY
FILED
2015 SEP 11 PM 12:06
JEANNETTE W. WALTERS
CLERK, C.C.P. & G.S.

Intervenor-Petitioner South Carolina Property and Casualty Insurance Guaranty Association ("Association"), by and through its undersigned counsel, hereby submits this Memorandum in Opposition to the Motion to Quash filed by Intervenor-Respnodent CompTrustAGC of South Carolina a/k/a CompTrustAGC of South Carolina, Inc. ("CompTrust") in this matter.

This Court allowed the Association to intervene in this ancillary receivership action and join CompTrust, along with the other Intervenor-Respondents, in the Association's Complaint for Declaratory Judgment. See Order filed June 9, 2014. CompTrust filed its Limited Answer to the Complaint on or about March 12, 2015. The Association subsequently served CompTrust with Interrogatories and Requests for Production on May 20, 2015. See Discovery Requests attached hereto as **Exhibit A**. Instead of responding to these discovery requests, CompTrust filed the instant Motion to Quash on June 19, 2015.

In its Motion, CompTrust objects to the discovery requests based on its assertion that it cannot sue or be sued under South Carolina law because it dissolved in 2011. However, CompTrust's dissolution does not insulate it from suit in South Carolina. South Carolina law provides that a business entity may still be sued after its dissolution. See S.C. Code § 33-15-105(c)(5) ("Dissolution of a corporation does not . . . prevent commencement of a proceeding by or against the corporation in its corporate name."); see also S.C. Code § 15-5-90 ("Causes of action for and in respect to any and all injuries . . . shall survive both to and against . . . the legal representative of . . . a defunct or insolvent corporation."). CompTrust's own Articles of Dissolution recognized that CompTrust remains subject to suit after its dissolution:

> [T]he Trustees now desire to terminate and dissolve CompTrustAGC-SC by entering into these Articles of Dissolution (hereinafter "Articles") and to hold the Trustees harmless **for any claims, liabilities, or obligations of CompTrustAGC-SC that may arise following the termination and dissolution of CompTrustAGC-SC.**
>
> . . .
>
> The Trustees are hereby indemnified against and held harmless **for any alleged debts, liabilities or obligations asserted against CompTrustAGC-SC after the effective date of these Articles. . .**

Motion to Quash at Ex. B pp. 1-2 (emphasis added). Also, contrary to its own assertion that it

cannot sue or be sued, CompTrust seeks affirmative relief from this Court by requesting its own declaratory ruling in its Limited Answer and by filing the instant Motion to Quash. See Limited Answer, Prayer for Relief at p. 10. Pursuant to South Carolina law, and as recognized by CompTrust itself at dissolution and during this litigation, claims may still be asserted against CompTrust in South Carolina courts even after its dissolution. CompTrust's dissolution does not insulate it from responding to discovery requests in this matter.

CompTrust next states that it "no longer retains the records or documentation requested by the Intervenor-Petitioner." Motion to Quash at p. 2. If this is correct, a Motion to Quash the Requests for Production does not seem necessary, and CompTrust could simply state such in their discovery responses.

In conclusion, the Association respectfully requests that this Court deny CompTrust's Motion to Quash and order CompTrust to provide responses to the discovery requests at issue.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Tara C. Sullivan

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E-Mail: erik.norton@nelsonmullins.com
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Columbia, SC 29201
(803) 799-2000

Attorneys for Intervenor-Petitioner South Carolina Property and Casualty Insurance Guaranty Association

Columbia, South Carolina

September 9, 2015.

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
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Tara C. Sullivan
Tel: 803.255.9591
Fax: 803.255.9079
tara.sullivan@nelsonmullins.com

May 20, 2015

Michael A. Molony, Esq.
T. Douglas Concannon, Esq.
Young Clement Rivers, LLP
25 Calhoun Street, Suite 400
Charleston, SC 29401

RE: Raymond G. Farmer, as Director of the South Carolina Department of Insurance v. CACG Insurance Company, in Liquidation
South Carolina Property and Casualty Insurance Guaranty Association v. CAGC Insurance Company, in Liquidation; Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in Liquidation; and CompTrustAGC of South Carolina a/k/a CompTrustAGC of South Carolina, Inc.
Civil Action No. 2014-CP-40-0313
Our File No. 00163/01649

Dear Michael and Doug:

Enclosed and served upon you please find the following discovery requests:

1. Intervenor-Petioner's First Set of Interrogatories to Intervenor-Respondent ComptrustAGC of South Carolina; and
2. Intervenor-Petioner's First Set of Requests for Production to Intervenor- Respondent ComptrustAGC of South Carolina.

Thank you for your attention to this matter. Please feel free to contact me if you have any questions.

Very truly yours,

Tara C. Sullivan

Tara C. Sullivan

EXHIBIT
A
ROA_000289

TCS:mk
Enclosures

cc: David W. Boone, Esquire
Geoffrey Ross Bonham, Esquire

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Raymond G. Farmer, as Director of the South Carolina Department of Insurance, Petitioner, vs. CAGC Insurance Company, In Liquidation, Respondent.	)	Civil Action No. 2014-CP-40-0313 **INTERVENOR-PETITIONER'S FIRST SET OF INTERROGATORIES TO INTERVENOR-RESPONDENT COMPTRUSTAGC OF SOUTH CAROLINA**
South Carolina Property and Casualty Insurance Guaranty Association, Intervenor-Petitioner. vs. CAGC Insurance Company, in Liquidation; Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in Liquidation; and CompTrustAGC of South Carolina a/k/a CompTrustAGC of South Carolina, Inc., Intervenor-Respondents.	)	

TO: MICHAEL A. MOLONY, ESQUIRE, AND T. DOUGLAS CONCANNON, ESQUIRE, ATTORNEYS FOR INTERVENOR-RESPONDENT COMPTRUSTAGC OF SOUTH CAROLINA A/K/A COMPTRUSTAGC OF SOUTH CAROLINA, INC.:

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, Intervenor-Petitioner South Carolina Property and Casualty Insurance Guaranty Association

("Association"), requests that you answer the following Interrogatories no later than thirty (30) days from the date of service hereof. The Interrogatories are continuing in nature and must be supplemented if you obtain additional responsive information.

DEFINITIONS

A. "You," "your," and "Intervenor-Respondent" and any variants thereof, refers to CompTrustAGC of South Carolina a/k/a CompTrustAGC of South Carolina, Inc., and shall also include employees, agents, attorneys, and any other persons or entities acting (or who acted) or purporting to act (or who purported to act) on its behalf.

B. "Person" means any natural person, sole proprietorship, corporation, company, association, joint venture, firm, partnership or other legal or business entity in whatever form.

C. "Representative" means any person acting or purporting to act on behalf of any other person.

D. The words "document" or "documents" include any written, printed, records or graphic matter, photographic matter or sound reproductions, however produced or reproduced, referring or relating to the subjects mentioned, now or formerly in the possession, control or custody of Intervenor-Respondent, including documents at any time in the possession, control, custody of Intervenor-Respondent's agents or other persons.

E. The words "communication" or "communications" include any verbal conversations or any other statement from one person to another, including but not limited to, any interview, conference, conversation, discussion, meeting or telephone conversation.

F. The words "identify," "identity," or "identification," of an individual person means to state his or her full name and present location, his or her present or last known address, employment, and position. "Identify" or "identification" of a document means to state the type document (e.g., letter, memorandum, telegram, chart, etc.), or some other means of identifying and its present

location or custodian. If any identified document was but is no longer in your possession or under your control, state its disposition.

G. As used herein, the term "referring" or "relating" means reflecting, containing, pertaining, indicating, showing, concerning, constituting, evidencing, describing, discussing or mentioning.

H. The singular form of a word shall refer to the plural, and words used in the masculine gender shall also include the feminine, and vice-versa.

I. If any privileges are claimed with respect to any document, identify the document and for each such document please state:

(a) The nature of the document (*e.g.*, letter, memorandum, report, tape recording, etc.);

(b) The date the document bears, or if undated, the date it was written or created;

(c) The document's author;

(d) The identity of each of the document's recipients;

(e) The general subject matter of the document;

(f) The document's present or last known location or custodian; and

(g) The privilege claimed and the basis therefor.

J. If any privileges are claimed with respect to any oral communication, identify the communication and for each such communication, please state:

(a) The date of the communication;

(b) The participants in the communication;

(c) All persons present during the communication;

(d) The nature of the communication (*e.g.*, face-to-face, by telephone);

(e) The general subject matter of the communication; and

(f) The privilege claimed and the basis therefor.

K. If the answer to any interrogatory is that you lack knowledge of the requested information, describe all efforts made by you to obtain the information.

INTERROGATORIES

1. Give the names and addresses of persons known to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses, and indicate who has possession of such statements.

2. Set forth a list of photographs, plats, sketches, or other prepared documents that relate to the claim in the case.

3. List the names and addresses of any expert witnesses whom you propose to use as a witness at the trial of the case.

4. For each person known 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 by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

5. If you denied any Paragraphs of the Association's Complaint in your Answer, state with specificity the basis upon which you denied each Paragraph.

6. Set forth a list of your member employers at the time of your dissolution on March 31, 2011, and for the five years preceding dissolution.

7. Set forth a list of all your trustees and the time periods when they served as trustees.

8. Set forth the present location of all documents relating to CompTrustAGC of South Carolina.

9. State your records retention policy at the time of dissolution and identify any written policy regarding records retention in place at dissolution and for the five years preceding dissolution.

10. Set forth a list of all documents responsive to Requests for Production in this matter being withheld on the grounds of privilege, including the date of the document, the author of the document, any recipients of the document, the type of document (email, memorandum, etc.) and the basis for your claim of privilege.

11. Identify the individuals and entities involved with the decision to enter the Loss Portfolio Transfer and state the reasons this decision was made.

12. Identify the individuals and entities involved with the decision for you to dissolve and state the reasons the decision was made.

13. Identify any communications in any form, whether written or oral, between you, your members or your agents and the South Carolina Worker's Compensation Commission, NC Department of Insurance, SC Department of Insurance or any other state or federal governmental agency or department regarding the "Loss Portfolio Transfer." For purposes of this Interrogatory, Loss Portfolio Transfer shall be given the same meaning as that in your Answer.

14. Identify any communications in any form, whether written or oral, between you, your members or your agents with any member of the South Carolina Legislature, their agents or staff members regarding the Loss Portfolio Transfer or claims made to you or CAGC.

15. Set forth a list of all claimants existing at the time of the Loss Portfolio Transfer and identify the attorney or representative of each.

16. Set forth a list of all claimants existing at the time of the dissolution of CompTrustAGC of South Carolina and identify the attorney or representative of each.

17. Identify any contact you or your representatives had with the Association regarding the Loss Portfolio Transfer, the dissolution, and the Association's acceptance of pre-transfer claims.

18. Identify the attorney and/or law firm representing you at the time of the Loss Portfolio Transfer.

19. Identify the attorney and/or law firm representing you at the time of the dissolution.

20. Identify the attorney and/or law firm who represented CAGC at the time of the Loss Portfolio Transfer.

NELSON MULLINS RILEY & SCARBOROUGH, LLP

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Attorneys for South Carolina Property and Casualty Insurance Guaranty Association

Columbia, South Carolina

May 20, 2015.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Raymond G. Farmer, as Director of the South Carolina Department of Insurance, Petitioner, vs. CAGC Insurance Company, In Liquidation, Respondent.	)	Civil Action No. 2014-CP-40-0313 **INTERVENOR-PETITIONER'S FIRST SET OF REQUESTS FOR PRODUCTION TO INTERVENOR-RESPONDENT COMPTRUSTAGC OF SOUTH CAROLINA**
South Carolina Property and Casualty Insurance Guaranty Association, Intervenor-Petitioner. vs. CAGC Insurance Company, in Liquidation; Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in Liquidation; and CompTrustAGC of South Carolina a/k/a CompTrustAGC of South Carolina, Inc., Intervenor-Respondents.	)	

TO: MICHAEL A. MOLONY, ESQUIRE, AND T. DOUGLAS CONCANNON, ESQUIRE, ATTORNEYS FOR INTERVENOR-RESPONDENT COMPTRUSTAGC OF SOUTH CAROLINA A/K/A COMPTRUSTAGC OF SOUTH CAROLINA, INC.:

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, Intervenor-Petitioner South Carolina Property and Casualty Insurance Guaranty Association

("Association"), requests that Intervenor-Respondent CompTrustAGC of South Carolina a/k/a CompTrustAGC of South Carolina, Inc. ("CompTrust"), produce and make available for inspection and duplication, in response to each numbered paragraph, all documents specified herein which are in its possession, custody or control or in the possession, custody or control of its agents, accountants or attorneys. CompTrust is requested to make such production within thirty (30) days after service of this request at the offices of the undersigned at the address indicated below, as required pursuant to the South Carolina Rules of Civil Procedure. If you contend any item need not be produced, identify such item and set forth the basis for your failure to produce same.

DEFINITIONS AND INSTRUCTIONS

As used herein, the following terms shall have the meanings set forth below:

1. The terms "you" and "your" mean the party or parties to which these requests for production are addressed, including their agents, attorneys, and all other persons acting or purporting to act on their behalf. If that party is a corporation or partnership, the terms "you" and "your" also include the party's divisions, departments, subsidiaries, affiliates, predecessors, present or former officers, directors, owners, agents, attorneys, and accountants as well as each partnership in which it is a partner; and includes any other person, acting or purporting to act on its behalf.

2. The term "person" or "persons" means any natural person, individual, proprietorship, partnership, corporation, association, organization, joint venture, firm, other business enterprise, governmental body, group of natural persons or other entity and includes any other person acting on behalf of a person.

3. The terms "document" or "documents" mean and include any written or graphic matter or other means of preserving thought or expression and all tangible things from which information can be processed or transcribed, including the originals and native forms of electronic documents, and any draft and all non-identical copies regardless of origin or location, whether different from the original by reason of any notation made on such copy or otherwise, including, but not limited to, correspondence, memoranda, handwritten notes, instructions, messages (including, but not limited to, reports of telephone conversations or conferences), letters, telegrams, teletype, telefax, bulletins, papers, meetings or other communications, interoffice and intraoffice telephone calls, diaries, chronological data, indices, minutes, books, reports, records, studies, summaries, analyses, pamphlets, booklets, circulars, bulletins, printed matter, charts, tables, graphs, ledgers, working papers, invoices, worksheets, receipts, returns, computer printouts, prospectuses, financial statements, schedules, affidavits, contracts, cancelled checks, statements, transcripts, statistics, surveys, magazine or newspaper articles, periodicals, releases (and any and all drafts, alterations and modifications, changes and amendments of any of the foregoing), graphic or aural records or representations of any kind (including without limitation photographs, microfiche, microfilm, videotape, tape recording, wire recording, transcript of recordings, records and motion pictures) and electronic, mechanical or electric records or representations of any kind (including without limitation tapes, cassettes, discs, records, data sheets and data processing cards) and any other compilations from which information can be obtained and translated if necessary, or any written, recorded, transcribed, punched, taped, filed or graphic matter, however produced or reproduced, to which you have or had access.

4. The term "all documents" means every document or group of documents as above defined that are known to you or that can be located or discovered by reasonably diligent efforts.

5. The term "communication" means any oral or written statement, dialogue, colloquy, discussion, conversation, agreement, or expression of any kind.

6. When producing the documents, please keep all documents segregated by the file in which the documents are contained and indicate the name of the file in which the documents are contained and the name of the documents being produced.

7. In the event such file(s) or document(s) has (have) been removed for the purposes of this action or for some other purpose, please state the name and address of the person who removed the file, the title of the file and each subfile, if any, maintained within the file, and the present location of the file.

8. If you choose to withhold any documents from production for inspection and copying (on the basis of privilege or otherwise), please identify each document withheld and provide its date, number of pages, author, recipient(s), a brief description of its subject matter, and your basis for withholding the document from production.

9. If any of the documents requested herein have been lost or destroyed since their creation, identify each of the missing documents, state when, where, how and by whom the documents were lost or destroyed and identify, by name and address, the person who last had custody of the missing documents.

10. As used herein, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine, and neuter shall include each of the other genders.

11. The words "and" as well as "or" shall be construed disjunctively as well as conjunctively. The word "all" means "any and all." The word "each" means "each and every," and the word "every" means "each and every."

DOCUMENTS REQUESTED

1. Any and all documents related to the claims set forth in the Association's Complaint or the allegations, denials, and/or defenses set forth in your Answer, including but not limited to any and all documents or materials identified in response to Interrogatories.

2. Any and all governing documents for CompTrust.

3. Any and all documents related to the dissolution of CompTrust.

4. Any and all documents related to the Loss Portfolio Transfer by CompTrust.

5. Any and all documents you provided to or received from the North Carolina Department of Insurance ("NC DOI"), including but not limited to all documents evidencing its "prior review and approval" of the Loss Portfolio Transfer as set forth in your Answer.

6. Any and all documents you provided to or received from the South Carolina Department of Insurance.

7. Any and all documents you provided to or received from the South Carolina Workers' Compensation Commission ("SC WCC"), including but not limited to all documents evidencing its "prior review and approval" of Loss Portfolio Transfer as set forth in your Answer.

8. Any and all documents you provided to or received from CAGC Insurance Company ("CAGC") or its Liquidator.

9. Any and all documents you provided to or received from your members related to the workers' compensation coverage you provided to them.

10. Any and all documents you provided to or received from your members related to the Loss Portfolio Transfer.

11. Any and all documents evidencing the intention and understanding of CAGC, CompTrust, NC DOI, and the SC WCC that the Loss Portfolio Transfer would effect a contractual novation as set forth in your Answer.

12. Any and all documents evidencing the agreement of the member employers of CompTrust that the Loss Portfolio Transfer would effect a contractual novation of their "essential agreements" with CompTrust as set forth in your Answer.

13. All documents related to any claims which you assert are now the responsibility of the Association as a result of the Loss Portfolio Transfer.

14. All documents received as a result of any subpoena issued in this case.

15. All documents that were sent to members regarding dissolution and member responsibility.

16. Any documents sent to individual claimants relative to the "novation" and any acceptance or approval received back.

17. Any merger related documents for both South Carolina and North Carolina.

18. All of your financial records from two years prior to the Loss Portfolio Transfer to the present.

19. Any other documents or materials which you intend to introduce in the trial of this case.

<signature block next page>

NELSON MULLINS RILEY & SCARBOROUGH, LLP

By: Jara C. Sullivan

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Attorneys for South Carolina Property and Casualty Insurance Guaranty Association

Columbia, South Carolina

May 20, 2015.

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for SC Property and Casualty Insurance Guaranty Association, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Document(s):

1. Intervenor-Petioner's First Set of Interrogatories to Intervenor-Respondent ComptrustAGC of South Carolina; and

2. Intervenor-Petioner's First Set of Requests for Production to Intervenor-Respondent ComptrustAGC of South Carolina.

Counsel Served:

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PO Box 100105
Columbia, SC 29202

David W. Boone, Esquire
PO Box 629
Raleigh, NC 27602

Michael A. Molony, Esq.
T. Douglas Concannon, Esq.
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25 Calhoun Street, Suite 400
Charleston, SC 29401

Maria Keeve
Administrative Assistant

May 20, 2015

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for SC Property and Casualty Insurance Guaranty Association, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Document(s):

1) Intervenor-Petitioner's Memorandum in Support of Motion for Summary Judgment; and
2) Intervenor-Petitioner's Memorandum in Opposition to Comptrust's Motion to Quash.

