The Supreme Court of South Carolina

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September 21, 2021

The Honorable Patricia C. Grant
PO Box 620
Walterboro SC 29488-0028

REMITTITUR

Re: Ashley Reeves v. SC Municipal Insurance
Lower Court Case No. 2014CP1500135
Appellate Case No. 2019-001756

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

Patricia A. Howard

CLERK

Enclosures

cc: William Mullins McLeod, Jr., Esquire
C. Mitchell Brown, Esquire
Brian Patrick Crotty, Esquire
Colin Ram, Esquire
Jenny Abbott Kitchings, Esquire

The Supreme Court of South Carolina

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

v.

South Carolina Municipal Insurance and Risk Financing Fund, Respondent.

Appellate Case No. 2019-001756

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

C.J.

J.

J.

J.

I would grant the petition for rehearing.

J.

Columbia, South Carolina

September 21, 2021

cc:
William Mullins McLeod Jr.
C. Mitchell Brown
Brian Patrick Crotty
Colin Ram
Patricia C. Grant
Jenny Abbott Kitchings

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

v.

South Carolina Municipal Insurance and Risk Financing Fund, Respondent.

Appellate Case No. 2019-001756

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

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

Opinion No. 28034
Heard November 18, 2020 – Filed June 16, 2021

REVERSED IN PART, VACATED IN PART

William Mullins McLeod Jr. and Colin Ram, McLeod Law Group, LLC, of Charleston for Petitioner.

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

JUSTICE FEW: A Town of Cottageville police officer shot and killed the former town Mayor Bert Reeves. A federal jury awarded Reeves' estate $97,500,000 in

damages. The South Carolina Municipal Insurance and Risk Financing Fund, which insured the town, paid $10,000,000 to settle the federal lawsuit and two other lawsuits. The Settlement Agreement provided for two questions to be submitted to the state courts. The first question is whether the amount of indemnity coverage available under the policy is more than $1,000,000. The second question is whether the South Carolina Tort Claims Act applies to a bad faith action against the Fund. We answer the first question "yes"; we decline to answer the second question.

I. Facts and Procedural History

Randall Price—a police officer for the Town of Cottageville in Colleton County—shot and killed former Cottageville Mayor Albert Carl "Bert" Reeves on May 16, 2011. Ashley Reeves—the personal representative of Bert Reeves' estate—filed a wrongful death and survival lawsuit in state court against Price, the Cottageville police department, and the Town of Cottageville for negligence, assault, battery, and civil rights violations under 42 U.S.C.A. § 1983 (2012). Ashley alleged that while Price was on duty, he drove onto a dirt road to confront Reeves, blocked him in, started a fight with him, and shot and killed him. She claimed the police department and the town were liable for Price's actions because he was their employee. Ashley also alleged the police department and the town were negligent in hiring, retaining, and supervising Price, and those actions violated Reeves' civil rights under section 1983. The defendants removed the lawsuit to federal court. The parties refer to this as the Cottageville lawsuit.

Ashley filed a separate federal lawsuit against Cottageville Police Chief John Craddock. She alleged Craddock—a licensed paramedic—was present when Price shot Reeves. She claimed Craddock was liable for civil rights violations under section 1983 for failing to supervise Price, failing to intervene to stop Price, and failing to give medical care after Price shot Reeves.

The South Carolina Municipal Insurance and Risk Financing Fund provided liability insurance to Cottageville, and administered claims against it, pursuant to an insurance policy labeled the Coverage Contract. This "Fund," as we will call it, is a self-insurance liability fund established pursuant to subsection 15-78-140(A) of the South Carolina Code (Supp. 2020).[1] Ashley filed a declaratory judgment action in

[1] Subsection 15-78-140(A) provides that "political subdivisions of this State . . . shall procure insurance to cover [tort and other liability] risks for which immunity has been waived" under the Tort Claims Act by one of several methods, including "(4) establishing pooled self-insurance liability funds, by intergovernmental agreement."

state circuit court against the Fund requesting the court declare the extent of indemnity coverage provided in the Coverage Contract. The Fund argued then and argues now that coverage provided by the Coverage Contract is limited to $1,000,000.

The Cottageville lawsuit was the only case to go to trial. The federal jury found Price was negligent, his negligence proximately caused Reeves' death, and Price violated Reeves' constitutional rights by using excessive force and unlawfully seizing Reeves. The jury found Cottageville negligently hired, retained, and supervised Price, and violated Reeves' constitutional rights. The jury awarded Reeves' estate $7,500,000 in actual damages and $90,000,000 in punitive damages—$30,000,000 against Price and $60,000,000 against Cottageville.

