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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Casey Manning, Circuit Court Judge

Common Pleas Court Case No.: 2017-CP-40-6773
Appellate Case No. 2021-00502

Nancy Morris, as Personal Representative of the
Estate of David Allan Woods..... Appellant

v.

State Fiscal Accountability Authority, South Carolina Insurance
Reserve Fund, Andrew J. Bland, Richard T. Burkholder,
Leemon E. Carner, Priscilla Bland, Jerry Speissegger, Jr. Respondents

Of Whom Nancy Morris, as Assignee of Andrew J. Bland, PFC;
Richard T. Burkholder, SGT: Leemon E. Carner, PFC;
Priscilla Garrett Bland, PFC; and Jerry Speissegger, Jr., PFC, is the Appellant

and

South Carolina Insurance Reserve Fund is the Respondent

RECORD ON APPEAL – VOL. I

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Nancy Morris, as assignee of Andrew J.)
Bland, PFC; Leemon E. Carner, PFC; Jerry)
Speissegger, Jr., PFC; Priscilla Garret, SGT;)
and Richard T. Burkholder, SGT,)

Civil Action No. 2017-CP-40-6773

Plaintiffs,)

v.)

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

South Carolina Insurance Reserve Fund,)

Defendant.)

This matter is before this Court on the Motion for Summary Judgment filed by the Defendant South Carolina Insurance Reserve Fund ("IRF"). A hearing was held on July 25, 2019, with all counsel of record present. After a review of the written submissions of the parties, the record presented, and the oral arguments of counsel, this Court grants the Defendant's motion and denies the declaratory relief sought by the Plaintiff on the bases addressed below.

INTRODUCTION

This is a declaratory judgment action filed by the Plaintiff Nancy Morris, as assignee of Andrew J. Bland, Richard Burkholder, Leemon E. Carner, Priscilla Garrett Bland and Jerry Speissegger (hereafter referred to as "Assignors"), against the Defendant IRF relating to judgments entered in a United States District Court action captioned *Morris v. Bland*, Civil Action Number 5: 12-3177-RMG. That case was tried before United States District Judge Richard M. Gergel and a jury in October 2014. On October 17, 2014, the jury returned a verdict finding against the Assignors, who were five corrections officers at the Hill-Finklea Detention Center operated by Berkeley County. The jury found that the Assignors had been deliberately

indifferent to the decedent's medical needs in violation of the Fourteenth Amendment to the United States Constitution.

The verdict against the Assignors included the following: \$500,000 in actual damages against all five officers jointly and severally, \$1 million in punitive damages against Burkholder, \$1 million in punitive damages against Priscilla Bland, \$150,000 in punitive damages against Andrew Bland, \$150,000 in punitive damages against Carner, and \$150,000 in punitive damages against Speissegger. Following a motion for set-off, the actual damages were reduced to \$171,875. Judge Gergel also awarded attorney's fees and costs under 42 U.S.C. § 1988. The Assignors appealed the judgments to the Fourth Circuit Court of Appeals. In November 2016, the Fourth Circuit affirmed the judgments against each of the officers. *See, Morris v. Bland*, 666 Fed. Appx. 233 (4th Cir. 2016).

The Defendant IRF issued a Tort Liability Insurance Policy to its named insured Berkeley County, which includes liability limits of \$600,000. Following the appeal, the IRF tendered the sum of \$992,013.63 to the Plaintiff, in her capacity as the personal representative of the Estate of David Allan Woods, in partial satisfaction of the judgments against the Assignors. The Plaintiff as the personal representative then executed a document captioned "Partial Satisfaction of Judgment" which reflects payment of the full \$600,000 in liability limits as well as supplemental payments for attorney's fees, costs, and post-judgment interest.

The Plaintiff thereafter filed the present action as the assignee for the five Assignors. In her Amended Complaint, the Plaintiff alleges as follows:

Andrew J. Bland, PFC; Priscilla Garrett Bland, SGT; Leeman A. Carner, PFC; Jerry Speissegger, Jr., PFC; and Richard T. Burkholder, SGT (hereinafter collectively referred to as "Assignors") did, for good and valuable consideration, irrevocably assign to Plaintiff Nancy Morris "any and all claims he/she may have against the South Carolina Insurance Reserve Fund and/or any other persons, firms, government organizations, or entities that arise out of [C.A. 0: 5: 12-cv-3177-RMG]," including, among

others "bad-faith conduct and/or breach of contract by the Insurance Reserve Fund" in the handling of the claims related to that case.

See, Amended Complaint, ¶ 6.

LEGAL ANALYSIS

I. Statute of Limitations Defense

The Defendant IRF argues as a threshold issue that the Plaintiff's claims are barred by the applicable statutes of limitations. The Plaintiff has alleged three causes of action for breach of contract, negligence, and "Tyger River" bad faith against the IRF.

Importantly, in adjudicating the statute of limitations defense, the Court is cognizant that the Plaintiff, who is the personal representative of the Estate of David Allan Woods, is bringing this action against the IRF as the assignee of Andrew J. Bland, Richard Burkholder, Leemon E. Carner, Priscilla Garrett Bland and Jerry Speissegger. These are not claims brought by the Estate, which is precluded by state law from bringing a direct action in contract or tort against an insurer for a third-party claim. See, *Swinton v. Chubb & Son, Inc.*, 283 S.C. 11, 320 S.E.2d 495, 496 (Ct. App. 1984) (a third-party claimant has "no right, either statutory or under common law, to maintain an independent action for damages solely against the insurer"). Instead, in bringing this action as an assignee, the Plaintiff stands in the shoes of the five Assignors. See, *Moore v. Weinberg*, 373 S.C. 209, 644 S.E.2d 740, 745 (Ct. App. 2007) ("[a]n assignee stands in the shoes of its assignor"). Therefore, the assignee takes subject to the defenses that could be asserted against the assignors, and that includes a statute of limitations defense. *Dixie Wood Preserving Co. v. Albert Gersten & Asso.*, 244 S.C. 57, 135 S.E.2d 368, 371 (1964).

The statute of limitations for the breach of contract cause of action is three years. The Defendant IRF argues that the acts or omissions alleged as the basis for the breach of contract cause of action, in addition to the resulting harm as alleged, occurred more than three years prior

to the filing of this action on November 6, 2017. This Court agrees. Specifically, in her breach of contract cause of action, the Plaintiff alleges that the IRF breached the insurance policy by failing to consult with the Assignors about the offers to settle, by failing to obtain separate counsel to advise the Assignors about the offers to settle, and by failing to settle prior to trial and judgment. *See*, Amended Complaint, ¶ 65. All of those alleged breaches of contract occurred prior to the Federal Court trial which took place in October 2014, with the judgment being entered on October 21, 2014. *See*, Amended Complaint, Ex. G. Because the alleged breach of contract occurred no later than October 2014, this Court concludes that the filing of the breach of contract action by the Plaintiff on November 6, 2017, was beyond the three-year statute of limitations.

Moreover, the statute of limitations for the negligence and bad faith causes of action is two years pursuant to the South Carolina Tort Claims Act. *See*, S.C. Code Ann. § 15-78-110.¹ The Defendant IRF argues that the acts or omissions alleged as the basis for the negligence and bad faith causes of action, in addition to the resulting harm as alleged, occurred more than two years prior to the filing of this action on November 6, 2017. Again, this Court agrees. The negligence cause of action asserts similar alleged breaches of duty as claimed in the breach of contract cause of action, including an alleged failure to timely and reasonably adjust the claim. *See*, Amended Complaint, ¶ 71. The same is also true for the bad faith claim. The Plaintiff alleges a bad faith claim pursuant to the “Tyger River” doctrine and based on the allegation that the IRF failed to settle the underlying action within policy limits. Again, those alleged acts or omissions occurred prior to the Federal Court trial which took place in October 2014, and certainly longer than two years before this lawsuit was filed. Because the alleged negligence and

¹ In *Charleston County School District v. State Budget and Control Board*, 313 S.C. 1, 437 S.E.2d 6 (1993), the South Carolina Supreme Court ruled that a bad faith cause of action is a tort claim, not a contract claim. Therefore, “as an action in tort, the South Carolina Tort Claims Act applies.” 437 S.E.2d at 10.

bad faith occurred no later than October 2014, this Court also concludes that the filing of the negligence and bad faith claims by the Plaintiff on November 6, 2017, was beyond the two-year statute of limitations for torts. Thus, each of the Plaintiff's causes of action brought as an assignee is barred by the applicable statute of limitations and therefore must be dismissed as untimely.

II. Personal Liability of Assignors is Extinguished

As discussed above, the Plaintiff alleges that she has received an assignment from the five correctional officers (the Assignors), and in return, the Estate of David Allan Woods entered into a Covenant Not to Execute extinguishing the personal liability of each of the Assignors. That is undisputed based on the language contained in the Covenants Not to Execute provided to the Assignors. *See*, Amended Complaint, Ex. A. The Defendant IRF thus argues that those Covenants Not to Execute render the current action non-justiciable because the Assignors are no longer personally liable for the judgments entered against them and on which the Plaintiff is seeking to recover from the IRF as an assignee.

It is well settled under South Carolina law that a liability policy is a contract of indemnity. *Smalls v. Blackmon*, 269 S.C. 614, 239 S.E.2d 640, 641 (1977). The South Carolina Supreme Court has explained that “[a]n insurance carrier is in the same legal position as its insured. A liability carrier only contracts to pay any debt the insured is liable to pay.” *Id.* Here, the insureds are the Assignors. Because the personal liability of the Assignors to pay the judgments has been fully extinguished by the Covenants Not to Execute, there is no longer any debt that the Assignors remain liable to pay. Thus, the IRF, as the liability insurer, is also relieved of any liability under the Tort Liability Policy. This Court thus finds that there remains no further personal liability of the insureds for which the Defendant IRF may be held responsible to indemnify, and as a result, the IRF is entitled to summary judgment on all claims.

III. No Breach of Any Contractual Duties.

As an additional basis for summary judgment on the Plaintiff's breach of contract cause of action, the Defendant IRF argues that none of the duties described in Paragraph 65 of the Amended Complaint are duties provided for by the contract, namely the Tort Liability Insurance Policy as issued to the named insured Berkeley County. *See*, Amended Complaint, Ex. B. In responses to interrogatories, the Plaintiff conceded that there is not a specific contract provision that explicitly imposes the contractual duties alleged in Paragraphs 65(a), 65(b), and 65(c). The Court finds that the same is also true with respect to the contractual duties alleged in Paragraphs 65(d) and 65(e). Paragraph 65(d) alleges a contractual duty "to settle Plaintiff's claim for an amount up to and including the full policy limits," and Paragraph 65(e) alleges a contractual duty "to accept Plaintiff's reasonable settlement offer within the policy limits." There is no contractual language, however, in the Tort Liability Insurance Policy that creates such contractual duties. The Court therefore agrees that the Plaintiff has not and cannot cite to any contractual language that the IRF has alleged breached. To the extent that the Plaintiff, as the assignee, has a claim, that would be pursuant to duties sounding in tort. Consequently, the Defendant IRF is entitled to summary judgment on the breach of contract claim.

IV. No Evidence to Support "Tyger River" Bad Faith Failure-To-Settle Claim

The Plaintiff has brought suit under the "Tyger River" doctrine based on the allegation that the IRF failed to settle the underlying action within policy limits. In the leading case of *Nichols v. State Farm Mut. Auto. Ins. Co.*, 279 S.C. 336, 306 S.E.2d 616 (1983), the Supreme Court explained that "an insurer's unreasonable refusal to settle within policy limits subjects the insurer to *tort liability*." 306 S.E.2d at 618. (Emphasis added).

The Defendant IRF argues that the Plaintiff, in her capacity as the personal representative of the Estate of David Allan Woods, never made a demand to settle the underlying case of

Morris v. Bland, Civil Action Number 5:12-3177-RMG, for \$600,000 or less. Instead, the Plaintiff alleges that she made a settlement demand of \$1 million, but that demand exceeds the policy limits. *See*, Amended Complaint, Ex. C. In addition, it is undisputed that the IRF did make a settlement offer to the Plaintiff of the full policy limits of \$600,000 prior to trial and the judgment being entered, and that offer was rejected. Exhibit F to the Amended Complaint is a letter dated August 13, 2014 from the Estate's trial counsel to one of the defense counsel acknowledging and rejecting an offer to settle for \$600,000, which the parties agree is the policy limits. *See*, Amended Complaint, Ex. F. That offer was made more than two months prior to trial. Because a settlement offer of the policy limits was made and rejected more than two months prior to trial, the Court concludes that the Plaintiff, as the assignee, cannot state a claim under the "Tyger River" doctrine based on the allegation that the IRF failed to settle the underlying action within policy limits. Where, as here, the plaintiff in the underlying action was offered policy limits prior to trial, and those policy limits were rejected, there is no basis for Tyger River tort liability. The Plaintiff has not presented this Court with any South Carolina precedent holding to the contrary.

Moreover, based on the undisputed evidence attached as exhibits to the Amended Complaint, this Court concludes that the Plaintiff as the assignee has failed to present evidence showing any bad faith on the part of the IRF. There is no evidence that the Plaintiff, in her capacity as the personal representative, was willing at any point to settle the underlying case for the policy limits of \$600,000 or less. The lowest demand in the underlying case was \$1 million, which is greater than the policy limits. In fact, the evidence reflects that the Plaintiff, in her capacity as the personal representative, increased her demand to \$3 million in September 2013, which was more than a year before the case went to trial. *See*, Amended Complaint, Ex. C. There is no allegation or evidence of a lower demand made during the course of year preceding the trial, and certainly no demand made within the policy limits.

Likewise, there is no evidence that the Assignors ever demanded or even requested that the IRF pay the policy limits in settlement of the claims against them. The so-called "Tyger River letter" to which the Plaintiff has referred is not, in actuality, a Tyger River letter from the insureds to the IRF demanding settlement within policy limits. Instead, as mentioned above, the September 12, 2013 letter is written by the Estate's counsel and sent to the IRF, and that letter includes a demand for \$3 million which far exceeds the policy limits. *See*, Amended Complaint, Ex. C. That is not a "Tyger River letter."

In short, the Plaintiff has failed to present evidence of a Tyger River bad faith claim. At best, the Plaintiff has shown excess judgments were returned at trial, and this Court rules that the return of an excess judgment at trial is not evidence of bad faith. For these reasons, the Court concludes that the IRF is entitled to summary judgment on the merits of the Tyger River bad faith failure to settle for policy limits claim.

IT IS, THEREFORE, ORDERED that the Motion for Summary Judgment filed by the Defendant South Carolina Insurance Reserve Fund is granted. The Plaintiff's prayer for relief is denied, and the Amended Complaint is hereby dismissed with prejudice.

AND IT IS SO ORDERED.


L. CASEY MANNING
Presiding Circuit Court Judge
Fifth Judicial Circuit
Sept. 25, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Nancy Morris, as Personal Representative	)	
of the Estate of David Allan Woods,	)	Civil Action No. 2017-CP-40-6773
	)	
Plaintiff,	)	
	)	
v.	)	
	)	ORDER DENYING PLAINTIFF'S
	)	MOTION TO ALTER OR AMEND
State Fiscal Accountability Authority,	)	
South Carolina Insurance Reserve Fund,	)	
Andrew J. Bland, Richard T. Burkholder,	)	
Leemon E. Carner, Priscilla Bland,	)	
Jerry Speissegger, Jr.,	)	
	)	
Defendants.	)	
_____	)	

This matter is before this Court on the Plaintiff's Motion to Alter or Amend Order filed October 4, 2019. Although the Plaintiff may have timely filed her motion pursuant to Rule 59(e), SCRCP, the Plaintiff never provided the Court with a copy of the motion in accordance with Rule 59(g), SCRCP, and as a result, the Court was not aware until recently that the motion had been filed. Based upon the failure of the Plaintiff to comply with Rule 59(g) SCRCP, the Motion to Alter or Amend Order is denied. *See, Smith v. Fedor*, 422 S.C. 118, 809 S.E.2d 612, 616 (Ct. App. 2017) (“the trial court properly denied Smith’s motion for reconsideration because he did not timely provide a copy of the motion to the judge”).

Moreover, after careful consideration of the Plaintiff's motion and the record in this case, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded.

In addition, pursuant to Rule 59(f), SCRCP, the Court is of the opinion that oral argument is not necessary.

IT IS, THEREFORE, ORDERED that the Plaintiff's Motion to Alter or Amend Order is denied.

AND IT IS SO ORDERED.

L. CASEY MANNING
Circuit Court Judge,
Fifth Judicial Circuit



Richland Common Pleas

Case Caption: Nancy Morris , plaintiff, et al vs South Carolina Insurance Reserve Fund

Case Number: 2017CP4006773

Type: Order/Other

So Ordered

s/L. Casey Manning, 2061

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP4006773

Nancy Morris et al
PLAINTIFF(S)

South Carolina Insurance Reserve Fund
DEFENDANT(S)

DISPOSITION TYPE CHECK ONE

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☒ **ACTION DISMISSED** (_____ A _____ : ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☒ Other See below Statement of Judgment.
- ☐ **ACTION STRICTLY EN** (_____ A _____ : ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO AN ARREST**
- ☐ **DISPOSITION ON APPEAL TO THE CIRCUIT COURT** _____ A _____ A _____ :
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

IT IS ORDERED AND ADJUDGED ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Based on consent from both parties, both of Plaintiff's Motions to Compel Discovery dated July 9, 2018, are hereby withdrawn. Plaintiff has leave to refile said motions at a later date.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

C C O U O

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/04/2019 .

Richard T. Burkholder
Priscilla Garrett
Jerry Speissegger, Jr
Leemon E Carner
Andrew J Bland

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

C R
E- N T E J E S
E- . S R . T , SCRCP.



Richland Common Pleas

Case Caption: Nancy Morris , plaintiff, et al vs South Carolina Insurance Reserve Fund

Case Number: 2017CP4006773

Type: Order/Electronic Form 4

So Ordered

s/Walton J. McLeod, 2765

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stay execution of judgment pending appeal, asking the Court to stay execution without requiring Defendants to post a supersedeas bond.

II. Discussion

Rule 62(d) entitles an appellant to stay an execution of judgment as a matter of right if she posts a supercedeas bond. *E.g., Se. Booksellers Ass'n v. McMaster*, 233 F.R.D. 456, 457 (D.S.C. 2006) (citing cases). However, Rule 62 does not address or affect a district court's "inherent discretionary power to stay judgments pending appeal on the basis of less than a full supersedeas bond, or no bond." *Se. Booksellers*, 233 F.R.D. at 458 (quoting *Alexander v. Chesapeake, Potomac & Tidewater Books, Inc.*, 190 F.R.D. 190, 192 (E.D.Va.1999)).

The Fourth Circuit has not addressed what factors a court should consider when deciding whether to grant a unsecured stay pending appeal. *Id.* However, in *Southeast Booksellers*, Judge Duffy laid out various standards used by other federal appellate courts as well as district courts in the Fourth Circuit. *See id.* at 458-59. Throughout these cases and more recent ones, courts hold that a district court should act to "preserve the status quo while protecting the non-appealing party's rights pending appeal." *Poplar Grove Planting & Ref. Co. v. Bache Halsey Stuart, Inc.*, 600 F.2d 1189, 1190-91 (5th Cir. 1979); *ABT, Inc. v. Juszczuk*, No. 5:09CV119-RLV, 2012 WL 117142, at *2 (W.D.N.C. Jan. 13, 2012); *D.B. v. Bedford Cnty. Sch. Bd.*, No. 6:09-CV-00013, 2010 WL 3323489, at *9 (W.D. Va. Aug. 23, 2010); *TransPacific Tire & Wheel, Inc. v. Orteck Int'l, Inc.*, No. CIV.A. DKC 2006-0187, 2010 WL 2774445, at *5 (D. Md. July 13, 2010); *Hofmann v. O'Brien*, No. CIV. WDQ-06-3447, 2009 WL 3216814, at *2 (D. Md. Sept. 28, 2009); *CapitalSource Fin. LLC v. Pittsfield Weaving Co.*, No. CIV. A.AW-06-2028, 2008 WL 3850385, at *1 (D. Md. Mar. 7, 2008); *Willcox v. Stroup*, 358 B.R. 835, 839 (D.S.C. 2006);

Conn. Gen. Life Ins. Co. v. Riner, No. 1:00 CV 00065, 2005 WL 151933, at *1 (W.D. Va. Jan. 24, 2005); *Kirby v. Gen. Elec. Co.*, 210 F.R.D. 180, 195 (W.D.N.C. 2000); *Alexander*, 190 F.R.D. at 193.

Normally, this principle is “best served by requiring a full supersedeas bond as a condition to the issuance of a stay.” *Alexander*, 190 F.R.D. at 193. However, a bond may not be necessary “(i) when the judgment debtor can currently easily meet the judgment and demonstrates that it will maintain the same level of solvency during appeal, and (ii) when the judgment debtor’s present financial condition is such that the posting of a full bond would impose an undue financial hardship.” *E.g.*, *Poplar Grove*, 600 F.2d at 1191; *TransPacific Tire & Wheel*, 2010 WL 2774445 at *5; *Hofmann*, 2009 WL 3216814 at *2; *CapitalSource Fin. LLC*, 2008 WL 3850385 at *2; *Kirby*, 210 F.R.D. at 195; *Alexander*, 190 F.R.D. at 193; *see also* 7 James Wm. Moore et al., *Moore’s Federal Practice* § 62.03[2] (finding courts had waived the bond requirement “where the judgment is so large that requiring the appealing party to post a bond would jeopardize the rights of the appealing party’s other creditors”).

The second of these circumstances is present here. Two of the defendants do not own any real property, two other defendants share a residence worth less than the mortgage on it, and the fifth lives in a mobile home that he does not own with his wife and five children on property worth just over \$13,000.¹ (Dkt. No. 272 at 4). None of the defendants have liquid assets, and their primary personal assets are their personal vehicles. (*Id.* at 5). If Defendants lost their vehicles, they could lose their ability to get to and from work, possibly causing them to lose their jobs and further hindering Plaintiff’s ability to collect a judgment.

¹ Plaintiff does not dispute these facts.

The parties all recognize that Plaintiff's ability to recover the judgment largely rests with recovering from the South Carolina Insurance Reserve Fund (IRF). (*See* Dkt. No. 272 at 7; Dkt. No. 274 at 1). Plaintiff has filed a declaratory judgment suit against the IRF in state court seeking a determination of coverage limits under the applicable policy. (Dkt. No. 272 at 7). This state court suit will continue while this action is on appeal.

Under these circumstances, the Court finds a stay is warranted even absent a bond. Defendants are arguably insolvent and unable to post a bond. Plaintiff's ability to collect her judgment will not materially change while the appeal is pending. It is unlikely Defendants will sell their personal vehicles, their only means of transportation to and from work, during the pendency of the appeal, and there do not appear to be any other assets for Defendants to spirit away while the appeal is pending. Furthermore, staying execution of the judgment pending appeal will not affect Plaintiff's pursuit of payment from IRF, the only means of collecting a sizable amount of the judgment.

Preserving the status quo while protecting Plaintiff's rights in this instance requires staying execution of the judgment pending appeal. In staying execution, all parties will largely be in the same position at the conclusion of the appeal, and Plaintiff's ability to collect her judgment will not materially change. However, if the Court does not stay execution of the

judgment, Defendants could be irreparably harmed. Therefore, the Court grants the stay.²

III. Conclusion

Defendants' Motion to Stay Execution of Judgment Pending Appeal (Dkt. No. 272) is **GRANTED**. Execution of the judgment is **STAYED PENDING APPEAL**. This ruling does not effect, in any way, Plaintiff's ability to pursue payment from the IRF.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Judge

March 23, 2015
Charleston, South Carolina

² The Court reaches the same conclusion applying the *Hilton* factors, which have been applied by some district courts in the Fourth Circuit. *See, e.g., ABT, Inc.*, 2012 WL 117142 at *1. These factors are “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceedings; and (4) where the public interest lies.” *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). While Defendants have not made a strong showing that they are likely to succeed on the merits, they will be irreparably injured absent a stay and issuance of the stay will not substantially injure Plaintiff. As explained above, execution of the judgment would result in the loss of Defendant's transportation to and from work and could cause them to lose their livelihoods, an irreparable injury. Plaintiff's ability to collect her judgment will not materially change; thus, she is not substantially injured. The Court finds that to the extent the public interest factor is at play, it lies with granting the stay and that the second and third factors outweigh the first in this instance.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Nancy Morris, as assignee of Andrew J.)
Bland, PFC; Leemon E. Carner, PFC; Jerry)
Speissegger, Jr., PFC; Priscilla Garret, SGT;)
and Richard T. Burkholder, SGT,)

Civil Action No. 2017-CP-40-6773

Plaintiffs,)

**NOTICE OF MOTION AND
MOTION SUMMARY JUDGMENT**

v.)

South Carolina Insurance Reserve Fund,)

Defendant.)

TO: HAROLD C. STALEY, ANDREW W. CREECH, AND GARRETT B. JOHNSON,
COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendant South Carolina Insurance Reserve Fund will move before the Presiding Judge of the Fifth Judicial Circuit at the Richland County Judicial Center, Columbia, South Carolina, at such time and place as may be set by the Court, for an Order, pursuant to Rule 56, SCRCP, granting summary judgment and dismissing the Plaintiff's Amended Complaint with prejudice.

The Defendant's motion is based upon the following grounds:

1. The Plaintiff's claims are barred by the applicable statute of limitations. The statute of limitations for the breach of contract cause of action is three years. The acts or omissions alleged as the basis for the breach of contract cause of action, in addition to the resulting harm as alleged, occurred more than three years prior to the filing of this action on November 6, 2017. The statute of limitations for the negligence and bad faith causes of action is

two years pursuant to the South Carolina Tort Claims Act. The acts or omissions alleged as the basis for the negligence and bad faith causes of action, in addition to the resulting harm as alleged, occurred more than two years prior to the filing of this action on November 6, 2017.

2. The Defendant has no duty to indemnify the Plaintiff because the assignors are not legally obligated to pay damages to the Plaintiff. When the Plaintiff entered Covenants Not to Execute and relieved the assignors of their personal liability to pay the judgments against them, that also relieved the Defendant of any further liability under the Tort Liability Policy.

3. The purported assignment of the causes of action, including the claim for bad faith, to the Plaintiff is contrary to South Carolina law, invalid, illegal, in violation of S.C. Code Ann. 16-17-10, and against the public policy of the State of South Carolina.

4. The Plaintiff lacks standing to assert each of the causes of action against the Defendant, including the bad faith claim.

5. The Defendant is entitled to summary judgment on the Plaintiff's breach of contract cause of action because none of the duties described in Paragraph 65 of the Amended Complaint are duties provided for by the contract, namely the Tort Liability Insurance Policy as issued to the named insured Berkeley County. *see*, Amended Complaint, Ex. B. In responses to interrogatories, the Plaintiff has already conceded that there is not a specific contract provision that explicitly imposes the contractual duties alleged in Paragraphs 65(a), 65(b), and 65(c). The same is also true with respect to the contractual duties alleged in Paragraphs 65(d) and 65(e).

6. The Plaintiff never made a demand to settle the underlying case of *Orrellan*, Civil Action Number 5:12-3177-RMG, within the policy limits of \$600,000. In addition, the Defendant did make a settlement offer to the Plaintiff of the policy limits of \$600,000 prior to trial and judgment being entered, and that offer was rejected. As a result, the Plaintiff cannot state a

claim under the “Tyger River” doctrine based on the allegation that the Defendant failed to settle the underlying action within policy limits.

7. The Plaintiff can present no evidence to support the specific allegations of negligence or gross negligence as pled in the Second Cause of Action.

8. Paragraphs 71(c), 71(d), and 71(e) should be dismissed in that those allegations fail to state proper allegations of negligence or gross negligence. Paragraph 71(c) only sets forth a statement of the reasonable man standard. Paragraph 71(d) alleges unspecified violations of laws or common law of the State of South Carolina.” Paragraph 71(e) alleges only that the Defendant is negligent or grossly negligent in any other matter that Plaintiff may discover through litigation.”

The Defendant’s motion is based upon the pleadings filed in this case, including exhibits attached to the Amended Complaint; the Plaintiff’s Responses to Defendant’s Interrogatories (attached); a supporting memorandum and affidavits as may be filed; the rules of court; and such other matters as may be presented to the Court at or before the time of the hearing.

LINDEMANN, DA IS HUGHES, P.A.

BY: Andrew F. Lindemann
 ANDREW F. LINDEMANN 13030
 5 Calendar Court, Suite 202
 Post Office Box 6923
 Columbia, South Carolina 29260
 TEL: 803-881-8920
 Email: andrew@ldh-law.com

*on behalf of the defendant
 of the defendant*

April 5, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Nancy Morris, as assignee of Andrew J.	)	C.A. No.: 2017-CP-40-06773
Bland, PFC; Leemon E. Carner, PFC; Jerry	)	
Speissegger, Jr., PFC; Priscilla Garrett,	)	
SGT; and Richard T. Burkholder, SGT;	)	
	)	PLAINTIFF'S RESPONSES TO
Plaintiffs,	)	DEFENDANT'S INTERROGATORIES
	)	
-vs-	)	
	)	
South Carolina Insurance Reserve Fund,	)	
	)	
Defendants.	)	

TO: THE ABOVE-NAMED DEFENDANT AND ITS ATTORNEY, ANDREW F. LINDEMANN, ESQUIRE:

RESPONSES

1. Give the names and addresses of persons known to the Plaintiff or her counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

RESPONSE

Nancy Morris
c/o Elrod Pope Law Firm
212 E. Black Street
Rock Hill, SC 29730

Ms. Morris will testify about the underlying litigation and her attempts to settle the case within the policy limits.

Andrew J. Bland
Leemon E. Carner
Jerry Speissegger, Jr.
Priscilla Garrett Bland
c/o Biering Law Firm
103 Broughton Rd
Moncks Corner, SC 29461

These correctional officers will testify about the underlying litigation and Defendant's failure to communicate with them and to protect them against an excess judgment.

Richard T. Burkholder
229 S. 9th Street
Connellsville, PA 15425

Mr. Burkholder will testify about the underlying litigation and Defendant's failure to communicate with him and to protect him against an excess judgment.

Sandra Senn
Robin L. Jackson
Senn Legal, LLC
3 Wesley Dr.
Charleston, SC 29407

Mrs. Senn and Mrs. Jackson represented the correctional officers through mediation, and are expected to testify as to any recommendations or advice given to Defendant concerning settlement.

Eugene P. Corrigan, III
Law Office of Eugene P. Corrigan, III
3 Broad Street, Fourth Floor
Charleston, SC 29401

Mr. Corrigan represented four of the correctional officers through trial and appeal, and is expected to testify as to any recommendations or advice given to Defendant concerning settlement.

James Stuckey
Stuckey Law Offices, LLC
123 Meeting Street
Charleston, SC 29401

Mr. Stuckey represented Mr. Burkholder through trial, and is expected to testify as to any recommendations or advice given to Defendant concerning settlement.

Alissa Collins Lietzow
Charleston Pro Bono Legal Services
111 Church St
Charleston, SC 29401

Ms. Lietzow represented Mr. Burkholder through trial, and is expected to testify as to any recommendations or advice given to Defendant concerning settlement.

Karl Folkens
Folkens Law Firm, P.A.
601 W Evans St
Florence, SC 29501

Mr. Folkens is expected to testify that he mediated the case and the sides arrived at a settlement agreement, but the Defendant failed to follow through.

Defendant's representative
Address unknown

No written or recorded statements in Plaintiff's possession

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

RESPONSE

Please see response to Interrogatory #1

3. Set forth a list of photographs, videotapes, audiotapes, plats, sketches, or other prepared documents in possession of the Plaintiff or her counsel that relate to any claims or defenses or coverage issues raised in this case.

RESPONSE

1. Assignments
2. Tort Liability Policy
3. Tyger River letter to Defendant
4. Letter from Defendant offering \$500,000
5. Offer of Judgment from County Defendants
6. Response Letter to County Offer
7. Clocked Judgment
8. Hesse CV

4. Please identify in complete detail each person whom the Plaintiff may call as an expert witness at the trial, and for each such person provide the following information:

- (a) Name, occupation, title, business address, area of specialization, if any, and professional relationship to the Plaintiff; and
- (b) The manner in which such person became familiar with the facts of this case.

RESPONSE

Tom Hesse

Attorney

Austen and Gowder, LLC

1629 Meeting Street, Suite A

Charleston, SC 29405

Expertise is in insurance claims handling

Mr. Hesse has been hired as Plaintiffs' expert. No prior relationship.

Mr. Hesse became familiar with the facts of the case through materials that were provided to him, which he reviewed.

5. As to each person who the Plaintiff has identified or intends to identify as an expert witness in this matter, please provide the following information:

- (a) The subject matter or area in which such person is to testify;
- (b) A statement of each opinion held by such person; and
- (c) A summary of the grounds or basis for each opinion.

RESPONSE

(a) Insurance claims handling

(b) Failure of the IRF to settle the claim when it had an opportunity to do so within the policy limits exposed the correctional officers to a judgment for \$2.95 million, including punitive damages of \$2.45 million that they otherwise would not have been exposed to.

(c) The pleadings, the judgment that was rendered, the offer of judgment, the Tyger River letter, and exhibits to the Complaint form the grounds for the opinion.

6. Identify by name and address of the "Assignors' personal attorney" that the Plaintiff refers to in Paragraph 48 of the Amended Complaint.

RESPONSE

Christopher P. Biering

Biering Law Firm

103 Broughton Rd

Moncks Corner, SC 29461

7. Identify by name and address each of the “counsel” that the Plaintiff refers to in Paragraph 65(b) of the Amended Complaint.

RESPONSE

Sandra Senn
Robin L. Jackson
Senn Legal, LLC
3 Wesley Dr.
Charleston, SC 29407

Eugene P. Corrigan, III
Law Office of Eugene P. Corrigan, III
3 Broad Street, Fourth Floor
Charleston, SC 29401

James Stuckey
Stuckey Law Offices, LLC
123 Meeting Street
Charleston, SC 29401

Alissa Collins Lietzow
Charleston Pro Bono Legal Services
111 Church St
Charleston, SC 29401

8. Identify by specific section and paragraph number that portion of the IRF Tort Liability Policy issued to Berkeley County that establishes the contractual duty described in Paragraph 65(a) of the Amended Complaint.

RESPONSE

Plaintiff does not maintain that there is a specific contract provision that explicitly imposes this duty on Defendant. Rather, it is a breach of Defendant’s duty of good faith and fair dealing that arises by operation of law.

9. Identify by specific section and paragraph number that portion of the IRF Tort Liability Policy issued to Berkeley County that establishes the contractual duty described in Paragraph 65(b) of the Amended Complaint.

RESPONSE

Plaintiff does not maintain that there is a specific contract provision that explicitly imposes this duty on Defendant. Rather, it is a breach of Defendant's duty of good faith and fair dealing that arises by operation of law.

10. Identify by specific section and paragraph number that portion of the IRF Tort Liability Policy issued to Berkeley County that establishes the contractual duty described in Paragraph 65(c) of the Amended Complaint.

RESPONSE

Plaintiff does not maintain that there is a specific contract provision that explicitly imposes this duty on Defendant. Rather, it is a breach of Defendant's duty of good faith and fair dealing that arises by operation of law.

11. Identify by specific section and paragraph number that portion of the IRF Tort Liability Policy issued to Berkeley County that establishes the contractual duty described in Paragraph 65(d) of the Amended Complaint.

RESPONSE

Section I of the Tort Liability Policy imposes a duty on Defendant to "pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of personal injury."

12. Identify by specific section and paragraph number that portion of the IRF Tort Liability Policy issued to Berkeley County that establishes the contractual duty described in Paragraph 65(e) of the Amended Complaint.

RESPONSE

Section I of the Tort Liability Policy imposes a duty on Defendant to "pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of personal injury."

13. Identify by name and address all persons who were involved in the negotiation of the documents captioned "Assignment of Rights and Covenant Not to Execute" that were entered by the Plaintiff and the Assignors (as defined in Paragraph 6 of the Amended Complaint).

RESPONSE

Harold C. Staley, Jr.
 Andrew W. Creech
 Garrett B. Johnson
 Nancy Morris
 c/o Elrod Pope Law Firm
 212 E. Black Street
 Rock Hill, SC 29730

Andrew J. Bland
 Leemon E. Carner
 Jerry Speissegger, Jr.
 Priscilla Garrett Bland
 c/o Biering Law Firm
 103 Broughton Rd
 Moncks Corner, SC 29461

Richard T. Burkholder
 229 S. 9th Street
 Connellsville, PA 15425

Christopher P. Biering
 Biering Law Firm
 103 Broughton Rd
 Moncks Corner, SC 29461

14. Describe in detail all of the legal consideration that was received by the Assignors (as defined in Paragraph 6 of the Amended Complaint) for entering into the "Assignment of Rights and Covenant Not to Execute" as well as any other benefits, financial or otherwise, conveyed or promised to the Assignors by the Plaintiff or her counsel.

RESPONSE

Plaintiff craves reference to the Assignments, which speak for themselves. Supplemental proceedings that had been filed against Assignors in Berkeley County were dismissed, and Plaintiff covenanted

not to execute against any assets of the Assignors, as well as not to institute any further claims, lawsuits, bankruptcy proceedings, or other causes of action against them to enforce or collect on the above judgment. That judgment, of course, had already been entered, and the Assignments have no bearing whatsoever on collection efforts against Defendant with regard to that judgment.

15. Identify by name and address all legal counsel representing the Assignors (as defined in Paragraph 6 of the Amended Complaint) individually or jointly in the negotiations that led to the execution of the documents captioned "Assignment of Rights and Covenant Not to Execute."

RESPONSE

Christopher P. Biering
Biering Law Firm
103 Broughton Rd
Moncks Corner, SC 29461

16. Identify by name and address all legal counsel representing the Plaintiff in the negotiations that led to the execution of the documents captioned "Assignment of Rights and Covenant Not to Execute."

RESPONSE

Harold C. Staley, Jr.
Andrew W. Creech
Garrett B. Johnson
Elrod Pope Law Firm
212 E. Black Street
Rock Hill, SC 29730

17. Describe all personal and professional relationships that exist between any of the persons identified in response to Interrogatory #15 and any of the persons identified in response to Interrogatory #16.

RESPONSE

None

18. Specify the amount of the legal fees that were paid by the Assignors (as defined in Paragraph 6 of the Amended Complaint) individually or jointly to the persons identified in response to Interrogatory #15.

RESPONSE

Plaintiff has issued a subpoena to Christopher Biering for this information.

19. Set forth an itemized statement of the actual and/or consequential damages claimed to have been sustained by the Assignors (as defined in Paragraph 6 of the Amended Complaint) as a result of the alleged breach of contract and negligence.

RESPONSE

In addition to the attorney's fees set forth above, Assignors have suffered:

Outstanding personal judgments due to Defendant's failure to settle:

Andrew J. Bland- \$123,788.27
Richard T. Burkholder- \$825,255.10
Leemon E. Carner- \$123,788.27
Jerry Speissegger, Jr.- \$123,788.27
Priscilla Garrett- \$825,255.10

Mental anguish- Not yet calculated

20. Set forth an itemized statement of the actual and/or extracontractual damages claimed to have been sustained by the Assignors (as defined in Paragraph 6 of the Amended Complaint) as a result of the alleged bad faith.

RESPONSE

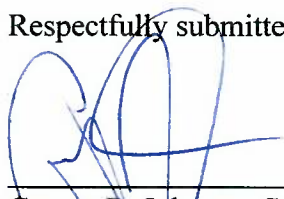
Please see response to Interrogatory #19.

21. Set forth an itemized statement of the "attorney's fees and expenses" identified in Paragraph 95(b) of the Amended Complaint, and state which of the Assignors incurred those fees and expenses, the name(s) of legal counsel to whom those fees and expenses were paid, the date those fees and expenses were paid, and the method of payment.

RESPONSE

Plaintiff has issued a subpoena to Christopher Biering for this information.

Respectfully submitted,



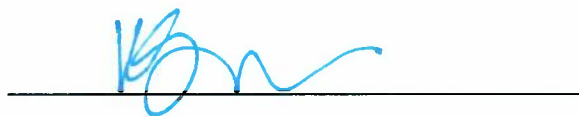
Garrett B. Johnson, SC Bar #81105
ELROD POPE LAW FIRM
212 E. Black Street
P.O. Box 11091 (29731)
Rock Hill, SC 29730
(803) 324-7574
GJohnson@ElrodPope.com
Attorney for Plaintiffs

May 14, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Nancy Morris, as assignee of Andrew J.	)	C.A. No.: 2017-CP-40-06773
Bland, PFC; Leemon E. Carner, PFC; Jerry	)	
Speissegger, Jr., PFC; Priscilla Garrett,	)	
SGT; and Richard T. Burkholder, SGT;	)	
	)	CERTIFICATE OF SERVICE
Plaintiffs,	)	
	)	
-vs-	)	
	)	
South Carolina Insurance Reserve Fund,	)	
	)	
Defendants.	)	

The undersigned hereby certifies that a true copy of the foregoing **PLAINTIFFS' FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT** has been served upon opposing counsel by depositing same in the United States Mail with sufficient postage affixed thereto this 14 day of May 2018, using the following address:

Andrew F. Lindemann
Lindemann, Davis, & Hughes, P.A.
Post Office Box 6923
Columbia, South Carolina 29260



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Nancy Morris, as assignee of Andrew J.	)	C.A. No.: 2017-CP-40-06773
Bland, PFC; Leemon E. Carner, PFC; Jerry	)	
Speissegger, Jr., PFC; Priscilla Garrett,	)	
SGT; and Richard T. Burkholder, SGT;	)	
	)	PLAINTIFF'S MEMORANDUM IN
Plaintiffs,	)	OPPOSITION TO DEFENDANT'S
	)	MOTION FOR SUMMARY JUDGMENT
-vs-	)	
	)	
South Carolina Insurance Reserve Fund,	)	
	)	
Defendants.	)	

This matter comes before the Court on Defendant's Motion for Summary Judgment, filed on April 5, 2019. Plaintiff respectfully requests that Defendant's Motion for Summary Judgment be DENIED.