Counsel Served:

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RICHLAND COUNTY
FILED
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JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Maria Keeve
Administrative Assistant

September 9, 2015

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Raymond G. Farmer, as Director of the South Carolina Department of Insurance, Petitioner, vs. CAGC Insurance Company, In Liquidation, Respondent.	)	Civil Action No. 2014-CP-40-0313 **INTERVENOR-PETITIONER'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**
South Carolina Property and Casualty Insurance Guaranty Association, Intervenor-Petitioner. vs. CAGC Insurance Company, in Liquidation; Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in Liquidation; and CompTrustAGC of South Carolina a/k/a CompTrustAGC of South Carolina, Inc., Intervenor-Respondents.	)	

RICHLAND COUNTY
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LEAMARIE T. MOBLEY
CLERK OF C.P.

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Intervenor-Petitioner South Carolina Property and Casualty Insurance Guaranty Association ("Association"), by and through its undersigned counsel, hereby submits this Memorandum in Support of its Motion for Summary Judgment as to its Complaint for Declaratory Judgment in this matter. This Court should grant the Association's Motion and find that the Association is

not obligated to pay claims related to the Self-Insured Coverage provided by CompTrustAGC of South Carolina a/k/a CompTrustAGC of South Carolina, Inc. ("CompTrust"), including any liabilities purportedly transferred from CompTrust to CAGC Insurance Company ("CAGC").

UNDISPUTED FACTS

CompTrust was a South Carolina business trust and operated as an unincorporated workers' compensation self-insurance trust. CompTrust was never a licensed insurer in South Carolina. From July 1, 1982, through December 28, 2010, CompTrust, as a self-insured organization, provided workers' compensation coverage to its self-insured members ("Self-Insurance Coverage").

CAGC is a North Carolina insurance company established on December 31, 2007. See Articles of Incorporation attached to Complaint as Exhibit A. On or about October 27, 2008, CAGC became a licensed insurer in South Carolina. Thereafter, CAGC began issuing South Carolina workers' compensation liability insurance policies to prior participants in CompTrust.

On December 28, 2010, CompTrust and CAGC executed an agreement titled Self-Insurance Loss Portfolio Transfer Assumption Agreement (the "LPT Agreement"). See Exhibit B to Complaint. Under the terms of the LPT Agreement, CompTrust paid $3,586,527.01 for CAGC to assume all of CompTrust's liabilities arising out of the Self-Insured Coverage ("Transferred Claims"). CompTrust subsequently dissolved on April 1, 2011.[1] See Articles of Dissolution attached to Limited Answer as Exhibit B.

On November 30, 2011 — less than a year after the execution of the LPT Agreement —

[1] Although CompTrust has dissolved, it remains a proper party to this action. See S.C. Code § 33-14-105(c)(5).

a review by the South Carolina Department of Insurance (the "Department") determined that CAGC was financially unsound. On January 18, 2012, pursuant to its authority under S.C. Code § 38-5-120(B), the Department suspended CAGC's authority to transact insurance business in South Carolina. Also in January 2012, CAGC was placed into receivership in its state of domicile, North Carolina. CAGC was declared insolvent by a court on January 6, 2014.

As a result of CAGC's insolvency, claims made by South Carolina claimants against CAGC have now been asserted against the Association, including claimants covered pursuant to the Self-Insured Coverage. The Association is a nonprofit unincorporated legal entity created by the South Carolina legislature pursuant to the South Carolina Property and Casualty Insurance Guaranty Association Act, S.C. Code Ann. § 38-31-10 et seq. (the "Act"). Because the Association was created by statute, "its duties, liabilities and obligations are controlled by the terms and conditions set forth in the Act." S.C. Prop. and Cas. Ins. Guar. Ass'n v. Brock, 410 S.C. 361, 365-66, 764 S.E.2d 920, 922 (2014). The purpose of the Association is to provide "some protection to insureds whose insurance companies become insolvent," and the protection provided is limited as set forth in the Act. S.C. Prop. and Cas. Ins. Guar. Ass'n v. Carolinas Roofing and Sheet Metal Contractors Self-Insurance Fund, 315 S.C. 555, 557, 446 S.E.2d 422, 424 (1994); see also S.C. Prop. and Cas. Ins. Guar. Ass'n v. Brock, 410 S.C. 361, 764 S.E.2d 920 (2014) (upholding statutory limitation on the Association's liability to claimants).

By statute, liability insurers are members of the Association and pay assessments to fund the operations of the Association, including the payment of claims made by insureds of insolvent insurers. S.C. Code §§ 38-31-40 and 38-31-60(c). Increased assessments are passed

on to insureds in the form of increased premiums. S.C. Code § 38-31-140; see also S.C. Code Ann. § 38-73-920.

Self-insurers are not licensed to transact insurance in South Carolina and, therefore, are not members of the Association and do not pay assessments to the Association. S.C. Code § 38-31-20(11). As a result, claims made pursuant to self-insured coverage are not the responsibility of the Association. The South Carolina Legislature has not opted to create an equivalent guaranty fund for self-insurers who become insolvent.

The Association does not dispute its obligation to pay the claims submitted as a result of policies actually issued by CAGC, and has been paying these claims pursuant to the Act. However, the Association disputes that it is obligated to pay the Transferred Claims, which arose under the Self-Insured Coverage provided by CompTrust but allegedly became CAGC's responsibility pursuant to the LPT Agreement. Nonetheless, the Association has been paying the Transferred Claims under a reservation of rights at the request of the Department of Insurance. Time is of the essence in resolving this matter because the Association is continuing to pay claims that are not funded, which ultimately could result in increased premiums for South Carolina policy holders.

PROCEDURAL HISTORY

On January 17, 2014, Raymond G. Farmer, Director of the South Carolina Department of Insurance, filed a petition to commence this ancillary receivership for CAGC in South Carolina. Farmer was appointed as the Ancillary Receiver of CAGC ("Receiver") by Order of this Court filed March 10, 2014.

On June 9, 2014, this Court allowed the Association to intervene in this ancillary receivership and join the Intervenor-Respondents for the purposes of asserting this declaratory

judgment action.

On August 22, 2014, the Ancillary Receiver for CAGC submitted an Answer and did not take any legal position as to the matters before the Court. See generally Answer of Ancillary Receiver.

On March 12, 2015, CompTrust filed a "Limited Answer" in which it asserted, among other things, that it is not a proper party to this lawsuit because it is dissolved and has no interest in the litigation. See generally Limited Answer of CAGC. Nonetheless, CompTrust asserted multiple legal arguments contrary to the positions of the Association. Importantly, though, CompTrust does **not** ask this Court for a declaration that the Association is responsible for paying claims of CAGC. See Prayer for Relief, Limited Answer.

STANDARD FOR SUMMARY JUDGMENT AND STATUTORY INTERPRETATION

Summary judgment must be granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. See First Federal Savings & Loan Ass'n v. Dangerfield, 307 S.C. 260, 262, 414 S.E.2d 590, 591 (Ct. App. 1992). As noted above, the relevant facts are not in dispute and the only issue before the Court in this declaratory judgment action is the application of S.C. Code Ann. § 38-31-10, et seq.

"The primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly." Brock, 410 S.C. at 367, 764 S.E.2d at 922; see also Anderson v. South Carolina Election Comm'n, 397 S.C. 551, 556, 725 S.E.2d 704, 706-07 (2012) (citing Beaufort Cnty. v. S.C. State Election Comm'n, 395 S.C. 366, 718 S.E.2d 432 (2011)); Builders Transp., Inc. v. S.C. Prop. and Cas. Ins. Guar. Ass'n, 307 S.C. at 404, 415 S.E.2d at 423 (looking to intention of South Carolina legislature in adoption of Act to determine meaning of Act's provisions). "In construing statutory language, the statute must be read as a

whole, and sections which are a part of the same general statutory law must be construed together and each one given effect." Anderson, 397 S.C. at 556, 725 S.E.2d at 707 (citing Beaufort Cnty., 395 S.C. 366, 718 S.E.2d 432; Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000)).

"What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, courts are bound to give effect to the expressed intent of the legislature." Brock, 410 S.C. 361, 367, 764 S.E.2d 920, 922 (citing McClanahan v. Richland Cnty. Council, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002)); see also Anderson, 397 S.C. at 556-57, 725 S.E.2d at 707 ("When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.") (citing Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 476 S.E.2d 690 (1996)). "Thus, [courts] must follow the plain and unambiguous language in a statute and have 'no right to impose another meaning.'" Brock, 410 S.C. 361, 367, 764 S.E.2d 920, 922 (citing McClanahan, 350 S.C. at 438, 567 S.E.2d at 242).

LEGAL ANALYSIS

Because the Association was created by statute, its duties, liabilities, and obligations are controlled by the terms and conditions set forth in the Act.[2] Under the Act, the Association is obligated to pay only "covered claims" pursuant to S.C. Code § 38-31-60. To be a covered claim, the claim must fall under an insurance policy issued by a member insurer that has been

[2] S.C. Code § 38-31-60; see also Brock, 410 S.C. at 365-66, 764 S.E.2d at 922; Carolinas Roofing, 315 S.C. at 557, 446 S.E.2d at 424; Builders Transp., 307 S.C. at 406, 415 S.E.2d at 424; 44 C.J.S. Insurance § 213 ("The association is a statutory entity that depends on statutory law for its existence and for the definition of its powers, duties, and protections.").

declared insolvent, among other requirements. See S.C. Code § 38-31-20(8). CompTrust, like all group self-insurers, is not a licensed insurer and is not a member insurer. See S.C. Code § 38-31-20(11). Likewise, CompTrust did not issue any coverage pursuant to a policy which falls within the Act, and the Act's protection is not afforded to any self-insured claims. Therefore, the Association is not responsible for any claims made pursuant to the Self-Insured Coverage.

In its Limited Answer, despite claiming it has no interest in the litigation, CompTrust nonetheless contends that the Transferred Claims should be covered by the Association because of the transfer of liabilities from CompTrust to CAGC. Limited Answer ¶ 21. This is wrong because the Act expressly prohibits any liability for the Association based on the transfer of existing claims. Further, the Association has named the correct and necessary parties for adjudication of this matter, and the other procedural arguments by CompTrust are fatally flawed.

I. The Association Is Not Liable For The Transferred Claims.

This Court is bound to follow the intent of the Legislature as expressed through unambiguous statutory text. Brock, 410 S.C. 361, 367, 764 S.E.2d 920, 922 (citing McClanahan, 350 S.C. at 438, 567 S.E.2d at 242). In this case, in addition to not providing protection for self-insured claims, the Act expressly and unambiguously excludes from the Association's protection any insurance written to retroactively cover known losses existing at the time insurance is bound. S.C. Code Ann. § 38-31-30(6). Moreover, to the extent any ambiguity exists, it would be contrary to the legislative intent and lead to absurd results to read the statute any other way.

A. The Transferred Claims are not the responsibility of the Association pursuant to the express terms of the Act.

Section 38-31-30(6) of the Act states:

> This chapter applies to all kinds of direct insurance but does not apply to the following:
>
> . . .
>
> (6) insurance written on a retroactive basis to cover known losses which have resulted from an event with respect to which a claim has already been made, and the claim is known to the insurer at the time the insurance is bound.

This unambiguous language precludes any responsibility for Transferred Claims by the Association, and prevents self-insured claims from being converted to covered claims under the Act. As acknowledged in Paragraph 10 of CompTrust's Limited Answer, CAGC issued replacement policies to CompTrust member employers following the LPT Agreement, at which time the insurance was bound. The Transferred Claims indisputably had been made and were known at that time because the claims and reserves were already being carried on the books and financial records of CompTrust. See Exhibit B to Complaint, LPT Agreement at Article 4.

Therefore, the Transferred Claims are expressly excluded by Section 38-31-30(6) of the Act, and the Association has no obligation to pay them. As a result, the Association is entitled to summary judgment as to its request for a declaratory judgment that it is not obligated to pay the Transferred Claims.

B. The Legislature did not intend for the Association to be responsible for the Transferred Claims.

CompTrust has not identified, and the Association is not aware of, any ambiguity in Section 38-31-30(6) of the Act. Indeed, the Supreme Court already has determined that the

Act is not ambiguous. See Brock, 410 S.C. 361, 764 S.E.2d 920; Hudson v. Lancaster Convalescent Ctr., 407 S.C. 112, 754 S.E.2d 486 (2014). However, to the extent CompTrust does argue that the Act is ambiguous, reading the Act as a whole demonstrates that the Legislature did not intend for the Association to be responsible for the Transferred Claims. See Anderson, 397 S.C. at 556, 725 S.E.2d at 707 ("In construing statutory language, the statute must be read as a whole, and sections which are a part of the same general statutory law must be construed together and each one given effect.").

Section 38-31-40 of the Act provides that all licensed insurers are members of the Association "as a condition of their authority to transact business in this State." Specifically, the Act only applies to member companies and created a framework to allocate losses when members went insolvent. Section 38-31-60 of the Act requires the Association to assess each of its members to cover the costs of paying claims that are the responsibility of the Association. Practically, increased assessments result in increased costs to insurers and resulting increased premiums to South Carolina policy holders. See S.C. Code Ann. § 38-31-140 (requiring insurance rates paid by policy holders to compensate insurer for net assessment).

The funding system created by the Legislature would be wholly undone by requiring the Association to be responsible for self-insured claims transferred to licensed insurers, as CompTrust and CAGC did in this case. As set forth above, self-insurers like CompTrust cannot be assessed and in fact do not pay assessments to the Association because they are not licensed insurers and therefore not members. To allow self-insurers to shift losses to the Association without paying assessments would create a recipe for imposing unaccounted for liabilities on member insurers, as was attempted here. Moreover, the Act prohibits the

Association from charging assessments based on the amounts paid as part of the transfer. See S.C. Code Ann. §§ 38-31-60(c) (requiring assessments to be based on Net Direct Premiums); 38-31-20(12). (excluding contracts between insurers as part of the definition of Net Direct Premiums). Consequently, reading the statute to make the Association responsible for transferred self-insurance claims would have the absurd result of requiring the Association's members—and in turn, South Carolina policy holders—to retroactively fund the shortfall created by this scenario or, to the extent sufficient funding did not exist, for the Association to cease to exist. This situation is why companies may choose to be self-insured: to avoid any requirement to pay assessments for failed entities. The Legislature requires companies to take the good with the bad if they want protection from the Association.

By excluding "insurance written on a retroactive basis to cover known losses," Section 38-31-30(6) of the Act avoids such an absurd result and evidences the Legislature's intent not to have the Association and its members responsible for claims incurred by non-member self-insurers, like the Transferred Claims in this case. Therefore, the Association is entitled to summary judgment as to its request for a declaratory judgment that it is not obligated to pay the Transferred Claims.

III. CompTrust's Other Affirmative Defenses Also Fail.

CompTrust asserts a variety of other procedural affirmative defenses that are wholly without merit. Specifically, CompTrust asserted lack of personal jurisdiction, insufficient service of process, failure to join necessary parties, statute of limitations, and misjoinder. Each of these affirmative defenses fails as set forth below:

A. The case is not moot.

First, CompTrust argues that the Association's claim is moot because any action by the

Court "would do no good, serve no purpose, or have any practical legal effect" because CompTrust dissolved nearly five years ago. Limited Answer at ¶ 25. However, this matter is an "actual controversy capable of specific relief" and, therefore, is not moot. Sloan v. Greenville County, 380 S.C. 528, 670 S.E.2d 663 (Ct. App. 2008). The Association is currently paying claims it should not have to pay and the Complaint seeks a declaration that it should not have to do so. The Complaint does not seek any declaration as to who, other than the Association, should be obligated to pay the claims and, therefore, CompTrust's status as a dissolved entity does not negate the controversy or the ability of this Court to render the relief sought. Therefore, the Association's declaratory judgment action is not moot.

B. This Court has personal jurisdiction.

CompTrust next argues that its dissolution means it can no longer be sued under South Carolina law and this Court lacks personal jurisdiction over it as a result. Limited Answer at ¶ 26. However, this Court has jurisdiction over CompTrust. CompTrust was a South Carolina business trust which operated in this state for approximately thirty years. See Limited Answer at Ex. A. CompTrust provided workers' compensation coverage for employees in South Carolina for the purpose of fulfilling its members' responsibilities pursuant to South Carolina's Workmen's Compensation Act and was regulated by the South Carolina Workers' Compensation Commission. Id. The Trust Agreement establishing CompTrust was executed and accepted in South Carolina and provided that South Carolina law should govern the "validity, construction and administration of the Trust in connection with its operation in the State of South Carolina." Id. at § 4. CompTrust clearly availed itself of the laws of the State of South Carolina throughout its existence.

CompTrust's dissolution does not insulate it from suit in South Carolina. South

Carolina law provides that a business entity may still be sued after its dissolution. See S.C. Code § 33-15-105(c)(5) ("Dissolution of a corporation does not . . . prevent commencement of a proceeding by or against the corporation in its corporate name."); see also S.C. Code § 15-5-90 ("Causes of action for and in respect to any and all injuries . . . shall survive both to and against . . . the legal representative of . . . a defunct or insolvent corporation."). CompTrust's own Articles of Dissolution recognize that CompTrust remains subject to suit after its dissolution:

> [T]he Trustees now desire to terminate and dissolve CompTrustAGC-SC by entering into these Articles of Dissolution (hereinafter "Articles") and to hold the Trustees harmless **for any claims, liabilities, or obligations of CompTrustAGC-SC that may arise following the termination and dissolution of CompTrustAGC-SC.**
>
> . . .
>
> The Trustees are hereby indemnified against and held harmless **for any alleged debts, liabilities or obligations asserted against CompTrustAGC-SC after the effective date of these Articles.** . .

Limited Answer at Ex. B pp. 1-2 (emphasis added). Pursuant to South Carolina law, and as recognized by CompTrust itself when it dissolved, claims may still be asserted against CompTrust in South Carolina courts even after its dissolution.

Additionally, CompTrust has waived any argument that this Court lacks personal jurisdiction over it because it sought affirmative relief in its Limited Answer. See Roberts v. Roberts, 277 S.C. 459, 461, 289 S.E.2d 640, 641 (1982) (noting trial court ruling that defendant waived his objection to court's personal jurisdiction where he "requested affirmative relief in his pleadings"). CompTrust requested that this Court "declare that the CompTrust has no obligation for any claims arising under LPT Agreement as a result of the resulting novation of that risk with CAGC, and for such other and further relief as the Court deems proper."

Limited Answer, Prayer for Relief at p. 10. As set forth above, the Association's Complaint simply seeks a declaration that it is not responsible for the Self-Insured Claims but does not seek any declaration as to whether CompTrust is responsible for such claims. Therefore, CompTrust is asking for its own, separate declaration in this matter and, therefore, has waived its allegation that this Court lacks personal jurisdiction over it.

