THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Perry M. Buckner, III, Circuit Court Judge

RECEIVED
JUN 04 2019
SC Court of Appeals

Case No. 2014-CP-15-135

Appellate Case No. 2016-001626

Ashley Reeves as Personal Representative for the Estate of Albert Carl "Bert" Reeves, ...	Respondent/ Appellant,
v.	
South Carolina Municipal Insurance and Risk Financing Fund, ...	Appellant/ Respondent.

Appellant/Respondent's Return to Petition for Rehearing *En Banc*

Pursuant to Rules 219(b), 221(a) and 240(e), SCACR, Appellant/Respondent South Carolina Municipal Insurance and Risk Financing Fund ("SCMIRF") hereby submits this return to the Petition for Rehearing *En Banc* of Respondent/Appellant Ashley Reeves ("Reeves"), as Personal Representative for the Estate of Albert Carl "Bert" Reeves ("Bert Reeves"). In *Reeves v. SCMIRF*, Op. No. 5643 (S.C. Ct. App. filed May 1, 2019) (Shearouse Adv. Sh. No. 18 at pp. 26-52) ("Op. No. 5643"), a Panel of this Court correctly affirmed in part and reversed in part the circuit court's findings in this declaratory judgment action which presented two stipulated questions for the Court's determination. The first stipulated question was whether, under the

stipulated facts, SCMIRF's Coverage Contract with the Town of Cottageville ("Cottageville") afforded more than $1,000,000 in indemnity coverage for the claims that had been asserted by Reeves against Cottageville, Randall Price ("Price"), and John Craddock ("Craddock"). The unanimous Panel reversed the circuit court's ruling on this issue and held that, under the terms of SCMIRF's Coverage Contract and the stipulated facts of this case, "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." (Op. No. 5643 at p. 43). The second stipulated question was whether a tort claim for bad faith brought against SCMIRF would be subject to the South Carolina Tort Claims Act (S.C. Code Ann. § 15-78-10 *et seq.*)("the Tort Claims Act"). The unanimous Panel affirmed the circuit court's ruling on this issue, holding that SCMIRF is a political subdivision under the Tort Claims Act, and that any tort claim for bad faith brought against SCMIRF would be subject to the provisions of the Tort Claims Act. (*Id.* at pp. 49-50). Reeves now seeks rehearing as to both of these holdings. As explained more fully below, rehearing of this matter is not warranted under Rules 219 or 221 because the Panel's opinion did not overlook or misapprehend any points of fact or law, did not create or entrench any disunity in this Court's precedent or that of the Supreme Court, and because the issues in this appeal—while important to the parties in this appeal—are not issues of "exceptional importance" to the public at large or to the development of the law. Because the Panel's unanimous rulings on these issues were correct and well-reasoned, SCMIRF respectfully requests that this Court deny Reeves' Petition for Rehearing and Rehearing *En Banc*.

Standard of Review

A petition for rehearing must "state with particularity the points supposed to have been overlooked or misapprehended by the court." *Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 643 (2011) (quoting Rule 221(a), SCACR). Stated another way, the purpose of a

petition for rehearing "is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." *Id.* (quoting *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001)). Thus, our appellate courts will deny a petition for rehearing whenever "the points set forth in the petition have all been considered and expressly decided against the respondent by this Court in the opinion filed." *Clemmons v. Nicholson*, 188 S.C. 124, 198 S.E. 180, 183 (1938). Additionally, "[a] hearing or rehearing *en banc* is not favored and ordinarily will not be ordered except (1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance." Rule 219(a), SCACR. As explained herein, Reeves does not come close to meeting the heavy burden that they face in seeking rehearing or rehearing *en banc* of the Panel's decision.

Argument

I. The Panel correctly held that the terms of SCMIRF's Coverage Contract only provided a single limit of $1,000,000 in indemnity coverage for all of Reeves' claims.

