

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Appellate Case No. 2019-000182

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SC Court of Appeals

Donald Stanley and Sean Reiter,
Individually and as Class Representatives,

Respondents,

v.

Southern States Police Benevolent Association, Inc.,

Appellant.

AMENDED MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING

Appellant, PBA, respectfully submits this amended memorandum in support of its petition for rehearing of the Court's February 14, 2019, Order dismissing its appeal.

INTRODUCTION

This case, which impacts thousands of police officers, sheriff's deputies, and other law enforcement officials throughout South Carolina, warrants immediate review because of the trial court's certification of an injunctive relief class that impacts PBA's substantial right to assert individual defenses to the claims asserted. If the trial court's decision is not immediately reviewed, then the manner in which the trial will be conducted will be materially altered and the errors cannot be remedied at the end of the case. PBA respectfully submits the Court overlooked and/or misapprehended these ramifications of the trial court's certification when it summarily dismissed PBA's appeal simply because it

perceived this to be an appeal of a class action order, and not accounting for the injunctive relief and substantial rights issues presented which should be reviewed at this stage.

Plaintiffs, current (Stanley), and former (Reiter) South Carolina law enforcement officers, allege that PBA violated a number of state laws by offering “several benefits,” including a Legal Defense Benefit Plan (“Plan”), to its members, including Plaintiffs. (See Order Certifying Plaintiff Class (“Certification Order”) at 2.) They allege the Plan was actually either (1) a policy of insurance; or (2) a “prepaid legal services plan,” neither of which PBA was authorized to sell. (*Id.*) They allege that PBA did not comply with the legal services plan requirements under South Carolina law because it provided legal defense counsel to its members from a panel of defense attorneys rather than notifying its members they could choose their own attorneys. (*Id.*) They further allege PBA failed to disclose to its members that the Plan permitted PBA to withhold benefits “its members pay for if it determines that the member “has committed an intentional, deliberate, and/or illegal act.” (*Id.* at 2-3.) Plaintiffs seek “injunctive relief and damages, namely a rescission of the Plan and a refund of member dues or premiums paid, together with additional relief.” (*Id.* at 3.)

On December 31, 2018, the trial court certified a class of [a]ll residents of South Carolina who participated in the Defendant’s Legal Defense Benefit Plan by paying ‘member dues’ to the Defendant in exchange for benefits of said Plan from August 4, 2013 to August 4, 2016.” (*Id.* at 12.) On February 6, 2019, PBA filed its notice of appeal with this Court. On February 14, 2019, this Court dismissed PBA’s appeal. For the reasons discussed below, PBA respectfully submits it should be granted rehearing.

RELEVANT FACTUAL BACKGROUND

PBA is a 501(c)(5) non-profit, tax-exempt organization that has been in existence since 1987. (PBA's Memorandum in Opposition to Plaintiff's Motion For Class Certification at 2, Exhibit A.) It operates as a labor organization for the welfare of its police officer members to improve working conditions, reduce the hazards of law enforcement, and enhance the professionalism of law enforcement. (*Id.*) PBA is funded by membership dues, and its benefits from those dues include lobbying efforts, endorsement of candidates for office, accidental death benefits, publication of a police magazine, a legal defense benefit, and representation in grievance and disciplinary matters in the administrative context. (*Id.*) The legal defense benefit provides, subject to the Plan's terms and conditions, payment for an attorney (at no cost to the member with no caps or limits) should a member ever be involved in a critical incident or sued as a result of actions taken as a result of his or her employment as a law enforcement officer, including any criminal investigation of a PBA member. (*Id.* at 3.)

Plaintiff Stanley is a current PBA member and Plaintiff Reiter is a former PBA member. (Certification Order at 1.) They have sued PBA in this proposed class action, asserting claims for (1) breach of contract; (2) negligence; (3) breach of fiduciary duty; (4) unjust enrichment; (5) fraud in the inducement; (6) negligent misrepresentation; and (7) injunctive relief. (*Id.* at 2.) Plaintiffs do not claim they or anyone in the class has been denied a benefit under the Plan or has been damaged by PBA in any way whatsoever other than the voluntary payment of membership dues (Plaintiffs' Memorandum In Opposition To Defendants' Motion For Summary Judgment at 15, Exhibit B).

ARGUMENT

I. THE COURT’S ORDER OVERLOOKED OR MISAPPREHENDED THAT CLASS CERTIFICATION ORDERS ARE IMMEDIATELY APPEALABLE WHEN THEY CONTAIN “OTHER APPEALABLE ISSUES.”

In its Order dismissing the appeal, the Court observed that “[t]he general rule established by this Court is that class certification orders are not immediately appealable.” (Order Dismissing Appeal at 1.) The Court acknowledged, however, that there are some circumstances where a class certification order may be immediately appealable when it held that “[u]sually, an order denying class certification is interlocutory and not immediately appealable.” (*Id.*) (emphasis added). In the *Salmonsén* case the Court cited, the South Carolina Supreme Court held that class certification orders can be reviewed when they contain “other appealable issues.” *Salmonsén v. CGD, Inc.*, 377 S.C. 442, 448, 661 S.E.2d 81, 85 (2008); *see also Doe v. Howe*, 362 S.C. 212, 216, 607 S.E.2d 354, 356 (Ct. App. 2004) (“Certain interlocutory orders are, however, immediately appealable. An interlocutory order is appealable if it falls into one of a few, limited categories of appealable judgments or orders.”); *see also BLH v. South Carolina Department of Social Services*, 423 S.C. 422, 229, 814 S.E.2d 638, 642 (2018) (trial court’s order certifying class and requiring agency to provide names and addresses of potential class members was immediately appealable); *Eldridge v. City of Greenwood*, 308 S.C. 125, 127, 417 S.E.2d 532, 534 (1992) (order prohibiting a plaintiff from contacting potential members of class was deemed an injunction and, therefore, immediately appealable).

Trial court orders that award injunctive relief have been deemed immediately appealable in other contexts as well. *See Doe*, 362 S.C. at 215, 607 S.E.2d at 355 (denial of motion to proceed anonymously was appropriate for immediate review); *Ex Parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 4-5, 630 S.E.2d 464, 466 (2006) (order permitting

review of private divorce records deemed immediately appealable). In its Order dismissing the appeal, the Court did not cite the above authorities, which recognize that there are circumstances where class certification orders are immediately appealable and, in so doing, did not analyze whether this case includes such “other issues” sufficient to warrant immediate review. Accordingly, rehearing is required to address this threshold, yet essential, issue.

II. THE COURT OVERLOOKED OR MISAPPREHENDED THAT INJUNCTIVE RELIEF IS AN “OTHER ISSUE” SUFFICIENT TO WARRANT IMMEDIATE REVIEW.

Because the Court, in issuing its Order, apparently did not consider that there can be “other issues” warranting immediate review, it also did not consider whether the grant of an injunctive relief class, as occurred here, was such an “other issue.” Immediately reviewable “other” issues have been held to exist when the practical impact of class certification is to grant injunctive relief. *See BLH*, 423 S.C. at 229, 814 S.E.2d at 642 (trial court’s order certifying class and requiring agency to provide names and addresses of potential class members was immediately appealable); *Eldridge*, 308 S.C. at 127, 417 S.E.2d at 534 (order prohibiting plaintiff from contacting potential members of class was deemed an injunction and, therefore, immediately appealable). Injunctive relief has been deemed immediately appealable in other contexts as well. *See Doe*, 362 S.C. at 215, 607 S.E.2d at 355 (denial of motion to proceed anonymously was appropriate for immediate review); *Capital U-Drive-It*, 369 S.C. at 4-5, 630 S.E.2d at 466 (order permitting review of private divorce records deemed immediately appealable).

In the present case, the Court should grant rehearing so it may determine whether the injunctive relief class certified here warrants immediate review. In its Certification Order, the trial court found “Plaintiffs seek injunctive relief and damages, namely a

rescission of the Plan and a refund of member dues or premiums paid, together with additional relief.” (Certification Order at 3.) The court then certified the injunctive relief class of “[a]ll residents of South Carolina who participated in the Defendant’s Legal Defense Benefit Plan by paying “member dues” to the Defendant in exchange for benefits of said Plan from August 4, 2013 to August 4, 2016.” (*Id.* at 12.) The court further acknowledged that PBA has now become licensed as a prepaid legal benefits plan through the Department of Consumer Affairs and “Plaintiffs’ claims are primarily focused on the actions of Defendant PBA in the years leading up to the filing of the Complaint and prior to PBA seeking licensure.” (*Id.* at 2.) The court’s finding was directly in conflict with the fact that Plaintiffs seek injunctive relief “to bar Defendant PBA from operating as an insurer without proper authority and license, including barring Defendant PBA from soliciting, marketing, selling and issuing insurance contracts and adjusting claims unless Defendant obtains proper authority and licensing from the states in which it is operating.” (Am. Compl., ¶ 127, Exhibit C.) The Circuit Court’s certification of an injunctive relief class was error that should be corrected at this stage.

Indeed, Plaintiffs have not – and cannot – put forth any legal authority entitling them injunctive relief. In their Memorandum Opposing Summary Judgment (the only document in which Plaintiffs offered any caselaw pertaining to this claim), Plaintiffs merely cited South Carolina cases explaining that injunctive relief aims to prevent potential future irreparable injury. (Pls.’ Opp. To MSJ at 17, Exhibit B.) In their Amended Complaint, Plaintiffs assert that the future irreparable injury to the class would be PBA’s “acting without any regulatory oversight whatsoever,” and they seek injunctive relief to “bar [PBA] from operating” and issuing the Plan “unless Defendant obtains proper

authority and licensing.” (Am. Compl. ¶¶ 125, 127, Exhibit C.) Because, as the trial court acknowledged, PBA has sought, and now obtained, proper authority for providing the Plan under South Carolina law, and is currently regulated by the state through the South Carolina Department of Consumer Affairs, the speculative, hypothetical potential future irreparable injury Plaintiffs predict is factually impossible. *See Gardner v. South Carolina Dept. of Revenue*, 353 S.C. 1, 24 n.14, 577 S.E.2d 190, 202 n.14 (2003) (citing *Edisto Fleets, Inc. v. S.C. Tax Com’n*, 256 S.C. 350, 182 S.E.2d 713 (1971), for the proposition that a “plaintiff cannot maintain a class action where [the] record indicates he was not directly harmed by defendant[s’] actions”). The certification of the injunctive relief class was, therefore, error and rehearing is warranted to cure it.

Furthermore, Plaintiffs went even further in their depositions and demanded PBA be dismantled, with all membership agreements rescinded and all membership dues refunded. In other words, Plaintiffs seek a mandatory injunction against PBA. There is absolutely no basis for one. “A mandatory injunction is an especially drastic remedy and is rarely granted.” *Johnson v. Phillips*, 315 S.C. 407, 417, 433 S.E.2d 895, 901 (1993), *aff’d in part, rev’d in part on other grounds by Smith v. Phillips*, 318 S.C. 453, 458 S.E.2d 427 (1995). Furthermore, “if the damage suffered by the party seeking a mandatory injunction is very small, a mandatory injunction is unduly oppressive and not in accordance with the principles upon which equitable relief is usually granted.” *Johnson*, 315 S.C. at 417, 433 S.E.2d at 901.

Plaintiffs have made no effort to fit their case within the “rare[]” circumstances under which the “especially drastic remedy” of a mandatory injunction could be obtained. Their lack of damages further impairs that effort. Finally, most courts reject requests for a

rescissionary remedy on a classwide basis, and this Court should grant rehearing so that it can do so here. *See, e.g., Whitmire v. Adams*, 273 S.C. 453, 456, 257 S.E.2d 160, 163 (1979) (refusing relief in class action that sought rescission of deeds); *see generally Morris v. Wachovia Securities, Inc.*, 223 F.R.D. 284, 287 (E.D. Va. 2004) (“[A] majority of courts ... have refused to certify a class action where a rescissionary remedy is sought.”) (citing several cases).

The trial court’s certification, given the injunctive relief sought, should be immediately reviewed. PBA is currently operating in a state of uncertainty given the trial court’s Certification Order. Should it continue to collect membership fees? Should it continue to offer the benefits that its members pay for each month though their membership fees? Is it at risk of having to repay its South Carolina members their membership fees from years past? How does its current licensure as a legal services plan impact its operations? Once class notice is sent to its South Carolina membership, PBA expects to receive a substantial number of questions from its members about the notice (although, under the Certification Order, it will be precluded from discussing the case with them). The practical impact of the Certification Order is to impose a *de facto* injunction upon the operations of PBA given these unresolved issues. It would be far more efficient, and reduce the risk of an unnecessary trial, to review these injunctive relief-related issues now, rather than having to review them after trial.

If immediate review is denied, then the case will proceed to trial as a class action that never should have been certified, and impacts a substantial number of law enforcement officers in South Carolina who rely upon their PBA benefits for things like accidental death insurance, legal defense, and legislative efforts. The trial court has, through its certification

of an injunctive relief class, created the potential, and indeed likelihood, that the PBA membership in South Carolina will be greatly confused concerning the status of their membership rights and benefits. In its Certification Order, the trial court ordered “[a]ny notices required by the law and the South Carolina Rules of Civil Procedure shall be given to the class in a form and manner to be determined by the Court upon application by Plaintiffs or Defendants. In the interim, no party shall communicate with the class members regarding this class action and the allegations contained herein.” (Certification Order at 12.) Once notice is sent to the class, the South Carolina PBA law enforcement members will likely be confused as to the status of their benefits and whether they should continue to pay their dues. Further, PBA will be required to turn over its South Carolina membership list to Plaintiffs’ counsel which PBA deems highly confidential. For all of these reasons, this Court should grant rehearing to address the injunctive relief-related issues presented by the trial court’s Certification Order.

III. THE TRIAL COURT’S CERTIFICATION ORDER AFFECTS A “SUBSTANTIAL RIGHT” OF PBA AND SHOULD, THEREFORE, BE IMMEDIATELY REVIEWED.

Intermediate orders that involve the merits of the case may be immediately appealed under Section 14-3-330. An order involves the merits when it “must finally determine some substantial matter forming the whole or a part of some cause of action or defense.” *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993). Interlocutory orders affecting a “substantial right” may be immediately appealed pursuant to Section 14-3-330(2). In order to affect a “substantial right,” the order must discontinue an action, prevent an appeal, grant or refuse a new trial, or strike an action or defense.” *Id.* at 335 n.4, 236 S.E.2d 780 n.4.

In the present case, the Certification Order impacts PBA's substantial rights. By certifying a class of every dues paying member (during the relevant time period), the trial court stripped PBA of its ability to assert its individual defenses against each class member. In its Answer to Plaintiffs' Amended Complaint, PBA asserted the following Defenses: laches, (Eighteenth Defense), no right to reply on representations of PBA (Nineteenth Defense), waiver (Twentieth Defense), absence of clean hands (Thirty-Second Defense). (Answer to Amended Complaint, Exhibit D.) Each of these defenses is highly individualized. Unless the trial court intends to have mini-trials for each and every class member, PBA cannot now assert these individualized defenses against individual class members as to whom it may have them. The practical impact of the Certification Order is to strip PBA of these defenses. Indeed, the Certification Order is silent on these defenses. This Court should grant rehearing in order to consider and reverse the Certification Order to the extent it serves as a *de facto* stripping away of PBA's individualized defenses to the claims of individual class members, thereby impacting its substantial right to assert them.

CONCLUSION

For the reasons above, PBA respectfully requests that its petition be granted and the Court grant a rehearing of its Order.

Respectfully submitted,



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IN THE COURT OF COMMON PLEAS

THE NINTH JUDICIAL CIRCUIT

) CASE NO.: 2016-CP-10-4062

**THE SOUTHERN STATES POLICE
BENEVOLENT ASSOCIATION, INC.'S
MEMORANDUM IN OPPOSITION TO
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION**

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Appendix 1

other members of the purported class who have been denied a benefit under the PBA's plan. Despite those facts, Plaintiffs are seeking reimbursement of all membership dues paid to the PBA and rescission of their memberships based on the allegation the PBA has engaged in the illegal sale of insurance. Despite the lack of any such determination by the South Carolina Insurance Director and in the face of a decision that the PBA is regulated by the South Carolina Department of Consumer Affairs, Plaintiffs seek certification of a class action to strip the PBA of its South Carolina membership, force disgorgement of dues voluntarily paid, and leave members of the PBA without the benefits bargained for in their membership. For the reasons outlined herein, certification of the purported class is inappropriate under Rule 23, SCRPC, and the Motion should be denied.

FACTUAL BACKGROUND

A. The Southern States Police Benevolent Association (PBA)

The PBA is a labor organization distributing funds and resources on behalf of its members. A Georgia nonprofit corporation in existence since 1987, the PBA was formed to promote the welfare of law enforcement officers, and operates for the advancement of programs to improve working conditions for officers, reduce the hazards of law enforcement, and enhance the professionalism of law enforcement.

The PBA, which exists for the benefit of its members, consists of police officers across Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia. The PBA engages in lobbying and political activity on behalf of its membership, and is a 501(c)(5) tax exempt labor organization.

The PBA is funded by membership dues. It exists to secure the needs of police officers and offers members the following benefits:

- 1) Governmental affairs and lobbying for police officers' interests;
- 2) Screening and endorsement of candidates for public office;
- 3) Accidental death benefits;
- 4) Access to PBA staff attorneys for advice or counsel;
- 5) The police magazine Blue Review;
- 6) A legal defense benefit for the performance of official duties within accepted standards of the profession; and,
- 7) Representation in disciplinary and grievance proceedings.

The PBA Board of Directors consists of PBA members and governs the organization.

Under the legal defense benefit listed above, the PBA provides its members an attorney-at-no-cost in the event a member is involved in a critical incident or is sued as the result of actions taken during their employment as a law enforcement officer. The legal defense benefit became the focus of litigation following the shooting of Walter Scott. North Charleston Police Officer Michael Slager, then a PBA member, was denied benefits under the legal defense benefit plan. Litigation between Slager and the PBA was later settled and voluntarily dismissed by Slager.

The PBA is regulated as a prepaid legal company under the umbrella of the South Carolina Department of Consumer Affairs. In December of 2016, the PBA voluntarily reached out to the Department of Consumer Affairs to determine whether it fell within the Department's authority. The Department issued an opinion on March 31, 2017 finding the PBA was a prepaid legal company and was subject to the Department's regulation. The PBA has since registered with the Department of Consumer Affairs and paid a \$13,000 filing fee to come into compliance with the Department's regulations. (See Ex. A).

B. The Lawsuit's Allegations

In the instant action, Donald Stanley, a Lieutenant with Charleston County Sheriff's Office and current member of the PBA, and Sean Reiter, a former officer with the North Charleston Police Department and former PBA member, have sued the PBA as purported class representatives alleging the following causes of action: (1) Breach of Contract; (2) Negligence; (3) Breach of Fiduciary Duty; (4) Unjust Enrichment and Restitution; (5) Fraud in the Inducement; (6) Negligent Misrepresentation; and (7) Injunctive Relief.

While the Complaint contains 125 numbered allegations, the wrongful conduct alleged concerns selling insurance without a license. The Complaint alleges the PBA's legal defense benefit is insurance, the PBA is not licensed to sell insurance, and, thus, Stanley and Reiter, as well as the purported class, should recover the dues they paid as members because the PBA is not licensed to sell insurance. The Complaint does not allege that any member has been wrongfully denied the legal defense benefit or that any member has been damaged in any way other than the voluntary payment of dues to the PBA.

Plaintiffs now seek certification of a South Carolina class of current and former PBA members. The goal of the purported class is to seek rescission of the legal defense plan and a refund of all member dues voluntarily paid to the PBA.

ARGUMENT

I. PLAINTIFFS CANNOT SATISFY THE REQUIREMENTS OF RULE 23, SCRPC

Plaintiffs bear the burden of persuasion in class certification. Here, Plaintiffs have failed to set forth an evidentiary record which will support the granting of class certification. Waller v.

Seabrook Island Prop. Owners Ass'n, 300 S.C. 465, 467-68, 388 S.E.2d 799, 801 (1990). A class is not maintainable as a class action simply by virtue of its designation as such in the pleadings. In re American Medical Sys., Inc., 75 F. 3d 1069, 1079 (6th Cir. 1996). Rather, a plaintiff bears the burden of proving she has established each of the prerequisites of a class. Waller v. Seabrook Island Prop. Owners Ass'n, 300 S.C. 465, 467-68, 388 S.E.2d 799, 801 (1990) (citing Windham v. American Brands, Inc., 565 F.2d 59 (4th Cir. 1977)). "It is imperative the court apply a rigorous analysis to assure the prerequisites of Rule 23(a) have been satisfied." Waller, 388 S.E.2d at 801 (citation omitted). If the plaintiff fails to satisfy any one of the Rule 23(a) requirements, that failure is fatal to a motion to certify a class. Id.; see also Ferguson v. Charleston Lincoln Mercury, Inc., 344 S.C. 502, 510, 544 S.E.2d 285, 289 (Ct. App. 2001). The class action was designed as "an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." Califano v. Yamasak, 442 U.S. 682, 700-01, (1979). This exception is not warranted here.

Proponents of class certification bear the burden of proving all five prerequisites. Under Rule 23(a), SCRCP the prerequisites are:

- (1) the class must be 'so numerous that joinder of all members is impracticable;'
- (2) there must be 'questions of law or fact common to the class;'
- (3) the 'claims or defenses of the representative parties must be typical of the claims or defenses of the class;'
- (4) 'the representative parties must fairly and adequately protect the interests of the class;' and
- (5) 'the amount in controversy must exceed \$100.00 for each member of the class.'

Gardner v. S.C. Dept. of Revenue 353 S.C. 1, 577 S.E.2d 190 (2003). The Plaintiffs, as proponents of class certification, have the burden of proving that each of these pre-requisites to class certification has been met. Id.; citing Waller, 300 S.C. 465, 388 S.E.2d 799 (1990); Windham v. American Brands, Inc., 565 F.2d 59 (4th Cir. 1977), cert. denied, 435 U.S. 968, 98

S.Ct. 1605 (1978). The failure of the proponents to satisfy any one of the pre-requisites is fatal to class certification. Id., citing Waller, supra., citing Tolbert v. Daniel Const. Co., 332 F.Supp. 772 (D.C.S.C. 1971). As discussed below, Plaintiffs are unable to satisfy **any** of the requirements of SCRCF, Rule 23(a); therefore, Plaintiffs' Motion for Class Certification must be denied.

A. Numerosity

The topic of numerosity has not been extensively discussed by South Carolina courts, thus, there has not been a definitive ruling in this state on the requisite number of parties to satisfy the numerosity element of Rule 23. However, the importance of the numerosity requirement should not be overlooked, as all members of the class will be bound by the judgment. Ripley v. Denver U.S. Nat. Bank, 260 F. Supp. 704, 712 (D. Colo. 1966).

"Practicability of joinder depends on the size of the class, ease of identifying its numbers and determining their addresses, facility of making service on them if joined in the action, and their geographic dispersion." Lott v. Westinghouse Savannah River Co., 200 F.R.D. 539, 550 (D.S.C. 2000) (quoting Kilgo v. Bowman Transp., Inc., 789 F.2d 859, 878 (11th Cir. 1986)). "No bright line test exists for determining numerosity; instead, the determination rests on the court's practical judgment in light of the particular facts of the case." Id. However, Plaintiffs do have a burden to demonstrate that the proposed class size makes it impracticable for class members to bring individual actions. The mere speculation of counsel and conclusory assumptions and allegations with respect to the size of the class is insufficient to satisfy the numerosity requirement. Lloyd v. Industrial Bio-Test Labs, Inc., 454 F.Supp. 807 (D.C.N.Y. 1978). The proponent of certification must provide sufficient reliable information from which the approximate number of class members can be ascertained before a court can find joinder impracticable. Al Barnett & Son, Inc. v. Outboard Marine Corp., 64 F.R.D. 43 (D.C. Del. 1974).

Moreover, “[a] small class militates against certification.” CL-Alexanders Laing & Cruickshank v. Goldfield, 127 F.R.D. 454, 455-56 (S.D.N.Y. 1989).

In their Motion, Plaintiffs estimate that the purported class has “at least several thousand members.” (Mtn for Class Cert. p.10). However, Plaintiffs have not provided the court with sufficient, reliable information from which the approximate number of class members can be ascertained thus, failing to meet their burden. See Gardner v. S.C. Dept. of Revenue 353 S.C. 1, 577 S.E.2d 190 (2003) (the Plaintiffs, as proponents of class certification, have the burden of proving that each of these pre-requisites to class certification has been met.).

Moreover, as will be discussed more fully herein, the practicalities of the class action are wholly negated by the individual assessment of each proposed class member that will be required if this class is to be certified.

B. Commonality

To establish commonality, a party must show “there are questions of law or fact common to the class.” Rule 23, SCRPC. In other words, a party must set forth the existence of “significant common, legal, or factual issues” which bind the proposed class together. Gardner, 353 S.C. at 20-22, 577 S.E.2d at 200-01 (quoting Boggs v. Divested Atomic Corp., 141 F.R.D. 58, 64 (S.D. Ohio 1991)). Not every issue must be common to all class members; however, the class must share a determinative issue. Pope v. Heritage Cmtys., Inc., 395 S.C. 404, 422, 717 S.E.2d 765, 774 (Ct. App. 2011). To satisfy commonality and reach certification, a determinative issue must overshadow all issues. Questions that are not dispositive but only “propel the action into a posture where judicial scrutiny is necessary for just adjudication” do not establish the

commonality requirement. Gardner, 353 S.C. at 22, 577 S.E. 2d at 200. (quoting Stott v. Haworth, 916 F.2d 134, 145 (4th Cir.1990)).

Class certification is not appropriate where factual differences are the crux of a predominant legal issue. Id. "A representative class cannot exist where the court must investigate each plaintiff's prejudice claim where it is one of the two predominate issues in the case." Id. Critically, "a representative plaintiff cannot establish commonality . . . if the court must investigate each plaintiff's individual claim." Id. (quoting Peoples v. Wendover Funding Inc., 179 F.R.D. 492, 498 (D. Md. 1998)).

"Requiring such individualized examination negates the benefits of a class action suit." Gardner, 353 S.C. at 22, 577 S.E.2d at 201. "The very purpose of a class action is to avoid the necessity of requiring each member of the class to prove the elements of the cause of action." O'Quinn v. Beach Associates, 272 S.C. 95, 104, 249 S.E.2d 734, 738 (1978). "A court determines the existence of commonality among defendants by examining the plaintiffs' claims and the defendants' anticipated defenses." 353 S.C. at 22, 577 S.E.2d at 201.

In their Motion, Plaintiffs have set forth a variety of common questions that may apply to the purported class. However, this case boils down to two common questions of law: 1) whether the PBA was selling insurance without a license, and, 2) whether Plaintiffs were damaged by that action. Even if the PBA has sold insurance without a license, a point the PBA refutes, Plaintiffs cannot prevail unless they establish they were damaged by that action. See Gardner (discussing the need to prove damage necessary to recover from violation of statute and that proof of damages requires individual assessment and negated class action benefit). Plaintiffs focus their

arguments on the first question and a sundry of minor factual issues, but ignore the crux of the common question of law – whether the alleged violation of law has actually resulted in damage.

As a general rule, a party must establish prejudice as the result of another's failure to follow mandatory statutory procedure. Gardner, 353 S.C. at 14, 577 S.E.2d at 197. Moreover, the very causes of action pled by Plaintiffs require a showing of damages. The claims and their elements follow:

(1) Breach of Contract:

- a. a binding contract entered into by the parties;
- b. a breach or unjustifiable failure to perform the contract; and
- c. **damages suffered by the plaintiff as a direct and proximate result of the breach.**

Fuller v. Eastern Fire & Casualty Insurance Co., 240 S.C. 75, 124 S.E.2d 602, 610 (1962) (burden on plaintiff to prove contract, its breach, and damages caused by such breach).

(2) Negligence:

- a. a duty of care owed by the defendant to the plaintiff;
- b. a breach of that duty by a negligent act or omission; and
- c. **damages proximately resulting from the breach.**

Crolley v. Hutchins, 300 S.C. 355, 387 S.E.2d 715 (Ct. App. 1989).

(3) Breach of Fiduciary Duty:

- a. the existence of a fiduciary duty;
- b. a breach of that duty owed to the plaintiff by the defendant; and
- c. **damages proximately resulting from the wrongful conduct of the defendant.**

RFT Management Co., LLC v. Tinsley & Adams, LLP, 399 S.C. 322, 732 S.E.2d 166 (2012).

(4) Unjust Enrichment/*Quantum Meruit*:

- a. a benefit conferred upon the defendant by the plaintiff;
- b. a realization of that benefit by the defendant; and
- c. **retention by the defendant of the benefit under conditions that make it unjust to retain it without paying its value.**

Myrtle Beach Hosp. v. City of Myrtle Beach, 341 S.C. 1, 532 S.E.2d 868 (2000).