C. Service was proper.

CompTrust also argues that the Association's service of the Summons and Complaint for Declaratory Judgment was insufficient. Limited Answer at ¶ 27. The Association first served Harry Lee Mashburn, as Trustee of CompTrust, on July 1, 2014, and this Affidavit of Service was filed July 16, 2014. However, Mashburn returned the Summons and Complaint to the Association's counsel in an effort to avoid service because he purportedly was "not authorized to accept service on [CompTrust's] behalf" due to CompTrust's previous dissolution. See Limited Answer at Ex. D.

However, as set forth above, CompTrust remains subject to suit after its dissolution. Moreover, the Summons and Complaint were properly served on Mashburn. S.C. Code § 33-53-50 specifically provides that service of process on a South Carolina business trust may be made in the same manner that South Carolina corporations are served. S.C. Code § 33-53-50. Service may be made upon a South Carolina corporation "by delivering a copy of the summons and complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process." Rule 4(d)(3), SCRCP. Mashburn admits he was a trustee for CompTrust and, therefore, service of him as an officer of the trust was sufficient for service on CompTrust. See Limited Answer at Ex. D.

After effecting service on CompTrust and not receiving any responsive pleading, the

Association moved for a default judgment as to CompTrust. See Motion for Default Judgment filed Oct. 28, 2014. When this motion was scheduled for a hearing, counsel for the Association and CompTrust reached an agreement to resolve any dispute as to whether proper service had been made on CompTrust. See Letter from Molony dated February 3, 2015, attached hereto as **Exhibit A**. Specifically, the parties agreed that the Association would serve CompTrust via the Department of Insurance, after which time CompTrust would answer the Complaint and the Association's Motion for Default Judgment would be withdrawn as to CompTrust. Id.; see also Letter from Sullivan dated February 4, 2015, attached hereto as **Exhibit B**. Although CompTrust agreed to this compromise on service and benefitted from the Association's agreement not to pursue a default judgment against it, CompTrust asserts that this service was also ineffective. Limited Answer at ¶ 27. This argument is clearly disingenuous based on the parties' agreement, and the previous service on Mashburn was effective in any event.

D. The necessary and proper parties are joined.

CompTrust asserts the affirmative defenses of misjoinder and failure to join necessary parties, arguing that regulatory agencies, including the South Carolina Workers' Compensation Commission and the North Carolina Department of Insurance, should be named in the Complaint because they allegedly "reviewed and approved the LPT Agreement" between CompTrust and CAGC. Limited Answer at ¶¶ 29, 31. As an initial matter, this basis is not sufficient for CompTrust to overcome the Association's summary judgment motion. See Rule 21, SCRCP ("Misjoinder of parties is not ground for dismissal of an action.").

These agencies are simply witnesses at best. The Association is not asserting that the LPT Agreement could not occur or should not have taken place. Instead, the Association is

arguing that the LPT Agreement cannot defeat the statutory provisions in the Act which govern the liabilities of the Association. See Richland Horizontal Prop. Regime Homeowners Ass'n, Inc. v. Sky Green Holdings, Inc., 392 S.C. 194, 198, 708 S.E.2d 225, 227 (Ct. App. 2011) ("Parties to a contract may not circumvent the requirements of a statute by redefining its plain and unambiguous terms."); Beach Co. v. Twillman, Ltd., 351 S.C. 56, 64, 566 S.E.2d 863, 866-67 (Ct.App.2002) ("The general rule is that courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution."). The review and approval of any regulatory agencies does not and cannot negate the limitations on the Association's liability set forth by the Legislature in the Act.

Furthermore, there are no other necessary parties because complete relief may be afforded among those already parties and there are no other parties that may claim an interest relating to the subject of this action. See Rule 19(a), SCRCP. The Association named CompTrust, who is the only entity that provided the insurance coverage at issue, along with CAGC, the only entity which entered the LPT Agreement with CompTrust. There is no need to name any agency that might have reviewed or approved an agreement between CAGC and CompTrust because such review and approval would have no effect on the statutory construction issue before this Court.

E. The Complaint was brought within the statute of limitations.

Finally, CompTrust argues that the Complaint is barred by the statute of limitations because the LPT Agreement was consummated more than five years ago. Limited Answer at ¶ 30. As an initial matter, the Association was not a party to and did not approve the LPT Agreement. Further, because the Association only becomes responsible for covered claims after an insurer becomes insolvent, no claims would have been made to the Association and

these issues would not have been ripe for determination until CAGC was declared insolvent by a North Carolina court on January 6, 2014. This Complaint for Declaratory Judgment was filed a mere six months later on June 17, 2014 and, therefore, is not barred by any statute of limitations.

CONCLUSION

As set forth above, the Association is not statutorily liable for the Transferred Claims. As such, the Association's Motion for Summary Judgment should be granted.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Tara C. Sullivan

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Attorneys for Intervenor-Petitioner South Carolina Property and Casualty Insurance Guaranty Association

Columbia, South Carolina

September 9, 2015.

State of South Carolina

1333 Main St, Suite 500
P.O. Box 1715
Columbia, S.C. 29202-1715

Tel: (803) 737-5700
Fax: (803) 737-1258
www.wcc.sc.gov

Workers' Compensation Commission

To: Gary Cannon
Executive Director
Keith Robertson
Attorney at Law
From: Betsy Hartman
IT Director
Date: September 3, 2014
Subject: CompTrust Subpoena

In response to the Case Number 2014-CP-40-0313 I pulled all documents from the SCWCC Document Imaging Self Insurance Data base using the SCWCC Carrier ID # 00909 and all email correspondence from any email with the domain of @wcc.sc.gov. You will find them on the shared Office drive in a folder called Carrier 0090 for your review.

The emails were pulled from the Exchange Server hosted by Department of Technology and Operations (DTO) Server. The images of documents were pulled from a secure Self Insurance data base also hosted by DTO. The documents are stored by various document types (doctypes) and individually saved to an electronic file.
To the best of my knowledge, all documents with the SCWCC Carrier ID 00909 or the name of CompTrust have been included in the electronic files.

Please note that I have taken every precaution to ensure that all documents stored with either the carrier code 0090 or the string of 'comptrust' has been included in the electronic file. There may be cases that a document was incorrectly indexed to the wrong carrier code and is included in this data pull. It is also possible that a document that should have been indexed carrier code 00909 but was incorrectly stored as a different number. At this point in time, I do not have a way to search for incorrectly indexed documents. If this is a concern, I will need to have more time to work with DTO to do a more extensive search of the imaging data base. I am not certain at this time that we can search for certain strings of text on the images as the expected method to pull documents is by the keyword values, IE carrierid. Please let me know if you would like me to pursue this further or if what has been provided meets the court order.

Please let me know if you need more information on the process or the actual technical storage of the documents. As IT Director, I am not personally knowledgeable about the data contained in either the emails or the documents. I can only comment on the technical location and the actual retrieval of the documents.

From: Charlie Tagman <CTagman@CarolinasAGC.org>

Sent: Wednesday, September 03, 2008 1:50 PM

To: Smith, W

Subject: FW: CAGC Ins. Co. - Application for Admission to South Carolina

Attachments: cagc ins co.twc.doc

WC...presume you are aware of this but thought I would make sure. See you on the 11th. Steve Gennett is planning to attend.
Charlie

From: Tim Campbell [mailto:TCampbell@doi.sc.gov]
Sent: Wednesday, September 03, 2008 9:46 AM
To: Charlie Tagman
Cc: rlangley1@bellsouth.net; Jeremy Sobon
Subject: CAGC Ins. Co. - Application for Admission to South Carolina

See attached.

Tim Campbell
Chief Financial Analyst
South Carolina Department of Insurance
Post Office Box 100105
Columbia, SC 29202-3105

Capitol Center
1201 Main Street, Suite 1000
Columbia, SC 29201

Phone: 803-737-6109
Fax: 803-737-6232
tcampbell@doi.sc.gov
www.doi.sc.gov

CONFIDENTIALITY NOTICE: The information contained in this electronic mail along with any attachment(s) is

Division of Financial Services
1201 Main Street, Suite 1000
Columbia, South Carolina 29201

Mailing Address:
P.O. Box 100105, Columbia, S.C. 29202-3105
Telephone: (803) 737-6109 Fax: (803) 737-6232
E-mail: tcampbell@doi.sc.gov

September 3, 2008

Via Electronic Mail to
CTagman@CarolinasAGC.org
and by U.S. Mail

Charlie Tagman
President/CEO
CompTrustAGC of the Carolinas
P.O. Box 30277
Charlotte, NC 28230-0277

Re: CAGC Insurance Company ("the Company")
Application for Admission to South Carolina

Dear Mr. Tagman:

The Department is pleased to inform you that the Director has approved the application of the Company to transact business within the State of South Carolina. However, before final issuance of the Certificate of Authority to the Company, the following requirements must be met:

1. Pursuant to S.C. Code Ann. Section 38-9-80 (2002) and 25A S.C. Code Ann. Regulation 69-15 (see attached), the Company must place on deposit with the Department acceptable securities having a current market value of $125,000. S.C. Code Ann. Sections 11-9-660 (see attached) and 38-9-80 specify the classes of securities authorized for deposit. The securities should be registered as follows:

> "Director of Insurance of the State of South Carolina in trust for CAGC Insurance Company as their interest may appear under Section 38-9-80 of the South Carolina Code of Laws."

Questions regarding deposits or registration of the securities should be directed to Roberta V. Jenkins, Securities Custodian at (803) 737-6115 or rjenkins@doi.sc.gov.

2. The Company must remit payment of the following fees required by Section 38-7-10. Please make the check payable to the South Carolina Department of Insurance.

Biennial License Fee	$ 800.00
Biennial Fixed License Fee: Casualty	400.00
Total License Fees Due	$1,200.00

Note: Pursuant to S.C. Code Ann. Sections 38-7-10 and 38-3-240, the above fees must be collected prior to issuance of the Certificate of Authority and biennially in even-numbered years thereafter. The fees are non-refundable and are not to be prorated. The above fees will be due again March 1, 2010.

Once the Company has received its Certificate of Authority, your attention is directed to:

A. Section 38-43-10 (Producers), 38-43-30 (Agencies), and 38-43-70 (Nonresidents), which can be accessed at: http://www.scstatehouse.net/code/t38c043.doc.

B. Producer licensing and producer appointment information, which can be accessed at: http://doi.sc.gov/licensing/.

C. Sections 38-61-20 and 38-73-520. These sections specify the requirements for physical filing of each and every policy, classification, rule and rate, with exceptions thereto, for approval by the Department prior to use in South Carolina. Filings should be forwarded to and questions directed to the Department's Property and Casualty Division (803-737-6230 or P&CMail@doi.sc.gov). Section 38-73-1210 states that an insurer may satisfy its obligation to make filings by becoming a member or a subscriber to a licensed rating organization which makes such filings and by authorizing the Director to accept such filings on the Company's behalf.

The Department wishes the Company every success in its operation in South Carolina. If I can be of assistance, please do not hesitate to contact me.

Yours very truly,

Tim Campbell

Tim Campbell
Chief Financial Analyst

Attachment
c: (via electronic mail)
Roger Langley

(cage ins co.twc)

SECTION 38-9-80. Certificates of deposits or securities required; amounts; factors considered in setting amounts; limits.

(A) The director or his designee shall require every insurer transacting, or desiring to transact, business in this State to deposit with him certificates of deposit of building and loan associations chartered by South Carolina or federal savings and loan associations located within the State in which deposits are guaranteed by the Federal Savings and Loan Insurance Corporation, not to exceed the amount covered by insurance, or of national banks located within the State or banks chartered by South Carolina in which deposits are guaranteed by the Federal Deposit Insurance Corporation, not to exceed the amount covered by insurance, or other securities which:

(1) qualify as legal investments under the laws of this State for public sinking funds (See 11-9-660 below);

(2) are not in default as to principal or interest;

(3) have a current market value of not less than ten thousand nor more than two hundred thousand dollars, as determined by the director or his designee pursuant to the standards promulgated by the department.

Regulation 69-15. South Carolina Deposits Required of Insurers.

Under S. C. Code Section 38-9-80 (1976), every domestic, foreign or alien insurance company, transacting or desiring to transact business in South Carolina is required to make deposits with the director or his designee in accordance with standards promulgated by him. The director or his designee is empowered to prescribe the amounts required, within the limits set forth in the statute, and he is specifically authorized to subsequently increase or decrease the amount of deposit required of any particular insurer.

The amount which an insurer is required to deposit is related to its surplus as regards policyholders (capital and surplus for stock insurers or surplus for mutual, fraternal benefit societies and reciprocal insurers), as set forth in its most recent annual statement filed pursuant to S. C. Code Section 38-13-80 (1976). Such amount is to be determined in accordance with the following table:

Surplus as Regards Policyholders	Market Value of Deposit
Under $1,000,000	$200,000
$1,000,000 or more but less than $3,000,000	$175,000
$3,000,000 or more but less than $5,000,000	$150,000
$5,000,000 or more	$125,000

The director or his designee may subsequently increase or decrease the amount of deposit required of an insurer depending upon particular circumstances, such as the current financial condition of the insurer in relation to its previous financial condition, the type or amount of business written by the insurer, the method of operation of the insurer, etc. The insurer will be notified of the amount of deposit it is required to make.

SECTION 11-9-660. Investment of funds.

(A) The State Treasurer has full power to invest and reinvest all funds of the State in any of the following:

(1) obligations of the United States, its agencies and instrumentalities;

(2) obligations issued or unconditionally guaranteed by the International Bank for Reconstruction and Development, the African Development Bank, and the Asian Development Bank;

(3) obligations of a corporation, state, or political subdivision denominated in United States dollars, if the obligations bear an investment grade rating of at least two nationally recognized rating services;

(4) certificates of deposit, if the certificates are secured collaterally by securities of the types described in items (1) and (3) of this section and held by a third party as escrow agent or custodian and are of a market value not less than the amount of the certificates of deposit so secured, including interest; except that this collateral is not required to the extent the certificates of deposit are insured by an agency of the federal government;

(5) repurchase agreements, if collateralized by securities of the types described in items (1) and (3) of this section and held by a third party as escrow agent or custodian and of a market value not less than the amount of the repurchase agreement so collateralized, including interest; and

(6) guaranteed investment contracts issued by a domestic or foreign insurance company or other financial institution, whose long-term unsecured debt rating bears the two highest ratings of at least two nationally recognized rating services.

(B) The State Treasurer may contract to lend securities invested pursuant to this section.

(C) The State Treasurer shall not invest in obligations issued by any country or corporation principally located in any country which the United States Department of State determines commits major human rights violations based on the Country Reports on Human Rights Practices by the Bureau of Democracy, Human Rights and Labor of the U. S. Department of State.

SECTION 38-15-30. Deposit of securities required.

Insurers doing business in this State who offer or undertake to become surety upon any bond or other surety contract must in addition to any other deposit required by the laws of this State deposit with the director bonds of the United States or of any state of the United States in the market value of one hundred thousand dollars which are receipted for by the director or his designee and held by him. The securities must be held to pay any final judgment entered against the insurer in a court of competent jurisdiction in this State requiring it to pay any loss or liability arising during the term of the bond or while the securities are held. Any judgment obtained is a lien upon the securities. When the insurer ceases to do business in this State, has settled all claims against it, and has been released from all bonds upon which it has been taken as surety, the securities deposited are delivered to the proper party on presentation of the receipt of the director or his designee for the securities. While the securities are deposited with the director, the owner is entitled to collect the interest on them. The faith of the State is pledged for the return of the deposited securities to the person entitled to receive them.

An insurer which has complied with the provisions required of qualified insurers in Section 38-9-100 is relieved of making the deposit required by this section and, subject to the provisions of Section 38-7-90, is entitled to the return of the deposit filed or deposited by it under this section.

A domestic insurer making a voluntary deposit provided by Section 38-9-110 is relieved of making this deposit if the insurer meets the definition of a qualified insurer as defined in Section 38-9-100 and if the voluntary deposit meets the requirements of that section.

SECTION 38-9-100. Deposit of securities not necessary when made with other states.

If a qualified insurer deposits with an officer or official body of another state for the protection of all its policyholders, or all its policyholders and creditors, acceptable securities not in default as to principal or interest and of a current market value of not less than one million dollars, and delivers to the director or his designee a certificate to that effect, authenticated by the appropriate state official holding the deposit, the insurer may be relieved of making the deposit required by Section 38-9-80. For the purpose of this section a 'qualified insurer' is a licensed stock insurer possessed of at least ten million dollars of capital and surplus or a licensed mutual, fraternal, or reciprocal insurer possessed of at least ten million dollars of surplus, according to its most recent annual statement filed with the director or his designee and, in the discretion of the director or his designee, may include eligible surplus lines insurers which meet these capital and surplus requirements. For the purpose of this section, "acceptable securities" means bonds of the United States or of a state of the United States, or of a municipality or county, upon which is pledged the full faith and credit of the appropriate political division, or bonds or notes secured by mortgages or deeds of trust on otherwise unencumbered real estate of a market value of not less than double the amount loaned, or other securities approved by the director or his designee.

From: Theresa Dew [tdew@stuartlawfirm.com]
Sent: Wednesday, July 28, 2010 9:45 AM
To: Smith, W
Cc: Jim Stuart
Subject: CAGC Insurance Company - LPT re CompTrustAGC of South Carolina, Inc.
Attachments: LPT Assumption Agreement (5-6-10 Draft).docx

Mr. Smith – It was a pleasure speaking with you this morning and thank you for agreeing to review the proposed LPT Assumption Agreement, which I have attached. As I indicated, the North Carolina Department of Insurance is requesting acknowledgement from South Carolina that the proposed document is acceptable. An email acknowledgement should be sufficient. If you forward the respond to me, I'll see that it is delivered to the appropriate person at the North Carolina Department of Insurance. Once you have had an opportunity to review the document, please do not hesitate to contact me if you have any questions. Have a wonderful day, Theresa

Theresa S. Dew
Member
Stuart Law Firm, PLLC
1033 Wade Avenue, Suite 202
Raleigh, NC 27605-1155
Tel (919) 787-6050
Fax (919) 787-9988
Cell (919) 345-3430

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Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, unless specifically indicated otherwise, any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of avoiding tax related penalties or promoting, marketing or recommending to another party any tax related matter addressed herein.

DRAFT
5/6/10

SELF-INSURANCE
LOSS PORTFOLIO TRANSFER
ASSUMPTION AGREEMENT
(Hereinafter referred to as the "Agreement")

between

CompTrustAGC of South Carolina, Inc.
(Hereinafter referred to as the "Self-Insurer")

and

CAGC Insurance Company
(Hereinafter referred to as the "Company")

ARTICLE 1 – BUSINESS COVERED

A. The Self-Insurer hereby transfers and the Company hereby assumes 100% of the liabilities and obligations of the Self-Insurer for operations in the state of South Carolina, thereby assuming the joint and several liability of the Self-Insurer's members, for its retained amounts of specific and aggregate liability for workers' compensation and employer's liability losses, including unpaid losses and loss adjustment expenses, during the time period July 1, 1982 through June 30, 2009 including all existing and incurred but not reported ("IBNR") claims (hereinafter "Assumed Claims"), pertaining to the Policies set forth below, and subject to the terms and conditions contained herein.