Ashley and the Fund agreed to settle all three lawsuits for $10,000,000. The Settlement Agreement provided Ashley may seek declaratory judgment asking the courts to resolve the two questions.[2] The Fund agreed to pay Reeves' estate an additional $1,000,000 for each question resolved in Ashley's favor. The federal court approved the Settlement Agreement.

The Fund filed a petition with this Court asking us to decide the questions in our original jurisdiction. We declined. Ashley then filed this declaratory judgment claim by amending her pending complaint in circuit court. On the first question, the circuit court ruled in favor of Ashley, finding there was more than $1,000,000 in coverage available under the policy. On the second question, the circuit court ruled in favor of the Fund, finding the Fund is a political subdivision, and therefore, a bad faith claim against it would be subject to the Tort Claims Act.

The court of appeals reversed the circuit court's ruling regarding the amount of coverage available but affirmed the ruling the Fund is a political subdivision. *Reeves v. S.C. Mun. Ins. & Risk Fin. Fund*, 427 S.C. 613, 635, 640, 832 S.E.2d 312, 324, 326 (Ct. App. 2019). We granted a writ of certiorari to review the court of appeals' decision.

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[2] The two questions as fully stated by the parties in the Settlement Agreement are set forth in the court of appeals' opinion. *Reeves v. S.C. Mun. Ins. & Risk Fin. Fund*, 427 S.C. 613, 620-21, 832 S.E.2d 312, 316 (Ct. App. 2019).

II. Indemnity Coverage Available

The Coverage Contract provided indemnity coverage for the town in areas such as general liability, business auto liability, and law enforcement liability. The coverage at issue in this case is law enforcement liability under Section IV of the Coverage Contract. The general provisions in Section I apply.

A. Insuring Language

We begin with the law enforcement liability insuring language in Section IV. We highlighted the operative language in bold for clarity,

> **[The Fund] agrees,** subject to the limitations, terms, and conditions hereunder mentioned **to pay** on behalf of the Member or Covered Person(s) **for sums which the Member or Covered Person(s) shall 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) while acting in conjunction with Law Enforcement Employees, which is **committed while acting in both the course and the scope of his or her official duties,** as provided under the "South Carolina Tort Claims Act" where a South Carolina state law is involved, or while acting in both the course and scope of a mutual aid agreement between governmental entities for the temporary sharing of Law Enforcement Employees or other Covered Person(s) under the terms and circumstances specified therein, and **which results in:**
>
> a. Property Damage or **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** or Advertising Injury which is first caused and first becomes manifest during the Coverage Period.

Under this insuring language, the Fund agreed to pay when a Member (Cottageville) or a Law Enforcement Employee (Price or Craddock) committed a Wrongful Act in the course and scope of his official duties, and the Wrongful Act resulted in Bodily Injury or Personal Injury. The parties agree Price and Craddock were acting within the scope of their official duties when Price killed Reeves. The federal jury determined Cottageville and Price committed numerous Wrongful Acts.

The next question is whether the Wrongful Acts resulted in Bodily Injury. Bodily Injury is defined in the Coverage Contract. We highlighted the operative language in bold for clarity,

> **"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 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.

Reeves is dead; that is a Bodily Injury. Therefore, as the parties agree, the insuring language provides coverage in this case.

We turn then to the policy limits for law enforcement liability indemnity coverage. The Contract Declaration page for Section IV of the Coverage Contract provides the "Liability Limit" is "$1,000,000" "Per Occurrence."

The term "Occurrence" is one we commonly use. In that common usage, the death of Bert Reeves was one tragic occurrence. However, we are not permitted to use our intuitive definition of a term defined in an insurance policy. The Fund wrote the definition of "Occurrence" applicable here, which is found in Section I, the General Provisions section of the Coverage Contract. Again, we put the operative language in bold for clarity,

> **"Occurrence" means an accident which results in Bodily Injury** or Property Damage, the original cause of which and the initial damage from **which happened during the Contract Period** set forth in the Declarations. 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 or Advertising Injury, as those terms are defined in the relevant Coverage Section.

This is not a simple and straightforward definition. In effect, it is three definitions, one for each context in which the Fund used the term Occurrence in the Coverage Contract. The first sentence of the definition provides its central meaning—an "'Occurrence' is an accident which results in Bodily Injury." The definition continues by explaining the three specific contexts in which the Fund used the term in the policy. The first context is set forth in the second sentence of the definition, which further explains the central meaning by reiterating the definition applies when an injury "arises out of" or is "caused by" an Occurrence. The first context applies when the Occurrence is an act or failure to act that causes injury. Under the terms of the Coverage Contract, therefore, an Occurrence is some act or failure to act that causes an injury.