FACTUAL BACKGROUND

On or about September 2, 2010, Decedent David Woods was tried and convicted in absentia by way of bench trial on charges of Shoplifting Merchandise/Less than \$2,000 and Animal Nuisance. On October 12, a bench warrant was issued for his arrest, and he was booked and taken into custody at Hill-Finklea Detention Center. Over the course of the next several weeks, Mr. Woods complained to jail and medical personnel of health problems, including but not limited to liver disease, intestinal pain, and blood in his stool.

On the night of Friday, November 5, 2010, Mr. Woods was reported to be lying down on the floor of his cell and shaking. Sergeant Priscilla Bland (then Priscilla Garrett) transferred him to a medical observation cell. This occurred at approximately 10:30 p.m. While the jail had medical personnel on-call 24 hours a day, 7 days a week, there were no medical personnel on site

at that time. Neither were any medical personnel scheduled to work at the detention center during the weekend.

Over the next sixty hours, surveillance footage from the observation cell shows Mr. Woods soiling himself, lying in his own feces, shaking, trembling, and repeatedly falling. During this time, Defendants PFC Andrew Bland; Sgt Richard T. Burkholder; PFC Leemon E. Carner; Sgt Priscilla Bland (Garrett); and PFC Jerry Speissegger, Jr. (hereinafter collectively “the County Defendants”) each had multiple interactions with Mr. Woods. None of them called for medical personnel or recommended that medical personnel be called.

At approximately 10:00 a.m. on Monday, November 8, Mr. Woods was found lying naked on the floor of his cell. EMS was called, and he was taken to Trident Medical Center. There, his hemoglobin was measured at 4, and his prognosis was felt to be “bleak. On November 11, Mr. Woods died of gastrointestinal bleeding from duodenal ulcer.

PROCEDURAL POSTURE

Mr. Woods’s sister, Nancy Morris, was duly appointed personal representative of his estate, and brought suit against the detention center correctional officers and medical personnel pursuant to 42 U.S.C. § 1983 and the South Carolina Tort Claims Act. The case was removed to the South Carolina District Court, Charleston Division. The medical defendants entered into a settlement agreement, and the SCTCA claims were dismissed. The District Court granted summary judgment to certain county defendants.

Trial proceeded against the remaining five defendants—Andrew Bland; Richard Burkholder; Leemon Carner; Priscilla Bland (Garrett); and Jerry Speissegger, Jr.—solely on the 42 U.S.C. § 1983 claims, on October 14, 2014. On October 17, 2014, the jury returned a verdict of \$500,000 in actual damages, and punitive damages of \$150,000 against Andrew Bland;

\$1,000,000 against Richard Burkholder; \$150,000 against Leemon Carner; \$1,000,000 against Priscilla Bland (Garrett); and \$150,000 against Jerry Speissegger, Jr.

The District Court later granted Defendants an offset, reducing the amount of the actual damages award to \$171,875. Plaintiff was granted attorneys' fees in the amount of \$354,923 and costs totaling \$31,820.62. Defendants appealed to the Fourth Circuit, which upheld the District Court on November 16, 2016. Independent of a court order, both sides stipulated that Plaintiff's attorneys' fees for the appeal totaled \$25,768.75. Total damages were thus \$3,040,287.37. In 2017, each of the defendants in the underlying action completed an assignment of rights in favor of Plaintiff Nancy Morris, allowing her to bring a bad faith action against Defendant.

LEGAL STANDARD

Under Rule 56(c), SCRCP, summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. Zurich Am. Ins. Co. v. Tolbert, 387 S.C. 280, 283, 692 S.E.2d 523, 524 (2010); Medical Univ. of South Carolina v. Arnaud, 360 S.C. 615, 602 S.E.2d 747 (2004). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000). Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. McCall v. State Farm Mut. Auto. Ins. Co., 359 S.C. 372, 376, 597 S.E.2d 181, 183

(Ct.App.2004). Because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. Helena Chem. Co. v. Allianz Underwriters Ins. Co., 357 S.C. 631, 594 S.E.2d 455 (2004).

ARGUMENT

Defendant's Motion is sparse, providing little to no explanation for the reasoning behind the various grounds asserted for dismissal. Given the lack of detail, Plaintiff addresses each of the arguments to the best of her ability herein, and

1. Plaintiff filed her action within the applicable statute of limitations.

Plaintiff filed this action on November 6, 2017. Defendant objects that this was outside the two-year statute of limitations provided for by the South Carolina Tort Claims Act. However, Defendant appealed the verdict in the underlying case to the Fourth Circuit Court of Appeals, which only affirmed the decision on November 16, 2016. This is the date when Plaintiff's statute of limitations accrued and she had an actionable claim against Defendant. Had the Fourth Circuit overturned the District Court's decision and ordered a new trial, Plaintiff would not have had a claim against for bad faith until and unless a jury awarded another verdict, one that would survive an appeal. Only when Plaintiff had a final adjudication of the underlying case did her right to bring this action arise.

Incidentally, Plaintiffs did file a declaratory judgment concerning this very same underlying case. This suit was filed in 2015, shortly after the verdict was awarded. On March 23, 2016, Judge Casey Manning issued a Form 4 Order staying that case on the ground that it was "premature" while the appeal was pending. Judge Manning correctly recognized that any of Plaintiff's rights or causes of action arising out of the verdict awarded in the underlying matter would not accrue until the appeal was heard. The Court should follow the same logic in this

matter and find that the statute of limitations began to run on the date that the defendants' appeal in the underlying case was denied. Plaintiff accordingly filed her Summons and Complaint less than one year after the verdict was affirmed on appeal, which is well within the statutory period.

In their motion, Defendant does not provide an alternate date for when Plaintiff's statute of limitations accrued. To the extent that it argues that the statute began on a date earlier than the denial of the appeal, it should be estopped from claiming the statute of limitations as a defense because its own actions induced the delay. See Kleckley v. Nw. Nat. Cas. Co., 338 S.C. 131, 136–37, 526 S.E.2d 218, 220 (2000). By repeatedly pushing back the trial date in the underlying action and by filing an ultimately fruitless appeal, Defendant induced the delay that caused Plaintiff to file this action only after the appeal had been decided. If Defendant's reasoning were to prevail, insurers would be incentivized to delay and appeal adjudication of claims so as to allow a sufficient amount of time to pass to bar any bad faith claim. The Court should instead look to the date when a final ruling was entered in the underlying matter, and calculate the statute of limitations from that date.

2. The assignments prepared by the defendants to the underlying action do not serve to relieve Defendant from liability.

In 2017, Andrew J. Bland, PFC; Richard T. Burkholder, SGT; Leemon E. Carner, PFC; Jerry Speissegger, Jr., PFC; and Priscilla Garrett, SGT entered into Assignments of Rights and Covenants Not to Execute. In these assignments, Plaintiff agreed "not to execute against any assets of the undersigned," to dismiss them from supplementary proceedings filed in Berkeley County, and not to institute any "further claims" against them. In exchange for this consideration, the correctional officers assigned to Plaintiff "any and all claims he/she may have against the South Carolina Insurance Reserve Fund... and the right to collect all actual and

punitive damages, attorney fees, or costs that may arise from those claims.” Defendant argues that these assignments serve to release Defendant from liability.

It is curious to suggest that an Assignment of Rights assigning Plaintiff “any and all claims” against the IRF excuses the IRF from liability. “Common sense and good faith are the leading touchstones of construction of the provisions of a contract; where one construction makes the provisions unusual or extraordinary and another construction which is equally consistent with the language employed, would make it reasonable, fair and just, the latter construction must prevail.” C.A.N. Enterprises, Inc. v. South Carolina Health & Human Services Finance Com., 296 S.C. 373, 377 (1988). The common sense reading of the assignments shows that Defendant’s argument is unfounded. Their clear intention and effect are quite the opposite of what Defendant claims; far from relieving Defendant from liability, they assign Plaintiff the right to pursue an additional remedy against the agency.

In the declaratory judgment action regarding this matter, Defendant offers alleged support from two primary cases. The first, Smalls v. Blackmon, 269 S.C. 614 (1977), dealt with the Longshoremen’s Act. The plaintiff in Smalls was injured by a fellow employee, and received benefits under the Longshoremen’s Act. The Act provided that it was the exclusive remedy for injuries caused by co-workers. The plaintiff then attempted to sue the co-worker who had caused the injury. The Court ruled that the plaintiff could not “circumvent the clear language” of the Longshoremen’s Act, and that “The insurer is obligated to pay only those sums which the insured becomes legally obligated to pay.” Because the co-worker never had any liability under the clear language of the Act, his insurer was not obligated to pay anything to the plaintiff.

In the second case, Cobb v. Benjamin, 325 S.C. 573, 576 (Ct. App. 1997), a plaintiff entered into a covenant not to execute which “released State Farm, Williams, and Benjamin from

all liability arising out of the accident.” The plaintiff reserved rights against the defendant “solely for the purpose of establishing claims against underinsured motorist carriers for underinsured motorist benefits,” and agreed that she would “only seek to collect such judgment from such underinsured motorist carriers as may be found to have such coverage.” Id. at 576-77. She further promised that “any judgment be entered against the underinsured motorist carrier and not against” the defendants. Id. at 577. The plaintiff subsequently learned that the defendant had an additional liability insurance policy, and attempted to collect against it. The court found that the plaintiff had preserved her right to proceed only against “any applicable UIM carriers” and waived her rights to enter a judgment against or impose any liability on the defendant. Id. at 578-79. The defendant’s second liability carrier therefore had no obligation to pay. Id. at 579.

Both of these cases are readily distinguishable from the current situation. In Smalls, there was no obligation to pay because of the clear prohibition of the statute. In Cobb, there was no obligation to pay because the plaintiff signed a clear and unequivocal release that extinguished any right to pursue a claim against another liability carrier. In the current matter, neither statutory provisions nor contractual releases excuse Defendant from liability. In fact, the preservation and assignment of that liability, and claims to establish the same, were the consideration sought and received by Plaintiff. Defendant’s reading would result in the assignments essentially rendering themselves null and void; the causes of action conveyed by the assignments would be defeated by the assignment itself. This is the absurd and unusual result envisioned by the Court in C.A.N. Enterprises, and this Court cannot adopt such a reading.

3. The assignments and claims do not constitute barratry.

In perhaps its most obscure argument, Defendant argues that the assignments constitute the crime of barratry pursuant to S.C. Code § 16-17-10. It is difficult to see how the current

action could fall into the terms of this code section. Given that the statute does not limit its terms to actions against government entities, Defendant would seemingly be forced to argue that any and all bad faith claims utilizing assignments would run afoul of the statute, which is clearly contrary to well-established South Carolina public policy. See Tyger River Pine Co. v. Maryland Casualty Co., 170 S.C. 286, 170 S.E. 346 (1933). Moreover, even if this action does somehow fall under the terms of the statute, nothing in the statute calls for or warrants the dismissal of the action. Defendant's argument is therefore unavailing.

4. The assignments confer standing upon Plaintiff.

Defendant claims that Plaintiff lacks standing to assert each of the causes of action against Defendant, including the bad faith claim. Under Tyger River and its progeny, insureds have a cause of action against their insurer when that insurer fails to act in good faith and to exercise reasonable care. Id. The defendants in the underlying action have a cause of action that arose due to Defendant's failure to act reasonably in settling the case. Those causes of action were duly and properly assigned to Plaintiff. Plaintiff accordingly has the standing to bring this action.

5. Summary judgment is not appropriate on Plaintiff's Breach of Contract claim.

Defendant argues that certain elements of Plaintiff's Breach of Contract claim should be dismissed. Specifically, Plaintiff pled that Defendant breached the contract by not consulting with the assignees regarding Plaintiff's offer to settle; by not discussing the offer with the assignees; by not retaining independent counsel to advise assignees of their rights concerning offers to settle; by not settling Plaintiff's claim for an amount up to and including the full policy limits; and by not accepting Plaintiff's reasonable settlement offer within the policy limits. Plaintiff concedes that the first three items are not enumerated in the contract, but contends that

they arise under operation of law as part of Defendant's duty of good faith and fair dealing. ("Importantly, an insured need not prove a breach of an express contractual provision as a prerequisite to bringing a bad faith cause of action." Tadlock Painting Co. v. Maryland Cas. Co., 322 S.C. 498, 504, 473 S.E.2d 52, 55 (1996).)

Plaintiff contends that the remaining two items arise under the language of the contract that requires Defendant to "pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of personal injury." Whether or not Defendant's conduct violates this provision is a question of fact for the jury, rendering summary judgment improper.

6. Plaintiff's demands are irrelevant as to whether or not Defendant acted in bad faith.

Defendant argues that Plaintiff cannot state a claim under the Tyger River doctrine because she "never made a demand to settle the underlying case" within the policy limits. It is a factual issue whether or not Plaintiff's demands would have been satisfied had Defendant tendered the full policy limits at mediation. Plaintiff intends to demonstrate that she had agreed to a tentative settlement agreement following the mediation, in which Defendant would tender the policy limits and Berkeley County would pay \$400,000.00. Plaintiff is informed and believes that the only reason the settlement was not effected was that Defendant was not willing to tender its policy limits, thus subjecting its insured to personal liability and excess judgments.

In any event, under Tyger River and South Carolina state law, Defendant had an obligation to act in good faith and to make a reasonable effort to settle the claim. This duty is not limited to instances in which the plaintiff makes certain demands or conducts herself in certain ways. The question of fact before the jury is whether Defendant upheld this duty

throughout the litigation, particularly in the months and years before Defendant finally offered the full policy limits. If the jury finds that Defendant breached this duty, then Defendant is liable for the same, regardless of what Plaintiff's demands may or may not have been at the time. The breach lies in the Defendant's conduct, not the Plaintiff's.

Defendant is, of course, free to argue that their breach did not result in any damages to the assignees because Plaintiff would not have accepted an offer of the full policy limits at mediation or any time prior to the limits actually being offered. However, that is a question of fact that will be submitted to and answered by the jury, and summary judgment is inappropriate.

7. Whether Plaintiff can provide evidence of gross negligence is a question of fact.

Defendant objects that "Plaintiff can present no evidence to support the specific allegations of negligence or gross negligence as pled in the Second Cause of Action." This cause of action is negligence on the part of Defendant in failing to process and timely adjust Plaintiff's claims and deviating from a standard of care. Plaintiff has already produced evidence in the form of a verdict well in excess of the policy limits and Defendant's failure to tender the limits until years into the litigation. Plaintiff strongly suspects that the only reason that she has not been able to produce more evidence supporting these allegations is that Defendant has steadfastly refused to turn over its claims file. In any event, this is a question of fact not appropriate for summary judgment.

8. Defendant's objections to Paragraphs 71(c), 71(d), and 71(e) have been held in abeyance.

Defendant requests the dismissal of Paragraphs 71(c), 71(d), and 71(e) of Plaintiff's Complaint. The parties have already agreed and consented that Defendant's challenge to these paragraphs be held in abeyance until further discovery is completed, as memorialized in an order

signed and filed by Judge Hood on June 14, 2018. That discovery is still ongoing and is awaiting a decision on Plaintiff's Motion to Compel concerning certain matters that Defendant claims are privileged. Summary judgment is inappropriate until full discovery has been conducted.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that Defendant's Motion for Summary Judgment be DENIED.

Respectfully submitted,

s/Garrett B. Johnson
Garrett B. Johnson, SC Bar #81105
ELROD POPE LAW FIRM
212 E. Black Street
P.O. Box 11091 (29731)
Rock Hill, SC 29730
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GJohnson@ElrodPope.com
Attorney for Plaintiff

June 5, 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

Nancy Morris, as assignee of Andrew J.)
Bland, PFC; Leemon E. Carner, PFC; Jerry)
Speissegger, Jr., PFC; Priscilla Garret, SGT;)
and Richard T. Burkholder, SGT,)

Civil Action No. 2017-CP-40-6773

Plaintiffs,)

v.)

**MEMORANDUM IN SUPPORT OF
MOTION SUMMARY JUDGMENT**

South Carolina Insurance Reserve Fund,)

Defendant.)

INTRODUCTION

This is a declaratory judgment action filed by the Plaintiff Nancy Morris, as assignee of Andrew J. Bland, Richard Burkholder, Leemon E. Carner, Priscilla Garrett Bland and Jerry Speissegger (hereafter referred to as “Assignors”), against the Defendant South Carolina Insurance Reserve Fund (IRF) relating to judgments entered in a United States District Court action captioned *orr lan* Civil Action Number 5: 12-3177-RMG. That case was tried before United States District Judge Richard M. Gergel and a jury in October 2014. On October 17, 2014, the jury returned a verdict finding against the Assignors, who were five corrections officers at the Hill-Finklea Detention Center operated by Berkeley County. The jury found that the Assignors had been deliberately indifferent to the decedent s medical needs in violation of the Fourteenth Amendment to the United States Constitution.

The verdict against the Assignors included the following: \$500,000 in actual damages against all five officers jointly and severally, \$1 million in punitive damages against Burkholder,

\$1 million in punitive damages against Priscilla Bland, \$150,000 in punitive damages against Andrew Bland, \$150,000 in punitive damages against Carner, and \$150,000 in punitive damages against Speissegger. Following a motion for set-off, the actual damages were reduced to \$171,875. Judge Gergel also awarded attorney's fees and costs under 42 U.S.C. § 1988. The Assignors appealed the judgments to the Fourth Circuit Court of Appeals. In November 2016, the Fourth Circuit affirmed the judgments against each of the officers. *See Orr v. Laney*, 666 Fed. Appx. 233 (4th Cir. 2016).

The Insurance Reserve Fund issued a Tort Liability Insurance Policy to its named insured Berkeley County, which includes liability limits of \$600,000. Following the appeal, the IRF tendered the sum of \$992,013.63 to the Plaintiff in partial satisfaction of the judgments against the Assignors. The Plaintiff executed a document captioned Partial Satisfaction of Judgment which reflects payment of the full \$600,000 in liability limits as well as supplemental payments for attorney's fees, costs, and post-judgment interest.

The Plaintiff thereafter filed the present action as the assignee for the five Assignors. In her Amended Complaint, the Plaintiff alleges as follows:

Andrew J. Bland, PFC; Priscilla Garrett Bland, SGT; Leeman A. Carner, PFC; Jerry Speissegger, Jr., PFC; and Richard T. Burkholder, SGT (hereinafter collectively referred to as Assignors) did, for good and valuable consideration, irrevocably assign to Plaintiff Nancy Morris any and all claims he/she may have against the South Carolina Insurance Reserve Fund and/or any other persons, firms, government organizations, or entities that arise out of C.A. 0: 5: 12-cv-3177-RMG, including, among others, bad-faith conduct and/or breach of contract by the Insurance Reserve Fund in the handling of the claims related to that case.

See Amended Complaint, ¶ 6. The Plaintiff has alleged three causes of action for breach of contract, negligence, and bad faith against the IRF.

The Defendant IRF has now filed a motion for summary judgment as to all claims.

ARGUMENTS

I. T P

The Plaintiff's claims are barred by the applicable statutes of limitations. The statute of limitations for the breach of contract cause of action is three years. The acts or omissions alleged as the basis for the breach of contract cause of action, in addition to the resulting harm as alleged, occurred more than three years prior to the filing of this action on November 6, 2017. Specifically, in her breach of contract cause of action, the Plaintiff alleges that the IRF breached the insurance policy by failing to consult with the Assignors about the offers to settle, failed to obtain separate counsel to advise the Assignors about the offers to settle, and failed to settle prior to trial and judgment. *ee*, Amended Complaint, ¶ 65. All of those alleged breaches of contract occurred prior to the Federal Court trial which took place in October 2014, with the judgment being entered on October 21, 2014. *ee*, Amended Complaint, Ex. G. It is well settled that “[a]n assignee stands in the shoes of its assignor.” *Oore v. e n er*, 373 S.C. 209, 644 S.E.2d 740, 745 (Ct. App. 2007). Therefore, the assignee takes subject to the defenses that could be asserted against the assignors. *e oo re er n o Al ert er ten A o*, 244 S.C. 57, 135 S.E.2d 368, 371 (1964). Because the alleged breach of contract occurred no later than October 2014, the filing of the breach of contract action by the Plaintiff on November 6, 2017, was beyond the three-year statute of limitations.

Moreover, the statute of limitations for the negligence and bad faith causes of action is two years pursuant to the South Carolina Tort Claims Act. *ee*, S.C. Code Ann. 15-78-110.¹

¹ In *harle ton o nty hool tr t tate et an ontrol oar*, 313 S.C. 1, 437 S.E.2d 6 (1993), the South Carolina Supreme Court ruled that a bad faith cause of action is a tort claim, not a contract claim. Therefore, as an action in tort, the South Carolina Tort Claims Act applies. 437 S.E.2d at 10.

The acts or omissions alleged as the basis for the negligence and bad faith causes of action, in addition to the resulting harm as alleged, occurred more than two years prior to the filing of this action on November 6, 2017. The negligence cause of action asserts similar alleged breaches of duty as claimed in the breach of contract cause of action, including an alleged failure to timely and reasonably adjust the claim. *See*, Amended Complaint, ¶ 71. The same is also true for the bad faith claim. The Plaintiff alleges a bad faith claim pursuant to the “Tyger River” doctrine and based on the allegation that the IRF failed to settle the underlying action within policy limits. Again, those alleged acts or omissions occurred prior to the Federal Court trial which took place in October 2014, and certainly longer than two years before this lawsuit was filed. Because the alleged negligence and bad faith occurred no later than October 2014, the filing of the negligence and bad faith claims by the Plaintiff on November 6, 2017, was beyond the two-year statute of limitations for torts.

II. THE DEFENDANT'S POSITION ON THE ASSIGNMENT OF LIABILITY DOCTRINE

The Plaintiff alleges that she has received an assignment from the five correctional officers, and in return, has entered into a Covenant Not to Execute extinguishing the personal liability of each of those parties. As a result, those Covenants Not to Execute render the current action non-justiciable because the Assignors are no longer personally liable for the judgments entered against them and on which the Plaintiff is seeking to recover from the IRF.

It is well settled under South Carolina law that a liability policy is a contract of indemnity. *See* *Allen v. South Carolina Insurance Co.*, 269 S.C. 614, 239 S.E.2d 640, 641 (1977). As such, the Plaintiff is now precluded from recovering under the IRF Tort Liability Policy. The South Carolina

Supreme Court has explained that “[a]n insurance carrier is in the same legal position as its insured. A liability carrier only contracts to pay any debt the insured is liable to pay.” *all*, 239 S.E.2d 640 at 641. Likewise, in *o en a n*, 325 S.C. 573, 482 S.E.2d 589 (Ct. App. 1997), the Court of Appeals explained that a liability insurance policy “is a contract of indemnity and the carrier is placed in the same position as its insured.” 482 S.E.2d at 592. In that case, the plaintiff (Cobb) entered a Covenant Not to Execute in favor of the defendant (Benjamin), and the Court of Appeals ruled as follows: “When Cobb removed the obligation to pay a judgment from Benjamin, she also relieved Nationwide of its liability to pay under Benjamin’s policy. The trial court was correct in its determination the covenant not to execute relieved Nationwide from liability.” .

The same is true in the present case. When the Plaintiff entered the Covenants Not to Execute and relieved the five corrections officers of their personal liability to pay the judgments against them, that also relieved the IRF of any further liability under the Tort Liability Policy. Thus, the Defendant IRF is entitled to summary judgment on all claims.

III. T P

The Defendant is entitled to summary judgment on the Plaintiff’s breach of contract cause of action because none of the duties described in Paragraph 65 of the Amended Complaint are duties provided for by the contract, namely the Tort Liability Insurance Policy as issued to the named insured Berkeley County. *ee*, Amended Complaint, Ex. B. In responses to interrogatories, the Plaintiff has already conceded that there is not a specific contract provision that explicitly imposes the contractual duties alleged in Paragraphs 65(a), 65(b), and 65(c). The same is also true with respect to the contractual duties alleged in Paragraphs 65(d) and 65(e).

Consequently, the Defendant IRF is entitled to summary judgment on the breach of contract claim.

IV. T P

“Tyger River”

-

The Plaintiff has brought suit under the “Tyger River” doctrine based on the allegation that the IRF failed to settle the underlying action within policy limits. In the leading case of *Holgate v. Atlantic*, 279 S.C. 336, 306 S.E.2d 616 (1983), the Supreme Court explained that “an insurer’s unreasonable refusal to settle within policy limits subjects the insurer to tort liability.” 306 S.E.2d at 618.

In this action, the Plaintiff never made a demand to settle the underlying case of *Orrian v. Lan*, Civil Action Number 5:12-3177-RMG, for \$600,000 or less. Instead, the Plaintiff alleges that she made a settlement demand of \$1 million which exceeded the policy limits. *See*, Amended Complaint, Ex. C. In addition, the IRF did make a settlement offer to the Plaintiff of the policy limits of \$600,000 prior to trial and judgment being entered, and that offer was rejected. *See*, Amended Complaint, Ex. F. As a result, the Plaintiff cannot state a claim under the “Tyger River” doctrine based on the allegation that the IRF failed to settle the underlying action within policy limits. Where the plaintiff in the underlying action was offered policy limits prior to trial, and those policy limits were rejected, there is no basis for Tyger River liability.

In effect, the Plaintiff has failed to present evidence showing any bad faith on the part of the IRF. There is no evidence that the Plaintiff was willing at any point to settle the underlying case for the policy limits of \$600,000 or less. Likewise, there is no evidence that the Assignors ever demanded or even requested that the IRF pay the policy limits in settlement of the claims against them. The so-called “Tyger River letter” to which the Plaintiff has referred was not, in

actuality, a Tyger River letter from the insureds to the IRF demanding settlement within policy limits. There is no such letter. At any rate, that September 12, 2013 letter from Plaintiff's counsel to the IRF includes a demand for \$3 million which far exceeds the policy limits. *ee*, Amended Complaint, Ex. C. That is not a "Tyger River letter." In short, the Plaintiff has failed in presenting evidence of a Tyger River bad faith claim. At best, the Plaintiff has shown excess judgments were returned at trial, and that alone is not evidence of bad faith.

V. P 1 , 1 , 1 A C
.

Paragraphs 71(c), 71(d), and 71(e) of the Amended Complaint should be dismissed in that those allegations fail to state proper allegations of negligence or gross negligence. Paragraph 71(c) only sets forth a statement of the reasonable man standard. Paragraph 71(d) alleges unspecified violations of "laws or common law of the State of South Carolina." Paragraph 71(e) alleges only that the Defendant is negligent or grossly negligent in any other matter that Plaintiff may discover through litigation." Those allegations fail to provide the Defendant fair notice of specific allegations of negligence or gross negligence and, quite frankly, cannot form the basis of any claim proceeding to trial.

CONCLUSION

Based on the foregoing discussion, the Defendant South Carolina Insurance Reserve Fund respectfully requests that the Court grant its motion for summary judgment and dismiss the Amended Complaint with prejudice.

Respectfully submitted,

LINDEMANN, DA IS HUGHES, P.A.

BY: Andrew F. Lindemann
ANDREW F. LINDEMANN 13030
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
TEL: 803-881-8920
Email: andrew@ldh-law.com

on behalf of the appellant
of the appellant herein

June 5, 2019

Nancy Morris, as assignee of Andrew J. Bland, et al

Plaintiff(s)

vs.

South Carolina Insurance Reserve Fund,

Defendant(s)

CIVIL ACTION COVERSHEET

2017-CP - 40- 00773Submitted By: Garrett B. JohnsonAddress: Elrod Pope Law Firm212 E. Black StreetP.O. Box 11091 (29731)Rock Hill, SC 29730SC Bar #: 81105Telephone #: (803) 324-7574Fax #: (803) 324-7545

Other: _____

E-mail: GJohnson@ElrodPope.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☒ Fraud/Bad Faith (150)
☐ Failure to Deliver/Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) _____ | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20____-NI-_____
☐ Notice/ File Med Mal (230)
☐ Other (299) _____ | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) _____ | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) _____ |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) _____ | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture—Consent Order (850)
☐ Other (899) _____ | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) _____ | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) _____ |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) _____
☐ Sexual Predator (510) | | | |
| ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | | |

Submitting Party Signature: _____

Date: November 1, 2017

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

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

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

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

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

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Nancy Morris, as assignee of Andrew J.)
Bland, PFC; Leemon E. Carner, PFC; Jerry)
Speissegger, Jr., PFC; and Priscilla Garrett,)
SGT;)

C.A. No.: 2017-CP-40-

Plaintiffs,)

SUMMONS

(Jury Trial Demanded)

-vs-)

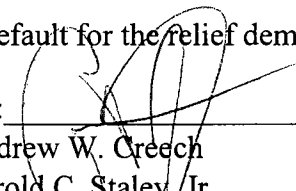
South Carolina Insurance Reserve Fund,)

Defendants.)

RICHLAND COUNTY
FILED
2017 NOV -6 PM 2:45
JEANETTE W. HOGAN
C.C.P. & C.S.

TO THE ABOVE NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED AND REQUIRED TO ANSWER the Summons and Complaint in this action, herewith of which a copy is served upon you, and to serve a copy of your answer to said Summons and Complaint on the subscriber at his office at 212 East Black Street, Rock Hill, SC, within thirty (30) days after the service hereof, exclusive of the day of such service; if you fail to answer the Summons and Complaint within the time aforesaid, the Plaintiff(s) in this action will apply to the Court for judgment by default for the relief demanded in the Complaint

By: 
Andrew W. Creech
Harold C. Staley, Jr.
Garrett B. Johnson
Elrod Pope Law Firm
212 E Black Street
Rock Hill, S.C. 29731
Phone: (803) 324-7574
ATTORNEYS FOR PLAINTIFF(S)

November 2, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Nancy Morris, as assignee of Andrew J.	)	C.A. No.: 2017-CP-40-
Bland, PFC; Leemon E. Carner, PFC; Jerry	)	
Speissegger, Jr., PFC; and Priscilla Garrett,	)	
SGT;	)	
	)	COMPLAINT
Plaintiffs,	)	(Jury Trial Demanded)
	)	
-vs-	)	
	)	
South Carolina Insurance Reserve Fund,	)	
	)	
Defendants.	)	

FILED
2017 NOV -6 PM 2:45
CLERK OF COURT
C.C.P. & J.S.

NOW COME the above-named Plaintiffs, complaining of the Defendants herein, who do allege and show unto this Honorable Court the following:

PARTIES AND JURISDICTION

1. Plaintiff Nancy Morris was, at all times relevant herein, a resident of the State of South Carolina, and is now a resident of the State of Missouri.
2. Plaintiff Nancy Morris is the duly-appointed personal representative for the Decedent, David Allan Woods.
3. Prior to his death in November 2010, David Allan Woods was a resident of Berkeley County, South Carolina.
4. Andrew J. Bland, PFC; Leemon E. Carner, PFC; Priscilla Garrett, SGT; and Jerry Speissegger, Jr. are residents of the State of South Carolina.
5. On August 30, 2017, Andrew J. Bland, PFC; Priscilla Garrett Bland, SGT; Leemon A. Carner, PFC; and Jerry Speissegger, Jr., PFC (hereinafter collectively referred to as "Assignors") did, for good and valuable consideration, irrevocably assign to Plaintiff Nancy Morris "any and all claims he/she may have against the South Carolina Insurance Reserve Fund

and/or any other persons, firms, government organizations, or entities that arise out of [C.A. No.: 5:12-cv-3177-RMG],” including, among others “bad-faith conduct and/or breach of contract by the Insurance Reserve Fund” in the handling of the claims related to that case. These assignments are attached as Exhibit A.

6. Plaintiff therefore has standing to assert all legally assignable claims, as alleged herein, against Defendant Insurance Reserve Fund.

7. Upon information and belief, Defendant IRF is a governmental entity organized and existing under the laws of the State of South Carolina and with its principle office in Richland County.

8. Upon information and belief, Defendant “functions as a governmental insurance operation with the mission to provide insurance specifically designed to meet the needs of governmental entities at the lowest possible cost. The Insurance Reserve Fund operates like an insurance company, by issuing policies, collecting premiums (based in consultation with actuaries), and by paying claims from the accumulated premiums in accordance with the terms and conditions of the insurance policies it has issued.”

FACTUAL BACKGROUND

9. On September 2, 2010, Mr. Woods was tried and convicted in absentia by way of bench trial on charges of Shoplifting Merchandise less than \$2,000.00 and Animal Nuisance.

10. Mr. Woods was ordered to pay a fine of \$2,130.00 or spend 30 days in jail for the shoplifting charge.

11. Mr. Woods was ordered to pay a fine of \$237.50 or spend 30 days in jail for the animal nuisance charge.

12. On October 12, 2010, a bench warrant was issued for Mr. Woods’s arrest.

13. Mr. Woods was booked and taken into custody at Hill-Finklea Detention Center.

14. Over the course of his confinement, Mr. Woods complained to jail and medical personnel of health problems including liver disease, intestinal pain, and blood in his stool.

15. At approximately 10:21 p.m. on Friday, November 5, 2010, Mr. Woods was reported to be lying on the floor of his cell and shaking.

16. At all times relevant herein, Hill-Finklea Detention Center contracted with Hope Clinic, LLC to provide medical services to inmates. Under the terms of this contract, Hope Clinic provided "nurse coverage... five (5) days per week, fifty-two weeks per year, except during County holidays, between the hours of 9:00 a.m. and 5:00 p.m."

17. At the time this report was made concerning Mr. Woods, Hope Clinic medical personnel had already left the facility for the weekend.

18. Sgt. Priscilla Garrett Bland responded to the call, along with PFC Ashley Harber, and transferred Mr. Woods to a medical observation cell.

19. For the next 60 hours, video surveillance footage shows Mr. Woods shaking and disoriented. He is unsteady on his feet, staggers around his cell, and falls at least twice. He defecates and urinates on himself, at one point lying in his own feces for a period of 16 hours.

20. During this 60-hour period, each of Assignors had multiple interactions with Mr. Woods. None attempted to secure medical assistance for him or to contact Hope Clinic personnel.

21. At approximately 8:30 a.m. on Monday, November 8, 2010, Mr. Woods was found lying on the floor of his cell naked and unresponsive. He was evaluated by the Hope Clinic nurse, who recommended that Mr. Woods be transported to the hospital.

22. EMS arrived at 9:52 a.m. and took Mr. Woods to Trident Medical Center, where "he could speak but only in a weak voice and not in sentences. He was receiving blood at the time,

had bright red blood and dark red blood around his rectum.” His prognosis was felt to be “bleak.”

23. Mr. Woods died three days later, on November 11, 2010, due to “severe blood loss with total body failure” secondary to an upper gastrointestinal bleed.

LIABILITY POLICY

24. At the time of Decedent’s death, Berkeley County maintained a policy of General Tort Liability Insurance issued by the South Carolina Budget and Control Board, Insurance Reserve Fund, Policy Number T130080011, attached as Exhibit B (hereinafter “the policy.”)

25. The policy was properly issued under S.C. Code § 1-11-140.

26. The effective dates of the policy were 2/13/2010 through 2/13/2011 and was thus in effect during the dates of Decedent’s confinement and death.

27. The policy obligated the Insurance Reserve Fund to “pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of: A. Personal injury.”

28. Persons insured under the policy included “Any employee of the entity designated in the declarations as named insured... but only while the employee is acting in the scope of his or her official duties.”

29. Berkeley County was a named insured under the policy.

30. At the time of the events complained of in the underlying action, Assignors were employees of Berkeley County acting within the course and scope of their employment and official duties.

31. Assignors are and were therefore entitled to coverage under the policy.

32. The position of Defendant Insurance Reserve Fund is that the maximum coverage available under the policy for the underlying action was \$600,000.00.

UNDERLYING ACTION: POSTURE

33. On September 20, 2012, Nancy Morris, as personal representative of the Estate of

David Allan Woods, filed suit against Defendants The Hope Clinic, LLC; Temisan Etikerentse, M.D.; Sue Brabham, R.N.; Berkeley County Sheriff H. Wayne DeWitt; Andrew J. Bland, PFC; Richard T. Burkholder, SGT; James M. Brophy, PFC; Leemon E. Carner, PFC; Patricia D. Collins, SGT; Charles A. DeSanto, CPL; Kendra B. Habersham, Staff SGT; Ashley A. Harber, PFC; Priscilla Scheetz¹, SGT; Jerry Speissegger, Jr., PFC; PFC Daaf; and John Does in the Circuit Court for Berkeley County, alleging causes of action under 42 U.S.C. 1983, Wrongful Death, Survival Action, and Intentional Infliction of Emotional Distress.

34. On November 2, 2012, Defendants removed the case to the United States District Court for the District of South Carolina, asserting federal question jurisdiction under the provisions of 28 U.S.C. §§ 1331 and 1343.

35. Robin Jackson of Senn Legal, LLC appeared as counsel for Assignors and the other defendants employed by Berkeley County.

36. Over the next nine months, the parties engaged in detailed written discovery, and took no fewer than 14 depositions, including those of all the Assignors and seven other county employees.

37. During this time, Defendant Insurance Reserve Fund and its attorney had ample opportunity to review deposition testimony, speak to its own clients, and observe the video footage from the medical observation cell demonstrating Mr. Woods's deteriorating condition and acute suffering, as well as the indifference of its own employees.

38. Defendant Insurance Reserve Fund had access to Mr. Woods's medical records, and was well aware of the fact that he had passed away as a result of its insureds' inaction.

¹ Priscilla Scheetz was divorced after the events complained of and prior to filing of the lawsuit, and the suit was subsequently amended to reflect her name as Priscilla Garrett. Prior to trial, she married Andrew J. Bland, PFC, but is referred to in the instant suit as Priscilla Garrett.

39. Defendant Insurance Reserve Fund was aware that Plaintiff was claiming punitive damages against its insureds, including Assignors, as was clearly set forth in her Complaint.

40. Defendant Insurance Reserve Fund was aware that Plaintiff was pursuing a claim under 42 U.S.C. 1983, which did not provide its insureds, including Assignors, with the damages caps set forth by the South Carolina Tort Claims Act, and therefore exposed them to a judgment in excess of the alleged \$600,000.00 policy limits.

41. Defendant Insurance Reserve Fund was aware that, pursuant to 42 U.S.C. 1988, Plaintiff's 42 U.S.C. 1983 claim, if successful, would entitle her to reasonable attorney's fees and costs.

UNDERLYING ACTION: NEGOTIATIONS

42. On August 1, 2013, the parties conducted a mediation at Elrod Pope Law Firm in Rock Hill, South Carolina. Robin L. Jackson, Esquire, of Senn Legal was present for the Defendant South Carolina Insurance Reserve Fund.

43. At the mediation, Plaintiff offered to accept \$1 million to settle all claims against the County Defendants, including Assignors, with \$600,000.00 to come from the Defendant Insurance Reserve Fund and \$400,000.00 to come from Berkeley County.

44. This constituted a reasonable offer to settle within the Insurance Reserve Fund's policy limits, and would have protected Assignors from the risk of any excess judgment.

45. Upon information and belief, Berkeley County was willing to pay the \$400,000.00.

46. Upon information and belief, Defendant Insurance Reserve Fund rejected Plaintiff's reasonable offer to settle the case within their policy limits and declined to tender the full \$600,000.00.

47. Defendant IRF rejected Plaintiff's reasonable offer to settle within the policy limits

without discussing the matter with Assignors or Assignors' personal attorney.

48. Defendant IRF rejected Plaintiff's reasonable offer to settle within the policy limits without retaining independent counsel to advise Assignors of their rights with respect to Plaintiff's offer to settle.

49. Defendant IRF rejected Plaintiff's reasonable offer to settle within the policy limits without informing Assignors that the offer had been rejected.

50. Plaintiff's position was reiterated in a letter addressed to Hattie Taylor on September 12, 2013 indicating that Plaintiff would now seek to collect any excess judgment obtained against Berkeley County from the IRF, pursuant to Tyger River Pine Co. v. Maryland Casualty Co., 170 S.C. 286, 170 S.E. 346 (1933). (Exhibit C).

51. Defendant Insurance Reserve Fund reiterated their refusal to tender the policy limits in a letter of October 22, 2013, written by Chris Lombard, in which Defendant offered \$500,000.00 "to settle this matter on behalf of Berkeley County and all the Berkeley County individual defendants." (Exhibit D).

