

**THE STATE OF SOUTH CAROLINA**  
**In The Court of Appeals**

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

v.

South Carolina Municipal Insurance and Risk Financing  
Fund [SCMIRF], Appellant/Respondent.

Appellate Case No. 2016-001626

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Appeal From Colleton County  
Perry M. Buckner, III, Circuit Court Judge

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Opinion No. 5643  
Submitted December 6, 2018 – Filed May 1, 2019

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**AFFIRMED IN PART AND REVERSED IN PART**

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C. Mitchell Brown and Brian P. Crotty, of Nelson  
Mullins Riley & Scarborough, LLP, of Columbia, for  
Appellant/Respondent.

W. Mullins McLeod, Jr. and Jacqueline LaPan  
Edgerton, both of McLeod Law Group LLC, of  
Charleston, for Respondent/Appellant.

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**WILLIAMS, J.:** In this declaratory judgment action, the South Carolina  
Municipal Insurance and Risk Financing Fund (SCMIRF) appeals the portion of  
the circuit court's order entering judgment in favor of Ashley Reeves (Reeves),  
Personal Representative of the Estate of Albert Carl Reeves (Bert Reeves),

regarding indemnity coverage under a pooled self-insurance liability fund (the Coverage Contract). SCMIRF argues the circuit court erred in (1) finding Reeves was entitled to more than \$1,000,000 in indemnity coverage under the Coverage Contract's terms; (2) failing to analyze the coverage issue exclusively under the Coverage Contract's "Personal Injury" provisions; (3) finding because there were separate wrongful death and survivorship action claims with different measures of damages there was more than \$1,000,000 in indemnity coverage available under the Coverage Contract; and (4) finding an ambiguity in the Coverage Contract as to whether "Occurrence" is defined by different acts of negligence or the resulting damage. Reeves cross-appeals the portion of the circuit court's order entering judgment in favor of SCMIRF regarding the South Carolina Tort Claims Act<sup>1</sup> (the Act). Reeves asserts (1) SCMIRF is not subject to the Act because SCMIRF is a not political subdivision of South Carolina; and (2) the Act is inapplicable to, and does not limit the recovery in, a breach of contract claim. We affirm in part and reverse in part.

## **FACTS/PROCEDURAL HISTORY**

The parties stipulated to the facts of this case. The action before this Court stemmed from numerous lawsuits related to insurance coverage concerning the shooting death of Bert Reeves. On May 16, 2011, Randall Price, a police officer with the Town of Cottageville Police Department (the Police Department) shot and killed Bert Reeves while Price was acting in the course and scope of his employment.

The Town of Cottageville (Cottageville) entered into an Intergovernmental Agreement for an Insurance and Risk Financing Fund for Risk Sharing with SCMIRF and in doing so, Cottageville became a member of SCMIRF.<sup>2</sup>

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<sup>1</sup> S.C. Code Ann. § 15-78-10 through -220 (2005 & Supp. 2018).

<sup>2</sup> SCMIRF is an unincorporated, voluntary, self-insurance pool "created by and comprised of South Carolina municipalities and their agencies which are parties to an Intergovernmental Agreement . . . ." SCMIRF "establishes a pool for the payment of property losses and liability claims on behalf of its members pursuant to [S.C. Code Ann. §] 15-78-140 [Supp. 2018]." Both the Act and the South Carolina Constitution authorize municipalities and other political subdivisions to establish pooled self-insurance liability funds. S.C. CONST. art. VIII, § 13; S.C. Code Ann. § 15-78-140(A) (Supp. 2018).

Cottageville and SCMIRF entered into the Coverage Contract, whereby SCMIRF provided liability coverage to Cottageville pursuant to the terms and limitations set forth in the Coverage Contract. The Coverage Contract provided liability coverage for Cottageville, as the "Member" named in the declarations page; the Police Department, as "the law enforcement department of the Member named;" and Price and John Craddock—the Police Department Chief of Police—"the individual law enforcement officers," as "Covered Persons."

On August 28, 2012, Reeves filed a lawsuit in the circuit court against Cottageville; the Police Department; and Price, individually (the Cottageville Action). The Cottageville Action was a survivorship and wrongful death action that alleged Cottageville, the Police Department, and Price were negligent in the death of Bert Reeves; Cottageville and the Police Department were negligent in the hiring, supervision, and retention of Price; and Cottageville, the Police Department, and Price violated Bert Reeves's civil rights under 42 U.S.C. § 1983 (2012). Pursuant to the Coverage Contract, SCMIRF retained attorneys to defend Cottageville and Price in the Cottageville Action. On September 25, 2012, the Cottageville Action was removed to the United States District Court for the District of South Carolina. On October 15, 2014, the jury in the Cottageville Action rendered a verdict in Reeves's favor finding Price liable for negligence; Cottageville liable for negligent hiring, supervision, retention, and training of Price; and both liable under Section 1983. The jury awarded Reeves actual damages of \$7,500,000 against both Cottageville and Price; and punitive damages of \$60,000,000 against Cottageville and \$30,000,000 against Price. On October 21, 2014, a judgment was entered in the Cottageville Action based on the jury verdict.

On February 18, 2014, Reeves filed a declaratory judgment lawsuit in the circuit court against SCMIRF; Cottageville; the Police Department; and Price, individually (the Declaratory Judgment Action). The Declaratory Judgment Action sought a declaration that the Coverage Contract provided \$1,000,000 in coverage for each independent, separate act of negligence, relating to the claims asserted in the Cottageville Action, thus resulting in the Coverage Contract providing for more than \$1,000,000 in coverage.

On May 14, 2014, Reeves filed a lawsuit in the United States District Court for the District of South Carolina against Craddock (the Craddock Action). The Craddock Action asserted survivorship and wrongful death claims based on Section 1983. The suit alleged Craddock failed to properly train and supervise Price, failed to

intervene in the altercation between Price and Bert Reeves, and failed to render medical care to Bert Reeves.