The second context is addressed in the next two sentences of the definition, which are the last two sentences of the first paragraph. These two sentences explain that when "continuing exposure to the same harmful conditions" results in damage or injury, there is only one Occurrence. This case is not a "continuing exposure" situation, and thus, this second context for the definition of Occurrence is not applicable here.

The third context overlaps with the first context and is applicable here. It is found in the second paragraph, which applies when Occurrence is "used to describe limits on a per 'Occurrence' basis or when otherwise describing whether an event or series of events constitutes one loss . . . ." In that context—this context—"the word 'Occurrence' means a covered event of the sort expressly described in the Insuring Agreement of the relevant Coverage Section."

This takes us back to the insuring language quoted above. The "covered event . . . expressly described" in the insuring language is a Wrongful Act. This portion of the definition of Occurrence specifically equates Occurrence with Wrongful Act.[3] The term Wrongful Act is defined 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 . . . ."

The meaning of the term Occurrence is central to understanding the Liability Limit for law enforcement liability coverage in Section IV. The Coverage Contract does not define Occurrence the way we commonly use it, in which some act or failure to act results in a tragic occurrence.[4] Rather, under the Fund's definition, the tragic death of Bert Reeves was the result of an Occurrence. The Coverage Contract defines Occurrence as a Wrongful Act that results in Bodily Injury. Ashley argues Reeves' death was the result of at least four Wrongful Acts. She argues Cottageville's negligent hiring, retention, and supervision of Price, and Price's use of deadly force, are four different Wrongful Acts. The federal jury found in Ashley's favor for each Wrongful Act, which demonstrates she is correct that four Wrongful Acts occurred. The four Wrongful Acts are four Occurrences under the terms of the Coverage Contract.

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[3] The definition provides, "'Occurrence' means a covered event of the sort expressly described in the Insuring Agreement . . . , whether an Occurrence . . . , a Wrongful Act, a Loss, or an Offense."

[4] Our analysis is narrow and relates only to the term "Occurrence" as it is defined in this Coverage Contract. Our analysis is irrelevant, for example, to the term "Occurrence" as it is used in the South Carolina Tort Claims Act. *See* S.C. Code Ann. § 15-78-30(g) (2005) (providing, "'Occurrence' means an unfolding sequence of events which proximately flow from a single act of negligence").

Our conclusion there was more than one Occurrence is supported by considering just two of the several Wrongful Acts Ashley contends "occurred." Even under the Fund's interpretation of the Coverage Contract, these two acts are separate Occurrences. First, Price shot Reeves. Though the gunshot left Reeves in danger for his life, and caused him eventually to die, he was still alive immediately afterwards. Second, Craddock allegedly refused to render medical care to Reeves, despite Craddock's training as a paramedic. The Craddock case was never tried, but considering the allegations against him, it is not possible to view (1) Price shooting Reeves and his eventually resulting death, and (2) Craddock standing by refusing to render medical care while Reeves suffered through the last few minutes of life, as the same Occurrence. So, even if we were to find all of the Wrongful Acts by Price, Craddock, the police department, and the town were not separate Occurrences, we cannot escape the reality that the two acts used in this illustration are two separate Occurrences resulting in separate claims for separate damages.

Returning to the applicable insuring language, however, we do find Cottageville and Price committed at least four Wrongful Acts while acting in the course and scope of their official duties: Cottageville's negligent hiring, retaining, and supervising Price, and Price's use of deadly force in shooting Reeves. If the jury in the Craddock case agreed Chief Craddock violated Reeves' civil rights by failing to render medical care, that would be another Wrongful Act and a fifth Occurrence. Section IV provides coverage for each of the four Occurrences the jury found occurred. The Liability Limit is the number of Occurrences/Wrongful Acts times $1,000,000. Unless some other limitation in the Coverage Contract applies, the four Occurrences require the Fund to pay more than $1,000,000 in indemnity coverage.[5]

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[5] The circuit court ruled in favor of Ashley on the first question for the additional reason that there were multiple categories of damages caused by the defendants' Wrongful Acts, including damages for wrongful death and damages that survived Reeves' death. The circuit court found the multiple categories of damages rendered the policy limit to be in excess of $1,000,000. *See Reeves*, 427 S.C. at 631, 832 S.E.2d at 321-22 (explaining the circuit court's alternative basis for its ruling). Because our decision is based on the number of Occurrences, we need not address this alternative point. *See Whiteside v. Cherokee Cty. Sch. Dist. No. One*, 311 S.C. 335, 340, 428 S.E.2d 886, 889 (1993) ("In view of our disposition of this issue, we need not address appellants' remaining exceptions." (citations omitted)).

B. Limitations

The Fund argues there are three applicable limitations in the Coverage Contract: (1) the No Duplication clause in Section I; and two clauses in the "Limit of Liability" portion of Section IV—(2) the "Limit of Liability" clause; and (3) "[the Fund]'s Limit of Liability" clause. We find none of the limitations apply.