In Opinion No. 5643, the Panel correctly determined that the proper coverage analysis of the Coverage Contract's Section IV coverage was a three-part analysis which determines whether a Wrongful Act that resulted in Personal Injury or Bodily Injury occurred and also aids in determining whether certain acts or omissions—that may qualify as Offenses or Occurrences under multiple categories of coverage or Coverage Sections—should be treated as a single event for coverage purposes pursuant to the Coverage Contract's non-duplication of coverage or limit of liability provisions. (Op. No. 5643 at p. 38). The first step in this analysis is whether a Wrongful Act occurred. (*Id.*) The second step was the determination of whether the Wrongful Act resulted in either Bodily Injury or Personal Injury (or both) (*Id.* at pp. 38-39). Finally, the third step of the analysis occurs where both Bodily Injury and Personal Injury exist, the Court determined whether

the Bodily Injury is deemed to be part of the Personal Injury. (*Id.* at pp. 39-40). Applying this three-part analysis, the Panel correctly concluded that, while there were Wrongful Acts that resulted in both Bodily Injury and Personal Injury, the injuries that comprised the Bodily Injury (caused by the negligence claims) were also the direct and immediate result of the infliction of the Personal Injury (the § 1983 civil rights violations), and , therefore, the Bodily Injury was deemed to the part of the Personal Injury. (*Id.* at p. 40). The Panel then correctly applied the "Duplication Clause" found in Section I.C.9. of the Coverage Contract and held that under this provision, as well as those found in I.B.5, IV.D.1. and IV.D.2, only one coverage limit of $1,000,000 was available under the Coverage Contract. (*Id.* at pp. 40-43). Reeves' petition for rehearing either attempts to rehash her existing arguments on these points or improperly seeks to assert entirely new arguments, including arguments inconsistent with Reeves' prior assertions. As the Panel's opinion ruling on this issue was well-reasoned and supported by the terms of the Coverage Contract, the petition for rehearing should be denied.

A. The Panel's analysis of the Coverage Contract's provisions properly started with its Insuring Agreement which required it to consider the definition of Wrongful Act.

Reeves asserts that "[t]he fatal flaw" of the Panel's three part analysis is that it starts with the definition of Wrongful Act, instead of with the liability coverage provision. (Petition for Rehearing at p. 6). This assertion is incorrect. As Opinion 5643 clearly states, the Panel found that "coverage analysis begins with the coverage language of the applicable section, Section IV." (Op. No. 5643 at p. 37). Section A.1. of Section IV provides the "Coverage Agreements" for "Law Enforcement Employees Coverage." (Coverage Contract at Sec. IV.A.1., R. 156). Under this coverage agreement, SCMIRF agrees to "... pay on behalf of the **Member** or **Covered Person(s)** for sums which the **Member** or **Covered Person(s)** may be obligated to pay exclusively as **Money**

Damages because of a **Wrongful Act** by a **Member**, a **Law Enforcement Employee**, or other **Covered Person(s)** ... which is committed while acting both in the course and in the scope of his or her official duties, as provided under the South Carolina Tort Claim Act...." (*Id.* (emphasis in original)). Thus, the necessary starting point for any coverage analysis under this section is the existence of a Wrongful Act. Without a Wrongful Act, there is no coverage. The logical next step in the Panel's analysis was the Coverage Contract's definition of "Wrongful Act." Contrary to Reeves' assertion that this was a "fatal flaw," the Panel did start with the coverage provision and then properly focused on the key element that triggered the existence or nonexistence of coverage—whether there was a Wrongful Act. This key analysis cannot be accomplished without reference to the definition of that term.

B. Reeves' improper and untimely assertion that civil rights violations cannot constitute Wrongful Acts under the Coverage Contract is incorrect.

Reeves' assertion that it was a "fatal flaw" for the Panel to consider the definition of Wrongful Act serves as the basis for Reeves' next erroneous assertion. Specifically, in her petition for rehearing, Reeves asserts, for both the first time[1] and erroneously, that under the Coverage Contract's definition of Wrongful Act, conduct actionable under Section 1983 can never constitute a Wrongful Act under the Coverage Contract, and Reeves then asserts that the Panel's decision leads to civil rights violations being exempt from coverage, purportedly leaving municipalities and law enforcement exposed to personal liability. (Petition for Rehearing at pp. 6-7). These assertions are incorrect and apparently are a misguided attempt by Reeves to manufacture a question of exceptional importance to justify her request for *en banc* rehearing.