On February 26, 2015, Reeves, SCMIRF, Price, and Craddock entered into a settlement agreement which settled both the Cottageville Action and the Craddock Action. On April 20, 2015, as part of the settlement, Reeves filed a partial stipulation of dismissal leaving SCMIRF as the only respondent in the present action. The settlement agreement stipulated Reeves and SCMIRF would litigate "the following two issues, and only these two issues" to resolve all claims arising from the Cottageville and Craddock Actions:

(1) Do the claims made and the verdict rendered against the Town of Cottageville and Randall Price, relating to the hiring, retention, supervision[,] and shooting death of Bert Reeves result in there being more than \$1,000,000.00 in indemnity coverage available under the terms of the SCMIRF Coverage Contract with the Town of Cottageville with respect to all such claims including the claims made against John Craddock in the separately styled action referenced above? Reeves asserts there is more than one occurrence based on the facts and claims and the jury's verdict relating to the hiring, retention, supervision[,] and shooting death of Bert Reeves, and, thus, there is more than \$1,000,000.00 in indemnity coverage available under the Coverage Contract. SCMIRF asserts the Coverage Contract is limited to a total of \$1,000,000.00 in indemnity coverage.

(2) Allegations have been made that SCMIRF has engaged in bad faith with regard to its handling of the claims relating to the shooting and death of Bert Reeves. SCMIRF denies it has engaged in bad faith. SCMIRF was informed that any bad faith claims that exist in favor of Cottageville would be assigned to Reeves. Would a tort claim for bad faith brought against SCMIRF be subject to the South Carolina Tort Claims Act (S.C. Code. Ann. § 15-78-10 *et seq.*), assuming such a claim were otherwise valid? SCMIRF asserts it would. Respondent Reeves asserts otherwise.

The settlement further stipulated Reeves would receive an additional \$1,000,000 for each issue found in Reeves's favor. If Reeves did not prevail on either issue, Reeves would not receive any additional funds aside from the \$10,000,000 settlement payment previously paid under the settlement agreement.

The parties jointly petitioned our supreme court to decide both issues in the court's original jurisdiction. Our supreme court declined the petition. Subsequently, Reeves filed an amended complaint in the circuit court setting forth the two stipulated issues in the settlement agreement and sought a declaration as to the interpretation of the Coverage Contract. SCMIRF filed an answer, and both parties filed motions for summary judgment regarding the stipulated issues.

The circuit court held a hearing on the cross-summary judgment motions. As to the first stipulated issue, the circuit court granted Reeves's summary judgment motion and denied SCMIRF's motion. The circuit court found the claims made and the verdict rendered in the Cottageville Action, and the claims made in the Craddock Action, resulted in more than \$1,000,000 in indemnity coverage under the Coverage Contract. Specifically, the circuit court found, "there is ambiguity as to whether 'occurrence' is defined by different acts of negligence or the resulting damage." The circuit court noted the Cottageville Action "sought to recover damages for wrongful death, as well as conscious pain and suffering," and "the measure of damages for a wrongful death claim and a claim for conscious pain and suffering are different." The circuit court concluded Reeves "suffered separate and distinct damages which could lead to additional coverage under the separate causes of action." As to the second stipulated issue, the circuit court granted SCMIRF's motion for summary judgment and denied Reeves's motion. The circuit court found a tort claim for bad faith brought against SCMIRF was subject to the Act.

Thereafter, Reeves and SCMIRF each filed motions to alter or amend the judgment. The circuit court denied both motions. This cross-appeal followed.

## **STANDARD OF REVIEW**

Under Rule 56(c), SCRCP, summary judgment is proper when "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." The questions before us in this appeal are questions of law. *See S.C. Dep't of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302–03 (2001) ("It is a question of law for the court whether the language of a contract is ambiguous."); *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008) ("Determining the proper interpretation of a

statute is a question of law . . ."). The appellate court reviews questions of law de novo. *Id.* at 110, 662 S.E.2d at 41.

## LAW/ANALYSIS

### I. SCMIRF's Appeal

On appeal, SCMIRF argues this Court should reverse the circuit court's order regarding indemnity coverage because the circuit court erred in (1) finding Reeves was entitled to more than \$1,000,000 in indemnity coverage under the Coverage Contract's terms; (2) failing to analyze the coverage issue exclusively under the Coverage Contract's provisions for Personal Injury; (3) holding that because there were separate wrongful death and survivorship action claims with different measures of damages there was more than \$1,000,000 in indemnity coverage available under the Coverage Contract; and (4) finding an ambiguity in the Coverage Contract as to whether "occurrence" is defined by different acts of negligence or the resulting damage and this ambiguity resulted in more than \$1,000,000 in indemnity coverage under the Coverage Contract. We agree.

"An insurance policy is a contract between the insured and the insurance company, and the policy's terms are construed according to the law of contracts." *Williams v. Gov. Emps. Ins. Co.*, 409 S.C. 586, 594, 762 S.E.2d 705, 709 (2014). "Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009). "Courts must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary[,] and popular meaning." *Sloan Constr. Co. v. Cent. Nat'l Ins. of Omaha*, 269 S.C. 183, 185, 236 S.E.2d 818, 819 (1977).

"The construction of a clear and unambiguous contract is a question of law for the court." *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997). "Ambiguous or conflicting terms in an insurance policy must be construed liberally in favor of the insured and strictly against the insurer." *Diamond State Ins. v. Homestead Indus., Inc.*, 318 S.C. 231, 236, 456 S.E.2d 912, 915 (1995). "A contract is read as a whole document so that one may not create an ambiguity by pointing out a single sentence or clause." *McGill*, 381 S.C. at 185, 672 S.E.2d at 574. "Whether a contract is ambiguous is to be determined from examining the entire contract, not by reviewing isolated portions of the contract." *Williams*, 409 S.C. at 595, 762 S.E.2d at 710.