The No Duplication clause contains two prohibitions. First, it limits recovery for any claim that invokes liability coverage from more than one section of the Coverage Contract. Ashley's claims involve only law enforcement liability, and thus, invoke liability coverage only under Section IV. Next, the No Duplication clause provides, "A single Coverage Limit applies to all claims or suits involving substantially the same injury or damage, or a progressive injury or damage." "Coverage Limit" is not defined in the Coverage Contract. The Fund would have us assume "Coverage Limit" means "$1,000,000," but there is no support for this position in the language of the policy. As the term "Coverage Limit" is not defined, we will not read it as limiting coverage more than the defined term "Liability Limit." *See Walde v. Ass'n Ins. Co.*, 401 S.C. 431, 439, 737 S.E.2d 631, 635 (Ct. App. 2012) ("Policies are construed in favor of coverage, and exclusions in an insurance policy are construed against the insurer." (quoting *M & M Corp. of S.C. v. Auto–Owners Ins. Co.*, 390 S.C. 255, 259, 701 S.E.2d 33, 35 (2010))). We find the undefined term Coverage Limit is synonymous with "Liability Limit," which is defined as "$1,000,000" "Per Occurrence."

The second limitation the Fund claims applies is in the "Limit of Liability" portion of Section IV of the Coverage Contract. The limitation provides, "Only a single limit or Annual Aggregate . . . 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 repeated over the course of more than one Coverage Period." This language does not limit Ashley's claims because Section IV does not contain an "Annual Aggregate," and to the extent there is a "single limit"—another undefined term—the Coverage Contract provides it is the Liability Limit: "$1,000,000" "Per Occurrence."

The third limitation the Fund claims applies is also in the "Limit of Liability" portion of Section IV. The limitation provides the Fund'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 . . . ." The Fund focuses on "limited to $1,000,000 per Member" to argue it does not have to provide

coverage from different wrongful acts committed by Cottageville and its officers. However, the Fund overlooks the key language in the limitation—that liability is limited to $1,000,000 per Member "for any one occurrence/wrongful act." There were multiple occurrences/wrongful acts. Therefore, this provision does not limit Ashley's claims.

To summarize, the insuring language of the Coverage Contract provides $1,000,000 in coverage for each Occurrence, which is a Wrongful Act resulting in Bodily Injury. Cottageville's negligent acts of hiring, retaining, and supervising Price, and Price's use of deadly force, are separate Occurrences under the terms of the Coverage Contract. No limitation applies. Therefore, there is more than $1,000,000 in indemnity coverage available.

C. Court of Appeals' Analysis

The structure of the court of appeals' opinion differs considerably from ours, which this Court should explain. We acknowledge the Coverage Contract is a complicated insurance policy which must be analyzed in a complicated factual scenario with at least four defendants and numerous Wrongful Acts. Respectfully, however, we find the court of appeals erred primarily because it did not complete its analysis of the insuring language of the Coverage Contract before considering whether the limiting language affected the insuring language. Under the proper structure for analyzing any insurance policy, the analysis begins with the insuring language. The court should complete that analysis, and then determine whether there is any other provision in the policy that limits or excludes what is insured.

The court of appeals followed that structure through what it called its first and second steps of analysis. *Reeves*, 427 S.C. at 627-29, 832 S.E.2d at 319-20. In its third step, however, the court of appeals considered whether the law enforcement liability coverage for Bodily Injury was limited by the definition of Personal Injury. 427 S.C. at 629-30, 832 S.E.2d at 320-21. The court of appeals relied on the following sentence in the Coverage Contract, as set forth in the definition we quoted above, "Bodily Injury does not include such injuries if they result directly and immediately from the infliction of Personal Injury."

The court of appeals erred in relying on this sentence for several reasons. First, this sentence from the Coverage Contract is confusing, if not indecipherable. The court of appeals read the phrase "such injuries" to refer all the way back in the definition of Bodily Injury to "physical injury to any person (including death)." Under the court of appeals' reading, the sentence provides "Bodily Injury" does not include

"physical injury" or "death." However, the policy definition of the term states, "'Bodily Injury' means physical injury . . . (including death)." Bodily Injury cannot be defined to "mean" physical injury including death and then suddenly not mean physical injury *or* death. The more logical way is to read the phrase "such injuries" as referring back in the definition of Bodily Injury only to "any mental anguish or mental suffering associated with or arising from such physical injury." Under this reading—which still is confusing—when an insured commits an Offense that results in Personal Injury, the Coverage Contract does not provide coverage for "mental anguish or mental suffering," but for only the physical injury itself. As our courts have repeatedly stated, confusing and ambiguous language in insurance policy limitations must be construed against the insurer that drafted the policy. *See, e.g.*, *Walde*, 401 S.C. at 439, 737 S.E.2d at 635.[6]