- (5) Fraud in the Inducement:
A plaintiff must prove the nine elements of fraud, **including damages arising from the fraudulent act**, as well as the following three elements:
- a. the alleged fraudfeasor made a false representation relating to a present or preexisting fact;
 - b. the alleged fraudfeasor intended to deceive him; and,
 - c. that plaintiff had a right to rely on the representation made to him.
- Moseley v. All Things Possible, Inc.*, 388 S.C. 31, 694 S.E.2d 43 (2010).
- (6) Negligent Misrepresentation:
- a. a false representation made by the defendant to the plaintiff;
 - b. a pecuniary interest by the defendant in making the statement;
 - c. a duty of care owed by the defendant to see that truthful information was communicated to the plaintiff;
 - d. the defendant breached the duty by failing to exercise due care;
 - e. the plaintiff justifiably relied on the representation; and
 - f. **the plaintiff suffered a pecuniary loss as a direct and proximate result of reliance on the representation.**
- Hurst v. Sandy*, 329 S.C. 471, 494 S.E.2d 847, 852 (Ct. App. 1997).

To argue that the element of prejudice as the result of the conduct complained of is not the predominate legal question at issue is misguided. Put simply, in order to obtain the relief requested there must be a showing of damage. As a prerequisite for relief, the element of damage must by its very nature serve as a predominate legal issue in this matter.

Plaintiffs would have this Court believe, by submitting what they believe to be a common question concerning PBA's status of under the Insurance Code, commonality is automatically satisfied; however, Plaintiffs have not, and cannot, put forth any case law or statute entitling Plaintiffs to the relief sought as the result of a licensing violation under the Insurance Code. In fact, a violation of the insurance licensing statutes does not create a private right of action. The PBA denies it is an insurance company. Instead, it is regulated by the Department of Consumer Affairs, with which it is now properly registered. (See Memorandum from Department of Insurance attached as ex. B). But, even if the PBA was an unlicensed insurance company, the lack of licensure does not create a cause of action for an individual or a class. Insurance

licensing statutes are enforced by the Insurance Commission, and do not create private causes of action.

The PBA has not found a reported opinion in which a plaintiff seeks to create a cause of action for a violation of insurance licensing statutes. While the South Carolina Supreme Court has been asked many times to create a private cause of action for violation of statutes which regulate insurance, each time the Court has refused to do so. For example, in Masterclean v. Star Ins., 347 S.C. 405, 566 S.E.2d 371 (2001), Masterclean attempted to sue its surety for bad faith refusal to pay on a bond. The Supreme Court held that the Insurance Trade Practices Act (S.C. Code Ann. §§ 38-57-10 *et seq.*) and the Claims Practices Act (S.C. Code Ann. §§ 38-59-20 *et seq.*) do not create private causes of action.

The Court held the Insurance Trade Practices Act provides administrative penalties for its violation. S.C. Code Ann. § 38-2-10. The Court also found that the Insurance Code gives the Department of Insurance authority to find violations. *Id.* at 415, 566 S.E.2d at 377 (citing S.C. Code Ann. § 38-3-110). As a result, a violation of the Insurance Trade Practices Act creates only an administrative remedy and not a private cause of action. *Id.* at 415, 556 S.E.2d at 377. Likewise, the Court found the Claims Practices Act does not create a private cause of action. Instead, it gives parties the right to administrative review before the Insurance Commission. *Id.* at 417, 556 S.E.2d at 377 (citing *Kleckley v. Northwestern National Casualty Co.*, 330 S.C. 277, 498 S.E.2d 669 (Ct. App. 1998)). As with the Insurance Trade Practices Act, South Carolina's insurance licensing provisions create a penalty for violations and a mechanism for enforcement. *See*, S.C. Code Ann. § 38-2-30 (establishing a penalty for acting without a license) and S.C. Code Ann. § 38-3-150 (granting the power to conduct hearings to the Insurance Commissioner).

As a result, there is no private cause of action for operating as an unlicensed insurer as alleged in the Complaint.

In addition, Plaintiffs' claim for rescission of the membership contract creates an untenable scenario for a class action. "Rescission is an equitable remedy that attempts to undo a contract from the beginning as if the contract had never existed." Anderson Cty. v. Preston, No. 5490, 2017 S.C. App. LEXIS 82, at 34 (Ct. App. Aug. 16, 2017) (quoting Ripley Cove, LLC, 406 S.C. at 413, 751 S.E.2d at 669; Mortg. Elec. Sys., Inc. v. White, 384 S.C. 606, 615, 682 S.E.2d 498, 502 (Ct. App. 2009)). Rescission returns the parties to their position prior to making the contract. Rescission, as a remedy, returns the parties to the status quo ante. Ellie, Inc. v. Miccichi, 358 S.C. 78, 95, 594 S.E.2d 485, 494 (Ct. App. 2004); See also First Equity Inv. Corp. v. United Serv. Corp. of Anderson, 299 S.C. 491, 496, 386 S.E.2d 245, 248 (1989) ("Rescission entitles the party to a return of the consideration paid as well as any additional sums necessary to restore [the party] to the position occupied prior to the making of the contract.").

In the case at hand, Plaintiffs' pursuit of this remedy will require not only the return of the dues paid to the PBA, but will also require Stanley, Reiter, and members of the class to return the benefits received from the PBA. In other words, rescission also requires the PBA be placed in its pre-contract position. Under this theory of recovery, the Court will be tasked with making an individual determination for each member of the class to ascertain the amount of dues paid the PBA and the costs of benefits provided by the PBA in order to properly implement rescission of each membership. Such a result would be burdensome for the court to undertake and completely negate the purpose of the class action. See Gardner, 353 S.C. at 22, 577 S.E. 2d at 200 (holding a plaintiff cannot establish commonality if the court must investigate each plaintiff's claim as individual examination negates the benefits of a class action).

Accordingly, in order for Plaintiffs and the proposed class to obtain the relief requested, Plaintiffs must prove they were damaged by the PBA's actions, which in turn requires each member of the class to individually prove the elements of the cause of action. The factual determination of prejudice is the crux of the predominate legal issue in this case which, negates the commonality element. Moreover, Plaintiffs' pursuit of rescission will necessitate a case-by-case determination by the court of fee paid versus benefits received. According to the Supreme Court, a representative class cannot exist where the court must investigate each plaintiff's prejudice claim when it is a predominate issue in the case. As stated in Gardner, "[r]equiring such individualized examination negates the benefits of a class action suit." Plaintiffs cannot show that commonality exists in this instance; therefore, Plaintiffs' Motion should be denied.

C. Typicality

To establish the typicality requirement, the "claims or defenses of the representative parties [must be] typical of the claims or defenses of the class." Pope v. Heritage Cmty., Inc., 395 S.C. 404, 422, 717 S.E.2d 765, 774 (Ct. App. 2011). "The representative party's interest in prosecuting his own case must simultaneously tend to advance the interests of the absent class members." Deiter v. Microsoft Corp., 436 F.3d 461, 466-67 (4th Cir. 2006). "For that essential reason, plaintiff's claims cannot be so different from the claims of absent class members that their claims will not be advanced by plaintiff's proof of his own individual claim." Id.

The typicality requirement focuses on the characteristics of the would-be class representative. Typicality entails an inquiry as to whether the named plaintiff's individual circumstances are markedly different or the legal theory upon which the claims are based differs from that upon which the claims of other class members will be based. The typicality requirement focuses on the consideration of whether the representatives' interests are truly

aligned and consistent with those of the class members. Smith v. The B&O Railroad Company, 473 F.Supp. 572 (D.C.Md. 1979). Moreover, typicality entails consideration of whether the plaintiffs can prove they have been injured by the same conduct has injured other class members and whether plaintiffs' claims are based upon conduct that is not unique to the named plaintiffs. Osgood v. Harrah's Entertainment, Inc., 202 F.R.D. 115, 124 (D.N.J. 2001). Here, as demonstrated below, Plaintiffs fail to satisfy these requirements.

When evaluating the typicality requirement, this Court must conduct a "rigorous analysis" into the characteristics of the class representatives and whether those claims advance the absent class members interests. See Waller, 300 S.C. at 467-68, 388 S.E.2d at 801 (1990) ("It is imperative the court apply a rigorous analysis to assure the prerequisites of Rule 23(a) have been satisfied."). Moreover, similar to commonality, Plaintiffs' claims and damages, as well as the defenses to those claims and damages must be consistent. To make this determination, it is important to understand what the named plaintiffs are seeking and their interests in prosecuting this claim.

Both Stanley and Reiter have testified that their goal is to ensure the PBA is properly regulated so that the circumstances surrounding the Slager denial does not occur again. (See Dep. of D. Stanley p.107, line 5-p.110, line 20; Dep. of S. Reiter p.56, line p.57, line14). Stanley and Reiter both blame the Slager denial on the lack of proper oversight; however, neither plaintiff could offer any examples of how they personally, or any other PBA member, has been damaged by the PBA outside of Slager. As a result of the Slager denial, Stanley and Reiter, as purported class representatives, are seeking rescission of the class members PBA membership and a refund of dues paid to the PBA by members of the class.

With that background in mind, the question posed by Rule 23 is whether a Slager-inspired lawsuit, thinly veiled as a request for oversight, with the end goal of terminating memberships and disgorgement of fees is typical and representative of the proposed class of PBA members. The PBA would offer these claims are not typical of the purported class, but represent the efforts of two individuals who are seeking a monetary reward at the expense of former and current PBA members.

To satisfy the typicality element of Rule 23, Plaintiffs bear the burden of proving the purported class is supportive of the claims that: 1) the PBA should be regulated as an insurance company; 2) the lack of licensure has caused damage to the class; 3) the memberships of the class should be rescinded; and, 4) the class is entitled to a full refund of dues paid to the PBA. Plaintiffs have produced no evidence that any other individuals who have or continue to voluntarily pay monthly membership dues to the PBA are desirous of that outcome. There has been no evidence presented that any other PBA member desires rescission of their membership. There has been no evidence presented that any former PBA member desires their membership dues be refunded. Moreover, there has been no evidence that any PBA member, past or present, desires the PBA be regulated as an insurance company or the perceived lack of oversight has resulted in any damage to any PBA member. In fact, in their responses to Interrogatories, Plaintiffs have failed to identify any witnesses beyond Stanley, Reiter, and PBA employees and officers as witnesses in this matter. (See Ex. C).

To argue the interests of the proposed class members would be served by Stanley and Reiter's drastic objectives is disingenuous, absent any evidence to support such a contention. The intentions laid out by Plaintiffs are not positive for PBA members, but would result in the rescission of their membership, and will ultimately result in a negative impact for those desiring

to remain a member with the PBA and receive the benefits they signed up to receive. Plaintiffs have not met their burden of establishing their claims as typical of the purported class. Accordingly, the Plaintiffs' Motion should be denied.

D. Adequacy of Representation

Rule 23(a)(4) SCRPC requires the representative party fairly and adequately protect the interests of the class. This requirement, like the typicality requirement, focuses on the proposed class representative. The South Carolina Supreme Court in Waller adopted the South Carolina district court's criteria set forth in Runion v. U.S. Shelter, 98 F.R.D. 313 (D.S.C. 1983). Waller at 468. In Runion, the court looked at two primary issues when determining whether a representative will fairly and adequately protect the interests of the class. The first is whether the representative has interests common with the unnamed members of the class, a requirement that has been interpreted to mean that the class representative should not have a significant antagonistic or conflicting interest to the unnamed members. The second is whether the named Plaintiff will vigorously prosecute the claims of the class members.

The PBA takes exception to Plaintiffs' claims that they are able to fairly represent and protect the interests of all class members. As discussed hereinabove, Plaintiffs are seeking a drastic remedy as it relates to the class members' relationship with the PBA. The PBA provides many services to its members, including lobbying efforts, accidental death benefits, advice and representation, and the oft-mentioned legal defense benefit. Current PBA members are paying dues to receive those benefits. The stated goal of this action is to judicially force the rescission of memberships and disgorgement of membership dues paid.

Plaintiffs fail to acknowledge that individuals included within the purported class rely on those significant benefits and are members of the PBA for valid and important reasons. For example, the PBA is currently providing legal counsel to seventy South Carolina PBA members, including Plaintiff Stanley. (See Affidavit of Charles Cordell attached as Ex. D). If Plaintiffs are successful, the memberships of those seventy members will be rescinded and the benefit of counsel removed. Further, under Plaintiffs' theory of rescission, such a recovery will require that both Plaintiffs and the PBA be returned to the status quo prior to the contract. Rescission, as a remedy, returns the parties to the status quo ante. Miccichi, 358 S.C. at 95, 594 S.E.2d at 494. In many instances, particularly involving those who have had an attorney provided by the PBA, members of the class may be required to compensate the PBA for the cost of the benefit provided in the event the cost of the benefits received exceeds the membership dues paid. This scenario may well come into play with respect to the class representatives who have both been provided the benefit of counsel by the PBA. Accordingly, Plaintiffs' pursuit of rescission not only would strip class members of their benefits and membership, but could result in monies being owed to the PBA by individual class members.

Plaintiffs' pursuit of rescission and disgorgement is not representative of a fair and adequate effort to protect the interests of *all* class members. Rather, Plaintiffs' efforts are adverse to PBA members who wish to remain members and retain their benefits. This is evidenced by the purported class representative's own testimony. Plaintiff Reiter admitted in his deposition that this lawsuit is seeking to shut the PBA down in its current form, and further acknowledged that he was unaware of any other member who shared that goal. (See Dep of S. Reiter p.45, line 10-p.46, line 3). The efforts by Plaintiffs to force a rescission of memberships, thus ending the benefits so many have paid for and relied upon, would likely be considered

repugnant by many of the proposed class. See Waller, 300 S.C. at 468, 388 S.E.2d at 801 (“The kind of antagonism that will defeat the maintenance of a class action is the kind which relates to the subject matter in controversy, as when the named representative has a claim which conflicts with the economic interests of the class.”). For these reasons, Plaintiffs’ Motion should be denied.

In addition to the lack of proper representation on the part of the class representatives, there are conflicts with class counsel that should preclude certification. While the PBA does not take issue with the ethics or legal ability of Plaintiffs’ counsel, the Bland and Richter firm has previously represented a Plaintiff that sued a member of the purported class. (See Affidavit of Charles Cordell, Ex. D) In addition, counsel of record, Andrew Savage, has previously provided legal representation to PBA members under the legal defense benefit plan he/they now criticize. (See Ex. D). Mr. Savage has represented several members of the purported class, most notably, Mr. Savage has represented both of the class representatives under the PBA legal defense benefit plan. (See Ex. D). Plaintiffs contend the legal defense benefit plan raises ethical questions, a point the PBA vehemently denies. Mr. Savage’s status of counsel for the proposed class presents a potential conflict as Mr. Savage’s prior conduct as a lawyer under the PBA legal defense plan is one of the very defenses the PBA will rely on in countering Plaintiffs’ claims of unethical practices. The PBA submits these potential conflicts be taken into consideration when evaluating certification under Rule 23.

E. Amount in Controversy

Rule 23(a)(5), SCRCF, mandates that the amount in controversy exceeds one hundred dollars for each member of the class. Plaintiffs claim they are entitled to a refund of all dues paid to the PBA during their membership period, thus satisfying the one hundred dollar requirement

of Rule 23. However, this bald allegation is not sufficient to establish this element of Rule 23. See In re American Medical Sys., Inc., 75 F. 3d 1069, 1079 (6th Cir. 1996) (stating a class is not maintainable as a class action simply by virtue of its designation as such in the pleadings); Waller, 300 S.C. at 467-68, 388 S.E.2d at 801 (1990) (stating a plaintiff bears the burden of proving she has established each of the prerequisites of a class and "[i]t is imperative the court apply a rigorous analysis to assure the prerequisites of Rule 23(a) have been satisfied.").

Stanley and Reiter do not allege any damages in their complaint other than dues they voluntarily paid as PBA members. See, Amended Complaint, ¶¶ 90, 94, 100, 104, 113, and 122. In addition, the PBA asked Stanley and Reiter to list their damages. Stanley and Reiter responded to the PBA's interrogatory as follows:

3. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the Plaintiff.

ANSWER: Plaintiff is still conducting discovery into this issue.

(See Ex. C).

Likewise, neither Mr. Stanley nor Mr. Reiter have testified to any damages. Mr. Stanley testified as follows:

Q All right. Has the PBA done anything to damage you?

MR. RICHTER: Object to the form.

A I think that the -- the -- I think the damages come in, in the -- the fact that -- the -- the potential of damages to me. I mean, I would -- could I be involved in the same situation that Michael Slager was and have -- have coverage denied. You know, I mean, we pay dues to support each other and the bottom line is that it -- it fell through in that case.

BY MR. BRADLEY:

Q Right. And Mr. Slager's been resolved, so --

A Yes, sir.

Q -- I -- I can't talk about the details of -- with it, because it's -- but -- but for the fact that it's been resolved, it's sealed.

A Sure.

Q My question is, how have you been damaged by something the PBA has done?

A Again, I think that the -- the potential for the damage is there, based on the -- if -- if I was involved in a similar situation.

Q All right. So would it be fair to say, as we sit here today, Mr. Stanley, the damage to you is something that could happen in the future?

MR. RICHTER: Object to the form.

A Not only something that could happen in the future, but I -- you know, my money also was there to support Michael Slager --

Q Right.

A -- and it -- it wasn't extended to him.

Q So as far as you're concerned, that damage is you think the organization made the wrong decision as to Mr. Slager?

A Yes, sir.

Q All right. Besides the fact of Mr. Slager, which has been resolved, what I want to know is how are you damaged by something the PBA has done.

A I think that I'm damaged in that -- in -- in the fact that -- again, the potential for damage, as well as the fact that I paid for -- my -- my dues don't go just for me. They go for other -- other law enforcement officers.

Q Right.

A And the fact that coverage was denied for him, I -- I think that is damaging.

Q Fair enough. So let's start from the beginning, then. The damages to you are you think Mr. Slager should have been defended by the PBA?

A Yes, sir.

Q All right. And you're concerned that in the future you might need the PBA and the PBA might not defend you?

A I'm -- I'm concerned that there could be a similar situation and the PBA decides they're not covering. And there's no oversight for that.

Q **All right. So my question is, besides what might happen to you in the future -- or to somebody else in the future -- and besides what happened to Mr. Slager, have you been damaged in any way by the PBA?**

A Besides those? No, sir.

(Dep. D. Stanley, p.74, l.3 -- p.76, l.16) (emphasis added).

Sean Reiter also testified that he had no damages as follows:

BY MR. BRADLEY:

Q Other than Michael Slager, have you been damaged by the PBA in any way?

A Yeah. I was damaged when Mike was damaged. Other than that, I don't know of any other members. Again, it hasn't been made public, so. But anyone who has been damaged, then, yes, I have been.

Q Right. **But you don't have any knowledge of anyone that's been damaged?**

A **No, sir.**

Q And other than Michael Slager, do you know of anyone that's been damaged by the PBA?

A No, sir.

(Dep. S. Reiter, p.43, ll. 2-14)(emphasis added).

In addition to Stanley and Reiter's lack of damages, the PBA hired an attorney to represent both Stanley and Reiter at their request; that attorney is Andrew Savage — the same attorney who is now suing the PBA on their behalf. (See Dep. of D. Stanley pp. 131-138 and S. Reiter Dep. pp. 63-65). Additionally, Stanley is currently being represented by attorney Abigail Walsh through the PBA on an unrelated civil matter. (See Dep. of D, Stanley pp. 124-125)(See also Ex. D). Thus, both Stanley and Reiter have received representation of an attorney from the PBA when requested. Furthermore, Plaintiffs have failed to put forth any evidence of any PBA member past or present, aside from Mr. Slager, has ever been denied a benefit by the PBA. Accordingly, absent any evidence to the contrary, Plaintiffs have failed to establish the one hundred dollar damage threshold.

In addition to the lack of damages, there is no legally cognizable theory of recovery that would entitle Plaintiffs to a refund of dues paid to the PBA as the result of a licensing violation. As discussed hereinabove, the insurance licensing statute does not create a private right of action.

Accordingly, absent any damages caused by the PBA, Plaintiffs are not entitled to any recovery due to the PBA's alleged failure to be properly licensed.

Moreover, South Carolina has explicitly rejected claims to recover money due to the lack of proper licensure. The residential contractor's licensing statutes prohibit an unlicensed residential contractor from suing to recover for work which requires a license. S.C. Code Ann. Ann. § 40-59-30. Even with this explicit bar, South Carolina courts do not allow a homeowner to recover money paid for work done solely because a homebuilder lacks a license. In Lenz v. Walsh, 362 S.C. 603, 608 S.E.2d 471 (Ct. App. 2005), the homebuilder sued to collect money due for the construction of a home. Id. The homeowners counter claimed for costs to complete the home. Id. The trial court dismissed the homebuilder's claim because the homebuilder did not have the required license. Id. The court ruled against the homeowner because the homeowners' counterclaim was for less than the amount owed to the builder. Id.

The Court of Appeals affirmed both rulings. Id. While the homebuilder could not enforce the contract because it lacked a license, the lack of a license by itself did not create a claim for the homeowners. Id. It held that "a homeowner may not recover payments already made to an unlicensed contractor merely because the contractor did not hold a license when the contract was executed." Id. at 608, 608 S.E.2d 473.

The Court of Appeals set forth its reasoning as follows:

- (1) The statutes requiring licenses do not specifically authorize the recovery of money paid;
- (2) Such laws are penal in nature and must be strictly construed;
- (3) The specification of particular penalties precludes the addition of other penalties by judicial interpretation;
- (4) Allowing recovery of such payments is not necessary to effectuate the policy of licensing statutes; and

- (5) Equity and principles of restitution do not require that unlicensed contractors be completely uncompensated or that contracting homeowners receive the completed construction without cost.

362 S.C. 608, 608 S.E.2d 473 (citing Hawkins v. Holland, 388 S.E.2d 221 (NC Ct. App. 1990))

See also, Maurice T. Brunner, Annotation. *Recovery Back of Money Paid to Unlicensed Person Required by Law to Have Occupational or Business License or Permit to Make Contract*, 74 A.L.R.3d 637, 642-44 (1976) (citing the same five factors).

Likewise, the South Carolina insurance licensing statutes do not explicitly authorize the recovery of amounts paid for failure to hold a license. In fact, the insurance licensing statutes impose other penalties for failure to hold a license. See, S.C. Code Ann. § 38-2-10 (administrative penalties for violation of insurance law); § 38-2-20 (penalties for conviction of misdemeanor); § 38-2-30 (penalties for acting without a license); § 38-5-160 (injunction, receivership); § 38-25-320 (penalty for unauthorized insurer); § 38-25-330 (penalty for violation of chapter); § 38-25-360 (personal liability on contracts of unauthorized insurers). As a result, there is no civil claim to recover money for the failure to have a license.

Furthermore, the named Plaintiffs have received the benefit of their bargain. They have received PBA supplied attorneys when requested. Indeed, they were pleased enough with the attorney assigned to them – Andrew Savage – that they hired him to sue the PBA for return of their membership dues. As they have received the benefit of their bargain, Stanley and Reiter are not entitled to the return of the dues they voluntarily paid. Like the homeowners in Lenz v. Walsh and Hawkins v. Holland, Stanley and Reiter should not be allowed to voluntarily pay for a benefit, receive the benefit with no complaint, and then recover back the money paid for the benefit.

South Carolina and North Carolina are not the only states to hold this way. In Fausnight v. Perkins, 994 So. 2d 912 (2008), the Alabama Supreme Court cited Lenz v. Walsh in holding that an unlicensed homebuilder need not return funds received for an otherwise acceptable job. It also quoted from *The Law of Restitution* to support its holding as follows:

When services contracted for have been performed by an unlicensed person, *courts nearly always have denied restitution of payments made for such services*. In the usual case there is no unjust enrichment of the unlicensed person, since he merely received the agreed compensation for services performed. This is the reason, either expressed or implicit, in most of the cases denying restitution although other reasons sometimes are given. The fact that an unlicensed person will not be permitted to recover compensation for his work, either on the contract or on principles of restitution, does not make his retention of a payment for such services an unjust enrichment. This is exemplified in the decisions rejecting his action to recover for uncompensated work, while at the same time denying the defendant's counterclaim seeing restitution of payments made for the work.

2 George E. Palmer, *The Law of Restitution* § 8.3(b) (1978).

In addition, Plaintiffs have not put forth any evidence any of the proposed class members have any claim for restitution as alleged. Rather, both plaintiffs have admitted they are personally unaware of any PBA member that has ever been denied a benefit aside from Michael Slager which has been resolved.

Therefore, Plaintiffs have failed to meet their burden concerning the damage threshold set forth in Rule 23. Accordingly, Plaintiffs' Motion should be denied.

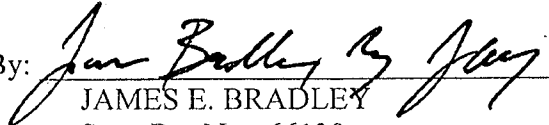
CONCLUSION

The named Plaintiffs, under the guise of serving as representatives of former and current South Carolina members of the PBA, are not seeking the oversight and regulation of the PBA, that has been accomplished through the action of the South Carolina Department of Consumer

Affairs. Rather, Plaintiffs are seeking this Court's aid in an effort to dismantle the PBA of its South Carolina membership in exchange for a class action award. The ramifications of this action reach far beyond the award of money, but will result in the rescission of memberships for law enforcement officers across the state that have paid, relied upon, and have or are *currently* receiving the benefits bargained for through their PBA membership. The proposed class seeks harm to many of its members and should not be certified.

Respectfully submitted,

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May 2, 2018

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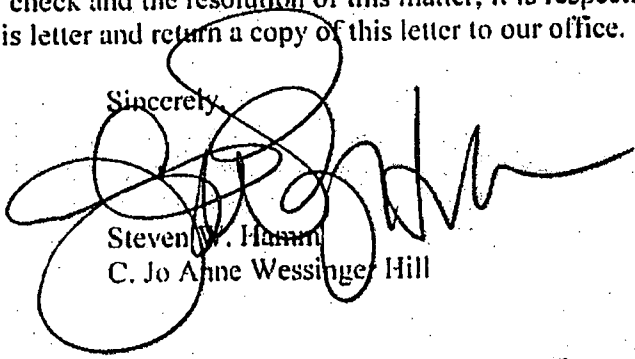
Re: Southern States Police Benevolent Association, Inc.
Our File No.: 8897.0001

Dear Kelly:

In follow up to our telephone conference and understanding regarding settlement of any and all issues between the South Carolina Department of Consumer Affairs ("Department") and our client, Southern States Police Benevolent Association, Inc. ("SSPBA"), enclosed please find a check in the amount of Thirteen Thousand and No/100 Dollars (\$13,000.00) together with a copy of this letter. The tender from SSPBA and acceptance of the check by the Department shall resolve any and all issues to present date between the Department and SSPBA, ~~whether known or unknown~~, and it is understood that this resolution is made in cooperation with the Department, on a doubtful and disputed basis, and to avoid incurring additional expense and cost after the parties has worked together for resolution. KHR

Thank you again. Everyone was able to work together for resolution. The Department's recognition and consideration of SSPBA's self-reporting, registration correcting efforts, and cooperation is appreciated. If you should have any questions, please do not hesitate to let us know. To acknowledge receipt of the enclosed check and the resolution of this matter, it is respectfully requested that you please sign the bottom of this letter and return a copy of this letter to our office.

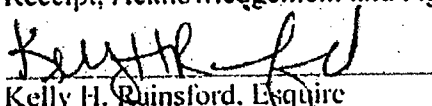
Sincerely,


Steven W. Hamm
C. Jo Anne Wessinger Hill

SWH/JWH:tjb

Enclosures

Receipt, Acknowledgement and Agreement to the above herein is provided this 4th day of May, 2018.


Kelly H. Rainsford, Esquire





Pre-Paid Legal Services

(Issued upon June 8, 2000)

To: Property and Casualty Insurers

From: Mr. Ernst N. Csiszar, Director

Subject: Pre-Paid Legal Services

Legislation has been enacted recently that affects the Property and Casualty Industry. Bill 4939 was signed on June 6, 2000 and takes effect on July 1, 2000. This bulletin is intended to bring the provisions of that Act to the attention of insurers in South Carolina.

The contact person for this Bulletin is Ms. Nancy Hoffman, Casualty Actuary, 300 Arbor Lake Drive, Suite 1200, Columbia, SC 29223, Phone 803-737-6230, Fax 803-737-6233, E-mail nhoffman@doi.sc.gov. If Ms. Hoffman is not available, ask for an employee of the Property and Casualty Division.

The definition of "Legal Insurance" is deleted in the following section:

SECTION 2. Section 38-1-20(26) of the 1976 Code, as amended by Act 181 of 1993, is further amended to read: "(26) Reserved."

Insurance statutes that referred to legal insurance are repealed.

SECTION 4. Sections 38-75-510 and 38-75-520 of the 1976 Code are repealed.

Prepaid legal services will no longer be statutorily defined as insurance under South Carolina Law. Prepaid legal service contracts will be regulated by the S.C. Department of Consumer Affairs.



STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

FOR THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2016-CP-10-4062

Donald Stanley, Individually and as)
Class Representative,)

vs:)

Southern States Police Benevolent)
Association, Inc.)

Defendant.)