Section I (General Provisions) and Section IV (Law Enforcement Liability) of the Coverage Contract are at issue here. The Coverage Contract provides that Section I's general provisions apply to Section IV. Under Section IV, SCMIRF provides coverage for members or covered persons while they are acting both in the course and scope of their official duties of providing law enforcement. Section IV provides coverage for a "Wrongful Act," committed by a law enforcement officer or other covered persons, which results in "**Bodily Injury**" "provided the **Wrongful Act** amounts to an **Occurrence**; or" a "**Personal Injury**." (emphasis in original).

Section IV's definition section provides:

"**Wrongful Act**" means any actual or alleged error in the performance or failure to perform an official duty; . . . or any omission or neglect in performing an official duty; or any breach of an official duty, including misfeasance, malfeasance[,] and nonfeasance . . . .

Section IV(G)(27) (emphasis in original).

"**Bodily Injury**" means physical injury to any person (including death) and any mental anguish or mental suffering associated with or arising from such physical injury. However, for the purposes of this Section IV, **Bodily Injury** does not include such injuries if they result directly and immediately from the infliction of **Personal Injury**, including without limitation assault and battery; any such resulting injuries shall be deemed to be part of the **Personal Injury**.

Section IV(G)(4) (emphasis in original).

"**Personal Injury**" in this Section means only the following **Offenses** committed in the course of the **Member's** law enforcement activities: [including: assault and battery; violation of civil rights; and false arrest, detention or imprisonment].

Section IV(G)(18) (emphasis in original).

Section I's definition section provides:

**"Offense"** means conduct constituting **Personal Injury** . . . that happens in the course and scope of the **Member's** or **Covered Person's** official duties as described in The South Carolina Tort Claims Act.

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

Section I(B)(5) (emphasis in original).

**"Occurrence"** means an accident which results in **Bodily Injury** . . . the original cause of which and the initial damage from which happened during the **Contract Period** set forth in the Declarations. Without limitation, all references to any type of injury arising out of or from an **Occurrence** or being caused by an **Occurrence** employ the foregoing meaning. Subject to the foregoing, **"Occurrence"** includes continuing exposure to the same harmful conditions. All such continuing exposure, damage, or injury shall be treated as one **Occurrence**.

Only when used to describe coverage limits on a per **"Occurrence"** basis or when otherwise describing whether an event or series of events constitutes one loss for coverage purposes or more than one loss, the word **"Occurrence"** means a covered event of the sort expressly described in the Insuring Agreement of the relevant Coverage Section pertaining to the loss or claim, whether an **Occurrence** (as defined in the opening paragraph of this General Definition or as defined in the separate definition, if any, appearing in the Definitions part of the relevant Coverage Section), a **Wrongful Act**,

a **Loss**, or an **Offense** causing **Personal Injury** . . . as those terms are defined in the relevant Coverage Section.

Section I(B)(4) (emphasis in original).

Numerous provisions in the Coverage Contract limit SCMIRF's liability. Section I(C)(9), No Duplication of Coverage or Coverage Limits, provides:

No liability that is covered under any Coverage Section of **This Contract** will be deemed to be separately covered under any other Coverage Section. No **Offense** will be deemed also to constitute separately an **Occurrence** for coverage purposes, or vice-versa. . . . Any act(s) or omission(s) that might be described under more than one Coverage Section or more than one category as an **Offense(s)** or an **Occurrence(s)** will be treated as a single event for coverage purposes, subject to a single Coverage Limit. A single Coverage Limit applies to any **Offense** or **Occurrence**, regardless of the number of claimants, suits, or claims. A single Coverage Limit applies to all claims or suits involving substantially the same injury or damage . . . . There is no duplication of any coverage or benefit under **This Contract**.

(emphasis in original). Section IV(D) addresses the "Limit of Liability" and "SCMIRF's Limit of Liability" which read as follows:

1. Limit of Liability

. . .

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

## 2. SCMIRF's Limit of Liability

[T]he total liability of [SCMIRF] [for] any one occurrence/accident/wrongful act will be \$1,000,000 per **Member** excluding expenses and defense cost[s] . . . .

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

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

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

(emphasis in original).

### A. **Interpreting Section IV Coverage**

SCMIRF argues the circuit court erred by failing to analyze the coverage issue exclusively under the Coverage Contract's provisions for Personal Injury. We agree.

The Coverage Contract limits liability coverage under Section IV to \$1,000,000 per Occurrence. Section I's duplication clause states, liability covered under one

Coverage Section will not be covered under another Coverage Section, and provides:

No **Offense** will be deemed also to constitute separately an **Occurrence** for coverage purposes, or vice-versa. . . . Any act(s) or omission(s) that might be described under more than one Coverage Section or more than one category as an **Offense(s)** or an **Occurrence(s)** will be treated as a single event for coverage purposes, subject to a single Coverage Limit.

(emphasis in original). Section IV, governing law enforcement liability, states: SCMIRF agrees to pay the sums a member or covered person becomes obligated to pay because of a Wrongful Act committed by a law enforcement officer or other covered persons which results in:

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

(emphasis in original). Section IV's definition of Bodily Injury clarifies the distinction between Bodily Injury and Personal Injury by providing, "for purposes of this Section IV, **Bodily Injury** does not include such injuries if they result directly and immediately from the infliction of **Personal Injury**, including without limitation assault and battery; any such resulting injuries shall be deemed to be part of the **Personal Injury**." (emphasis in original).