52. Defendant Insurance Reserve Fund again staked out their position on January 10, 2014, when they made an Offer of Judgment of \$500,000.00 through new counsel Eugene P. Corrigan, III. (Exhibit E).

53. It was not until August of 2014 that counsel for Assignors and the County Defendants offered \$600,000.00 to settle the case, which offer was declined in a letter of August 13, 2014. (Exhibit F).

54. It was not until the day of trial, October 14, 2014, that counsel for Assignors and the County Defendants offered the \$1,000,000.00 that Plaintiff initially demanded at mediation. Plaintiff declined the offer, choosing to pursue an excess verdict against Defendant Insurance

Reserve Fund's insureds.

UNDERLYING ACTION: TRIAL AND JUDGMENT

55. Prior to trial, Plaintiff had dismissed her state court claims and numerous defendants, proceeding to trial solely against Assignors on the 42 U.S.C. 1983 claim.

56. On October 17, 2014, Plaintiff obtained a judgment in the amount of \$500,000.00 for actual damages; \$150,000.00 in punitive damages against Andrew J. Bland, PFC; \$150,000.00 in punitive damages against Leemon E. Carner, PFC; \$150,000.00 in punitive damages against Jerry Speissegger, Jr., PFC; \$1,000,000.00 in punitive damages against Richard T. Burkholder, SGT; and \$1,000,000.00 in punitive damages against Priscilla Garrett, SGT. (Exhibit G).

57. By order of the court, the verdict for compensatory damages was partially offset and reduced to \$171,875.00.

58. Plaintiff was subsequently awarded \$354,293.00 in attorney's fees and \$31,820.62 in costs.

59. Assignors appealed the decision to the Fourth Circuit, which affirmed the District Court on November 16, 2016.

60. Defendant IRF's rejection of Plaintiff's reasonable offer to settle for the available limits of the policy and the resulting judgment against Assignors provides Assignors with a cause of action against Defendant IRF for breach of contract and breach of the implied covenant of good faith and fair dealing, in light of (i) the nature and scope of damages suffered by David Woods; (ii) the probable liability of Assignors; (iii) the substantial risk of a recovery in excess of Plaintiff's reasonable offer to settle; and (iv) the danger of a judgment in excess of the limits of the policy.

61. Each and every Assignor possesses these causes of action individually.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

62. Plaintiff hereby incorporates by reference all foregoing allegations.
63. Assignors and Defendant Insurance Reserve Fund had a mutually binding contract of insurance.
64. Defendant IRF breached that contract of insurance by its failure, refusal, and neglect:
- a. To consult as to Defendant IRF's rejection of Plaintiff's reasonable offer to settle with:
 - i. Andrew J. Bland, PFC;
 - ii. Leemon E. Carner, PFC;
 - iii. Jerry Speissegger, Jr., PFC;
 - iv. Priscilla Garrett, SGT;
 - b. To discuss said offer prior to rejecting with or with counsel for:
 - i. Andrew J. Bland, PFC;
 - ii. Leemon E. Carner, PFC;
 - iii. Jerry Speissegger, Jr., PFC;
 - iv. Priscilla Garrett, SGT;
 - c. To retain independent counsel to provide advice concerning Plaintiff's reasonable offer to settle and his or her rights concerning the same to:
 - i. Andrew J. Bland, PFC;
 - ii. Leemon E. Carner, PFC;
 - iii. Jerry Speissegger, Jr., PFC;
 - iv. Priscilla Garrett, SGT;

- d. To settle Plaintiff's claim for an amount up to and including the full policy limits;
- e. To accept Plaintiff's reasonable settlement offer within the policy limits.

65. Defendant IRF breached the contract as set forth above with regard to each and every Assignor individually.

66. As a proximate result of Defendant IRF's breach of contract, Assignors have been injured and otherwise suffered damages, as set forth more fully herein.

67. By nature of her assignments, Plaintiff is entitled to recover from Defendant IRF all damages incurred by Assignors as a result of this breach, including all actual damages, both pre-judgment and post-judgment interest, attorney's fees and costs, and for such other and further relief, in law or in equity, in favor of Assignee as this Court may deem just and proper.

FOR A SECOND CAUSE OF ACTION
(Negligence/Gross Negligence)

68. Plaintiff hereby incorporates by reference all foregoing allegations.

69. Defendant Insurance Reserve Fund had notice of Plaintiff's claim by September 20, 2012 at the latest.

70. Defendant IRF was negligent, grossly negligent, careless, reckless, willful, and wanton in the following particulars:

- a. In failing to process and adjust in a timely fashion Plaintiff's claims against:
 - i. Andrew J. Bland, PFC;
 - ii. Leemon E. Carner, PFC;
 - iii. Jerry Speissegger, Jr., PFC;
 - iv. Priscilla Garrett, SGT;
- b. In failing to establish reasonable procedures for the processing and handling of claims that are made against its insureds;

- c. In deviating from the standard of care that a reasonable and prudent insurance company would employ under the circumstances;
- d. In any other such acts that constitute a violation of the laws or common law of the State of South Carolina;
- e. In any other matter that Plaintiff may discover through litigation.

71. Defendant IRF's negligent, grossly negligent, careless, reckless, willful, and wanton conduct affected each Assignor individually.

72. As a proximate result of Defendant IRF's negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness, Assignors have been injured and otherwise suffered damages, as set forth more fully herein.

73. Assignors' damages would not have occurred but for Defendant IRF's conduct, described more fully herein.

74. Assignors' damages occurred as a natural and probable consequence of Defendant IRF's conduct.

75. By nature of her assignments, Plaintiff is entitled to recover from Defendant IRF actual, compensatory damages, including the full amount of the verdict not yet satisfied, plus interest accruing from October 17, 2014; exemplary or punitive damages in an amount that is fair, just, and reasonable under the circumstances; and whatever costs, interest, both pre-judgment and post-judgment, and attorney's fees that the Court deems proper.

FOR A THIRD CAUSE OF ACTION
(Bad Faith)

76. Plaintiff hereby incorporates by reference all foregoing allegations.

77. Defendant Insurance Reserve Fund provides insurance to governmental entities.

78. Upon information and belief, Defendant IRF presents claims made against its

insureds to adjusters to oversee these files and to work toward adjusting and resolving those claims.

79. Upon information and belief, once a claim is presented to an adjuster, that adjuster maintains control over the claim and is involved in all claims handling decisions.

80. Upon information and belief, the underlying claim of Plaintiff Nancy Morris as Personal Representative of the Estate of David Allan Woods was assigned to an adjuster employed by Defendant IRF, and at all relevant times, Defendant IRF assumed and maintained control of Plaintiff's claim.

81. Defendant IRF has a duty to deal in good faith and fair dealing with its insureds, including Assignors.

82. Defendant IRF held that duty to each Assignor individually.

83. Assignors and/or their employer promptly reported the underlying claim to Defendant IRF, and have otherwise performed all conditions required by the policy.

84. Assignors did not make any demand or request to Defendant IRF, or to any of its adjusters or employees, that Defendant IRF not settle Plaintiff's claim.

85. Assignors did nothing to impair Defendant IRF's assessment of the substantial risk of an excess judgment.

86. Defendant IRF failed to promptly and effectively investigate Plaintiff's claim.

87. Defendant IRF failed to timely settle Plaintiff's claim within the available policy limits, even though Defendant IRF had the opportunity to do so.

88. Defendant IRF rejected Plaintiff's offer to settle within the policy limits without consulting Assignors; did not conduct an adequate or appropriate investigation into Plaintiff's claim; failed to retain independent counsel to advise Assignors of their rights with respect to Plaintiff's reasonable offer to settle; did not retain coverage counsel to properly review Plaintiff's

reasonable offer to settle; and otherwise failed to act as a reasonable and prudent insurer would act under similar circumstances.

89. Defendant IRF's failure to timely evaluate and settle Plaintiff's claim caused Plaintiff's settlement demand to be withdrawn, exposing Assignors to personal financial risk.

90. Defendant IRF has refused, and continues to refuse, to protect Assignors from personal exposure in this matter.

91. Defendant IRF has breached the implied covenants of good faith and fair dealing with regard to the insurance policy by, among other acts or omissions, failing to settle Plaintiff's claim for the amount of the applicable insurance coverage when presented with the opportunity to do so.

92. Defendant IRF has acted in bad faith and/or was negligent, grossly negligent, careless, reckless, willful, and wanton in the following particulars:

- a. In failing to timely investigate Plaintiff's liability claim;
- b. In failing to make an offer of the full \$600,000.00 policy limits in response to Plaintiff's reasonable demand to settle the case for that amount;
- c. In failing to timely inform of Plaintiff's reasonable offer to settle the case;
- d. In failing to retain independent counsel to protect the interests of:
 - i. Andrew J. Bland, PFC;
 - ii. Leemon E. Carner, PFC;
 - iii. Jerry Speissegger, Jr., PFC;
 - iv. Priscilla Garrett, SGT;
- e. In failing to retain independent counsel to advise:
 - i. Andrew J. Bland, PFC;

- ii. Leemon E. Carner, PFC;
 - iii. Jerry Speissegger, Jr., PFC;
 - iv. Priscilla Garrett, SGT;
- f. In exposing to excess personal liability:
 - i. Andrew J. Bland, PFC;
 - ii. Leemon E. Carner, PFC;
 - iii. Jerry Speissegger, Jr., PFC;
 - iv. Priscilla Garrett, SGT;
- g. In failing to act reasonably in light of the totality of the circumstances presented by Plaintiff's claim;
- h. In failing to act as a reasonable and prudent insurer would act in regards to Plaintiff's claim;
- i. In failing to acknowledge with reasonable promptness pertinent communications with respect to Plaintiff's underlying claim;
- j. In failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims, including Plaintiff's claim, arising under its policies;
- k. In failing to attempt in good faith to effect a fair, prompt, and equitable resolution to Plaintiff's claim after liability had become reasonably clear;
- l. In compelling Plaintiff to institute a suit to recover amounts reasonably due or payable with respect to claims arising under Defendant IRF's policy by offering substantially less than the amounts ultimately recovered through suits brought by the claimants as the result of the inability of Plaintiff to effect reasonable settlements with Defendant IRF;

- m. In offering to settle Plaintiff's claim for an amount less than the amount otherwise reasonably due or payable based upon the possibility or probability that Plaintiff would be required to incur attorneys' fees to recover the amount reasonably due or payable;
- n. In engaging in practices which constituted an unreasonable delay in paying or an unreasonable failure to pay Plaintiff's claim;
- o. In violating the laws and statutes of the State of South Carolina, including but not limited to S.C. Code § 38-59-20.

93. Defendant IRF's breach of its duty of good faith and fair dealing was the direct and proximate cause of damage to each and every Assignor in his or her individual capacity, those damages including mental anguish, anxiety, stress, expenses, and incurring personal judgments.

94. As a direct and proximate result of Defendant IRF's breach of its duty of good faith and fair dealing, each and every Assignor in his or her individual capacity has been and continue to be injured in the following ways:

- a. In suffering personal exposure to unsatisfied judgments;
- b. In incurring attorney's fees and expenses;
- c. In suffering the mental anguish, anxiety, and stress of being sued by Plaintiff and the knowledge that such suit would likely lead to excessive personal financial responsibility;
- d. In such other ways as would cause Assignors' additional and unnecessary pain, suffering, mental anguish, and aggravation.

95. Each and every Assignor's damages in their individual capacity would not have occurred but for Defendant IRF's breach of its duty of good faith and fair dealing.

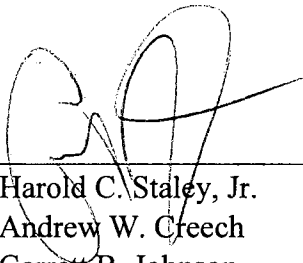
96. By nature of the assignments, Plaintiff is entitled to judgment against Defendant IRF for actual, compensatory damages, including the full amount of the verdict not yet satisfied, plus interest accruing from October 17, 2014; exemplary or punitive damages in an amount that is fair, just, and reasonable under the circumstances; and whatever costs, interest, both pre-judgment and post-judgment, and attorney's fees that the Court deems proper.

97. Moreover, Defendant IRF is liable to Plaintiff for attorney's fees in prosecuting this action pursuant to S.C. Code Ann. § 38-59-40.

WHEREFORE, Plaintiff prays for judgment against Defendant in a sum to be determined by a jury of Plaintiff's peers and to exceed one hundred thousand dollars (\$100,000.00), thus meeting the requirements set under the South Carolina Rules of Civil Procedure Rule 30 (h), and should include actual damages, future damages, punitive damages in a reasonable amount, and the costs and disbursements of this action and for such other and further relief that this Court or jury deems just and proper.

Respectfully,

By:



 Harold C. Staley, Jr.
 Andrew W. Creech
 Garrett B. Johnson
 Elrod Pope Law Firm
 212 E Black Street
 P.O. Box 11091 (29731)
 Rock Hill, S.C. 29730
 Phone: (803) 324-7574

ATTORNEYS FOR PLAINTIFF

November 2, 2017
 Rock Hill, South Carolina

EXHIBIT A

Record on Appeal073

1

Fund or any other insurance company, adjuster, agency, broker, or organization in order to collect the excess judgment or to prosecute any of the claims hereby assigned to Nancy Morris.

The undersigned expressly waives any attorney/client privilege concerning his/her prior representation in civil action number 5:12-cv-03177-RMG to the extent necessary to assist in the pursuit of any litigation arising from this assignment.

The undersigned acknowledges that he/she has sought the advice of counsel regarding this assignment, is under no undue coercion or duress, is of sound mind and body, and believes the assignment to be in his/her best interests and supported by valuable consideration.

In consideration of this assignment, Plaintiff hereby covenants not to execute against any assets of the undersigned. Plaintiff furthermore agrees to dismiss the undersigned from civil action number 2017-CP-08-1439, currently pending in Berkeley County. Plaintiff covenants not to institute any further claims, lawsuits, bankruptcy proceedings, or other causes of action against the undersigned to enforce or collect on the above judgment.

This assignment is intended to bind the parties hereto and their heirs and assigns.

THIS ASSIGNMENT IS IRREVOCABLE.

Christopher P. Biering
David C. Stahl 1.
Attorney for Andrew J. Bland

Christopher P. Biering
Andrew Bland
Printed Name

Andrew J. Bland
Andrew J. Bland

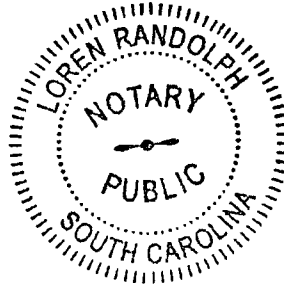
W. H. Green
Witness

SWORN to and Subscribed Before Me

This 30th day of August, 2017.

Loren Randolph
Notary Public of South Carolina

My Commission Expires: 6-1-2026



I hereby accept this assignment and agree that all sums received shall be applied to the judgment against Andrew J. Bland.

Nancy Morris, as personal representative
of the Estate of David Allan Woods

Record on Appeal076

C.A. No.: 5:12-cv-3177-RMG

ASSIGNMENT OF RIGHTS AND COVENANT NOT TO EXECUTE

The undersigned agrees to be deposed and testify at trial in any cause of action that is brought against the State Fiscal Accountability Authority, the South Carolina Insurance Reserve

Fund or any other insurance company, adjuster, agency, broker, or organization in order to collect the excess judgment or to prosecute any of the claims hereby assigned to Nancy Morris.

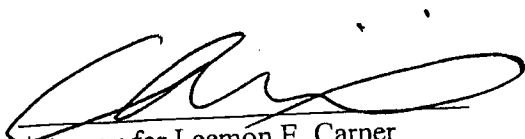
The undersigned expressly waives any attorney/client privilege concerning his/her prior representation in civil action number 5:12-cv-03177-RMG to the extent necessary to assist in the pursuit of any litigation arising from this assignment.

The undersigned acknowledges that he/she has sought the advice of counsel regarding this assignment, is under no undue coercion or duress, is of sound mind and body, and believes the assignment to be in his/her best interests and supported by valuable consideration.

In consideration of this assignment, Plaintiff hereby covenants not to execute against any assets of the undersigned. Plaintiff furthermore agrees to dismiss the undersigned from civil action number 2017-CP-08-1439, currently pending in Berkeley County. Plaintiff covenants not to institute any further claims, lawsuits, bankruptcy proceedings, or other causes of action against the undersigned to enforce or collect on the above judgment.

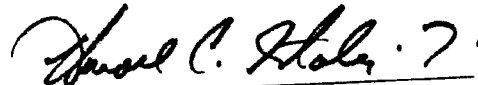
This assignment is intended to bind the parties hereto and their heirs and assigns.

THIS ASSIGNMENT IS IRREVOCABLE.


Attorney for Leemon E. Carner

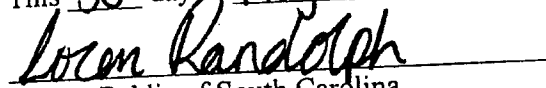
Christopher P. Bierning
Printed Name


Leemon E. Carner

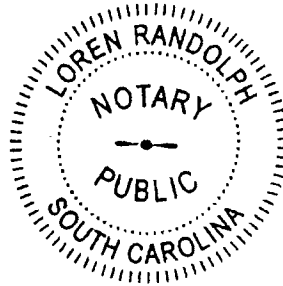

Witness

SWORN to and Subscribed Before Me

This 30th day of August, 2017.


Notary Public of South Carolina

My Commission Expires: 6-1-2026



I hereby accept this assignment and agree that all sums received shall be applied to the judgment against Leemon E. Carner.

Nancy Morris, as personal representative
of the Estate of David Allan Woods

Record on Appeal079

The undersigned agrees to be deposed and testify at trial in any cause of action that is brought against the State Fiscal Accountability Authority, the South Carolina Insurance Reserve

Fund or any other insurance company, adjuster, agency, broker, or organization in order to collect the excess judgment or to prosecute any of the claims hereby assigned to Nancy Morris.

The undersigned expressly waives any attorney/client privilege concerning his/her prior representation in civil action number 5:12-cv-03177-RMG to the extent necessary to assist in the pursuit of any litigation arising from this assignment.

The undersigned acknowledges that he/she has sought the advice of counsel regarding this assignment, is under no undue coercion or duress, is of sound mind and body, and believes the assignment to be in his/her best interests and supported by valuable consideration.

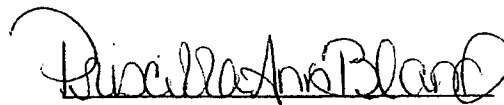
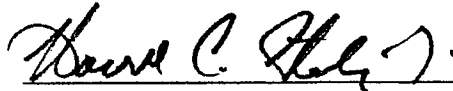
In consideration of this assignment, Plaintiff hereby covenants not to execute against any assets of the undersigned. Plaintiff furthermore agrees to dismiss the undersigned from civil action number 2017-CP-08-1439, currently pending in Berkeley County. Plaintiff covenants not to institute any further claims, lawsuits, bankruptcy proceedings, or other causes of action against the undersigned to enforce or collect on the above judgment.

This assignment is intended to bind the parties hereto and their heirs and assigns.

THIS ASSIGNMENT IS IRREVOCABLE.


Attorney for Priscilla Garrett Bland

Christopher P. Bicing
Printed Name

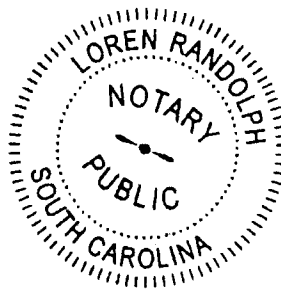

Priscilla ~~Garrett~~ ^{Ann} Bland

Witness

SWORN to and Subscribed Before Me

This 30th day of August, 2017.


Notary Public of South Carolina

My Commission Expires: 6-1-2026



I hereby accept this assignment and agree that all sums received shall be applied to the judgment against Priscilla Garrett Bland.

Nancy Morris, as personal representative
of the Estate of David Allan Woods

Record on Appeal082

C.A. No.: 5:12-cv-3177-RMG

ASSIGNMENT OF RIGHTS AND COVENANT NOT TO EXECUTE

The undersigned agrees to be deposed and testify at trial in any cause of action that is brought against the State Fiscal Accountability Authority, the South Carolina Insurance Reserve

Fund or any other insurance company, adjuster, agency, broker, or organization in order to collect the excess judgment or to prosecute any of the claims hereby assigned to Nancy Morris.

The undersigned expressly waives any attorney/client privilege concerning his/her prior representation in civil action number 5:12-cv-03177-RMG to the extent necessary to assist in the pursuit of any litigation arising from this assignment.

The undersigned acknowledges that he/she has sought the advice of counsel regarding this assignment, is under no undue coercion or duress, is of sound mind and body, and believes the assignment to be in his/her best interests and supported by valuable consideration.

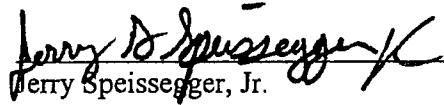
In consideration of this assignment, Plaintiff hereby covenants not to execute against any assets of the undersigned. Plaintiff furthermore agrees to dismiss the undersigned from civil action number 2017-CP-08-1439, currently pending in Berkeley County. Plaintiff covenants not to institute any further claims, lawsuits, bankruptcy proceedings, or other causes of action against the undersigned to enforce or collect on the above judgment.

This assignment is intended to bind the parties hereto and their heirs and assigns.

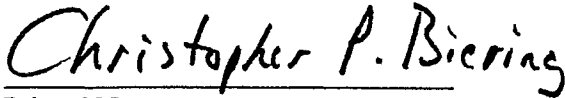
THIS ASSIGNMENT IS IRREVOCABLE.



Attorney for Jerry Speissegger, Jr.



Jerry Speissegger, Jr.



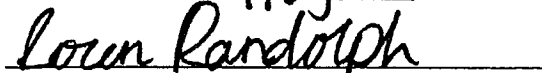
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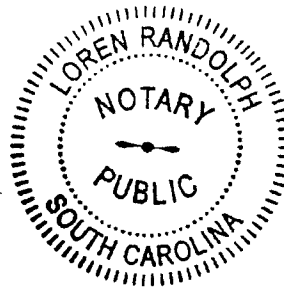
SWORN to and Subscribed Before Me

This 30th day of August, 2017.



Notary Public of South Carolina

My Commission Expires: 6-1-2026



I hereby accept this assignment and agree that all sums received shall be applied to the judgment against Jerry Speissegger, Jr.

Nancy Morris, as personal representative
of the Estate of David Allan Woods

EXHIBIT B

THE SOUTH CAROLINA STATE BUDGET AND CONTROL BOARD

OFFICE OF INSURANCE RESERVE FUND
POST OFFICE BOX 11066
COLUMBIA, SOUTH CAROLINA 29211

Phone: (803) 737-0020

TORT LIABILITY INSURANCE POLICY**POLICY PROVISIONS****STATE BUDGET AND CONTROL BOARD****OFFICE OF INSURANCE RESERVE FUND
(HEREINAFTER CALLED THE FUND)**

P. O. BOX 11066
1201 MAIN STREET, SUITE 500
COLUMBIA, S. C. 29211
803-737-0020

These policy provisions, with declarations, and endorsements, if any, issued to form a part thereof, complete your Tort Liability Insurance Policy. This policy is made and accepted subject to the following provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy, together with such other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

The time of inception and the time of expiration of this policy and of any schedule or endorsement attached shall be 12:01 AM standard time at the location of property involved. To the extent that coverage in this policy replaces coverage in other policies terminating noon standard time on the inception date of this policy, coverage under this policy shall not become effective until other such coverage has terminated.

This policy is made and accepted subject to the foregoing stipulations and conditions and to the following stipulations and conditions printed on back hereof, or attached hereon, which are hereby specially referred to and made a part of this Policy, together with such other provisions, agreements, or conditions as may be endorsed herein or added hereto; and no officer, agent or other representative of said Board shall have power to waive any provision or condition of this Policy except such as by the terms of this Policy may be the subject of agreement endorsed hereon or added hereto; and as to such provisions and conditions no officer, agent, or representative shall have such power to be deemed or held to have waived such provisions or conditions unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this Policy exist or be claimed by the Insured unless so written or attached.

Assignment of this Policy shall not be valid except with the written consent of the Fund.

IN WITNESS THEREOF The State Budget and Control Board of the State of South Carolina, through the Office of Insurance Reserve Fund executed and attested these presents.

OFFICE OF INSURANCE RESERVE FUND

By James E. Bennett
Insurance Reserve Fund Officer

STATE BUDGET AND CONTROL BOARD OFFICE OF INSURANCE RESERVE FUND

I. COVERAGE A - PERSONAL INJURY LIABILITY COVERAGE B - PROPERTY DAMAGE LIABILITY

The Fund will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of

- A. Personal Injury or
- B. Property Damage to which this applies caused by an occurrence.

The Fund shall have the right and duty to defend any suit against the insured seeking damages on account of such personal injury or property damage, even if any of the allegations of the suit are groundless, false, or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Fund shall not be obligated to pay any claim or judgement or to defend any suit after the applicable limit of the Fund's liability has been exhausted by payment of judgements or settlements.

II. SUPPLEMENTARY PAYMENTS

The Fund will pay, in addition to the applicable limit of liability:

- (a) All expenses incurred by the Fund, all costs taxed against the insured in any suit defended by the Fund and all interest on the entire amount of any judgement therein which accrues after entry of the judgement and before the Fund has paid or tendered or deposited in court that part of the judgement which does not exceed the limit of the Fund's liability thereon.
- (b) Premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required of the insured because of accident or traffic law violation arising out of the use of any vehicle to which this policy applies, not to exceed \$250 per bail bond, but the Fund shall have no obligation to apply for or furnish any such bonds.
- (c) At the request of the insured, to or for each person who sustains bodily injury caused by an accident all reasonable medical expense incurred within one year from the date of the accident on account of such bodily injury, provided such bodily injury arises out of (a) a condition in the insured premises, or (b) operations with respect to which the named insured is afforded coverage for bodily injury liability under this policy, not to exceed \$1,000 per person, such payments shall be excess over any valid and collectible insurance, Medicare, or Medicaid. The applicable limit of the Fund's liability will be reduced by any medical expense payments.
- (d) Reasonable expenses incurred by the insured at the Fund's request in assisting the Fund in the investigation or defense of any claim or suit, including actual loss of earnings not to exceed \$250 per day.
- (e) Defense costs, including legal fees, travel, expert witness fees, and court reporter fees, for all suits against an insured not covered by this policy, auto liability policies, aircraft liability policies, or medical professional liability policies, but only if the suit was served on or after January 1, 2001, subject to an annual aggregate limit of \$15,000 for defense costs for all suits covered under this paragraph.

III. DEFINITIONS

When used in this policy:

"Automobile" means a licensed or unlicensed land motor vehicle, trailer or semi-trailer designed for use principally on public roads (including any machinery or apparatus attached thereto), but does not include mobile equipment.

"Bodily Injury" means bodily injury, sickness or disease sustained by any person which occurs during the policy period, including death at any time resulting therefrom.

"Handicap" means physical disability.

"Insured" means any person, entity or organization qualifying as an insured in the "Persons Insured" provision. The insurance afforded applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the Fund's liability.

"Mobile Equipment" means a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled;

- (1) not subject to motor vehicle registration,
- (2) maintained for use exclusively on premises owned by or rented to the named insured, including the ways immediately adjoining, or
- (3) designed for use principally off public roads, or
- (4) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle: power cranes, shovels, loaders, diggers and drills; concrete mixers (other than the mix-in-transit type); graders, scrapers, rollers and other road construction or repair equipment; air compressors, pumps and generators, including spraying, welding and building cleaning equipment; and geophysical exploration and well servicing equipment.

"Named Insured" means the person or entity named in Item 1 of the declarations of this policy.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which result in personal injury or property damage neither expected nor intended from the standpoint of the insured.

"Personal Injury" means:

- (1) bodily injury caused by an occurrence.
- (2) injury arising out of one or more of the following offenses committed during the policy period:
 - (a) false arrest, detention, imprisonment, malicious prosecution; or humiliation resulting from false arrest, detention, imprisonment or malicious prosecution.
 - (b) wrongful entry or eviction or other invasion of the right of private occupancy;
 - (c) a publication or utterance of a libel or slander or other defamatory or disparaging material;
 - (d) assault and battery not committed by or at the direction of the insured unless committed for the purpose of protecting persons or property;
 - (e) discrimination on the basis of race, sex, age, religion, or handicap;
 - (f) denial of due process as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States;

- (g) violation of the following Amendments to the Constitution of the United States:

First Amendment
Fourth Amendment
Eighth Amendment

"Policy Territory" means:

- (1) the United States of America, its territories or possessions, or
- (2) international waters or air space, provided the personal injury or property damage does not occur in the course of travel to any other country or nation, or
- (3) anywhere in the world with respect to "bodily injury, property damage or personal injury" arising out of the activities of any "insured" permanently domiciled in the United States of America, though temporarily outside the United States of America, its territories and possessions or Canada, provided the original suit for damages because of any such injury or damage is brought within the United States of America, its territories or possessions.

Such insurance as is afforded by paragraph (3) above shall not apply to Premises Medical Payments Coverage.

"Professional Services" means the rendering of medical or architectural services by individuals with training in the profession who are licensed or certified to practice the profession.

"Property Damage" means:

- (1) physical injury to or destruction of tangible property which occurs during the policy period, including the loss of use thereof at any time resulting therefrom, or
- (2) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an **occurrence** during the policy period.

"Volunteer Employee" means:

- (1) any person or entity who, of his own free will, provides goods or services, without any financial gain, to any agency, instrumentality or political subdivision of the State; or
- (2) any person performing public service employment, either voluntarily or as directed by a court or other authority, in lieu of fines and/or incarceration.

IV. PERSONS INSURED

Each of the following is an insured under this insurance to the extent set forth below:

- (a) The entity designated in the declarations as **named insured** is an insured.
- (b) Any employee of the entity designated in the declarations as **named insured** is an insured, but only while the employee is acting in the scope of his or her official duties.
- (c) Any **volunteer employee** of the entity designated in the declarations as **named insured** is an insured, but only while the **volunteer employee** is acting in the scope of his or her official duties.
- (d) With respect to the operation, for the purpose of locomotion upon a public highway, of mobile equipment registered under any motor vehicle registration law;
 - (i) an employee of the **named insured** while operating any such equipment in the scope of his or her official duties for the insured, and
 - (ii) any other person while operating with the permission of the **named insured** any such equipment registered in the name of the named insured and any person or organization legally responsible for such operation, but only if there is no other valid and collectible insurance available, either on a primary or excess basis, to such person or

organization; provided that no person or organization shall be an insured under this paragraph (d) with respect to:

- (1) **bodily injury** to any fellow employee of such person injured in the scope of his or her official duties for the insured, or
- (2) **property damage** to property owned by, rented to, in charge of or occupied by the named insured or the employer of any person described in subparagraph (ii).

V. LIMIT OF LIABILITY

Regardless of the number of (1) insureds under this policy, (2) persons or organizations who sustain **personal injury** or **property damage**, or (3) claims made or suits brought on account of **personal injury** or **property damage**, the Fund's liability is limited as follows:

The total liability of the Fund for all damages as the result of any **occurrence** including damages for care and loss of services, because of **personal injury** sustained by one or more persons, because of all **property damage** sustained by one or more persons or organizations, or by any combination of **personal injury** or **property damage** sustained by one or more persons or organizations, shall not exceed the limit of liability stated in the declarations as applicable to each **occurrence**. However, for any action or claim brought under the provisions of Chapter 78 of the South Carolina Code of Laws, cited as the "South Carolina Tort Claims Act", the liability of the Fund shall not exceed the following limits:

- (a) Occurrences arising prior to July 1, 1998:
 - (1) No person shall recover in any one action or claim a sum exceeding 250,000 dollars because of loss arising from a single **occurrence** regardless of the number of agencies or political subdivisions involved.
 - (2) The total sum recovered arising out of a single **occurrence** shall not exceed 500,000 dollars regardless of the number of agencies or political subdivisions involved.
- (b) Occurrences arising on or after July 1, 1998:
 - (1) No person shall recover in any one action or claim a sum exceeding 300,000 dollars because of loss arising from a single **occurrence** regardless of the number of agencies or political subdivisions involved.
 - (2) The total sum recovered arising out of a single **occurrence** shall not exceed 600,000 dollars regardless of the number of agencies or political subdivisions involved.

Liability limits in excess of those stated in (a) and (b) shall apply only in actions or claims to which Chapter 78 does not apply.

The property damage liability coverage applies only to the amount of damages in excess of a \$250 per claim deductible sustained by one person or organization as the result of any one **occurrence**. The Fund may pay any part or all of the deductible amount to effect settlement of any claim or suit and, upon notification of the action taken, the Insured shall promptly reimburse the Fund for such part of the deductible amount as has been paid by the Fund.

For the purpose of determining the limit of the Fund's liability, all **personal injury** and **property damage** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **occurrence**.

VI. EXCLUSIONS

This insurance does not apply:

- (a) to liability assumed by the insured under any contract or agreement;
- (b) to **personal injury or property damage** arising out of the ownership, maintenance, operation, use, loading or unloading of
 - (1) any automobile or aircraft owned or operated by or rented or loaned to any insured and/or
 - (2) any other automobile or aircraft operated by any person in the scope of his or her official duties for the insured; but this exclusion does not apply to the parking of an automobile on premises owned by, rented to or controlled by the named insured or the ways immediately adjoining, if such automobiles are not owned by or rented or loaned to any insured, or
 - (3) any aircraft under the guidance of an air traffic controller employed by any insured;
- (c) to **personal injury or property damage** arising out of the ownership, maintenance, operation, use, loading or unloading of any **mobile equipment** while being used in any prearranged or organized racing, speed, or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity;
- (d) to **personal injury or property damage** arising out of and in the course of the transportation of **mobile equipment** by an automobile owned or operated by or rented or loaned to any insured;
- (e) to **personal injury or property damage** arising out of the ownership, maintenance, operation, use, loading or unloading of
 - (1) any watercraft, in excess of twenty-six (26) feet in length, owned or operated by or rented or loaned to any insured, or
 - (2) any other watercraft, in excess of twenty-six (26) feet in length, operated by any person in the scope of his or her official duties for the insured; by any insured; but this exclusion does not apply to watercraft while ashore on premises owned by, rented to or controlled by the named insured;
- (f) to **personal injury or property damage** arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritant, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental;
- (g) to **personal injury or property damage** due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the following, with respect to
 - (1) liability assumed by the insured under contract
 - (2) expenses for medical expense under the Supplementary Payments provision;
- (h) to any obligation for which the insured or any carrier as his insurer may be held liable under any workers' compensation; unemployment compensation or disability benefits law, or under any similar law;
- (i) to **bodily injury** to
 - (1) an employee of the insured arising out of and in the scope of his or her official duties for the insured; or
 - (2) the spouse, child, parent, brother or sister of that employee as a consequence of (1) above.

This exclusion applies:

- (1) whether the insured may be liable as an employer or in any other capacity; and
 - (2) to any obligation to share damages with or repay someone else who must pay damages because of the injury.
- to **property damage** to
- (1) property owned or occupied by or rented to the insured,
 - (2) property used by the insured,
 - (3) property in the care, custody or control of the

insured or as to which the insured is for any purpose exercising physical control, or

- (4) property (including money) seized by the insured whether legally or illegally;
- (k) to **property damage** to premises alienated by the named insured arising out of such premises or any part thereof;
- (l) to loss of use of tangible property which has not been physically injured or destroyed resulting from a delay in or lack of performance by or on behalf of the insured or any contract or agreement;
- (m) to **personal injury or property damage** due to rendering of or failure to render any professional service;

(n) NUCLEAR ENERGY LIABILITY EXCLUSION (Broad Form)

I. This policy does not apply:

A. Under any Liability Coverage, to personal injury or property damage

- (1) with respect to which an insured under this policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

- (2) resulting from the hazardous properties of nuclear material and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Under any Medical Payments Coverage, to expenses incurred with respect to personal injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.

C. Under any Liability Coverage, to personal injury or property damage resulting from the hazardous properties of nuclear material, if

- (1) the nuclear material (a) is at any nuclear facility owned by, or operated by or on behalf of an insured, or (b) has been discharged or dispersed therefrom;
- (2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured, or
- (3) the personal injury or property damage arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to property damage to such nuclear facility and any property thereat.

II. As used herein:

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or byproduct material;

"source material," "special nuclear material," and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"waste" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"nuclear facility" means

- (a) any nuclear reactor;
- (b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel or (3) handling, processing or packaging waste;
- (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"property damage" includes all forms of radioactive contamination of property;

- (o) to any **personal injury** or **property damage** resulting from retaliation. This policy excludes coverage for any claim or suit that is based upon any statute which provides a remedy for retaliation or which prohibits retaliation including, but not limited to, whistleblower statutes and those statutory remedies prescribed for retaliation based upon the making of a complaint or upon participation in some proceeding or process. This exclusion applies to any statutory remedy for retaliation or to any retaliation prohibited by statute even where the retaliation relates to a covered personal injury or property damage.
- (p) to **bodily injury** or **property damage** arising out of or in any way connected with the operation of the principals of eminent domain, condemnation proceedings, inverse condemnation, or takings, by whatever name called, whether such liability accrues directly against the insured or by virtue of any agreement entered into by or on behalf of the insured.

VII. CONDITIONS

1. Premium.

All premiums for this policy shall be computed in accordance with the Fund's rules, rates, rating plans, premiums and minimum premiums applicable to the insurance afforded herein.

The **named insured** shall maintain records of such information as is necessary for premium computation, and shall send copies of such records to the Fund at the end of the policy period and at such times during the policy period as the Fund may direct.

2. Inspection and Audit.

The Fund shall be permitted but not obligated to inspect the **named insured's** property and operations at any time. Neither the Fund's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the named insured or others, to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulation.

The Fund may examine and audit the **named insured's** books and records at any time during the policy period and extensions thereof and within three years after the final termination of this policy, as far as they relate to the subject matter of this insurance.

3. Financial Responsibility Laws.

When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by this policy for **bodily injury** liability or for **property damage** liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law. The insured agrees to reimburse the Fund for any payment made by the Fund which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

4. Insured's Duties in the Event of Occurrence, Claim or Suit.

- (a) In the event of an **occurrence**, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the insured and of available witnesses, shall be given by or for the insured to the Fund or any of its authorized agents as soon as practicable.
- (b) If claim is made or suit is brought against the insured, the insured shall immediately forward to the Fund every demand, notice, summons or other process received by him or his representative.
- (c) The insured shall cooperate with the Fund and, upon the Fund's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of injury or damage with respect to which insurance is afforded under this policy; and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of accident.

5. Action Against Fund.

No action shall lie against the Fund unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgement against the insured after actual trial or by written agreement of the insured, the claimant and the Fund.

Any person or organization or the legal representative thereof who has secured such judgement or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Fund as a party to any action against the insured to determine the insured's liability, nor shall the Fund be impleaded by the insured or his legal representative. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the Fund of any of its obligations hereunder.

6. Other Insurance.

The insurance afforded by this policy is primary insurance, except when stated to apply in excess of or contingent upon the absence of other insurance. When this insurance is primary and the insured has other insurance which is stated to be applicable to the loss on an excess or contingent basis, the amount of the Fund's liability under this policy shall not be reduced by the existence of such other insurance.

When both this insurance and other insurance apply to the loss on the same basis, whether primary, excess or contingent, the Fund shall not be liable under this policy for a greater proportion of the loss than that stated in the applicable contribution provision below:

(a) Contribution by Equal Shares.

If all of such other valid and collectible insurance provides for contribution by equal shares, the Fund shall not be liable for a greater proportion of such loss than would be payable if each insurer contributes an equal share until the share of each insurer equals the lowest applicable limit of liability under any one policy or the full amount of the loss is paid, and with respect to any amount of loss not so paid the remaining insurers then continue to contribute equal shares of the remaining amount of the loss until each such insurer has paid its limit in full or the full amount of the loss is paid.

(b) Contribution by Limits.

If any of such other insurance does not provide for contribution by equal share, the Fund shall not be liable for a greater proportion of such loss than the applicable limit of liability under this policy for such loss bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

7. Subrogation.

In the event of any payment under this policy, the Fund shall be subrogated to all the insured's rights of recovery therefore against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

8. Changes.

Notices to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the Fund from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy, signed by a duly authorized officer or representative of the Fund.

9. Assignment.

Assignment of interest under this policy shall not bind the Fund until its consent is endorsed hereon; if, however, the named insured shall die, such insurance as is afforded by this policy shall apply (1) to the named insured's legal representative, as the named insured, but only while acting within the scope of his duties as such, and (2) with respect to the property of the named insured, to the person having proper temporary custody thereof, as insured, but only until the appointment and qualification of the legal representative.

10. Cancellation and Non-Renewal.

- (a) This policy may be cancelled by the named insured by mailing to the Fund a 90 day written advance notice stating when thereafter the cancellation shall be effective. A political subdivision may cancel all policies with the Fund by mailing to the Fund a 90 day written advance notice as provided in §15-78-140 of the South Carolina Code of Laws.
- (b) The Fund may cancel this policy for non-payment of premium by mailing a notice of cancellation giving not less than 30 days notice of the cancellation as provided in §15-78-160 of the South Carolina Code of Laws.
- (c) If this policy is cancelled in accordance with (a) or (b) above, earned premium shall be computed in accordance with the customary short rate table and procedure. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.
- (d) For the purposes of this policy, the term "non-renewal" shall mean "cancellation" if the insured is ceasing all coverages with the Fund and conditions as provided in sections (a), (b) and (c) above apply.