**PLAINTIFF'S ANSWERS TO
DEFENDANT'S FIRST SET OF
INTERROGATORIES**

TO: JAMES EDWARD BRADLEY, ESQ., ATTORNEY FOR DEFENDANT:

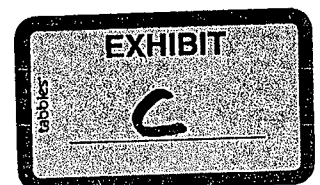
The Plaintiff Donald Stanley, Individually and as Class Representative, ("Plaintiff"), in answer to Defendant Southern States Police Benevolent Association, Inc.'s Discovery requests and pursuant to Rules 26, 33 and 34 of the Federal Rules of Civil Procedure, hereby answers as follows:

GENERAL OBJECTIONS

Plaintiff objects to the entire set of Defendant's discovery requests on the following grounds, which are hereby incorporated by reference in Plaintiff's responses to individual discovery requests below:

GENERAL OBJECTION NO. 1

Plaintiff states that trial preparation and factual investigation are ongoing. Plaintiff's responses to these discovery requests are based on information known to Plaintiff at this time. Plaintiff reserves the right, however, to make reference at the trial or at any hearing in this action to facts and documents not identified in these responses, the existence or relevance of which is later discovered by Plaintiff or his counsel. To the extent the information contained herein



differs in any respect from any prior responses to discovery, these responses shall be deemed to update and supersede such prior responses.

GENERAL OBJECTION NO. 2:

Defendant objects to Plaintiff's discovery requests in their entirety on the grounds that they are not reasonably framed in terms of the facts and subject matter of the present action, with the result that Defendant is called upon to speculate as to what information or material is relevant to the present case, if any, may be deemed to fall within the scope of these discovery requests as phrased. In addition, Defendant objects to this set of discovery requests to the extent that they seek the production of information or material not relevant to any matter at issue in this litigation or likely to lead to the discovery of relevant information or material. Defendant's responses, or production of documents, data, or other material, is not a waiver or admission that any such information, document, data, or other material is relevant or admissible in this matter.

GENERAL OBJECTION NO. 3:

Defendant objects generally to Plaintiff's discovery requests to the extent that they seek information or material protected by the attorney-client privilege, the protection afforded attorneys' work product, Rule 26, FRCP, or any other applicable privilege, protection or immunity from discovery. To the extent that these requests seek such privileged or protected information or material, Defendant will not provide such information. Moreover, even if Defendant inadvertently provides information or material protected from disclosure by the foregoing privileges or protections, Defendant does not waive their right to assert those privileges and/or objections to disclosure.

GENERAL OBJECTION NO. 4:

Defendant objects to each discovery request to the extent that it requests information or material in the possession of persons or entities that are not under Defendant's control.

GENERAL OBJECTION NO. 5:

Defendant objects to each discovery request to the extent that it is unreasonably cumulative and duplicative and can be obtained from some other source that is more convenient, less burdensome, or less expensive.

GENERAL OBJECTION NO. 6:

Defendant objects to each discovery request to the extent that the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resource, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

GENERAL OBJECTION NO. 7:

Defendant objects to Plaintiff's Interrogatories on the grounds that they exceed the limits set out in Rule 33(a)(1), FRCP. Defendant will respond to all the Interrogatories contained in this initial discovery request, but reserves the right to object to the Interrogatories or any future Interrogatories on the grounds that they exceed the limits set out in Rule 33(a)(1), FRCP.

Subject to the foregoing objections, which are specifically incorporated into each of the following answers, Defendant responds to Plaintiff's discovery requests as follows:

ANSWERS TO INTERROGATORIES

1. Give the names and addresses of persons known to the Plaintiff or counsel 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.

ANSWER:

Donald Stanley

Sean Reiter

Charlie Cordell

Joni Fletcher

Renee Dixon

Jack Roberts

Dave Soderberg

Dale Preiser

Chris Skinner

Joseph Woloszyn

Donald Scott

Joseph Naia

James Byrd

Johnny Bohanan

Scott Hicks

Kristopher Jarvis

Wayne Tubb

Carl McKoon

Donald English

Charlie Maddox

Andrew Valli

Jim Wright

Jodi Peyton

Jennifer Gossett

April Crumbley

Amy Barnett

Amy Coursey

J.D. Hobbie

Tommy Simpson

John Midgette

Joe Stiles

Gary Smith

Sean McGowan

Gayla Johnson

Tom Conroy

Jenna Lynn Warner

Jeff Fluck

Sabrina Dunn

Southern States Police Benevolent Association, Inc.

Daniel O. Clum

Robins Eskew Smith & Jordan

350 Country Club Drive, Suite C
Stockbridge, GA 30281

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the Plaintiff that relate to the claim or defense in the case.

ANSWER:

Plaintiff will produce documents responsive to this interrogatory.

3. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the Plaintiff.

ANSWER:

Plaintiff is still conducting discovery into this issue.

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

ANSWER:

Plaintiff has not retained any experts for testimony at trial at this point.

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

ANSWER:

Employees of Defendant are expected to testify regarding their work for Defendant, including Defendant's failure to obtain appropriate state licensing, and Defendant's effort, or lack thereof, to protect its members' rights in appointing counsel to its members.

6. Has Plaintiff ever been involved in a lawsuit? If so, please provide the data of the lawsuit, the county the lawsuit was filed in, the caption of the case, the nature of the case, and the outcome of the case.

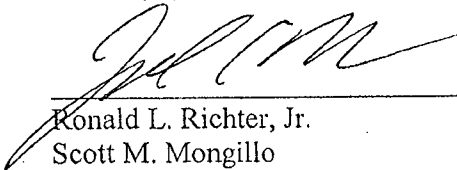
ANSWER:

See Depositions of Plaintiffs.

Charleston, South Carolina

8/17, 2017

Attorneys for Plaintiffs



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joewilson@phswlaw.com

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by email and mailing in the manner prescribed by the applicable Rule of Civil Procedure.

This 17 day of Aug., 2017

Kelly D. Forrester

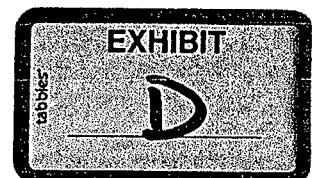
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2016-CP-10-4062
DONALD STANLEY AND SEAN	)	
REITER, INDIVIDUALLY AND AS	)	
CLASS REPRESENTATIVES,	)	AFFIDAVIT OF CHARLES CORDELL
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
SOUTHERN STATES POLICE	)	
BENEVOLENT ASSOCIATION, INC.,	)	
	)	
Defendant.	)	

The Affiant testifies as follows:

1. I am over the age of 18 and otherwise qualified to offer sworn testimony. I am a lawyer licensed to practice law in the State of Georgia. I am a staff attorney for the Southern States Police Benevolent Association. I am authorized and qualified to make the representations in this Affidavit.

2. The Southern States Police Benevolent Association (PBA) was formed to promote the welfare of law enforcement officers. It advances programs for improved working conditions for officers, to reduce the hazards of law enforcement, and to enhance the professionalism of the field of law enforcement.

3. The PBA exists to serve the needs of police officers. In particular, some of the benefits the organization provides are: 1) governmental affairs and lobbying efforts on behalf of police officers; 2) screening and endorsements for candidates of public office; 3) accidental death benefits up to \$60,000; 4) access to Police Benevolent Association's staff attorneys for advice or counsel; 5) copies of the Southern States Police Benevolent Association's magazine, Blue Review; 6) a legal defense benefit for the performance of official duties within the accepted standards of the profession; and 7) representation in disciplinary or grievance proceedings.



4. Currently, the PBA is providing legal counsel under the legal defense benefit plan to seventy PBA members that reside in South Carolina who have open legal defense matters.

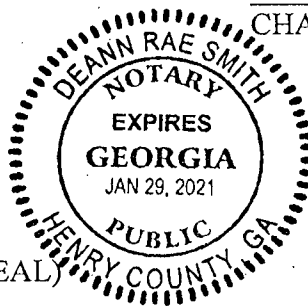
5. Plaintiff Donald Stanley is currently a member of the PBA. Upon his request, Mr. Stanley is currently being provided an attorney by the PBA under the legal defense benefit plan. Mr. Stanley is being represented by attorney Abigail Walsh.

6. Previously, Attorney Andrew Savage has represented PBA members through the legal defense benefit plan. In addition to several members of the purported class, Mr. Savage has previously represented both Donald Stanley and Sean Reiter under the PBA legal defense benefit plan. Mr. Savage was paid by the PBA for legal services rendered on behalf of Stanley and Reiter.

7. The PBA previously provided an attorney to a PBA member that was being sued in a civil action by a Plaintiff represented by the law firm of Bland Richter, LLC. That case bore the caption Hammond et al v. City of Seneca Police Department et al (South Carolina District Court 8:2015-cv-04031).

FURTHER AFFIANT SAYETH NAUGHT

SWORN to before me this
10 day of July, 2018



Charles Cordell
CHARLES CORDELL

Deann Rae Smith (SEAL)

Deann Rae Smith
Printed Name of Notary Public of Georgia

My Commission Expires: 1/29/21

State of South Carolina)
)
County of Charleston)

Donald Stanley, Individually)
and as Class Representative,)

2016-CP-10-4062

Plaintiff,)

V.)

Video Deposition
of

Southern States Police)

Donald Stanley

Benevolent Association, Inc.,)

Defendant.)

Date: January 5, 2017

Time: 10:41 a.m.

Location: 18 Broad Street
Charleston, South Carolina

Reported by
Kathleen M. Owens-Hays

1 Q Have you sent out any e-mails about it, at all?

2 A No, sir.

3 Q All right. Has the PBA done anything to damage
4 you?

5 MR. RICHTER: Object to the form.

6 A I think that the -- the -- I think the damages
7 come in, in the -- the fact that -- the -- the
8 potential of damages to me. I mean, I would -- could
9 I be involved in the same situation that Michael
10 Slager was and have -- have coverage denied. You
11 know, I mean, we pay dues to support each other and
12 the bottom line is that it -- it fell through in that
13 case.

14 BY MR. BRADLEY:

15 Q Right. And Mr. Slager's been resolved, so --

16 A Yes, sir.

17 Q -- I -- I can't talk about the details of --
18 with it, because it's -- but -- but for the fact that
19 it's been resolved, it's sealed.

20 A Sure.

21 Q My question is, how have you been damaged by
22 something the PBA has done?

23 A Again, I think that the -- the potential for the
24 damage is there, based on the -- if -- if I was
25 involved in a similar situation.

1 Q All right. So would it be fair to say, as we
2 sit here today, Mr. Stanley, the damage to you is
3 something that could happen in the future?

4 MR. RICHTER: Object to the form.

5 A Not only something that could happen in the
6 future, but I -- you know, my money also was there to
7 support Michael Slager --

8 BY MR. BRADLEY:

9 Q Right.

10 A -- and it -- it wasn't extended to him.

11 Q So as far as you're concerned, that damage is
12 you think the organization made the wrong decision as
13 to Mr. Slager?

14 A Yes, sir.

15 Q All right. Besides the fact of Mr. Slager,
16 which has been resolved, what I want to know is how
17 are you damaged by something the PBA has done.

18 A I think that I'm damaged in that -- in -- in the
19 fact that -- again, the potential for damage, as well
20 as the fact that I paid for -- my -- my dues don't go
21 just for me. They go for other -- other law
22 enforcement officers.

23 Q Right.

24 A And the fact that coverage was denied for him, I
25 -- I think that is damaging.

1 Q Fair enough. So let's start from the beginning,
2 then. The damages to you are you think Mr. Slager
3 should have been defended by the PBA?

4 A Yes, sir.

5 Q All right. And you're concerned that in the
6 future you might need the PBA and the PBA might not
7 defend you?

8 A I'm -- I'm concerned that there could be a
9 similar situation and the PBA decides they're not
10 covering. And there's no oversight for that.

11 Q All right. So my question is, besides what
12 might happen to you in the future -- or to somebody
13 else in the future -- and besides what happened to
14 Mr. Slager, have you been damaged in any way by the
15 PBA?

16 A Besides those? No, sir.

17 Q All right. So your only damage is what might
18 happen in the future and what has already happened to
19 Mr. Slager?

20 MR. RICHTER: Object to the form.

21 A As far as I -- as far as I'm concerned, those
22 are the -- the significant things that stick out in
23 my mind. Yes, sir.

24 BY MR. BRADLEY:

25 Q Is there anything else?

1 A I think that they do provide a valuable service.
2 However, I think there needs to be oversight of that
3 service. I -- I think that, you know, we -- we've
4 seen what the loophole is.

5 Q All right. You're concerned about the decisions
6 the PBA has made on how to do its business?

7 A Yes, sir.

8 Q And that's why you've brought this lawsuit?

9 A I'm -- the lawsuit's been brought because the
10 PBA is not regulated and I feel that they're
11 operating as an insurance company.

12 Q All right. So your concern is the PBA is not
13 doing its business the way it should be, it should be
14 compliant with insurance regulations?

15 A Yes, sir.

16 Q But besides that, you haven't been damaged?

17 A I'll go back to the fact that I -- I think that
18 all the members have been damaged in the fact that we
19 all pay dues to support each other --

20 Q Right...

21 A -- and that fell through, in Michael Slager's
22 case.

23 Q You -- you disagree with the decisions that were
24 made at the highest level of the PBA?

25 A With that, yes, sir.

1 Q And you believe they should have made different
2 decisions?

3 A I think they should've looked into it.

4 Q All right. And the basis of your lawsuit is
5 those decisions that the PBA made?

6 MR. RICHTER: Object to the form.

7 A The basis of the lawsuit is the fact that
8 they're -- they're operating in the same manner as an
9 insurance company and they're not regulated as an
10 insurance company is.

11 BY MR. BRADLEY:

12 Q Your dispute with them, and why you brought the
13 lawsuit, is you are concerned with the decisions they
14 made on complying with insurance laws?

15 A It's brought because they're not complying with
16 the insurance laws. Yes, sir.

17 Q Exactly.

18 A Yes, sir.

19 Q If the PBA was complying with insurance laws, in
20 your opinion, you would have no complaint?

21 MR. RICHTER: Object to the form.

22 A If they were complying with insurance laws?

23 BY MR. BRADLEY:

24 Q Right.

25 A I don't think that I would, no, sir, 'cause I

1 don't think --

2 Q All right.

3 A -- the situation would've happened with Michael
4 Slager.

5 Q Right. Okay. The main problem is the decisions
6 that they're making, as far as how they comply with
7 insurance laws?

8 MR. RICHTER: Object to the form.

9 A The -- well, I mean, the main part is the fact
10 they're not regulated by insurance laws, if that's
11 what you're asking.

12 BY MR. BRADLEY:

13 Q Right. You -- I understand that. I think what
14 you're saying is they should be following insurance
15 laws and they're not following insurance laws; right?

16 A I think they --

17 MR. RICHTER: Objection.

18 A -- should be regulated --

19 MR. RICHTER: Objection.

20 A -- under insurance regulations.

21 BY MR. BRADLEY:

22 Q And that's what your main dispute is?

23 MR. RICHTER: Object to the form.

24 A That they're not regulated?

25 BY MR. BRADLEY:

1 Q That they're not compliant with whatever these
2 insurance laws are, that you say they should comply
3 with.

4 A Well, that's what the lawsuit's about. Yes,
5 sir.

6 Q All right. And leaving Michael Slager out,
7 that's your -- that's the only problem you have with
8 the PBA?

9 MR. RICHTER: Object to the form.

10 A That -- the -- the fact that they're not
11 regulated?

12 BY MR. BRADLEY:

13 Q The fact that they're not compliant with the
14 insurance laws you believe they should comply with.

15 A That -- I mean, that is -- that is the main
16 focus here. Yes, sir.

17 Q All right. Is there any other focus, other than
18 that?

19 MR. RICHTER: Object to the form.

20 A Not that I -- not that I recall.

21 BY MR. BRADLEY:

22 Q All right. Do you who Chris Skinner is?

23 A No, sir.

24 Q All right.

25 A Think I've heard the name, but I don't know who.

1 MR. RICHTER: Object to the form.

2 A I would assume. I mean, I don't know what they
3 mean by -- by promote welfare, but...

4 BY MR. BRADLEY:

5 Q It's basically do things to help law enforcement
6 officers.

7 A That would sound right. Yes, sir.

8 Q Okay. And based on -- upon your experience with
9 the PBA, just -- I know you had disagreement with
10 them about Mr. Slager. But without talking about
11 Mr. Slager, that's what the PBA does, is help law
12 enforcement officers?

13 A That's what they're designed for. Yes, sir.

14 Q And that's what they do, as well; right?

15 A Well, with respect to Michael Slager, I don't
16 think they did their due diligence on that, but I'm
17 sure there are plenty of other cases where they did
18 the right thing.

19 Q Right. Okay.

20 (Defendant's Exhibit Number 3 marked
21 for identification.)

22 BY MR. BRADLEY:

23 Q Mr. Stanley, I'm showing you Exhibit 3 to your
24 deposition, which is, I think the complaint and the
25 answer of the -- I think Akilou Smith lawsuit we

1 talked about earlier. Is that --

2 A Yes, sir.

3 Q -- right?

4 A Yeah, I don't know how you pronounce it, but
5 yes, sir.

6 Q And this is the situation where you called the
7 PBA recently?

8 A It is.

9 Q All right. And the PBA hired a lawyer to help
10 you with that; right?

11 A Yes, sir.

12 Q Okay. Just like it promised to do?

13 A Yes, sir.

14 Q And that lawyer was Abigail Walsh?

15 A Yes, it was.

16 Q Did she meet with you? Did you meet with
17 Ms. Walsh?

18 A Yes, sir.

19 Q Okay.

20 A I met with her once.

21 Q Were you satisfied with her helping you?

22 A I -- quite honestly, I don't think there's been
23 enough involvement yet, to know whether I'm satisfied
24 or not. I don't have any reason not to be. It --

25 Q Okay.

1 A I do not. No, sir.

2 Q Okay. Do you remember the PBA providing a
3 lawyer for you and Pacheco and Anderson?

4 MR. RICHTER: Object to the form.

5 A I didn't recall that at all.

6 BY MR. BRADLEY:

7 Q All right. And as far as you know, Andy Savage
8 didn't represent you?

9 A I don't recall him representing me.

10 Q All right.

11 A Quite honestly, I don't -- I didn't know anybody
12 had contacted the PBA on it.

13 Q Okay.

14 (Defendant's Exhibit Number 8 marked
15 for identification.)

16 BY MR. BRADLEY:

17 Q Mr. Stanley, I'm showing you what's marked as
18 Exhibit 8 of your deposition.

19 A Yes, sir.

20 Q This appears to be a consent to release
21 information that, on its face, is signed by you.

22 A That -- apparently it is.

23 Q Did you sign that?

24 A Apparently I did.

25 Q All right. And it looks like its witnessed by

1 Cathleen Stanley. Is -- is that your wife's
2 signature?

3 A Yes, sir. That's my wife's signature.

4 Q And is that your signature on this document?

5 A That would be.

6 Q And does that help you remember that Andy Savage
7 was hired by the PBA to represent you?

8 A Well, obviously, he was, but I -- I still don't
9 recall even dealing with Andy on it.

10 Q Okay. You remember -- now that we see your
11 signature and your wife's signature on this document,

12 would you agree that Andy Savage was hired to
13 represent you on that?

14 A I would agree with that, yes, sir. Based on the
15 fact that I signed the form. But surprisingly, I --
16 I have no recollection of even talking to Andy about
17 this.

18 Q Okay. And I guess you don't have any complaint,
19 since you don't have any memory of -- of it?

20 A I have no complaints. That's correct.

21 Q All right.

22 (Defendant's Exhibit Number 9 marked
23 for identification.)

24 BY MR. BRADLEY:

25 Q Mr. Stanley, I'm showing you what's marked as

1 Exhibit 9 in -- this is a letter from Joni Fletcher
2 at the PBA to Andy Savage, referencing you, Anderson
3 and Pacheco, regarding he'll represent you guys.

4 A Yes, sir.

5 Q The reason I show it to you -- well, first of
6 all, have you ever seen this letter before?

7 A I -- I don't recall seeing it.

8 Q Okay.

9 A I --

10 Q All right.

11 A I'm actually kinda surprised at the other stuff,

12 'cause I don't recall that. But...

13 Q Okay. Do you see down there, where it says it's
14 carbon-copied to you?

15 A Yes, sir. I see that.

16 Q Would you have been moving or had a different
17 address, back in 2005? Like, going from one address
18 to another or anything like that?

19 A No, sir.

20 Q All right. Is the address on this letter, where
21 it says 109 Deer Run Court -- is that where you lived
22 in March of 2005?

23 A That is where I lived. Yes, sir.

24 Q But you don't remember receiving this letter?

25 A I do not.

1 Q Okay. All right. And since you don't remember
2 anything about dealing with Andy Savage, I -- do you
3 have any complaints about how the PBA responded in
4 that situation?

5 A Well, again, I didn't even realize they did.

6 Q Okay.

7 A I didn't recall they did, anyway. I --

8 Q Okay.

9 A I don't know if -- Michael Anderson may have
10 been the one who contacted them. I -- he was another
11 detective at the time.

12 Q Okay.

13 A I -- I really don't even -- obviously I signed a
14 release, but I don't recall any details of -- of
15 this, other than the accusations about what happened.

16 Q Right. And after seeing these documents, would
17 you agree now that the PBA hired Andy Savage to
18 represent you on this investigation?

19 A Oh, yes, sir. Uh-huh.

20 Q All right. And since you don't remember
21 anything about it, do you have any reason to be
22 dissatisfied with what he did?

23 A I have no reason at all.

24 Q All right. And you think Andy's a good lawyer;
25 right? You've got --

1 A Oh, yes, sir.

2 Q -- no complaint about that, do you?

3 A No, sir.

4 MR. BRADLEY: All right. I'd like to take a
5 break now, if that's okay.

6 (Off the record from 1:05 p.m. until
7 1:16 p.m.)

8 (Defendant's Exhibit Number 10 marked
9 for identification.)

10 BY MR. BRADLEY:

11 Q All right. Mr. Stanley, I'm showing you Exhibit
12 10, which I believe to be Andy Savage's bill for work
13 done on the investigation that we talked about
14 earlier. Have you seen this before?

15 A No, sir. I have not.

16 Q All right. Earlier you said some indication of
17 you didn't know if the PBA had paid the lawyers that
18 it hired to defend you. Would you agree that the PBA
19 has paid people to defend you now?

20 MR. RICHTER: Object to the form.

21 A I don't recall saying that, but I -- I wouldn't
22 doubt that the PBA pays the attorneys.

23 BY MR. BRADLEY:

24 Q Okay. All right. Good.

25 I apologize if I've already done this, but I

1 just want to make sure. You have not made any
2 complaint to the Insurance Commission of South
3 Carolina or any other state; is that true?

4 A That is true.

5 Q And you have not made any complaint with the
6 Department of Consumer Affairs in South Carolina or
7 any state; is that correct?

8 A That is correct.

9 Q All right. And do you realize that the PBA is
10 governed by a board of members who are elected by the
11 state leadership for each state?

12 MR. RICHTER: Object to the form.

13 A I know -- I was familiar with the local level,
14 but as far as the upper level, I didn't know exactly
15 how they were --

16 BY MR. BRADLEY:

17 Q All right.

18 A -- elected, or don't recall.

19 Q But assuming that each state has a state
20 president and those people sit together on a board
21 that makes that ultimate policy decisions and hiring
22 and firing decisions for the PBA, do you have any
23 problem with that leadership structure?

24 MR. RICHTER: Object to the form.

25 A I don't necessarily know that I have a -- a

1 problem with the leadership structure. I mean -- I
2 mean, the whole crux of this -- this thing is the
3 fact there's no oversight over that, though.

4 BY MR. BRADLEY:

5 Q Right. Would you have any other way that you
6 think the PBA should be governed, other than by a
7 member-elected board?

8 A I think they should be regulated through state
9 insurance regulations.

10 Q Would you prefer to have an insurance
11 regulations making the decisions or having your
12 fellow officers making the decisions?

13 MR. RICHTER: Object to the form.

14 A Well, the issue comes up that we already saw
15 with Michael Slager. The fact that that fell
16 through --

17 BY MR. BRADLEY:

18 Q Right.

19 A -- and it was one person's decision, and that --
20 that's where a lot of the issue resides at.

21 Q And I understand you disagree with that
22 decision.

23 A Yes, sir.

24 Q Ultimately, in any situation, whether it's
25 insurance or whether it's a member benefit, sometimes

1 decisions are made that one person might agree with
2 and another person would disagree with; correct?

3 A That -- that would be correct.

4 Q All right. And if this entity was found to be
5 insurance and regulated by an insurance commissioner,
6 do you know of any reason the decisions would be any
7 different than the way they're made now?

8 MR. RICHTER: Object to the form.

9 A I just -- I feel that there would be more
10 oversight. It wouldn't be left up to one person.

11 BY MR. BRADLEY:

12 Q All right. And where do you get that belief
13 from?

14 A There's -- if they're regulated, there --
15 there's guidelines they have to follow.

16 Q Do you know what those guidelines are?

17 A I would have no clue exactly what the guidelines
18 are.

19 Q Do you know how things would be differently, if
20 it was regulated?

21 A Specifically, no, sir.

22 Q All right. Do you trust your fellow officers to
23 make good decisions?

24 MR. RICHTER: Object to the form.

25 A In most cases. But as we saw with Michael

1 STATE OF SOUTH CAROLINA)
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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON)
3)
4 Donald Stanley and Sean) CASE NO.:
5 Reiter, Individually and as) 2016-CP-10-4062
6 Class Representatives,)
7)
8 Plaintiffs,) Videotaped Deposition
9) of
10 vs.) Sean P. Reiter
11)
12)
13 Southern States Police)
14 Benevolent Association,)
15 Inc.,)
16)
17 Defendant.)
18)
19)
20)
21)
22)
23)
24)
25)

12
13 Date: September 28, 2017

14 Time: 10:48 a.m.

15 Location: Turner Padgett Graham & Laney, PA

16 40 Calhoun Street, Suite 400

17 Charleston, SC 29401

18

19

20

21

Reported by
Teri L. Sampson, RPR

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1 MR. RICHTER: Object to the form.

2 BY MR. BRADLEY:

3 Q Other than Michael Slager, have you been damaged by
4 the PBA in any way?

5 A Yeah. I was damaged when Mike was damaged. Other
6 than that, I don't know of any other members.

7 Again, it hasn't been made public, so. But anyone
8 who has been damaged, then, yes, I have been.

9 Q Right. But you don't have any knowledge of anyone
10 that's been damaged?

11 A No, sir.

12 Q And other than Michael Slager, do you know of
13 anyone that's been damaged by the PBA?

14 A No, sir.

15 Q All right. Do you know of any promise the PBA has
16 made that it has broken to you or anyone other than
17 Michael Slager?

18 A No, sir.

19 Q All right. Do you know of anything the PBA has
20 done to violate your rights or anyone's rights other
21 than Michael Slager?

22 A No, sir.

23 Q Do you know of any way the PBA has been unjustly
24 enriched?

25 A In --

1 complaints about a lawyer when you needed one?

2 A No, sir.

3 Q Do you know of anybody else other than Slager that
4 had any complaints about getting a lawyer from the
5 PBA when they needed one?

6 A No, sir.

7 Q All right. Take a look at paragraph 124. This 7th
8 cause of action, do you see it there, Mr. Reiter?

9 A Yes, sir.

10 Q Do you understand this lawsuit asked to shut the
11 PBA down?

12 MR. RICHTER: Object to the form.

13 A (Continuing) In its current form, yes.

14 Q Is that what you want to have happen?

15 A Yes.

16 Q Do you know of anybody besides you and Officer
17 Stanley that wants to shut the PBA down?

18 MR. RICHTER: Object to the form.

19 A (Continuing) Directly, no, I don't know.

20 Q Or indirectly.

21 A I'm sure there will be other people to come
22 forward; but at this point, Don and I are the ones
23 that have stepped up at the helm of this.

24 Q But based on the knowledge that you have as you sit
25 here, do you know of any person anywhere other than

1 Mr. Stanley that wants to shut this PBA down?

2 MR. RICHTER: Object to the form.

3 A (Continuing) No.

4 Q Do you know of anyone other than Mr. Stanley and
5 you who agrees with the allegations in this
6 complaint?

7 A No, sir.

8 Q Paragraph 126 says, "The PBA will cause irreparable
9 harm, loss and damage to you and to other class
10 members." Do you see that?

11 A Yes, sir.

12 Q What is the irreparable harm that you're suffering?

13 MR. RICHTER: Object to the form.

14 A (Continuing) The idea that at any moment another
15 officer could be involved in a critical incident and
16 not receive coverage because the PBA deemed it
17 unworthy of counsel, and they could then lose their
18 homes, their jobs, their savings, that's a
19 terrifying thought to a police officer.

20 Q Is there any other irreparable harm besides that
21 idea?

22 A No, sir.

23 Q All right. Do you know of any irreparable harm
24 other than that idea to anybody besides you?

25 A I'm pretty sure Mike Slager probably feels that he

1 need representation, you're in good standing, yes.

2 It shouldn't be up to the four or five guys to

3 decide that who don't have any training.

4 Q Okay. Do you have any other expectations of the

5 PBA?

6 A In terms of what?

7 Q Anything we haven't gone over that you think that

8 they're supposed to do.

9 MR. RICHTER: Object to the form.

10 A (Continuing) No. I mean, incident happens, phone

11 call is made, you have an attorney. That's pretty

12 cut and dry.

13 Q All right. And you received what you believe you

14 were entitled to from the PBA?

15 A Yes, sir.

16 Q All right. Take a look at Exhibit A to your

17 lawsuit.

18 A (Witness complied with request of counsel.)

19 Q Whenever you're ready, Mr. Reiter.

20 A I am ready.

21 Q This is the legal defense benefit that you are

22 suing about; correct?