Second, the court of appeals' reading limits coverage only when the sentence is considered in conjunction with the definition of Offense. The court stated "to recover under Personal Injury, the Wrongful Act that caused the Personal Injury must amount to a covered Offense." 427 S.C. at 629, 832 S.E.2d at 320. Thus, the Personal Injury limitation applied by the court of appeals operates by incorporating the language "Offense is subject to a single Coverage Limit of $1,000,000" into the analysis. *See* 427 S.C. at 633, 832 S.E.2d at 323 (stating "the Offense is subject to a single Coverage Limit of $1,000,000"). As we explained, however, the term "Coverage Limit" is undefined, and we will not read it to limit coverage under the policy to $1,000,000.

Third, the term Personal Injury does not include all of the Wrongful Acts the jury found to have occurred in this case. The Coverage Contract defines Personal Injury to "mean[] only the following Offenses," and then lists "assault and battery," "violation of civil rights," and others not applicable here. The definition does not

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[6] The circuit court found the term Occurrence to be ambiguous, 427 S.C. at 633-34, 832 S.E.2d at 323, but the court of appeals apparently found the entire Coverage Contract to be clear and unambiguous, 427 S.C. at 634-35, 832 S.E.2d at 323-24. As we explained, we find the insuring language applicable to this case, including the Liability Limit on the Contract Declarations page, to be unambiguous. We also find there is no clear limitation in the policy that would reduce the available coverage to $1,000,000. To the extent it may be argued that such a limitation exists, the argument ignores numerous ambiguities in the limiting language. When those ambiguous provisions are construed against the insurer, the insuring language is limited only by the Limit of Liability provision, "$1,000,000" "Per Occurrence."

list negligence, such as the jury found Price committed, or negligent hiring, retention, or supervision, such as the jury found the town committed. Each of these were Wrongful Acts that resulted in the death of Reeves, but they are not Personal Injury as that term is defined in the policy. Thus, even to the extent Reeves' death did result directly from Offenses as included in the definition of Personal Injury, Reeves' death also resulted directly from Wrongful Acts that meet only the definition of Bodily Injury.

Finally, the court of appeals was not correct to conclude "the coverage issue [must be analyzed] exclusively under the Coverage Contract's provisions for Personal Injury." 427 S.C. at 622, 832 S.E.2d at 317; *see also* 427 S.C. at 630, 832 S.E.2d at 321 (stating "the Bodily Injury is deemed part of the Personal Injury for coverage purposes"); 427 S.C. at 634, 832 S.E.2d at 323 (holding "coverage for *Offense* is at issue, not coverage for *Occurrence*"). A straightforward analysis of the insuring language of the Coverage Contract reveals clear and unambiguous indemnity coverage for liability incurred when a Member (Cottageville) or Law Enforcement Employee (Price or Craddock) commits Wrongful Acts that result in Bodily Injury "(including death)."

III. Bad Faith Tort Claim

The second question the Settlement Agreement calls on us to answer is whether a bad faith claim against the Fund is subject to the South Carolina Tort Claims Act. For two reasons, we decline to answer the question. We vacate the answer given by the court of appeals. *See Reeves*, 427 S.C. at 635-40, 832 S.E.2d at 324-26.

The first reason we decline to answer the question is we cannot be sure the claim is assignable. The claim did not initially belong to Ashley, but instead, to the parties insured by the Fund: Cottageville, Price, and Craddock. According to the full text of the second question, "[The Fund] was informed that any bad faith claims that exist in favor of Cottageville would be assigned to [Ashley]." 427 S.C. at 620-21, 832 S.E.2d at 316. The declaratory judgment claim Ashley filed pursuant to the Settlement Agreement also states, "Cottageville informed [the Fund] it intended to assign any bad faith claims in its favor that may exist against [the Fund] to

[Ashley]."[7] This Court has never recognized the validity of any assignment of a bad faith claim; certainly we have not done so in the circumstances of this case.[8]

In other factual situations, South Carolina's federal courts have held a bad faith claim is assignable. In *Schneider v. Allstate Insurance Co.*, 487 F. Supp. 239 (D.S.C. 1980), for example, the injured plaintiff sued the at-fault driver insured by Allstate with liability limits of $10,000. 487 F. Supp. at 240. Before trial, the plaintiff offered to settle within policy limits. The jury awarded a total of $68,000. Allstate paid its liability limits but no more, leaving its insured with an excess judgment of $58,000. The at-fault driver then assigned his bad faith claim against Allstate to the plaintiff, presumably in exchange for a covenant not to execute on the judgment. *Id.* In the plaintiff's suit against Allstate on the assigned claim, the district court held the bad faith claim was assignable. 487 F. Supp. at 245.