[1] This argument was not previously made to either the trial court or the Panel. A party may not raise an issue for the first time in a petition for rehearing. *Herron v. Century BMW*, 395 S.C. 461, 469, 719 S.E.2d 640, 644 (2011); *Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001). For this reason alone, it should be disregarded.

Reeves' argument begins with the fact that the definition of Wrongful Act requires the person committing the Wrongful Act to be acting within the course and scope of their official duties "as provided under the South Carolina Tort Claims Act." (*Id.* at p. 6). Reeves then asserts that "[l]iability under 42 U.S.C. § 1983 also rests on the state actor acting with some intent to harm...." (*Id.*). This then leads Reeves to conclude that "civil rights violations necessarily occur when the state actor acts outside the Tort Claims Act" and "the Tort Claims Act does not provide for liability for civil rights violations, and, accordingly, civil rights violations will never be Wrongful Acts under this Contract." (*Id.*). Reeves, however, cites no statutory or case law support whatsoever in support of these conclusions. That is because these conclusions are false.

First, there is nothing in the Tort Claims Act that provides an explicit exception to the waiver of immunity for civil rights violations. Instead, it appears that Reeves is attempting to rely on S.C. Code Ann. § 15-78-60(17) which provides that "[t]he governmental entity is not liable for a loss resulting from: ... (17) employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." In this case, it is uncontested that Price and Craddock were acting within the scope of their employment with the Cottageville Police Department. (Stipulation of Facts and Issues at ¶¶ 3, 5, R. 83-84). Thus, it appears the basis for Reeves' conclusion that Section 1983 claims are outside of the Tort Claims Act is the assertion that Section 1983 claims include the element of an "intent to harm." However, this is incorrect and intent to harm is not an element of the Section 1983 claims in this case.

All of Reeves' Section 1983 claims center on the alleged use of excessive force. (*See* Price Complaint at ¶¶ 47, 52, R. 30-31; Craddock Complaint at ¶¶ 23, 33, 42, R. 54. 56-57). Contrary to Reeves' unsupported assertions, intent to harm is ***not an element*** of a section 1983 excessive

force case. *Howard v. Hudson*, 2016 U.S. Dist. LEXIS 185458, at *4-5 (S.D. Ala. Feb. 29, 2016) ("Intent is not an element of a § 1983 Fourth Amendment excessive force claim; to the contrary, the Supreme Court has taken pains to explain that '[a]n officer's evil intentions will not make a ... violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional.'"); *Garret v. City of Milford*, 2004 U.S. Dist. LEXIS 32420, at *5 (N.D. Tex. Nov. 12, 2004) ("[The plaintiff's] state law claim appears to be based on the same facts as her excessive force claim under Section 1983, and intent is not an element of [the Section 1983] claim.").[2] Thus, S.C. Code Ann. § 15-78-60(17)'s exception for "intent to harm" does not apply to this situation and Reeves' assertion that civil rights violations will never be covered under the Coverage Contract is incorrect. In this case, the Section 1983 claims in the underlying cases do fall within the scope of the Tort Claims Act, and, therefore, do fall within the scope of the term "Wrongful Act" as defined in the Coverage Contract. There was no error in the Panel's analysis which initially and correctly focused on the meaning of Wrongful

[2] Reeves cites to *Sacramento v. Lewis*, 523 U.S. 833, 852 (1998), and *Slaughter v. Mayor & City Council of Baltimore*, 682 F.3d 317 (4th Cir. 2012), in apparent support of the assertion that intent to harm is a requirement. However, each of those cases is distinguishable from the stipulated facts of this case. In *Sacramento v. Lewis*, the Supreme Court rejected an argument that deliberate indifference is sufficient to constitute a section 1983 violation in a high-speed chase. 523 U.S. 833, 852. The Court found when a police officer must make decisions "in haste, under pressure, and frequently without the luxury of a second chance"—for example, in a high-speed chase or prison riot where the officer faces competing obligations of restoring order and avoiding harm to others—he deprives a person of substantive due process only if he acts with an intent to harm that person. *Id.* at 853. The court clarified that in other situations where it is possible for the officer to deliberate before acting, "deliberate indifference" may be sufficient. *Id.* at 852–53. *Slaughter v. Mayor & City Council of Baltimore* addressed a civil rights claim brought by the estate of a firefighter killed in training. The Fourth Circuit explained that a voluntary government employee is deprived of substantive due process only if he can prove an intent to harm. *Id.* at 322. The court reasoned that a voluntary employee can decide to relinquish his employment—or not participate in a dangerous activity—at any time and, therefore, in those limited circumstances "deliberate indifference" does not give rise to a section 1983 claim. *Id.* Neither of these cases applies to the excessive use of force situation present in this matter.