11. Declarations.

By acceptance of this policy, the **named insured** agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the Fund or any of its agents relating to this insurance.

EXHIBIT C

September 12, 2013

Hattie Taylor
South Carolina Insurance Reserve Fund
1201 Main Street, Suite 500
Columbia, SC 29201

RE: The Estate of Woods v. Hope Clinic, LLC, et al
C.A. No.: 5:12-cv-03177-RMG-KDW

Dear Ms. Taylor:

I am writing in regards to the settlement proceedings that have occurred in the above-captioned case. On August 1, 2013, we made a demand of the county and IRF in the amount of \$1,000,000.00. That demand was to be good through August 16, 2013. That deadline has now come and gone without any acceptance from the county, and we wish to make it clear that we will no longer honor the initial \$1,000,000 demand.

As this constituted an offer to settle within the policy limits as to the Insurance Reserve Fund, we will now seek to collect any excess judgment obtained against Berkeley County from the IRF, pursuant to Tyger River Pine Co. v. Maryland Casualty Co., 170 S.C. 286, 170 S.E. 346 (1933). However, as an offer to compromise, we will now accept \$3 million from Berkeley County and the IRF to settle the claims against all Berkeley County defendants. Thank you for your time and attention to this matter. Please feel free to contact me if you have any questions. With kindest regards,

Very truly yours,

Garrett B. Johnson

EXHIBIT D

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



SC BUDGET AND CONTROL BOARD

INSURANCE RESERVE FUND

POST OFFICE BOX 11066
COLUMBIA, SOUTH CAROLINA 29211
(803) 737-0020
FAX: (803) 737-0042

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS

MARCIA ADAMS
EXECUTIVE DIRECTOR

Record on Appeal 095

October 22, 2013

via email: acreech@elrodpope.com

Andrew W. Creech, Esq
Elrod Pope Law Firm
PO Box 11091
Rock Hill, SC 29731

Your Client: Nancy Morris as personal Representative of the Estate of David Alan Woods
Our Policyholder: Berkeley County
Our Claim #: 77271
Date of Loss: 10/17/2010

Dear Mr. Creech:

I am writing to you as the insurer for Berkeley County in the above captioned matter.

I note that an unsuccessful mediation was held in this matter on August 1st. My reading of the meeting was there was a lack of clarity among the parties as to policy limits, indemnification agreements and liability, hence an inability to reach an agreement. Further attempts to reconcile these issues with the carrier for the Hope Clinic/ Dr. Etikerentse/Sue Brabahm have been fruitless.

In an effort to move this case along, we would like to offer \$500,000 to settle this matter on behalf of Berkeley County and all the Berkeley County individual defendants. We will also agree to drop our indemnification claims against the Hope Clinic/ Dr. Etikerentse/Sue Brabahm. As you are aware, the Hope Clinic's policy is a declining policy limit to start with and therefore any recovery by Berkeley County under the terms of the contractual indemnity agreement will further reduce the already dwindling limits. Settlement with Berkeley County today guarantees your client a \$500,000 recovery with the potential for further recovery from the Hope Clinic.

We ask that you please confer with your client and contact this writer of his acceptance or rejection within the next 7 days.

Sincerely,

Chris Lombard, CPCU, ARM, AIC
Assistant Director of Claims

EXHIBIT E

CORRIGAN & CHANDLER LLC

ATTORNEYS AT LAW

Eugene P. Corrigan III
(843) 577-5450 (direct)
rick@corriganhandler.com

REPLY TO:
P.O. Box 547
Charleston, SC 29402

January 10, 2014

VIA U.S. MAIL

Thomas E. Pope, Esquire
Harold C. Staley, Esquire
Andrew W. Creech, Esquire
Garrett B. Johnson, Esquire
Elrod Pope Law Firm
212 East Black Street
Rock Hill, SC 29730

Re: *Nancy Morris, as personal representative of the estate of David Allan Woods v. Hope Clinic, LLC, et. al*
Case No. 5:12-cv-3177-RMG-KDW

Dear Counsel:

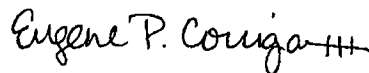
Enclosed for service upon you, please find an *Offer of Judgment* made on behalf of the Berkeley County Defendants in regards to the above-referenced case.

By copy of this letter, I am serving all counsel of record with the same.

Should you wish to discuss this further, please do not hesitate to contact me. I look forward to your response.

With best regards, I am

Yours very truly,



Eugene P. Corrigan III

Enclosure

EPC:eff

cc: James A. Stuckey Jr, Esquire
Alissa R. Collins, Esquire
Elizabeth W. Ballentine, Esquire
Chilton G. Simmons, Esquire

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

NANCY MORRIS, as personal representative)
of the estate of DAVID ALLAN WOODS,)

Plaintiff,)

v.)

HOPE CLINIC, LLC, officially and)
individually; TEMISAN ETIKERENTSE,)
MD, officially and individually; SUE)
BRABHAM, R.N., officially and)
individually; BERKELEY COUNTY)
SHERIFF H. WAYNE DeWITT, officially)
and individually; ANDREW J. BLAND,)
PFC, officially and individually; RICHARD)
T. BURKHOLDER, SGT., officially and)
individually; JAMES M. BROPHY, PFC,)
officially and individually; LEEMON E.)
CARNER, PFC, officially and individually;)
CHARLES A. DeSANTO, CPL, officially)
and individually; KENDRA MOORE,)
STAFF SGT., officially and individually,)
ASHLEY A. HARBER, PFC, officially and)
individually; PRISCILLA GARRETT,)
SGT., officially and individually; JERRY)
SPEISSEGGER JR., PFC, officially and)
individually; PFC KANSAS DAAB,)
officially and individually; JOHN DOE(S),)
officially and individually; CLIFFORD L.)
McELVOGUE, DIRECTOR, officially and)
individually,)

Defendants.)

C.A. No. 5:12-cv-3177-RMG-KDW

OFFER OF JUDGMENT

TO: PLAINTIFF AND HER ATTORNEYS

The Defendants, Berkeley County Sheriff H. Wayne DeWitt, Andrew J. Bland, PFC,
James M. Brophy, PFC, Leemon E. Carner, PFC, Kendra Moore, Staff Sgt., Priscilla Garrett,

SGT, Jerry Speissegger Jr., PFC, PFC Kansas Daab, Clifford L. McElvogue, Director, John Doe(s), represented by Corrigan & Chandler LLC, and Richard T. Burkholder, Sgt., Charles A. Desanto, CPL, Ashley A. Harber, PFC, represented by Stuckey Law Offices, LLC (collectively "Berkeley County Defendants"), by and through their undersigned attorneys, offer to allow judgment to be entered on behalf of the Plaintiff Nancy Morris, as personal representative of the estate of David Allan Woods ("Plaintiff"), in the amount of Five Hundred Thousand (\$500,000.00) Dollars, in order to bring to an end with prejudice all claims by Plaintiff against Berkeley County Defendants, arising from or in any way related to the allegations set forth in the above-captioned lawsuit, including all claims for attorney's fees and other costs.

This is an offer made jointly for Five Hundred Thousand (\$500,000.00) Dollars, including all claims for attorney's fees and costs, on behalf of Berkeley County, and all of its employees, including its Sheriff, Detention Center employees, and any other persons employed by or connected to Berkeley County, including any referred to as John Doe or otherwise, whether represented by Corrigan & Chandler LLC or Stuckey Law Offices, LLC.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.

[SIGNATURE PAGE TO FOLLOW]

CORRIGAN & CHANDLER LLC

STUCKEY LAW OFFICES, LLC

/S/ EUGENE P. CORRIGAN III

Eugene P. Corrigan III, Esq.

E-Mail: rick@corriganhandler.com

16 Charlotte Street, Suite B

Charleston, SC 29403

843-577-5410

/S/ JAMES A. STUCKEY, JR.

James A. Stuckey, Jr., Esq.

E-Mail: jstuckey@stuckeylaw.com

123 Meeting Street

Charleston, SC 29401

(843) 577-9323

ATTORNEYS FOR DEFENDANTS

BERKELEY COUNTY SHERIFF H. WAYNE

DEWITT, ANDREW J. BLAND, PFC,

JAMES M. BROPHY, PFC, LEMON E.

CARNER, PFC, PRISCILLA GARRETT,

SGT, KENDRA MOORE, STAFF SGT.,

JERRY SPEISSEGER JR., PFC, PFC

KANSAS DAAB, CLIFFORD L.

MCELVOGUE, DIRECTOR, AND JOHN

DOE(S)

ATTORNEY FOR DEFENDANTS

RICHARD T. BURKHOLDER, SGT.,

CHARLES A. DESANTO, CPL, ASHLEY A.

HARBER, PFC

January 10, 2014

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

NANCY MORRIS, as personal representative)
of the estate of DAVID ALLAN WOODS,)

Plaintiff,)

v.)

HOPE CLINIC, LLC, officially and)
individually; TEMISAN ETIKERENTSE,)
MD, officially and individually; SUE)
BRABHAM, R.N., officially and)
individually; BERKELEY COUNTY)
SHERIFF H. WAYNE DeWITT, officially)
and individually; ANDREW J. BLAND,)
PFC, officially and individually; RICHARD)
T. BURKHOLDER, SGT., officially and)
individually; JAMES M. BROPHY, PFC,)
officially and individually; LEEMON E.)
CARNER, PFC, officially and individually;)
CHARLES A. DeSANTO, CPL, officially)
and individually; KENDRA MOORE,)
STAFF SGT., officially and individually,)
ASHLEY A. HARBER, PFC, officially and)
individually; PRISCILLA GARRETT,)
SGT., officially and individually; JERRY)
SPEISSEGER JR., PFC, officially and)
individually; PFC KANSAS DAAB,)
officially and individually; JOHN DOE(S),)
officially and individually; CLIFFORD L.)
McELVOGUE, DIRECTOR, officially and)
individually,)

Defendants.)

C.A. No. 5:12-cv-3177-RMG-KDW

CERTIFICATE OF SERVICE

I certify that I have served the foregoing **OFFER OF JUDGMENT** on all parties of record by depositing copies of the same in the United States Mail, postage prepaid, addressed to the following:

Thomas E. Pope, Esquire
Harold C. Staley, Esquire
Andrew W. Creech, Esquire
Garrett B. Johnson, Esquire
Elrod Pope Law Firm
212 East Black Street
Rock Hill, SC 29730
Attorneys for Plaintiff

James A. Stuckey Jr, Esquire
Alissa R. Collins, Esquire
Stuckey Law Offices, LLC
123 Meeting Street
Charleston SC 29401
*Attorneys for Defendants Ashley A. Harber,
PFC, Charles A. Desanto, CPL and
Richard T. Burkholder, SGT*

Chilton G. Simmons, Esquire
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Johnnie Dodds Boulevard, Suite 100
P.O. Box 2424
Mt. Pleasant SC 29464

*Attorneys for Defendants Hope Clinic,
LLC, Temisan Etikerentse, MD, And Sue
Brabham, RN*

CORRIGAN & CHANDLER LLC


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elizabeth@corriganhandler.com

Charleston, South Carolina
January 9, 2014

EXHIBIT F

August 13, 2014

VIA EMAIL

James A. Stuckey
Stuckey law Offices, LLC
123 Meeting Street
Charleston, SC 29401-2217

RE: Nancy Morris as Personal Representative of the Estate of
David Allan Woods v Hope Clinic, et al.
Civil Action No.: 5:12-cv-03177-RMG-KDW

Dear Jim,

Thank you for the recent offer to settle the Woods case for \$600,000.00. My client has instructed me to reject the offer. While I am disappointed that we were unable to reach a settlement, I am very appreciative of your efforts.

Kind regards,

Harold C. Staley, Jr.

cc: The Honorable Richard Gergel
Eugene Corrigan, Esquire
Nicole Ewing, Esquire
Hattie Taylor

EXHIBIT G

AO 450 (SCD 04/2010) Judgment in a Civil Action

UNITED STATES DISTRICT COURT
for the
District of South Carolina

Nancy Morris, as personal representative of the
Estate of David Allan Woods,

Plaintiff

v.

Andrew J. Bland, PFC; Richard T. Burkholder, SGT;
Leemon E. Carner, PFC; Jerry Speissegger, Jr., PFC;
Priscilla Garrett, SGT,

Defendants

Civil Action No. 5:12-cv-03177-RMG

JUDGMENT IN A CIVIL ACTION

The court has ordered that (check one):

☒ the plaintiff Nancy Morris, as personal representative of the Estate of David Allan Woods, recover from the defendants, Andrew J. Bland, Richard T. Burkholder, Leemon E. Carner, Jerry Speissegger, Jr., and Priscilla Garrett actual damages in the amount of Five Hundred Thousand dollars (\$500,000.00), and punitive damages against defendant Andrew J. Bland in the amount of One Hundred Fifty Thousand dollars (\$150,000.00); against defendant Richard T. Burkholder in the amount of One Million dollars (\$1,000,000.00); against defendant Leemon E. Carner in the amount of One Hundred Fifty Thousand dollars (\$150,000.00); against defendant Jerry Speissegger in the amount of One Hundred Fifty Thousand dollars (\$150,000.00); against defendant Priscilla Garrett in the amount of One Million dollars (\$1,000,000.00), plus postjudgment interest at the rate of 0.10 %, along with costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant (name) _____ recover costs from the plaintiff (name) _____.

☐ other:

This action was (check one):

☒ tried by a jury, the Honorable Richard M. Gergel, U.S. District Judge presiding, and the jury has rendered a verdict.

☐ tried by the Honorable _____ presiding, without a jury and the above decision was reached.

☐ decided by the Honorable _____

Date: October 21, 2014

CLERK OF COURT

s/Eunice Ravenel-Bright

Signature of Clerk or Deputy Clerk

A TRUE COPY

Attest: Robin L. Blume

By:

DEPUTY CLERK

Record on Appeal 106

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Nancy Morris, as assignee of Andrew J.	)	C.A. No.: 2017-CP-40-06773
Bland, PFC; Leemon E. Carner, PFC; Jerry	)	
Speissegger, Jr., PFC; Priscilla Garrett,	)	
SGT; and Richard T. Burkholder, SGT;	)	
	)	
Plaintiffs,	)	AMENDED COMPLAINT
	)	(Jury Trial Demanded)
	)	
-vs-	)	
	)	
South Carolina Insurance Reserve Fund,	)	
	)	
Defendants.	)	

2017 NOV 29 PM 1:45
CLERK OF COURT
COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
RICHLAND COUNTY, SOUTH CAROLINA

NOW COME the above-named Plaintiffs, complaining of the Defendants herein, who do allege and show unto this Honorable Court the following:

PARTIES AND JURISDICTION

1. Plaintiff Nancy Morris was, at all times relevant herein, a resident of the State of South Carolina, and is now a resident of the State of Missouri.
2. Plaintiff Nancy Morris is the duly-appointed personal representative for the Decedent, David Allan Woods.
3. Prior to his death in November 2010, David Allan Woods was a resident of Berkeley County, South Carolina.
4. Andrew J. Bland, PFC; Leemon E. Carner, PFC; Priscilla Garrett, SGT; and Jerry Speissegger, Jr. are residents of the State of South Carolina.
5. Richard T. Burkholder, SGT is a resident of the Commonwealth of Pennsylvania.
6. Andrew J. Bland, PFC; Priscilla Garrett Bland, SGT; Leemon A. Carner, PFC; Jerry Speissegger, Jr., PFC; and Richard T. Burkholder, SGT (hereinafter collectively referred to as "Assignors") did, for good and valuable consideration, irrevocably assign to Plaintiff Nancy

Morris “any and all claims he/she may have against the South Carolina Insurance Reserve Fund and/or any other persons, firms, government organizations, or entities that arise out of [C.A. No.: 5:12-cv-3177-RMG],” including, among others “bad-faith conduct and/or breach of contract by the Insurance Reserve Fund” in the handling of the claims related to that case. These assignments are attached as Exhibit A.

7. Plaintiff therefore has standing to assert all legally assignable claims, as alleged herein, against Defendant Insurance Reserve Fund.

8. Upon information and belief, Defendant IRF is a governmental entity organized and existing under the laws of the State of South Carolina and with its principle office in Richland County.

9. Upon information and belief, Defendant “functions as a governmental insurance operation with the mission to provide insurance specifically designed to meet the needs of governmental entities at the lowest possible cost. The Insurance Reserve Fund operates like an insurance company, by issuing policies, collecting premiums (based in consultation with actuaries), and by paying claims from the accumulated premiums in accordance with the terms and conditions of the insurance policies it has issued.”

FACTUAL BACKGROUND

10. On September 2, 2010, Mr. Woods was tried and convicted in absentia by way of bench trial on charges of Shoplifting Merchandise less than \$2,000.00 and Animal Nuisance.

11. Mr. Woods was ordered to pay a fine of \$2,130.00 or spend 30 days in jail for the shoplifting charge.

12. Mr. Woods was ordered to pay a fine of \$237.50 or spend 30 days in jail for the animal nuisance charge.

13. On October 12, 2010, a bench warrant was issued for Mr. Woods's arrest.
14. Mr. Woods was booked and taken into custody at Hill-Finklea Detention Center.
15. Over the course of his confinement, Mr. Woods complained to jail and medical personnel of health problems including liver disease, intestinal pain, and blood in his stool.
16. At approximately 10:21 p.m. on Friday, November 5, 2010, Mr. Woods was reported to be lying on the floor of his cell and shaking.
17. At all times relevant herein, Hill-Finklea Detention Center contracted with Hope Clinic, LLC to provide medical services to inmates. Under the terms of this contract, Hope Clinic provided "nurse coverage... five (5) days per week, fifty-two weeks per year, except during County holidays, between the hours of 9:00 a.m. and 5:00 p.m."
18. At the time this report was made concerning Mr. Woods, Hope Clinic medical personnel had already left the facility for the weekend.
19. Sgt. Priscilla Garrett Bland responded to the call, along with PFC Ashley Harber, and transferred Mr. Woods to a medical observation cell.
20. For the next 60 hours, video surveillance footage shows Mr. Woods shaking and disoriented. He is unsteady on his feet, staggers around his cell, and falls at least twice. He defecates and urinates on himself, at one point lying in his own feces for a period of 16 hours.
21. During this 60-hour period, each of Assignors had multiple interactions with Mr. Woods. None attempted to secure medical assistance for him or to contact Hope Clinic personnel.
22. At approximately 8:30 a.m. on Monday, November 8, 2010, Mr. Woods was found lying on the floor of his cell naked and unresponsive. He was evaluated by the Hope Clinic nurse, who recommended that Mr. Woods be transported to the hospital.
23. EMS arrived at 9:52 a.m. and took Mr. Woods to Trident Medical Center, where

“he could speak but only in a weak voice and not in sentences. He was receiving blood at the time, had bright red blood and dark red blood around his rectum.” His prognosis was felt to be “bleak.”

24. Mr. Woods died three days later, on November 11, 2010, due to “severe blood loss with total body failure” secondary to an upper gastrointestinal bleed.

LIABILITY POLICY

25. At the time of Decedent’s death, Berkeley County maintained a policy of General Tort Liability Insurance issued by the South Carolina Budget and Control Board, Insurance Reserve Fund, Policy Number T130080011, attached as Exhibit B (hereinafter “the policy.”)

26. The policy was properly issued under S.C. Code § 1-11-140.

27. The effective dates of the policy were 2/13/2010 through 2/13/2011 and was thus in effect during the dates of Decedent’s confinement and death.

28. The policy obligated the Insurance Reserve Fund to “pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of: A. Personal injury.”

29. Persons insured under the policy included “Any employee of the entity designated in the declarations as named insured... but only while the employee is acting in the scope of his or her official duties.”

30. Berkeley County was a named insured under the policy.

31. At the time of the events complained of in the underlying action, Assignors were employees of Berkeley County acting within the course and scope of their employment and official duties.

32. Assignors are and were therefore entitled to coverage under the policy.

33. The position of Defendant Insurance Reserve Fund is that the maximum coverage available under the policy for the underlying action was \$600,000.00.

UNDERLYING ACTION: POSTURE

34. On September 20, 2012, Nancy Morris, as personal representative of the Estate of David Allan Woods, filed suit against Defendants The Hope Clinic, LLC; Temisan Etikerentse, M.D.; Sue Brabham, R.N.; Berkeley County Sheriff H. Wayne DeWitt; Andrew J. Bland, PFC; Richard T. Burkholder, SGT; James M. Brophy, PFC; Leemon E. Carner, PFC; Patricia D. Collins, SGT; Charles A. DeSanto, CPL; Kendra B. Habersham, Staff SGT; Ashley A. Harber, PFC; Priscilla Scheetz¹, SGT; Jerry Speissegger, Jr., PFC; PFC Daaf; and John Does in the Circuit Court for Berkeley County, alleging causes of action under 42 U.S.C. 1983, Wrongful Death, Survival Action, and Intentional Infliction of Emotional Distress.

35. On November 2, 2012, Defendants removed the case to the United States District Court for the District of South Carolina, asserting federal question jurisdiction under the provisions of 28 U.S.C. §§ 1331 and 1343.

36. Robin Jackson of Senn Legal, LLC appeared as counsel for Assignors and the other defendants employed by Berkeley County.

37. Over the next nine months, the parties engaged in detailed written discovery, and took no fewer than 14 depositions, including those of all the Assignors and seven other county employees.

38. During this time, Defendant Insurance Reserve Fund and its attorney had ample opportunity to review deposition testimony, speak to its own clients, and observe the video footage from the medical observation cell demonstrating Mr. Woods's deteriorating condition and acute suffering, as well as the indifference of its own employees.

¹ Priscilla Scheetz was divorced after the events complained of and prior to filing of the lawsuit, and the suit was subsequently amended to reflect her name as Priscilla Garrett. Prior to trial, she married Andrew J. Bland, PFC, but is referred to in the instant suit as Priscilla Garrett.

39. Defendant Insurance Reserve Fund had access to Mr. Woods's medical records, and was well aware of the fact that he had passed away as a result of its insureds' inaction.

40. Defendant Insurance Reserve Fund was aware that Plaintiff was claiming punitive damages against its insureds, including Assignors, as was clearly set forth in her Complaint.

41. Defendant Insurance Reserve Fund was aware that Plaintiff was pursuing a claim under 42 U.S.C. 1983, which did not provide its insureds, including Assignors, with the damages caps set forth by the South Carolina Tort Claims Act, and therefore exposed them to a judgment in excess of the alleged \$600,000.00 policy limits.

42. Defendant Insurance Reserve Fund was aware that, pursuant to 42 U.S.C. 1988, Plaintiff's 42 U.S.C. 1983 claim, if successful, would entitle her to reasonable attorney's fees and costs.

UNDERLYING ACTION: NEGOTIATIONS

43. On August 1, 2013, the parties conducted a mediation at Elrod Pope Law Firm in Rock Hill, South Carolina. Robin L. Jackson, Esquire, of Senn Legal was present for the Defendant South Carolina Insurance Reserve Fund.

44. At the mediation, Plaintiff offered to accept \$1 million to settle all claims against the County Defendants, including Assignors, with \$600,000.00 to come from the Defendant Insurance Reserve Fund and \$400,000.00 to come from Berkeley County.

45. This constituted a reasonable offer to settle within the Insurance Reserve Fund's policy limits, and would have protected Assignors from the risk of any excess judgment.

46. Upon information and belief, Berkeley County was willing to pay the \$400,000.00.

47. Upon information and belief, Defendant Insurance Reserve Fund rejected Plaintiff's reasonable offer to settle the case within their policy limits and declined to tender the

full \$600,000.00.

48. Defendant IRF rejected Plaintiff's reasonable offer to settle within the policy limits without discussing the matter with Assignors or Assignors' personal attorney.

49. Defendant IRF rejected Plaintiff's reasonable offer to settle within the policy limits without retaining independent counsel to advise Assignors of their rights with respect to Plaintiff's offer to settle.

50. Defendant IRF rejected Plaintiff's reasonable offer to settle within the policy limits without informing Assignors that the offer had been rejected.

51. Plaintiff's position was reiterated in a letter addressed to Hattie Taylor on September 12, 2013 indicating that Plaintiff would now seek to collect any excess judgment obtained against Berkeley County from the IRF, pursuant to Tyger River Pine Co. v. Maryland Casualty Co., 170 S.C. 286, 170 S.E. 346 (1933). (Exhibit C).

52. Defendant Insurance Reserve Fund reiterated their refusal to tender the policy limits in a letter of October 22, 2013, written by Chris Lombard, in which Defendant offered \$500,000.00 "to settle this matter on behalf of Berkeley County and all the Berkeley County individual defendants."

53. Defendant Insurance Reserve Fund again established their position on January 10, 2014, when they made an Offer of Judgment of \$500,000.00 through new counsel Eugene P. Corrigan, III.

54. It was not until August of 2014 that counsel for Assignors and the County Defendants offered \$600,000.00 to settle the case, which offer was declined in a letter of August 13, 2014.

55. It was not until the day of trial, October 14, 2014, that counsel for Assignors and

the County Defendants offered the \$1,000,000.00 that Plaintiff initially demanded at mediation. Plaintiff declined the offer, choosing to pursue an excess verdict against Defendant Insurance Reserve Fund's insureds.

UNDERLYING ACTION: TRIAL AND JUDGMENT

56. Prior to trial, Plaintiff had dismissed her state court claims and numerous defendants, proceeding to trial solely against Assignors on the 42 U.S.C. 1983 claim.

57. On October 17, 2014, Plaintiff obtained a judgment in the amount of \$500,000.00 for actual damages; \$150,000.00 in punitive damages against Andrew J. Bland, PFC; \$150,000.00 in punitive damages against Leemon E. Carner, PFC; \$150,000.00 in punitive damages against Jerry Speissegger, Jr., PFC; \$1,000,000.00 in punitive damages against Richard T. Burkholder, SGT; and \$1,000,000.00 in punitive damages against Priscilla Garrett, SGT.

58. By order of the court, the verdict for compensatory damages was partially offset and reduced to \$171,875.00.

59. Plaintiff was subsequently awarded \$354,293.00 in attorney's fees and \$31,820.62 in costs.

60. Assignors appealed the decision to the Fourth Circuit, which affirmed the District Court on November 16, 2016.

61. Defendant IRF's rejection of Plaintiff's reasonable offer to settle for the available limits of the policy and the resulting judgment against Assignors provides Assignors with a cause of action against Defendant IRF for breach of contract and breach of the implied covenant of good faith and fair dealing, in light of (i) the nature and scope of damages suffered by David Woods; (ii) the probable liability of Assignors; (iii) the substantial risk of a recovery in excess of Plaintiff's reasonable offer to settle; and (iv) the danger of a judgment in excess of the limits of the policy.

62. Each and every Assignor possesses these causes of action individually.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

63. Plaintiff hereby incorporates by reference all foregoing allegations.

64. Assignors and Defendant Insurance Reserve Fund had a mutually binding contract of insurance.

65. Defendant IRF breached that contract of insurance by its failure, refusal, and neglect:

a. To consult as to Defendant IRF's rejection of Plaintiff's reasonable offer to settle with:

- i. Andrew J. Bland, PFC;
- ii. Leemon E. Carner, PFC;
- iii. Jerry Speissegger, Jr., PFC;
- iv. Priscilla Garrett, SGT;
- v. Richard T. Burkholder, SGT;

b. To discuss said offer prior to rejecting with or with counsel for:

- i. Andrew J. Bland, PFC;
- ii. Leemon E. Carner, PFC;
- iii. Jerry Speissegger, Jr., PFC;
- iv. Priscilla Garrett, SGT;
- v. Richard T. Burkholder, SGT;

c. To retain independent counsel to provide advice concerning Plaintiff's reasonable offer to settle and his or her rights concerning the same to:

- i. Andrew J. Bland, PFC;

- ii. Leemon E. Carner, PFC;
- iii. Jerry Speissegger, Jr., PFC;
- iv. Priscilla Garrett, SGT;
- v. Richard T. Burkholder, SGT;

- d. To settle Plaintiff's claim for an amount up to and including the full policy limits;
- e. To accept Plaintiff's reasonable settlement offer within the policy limits.

66. Defendant IRF breached the contract as set forth above with regard to each and every Assignor individually.

67. As a proximate result of Defendant IRF's breach of contract, Assignors have been injured and otherwise suffered damages, as set forth more fully herein.

68. By nature of her assignments, Plaintiff is entitled to recover from Defendant IRF all damages incurred by Assignors as a result of this breach, including all actual damages, both pre-judgment and post-judgment interest, attorney's fees and costs, and for such other and further relief, in law or in equity, in favor of Assignee as this Court may deem just and proper.

FOR A SECOND CAUSE OF ACTION
(Negligence/Gross Negligence)

69. Plaintiff hereby incorporates by reference all foregoing allegations.

70. Defendant Insurance Reserve Fund had notice of Plaintiff's claim by September 20, 2012 at the latest.

71. Defendant IRF was negligent, grossly negligent, careless, reckless, willful, and wanton in the following particulars:

- a. In failing to process and adjust in a timely fashion Plaintiff's claims against:
 - i. Andrew J. Bland, PFC;
 - ii. Leemon E. Carner, PFC;

- iii. Jerry Speissegger, Jr., PFC;
 - iv. Priscilla Garrett, SGT;
 - v. Richard T. Burkholder, SGT;
- b. In failing to establish reasonable procedures for the processing and handling of claims that are made against its insureds;
 - c. In deviating from the standard of care that a reasonable and prudent insurance company would employ under the circumstances;
 - d. In any other such acts that constitute a violation of the laws or common law of the State of South Carolina;
 - e. In any other matter that Plaintiff may discover through litigation.

72. Defendant IRF's negligent, grossly negligent, careless, reckless, willful, and wanton conduct affected each Assignor individually.

73. As a proximate result of Defendant IRF's negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness, Assignors have been injured and otherwise suffered damages, as set forth more fully herein.

74. Assignors' damages would not have occurred but for Defendant IRF's conduct, described more fully herein.

75. Assignors' damages occurred as a natural and probable consequence of Defendant IRF's conduct.

76. By nature of her assignments, Plaintiff is entitled to recover from Defendant IRF actual, compensatory damages, including the full amount of the verdict not yet satisfied, plus interest accruing from October 17, 2014; exemplary or punitive damages in an amount that is fair, just, and reasonable under the circumstances; and whatever costs, interest, both pre-judgment and

post-judgment, and attorney's fees that the Court deems proper.

FOR A THIRD CAUSE OF ACTION
(Bad Faith)

77. Plaintiff hereby incorporates by reference all foregoing allegations.
78. Defendant Insurance Reserve Fund provides insurance to governmental entities.
79. Upon information and belief, Defendant IRF presents claims made against its insureds to adjusters to oversee these files and to work toward adjusting and resolving those claims.
80. Upon information and belief, once a claim is presented to an adjuster, that adjuster maintains control over the claim and is involved in all claims handling decisions.
81. Upon information and belief, the underlying claim of Plaintiff Nancy Morris as Personal Representative of the Estate of David Allan Woods was assigned to an adjuster employed by Defendant IRF, and at all relevant times, Defendant IRF assumed and maintained control of Plaintiff's claim.
82. Defendant IRF has a duty to deal in good faith and fair dealing with its insureds, including Assignors.
83. Defendant IRF held that duty to each Assignor individually.
84. Assignors and/or their employer promptly reported the underlying claim to Defendant IRF, and have otherwise performed all conditions required by the policy.
85. Assignors did not make any demand or request to Defendant IRF, or to any of its adjusters or employees, that Defendant IRF not settle Plaintiff's claim.
86. Assignors did nothing to impair Defendant IRF's assessment of the substantial risk of an excess judgment.
87. Defendant IRF failed to promptly and effectively investigate Plaintiff's claim.
88. Defendant IRF failed to timely settle Plaintiff's claim within the available policy

limits, even though Defendant IRF had the opportunity to do so.

89. Defendant IRF rejected Plaintiff's offer to settle within the policy limits without consulting Assignors; did not conduct an adequate or appropriate investigation into Plaintiff's claim; failed to retain independent counsel to advise Assignors of their rights with respect to Plaintiff's reasonable offer to settle; did not retain coverage counsel to properly review Plaintiff's reasonable offer to settle; and otherwise failed to act as a reasonable and prudent insurer would act under similar circumstances.

90. Defendant IRF's failure to timely evaluate and settle Plaintiff's claim caused Plaintiff's settlement demand to be withdrawn, exposing Assignors to personal financial risk.

91. Defendant IRF has refused, and continues to refuse, to protect Assignors from personal exposure in this matter.

92. Defendant IRF has breached the implied covenants of good faith and fair dealing with regard to the insurance policy by, among other acts or omissions, failing to settle Plaintiff's claim for the amount of the applicable insurance coverage when presented with the opportunity to do so.

93. Defendant IRF has acted in bad faith and/or was negligent, grossly negligent, careless, reckless, willful, and wanton in the following particulars:

- a. In failing to timely investigate Plaintiff's liability claim;
- b. In failing to make an offer of the full \$600,000.00 policy limits in response to Plaintiff's reasonable demand to settle the case for that amount;
- c. In failing to timely inform of Plaintiff's reasonable offer to settle the case;
- d. In failing to retain independent counsel to protect the interests of:
 - i. Andrew J. Bland, PFC;

- ii. Leemon E. Carner, PFC;
 - iii. Jerry Speissegger, Jr., PFC;
 - iv. Priscilla Garrett, SGT;
 - v. Richard T. Burkholder, SGT;
- e. In failing to retain independent counsel to advise:
 - i. Andrew J. Bland, PFC;
 - ii. Leemon E. Carner, PFC;
 - iii. Jerry Speissegger, Jr., PFC;
 - iv. Priscilla Garrett, SGT;
 - v. Richard T. Burkholder, SGT;
- f. In exposing to excess personal liability:
 - i. Andrew J. Bland, PFC;
 - ii. Leemon E. Carner, PFC;
 - iii. Jerry Speissegger, Jr., PFC;
 - iv. Priscilla Garrett, SGT;
 - v. Richard T. Burkholder, SGT;
- g. In failing to act reasonably in light of the totality of the circumstances presented by Plaintiff's claim;
- h. In failing to act as a reasonable and prudent insurer would act in regards to Plaintiff's claim;
- i. In failing to acknowledge with reasonable promptness pertinent communications with respect to Plaintiff's underlying claim;
- j. In failing to adopt and implement reasonable standards for the prompt investigation

and settlement of claims, including Plaintiff's claim, arising under its policies;

- k. In failing to attempt in good faith to effect a fair, prompt, and equitable resolution to Plaintiff's claim after liability had become reasonably clear;
- l. In compelling Plaintiff to institute a suit to recover amounts reasonably due or payable with respect to claims arising under Defendant IRF's policy by offering substantially less than the amounts ultimately recovered through suits brought by the claimants as the result of the inability of Plaintiff to effect reasonable settlements with Defendant IRF;
- m. In offering to settle Plaintiff's claim for an amount less than the amount otherwise reasonably due or payable based upon the possibility or probability that Plaintiff would be required to incur attorneys' fees to recover the amount reasonably due or payable;
- n. In engaging in practices which constituted an unreasonable delay in paying or an unreasonable failure to pay Plaintiff's claim;
- o. In violating the laws and statutes of the State of South Carolina, including but not limited to S.C. Code § 38-59-20.

94. Defendant IRF's breach of its duty of good faith and fair dealing was the direct and proximate cause of damage to each and every Assignor in his or her individual capacity, those damages including mental anguish, anxiety, stress, expenses, and incurring personal judgments.

95. As a direct and proximate result of Defendant IRF's breach of its duty of good faith and fair dealing, each and every Assignor in his or her individual capacity has been and continue to be injured in the following ways:

- a. In suffering personal exposure to unsatisfied judgments;

- b. In incurring attorney's fees and expenses;
- c. In suffering the mental anguish, anxiety, and stress of being sued by Plaintiff and the knowledge that such suit would likely lead to excessive personal financial responsibility;
- d. In such other ways as would cause Assignors' additional and unnecessary pain, suffering, mental anguish, and aggravation.

96. Each and every Assignor's damages in their individual capacity would not have occurred but for Defendant IRF's breach of its duty of good faith and fair dealing.

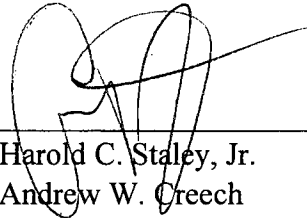
97. By nature of the assignments, Plaintiff is entitled to judgment against Defendant IRF for actual, compensatory damages, including the full amount of the verdict not yet satisfied, plus interest accruing from October 17, 2014; exemplary or punitive damages in an amount that is fair, just, and reasonable under the circumstances; and whatever costs, interest, both pre-judgment and post-judgment, and attorney's fees that the Court deems proper.

98. Moreover, Defendant IRF is liable to Plaintiff for attorney's fees in prosecuting this action pursuant to S.C. Code Ann. § 38-59-40.

WHEREFORE, Plaintiff prays for judgment against Defendant in a sum to be determined by a jury of Plaintiff's peers and to exceed one hundred thousand dollars (\$100,000.00), thus meeting the requirements set under the South Carolina Rules of Civil Procedure Rule 30 (h), and should include actual damages, future damages, punitive damages in a reasonable amount, and the costs and disbursements of this action and for such other and further relief that this Court or jury deems just and proper.

Respectfully,

By:

A handwritten signature in black ink, appearing to be "H. Staley, Jr.", written over a horizontal line.

Harold C. Staley, Jr.
Andrew W. Creech
Garrett B. Johnson
Elrod Pope Law Firm
212 E Black Street
P.O. Box 11091 (29731)
Rock Hill, S.C. 29730
Phone: (803) 324-7574

ATTORNEYS FOR PLAINTIFF

November 27, 2017
Rock Hill, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Nancy Morris, as assignee of Andrew J.)
Bland, PFC; Leemon E. Carner, PFC; Jerry)
Speissegger, Jr., PFC; Priscilla Garret, SGT;)
and Richard T. Burkholder, SGT,)

Civil Action No. 2017-CP-40-6773

Plaintiffs,)

ANSWER TO AMENDED COMPLAINT

v.)

South Carolina Insurance Reserve Fund,)

Defendant.)
_____)

RICHLAND COUNTY
FILED
2018 JAN 11 AM 11:17
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

The Defendant South Carolina Insurance Reserve Fund, reserving all rights pursuant to a
Motion to Make More Definite and Certain and Motion to Strike, answers the Plaintiff's Amended
Complaint herein as follows:

FOR A FIRST DEFENSE

1. The Defendant denies each and every allegation of the Plaintiff's Amended
Complaint not hereinafter specifically admitted, qualified, or explained.

2. As to the allegations set forth in Paragraph 1 of the Plaintiff's Amended
Complaint, the Defendant lacks sufficient information to admit or deny that the Plaintiff is a
resident and citizen of the State of Missouri.

3. The allegations set forth in Paragraph 2 of the Plaintiff's Amended Complaint are,
upon information and belief, admitted.

4. As to the allegations set forth in Paragraph 3 of the Plaintiff's Amended Complaint, the Defendant lacks sufficient information to admit or deny those allegations and, as a result, denies those allegations.

5. As to the allegations set forth in Paragraph 4 of the Plaintiff's Amended Complaint, the Defendant lacks sufficient information to admit or deny the residency of Andrew J. Bland, Leemon E. Carner, Priscilla Garrett Bland and Jerry Speissegger, Jr.

6. As to the allegations set forth in Paragraph 5 of the Plaintiff's Amended Complaint, the Defendant lacks sufficient information to admit or deny the residency of Richard T. Burkholder.

7. As to the allegations set forth in Paragraph 6 of the Plaintiff's Amended Complaint, the Defendant lacks sufficient information to admit or deny those allegations and, as a result, denies those allegations.

8. The allegations set forth in Paragraph 7 of the Plaintiff's Amended Complaint are denied.

9. As to the allegations set forth in Paragraph 8 of the Plaintiff's Amended Complaint, the Defendant admits that the South Carolina Insurance Reserve Fund is a division of the South Carolina State Fiscal Accountability Authority, which is an agency of the State of South Carolina created and administered under state statutory law. The Defendant further admits that its principal offices are located in Richland County.

10. The allegations set forth in Paragraph 9 of the Plaintiff's Amended Complaint are admitted.

11. The allegations set forth in Paragraphs 10 through 24 of the Plaintiff's Amended Complaint are denied as immaterial to the action filed by the Plaintiff. Further answering, the duty

to indemnify, if any, owed by the South Carolina Insurance Reserve Fund to its insureds shall be adjudged based upon the judgment ultimately entered in the action captioned *Morris v. Bland*, Civil Action Number 5:12-3177-RMG. Further answering, the Defendant craves reference to the Special Verdict Form as returned by the jury in Civil Action Number 5:12-3177-RMG, which does not include any special interrogatories or findings that support the Plaintiff's allegations as set forth in Paragraphs 10 through 24. The Defendant specifically objects to any attempt by the Plaintiff to re-litigate any factual questions as may have been litigated or could have been litigated in Civil Action Number 5:12-3177-RMG.