The assignment in *Schneider*, however, appears considerably different from the assignment in this case. The party making the assignment was an individual, not a town. 487 F. Supp. at 240. To reach its conclusion the bad faith claim was

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[7] The record before us does not contain the actual assignment.

[8] While we have no concern regarding any improper conduct in this case, the practice of assigning bad faith claims to leverage insurance companies to pay more than policy limits has apparently become fashionable in recent years. In *Fowler v. State Farm Mutual Automobile Insurance Co.*, 300 F. Supp. 3d 751 (D.S.C. 2017), for example, the plaintiff's attorney sent a demand letter to State Farm insisting the insurer pay its policy limits within a week, "at noon." 300 F. Supp. 3d at 753. Despite State Farm's apparent acceptance of the demand, the plaintiff's attorney deemed the response a counteroffer and rejection, filed suit against the insured, negotiated with the insured—now its adverse party in a lawsuit—for a "confession of judgment of $7 million" without State Farm's involvement, took a purported assignment of the insured's bad faith claim, and sued State Farm for bad faith. *Id.* After State Farm removed the case, the district court granted summary judgment, in part because, "Defendant's response to the offer could not constitute bad faith as a matter of law." 300 F. Supp. 3d at 753-54. The Fourth Circuit affirmed. 759 F. App'x 160 (4th Cir. 2019). While the *Fowler* case suggests "bad faith" of another form that we stress is not present here, it illustrates reasons it may not be appropriate to permit assignment of bad faith claims under all circumstances. *But see* Constance A. Anastopoulo, *A New Twist on Remedies: Judicial Assignment of Bad Faith Claims*, 50 Ind. L. Rev. 727 (2017) (arguing bad faith claims should be assignable).

assignable, the district court in *Schneider* relied exclusively on the applicability of the South Carolina survival statute. 487 F. Supp. at 241 (citing S.C. Code Ann. § 15-5-90 (1976) (survival statute); *Doremus v. Atl. Coast Line R.R. Co.*, 242 S.C. 123, 142, 130 S.E.2d 370, 379 (1963) (holding a personal injury claim is assignable because it survives the death of the real party in interest)). In this case, the party making the assignment is a town, to which the survival statute does not apply. *See* S.C. Code Ann. § 15-5-90 (2005) (providing this statute—the survival statute—applies to "a deceased person and . . . an insolvent person or a defunct or insolvent corporation"). In *Schneider*, the plaintiff made an offer to settle within policy limits. 487 F. Supp. at 240. In this case, the parties never were able to agree on the policy limits. In *Schneider*, the judgment against the insured appears to have become final. In this case, the verdict against the insured remained subject to the district court's ruling on post-trial motions and an appeal to the Fourth Circuit.

The most significant difference between *Schneider* and this case, however, is that in *Schneider* the insurance company did not satisfy the judgment, but left the insured exposed beyond the policy limits. Here, the Fund satisfied the judgment. The insured paid nothing.

The question of whether a bad faith claim is assignable under the circumstances present in this case, to our knowledge, has never been presented to this Court. While it seems to us that allowing assignment under the circumstances present in *Schneider* would be appropriate, we also recognize there are other considerations that may warrant refusing to allow assignment of bad faith claims in all situations. *See generally Fowler v. Hunter*, 388 S.C. 355, 362, 697 S.E.2d 531, 535 (2010) (permitting the assignment of a professional negligence claim against the insurer as a part of a settlement with an at-fault driver, "provided the risk of collusion is minimized").[9] Until we decide whether such a claim may be assigned in the first place, we are hesitant to answer the question posed by the parties in this case.

The second reason we decline to answer the question relates to the validity of any bad faith claim Cottageville may have had against the Fund. On this point, we do not address whether the Fund acted in bad faith. There is simply no evidence in the

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[9] The assigned claim in *Fowler* was a professional negligence claim against the insurer; it was not a bad faith claim. 388 S.C. at 360, 697 S.E.2d at 533. However, our analysis in *Fowler* of the danger of collusion as a predicate to permitting the assignment of claims pursuant to a settlement is relevant to whether assignment of bad faith claims should be permitted in all situations.

record either way, so we have no way of knowing. Rather, we address the nature of the Fund's duty to its insureds.