B. The term "Policies" shall mean all specific and aggregate excess worker's compensation and employers' liability agreements issued by the Company, and all other agreements, policies, binders, contracts, certificates and other obligations, whether oral or written, of insurance issued by other insurers, pertaining to the liabilities assumed hereunder, including the following agreements or policies:

INSURER & AGREEMENT NO.	PERIOD OF AGREEMENT
No applicable policies	No applicable policies

C. The Self-Insurer hereby transfers to the Company all rights the Self-Insurer may have now or in the future with respect to the Self-Insurer's retained liability for workers' compensation, employers' liability and/or related losses, or under or with respect to the Policies.

ARTICLE 2 – EFFECTIVE DATE

This Agreement shall be effective as of 12:01 a.m., _____, 2010.

ARTICLE 3 – CONSIDERATION

In consideration of the Company's agreement to assume the liabilities of the Self-Insurer, as set forth in Article 1 above, and subject to the terms and conditions of this Agreement, the Self-Insurer shall pay the sum of FIVE MILLION EIGHT HUNDRED SIXTY-THREE THOUSAND AND NO/100s DOLLARS ($5,863,000.00)* to the Company by the Effective Date.

ARTICLE 4 – COOPERATION AMONG PARTIES: TRANSFER OF DOCUMENTS

A. The parties hereto agree to act in good faith and cooperate with each other in effecting the assumption of the Assumed Claims provided for in this Agreement. The parties shall take all action necessary to assist each other in obtaining all regulatory approvals or responding to information requests of those insurance regulatory authorities asserting jurisdiction over the transactions herein described.

B. Upon demand by, and in accordance with instructions of the Company, the Self-Insurer shall deliver originals or copies of all policy records and claims files pertaining to the Assumed Claims and all other files and records incidental to the Assumed Claims to the Company or its designated representative, as are necessary for the Company to perform its obligations under this Agreement. The Company or its designated representative shall retain all policy records, claim files, and other documents received by it from the Self-Insurer as required by applicable law. Upon reasonable notice, each of the Company and the Self-Insurer will be entitled to reasonable access to the books and records of the other party at any reasonable time, but only to the extent such materials pertain to the business assumed under this Agreement. Each party will pay its own expense associated with any such review of books and records. The Self-Insurer will retain as its property all its original records, including, without limitation, articles of incorporation, bylaws, minute books, and certificates of authority; provided, however, that the Self-Insurer shall promptly provide the Company with copies of all such documents, if so requested by the Company.

C. Whenever the Self-Insurer receives any communications, including notices of claims and proofs of loss, pertaining to the Assumed Claims, it will forward such communications promptly to the Company or its designated representative.

ARTICLE 5 – NOTICE OF ASSUMPTION

The Self-Insurer will cooperate fully with the Company in implementing the assumption which is the subject of this Agreement, including, without limitation, executing any documents reasonably necessary to evidence the completion of the transactions contemplated by this Agreement.

* Subject to adjustment for claims paid between 3/31/10 and the Effective Date

ARTICLE 6 – ADMINISTRATION AND CLAIM PAYMENTS

A. From and after the Effective Date, the Company will be solely liable for the administration and disposition of all aspects of the Assumed Claims, including, without limitation, the defense, adjustment, settlement, and payment of all losses and expenses arising under or relating to the Assumed Claims. The Self-Insurer hereby grants and assigns to the Company authority to administer such losses, claims, expenses, defenses, adjustments, settlements, and payments, and such matters will be under the Company's control and within its sole discretion. The Company will bear all expenses and costs incurred by it in connection with the administration and disposition of such losses, claims, expenses, defenses, adjustments, settlements, and payments.

B. In its sole discretion, the Company shall have the right to select a third party administrator to perform claims administration services pertaining to the Assumed Claims.

C. The Self-Insurer will cause all information and notices regarding the Assumed Claims, actually received by the Self-Insurer after the Effective Date to be promptly reported to the Company or the Company's designated representative, and will undertake reasonable measures to ensure that all such notices are promptly delivered to the Company or to its designated representative.

D. All losses and expenses regarding the Assumed Claims that the Company determines to be payable will be paid directly and promptly by the Company.

ARTICLE 7 – ASSESSMENTS

After the Effective Date of this Agreement, in the event that an assessment is made against any present or former members of the Self-Insurer pursuant to statute or regulation, the Company agrees to pay the assessment on behalf of said Self-Insurer members.

ARTICLE 8 – REQUIRED REGULATORY APPROVAL

This Agreement remains subject to the approval of the South Carolina Workers' Compensation Commission, Self-Insurance Division, the Self-Insurer and the Company shall take all steps necessary to obtain requisite regulatory approval of this Agreement, if any, and the transaction described herein.

ARTICLE 9 – SUBORDINATION AND REINSURANCE RECEIVEABLES

A. The Company shall be subrogated to all of the rights of the Self-Insurer against any responsible person or entity. The Company is hereby authorized and empowered to bring any appropriate action in its own name or in the name of the Self-Insurer to enforce such rights.

B. Any payments received by or due to the Self-Insurer from any reinsurer of the Self-Insurer which is payable on an Assumed Claim shall become the property of and paid to the Company. If any payment is received by the Self-Insurer which is to be credited to the Company

under or with respect to any of the Assumed Claims, the Self-Insurer will immediately endorse (without warranty or recourse) and deliver to the Company such checks, drafts, or money intended as such payment, and until delivery of such items to the Company, the Self-Insurer will treat any such checks, drafts, or money as the property of the Company held for the account of the Company. The Company and the Self-Insurer will each use all commercially reasonable efforts to cause the transfer and assignment, as of the Effective Date to the Company of all the Self-Insurer's rights, interest, and obligations under the Self-Insurer's reinsurance agreement, if any, covering the risks, liabilities, and obligations of the Self-Insurer under or with respect to Assumed Claims including, without limitation, obtaining any necessary consents or approvals to such transfer and assignment by the reinsurer under any such reinsurance agreements effective as of the Effective Date. Any failure to receive the consents referred to herein will not relieve or diminish in any manner the Company's obligation under this Agreement.

C. The Company shall be authorized and entitled to file and pursue the collection of claims against the South Carolina Second Injury Fund and all other collateral sources, arising out of or resulting from Assumed Claims (hereinafter "Collateral Sources Claims'); to pursue the collection of Collateral Sources Claims filed by the Self-Insurer prior to the Effective Date; and to collect, receive, and retain any monies paid in settlement of satisfaction of any Collateral Sources Claims filed by either the Company or the Self-Insurer.

ARTICLE 10 – ERRORS OR OMISSIONS

Inadvertent delays, errors or omissions made in connection with this Agreement or any transaction hereunder will not relieve either party from any liability that would otherwise have attached had such delay, error, or omission not occurred. Regardless, the responsible party will rectify each such delay, error, or omission as promptly as practicable after discovery.

ARTICLE 11 – ARBITRATION

A. Any dispute or other matters in question between the Self-Insurer and the Company arising out of or relating to the formation, interpretation, performance, or breach of this Agreement, whether such dispute arises before or after termination of this Agreement, shall be settled by arbitration if the parties are unable to resolve the dispute through negotiation. Arbitration shall be initiated by the delivery of a written notice of demand for arbitration by one party to the other.

B. Each party shall appoint an individual as arbitrator and the two so appointed shall then appoint a third arbitrator. If either party refuses or neglects to appoint an arbitrator within sixty (60) days of receipt of written notice of demand for arbitration, the other party may appoint the second arbitrator. If the two arbitrators do not agree on a third arbitrator within sixty (60) days of their appointment, each of the arbitrators shall nominate three individuals. Each arbitrator shall then decline two of the nominations presented by the other arbitrator. The third arbitrator shall then be chosen from the remaining two nominations by drawing lots and the name of the individual first drawn shall be the umpire. The arbitrators shall be disinterested active or former

executive officers of insurance or reinsurance companies or disinterested individuals with significant knowledge and experience with respect to insurance or reinsurance.

C. Arbitration hearing shall be held in Charlotte, North Carolina or such other place as may be mutually agreed. Each party shall submit its case to the arbitrators within sixty (60) days of the selection of the third arbitrator or within such longer period as may be agreed by the arbitrators. The arbitrators shall not be obliged to follow judicial formalities or the rules of evidence except to the extent required by governing law; they shall make their decisions according to the custom and practice of the reinsurance business. The decision rendered by a majority of the arbitrators shall be final and binding on both parties. Such decision shall be a condition precedent to any right to legal action arising out of the arbitrated dispute which either party may have against the other. Judgment upon the award rendered may be entered in any court having jurisdiction thereof.

D. Each party shall pay the fees and expenses of its arbitrator and attorneys and one-half of the fees and expenses of the third arbitrator. All other expenses of the arbitration shall be equally divided between the parties.

ARTICLE 12 – HONORABLE UNDERTAKING

This Agreement shall be construed as an honorable undertaking between the parties herto not to be defeated by technical legal constructions.

ARTICLE 13 – GENERAL PROVISIONS

A. Successor and Assigns. This Agreement shall inure to the benefit of and bind the Self-Insurer and its successors and assigns and the Company and its successors and assigns. Neither this Agreement nor any right hereunder nor any part hereof may be assigned by any party hereto without the prior written consent of the other party hereto. Prior to any such assignment, the consent of all necessary regulatory authorities must be obtained.

B. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of South Carolina (without giving effect to principles of conflict of laws) applicable to a contract executed and to be performed in such state.

C. Entire Agreement. This Agreement supercedes all prior discussions and agreements between the parties, and contains the sole and entire agreement between the Self-Insurer and the Company with respect to the subject matter hereof.

D. Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument.

E. Headings, etc. The headings used in this Agreement have been inserted for convenience and do not constitute matter to be construed or interpreted in connection with this Agreement.

Unless the context of this Agreement otherwise requires, (a) words of any gender will be deemed to include each other gender, (b) words using singular or plural number will also include the plural or singular number, respectively, (c) the terms "hereof," "herein," "hereby," and derivative or similar words will refer to this entire Agreement, and (d) the conjunction "or" will denote any one or more, or any combination or all, of the specified items or matter involved in the respective list.

F. Non-waiver. The failure of either party hereto at any time to enforce any provision of this Agreement shall not be construed as a waiver of that provision and shall not effect the right of either party thereafter to enforce each and every provision of this Agreement in accordance with its terms.

G. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present of future law, and if the rights or obligations of any party under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance here form, and (d) in lieu of such illegal, invalid, or unenforceable provision or by its severance added automatically as part of this Agreement, a legal, invalid, and enforceable provision as similar in terms to such illegal, valid, or unenforceable provision as may be possible.

H. Notices. Any notice or communication given pursuant to this Agreement must be in writing and will be deemed to have been duly given if mailed (by registered or certified mail, postage prepaid, return receipt requested), or if transmitted by facsimile or if delivered by courier as follows:

To the Self Insurer:

CompTrustAGC of South Carolina
1100 Euclid Avenue
Charlotte, NC 28203
Facsimile: 704-347-0627

To the Company:

CompTrustAGC of South Carolina
1100 Euclid Avenue
Charlotte, NC 28203
Facsimile: 704-347-0627

Copy to:

James L. Stuart
Stuart Law Firm, PLLC
1033 Wade Avenue, Suite 202
Raleigh, NC 27605
Facsimile: 919-787-9988

All notices and other communications required or permitted under this Agreement that are addressed as provided in this paragraph will, whether sent by mail, facsimile, or courier, be deemed given upon the first business day after actual delivery to the party to whom such notice or other communication is sent (as evidenced by the return receipt or shipping invoice signed by a representative of such party or by the facsimile confirmation). Any party from time to time may change its address for the purpose of notices to that party by giving a similar notice specifying a new address, but no such notice will be deemed to have been given until it is actually received by the party sought to be charged with the contents thereof.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized representatives this _____ day of May, 2010.

CompTrustAGC of South Carolina

ATTEST: _____ By: _____
Secretary
Harry Mashburn
Chairman, Board of Trustees

CAGC Insurance Company

ATTEST: _____ By: _____
Secretary
Charles T. Tagman, Jr.
President/CEO

DRAFT
5/6/10

SELF-INSURANCE
LOSS PORTFOLIO TRANSFER
ASSUMPTION AGREEMENT
(Hereinafter referred to as the "Agreement")

between

CompTrustAGC of South Carolina, Inc.
(Hereinafter referred to as the "Self-Insurer")

and

CAGC Insurance Company
(Hereinafter referred to as the "Company")

ARTICLE 1 – BUSINESS COVERED

A. The Self-Insurer hereby transfers and the Company hereby assumes 100% of the liabilities and obligations of the Self-Insurer for operations in the state of South Carolina, thereby assuming the joint and several liability of the Self-Insurer's members, for its retained amounts of specific and aggregate liability for workers' compensation and employer's liability losses, including unpaid losses and loss adjustment expenses, during the time period July 1, 1982 through June 30, 2009 including all existing and incurred but not reported ("IBNR") claims (hereinafter "Assumed Claims"), pertaining to the Policies set forth below, and subject to the terms and conditions contained herein.

B. The term "Policies" shall mean all specific and aggregate excess worker's compensation and employers' liability agreements issued by the Company, and all other agreements, policies, binders, contracts, certificates and other obligations, whether oral or written, of insurance issued by other insurers, pertaining to the liabilities assumed hereunder, including the following agreements or policies:

INSURER & AGREEMENT NO.	PERIOD OF AGREEMENT
No applicable policies	No applicable policies

C. The Self-Insurer hereby transfers to the Company all rights the Self-Insurer may have now or in the future with respect to the Self-Insurer's retained liability for workers' compensation, employers' liability and/or related losses, or under or with respect to the Policies.

ARTICLE 2 – EFFECTIVE DATE

This Agreement shall be effective as of 12:01 a.m., _____ _____, 2010.

ARTICLE 3 – CONSIDERATION

In consideration of the Company's agreement to assume the liabilities of the Self-Insurer, as set forth in Article 1 above, and subject to the terms and conditions of this Agreement, the Self-Insurer shall pay the sum of FIVE MILLION EIGHT HUNDRED SIXTY-THREE THOUSAND AND NO/100s DOLLARS ($5,863,000.00)* to the Company by the Effective Date.

ARTICLE 4 – COOPERATION AMONG PARTIES: TRANSFER OF DOCUMENTS

A. The parties hereto agree to act in good faith and cooperate with each other in effecting the assumption of the Assumed Claims provided for in this Agreement. The parties shall take all action necessary to assist each other in obtaining all regulatory approvals or responding to information requests of those insurance regulatory authorities asserting jurisdiction over the transactions herein described.

B. Upon demand by, and in accordance with instructions of the Company, the Self-Insurer shall deliver originals or copies of all policy records and claims files pertaining to the Assumed Claims and all other files and records incidental to the Assumed Claims to the Company or its designated representative, as are necessary for the Company to perform its obligations under this Agreement. The Company or its designated representative shall retain all policy records, claim files, and other documents received by it from the Self-Insurer as required by applicable law. Upon reasonable notice, each of the Company and the Self-Insurer will be entitled to reasonable access to the books and records of the other party at any reasonable time, but only to the extent such materials pertain to the business assumed under this Agreement. Each party will pay its own expense associated with any such review of books and records. The Self-Insurer will retain as its property all its original records, including, without limitation, articles of incorporation, bylaws, minute books, and certificates of authority; provided, however, that the Self-Insurer shall promptly provide the Company with copies of all such documents, if so requested by the Company.

C. Whenever the Self-Insurer receives any communications, including notices of claims and proofs of loss, pertaining to the Assumed Claims, it will forward such communications promptly to the Company or its designated representative.

ARTICLE 5 – NOTICE OF ASSUMPTION

The Self-Insurer will cooperate fully with the Company in implementing the assumption which is the subject of this Agreement, including, without limitation, executing any documents reasonably necessary to evidence the completion of the transactions contemplated by this Agreement.

* Subject to adjustment for claims paid between 3/31/10 and the Effective Date

ARTICLE 6 – ADMINISTRATION AND CLAIM PAYMENTS

A. From and after the Effective Date, the Company will be solely liable for the administration and disposition of all aspects of the Assumed Claims, including, without limitation, the defense, adjustment, settlement, and payment of all losses and expenses arising under or relating to the Assumed Claims. The Self-Insurer hereby grants and assigns to the Company authority to administer such losses, claims, expenses, defenses, adjustments, settlements, and payments, and such matters will be under the Company's control and within its sole discretion. The Company will bear all expenses and costs incurred by it in connection with the administration and disposition of such losses, claims, expenses, defenses, adjustments, settlements, and payments.

B. In its sole discretion, the Company shall have the right to select a third party administrator to perform claims administration services pertaining to the Assumed Claims.

C. The Self-Insurer will cause all information and notices regarding the Assumed Claims, actually received by the Self-Insurer after the Effective Date to be promptly reported to the Company or the Company's designated representative, and will undertake reasonable measures to ensure that all such notices are promptly delivered to the Company or to its designated representative.

D. All losses and expenses regarding the Assumed Claims that the Company determines to be payable will be paid directly and promptly by the Company.

ARTICLE 7 – ASSESSMENTS

After the Effective Date of this Agreement, in the event that an assessment is made against any present or former members of the Self-Insurer pursuant to statute or regulation, the Company agrees to pay the assessment on behalf of said Self-Insurer members.

ARTICLE 8 – REQUIRED REGULATORY APPROVAL

This Agreement remains subject to the approval of the South Carolina Workers' Compensation Commission, Self-Insurance Division, the Self-Insurer and the Company shall take all steps necessary to obtain requisite regulatory approval of this Agreement, if any, and the transaction described herein.

ARTICLE 9 – SUBORDINATION AND REINSURANCE RECEIVEABLES

A. The Company shall be subrogated to all of the rights of the Self-Insurer against any responsible person or entity. The Company is hereby authorized and empowered to bring any appropriate action in its own name or in the name of the Self-Insurer to enforce such rights.

B. Any payments received by or due to the Self-Insurer from any reinsurer of the Self-Insurer which is payable on an Assumed Claim shall become the property of and paid to the Company. If any payment is received by the Self-Insurer which is to be credited to the Company

under or with respect to any of the Assumed Claims, the Self-Insurer will immediately endorse (without warranty or recourse) and deliver to the Company such checks, drafts, or money intended as such payment, and until delivery of such items to the Company, the Self-Insurer will treat any such checks, drafts, or money as the property of the Company held for the account of the Company. The Company and the Self-Insurer will each use all commercially reasonable efforts to cause the transfer and assignment, as of the Effective Date to the Company of all the Self-Insurer's rights, interest, and obligations under the Self-Insurer's reinsurance agreement, if any, covering the risks, liabilities, and obligations of the Self-Insurer under or with respect to Assumed Claims including, without limitation, obtaining any necessary consents or approvals to such transfer and assignment by the reinsurer under any such reinsurance agreements effective as of the Effective Date. Any failure to receive the consents referred to herein will not relieve or diminish in any manner the Company's obligation under this Agreement.

C. The Company shall be authorized and entitled to file and pursue the collection of claims against the South Carolina Second Injury Fund and all other collateral sources, arising out of or resulting from Assumed Claims (hereinafter "Collateral Sources Claims'); to pursue the collection of Collateral Sources Claims filed by the Self-Insurer prior to the Effective Date; and to collect, receive, and retain any monies paid in settlement of satisfaction of any Collateral Sources Claims filed by either the Company or the Self-Insurer.