12. The allegations set forth in Paragraph 25 of the Plaintiff's Amended Complaint are admitted.

13. As to the allegations set forth in Paragraph 26 of the Plaintiff's Amended Complaint, the Defendant admits that S.C. Code Ann. § 1-11-140 is the enabling statute that authorizes the South Carolina State Fiscal Accountability Authority, through the Office of Insurance Services, to issue insurance coverage for the State, its agencies and political subdivisions.

14. The allegations set forth in Paragraph 27 of the Plaintiff's Amended Complaint are admitted.

15. As to the allegations set forth in Paragraphs 28 and 29 of the Plaintiff's Amended Complaint, the Defendant craves reference to the Tort Liability Insurance Policy as issued to its named insured Berkeley County as the best evidence of the provisions of that policy.

16. The allegations set forth in Paragraph 30 of the Plaintiff's Amended Complaint are admitted.

17. The allegations set forth in Paragraph 31 of the Plaintiff's Amended Complaint are too vague and uncertain to allow for a proper response. The Plaintiff fails to specify "the events complained of in the underlying action," and for that reason, the Defendant denies those allegations as pled.

18. The allegations set forth in Paragraphs 32 of the Plaintiff's Amended Complaint are denied as stated. Further answering, the Defendant admits only that a Tort Liability Insurance Policy was issued to its named insured Berkeley County which may provide liability coverage -- subject to the terms, conditions, limitations, and exclusions of the policy -- to Andrew J. Bland, Richard Burkholder, Leemon E. Carner, Priscilla Garrett Bland and Jerry Speissegger, Jr. with respect to the action captioned *Morris v. Bland*, Civil Action Number 5:12-3177-RMG.

19. As to the allegations set forth in Paragraph 33 of the Plaintiff's Amended Complaint, the Defendant admits that the Tort Liability Insurance Policy as issued to the named insured Berkeley County provides limits of liability of \$600,000 per occurrence as that term is defined by the policy language.

20. As to the allegations set forth in Paragraph 34 of the Plaintiff's Amended Complaint, the Defendant craves reference to the pleadings filed in the action captioned *Morris v. Bland*, Civil Action Number 5:12-3177-RMG, as the best evidence of the parties and causes of action pled.

21. As to the allegations set forth in Paragraph 35 of the Plaintiff's Amended Complaint, the Defendant craves references to the Notice of Removal and related filings in the action captioned *Morris v. Bland*, Civil Action Number 5:12-3177-RMG, as the best evidence of the removal and the basis thereof. Further answering, the Defendant was not a party to Civil Action Number 5:12-3177-RMG and, therefore, was not a party to the removal.

22. The allegations set forth in Paragraph 36 of the Plaintiff's Amended Complaint are admitted.

23. As to the allegations set forth in Paragraph 37 of the Plaintiff's Amended Complaint, the Defendant craves references to the discovery and depositions taken in the action captioned *Morris v. Bland*, Civil Action Number 5:12-3177-RMG, as the best evidence of the scope and extent of discovery conducted.

24. As to the allegations set forth in Paragraph 38 of the Plaintiff's Amended Complaint, the Defendant admits only that it had the opportunity to and did evaluate the liability and damages issues during the pendency of the action captioned *Morris v. Bland*, Civil Action Number 5:12-3177-RMG. The remaining allegations of the Paragraph 38 are denied, including allegations that the Assignors were employees of the Insurance Reserve Fund.

25. As to the allegations set forth in Paragraph 39 of the Plaintiff's Amended Complaint, the Defendant admits only that it had the opportunity to and did evaluate the liability and damages issues during the pendency of the action captioned *Morris v. Bland*, Civil Action Number 5:12-3177-RMG. The remaining allegations of the Paragraph 39 are denied.

26. As to the allegations set forth in Paragraph 40 of the Plaintiff's Amended Complaint, the Defendant admits only that it had the opportunity to and did evaluate the liability and damages issues during the pendency of the action captioned *Morris v. Bland*, Civil Action Number 5:12-3177-RMG, including the prayer for punitive damages.

27. As to the allegations set forth in Paragraph 41 of the Plaintiff's Amended Complaint, the Defendant admits that it was aware that the claim pursuant to 42 U.S.C. § 1983 is not subject to damages caps under the South Carolina Tort Claims Act. As to the remaining allegations, the Defendant denies that it evaluated the claim in excess of the policy limits.

28. The allegations set forth in Paragraph 42 of the Plaintiff's Amended Complaint are admitted.

29. The allegations set forth in Paragraph 43 of the Plaintiff's Amended Complaint are admitted.

30. As to the allegations set forth in Paragraphs 44 and 45 of the Plaintiff's Amended Complaint, the Defendant objects that such allegations are properly pled or otherwise admissible under state law. To the extent a response is required, the allegations are denied as stated.

31. The allegations set forth in Paragraph 46 of the Plaintiff's Amended Complaint are denied as stated.

32. The allegations set forth in Paragraphs 47 through 50 of the Plaintiff's Amended Complaint are denied as stated.

33. The allegations set forth in Paragraph 51 of the Plaintiff's Amended Complaint are denied.

34. The allegations set forth in Paragraph 52 of the Plaintiff's Amended Complaint are denied as stated. The Defendant craves reference to the letter dated October 22, 2013, as the best evidence of its contents.

35. As to the allegations set forth in Paragraph 53 of the Plaintiff's Amended Complaint, the Defendant craves reference to the Offer of Judgment served in the action captioned *Morris v. Bland*, Civil Action Number 5:12-3177-RMG, as to the best evidence of its contents.

36. As to the allegations set forth in Paragraph 54 of the Plaintiff's Amended Complaint, the Defendant craves reference to letters dated August 12, 2014 and August 13, 2014, as the best evidence of the settlement negotiations.

37. As to the allegations set forth in Paragraph 55 of the Plaintiff's Amended Complaint, the Defendant admits, upon information and belief, that defense counsel in the action captioned *Morris v. Bland*, Civil Action Number 5:12-3177-RMG, offered a total of \$1 million, including monies from Berkeley County, to settle the litigation on or about October 14, 2014, and that the offer was rejected by the Plaintiff.

38. The allegations set forth in Paragraph 56 of the Plaintiff's Amended Complaint are denied as stated.

39. As to the allegations set forth in Paragraph 57 of the Plaintiff's Amended Complaint, the Defendant craves reference to the Judgment entered in the action captioned *Morris v. Bland*, Civil Action Number 5:12-3177-RMG, as the best evidence of its contents.

40. As to the allegations set forth in Paragraphs 58 and 59 of the Plaintiff's Amended Complaint, the Defendant craves reference to the post-trial orders of Judge Richard M. Gergel entered in the action captioned *Morris v. Bland*, Civil Action Number 5:12-3177-RMG, as the best evidence of their contents.

41. The allegations set forth in Paragraph 60 of the Plaintiff's Amended Complaint are admitted.

42. The allegations set forth in Paragraph 61 of the Plaintiff's Amended Complaint are denied.

43. The allegations set forth in Paragraph 62 of the Plaintiff's Amended Complaint are denied.

44. As to the allegations set forth in Paragraph 63 of the Plaintiff's Complaint, the Defendant reiterates and realleges each corresponding paragraph of this Answer set forth herein.

45. The allegations set forth in Paragraph 64 of the Plaintiff's Amended Complaint are denied as stated.

46. The allegations set forth in Paragraph 65 of the Plaintiff's Amended Complaint, including all subparts, are denied.

47. The allegations set forth in Paragraphs 66, 67, and 68 of the Plaintiff's Amended Complaint are denied.

48. As to the allegations set forth in Paragraph 69 of the Plaintiff's Complaint, the Defendant reiterates and realleges each corresponding paragraph of this Answer set forth herein. The Defendant objects to the jumbling of causes of action.

49. The allegations set forth in Paragraph 70 of the Plaintiff's Amended Complaint are denied.

50. The allegations set forth in Paragraph 71 of the Plaintiff's Amended Complaint, including all subparts, are denied.

51. The allegations set forth in Paragraphs 72, 73, 74, 75, and 76 of the Plaintiff's Amended Complaint are denied.

52. As to the allegations set forth in Paragraph 77 of the Plaintiff's Amended Complaint, the Defendant reiterates and realleges each corresponding paragraph of this Answer set forth herein. The Defendant objects to the jumbling of causes of action.

53. The allegations set forth in Paragraph 78 of the Plaintiff's Amended Complaint are admitted.

54. As to the allegations set forth in Paragraphs 79 and 80 of the Plaintiff's Amended Complaint, the Defendant admits that it uses claims adjusters and supervisors to adjust claims

against its insureds and those individuals are involved in the decision-making process as to the adjustment process.

55. As to the allegations set forth in Paragraph 81 of the Plaintiff's Amended Complaint, the Defendant admits that the action captioned *Morris v. Bland*, Civil Action Number 5:12-3177-RMG, was assigned to adjusters and supervisors who collaborated on the adjustment of the claim and the management of the litigation.

56. The allegations set forth in Paragraphs 82, 83, 84, and 85 of the Plaintiff's Amended Complaint are admitted.

57. The allegations set forth in Paragraph 86 of the Plaintiff's Amended Complaint are denied as stated.

58. The allegations set forth in Paragraphs 87 through 92 of the Plaintiff's Amended Complaint are denied.

59. The allegations set forth in Paragraph 93 of the Plaintiff's Amended Complaint, including all subparts, are denied.

60. The allegations set forth in Paragraphs 94 through 98 of the Plaintiff's Amended Complaint are denied.

61. The allegations and relief as set forth in the prayer for relief are denied.

FOR A SECOND DEFENSE

62. The Plaintiff's Amended Complaint fails to state a cause of action upon which relief may be granted. The Defendant reserves its right to file a motion pursuant to Rule 12(b)(6), SCRCRCP.

FOR A THIRD DEFENSE

63. The Plaintiff's Amended Complaint fails to set forth a claim that is ripe for adjudication.

FOR A FOURTH DEFENSE

64. The Defendant has no duty to indemnify the Plaintiff because the assignors are not "legally obligated to pay" damages to the Plaintiff.

FOR A FIFTH DEFENSE

65. The Plaintiff lacks standing to assert each of the causes of action against the Defendant, including the bad faith claim.

FOR A SIXTH DEFENSE

66. The Plaintiff's claims are, in whole or in part, barred by release.

FOR A SEVENTH DEFENSE

67. The Plaintiff's claims are, in whole or in part, barred by waiver and estoppel.

FOR AN EIGHTH DEFENSE

68. The Plaintiff's claims are, in whole or in part, barred by accord and satisfaction.

FOR A NINTH DEFENSE

69. The Plaintiff's claims are, in whole or in part, barred by the applicable statute of limitations.

FOR A TENTH DEFENSE

70. The Defendant is immune from suit pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.*, specifically S.C. Code Ann. § 15-78-60(1), (2), (4), (5), (17), and (20).

FOR AN ELEVENTH DEFENSE

71. The Defendants assert the defense of sovereign immunity, pursuant to the terms of the South Carolina Tort Claims Act as well as pursuant to the common law, including but not limited to the damages caps set forth in S.C. Code Ann. § 15-78-120 and the bar on the recovery of attorney's fees, pre-judgment interest, and punitive damages.

FOR A TWELFTH DEFENSE

72. The Defendant is absolutely immune pursuant to S.C. Code Ann. § 15-78-50(b) of the South Carolina Tort Claims Act with respect to the Third Cause of Action.

FOR A THIRTEENTH DEFENSE

73. The Plaintiff's claims are, in whole or in part, barred by the doctrine of sovereign immunity.

FOR A FOURTEENTH DEFENSE

74. This Court lacks subject matter jurisdiction over this claim. The Defendant reserves its right to file a motion pursuant to Rule 12(b)(1), SCRPC.

FOR A FIFTEENTH DEFENSE

75. The Plaintiff's claims are is barred, in whole or in part, by operation of collateral estoppel, also known as issue preclusion, from re-litigating any factual questions as may have been litigated or could have been litigated in the action captioned *Morris v. Bland*, Civil Action Number 5:12-3177-RMG.

FOR A SIXTEENTH DEFENSE

76. The Plaintiff's claims are is barred, in whole or in part, by operation of res judicata, also known as claim preclusion.

FOR A SEVENTEENTH DEFENSE

77. The South Carolina Insurance Reserve Fund is not an "insurer" as defined under Title 38 of the South Carolina Code of Laws, and as a result, the Defendants as a matter of law cannot be held liable for attorney's fees under S.C. Code Ann. § 38-59-40.

FOR AN EIGHTEENTH DEFENSE

78. The purported assignment of the causes of action, including the claim for bad faith, is invalid, illegal, champertous, and against the public policy of the State of South Carolina.

FOR A NINETEENTH DEFENSE

79. The purported assignment of the causes of action, including the claim for bad faith, is invalid, illegal, in violation of S.C. Code Ann. § 16-17-10 and against the public policy of the State of South Carolina.

FOR A TWENTIETH DEFENSE

80. The Plaintiff's claim for attorney's fees have no legal basis and should be stricken and/or dismissed.

FOR A TWENTY-FIRST DEFENSE

81. The Defendant reserves its right to oppose the Plaintiff's request for a trial by jury.

FOR A TWENTY-SECOND DEFENSE

82. Upon information and belief, service of process upon the Defendant was insufficient because the Defendant is not an insurer subject to the provisions of S.C. Code Ann. § 38-5-70. The Defendants reserve their right to file a motion pursuant to Rule 12(b)(5), SCRPC.

FOR A TWENTY-THIRD DEFENSE

83. This Court lacks personal jurisdiction over the Defendant. As a result, the Defendant reserve its right to file a motion pursuant to Rule 12(b)(2), SCRPC.

WHEREFORE, the Defendant South Carolina Insurance Reserve Fund prays that the Plaintiff's Amended Complaint be dismissed with prejudice; for the costs of this action; and for such other and further relief as the Court deems just and proper.

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

*Counsel for Defendants South Carolina
Insurance Reserve Fund*

Columbia, South Carolina

January 8, 2018

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Nancy Morris, as personal representative
of the Estate of David Allan Woods,

Plaintiff(s)

vs.

State Carolina State Budget and Control Board, et.
al.,

Defendant(s)

IN THE COURT OF COMMON PLEAS
IN THE FIFTH JUDICIAL CIRCUIT

CIVIL ACTION COVERSHEET

2015-CP - 40- 00019

Submitted By: Garrett B. Johnson
Address: P.O. Box 11091, Rock Hill, SC 29731

SC Bar #: 81105
Telephone #: 803-324-7574
Fax #: 803-324-7545
Other:
E-mail: GJohnson@ElrodPope.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|---|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☒ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | Previous Notice of Intent Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | 20 -NI- - | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☐ Notice/ File Med Mal (230) | ☐ Personal Injury (350) | ☐ Possession (450) |
| | ☐ Other (299) | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
| Inmate Petitions | Administrative Law/Relief | Judgments/Settlements | Appeals |
| ☐ PCR (500) | ☐ Reinstate Drv. License (800) | ☐ Death Settlement (700) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Judicial Review (810) | ☐ Foreign Judgment (710) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Relief (820) | ☐ Magistrate's Judgment (720) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Permanent Injunction (830) | ☐ Minor Settlement (730) | ☐ Municipal (930) |
| | ☐ Forfeiture-Petition (840) | ☐ Transcript Judgment (740) | ☐ Probate Court (940) |
| | ☐ Forfeiture—Consent Order (850) | ☐ Lis Pendens (750) | ☐ SCDOT (950) |
| | ☐ Other (899) | ☐ Transfer of Structured Settlement Payment Rights Application (760) | ☐ Worker's Comp (960) |
| Special/Complex /Other | | ☐ Confession of Judgment (770) | ☐ Zoning Board (970) |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) | ☐ Petition for Workers Compensation Settlement Approval (780) | ☐ Public Service Comm. (990) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) | ☐ Other (799) | ☐ Employment Security Comm (991) |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) | | ☐ Other (999) |
| ☐ Other (699) | ☐ Motion to Quash Subpoena in an Out-of-County Action (660) | | |
| | ☐ Sexual Predator (610) | | |

Submitting Party Signature:

Date: January 23, 2015

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

FOR MANDATED ADR COUNTIES ONLY

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

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

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

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

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

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Nancy Morris, as personal representative
of the Estate of David Allan Woods,

Plaintiff(s)

vs.

South Carolina State Budget and Control
Board, South Carolina Insurance Reserve
Fund, Berkeley County, Andrew J. Bland,
Richard T. Burkholder, Leemon E. Carner,
Priscilla Bland, Jerry Speissegger, Jr.,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO: 2015-CP-40-

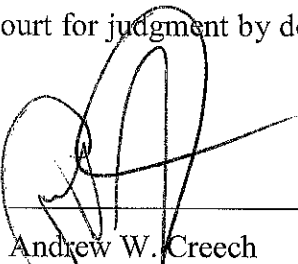
SUMMONS

RICHLAND COUNTY
FILED
2015 JAN 29 AM 10:12
JEANETTE W. MCORRIDE
C.C.P. & C.S.

TO THE ABOVE NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED AND REQUIRED TO ANSWER the Summons and Complaint in this action, herewith of which a copy is served upon you, and to serve a copy of your answer to said Summons and Complaint on the subscriber at his office at 212 East Black Street, Rock Hill, SC, within thirty (30) days after the service hereof, exclusive of the day of such service; if you fail to answer the Summons and Complaint within the time aforesaid, the Plaintiff(s) in this action will apply to the Court for judgment by default for the relief demanded in the Complaint

By:



Andrew W. Creech
Harold C. Staley, Jr.
Garrett B. Johnson
Elrod Pope Law Firm
212 E Black Street
Rock Hill, S.C. 29731
Phone: (803) 324-7574

ATTORNEYS FOR PLAINTIFF(S)

January 23, 2015
Rock Hill, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Nancy Morris, as personal representative)
of the Estate of David Allan Woods,)
Plaintiff(s))
vs.)
South Carolina State Budget and Control)
Board, South Carolina Insurance Reserve)
Fund, Berkeley County, Andrew J. Bland,)
Richard T. Burkholder, Leemon E. Carner,)
Priscilla Bland, Jerry Speissegger, Jr.,)
Defendant(s).

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO: 2015-CP-40-

COMPLAINT FOR DECLARATORY
JUDGMENT

RICHLAND COUNTY
FILED
2015 JAN 29 AM 10:18
JEANETTE W. MORRIS
C.C.P. & G.S.

NOW COMES the above-named Plaintiff, by and through her attorneys, and hereby asserts the following Complaint for Declaratory Judgment by alleging and averring as follows:

1) By this action, Plaintiff Nancy Morris, as personal representative of the Estate of David Allan Woods, seeks a declaration regarding the amount of coverage due under a policy of insurance, Policy Number T130080011, a copy of which is attached hereto as Exhibit A, issued to Berkeley County, South Carolina.

PARTIES AND VENUE

2) Plaintiff is, and at all times mentioned in the Complaint was, a resident of York County, residing at 1012 Barrow Court, Rock Hill, SC 29730.

3) Plaintiff is the duly-appointed personal representative for the Decedent, David Allan Woods.

4) Plaintiff is informed and believes that Defendants South Carolina State Budget and Control Board and South Carolina Insurance Reserve Fund are governmental entities organized and operating under the laws of the State of South Carolina and with their principal offices in Richland County.

- 5) Defendant Berkeley County is a political subdivision of the State of South Carolina.
- 6) Plaintiff is informed and believes that Defendants Andrew J. Bland, Leemon E. Carner, Priscilla Garrett Bland, and Jerry Speissegger, Jr. are, and at all times mentioned in the Complaint were, residents of Berkeley County, South Carolina.
- 7) Plaintiff is informed and believes that Defendant Richard T. Burkholder is now a resident of Fayette County, Pennsylvania, but was at the time of the events of the underlying action a resident of Berkeley County, South Carolina.
- 8) Defendants Berkeley County, Andrew J. Bland, Richard T. Burkholder, Leemon E. Carner, Priscilla Garrett Bland, and Jerry Speissegger, Jr. have an interest which would be affected by this declaration and are therefore proper parties to the action pursuant to S.C. Code § 15-53-80.
- 9) This is an action for declaratory judgment pursuant to S.C. Code § 15-53-10 et seq.
- 10) This action is currently ripe for adjudication.
- 11) Venue is proper under S.C. Code § 15-7-10 because this is the county where Defendants South Carolina Budget and Control Board and South Carolina Insurance Reserve Fund maintain their home office.

FACTUAL BACKGROUND

- 12) As of September 2010, Decedent David Woods was a resident of Berkeley County, South Carolina.
- 13) On September 2, 2010, Decedent was tried and convicted in absentia by way of bench trial on charges of Shoplifting Merchandise less than \$2,000.00 and Animal Nuisance.

- 14) Decedent was ordered to pay a fine of \$2,130.00 or spend 30 days in jail for the shoplifting charge.
- 15) Decedent was ordered to pay a fine of \$237.50 or spend 30 days in jail for the animal nuisance charge.
- 16) On October 12, 2010, a bench warrant was issued for Decedent's arrest.
- 17) Decedent was booked and taken into custody at Hill-Finklea Detention Center.
- 18) Over the course of his confinement, Decedent complained to jail and medical personnel of health problems including but not limited to liver disease, intestinal pain, and blood in his stool.
- 19) On Friday, November 5, 2010, Decedent was placed in a medical observation cell.
- 20) For the next 60 hours, video evidence from the cell shows Decedent staggering, trembling, unsteady on his feet, disoriented, falling, defecating and urinating on himself, and lying in his own feces for a period of 16 hours.
- 21) At approximately 10:00 a.m. on Monday, November 8, 2010, emergency medical services were called for Decedent, who was transported to Trident Medical Center.
- 22) On November 11, 2010, Decedent expired from blood loss secondary to a gastrointestinal bleed.

UNDERLYING ACTION

- 23) On September 20, 2012, Nancy Morris, as personal representative of the Estate of David Allan Woods, filed suit against Defendants The Hope Clinic, LLC; Temisan Etikerentse, M.D.; Sue Brabham, R.N.; Berkeley County Sheriff H. Wayne DeWitt; Andrew J. Bland, PFC; Richard T. Burkholder, SGT; James M. Brophy, PFC; Leemon E. Carner, PFC; Patricia D. Collins, SGT; Charles A. DeSanto, CPL; Kendra B. Habersham,

Staff SGT; Ashley A. Harber, PFC; Priscilla Scheetz¹, SGT; Jerry Speissegger, Jr., PFC; PFC Daaf; and John Does in the Circuit Court for Berkeley County, alleging causes of action under 42 U.S.C. 1983, Wrongful Death, Survival Action, and Intentional Infliction of Emotional Distress.

24) On November 2, 2012, Defendants removed the case to the United States District Court for the District of South Carolina, asserting federal question jurisdiction under the provisions of 28 U.S.C. §§ 1331 and 1343.

25) Prior to trial, Plaintiff dismissed any and all state court claims, including any claims that would implicate the South Carolina Tort Claims Act, S.C. Code § 15-78-10, et seq., and proceeded solely on her 42 U.S.C. 1983 claims.

26) The case was tried in October of 2014 in District Court against the remaining Defendants, to wit, Andrew J. Bland, PFC; Richard T. Burkholder, SGT; Leemon E. Carner, PFC; Priscilla Garrett [Bland], SGT; and Jerry Speissegger, Jr., PFC.

27) On October 21, 2014, a judgment was returned in Plaintiff's favor.

28) The judgment awarded Plaintiff actual damages in the amount of \$500,000.00. (Exhibit A).

29) This amount was later reduced by order of the presiding judge to \$171,875.00. (Exhibit B, page 31).

30) The judgment awarded Plaintiff punitive damages in the amount of \$150,000 against Bland; \$1,000,000 against Burkholder; \$150,000 against Carner; \$1,000,000 against Garrett [Bland]; and \$150,000 against Speissegger, Jr.

31) On January 15, 2015, Plaintiff was awarded attorneys' fees pursuant to 42 U.S.C. § 1988 in the amount of \$354,293. (Exhibit C).

¹ Priscilla Scheetz was divorced after the events complained of and prior to filing of the lawsuit, and the suit was subsequently amended to reflect her name as Priscilla Garrett. Prior to trial, she married Andrew J. Bland, PFC, and is named in the instant suit as Priscilla Bland.

32) As of January 22, 2015, a total aggregate judgment of \$2,976,168.00 has been entered against Defendants.

LIABILITY POLICY

33) At the time of Decedent's death, Berkeley County maintained a policy of General Tort Liability Insurance issued by the South Carolina Budget and Control Board, Insurance Reserve Fund, Policy Number T130080011, attached as Exhibit D.

34) Said policy was properly issued under S.C. Code § 1-11-140.

35) The effective dates of said policy were 2/13/2010 through 2/13/2011 and was thus in effect during the dates of Decedent's confinement and death.

36) Said policy obligated the Insurance Reserve Fund to "pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of:
A. Personal injury."

37) Persons insured under said policy included "Any employee of the entity designated in the declarations as named insured... but only while the employee is acting in the scope of his or her official duties."

38) Defendant Berkeley County was a named insured under said policy.

39) At the time of the events complained of in the underlying action, Defendants Defendants Andrew J. Bland, Richard T. Burkholder, Leemon E. Carner, Priscilla Garrett [Bland], and Jerry Speissegger, Jr. were employees of Berkeley County acting within the course and scope of their employment and official duties.

40) Defendants Andrew J. Bland, Richard T. Burkholder, Leemon E. Carner, Priscilla Garrett [Bland], and Jerry Speissegger, Jr. are therefore entitled to coverage under the policy.

41) Said coverage extends to the judgment issued against Andrew J. Bland, PFC; Richard T. Burkholder, SGT; Leemon E. Carner, PFC; Priscilla Garrett [Bland], SGT; and Jerry Speissegger, Jr., PFC in the underlying action.

OCCURRENCES

42) Section V., Limit of Liability, of the policy provides that, for “The total liability of the Fund for all damages as the result of any occurrence... because of personal injury sustained by one or more persons... shall not exceed the limit of liability stated in the declarations as applicable to each occurrence.”

43) The limit stated in the declarations is 600,000.

44) Section III defines “occurrence” as “an accident, including continuous or repeated exposure to conditions, which result in personal injury or property damage neither expected nor intended from the standpoint of the insured.”

45) Section V further states that “For the purpose of determining the limit of the Fund’s liability, all personal injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.”

46) The undisputed evidence at trial was that Decedent was placed in a medical observation cell at approximately 10:30 p.m. on November 5, 2010 and remained there until approximately 10:12 a.m. on November 8, 2010.

47) At trial, Defendant Andrew J. Bland testified that he interacted with Decedent twice during this time period, and failed to request medical assistance after each of these encounters.

48) At trial, Defendant Richard T. Burkholder testified that he interacted with Decedent at least once during this time period and received multiple reports concerning

Decedent's deteriorating health, and failed to request medical assistance after each of these reports.

49) At trial, Defendant Leemon E. Carner testified that he interacted with Decedent twice during this time period, and failed to request medical assistance after each of these encounters.

50) At trial, Defendant Priscilla Garrett [Bland] testified that she interacted with Decedent at least three times on three different days during this time period, and failed to request medical assistance after each of these encounters, failed to request medical assistance after each of these encounters.

51) At trial, Defendant Jerry Speissegger, Jr. testified that he interacted with Decedent twice on two different days during this time period, failed to request medical assistance after each of these encounters.

52) Precedent exists in South Carolina to support a finding that "separate and independent acts" constitute separate occurrences. See Boiter v. S.C. DOT, 393 S.C. 123 (2011).

53) The tortious acts of Andrew J. Bland, PFC; Richard T. Burkholder, SGT; Leemon E. Carner, PFC; Priscilla Garrett [Bland], SGT; and Jerry Speissegger, Jr., PFC were separate and independent.

54) Plaintiff is entitled to an Order of this Court holding that:

- (a) Decedent's injuries were the result of five (5) separate and independent acts;
- (b) Each of these acts constituted a separate occurrence under the terms of the Policy;
- (c) The amount of coverage provided by the Policy in the underlying action is three million dollars (\$3,000,000.00).

EXCESS COVERAGE

55) Upon information and belief, in conjunction with the written terms of the policy, Defendant South Carolina Budget and Control Board and/or Defendant South Carolina Insurance Reserve Fund provided insureds with a Policyholder's Manual, attached hereto as Exhibit E.

56) According to the foreword of said manual, "This handbook provides general information concerning the policies issued by the Fund... Every effort has been made to make this manual as complete and accurate as possible." (Page i).

57) Page Nine of the manual provides that:

The Fund is authorized to pay judgements rendered pursuant to 42 U.S.C. Section 1983 (civil rights) against individual government employees and officials subject to a maximum of four million dollars in excess of one million dollars and a maximum of twenty million dollars in excess of five million dollars. Payments are limited to the judgements against officials covered by the Fund for acts committed within the scope of employment.

58) This provision is codified at S.C. Code § 1-11-460.

59) Plaintiff received a judgment in the underlying trial pursuant to 42 U.S.C. Section 1983.

60) Said judgment was rendered against individual government employees.

61) The liability of said employees was for acts committed within the scope of their employment.

62) Said judgment was in excess of one million dollars.

63) Plaintiff is entitled to an Order of this Court holding that:

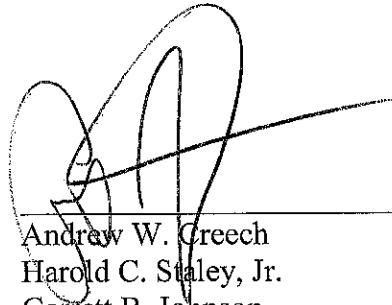
(a) The excess coverage provided for in the Policyholder's Manual and S.C. Code § 1-11-460 applies to the instant situation; and

(b) Defendants Berkeley County, Bland, Burkholder, Carner, Garrett [Bland}, and Speissegger, Jr. are entitled to coverage up to four million dollars in excess of one million dollars.

WHEREFORE, Plaintiff prays that the Court enter judgment in its favor as set forth hereinabove and for such other and further relief as is just and proper.

Respectfully,

By:



Andrew W. Creech
Harold C. Staley, Jr.
Garrett B. Johnson
Elrod Pope Law Firm
P.O. Box 11091
Rock Hill, S.C. 29731
Phone: (803) 324-7574

ATTORNEYS FOR PLAINTIFF

January 23, 2015
Rock Hill, South Carolina

EXHIBIT A

AO 450 (SCD 04/2010) Judgment in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

Nancy Morris, as personal representative of the
Estate of David Allan Woods,

Plaintiff

v.

Andrew J. Bland, PFC; Richard T. Burkholder, SGT;
Leemon E. Carner, PFC; Jerry Speissegger, Jr., PFC;
Priscilla Garrett, SGT,

Defendants

Civil Action No. 5:12-cv-03177-RMG

JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one)*:

☒ the plaintiff Nancy Morris, as personal representative of the Estate of David Allan Woods, recover from the defendants, Andrew J. Bland, Richard T. Burkholder, Leemon E. Carner, Jerry Speissegger, Jr., and Priscilla Garrett actual damages in the amount of Five Hundred Thousand dollars (\$500,000.00), and punitive damages against defendant Andrew J. Bland in the amount of One Hundred Fifty Thousand dollars (\$150,000.00); against defendant Richard T. Burkholder in the amount of One Million dollars (\$1,000,000.00); against defendant Leemon E. Carner in the amount of One Hundred Fifty Thousand dollars (\$150,000.00); against defendant Jerry Speissegger in the amount of One Hundred Fifty Thousand dollars (\$150,000.00); against defendant Priscilla Garrett in the amount of One Million dollars (\$1,000,000.00), plus postjudgment interest at the rate of 0.10 %, along with costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant *(name)* _____ recover costs from the plaintiff *(name)* _____.

☐ other:

This action was *(check one)*:

☒ tried by a jury, the Honorable Richard M. Gergel, U.S. District Judge presiding, and the jury has rendered a verdict.

☐ tried by the Honorable _____ presiding, without a jury and the above decision was reached.

☐ decided by the Honorable _____

Date: October 21, 2014

CLERK OF COURT

s/Eunice Ravenel-Bright

Signature of Clerk or Deputy Clerk

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

2014 DEC 31 A 9:11

Nancy Morris, as *Personal Representative*
of the Estate of David Allan Woods,

Plaintiff,

vs.

Andrew J. Bland, *PFC*; Richard T.
Burkholder, *SGT*; Leemon E. Carner, *PFC*;
Jerry Speissegger, Jr., *PFC*; Priscilla Garret,
SGT;

Defendants.

No. 5:12-cv-3177-RMG

This matter is before the Court on Defendants' Motions for Judgment as a Matter of Law, Motions for a New Trial, Motions for New Trial Nisi Remittitur, and Motions for Setoff (Dkt. Nos. 242, 243, 244, 245, 246). The Court addresses each type of motion in turn.

I. Motions for Judgment as a Matter of Law

A. Legal Standard

The Defendants' have filed renewed motions for judgment as a matter of law under Fed. R. Civ. P. 50(b). On a Rule 50(b) motion, the Court must view the evidence "in the light most favorable to the prevailing party," and must deny the motion "unless the jury lacked a legally sufficient evidentiary basis for its verdict." *Gregg v. Ham*, 678 F.3d 333, 341 (4th Cir. 2012). In other words, the motion should be denied if "giving the non-movant the benefit of every legitimate inference in his favor, there was evidence upon which a jury could reasonably return a verdict for him." *Pitt Ohio Exp., LLC v. Pat Salmon & Sons, Inc.*, 532 F. App'x 439, 441 (4th Cir. 2013) (quotations omitted).

B. Discussion

The Court finds that, viewing the evidence in the light most favorable to Plaintiff, there is sufficient evidence for a reasonable jury to have found in Plaintiff's favor as to each Defendant; thus, the Court must affirm the jury verdict. *First Union Commercial Corp. v. GATX Capital Corp.*, 411 F.3d 551, 556 (4th Cir. 2005).

A. Burkholder

Burkholder claims that there was not sufficient evidence at trial for a jury to find that he perceived a substantial risk of harm, that he recognized additional actions were necessary to prevent a substantial risk of harm, that he had a sufficiently culpable state of mind, or that he thought he was violating clearly established law under qualified immunity.¹ (Dkt. No. 242-1 at 8-9). As Burkholder acknowledges, whether a prison official had the requisite knowledge of a substantial risk of harm is a question of fact that can be proven from circumstantial evidence, including "the very fact that a risk was obvious." *Farmer v. Brennan*, 511 U.S. 825, 842 (1994). Under this standard, a prison official is deliberately indifferent if "he merely refused to verify underlying facts that he strongly suspected to be true, which, if verified, would have compelled him to realize that the claimant needed immediate medical attention, or that he declined to

¹ Burkholder does not argue that the evidence was insufficient to show that Mr. Woods had a serious medical need. (See Dkt. No. 242-1). The first three of issues listed by Burkholder all pertain to the subject element of proving a deliberate indifference claim. Burkholder appears to assert that showing a defendant had a sufficiently culpable state of mind is a showing separate and apart from showing deliberate indifference. (See Dkt. No. 242-1 at 8). It is not. See *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) ("To violate the Cruel and Unusual Punishments Clause, a prison official must have a 'sufficiently culpable state of mind.' In prison-conditions cases that state of mind is one of 'deliberate indifference' to inmate health or safety.") (internal citations omitted). To show such a culpable state of mind or deliberate indifference, a plaintiff need only show that an "official acted or failed to act despite his knowledge of a substantial risk of serious harm." *Id.* at 842.

confirm inferences of risk that he strongly suspected to exist.” *Brice v. Va. Beach Corr. Ctr.*, 58 F.3d 101, 105 (4th Cir. 1995).

Burkholder received an incident report from Officer Brophy stating that (1) Woods appeared to be disoriented and was not able to stand but for a short period of time, (2) appeared to be dehydrated, (3) did not respond to any question that Brophy asked him, and did not know where he was or why he was here. (*See* Dkt. No. 255 at 86). Because a private cannot call the nurse directly (only a Sergeant can call the nurse), such a report is used to notify the Sergeant of a medical issue that may require the nurse’s attention. (*Id.* at 16-17). Sergeant Garret also told Burkholder that he may want to contact the nurse based on Woods’ condition. (*Id.* at 84). Burkholder also knew that Woods had been lying in his own feces and that Woods’ cellmate stated there was blood in Woods’ stool. (*Id.* at 80, 100). A reasonable jury could find from this evidence that Burkholder knew of a substantial risk of harm from the very fact that the risk was obvious, that he strongly suspected certain facts based on Brophy’s report but refused to verify those facts, which would have compelled him to realize that the claimant needed immediate medical attention, and that he failed to act (i.e., call the nurse) despite this known risk.

Burkholder argues that he did in fact act—that he went by Woods’ cell one time to check on him. (Dkt. No. 242-1 at 6; *see also* Dkt. No. 255 at 62). However, a reasonable jury could choose not to believe this testimony. Burkholder testified that when he saw Woods, Woods was “up walking around, coherent, talking. He was having a good old time like he was out at play time.”² (Dkt. No. 255 at 89). A reasonable jury could easily find such a statement unbelievable

² This deposition testimony, which was read into the record, may be used for any purpose, including as affirmative evidence. *See* Fed. R. Civ. P. 32(a)(3); Fed. R. Evid. 801(d)(2).

in light of the video shown at trial and choose to disbelieve Burkholder's testimony that he actually checked on Woods at all. Furthermore, a reasonable jury could find that "[going] by one time," looking through a small window and seeing Woods standing (Dkt. No. 255 at 62-63) was "so patently inadequate" under the circumstances "as to justify an inference that [Burkholder] actually recognized that his response to the risk was inappropriate under the circumstances." *Parrish ex rel. Lee v. Cleveland*, 372 F.3d 294, 303 (4th Cir. 2004). Thus, the Court denies Burkholder's motion as to the deliberate indifference claim.³

As to Burkholder's motion on qualified immunity, it is not clear that he has preserved the issue, as Burkholder's Rule 50(a) motion only pertained to the deliberate indifference issue and not qualified immunity. (See Dkt. No. 256 at 60-61, 122-23); *McAfee v. Boczar*, 738 F.3d 81, 87 (4th Cir. 2013). However, the Court need not decide the issue because it is "amply satisfied that no such immunity was warranted." *Id.* "The right to adequate medical care [has] been carefully circumscribed in the caselaw, with its objective and subjective components spelled out to ensure that only the most wanton indifference goes punished." *Iko v. Shreve*, 535 F.3d 225, 243 n.12. Therefore, to the extent that Burkholder's conduct constituted deliberate indifference, he "had fair warning that [his] conduct was unconstitutional." *Id.* (internal quotations omitted); see also *Ervin v. Mangum*, 127 F.3d 1099 (Table), 1997 WL 664606 at *7 (4th Cir. Oct. 27, 1997) ("In

³ Burkholder also argues that the jury verdict was inconsistent with the Court's instructions regarding no vicarious liability. (Dkt. No. 242-1 at 9-11). It is not clear whether Burkholder makes this argument as part of his motion for judgment as a matter of law or his motion for a new trial. (See *id.*). To the extent he makes this argument as part of his motion for judgment as a matter of law, the Court finds that, based on the evidence discussed above, a reasonably jury could find Burkholder was personally deliberately indifferent to Woods' serious medical needs, and denies the motion for judgment as a matter of law. The vicarious liability issue is discussed further below under the motions for a new trial.

order to be entitled to qualified immunity from suit for failure to provide medical care, [the defendant] must show, as a matter of law, that his actions could not have constituted ‘deliberate indifference’ to [plaintiff’s] serious medical needs.”). Because Burkholder has not shown as a matter of law that his actions could not have constituted deliberate indifference, his motion as to qualified immunity is denied.

2. Bland

The other four Defendants each argue that Plaintiff failed to put forward sufficient evidence that they had actual knowledge of the risk of harm faced by Woods or that their actions were insufficient.⁴ (Dkt. No. 243-1 at 8). The Court takes each Defendant in turn.

Defendant Bland observed Mr. Woods when he had difficulty standing, and was visibly swaying, shaking and trembling. (*See* Pl. Exs. 5(a)(18), 5(a)(19)). When Defendant Bland entered the observation cell to give Mr. Woods his medication, Mr. Woods appeared weak and disoriented, sat up with effort, and reached for his medication. Viewed in the light most favorable to Plaintiff, Mr. Woods was physically incapable of holding his medication and extremely weak. (*Id.*). Bland points out that his testimony was that he believed that Woods was simply being difficult at the time. (Dkt. No. 243-1). However, a reasonable jury could

⁴ On Reply, these Defendants argue that the objective prong of a deliberate indifference—showing a serious medical need—was not met at trial. (Dkt. No. 253 at 2-6). This argument must fail. The evidence presented at trial showed that Woods died from the medical issues present during the weekend of November 5-8, 2010. Once he went to the hospital, he was immediately admitted to ICU and died three days later. “It seems axiomatic that an inmate who dies in this way must have suffered some serious medical need that caused his death.” *Iko v. Shreve*, 535 F.3d 225, 241 (4th Cir. 2008). Furthermore, as explained below for each Defendant, a reasonable jury could find that the behavior and symptoms observed by each Defendant indicated even to lay person that Mr. Woods was in need of medical attention. Therefore, to the extent this argument was properly raised, the Court rejects it.

disbelieve Bland's testimony in light of the video evidence. Viewing the video clips of Bland's interactions with Woods in the light most favorable to Plaintiff, a reasonably jury could find that Bland knew of a substantial risk of harm from the very fact that it was obvious.