23 A Yes, sir.

24 Q All right. What is wrong with it?

25 MR. RICHTER: Object to the form.

1 A (Continuing) On paper, I don't think there's
2 anything wrong with it. How it's actually
3 implemented is what I have issue with.

4 Q That's the decision as to Mr. Slager?

5 A Slager, anybody. The -- the fact that one or two
6 people can decide yes or no, that's what I -- I take
7 issue with, and there's no oversight to that.

8 Q How would you improve it?

9 MR. RICHTER: Object to the form.

10 A (Continuing) If it's structured like an insurance
11 company where there are checks and balances, and if
12 a claim's denied, you have an appeal process that
13 you can go through, so I think setting this up in
14 that manner is what needs to happen.

15 Q Have you ever worked for an insurance company?

16 A No, sir.

17 Q Why do you believe all of those things you just
18 said happen with insurance companies?

19 A I've never had a -- a claim denied with my
20 insurance company when I made one, so...

21 Q I mean, you just said that there is an appeals
22 process for an insurance company and a board that
23 reviews and these sorts of things. Why do you think
24 all that?

25 A I know that that's in place. I know that if my

1 talk to you?

2 A Yes, sir.

3 Q Okay. And he followed up with the police
4 authorities on your behalf?

5 A I -- I don't recall.

6 Q Okay. And you even signed a waiver for him to talk
7 to the PBA about your case?

8 A I don't recall doing that.

9 Q All right. Okay.

10 MR. BRADLEY: Mark that.

11 (PBA OF SOUTH CAROLINA REQUEST FOR SERVICE

12 AND RELATED DOCUMENTS MARKED DEFENDANT'S EXHIBIT NO.

13 2 FOR I.D.)

14 A (Continuing) Thank you.

15 MR. BRADLEY: Here you go, guys.

16 MR. RICHTER: Thank you.

17 BY MR. BRADLEY:

18 Q All right. I'm showing you what's marked as
19 Exhibit 2 to your deposition, Mr. Reiter, which is a
20 stack of documents that I believe is associated with
21 the June 2004 incident. Can you take a look at
22 those?

23 A Yes, sir.

24 Q And confirm that?

25 MR. RICHTER: Ward, have these been

1 produced in discovery?

2 MR. BRADLEY: Honestly, I think so, but I
3 can't guarantee that to you. If you want to
4 discuss it with him off the record, that's fine.

5 MR. RICHTER: Yeah, let's take a break.

6 (Whereas, the deposition recessed briefly.)

7 BY MR. BRADLEY:

8 Q All right. I've shown you what's marked as Exhibit
9 2 to your deposition, which are some documents
10 regarding the provision of a lawyer in 2004 as a
11 result of an accident you were involved in. Look at
12 the third page in there. It looks like a bill from
13 Andy Savage's office?

14 A Yes, sir.

15 Q You didn't ever receive that bill, did you?

16 A No, sir.

17 Q All right. That was paid by the PBA, as far as you
18 know?

19 A As far as I know, yes, sir.

20 Q Okay. All right. And you didn't have to pay Mr.
21 Savage at all?

22 A No, sir.

23 Q All right. And if you'd look, it looks like this.
24 It's about the eighth page in. It says, "Consent to
25 Release Information," at the top.

1 A Yes, sir.

2 Q All right. And this says, "I, Sean Reiter, member
3 of the Southern States Police Benevolent
4 Association"; is that correct?

5 A Yes, sir.

6 Q All right. And you signed this document?

7 A Yes, sir.

8 Q Okay. So you consented to Mr. Savage sharing
9 information regarding your representation with the
10 PBA?

11 A Yes, sir.

12 Q All right. Did you have a problem with that?

13 A No, sir.

14 Q Okay. All right. All right.

15 MR. BRADLEY: Mark this.

16 (MINUTES MARKED DEFENDANT'S EXHIBIT NO. 3
17 FOR I.D.)

18 A (Continuing) Thank you.

19 MR. BRADLEY: Is this Exhibit 3?

20 COURT REPORTER: Yes, sir.

21 BY MR. BRADLEY:

22 Q All right. Mr. Reiter, I'm showing you what's
23 marked Exhibit 3, which I believe are minutes from
24 your chapter's meeting starting December 8th, 2014.
25 Is that correct?

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Donald Stanley and Sean Reiter,)
Individually and as Class Representatives,)
)
vs.)
)
Southern States Police Benevolent)
Association, Inc.)
)
)
Defendant.)

FOR THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2016-CP-10-4062

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

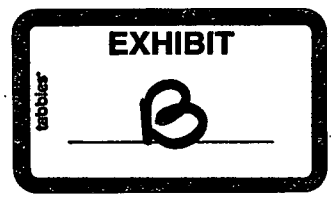
FILED
2017 NOV -9 PM 4:31
JULIA ALLEN STRONG
CLERK OF COURT

This matter is before the Court on the motion of Southern States Police Benevolent Association, Inc. ("PBA" or Defendant) for summary judgment. The motion is premature and should be denied because discovery in this matter is continuing. In fact, Plaintiffs currently have three motions to compel attempting to get Defendant to respond to written discovery and provide timely deposition dates.

In addition, the arguments presented in Defendant's summary judgment are identical to the arguments presented in Defendant's motion to dismiss, which this court denied on July 27, 2017. Order, Exhibit No. 1. Both motions argue that Plaintiffs have no damages and no standing. Given that Defendant has not produced any documents or witnesses since that ruling, this motion is nothing more than a belated motion to reconsider the Court's denial of the motion to dismiss.

I. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED BECAUSE DISCOVERY IS CONTINUING IN THIS MATTER.

Summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. Doe v. Batson, 345 S.C. 316, 548 S.E.2d 854 (2001); Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991); see also Schmidt v. Courtney, 357 S.C. 310, 319, 592 S.E.2d 326, 331 (Ct.App. 2003) ("Because



summary judgment is a drastic remedy, it must not be granted until the opposing party has had a 'full and fair opportunity to complete discovery.' ”).

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003); Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 593 S.E.2d 183 (Ct.App. 2004). Because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. Helena Chem. Co. v. Allianz Underwriters Ins. Co., 357 S.C. 631, 594 S.E.2d 455 (2004); Hawkins v. City of Greenville, 358 S.C. 280, 289, 594 S.E.2d 557, 561-62 (Ct.App.2004); Murray v. Holnam, Inc., 344 S.C. 129, 542 S.E.2d 743 (Ct.App. 2001).

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000); Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (Ct.App.2004). Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000); Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct.App. 2004).

A. PLAINTIFFS HAVE DILIGENTLY SOUGHT DISCOVERY IN THE THREE MONTHS SINCE THE MOTION TO DISMISS WAS DENIED

In the three months between the denial of the motion to dismiss and Defendant's motion for summary judgment, Plaintiffs have diligently pursued discovery. The order denying the motion to dismiss was received on August 8, 2017. The parties negotiated a scheduling order extending discovery to April 1, 2018. Scheduling Order, Exhibit No. 2. On August 14, 2017, Plaintiff's counsel sent a deficiency letter to Defendant's counsel setting out areas that Defendant

did not fully respond to Plaintiff's First Set of Interrogatories and Requests for Production. August 14, 2017 Deficiency Letter, Exhibit No. 3. After receiving no response to this letter, Plaintiff filed a motion to compel on September 6, 2017, which is scheduled to be heard November 14, 2017. Plaintiff has sent several emails seeking to discuss same, but the only response to date (received in November) is a belated request for a protective order.

On August 18, 2017, Plaintiff served a Second Set of Interrogatories and Requests for Production on Defendant. Defendant requested, and Plaintiff agreed, to a thirty day extension to respond to these requests, making them due October 20, 2017. September 18, 2017 Email Chain, Exhibit No. 4. Defendant did not respond to the Second Set of Discovery requests, so Plaintiff filed a Motion to Compel those responses on November 6, 2017.

On September 21, 2017, Plaintiff's counsel requested 2-3 consecutive days to depose Defendant's officers in Georgia in early November. September 21, 2017 Email Chain, Exhibit No. 5. Having received no deposition dates from Defendant, on October 18, 2017, Plaintiff's counsel served a Notice of Depositions on Defendant with a blank date requested dates in November and December. October 18, 2017 Email and Deposition Notice, Exhibit No. 6. On October 31, 2017, defense counsel offered deposition dates the week of January 15, 2018. October 31, 2017 Email, Exhibit No. 7. Since Defendant decided to file a motion for summary judgment and seek a hearing of same in early November, Plaintiff had no choice but to file a motion to compel to receive earlier dates for these depositions.

On November 7, 2017, Defendant presented a confidentiality order for the first time and has promised to produce documents once that order is entered.

B. PLAINTIFFS HAVE DILIGENTLY RESPONDED TO DEFENDANT'S DISCOVERY REQUESTS SINCE THE MOTION TO DISMISS WAS DENIED

Also, during this time, Plaintiff has responded to Defendant's discovery requests. Plaintiff fully responded to Defendant's first set of written discovery in August. In September, Defendant asked to depose Plaintiff Sean Reiter (Defendant has already deposed Plaintiff Donald Stanley), and Reiter's deposition was taken in September.

In short, in the three months since Defendant's motion to dismiss was denied, Plaintiff has timely responded to all of Defendant's discovery requests, and Defendant has not produced one document or one witness despite Plaintiff's diligent efforts. As a result, there are now three motions to compel outstanding. Instead of responded to Plaintiff's long-standing discovery requests, Defendant has moved for summary judgment.

C. THIS IS NOT A "FISHING EXPEDITION."

To date, Defendant has only produced documents related to Plaintiff's claims over the years. Plaintiff has not received documents, Answers to Interrogatories, or depositions for numerous relevant issues, including but not limited to:

1. documents related to the claims in this litigation (1st Set of RFP No. 1);
2. communications with third parties that touch upon the claims in this litigation (1st Set of RFP No. 8);
3. internal communications concerning the claims in this litigation (1st Set of RFP No. 9);
4. communications with any state agency, including insurance commissions (1st Set of RFP No. 10 and 17);
5. documents related to the denial of claims to members (1st Set of RFP No. 11);
6. form communications with members concerning the legal defense benefit and actions against Defendant (1st Set of RFP No. 14 and 2nd Set of RFP No. 2);
7. communications regarding compliance (or lack thereof) with state law (1st Set of RFP No. 16, 2nd Set of RFP No. 4);
8. persons that Defendant has discussed this lawsuit with (1st Set of Interrogatories No. 8);
9. Defendant's membership list (1st Set of Interrogatories No. 9);
10. information regarding denied claims (1st Set of Interrogatories No. 10);
11. documents related to or setting forth Defendant's policies and procedures related to:
 - a. Defendant's reserves or any other efforts to insure that it can pay for claims going forward;

- b. Defendant's decision not to register as an insurance company or prepaid legal benefits plan;
- c. solicitation of new members and representations made to them;
- d. denying or approving claims made by members;
- e. handling and adjustment of claims;
- f. cancellation of coverage for members;
- g. the selection of referral attorneys and why Defendant has not complied with state law requiring that Prepaid Legal Benefit Plans typically require that the member gets to choose his or her attorney, see South Carolina Code § 37-16-50;
- h. communications between Defendant and its members attorneys and measures taken to insure confidentiality, see South Carolina Appellate Court Rule 407, Rule of Professional Conduct 1.6 and 1.8(f)(3);
- i. measures taken by Defendant to insure that its members have given informed consent to appointment of counsel, see South Carolina Appellate Court Rule 407, Rule of Professional Conduct 1.8(f)(1);
- j. measures taken by Defendant to insure there is no interference with its lawyer's independence, professional judgment, or the client-lawyer relationship, see South Carolina Appellate Court Rule 407, Rule of Professional Conduct 1.8(f)(2) (2nd Set of RFP No. 1);
- 12. form communications with Defendant's referral attorneys (2nd Set of RFP No. 3);
- 13. documents and compilations concerning fees collected by Defendant (2nd Set of RFP No. 5; 2nd Set of Interrogatories No. 3, 7);
- 14. communications with Defendant's expert Steven Hamm (2nd Set of RFP No. 8);
- 15. information regarding Defendant's reserves (2nd Set of Interrogatories No. 1);
- 16. information regarding Defendant's referral attorneys (2nd Set of Interrogatories No. 4);
- 17. depositions of Defendant's employees and officers in charge of its prepaid legal benefit program.

To be clear, this is not a "fishing expedition." Plaintiffs are seeking information on policies and procedures that apparently do not exist, in plain violation of South Carolina law. Plaintiffs are seeking information on the manner in which Defendant handles claims and treats its members. Plaintiffs are seeking information on how Defendant maintains its clear obligations to protect the attorney-client relationship between its members and its referral attorneys, including making sure that the attorney-client privilege is not breached.

Plaintiffs are seeking information on whether the attorneys, retained by and paid for by Defendant, are guided by the client-members, who are interested in a favorable resolution of the claims against them, or are guided by Defendant, whose interest in these matters will always be

the swiftest, cheapest resolution possible. The little information available to Plaintiffs at this point strongly suggests that Defendant has violated its duties.

SLAGER EXPERIENCE

This lawsuit follows Defendant's inexcusable treatment of former member Michael Slager. Mr. Slager was involved in an officer related shooting on April 4, 2015 while on the job. Mr. Slager's actions were clearly covered by Defendant's Legal Defense Benefit Plan, for which he had paid his dues for many years. Mr. Slager immediately contacted Defendant, and Defendant appointed attorney David Aylor to represent Slager.

Soon after his retention, on the afternoon of April 7, 2015, Mr. Aylor sent a "video" depicting a portion of the shooting to Defendant's staff attorney Charlie Cordell without explanation. Mr. Aylor also called Defendant to inform Defendant that Aylor felt the video conflicted with a prior public statement made by Slager, and that Aylor was withdrawing.

The following morning Defendant decided that the matter was not covered by its policy and issued a letter denying coverage for Slager and refusing to find Mr. Slager another attorney under the terms of his policy with Defendant. Defendant did not interview Slager or any other witness in reaching its termination decision. In depositions, Defendant's representatives acknowledged that Slager had a legitimate defense to the criminal claims against him.

DEFENDANT HAS ADMITTED TO OPERATING IN VIOLATION OF THE LAW FOR YEARS IN SOUTH CAROLINA

It is also not in dispute that Defendant has been operating in nine states for decades without ever registering as either an insurance company or a prepaid legal benefits plan in any of those states, even though Defendant is obviously offering both insurance benefits and prepaid legal benefits to its members. Indeed, as pointed out in Defendant's motion, Defendant finally contacted the South Carolina Department of Consumer Affairs arguing that it was not a prepaid

legal benefits plan. The Department of Consumer Affairs disagreed, and Defendant has now applied for and belatedly received a Certificate of Registration on June 23, 2017, apparently acknowledging that it has been operating as an unlicensed and unregistered prepaid legal benefits plan for decades. There is no evidence that Defendant has made any attempt to comply with the laws of the other States in which it operates.

Defendant's failure to seek licensing as a prepaid legal benefits plan or insurer for decades is not merely a matter of formality or filing papers. There are real requirements imposed by the law that Defendant has apparently ignored for years and that have led to potential losses for both Plaintiffs and putative class members. As demonstrated by Mr. Slager's experience, it appears likely that Defendant has no policies or procedures in place to protect communications between its referral attorneys and members or to protect the sanctity of that attorney-client relationship, as required by South Carolina Appellate Court Rule 407, Rules of Professional Conduct 1.6 and 1.8(f).

The American Bar Association has also recognized several limits on prepaid legal services plans that Defendant has not complied with. Annotation, Prepaid Legal Services Plans, 93 A.L.R.3d 199 nn. 9 & 10. Ethical Consideration ("EC") 2-33 of the ABA Model Code of Professional Responsibility warns attorney who participate in such plans that their independence must be retained and that they should not be directed by an organization "in which considerations of economy are given undue weight in determining the attorneys employed by an organization or the legal services to be performed for the member or beneficiary rather than competence and quality of service."

This Ethical Consideration recognizes the fact that there is an inherent conflict when the PBA is paying for legal services but not any judgment or penalty that might be rendered against

its member. Due to this conflict, the ABA has adopted Disciplinary Rule 2-103(D)(4), which allows a lawyer to be recommended, employed, or paid by a for-profit¹ prepaid legal services organization, but only if the member employs, directs, supervises, and selects his or her own attorney, which the PBA does not allow, and only if the organization files required reports with the appropriate disciplinary authority, which the PBA has not done.

Likewise, it is clear that Defendant has ignored the requirement under South Carolina law that beneficiaries of a prepaid legal benefit plan, like Plaintiffs and Mr. Slager, are entitled to choose their own attorney. South Carolina Code § 37-16-50. This requirement is mirrored in most of the States in which Defendant sells its policies. Rather, in every instance that Plaintiffs are aware of, Defendant has always appointed attorneys it chooses for its members. Thus, Defendant has been operating in violation of clear law that it now recognizes it is governed by.

Moreover, during this time of operating illegally, Defendant has collected literally millions of dollars in dues for its legal benefits plan. Upon information and belief, the PBA currently has approximately 42,000 members spread over nine States (Georgia, South Carolina, North Carolina, Virginia, West Virginia, Kansas, Arkansas, Tennessee and Louisiana), each of whom pays approximately \$23.50 per month to participate in the PBA's Legal Defense Benefit Plan. Amended Complaint, ¶ 13. This amounts to the collection of approximately \$11,844,000 in premiums every year. The PBA pays out far less than this to the attorneys it retains.

Certainly, Plaintiffs are entitled to conduct discovery into why Defendant operated in blatant disregard of the law for years, if not decades, and further what Defendant has done with the millions of dollars in excess dues it has collected, all the while contending that it is a non-profit benevolent association.

¹ Although the PBA claims it is a non-profit, it has not been able to explain where or how it spends nearly \$12 million in dues it collects every year. Upon information and belief, it only pays a fraction of these premiums out to attorneys representing members.

DEFENDANT'S LEGAL DUTIES TO ITS MEMBERS²

Moreover, since Defendant was not registered as a prepaid legal benefit plan and has not complied with the statutory requirements for prepaid legal benefits plans, Plaintiffs contend that Defendant was acting as an insurer in South Carolina (and all of the other states in which it operates) and is subject to both the statutory requirements imposed upon insurers, as well as the myriad common law obligations imposed upon insurers.

As alleged in the Amended Complaint, those obligations include:

- a. the duty to maintain sufficient reserves, capital, and surplus;
- b. the duty to maintain adequate records and be subject to supervision and regular audits by appropriate state authorities;
- c. the duty to prepare and submit reports to state authorities to demonstrate adherence to reserve, capital, and surplus requirements;
- d. the duty to handle and account for premiums paid by insureds;
- e. the duty to renew policies and not cancel policies in bad faith;
- f. the duty to conduct its business in a fair and honest manner;
- g. the duty to act in good faith in the solicitation, sell, negotiation and issuance of policies;
- h. the duty to act in good faith and in the best interests of the class members in the handling and adjustment of claims made against those policies; and
- i. the duty to comply with other laws, statutes and regulations enacted for the benefit of insureds as discovery may show. Amended Complaint, ¶ 81.

² The argument contained herein is a summary of the arguments previously presented by Plaintiffs in their Memorandum in Opposition to the Motion to Dismiss, which is incorporated herein in full.

Put simply, Plaintiffs are entitled to conduct discovery into whether Defendant followed these standards and duties owed to its members. Slager's experience indicates Defendant completely ignores those duties. Plaintiffs' experience indicates Defendant has ignored these duties at least with regards to not allowing its members to select their own attorneys. Plaintiffs have diligently pursued this discovery, and Defendant has diligently refused to respond to this discovery.

II. EVEN IF THE COURT WERE TO CONSIDER THE SUBSTANCE OF DEFENDANT'S MOTION, DEFENDANT IS NOT ENTITLED TO SUMMARY JUDGMENT.

As an initial matter, Defendant's arguments on summary judgment are identical to its arguments on the motion to dismiss, which Defendant lost three months ago. Nothing in the law has changed since that ruling. The Plaintiffs' deposition testimony submitted by Defendant does not alter the law or impact the prior ruling of the Court. As such, Plaintiffs would incorporate herein its prior memoranda in opposition to Defendant's Motion to Dismiss, but would reiterate some of the points herein.

A. THE PBA IS ENGAGED IN THE UNAUTHORIZED TRANSACTION OF INSURANCE BUSINESS IN SOUTH CAROLINA.

Defendant is operating as an unauthorized, unlicensed, unregistered, and unsupervised insurance company in South Carolina. In prior litigation, The Honorable David C. Norton recognized that the PBA is operating as an insurer that is not subject to any oversight. Norton Order, n. 1, Exhibit No. 8 ("It seems a might curious that an insurer, who issues a policy that supposedly covers a criminal accusation on the one hand, can withdraw benefits if a member

‘has committed an intentional, deliberate and/or illegal act . . . criminally.’ But this is a question for another day.”).³

In its summary judgment motion, Defendant does not deny that it is an insurer.

B. DEFENDANT WAS NEITHER LICENSED AS A PREPAID LEGAL SERVICE PROVIDER NOR IN COMPLIANCE WITH LAWS GOVERNING PREPAID LEGAL SERVICE PROVIDERS.

After the South Carolina Department of Consumer Affairs required Defendant to obtain a license as a Prepaid Legal Services Company, Defendant recently did so on June 23, 2017, in apparent response to this litigation. Defendant would have the Court ignore the fact that at the time this lawsuit was filed and for years before then, Defendant operated without any such license and in violation of South Carolina’s statutory requirement that any contract for prepaid legal services “must include a provision allowing the member or beneficiary the right to select the attorney of his choice when legal services are needed.” S.C. Code Ann. § 37-16-50. The Defendant in fact, chooses its members’ attorneys. Thus, even if Defendant had attempted to register as a prepaid legal services plan with the South Carolina Department of Consumer Affairs, its application would have been rejected because it does not adhere to the clear requirements of such plans as set forth in S.C. Code Ann. §§ 37-16-10, et seq. In short, Defendant was not a registered or authorized prepaid legal services plan under South Carolina law or any other State’s law and did not act like one either.

C. PLAINTIFFS ARE ENTITLED TO BRING AN ACTION FOR THE UNAUTHORIZED TRANSACTION OF INSURANCE.

³ The Court may take judicial notice at any stage of the proceedings. S.C. R. Evid. 201(f). The Court may take judicial notice of documents that are a matter of public record, the authenticity of which cannot reasonably be questioned, including pleadings or orders from a related matter. S.C. R. Evid. 201(b); Doe v. Bishop of Charleston, 407 S.C. 128, 754 S.E.2d 494 n. 2 (2014); Hall v. Virginia, 385 F.3d 421, 424 n.3 (4th Cir. 2004).

In addition to being entitled to bring claims for breach of contract, negligence, and other torts, Plaintiffs are entitled to bring an action against the PBA for transacting an unauthorized insurance business in South Carolina and collecting premiums from the Plaintiffs in doing so.

Chapter 25 of South Carolina's Insurance Code governs the unauthorized transaction of insurance business in South Carolina. S.C. Code Ann. § 38-25-10, *et seq.* The Chapter implicitly authorizes the pursuit of claims against entities that are engaged in the unauthorized transaction of the insurance business. S.C. Code Ann. § 38-25-510, *et seq.* Although the primary subject of the section is how service is obtained against out-of-state unauthorized insurers, the section plainly contemplates lawsuits by individuals against such unauthorized insurers. Otherwise, there would simply be no need for the section. See Ross v. American Income Life Ins. Co., 232 S.C. 433, 102 S.E.2d 743, 746-47 (1958); Hodge v. Reserve Life Ins. Co., 229 S.C. 326, 92 S.E.2d 849 (1956) (considering an action for the fraud and deceit in the solicitation of the policy, not "for breach of the conditions of the policy or for loss occurring thereunder.").

D. PLAINTIFFS ARE ENTITLED TO BRING A CLAIM UNDER THE COMMON LAW.

Defendant repeats its argument from its Motion to Dismiss to claim that there is no private cause of action for acting without a license. S.C. Code § 38-59-30. As pointed out repeatedly already, this argument misinterprets Plaintiffs' claims. First, as pointed out above and as argued extensively in Plaintiffs' Memorandum in Opposition to Defendant's Motion to Dismiss, which was denied, Plaintiffs are not suing under this Code section. Instead, Plaintiffs are suing under the numerous common law duties that exist between Defendant and its members.

These common law duties apply to Defendant regardless of whether Defendant can be directly sued for failing to register with the South Carolina Department of Insurance or

Department of Consumer Affairs. Defendant's duties to its members, like any other duties, can be created by statute, a contractual relationship, status, property interest, or some other special circumstance. McCullough v. Goodrich & Pennington Mortg. Fund, Inc., 373 S.C. 43, 644 S.E.2d 43, 46 (2007); Madison v. Babcock Ctr., Inc., 371 S.C. 123, 638 S.E.2d 650, 656–57 (2006).

Courts have repeatedly recognized that claims against putative insurers for failing to comply with basic common law duties. See, e.g., Olukoya v. American Ass'n of Cab Companies, Inc., 219 Ga.App. 508, 465 S.E.2d 715 (1995) (illegal attempt to sell insurance could constitute an element of a RICO claim); American Ass'n of Cab Companies, Inc. v. Parham, 291 Ga.App. 33, 661 S.E.2d 161, 167 (2008) (self-insured cab companies' misrepresentations of their financial condition proximately caused plaintiff harm by compromising his ability to satisfy a judgment against them).

Analogously, South Carolina courts have recognized that the unauthorized practice of law can result in the loss of both legal and equitable claims, even though such finding is not grounded in any language found in a statute. Wachovia Bank, N.A. v. Coffey, 389 S.C. 68, 698 S.E.2d 244 (Ct. App. 2010), aff'd as modified, 404 S.C. 421, 746 S.E.2d 35 (2013). The Court of Appeals in Coffey affirmed the dismissal of a bank's foreclosure lawsuit because the bank was engaged in the unauthorized practice of law even though there is "no private right of action in South Carolina for the unauthorized practice of law." Franklin v. Chavis, 371 S.C. 527, 640 S.E.2d 872,877 (2007).

The reasoning in Coffey applies with equal force here. In operating an unauthorized insurance company, Defendant is engaged in inherently prejudicial conduct that can result in potentially severe economic and emotional consequences to its insureds. Even if there is no

private right of action for the unauthorized conduct of the insurance business, the Plaintiffs are entitled to seek common law remedies for the actions of Defendant that are based on the Defendant's failures to adhere to the standard of care that authorized insurers are required by statute to follow.

The South Carolina Supreme Court long ago recognized that South Carolina residents who have paid premiums to out-of-state unauthorized insurers are entitled to pursue a cause of action for fraudulent inducement against such unauthorized insurers. Ross v. American Income Life Ins. Co., 232 S.C. 433, 102 S.E.2d 743, 746-47 (1958).

As an insurance company or even as a company offering insurance-like benefits, the PBA has a duty to act in good faith in dealing with its insureds or its members. Nichols v. State Farm Mut. Auto. Ins. Co., 279 S.C. 336, 306 S.E.2d 616 (1983).

It is widely recognized that associations owe their members a duty to act with due care and in good faith. See Int'l Longshore & Warehouse Union v. ICTSI Oregon, Inc., 15 F. Supp. 3d 1075, 1101 (D. Or. 2014) (associations are subject to bad faith claims by its members); Berryman v. Merit Prop. Mgmt., Inc., 152 Cal. App. 4th 1544, 1558, 62 Cal. Rptr. 3d 177, 189 (2007) ("An association has a fiduciary relationship with its members.").

The PBA owes additional duties as part of the implied covenant of good faith and fair dealing. Every contract, including every insurance contract, in South Carolina includes an implied covenant of good faith and fair dealing. Commercial Credit Corp. v. Nelson Motors, Inc., 247 S.C. 360, 147 S.E.2d 481, 484 (1966); Tadlock Painting Co. v. Maryland Cas. Co., 322 S.C. 498, 473 S.E.2d 52, 53 (1996). See also Kimball v. Better Bus. Bureau of W. Florida, 613 F. App'x 821, 825 (11th Cir. 2015) (Member of an association has standing to bring a breach of contract claim against an association); S. Walk at Broadlands Homeowner's Ass'n, Inc. v.

OpenBand at Broadlands, LLC, 713 F.3d 175, 182 (4th Cir. 2013) (a party to a contract containing allegedly illegal provisions often will have standing to challenge that contract).

Similarly, a fiduciary relationship is founded on the trust and confidence reposed by one person in the integrity and fidelity of another. Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct.App.2003); Redwend Ltd. Partnership v. Edwards, 354 S.C. 459, 581 S.E.2d 496 (Ct.App.2003); Steele v. Victory Sav. Bank, 295 S.C. 290, 368 S.E.2d 91 (Ct.App.1988). A fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence. Hendricks v. Clemson Univ., 353 S.C. 449, 578 S.E.2d 711 (2003); O'Shea v. Lesser, 308 S.C. 10, 416 S.E.2d 629 (1992); SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990); Regions Bank, 582 S.E.2d at 444; Steele, 368 S.E.2d at 93.

Plaintiffs have entrusted the PBA with their dues in reliance upon the understanding that the PBA will maintain sufficient reserves to cover Plaintiffs' demands for legal representation and will have appropriate procedures in place to ensure those demands are treated fairly and in good faith. These are hallmarks of a fiduciary relationship.

Defendant is attempting to extend the protections afforded by S.C. Code § 38-59-30 and the cases cited in its brief to a complete immunity from lawsuit. This is not the law. Defendant remains obligated to comply with its common law duties to both the Plaintiffs and the putative class members.