SCMIRF argues the following analysis must take place to determine liability coverage under Section IV: (1) determine if there was a Wrongful Act, (2) determine whether the Wrongful Act resulted in either (a) Bodily Injury or (b) Personal Injury, and (3) determine whether Bodily Injury falls exclusively under Personal Injury coverage. SCMIRF argues, under this analysis, coverage falls solely under Personal Injury because the Bodily Injury here is a direct result of the Personal Injury. Conversely, Reeves asserts in order to determine whether more than \$1,000,000 in indemnity coverage exists, there must first be a determination of whether "separate and distinct occurrences, wrongful actions, or conduct

occurred," and, only after this determination is made, should the analysis turn to whether Bodily Injury is deemed part of the Personal Injury for coverage purposes.

Under the terms of the Coverage Contract, we find coverage analysis begins with the coverage language of the applicable section, Section IV—governing law enforcement liability. Under Section IV, there are two means of obtaining coverage, (1) coverage for *Bodily Injury* or (2) coverage for *Personal Injury*: when such injury *is the result of a Wrongful Act*. We find SCMIRF's proposed three-part analysis is the correct analysis for determining whether a Wrongful Act resulted in Personal Injury and/or Bodily Injury. This three-part analysis establishes coverage under the applicable coverage section and aids in determining whether the acts or omissions—that might be described under more than one Coverage Section or more than one category as an Offense or an Occurrence—are treated as a single event for coverage purposes under Section I's duplication clause.

First, under the three-part analysis, there must be a Wrongful Act. Section IV defines Wrongful Act as "any actual or alleged error in the performance or failure to perform an official duty; . . . or any omission or neglect in performing an official duty; or any breach of an official duty, including misfeasance, malfeasance[,] and nonfeasance . . . ." Under this definition, we find in this case there is a Wrongful Act—the actions and omissions of Cottageville and Price which violated Reeves's rights and ultimately led to his death.<sup>3</sup>

Second, the Wrongful Act must result in either (a) Bodily Injury or (b) Personal Injury. Section IV defines Bodily Injury as "physical injury to any person (including death) and any mental anguish or mental suffering associated with or

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<sup>3</sup> In the Cottageville Action, the jury found Price was negligent, his negligence proximately caused Bert Reeves's death, and he violated Bert Reeves's constitutional rights under Section 1983 to be free from the use of excessive force and unnecessary seizure. The jury found Cottageville was grossly negligent in its hiring, supervising, failing to train, and retaining of Price and such negligence proximately caused Bert Reeves's death. The jury found Cottageville was liable under Section 1983 because Price's violation of Bert Reeves's rights was done pursuant to a custom, policy, ordinance, regulation, or decision of Cottageville or as a result of Cottageville's deliberate indifference to the use of excessive force by Price; and Cottageville was deliberately indifferent to the constitutional rights of its citizens in hiring and failing to properly train Price and such deliberate indifference caused Bert Reeves's death.

arising from such physical injury." In order to recover under Bodily Injury, Section IV requires the Wrongful Act that caused the Bodily Injury to amount to an Occurrence. Section I defines Occurrence as "an accident which results in **Bodily Injury**." (emphasis in original). We find in this case there is Bodily Injury—Bert Reeves's death and the mental anguish and suffering associated with his death. Reeves and SCMIRF do not contest Reeves's negligence claims support finding coverage for Bodily Injury, and the Wrongful Act which caused the Bodily Injury amounts to an Occurrence under Section IV coverage.

Section IV defines Personal Injury as "the following **Offenses** committed in the course of the **Member's** law enforcement activities" including: "assault and battery;" "violation of civil rights;" and "false arrest, detention or imprisonment." (emphasis in original). Section I defines Offense as "conduct constituting **Personal Injury** . . . that happens in the course and scope of the **Member's** or **Covered Person's** official duties . . ." (emphasis in original). Thus, to recover under Personal Injury, the Wrongful Act that caused the Personal Injury must amount to a covered Offense. We find in this case there is Personal Injury—the violation of Bert Reeves's civil rights under Section 1983 which caused his death. Reeves and SCMIRF do not contest Reeves's Section 1983 claims support coverage for Personal Injury, and that the Wrongful Act which caused the Personal Injury amounts to an Offense under Section IV coverage. Prior to step three, we find there are two potential avenues for coverage here—coverage for Bodily Injury and coverage for Personal Injury.

Third, if there is both Bodily Injury and Personal Injury, we must determine whether the Bodily Injury is deemed part of the Personal Injury for coverage purposes. The definition for Bodily Injury states "**Bodily Injury** does not include such injuries if they result directly and immediately from the infliction of **Personal Injury**, including without limitation assault and battery; any such resulting injuries shall be deemed to be part of the **Personal Injury**." (emphasis in original). The Wrongful Act that causes the Bodily Injury must amount to an Occurrence. The definition of Occurrence provides that when the term Occurrence is used to determine whether an event or series of events constitutes one loss, Occurrence can mean "an **Offense** causing **Personal Injury**." (emphasis in original). Section I prohibits the basis for coverage under Personal Injury (an Offense) to be the same basis for coverage under Bodily Injury (an Occurrence), stating "[n]o **Offense** will be deemed also to constitute separately an **Occurrence** for coverage purposes, or vice-versa." (emphasis in original). We find the circuit court failed to analyze the Coverage Contract's distinction between Bodily Injury and Personal Injury under Section IV and the limitations imposed under Sections I and IV when both are

present. *See McGill*, 381 S.C. at 185, 672 S.E.2d at 574 ("A contract is read as a whole document so that one may not create an ambiguity by pointing out a single sentence or clause."); *Williams*, 409 S.C. at 595, 762 S.E.2d at 710 ("Whether a contract is ambiguous is to be determined from examining the entire contract, not by reviewing isolated portions of the contract.").