ARTICLE 10 – ERRORS OR OMISSIONS

Inadvertent delays, errors or omissions made in connection with this Agreement or any transaction hereunder will not relieve either party from any liability that would otherwise have attached had such delay, error, or omission not occurred. Regardless, the responsible party will rectify each such delay, error, or omission as promptly as practicable after discovery.

ARTICLE 11 – ARBITRATION

A. Any dispute or other matters in question between the Self-Insurer and the Company arising out of or relating to the formation, interpretation, performance, or breach of this Agreement, whether such dispute arises before or after termination of this Agreement, shall be settled by arbitration if the parties are unable to resolve the dispute through negotiation. Arbitration shall be initiated by the delivery of a written notice of demand for arbitration by one party to the other.

B. Each party shall appoint an individual as arbitrator and the two so appointed shall then appoint a third arbitrator. If either party refuses or neglects to appoint an arbitrator within sixty (60) days of receipt of written notice of demand for arbitration, the other party may appoint the second arbitrator. If the two arbitrators do not agree on a third arbitrator within sixty (60) days of their appointment, each of the arbitrators shall nominate three individuals. Each arbitrator shall then decline two of the nominations presented by the other arbitrator. The third arbitrator shall then be chosen from the remaining two nominations by drawing lots and the name of the individual first drawn shall be the umpire. The arbitrators shall be disinterested active or former

executive officers of insurance or reinsurance companies or disinterested individuals with significant knowledge and experience with respect to insurance or reinsurance.

C. Arbitration hearing shall be held in Charlotte, North Carolina or such other place as may be mutually agreed. Each party shall submit its case to the arbitrators within sixty (60) days of the selection of the third arbitrator or within such longer period as may be agreed by the arbitrators. The arbitrators shall not be obliged to follow judicial formalities or the rules of evidence except to the extent required by governing law; they shall make their decisions according to the custom and practice of the reinsurance business. The decision rendered by a majority of the arbitrators shall be final and binding on both parties. Such decision shall be a condition precedent to any right to legal action arising out of the arbitrated dispute which either party may have against the other. Judgment upon the award rendered may be entered in any court having jurisdiction thereof.

D. Each party shall pay the fees and expenses of its arbitrator and attorneys and one-half of the fees and expenses of the third arbitrator. All other expenses of the arbitration shall be equally divided between the parties.

ARTICLE 12 – HONORABLE UNDERTAKING

This Agreement shall be construed as an honorable undertaking between the parties herto not to be defeated by technical legal constructions.

ARTICLE 13 – GENERAL PROVISIONS

A. Successor and Assigns. This Agreement shall inure to the benefit of and bind the Self-Insurer and its successors and assigns and the Company and its successors and assigns. Neither this Agreement nor any right hereunder nor any part hereof may be assigned by any party hereto without the prior written consent of the other party hereto. Prior to any such assignment, the consent of all necessary regulatory authorities must be obtained.

B. Governing Law. Company is a North Carolina corporation, licensed to do business in States of North Carolina and South Carolina and is subject to the laws governing both states. This Agreement shall be governed by and construed in accordance with the laws of either State as controlled by the nature of the dispute. Specifically, but not necessarily limited to, disputes related to an alleged breach of this Agreement shall be governed by North Carolina except that disputes related to the Assumed Claims and Collateral Sources Claims shall be governed by South Carolina law.

C. Entire Agreement. This Agreement supercedes all prior discussions and agreements between the parties, and contains the sole and entire agreement between the Self-Insurer and the Company with respect to the subject matter hereof.

D. Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument.

E. Headings, etc. The headings used in this Agreement have been inserted for convenience and do not constitute matter to be construed or interpreted in connection with this Agreement. Unless the context of this Agreement otherwise requires, (a) words of any gender will be deemed to include each other gender, (b) words using singular or plural number will also include the plural or singular number, respectively, (c) the terms "hereof," "herein," "hereby," and derivative or similar words will refer to this entire Agreement, and (d) the conjunction "or" will denote any one or more, or any combination or all, of the specified items or matter involved in the respective list.

F. Non-waiver. The failure of either party hereto at any time to enforce any provision of this Agreement shall not be construed as a waiver of that provision and shall not effect the right of either party thereafter to enforce each and every provision of this Agreement in accordance with its terms.

G. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present of future law, and if the rights or obligations of any party under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance here form, and (d) in lieu of such illegal, invalid, or unenforceable provision or by its severance added automatically as part of this Agreement, a legal, invalid, and enforceable provision as similar in terms to such illegal, valid, or unenforceable provision as may be possible.

H. Notices. Any notice or communication given pursuant to this Agreement must be in writing and will be deemed to have been duly given if mailed (by registered or certified mail, postage prepaid, return receipt requested), or if transmitted by facsimile or if delivered by courier as follows:

To the Self Insurer:

CompTrustAGC of South Carolina
1100 Euclid Avenue
Charlotte, NC 28203
Facsimile: 704-347-0627

To the Company:

CompTrustAGC of South Carolina
1100 Euclid Avenue
Charlotte, NC 28203
Facsimile: 704-347-0627

Copy to:

James L. Stuart
Stuart Law Firm, PLLC
1033 Wade Avenue, Suite 202
Raleigh, NC 27605
Facsimile: 919-787-9988

All notices and other communications required or permitted under this Agreement that are addressed as provided in this paragraph will, whether sent by mail, facsimile, or courier, be deemed given upon the first business day after actual delivery to the party to whom such notice or other communication is sent (as evidenced by the return receipt or shipping invoice signed by a representative of such party or by the facsimile confirmation). Any party from time to time may change its address for the purpose of notices to that party by giving a similar notice specifying a new address, but no such notice will be deemed to have been given until it is actually received by the party sought to be charged with the contents thereof.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized representatives this _____ day of May, 2010.

CompTrustAGC of South Carolina

ATTEST: _____ By: _____
Secretary
Harry Mashburn
Chairman, Board of Trustees

CAGC Insurance Company

ATTEST: _____ By: _____
Secretary
Charles T. Tagman, Jr.
President/CEO

From: Smith, W
Sent: Tuesday, December 14, 2010 10:23 AM
To: 'Theresa Dew'
Subject: RE: CAGC Insurance Company/CompTrustAGC of SC

Hello Theresa! We have reviewed the language of the LPT and have nothing to add. We are OK with it if NC is. Thanks! WC Smith, SCWCC

From: Theresa Dew [mailto:tdew@stuartlawfirm.com]
Sent: Monday, December 13, 2010 3:07 PM
To: Smith, W
Subject: CAGC Insurance Company/CompTrustAGC of SC

Mr. Smith – As you may recall, we are counsel for CAGC Insurance Company, which has been working with the North Carolina Department of Insurance regarding an LPT transaction with CompTrustAGC of SC. The North Carolina Department of Insurance continues its review of the proposed Assumption Agreement (which was based on your model). However, in the interest of moving this review process forward, I have attached a copy of the proposed Assumption Agreement for your review and consideration as well. In particular, the North Carolina Department of Insurance has requested that there be some level of North Carolina governing law in the transaction so you will see those modifications in Article 13, Section 8. Once you have had an opportunity to review the proposed document, please let me know of any questions, comments or concerns. Thanks, Theresa

Theresa S. Dew
Member
Stuart Law Firm, PLLC
1033 Wade Avenue, Suite 202
Raleigh, NC 27605-1155
Tel (919) 787-6050
Fax (919) 787-9988
Cell (919) 345-3430
http://www.stuartlawfirm.com/

The information contained in this message is confidential, may be protected by attorney-client privilege and is intended for the individual named above. If you are not the intended recipient, you are notified that any dissemination, distribution or copying of this message is strictly prohibited. If you have received this communication in error, please notify the sender by telephone or email immediately.

Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, unless specifically indicated otherwise, any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of avoiding tax related penalties or promoting, marketing or recommending to another party any tax related matter addressed herein.

From: Smith, W
Sent: Friday, January 10, 2014 9:58 AM
To: 'Randy@scwind.com'
Subject: CAGC

Good morning Randy:

I am writing in response to our telephone conversation of Wednesday, January 10, 2014, concerning the Loss Portfolio Transfer between the former self-insured fund, Comptrust AGC and the commercial carrier CAGC. The approval of the language of this Loss Portfolio Transfer was conducted solely by the North Carolina Department of Insurance, which was the state of domicile for CAGC. The South Carolina Workers' Compensation Commission places only one requirement on Loss Portfolio Transfers involving a former self-insured employer or fund. That requirement is that the transfer is a 100% transfer of ALL past, present and future liability. Upon our receipt of the signed CompTrust AGC/CAGC Loss Portfolio Transfer document it was confirmed by us that the LPT met this one requirement. That was the extent of our involvement.

On the list of fund members you requested, I will need to get the approval of our Legal Department for the release of the data. I foresee no problems and will get back to you as soon as I get the go ahead from them.

WC Smith
Director, Self-Insurance Division
South Carolina Workers' Compensation Commission

From: Smith, W
Sent: Thursday, January 30, 2014 4:14 PM
To: Cannon, Gary; Crocker, Virginia
Subject: FW: AGC reports
Attachments: 01137-open.pdf; 01137-open.txt; 00909-open.txt; 00909-open.pdf

Hello Gary and Ginger! Attached are the two reports from Duane. The first report lists the 11 open claims that apply to CAGC Insurance Company. The second list indicates 41 open claims that were once the responsibility on the CompTrust AGC of S.C. Self-Insurance Fund, (AKA: Carolinas Associated General Contractors Self-Insurance Fund, self-insurance number 909). The fund was in operation from 7-1-1982 until it closed June 30, 2009. The assumption agreement, Loss Portfolio Transfer, was signed 12-28-2010 when CAGC Insurance Company assumed 100% of all liability, (past, present and future), of the former self-insured fund. Duane is of the opinion that a number of the 41 open claims shown for the old self-insurance fund are likely closed but not closed in the system. WC

From: Earles, Duane
Sent: Thursday, January 30, 2014 3:57 PM
To: Smith, W
Subject: AGC reports

Attached.

Duane Earles
Project Manager I
SCWCC
803 737-5716 (v)
803 737-5768 (f)

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Raymond G. Farmer, as Director of the South Carolina Department of Insurance, Petitioner, vs. CAGC Insurance Company, In Liquidation, Respondent.	)	Civil Action No. 2014-CP-40-0313 **ORDER GRANTING MOTION TO COMPEL RESPONSE TO SUBPOENA**
South Carolina Property and Casualty Insurance Guaranty Association, Intervenor-Petitioner. vs. CAGC Insurance Company, in Liquidation; Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in Liquidation; and CompTrustAGC of South Carolina a/k/a CompTrustAGC of South Carolina, Inc., Intervenor-Respondents.	)	

RICHLAND COUNTY FILED
2014 AUG 15 AM 10:55
JEANETTE W. WALDEN C.C.P. & G.S.

This matter came before the court at 11:00 a.m. on Thursday, August 14, 2014, for the purpose of hearing the Motion to Compel Response to Subpoena filed by Intervenor-Petitioner South Carolina Property and Casualty Insurance Guaranty Association ("Association"). The Association's Motion seeks to compel the South Carolina Workers' Compensation Commission ("Commission") to fully and completely respond to its Subpoena for Rule 30(b)(6) Deposition

RECEIVED
AUG 25 2014
S. C. WORKERS' COMP. COMM.
EXECUTIVE DIRECTOR

SCANNED

and Subpoena Duces Tecum ("Subpoena") dated June 12, 2014. Upon review of the Motion and hearing arguments from counsel present at the hearing, the Association's Motion is hereby GRANTED. It is, therefore,

ORDERED, ADJUDGED AND DECREED that the Commission must fully and completely respond to the Subpoena as follows:

1. The Commission must produce to the Association the documents requested in the Subpoena on or before September 4, 2014; and

2. The Commission must submit to the 30(b)(6) deposition requested in the Subpoena on September 5, 2014, at 10:00 A.M.

AND IT IS SO ORDERED.

The Honorable Alison Renee Lee
Presiding Judge, Fifth Judicial Circuit

August 14, 2014.

RECEIVED
AUG 25 2014
S C WORK. COMP. COMM.
EXECUTIVE DIRECTOR

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for SC Property and Casualty Insurance Guaranty Association , do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Document(s):

Filed copy of the Order Granting Motion to Compel Response to Subpoena signed by The Honorable Alison Renee Lee.

Counsel Served:

Keith Roberts, Esquire
South Carolina Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202-1715

Geoffrey Ross Bonham, Esquire
PO Box 100105
Columbia, SC 29202

David W. Boone, Esquire
PO Box 629
Raleigh, NC 27602

Mari[illegible] Reeve
Administrative Assistant

August 22, 2014

RECEIVED
AUG 25 2014
[illegible] COMM.
EXECUTIVE DIRECTOR

STATE OF SOUTH CAROLINA
ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF RICHLAND

Raymond G. Farmer, as Director of the South Carolina Department of Insurance, Petitioner,

v.

CAGC Insurance Company, in Liquidation., Respondent,

South Carolina Property and Casualty Insurance Guaranty Association, Intervenor-Petitioner,

v.

CAGC Insurance Company, in Liquidation; Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in Liquidation; and CompTrustAGC of SC a/k/a CompTrustAGC of SC, Inc., Intervenor-Respondents.

SUBPOENA IN A CIVIL CASE
Subpoena for Rule 30(b)(6) Deposition and Subpoena Duces Tecum

Case Number: 2014-CP-40-0313
Pending in Richland County

TO: South Carolina Workers' Compensation Commission, ATTN: Keith Roberts, Esq., PO Box 1715, Columbia, SC 29202-1715

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition pursuant to Rule 30(b)(6) of the South Carolina Rules of Civil Procedure in the above case regarding the following matters:

1. **The process by which documents were located in response to this Subpoena;**
2. **An explanation of each document produced in response to this Subpoena; and**
2. **If any documents were withheld from production, the basis for such withholding.**

PLACE OF DEPOSITION	DATE AND TIME
Nelson Mullins Riley & Scarborough, LLP **1320 Main Street, 17th Floor, Columbia, SC**	**June 30, 2014 at 10:00 AM**

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

Your office's entire file related to CompTrustAGC of SC a/k/a CompTrustAGC of SC, Inc. ("CompTrust"), including but not limited to the following:

1. **Application to Create a Self-Insurance Fund;**
2. **Three years' audited GAAP financial statements filed with Application;**
3. **Audited GAAP financial statement filed annually;**
4. **Any other financial reports filed;**
5. **All documents related to or evidencing payment of self-insurance tax;**

SCCA 254 (05/2011)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on next page)

6. All documents related to or evidencing payment of assessments to the South Carolina Second Injury Fund;
7. All documents related to or evidencing entry of a bond or provision of an irrevocable letter of credit and the current status of said bond or letter of credit;
8. All documents related to or evidencing the approval and regulation of CompTrust;
9. All documents related to the existence or operation of CompTrust;
10. A listing of each member of CompTrust;
11. All documents related to the Self-Insurance Loss Portfolio Transfer Assumption Agreement ("Agreement") entered into by CompTrust on or about December 28, 2010;
12. All correspondence with or regarding CompTrust; and
13. Any other documents related to CompTrust.

PLACE Nelson Mullins Riley & Scarborough, LLP 1320 Main Street, 17th Floor, Columbia, SC	DATE AND TIME June 30, 2014

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

~~I CERTIFY THAT THIS SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(a)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN~~ GIVEN TO ALL PARTIES.

Jill C. Sullivan — Attorney for Intervenor-Petitioner — 6/12/14 — Tara C. Sullivan
Attorney/Issuing Officer's Signature — Date — Print Name
Indicate if Attorney for Plaintiff or Defendant
Attorney's Address and Telephone Number:

Nelson Mullins Riley Scarborough LLP, 1320 Main Street, Meridian Building, Columbia, SC 29201, (803) 799-2000

Clerk of Court/Issuing Officer's Signature — Date — Print Name
Indicate if Attorney for Plaintiff or Defendant
Pro Se Litigant's Name, Address and Telephone Number:

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TENDERED TO WITNESS
	PLACE	☐YES ☐NO AMOUNT $
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedure, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

i. fails to allow reasonable time for compliance; or

ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

iv. subjects a person to undue burden.

(B) If a subpoena:

i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or

ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on next page)

From: Ballentine, Kim
Sent: Tuesday, February 11, 2014 11:14 AM
To: AGENCYGroup
Subject: SCWCC Notice

The following was posted on our website this morning:

CAGC Insurance Company pending claims (Posted February 11, 2014)
Read more...

Kim Ballentine
Office of the Executive Director
SC Workers' Compensation Commission
1333 Main Street
PO Box 1715
Columbia, SC 29202
803-737-5744
www.wcc.sc.gov

http://www.wcc.sc.gov/Documents/What%27s%20New/CAGC%20Insurance%20Co/2014%2001%2017%20CAGC%20Order%20of%20Injunction%20Notice.pdf

State of South Carolina

1333 Main Street, 5th Floor
P.O. Box 1715
Columbia, S C. 29202-1715



TEL: (803) 737-5700
www.wcc.sc.gov

Workers' Compensation Commission

February 11, 2014

In the Matter of Workers' Compensation Claims Arising Under CAGC Insurance Company Inc., Self-insured Program

On January 26, 2012, the General Court of Justice Superior Court Division, Wake County, North Carolina Court, entered a Rehabilitation and Injunction Order against CAGC Insurance Company. The court declared CAGC insolvent, appointed the Deputy Commissioner of the North Carolina Department of Insurance as Receiver, and gave exclusive possession of all CAGC's assets to the Receiver. With the Order of Liquidation, CAGC qualifies as an "insolvent insurer" as defined by § 38-31-20(7). The South Carolina Property and Casualty Insurance Guaranty Association Act (the Act) provides a remedy for certain obligations of an insolvent insurer. The South Carolina Guaranty Association is responsible for administration of the Act.