E. PLAINTIFFS AND CLASS MEMBERS HAVE SUFFERED DAMAGES.

Plaintiffs have suffered and alleged damages, namely the payment of premiums to the Defendant, and have alleged causes of action to return those premiums. See Ross v. American Income Life Ins. Co., 232 S.C. 433, 102 S.E.2d 743, 746-47 (1958); Hodge v. Reserve Life Ins.

Co., 229 S.C. 326, 92 S.E.2d 849 (1956) (considering an action for the fraud and deceit in the solicitation of the policy, not “for breach of the conditions of the policy or for loss occurring thereunder.”).

In addition, Plaintiffs have alleged damages related to the Defendant’s failure to comply with the laws and standards expected of insurance companies and prepaid legal benefit plans in South Carolina. As an example, these damages include Defendant’s failure to maintain appropriate reserves, which put the Plaintiffs at risk of not receiving the benefit that they have paid for over the years. Similarly, due to Defendant’s failures, Plaintiffs have no way of insuring that Defendant will comply with standards applicable to insurers related to transparency, handling of claims in good faith, or cancelling policies in good faith.

F. PLAINTIFFS HAVE PROPERLY PLED A CLAIM FOR INJUNCTIVE RELIEF.

Plaintiffs have also pled a claim for the equitable remedy of injunctive relief. An injunction, like all equitable remedies, is granted as a matter of sound judicial discretion, not as a matter of legal right. Johnson v. Phillips, 315 S.C. 407, 433 S.E.2d 895 (Ct. App. 1993), aff’d in part and rev’d in part on other grounds, remanded sub nom., Smith v. Phillips, 318 S.C. 453, 458 S.E.2d 427 (1995).

To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law. Denman v. City of Columbia, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010). Injunction actions have been used to determine statutory construction: See, e.g., Denman, 691 S.E.2d at 465. Plaintiffs have pled these elements of injunctive relief.

In addition, injunctive relief, as an equitable remedy, is aimed at prospective issues rather than past wrongs. Sanford v. South Carolina State Ethics Com’n, 385 S.C. 483, 685 S.E.2d 600

(2009) (An injunction can issue where some irreparable injury is *threatened*.); Brooks v. South Carolina R. Co., 8 Rich.Eq. 30 (1855). See also Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004) (The purpose behind the Declaratory Judgment Act is to “provide for declaratory judgments without awaiting a breach of existing rights.”).

Plaintiffs in effect are seeking a declaratory judgment that Defendant is an unauthorized insurer. “Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed.” S.C. Code Ann. § 15-53-20. “A contract [like the Defendant’s “Policy”] may be construed either before or after there has been a breach thereof.” S.C. Code Ann. § 15-53-40.

In short, although Plaintiffs have alleged damages, even if they had not alleged damages, they would still be entitled to injunctive relief.

VI. AT THE VERY LEAST, PLAINTIFFS ARE ENTITLED TO RECOVER ATTORNEYS FEES FOR FORCING DEFENDANT TO COMPLY WITH SOUTH CAROLINA LAW.

Defendant concludes arguing that Plaintiffs’ request for injunctive relief is moot because Defendant has complied with the South Carolina law and registered as a Prepaid Legal Services Company. Plaintiffs would point out that this action was clearly taken in reaction to this lawsuit. Defendant did not start this process of seeking clarification of its status and eventually registering in South Carolina until after this suit was filed.

Put simply, Defendant’s action is at least a partial vindication of Plaintiffs’ rights, and, as such, Plaintiffs are entitled to recovery their attorneys’ fees and costs. Plaintiffs’ action has resulted in an alteration of the parties legal relationship and a change in Defendant’s practices. In other words, Plaintiffs’ actions were a catalyst to Defendant seeking registration as a Prepaid Legal Services Company, and, as such, Plaintiffs are entitled to collect attorney’s fees.

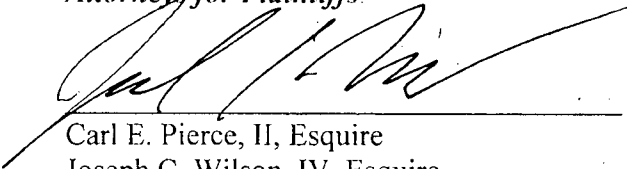
South Carolina's Declaratory Judgment Act allows an award of costs "as may seem equitable and just." South Carolina Code § 15-53-100. Rule 65(e)(2), SCRCP, allows for the recovery of costs, including attorneys fees, "where proper." Plaintiffs would assert that since their actions brought Defendant into line with South Carolina law, Plaintiffs are entitled to a recovery of fees and costs.

CONCLUSION

Based on the foregoing, Plaintiffs would respectfully request that the Court deny Defendant's Motion for Summary Judgment.

November 9, 2017

Attorneys for Plaintiffs



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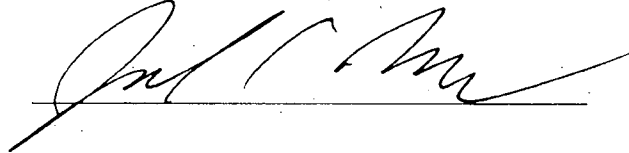
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(843) 720-7470
andy@savlaw.com

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by email and mailing in the manner prescribed by the applicable Rule of Civil Procedure.

This 9th day of November, 2017

A handwritten signature in black ink, appearing to read "Andrew J. Savage, III", is written over a horizontal line.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-10-4062

Donald Stanley
PLAINTIFF(S)

Southern States Police Benevolent Association, Inc.
DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion to Dismiss, filed on 1/23/2017, came before this Court on 4/26/17. Upon review of the allegations set forth in the pleadings pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the Defendant's Motion is denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

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

[Signature]
Circuit Court Judge

2117
Judge Code

7/27/17
Date



2016-CP-10-4062

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Donald Stanley and Sean Reiter,
Individually and as Class
Representatives,)

vs.)

Southern States Police Benevolent
Association, Inc.)

Defendant.)

FOR THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2016-CP-10-4062

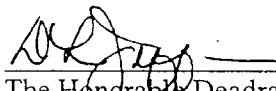
SCHEDULING ORDER.

FILED
JUL 11 2017 AUG 31 PM 12:09
CLERK OF COURT

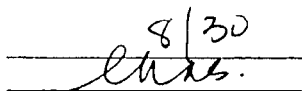
Upon motion of the Plaintiffs, the Court adopts the following scheduling order in this matter.

1. Plaintiff will identify any experts on or before December 1, 2017.
2. Defendants will identify any experts February 1, 2018.
3. Discovery will be completed by April 1, 2018.
4. Trial will not be held prior to June 1, 2018.

AND IT IS SO ORDERED.



The Honorable Deadra L. Jefferson
Chief Administrative Judge
Charleston County, Court of Common Pleas

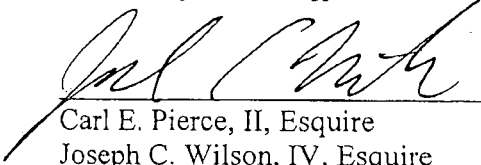
8/30 2017
, South Carolina

602
2017



WE SO MOVE:

Attorneys for Plaintiffs:



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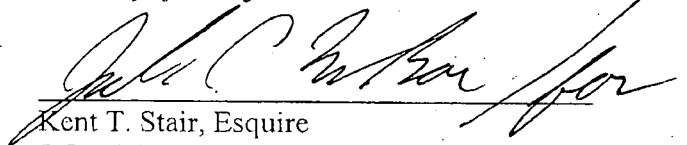
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WE CONSENT:

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ALLAN P. SLOAN, III ♦♦
JOSEPH C. WILSON, IV †
JAMES G. KENNEDY
WILLIAM P. EARLY ●
SONALY K. HENDRICKS +
GREGG MEYERS ▲
* MEMBER SC & FL BAR
♦ CERTIFIED SC CIRCUIT
COURT MEDIATOR
† MEMBER SC, FL & GA BAR
+ SPECIAL COUNSEL
▲ OF COUNSEL
● MEMBER SC & TN BAR

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■ MEMBER SC & VA BAR

Direct Dial: (843) 725-7705
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August 14, 2017

VIA EMAIL & U.S. MAIL

James Edward Bradley, Esquire
Moore Taylor Law Firm
P.O. Box 5709
Columbia, SC 29171

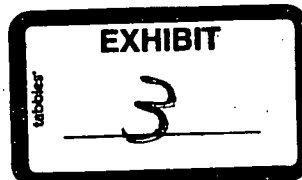
Re: *Donald Stanley, Individually and as Class Representative v. Southern States
Police Benevolent Association, Inc.*
C/A No. 2016-CP-10-4062
PHSW File No.: P2765.00

Dear Ward:

Please allow this letter to serve as Plaintiffs' effort to avoid filing a motion to compel related to Defendant's responses to Plaintiffs' First Set of Interrogatories and Requests for Production. As an initial matter, Plaintiffs would note that they are amenable to a protective order to protect any purported trade secrets or confidential information in Defendant's possession.

Defendant's responses to Plaintiffs' First Set of Requests for Production are deficient in that the only documents provided to date are related to the individual Plaintiffs' claims over the years. You have produced no other documents related to the claims in this litigation (RFP No. 1), the communications with third parties that touch upon the claims in this litigation (RFP No. 8), internal communications concerning the claims in this litigation (RFP No. 9), all communications with any state agency, including insurance commissions (RFP No. 10 and 17), documents related to the denial of claims to members (RFP No. 11), membership forms (RFP No. 12), form communications with members concerning the legal defense benefit and actions against Defendant (RFP No. 14), all advertising, brochures, flyers, etc. distributed by Defendant (RFP No. 15), and communications regarding compliance (or lack thereof) with state law (RFP No. 16),

Defendant's Answers to Interrogatories are deficient in that you have failed to fully respond to the following interrogatories: request for all email accounts and telephone numbers used by Defendant (Interrogatory No. 6), persons that Defendant has discussed this lawsuit with

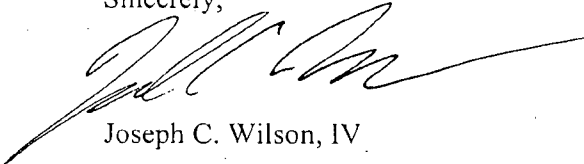


(Interrogatory No. 8), Defendant's membership list (Interrogatory No. 9), and information regarding denials (Interrogatory No. 10).

Please respond to these requests in full within ten days. Failure to do so will result in a motion to compel.

With kind regards,

Sincerely,

A handwritten signature in black ink, appearing to read "J. C. Wilson, IV", with a long horizontal flourish extending to the right.

Joseph C. Wilson, IV

Enclosures

cc: Kent T. Stair, Esquire (Via Email and U.S. Mail)
Ronald L. Richter, Jr., Esquire (Via Email)
Eric S. Bland, Esquire (Via Email)
Andrew J. Savage, Esquire (Via Email)

Joseph Wilson

From: Ronnie Richter <Ronnie@blandrichter.com>
Sent: Monday, September 18, 2017 4:23 PM
To: Ward Bradley; Scott Mongillo; Eric S. Bland; andy@savlaw.com; kstair@carlockcopeland.com; pnorris@carlockcopeland.com
Cc: Joseph Wilson; Carl Pierce
Subject: RE: Donald Stanley v. Southern States Police Benevolent Assoc.

Certainly. Ronnie

From: Ward Bradley [mailto:ward@mttlaw.com]
Sent: Monday, September 18, 2017 12:34 PM
To: Ronnie Richter; Scott Mongillo; Eric S. Bland; andy@savlaw.com; kstair@carlockcopeland.com; pnorris@carlockcopeland.com
Cc: Joseph Wilson; Carl Pierce
Subject: RE: Donald Stanley v. Southern States Police Benevolent Assoc.

Gentlemen

It looks like you guys have served us with additional discovery.

By my count the responses are due soon.

Can we have an additional 30 days to respond to the additional discovery, please?

That would make the response due October 20 by my calculations.

Please let me know

Thanks

Ward

Moore Taylor Law Firm, P.A.
1700 Sunset Blvd.
Post Office Box 5709
West Columbia, SC 29171
Phone: 803-796-9160
Fax: 803-791-8410

The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. This message may be an attorney-client communication and/or work product and is therefore privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by e-mail, and delete the original message.



Joseph Wilson

From: Ronnie Richter <Ronnie@blandrichter.com>
Sent: Thursday, September 21, 2017 11:10 AM
To: Ward Bradley; Scott Mongillo; Eric S. Bland; andy@savlaw.com; kstair@carlockcopeland.com; pnorris@carlockcopeland.com
Cc: Joseph Wilson; Carl Pierce; Lisa M. Lescord; Larry Blackmer
Subject: RE: Donald Stanley v. Southern States Police Benevolent Assoc.

Ward. Please give us 2-3 consecutive days to conduct depositions at the home office in Georgia in early November. We will give you a list of the players shortly. Thanks. Ronnie

From: Ronnie Richter
Sent: Monday, September 18, 2017 4:23 PM
To: 'Ward Bradley'; Scott Mongillo; Eric S. Bland; andy@savlaw.com; kstair@carlockcopeland.com; pnorris@carlockcopeland.com
Cc: Joseph Wilson; Carl Pierce
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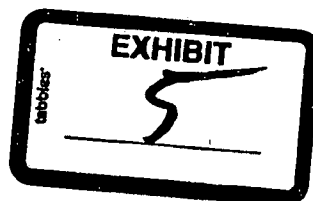
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Please let me know

Thanks

Ward

Moore Taylor Law Firm, P.A.
1700 Sunset Blvd.
Post Office Box 5709
West Columbia, SC 29171
Phone: 803-796-9160
Fax: 803-791-8410



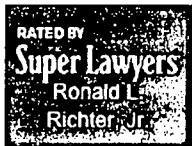
Joseph Wilson

From: Ronnie Richter <Ronnie@blandrichter.com>
Sent: Wednesday, October 18, 2017 2:00 PM
To: Ward Bradley; kstair@carlockcopeland.com
Cc: Eric S. Bland; Scott Mongillo; Lisa M. Lescord; Carl Pierce; Joseph Wilson
Subject: SSPBA Depositions
Attachments: SSPBA Lawsuit - PL 30b6 NOD.PDF

Ward. Attached please find a draft of the 30b6 notice we would intend to serve. This should allow you to identify those parties who will testify as to the intended subject matters. In addition to one or more 30b6 witnesses, we would also like to depose Jack Roberts, Charlie Cordell, Renee Dixon, Wayne Tubb, Jenna Warner and Joni Fletcher. Please give us a few alternate dates in November / December. We anticipate 2-3 days. We are happy to take the depositions at the SSPBA home office in Georgia. Let me know. Ronnie

Ronald L Richter, Jr.

Bland Richter, LLP
Attorneys at Law
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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

FOR THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2016-CP-10-4062

Donald Stanley, Individually and as)
Class Representative,)

vs.)

Southern States Police Benevolent)
Association, Inc.)

Defendant.)

**PLAINTIFF'S NOTICE OF 30(b)(6)
DEPOSITION OF DEFENDANT
SOUTHERN STATES POLICE
BENEVOLENT ASSOCIATION, INC.**

YOU WILL PLEASE TAKE NOTICE that on _____ beginning at 10:00 AM, at the offices of Defendant Southern States Police Benevolent Association, Inc., 2155 Highway 42 South, McDonough, GA 30252, the undersigned attorneys will take the 30(b)(6) Deposition of Defendant Southern States Police Benevolent Association, Inc., through a corporate designee of said entity, before a notary public, this Deposition to continue from day to day until completed. You are invited to attend and take such part as is fit and proper.

The Defendant Southern States Police Benevolent Association, Inc. designee will be examined regarding those matters set forth in the attached **EXHIBIT A**.

This deposition is being taken for the purpose of discovery, for use at trial, and all other purposes as are permitted under the Rules of this Court and all other applicable statutes and laws. If said deposition is not commenced or, if commenced, should be not concluded on that date, the taking thereof shall be adjourned from time to time, at the same place and hour, until the same shall be completed.

Charleston, South Carolina
October 18, 2017

{SIGNATURE PAGE TO FOLLOW}

Attorneys for Plaintiffs

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STATE OF SOUTH CAROLINA)
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Donald Stanley, Individually and as)
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vs.)

Southern States Police Benevolent)
Association, Inc.)

Defendant.)

CERTIFICATE OF SERVICE

I, Lisa M. Lescord, the undersigned paralegal at Bland Richter, LLP, attorney for the Plaintiffs, do hereby certify that I have served upon the Defendants in the above referenced matter, by forwarding a copy of the same, via email and/or first class mail postage prepaid, unless otherwise stated below, to the following counsel listed below:

Documents:

PLAINTIFF'S NOTICE OF 30(b)(6) DEPOSITION OF DEFENDANT SOUTHERN STATES POLICE BENEVOLENT ASSOCIATION, INC.

Counsel:

James Edward Bradley, Esquire
MOORE TAYLOR LAW FIRM, P.A.
Attorneys for Defendant
1700 Sunset Boulevard
P.O. Box 5709
West Columbia, SC 29171

Lisa M. Lescord
Paralegal

Charleston, South Carolina
October 18, 2017

*Donald Stanley, Individually and as Class Representative vs.
Southern States Police Benevolent Association, Inc.
Civil Action No: 2016-CP-10-4062*

EXHIBIT A

1. The corporate structure of the Southern States Police Benevolent Association, Inc. ("SSPBA"), including but not limited to its ownership, the identity and role of its officers and directors and the identity and role of its management structure.
2. The corporate finances of the SSPBA, including but not limited to its annual revenues and expenses for the years 2010 to present, officer's salaries, director's compensation, reserves, assets, debts and contractual relationships.
3. The legal defense benefit plan, including but not limited to the funds paid to attorneys on behalf of members for the years 2010 to present, the number of claims submitted for coverage under the plan for the years 2010 to present, the number and identify of claims for which coverage was denied for the years 2010 to present.
4. The denial, suspension or withdrawal of benefits under the legal defense benefit plan for the years 2010 to present, including the name of the party seeking benefits, the nature of the underlying claim and the reasons for the denial, suspension or withdrawal of benefits.
5. Any and all requests submitted by the SSPBA for licensure and/or permission to transact business of any kind in the State of South Carolina for the years 2010 to present, including the name of the agency from which licensure / permission was sought, the identity of the person(s) making the request, the identity of the information submitted for consideration, the decision of the agency to which the request was made.
6. Any and all requests submitted by the SSPBA for licensure and/or permission to transact business of any kind in the State of Georgia for the years 2010 to present, including the name of the agency from which licensure / permission was sought, the identity of the person(s) making the request, the identity of the information submitted for consideration, the decision of the agency to which the request was made.
7. Any and all requests submitted by the SSPBA for licensure and/or permission to transact business of any kind in the State of North Carolina for the years 2010 to present, including the name of the agency from which licensure / permission was sought, the identity of the person(s) making the request, the identity of the information submitted for consideration, the decision of the agency to which the request was made.
8. Any and all requests submitted by the SSPBA for licensure and/or permission to transact business of any kind in the State of Virginia for the years 2010 to present, including the name of the agency from which licensure / permission was sought, the identity of the

person(s) making the request, the identity of the information submitted for consideration, the decision of the agency to which the request was made.

9. Any and all requests submitted by the SSPBA for licensure and/or permission to transact business of any kind in the State of West Virginia for the years 2010 to present, including the name of the agency from which licensure / permission was sought, the identity of the person(s) making the request, the identity of the information submitted for consideration, the decision of the agency to which the request was made.
10. Any and all requests submitted by the SSPBA for licensure and/or permission to transact business of any kind in the State of Kansas for the years 2010 to present, including the name of the agency from which licensure / permission was sought, the identity of the person(s) making the request, the identity of the information submitted for consideration, the decision of the agency to which the request was made.
11. Any and all requests submitted by the SSPBA for licensure and/or permission to transact business of any kind in the State of Arkansas for the years 2010 to present, including the name of the agency from which licensure / permission was sought, the identity of the person(s) making the request, the identity of the information submitted for consideration, the decision of the agency to which the request was made.
12. Any and all requests submitted by the SSPBA for licensure and/or permission to transact business of any kind in the State of Tennessee for the years 2010 to present, including the name of the agency from which licensure / permission was sought, the identity of the person(s) making the request, the identity of the information submitted for consideration, the decision of the agency to which the request was made.
13. Any and all requests submitted by the SSPBA for licensure and/or permission to transact business of any kind in the State of Louisiana for the years 2010 to present, including the name of the agency from which licensure / permission was sought, the identity of the person(s) making the request, the identity of the information submitted for consideration, the decision of the agency to which the request was made.
14. Defendant's policies, procedures, standards, rules, ethics, or guidelines; including any documents, emails, and/or other communications regarding said subject matter (collectively referred to as "policies") adopted or communicated by Defendant that govern or direct Defendant in the following areas:
 - a. The amount of reserves, capital, or surplus that Defendant maintains to insure it can provide and pay for attorneys for members pursuant to the Legal Defense Benefit provided by Defendant;
 - b. Any policies related to Defendant's decision to not register as an insurance company or prepaid legal benefits plan in any state in which Defendant operates;

- c. Any policies governing the solicitation or new members, including but not limited to appropriate representations to make or not make to members;
- d. Any policies related to denying or approving claims or requests for counsel by members, including "coverage analysis," pursuant to the Legal Defense Benefit provided by Defendant;
- e. Any policies related to the handling or adjustment of "claims" by members under the Legal Defense Benefit;
- f. Any policies related to cancelling coverage for members under the Legal Defense Benefit provided by Defendant;
- g. Any policies related to the choice of the appropriate referral attorney to represent members, including but not limited to whether that choice is made by Defendant or the member;
- h. Any policies related to the relationship or communications between Defendant and its members who have sought legal counsel pursuant to Defendant's Legal Defense Benefit;
- i. Any policies related to the relationship or communications between Defendant and the referral attorneys it hires for its members;
- j. Any policies addressing the conflict of interest between Defendant and its members created by the fact that Defendant is paying for referral attorneys for members, as recognized by Rule 1.8(f) of the South Carolina Rules of Professional Conduct;
- k. Any policies regarding obtaining informed consent from members to having a third party, Defendant, pay for a member's referral attorney;
- l. Any policies addressing the attorney-client privilege or privileged communications between Defendant's members and the referral attorneys retained by Defendant to represent members, including how those privileged communications will be protected in light of the fact that Defendant is paying for those referral attorneys;
- m. Any policies addressing Defendant's control or guidance of the referral attorneys it retains for its members and Defendant's duty to not interfere in the attorney's professional judgment in representing members;
- n. Any policies addressing how much referral attorneys retained by Defendant on behalf of its members can charge Defendant or how much time a referral attorney can spend on any particular matter;

- o. Any other policies that relate to or touch Defendant conducting its business and handling of the Legal Defense Benefit with good faith or in a fair and honest manner.
- 15. Defendant's communications with its members regarding the above-referenced policies and procedures.
- 16. Defendant's communications with its members regarding the above-referenced policies and procedures.
- 17. Defendant's communications with its referral attorneys regarding the above-referenced policies and procedures.
- 18. Defendant's decision to not register or seek licensing as an insurance company or prepaid legal benefits plan in any of the states in which Defendant operates, including any and all internal communications regarding same and communications with third parties, including attorneys, regarding same.

Joseph Wilson

From: Ward Bradley <ward@mttlaw.com>
Sent: Tuesday, October 31, 2017 10:54 AM
To: Ronnie Richter; kstair@carlockcopeland.com
Cc: Eric S. Bland; Scott Mongillo; Lisa M. Lescord; Carl Pierce; Joseph Wilson
Subject: RE: SSPBA Depositions

Follow Up Flag: Follow up
Flag Status: Completed

Thanks Ronnie

Sorry I haven't been back to you sooner.

We have had a hard time finding a time when everyone is available for two or three days in a row. A good bit of it is on me. I just am jammed through the end of the year – nice problem to have, but a problem nonetheless.

How does the week of January 15 sound to you? This is far enough ahead that we should be able to reserve space on everyone's calendars.

We would like to have the depositions in McDonough but not at PBA headquarters as we do not want to disrupt the operations for that long. We will find suitable lawyer's office or other conference room nearby.

Two other matters. First, I think our discovery responses to your second requests are due today or tomorrow. I am working on these and should get information to you this week.

Second, it looks like your motion to compel the first discovery responses is scheduled for November 14 in front of Judge Nicholson. Since we have a pending motion for summary judgment, I am going to ask the Judge Nicholson to hear both motions at the same time as we did with the previous motions. I don't know how you feel about that, and I didn't want to spring it on you at the last minute. Please let me know your position.

Please let me know if there are any other outstanding issues.

Thanks

Ward

From: Ronnie Richter [mailto:Ronnie@blandrichter.com]
Sent: Tuesday, October 31, 2017 9:54 AM
To: Ward Bradley <ward@mttlaw.com>; kstair@carlockcopeland.com
Cc: Eric S. Bland <ericbland@blandrichter.com>; Scott Mongillo <Scott@blandrichter.com>; Lisa M. Lescord <Lisa@blandrichter.com>; Carl Pierce <carlpierce@phswlaw.com>; Joseph Wilson <joewilson@phswlaw.com>
Subject: RE: SSPBA Depositions

Ward. Please let us know how you are coming along with getting dates for depositions. Thanks. Ronnie

From: Ward Bradley [mailto:ward@mttlaw.com]
Sent: Thursday, October 19, 2017 11:56 AM
To: Ronnie Richter <Ronnie@blandrichter.com>; kstair@carlockcopeland.com



Cc: Eric S. Bland <ericbland@blandrichter.com>; Scott Mongillo <Scott@blandrichter.com>; Lisa M. Lescord <Lisa@blandrichter.com>; Carl Pierce <carlpierce@phswlaw.com>; Joseph Wilson <joewilson@phswlaw.com>
Subject: RE: SSPBA Depositions

OK

Thanks Ronnie

I will see what I can do with dates.

I am pretty blocked up for November, and December is filing up fast.

We are probably going to have objections to the scope of your notice, but we can take that up later – just want to put you on notice.

Thanks

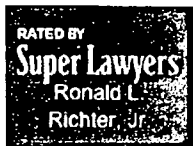
Ward

From: Ronnie Richter [<mailto:Ronnie@blandrichter.com>]
Sent: Wednesday, October 18, 2017 2:00 PM
To: Ward Bradley <ward@mttlaw.com>; kstair@carlockcopeland.com
Cc: Eric S. Bland <ericbland@blandrichter.com>; Scott Mongillo <Scott@blandrichter.com>; Lisa M. Lescord <Lisa@blandrichter.com>; Carl Pierce <carlpierce@phswlaw.com>; Joseph Wilson <joewilson@phswlaw.com>
Subject: SSPBA Depositions

Ward. Attached please find a draft of the 30b6 notice we would intend to serve. This should allow you to identify those parties who will testify as to the intended subject matters. In addition to one or more 30b6 witnesses, we would also like to depose Jack Roberts, Charlie Cordell, Renee Dixon, Wayne Tubb, Jenna Warner and Joni Fletcher. Please give us a few alternate dates in November / December. We anticipate 2-3 days. We are happy to take the depositions at the SSPBA home office in Georgia. Let me know. Ronnie

Ronald L Richter, Jr.

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

MICHAEL SLAGER,	)	
	)	
Plaintiff,	)	No. 2:15-cv-04536-DCN
	)	
v.	)	
	)	
SOUTHERN STATES POLICE	)	ORDER
BENEVOLENT ASSOCIATION, INC.,	)	
	)	
Defendant.	)	

This matter is before the court on plaintiff Michael Slager's ("Slager") motion to seal and motion for a protective order pursuant to Federal Rule of Civil Procedure 26(c). For the reasons set forth below, the court grants Slager's motions.

I. BACKGROUND

Slager is a resident of South Carolina, Compl. ¶ 1, and defendant Southern States Police Benevolent Association, Inc. ("the PBA") is a tax-exempt labor organization, incorporated and existing under the laws of Georgia, Answer ¶ 4, that was formed to further the interests of its police officer members, Def.'s Resp. 1. The PBA offers a legal defense benefit policy to its members in South Carolina. Pl.'s Mot. 1; Def.'s Resp. 1. Slager, who was an officer with the City of North Charleston Police Department at the time, initially purchased a legal defense benefit policy from the PBA on October 13, 2011, but elected to discontinue the policy in June 2012. Compl. ¶¶ 8-9, 27. Nevertheless, Slager reinstated the policy on January 31, 2013, and continued to pay his \$23.50 monthly premium through April 2015. *Id.* ¶ 10. The policy, in pertinent part, stated that the PBA would provide legal representation to its "members only in those



cases where a lawsuit or criminal accusation results from professional acts or omissions which arise out of and in the scope of their duties as a law enforcement officer.” Pl.’s Mot., Ex. A ¶ A. Under the policy, the legal defense benefit “consist[ed] of payment by [the PBA] of attorney’s fees and directly related [c]ourt costs.” Id. ¶ B.

On April 4, 2015, Slager was involved in an officer-related shooting that resulted in the death of Walter Scott (“the Walter Scott incident”). Pl.’s Mot. 2. At the time of the incident, Slager had a wallet card issued by the PBA that provided an emergency telephone number for him to call to obtain an attorney. Id. at Ex. B. Per the instructions on the wallet card, Slager called the PBA emergency line to report the shooting and spoke with John Midgette (“Midgette”), a nonlawyer employee of the PBA who was on call at the time. Id. at 2; Def.’s Resp. 2. According to Slager, the call was for the express purpose of securing legal representation pursuant to the legal defense benefit policy. Pl.’s Mot. 2.