Under the terms of Section I and Section IV, we find when both Bodily Injury and one of the six Offenses constituting Personal Injury occur, the Bodily Injury is deemed part of the Personal Injury for coverage purposes. Here, the resulting injury is the same for both the negligence claims and the Section 1983 claims—that the conduct of Cottageville and Price "proximately caused the death of Bert Reeves." The Bodily Injury—Bert Reeves's death and the mental anguish and suffering associated with his death—"result[ed] directly or immediately" from the Personal Injury—the Section 1983 violations. We find the resulting injury is "deemed to be part of the **Personal Injury**" and cannot constitute a separate Bodily Injury under the Coverage Contract. (emphasis in original). Therefore, Bodily Injury is encompassed within SCMIRF's liability for Cottageville and Price's Section 1983 violations—the Offense—which constituted a Personal Injury.

## **B. Application of the Duplication Clause**

SCMIRF argues the circuit court erred in holding that because it found separate wrongful death and survivorship action claims with different measures of damages, there was more than \$1,000,000 in indemnity coverage. We agree.

Section I's "No Duplication of Coverage or Coverage Limits," provides:

No liability that is covered under any Coverage Section of **This Contract** will be deemed to be separately covered under any other Coverage Section. No **Offense** will be deemed also to constitute separately an **Occurrence** for coverage purposes, or vice-versa. . . . Any act(s) or omission(s) that might be described under more than one Coverage Section or more than one category as an **Offense(s)** or an **Occurrence(s)** will be treated as a single event for coverage purposes, subject to a single Coverage Limit. A single Coverage Limit applies to any **Offense** or **Occurrence**, *regardless of the number of claimants, suits, or claims*. A single Coverage Limit applies to all claims or suits involving *substantially*

*the same injury or damage . . . .* There is no duplication of any coverage or benefits under **This Contract**.

(bold emphasis in original) (italic emphasis added).

The circuit court found the duplication clause did not limit SCMIRF's liability because there were different legal claims asserted—"wrongful death, as well as conscious pain and suffering, among other things"—which had different measures of damages. The circuit court found the damages recoverable for a wrongful death claim—damages sustained by the beneficiaries resulting from the death of the decedent, including mental shock and suffering, wounded feelings, grief, sorrow and loss of companionship—were not the same damages recoverable for a pain and suffering claim—damages sustained by the injured individual for the physical discomfort and the emotional response to the sensation of pain caused by the injury itself. Thus, the circuit court concluded Bert Reeves suffered separate and distinct damages—which were not "substantially the same injury or damage" contemplated by the duplication clause. This finding led the circuit court to award coverage under the separate causes of action resulting in more than \$1,000,000 in indemnity coverage.

Specifically, SCMIRF argues the circuit court erred by focusing on the different measures of damages for the different legal claims. SCMIRF asserts the duplication clause applies here because there is only one Personal Injury for coverage purposes.

Coverage does not turn on the legal theory under which liability is asserted, but on the cause of the injury. *McPherson v. Mich. Mut. Ins.*, 306 S.C. 456, 462, 412 S.E.2d 445, 448 (Ct. App. 1991), *affirmed as modified* 310 S.C. 316, 426 S.E.2d 770 (1993). Section IV of the Coverage Contract does not insure against theories of liability; it insures against Wrongful Acts which result in Bodily Injury or Personal Injury. We find asserting claims under multiple legal theories does not impact coverage under the Coverage Contract. For coverage purposes here, Bodily Injury is deemed part of Personal Injury. Because the Personal Injury caused Bert Reeves's death and Bert Reeves's death is the basis for all of Reeves's claims, we find Reeves's claims involve "substantially the same injury or damage" contemplated by the duplication clause. Therefore, under the facts of the case, the duplication clause applies.

We find the duplication clause and other coverage provisions in the Coverage Contract act to limit coverage to a single Coverage Limit. Coverage Contract

language prohibits duplicate coverage here despite having (1) multiple claimants—Bert Reeves and his statutory beneficiaries; (2) multiple members or covered persons—Cottageville and Price; and (3) members and covered persons who committed various acts and omissions over a period of time—negligence and Section 1983 violations. The Coverage Contract specifically contemplates injury or damage, as the result of the acts or omissions of numerous members or covered persons, to more than one person, in the following provisions:

1. "A single Coverage Limit applies to any **Offense** or **Occurrence**, *regardless of the number of claimants, suits, or claims.*" Section I(C)(9) (bold emphasis in original) (italic emphasis added).
2. "*Any act(s) or omission(s)* that might be described under more than one Coverage Section or *more than one category as an **Offense(s)** or an **Occurrence(s)*** will be treated as a single event for coverage purposes, subject to a single Coverage Limit." Section I(C)(9) (bold emphasis in original) (italic emphasis added).
3. "All repetitions of *the same basic **Offense*** involving *any offended person* and/or organization or *group of persons* and/or organizations, whether or not there are different witnesses to the **Offense** or there is *variation in the conduct constituting the **Offense***, will be treated as one **Offense**, subject to a single Coverage Limit . . . ." Section I(B)(5) (bold emphasis in original) (italic emphasis added).
4. "Only a single limit or Annual Aggregate from a single **Contract** for a single **Coverage Period** will apply, *regardless of the number of persons or organizations injured or making claims, or the number of **Covered Persons*** who allegedly caused them, or whether the damage or injuries at issue were *continuing or were repeated* over the course of more than one **Coverage Period.**" Section IV(D)(1) (bold emphasis in original) (italic emphasis added).
5. "SCMIRF's liability for any one occurrence/wrongful act will be limited to \$1,000,000 per **Member** regardless of the number of ***Covered Persons, number of claimants[,] or claims made . . . .***" Section IV(D)(2) (bold emphasis in original) (italic emphasis added).
6. "Subject to any special aggregates, *all continuing, serial, or repeated instances of **Personal Injury*** . . . will be considered as one

occurrence/wrongful act, *regardless of the number of Covered Persons* involved in causing or failing to permit [sic] such injuries or the *number of persons injured . . .*" Section IV(D)(2) (bold emphasis in original) (italic emphasis added).