Pursuant to the Act,

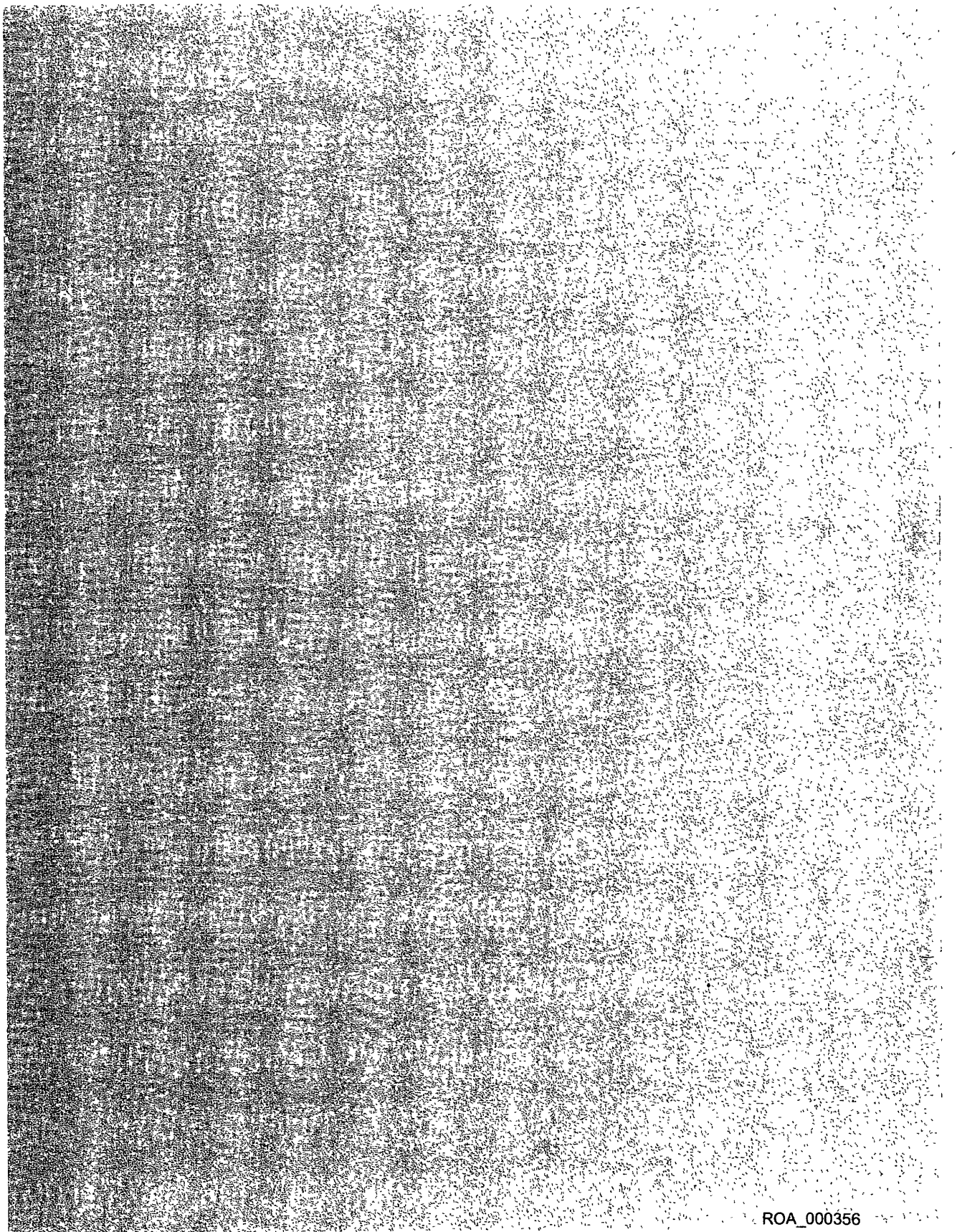
> [a]ll proceedings involving covered claims in which the insolvent insurer is a party or is obligated to defend a party in any court in this State must be stayed ninety days from the date insolvency is determined to permit proper defense by the association.

§ 38-31-160

In accordance with § 38-31-160, the Commission issued an Administrative Order instructing the Commission to stay all matters before the Commission in which CAGC is a party until **April 16, 2014**, which is 90 days after the entry of the Order of Liquidation. Once the statutory 90 day stay has expired, the Commission's Judicial Department will move forward with processing all pending matters in as expedient manner as possible.

The Commission will continue to provide updates as they become available.

Gary M. Cannon
Executive Director
803-737-5744
gcannon@wcc.sc.gov



North Carolina
DEPARTMENT OF INSURANCE
Wayne Goodwin | Commissioner of Insurance

FINANCIAL EVALUATION

December 22, 2010

Mr. Charles T. Tagman, Jr.
President
CAGC Insurance Company
P.O. Box 30277
Charlotte, NC 28230

Re: Assumption Transaction with
CompTrustAGC of South Carolina

Dear Mr. Tagman:

The North Carolina Department of Insurance (hereinafter the "Department") has completed its review of the proposed assumption transaction whereby CAGC Insurance Company (hereinafter the "Company") will assume the outstanding liability obligations of the CompTrustAGC of South Carolina.

Based on the representations made by the Company regarding the proposed transaction, the Department does not object to the Company entering into this transaction.

Once the transaction has been consummated, please notify the Department. We ask that you also provide the total amount of assets, liabilities, and surplus that was transferred to the Company as a result of the transaction.

If you have any questions or if I can be of additional assistance, please feel free to contact me at (919) 424-6273 or via e-mail at Betty.Jackson@ncdoi.gov.

Sincerely,

Betty C. Jackson

Betty C. Jackson, FLMI
Senior Financial Analyst

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF Richland	)	CASE NO.: 14-CP-40-0313
Raymond G. Farmer, as Director of the South Carolina Department of Insurance,	)	
Petitioner,	)	MOTION AND ORDER INFORMATION FORM AND COVER SHEET
vs.	)	
CAGC Insurance Company, in liquidation,	)	
Respondent.	)	
South Carolina Property and Casualty, Insurance Guaranty Association,	)	
Intervenor-Petitioner,	)	
vs.	)	
CAGC Insurance Company, in liquidation, Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in liquidation, and CompTrustAGC of South Carolina, a/k/a CompTrustAGC of South Carolina, Inc.	)	
Intervenor-Respondent.	)	

Name, SC Bar No. and Address of Plaintiff's Attorney	Name, SC Bar No. and Address of Intervenor-RespondentCompTrustAGC of South Carolina, a/k/a CompTrustAGC of South Carolina, Inc. Attorney
Howard A. VanDine, III Meridian, 17th Floor 1320 Main Street Columbia, SC 29201 Telephone: 803.255.9466 fax: 803.256.7500 e-mail: howard.vandine@nelsonmullins.com other:	T. Douglas Concannon SC Bar #:066316 Address: Young Clement Rivers, LLP Post Office Box 993 Charleston, SC 29402-0993 Telephone: (843) 724-6640 fax: (843) 579-1377 e-mail: dconcannon@ycrlaw.com

☒ MOTION HEARING REQUESTED (attach *written* motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (COMPLETE SECTIONS II and III)

SECTION I: HEARING INFORMATION

Nature of Motion: Motion to Dismiss Intervenor-Petitioner South Carolina Property and Casualty, Insurance Guaranty Association, compliant against Intervenor-RespondentCompTrustAGC of South Carolina, a/k/a CompTrustAGC of South Carolina, Inc.

Estimated Time Needed: 30 Minutes Court Reporter Needed?: ☒ YES ☐ NO

SECTION II: MOTION TYPE

☒ Written Motion Attached
☐ Form Motion

I hereby move for relief or action by the Court as set forth in the attached proposed order.

Dated: 7 Sept 2015

Signature of Attorney for ☐ Plaintiff (s) ☒ Intervenor-RespondentCompTrustAGC of South Carolina, a/k/a

SCCA/233 (11/03)

CompTrustAGC of South Carolina, Inc.

SECTION III: MOTION FEE

☒ PAID – AMOUNT $ 25.00

☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency w. Indigent Party
- ☐ Sexually Violent Predator Act
- ☐ Post-Conviction Relief
- ☐ Motion for Stay Bankruptcy
- ☐ Motion for Publication
- ☐ Motion for Execution (Rule 69, *SCRCP*)
- ☐ Proposed order submitted at request of the Court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order

☐ Other: _____

JUDGE: _____

CODE: _____ DATE: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
(print name)

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED – AMOUNT DUE:

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Raymond G. Farmer, as Director of the South Carolina Department of Insurance, Petitioner, vs. CAGC Insurance Company, in liquidation, Respondent.	Civil Action No. 2014-CP-40-0313 **NOTICE OF MOTION AND MOTION TO DISMISS**
South Carolina Property and Casualty, Insurance Guaranty Association, Intervenor-Petitioner, vs. CAGC Insurance Company, in liquidation, Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in liquidation, and CompTrustAGC of South Carolina, a/k/a CompTrustAGC of South Carolina, Inc. Intervenor-Respondent.	

The Intervenor-Respondent, CompTrustAGC of South Carolina, a/k/a CompTrustAGC of South Carolina, Inc., ("**CompTrust**") by and through its undersigned counsel, preserving all rights and defenses presented in its Limited Answer, hereby moves to dismiss all claims filed against it in the above referenced matter pursuant to Rules 12(b)(1) and 21, SCRCP.

Factual Background

CAGC Insurance Company ("**CAGC**") was a workers compensation insurance company domiciled in North Carolina. Its principal insurance obligations came from two entities: (1) CompTrustAGC of North Carolina (the "**NC Trust**") merged into CAGC with the full review and approval of the North Carolina Department of Insurance in July 2008; (2) the CompTrust, the NC Trust's South Carolina counterpart, transferred all of its workers compensation liabilities to CAGC effective December 30, 2010 via a contractual novation under the terms of a Self-Insurance Loss Portfolio Transfer Assumption Agreement (the "**LPT Agreement**") between CAGC and the CompTrust. On January 6, 2014, CAGC was declared insolvent by a court of competent jurisdiction in North Carolina, and CAGC became subject of an Order of Liquidation which appointed the Insurance Commissioner of the State of North Carolina as Liquidator of CAGC. On March 5, 2014, this Court appointed the Director of the South Carolina Department of Insurance as Ancillary Receiver of CAGC to facilitate the management of CAGC's South Carolina assets. The South Carolina Property and Casualty Insurance Guaranty Association ("**SC IGA**") was allowed to intervene in this case and file a Summons and Complaint for Declaratory Judgment (the "**Complaint**") seeking to establish that SC IGA is not statutorily responsible for payment of the South Carolina claims of CAGC which either have arisen or might arise from the workers compensation liabilities of the CompTrust transferred to CAGC under the LPT Agreement.

Claims against the CompTrust are Moot under *Stare Decisis* Rule 12(b)(1) SCRCP

In the North Carolina proceeding, the North Carolina Property and Casualty Insurance Guaranty Association ("**NC IGA**") was allowed to intervene and seek to establish that it was not

statutorily responsible for payment of the North Carolina workers compensation claim liabilities which had arisen from the NC Trust prior to its merger with CAGC. However, on January 20, 2015 the North Carolina Court of Appeals decided the NC IGA should be "estopped from denying that it is obligated under the North Carolina Insurance Guaranty Association Act for any of the pre-merger workers' compensation claims made or incurred against [the NC Trust]." A copy of this decision is attached as **Exhibit A**. Then on June 10, 2015, the North Carolina Supreme Court denied the NC IGA's request for an appeal of that decision and dismissed the remaining claims in the case as moot. Copies of those orders are attached as **Exhibit B**. Finally, on July 27, 2015 the General Court of Justice Superior Court Division issued a judgment against the NC IGA. A copy of that order is attached as **Exhibit C**.

These decisions establish a strong, very persuasive precedent in the ongoing liquidation of CAGC. The definitions and other statutory provisions of the North Carolina Insurance Guaranty Association Act, N.C. Gen. Stat. §§ 58-48-1, *et seq.*, are based on the same model law that South Carolina adopted for the South Carolina Property and Casualty Insurance Guaranty Association Act, S.C. Code Ann. §§ 38-31-10, *et seq.* For example, as alleged in the Complaint, S.C. Code Ann. § 38-31-10 defines "covered claim" as:

> [A]n unpaid claim, including one of unearned premiums, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this chapter applies issued by an insurer, **if the insurer is an insolvent insurer** and (a) the claimant or insured is a resident of this State at the time of the insured event, if for entities other than an individual, the residence of a claimant or insured is the state in which its principal place of business is located at the time of the insured event or (b) the claim is for first-party benefits for damage to property permanently located in this State.
>
> (Emphasis added)

The definition of "covered claim" under North Carolina insurance law is in N.C. Gen. Stat. § 58-

48-20(4):

> [A]n unpaid claim, including one of unearned premiums, which is in excess of fifty dollars ($50.00) and arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Article applies as issued by an insurer, **if such insurer becomes an insolvent insurer after the effective date of this Article** and (i) the claimant or insured is a resident of this State at the time of the insured event; or (ii) the property from which the claim arises is permanently located in this State.
>
> (Emphasis added)

Similarly, S.C. Code Ann. § 38-31-10 (9) defines of an "insolvent insurer" as:

> **[A]n insurer (a) licensed to transact insurance in this State either at the time the policy was issued or when the insured event occurred** and (b) determined to be insolvent by a court of competent jurisdiction in the insurer's state of domicile or of this State and which the director or his designee has found fails to meet its obligation to policyholders in this State.
>
> (Emphasis added)

And the definition of "insolvent insurer" in North Carolina in N.C. Gen. Stat. § 58-48-20(5) is:

> "Insolvent insurer" means (i) **an insurer licensed and authorized to transact insurance in this State either at the time the policy was issued or when the insured event occurred** and (ii) against whom an order of liquidation with a finding of insolvency has been entered after the effective date of this Article by a court of competent jurisdiction in the insurer's state of domicile or of this State under the provisions of Article 30 of this Chapter, and which order of liquidation has not been stayed or been the subject of a writ of supersedeas or other comparable order.
>
> (Emphasis added)

The underlying facts and parties to the North Carolina case are virtually identical to the one at hand. The NC IGA and SC IGA are represented by the same law firm, which presented the same arguments against liability for CAGC's claims at trial and on appeal. Like the NC IGA, the SC IGA is denying that it is statutorily obligated for any of CAGC's claims in South Carolina based on the CompTrust's worker compensation liabilities ultimately transferred to CAGC. The jurisdiction has changed, but little else. In short, the principal issues underlying

the Complaint have been reviewed and decided by the court of final authority over the liquidation of CAGC in its state of domicile and principal regulation. This judicial history should make moot further litigation of that point in this jurisdiction, and the Complaint should be dismissed with prejudice.

Claims against the CompTrust are Moot Because the CompTrust Does Not Exist Rule 21 SCRCP

On March 31, 2011, 3 months after transferring all of its assets and liabilities to CAGC via the LPT Agreement, CompTrust dissolved voluntarily as an entity. For whatever reason, neither the SC IGA nor the South Carolina Department of Insurance communicated this essential fact to the Court when it heard the SC IGA's Petition to Intervene. While that petition may have been properly granted, the SC IGA's concurrent motion to add the CompTrust as a party to this case was clearly granted in error under Rule 21, SCRCP.

CompTrust was formed as an unincorporated business trust in May 1982, years before South Carolina promulgated the South Carolina Business Corporation Act. (S.C. Code Ann. §§ 33-1-101, *et seq.* (the "**Act**")). Even assuming the Act would apply, it contains only five sparse provisions that specifically relate to "business trusts," S.C. Code Ann §§ 33-51-10 through 33-51-50. A business trust is created by the voluntary act of the parties. 12A C.J.S. Business Trusts § 12. A written declaration of trust is often necessary; however there is no special form or language that is required to form a business trust other than the parties' intention to create a trust or by showing the intention to beneficially own another party's property. *Id.* None of the Act's provisions set any firm requirements for a business trust's foundational trust agreement. One important thing the Act does specify is that the declaration of trust for a business trust may limit the individual liability of shareholders and trustees. S.C.

Code Ann § 33-51-40. Article VI § 8 of the CompTrust's Declaration of Trust contains such a provision.

South Carolina law does not require the filing of a business trust agreement unless the trust holds and manages real property (S.C. Code Ann. § 33-53-10), whereupon a copy must be filed with the register of deeds where the property is located and subsequently with the Secretary of State. CompTrust did not own real estate, and so it filed no copies of its Declaration of Trust. CompTrust did file the applicable and requisite forms and follow the self-insurance rules and regulations of the South Carolina Worker's Compensation Commission ("**SC WCC**"), so it could assume workers compensation risk on behalf of CompTrust member employers. It then transferred all of its assets, liabilities, and business records to CAGC with the prior approval of both the North Carolina Department of Insurance and the SC WCC under the LPT Agreement.

Similarly, the Act is silent regarding the notice, timeline, and any other aspects of the dissolution of unincorporated business trusts. CompTrust's Declaration of Trust granted its former trustees broad authority and discretion in this area, and having completed the novation with CAGC, the former trustees saw no purpose for continuing the CompTrust's existence. They elected to dissolve the CompTrust on March 31, 2011. The Articles of Dissolution reiterate the limitations of shareholder and trustee liability in the Declaration of Trust, a copy of which is attached as **Exhibit D**.

Conclusion

The SC IGA's allegations in its Complaint have been made moot by recent decisions of both the North Carolina Court of Appeals and the North Carolina Supreme Court. Liquidation of an insurance company is the all but exclusive jurisdiction of the company's domestic regulator. The North Carolina decisions set a strong precedent in the ancillary liquidation of

CAGC in South Carolina. Even if the allegations in the Complaint are presumed true, any action by the Court in the Intervenor-Petitioner's favor would do no good, serve no purpose, or have any practical legal effect because CompTrust no longer exists. The dissolution of CompTrust in 2011 renders any grant of effectual relief impossible from either the CompTrust or its former trustees or shareholders in this case. Therefore, SC IGA's claims against CompTrust should be dismissed with prejudice as moot under Rules 12(b)(1) and 21, SCRCP.

CompTrust requests a hearing on this motion on the tenth (10th) day after service hereof or as soon thereafter as counsel may be heard.

YOUNG CLEMENT RIVERS, LLP

By: _____

Michael A. Molony, SC Bar No.: 04026
E-Mail: mmolony@ycrlaw.com
T. Douglas Concannon, SC Bar No. 066316
E-Mail: dconcannon@ycrlaw.com
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
(843) 724-6640

Attorneys for Intervenor-Respondent
CompTrustAGC of South Carolina

Charleston, South Carolina

Dated: 9 Sept 2015

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this 9th day of September, 2015.

_____

Exhibit A

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA14-445
NORTH CAROLINA COURT OF APPEALS

Filed: 20 January 2015

WAYNE GOODWIN, as Commissioner of Insurance of the State of North Carolina,
Petitioner-Appellee,

v.

Wake County
No. 12 CVS 1270

CAGC INSURANCE COMPANY,
Respondent-Appellee,

v.

NORTH CAROLINA INSURANCE GUARANTY ASSOCIATION,
Intervenor, Respondent, Counterclaimant, and Cross-Claimant,

v.

NORTH CAROLINA SELF-INSURANCE SECURITY ASSOCIATION,
Intervenor, Respondent, Counterclaimant, and Cross-Claimant-Appellant.

Appeal by Intervenor, Respondent, Counterclaimant, and Cross-Claimant North Carolina Self-Insurance Security Association from orders and judgment entered 6 January 2014 by Judge Shannon R. Joseph in Superior Court, Wake County. Heard in the Court of Appeals 25 September 2014.

Attorney General Roy Cooper, by Special Deputy Attorney General David W. Boone, and Assistant Attorney General M. Denise Stanford, for Wayne Goodwin, as Commissioner of Insurance of the State of North Carolina, Petitioner-Appellee.

Ragsdale Liggett PLLC, by James L. Conner, II and David K. Liggett, for CAGC Insurance Company, Respondent-Appellee.

Nelson Mullins Riley & Scarborough, LLP, by Christopher J. Blake and Joseph W. Eason, for Intervenor, Respondent, Counterclaimant, and Cross-Claimant-Appellee North Carolina Insurance Guaranty Association, Respondent-Appellee.

Stuart Law Firm, PLLC, by Catherine R. Stuart and Susan J. Vanderweert, for Intervenor, Respondent, Counterclaimant, and Cross-Claimant-Appellant North Carolina Self-Insurance Security Association, Respondent-Appellant.