Following the telephone conversation with Slager, Midgette assigned attorney David Aylor (“Aylor”) to represent Slager. Id. Thereafter, Slager gave a statement regarding the incident to the South Carolina State Law Enforcement Division (“SLED”) in Aylor’s presence. Def.’s Resp. 2. Upon completion of the oral statement, Slager and Aylor made plans to meet with SLED again to submit a written statement. Id. at 3. When the two met with SLED on April 7, 2015, officers showed them a video of the incident, after which Slager refused to complete a written statement and was placed under arrest. Id. Aylor withdrew from representation on the same day. Id.; Pl.’s Mot. 2. Slager then contacted the PBA and asked for a replacement lawyer, but in a letter dated April 8, 2015, the PBA informed Slager it would no longer “provide [him] representation

in this matter due to the intentional violation of [the] policy/law exclusion.”¹ Exhibit 1 attached hereto.

After the PBA declined to hire a replacement lawyer for Slager, he filed the instant lawsuit on November 10, 2015, alleging claims for breach of contract, bad faith, and unfair insurance practices. Def.’s Resp. 3; Compl. ¶¶ 50–85. The PBA filed an answer on December 14, 2015, denying liability. ECF No. 7. As part of discovery, Slager first deposed Dale Preiser (“Preiser”), an employee of the PBA. Def.’s Resp. 3. Slager asked Preiser to justify the PBA’s refusal to appoint a replacement lawyer for him, and Preiser referenced the SLED video and the statements Slager made to Midgette on the date of the incident. Def.’s Resp., Ex. G, Dep. Dale Preiser 72–89. Following Preiser’s deposition, on June 8, 2016, Slager filed a motion to seal and motion for a protective order “restricting the [PBA] from referencing, disclosing[, or otherwise using communications between parties which are protected by the attorney client privilege.” ECF No. 23. Subsequently, during Slager’s deposition on June 13, 2016, the PBA asked questions regarding information Slager communicated to Midgette while trying to secure legal representation. Pl.’s Mot. 2. The PBA also inquired as to Slager’s current home address. Id. Slager’s counsel objected to the line of questioning and instructed Slager not to answer. Id.

Slager’s counsel consulted with opposing counsel pursuant to Local Rule 7.02, but the parties were unable to resolve the matter. Id. Therefore, Slager filed the present

¹ It seems a might curious that an insurer, who issues a policy that supposedly covers a criminal accusation on the one hand, can withdraw benefits if a member “has committed an intentional, deliberate and/or illegal act . . . criminally.” But this is a question for another day.

motion for a protective order on June 20, 2016. ECF No. 24. Slager seeks a protective order to prevent the PBA from using or otherwise disclosing any communication between him and Midgette regarding the Walter Scott incident. Id. at 5. In addition, Slager seeks to protect his home address from disclosure for the safety of his family. Id. at 6. The PBA filed a memorandum in opposition to Slager's motion on June 27, 2016, ECF No. 25, and the court held a hearing on July 18, 2016. The motion has been fully briefed and is ripe for the court's review.

II. STANDARD

Federal Rule of Civil Procedure 26(b)(1) limits the scope of discovery to "any nonprivileged matter that is relevant to any party's claim or defense." "The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden and expense" by forbidding or limiting the scope of discovery. Fed. R. Civ. P. 26(c)(1). "The scope and conduct of discovery are within the sound discretion of the district court." Columbus-Am. Discovery Grp. v. Atl. Mut. Ins. Co., 56 F.3d 556, 568 n.16 (4th Cir. 1995); see also U.S. ex rel. Becker v. Westinghouse Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating district courts are afforded "substantial discretion . . . in managing discovery").

"The party moving for a protective order bears the burden of establishing good cause." Webb v. Green Tree Servicing, LLC, 283 F.R.D. 276, 278 (D. Md. 2012).

"Normally, in determining good cause, a court will balance the interest of a party in obtaining the information versus the interest of his opponent in keeping the information confidential or in not requiring its production." UAI Tech., Inc. v. Valutech, Inc., 122 F.R.D. 188, 191 (M.D.N.C. 1988). In other words, the district court "must weigh the

need for the information versus the harm in producing it.” A Helping Hand, LLC v. Baltimore Cty., Md., 295 F. Supp. 2d 585, 592 (D. Md. 2003) (quoting Valutech, 122 F.R.D. at 191). The district court, however, is afforded broad discretion “to decide when a protective order is appropriate and what degree of protection is required.” Seattle Times Co. v. Rhinehart, 467 U.S. 20, 36 (1984).

Local Rule 30.04(C) provides that “[c]ounsel shall not direct or request that a witness not answer a question, unless that counsel has objected to the question on the ground that the answer is protected by a privilege. . . .” The rule further states that “[c]ounsel directing that a witness not answer a question on those grounds or allowing their clients to refuse to answer a question on those grounds shall move the court for a protective order under Fed. R. Civ. P. 26(c) or 30(d)(3) within seven (7) days of the suspension or termination of the deposition.” Id. “When a party withholds information otherwise discoverable by claiming that the information is privileged . . . , the party must: (i) expressly make the claim; and (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.” Fed. R. Civ. P. 26(b)(5)(A).

III. DISCUSSION

Slager filed a motion to seal and motion for a protective order to prevent the PBA from using or otherwise disclosing any communication between Slager and the PBA regarding the Walter Scott incident. According to Slager, these communications are protected by the attorney-client privilege and implicate his Fifth Amendment privilege against self-incrimination. Slager further contends his statements to Midgette are

irrelevant because the PBA, in defending its decision to deny him the legal defense benefit under the policy, is precluded from pursuing a different defense from that which it asserted in the April 8, 2015 denial letter. The PBA, on the other hand, argues it is entitled to use Slager's statements to defend itself in the instant lawsuit.

In Washington v. National Service Fire Insurance Co., the Supreme Court of South Carolina considered whether an insurer was bound by the defense asserted in its letter denying coverage under an automobile insurance policy. 168 S.E.2d 90 (S.C. 1969). The insured in Washington had promptly given notice of the accident in question to the insurer, but the insurer denied coverage, arguing the substitution of the "owned automobile" under the policy relieved it of liability with respect to the collision. Id. at 92. Notwithstanding the reason offered in the denial letter, the insurer subsequently sought to "assert[] as a defense that it was not given notice of the Washington claim, nor were the suit papers forwarded to it as required by the policy." Id.

The Washington court noted "[i]t is well settled that an insurer which has denied coverage on some other basis is precluded from defending against an action on a liability policy on the ground that the insured failed to comply with its requirements as to notice and the forwarding of suit papers." Id. According to the court, "[t]he purpose of these policy requirements is to 'enable the insurer to inform itself promptly concerning the accident, to investigate the circumstances, and prepare a timely defense, if necessary on behalf of the insured. Compliance with such a provision is unnecessary and serves no good purpose where the insurer has disclaimed liability under the policy.'" Id. at 93. Because the insurer denied coverage on the ground that the vehicle listed in the policy had been effectively substituted for another vehicle prior to the accident, the court held

that the insurer was precluded from relying upon any of the insured's omissions regarding notice and the forwarding of suit papers as a policy defense against the insured in that case. Id.

Applying the Washington court's reasoning to the facts of the instant case, the court finds the PBA is precluded from asserting as a defense that it denied the legal defense benefit based upon Slager's alleged misrepresentations to Midgette regarding the Walter Scott incident. In the letter denying coverage, the PBA stated the following:

Upon review of your case, please be advised that the P.B.A. will be unable to provide representation in this matter due to the intentional violation of [the] policy/law exclusion.

Southern States P.B.A. policy states as follows:

"Southern States P.B.A. reserves the right to withhold approval of any benefits and to withdraw approval of any benefits if it is determined at any time that the member has committed an intentional, deliberate and/or illegal act, either civilly, criminally, or administratively."

Order, Ex. 1.

Thus, it is clear from the denial letter that the sole basis upon which the PBA sought to deny Slager the legal defense benefit was its belief that Slager's actions during the Walter Scott incident were "intentional, deliberate and/or illegal" and, as such, were excluded from coverage under the policy. The letter makes no mention of Slager failing to cooperate, failing to provide truthful and relevant information, or otherwise violating any duties set forth in the policy. As a result, under Washington, the PBA is precluded from asserting Slager's allegedly untruthful conversations with Midgette led it to deny the legal defense benefit to Slager. 168 S.E.2d at 92 ("It is well settled that an insurer which has denied coverage on some other basis is precluded from defending against an

action on a liability policy on the ground that the insured failed to comply with its requirements as to notice and the forwarding of suit papers”); see also, e.g., Cox v. Reliance Standard Life Ins. Co., 43 F. App’x 606, 610 (4th Cir. 2002) (holding an insurer waived the right to argue the insured’s death was not an accident and, thus, not covered by the policy given that the insurer’s letter denying the beneficiary’s claim for accidental death benefits stated only that, pursuant to a policy exclusion, the loss was not covered because the insured was engaged in a felony at the time of his death). Because the PBA is precluded from asserting this defense, the court finds Slager’s conversations with Midgette are simply irrelevant to the case at hand. See Fed. R. Civ. P. 26(b)(1) (limiting the scope of discovery to “any nonprivileged matter that is relevant to any party’s claim or defense”).

The court further finds the potential harm that could arise from the introduction of Slager’s statements—namely, the possible implications it could have on the indictments pending in state and federal court—far outweighs any interest in using this evidence to substantiate a defense that the PBA, as a matter of law, is precluded from asserting. See A Helping Hand, LLC, 295 F. Supp. 2d at 592 (stating the court “must weigh the need for the information versus the harm in producing it” (quoting Valutech, 122 F.R.D. at 191)); Afro-Lecon, Inc. v. United States, 820 F.2d 1198, 1202 (Fed. Cir. 1987) (providing the court “has the discretion to . . . impose protective orders and conditions ‘when the interests of justice seem[] to require such action’” (quoting Sec. & Exch. Comm’n v. Dresser Indus., Inc., 628 F.2d 1368, 1375 (D.C. Cir. 1980), cert. denied, 449 U.S. 993 (1980))); Washington, 168 S.E.2d at 92 (stating “an insurer which has denied coverage on some other basis is precluded from defending against an action on a liability policy on

the ground that the insured failed to comply with its requirements as to notice and the forwarding of suit papers”). The court acknowledges that a protective order is not necessarily required for Slager to assert his Fifth Amendment privilege against self-incrimination. See In re Grand Jury Subpoena, 836 F.2d 1468, 1471 (4th Cir. 1988) (holding that, “[a]bsent a grant of immunity, the deponents were entitled, with or without a protective order, to assert their [F]ifth [A]mendment privilege in answer to potentially incriminating questions in a civil proceeding”). Slager, of course, may exercise this privilege at any time. See id. Nevertheless, the court finds the irrelevance of the information the PBA seeks to introduce—coupled with the potential harm its revelation could cause Slager in the pending criminal indictments—constitutes “good cause” for the court to issue a protective order in this matter. See Webb, 283 F.R.D. at 278 (stating that a “party moving for a protective order bears the burden of establishing good cause”); Valutech, 122 F.R.D. at 191 (“Normally, in determining good cause, a court will balance the interest of a party in obtaining the information versus the interest of his opponent in keeping the information confidential or in not requiring its production.”).

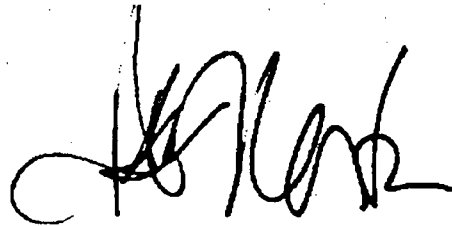
Finally, Slager asks the court to issue a protective order permitting him to refuse to disclose his home address, arguing such a measure is necessary for the safety of his family. In his memorandum in support of the motion, Slager notes that the state court “did not require [him] to list his current address on the bond paperwork because his previous home was firebombed.” Pl.’s Mem. Supp. 6. Frankly, the court sees no reason why the PBA needs this information because—as Slager notes—his attorney will accept service on his behalf and he is under the confines of a criminal bond. Id. More importantly, the release of Slager’s address could endanger the safety of his family.

Given that the potentially harmful consequences of requiring Slager to produce his current home address far outweigh the PBA's need for such information to defend itself in this lawsuit, the court finds Slager has shown good cause as to why he should not be required to disclose it. See A Helping Hand, LLC, 295 F. Supp. 2d at 592 (stating that, in deciding whether to issue a protective order, the court "must weigh the need for the information versus the harm in producing it" (quoting Valutech, 122 F.R.D. at 191)).

IV. CONCLUSION

For the foregoing reasons, the court **GRANTS** Slager's motion for a protective order to protect from disclosure his current home address as well as any statements he made to Midgette regarding the Walter Scott incident. In light of the court's decision as to this issue, the court finds Slager's motion to seal is **MOOT**.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'D. Norton', written over a horizontal line.

DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

August 3, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

FOR THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2016-CP-10-4062

Donald Stanley and Sean Reiter,)
Individually and as Class)
Representatives,)

AMENDED COMPLAINT

vs.)

Southern States Police Benevolent)
Association, Inc.)

Jury Trial Demanded

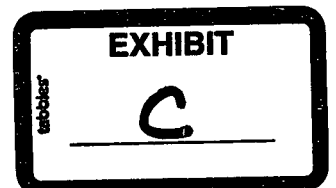
Defendant.

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CLERK OF COURT

The Plaintiffs, complaining of the conduct of the Defendant herein, allege as follows:

Class Allegations

1. Plaintiff, Donald Stanley, is an individual and resident of Berkeley County, South Carolina, who was at all times relevant hereto a member in good standing with the Southern States Police Benevolent Association.
2. Plaintiff, Sean Reiter, is a resident of New Jersey, who was at all times relevant hereto a member in good standing with the Southern States Police Benevolent Association.
3. Defendant Southern States Police Benevolent Association, Inc. ("PBA") is a corporation organized and existing under the laws of the State of Georgia, which transacts business in the States of Georgia, South Carolina, North Carolina, Virginia, West Virginia, Kansas, Arkansas, Tennessee and Louisiana.
4. The PBA invites police officers in the States of Georgia, South Carolina, North Carolina, Virginia, West Virginia, Kansas, Arkansas, Tennessee and Louisiana to become "members" of the PBA. Members of the PBA pay monthly "dues" to the PBA in exchange for a "Legal Defense Benefit Plan" (sometimes referred to as the "Plan"). According to the Plan, it provides a legal defense and related costs to an officer member who is accused of a crime while performing his or her official duties as police officers.



5. On average, PBA members pay \$23.50 per month in exchange for their membership, the primary benefit of which is the Legal Defense Benefit Plan.

6. To these officers, the benefit which the Plan purportedly offers is very attractive to officer members who are named in internal police investigations, criminal inquiries or are the target of a potential criminal action. It is common knowledge that a full drawn out defense for these cases in terms of attorneys' fees and costs can greatly exceed the annual compensation of the officer and quickly deplete any savings the officer may have.

7. The Legal Defense Benefit Plan is further attractive in that the members of the Plan view their individual contributions as being made for the benefit of all other Plan members, such that if any one member of the Plan were involved in an event which would necessitate the services of an attorney, a common fund would be available to provide for such needs.

8. In this action, the Plaintiffs contend that the Legal Defense Benefit Plan is actually a policy of insurance which the PBA was not licensed to sell in any of the States in which it transacts business.

9. Plaintiff Stanley is a Lieutenant with the Charleston County Sheriff's Department and is a member in good standing of the PBA and has been such for over 21 years.

10. Plaintiff Reiter was at all times relevant hereto a law enforcement officer with the Charleston County Sheriff's Department and/or the City of North Charleston Police Department.

11. Plaintiffs are representative of a proposed class consisting of the following:

All persons during the class period who participated in the Defendant's Legal Defense Benefit Plan by paying "member dues" in the approximate amount of \$23.50 per month to the Defendant in exchange for benefits of said Plan.

12. The "class period" runs from the filing of the present action back to the furthest time permissible under any applicable statutes of limitation, but not less than three (3) years.

13. Upon information and belief, the PBA currently has approximately 42,000

members spread over nine States (Georgia, South Carolina, North Carolina, Virginia, West Virginia, Kansas, Arkansas, Tennessee and Louisiana), each of whom pays approximately \$23.50 per month to participate in the PBA's Legal Defense Benefit Plan.

14. The proposed class is so numerous that joinder of all members is impractical. The class would consist not only of the approximately 42,000 current members of the PBA, but also any former members who paid "member dues" to the PBA during the class period as set forth herein.

15. As set forth herein below in greater detail, there are questions of law and fact which are common to the class.

16. In short, the PBA is not licensed as an insurer in any State in which it offers its Legal Defense Benefit Plan. As the Legal Defense Benefit Plan is a policy of insurance and the PBA lacks licensure to sell its policies of insurance, it has sold unauthorized insurance policies to its members who are entitled to a rescission of the Plan and to a refund of "member dues" or premiums paid, together with additional relief as set forth herein.

17. The claims and defenses of the representative parties are typical of the claims and defenses of the class. For example, it is anticipated that the PBA will assert that it is not an insurer and that the Legal Defense Benefit Plan is not a policy of insurance, but is instead a member benefit plan or a private contract between the parties. As a result, the PBA will assert that licensure was not required in order to sell its Plan.

18. As a certified law enforcement officers and members in good standing of the PBA throughout the class period, the class representatives will fairly and adequately protect the interests of the class.

19. The class action is the only vehicle to prevent inconsistent and varying adjudications with respect to individual class members. For example, it is foreseeable that at

least nine separate declaratory judgment actions may be commenced in the nine jurisdictions in which the PBA transacts business (if not 42,000+ separate actions). The commencement of such separate actions invites the possibility, if not probability, of inconsistent and/or contradictory rulings on the core issues presented herein (ie. whether the Legal Defense Benefit Plan is a policy of insurance, and therefore whether the PBA engaged in the unauthorized sale of policies of insurance). To the extent that the application of any individual State's law becomes significant, this contingency could be addressed easily through the creation of subclasses to represent the separate State memberships serviced by the PBA.

20. The class action is the superior method to fairly and efficiently adjudicate this controversy in that it would avoid the possibility of nine separate actions (if not 42,000 separate actions) spread over nine different States.

21. Also, upon information and belief, the Defendant would be in possession of the roster of current and past members, such that the management of the class action would not be difficult.

22. This court has jurisdiction over the parties to and the subject matter of this litigation. Jurisdiction is proper in South Carolina in accordance with the South Carolina Long Arm Statute for several reasons, including but not limited to the PBA's contracting to provide goods or services in the State of South Carolina and the PBA's tortious conduct resulting in tortious injury in the State of South Carolina.

23. Venue is proper in this Court as the PBA transacts business in this venue and the PBA has caused tortious injury in this venue.

Factual Background

24. Over the years, Plaintiff Stanley has been present at meetings of police officers in Charleston County, South Carolina at which agents of the Defendant appeared for the purpose of

selling memberships in the PBA.

25. In selling the merits of membership in the PBA, the Defendant advanced one benefit in particular: that as a member in good standing of the PBA, an officer who was accused of a crime while in the performance of the duties of their job would be provided an attorney and a legal defense at no cost. Moreover, the PBA would place no cap and no limit on the amount of money that it would spend in defense of a member for attorney's fees and costs.

26. In selling the Plan, the Defendant never revealed that it lacked proper licensure and authority to sell insurance, and to the contrary, gave every indication that it was so authorized and that the Plan was the best way possible for each and every member to protect themselves and their families from the potential financial devastation associated with being accused of a crime and being forced to retain the services of a lawyer.

27. In selling the Plan, the Defendant played upon the fear of financial devastation that police officers would face if they were in need of legal services and were not members of the PBA's organization.

28. Upon information and belief, the PBA agents who sell the Legal Defense Benefit Plan are paid on a commission basis as members are signed up.

29. The Legal Defense Benefit Plan is administered pursuant to the rules of Policy 00-16 (hereinafter the "Policy", a copy of which is attached as **Exhibit A**). In pertinent part, the Policy provides that:

- a. "The Legal Defense Benefit will be provided to Southern States PBA members only in those cases where a lawsuit or criminal accusation results from professional acts or omissions which arise out of and in the scope of their duties as a law enforcement officer." **Section 1.A. Coverage and Eligibility.**

- b. "The Benefit shall consist of the payment by Southern States PBA of attorney's fees and directly related Court costs." **Section 1.B. Coverage and Eligibility.**
- c. "The term 'arising out of and in the scope of their duties' as used in this Policy encompasses actions or omissions of a member while in the performance of regularly assigned law enforcement duties for his/her employment agency. The benefit is not designated to cover a member while he/she is off-duty or engaged in off-duty employment." **Section 1.E. Coverage and Eligibility.**
- d. "Coverage under the benefit is intended to apply to cases where a member has taken some type of direct law enforcement action consistent with his/her responsibilities as a law enforcement officer. It is not intended to apply to non-law enforcement actions, including, but not limited to, personnel, employment decisions (hiring, discipline or termination of employees), management decisions dealing with procedural operation or physical facilities of the law enforcement agency (validity of agency rules, procedural orders or a facilities capacity) or instances where no direct law enforcement action on the part of the member is alleged to have taken place (vicarious liability or liability based on a theory of respondent superior)." **Section 1.G. Coverage and Eligibility.**
- e. "The Association CEO or the Director of Legal Services (DLS) will authorize all requests for legal services under the Benefit if it is determined that the following criteria are met:
 - i. The requesting officer is a current member in good standing of Southern States, PBA,
 - ii. He/she was a member of the Association at the time of the incident,

- iii. He/she remains a member in good standing from the date of incident until conclusion of the adversarial proceedings,
- iv. The incident was the result of the MEMBER's performance of or pursuit of his/her official duties as a law enforcement officer, and
- v. The request for coverage was submitted by the member and received by the Association within ten (10) calendar days after the member received official notification of the civil suit or criminal accusation and active representation of the member is undertaken by a legal defense benefit attorney.
- vi. The member contracts the assigned attorney within five (5) days of receiving notification from the association specifying the name and phone number of such attorney.
- vii. The member cooperates in the preparation and defense of the case by remaining available for contact upon reasonable notice from the association or assigned counsel." **Section 1.B. Benefit Administration.**

- f. "Southern States PBA reserves the right to withhold approval of any benefits and to withdraw approval of any benefits if it is determined at any time that the member has committed an intentional, deliberate and/or illegal act, either civilly or criminally." **Section 1.D. Limitations, Restrictions and Exemptions.**

30. In further explanation of its benefits, Southern States PBA issues a wallet card to its members which summarizes the benefits and provides an explanation with regard to reporting claims. A copy of the wallet card is attached hereto as **Exhibit B**.

31. The wallet card provides in pertinent part as follows:

- All active members are eligible for the following defense benefits while acting within the scope of their law enforcement duties. SHOOTING; DEATH IN CUSTODY; CRIMINAL; CIVIL.
- ACCIDENT WITH DEATH OR SERIOUS INJURY. Contact PBA immediately 1-800-233-3506.
- More detailed information, including limitations, available upon request. To receive benefits, you must have continuing active membership for the time of the incident through period of assistance. For all other assistance, prior approval must be obtained.

32. According to the PBA website, the Legal Defense Benefit Plan is administered with "NO CAP" and "NO LIMIT." A copy of a screenshot from the website is attached hereto as **Exhibit C**.

33. In fact, no caps or limits are included within the Policy itself. However, not unlike any other insurance policy, the Policy does include provisions for exclusions from coverage.

34. The Policy provides a member with indemnity protection against a known future contingency.

35. The Policy allows a member to protect against the expense of a future contingency that would likely be too expensive to cover without the benefit of the Plan.

36. The Policy is insurance.

37. The membership "dues" are actually premiums.

38. The PBA engages in an elaborate scheme to evade the regulatory oversight of the various insurance commissions from the States in which it transacts business by referring to its

insurance policy as a "benefit plan" and by referring to the premiums paid by its insureds as "member dues."

39. Upon information and belief, the PBA has never asked for nor received an opinion letter from any of the insurance commissions from the various States in which it sells insurance.

40. Upon information and belief, the PBA has never asked for nor received an opinion letter from any attorney as to the propriety of selling the Legal Defense Benefit Plan.

41. In the State of Georgia, no person shall act as an insurer and no insurer shall transact insurance except as authorized to do so by the State. Ga. Code Ann. §§ 33-3-2, et seq.

42. In the State of Georgia, no person shall sell, solicit or negotiate insurance without being authorized to do so by the State. Ga. Code Ann. §§ 33-23-4, et seq.

43. Upon information and belief, the PBA is not licensed to act as an insurer or to solicit, sell, negotiate, or issue policies of insurance in the State of Georgia and has never been so licensed.

44. The PBA, both directly and by and through its agents and recruiters, acted as an insurer and sold policies of insurance to class members during the class period in the State of Georgia.

45. In the State of South Carolina, every insurer doing business in the State must be licensed and supervised by the director of insurance or his designee. S.C. Code Ann. §§ 38-5-10, et seq., 38-25-10, et seq.

46. In the State of South Carolina, no person shall sell, solicit or negotiate insurance without being authorized to do so by the State. S.C. Code Ann. §§ 38-43-20, et seq.

47. Upon information and belief, the PBA is not licensed to act as insurer or to solicit, sell, negotiate, or issue policies of insurance in the State of South Carolina and has never been so licensed.

48. The PBA, both directly and by and through its agents and recruiters, acted as an insurer and sold policies of insurance to class members during the class period in the State of South Carolina.

49. In the State of North Carolina, it is unlawful for any company to make or issue any contract of insurance except as authorized by that the State. N.C.G.S.A. §§ 58-3-5, et seq., 58-3-85, et seq.

50. In the State of North Carolina, no person shall sell, solicit or negotiate insurance without being authorized to do so by the State. N.C.G.S.A. §§ 58-33-26, et seq.

51. Upon information and belief, the PBA is not licensed to act as insurer or to solicit, sell, negotiate, or issue policies of insurance in the State of North Carolina and has never been so licensed.

52. The PBA, both directly and by and through its agents and recruiters, acted as an insurer and sold policies of insurance to class members during the class period in the State of North Carolina.

53. In the State of Virginia, no insurer shall transact the business of insurance or issue insurance policies until it has obtained a license issued by the State. Va. Code Ann. §§ 38.2-1024, et seq.

54. In the State of Virginia, no person shall sell, solicit or negotiate insurance without being authorized to do so by the State. Va. Code Ann. §§ 38.2-1802, et seq.

55. Upon information and belief, the PBA is not licensed to act as insurer or to solicit, sell, negotiate, or issue policies of insurance in the State of Virginia and has never been so licensed.

56. The PBA, both directly and by and through its agents and recruiters, acted as an insurer and sold policies of insurance to class members during the class period in the State of Virginia.

57. In the State of West Virginia, no person may act as an insurer and no insurer may transact insurance except as authorized by a valid license issued by the State. W.V. Code Ann. §§ 33-3-1, et seq.

58. In the State of West Virginia, no person shall sell, solicit or negotiate insurance without being authorized to do so by the State. W.V. Code Ann. §§ 33-12-3.

59. Upon information and belief, the PBA is not licensed to act as insurer or to solicit, sell, negotiate, or issue policies of insurance in the State of West Virginia and has never been so licensed.

60. The PBA, both directly and by and through its agents and recruiters, acted as an insurer and sold policies of insurance to class members during the class period in the State of West Virginia.

61. In the State of Kansas, it is unlawful for any person to transact insurance business without a certificate of authority from the commission of insurance. Kan. Stat. Ann. §§ 40-214, et seq., 40-2702, et seq.

62. In the State of Kansas, no person shall sell, solicit or transact insurance without being authorized to do so by the State. Kan. Stat. Ann. §§ 40-244, et seq.

63. Upon information and belief, the PBA is not licensed to act as an insurer or to solicit, sell, negotiate, or issue policies of insurance in the State of Kansas and has never been so licensed.

64. The PBA, both directly and by and through its agents and recruiters, acted as an insurer and sold policies of insurance to class members during the class period in the State of Kansas.

65. In the State of Arkansas, no person shall act as an insurer, and no insurer shall transact insurance unless authorized by a certificate of authority issued by the Insurance Commissioner. A.C.A. §§ 23-63-201, et seq.

66. In the State of Arkansas, no person shall sell, solicit or negotiate insurance without being authorized to do so by the State. A.C.A. §§ 23-64-201, et seq.

67. Upon information and belief, the PBA is not licensed to act as an insurer or to solicit, sell, negotiate, or issue policies of insurance in the State of Arkansas and has never been so licensed.

68. The PBA, both directly and by and through its agents and recruiters, acted as an insurer and sold policies of insurance to class members during the class period in the State of Arkansas.

69. In the State of Tennessee, no insurer shall transact business until it has complied with all laws and received a certificate of authority to do business from the commissioner of insurance. T.C.A. §§ 56-2-102, et seq.

70. In the State of Tennessee, no person shall sell, solicit or negotiate insurance without being authorized to do so by the State. T.C.A. §§ 56-6-103, et seq.

71. Upon information and belief, the PBA is not licensed to act as an insurer or to solicit, sell, negotiate, or issue policies of insurance in the State of Tennessee and has never been so licensed.

72. The PBA, both directly and by and through its agents and recruiters, acted as an insurer and sold policies of insurance to class members during the class period in the State of Tennessee.