Act, and there is no danger of municipalities and law enforcement personnel who fall within SCMIRF's Coverage Contracts being unduly exposed to personal liability. Therefore, *en banc* rehearing is not warranted and the petition for rehearing should be denied.

C. The Panel correctly applied the applicable provisions of the Coverage Contract which required a finding that coverage could only exist for Personal Injury and that this Coverage was limited to one $1,000,000 coverage limit.

In Opinion No. 5643, the Panel correctly determined that "there is a Wrongful Act—the actions and omissions of Cottageville and Price which violated Reeves' rights and ultimately led to his death." (Op. No. 5643 at p. 38). While this sentence omitted Craddock, that is immaterial. The actions or omissions of Cottageville, Price and Craddock all led to precisely the same injury—the death of Bert Reeves, and it is the existence of both the acts and the corresponding injury that lead to coverage. The Panel correctly determined that both Bodily Injury (Bert Reeves' death and resulting mental anguish) and Personal Injury (the Section 1983 violations that resulted in Bert Reeves' death) resulted from the Wrongful Acts. (*Id.* at p. 39). Next, the Panel properly concluded that the Bodily Injury in this matter must be deemed to be part of the Personal Injury. (*Id.* at 39-40). This is because the definition of "Bodily Injury" specifically provides that it does not include injuries "if they result directly and immediately from the infliction of Personal Injury" and that "any such resulting injuries shall be deemed to be part of the Personal Injury." (Coverage Contract at Sec. IV.G.4., R. 166). Next, the Panel correctly found that under the Duplication provision in Section I.C.9, and other limit of liability provisions of the Coverage Contract, that only a single $1,000,000 coverage limit applied. (*Id.* at p. 42).

In her petition for rehearing, Reeves seeks to create multiple coverages by attempting to separate the negligence claims from the civil rights claims. (Petition for Rehearing at p. 10). Reeves asserts that the negligence claims are "actionable under the Tort Claims Act" and "did not

cause Personal Injury" because the offensive act (the negligent act) is not an offense listed in the definition of Personal Injury. (*Id.*). Reeves then asserts that the civil rights violations which are covered as Personal Injury are a separate covered injury. (*Id.*). Basically, Reeves attempts to recover for both Bodily Injury and Personal Injury by asserting that they are not one in the same. This, however, completely ignores the merger provision in the definition of "Bodily Injury." This merger provision does not focus on the wrongful act that gives rise to the injury. Rather, it focuses on the resulting injury without regard to the corresponding act. If the Bodily Injury is the direct and immediate result of the infliction of the Personal Injury, then the two injuries are merged into the Personal Injury.

Additionally, Reeves attempts to shift this Court's focus from the common injury to the different acts of Cottageville, Price and Craddock. (Petition for Rehearing at pp. 9-10). This misdirection fails, however, because coverage under the Coverage Contract does not exist for Wrongful Acts standing alone. Coverage is only triggered where a Wrongful Act results in either Bodily Injury or Personal Injury. Absent the resulting injury, there simply is no coverage. As explained above, where an injury that qualifies as Bodily Injury is the direct and immediate result of the infliction of a Personal Injury, then it is deemed part of that Personal Injury and the only potential coverage is under the Personal Injury provisions of the Coverage Contract.