This Court has recognized in numerous opinions that an insurer must act reasonably and in good faith in defending its insured. *See, e.g., Miles v. State Farm Mut. Auto. Ins. Co.*, 238 S.C. 374, 380, 120 S.E.2d 217, 220 (1961) ("In the defense of an action against its insured, an insurer is bound not only to act in good faith but also to exercise reasonable care." (citing *Tiger River*[10] *Pine Co. v. Maryland Cas. Co.*, 163 S.C. 229, 234-35, 161 S.E. 491, 493-94 (1931))). This duty includes the insurer's obligation to settle a lawsuit against its insured within policy limits if it is unreasonable to refuse to do so. *See Nichols v. State Farm Mut. Auto. Ins. Co.*, 279 S.C. 336, 339, 306 S.E.2d 616, 618 (1983) (stating "an insurer's unreasonable refusal to settle within policy limits subjects the insurer to tort liability" (citing *Tyger River Pine Co. v. Maryland Cas. Co.,* 170 S.C. 286, 290-91, 170 S.E. 346, 348 (1933))). We also recognized an insurer may be liable for consequential damages in addition to the amount of the excess judgment if the insurer acts in bad faith to the insured in some respect other than protecting the insured from an excess judgment. *See Tadlock Painting Co. v. Maryland Cas. Co.*, 322 S.C. 498, 501, 473 S.E.2d 52, 53 (1996) ("[I]mplicit in the holding [of *Nichols*] is the extension of a duty of good faith and fair dealing in the performance of *all* obligations undertaken by the insurer for the insured." (quoting *Carolina Bank & Tr. Co. v. St. Paul Fire & Marine Co.*, 279 S.C. 576, 580, 310 S.E.2d 163, 165 (Ct. App. 1983))); 322 S.C. at 504, 473 S.E.2d at 55 (permitting the recovery of consequential damages).

As we stated, we do not have before us any facts regarding what conduct by the Fund may form the basis of a bad faith claim. Nevertheless, none of the cases we previously decided in which we recognized a right of action for bad faith against an insurer appear to bear any relationship to this case. Here, the Fund argued the extent of its limit for liability was $1,000,000. Although we disagree, we find the Fund's position reasonable. The Coverage Contract gave the Fund the exclusive right—"subject to the Limits of Liability"—to "conduct negotiations and enter into such settlement of any claim or suit as [the Fund] deems expedient." The liability issues at the trial of the Cottageville lawsuit were hotly contested, and there is no indication of any certainty the plaintiff would prevail before the jury. We are aware of no conduct by the Fund which might subject it to liability other than asserting its insureds right to a trial by jury. *See In re Mt. Hawley Ins. Co.*, 427 S.C. 159, 170,

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[10] The River and the former eponymous "Pine Company" are correctly spelled "Tyger." *See Sentry Select Ins. Co. v. Maybank L. Firm, LLC*, 426 S.C. 154, 158 n.3, 826 S.E.2d 270, 272 n.3 (2019).

829 S.E.2d 707, 714 (2019) ("Of course, . . . '[i]f there is a reasonable ground for contesting a claim, there is no bad faith.'" (alteration in original) (quoting *Crossley v. State Farm Mut. Auto. Ins. Co.*, 307 S.C. 354, 360, 415 S.E.2d 393, 397 (1992))). When the verdict far exceeded any view of policy limits, the Fund settled the case, leaving its insureds insulated from any excess judgment. While it is conceivable an insurer may subject itself to liability for consequential damages for bad faith conduct in some other respect, we do not condone the idea an insurer may incur bad faith liability for simply taking a case to the jury, when the insurer satisfied the judgment after trial without exposing the insured to excess liability.

For these two reasons, we decline to answer the second question.

IV. Conclusion

We reverse the court of appeals' determination regarding the amount of indemnity coverage available. We vacate the court of appeals' determination that a bad faith claim against the Fund is barred by the South Carolina Tort Claims Act.

BEATTY, C.J., HEARN and JAMES, JJ., concur. KITTREDGE, J., concurring in result in a separate opinion.

JUSTICE KITTREDGE: I concur in result. I write separately because I respectfully disagree with the majority's approach in determining the number of occurrences. I would hold the two lawsuits filed by the Estate of Albert "Bert" Reeves involved two occurrences.

The South Carolina Municipal Insurance and Risk Financing Fund (the Fund) provided liability coverage to the Town of Cottageville and its police officers. The question presented by the parties is:

> (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 [Fund's] 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. [The Fund] asserts the Coverage Contract is limited to a total of $1,000,000.00 in indemnity coverage.

Reeves v. S.C. Mun. Ins. & Risk Fin. Fund, 427 S.C. 613, 620, 832 S.E.2d 312, 316 (Ct. App. 2019) (internal alteration marks omitted).