73. In the State of Louisiana, no person shall act as an insurer unless properly qualified, and no person shall transact the business of insurance without complying with the appropriate laws. La. Stat. Ann. §§ 22.12, et seq.

74. In the State Louisiana, no person shall sell, solicit or negotiate insurance without being authorized to do so by the State. La. Stat. Ann. §§ 22:1543, et seq.

75. Upon information and belief, the PBA is not licensed to act as an insurer or to solicit, sell, negotiate, or issue policies of insurance in the State of Louisiana and has never been so licensed.

76. The PBA, both directly and by and through its agents and recruiters, acted as an insurer and sold policies of insurance to class members during the class period in the State of Louisiana.

77. In the State of Alabaman, no person shall transact a business of insurance without complying with the applicable law and without authorization by a certificate of authority issued by the insurance commissioner. Ala. Code §§ 27-1-5, et seq., 27-3-1, et seq., 27-3-27, et seq.

78. In the State Alabama, no person shall sell, solicit or negotiate insurance without being authorized to do so by the State. Ala. Code §§ 27-2-1, et seq., 27-3-27, et seq.

79. Upon information and belief, the PBA is not licensed to act as an insurer or to solicit, sell, negotiate, or issue policies of insurance in the State of Alabama and has never been so licensed.

80. The PBA, both directly and by and through its agents and recruiters, acted as an insurer and sold policies of insurance to class members during the class period in the State of Alabama.

81. Upon information and belief, as a result of PBA's failure to seek appropriate licensing and authorization to solicit, sell, negotiate or issue policies of insurance in the states in which it operated, PBA failed to comply with the states' various requirements governing properly licensed and authorized insurance companies and consequently breached its duties to Plaintiff and all class members, including:

- a. the duty to maintain sufficient reserves, capital, and surplus;
- b. the duty to maintain adequate records and be subject to supervision and regular audits by appropriate state authorities;
- c. the duty to prepare and submit reports to state authorities to demonstrate adherence to reserve, capital, and surplus requirements;
- d. the duty to handle and account for premiums paid by insureds;
- e. the duty to renew policies and not cancel policies in bad faith;
- f. the duty to conduct its business in a fair and honest manner;
- g. the duty to act in good faith in the solicitation, sell, negotiation and issuance of policies;
- h. the duty to act in good faith in the handling and adjustment of claims made against those policies; and

i. the duty to comply with other laws, statutes and regulations enacted for the benefit of insureds as discovery may show.

82. Without regulatory oversight, the Defendant has and continues to administer its plan with impunity as it relates to the rights and interests of its membership.

**For a First Cause of Action
Breach of Contract**

83. The paragraphs enumerated above are incorporated herein as if realleged and restated verbatim.

84. With regard to every class member during the class period, the Defendant PBA issued and sold the class members policies of insurance which it was not authorized to issue or sell.

85. The fact that the Defendant PBA was not authorized to enter into insurance contracts with the class members is a breach of the contract between Defendant PBA and class members and a breach of the implied covenants of good faith and fair dealing contained in the contract.

86. Class members have not breached the insurance contracts.

87. As a direct and proximate result of these breaches of contract, all class members were damaged.

88. As a proximate cause of Defendant PBA's breach of contract, the class members have suffered damages in an amount to be proven at trial, and Plaintiffs hereby seek compensatory and consequential damages on behalf of himself and the entire class.

89. In the alternative, Defendant PBA's breach is so fundamental that Plaintiffs and all class members are entitled to rescission of the insurance contracts and a return to each and every class member of the monies paid to the Defendant PBA during the class period.

90. The class members are entitled to and pray for a judgment against the Defendant PBA in a sum equal to the aggregate of all monies paid by the class members during the class period in exchange for their participation in the unauthorized Legal Defense Benefit Plan sold by the Defendant PBA, together with prejudgment interest, attorneys' fees and other relief which the court deems just and proper.

**For a Second Cause of Action
Negligence**

91. The paragraphs enumerated above are incorporated herein as if realleged and restated in full verbatim.

92. Defendant PBA owed a duty to the Plaintiffs and class members to use due skill, care, reasonable expedience and faithfulness in the operation of its business, in the solicitation, sell, negotiation and issuance of policies, in the handling and adjustment of claims, and in such other ways as set out above.

93. Defendant PBA breached its duties to Plaintiffs and class members by failing to obtain appropriate licensing and authorization from the states in which Defendant is operating and by failing to comply with the insurance laws of those states.

94. Plaintiff and all class members were damaged by Defendant PBA's breach of its duties.

95. As a proximate cause of Defendants' negligence, Plaintiffs and all class members have suffered damages in an amount to be proven at trial, and Plaintiffs on behalf of themselves and all class members hereby seek compensatory and consequential damages.

96. These breaches of duty were made with reckless and/or wanton disregard for the rights of the Plaintiffs and class members, and the Plaintiffs on behalf of themselves and all class members are entitled to an award of actual, consequential and punitive damages in amounts to be proven at trial.

**For a Third Cause of Action
Breach of Fiduciary Duty**

97. The paragraphs enumerated above are incorporated herein as if realleged and restated in full verbatim.

98. Defendant PBA owed Plaintiff and all class members a fiduciary duty of good faith and fair dealing.

99. Defendant PBA breached its fiduciary duties to Plaintiffs and all class members by soliciting, selling, negotiating, and issuing insurance policies without appropriate licensing and authorization from state authorities and without complying with state laws as set out above.

100. Plaintiffs and all class members are entitled to and pray for damages against the Defendant PBA, including a refund all of the premiums paid for the Plan during the class period, as well as an award of punitive damages in a sum determined sufficient to impress upon the Defendant PBA the seriousness of its conduct and to deter such similar conduct in the future.

**For a Fourth Cause of Action
Unjust Enrichment and Restitution**

101. The paragraphs enumerated above are incorporated herein as if realleged and restated in full verbatim.

102. Plaintiffs and all class members paid premiums to Defendant PBA for the insurance contracts that were not authorized by law.

103. At the time Defendant PBA received these premiums, it knew that it was selling and issuing insurance policies, collecting premiums on those policies, and adjusting claims even though it was not licensed and authorized to act as an insurer in any of the states in which it was operating.

104. In equity and good conscience, the money paid to Defendant PBA by the Plaintiffs and class members should be refunded.

105. Plaintiffs and class members are entitled to restitution from Defendant PBA of all sums paid to Defendant PBA.

**For a Fifth Cause of Action
Fraud in the Inducement**

106. The paragraphs enumerated above are incorporated herein as if realleged and restated in full verbatim.

107. In selling the Plan, the PBA falsely represented to its members either expressly or impliedly that it was authorized to sell the Plan.

108. The PBA's misrepresentation and/or omission with regard to its authorization to sell the Plan was material.

109. The PBA knew or should have known that it was not authorized to sell policies of insurance and/or the PBA acted in reckless disregard of such truth or falsity.

110. The PBA made its misrepresentations and/or omissions with the intent that its members rely on the PBA by purchasing its Plan of insurance.

111. The members who purchased the Plan were ignorant of the falsity of the PBA's misrepresentations and/or omissions and acted in reliance on the truth of such representations or omissions.

112. The members who purchased the Plan had the right to rely on the PBA. At all times relevant hereto, although not authorized, the PBA was acting in the capacity as an insurer, as a result of which a special or fiduciary relationship existed between the PBA and its members.

113. As a direct and proximate result of the members' reliance upon the PBA, they purchased plans of insurance which the PBA was not authorized to sell. The members paid monthly premiums during the class period and are entitled to a return of all such premiums paid.

114. The class members are entitled to and pray for damages against the Defendant in an amount sufficient to refund all of the premiums paid for the Plan during the class period, as well as an award of punitive damages in a sum determined sufficient to impress upon the Defendant the seriousness of its conduct and to deter such similar conduct in the future.

**For a Sixth Cause of Action
Negligent Misrepresentation**

115. The paragraphs enumerated above are incorporated herein as if realleged and restated in full verbatim.

116. In selling the Plan, the PBA falsely represented to its members either expressly or impliedly that it was authorized to sell the Plan.

117. The PBA had a pecuniary interest in making such false representation.

118. The PBA had a duty of care to ensure that it communicated truthful information to the members who purchased its Plan.

119. The PBA breached its duty of care in a number of particulars, including but not limited to the following:

a. In never seeking an opinion from any insurance commission in any State in which it transacts business that it was authorized to sell its Plan;

b. In never seeking an opinion from any State agency in any State in which it transacts business that it was authorized to sell its Plan; and

c. In never seeking the opinion of legal counsel as to the propriety of selling its Plan in any of the States in which it transacts business.

120. The members who purchased the Plan justifiably acted in reliance on the truth of the PBA's representations or omissions.

121. As a direct and proximate result of the members' reliance upon the PBA, they purchased plans of insurance which the PBA was not authorized to sell. The members paid monthly premiums during the class period and are entitled to a return of all such premiums paid.

122. The class members are entitled to and pray for damages against the Defendant in an amount sufficient to refund all of the premiums paid for the Plan during the class period, as well as an award of punitive damages in a sum determined sufficient to impress upon the Defendant the seriousness of its conduct and to deter such similar conduct in the future.

**For a Seventh Cause of Action
Injunctive Relief**

123. The paragraphs enumerated above are incorporated herein as if realleged and restated in full verbatim.

124. Defendant PBA is operating illegally and in violation of insurance laws in each of the states in which it is operating without authority or license.

125. As such, the PBA operates without any regulatory oversight whatsoever, including significantly the establishment of reserves to ensure that it has the financial wherewithal to cover the risks for which has extended coverage.

126. The actions of Defendant PBA have and will continue to result in irreparable harm, loss and damage to Plaintiff and the class members.

127. Based on the foregoing, Plaintiffs, on behalf of themselves and the entire class, hereby seeks preliminary and permanent injunctive relief to bar Defendant PBA from operating as an insurer without proper authority and license, including barring Defendant PBA from soliciting, marketing, selling, and issuing insurance contracts and adjusting claims unless Defendant obtains proper authority and licensing from the states in which it is operating.

WHEREFORE, the Plaintiffs, on their own behalf and on behalf of the class of members they represent, pray for:

- a. a judgment against the PBA both for actual damages, including damages for the dues or premiums paid by PBA members during the class period, together with prejudgment interest thereon;
- b. an award of punitive damages in an amount deemed sufficient to impress upon the Defendant the seriousness of its conduct and to deter such similar conduct in the future;
- c. an award of attorney's fees and costs;
- d. injunctive relief temporarily and permanently barring Defendant PBA from operating as an insurer in any state in which it is not licensed or authorized to act as an insurer; and
- e. such additional relief as the Court deems just and proper.

Charleston, South Carolina

11/22, 2016

Attorneys for Plaintiffs



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Donald Stanley, Individually and as Class Representative
vs. Southern States Police Benevolent Association, Inc.

EXHIBIT A
COMPLAINT

Legal Defense Benefit Plan

SOUTHERN STATES POLICE BENEVOLENT ASSOCIATION, INC.

POLICY NO. 00-16

LEGAL DEFENSE BENEFIT

BACKGROUND:

In order to provide legal defense benefits to the members of Southern States P.B.A., the Board of Directors hereby adopts the following policy:

POLICY:

Section 1. Coverage and Eligibility

- A. The Legal Defense Benefit will be provided to Southern States P.B.A. members only in those cases where a lawsuit or criminal accusation results from professional acts or omissions which arise out of and in the scope of their duties as a law enforcement officer. Representation will also be available at shooting scenes for incidents that resulted in personal injury, and at the scene of other incidents resulting in serious personal injuries caused by a member, arising out of that member's performance of or pursuit of his/her official duties. Where the attorney is made available will be determined by factors including, but not limited to, medical condition of the member, timeliness of the request for service and immediacy of the investigation.
- B. The Benefit shall consist of the payment by Southern States P.B.A. of attorney's fees and directly related Court costs.
- C. Members are entitled to legal defense and costs within the coverage provided regardless of the number of litigations involving a member during each year.
- D. Coverage is limited to actions stemming from incidents which occurred after May 1, 1984. Members must have been a Southern States P.B.A. member in good standing prior to the incident, and maintain membership in good standing status from time of incident, as well as throughout the litigation. If a member has joined Southern States P.B.A. from a similar organization subsequent to an incident which results in litigation, during the time of an organizational campaign wherein the P.B.A. was competing for collective bargaining certification rights held by another association,

Policy No. 00-16
Legal Defense Benefit
Page 2

Southern States P.B.A. will pay the same benefits for legal defense as would have been provided by the Association to which he/she was a member.

- E. The term "arising out of and in the scope of their duties" as used in this Policy encompasses actions or omissions of a member while in the performance of regularly assigned law enforcement duties for his/her employing agency. The benefit is not designated to cover a member while he/she is off-duty or engaged in off-duty employment, unless the circumstances are such that it is apparent the member was justified in placing himself/herself on duty acting in his/her police capacity in order to effect an arrest and to protect persons or property from harm. In instances of off-duty employment, coverage will be provided only where the member's employing agency and secondary employer decline coverage of that member. By definition "scope of duties" involves taking actions in those geographic areas or situations where the member has law enforcement authority.
- F. In order for a member to be eligible for legal defense, the member must be in good standing and up to date in dues payments, and must remain in good standing during the litigation. If the member fails to remain in good standing, Southern States P.B.A. reserves the right to terminate its support.
- G. Coverage under the benefit is intended to apply to cases where a member has taken some type of direct law enforcement action consistent with his/her responsibilities as a law enforcement officer. It is not intended to apply to non-law enforcement actions including, but not limited to, personnel, employment decisions (hiring, discipline or termination of employees), management decisions dealing with procedural operation or physical facilities of the law enforcement agency (validity of agency rules, procedural orders or a facility's capacity) or instances where no direct law enforcement action on the part of the member is alleged to have taken place (vicarious liability or liability based on theory of respondent superior).
- H. A member must request P.B.A. representation at the time the member receives official notice of the civil suit or criminal indictment and active representation of the member is undertaken. If counsel other than P.B.A.'s is retained by the member either at the onset of the case or at any future time, legal defense benefit coverage may, at the sole discretion of P.B.A., be denied or discontinued.

Section 2. Benefit Administration

- A. The Association CEO or the Director of Legal Services (DLS) will authorize all requests for legal services under the Benefit if it is determined that the following criteria are met:
1. the requesting officer is a current member in good standing of Southern States, P.B.A.,
 2. he/she was a member of the Association at the time of the incident,
 3. he/she remains member in good standing from date of incident until conclusion of adversarial proceedings,
 4. the incident was the result of the MEMBER's performance of or pursuit of his/her official duties as a law enforcement officer, and
 5. the request for coverage was submitted by the member and received by the Association within ten (10) calendar days after the member received official notification of the civil suit or criminal accusation and active representation of the member is undertaken by a legal defense benefit attorney,
 6. The member contacts the assigned attorney within five (5) days of receiving notification from the association specifying the name and phone number of such attorney,
 7. The member cooperates in the preparation and defense of the case by remaining available for contact upon reasonable notice from the association or assigned counsel.
- B. In instances where a timely request for representation as provided for in Section 2(A)5 has not been made, but the member is otherwise eligible for coverage, the member shall be responsible for all legal fees and costs incurred prior to the date the coverage is approved by the Association CEO.
- C. The Association CEO or the Director of Legal Services shall review all cases on a continuing basis to ensure proper representation is being

Policy No. 00-16
Legal Defense Benefit
Page 4

provided to the member and that the monthly fees, costs and expenditures are being incurred within the coverage and limitations set forth by this policy.

- D. If the Director of Legal Services determines that the criteria listed above are not met, the Director of Legal Services may reject the request, subject to review by the Association CEO.
- E. The request for representation shall include the name of the member and the member's Social Security number; a summary of the allegations; and the date of the incident. Upon receipt and review, approval or disapproval of coverage will be provided to the member. At that time, if approval is granted, the Association CEO or his/her designee shall assign a Panel Attorney to handle the case.
- F. In cases involving emergency situations such as shootings, vehicular accidents involving serious injury inflicted by a member, or other instances requiring emergency response by an attorney, the division or chapter president may authorize the use of a Panel Attorney for the emergency situation. As soon as possible, the Association CEO or the Director of Legal Services for Southern States P.B.A. is to be advised of the incident telephonically. A written request and/or report is to follow. The assignment of an attorney to cover an emergency problem will not commit the Southern States P.B.A. Legal Defense Benefit to coverage of future legal fees and costs. An attorney may not proceed beyond the preliminary stages of an emergency situation without additional written approval from the Association CEO or the Director of Legal Services.

Section 3. Legal Defense Benefit Panel of Attorneys and Authorized Fees.

- A. Attorneys appointed to the Legal Defense Benefit Panel of Attorneys shall be in good standing with the State Bar Association in which they intend to represent members and be willing to represent members pursuant to the fee arrangement as established by the Association CEO.
- B. Attorney's fees will be paid on the basis of uniform hourly rates established by the Association CEO. Deviations from this rate may be approved by the Association CEO or the Director of Legal Services.

- C. The Benefit shall also consist of the payment of Appellate fees when authorized by the Association CEO. Appellate fees shall be established in the same method as attorney fees in (B) above.
- D. When an attorney accepts representation for a member, he or she may seek compensation for fees and costs from the Southern States P.B.A. Legal Defense Benefit if:
 - 1. The attorney receives written authorization for such representation from the Association CEO or the Director of Legal Services.
 - 2. The attorney consents to the procedure, restrictions and limitations as set forth herein.
 - 3. No later than the 10th of each month, the attorney shall file with the Association CEO or the Director of Legal Services of Southern States P.B.A. a detailed monthly status report of the case he/she is handling, together with an itemized statement of fees and costs. Costs will be paid pursuant to a schedule established by the Association CEO and/or the Director of Legal Services.
 - 4. In civil cases wherein the employer is a party defendant, the attorney shall concentrate his/her efforts to protect the member against personal liability, unless the Association CEO or the Director of Legal Services authorizes otherwise.
 - 5. Interlocutory appeals or writs of certiorari may be filed with written permission from the Association Director of Legal Services, after consultation with the CEO of Southern States P.B.A. All appeals from final orders, judgment and verdicts must also have prior written approval.
 - 6. Upon completion of a case which has been concluded in favor of member, the attorney shall immediately file a motion for costs (and attorney's fees, if applicable). Southern States P.B.A. shall receive the benefit of an order granting recovery of attorney fees and assessed costs.

Section 4. Limitations, Restrictions and Exemptions

- A. A member will be entitled to an attorney under the Legal Defense Benefit in civil actions when the member is a co-defendant, in his/her individual capacity, with his/her employer and when punitive damages are sought against the member. (The litigation preparation shall be confined to the issue of punitive damages). The Association CEO or the Director of Legal Services reserve the right to review the costs and expenditures each month to determine if they have been incurred within the coverage set forth.
- B. The Benefit will not provide legal services in civil matters wherein punitive damages are not sought unless the member is sued individually and the employer refuses representation; or unless the employer is going to settle the claim and the employer has admitted wrongdoing on behalf of the member without the member's consent.
- C. The Director of Legal Services may direct that a case assigned to a legal defense attorney be monitored by the attorney in the following cases: (a) cases in which the member is being actively represented by the employer; (b) civil cases in which the member is being actively represented by the employer and the member is satisfied with representation being provided; and (c) civil cases in which the member is only a nominal party and the case is designed to test the legality of an employer's practice, policy or rule enforced by the member.

When a case is in monitoring status, the legal defense attorney will not actively participate in litigation of the case but, instead, will consult with the member and review appropriate court documents to ensure the member's interest continues to be adequately protected. Should the legal defense attorney determine active representation is warranted, or should the member request active participation in the case, the Director of Legal Services will be informed of the proposed change in representation and the reasons for the change. If after review of the information provided, the Director of Legal Services agrees that such active participation is warranted, the legal defense attorney shall actively represent the member in the case as approved by the Association CEO or the Director of Legal Services.

- D. Southern States P.B.A. reserves the right to withhold approval of any benefits and to withdraw approval of any benefits if it is determined at any

time that the member has committed an intentional, deliberate and/or illegal act, either civilly or criminally.

- E. Southern States P.B.A. reserves the sole right to settle a claim against a member based upon the recommendation of legal counsel and a determination by the Association CEO that such a course of action is in the best interest of Southern States P.B.A. Where such a determination is made, the member shall be afforded the option of accepting the settlement or obtaining private legal counsel, at his own expense, to continue the case. Should the member elect to continue litigation, all obligations of Southern States P.B.A. under the Legal Defense Benefit shall cease.
- F. The Benefit will not pay for the cost of any appeal, interlocutory or final, civil or criminal, unless prior approval is first obtained from the Association CEO or the Director of Legal Services.
- G. The attorney for a member may seek permission from the Association CEO or the Director of Legal Services to allow the attorney to actively litigate a civil case involving a member when the employer has indicated a position that is adverse to the member and/or the representation afforded by the employer is detrimental to the member. If the Association CEO or the Director of Legal Services grants approval in that instance, the Legal Defense Benefit will cover those legal fees and costs. Permission must first be obtained. Approval under this paragraph may be made by the Director of Legal Services only, in the absence of the CEO, is made to temporarily protect the member, and is to be reviewed by the CEO upon his/her return.
- H. A member who is being represented by the Association in any action, may not take any steps to amend the allegations and/or defenses to that action without the prior approval of the assigned legal defense attorney, if any, and the Director of Legal Services. Taking such an action will automatically release the Association from any requirements for coverage, if any, and give the Association the option to withdraw its representation from the action and to receive indemnification from the member for services provided up to the time the Association became aware of unapproved amendment.
- I. The Association will not provide legal defense benefit coverage as described in this policy to any member accused of criminal involvement

where the member either admits such involvement or where, in the opinion of the Association CEO, there exists sufficient evidence of such involvement that providing such coverage could bring discredit to the Association and/or the law enforcement profession.

- J. All decisions of the Director of Legal Services are subject to review by the Association CEO.

Section 5. Cessation of Legal Defense Benefit Plan

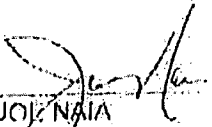
- A. In the event the Association Board of Directors shall determine that the Legal Defense Benefit Plan is no longer feasible for whatever reason, Southern States P.B.A. shall promptly notice each member of the Association by U.S. mail, first class, to the member's address, as listed in the Association's membership list.
- B. Thirty (30) days after the notice is mailed, the P.B.A.'s obligation under this plan shall cease, except in those incidents where representation of a member had already been undertaken. Where representation had been undertaken prior to the end of the thirty (30) day period, the provisions of this Plan shall continue to apply.

Section 6. Definitions

- A. As used in this Policy the term "Director of Legal Services" is defined as that individual on the Association staff designated by the CEO to be in charge of the Legal Department of the Association, and to assist in the administration of this policy.

ADOPTED: 10 JUNE 2000
EFFECTIVE DATE: 10 JUNE 2000
AMENDED: 24 JULY 2004
AMENDED: 16 JUNE 2010
CEO EFFECTIVE: 8 JUNE 2012

Former SSPBA Policy 90-01


JOE NAITA
Secretary-Treasurer

Donald Stanley, Individually and as Class Representative
vs. Southern States Police Benevolent Association, Inc.

EXHIBIT B
COMPLAINT

Southern States Police Benevolent Association, Inc. Wallet Card

LEGAL DEFENSE PLAN

All active members are eligible for the following defense benefits while acting within the scope of their law enforcement duties.

SHOOTING
DEATH IN CUSTODY
CIVIL
CRIMINAL
ACCIDENT WITH DEATH OR SERIOUS INJURY

Contact PBA immediately 1-800-233-5606

More detailed information including limitations available upon request. Inactive or new members must have continuing active membership in order to be eligible for the above benefits. If assistance is needed, contact your chapter or PBA.

SOUTHERN STATES
POLICE BENEVOLENT ASSN., INC.

1-800-233-5606 • WWW.SSPBA.ORG

Donald Stanley
 ID# 49120
 Member Since 10/11/1994

20 YEAR MEMBER



Donald Stanley, Individually and as Class Representative
vs. Southern States Police Benevolent Association, Inc.

EXHIBIT C
COMPLAINT

Southern States Police Benevolent Association, Inc. Website Screenshot



SOUTHERN STATES PBA

WHY JOIN? ([HTTPS://WWW.SSPBA.ORG/GEN/ARTICLES/WHY_JOIN__68.JSP](https://www.sspba.org/gen/articles/why_join__68.jsp))WHO CAN JOIN? ([HTTPS://WWW.SSPBA.ORG/GEN/ARTICLES/WHO_CAN_JOIN__564.JSP](https://www.sspba.org/gen/articles/who_can_join__564.jsp))LEGAL ([HTTPS://WWW.SSPBA.ORG/GEN/ARTICLES/LEGAL_DEPARTMENT_125.JSP](https://www.sspba.org/gen/articles/legal_department_125.jsp)) STATE DIVISIONS MEMBER CENTERGOV AFFAIRS ([HTTPS://WWW.SSPBA.ORG/GEN/ARTICLES/GOVERNMENTAL_AFFAIRS_124.JSP](https://www.sspba.org/gen/articles/governmental_affairs_124.jsp)) SSPBA STAFF

Legal benefits PBA members receive

No other law enforcement association even comes close

LEGAL BENEFITS ARE AVAILABLE TO SSPBA MEMBERS IN ACCORDANCE WITH POLICY FOR INCIDENTS ARISING FROM THE PERFORMANCE OF A DIRECT LAW ENFORCEMENT ACTION.

Shooting and Serious Injury Incidents

When a call to the SSPBA emergency line is made on behalf of a member involved in a shooting or accident with serious injury, SSPBA will promptly have an attorney in touch with the member, going to the scene if necessary. The attorney will represent the member to the resolution of the Incident.

Civil Suits and Criminal Action

An attorney is assigned to ensure that the member is adequately represented and, if necessary, the attorney will personally represent the member until resolution of the action. No cap or limit.

Grievance and Disciplinary Representation

SSPBA chapters assist members through the early levels of their appeals. Upon approval of the chapter, the SSPBA legal department will review the case for assignment of an attorney at the last level of appeal.

With PBA's Legal Defense Benefit...

"Do I need committee approval?"

NO!

"Do I need the general membership's approval?"

NO!

"Will personalities be involved in my request?"

NO!

"Will inner-circle politics be involved?"

NO!

Under the Legal Defense Benefit of the PBA, only four simple questions are asked...

1. Are you a PBA member in good standing?
2. Were you a PBA member on the day of the incident?
3. Have you maintained your membership?
4. Was the incident within the scope of your official duties in performing a law enforcement function?

As a PBA member, you will have available to you 24-hour, on the scene coverage, PLUS there is no dollar limit on your coverage!

Click here for (http://sspbaweb.newleveltech.net/sspbafile/PDF/SSPBA/Grievance_Disciplinary_Policy.pdf) **SSPBA's Legal Defense Benefit** (http://sspbaweb.newleveltech.net/sspbafile/PDF/SSPBA/Legal_Defense_Benefit.pdf)

Click here for (http://sspbaweb.newleveltech.net/sspbafile/PDF/SSPBA/Legal_Defense_Benefit.pdf) **SSPBA's Grievance, Disciplinary and Other Services policy** (http://sspbaweb.newleveltech.net/sspbafile/PDF/SSPBA/Grievance_Disciplinary_Policy.pdf)

For further coverage details, please contact the SSPBA Legal Department at (800) 233-3506 ext 3.

SOUTHERN STATES PBA NEWS

VIEW ALL (<https://www.sspba.org/gen/chapters/5>)

114TH US CONGRESS UPDATE JULY 2016

([HTTPS://WWW.SSPBA.ORG/GEN/ARTICLES/114TH_US_CONGRESS_UPDATE_JULY_2016_630.JSP](https://www.sspba.org/gen/articles/114th_US_CONGRESS_UPDATE_JULY_2016_630.JSP))

August 2, 2016

The Southern States Police Benevolent Association is committed to keeping you informed of federal legislation that may affect your work-life, pay and benefits.

[more](#)

(https://www.sspba.org/gen/articles/114th_US_Congress_Update_July_2016_630.jsp)

PRAYING FOR BATON ROUGE ([HTTPS://WWW.SSPBA.ORG/GEN/ARTICLES/PRAYING_FOR_BATON_ROUGE_628.JSP](https://www.sspba.org/gen/articles/PRAYING_FOR_BATON_ROUGE_628.JSP))

July 18, 2016

It is with a heavy heart that we are once again grieving the tragic loss of three of our own at the hands of pure hatred.

[more](#)

(https://www.sspba.org/gen/articles/Praying_for_Baton_Rouge_628.jsp)

PRAYING FOR DALLAS ([HTTPS://WWW.SSPBA.ORG/GEN/ARTICLES/PRAYING_FOR_DALLAS_627.JSP](https://www.sspba.org/gen/articles/PRAYING_FOR_DALLAS_627.JSP))

July 8, 2016

Our thoughts and prayers go out to the City of Dallas and all those affected by last night's tragic events.