Williams Mullen, by Christopher G. Browning, Jr., Garrick A. Seville, and C. Elizabeth Hall; Phillip A. Ellen; J. Michael Carpenter; and T. John Policastro, for North Carolina Retail Merchants Association, North Carolina Home Builders Association, North Carolina Forestry Association, North Carolina Automobile Dealers Association, First Benefits Insurance Mutual, Inc., Builders Mutual Insurance Company, Forestry Mutual Insurance Company, Dealers Choice Mutual Insurance, Incorporated, and Carolina Mutual Insurance, Inc., amicus curiae.

McGEE, Chief Judge.

CompTrustAGC ("CompTrust") was licensed by the North Carolina Department of Insurance ("DOI") as a group self-insurer pursuant to Article 47 of Chapter 58 of the North Carolina General Statutes. At all relevant times until 1 July 2008, CompTrust was a member of the North Carolina Self-Insurance Security Association ("SISA"), which "is an unincorporated

association existing pursuant to . . . Article 4 of Chapter 97 of the North Carolina General Statutes." SISA "is a 'domestic guaranty association' within the meaning of N.C. Gen. Stat. § 58-30-10(7)[,]" which means it is an "entity . . . created by the General Assembly for the payment of claims of insolvent insurers." N.C. Gen. Stat. § 58-30-10(7) (2013). As a group self-insurer, CompTrust was in the business of issuing workers' compensation insurance policies to employer-members who "pool their workers' compensation liabilities under the [Workers' Compensation] Act and are licensed under [N.C. Gen. Stat. § 58-47-60 to 58-47-140]." N.C. Gen. Stat. § 58-47-60(8) (2013). In late 2006, CompTrust initiated a process to convert itself into a North Carolina licensed direct insurance company. DOI informed CompTrust that it could create a new domestic insurance company pursuant to Article 7, Chapter 58 of the North Carolina General Statutes, and then merge CompTrust into that newly created entity. The CompTrust board of trustees took the appropriate actions and created CAGC Insurance Company ("CAGC"), which was incorporated effective 31 December 2007. CAGC was incorporated "pursuant to Chapter 55 of the North Carolina General Statutes, following certification by the Commissioner of Insurance, pursuant to Chapter 58 of the North Carolina General Statutes." CAGC's license "to transact the business of

insurance" became effective 31 May 2008. CompTrust and CAGC "filed Articles of Conversion and Merger with the North Carolina Secretary of State to be effective 1 July 2008[.]" As a direct insurer, CAGC was required to join the North Carolina Insurance Guaranty Association ("IGA"), which is "an unincorporated association existing pursuant to . . . Article 48 of Chapter 58 of the North Carolina General Statutes." IGA, like SISA, is also a "domestic guaranty association." IGA serves the same function for direct insurers that SISA serves for self-insurers. The merger of CompTrust into CAGC was completed on 1 July 2008.

The work-related injuries giving rise to the workers' compensation claims relevant to this appeal all occurred when CompTrust was still in business and responsible for the relevant insurance policies. "All of the compensable injuries giving rise to the workers' compensation claims incurred against CompTrust[] before its 1 July 2008 merger with CAGC occurred before 1 July 2008 when: (a) CompTrust[] was licensed by []DOI as a group self-insurer; and (b) CompTrust[] was a member of []SISA."

Following the merger, CAGC was the "surviving corporation," and CompTrust ceased operating in any manner as a going concern. "The members of CompTrust [were] converted into policyholders of CAGC[] and [were] at the effective date the only policyholders

of CAGC[], and [had] identical rights and benefits in CAGC[] as in CompTrust." CAGC assumed liability for all claims previously held by CompTrust, and CAGC immediately began paying those obligations pursuant to the same terms previously applicable to CompTrust. There is no dispute that CAGC was responsible for paying all ongoing workers' compensation claims, including all those incurred by CompTrust prior to the 1 July 2008 merger.

Had CAGC survived, it would have continued to pay these pre 1 July 2008 claims. However, on 26 January 2012, the trial court

> entered an Order of Rehabilitation and Order of Injunction against CAGC with the written consent of CAGC. The Order of Rehabilitation found that CAGC was in an impaired financial condition within the meaning of N.C. Gen. Stat. § 58-30-12(a)(2) and that CAGC was in such condition as to render the continuance of its business hazardous to its policyholders, creditors, or the public.

CAGC was liquidated by order entered 6 January 2014, which was effective 17 January 2014. At the time of liquidation, there was no dispute that IGA was responsible for covering all claims on CAGC policies issued on or after 1 July 2008 that remained unsettled at the time of liquidation.

IGA moved to intervene in this matter, and an order was entered on 18 December 2012 allowing IGA's motion. IGA

petitioned for declaratory relief on or after 10 December 2012, requesting the trial court, *inter alia*, to declare that

> the resulting liabilities of CAGC for claims made against members of CompTrust[] have arisen pursuant to the commercial agreements between CAGC and CompTrust[], and did not and do not arise under policies of direct insurance as issued by CAGC, and thus are outside of the scope of the Insurance Guaranty Association Act established by N.C. Gen. Stat. § 58-48-10; . . . or, alternately, that the claims against the self-insured members of CompTrust[] did not and do not arise out of "an insurance policy to which [Article 48 of Chapter 58] applies *as issued by an insurer*", but instead arose out of undertakings by the self-insured members of CompTrust[], contracts issued by CompTrust[], and the commercial agreements between CompTrust[] and CAGC, and thus are not "covered claims" under the North Carolina Insurance Guaranty Association Act; [and]
>
> . . . Adjudging and declaring that [IGA] has no obligation to accept custody of or administer claim files for workers' compensation claims which have arisen against the self-insured members of CompTrust[] for accidents or illnesses occurring before July 1, 2008, or to make payments to satisfy the liabilities for such claims under the Insurance Guaranty Association Act[.]

IGA further requested a ruling that it had no obligation for administering or paying claims arising from accidents or injuries occurring before 1 July 2008.

SISA moved to intervene and was allowed to do so by order entered 1 March 2013. SISA filed a cross-petition for

declaratory relief, requesting that the trial court deny IGA's prayers for relief set forth in IGA's petition and, *inter alia*, declare that, as a result of the merger between CompTrust and CAGC, that CAGC, as the surviving entity, was responsible for all of CompTrust's obligations, and declare "that the direct insurance obligations of the former CompTrust . . . became, by operation of law, direct insurance obligations of CAGC[], effective July 1, 2008, as the result of merger and consolidation[.]"

SISA filed a motion for summary judgment on 8 November 2013, arguing, *inter alia*, that it was "entitled to a summary judgment declaring that the workers' compensation claims incurred against the former CompTrust[] prior to its July 1, 2008 merger with CAGC . . . are not 'covered claims[.]'" SISA's motion for summary judgment was denied by order entered 6 January 2014, and the trial court concluded "that it [was] appropriate to render summary judgment against []SISA" and declare that the disputed claims were "'covered claims' within the meaning [of] N.C. Gen. Stat. § 97-130(4) in the event a determination of the insolvency of CAGC is made by [the trial court]." The trial court also entered a: "Judgment Pursuant to Rule 52" on 6 January 2014, ruling, *inter alia*, that IGA had no obligation "for any of the pre-merger workers' compensation

claims made or incurred against CompTrust[] . . . arising from events and occurrences before 1 July 2008[.]" Finally, the trial court entered an order of liquidation on 6 January 2014, ordering the liquidation of CAGC. SISA appeals.

Analysis

SISA argues that "the trial court erred by failing to rule that the pre-merger claims are 'covered claims' for IGA." We agree.

This Court's opinion in *Bowles v. BCJ Trucking Servs., Inc.*, 172 N.C. App. 149, 615 S.E.2d 724 (2005), informs our decision in this matter. The relevant facts from *Bowles* follow:

> Plaintiff was injured on 3 March 1998 in the course of his employment with BCJ Trucking Services ("BCJ"). On 11 April 2001, plaintiff was awarded ongoing temporary total disability benefits beginning 6 December 1999 from BCJ's workers' compensation insurance company, North Carolina Selective ("Selective"). Selective was comprised of various employers who pool their workers' compensation liabilities to create a licensed self-insured group.[1]
>
> Selective began experiencing financial trouble in early 1997. On 29 April 1997, the North Carolina Department of Insurance ("NCDOI") informed Selective of its financial concerns and by letter dated 21 January 1998 informed Selective of its need

[1] Selective, as a group insurer, was a member of The North Carolina Self-Insurance Guaranty Association, now The North Carolina Self-Insurance Security Association, or SISA. For clarity, we will refer to both the former and present entities as "SISA."

> to obtain additional capital or a commitment from a commercial insurance company to reinsure them. Shortly thereafter, NCDOI informed Selective it would be in the "best interest" of the public and Selective's members to transfer its obligations and liabilities to a commercial insurer.
>
> Selective entered into a NCDOI approved assumption reinsurance agreement with Reliance National Insurance Company ("Reliance") effective 31 December 1998. Selective transferred and Reliance assumed 100 percent of Selective's workers' compensation liability claims and obligations. Reliance began and continued to pay plaintiff's benefits per the assumption agreement.
>
> Reliance was an active member of IGA, which is a statutorily created reinsurance association which covers claims of insolvent insurance companies pursuant to N.C. Gen. Stat. § 58-48-1 *et seq.* On 3 October 2001, Reliance became insolvent and was ordered into liquidation by the Pennsylvania Commonwealth Court. After Reliance was liquidated, IGA assumed payments of plaintiff's benefits.
>
> IGA commenced this action by filing a Form 33 request with the Commission to determine its responsibility for paying plaintiff's claim. The Commission issued an opinion and award holding IGA responsible for paying plaintiff's workers' compensation claim. The Commission held: (1) the claim arose when Selective was the insurance carrier for BCJ; and (2) Reliance had assumed the insurance contract through novation and IGA was liable for the claim due to Reliance's insolvency.

Bowles, 172 N.C. App. at 151-52, 615 S.E.2d at 726. IGA argued the Industrial Commission erred in finding BCJ's claim, which

came into existence when Selective was BCJ's insurer and SISA was Selective's security association, was a "covered claim" pursuant to N.C. Gen. Stat. § 58-48-20(4). *Bowles*, 172 N.C. App. at 153, 615 S.E.2d at 727. This Court explained:

> N.C. Gen. Stat. § 58-48-20(4) (2003) defines a "covered claim" as
>
> > an unpaid claim, including one of unearned premiums, which is in excess of fifty dollars ($50.00) and arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Article applies as issued by an insurer, if such insurer becomes an insolvent insurer....
>
> An insolvent insurer is:
>
> > (i) an insurer licensed and authorized to transact insurance in this State either at the time the policy was issued or when the insured event occurred and (ii) against whom an order of liquidation with a finding of insolvency has been entered after the effective date of this Article by a court of competent jurisdiction in the insurer's state of domicile or of this State under the provisions of Article 30 of this Chapter, and which order of liquidation has not been stayed or been the subject of a writ of supersedeas or other comparable order.
>
> N.C. Gen. Stat. § 58-48-20(5) (2003).
>
> The Commission concluded IGA's liability for plaintiff's claim arose when Reliance assumed Selective's obligations and rested its conclusion on applying the law of novation.

Bowles, 172 N.C. App. at 153, 615 S.E.2d at 727. This Court held that Reliance had assumed all of Selective's workers' compensation claims obligations through the statutory novation effected by the execution of the assumption reinsurance agreement on 31 December 1998. *Id.* at 154, 615 S.E.2d at 728. When a novation occurs through the execution of an assumption reinsurance agreement, "the result [is] that the transferring insurer is thereby relieved of all insurance obligations or risks transferred under the assumption reinsurance agreement and the assuming insurer is directly and solely liable to the policyholder for those insurance obligations or risks." N.C. Gen. Stat. § 58-10-40 (2013). This Court held: "The [assumption reinsurance] agreement did not create a new contract for insurance coverage but solely substituted a new party, Reliance for Selective, to the contract." *Bowles*, 172 N.C. App. at 154, 615 S.E.2d at 728. "Reliance [was] deemed to have replaced Selective as if Reliance had issued the original contract of insurance to BCJ." *Id.* This Court therefore affirmed the ruling of the Commission that IGA was the obligated organization upon the insolvency of Reliance, even though the workers' compensation obligations originated when Selective was the responsible self-insurer, and SISA was the organization

responsible for paying Selective's covered claims in the event of Selective's insolvency:

> The original insurance policy between BCJ and Selective became a direct insurance obligation when Reliance expressly assumed Selective's book of business. Through novation, Reliance is deemed to have issued the insurance policy. Reliance is a "direct insurer" placing it within the obligations of IGA by N.C. Gen. Stat. § 58-48-35. Reliance became insolvent triggering the application of N.C. Gen. Stat. § 58-48-1 *et seq.* to IGA. Plaintiff's claim is a "covered claim" issued by an "insolvent insurer" and became IGA's obligation. The Commission properly concluded plaintiff's claim is within the statutory obligations of IGA.

Id. at 156, 615 S.E.2d at 728-29.

In the present case, IGA argues that *Bowles* does not control on the current facts because there was no statutory novation in the present case. However, the result of a statutory novation is "that the transferring insurer is thereby relieved of all insurance obligations or risks transferred under the assumption reinsurance agreement and the assuming insurer is directly and solely liable to the policyholder for those insurance obligations or risks." N.C. Gen. Stat. § 58-10-40. The merger agreement between CompTrust and CAGC achieved precisely this result. The merger agreement states:

> On the Effective Date [of the merger] the

> separate existence of CompTrust shall cease, and CompTrust shall be transferred into CAGC[] which, as the Surviving Corporation, shall possess all the right, privileges, powers, and franchises, of a public as well as of a private nature, and be subject to all the restrictions, disabilities, and duties of CompTrust; and, all the rights, privileges, powers, and franchises of CompTrust and all property, real, personal, and mixed, and all debts due to CompTrust on whatever account, shall be vested in [CAGC.] [And] all debts, liabilities, and duties of CompTrust shall thenceforth attach to [CAGC] and may be enforced against it *to the same extent as if said debts, liabilities, and duties had been incurred or contracted by it*. (Emphasis added).

As in *Bowles*, 172 N.C. App. at 156, 615 S.E.2d at 728-29, in the present case all of the self-insurer's (CompTrust's) debts and obligations were transferred to the direct insurer (CAGC) "to the same extent as if said debts, liabilities, and duties had been incurred or contracted by [CAGC,]" the direct insurer. We do not believe it is relevant on these facts whether this result was achieved through the execution of an assumption reinsurance agreement, or through the execution of a merger agreement. The responsibility for paying the relevant workers' compensation claims was removed from CompTrust and assumed by CAGC. According to the merger agreement, CAGC was "deemed to have issued the insurance polic[ies]." *Id.* at 156, 615 S.E.2d at 728. Further:

> [CAGC] is a "direct insurer" placing it

> within the obligations of IGA by N.C. Gen. Stat. § 58-48-35. [CAGC] became insolvent triggering the application of N.C. Gen. Stat. § 58-48-1 *et seq.* to IGA. [The relevant claims are] "covered claim[s]" issued by an "insolvent insurer" and became IGA's obligation.

Id. at 156, 615 S.E.2d at 728-29. In *Bowles*, neither SISA nor IGA were parties to the assumption reinsurance agreement, and neither had any ability to shape that agreement. In the present case, neither SISA nor IGA were parties to the merger agreement, and neither had any ability to shape that agreement. We can see no equitable nor policy differences between the outcome in *Bowles* and our holding in the present case.

We reverse and remand to the trial court to enter judgment ruling that IGA is estopped from denying that it is obligated under the North Carolina Insurance Guaranty Association Act for any of the pre-merger workers' compensation claims made or incurred against CompTrust before 1 July 2008.

Reversed and remanded.

Judges GEER and STROUD concur.

Report per Rule 30(e).

Exhibit B

No. 70P15 TENTH DISTRICT

Supreme Court of North Carolina

WAYNE GOODWIN, as Commissioner of Insurance of the State of North Carolina, Petitioner

v

CAGC INSURANCE COMPANY, Respondent

v

NORTH CAROLINA INSURANCE GUARANTY ASSOCIATION, Intervenor, Respondent, Counterclaimant, and Cross-Claimant

v

NORTH CAROLINA SELF-INSURANCE SECURITY ASSOCIATION, Intervenor, Respondent, Counterclaimant, and Cross-Claimant

From N.C. Court of Appeals
(14-445)
From Wake
(12CVS1270)

ORDER

Upon consideration of the petition filed on the 9th of February 2015 by North Carolina Insurance Guaranty Association in this matter for discretionary review of the decision of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 10th of June 2015."

s/ Beasley, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 16th day of June 2015.

Christie Speir Cameron Roeder
Clerk, Supreme Court of North Carolina

M. C. Hackney
Assistant Clerk, Supreme Court Of North Carolina

Copy to:
North Carolina Court of Appeals
Ms. Catherine R. Stuart, Attorney at Law, For North Carolina Self-Insurance Security Association - (By Email)
Ms. Susan J. Vanderweert, Attorney at Law - (By Email)
Mr. David W. Boone, Special Deputy Attorney General, For Goodwin, Wayne (Commissioner of Insurance) - (By Email)
Ms. M. Denise Stanford, Assistant Attorney General - (By Email)
Mr. David K. Liggett, Attorney at Law, For CAGC Insurance Company - (By Email)
Mr. James L. Conner, II, Attorney at Law - (By Email)
Mr. Christopher Blake, Attorney at Law, For North Carolina Insurance Guaranty Association - (By Email)
Mr. Joseph W. Eason, Attorney at Law, For North Carolina Insurance Guaranty Association - (By Email)
Ms. Amie C. Sivon, Attorney at Law, For CAGC Insurance Company - (By Email)
Mr. William W. Pollock, Attorney at Law, For CAGC Insurance Company - (By Email)
West Publishing - (By Email)
Lexis-Nexis - (By Email)

No. 70P15 TENTH DISTRICT

Supreme Court of North Carolina

WAYNE GOODWIN, as Commissioner of Insurance of the State of North Carolina, Petitioner

v

CAGC INSURANCE COMPANY, Respondent

v

NORTH CAROLINA INSURANCE GUARANTY ASSOCIATION, Intervenor, Respondent, Counterclaimant, and Cross-Claimant

v

NORTH CAROLINA SELF-INSURANCE SECURITY ASSOCIATION, Intervenor, Respondent, Counterclaimant, and Cross-Claimant

From N.C. Court of Appeals
(14-445)
From Wake
(12CVS1270)

ORDER

Upon consideration of the conditional petition filed on the 23rd of February 2015 by North Carolina Self-Insurance Security Association in this matter for discretionary review of the decision of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Dismissed as moot by order of the Court in conference, this the 10th of June 2015."

s/ Ervin, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 16th day of June 2015.