The facts are fully set forth in the majority opinion as well as the court of appeals' opinion. Cottageville Police Officer Randall Price shot former Cottageville Mayor Bert Reeves. Cottageville Police Chief John Craddock was present when Price shot Reeves. Craddock, a trained paramedic, refused to provide medical assistance to Reeves as he lay dying from the gunshot wound. In the action against Officer Price and the Town of Cottageville, a jury awarded Reeves's estate $97.5 million, consisting mainly of punitive damages. Reeves's estate and the Fund settled both cases, which included the claim against Craddock.

The parties agreed that Reeves's estate would receive—in addition to a guaranteed $10,000,000 settlement—an additional $1,000,000 payment for each of two possible questions answered in favor of Reeves's estate.[11]

Reeves's estate argued there were four "occurrences" under the terms of the Fund's insurance policy with Cottageville; the Fund argued there was only one occurrence. Once we determine there was more than one occurrence, we have resolved the appeal—under the terms of the question presented by the parties, it matters only whether there was more than one occurrence (as asserted by Reeves's estate), not precisely how many occurrences there were. The majority, however, holds there were exactly four occurrences. I do not agree. If we must decide the number of occurrences, in my judgment, the policy provides there were only two occurrences.

As I construe the majority opinion, it seems the majority equates each "wrongful act" with a covered "occurrence" under the policy, irrespective of the presence or absence of a resulting injury. In construing the insuring language portion of the policy, the majority opinion states, "[t]his portion of the definition of Occurrence specifically equates Occurrence with Wrongful Act." I agree with the majority insofar as a single wrongful act or multiple wrongful acts resulting in an injury is an occurrence. I respectfully disagree that a wrongful act, by itself with no resulting injury, "equates [to an] Occurrence."

The policy defines "wrongful act" as

> any actual or alleged error in the performance or failure to perform an official duty; or any misstatement, misleading statement, or misleading act made or done in the course of official duty and upon which a claimant or plaintiff has relied to his, her, or its detriment; or any omission or neglect in performing an official duty; or any breach of an official duty, including misfeasance, malfeasance and nonfeasance; but only, with respect to any or all of the foregoing, when committed by a Member or by a Covered Person(s) while acting within both the course and the scope of his or her official duties, as provided under the "South Carolina Tort Claims Act."

The policy defines "occurrence" as the term is commonly understood—"an accident which results in Bodily Injury." "Bodily Injury" is further defined as

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[11] The majority and I answer only the first of the two questions presented by the parties.

"physical injury to any person (including death)." The policy language requires the Fund to only pay covered claims for "a Wrongful Act . . . *which results in* . . . *bodily injury* . . . provided the Wrongful Act amounts to an Occurrence." (Emphasis added.) Thus, as I read the policy's language, the Fund is not required to cover a wrongful act that does *not* result in bodily injury.

I do agree with the majority that the policy language does allow for coverage for more than a single occurrence. That, however, does not negate what I view as a clear requirement that a wrongful act result in an injury. What links a wrongful act to an occurrence is the resulting injury. Absent a resulting injury, there is no occurrence, regardless of the number of wrongful acts.

I acknowledge a host of wrongful acts committed by Officer Price and the Town of Cottageville.[12] But under the terms of the policy, a wrongful act *by itself* is not an occurrence and does not trigger coverage. My review of the policy persuades me that coverage is activated only when the wrongful act or wrongful acts result in the injury—that is the occurrence. I would hold the parties to the unambiguous definition of occurrence, which expressly requires a resulting injury. Here, there were two occurrences, one which resulted from the wrongful acts of Officer Price and the Town of Cottageville, and the second stemming from Chief Craddock's willful failure to render aid to Reeves. Concerning the second occurrence—the claim against Chief Craddock—the record stipulates that Reeves was still alive after being shot by Officer Price, yet Chief Craddock (a trained paramedic) decided to watch Reeves die rather than attempt to save his life or promptly summon medical assistance.

Therefore, as far as determining there was more than one occurrence, I concur in result. I do fully concur in the balance of the majority opinion.

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[12] The majority agrees with Reeves's estate that "Cottageville's negligent hiring, retention, and supervision of Price, and Price's use of deadly force, are four different Wrongful Acts." I take no issue with the majority in this regard. I part company with the majority in equating a wrongful act with a covered occurrence.

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

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

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

AFFIRMED IN PART AND REVERSED IN PART

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.

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[1] (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.[2]

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[1] S.C. Code Ann. § 15-78-10 through -220 (2005 & Supp. 2018).

[2] 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 defended 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.[3]

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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[3] 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.[4] *See* S.C. Op. Att'y Gen., 1990 WL

[4] 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).

> [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***[5] **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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[5] *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), SCRCP, 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.[6]

HUFF and SHORT, JJ., concur.

[6] We decide this case without oral argument pursuant to Rule 215, SCACR.