Here, as the Panel correctly concluded, the Bodily Injury was "Bert Reeves' death and the mental anguish and suffering associated with his death" and this injury "'resulted directly or immediately' from the Personal Injury—the Section 1983 violations. (Op. No. 5643 at p. 40). As the Panel explained, "the Coverage Contract does not insure against theories of liability; it insures against Wrongful Acts which result in Bodily Injury or Personal Injury." (*Id.* at p. 41). After determining that the Bodily Injury was deemed part of the Personal Injury, the Panel then correctly

found that "the duplication clause[3] and other coverage provisions in the Coverage Contract act to limit coverage to a single limit." (*Id.* at p. 42). These include:

- Sec. I. C.9 (R. 112) (providing that a single Coverage Limit applies to any Offense or Occurrence, regardless of the number of claimants, suits, or claims);
- Sec I.C.9. (R. 112) (providing that any act(s) or omission(s) that might be described as either an "Offense" supporting Personal Injury or an "Occurrence" supporting Bodily Injury will be treated as a single event for coverage purposes, subject to a single Coverage Limit);
- Sec. I.B.5. (R. 108-109) (defining "Offense" and providing that repetitions of the same basic "Offense," whether or not there are multiple offended persons or variation in the offensive conduct, will be treated as one "Offense" subject to a single coverage limit);
- Sec. IV.D.1 (R. 157) (providing that only a single limit will apply regardless of the number of persons injured or making claims, or the number of covered persons who allegedly caused them);
- Sec. IV., ¶ D.2 (R. 157) (providing that the total liability of SCMIRF for any one occurrence/wrongful act is limited to $1,000,000 per "Member" regardless of the number of "Covered Persons" involved or the number of claims made); and
- Sec. IV., ¶ D.2. (R. 157) (providing that 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 [prevent] such injuries – and only a single Coverage Limit applies).

The Panel correctly concluded that under these provisions "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." (Op. No. 5643 at p. 43). Reeves' attempt to create separate duplicative coverages for Bodily Injury caused by negligence and Personal Injury caused by Section 1983 violations ignores these provisions.

[3] Sec I.C.9. (R. 112) (providing that a single coverage limit applies to all claims or suits involving substantially the same injury or damage).

Reeves now asserts that there are four separate $1,000,000 limits available in this matter—comprised of $1,000,000 for the negligence claims against Cottageville/Price, and three separate $1,000,000 limits for the civil rights claims against Cottageville, Price and Craddock, respectively. (Petition for Rehearing at p. 15). Thus, Reeves seeks to duplicate limits for both Bodily Injury and Personal Injury while also duplicating three separate Personal Injury limits. The number of coverage limits Reeves claims is available has inexplicably changed. In her Respondent's brief on this issue and in her summary judgment motion to the circuit court, Reeves asserted that separate liability limits exist for ten separate "occurrences." (*See* Final Response Brief of Respondent/Appellant at pp. 5, 29; Plaintiff's Memorandum in Support of Summary Judgment at pp. 3, 10-11, R. 403, 410-411). This change from ten to four comes from a change in Reeves' entire theory of interpretation of the Coverage Contract.

Reeves now asserts that the Duplication Clause in Section I.C.9 and the definitions for "Occurrence" and "Offense" found in Section I have no bearing on the interpretation of coverage under Section IV. (Petition for Rehearing at p. 11). Additionally, Reeves now asserts that the "Limit of Liability" provision in Section IV.D.1. (R. 156-157) applies only to negligence claims brought under the Tort Claims Act and that this provision limits Reeves to only one coverage limit for her negligence claims. (Petition for Rehearing at pp. 12-13). This is asserted despite the fact that there is nothing in Section IV.D.1 limiting its application to only claims under the Tort Claims Act. Reeves then claims that the "SCMIRF's Limit of Liability" provision in Section IV.D.2. (R. 157) applies to limit any one Occurrence or Wrongful Act to only one coverage limit. (Petition for Rehearing at p. 13). This argument, which is being made for the first time in the petition for

rehearing,[4] hinges on Section I's provisions, particularly Section I.C.9 and the definition of Offense found in Section I.B.5, having no application to Section IV in this matter. This argument, if considered at all, should be rejected.