Christie Speir Cameron Roeder
Clerk, Supreme Court of North Carolina

M. C. Hackney
Assistant Clerk, Supreme Court Of North Carolina

Copy to:
North Carolina Court of Appeals
Ms. Catherine R. Stuart, Attorney at Law, For North Carolina Self-Insurance Security Association - (By Email)
Ms. Susan J. Vanderweert, Attorney at Law - (By Email)
Mr. David W. Boone, Special Deputy Attorney General, For Goodwin, Wayne (Commissioner of Insurance) - (By Email)
Ms. M. Denise Stanford, Assistant Attorney General - (By Email)
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Ms. Amie C. Sivon, Attorney at Law, For CAGC Insurance Company - (By Email)
Mr. William W. Pollock, Attorney at Law, For CAGC Insurance Company - (By Email)
West Publishing - (By Email)
Lexis-Nexis - (By Email)

Exhibit C

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

2015 JUL 27 PM 3:20

12 CVS 001270

WAKE COUNTY, C.S.C.

WAYNE GOODWIN,
as Commissioner of Insurance
of the State of North Carolina,
Petitioner,

BY

v.

CAGC INSURANCE COMPANY,
Respondent,

v.

NORTH CAROLINA INSURANCE
GUARANTY ASSOCIATION,
Intervener, Respondent,
Counterclaimant, and
Cross-Claimant,

v.

NORTH CAROLINA SELF-INSURANCE
SECURITY ASSOCIATION,
Intervener, Respondent,
Counterclaimant, and
Cross-Claimant.

ORDER UPON ISSUANCE OF CERTIFICATION OF THE N.C. COURT OF APPEALS AFTER DENIAL OF THE PETITION FOR DISCRETIONARY REVIEW BY THE N.C. SUPREME COURT (NO. COA14-445)

This matter is before the undersigned Superior Court Judge Presiding upon certification by the North Carolina Court of Appeals that the North Carolina Supreme Court has denied the Petition for Discretionary Review in the above captioned action.

According to the Order of the North Carolina Court of Appeals which was certified to the Wake County Superior Court on 17 June 2015, the Petition for Discretionary Review filed by the North Carolina Insurance Guaranty Association was denied by order of the North Carolina

Supreme Court on 10 June 2015. Accordingly, the undersigned directs judgment be entered as follows:

1. Judgment is hereby entered against the North Carolina Insurance Guaranty Association ("NCIGA") and NCIGA is hereby ordered to pay all pre-merger North Carolina workers' compensation claims of CAGC Insurance Company whether the workers' compensation claims are currently known or have been incurred but not yet reported;

2. NCIGA shall reimburse the North Carolina Self-Insurance Security Association for all sums expended for claim and claims related expenses resulting from the January 17, 2014 Liquidation of CAGC Insurance Company.

IT IS SO ORDERED.

This the 27 day of July, 2015.

Donald W. Stephens
Senior Resident Superior Court Judge Presiding

Exhibit D

ARTICLES OF DISSOLUTION

COMPTRUSTAGC OF SOUTH CAROLINA
(A South Carolina Business Trust)

WHEREAS, pursuant to that certain Agreement and Declaration of Trust, made and entered into as of May 14, 1982, and subsequently amended June 23, 1983, May 21, 1992, April 28, 1993 and July 1, 200 (hereinafter the "Trust Agreement") Carolinas AGC, Inc, (hereinafter "CAGC") as grantor and the original trustees duly appointed by CAGC established CompTrustAGC of South Carolina (hereinafter "CompTrustAGC-SC") as a South Carolina business trust to fulfill the obligations and liabilities pursuant to the South Carolina workers' compensation laws of employers that were members of CompTrustAGC-SC;

WHEREAS, Harry Lee Mashburn, James Thomas Tharp and Hugh K. Leatherman, Sr., are the current Trustees of CompTrustAGC-SC (hereinafter the "Trustees"), duly appointed as trustees pursuant to the Trust Agreement;

WHEREAS, CompTrustAGC-SC is duly qualified as a workers' compensation self-insurance group pursuant to the laws of the state of South Carolina and is subject to regulation by the South Carolina Workers' Compensation Commission;

WHEREAS, CAGC and the Trustees have entered into and consummated that certain December 28, 2010 Loss Portfolio Transfer and Assumption Agreement wherein all of the workers' compensation claims liabilities of CompTrustAGC-SC and all other liabilities and obligations of CompTrustAGC-SC were transferred to and assumed by CAGC Insurance Company (hereinafter "CAGCIC") in exchange for the transfer of all of the assets of CompTrustAGC-SC to CAGCIC;

WHEREAS, CompTrustAGC-SC has provided a final financial accounting to CAGC pursuant to Article VI, Section 5 of the Trust Agreement; and,

WHEREAS, CAGC and the Trustees now desire to terminate and dissolve CompTrustAGC-SC by entering into these Articles of Dissolution (hereinafter "Articles") and to hold the Trustees harmless for any claims, liabilities or obligations of CompTrustAGC-SC that may arise following the termination and dissolution of CompTrustAGC-SC.

NOW, THEREFORE, CAGC and the Trustees agree as follows:

1. Capitalized terms in these Articles have the same meaning as in the Trust Agreement.

2. These Articles shall become effective at 12:01 a.m. on April 1, 2011.

3. The Trustees are hereby indemnified against and held harmless for any alleged debts, liabilities or obligations asserted against CompTrustAGC-SC after the effective date of

these Articles; and, all post-dissolution alleged debts, liabilities and obligations of CompTrustAGC-SC shall be referred to CAGCIC.

4. An executed copy of these Articles shall be delivered to the South Carolina Workers' Compensation Commission.

IN WITNESS WHEREOF, these Articles have been executed this the 31st day of March, 2011.

CAROLINAS AGC, INC.

By: _____ (Seal)
S. Mark Good,
Chair of the Board

Attest: _____, CAE, CMC
Cynthia Mills, CAE, CMC,
Secretary

COMPTRUSTAGC of SOUTH CAROLINA
TRUSTEES

By: _____ (Seal)
Hugh K. Leatherman, Sr. Trustee

By: _____ (Seal)
Harry Lee Washburn, Trustee

By: _____ (Seal)
James Thomas Tharp, Trustee

Unless otherwise expressly noted herein, this Agreement is for the benefit of the Parties only, and not for the benefit of any other person or entity, except that this Agreement shall inure to the benefit of and be binding upon the successors, assigns, heirs, and legal representatives of the Parties to this Agreement. Nothing in this Paragraph shall be construed to limit the right of VWGoA to approve the sale or transfer of dealerships or expand the limited right of Opt-In Dealers to assign their right to receive any amount due hereunder as set forth in Section I.1.D.

10. Non-Waiver.

The waiver by either Party of any breach or violation of or default under any provision of this Agreement will not operate as a waiver of such provision or of any subsequent breach, violation or default under this Agreement.

11 Attorneys' Fees.

The Parties agree that each Party shall be responsible for its own attorneys' fees and costs related to the negotiation and execution of this Agreement and in the event of any future action or proceeding to enforce the rights or obligations set forth in this Agreement.

12. Challenge to Release.

In the event of any future challenge to the Releases contained in this Agreement or any future action or proceeding based on a released claim by the Committee or any Opt-In Dealer, this Agreement shall become voidable at the sole discretion of VWGoA, as to that Party In the event that VWGoA elects to void this Agreement with respect to that party, the party making such challenge or bringing such action or proceeding shall immediately repay VWGoA

Confidential Draft

any consideration VWGoA paid to that party pursuant to this Agreement with legal interest thereon and shall also be responsible for VWGoA's attorneys' fees and costs related to the challenge, action, or proceeding. The challenging party also expressly agrees and authorizes VWGoA to debit its open parts account in the amount of any settlement funds paid to the challenging party under this Agreement, and the challenging party acknowledges VWGoA's right to off-set any settlement funds paid to that party under this Agreement from any funds owed to that party by VWGoA.

13. Timing.

Time is of the essence with respect to fulfillment of this Agreement. If any deadline in this Agreement falls on a weekend or federal holiday, the deadline is extended to the first business day thereafter.

14. Counterparts.

This Agreement may be executed in counterparts, and counterparts that are scanned or sent by facsimile may be accepted as an original.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date indicated below:

VOLKSWAGEN GROUP OF AMERICA, INC.

By: _____ Date: _____

Its: _____

By: _____ Date: _____

Its: _____

Confidential Draft

CONDITIONAL SETTLEMENT AND RELEASE AGREEMENT

DEALER INVESTMENT COMMITTEE, LLC

By: _____ Date: _____

Its: _____

Confidential Draft

CONSENT TO ALL TERMS AND OPT-IN TO THE AGREEMENT:

Dealer Name: _____

By: _____ Date: _____

Its: _____

**By signing to Opt-In to the Agreement, I agree and understand that I am freely and voluntarily consenting to all terms of pages 1-15 of the Agreement, including the release of all claims against VWGoA, its parents, affiliates, and subsidiaries set forth in Section I.4 on pages 6-7 of the Agreement, the release of all claims against the Committee and its members set forth in Section I.5 on pages 7-8 of the Agreement, and the provisions related to challenging the releases or filing a suit or claims against VWGoA, its parents, affiliates or subsidiaries based in any way on a claim released herein as set forth in Section IV.12 on page 14 of the Agreement.

Page 3: [1] Commented [A2]	Author	8/1/2016 10:12:00 PM

Nelson Mullins 2: We need to decide which of the following 5 payment scenarios to use (scenario 4 is currently in the Agreement):

Scenario 1

- Year 1 — 6 month lump sum payment plus 6 individual monthly payments
- Year 2 — 6 month lump sum payment plus 6 individual monthly payments
- Year 3 — 6 month lump sum payment plus 4 individual monthly payments

Scenario 2

- Year 1 — 12 month lump sum payment
- Year 2 — 12 month lump sum payment
- Year 3 — 10 month lump sum payment

Scenario 3

- Year 1 — 4 month lump sum payment plus 8 individual monthly payments

- Year 2 — 4 month lump sum payment plus 8 individual monthly payments

- Year 3 — 4 month lump sum payment plus 6 individual monthly payments

Scenario 4

- Year 1 — 12 month lump sum payment

- Year 2 — 12 individual monthly payments

- Year 3 — 10 individual monthly payments

Scenario 5

Years 1 - 3 — Decreasing monthly payment from month 1 to 34.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Raymond. G Farmer, as Director of the South Carolina Department of Insurance, Petitioner, vs. CAGC Insurance Company, In Liquidation, Respondent. South Carolina Property and Casualty Insurance Guaranty Association, Intervenor-Petitioner, vs. CAGC Insurance Company, In Liquidation; Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in Liquidation; and ComptrustAGC of South Carolina a/k/a ComptrustAGC of South Carolina, Inc., Intervenor-Respondent.	IN THE COURT OF COMMON PLEAS JUDICIAL CIRCUIT CASE NO.: 2014-CP-40-0313 **MOTION AND ORDER INFORMATION** **FORM AND COVERSHEET**

RICHLAND COUNTY
FILED
2015 OCT 13 PM 4:32
JEANNETTE W. WALTERS
CLERK OF COURT

Plaintiff's Attorney: Geoffrey R. Bonham, Esq., Address: PO Box 100105 Columbia, SC 29202 Phone: 803-737-6132 Fax 803-737-6227 E-mail: gbonham@doi.sc.gov	Intervenor- Petitioner's Attorney: Tara C. Sullivan, Bar No. 79806 Address: 1320 Main Street, Columbia, SC 29201 Phone: 803-255-9591 E-mail: tara.sullivan@nelsonmullins.com

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion for Reconsideration
Estimated Time Needed: 20 min Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Tara C. Sullivan Date 10/13/15
Signature of Attorney for ☐ Plaintiff /☐ Defendant ☒ Intervenor-Petitioner

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Raymond G. Farmer, as Director of the South Carolina Department of Insurance, Petitioner, vs. CAGC Insurance Company, In Liquidation, Respondent.	)	Civil Action No. 2014-CP-40-0313 **ASSOCIATION'S MOTION PURSUANT TO S.C. R. CIV. P. 52(b) AND 59(e) REGARDING ORDERS FILED SEPTEMBER 30, 2015**
South Carolina Property and Casualty Insurance Guaranty Association, Intervenor-Petitioner. vs. CAGC Insurance Company, in Liquidation; Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in Liquidation; and CompTrustAGC of South Carolina a/k/a CompTrustAGC of South Carolina, Inc., Intervenor-Respondents.	)	

RICHLAND COUNTY
FILED
2015 OCT 13 PM 4:32
JEANNETTE W. McBRIDE
C.C.P. & G.S.

Pursuant to S.C. R. Civ. P. 52(b) and 59(e), Intervenor-Petitioner South Carolina Property and Casualty Insurance Guaranty Association ("Association"), requests that this Court reconsider, alter, amend, and/or clarify its Order Denying the Association's Motion for Summary Judgment filed at 2:54 PM on September 30, 2015 ("First Order") and its Order Granting the Motion to Quash Discovery and Motion to Dismiss filed by Intervenor-

Respondent CompTrustAGC of South Carolina a/k/a CompTrustAGC of South Carolina, Inc. ("CompTrust") and Denying the Association's Motion for Summary Judgment filed at 2:55 PM on September 30, 2015 ("Second Order," and collectively with the First Order, the "Orders"). The undersigned counsel for the Association received written notice of entry of the Orders on October 7, 2015, and this Motion is therefore timely filed.

The Association respectfully requests that the Court reconsider its ruling as follows:

1. The Court should reconsider and reverse its ruling granting CompTrust's Motion to Dismiss and Motion to Quash Discovery. Prior to these Motions, the Association filed a Motion to Intervene and Join Intervenor-Respondents, including CompTrust, in this matter. By Order filed June 9, 2014, Judge DeAndrea Benjamin joined CompTrust as a party to this action. In this Court's ruling on CompTrust's Motion to Dismiss and Motion to Quash Discovery, this Court reversed Judge Benjamin's order, found that CompTrust was improperly added as a party, and dismissed CompTrust. See Second Order. However, a circuit court judge does not have the power to set aside another circuit court judge's order. Cook v. Taylor, 272 S.C. 536, 252 S.E.2d 923 (1979) (citing Steele v. Charlotte, C&A R. Co., 14 S.C. 324 (1879); Cudd v. Williams, 39 S.C. 452, 18 S.E.3 (1893); State v. Harrelson, 211 S.C. 11, 43 S.E.2d 593 (1947); Dukes & Dukes v. Hygrade Food Products Corp., 236 S.C. 69, 113 S.E.2d 254 (1960); Ex Parte State, 263 S.C. 363, 210 S.E.2d 600 (1974)). As set forth in Judge Benjamin's order, CompTrust was properly added as an Intervenor-Respondent in this matter.

Moreover, the Court improperly dismissed CompTrust based on its prior dissolution and the statute of limitations. The Court's Second Order is internally inconsistent in that it finds that CompTrust properly dissolved pursuant to South Carolina's Business Corporation

Act ("Corporation Act") but refuses to apply the Corporation Act's provision regarding liability following dissolution to CompTrust. Second Order at pp. 6-8. In fact, the Court did not identify any limitations on a business trust's liability following its dissolution and specifically recognized that the Corporation Act provides for suits on unincorporated business trusts. Id. Accordingly, CompTrust's dissolution is not a proper ground for its dismissal from this action as it still has liability as provided by the Corporation Act in S.C. Code Ann. §§ 33-14-105 and 33-14-107 and as recognized in CompTrust's Articles of Dissolution.

The court also relied on the three-year statute of limitations found in S.C. Code Ann. § 15-3-530 to find that CompTrust "could not lawfully be made liable for the Contested Claims, because the latest of the Transferred Policies was underwritten in 2009, and they were lawfully transferred to CAGC in 2010." Id. at p. 7. However, as the Court noted, CAGC was not declared insolvent until January 6, 2014, which was the earliest time the subject claims could have been asserted against the Association. Id. at p. 3; see also S.C. Code Ann. § 15-3-535 (Actions "must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action."). Because three years had not yet expired before the filing of this declaratory judgment action on June 17, 2014, the statute of limitations is also not an appropriate basis upon which to dismiss CompTrust from this action.

The Court should reverse its decision to grant CompTrust's Motion to Dismiss and Motion to Quash and allow this declaratory judgment action to proceed with CompTrust as a party. The Court should further order CompTrust to provide discovery responses in this matter.

2. The Court should reconsider and reverse its ruling denying the Association's Motion for Summary Judgment. As an initial matter, the Court entered two orders denying the Association's single Motion for Summary Judgment with different reasoning and analysis for each. See First Order and Second Order. At a minimum, the Court should amend its decision on the Motion for Summary Judgment to consist of only one order.

Furthermore, the Court should reverse its denial of the Association's Motion for Summary Judgment. The Court correctly notes that S.C. Code Ann. § 38-31-30(b) prohibits the Association's liability for "insurance written on a retroactive basis to cover known losses which have resulted from an event with respect to which a claim has already been made, and the claim is known to the insurer at the time the insurance is bound." Second Order at pp. 8-9. The Court also correctly notes that this language describes the Loss Portfolio Transfer Agreement entered into by CompTrust and CAGC Insurance Company ("CAGC"). Id. Nevertheless, the Court disregards this prohibition and finds that the statute should be limited to "underwriting fraud" and not applied to the Loss Portfolio Transfer Agreement. Id. at p. 10. There is no support for this narrow interpretation of S.C. Code Ann. § 38-31-30(b).

Moreover, the Court relies on cases from other jurisdictions which are distinguishable from the present case. Id. at pp. 10-14; First Order at pp. 7-9 and 15-19. For example, the Court relies on litigation related to CAGC's receivership in North Carolina. Second Order at p. 14; First Order at pp. 7-8 and 10. However, the North Carolina counterpart to S.C. Code Ann. § 38-31-30(b) was not at issue in that litigation and, therefore, that ruling is not instructive here.

Finally, the numerous "findings" in denying summary judgment are unnecessary and unwarranted. See Ballenger v. Bowen, 313 S.C. 476, 477, 443 S.E.2d 379, 380 (1994)

(findings in denying summary judgment are not conclusive or binding on the parties to the action) (internal citations omitted); Weil v. Weil, 299 S.C. 84, 89, 382 S.E.2d 471, 473-74 (Ct. App. 1989) (holding that "a judge deciding a case on the merits is not bound by a prior order of another judge denying summary judgment"). Thus, the gratuitous "findings" should be omitted.

The Court should reverse its decision to deny the Association's Motion for Summary Judgment and find that the Association is entitled to the declaratory relief sought in this matter.

3. In addition to the arguments herein, the Association expressly incorporates by reference its Motion for Summary Judgment, its Memorandum in Support of its Motion for Summary Judgment, its Memorandum in Opposition to CompTrust's Motion to Quash, the arguments made at the hearing on September 18, 2015, before this Court, and such other and further pleadings, motions, and affidavits in the Record and considered by this Court in deciding this motion. The Association respectfully requests that the Order be amended as set forth therein.

<signature block next page>

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Attorneys for Intervenor-Petitioner South Carolina Property and Casualty Insurance Guaranty Association

Columbia, South Carolina

October 13, 2015.

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for SC Property and Casualty Insurance Guaranty Association, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Document(s):

Association's Motion Pursuant to S.C. R. Civ. P. 52(b) and 59(e) Regarding Orders Filed September 30, 2015

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2015 OCT 13 PM 4:32
JEANNETTE W. McBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
S.C.

Lisa S. Shumpert
Administrative Assistant

October 13, 2015