Under the aforementioned provisions, we find if the same basic Offense injures multiple people who bring multiple claims—even if the conduct that constitutes the Offense varies and involves multiple members and covered persons—there is only one Offense for coverage purposes and recovery is limited to \$1,000,000. *See McGill*, 381 S.C. at 185, 672 S.E.2d at 574 ("A contract is read as a whole document so that one may not create an ambiguity by pointing out a single sentence or clause."); *Williams*, 409 S.C. at 595, 762 S.E.2d at 710 ("Whether a contract is ambiguous is to be determined from examining the entire contract, not by reviewing isolated portions of the contract."). The circuit court erred in focusing on the different measures of damages for Reeves's legal claims and finding the duplication clause did not apply here. We find there is one Wrongful Act giving rise to the same Offense which constitutes a Personal Injury, and the Offense is subject to a single Coverage Limit of \$1,000,000.

### C. Ambiguous Policy: Occurrence

SCMIRF argues the circuit court misplaced its emphasis on the term Occurrence, and it erred in finding the term ambiguous. We agree.

The Coverage Contract defines Occurrence as "an accident which results in **Bodily Injury . . .**" (emphasis in original). In determining coverage under the Coverage Contract, the circuit court found "there is ambiguity as to whether 'occurrence' is defined by different acts of negligence or the resulting damage." The circuit court interpreted SCMIRF's position to mean if there was one wrongful death, there was one Occurrence under the policy, and it characterized SCMIRF's position as viewing the Coverage Contract "as a damages policy for purposes of coverage determination." The circuit court concluded, even if viewed as a "damages policy," Reeves's underlying actions included separate claims with different measures of damages which "could lead to additional coverage under these separate causes of action." The court granted Reeves's motion for summary judgment and found there were multiple covered Occurrences which allowed for more than \$1,000,000 in coverage.

Reeves cites *Boiter v. South Carolina Department of Transportation*, for the proposition that multiple acts of negligence constitute separate Occurrences under

the Coverage Contract. 393 S.C. 123, 712 S.E.2d 401 (2011). However, *Boiter* is distinguishable on two distinct and important points: first, it did not address the Coverage Contract, rather it involves the definition of "occurrence" under the Act; and second, it discussed liability for two acts of negligence by entirely separate entities with no causal connection between the two. *Id.* at 133, 712 S.E.2d at 406 (distinguishing *Boiter* from other cases "because they involve[d] a single governmental entity which committed multiple acts of negligence, [and] completely different situation[s] than the one before [*Boiter*]" and deciding there were two occurrences "based solely on the peculiar facts of [*Boiter*]"). Thus, the instant case is factually distinguishable from *Boiter* and does not compel a finding of multiple occurrences.

We find the circuit court misplaced its focus on the definition of Occurrence. Occurrence relates to coverage for Bodily Injury, and Offense relates to coverage for Personal Injury. Here, we find a single Offense constituting a Personal Injury for coverage purposes. Thus, coverage for *Offense* is at issue, not coverage for *Occurrence*. Our finding that there is a single Offense constituting a Personal Injury is dispositive of whether Occurrence is ambiguous. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (ruling an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal); *see also McGill*, 381 S.C. at 185, 672 S.E.2d at 574 ("A contract is read as a whole document so that one may not create an ambiguity by pointing out a single sentence or clause."); *Williams*, 409 S.C. at 595, 762 S.E.2d at 710 ("Whether a contract is ambiguous is to be determined from examining the entire contract, not by reviewing isolated portions of the contract.").

For the foregoing reasons, we reverse the circuit court's order finding Reeves was entitled to more than \$1,000,000 in indemnity coverage, and we enter judgment in favor of SCMIRF as to this issue.

## **II. Reeves's Appeal**

On appeal, Reeves argues the circuit court erred in granting the portion of SCMIRF's summary judgment motion regarding the Act because (1) the Act does not govern claims brought against SCMIRF because SCMIRF is not a political subdivision of the state, and (2) the Act does not apply to, and limit the recovery in, a breach of contract claim. We address each argument in turn.

### **A. Political Subdivision**

**i. "Political Subdivision" Interpretation**

On appeal, Reeves argues the circuit court misinterpreted the definition of political subdivision within the Act. We disagree.

Questions of statutory construction are a matter of law. *Charleston Cty. Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it reasonably can be discovered in the language used, and the language must be construed in the light of the intended purpose of the statute." *Sumter Police Dep't v. Blue Mazda Truck*, 330 S.C. 371, 375, 498 S.E.2d 894, 896 (Ct. App. 1998). "In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect." *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998).

The South Carolina Constitution provides:

(A) Any county, incorporated municipality, or other political subdivision may agree with the State or with any other political subdivision for the joint administration of any function and exercise of powers and the sharing of the costs thereof. (B) Nothing in this Constitution may be construed to prohibit the State or any of its counties, incorporated municipalities, or other political subdivisions from agreeing to share the lawful cost, responsibility, and administration of functions with any one or more governments, whether within or without this State.

S.C. CONST. art. VIII, § 13. The Act mandates, "The political subdivisions of this State . . . shall procure insurance to cover these risks for which immunity has been waived [in the Act] by: . . . (4) establishing pooled self-insurance liability funds, by intergovernmental agreement." S.C. Code Ann. § 15-78-140(A) (Supp. 2018).