Reeves now asserts that the Panel's "interpretation of Section IV's coverage and limitations to coverage is impermissibly based on language and definitions from Section I, General Provisions." (Petition for Rehearing at p. 11). Reeves argues that this Panel should not have used the Section I definitions for Occurrence and Offense in its analysis because the Section I definitions for these terms were supplanted by "specific provisions on liability coverage and the definitions of bodily injury and personal injury [that] are contained in Section IV." (*Id.*) Not only is this an entirely new argument, it is the ***opposite*** of what Reeves argued in her Respondent's Brief on this issue. In her Respondent's Brief, Reeves specifically asserted that the Section I definitions of Occurrence and Offense applied to the interpretation of Section IV. (*See* Final Response Brief of Respondent/Appellant at pp. 10-11). Similarly, in her appellate briefing Reeves presented an entirely different argument regarding the application of Section I.C.9. Reeves did not assert that Section I.C.9 was inapplicable to Section IV. Rather, she asserted that this provision meant only that "there will be no duplication of policy coverage for an occurrence that may fall under more than one coverage section." (*Id.* at p. 15). Now, however, Reeves attempts to add a new argument that Section I.C.9. is superseded by liability limitation provisions found in Section IV. (Petition for Rehearing at pp. 15-16.)

Reeves' contradictory positions as to whether Section I's provisions or definitions apply or do not apply undermines Reeves' entire argument on the proper interpretation of the Coverage

[4] A party may not raise an issue for the first time in a petition for rehearing. *Herron*, 395 S.C. at 469, 719 S.E.2d at 644; *Kennedy*, 349 S.C. at 532, 564 S.E.2d at 322 (2001).

Contract's non-duplication and limit of liability provisions. Section I.A expressly provides that "[t]his Section I shall apply to Sections ... IV (Law Enforcement) ... unless specific provisions are contained in the appropriate section. (R. 108). Thus, unless the provisions of Section I are specifically replaced in Section IV, they will apply. This is made clear in the opening language of Section IV, which provides that it is "subject to the limits of liability, exclusions, definitions, and conditions contained in the General Provisions Section I." Section I.C.9 is titled "No Duplication of Coverage or Coverage Limits" and is found in the "General Conditions" part of Section I. There is no provision in Section IV with that title, and there is nothing in Section I.C.9 that conflicts with or is inconsistent with any provision in Section IV. Thus, as Reeves previously freely acknowledged, Section IV is subject to Section I.9.C. Additionally, the terms Occurrence and Offense are defined only in Section I. As there is no specific provision in Section IV replacing or contradicting them, they apply with full force to Section IV.

The Panel's analysis of the Coverage Contract was well-reasoned and correctly determined that, under these circumstances, only a **single** limit of $1,000,000 was available. Thus, this Court should deny the petition for rehearing.

II. The Panel correctly held that SCMIRF is a political subdivision and is, therefore, entitled to protection under the Tort Claims Act for any tort claim for bad faith.

In Opinion No. 5643, the Panel correctly affirmed the trial judge on this issue and held that SCMIRF was a political subdivision within the meaning of the Tort Claims Act and, was therefore entitled to the protections of that Act. (Op. 5643 at pp. 49-50). In her petition for rehearing, Reeves rehashes her prior argument that SCMIRF falls outside the definition of political subdivision because SCMIRF is a fund and is not an agency, department or subdivision of its member municipalities. (Petition for Rehearing at p. 22).

The Panel, however, correctly held that that "SCMIRF is a voluntary self-insurance pool created by municipalities of the state under the authorization of the State Constitution and the [Tort Claims] Act" and found that both the Tort Claims Act and the Constitution authorize municipalities and other political subdivisions to establish such pooled self-insurance funds. (*Id.* at p. 49). Contrary to Reeves' assertion that SCMIRF is merely a "fund," the intergovernmental agreement that created SCMIRF established SCMIRF "as a *joint interlocal agency* to operate a fund for liability risk sharing." (Intergovernmental Agreement at ¶ 1, R. 100) (emphasis added). Further, SCMIRF's bylaws state that SCMIRF

> is a Fund created by and *comprised of South Carolina municipalities and their agencies* which are parties to an Intergovernmental Agreement which establishes a pool for the payment of property losses and liability claims on behalf of its members pursuant to the provisions of the Code of Laws of South Carolina, 1976, Section 15-78-140.