3. Carner

Defendant Carner helped clean Mr. Woods' cell after repeated episodes of diarrhea, where he had defecated on himself. (Dkt. No. 254 at 169-70). Later Defendant Carner helped Mr. Woods put on his uniform. (*Id.* at 172). While Defendant Carner was with him, Mr. Woods had trouble standing, had to lean on the bunk and wall, was disoriented, and was visibly shaking. (*Id.*; Pl. Ex. 5(a)(14)). At the time Carner observed him, Woods could "barely stand up." (Dkt. No. 254 at 177; Pl. Ex. 5(a)(14)). Viewing the video clips of Carner's interactions with Woods in the light most favorable to Plaintiff, a reasonably jury could find that Carner knew of a substantial risk of harm from the very fact that it was obvious. Carner argues he testified clearly about his subjective beliefs and that he did not believe Woods was at a substantial risk of harm. (Dkt. No. 243-1 at 11-13). However, the standard is not whether Defendant Carner offered evidence that a reasonable jury could believe and find in his favor, but whether giving the Plaintiff "the benefit of every legitimate inference in [her] favor, there was evidence upon which a jury could reasonably return a verdict for [her]." *Pitt Ohio*, 532 F. App'x at 441. Here, there is such evidence, and Carner's motion is denied.

4. Garrett

Garrett claims that Plaintiff failed to put forth sufficient evidence that she had actual knowledge of a risk of harm to Woods or that she knew her actions were insufficient. (Dkt. No. 243-1 at 15). Defendant Garrett first observed Mr. Woods shaking on his mat on Friday night

and escorted Mr. Woods to an observation cell. (Dkt. No. 254 at 112). Garrett asked Woods a series of questions, including whether he could walk or stand and what was wrong, and Woods responded that he did not know. (*Id.* at 113). Mr. Woods' cellmate told her that it looked like Mr. Woods' stool had blood in it. (*Id.* at 119).

The next day, Garrett was advised at pass down that Woods had defecated on himself and refused to shower. (*Id.* at 122). Garrett observed the hard black feces on his uniform. (*Id.* at 124-25). As he walked to the shower, Woods appeared to be weak and shaking, and Garrett thought he was disoriented. (*Id.* at 126). At pass down, Garrett informed Burkholder that he may want to call the nurse. (*Id.* at 128). When Garrett returned on her next shift, she was informed that Burkholder did not call the nurse. (*Id.* at 129). However, upon learning the nurse was not called, she also did not call the nurse. (*Id.*). Later Garrett went to check on Woods. (*Id.*). He was sitting naked in his cell and he was only able to respond to her questions with grunts. (*Id.*). Garrett did not call the nurse or investigate further.

From this evidence, a reasonable jury could find that Garrett knew of a substantial risk of harm to Woods from the fact that it was obvious. Furthermore, the fact that Defendant Garrett told Defendant Burkholder that "he may want to notify the nurse" indicates her subject awareness of risk to Mr. Woods and that she strongly suspected that he needed medical attention. Viewing the evidence in the light most favorable to Plaintiff and drawing all inferences in her favor, Garrett returned to find that the nurse was not called but did not take adequate steps to verify her suspicion that medical attention was needed. Evidence suggests that Woods' condition had, in fact, deteriorated since Garrett suggested a nurse be called, and that when she went to check on him, he was only capable of grunting, not even capable of stating "I don't know" in response to

questions, as he had earlier. Yet, she did no further investigation and did not call the nurse. A reasonable jury could find that Garrett's actions were "so patently inadequate" under the circumstances "as to justify an inference that [Garrett] actually recognized that [her] response to the risk was inappropriate under the circumstances." *Cleveland*, 372 F.3d at 303.

5. Speissegger

Over the weekend in question, Speissegger spent a total of 12 hours at the front desk where he could observe Mr. Woods and his condition by camera. (Dkt. No. 254 at 152-53). On November 6, 2010, Defendant Speissegger attempted to give Mr. Woods his medication. (Pl. Ex. 5(a)(5)). Mr. Woods stared blankly, did not respond verbally and reached for his medication but was unable to hold his medication due to visibly shaking hands, weakness and an inability to cup his hand. (*Id.*). The next night Speissegger saw Woods before he was showered off and helped clean his cell. (*Id.* at 158-59). Thus, Speissegger saw Woods' cell filled with feces from diarrhea and the hard black fecal matter on Woods' uniform, as described by other witnesses present at the same time as Speissegger. Viewing the video clip of Speissegger's interactions with Woods and the testimony in the light most favorable to Plaintiff, a reasonable jury could find that Speissegger knew of a substantial risk of harm from the very fact that it was obvious. Therefore, Speissegger's motion is denied.

6. Qualified Immunity

Bland, Carner, Garrett, and Speissegger argue that they are entitled to qualified immunity because the evidence at trial does not support a finding of deliberate indifference. (Dkt. No. 243-1 at 18). For the reasons stated above, the Court finds that giving Plaintiff the benefit of every

inference, there is sufficient evidence for a reasonable jury to have found each of the Defendants deliberately indifferent; thus, the Court denies the motion. *See First Union*, 411 F.3d at 556.

II. Motions for a New Trial

A. Legal Standard

Under Rule 59(a), a court may set aside the jury's verdict and grant a new trial if "(1) the verdict is against the clear weight of the evidence, or (2) is based upon evidence which is false, or (3) will result in a miscarriage of justice, even though there may be substantial evidence which would prevent the direction of a verdict." *Minter v. Wells Fargo Bank, N.A.*, 762 F.3d 339, 346 (4th Cir. 2014) (quoting *Knussman v. Md.*, 272 F.3d 625, 639 (4th Cir. 2001)).

B. Discussion

Defendants argue that the verdict will result in a miscarriage of justice because (1) the verdict is against the Court's instructions regarding vicarious liability (Dkt. No. 242-1 at 9-11); (2) because the verdict was manifestly unjust and against the great weight of evidence (Dkt. No. 246-1 at 6); (3) because the Court erred in its evidentiary rulings (Dkt. No. 242-1 at 14-17; Dkt. No. 246-1 at 6-7); (4) because Plaintiff's counsel committed prejudicial misconduct during his closing reply (Dkt. No. 246-1 at 7); and (5) because the Court erred in not charging the jury on an intervening act (*Id.* at 8). The Court takes each argument in turn.

1. Vicarious Liability

Defendant Burkholder argues that the verdict is against the Court's instructions regarding no vicarious liability. (Dkt. No. 242-1 at 9). Burkholder notes that on cross-examination, Plaintiff's counsel highlighted his rank as Sergeant and responsibilities as Sergeant and that in closing Plaintiff's counsel referred to "the system" and was reminded by the Court to proceed

only on individual responsibility.⁵ (*Id.* at 10). Burkholder also argues that the punitive damages awards (where Plaintiff was awarded \$1 million against each sergeant and \$150,000 against each of the other officers) indicates that the jury's verdict was based on vicarious liability. (*Id.* at 11).

As to Burkholder's first complaint, no objection was made to most of the questioning regarding Burkholder's responsibility as sergeant. (*See* Dkt. No. 255 at 52, 58, 59). Thus, objections to any such questions are waived. The only question to which Burkholder objected was "who is ultimately accountable." (Dkt. No. 255 at 92). In response to the objection, the Court stated, in front of the jury, that "I think it's important that the jury understand that there's not vicarious liability. **He's not responsible for the actions of others**, it's his – he must breach his duty of deliberate indifference." (*Id.* (emphasis added)). Thus, to the extent that there could be any confusion, the Court clearly explained in the presence of the jury that Burkholder was not responsible for the actions of others. The Court did so again in its closing instructions. (Dkt. No. 257 at 17). Counsel also explained in closing that, in accordance with the Court's instructions, "[g]overnmental officials may not be held liable for the unconstitutional conduct of their subordinates, those who are below them." (Dkt. No. 256 at 192-93). Thus, it was clearly explained to the jury multiple times that Burkholder could not be held responsible for the conduct of his subordinates.

⁵Counsel's reference to "the system" on reply was actually a reference to the computer system "lock[ing] up" when an officer attempted to zoom in, not a reference to the detention center or correctional system. (Dkt. No. 256 at 207). The Court instructed counsel to proceed "[o]nly on individual responsibility" when counsel suggested "maybe we need to get a bigger monitor. But we can't zoom in either." (*Id.*). These comments related a general negligence claim against the entity, which had been dismissed by Plaintiff prior to trial. However, they did not reference or pertain to Burkholder.

The Court finds that there was ample evidence (discussed above) of Burkholder's personal deliberate indifference and that the jury's verdict was not inconsistent with its charge on vicarious liability. The jury's decision on punitive damages is also consistent with evidence at trial regarding the relative reprehensibleness of the Defendants' conduct and does not inexorably lead to the conclusion that the jury based its verdict on vicarious liability. Bland, Carner and Speissegger had one or two interactions with Woods over the weekend and observed him for a relatively short period of time. While Woods' physical and mental state during these interactions was enough for a reasonable jury to find the risk to his health was obvious, these Defendants did not have the same amount of information regarding risk as Burkholder. Burkholder received an incident report from Brophy requesting that a nurse be called and describing a particularly bad physical state. He was also advised by Garrett that he may want to call a nurse, said that he would do so, and then did not. A reasonably jury could easily find Burkholder's actions more reprehensible under the circumstances.

Similarly, a reasonable jury could find Garrett's actions more reprehensible than that of the other officers and find that her deliberate indifference extended over a longer period of time. She was the first of the Defendants to observe Woods shaking on his mat. Her awareness of the risk to Woods was demonstrated by her suggestion to Burkholder to call a nurse, and when she returned twelve hours later to find out that he had not done so, she did not call the nurse, even after seeing that his state deteriorated.⁶ Given her repeated contacts with Woods over the weekend and her suggestion of calling a nurse but not doing so herself, a reasonable jury could

⁶ Woods was at least able to verbally respond to Garrett and walk to the observation cell on an earlier shift. When she returned, he was only capable of grunting and did not indicate an ability to stand.

find her conduct more reprehensible than the conduct of officers with only a one or two interactions with Woods. Thus, the Court finds that the jury's verdict is not inconsistent with its charge on vicarious liability.

2. The Great Weight of Evidence

Defendants argue that because Plaintiff relied heavily on surveillance video while the Defendants testified as to their subjective belief that Woods did not have a serious medical condition, the verdict was against the great weight of evidence. (Dkt. No. 246-1 at 6). The Court disagrees. Defendants' argument amounts to little more than arguing that the jury should have believed Defendants. While the jury was free to believe the Defendants, it chose not to and was not required to. The video evidence at trial was quite compelling. It casts serious doubt on Defendants' testimony that they were unaware of a substantial risk of harm to Woods, and the Court finds no error in the jury determining that the video evidence was more persuasive than Defendants' testimony, particularly in light of the demeanor of some of the Defendants on the stand. Furthermore, the Plaintiff put on testimony that Officer Brophy thought Woods required medical attention and requested a nurse, and that Defendant Garrett suggested to Defendant Burkholder that a nurse be called, indicating a subjective belief that medical attention was necessary. The verdict was simply not against the great weight of evidence at trial, and the Court denies the motion on this ground.

3. Exclusion of Evidence that Hope Clinic was Negligent

Defendants argue that the Court erred in limiting evidence to the weekend of November 5, 2010, through November 8, 2010, and not allowing evidence regarding the Hope Clinic and the medical defendants who had previously settled with Plaintiff. (Dkt. No. 242-1 at 14-16; Dkt.

No. 246-1 at 6-7). As an initial matter, the Court did not limit evidence solely to November 5-8, 2010, without exception. The Court allowed evidence outside of this time period, as long as the parties could show that it was relevant, for example, to proximate cause. Indeed, the parties presented evidence at trial about what happened after Woods left the detention center and was admitted to the hospital. The Court specifically stated at the pretrial conference on October 8, 2014, that to the extent someone talked to the medical personnel and relied on what they said or knew that Woods had been seen by medical personnel and had been cleared, such information would be relevant and admissible.⁷ However, Defendants readily admitted and testified at trial that they had no knowledge of Woods' medical records or his medical treatment. (*E.g.*, Dkt. No. 254 at 146).

The Court held that whether the medical defendants were negligent was (1) irrelevant to what Defendants knew, to whether they were aware of a "substantial risk of serious harm" to Woods, or to whether they were deliberately indifferent and (2) would be confusing to the jury. It is simply not a defense to one's own deliberate indifference to argue that another was also deliberately indifferent or negligent at an earlier time. *See, e.g., Cooper v. Dyke*, 814 F.2d 941, 947 (4th Cir. 1987) (holding paramedics actions could not be an intervening cause because Plaintiff's claim was "based on defendants' deliberate indifference to his continued complaints and obvious suffering *after* the time of the initial paramedic exam.") (emphasis in original). Even if the parties stipulated that the medical defendants were deliberately indifferent prior to the weekend in question, it does not exculpate the Defendants for their own actions on the weekend

⁷ The Court also made clear that the Defendants could testify that no one told them Woods had a medical condition.

of November 5-8, 2010. Thus, the Court finds no error in its ruling and no miscarriage of justice from the exclusion of this evidence.

4. Evidence of Alcohol Abuse and Drug Use

At the October 8, 2014 pretrial conference, the Court held that the Defendants could offer evidence that Plaintiff had cirrhosis of the liver. However, the Court held that remote alcohol and drug use, as the cause of cirrhosis of the liver, was excluded under Rule 403. The Court stated that it would not allow a defense that Woods deserved to die, given his history of alcohol and drug use. At the pretrial conference, the Court gave Defendants ample opportunity to articulate a reason as to why remote alcohol use or drug use (or why Woods' cirrhosis of the liver being alcohol-induced) was relevant or important to their defense, and they did not articulate one apart from it being evidence of bad character. They still have not articulated one in their motions for a new trial.

The Court agreed that if Woods was currently using drugs or alcohol, that could go to comparative negligence,⁸ but the parties did not have any evidence of current use (for example, use at the detention center). Once counsel raised the issue of life expectancy, the Court also found that, given Woods' medical condition, recent alcohol use was probative of life expectancy. Thus, the Court ruled that Defendants could introduce evidence that Woods was actively using or drinking at the time of his death or shortly before his death, but could not introduce evidence of remote use. Specifically, the Court held that evidence Woods used alcohol in March of 2010 was

⁸ At the pretrial conference, Plaintiff's negligence claim was still pending.

“fair game,”⁹ and stated that to the extent there was a question about the remoteness of a particular instance of use, the Court would rule on them at trial.

On the morning of trial, the Court reiterated its holding: “There might be situations in terms of how the issue is posited, where it is relevant that it’s alcohol induced. I can’t forecast what that testimony is. Strictly to know he has cirrhosis, not admissible. But there might be issues as to life expectancy or proximate cause that it may have some relevance, his remote use, his current use, et cetera. And I didn’t want to rule on it until I heard how it arose.” (Dkt. No. 254 at 4-5).

For the reasons stated at the pretrial conference, the Court does not find any error in its evidentiary rulings related to drug and alcohol use. Furthermore, even if it was error to exclude evidence that Woods’ cirrhosis of the liver was caused by alcohol, the ruling did not result in a miscarriage of justice. Despite the Court’s ruling, the jury had such evidence before it. Dr. Raba testified on direct examination that Woods’ cirrhosis of the liver was caused by hepatitis C and “probably a component of alcohol.” (Dkt. No. 255 at 181). Because Plaintiff offered this evidence, the Court allowed other documentary evidence of prior use to be admitted because it was “harmless, since the plaintiff already offered the evidence.” (*Id.* at 192). Therefore, Defendants’ motion is denied on this ground.

5. Exclusion of Telephone Calls between Dr. Sanders and Woods

At the pretrial conference, the Court discussed two specific telephone calls between Dr. Sanders and Mr. Woods. The Court noted that it did not have a recording of the two calls at

⁹ Evidence about alcohol abuse in March of 2010 was in fact admitted at trial. (Dkt. No. 255 at 191).

issue but addressed specific issues raised. The Court noted that Call 1 could not be introduced solely to show that Hope Clinic was negligent for the reasons stated above but otherwise said that it could not make any determination about the call because the Court had not listened to it. As to Call 2, Woods apparently says, "I am in such bad shape and I told them, and they said if I ask them again, they're going to throw me down in isolation and leave me there until I die." The Court held that this statement was excludable under Rule 403 because no one knew who "they" referred to, and it was not fair to attribute this statement to Defendants. The Court made no other rulings with regard to the telephone calls between Dr. Sanders and Woods at the pretrial conference.

At trial Defendants initially sought to introduce evidence regarding Call 2, where Sanders allegedly instructs Woods to show "them" any blood. (Dkt. No. 256 at 66). Defendants argue that this evidence was "probative," and thus its exclusion was error. (Dkt. No. 246-1 at 7). However, the Court did not exclude this evidence. The Court held that Defendants could offer this evidence and put the call into evidence; however, they would be opening to the door to allow the entirety of the call in, as the references to "them" were similarly ambiguous. (*Id.* at 66-67). The Court left the decision to counsel: "I'm not ruling it out, but I'm telling you if you get into it, you're potentially opening the door and allowing these other things to be addressed, which I had kept out, because I thought it was unclear they were talking about the correctional staff. If you're telling me [they were] talk[ing] about the correctional staff, I would let it in." (*Id.* at 67). Counsel decided not to offer the evidence. (*Id.*). Thus, the issue is waived, and Defendants' motion is denied as to this ground.

6. Statements by Plaintiff's Counsel on Reply

Defendants complain that, on reply, Plaintiff's counsel "included an improper golden rule argument, an improper appeal based on upon Defendant's ability to pay that was a thinly veiled reference to insurance . . . , and included . . . [an] assertion that the Defendants tortured Woods." (Dkt. No. 246-1 at 7-8).

While Defendants did not specify what statement was an improper golden rule argument, they are presumably referring to the section of Plaintiff's reply that responds to the Defendants' argument that Woods' mother should endure some "inconvenience" and attend trial if she is asking the jury for millions of dollars:

But I submit to you, through Nancy's testimony, you know with your heart of hearts why Mama's not here today, don't you? That wasn't your son, that wasn't my son . . . that was Mama's son. And however much we felt when we saw [the video of Woods], however much the jury feels or anybody in this courtroom feels when they see those videos, . . . A child that you brought to this world, as Nancy said, nobody wants to see that.

(Dkt. No. 256 at 212). Counsel was not asking the jury to put themselves in the shoes of Woods or his mother. He was explaining why she was choose not to attend trial in response to Defendants explanation that she simply did not want to be inconvenienced. Thus, the Court does not find this a violation fo the rule, or that the comment served to inflame or excite the passions of the jury.

As to the second complaint, again Defendants did not specify what statement they are objecting to. However, the Court assumes that it was counsel's statement to the jury that "[y]ou don't need to worry about who's writing a check and who is bringing case and who's rolling quarters. Your job is to decide the value of this conduct, not how it gets paid. . . ." (Dkt. No.

256 at 211). Defendants did not object to this statement when made or move for a mistrial after closings, outside of the presence of the jury; thus, it is waived.¹⁰ *See Dennis v. Gen. Elec. Corp.*, 762 F.2d 365, 366-67 (4th Cir. 1985) (“A motion for a new trial should not be granted, therefore, where the moving party has failed to timely object to the alleged impropriety giving rise to the motion.”). Furthermore, as the Court explained in response to Defendant Burkholder’s concern regarding jury charges, the Court took counsel’s statement in context to mean that a plaintiff is entitled to a verdict on actual damages, without regard to wealth and, as such, the statement was not objectionable. (Dkt. No. 257 at 3-4).

Finally, Defendants contend that the verdict is a miscarriage of justice because counsel referred to Woods’ treatment as “torture” in his reply. (Dkt. No. 246-1 at 8). Again, counsel did not object to this statement at the time it was made. (Dkt. No. 256 at 213). And contrary to Defendants’ contention (*see* Dkt. No. 253 at 19), this ground was not raised in Defendants’ motion for a mistrial. (*See* Dkt. No. 256 at 217 (moving for a mistrial on the grounds that the reply discussed “the system” and included an appeal to the jury’s personal situation)). Thus, this argument is waived as well. Furthermore, the Court finds that counsel’s single reference to the word torture does not warrant a mistrial, especially considering that Defendants’ counsel raised

¹⁰ The failure to object in the middle of a closing may be excused “if exceptional circumstances exist such as when the error is so obvious or so serious that the public reputation and integrity of the judicial proceeding is impaired,” and counsel does not wish to emphasize the impermissible point to the jury. *Ray v. Allergan, Inc.*, 863 F. Supp. 2d 552, 565-67 (E.D. Va. 2012). However, in such a circumstance, Defendants should have raised the objection outside of the presence of the jury in a motion for mistrial, as they did with their claim that the reply appealed to the jury’s personal situations. (Dkt. No. 256 at 217). They did not do so.

Defendant Burkholder did raise the issue the following day with regard to jury instructions (Dkt. No. 257 at 3-4); however, the Defendants who are raising this issue in post-trial motions did not do so and have waived the issue.

the prospect of torture in his opening statement. (Dkt. No. 254 at 33). Therefore, Defendants' motion for a new trial on these grounds is denied.

7. Court's Decision Not to Charge the Jury on Intervening Act

The Court did not charge the jury on an intervening act because Defendants had not presented sufficient evidence at trial to warrant the charge. As the Court explained at the charge conference, receiving routine and proper treatment at Trident Hospital is foreseeable; thus, for the actions of doctors at Trident Hospital to be unforeseeable intervening acts, these acts must at least be negligent. (Dkt. No. 256 at 5-6); *Monroe v. Pape*, 365 U.S. 167, 187 (1961) ("Section [1983] should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions.").

However, Defendants did not submit any expert testimony that the actions of doctors at Trident were negligent, and the medical standard of care in treating a critically ill patient in hypovolemic shock is generally beyond the scope of a layperson's expertise. (Dkt. No. 256 at 5-7). Defendants state that they cross-examined Dr. Raba as to the "possibility of treatment irregularities at Trident," but they have failed to point to a single instance where Dr. Raba—or any other witness—testified that Woods received negligent care at Trident. Defendants were simply unable to elicit such testimony on cross, and without any evidence that Woods received negligent care at Trident, they put forward no evidence of intervening cause. Therefore, Defendants' motion is denied.

III. Motions for New Trial Nisi Remittitur

A. Constitutional Challenge to Punitive Damages Award

1. Legal Standard

The Due Process Clause “imposes a substantive limit on the size of punitive damages awards.” *Honda Motor Co., Ltd. v. Oberg*, 512 U.S. 415, 420 (1994). “To the extent an award is grossly excessive, it furthers no legitimate purpose and constitutes an arbitrary deprivation of property.” *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 417 (2003). In *BMW of North America, Inc. v. Gore*,¹¹ the Supreme Court established three guideposts for courts reviewing punitive damages awards: “(1) the degree of reprehensibility of the defendant’s misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.”¹² *State Farm*, 538 U.S. at 418 (citing *Gore*, 517 U.S. at 575). The most important of these is the degree of reprehensibility of the defendant’s conduct. *Id.* at 419.

Courts assess the reprehensibility of a defendant’s conduct by considering whether “the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference

¹¹ 517 U.S. 559 (1996).

¹² While these guideposts were developed and applied in the context of punitive damages allowed under state law, they likely apply to punitive damages awards under federal statutes. See *Cooper Ind. v. Leatherman Tool Group, Inc.* 532 U.S. 424, 430 n. 3 (2001) (“[T]here is no reason to believe that any possible difference between federal and state passing off would affect the constitutionality of the punitive damages award”); *Lowry’s Reports, Inc. v. Legg Mason, Inc.*, 302 F. Supp. 2d 455, 460 (D. Md. 2004) (“The *Gore* guideposts may apply to punitive damages awards under federal statutes.”). Here, the parties do not dispute that *State Farm* and *Gore* govern the due process analysis. (Dkt. No. 242-1 at 12, Dkt. No. 250 at 5, Dkt. No. 244-1 at 2-3).

to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident.” *Id.*

2. Discussion

In considering the reprehensibility of Defendants’ conduct, the factors weigh in favor of sustaining the verdict. The harm caused was indisputably physical, resulting in Woods’ death. The jury had to specifically find that Defendants’ conduct was indifferent to the health and safety of Woods. There was no direct evidence either way on Woods’ financial vulnerability.¹³ The conduct of the sergeants involved actions over a period of several days with multiple opportunities to act, where as the conduct of the privates were generally based on one or two isolated interactions of Woods, consistent with the variance in punitive damages awarded by the jury. *See Murphy v. Gilman*, 551 F. Supp. 2d 677, 685 (W.D. Mich. 2008) (finding this factor met where “the conduct at issue continued over nearly five days”). Finally, while there was not evidence of trickery or deceit, “[t]he harm was not the result of mere accident, but of malice as demonstrated by reckless disregard.” *Id.* Under these circumstances, the Court finds no “disconnect between the reprehensibility of the officers’ conduct in relation to the federal claims and the substantial punitive damages awarded by the jury.” *Wallace v. Poulos*, 861 F. Supp. 2d 587, 605 (D. Md. 2012).

¹³ Such evidence may not have been admissible at trial. *See Granger v. Babin*, 2014 WL 4211309 at *2 (M.D. La. Aug. 25, 2014) (excluding evidence that was only relevant to the *Gore* factors because *Gore* does not “consider[] what evidence is appropriate to support a claim for punitive damages” but only whether an award is excessive). The parties agreed that Woods was not regularly employed and, thus, did not present evidence of lost wages. Though it was clear to the parties and the Court that Woods was financially vulnerable, such evidence was not relevant to the issues at trial and, thus, not presented to the jury.

Turning to the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award, “the focus of the inquiry is on whether ‘the measure of punishment is both reasonable and proportionate to the amount of harm to the plaintiff and to the general damages recovered.’” *Id.* (quoting *Mendez-Matos v. Mun. of Guaynabo*, 557 F.3d 36, 53 (1st Cir. 2009)). While the ratio of compensatory to punitive damages may prove instructive, “[t]he precise award in any case, of course, must be based upon the facts and circumstances of the defendant’s conduct and the harm to the plaintiff.” *State Farm*, 538 U.S. at 425.

The Court first notes that the compensatory damages in this case were less than they might have been because the parties agreed that Mr. Woods was not regularly employed and, thus, did not introduce evidence of lost wages. Just because lost wages are often a significant aspect of wrongful death damages does not mean that the death of a poor man should be judged any less “harmful” than the death of a rich man. *See Murphy*, 551 F. Supp. 2d at 685-86 (“[T]he compensatory damages here are misleadingly low. Mr. Clark lost his life as a result of Defendants’ conduct. However, that life was undervalued, due to his mental illness, his race, and his status as a convicted prisoner.”); *see also State Farm*, 538 U.S. at 425 (“[R]atios greater than those we have previously upheld may comport with due process where a particularly egregious act has resulted in only a small amount of economic damages.”) (internal quotations omitted); *Gore*, 517 U.S. at 582 (“A higher ratio may also be justified in cases in which the injury is hard to detect or the monetary value of noneconomic harm might have been difficult to determine.”).

Even with this aspect of the case, the ratio of compensatory to punitive damages here is consistent with caselaw upholding punitive damages awards. “Single-digit multipliers are more likely to comport with due process . . . than awards with ratios in range of 500 to 1 . . . or . . . of

145 to 1.” *State Farm*, 538 U.S. at 425. Here, the ratio was just under 5 to 1 (\$2.45 million to \$500,000), well within the single-digit guidepost of the Supreme Court and not far from the 4-to-1 ratio repeatedly referenced by the Supreme Court. *See State Farm*, 538 U.S. at 425 (noting the Court’s references to a 4-to-1 ratio); *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 24 (1991) (upholding punitive damages award that was “more than 4 times the amount of compensatory damages”); (Dkt. No. 253 at 12; Dkt. No. 251 at 11). Courts have allowed punitive damages in a 5-to-1 ratio in medical deliberate indifference cases. *See Murphy v. Gilman*, 551 F. Supp. 2d 677 (W.D. Mich. 2008) (upholding 10-to-1 ratio in deliberate indifference case where inmate died of dehydration); *Heard v. Ill. Dep’t of Corr.*, 2012 WL 5199616 at *3 (N.D. Ill Oct. 22, 2012) (remitting punitive damages to 5-to-1 ratio in medical indifference case where injury was not life-threatening). The Court finds that based upon the facts and circumstances of Defendant’s conduct and the fact that this conduct caused Woods death, the punitive damage award is not disparate with the actual harm caused to Woods.

Finally, the amount is consistent with punitive damages awarded in similar cases. The parties both cite a number of cases that are not necessarily comparable such as excessive force cases, false imprisonment cases, First Amendment cases, and employment cases. In cases where a prisoner has died due to the deliberate indifference of a state actor, courts have upheld punitive damage awards in amounts similar to the amount awarded here. *See Gibson v. Moskowitz*, 523 F.3d 657 (6th Cir. 2008) (upholding punitive damages of \$3 million with compensatory damages of \$1.5 million in deliberate indifferent case where inmate died of dehydration); *Murphy v. Gilman*, 551 F. Supp. 2d 677 (W.D. Mich. 2008) (upholding punitive damages of \$2.5 million with compensatory damages of \$250,000 in deliberate indifference case where inmate died of

dehydration). Therefore, after considering each of the *Gore* guideposts, the Court finds that the punitive damages awards are not constitutionally unpermissible.

B. Remittitur under Rule 59(a)

Remittitur, used in connection with Fed. R. Civ. P. 59(a), “is the established method by which a trial judge can review a jury award for excessiveness.” *Atlas Food Sys. and Serv., Inc. v. Crane Nat. Vendors, Inc.*, 99 F.3d 587, 593 (4th Cir. 1996). It is a process “by which the trial court orders a new trial unless the plaintiff accepts a reduction in an excessive jury award.” *Id.* The Court must set aside an excessive verdict, even if supported by substantial evidence, if the Court finds that the verdict is “against the clear weight of the evidence, or is based upon evidence which is false, or will result in a miscarriage of justice.” *Johnson v. Hugo’s Skateway*, 974 F.2d 1408, 1444 (4th Cir. 1992) (quoting *Johnson v. Parrish*, 827 F.2d 988, 991 (4th Cir.1987)).

Defendants claim that the punitive damages awards will result in a miscarriage of justice because (1) they are “oppressive” because they exceed the Defendants’ ability to pay and (2) were tainted by Plaintiff’s counsel’s improper reply. (Dkt. No. 242-1 at 11, 13-14; Dkt. No. 250 at 7-8). As to the first claim, Defendants chose not to offer evidence of their ability to pay (or lack thereof) at trial. Defendants cannot refuse to introduce such evidence at trial and then expect to have the verdict overturned based on their own failure to do so.

Under federal law, the Defendants—not Plaintiff—have the burden of introducing evidence of net worth for purposes of minimizing a punitive damages award.¹⁴ *E.g., Schaub v. VonWald*,

¹⁴ This is also true under South Carolina state law. *See Mattison v. Dallas Carrier Corp.*, 947 F.2d 95, 100 (4th Cir. 1991) (finding that under South Carolina law, “punitive damages awards would apparently be upheld in the absence of any evidence of the worth of the defendant”).

638 F.3d 905, 926 (8th Cir. 2011); *Horney v. Westfield Gage Co., Inc.*, 77 F. App'x 24, 34 (1st Cir. 2003); *Hutchinson v. Stuckey*, 952 F.2d 1418, 1422 n.4 (D.C. Cir. 1992); *see also Kemezy v. Peters*, 79 F.3d 33, 34-36 (7th Cir. 1996) (adopting majority view that under federal law, Plaintiff need not produce any evidence of ability to pay). As Posner explained in *Kemezy*, “[a] plea of poverty is a classic appeal to the mercy of the judge or jury, and why the plaintiff should be required to make the plea on behalf of his opponent eludes us.” 79 F.3d at 36. Defendants’ failure to introduce such evidence at trial constitutes a waiver of the issue. *Grabinski v. Blue Springs Ford Sales, Inc.*, 136 F.3d 565, 570 (8th Cir. 1998); *Diesel Mach., Inc. v. B.R. Lee Ind., Inc.*, 328 F. Supp. 2d 1029, 1054-55 (D.S.D. 2003).

Even in the case cited by Defendants in support of their position, the Second Circuit started with the “well established precedent” that “it is the defendant’s burden to show that his financial circumstances warrant a limitation of the award.” *Patterson v. Balsamico*, 440 F.3d 104, 122 (2d Cir. 2006) (quotations omitted). The court then went on to “engage in an independent and detailed appraisal of the evidence [submitted at trial] bearing on damages,” including the defendant’s annual salary, defendant’s Form W-2, the value of defendant’s home, the amount of money in defendant’s bank accounts, and the amount of defendant’s debt. *Id.* Based on this considerable evidence, the court found that defendant had met his burden of showing that the award was excessive in light of his personal finances. *Id.* Defendants have simply provided no such information or evidence for the jury, or this Court, to consider.¹⁵

¹⁵ Even on post-trial motions, Defendants have provided no evidence as to their ability to pay. They note that some Defendants are still employed at Hill-Finklea Detention Center, and some are employed as private security guards; however, they have provided no evidence of Defendants’ salaries/wages, no evidence of Defendants’ assets or financial resources apart from their salaries/wages, and no evidence of their net worth. The Court cannot entertain Defendants’

Defendants have simply not met their burden of showing that their abilities to pay warrant a limitation of the punitive damages awards, and their failure to introduce any such evidence at trial waives the argument on post-trial motions.

Next, Defendants again take issue with counsel's statement to the jury on reply that "[y]ou don't need to worry about who's writing a check and who is bringing case and who's rolling quarters. Your job is to decide the value of this conduct, not how it gets paid. . . ." (Dkt. No. 256 at 211). Again, because Defendants did not object to this statement when made or move for a mistrial after closings, outside of the presence of the jury, it is waived. *See Dennis*, 762 F.2d at 367 ("It is the universal rule that during closing argument counsel cannot as a rule remain silent, interpose no objections, and after a verdict has been returned seize for the first time on the point that the comments to the jury were improper and prejudicial").

Furthermore, even if counsel erred in making the statement, there was no miscarriage of justice. The jury's question during deliberations clearly indicates that the jury understood that it was to consider, to the extent that it could from the evidence presented at trial, Defendant's ability pay: "Your Honor, with respect to your instructions, page 19, item seven, what are each defendant's ability to pay?" (Dkt. No. 257 at 29). The Court instructed the jury that it "must rely on the evidence offered at trial." (*Id.* at 30). The fact that Defendants chose not to offer any such evidence at trial falls on Defendants; it is not cause for remittitur.

argument without such information. However, even if Defendants had provided such information only on post-trial motions, the Court likely could not consider such evidence because it was not presented at trial. *See, e.g., Grabinski*, 136 F.3d at 570.

IV. Motions for Setoff

A. Legal Standard

Section 1983 does not contain any provision regarding offsetting an actual damages award because of settlement. Because § 1983 and federal law does not provide substantive law on the matter, the Court must apply state law. 42 U.S.C. § 1988; *Big Elk v. Bd. of Cty. Comm'rs of Osage Cty*, 3 F. App'x 802, 808-09 (10th Cir. 2001); *see also C.B. v. City of Sonora*, 769 F.3d 1005, 1031 (9th Cir. 2014) (applying state law on issue of offset in a § 1983 case).

“South Carolina’s setoff rule rests on the ‘almost universally held [principle] that there can be only one satisfaction for an injury or wrong.’” *Atlas Food Sys. and Serv., Inc. v. Crane Nat. Vendors, Inc.*, 99 F.3d 587, 596 (4th Cir. 1996) (quoting *Truesdale v. S.C. Highway Dep't*, 213 S.E.2d 740, 746 (1975)); *Rutland v. S.C. Dep't of Transp.*, 734 S.E.2d 142, 145 (S.C. 2012). Thus, the court “must reduce the amount of the verdict to account for any funds previously paid by a settling defendant, so long as the settlement funds were paid to compensate the same plaintiff on a claim for the same injury.” *Smith v. Widener*, 724 S.E.2d 188, 190 (S.C. Ct. App. 2012); *see also* S.C. Code Ann. § 15–38–50(1).¹⁶ “Likewise, when the prior settlement involves compensation for a different injury from the one tried to verdict, there is no setoff as a matter of law.” *Id.* at 191.

When a settlement involve two claims, one of which involves the same injury as the claim tried to verdict and one of which does not, the court must make a factual determination of

¹⁶ The Uniform Contribution Among Tortfeasors Act is not applicable to governmental entities. *See* S.C. Code Ann. § 15-38-65. However, even in cases with government entities, there is a right of setoff that is “equitable in nature,” and a trial court may grant setoff “when necessary to provide justice between the parties.” *Smalls v. S.C. Dep't of Educ.*, 528 S.E.2d 682, 689 (S.C. Ct. App. 2000).

how to allocate the settlement between the two claims. *Id.* In particular, compensatory damages on survival claims and wrongful death damages are compensation for different injuries, and courts must determine what portion of a settlement are attributable to each injury. *See, e.g., Rultand*, 734 S.E.2d at 145-46; *Smalls v. S.C. Dep't of Educ.*, 528 S.E.2d 682, 689 (S.C. Ct. App. 2000).

B. Discussion

Here, Plaintiff brought three survival claims against Hope Clinic, Dr. Etikerentse, and Nurse Brabham (collectively, the “Medical Defendants”): a Section 1983 claim, a claim for Intentional Infliction of Emotional Distress, and a negligence claim.¹⁷ (Dkt. No. 34). Plaintiff also sought wrongful death damages against the Medical Defendants. (*See id.* at 20). Plaintiff settled all of her claims against the Medical Defendants for \$625,000. (Dkt. No. 166). The Court approved the settlement without resolving how much of the settlement proceeds should be allocated to any particular claim. (Dkt. No. 176). The question before the Court now is how much of the \$625,000 settlement should apply to offset the \$500,000 jury verdict in compensatory damages.

As an initial matter, the Court does not need to allocate the settlement proceeds between each cause of action pled, only between survival damages and wrongful death damages. To the extent that the different causes of action seek the same remedy, i.e., seek “to compensate the same plaintiff on a claim for the same injury,” there is nothing to portion. *See Smith*, 724 S.E.2d

¹⁷ Despite the fact that Plaintiff only pled the survival statute with regard to the negligence claim (*see* Dkt. No. 34), all three of these causes of action are survival claims because they seek to recover damages for Mr. Woods’ personal injuries. *See* S.C. Code Ann. § 15-5-90 (“Causes of action for and in respect to . . . any and all injuries to the person . . . shall survive both to and against the personal or real representative.”).

at 190; *cf. Keeter v. Alpine Towers Intern., Inc.*, 730 S.E.2d 890, 899-900 (S.C. Ct. App. 2012) (holding that where a plaintiff asserts multiple causes of action, but seeks only one remedy (e.g., actual damages), a plaintiff need not elect a remedy because “there is nothing to elect”). Thus, the Court must allocate the settlement proceeds between survival damages and wrongful death damages.

The Court starts with Plaintiff’s allocation, which was 50% to each type of damages. (Dkt. No. 166 at 5). None of the Defendants quarrel with this allocation or suggest a different allocation.¹⁸ (Dkt. No. 242-1 at 18-19; Dkt. No. 245-1 at 3-4). The Court finds that this allocation of the settlement proceeds is reasonable. There was ample evidence at trial that Woods suffered conscious pain and suffering, such that both types of damages are warranted. Plaintiff did not seek specific, easy-to-determine economic damages as part of the survival or wrongful death damages. For example, she did not seek medical expenses or lost wages. Instead, both types of damages were more difficult to quantify, such a pain and suffering (survival damages) and grief and sorrow (wrongful death damages). Thus, the 50-50 allocation is reasonable given the evidence at trial, and the Court allocates \$312,500 of the settlement proceeds to survival damages and \$312,500 of the proceeds to wrongful death damages.

For the same reasons, the Court allocates the \$500,000 verdict evenly between these two types of damages: \$250,000 to survival damages and \$250,000 to wrongful death damages.¹⁹

¹⁸ Burkholder took issue with Plaintiff’s allocation of survival damages all to the negligence cause of action and none to the Section 1983 or intentional infliction of emotional distress causes of action. (Dkt. No. 242-1 at 19). However, this issue is moot, as the Court need not allocate damages among these three causes of action, all of which seek damages for the same injury.

¹⁹ Again, the parties do not suggest any other allocation.

Plaintiff agrees that the wrongful death settlement proceeds offset the wrongful death verdict because “there can only be one death and only one recovery for the same.” (Dkt. No. 250 at 9). The Court agrees and finds the \$250,000 wrongful death portion of the verdict fully offset by the settlement proceeds.

Defendants claim that the survival portion of the verdict is also fully offset by the settlement proceeds. (Dkt. No. 242-1 at 19; Dkt. No. 254-1 at 4). Plaintiff argues that the settlement proceeds with the Medical Defendants compensated Woods for the pain and suffering he endured in the 3.5 weeks (or 25 days) that he was at Hill-Finklea Detention Center prior the weekend of November 5-8, 2010. (Dkt. No. 250 at 9; Dkt. No. 251 at 19). Thus, Plaintiff claims that the settlement compensates for a different injury than the jury verdict, which compensates for pain and suffering endured during the week of November 5-8, 2010, and none of the proceeds should be used offset the \$250,000 survival portion of the verdict.²⁰ (*Id.*). The Court disagrees with both positions.