[more](#)

(https://www.sspba.org/gen/articles/Praying_for_Dallas_627.jsp)

LEGAL AID

Legal News (<https://www.sspba.org/gen/legalNews.jsp>)

Legal Benefits (https://www.sspba.org/gen/articles/Legal_Benefits_83.jsp)

Meet the Legal Staff

(https://www.sspba.org/gen/articles/Meet_the_Legal_Staff2_156.jsp)

What We Are Up To

(https://www.sspba.org/gen/articles/What_Are_We_Up_To_85.jsp)

Need to Know

(https://www.sspba.org/gen/articles/What_you_need_to_know_when_you_need_legal_aid_8064166.jsp)

Garrity Rule

(https://www.sspba.org/gen/articles/Garrity_Information_Protect_yourself_Know_your_rights_8064166.jsp)

Simple Will (https://www.sspba.org/gen/articles/Simple_Wills_88.jsp)

Legal FAQ

(https://www.sspba.org/gen/articles/Frequently_Asked_Questions_89.jsp)

Contact Legal

(https://www.sspba.org/gen/articles/Contact_the_Legal_Department_90.jsp)

MEDIA CENTER

About the SSPBA

(https://www.sspba.org/gen/articles/About_the_SSPBA_110.jsp)

SSPBA Board

(https://www.sspba.org/gen/chapters/Southern_States_PBA_22_board.jsp)

Press Contacts (https://www.sspba.org/gen/articles/Press_Contact_202.jsp)

News (<https://www.sspba.org/news/newsList.jsp>)

Photos (<http://www.flickr.com/photos/southernstatespba/>)

Videos (<http://vimeo.com/pbfi>)

GET INVOLVED

Join Now (<https://www.sspba.org/do/registrationEdit>)

Why Join? (https://www.sspba.org/gen/articles/Why_Join_68.jsp)

Donate (<https://donatenow.networkforgood.org/PBF>)

SSPBA News (<https://www.sspba.org/news/newsList.jsp>)

The Foundation (<http://www.pbfi.org>)

Facebook (<https://www.facebook.com/SSPBA>)

Twitter (https://www.sspba.org/gen/articles/Follow_us_on_Twitter_204.jsp)

Visitor List (<http://visitor.r20.constantcontact.com/manage/optIn/ea?v=00110R116q2x1HBsPuO6Kolw%3D%3D>)

Combigh (sponsors/sponsors.jsp)

Combigh (sponsors/sponsors.jsp)

PBA Store (<http://ces.landsend.com/sspba>)

MEMBER CENTER

Pay Dues (<https://www.sspba.org/do/paymentEdit>)

My Account (<https://www.sspba.org/do/startLogin>)

Retired Members

(https://www.sspba.org/gen/articles/Retired_Members_158.jsp)

Military/Active Duty

(https://www.sspba.org/gen/articles/Military_Active_Duty_131.jsp)

Webmail (<http://mail.sspba.org>)

GOVERNMENTAL AFFAIRS

Candidate Endorsements (<https://www.sspba.org/gen/elections.jsp>)

Political News (<https://www.sspba.org/gen/sspbaNews.jsp>)

Governmental Affairs FAQ

(https://www.sspba.org/gen/articles/Frequently_Asked_Governmental_Affairs_Questions)

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT

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) CASE NO.: 2016-CP-10-4062

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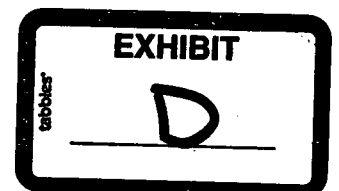
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FILED
2017 JAN 23 PM 4:15
JULIE A. CHRISTENSEN
CLERK OF COURT

- ## FOR A SECOND DEFENSE

3. The Defendant admits the allegations of paragraph 1.

- 1



5. In response to paragraph 3, the Defendant admits it is a non-profit, member run corporation existing under the laws of the State of Georgia. The Defendant admits it has members in Georgia, South Carolina, North Carolina, Virginia, West Virginia, Arkansas, Tennessee, and Louisiana. The Defendant denies the remaining allegations of paragraph 3.

6. In response to paragraph 4, the Defendant admits it has members in the States of Georgia, South Carolina, North Carolina, Virginia, West Virginia, Arkansas, Tennessee, and Louisiana. The Defendant admits that its members pay dues in exchange for membership in the organization. The Defendant admits as one of the benefits of membership it provides a legal defense benefit. The Defendant admits that the legal defense benefit provides legal defense in accordance with the terms of the legal defense plan. For further details regarding the legal defense benefit, the Defendant refers the Plaintiffs to the terms of the legal defense benefit. The Defendant denies the remaining allegations of paragraph 4.

7. In response to paragraph 5, the Defendant admits that members pay monthly dues of \$23.00. An additional \$0.50 is a voluntary contribution to the Southern States Police Benevolent Association Political Action Committee Fund that some members pay and some members waive. The Defendant denies the remaining allegations of paragraph 5.

8. In response to paragraph 6, the Defendant admits that it provides the legal defense benefit in accordance with the terms of the legal defense plan. The Defendant admits that a legal defense can be expensive. The Defendant denies the remaining allegations of paragraph 6.

9. In response to paragraph 7, the Defendant admits the legal defense benefit is extended to all members, according to the terms of the plan. The Defendant denies the allegations of paragraph 7.

10. The Defendant denies the allegations of paragraph 8.

11. In response to Paragraph 9, the Defendant admits the Plaintiff is a Lieutenant with the Charleston County Sheriff's Department and is a member in good standing of the PBA where he has been a member in good standing for many years.

12. The Defendant denies the allegations of paragraph 10.

13. The Defendant denies the allegations of paragraph 11.

14. The Defendant denies the allegations of paragraph 12.

15. In response to paragraph 13, the Defendant admits it has members in southeastern states including Georgia, South Carolina, North Carolina, Virginia, West Virginia, Arkansas, Tennessee, and Louisiana. The Defendant admits that membership dues are \$23.00 per month. The Defendant denies the remaining allegations of paragraph 13.

16. The Defendant denies the allegations of paragraphs 14 and 15.

17. In response to paragraph 16, the Defendant admits it is not licensed as an insurance company. The Defendant denies the remaining allegations of paragraph 16.

18. The Defendant denies the allegations of paragraphs 17, 18, 19, and 20.

19. In response to paragraph 21, the Defendant admits it has a list of current members. The Defendant denies the remaining allegations of paragraph 21.

20. The Defendant denies the allegations of paragraph 22.

21. The Defendant denies the allegations of paragraph 23.

22. The Defendant denies the allegations of paragraph 24.

23. In response to paragraph 25, the Defendant admits that it does not cap or limit the amount of money spent to defend a member in accordance with the terms of the Legal Defense Plan. The Defendant denies the remaining allegations of paragraph 25.

24. The Defendant denies the allegations of paragraph 26. The Defendant admits it never told its members or prospective members that it was an insurance company.

25. The Defendant denies the allegations of paragraph 27.

26. In response to paragraph 28, the Defendant admits membership recruiters are partially paid based on recruitment. The Defendant denies the remaining allegations of paragraph 28.

27. In response to paragraph 29, the Defendant admits the Legal Defense Benefit is administered according to its terms set forth in Policy Number 00-16. The Defendant admits a copy of the Legal Defense Benefit is attached as Exhibit A to the Complaint. The Defendant responds to the lettered allegations as follows:

- a. The Defendant admits this sub-paragraph accurately quotes from the Legal Defense Benefit.
- b. The Defendant admits this sub-paragraph accurately quotes from the Legal Defense Benefit.
- c. The Defendant admits this sub-paragraph accurately quotes from the Legal Defense Benefit with the following changes: "or" should read as "of," and "employment" should read as "employing."
- d. The Defendant admits this sub-paragraph accurately quotes from the Legal Defense Benefit except that the second "facilities" should say "facility's."

- e. The Defendant admits this sub-paragraph accurately quotes from the Legal Defense Benefit except that it quotes from Section 2.A. instead of Section 1.B.
- f. The Defendant admits this sub-paragraph accurately quotes from the Legal Defense Benefit except that it quotes from Section 4.D., not Section 1.D.

28. In response to paragraph 30, the Defendant admits it issues a wallet card to its members which summarizes the Legal Defense Benefit. The Defendant admits that a copy of a wallet card which has been issued to its members is attached as Exhibit B to the Complaint.

29. In response to paragraph 31, the Defendant admits that paragraph 31 quotes from Exhibit B which is a copy of a wallet card which has been issued by the Defendant.

30. In response to paragraph 32, the Defendant admits that the Legal Defense Benefit is administered with no cap and no limit. The Defendant admits that a copy of its website is attached as Exhibit C to the Complaint. The Defendant denies the remaining allegations of paragraph 32.

31. In response to paragraph 33, the Defendant admits that the Legal Defense Benefit does not have caps or limits. The Defendant admits that the Legal Defense Benefit does exclude certain conduct and conditions. The Defendant denies the remaining allegations of paragraph 33.

32. The Defendant denies the allegations of paragraphs 34, 35, 36, 37, and 38.

33. In response to paragraph 39, the Defendant admits that, prior to this lawsuit, it never received an opinion letter or inquiry from any insurance commission regarding its member benefit. The Defendant denies the remaining allegations of this paragraph.

34. In response to paragraph 40, the Defendant admits that, as of the filing of this lawsuit, it had never received an opinion letter from an attorney regarding its legal defense benefit. The Defendant denies the remaining allegations of paragraph 40.

35. In response to paragraphs 41 and 42, the Defendant admits those provisions which are consistent with Georgia law. The Defendant denies the remaining allegations of paragraphs 41 and 42.

36. In response to paragraph 43, the Defendant admits it is not licensed to sell or issue insurance in the State of Georgia and has not been licensed to issue or sell insurance in the State of Georgia.

37. The Defendant denies the allegations of paragraph 44.

38. In response to paragraphs 45 and 46, the Defendant admits those provisions which are consistent with South Carolina law. The Defendant denies the remaining allegations of paragraphs 45 and 46.

39. In response to paragraph 47, the Defendant admits that it is not licensed to sell or issue insurance in the State of South Carolina and that it has not been licensed to sell or issue insurance in South Carolina.

40. The Defendant denies the allegations of paragraph 48.

41. In response to paragraphs 49 and 50, the Defendant admits those provisions which are consistent with North Carolina law. The Defendant denies the remaining allegations of paragraphs 49 and 50.

42. In response to paragraph 51, the Defendant admits that it is not licensed to sell or issue insurance in the State of North Carolina and that it has not been licensed to sell or issue insurance in North Carolina.

43. The Defendant denies the allegations of paragraph 52.

44. In response to paragraphs 53 and 54, the Defendant admits those provisions which are consistent with Virginia law. The Defendant denies the remaining allegations of paragraphs 53 and 54.

45. In response to paragraph 55, the Defendant admits that it is not licensed to sell or issue insurance in the State of Virginia and that it has not been licensed to sell or issue insurance in Virginia.

46. The Defendant denies the allegations of paragraph 56.

47. In response to paragraphs 57 and 58, the Defendant admits those provisions which are consistent with West Virginia law. The Defendant denies the remaining allegations of paragraphs 57 and 58.

48. In response to paragraph 59, the Defendant admits that it is not licensed to sell or issue insurance in the State of West Virginia and that it has not been licensed to sell or issue insurance in West Virginia.

49. The Defendant denies the allegations of paragraph 60.

50. In response to paragraphs 61 and 62, the Defendant admits those provisions which are consistent with Kansas law. The Defendant denies the remaining allegations of paragraphs 61 and 62.

51. In response to paragraph 63, the Defendant admits that it is not licensed to sell or issue insurance in the State of Kansas and that it has not been licensed to sell or issue insurance in Kansas.

52. The Defendant denies the allegations of paragraph 64.

53. In response to paragraphs 65 and 66, the Defendant admits those provisions which are consistent with Arkansas law. The Defendant denies the remaining allegations of paragraphs 65 and 66.

54. In response to paragraph 67, the Defendant admits that it is not licensed to sell or issue insurance in the State of Arkansas and that it has not been licensed to sell or issue insurance in Arkansas.

55. The Defendant denies the allegations of paragraph 68.

56. In response to paragraphs 69 and 70, the Defendant admits those provisions which are consistent with Tennessee law. The Defendant denies the remaining allegations of paragraphs 69 and 70.

57. In response to paragraph 71, the Defendant admits that it is not licensed to sell or issue insurance in the State of Tennessee and that it has not been licensed to sell or issue insurance in Tennessee.

58. The Defendant denies the allegations of paragraph 72.

59. In response to paragraphs 73 and 74, the Defendant admits those provisions which are consistent with Louisiana law. The Defendant denies the remaining allegations of paragraphs 73 and 74.

60. In response to paragraph 75, the Defendant admits that it is not licensed to sell or issue insurance in the State of Louisiana and that it has not been licensed to sell or issue insurance in Louisiana.

61. The Defendant denies the allegations of paragraph 76.

62. In response to paragraphs 77 and 78, the Defendant admits those provisions which are consistent with Alabama law. The Defendant denies the remaining allegations of paragraphs 77 and 78.

63. In response to paragraph 79, the Defendant admits that it is not licensed to sell or issue insurance in the State of Alabama and that it has not been licensed to sell or issue insurance in Alabama.

64. The Defendant denies the allegations of paragraph 80.

65. The Defendant denies the allegations of paragraphs 81 and 82.

66. In response to paragraph 83, the Defendant realleges its previous allegations and denials.

67. The Defendant denies the allegations of paragraphs 84 and 85.

68. In response to paragraph 86, the Defendant denies that it has entered insurance contracts and therefore denies the allegations of paragraph 86.

69. The Defendant denies the allegations of paragraphs 87, 88, 89, and 90.

70. In response to paragraph 91, the Defendant realleges its previous allegations and denials.

71. The Defendant denies the allegations of paragraphs 92, 93, 94, 95, and 96.

72. In response to paragraph 97, the Defendant realleges its previous allegations and denials.

73. The Defendant denies the allegations of paragraphs 98, 99, and 100.

74. In response to paragraph 101, the Defendant realleges its previous allegations and denials.

75. The Defendant denies the allegations of paragraphs 102, 103, 104, and 105.

76. In response to paragraph 106, the Defendant realleges its previous allegations and denials.

77. The Defendant denies the allegations of paragraphs 107, 108, 109, 110, 111, 112, 113, and 114.

78. In response to paragraph 115, the Defendant realleges its previous allegations and denials.

79. The Defendant denies the allegations of paragraphs 116, 117, 118, 119, 120, 121, and 122.

80. In response to paragraph 123, the Defendant realleges its previous allegations and denials.

81. The Defendant denies the allegations of paragraphs 124, 125, 126, and 127.

FOR A THIRD DEFENSE

82. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

83. The Plaintiffs' Complaint fails to state a claim upon which relief can be granted and should be dismissed with prejudice under Rule 12(b)(6).

FOR A FOURTH DEFENSE

84. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

85. This Court does not have jurisdiction over the matters alleged in the Complaint.

86. In particular, the Complaint alleges transactions between the Southern States Police Benevolent Association which is a non-profit, member run Georgia corporation and members in other states.

87. The Complaint purports to bring claims for members of the Southern States Police Benevolent Association in states other than South Carolina.

88. Thus, the Complaint alleges membership transactions between the Southern States Police Benevolent Association as a Georgia corporation and members in other states which are not South Carolina.

89. As a result, these membership transactions have no connection to South Carolina.

90. This Court does not have jurisdiction over this dispute pursuant to Constitutional Due Process.

91. The South Carolina Long-Arm Statute exercises jurisdiction over transactions taking place in the State of South Carolina or performed within the State of South Carolina.

92. The Plaintiff is attempting to bring an action on behalf of members of other states against the Southern States Police Benevolent Association which is a Georgia non-profit, member run corporation.

93. As a result, this Court does not have jurisdiction over these members, and the Complaint should be dismissed for lack of jurisdiction as to members outside the State of South Carolina pursuant to the United States Constitution, the South Carolina Constitution, the South Carolina Long-Arm Statute, and the South Carolina Door Closing Statute South Carolina Code Section 15-5-150.

FOR A FIFTH DEFENSE

94. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

95. The allegations in the Complaint relate solely to the licensing of the Southern States Police Benevolent Association.

96. The allegations of the Complaint purport to bring an action against the Southern States Police Benevolent Association for selling unlicensed insurance products.

97. There is no private cause of action recognized for selling unlicensed insurance products.

98. In fact, violations of the insurance code do not give rise to a civil cause of action.

99. Instead, violations of the insurance code are enforced only through criminal action or action of the Insurance Commission, and this matter should be dismissed with prejudice.

FOR A SIXTH DEFENSE

100. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

101. The Plaintiffs and the Plaintiff Class have no damages whatsoever.

102. The Plaintiffs and the Plaintiff Class have received the benefit of their bargain.

103. In fact, no damages are specifically alleged in the Complaint.

104. Not only does the Complaint not allege any damages, the Plaintiffs and the class which they purport to represent have not been damaged in any way.

105. As a result, the Plaintiffs' claims should be dismissed for lack of damages.

FOR A SEVENTH DEFENSE

106. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

107. Pursuant to South Carolina Rule of Civil Procedure 23, for a class to exist, each member must have \$100.00 or more in damages.

108. Neither the Plaintiffs nor any class members have damages of any sort.

109. As a result, this matter cannot be pursued as a class action.

FOR AN EIGHTH DEFENSE

110. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

111. Rule 23(b)(1) of the South Carolina Rules of Civil Procedure requires that, in actions brought by shareholders or members, the Complaint be verified.

112. The Complaint is not verified.

113. As a result, the Complaint should be dismissed.

FOR A NINTH DEFENSE

114. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

115. Rule 23(b)(1) of the South Carolina Rules of Civil Procedure requires that:

“The Complaint shall also allege with particularity the efforts, if any, made by the Plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and his reasons for his failure to obtain the action or for not making the effort.”

116. The Complaint does not contain the efforts or an explanation of why the Plaintiffs have not taken the efforts before filing a lawsuit as required by Rule 23.

117. As a result, the Complaint should be dismissed.

FOR A TENTH DEFENSE

118. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

119. The Plaintiffs are not sufficient representatives of the purported class as they have no damages whatsoever.

120. As a result, the claims should be dismissed.

FOR AN ELEVENTH DEFENSE

121. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

122. The proposed Plaintiff Class has received the benefits of membership in the Southern States Police Benevolent Association including, but not limited to, the following:

- a. Governmental affairs and lobbying efforts on behalf of police officers;

- b. Screening and endorsements for candidates of public office;
- c. Accidental death benefits up to \$60,000;
- d. Access to Police Benevolent Association's staff attorneys for advice or counsel;
- e. Copies of the Southern States Police Benevolent Association's magazine, *Blue Review*;
- f. A legal defense benefit for the performance of official duties within the accepted standards of the profession; and
- g. Representation in disciplinary or grievance proceedings.

123. As the members have received these benefits in exchange for their membership dues, they have received the benefit of their bargain.

124. Since the members have received the benefit of their bargain, they do not have a claim against the Southern States Police Benevolent Association as they have received the benefits of the Association which they bargained for and paid for.

FOR A TWELFTH DEFENSE

125. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

126. To the extent the Complaint alleges membership transactions between the Defendant Georgia nonprofit corporation and members of other states, those transactions are controlled either by Georgia law or the law where the members reside.

127. The claims made in the Complaint are not recognized in other states as follows:

- a. ALABAMA: Alabama law contains a statutory exemption for legal assistance provided by employee organizations to members. *See*, Alabama Code § 27-43-4.
- b. ARKANSAS: Arkansas law contains a statutory exemption for legal assistance provided by an employee association. *See*, Arkansas Code § 23-91-203(3).
- c. GEORGIA: Georgia law does not provide a cause of action for violation of insurance regulations. *See*, State Farm v. Hernandez Auto Painting, 312 Ga App. 756, 719 S.E.2d 597 (2011)
- d. LOUISIANA: Louisiana law does not regulate the legal benefit plan.
- e. MISSISSIPPI: Mississippi law does not regulate the legal benefit plan.
- f. NORTH CAROLINA: North Carolina law does not regulate the legal benefit plan.
- g. SOUTH CAROLINA: South Carolina law exempts legal service plans from insurance regulation.
- h. TENNESSEE: Tennessee law contains a statutory exemption for legal assistance provided by an employee association. *See*, Tennessee Code § 56-43-103.
- i. VIRGINIA: Virginia law does not regulate the legal benefit plan.
- j. WEST VIRGINIA: The West Virginia Supreme Court has ruled legal benefit plans are not subject to insurance regulation. *See*, Poling v. Pre-Paid Legal Services, 212 W.Va. 589, 575 S.E.2d 199, n.2. (2002).

128. For these reasons, this Complaint should be dismissed with prejudice.

FOR A THIRTEENTH DEFENSE

129. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

130. The Defendant does no business and has no members that live and work in Kansas.

131. As a result, any claims regarding Kansas law should be dismissed.

FOR A FOURTEENTH DEFENSE

132. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

133. The Defendant pleads the statute of limitations as a defense.

134. In particular, the defendant pleads the South Carolina three-year statute of limitations and where applicable the one-year statute in the Consumer Protection Code.

135. To the extent applicable, the Defendant pleads the statute of limitations in the other states named in the complaint.

FOR A FIFTEENTH DEFENSE

136. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

137. To the extent the Consumer Protection Code applies to this dispute, the Plaintiffs have failed to follow its statutory requirements, including failure to notify the Department of Consumer Affairs.

FOR A SIXTEENTH DEFENSE

138. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

139. The Plaintiffs lack standing to bring this action and have failed to present a justiciable controversy as they have never had a matter denied, an obligation breached, or a request refused by the Defendant.

FOR A SEVENTEENTH DEFENSE

140. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

141. The Plaintiffs and the uncertified plaintiff class have received the benefit of their bargain, and allowing the recovery of the amounts sought in the complaint would unjustly enrich them. As a result, the Plaintiffs are estopped from bringing the claims for refunds of dues paid set forth in the complaint.

FOR AN EIGHTEENTH DEFENSE

142. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

143. The claims of the Plaintiffs are barred by the doctrine of laches.

FOR A NINETEENTH DEFENSE

144. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

145. The Plaintiffs had no right or entitlement to rely upon any representations allegedly made by Defendant, which representations are hereby specifically denied.

FOR A TWENTIETH DEFENSE

146. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

147. The Plaintiffs' claims are barred by the doctrine of waiver.

FOR A TWENTY-FIRST DEFENSE

148. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

149. At all relevant times, Defendant exercised the necessary degree of care and skill maintained by other benevolent associations under similar conditions and in like circumstances.

FOR A TWENTY-SECOND DEFENSE

150. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

151. Any award of punitive or exemplary damages in this action would be in violation of the rights of Defendant under the United States Constitution and the Constitution of the State of South Carolina.

FOR A TWENTY-THIRD DEFENSE

152. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

153. The Plaintiffs' claims are not ripe as Plaintiffs have never had a matter denied, an obligation breached, or a request refused by Defendant.

FOR A TWENTY-FOURTH DEFENSE

154. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

155. Defendant was not contractually obligated to pursue licensure to offer its benefits to police officers in any state that it conducts business, and thus, did not breach any contract with Plaintiffs.

FOR A TWENTY-FIFTH DEFENSE

156. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

157. The Defendant did not owe Plaintiffs the duties alleged by Plaintiffs and, as a result, Plaintiffs are not entitled to recover.

FOR A TWENTY-SIXTH DEFENSE

158. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

159. To the extent Plaintiffs have sustained any damage, which is specifically denied, they are barred from recovery, in whole or part, by their failure to mitigate damages.

FOR A TWENTY-SEVENTH DEFENSE

160. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

161. The Plaintiffs have failed to plead fraud with the requisite particularity.

FOR A TWENTY-EIGHTH DEFENSE

162. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

163. The Plaintiffs have failed to allege any specific false representation by Defendant.

FOR A TWENTY-NINTH DEFENSE

164. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

165. The Plaintiffs lack standing to request an injunction, have failed to properly plead the elements of a cause of action for an injunction, and cannot meet the elements necessary to impose an injunction.

FOR A THIRTIETH DEFENSE

166. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

167. Plaintiffs cannot meet the requirements of Rule 23 of the South Carolina Rules of Civil Procedure.

168. Plaintiffs have failed to allege that Plaintiffs or any proposed class members have damages that exceed \$100.00.

169. The proposed class is not so numerous that joinder of all members of the proposed class is impracticable.

170. There are no questions of law or fact common to the proposed class.

171. The claims or defenses of the representative parties are not typical of the claims or defenses of the proposed class.

172. The representative parties are unable to fairly and adequately protect the interest of the proposed class.

FOR A THIRTY-FIRST DEFENSE

173. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

174. The Plaintiffs lack standing to pursue claims under the laws of states in which they do not reside or in which they have suffered no injury.

FOR A THIRTY-SECOND DEFENSE

175. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

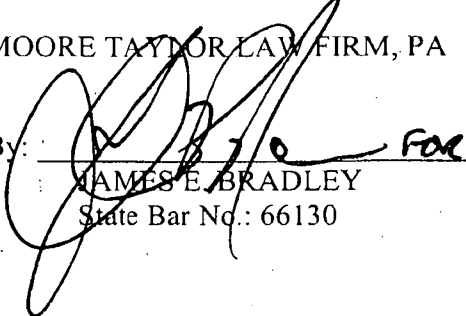
176. The Plaintiffs are barred from their equitable claims by their absence of clean hands.

WHEREFORE, the Defendant Southern States Police Benevolent Association asks that the Complaint be dismissed with prejudice and for such other relief as the Court deems fair and equitable.

SIGNATURE BLOCKS TO FOLLOW

Respectfully submitted,

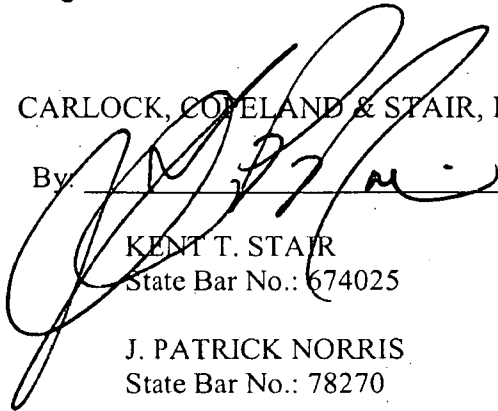
MOORE TAYLOR LAW FIRM, PA

By:  For

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*Attorneys for Defendant Southern States
Police Benevolent Association, Inc.*

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Appellate Case No. 2019-000182

RECEIVED
MAR 04 2019
SC Court of Appeals

Donald Stanley and Sean Reiter,
Individually and as Class Representatives,

Respondents,

v.

Southern States Police Benevolent Association, Inc.,

Appellant.

PROOF OF SERVICE

I, Lynn G. Ivey, an employee of the Moore Taylor Law Firm, P.A., certify that I have served the Appellant's Amended Memorandum in Support of Petition for Rehearing on the Respondents by depositing copies of same in the United State Mail, postage prepaid, on March 1, 2019, addressed to their attorneys of record as follows:

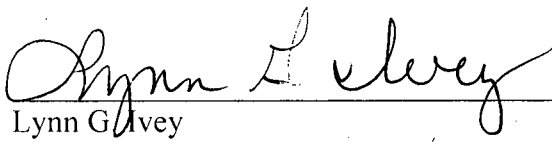
Ronald L. Richter, Jr., Esquire
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P.O. Box 22437
Charleston, SC 29413

West Columbia, South Carolina
March 4, 2019


Lynn G Ivey



March 4, 2019

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

VIA HAND DELIVERY

Re: Donald Stanley and Sean Reiter, Individually and as Class Representatives
vs. Southern States Police Benevolent Association, Inc.
C/A No. 2016-CP-10-04062
Appellate Case No. 2019-000182

Dear Ms. Kitchings:

Enclosed for filing is Appellant's Amended Memorandum in Support of Petition for Rehearing with associated exhibits.

On Friday, March 1, 2019, Appellant filed its Petition for Rehearing, and Memorandum in Support of Petition for Rehearing.

Upon review, Appellant noted that the Memorandum referred to four documents which were not previously filed with the Court of Appeals, and were not attached as exhibits to the filing.

In order to remedy this inadvertent oversight, Appellant has amended its Memorandum to include these four referenced documents as exhibits. We respectfully submit this for filing with the Court. Please let us know if this should be handled in a different manner.

We apologize for the oversight and ask that the extra copies of the Amended Memorandum with exhibits be clocked in and returned to our courier.

RECEIVED
MAR 04 2019
SC Court of Appeals

S. Jahue Moore†
J. Mark Taylor*
C. Vance Stricklin, Jr.
James Edward Bradley†
Sheila McNair Robinson
Christian G. Spradley
C. David Sawyer, Jr.
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Stanley L. Myers
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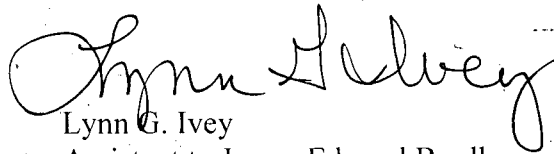
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The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Page 2
March 4, 2019

By copy of this letter, we are advising opposing counsel of this filing and providing copies of the Amended Memorandum in Support of Petition for Rehearing with the associated exhibits.

Thank you for your consideration.

Sincerely,



Lynn G. Ivey
Assistant to James Edward Bradley

Enclosures

cc: Ronald L. Richter, Jr., Esquire (via first class mail)
Scott M. Mongillo, Esquire (via first class mail)
Eric S. Bland, Esquire (via first class mail)
Andrew J. Savage, III, Esquire (via first class mail)
Carl E. Pierce, II, Esquire (via first class mail)
Joseph C. Wilson, IV, Esquire (via first class mail)
Daniel Francis Lynch, IV, Esquire (via first class mail)