(SCMIRF Bylaws at p. 1, R. 95) (emphasis added). It is undisputed that Cottageville is a municipality of the State and is therefore a political subdivision. All other SCMIRF members are "municipal local government unit[s]" and therefore are also political subdivisions. *See* (SCMIRF Bylaws at pp. 5-6, R. 97-98). The joining together of municipalities and their agencies for the purposes of providing liability coverage and sharing risk is expressly authorized by the Tort Claims Act and the South Carolina Constitution. 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 . . . ."); S.C. Const. art. VIII, § 13 ("(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.").

The Panel correctly concluded that "[i]t would be an absurd result for the legislature to create a scheme in which a municipality loses its status as political subdivision under this Act—and, thus loses the protection of the Act—when it joins together with other municipalities for the purpose of complying with statutory obligations." (Op. No. 5643 at p. 49). If one municipality is covered by the Tort Claims Act, a group of political subdivisions sharing a joint self-insurance pool run by an agency – here SCMIRF - must also be covered by the Tort Claims Act. Therefore rehearing on this issue should be denied.

Conclusion

For the reasons set forth herein, and for the reasons and argument set forth in SCMIRF's appellate briefs, all of which should be deemed incorporated herein, this Court should deny Respondent/Appellant's Petition for Rehearing *En Banc*.

Signature Page Attached

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH, LLP

By: _____

C. Mitchell Brown
SC Bar No. 012872
E-Mail: mitch.brown@nelsonmullins.com
Brian P. Crotty
SC Bar No. 16983
E-Mail: brian.crotty@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for South Carolina Municipal Insurance and Risk Financing Fund

Columbia, South Carolina
June 4, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
JUN 04 2019
SC Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas
Perry M. Buckner, III, Circuit Court Judge

Case No. 2014-CP-15-135
Appellate Case No. 2016-001626

Ashley Reeves as Personal Representative for the Estate of Albert Carl "Bert" Reeves, ...	Respondent/ Appellant,
v.	
South Carolina Municipal Insurance and Risk Financing Fund, ...	Appellant/ Respondent.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellant/Respondent, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Appellant/Respondent's Return to Petition for Rehearing *En Banc*

Counsel Served:

W. Mullins McLeod, Jr., Esquire
Jacqueline LaPan Edgerton, Esquire
McLeod Law Group, LLC
3 Morris Street, Suite A
Post Office Box 21624
Charleston, SC 29413

Eileen Hindman
Administrative Assistant

06/04, 2019

NELSON MULLINS

NELSON MULLINS RILEY & SCARBOROUGH LLP
ATTORNEYS AND COUNSELORS AT LAW

Brian P. Crotty
(Admitted in PA & SC)
T 803.255.9422 F 803.255.9040
brian.crotty@nelsonmullins.com

1320 Main Street | 17th Floor
Columbia, SC 29201
T 803.799.2000 F 803.256.7500
nelsonmullins.com

June 4, 2019

RECEIVED
JUN 04 2019
SC Court of Appeals

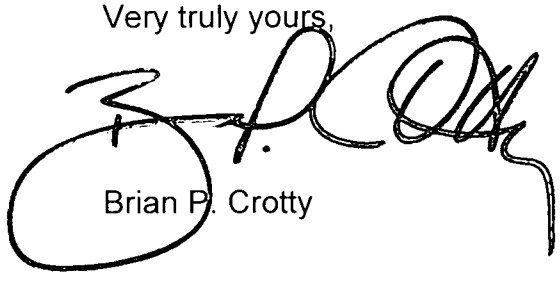
Hand Delivered
The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1220 Senate Street
Columbia, SC 29211

RE: Ashley Reeves, as Personal Representative for the Estate of Albert Carl "Bert" Reeves v. South Carolina Municipal Insurance and Risk Financing Fund
Appellate Case No. 2016-001626
Our File No. 20848/01500

Dear Ms. Kitchings:

Enclosed please find the original and seven copies Appellant/Respondent's Return to Petition for Rehearing. We would ask that you file the original and return a clocked-in copy to us via our courier.

Very truly yours,



Brian P. Crotty

BPC:eh
Enclosure
cc: W. Mullins McLeod, Jr., Esquire
Jacqueline LaPan Edgerton, Esquire