The survival settlement proceeds compensate for Woods for his pain and suffering during the 25 days that he was at Hill Finklea prior to the weekend of November 5-8, 2010, his pain and suffering during the weekend of November 5-8, 2010, and any pain and suffering at Trident Hospital prior to his death. Plaintiff claimed that the Medical Defendants proximately caused Woods’ death and received a settlement that she agrees includes wrongful death damages. It is

²⁰ Burkholder does not respond to this argument. (*See* Dkt. No. 252). The other Defendants’ only response is that if the Medical Defendants had gone to trial, the jury might have found Medical Defendants more comparatively negligent than the other defendants. (Dkt. No. 253 at 21). This argument does not bear on the question at hand. The question at hand is whether the settlement proceeds compensate for the same injury as the verdict—not the comparative fault of the respective defendants.

nonsensical to argue that the settlement covers damages from Woods' death but not the pain and suffering endured for the days immediately preceding his death. However, the evidence at trial was that Woods was unconscious for much, if not all, of his time at Trident Hospital. (Dkt. No. 256 at 79, 84). Thus, the Court finds that the survival settlement proceeds compensate for Woods' pain and suffering for 29 days: the 25 days prior to the weekend of November 5, 2010, and November 5, 6, 7, and 8, 2010.

The survival settlement proceeds do cover a longer time span than the jury verdict. The jury verdict only covers Woods' pain and suffering from November 5, 2010, until his death. Again, because Woods was unconscious during his time at Trident, the Court finds that the verdict compensates for Woods' pain and suffering for four days: November 5, 6, 7, and 8, 2010.

Allocating the survival settlement proceeds equally over the 29 days that they cover, the amount of the settlement proceeds attributable to Woods' pain and suffering for November 5-8, 2010, is \$43,103 (or 13.8%). However, the evidence at trial suggests that Woods' pain and suffering grew as time progressed and as his condition deteriorated. Therefore, the Court finds it reasonable under the circumstances to attribute 25% of the survival settlement proceeds (or \$78,125) to the Woods' pain and suffering during the weekend in question.

In sum, the Court offsets the jury verdict of \$500,000 in compensatory damages by \$328,125 of the settlement proceeds. Thus, the verdict for compensatory damages is reduced to \$171,875.

V. Conclusion

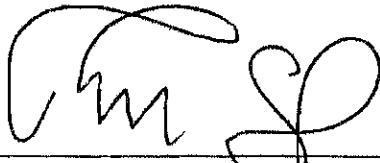
Defendants' Motion for Judgement as a Matter of Law (Dkt. No. 243), Motion for New Trial Remittitur (Dkt. No. 244), and Motion for New Trial (Dkt. No. 246) are DENIED.

Defendants' Motion for Setoff (Dkt. No. 245) is GRANTED IN PART AND DENIED IN PART.

Defendant Burkholder's Motion for Judgment as a Matter of Law, New Trial, New Trial Remittitur, and Setoff (Dkt. No. 242) is GRANTED IN PART AND DENIED IN PART. In particular, Burkholder's Motions for Judgment as a Matter of Law, New Trial, and New Trial Remittitur are DENIED, and Burkholder's Motion for Setoff is GRANTED IN PART AND DENIED IN PART.

IT IS HEREBY ORDERED THAT the jury verdict for \$500,000 in compensatory damages is offset by \$328,125 in settlement proceeds. Thus, the verdict for compensatory damages is reduced to \$171,875.

AND IT IS SO ORDERED.


Richard Mark Gergel
United States District Judge

December 31, 2014
Charleston, South Carolina

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Nancy Morris, <i>as Personal Representative</i>	)	
<i>of the Estate of David Allan Woods,</i>	)	No. 5:12-cv-3177-RMG
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Andrew J. Bland, <i>PFC</i> ; Richard T.	)	
Burkholder, <i>SGT</i> ; Leemon E. Carner, <i>PFC</i> ;	)	
Jerry Speissegger, Jr., <i>PFC</i> ; Priscilla Garret,	)	
<i>SGT,</i>	)	
	)	
Defendants.	)	
_____	)	

This matter is before the Court on Plaintiff's Motion for Costs and Attorney's Fees. (Dkt. No. 239). For the reasons stated below, the motion is granted in part and denied in part.

I. Attorney's Fees

A. Plaintiff is entitled to reasonable attorney's fees.

Under the Civil Rights Attorney's Fees Awards Act of 1976, a district court may award reasonable attorney's fees to the prevailing party in a § 1983 action. 42 U.S.C. § 1988(b); *Hudson v. Pittsylvania Cty., Va.*, - - - F.3d - - - , 2014 WL 7210330 at *4 (4th Cir. 2014). "Congress enacted § 1988 specifically because it found that the private market for legal services failed to provide many victims of civil rights violations with effective access to the judicial process." *City of Riverside v. Rivera*, 477 U.S. 561, 576 (1986) (citations omitted). It found that "victims ordinarily cannot afford to purchase legal services at the rates set by the private market." *Id.*

“In light of Section 1988's language and purpose, a prevailing plaintiff ‘should ordinarily recover an attorney’s fee unless special circumstances would render such an award unjust.’” *Lefemine v. Wideman*, 758 F.3d 551, 555 (4th Cir. 2014) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983)). This special circumstances exception is “very narrowly limited” and only applies “on rare occasions.” *Id.* (quotations omitted). Examples of such circumstances include fees claimed by a pro se plaintiff who is also an attorney or where the plaintiff’s suit does not actually vindicate civil rights. *Id.* at 555-56. A plaintiff’s ability to pay, the fact that defendants acted in good faith, or the fact that a plaintiff only received limited relief (e.g., an injunction but not damages) are not special circumstances that warrant the denial of attorney’s fees. *Id.* at 556, 558-59; *Bills v. Hodges*, 628 F.2d 844, 847 (4th Cir. 1980).

Here, Defendants Bland, Carner, Garrett, and Speissegger appear to argue that this case has special circumstances that would warrant the denial of attorney’s fees, though they do not specify what these special circumstances might be.¹ (Dkt. No. 241 at 2). These defendants also claim that because the \$625,000 settlement with Hope Clinic, Dr. Etikerentse, and Nurse Brabham (collectively, the “Medical Defendants”) must be setoff against the \$500,000 verdict for compensatory damages, “[t]he trial of this case failed to achieve any recompense for a civil rights violation against Mr. Woods.” (Dkt. No. 241 at 3). However, the Court has now ruled on Defendants’ motions for setoff and only granted the motion in part, leaving a compensatory damages verdict in the amount of \$171,875. (Dkt. No. 259). Furthermore, Defendants’ argument fails to consider that the jury’s award of \$2.45 million in punitive damages is a

¹ Defendant Burkholder does not contest Plaintiff’s entitlement to attorney’s fees, only the reasonableness of the fees claimed. (See Dkt. No. 240).

vindication of Woods' civil rights. The Court finds no special circumstances present here and finds that Plaintiff is entitled to reasonable attorney's fees.

B. Reasonableness of the Fees Requested.

A district court awards attorney's fees under Section 1988 in three steps:

First, it must determine the lodestar figure by multiplying the number of reasonable hours expended times a reasonable rate. Second, the court must subtract fees for hours spent on unsuccessful claims unrelated to successful ones. Third, the court should award some percentage of the remaining amount, depending on the degree of success enjoyed by the plaintiff.

Hudson v. Pittsylvania Cty., Va., - - - F.3d - - - -, 2014 WL 7210330 at *4 (4th Cir. 2014)

(internal quotations and citations omitted). In determining the lodestar figure, the court considers the *Johnson*²/*Barber*³ factors:

1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases.⁴

² *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714 (5th Cir.1974), *overruled on other grounds by Blanchard v. Bergeron*, 489 U.S. 87 (1989).

³ *Barber v. Kimbrell's Inc.*, 577 F.2d 216 (4th Cir.1978) (adopting twelve factor test set forth in *Johnson*).

⁴ There is some confusion about the correct application of the *Johnson/Barber* factors after the Supreme Court's decision in *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542 (2010). See *Shelley v. Tribble*, 2014 WL 6460552 at *2 n.4 (D.S.C. Nov. 17, 2014) for a full explanation. However, because the Court does not enhance the lodestar fee calculation based on the *Johnson* factors, it need not resolve the issue here. See *McAfee*, 738 F.3d at 90 (distinguishing *Perdue* on the basis that the district court did not enhance the lodestar fee calculation and, thus, not addressing which *Johnson* factors might be subsumed by the lodestar calculations).

McAfee v. Boczar, 738 F.3d 81, 88 n.5 (4th Cir. 2013); *Grissom v. The Mills Corp.*, 549 F.3d 313, 320-21 (4th Cir. 2008). As the fee applicant, Plaintiff bears the burden of showing that both the hourly rate and hours expended are reasonable. *E.g.*, *McAfee*, 738 F.3d at 91.

1. Hourly Rate

A reasonable rate is one that compensates attorneys at the “prevailing market rates in the relevant community.” *Rum Creek Coal Sales, Inc v. Caperton*, 31 F.3d 169, 175 (4th Cir. 1994) (quoting *Blum v. Stenson*, 465 U.S. 886, 895 (1984)). “The relevant market for determining the prevailing rate is ordinarily the community in which the court where the action is prosecuted sits.” *Id.* However, “[i]n circumstances where it is reasonable to retain attorneys from other communities, however, the rates in those communities may also be considered.” *Id.* “[A]ffidavits of other local lawyers who are familiar both with the skills of the fee applicants and more generally with the type of work in the relevant community” have been held to be competent evidence to shown prevailing market rates. *McAfee*, 738 F.3d at 91.

Once a Plaintiff provides competent evidence of the prevailing market rate, “a court may apply its own knowledge and familiarity of the relevant prevailing market rates to provide further evidence of the reasonableness of the rate.” *Shelley v. Tribble*, 2014 WL 6460552 at *2 n.4 (D.S.C. Nov. 17, 2014); *see also Rum Creek Coal Sales*, 31 F.3d at 179 (“While [plaintiff] makes a persuasive argument that the fees actually charged by its law firm in Charleston . . . and paid by clients there should be strong evidence of the prevailing market rate, we cannot say that a contrary factual finding by the magistrate judge constitutes an abuse of discretion where the magistrate judge used his own personal knowledge of the prevailing rates in Charleston.”).

Here, Plaintiff has requested fees for six attorneys, with hourly rates as follows:

Attorney	Hourly Rate
Thomas Pope: Former solicitor of York County, Mr. Pope has considerable trial experience and served as trial counsel in this case. He has practiced law in South Carolina for 26 years.	\$400
Jack Leader: Mr. Leader has practiced law for over 40 years. He was not trial counsel in the case but participated in case strategy meetings and one deposition.	\$400
Harold Staley: Mr. Staley has practiced law in South Carolina for 15 years and served as trial counsel in the case.	\$350
Andrew Creech: Mr. Creech has practiced law in South Carolina for 6 years and served as trial counsel in the case.	\$325 (work in 2014) \$245 (work in 2012, 2013) \$200 (work in 2011)
Garrett Johnson: Mr. Johnson has practiced law in South Carolina for 4 years.	\$245 (work in 2013, 2014) \$200 (work in 2011, 2012)
Ben Leader: Mr. Leader has practiced law for less than a year. He joined the law firm in September of 2014 and attended trial six weeks later in mid-October 2014.	\$200

Plaintiff has submitted the affidavit of Stephen Cox, testifying that these rates are reasonable for the Charlotte metropolitan area. (Dkt. No. 239-2).

Defendants first object that the appropriate community to consider is Charleston, South Carolina, not the Charlotte metropolitan area. (Dkt. No. 240 at 3-4; Dkt No. 241 at 4-5). Charleston is ordinarily the community that the Court would consider. However, because Plaintiff is a resident of York County, it was reasonable for her to obtain local counsel there, and the Court will consider the rates where counsel is located as well.

However, the Court does have concerns that a first year associate is billing at a rate nearly 60% higher than the rate allowed for court appointed counsel in federal criminal cases.⁵ See *McAfee*, 738 F.3d at 91 n.8 (“We observe that the hourly rates of court-appointed counsel in federal criminal cases are substantially less than those being sought here. . . . Viewed from that perspective, [plaintiff’s] lawyers may be said to have received a hefty premium for their legal services.”). Mr. Leader’s rate also seems high because he was with the law firm only six weeks when the case went to trial and, therefore, did not have any significant knowledge or background in the case.⁶ Thus, the Court finds a reasonable rate for Ben Leader’s services to be \$125 per hour. Similarly, the Court reduces the rate for Mr. Garret’s services to \$125 per hour for his services as a first-year associate in 2011 and 2012, and to \$200 per hour for his services in 2013 and 2014. The Court reduces Mr. Creech’s rate for 2014 to \$300 per hour, but otherwise finds his rates reasonable for a mid-level associate performing this type of work. See *Glidewell v. City of Greenville, S.C.*, 2012 WL 951777 at *5 (D.S.C. Mar. 20, 2012) (finding requested rates unreasonable and approving hourly rates of \$275 and \$225).

Finally, as to Thomas Pope, Jack Leader and Harold Staley, the Court finds their rates reasonable after consideration of the *Johnson* factors. In particular, the experience, reputation

⁵ Counsel appointed in federal non-capital criminal cases may bill at a maximum hourly rate of \$126. 7A Admin. Office of U.S. Courts, Guide to Judiciary Policy § 230.16(a) (2014). The rate requested here for a first-year associate is even more than the rate allowed court appointed counsel in capital cases. See *id.* § 630.10.10 (providing a maximum hourly rate of \$180 in a capital case).

⁶ Mr. Leader was with the firm for only a week before billing for attending and observing jury selection.

and ability of these attorneys are well-known in the community, and the results obtained for their client were significant. Thus, the Court approves the following rates for Plaintiff's attorneys:

Attorney	Court-approved Hourly Rate
Thomas Pope	\$400
Jack Leader	\$400
Harold Staley	\$350
Andrew Creech	\$300 (work in 2014) \$245 (work in 2012, 2013) \$200 (work in 2011)
Garrett Johnson	\$200 (work in 2013, 2014) \$125 (work in 2011, 2012)
Ben Leader	\$125

2. Reasonableness of Hours Expended - Duplicative hours

In evaluating a fee application, “[t]he number of hours must obviously be adjusted to delete duplicative or unrelated hours.” *Rum Creek Coal Sales*, 31 F.3d at 175. The Fourth Circuit has been “sensitive to the need to avoid use of multiple counsel for tasks where such use is not justified by the contributions of each attorney,” as “[g]eneralized billing by multiple attorneys on a large case often produces unacceptable duplication.” *Id.* at 180; *accord Trimper v. City of Norfolk, Va.*, 58 F.3d 68, 76 (4th Cir. 1995).

Here, the Court finds some of the claimed fees duplicative. First, four attorneys attended and billed for their time at jury selection, and five attorneys attended and billed for their time at trial. This is excessive. Four attorneys are adequate for trial, and three are adequate for jury selection. Therefore, the Court excludes hours billed by Ben Leader for jury selection and trial. Similarly, four attorneys attended the pretrial conference/hearing on motions in limine and billed

for this time. The Court finds that two attorneys are reasonable, and Plaintiff has failed to explain why a third and fourth attorney are not duplicative.

Second, two or three attorneys attended many of the depositions in the case and billed for travel and attendance at these depositions. While there may be circumstances that warrant two attorneys at a deposition, Plaintiff's counsel has not explained why a second or third attorney was needed in any of these instances, and thus, have not met their burden of showing that fees for multiple attorneys are reasonable. The Court finds such hours duplicative and only allows fees for a single attorney for each deposition.

Third, four attorneys attended and billed for their time at mediation. Plaintiff has provided not any reason for having four attorneys present at mediation or explained how the third and fourth counsel added any non-duplicative services. Therefore, the Court finds duplicative and excludes hours billed by the third and fourth counsel at mediation.

Finally, three attorneys attended a status conference in August of 2013 and the bar meeting held by this Court in August of 2014. These proceedings were not complex in nature and did not require three attorneys. Therefore, the Court finds duplicative and excludes the hours billed by the third attorney in each instance.

3. Reasonableness of Hours Expended - Block Billing

Block Billing is "the practice of grouping, or 'lumping,' several tasks together under a single entity, without specifying the amount of time spent on each particular task." *Guidry v. Clare*, 442 F. Supp. 2d 282, 294 (E.D.Va.2006). "[C]ourts have permitted parties seeking attorneys' fees to use block billing, at least where the entries are reasonably descriptive and the tasks all pertain to the case or claims for which attorneys' fees are sought." *Md. Elec. Indus.*

Health Fund v. MESCO, Inc., 2014 WL 4660813 at * 6 (D. Md. Sept. 16, 2014); *see also United States ex. rel. Abbott-Burdick v. Un. Med. Assoc.*, 2002 WL 34236885 at *16 (D.S.C. May 23, 2002) (noting that block billing “is not per se forbidden” and declining to reduce the fee award due to block billing); *Westmoreland v. Prince George’s Cty., Md.*, 2013 WL 6629054 at *16 (D. Md. Dec. 17, 2013) (“Although the records reflect that an appreciable amount of block-billing took place, they correspond to the procedural history of the case and are reasonably detailed overall.”). However, courts have reduced fee awards “where counsel used block-billing to record multiple tasks, only a portion of which fell within the scope of reimbursable work,” *MESCO, Inc.*, 2014 WL 4660813 at * 6, or where it “prevent[s] an accurate determination of the reasonableness of the time expended in a case.” *Guidry*, 442 F. Supp. 2d at 294.

Here, the Court has reviewed the hours that Defendants object to as “block billing” in Dkt. No. 240-2 and finds them acceptable. For example, “trial prep” on the eve of trial is acceptable; attorneys need not break down how much of their time is spent preparing for each direct or cross examination, for opening statements, or closing arguments. While “case prep” may be objectionable if used extensively, here it was used sparingly (only accounting for a minimal numbers of hours) and exclusively pertains to this case. Thus, the Court declines to reduce the fee award based on the “block billing” present here.

4. Unrelated Claims

The Court must “subtract fees for hours spent on unsuccessful claims unrelated to successful ones.” *E.g., McAfee*, 738 F.3d at 88. Claims are related when they “involve a common core of facts” and involve related legal theories such that it is “difficult to divide the

hours expended on a claim-by-claim basis.” *Brodziak v. Runyon*, 145 F.3d 194, 197 (4th Cir. 1998); *see also Tex. State Teachers Ass’n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 789 (1989).

Here, the Court agrees with Defendants that Plaintiff’s claims against the Medical Defendants are unrelated to the claims that went to trial. The claims against the Medical Defendants simply involve a different set of core facts from those at trial, namely the conduct of the Medical Defendants in the three weeks prior to the weekend at issue in trial. The time frames at issue in the two sets of claims were different, and the conduct at issue was different. At the request of Plaintiff, the Court excluded evidence at trial regarding the Medical Defendants’ conduct because it was irrelevant to the claims at trial. It is not difficult for the Court to separate hours spent solely on claims against the Medical Defendants. Indeed, Plaintiff’s counsel did not have trouble allocating their costs and attorney’s fees to these claims in the petition to approve settlement (Dkt. No. 166 at 5) and have already been paid their fees for claims against the Medical Defendants. (Dkt. No. 176). Counsel cannot recover them again, here, against the trial Defendants.

Therefore, the Court excludes hours spent solely on the claims against the Medical Defendants. These hours include:

- hours related to Hope Clinic’s bankruptcy case;
- hours related to Jacqueline Moore and Dawn Frazier, nursing experts retained to address the actions of Nurse Brabham;
- hours related to Dr. Serra and Dr. Neal, the medical experts retained to address the actions of the Medical Defendants;

- hours related to settlement demands and/or negotiations with the Medical Defendants;
- hours reviewing filings by the Medical Defendants; and
- hours related the depositions of the Medical Defendants and their expert(s).

Defendants also complain that claims against other Hill Finklea Detention Center correctional officers were dismissed voluntarily or on summary judgment, and the five Defendants at trial should not be responsible for costs related to the claims against these dismissed defendants. (Dkt. No. 241 at 8). However, unlike the case with the Medical Defendants, Defendants are unable to identify any fees that solely relate claims against other correctional officers. (*See* Dkt. No. 241-1). The Court finds that the claims against other correctional officers are related to the claims at trial—they all involve the actions of correctional officers during the weekend of November 5-8, 2010, Mr. Woods' condition during that time and whether the defendants were deliberately indifferent. Even if these Defendants had not been named parties, their depositions would have likely been taken as witnesses. The fact that Defendants cannot identify fees solely related to these claims suggests that it is "difficult to divide the hours expended on a claim-by-claim basis." *Brodziak*, 145 F.3d at 197. Therefore, the Court does not exclude any hours based on claims against other Hill Finklea employees.

5. Calculation of Allowable Attorney's Fees

As to Thomas Pope, the Court excludes 4.5 hours of time related to the deposition of Defendant Etikerentse. Thus, the Court approves fees in the amount of \$82,780 (206.95 hours at \$400 an hour).

As to Jack Leader, the Court excludes 11 hours related to the deposition of the Medical Defendants' expert. Thus, the Court approves fees in the amount of \$18,600 (46.5 hours at \$400 an hour).

As to Harold Staley, the Court excludes a total of 59.5 hours related to the claims against the Medical Defendants: 30 hours related to the deposition of Defendant Nurse Brabham, 1 hour related to the deposition of Jacqueline Moore, 11 hours related to the deposition of Dr. Serra, 9 hours related to the deposition of Dawn Frazier, and 8.5 hours related to the deposition of the Medical Defendants' expert. Thus, the Court approves fees in the amount of \$106,865.50 (305.33 hours at \$350 an hour).

As to Andrew Creech, the Court excludes a total of 147.5 hours related to claims against the Medical Defendants: 21 hours related to the deposition of Defendant Etikerentse, 42 hours related to the deposition and expert report of Jacqueline Moore, 19 hours related to the deposition of Defendant Brabham, 11 hours related to the deposition of Dr. Serra, 3 hours related to the deposition of Dawn Frazier, and 51.5 hours related to the deposition of Medical Defendants' experts. The Court also excludes a total of 112.08 hours that are duplicative: 93.33 hours as the second attorney attending depositions, 10.75 hours as the third attorney attending mediation, and 8 hours as the third attorney attending the bar meeting. These excluded hours breakdown as 148.08 hours excluded for 2012 and 2013 and 111.5 hours excluded for 2014. Thus, the Court approves fees in the amount of \$92,810, broken down as follows:

For 2011, 2 hours at \$200 an hour = \$400;

For 2012 and 2013, 71 hours at \$245 an hour = \$17,395;

For 2014, 250.05 hours at \$300 an hour = \$75,015.

As to Garrett Johnson, the Court excludes a total of 15.5 hours related to claims against the Medical Defendants: 8.75 hours related to the bankruptcy of Defendant Hope Clinic, 1 hour related to Jacqueline Moore's affidavit, 1 hour related to Dr. Serra's expert report, .5 hours reviewing filings by Medical Defendants, 1.25 hours related to demand/settlement with the Medical Defendants, and 3 hours researching nursing standards. The Court also excludes a total of 44.58 hours that are duplicative: 16.33 hours as the third attorney attending a deposition, 10.75 hours as the fourth attorney attending mediation, 8 hours as the third attorney attending a 2013 Status Conference, and 9.5 hours as the third attorney attending the pretrial conference/hearing on motions in limine. These excluded hours breakdown as 9.75 hours in 2012 and 50.33 hours in 2013 and 2014. Thus, the Court approves fees in the amount of \$48,737.50, broken down as follows:

For 2012, 23.5 hours at \$125 an hour = \$2,937.50

For 2013 and 2014, 229 hours at \$200 an hour = \$45,800.

As to Ben Leader, the Court exclude 77.75 hours as duplicative: 8.5 hours as the fourth attorney attending jury selection, 9.5 hours as the fourth attorney attending the pretrial conference/hearing on motions in limine, and 59.75 hours as the fifth attorney attending trial. Thus, the Court approves fees in the amount of \$4,500 (36 hours at \$125 an hour).

Therefore, the Court awards attorney's fees in the total amount of **\$354,293**.

III. Costs & Expenses

A. Plaintiff is entitled to reimbursement for reasonable litigation related expenses.

It is well settled that a plaintiff prevailing in an action under § 1988 is entitled to reimbursement for reasonably incurred litigation related expenses. Some of these litigation

related expenses fall into the category of out of pocket expenses normally reimbursed attorneys by fee paying clients, such as travel, telephone and paralegal expenses. These are normally categorized as a part of a normal attorney fee award. Other expenses, such as payments to third parties for deposition expenses and witness fees, have been categorized traditionally as costs. *Spell v. McDaniel*, 852 F.2d 762, 771 (4th Cir. 1988); *Northcross v. Board of Education of Memphis City Schools*, 611 F.2d 624, 639 (6th Cir. 1980).

B. Plaintiff is not entitled to expenses previously awarded as part of the Hope Clinic settlement.

Plaintiff has submitted itemized expenses for reimbursement by these Defendants totaling \$134,192.32, covering expenses from March 2, 2011 through October 17, 2014. (Dkt. No. 239-13). In the earlier Hope Clinic settlement, Plaintiff submitted for reimbursement expenses in the amount of \$100,702.53 covering the period March 2, 2011 through June 16, 2014. (Dkt. No. 166-1). It appears that all costs sought by Plaintiff to be reimbursed by these Defendants through June 16, 2014 have already been reimbursed as part of the Hope Clinic settlement.

The difficulty with these overlapping claims is that they represent inconsistent positions of the Plaintiff regarding where these expenses arose. At the time of the Hope Clinic settlement, it was in the interest of Plaintiff's counsel to claim all costs were related to that particular settlement because it allowed full reimbursement to them for all costs advanced to that point. In evaluating the settlement proposal and Plaintiff's request for attorneys' fees in the amount of \$218,750.00, the Court considered the significant costs incurred and advanced by counsel as one of the factors supporting a sizeable fee award. Thus, the Court approved both the fee award and cost reimbursement requested by counsel in the Hope Clinic settlement, which totaled

\$218,750.00 in attorney fees and \$100,702.53 in costs. (Dkt. No. 176).

Now, after going to trial against the Detention Center related defendants and obtaining a verdict under § 1988, Plaintiff's counsel has submitted these very same costs as related to the Detention Center claim. This new position is clearly in the interest of their client since it would shift these costs to the Detention Center defendants above and beyond the jury award. The problem, however, is that there can be no consistency or integrity to the adjudication process if counsel can take a position in one proceeding to his advantage and then take the opposite position regarding a subsequent matter, also to obtain an advantage. *King v. Herbert J. Thomas Memorial Hospital*, 159 F.3d 192, 196 (4th Cir. 1998). Under such circumstances, counsel is estopped from taking an inconsistent position, from "blowing hot and cold as the occasion demands." *Lowery v. Stovall*, 92 F.3d 219, 223 (4th Cir. 1996).

Having knowingly and intentionally sought reimbursement for expenses in the Hope Clinic settlement on the basis that those expenses were related to that claim, and successfully obtained the relief sought, Plaintiff is estopped from asserting that these same expenses were related to the Detention Center claim. Thus, the Court denies Plaintiff's claims for reimbursement for all costs previously reimbursed in the Hope Clinic settlement.

C. More information is necessary for an appropriate calculation of expenses incurred since June 16, 2014.

Plaintiff seeks reimbursement for \$33,489.79 for costs incurred since June 16, 2014. Defendants have raised a number of issues regarding the nature, appropriateness and reasonableness of many of these expenses. (See Dkt. Nos. 240-3 at 6-9, 241-3 at 3-5). Plaintiff

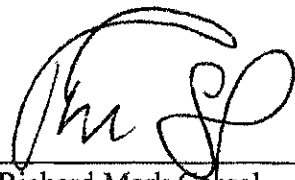
did not respond to any of these specific objections, many of which potentially have some merit.⁷

Without more information on these expenditures, the Court is unable to determine if they were reasonably necessary and reasonable. Therefore, Plaintiff is directed to file a response within 10 days of this order addressing each of the objections raised by the Defendants to expenses incurred after June 16, 2014.

Plaintiff has also sought a lump sum reimbursement \$4,817.40 for "mileage reimbursement" for 8,680 miles. (Dkt. No. 239-13 at 5). The Court cannot discern if this amount includes travel expenses previously reimbursed in the Hope Clinic settlement or for travel for attorneys whose time has not been authorized as necessary in the earlier portion of this order. The Court directs that Plaintiff resubmit any claim for travel reimbursement with itemized costs for each trip and exclude any travel expenses previously reimbursed in the Hope Clinic settlement or associated with costs disallowed by this order. This supplemental response must be submitted within 10 days of this order.

Once this additional information is submitted, the Court will issue an order concerning the request for the post June 16, 2014 expenses.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Judge

January 15, 2015
Charleston, South Carolina

⁷ For instance, Plaintiffs sought reimbursement for hotel rooms for Dr. Serra and Freeman Ingram, neither of whom appeared or testified at trial. Further, Plaintiff sought reimbursement for an actor fee and hotel room that is not explained. (Dkt. Nos. 240-3 at 8, 241-3 at 4).

EXHIBIT D

PART 1

POLICY NUMBER	POLICY PERIOD	TYPE OF INSURANCE	COVERAGE
T130080011	02/13/2010-02/13/2011	GENERAL TORT LIABILITY	600,000

NAMED INSURED AND ADDRESS	CURRENT DEC PAGE AND SCHEDULE	ACTIVITY
BERKELEY COUNTY	AS OF: 07/18/2013	009
POST OFFICE BOX 6122		
MONCKS CORNER, SC 29461	ATTN: PATRICIA WITHROW (843) 719-4908	

COVERAGE PROVIDED UNDER THIS POLICY IS SUBJECT TO THE FOLLOWING FORMS:
CD-01 CD-12

S C H E D U L E

COVERAGE IS AUTOMATICALLY PROVIDED FOR THE ENTITY

PREPAID LEGAL DEFENSE COSTS COVERAGE

BASIC	15,000.00
OPTIONAL	.00
TOTAL	15,000.00

CERTIFIED TRUE COPY



7-18-13

JIM DOTY, ASSISTANT UNDERWRITING DIRECTOR DATE
INSURANCE RESERVE FUND, UNDERWRITING DEPARTMENT



SOUTH CAROLINA BUDGET AND CONTROL BOARD

INSURANCE RESERVE FUND
POST OFFICE BOX 11066
COLUMBIA, SOUTH CAROLINA 29211

Phone: (803) 737-0020

TORT LIABILITY INSURANCE POLICY

POLICY PROVISIONS

SOUTH CAROLINA BUDGET AND CONTROL BOARD

INSURANCE RESERVE FUND
(HEREINAFTER CALLED THE FUND)

P. O. BOX 11066
1201 MAIN STREET, SUITE 500
COLUMBIA, S. C. 29211
803-737-0020

These policy provisions, with declarations, and endorsements, if any, issued to form a part thereof, complete your Tort Liability Insurance Policy. This policy is made and accepted subject to the following provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy, together with such other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

The time of inception and the time of expiration of this policy and of any schedule or endorsement attached shall be 12:01 AM standard time at the location of property involved. To the extent that coverage in this policy replaces coverage in other policies terminating noon standard time on the inception date of this policy, coverage under this policy shall not become effective until other such coverage has terminated.

This policy is made and accepted subject to the foregoing stipulations and conditions and to the following stipulations and conditions printed on back hereof, or attached hereon, which are hereby specially referred to and made a part of this Policy, together with such other provisions, agreements, or conditions as may be endorsed herein or added hereto; and no officer, agent or other representative of said Board shall have power to waive any provision or condition of this Policy except such as by the terms of this Policy may be the subject of agreement endorsed hereon or added hereto; and as to such provisions and conditions no officer, agent, or representative shall have such power to be deemed or held to have waived such provisions or conditions unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this Policy exist or be claimed by the Insured unless so written or attached.

Assignment of this Policy shall not be valid except with the written consent of the Fund.

IN WITNESS THEREOF The State Budget and Control Board of the State of South Carolina, through the Insurance Reserve Fund, executed and attested these presents.

INSURANCE RESERVE FUND

By

Director

CERTIFIED TRUE COPY

7-18-13

JIM DOTY, ASSISTANT UNDERWRITING DIRECTOR DATE
INSURANCE RESERVE FUND, UNDERWRITING DEPARTMENT

I.
COVERAGE A - PERSONAL INJURY LIABILITY
COVERAGE B - PROPERTY DAMAGE LIABILITY

The Fund will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of

- A. Personal Injury or
- B. Property Damage to which this applies caused by an occurrence.

The Fund shall have the right and duty to defend any suit against the insured seeking damages on account of such personal injury or property damage, even if any of the allegations of the suit are groundless, false, or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Fund shall not be obligated to pay any claim or judgement or to defend any suit after the applicable limit of the Fund's liability has been exhausted by payment of judgements or settlements.

II.
SUPPLEMENTARY PAYMENTS

The Fund will pay, in addition to the applicable limit of liability:

- (a) All expenses incurred by the Fund, all costs taxed against the insured in any suit defended by the Fund and all interest on the entire amount of any judgement therein which accrues after entry of the judgement and before the Fund has paid or tendered or deposited in court that part of the judgement which does not exceed the limit of the Fund's liability thereon.
- (b) Premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required of the insured because of accident or traffic law violation arising out of the use of any vehicle to which this policy applies, not to exceed \$250 per bail bond, but the Fund shall have no obligation to apply for or furnish any such bonds.
- (c) At the request of the insured, to or for each person who sustains bodily injury caused by an accident all reasonable medical expense incurred within one year from the date of the accident on account of such bodily injury, provided such bodily injury arises out of (a) a condition in the insured premises, or (b) operations with respect to which the named insured is afforded coverage for bodily injury liability under this policy, not to exceed \$1,000 per person, such payments shall be excess over any valid and collectible insurance, Medicare, or Medicaid. The applicable limit of the Fund's liability will be reduced by any medical expense payments.
- (d) Reasonable expenses incurred by the insured at the Fund's request in assisting the Fund in the investigation or defense of any claim or suit, including actual loss of earnings not to exceed \$250 per day.
- (e) Defense costs, including legal fees, travel, expert witness fees, and court reporter fees, for all suits against an insured not covered by this policy, auto liability policies, aircraft liability policies, or medical professional liability policies, but only if the suit was served on or after January 1, 2001, subject to an annual aggregate limit of \$15,000 for defense costs for all suits covered under this paragraph.

III.
DEFINITIONS

When used in this policy:

"Automobile" means a licensed or unlicensed land motor vehicle, trailer or semi-trailer designed for use principally on public roads (including any machinery or apparatus attached thereto), but does not include mobile equipment.

"Bodily Injury" means bodily injury, sickness or disease sustained by any person which occurs during the policy period, including death at any time resulting therefrom.

"Handicap" means physical disability.

"Insured" means any person, entity or organization qualifying as an insured in the "Persons Insured" provision. The insurance afforded applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the Fund's liability.

"Mobile Equipment" means a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled;

- (1) not subject to motor vehicle registration,
- (2) maintained for use exclusively on premises owned by or rented to the named insured, including the ways immediately adjoining, or
- (3) designed for use principally off public roads, or
- (4) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle: power cranes, shovels, loaders, diggers and drills; concrete mixers (other than the mix-in-transit type); graders, scrapers, rollers and other road construction or repair equipment; air compressors, pumps and generators, including spraying, welding and building cleaning equipment; and geophysical exploration and well servicing equipment.

"Named Insured" means the person or entity named in Item 1 of the declarations of this policy.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which result in personal injury or property damage neither expected nor intended from the standpoint of the insured.

"Personal Injury" means:

- (1) bodily injury caused by an occurrence.
- (2) injury arising out of one or more of the following offenses committed during the policy period:
 - (a) false arrest, detention, imprisonment, malicious prosecution; or humiliation resulting from false arrest, detention, imprisonment or malicious prosecution.
 - (b) wrongful entry or eviction or other invasion of the right of private occupancy;
 - (c) a publication or utterance of a libel or slander or other defamatory or disparaging material;
 - (d) assault and battery not committed by or at the direction of the insured unless committed for the purpose of protecting persons or property;
 - (e) discrimination on the basis of race, sex, age, religion, or handicap;
 - (f) denial of due process as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States;

- (g) violation of the following Amendments to the Constitution of the United States:

First Amendment
Fourth Amendment
Eighth Amendment

"Policy Territory" means:

- (1) the United States of America, its territories or possessions, or
- (2) international waters or air space, provided the personal injury or property damage does not occur in the course of travel to any other country or nation, or
- (3) anywhere in the world with respect to "bodily injury, property damage or personal injury" arising out of the activities of any "insured" permanently domiciled in the United States of America, though temporarily outside the United States of America, its territories and possessions or Canada, provided the original suit for damages because of any such injury or damage is brought within the United States of America, its territories or possessions.

Such insurance as is afforded by paragraph (3) above shall not apply to Premises Medical Payments Coverage.

"Professional Services" means the rendering of medical services by individuals with training in the profession who are licensed or certified to practice the profession.

"Property Damage" means:

- (1) physical injury to or destruction of tangible property which occurs during the policy period, including the loss of use thereof at any time resulting therefrom, or
- (2) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an **occurrence** during the policy period.

"Volunteer Employee" means:

- (1) any person or entity who, of his own free will, provides goods or services, without any financial gain, to any agency, instrumentality or political subdivision of the State; or
- (2) any person performing public service employment, either voluntarily or as directed by a court or other authority, in lieu of fines and/or incarceration.

**IV.
PERSONS INSURED**

Each of the following is an insured under this insurance to the extent set forth below:

- (a) The entity designated in the declarations as **named insured** is an insured.
- (b) Any employee of the entity designated in the declarations as **named insured** is an insured, but only while the employee is acting in the scope of his or her official duties.
- (c) Any **volunteer employee** of the entity designated in the declarations as **named insured** is an insured, but only while the **volunteer employee** is acting in the scope of his or her official duties.
- (d) With respect to the operation, for the purpose of locomotion upon a public highway, of mobile equipment registered under any motor vehicle registration law:
 - (i) an employee of the **named insured** while operating any such equipment in the scope of his or her official duties for the insured, and
 - (ii) any other person while operating with the permission of the **named insured** any such equipment registered in the name of the named insured and any person or organization legally responsible for such operation, but only if there is no

other valid and collectible insurance available, either on a primary or excess basis, to such person or organization; provided that no person or organization shall be an insured under this paragraph (d) with respect to:

- (1) **bodily injury** to any fellow employee of such person injured in the scope of his or her official duties for the insured, or
- (2) **property damage** to property owned by, rented to, in charge of or occupied by the named insured or the employer of any person described in subparagraph (ii).

**V.
LIMIT OF LIABILITY**

Regardless of the number of (1) insureds under this policy, (2) persons or organizations who sustain **personal injury** or **property damage**, or (3) claims made or suits brought on account of **personal injury** or **property damage**, the Fund's liability is limited as follows:

The total liability of the Fund for all damages as the result of any **occurrence** including damages for care and loss of services, because of **personal injury** sustained by one or more persons, because of all **property damage** sustained by one or more persons or organizations, or by any combination of **personal injury** or **property damage** sustained by one or more persons or organizations, shall not exceed the limit of liability stated in the declarations as applicable to each **occurrence**. However, for any action or claim brought under the provisions of Chapter 78 of the South Carolina Code of Laws, cited as the "South Carolina Tort Claims Act", the liability of the Fund shall not exceed the following limits:

- (a) Occurrences arising prior to July 1, 1998:
 - (1) No person shall recover in any one action or claim a sum exceeding 250,000 dollars because of loss arising from a single **occurrence** regardless of the number of agencies or political subdivisions involved.
 - (2) The total sum recovered arising out of a single **occurrence** shall not exceed 500,000 dollars regardless of the number of agencies or political subdivisions involved.
- (b) Occurrences arising on or after July 1, 1998:
 - (1) No person shall recover in any one action or claim a sum exceeding 300,000 dollars because of loss arising from a single **occurrence** regardless of the number of agencies or political subdivisions involved.
 - (2) The total sum recovered arising out of a single **occurrence** shall not exceed 600,000 dollars regardless of the number of agencies or political subdivisions involved.

Liability limits in excess of those stated in (a) and (b) shall apply only in actions or claims to which Chapter 78 does not apply.

The property damage liability coverage applies only to the amount of damages in excess of a \$250 per claim deductible sustained by one person or organization as the result of any one **occurrence**. The Fund may pay any part or all of the deductible amount to effect settlement of any claim or suit and, upon notification of the action taken, the Insured shall promptly reimburse the Fund for such part of the deductible amount as has been paid by the Fund.

For the purpose of determining the limit of the Fund's liability, all **personal injury** and **property damage** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **occurrence**.