The Act provides limitations on liability for torts asserted against the State and its political subdivisions. *See* S.C. Code Ann. § 15-78-20(a) (2005) ("[I]t is declared to be the public policy of the State of South Carolina that the State, and its political subdivisions, are only liable for torts within the limitations of this chapter and in accordance with the principles established herein."). The Act "is the exclusive and

sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty." S.C. Code Ann. §15-78-200 (2005). "The provisions of [the Act] establish limitations on and exemptions to the liability of the governmental entity and must be liberally construed in favor of limiting the liability of the governmental entity." *Id.* "The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, [under the Act]." S.C. Code Ann. §15-78-40 (2005).

The Act defines "governmental entity" as "the State and its political subdivisions." S.C. Code Ann. §15-78-30(d) (2005). "Political subdivision" is defined as:

the counties, municipalities, school districts, a regional transportation authority established pursuant to Chapter 25 of Title 58, and an operator as defined in item (8) of § 58-25-20 which provides public transportation on behalf of a regional transportation authority, and special purpose districts of the State and *any agency, governmental health care facility, department, or subdivision thereof.*

S.C. Code Ann. §15-78-30(h) (2005) (emphasis added).

In the instant case, SCMIRF contends it is a political subdivision based on the foregoing definition, arguing the phrase "any agency, governmental health care facility, department, or subdivision thereof" qualifies all terms before it. Under SCMIRF's interpretation, political subdivisions include: any agency, governmental health care facility, department, or subdivision of "counties, municipalities, school districts, a regional transportation authority . . . , and an operator as defined in item (8) of Section 58-25-20 . . . and special purpose districts of the State . . . ." S.C. Code Ann. §15-78-30(h). SCMIRF relies on Attorney General's opinions finding SCMIRF is an agency or department of the municipality and tort claims brought against SCMIRF are subject to the Act.<sup>4</sup> *See* S.C. Op. Att'y Gen., 1990 WL

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<sup>4</sup> A 1990 Attorney General's opinion analyzed the definition of political subdivision in the Act and found the phrase "any agency, governmental health care facility, department, or subdivision thereof" "amplifies the term 'political subdivision' and cannot be reasonably read to modify the term 'State' since that term, as used in this paragraph, exists only to further describe special purpose districts." 1990 WL 599264, at \*2. The opinion found,

599264 (S.C.A.G. July 25, 1990); S.C. Op. Att'y Gen., 2014 WL 7405219 (S.C.A.G. December 17, 2014).

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[a] reading of the statutory language when reduced to its simplest terms provides that a political subdivision means or includes the following:

1. counties;
2. municipalities;
3. school districts;
4. regional transportation authorities established pursuant to Chapter 25 of Title 58;
5. an operator as defined in item (8) of Section 58-25-20;
6. special purpose districts; and
7. *any agency, governmental health care facility, department or subdivision of any of the aforementioned political subdivisions.*

*Id.* (emphasis added). "Each clause is of equal status and no phrase exists as modification or explanation of another." *Id.*

A 2014 Attorney General's opinion addressed the issue of whether SCMIRF is a governmental entity as defined in the Act, "such that tort claims brought against SCMIRF are subject to the Act." 2014 WL 7405219, at \*1. Building on the Attorney General's 1990 interpretation of the definition of political subdivision, the opinion found the definition of political subdivision included any agency or department of one or more municipalities. *Id.* at \*2. The opinion noted the "very purpose and structure of SCMIRF is contemplated in and authorized by the Act." *Id.* at \*3; *see* S.C. Code Ann. § 15-78-140(A) ("The political subdivisions of this State . . . shall procure insurance to cover these risks for which immunity has been waived by: . . . (4) *establishing pooled self-insurance liability funds, by intergovernmental agreement.*") (emphasis added). The opinion found "SCMIRF clearly serves as an agency or department of its municipality members, it therefore falls within the [] definition and is subject to tort suits only pursuant to the terms of the Act." *Id.* Accordingly, the Attorney General's opinion opined that SCMIRF's liability is subject to the Tort Claims Act. *Id.* at \*3.

Conversely, Reeves contends SCMIRF is not a political subdivision, arguing the phrase "any agency, governmental health care facility, department, or subdivision thereof" only qualifies the phrase "special purpose districts of the State." S.C. Code Ann. § 15-78-30(h). Under Reeves's interpretation, political subdivisions include: any agency, governmental health care facility, department, or subdivision of special districts of the State. Reeves concludes, SCMIRF is not an agency, department, or subdivision of a special district of the State and, accordingly, not a political subdivision. In response to SCMIRF's reliance on the Attorney General's opinions, Reeves argues the Attorney General's opinions may be persuasive authority, but they are not binding, and this Court should disagree with the opinions' reasoning and decline to adopt them. *See Charleston Cty. Sch. Dist. v. Harrell*, 393 S.C. 552, 560–61, 713 S.E.2d 604, 609 (2011) ("Attorney General opinions, while persuasive, are not binding upon this Court."); *but cf. Price v. Watt*, 280 S.C. 510, 513 n.1, 313 S.E.2d 58, 60 n.1 (Ct. App. 1984) (demonstrating Attorney General's opinions should not be disregarded without cogent reason).

The circuit court agreed with SCMIRF's interpretation, found SCMIRF is a political subdivision of the state, and found a tort claim for bad faith brought against SCMIRF is subject to the Act. The circuit court granted SCMIRF's motion for summary judgment on the issue.

We find the circuit court did not err in finding SCMIRF is a political subdivision under the Act. SCMIRF is a voluntary self-insurance pool created by municipalities of the state under the authorization of the State Constitution and the Act. The Act and the South Carolina Constitution authorize municipalities and other political subdivisions to establish pooled self-insurance liability funds. S.C. CONST. art. VIII, § 13; S.C. Code Ann. § 15-78-140(A). It would be an absurd result for the legislature to create a scheme in which a municipality loses its status as a political subdivision under the Act—and, thus, loses the protection of the Act—when it joins together with other municipalities for the purpose of complying with statutory obligations. We find SCMIRF is a political subdivision under the language of the Act.

## ***ii. Health Promotion Specialists<sup>5</sup> Factors***

Reeves argues the factors established in *Health Promotion Specialists* clearly establish that SCMIRF is not a political subdivision of the state. We disagree.

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<sup>5</sup> *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 743 S.E.2d 808 (2013).

Beyond the plain language of the Act, our supreme court in *Health Promotion Specialists* specified the following factors to determine whether an entity is the state or its political subdivision for purposes of coverage under the Act:

[1] whether the entity functions statewide, [2] whether the entity performs the work of the state, [3] whether the entity was created by the legislature, and [4] whether the entity is subject to local control. Additionally, we have examined [5] the character of the power delegated to the entity, and [6] the nature of the function performed by the entity.

*Id.* at 636, 743 S.E.2d at 814 (citation omitted). Specifically, Reeves contends SCMIRF is not a political subdivision under the Act because it is merely a fund, the General Assembly did not create SCMIRF nor provide for any control over it, and SCMIRF's funds are not controlled by the State Treasurer.

SCMIRF functions statewide in municipalities across the state, enabling municipalities to enter into an intergovernmental agreement for insurance coverage. Its purpose is to provide insurance coverage to municipal government units, institutions, or agencies in the state—a function required of municipalities under the State Constitution and the Act. S.C. CONST. art. VIII, § 13; S.C. Code Ann. § 15-78-140(A). The legislature did not create SCMIRF, however. Municipalities created SCMIRF at the direction of the Act. The State Constitution provides, "Nothing in this Constitution may be construed to prohibit the State or any of its counties, incorporated municipalities, or other political subdivisions from agreeing to share the lawful cost, responsibility, and administration of functions with any one or more governments, whether within or without this State." S.C. CONST. art. VIII, § 13(B). The Act mandates "[t]he political subdivisions of this State . . . shall procure insurance to cover these risks for which immunity has been waived [in the Act] by: . . . (4) establishing pooled self-insurance liability funds, by intergovernmental agreement." S.C. Code Ann. § 15-78-140(A). In providing liability coverage, SCMIRF is performing a mandated function of a municipality. We find the *Health Promotion Specialists* factors weigh in favor of finding SCMIRF is a political subdivision subject to the Act.

For the foregoing reasons, we find the circuit court did not err in finding SCMIRF is subject to the Act when a tort claim for bad faith is brought against it. We affirm the circuit court's order granting SCMIRF's motion for summary judgment on this

issue. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006) ("[S]ummary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.").

## **B. Applicability of Torts Claims Act: Breach of Contract**

Reeves argues regardless of whether SCMIRF is a political subdivision, the Act has no impact on SCMIRF's liability based on a breach of contract. Specifically, Reeves asserts a claim against SCMIRF for a breach of the Coverage Contract sounds in contract and is not subject to the Act's coverage limitations. We disagree.

The parties agreed in their settlement agreement to litigate "the following two issues, and only these two issues": (1) whether the Coverage Contract provides more than \$1,000,000 in indemnity coverage to Reeves's claims; and (2) whether "a *tort claim* for bad faith brought against SCMIRF [was] subject to the [ ] Act." (emphasis added). The settlement agreement provided that if the court found a bad faith tort claim against SCMIRF was not subject to the Act, SCMIRF would pay Reeves an additional \$1,000,000. The circuit court found the tort claim for bad faith brought against SCMIRF *was* subject to the Act and granted SCMIRF's motion for summary judgment on issue two. Reeves filed a Rule 59(e), SCRC, motion requesting the circuit court amend its order to find the Act does not apply to, nor limit the recovery in, a breach of contract claim. The circuit court denied Reeves's Rule 59(e) motion regarding the second issue. The circuit court found the breach of contract issue was not before the circuit court because the stipulated question was whether a *tort claim* for bad faith brought against SCMIRF was subject to the Act.

"A stipulation is an agreement, admission[, ] or concession made in judicial proceedings by the parties thereto or their attorneys. Stipulations, of course, are binding upon those who make them." *Kirkland v. Allcraft Steel Co.*, 329 S.C. 389, 393, 496 S.E.2d 624, 626 (1998); *see Belue v. Fetner*, 251 S.C. 600, 606, 164 S.E.2d 753, 755 (1968) ("When counsel enter into an agreed stipulation of fact as a basis for decision by the court, both sides will be bound by such agreed stipulation, and the court will not go beyond such stipulation to determine the facts upon which the case is to be decided."). "A stipulation is an agreement, an understanding. The court must construe [a stipulation] like a contract, i.e., interpret it in a manner consistent with the parties' intentions." *Porter v. S.C. Pub. Serv. Com'n*, 333 S.C. 12, 30, 507 S.E.2d 328, 337 (1998). "The interpretation of a stipulation is

addressed to the sound discretion of the [circuit] court and will not be reversed on appeal absent an abuse of that discretion." *Milton P. Demetre Family Ltd. P'ship v. Beckmann*, 413 S.C. 38, 50, 773 S.E.2d 596, 603 (Ct. App. 2014).

The second stipulated question for litigation was not whether the Act would apply to a *breach* of the Coverage Contract; rather, the question was whether a *tort claim* for bad faith brought against SCMIRF was subject to the Act. *See Porter*, 333 S.C. at 30, 507 S.E.2d at 337 ("Because the court construes it like a contract, a stipulation that is unambiguous and explicit must be construed according to the terms the parties have used, as those terms are understood in their plain, ordinary, and popular sense."). We find the circuit court properly enforced the plain meaning of the stipulation at issue in this case. Accordingly, we affirm the circuit court's order granting SCMIRF's motion for summary judgment on this issue.

**AFFIRMED IN PART AND REVERSED IN PART.**<sup>6</sup>

**HUFF and SHORT, JJ., concur.**

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<sup>6</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.