VI. EXCLUSIONS

This insurance does not apply:

- (a) to liability assumed by the insured under any contract or agreement;
- (b) to **personal injury** or **property damage** arising out of the ownership, maintenance, operation, use, loading or unloading of
 - (1) any automobile or aircraft owned or operated by or rented or loaned to any insured and/or
 - (2) any other automobile or aircraft operated by any person in the scope of his or her official duties for the insured; but this exclusion does not apply to the parking of an automobile on premises owned by, rented to or controlled by the named insured or the ways immediately adjoining, if such automobiles are not owned by or rented or loaned to any insured, or
 - (3) any aircraft under the guidance of an air traffic controller employed by any insured;
- (c) to **personal injury** or **property damage** arising out of the ownership, maintenance, operation, use, loading or unloading of any **mobile equipment** while being used in any prearranged or organized racing, speed, or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity;
- (d) to **personal injury** or **property damage** arising out of and in the course of the transportation of **mobile equipment** by an automobile owned or operated by or rented or loaned to any insured;
- (e) to **personal injury** or **property damage** arising out of the ownership, maintenance, operation, use, loading or unloading of
 - (1) any watercraft, in excess of twenty-six (26) feet in length, owned or operated by or rented or loaned to any insured, or
 - (2) any other watercraft, in excess of twenty-six (26) feet in length, operated by any person in the scope of his or her official duties for the insured; by any insured; but this exclusion does not apply to watercraft while ashore on premises owned by, rented to or controlled by the named insured;
- (f) to **personal injury** or **property damage** arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritant, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental;
- (g) to **personal injury** or **property damage** due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the following, with respect to
 - (1) liability assumed by the insured under contract
 - (2) expenses for medical expense under the Supplementary Payments provision;
- (h) to any obligation for which the insured or any carrier as his insurer may be held liable under any workers' compensation; unemployment compensation or disability benefits law, or under any similar law;
- (i) to **bodily injury** to
 - (1) an employee of the insured arising out of and in the scope of his or her official duties for the insured; or
 - (2) the spouse, child, parent, brother or sister of that employee as a consequence of (1) above.

This exclusion applies:

- (1) whether the insured may be liable as an employer or in any other capacity; and
- (2) to any obligation to share damages with or repay someone else who must pay damages because of the injury.
- (j) to **property damage** to
 - (1) property owned or occupied by or rented to the insured,
 - (2) property used by the insured,
 - (3) property in the care, custody or control of the

insured or as to which the insured is for any purpose exercising physical control, or

- (4) property (including money) seized by the insured whether legally or illegally;
- (k) to **property damage** to premises alienated by the named insured arising out of such premises or any part thereof;
- (l) to loss of use of tangible property which has not been physically injured or destroyed resulting from a delay in or lack of performance by or on behalf of the insured or any contract or agreement;
- (m) to **personal injury** or **property damage** due to rendering of or failure to render any professional service;
- (n) **NUCLEAR ENERGY LIABILITY EXCLUSION (Broad Form)**

I. This policy does not apply:

A. Under any Liability Coverage, to personal injury or property damage

- (1) with respect to which an insured under this policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- (2) resulting from the hazardous properties of nuclear material and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Under any Medical Payments Coverage, to expenses incurred with respect to personal injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.

C. Under any Liability Coverage, to personal injury or property damage resulting from the hazardous properties of nuclear material, if

- (1) the nuclear material (a) is at any nuclear facility owned by, or operated by or on behalf of an insured, or (b) has been discharged or dispersed therefrom;
- (2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured, or
- (3) the personal injury or property damage arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to property damage to such nuclear facility and any property thereat.

II. As used herein:

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or byproduct material;

"source material," "special nuclear material," and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"waste" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"nuclear facility" means

- (a) any nuclear reactor,
- (b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel or (3) handling, processing or packaging waste,
- (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations:

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"property damage" includes all forms of radioactive contamination of property;

- (o) to any **personal injury** or **property damage** resulting from retaliation. This policy excludes coverage for any claim or suit that is based upon any statute which provides a remedy for retaliation or which prohibits retaliation including, but not limited to, whistleblower statutes and those statutory remedies prescribed for retaliation based upon the making of a complaint or upon participation in some proceeding or process. This exclusion applies to any statutory remedy for retaliation or to any retaliation prohibited by statute even where the retaliation relates to a covered personal injury or property damage.
- (p) to **bodily injury** or **property damage** arising out of or in any way connected with the operation of the principals of eminent domain, condemnation proceedings, inverse condemnation, or takings, by whatever name called, whether such liability accrues directly against the insured or by virtue of any agreement entered into by or on behalf of the insured.

VII. CONDITIONS

1. Premium.

All premiums for this policy shall be computed in accordance with the Fund's rules, rates, rating plans, premiums and minimum premiums applicable to the insurance afforded herein.

The **named insured** shall maintain records of such information as is necessary for premium computation, and shall send copies of such records to the Fund at the end of the policy period and at such times during the policy period as the Fund may direct.

2. Inspection and Audit.

The Fund shall be permitted but not obligated to inspect the **named insured's** property and operations at any time. Neither the Fund's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the named insured or others, to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulation.

The Fund may examine and audit the **named insured's** books and records at any time during the policy period and extensions thereof and within three years after the final termination of this policy, as far as they relate to the subject matter of this insurance.

3. Financial Responsibility Laws.

When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by this policy for **bodily injury** liability or for **property damage** liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law. The insured agrees to reimburse the Fund for any payment made by the Fund which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

4. Insured's Duties in the Event of Occurrence, Claim or Suit.

- (a) In the event of an **occurrence**, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the insured and of available witnesses, shall be given by or for the insured to the Fund or any of its authorized agents as soon as practicable.
- (b) If claim is made or suit is brought against the insured, the insured shall immediately forward to the Fund every demand, notice, summons or other process received by him or his representative.
- (c) The insured shall cooperate with the Fund and, upon the Fund's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of injury or damage with respect to which insurance is afforded under this policy; and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of accident.

5. Action Against Fund.

No action shall lie against the Fund unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgement against the insured after actual trial or by written agreement of the insured, the claimant and the Fund.

Any person or organization or the legal representative thereof who has secured such judgement or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Fund as a party to any action against the insured to determine the insured's liability, nor shall the Fund be impleaded by the insured or his legal representative. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the Fund of any of its obligations hereunder.

6. Other Insurance.

The insurance afforded by this policy is primary insurance, except when stated to apply in excess of or contingent upon the absence of other insurance. When this insurance is primary and the Insured has other insurance which is stated to be applicable to the loss on an excess or contingent basis, the amount of the Fund's liability under this policy shall not be reduced by the existence of such other insurance.

When both this insurance and other insurance apply to the loss on the same basis, whether primary, excess or contingent, the Fund shall not be liable under this policy for a greater proportion of the loss than that stated in the applicable contribution provision below:

(a) Contribution by Equal Shares.

If all of such other valid and collectible insurance provides for contribution by equal shares, the Fund shall not be liable for a greater proportion of such loss than would be payable if each insurer contributes an equal share until the share of each insurer equals the lowest applicable limit of liability under any one policy or the full amount of the loss is paid, and with respect to any amount of loss not so paid the remaining insurers then continue to contribute equal shares of the remaining amount of the loss until each such insurer has paid its limit in full or the full amount of the loss is paid.

(b) Contribution by Limits.

If any of such other insurance does not provide for contribution by equal share, the Fund shall not be liable for a greater proportion of such loss than the applicable limit of liability under this policy for such loss bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

7. Subrogation.

In the event of any payment under this policy, the Fund shall be subrogated to all the insured's rights of recovery therefore against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

8. Changes.

Notices to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the Fund from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy, signed by a duly authorized officer or representative of the Fund.

9. Assignment.

Assignment of interest under this policy shall not bind the Fund until its consent is endorsed hereon; if, however, the named insured shall die, such insurance as is afforded by this policy shall apply (1) to the named insured's legal representative, as the named insured, but only while acting within the scope of his duties as such, and (2) with respect to the property of the named insured, to the person having proper temporary custody thereof, as insured, but only until the appointment and qualification of the legal representative.

10. Cancellation and Non-Renewal.

- (a) This policy may be cancelled by the named insured by mailing to the Fund a 90 day written advance notice stating when thereafter the cancellation shall be effective. A political subdivision may cancel all policies with the Fund by mailing to the Fund a 90 day written advance notice as provided in §15-78-140 of the South Carolina Code of Laws.
- (b) The Fund may cancel this policy for non-payment of premium by mailing a notice of cancellation giving not less than 30 days notice of the cancellation as provided in §15-78-160 of the South Carolina Code of Laws.
- (c) If this policy is cancelled in accordance with (a) or (b) above, earned premium shall be computed in accordance with the customary short rate table and procedure. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.
- (d) For the purposes of this policy, the term "non-renewal" shall mean "cancellation" if the insured is ceasing all coverages with the Fund and conditions as provided in sections (a), (b) and (c) above apply.

11. Declarations.

By acceptance of this policy, the **named Insured** agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the Fund or any of its agents relating to this insurance.

EXHIBIT D

PART 2



SOUTH CAROLINA BUDGET AND CONTROL BOARD

OFFICE OF INSURANCE RESERVE FUND
POST OFFICE BOX 11066
COLUMBIA, SOUTH CAROLINA 29211

Form 1920 7/3/05
DATE PRINTED

POLICY NUMBER	FROM	POLICY PERIOD	TO	TYPE OF INSURANCE	DATE PRINTED
1130080011	02/13/2010	02/13/2011		GENERAL TORT LIABILITY	23 FEB 2010

COVERAGE PROVIDED UNDER THIS POLICY PART IS SUBJECT TO THE FOLLOWING FORMS:
CD-01 CD-12

NAMED INSURED AND ADDRESS BERKELEY COUNTY POST OFFICE BOX 6122 MONCK'S CORNER, SC 29461	CONTACT PERSON AND PHONE PATRICIA WITHROW (843)719-4908	FORM #	PAGE 68 OF 68
TYPE OF ACTIVITY *** RENEWAL DECLARATION ***			ACTIVITY # 001

EFFECTIVE 12:01 AM STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE

1 OF 1

NUMBER OF PERSONS	RATE PER PERSON	PREMIUM	PERSONNEL CLASSIFICATION
172			- LAW ENFORCEMENT
71			- DIRECTORS, EXEC, MANAGERS
87			- MAINTENANCE PERSONNEL
302			- CLERICAL PERSONNEL
31			- VOLUNTEERS
222			- OTHERS
			- TOTAL PREMIUM

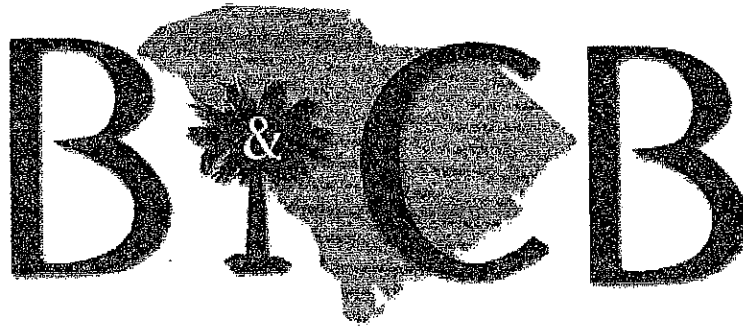
COVERAGE

LIMIT OF LIABILITY - \$600,000 PER OCCURRENCE

PREPAID LEGAL DEFENSE COSTS COVERAGE

BASIC	15,000.00
OPTIONAL	.00
TOTAL	15,000.00

EXHIBIT E



SC BUDGET AND CONTROL BOARD

POLICYHOLDER'S MANUAL

ALL LINES

SOUTH CAROLINA STATE BUDGET & CONTROL BOARD
OFFICE OF INSURANCE RESERVE FUND
POST OFFICE BOX 11066
1201 MAIN STREET - SUITE 500
COLUMBIA, SOUTH CAROLINA 29201

PHONE NUMBER (MAIN)

803-737-0020

FAX NUMBERS

803-737 0393 - Underwriting

803-737-3757 - Medical Professional Liability

803-737-0042 - Claims

AUGUST 2011
(REV.)

FOREWORD

The purpose of the South Carolina Insurance Reserve Fund is to provide property and liability insurance products to governmental entities in South Carolina. Governmental entities include state agencies, counties, municipalities, school districts, regional transportation authorities, special purpose districts and governmental and eleemosynary hospitals.

The IRF issues a package policy. This type of policy includes two or more coverage parts. Your policy may include:

- Building and Personal Property Coverage Part
- Data Processing Equipment Coverage Part
- Business Interruption/Extra Expense Coverage Part
- Builder's Risk Coverage Part
- Inland Marine Coverage Part
- General Tort Liability Coverage Part
- Medical Professional Liability Coverage Part
- Automobile Liability Coverage Part
- Automobile Physical Damage Coverage Part
- School Activity Vehicle Coverage Part
- Underground Storage Tank Coverage Part

This handbook provides general information concerning the policies issued by the Fund including issue/renewal instructions and claim reporting instructions. While every effort has been made to make this manual as complete and accurate as possible, it does not contain a full restatement of the contracts. In the event of any conflict or omission, the terms of the actual contract of insurance shall be paramount in every instance.

IRF CONTACTS can be found in APPENDIX I and CLAIMS ADJUSTERS BY COUNTY can be found in APPENDIX II

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SECTION I – COVERAGES

A. PROPERTY

1. DEFINITIONS

- a. "Actual cash value" means the then current cost of replacing property with new property of like kind, less the dollar equivalent of any physical depreciation and economic obsolescence that had accumulated immediately prior to the property's destruction or abstraction.
- b. "Coinsurance" establishes the minimum amount of insurance required and is expressed in a percentage of the property's insurable value at the time of loss, i.e., replacement cost basis or actual cash value basis. The purpose of coinsurance is to provide an incentive to insure-to-value. A coinsurance "penalty" applies to losses when the insured value is less than the applicable coinsurance requirement.
- c. "Deductible" is the fixed dollar amount subtracted from each loss, and the Fund is obligated to pay the remainder.
- d. "Direct physical loss" means the policy covers all perils of direct physical loss or damage unless they are excluded or limited by the coverage form. The "Causes of Loss-Special Form" (PD-05) is used to provide coverage on property policies other than inland marine insurance. In addition, the specific perils of earthquake and flood are automatically added by endorsement.
- e. "Replacement cost" means the insured recovers on the basis of replacement cost of the damaged property at the time and place of loss, without reduction for physical depreciation and economic obsolescence.
- f. "Exposure Code Territory Definitions"

INLAND

Inland territory includes all parts of South Carolina except those designated as Seacoast or Beach.

SEACOAST

All areas within Horry, Georgetown, Berkeley, Charleston, Dorchester, Colleton, Beaufort, and Jasper Counties.

BEACH

- (1) All areas in Beaufort County and Colleton County which are east of the west bank of the Intracoastal Waterway;
- (2) The following areas in Georgetown County: all areas between the Harrell Siau Bridge and the Georgetown-Horry County border which are east of a line paralleling U.S. Highway No. 17, and Cedar Island, North Island and South Island;

- (3) All areas in Horry County east of U.S. Highway No. 17, or By-Pass 17, whichever is farther to the west;
- (4) The following areas in Charleston County: Edisto Island, Edingsville Beach, Klawah Island, Botany Bay Island, Folly Island, Seabrook Island, Morris Island, and all areas north of the City of Charleston which are east of the west bank of the Intracoastal Waterway and the following areas:
 - (a) The portion of James Island which is east of the west bank of the James Island Creek;
 - (b) The portion of John's Island which is east of a line paralleling Exchange Road which becomes Plow Ground Road to Hoopstick Island Road to Church Creek; and
 - (c) The portion of Wadmalaw Island which is east of a line paralleling Roseville Road to west of Cherry Point Road to Maybank Highway to Brigger Hill Road.

2. BUILDING AND PERSONAL PROPERTY INSURANCE (Form PD04 01-01)

- a. Coverage: The Fund will pay for direct physical loss of or damage to covered property unless excluded or limited. Coverage is written on a replacement cost basis with an 80% coinsurance clause. A standard \$1,000 deductible applies to each occurrence, with optional higher deductibles available.

- i. Covered Property may be "Building", "Your Business Personal Property", or "Personal Property of Others."

"Building" includes the structure, outdoor fixtures, property which services the premises, completed additions and, if not covered by other insurance, alterations and repairs to the building. A covered building is scheduled on the policy Declaration page.

"Business Personal Property" applies to furniture and fixtures; machinery and equipment; all other personal property owned by the organization and used in the business; and the insured's use interest as a tenant in improvements and betterments. Also insurable as business personal property is leased property for which you have a contractual responsibility to insure.

"Personal property of others" applies to property in your care, custody or control and located in or on a scheduled building. Property must be in the physical control of the insured and scheduled on the Declaration page. (This does not include tools owned by your employees.)

- ii. PROPERTY NOT COVERED (EXCLUDED) INCLUDES: (Form PD04 01-01)

Accounts, bills, currency

Land and water

deeds, food stamps, etc.

Outdoor antennas, unless scheduled

Animals, except when held for sale or boarded for others.	Personal property while airborne or waterborne
Automobiles	
Bridges, roadways, walks patios, etc.	Pillings, piers, wharves and docks
Contraband	Property more specifically covered elsewhere, (excess only)
Cost of excavations, grading backfilling or filling	Retaining walls not part of buildings
Fences, when outdoors, unless scheduled	Underground pipes, flues, or drains
Foundations of buildings	Valuable papers
Growing crops and lawns	Vehicles or self propelled machines
	Property while outside of building

- b. ADDITIONAL COVERAGES extend the insurance provided beyond direct physical damage, and are automatic. Additional coverages include:

"Debris removal" applies to expenses incurred in cleaning up covered property after a covered cause of loss.

"Preservation of property" applies to property moved from an insured location for protection from loss by a covered peril.

"Fire department service charge" applies to service charges assessed by a fire department, up to \$1,500.

"Pollutant cleanup and removal" applies to expenses incurred to extract pollutants from land or water at a covered location, if the discharge is caused by or results from a covered cause of loss, up to \$10,000.

- c. Earthquake (Form PD10 01-91) and Flood (Form PD11 01-91) perils are included at each location scheduled on the declarations pages of the insured. (Earthquake coverage has a separate deductible of 5 %.)

- d. COVERAGE EXTENSIONS are additional amounts of insurance. Coverages are excess as to other insurance that is more specific. Coverage extensions include:

"Newly acquired or constructed property" applies to new buildings under construction on the insured's premises and any buildings acquired within the policy territory, not to exceed \$250,000. This extension functions in excess of more specific builder's risk coverage. Additional premium applies from the date construction begins or the property is acquired.

"Personal effects and property of others" applies to property in your care, custody or control, up to \$5,000. Theft coverage is excluded.

"Valuable papers and records-cost of research" applies to expenses to restore such property, up to \$5,000.

"Property off-premises" applies to covered property at a temporary location, up to \$10,000.

"Outdoor property" applies to outdoor fences, radio antennas, television antennas, detached signs, trees, shrubs and plants. Such property is covered for the perils of fire, lightning, explosion, riot, civil commotion or aircraft, up to \$3,000.

- e. REPLACEMENT COST: Property not covered at replacement cost includes property of others, manuscripts, works of art, antiques or rare artifacts. Such property is covered at actual cash value.
- f. COINSURANCE: An 80% coinsurance clause is in effect. A coinsurance "penalty" applies to losses when the insured value is less than 80% of the replacement value at the time of loss. Clear-cut examples of the adjustment of losses subject to coinsurance are outlined in the policy.

3. BOILER AND MACHINERY INSURANCE (Form PD12 01-01 and Form PD05 01-01)

- a. COVERAGE: The Fund will pay for direct damage to covered property caused by a sudden and accidental breakdown of the property, unless excluded or limited.
 - i. "Covered property" means:
 - 1. Any boiler, fired vessel, unfired vessel normally subject to vacuum or internal pressure, refrigerating and air conditioning vessels.
 - 2. Any mechanical or electrical machine or apparatus used for the generation, transmission or utilization of mechanical or electrical power.
 - 3. Any cushion or expansion tank used with a hot water heating boiler or condensate return tank, when used with any of the insured objects.
- b. COVERAGE EXTENSIONS: There are four coverage extensions: "Expediting expenses" applies to reasonable extra costs to make temporary repairs, expedite permanent repairs, and expedite permanent replacement.

"Automatic coverage for a newly acquired location" applies to insurable property at new locations. Coverage continues for 90 days.

"Defense" applies the costs to defend and settle a claim or suit alleging liability for damage to property of others in the care, custody or control of the insured.

"Supplementary payments" apply to expenses incurred in the settlement of a claim or suit.

4. DATA PROCESSING EQUIPMENT INSURANCE (Form PD20 01-01)

- a. COVERAGE: The Fund will pay for direct physical loss or damage to computer equipment unless excluded or limited. We'll cover computer equipment you own, rent or for which you are legally responsible. Coverage is written on a replacement cost basis with a 100% coinsurance clause. A standard \$1,000 deductible applies to each loss.

- i. "Computer equipment" means a network of machine components capable of accepting information, processing it and producing results. It includes air conditioning, fire protection equipment and electrical equipment used exclusively in the computer operation.

b. ADDITIONAL BENEFITS INCLUDE:

"Data, media, programs, and extra expenses" covered up to 20% of highest location value with a minimum of \$10,000 and maximum of \$100,000. Coverage provided on an actual cash value basis.

We will cover additional equipment you acquire while this agreement is in effect. "Newly acquired equipment" is covered up to \$500,000 dollars. You must report the additional equipment within (60) sixty days of the purchase or the extension of coverage will expire.

Property at "temporary location" covered up to \$500,000. Coverage is provided for a maximum of 60 days while at any temporary location.

"Removal coverage" to cover property away from a covered location to a safe place. You must tell us within ten days after you move the property for the property to apply.

"Debris removal" to cover costs of removing debris resulting from a covered loss.

"Breakdown coverage" applies to mechanical breakdown or machinery breakdown; short-circuit blow-out, or electrical damage to equipment. A \$1,000 deductible applies to each loss.

5. BUSINESS INTERRUPTION/EXTRA EXPENSE (Form PD17 01-91)

- a. COVERAGE: The Fund will pay for the actual loss of business income and/or extra expense due to the necessary suspension of operations caused by direct physical loss of or damage to covered property.

- i. "Business income" means net income that would have been earned or incurred or continuing normal operating expenses.
- ii. "Extra expense" means the additional expenses that are necessary to avoid or minimize the interruption of business.

b. **ADDITIONAL COVERAGES INCLUDE:**

"Civil authority" applies to the extra expense caused by a civil authority prohibiting access to the damaged property.

"Alterations and new buildings" applies to new structures or alterations and begins on the date that operations would have begun except for the occurrence of the loss.

"Extended business income" applies to additional loss of business income after property is actually repaired and operations are resumed, until the business can be restored, with reasonable speed, to the condition that would have existed had no loss occurred.

6. **BUILDER'S RISK (Form PD23 01-91)**

- a. **COVERAGE:** The Fund will pay for direct physical loss of or damage to covered property unless excluded or limited. Coverage is written on a replacement cost basis with a 100% coinsurance clause. A standard \$1,000 deductible applies to each occurrence.
 - i. "Covered property" includes the structure under construction, foundations, and, if intended to become a permanent part of the structure, fixtures, machinery, equipment, building materials and supplies within 100 feet of the premises.
 - ii. "Property not covered" includes land, lawns, trees, shrubs and plants, radio and television antennas, and signs not attached to buildings.

b. **ADDITIONAL COVERAGES INCLUDE:**

"Debris removal" applies to the expenses incurred in cleaning up covered property after a covered cause of loss, up to 25% of the direct physical loss.

"Preservation of property" applies to property moved from an insured location for protection from loss by a covered peril.

"Fire department service charge" applies to service charges assessed by a fire department, up to \$1,000.

"Pollutant clean up and removal" applies to expenses incurred to extract pollutants from land or water at a covered location, if the discharge is caused by or results from a covered cause of loss, up to \$10,000.

7. INLAND MARINE

- a. COVERAGE: Applies to property moving, capable of being moved or aiding in the movement of property. The Fund will pay for direct physical loss of or damage to covered property unless excluded. Coverage is written on the following forms:
 - i. "Contractors equipment form" (Form PD13 01-01) applies to mobile heavy equipment. The Fund will pay for direct physical damage of or loss to covered property unless excluded or limited. Coverage is written on an actual cash value basis with a 100% coinsurance clause. A deductible equal to 2% of the amount of loss, with a \$500 minimum applies to each loss. Automatic coverage is provided on newly acquired property if reported within 30 days of acquisition, limited to the lesser of \$25,000 or 25% of total limits of insurance.
 - ii. "Fine arts floater form" (Form PD19 01-91) applies to objects of art such as pictures, statuary, bronzes and antiques, rare manuscripts and books, etc. The Fund will pay for direct physical loss of or damage to covered property unless excluded or limited. Coverage is written on an agreed value basis with a 100% coinsurance clause. A standard \$500 deductible applies.
 - iii. "Scheduled property floater form" (Form PD14 01-01) applies to miscellaneous property that is mobile in nature. The Fund will pay for direct physical damage of or loss to covered property unless excluded or limited. Coverage is written on an actual cash value basis with a 100% coinsurance clause. A standard \$500 deductible applies to each loss.
 - iv. "Trip transit endorsement" (Form PD22 01-91) applies to the owner's property while being transported. The Fund will pay for direct physical damage of or loss to covered property unless excluded or limited. Coverage is written on an actual cash value basis with a 100% coinsurance clause. A standard \$500 deductible applies to each loss.
 - v. "Watercraft form" (Form PD18 01-91) applies to outboard boats, inboard boats, inboard/outboard boats, and sailboats, less than 26 feet. The Fund will pay for direct physical loss of or damage to covered property, unless excluded or limited. Coverage is written on an actual cash value basis with a 100% coinsurance clause. A standard \$500 deductible applies to each loss.

B. TORT LIABILITY (Form CD01 3-05)

1. DEFINITIONS

- a. "Insured" includes the entity named on the declaration page, employees of the entity, while acting in the scope of their official duties and volunteers, as defined by Section 8-25-10 of the S. C. Code, while acting in the scope of their official duties.

An insured does not include an independent contractor or non-governmental entities/employees, except when acting as volunteers.

b. "Personal injury" means:

- i. Bodily Injury caused by an occurrence
- ii. Injury arising out of or one or more following offenses committed during the policy period.
 1. false arrest, detention, imprisonment, malicious prosecution or humiliation resulting from false arrest, detention, imprisonment or malicious prosecution
 2. wrongful entry or eviction
 3. libel and slander
 4. assault and battery
 5. discrimination on the basis of race, sex, age, religion or handicap
 6. denial of due process as guaranteed by the 5th and 14th Amendments of the United States Constitution.
 7. violation of the 1st, 4th, and 8th Amendments of the United States Constitution.

c. "Property damage" means physical damage to or destruction of tangible property, including loss of use.

d. "Occurrence" means an accident, including continuous or repeated exposure to conditions, which result in personal injury or property damage neither intended nor expected from the standpoint of the insured. (Negligence)

2. COVERAGES

The Fund will pay on behalf of the insured all sums (up to the policy limits) which the insured shall become legally obligated to pay to a third party as damages because of personal injury or property damage caused by an occurrence. In addition, the Fund will pay all defense costs; reasonable medical expenses (limited to \$1,000 per person); and premiums on appeal bonds and attachment bonds.

A standard \$250 per claim deductible applies to all property damage claims.

Coverages are written on an "occurrence" policy form. Coverage of the "occurrence" policy is triggered by the event resulting in damages to a third party. The "occurrence" policy will respond to covered events arising during the policy period, no matter when the claim is eventually reported.

3. EXCLUSIONS INCLUDE

- a. Contractual liability. Contractual liability exists when one party assumes the liabilities of another party, or the financial responsibility for those liabilities, by means of a contract. Two examples are "hold harmless" clauses and "indemnification" clauses in written agreements. The insured should be alert to any wording in contracts that state you will "hold harmless", "indemnify" or "name an additional insured."

- b. Automobile, aircraft and watercraft (in excess of 26 feet in length) liability. (Each risk can be covered by separate policies issued by the Fund.)
- c. Liability from any pre-arranged speed contest.
- d. Pollution liability, except sudden and accidental.
- e. War risks.
- f. Workers' Compensation liability.
- g. Bodily injury to fellow employees.
- h. Property damage to property owned by or in the care, custody and control of the insured. (Owned or leased property can be covered by separate policies issued by the Fund.)
- i. Property damage to seized property, including money.
- j. Professional liability of medical practitioners. (Medical professional liability can be covered by a separate policy written by the Fund.)
- k. Retaliation
- l. Inverse condemnation

4. LIMITS OF LIABILITY

a. Primary

The insured selects the limit of liability. Currently two plans of coverage are available

- (1) \$600,000 per occurrence
- or
- (2) \$1,000,000 per occurrence

The limit of liability is the maximum amount the Fund will pay as damages for any single occurrence. The limit applies regardless of the number of people against whom the claim is made. Liability limits in excess of \$600,000 per occurrence shall apply only in actions or claims to which Chapter 78 of the South Carolina Code of Laws does not apply.

b. Excess

The Fund is authorized to pay judgements rendered pursuant to 42 U.S.C. Section 1983 (civil rights) against individual government employees and officials subject to a maximum of four million dollars in excess of one million dollars and a maximum of twenty million dollars in excess of five million dollars. Payments are limited to judgements against officials covered by the Fund for acts committed within the scope of employment. Any payments must be recovered by assessments against all entities purchasing tort liability insurance from the Fund.

5. Prepaid Legal Defense

- a. Purpose - This coverage is designed to pay the costs of defending legal suits that are not covered under the Tort Liability Insurance Policy.

Examples of such suits include:

Breach of Contract Suits
Suits seeking injunctive relief
Suits seeking return of property

- b. Eligibility - Entities that are insured under the Tort Liability Policy are eligible to participate in the prepaid legal defense costs coverage. Claims for actions of contract employees are not eligible.
- c. Coverages - An automatic \$15,000 coverage is added to your Tort liability insurance policy. There is no premium charge for this coverage. Additional amounts of coverage are available up to \$985,000. The premium for this additional coverage is 10% of the coverage amount chosen.

6. Sewer Backup Coverage

- a. Purpose – This coverage is intended to provide the insured a source of recovery for expenses for property damage, including clean-up costs, resulting from the backup of water through sewers or drains maintained by the insured, regardless of fault.
- b. Limits – Two limits are available: (1) \$1,000 maximum each loss, with \$250 deductible or (2) \$5,000 maximum for each loss, with \$250 deductible and 20% co-pay from the insured. Any payments made under this provision reduces the applicable limit of the Fund's liability

(The payment is made to the Insured not the claimant.)

C. MEDICAL PROFESSIONAL LIABILITY INSURANCE (Form MD36 12-06)

1. INSURING AGREEMENT

- a. The Insurance Reserve Fund will pay on behalf of the insured damages for which the insured is legally obligated to pay which arise from the rendering or failure to render professional services during the policy period.
- b. The Insurance Reserve Fund has the exclusive duty and right to defend any suit against an insured and has the right to make the decision to settle or defend. Defense costs are in addition to limits of liability.
- c. Limits of liability are established by a South Carolina Statute known as the Tort Claims Act as follows:

\$300,000 per person	non physician
\$600,000 per occurrence	
\$1,200,000 per person	physician
\$1,200,000 per occurrence	

2. DEFINITIONS

- a. "Injury" means bodily physical injury, sickness, disease, mental or emotional distress accompanied by a physical manifestation thereof, or death resulting from any one or more thereof.
- b. "Insured" means the entity named in the declaration, employees, authorized volunteers, physicians in authorized practice plans, members of duly appointed committees and boards.
- c. "Professional services" means:
 - 1. Medical including emergency and paramedical, surgical, psychological, dental, radiological or nursing service or treatment, including the furnishing of food or beverages in connection therewith.
 - 2. Furnishing, filling or dispensing drugs or medical, dental, or surgical supplies or appliances if injury occurs after the insured has relinquished possession thereof.
 - 3. Handling of or performing postmortem examinations on human bodies.
 - 4. Services by any person as a member or employee of any governing or other formal board or committee of the Named Insured or as any other person charged with executing directives of any such board or committee, or may be reasonably expected to result in Bodily Injury neither expected or intended by the insured.
- d. "Occurrence" means any accident or other event (including non action) which does or may be expected to result in Bodily Injury neither expected or intended by the insured.
- e. "**Policy Territory**" means (1) The United States of America, its territories or possessions, or (2) anywhere in the world with respect to "Injury" arising out of the activities of any "Insured" permanently domiciled in the United States of America, though temporarily outside the United States of America, its territories and possessions or Canada, provided the original suit for damages because of any such injury or damage is brought within the United States of America, its territories or possessions.

3. EXCLUSIONS INCLUDE

- 1. Injury to any employee of the Named Insured arising out of or in the course of his employment by the named insured.
- 2. Any obligation for which the insured or any carrier as his insurer may be liable under and Worker Compensation, unemployment compensation, disability benefits or other similar law or regulation.
- 3. Expenses incurred by the insured for first aid at the time of any accident or occurrence.
- 4. Liability imposed by statute

5. Occurrences involving parties not approved or insured by the Fund
6. Dishonesty, fraud and deliberate acts
7. Entities not shown in the declarations of the policy
8. Claims involving the loading or unloading of a motor vehicle
9. Acting outside scope of employment except as good samaritan

D. AUTOMOBILE INSURANCE (Form CD20 03-05)

1. DEFINITIONS

- a. "Insured" means the entity named on the declaration page and anyone else while using a covered vehicle with permission, for the intended purpose, except when the driver using the vehicle is working in a business of selling, servicing or repairing or parking autos.
- b. "Bodily injury" means bodily injury, sickness or disease including death resulting from any of these.
- c. "Property damage" means damage to or loss of use of tangible property.
- d. "Accident" means a mishap to include continuous or repeated exposure to the same conditions, which results in bodily injury or property damage the insured neither intended nor expected.
- e. "Covered auto" means any land motor vehicle, trailer or semi-trailer that the insured owns, hires or borrows and which is designed for travel on public roads.

2. COVERAGES

- a. "Third party liability" (Part IV of Standard policy) - The Fund will pay on behalf of the insured all sums (up to the policy limits) which the insured shall become legally obligated to pay to the third party as damages because of bodily injury or property damage caused by an accident and resulting from the ownership, maintenance or use of a covered auto. In addition the Fund will pay for defense costs and premiums on bail bonds and attachment bonds.
- b. "Auto Medical Payments" (Endorsement CD20 04-08) - This is a form of no-fault coverage. The general purpose of this insurance is to provide a prompt source of medical expense reimbursement for occupants of a covered auto. Coverage is limited to a maximum of \$1,000 per person.

- c. "Uninsured Motorists Coverage" (Endorsement CD20 04-08) - This coverage basically amounts to insurance against being injured in an accident with an at-fault motorist who is not protected by bodily injury liability or property damage liability insurance. Subject to the policy limits, the Fund will pay to the insured all sums which the uninsured motorist is legally obligated to pay because of bodily injury or property damage caused by an accident. Coverage applies only if the uninsured motorist is legally liable for the bodily injury or property damage. Coverage is limited to the statutory Basic limits as of the date of the loss.
- d. "Nonowned Auto Liability Coverage" (Endorsement CD20 04-08) - This coverage is intended to provide the insured with liability protection when an employee is using a privately owned vehicle in the performance of his/her duties. The insured is provided the policy limits of liability. However, the coverage provided is excess of any other valid and collectible insurance covering that vehicle.
- e. "Nonowned Auto Physical Damage" (Endorsement CD20 04-08) - This coverage is intended to provide the insured with physical damage coverage when an employee is using a rental vehicle in the performance of his/her duties. The coverage does not apply to the use of the employee's vehicle or vehicles operated under long term lease. The insurance is subject to any other valid and collectible insurance and a \$200 deductible. The coverage is limited to less than 30 consecutive days per vehicle per rental period.
- f. "Auto Physical Damage" (Comprehensive and Collision) - Coverages (Part VII of Standard Policy) - The insured may elect to insure all or part of its fleet of vehicles for these coverages. Comprehensive coverage provides "all-risk" protection on covered autos from any cause, except collision and overturn. Collision coverage includes losses involving the collision of a covered auto with another object and the overturn of a covered auto. In the event of loss, the Fund will pay the smaller of the actual cash value of the damaged or stolen property at the time of loss or the cost of repairing or replacing the property.

A standard \$200 per claim deductible applies to each claim per auto, with optional higher deductible available.

An insured may purchase comprehensive coverage only, but cannot purchase collision coverage only.

- g. "Towing" (Part VII A2 of Standard Policy) - If the auto is insured for any physical damage coverage, the Fund will pay up to \$25 for towing and labor costs each time the covered auto of a private passenger type is disabled.

Other transportation expense (Part VII B of Standard Policy) - If the auto is insured for comprehensive coverage, the Fund will pay up to \$10 per day, maximum of \$300, for transportation expense incurred because of the total loss or theft of a covered auto.

- h. "Garagekeepers" (Form CD33 05-95 or Form CD43 05-95) – Available to insureds that have garage operations meaning the ownership, maintenance or use of locations for a garage business. Provides comprehensive and collision coverage for autos left with the insured for service, repair, storage or safekeeping. Two limits of liability are available: (1) \$50,000 per accident and (2) \$100,000 per accident.

3. EXCLUSIONS

a. IMPORTANT LIABILITY EXCLUSIONS INCLUDE:

- i. Contractual liability. Contractual liability exists when one party assumes the liabilities of another party, or the financial responsibility for those liabilities, by means of a contract. Two examples are "hold harmless" clauses and "indemnification clauses" written in agreements. The insured should be alert to any wording in contracts with private parties that say you will "hold harmless", "indemnify" or "name an additional insured".
- ii. Workers' Compensation liability.
- iii. Bodily injury to fellow employees.
- iv. Bodily Injury to any employee of the insured arising out of and in the course of his or her employment by the insured.
- v. Property damage to property owned, or in the care, custody and control of the insured. (Can be covered by separate policies issued by the Fund.)
- vi. Pollution liability, other than sudden and accidental.

b. IMPORTANT PHYSICAL DAMAGE EXCLUSIONS INCLUDE:

- i. Wear and tear, freezing, mechanical or electrical breakdowns, blowouts, punctures or road damage to tires not caused by an accident.
- ii. War risks.
- iii. Equipment not permanently attached to or installed in a covered vehicle.

4. LIMITS OF LIABILITY. The insured selects the limits of liability. Currently two plans are available:

- a. \$600,000 Single limit policy. Regardless of the number of vehicles or the number of persons involved in the accident the most we will pay for all resulting damages will be \$600,000
- b. \$1,000,000 Single limit policy. (Same as 4a. with higher maximum limits.)

The limit of liability is the maximum amount the Fund will pay as damages for any single occurrence. The limit applies regardless of the number of people against whom the claim is made. Liability limits in excess of \$600,000 per occurrence shall apply only in actions or claims to which Chapter 78 of the South Carolina Code of Laws does not apply.

E. SCHOOL BUS ACCIDENT INSURANCE (STATE OWNED BUSES) (Form CD35 07-86)
(DISTRICT OWNED ROUTE BUSES) (Form CD32 05-10)

1. DESCRIPTION OF POLICY

As required by statute, no fault accident insurance is provided to lawful occupants (pupil/passenger) of State or District owned Route school buses. These accident insurance benefits are included in the automobile policy issued to the Department of Education. No fault coverage provides benefits without regard to fault or negligence.

2. COVERAGES

- a. Accidental Death and Dismemberment - The Fund will pay to or on behalf of an insured (pupil/passenger) a maximum benefit of \$50,000 for death or dismemberment.
- b. Medical Expense - The Fund will pay to an insured (pupil/passenger) up to \$53,000 for medical expenses for bodily injuries suffered in an accident. However, the Fund will not pay medical expenses in excess of \$3,000 when other insurance is available to pay such costs.

3. EXCLUSIONS

a. IMPORTANT EXCLUSIONS INCLUDE:

- i. Aircraft Liability.
- ii. Loss caused by disease, suicide, self inflicted injury, war, mental infirmity or hernia.
- iii. To injury which occurs while the insured is serving in the armed forces of any country.
- iv. Worker's compensation liability
- v. Expenses incurred for preventive medicines, routine eye, ear or dental examination, eye glasses, contact lens, hearing aids, orthopedic devices.
- vi. Cosmetic surgery, except to repair injured body part.

F. SCHOOL ACTIVITY BUS ACCIDENT INSURANCE (SCHOOL DISTRICT
OWNED/CONTRACTED VEHICLES) (Form CD34 02-87)

1. DESCRIPTION

This policy provides no fault accident insurance coverage for lawful occupants of school district owned vehicles and contract carriers. No fault coverage provides benefits without regard to fault or negligence.

2. DEFINITIONS OF IMPORTANT TERMS

- a. "Lawful occupants" means a pupil/passenger.
- b. "Contract carriers" means anyone hired by the school districts to fill special transportation needs, i.e., to transport a handicapped child to/from school. For the purposes of this policy, contract carriers do not include common carriers hired to transport school officials and pupils to special events, i.e., a bus hired to transport an athletic team to a game.
- c. "Bodily injury" means bodily injury, sickness or disease including death resulting from an accident.

3. COVERAGES

- a. Accidental death and dismemberment. The Fund will pay to or on behalf of a lawful occupant a maximum benefit of \$50,000 for death or dismemberment.
- b. Medical expenses. The Fund will pay to a lawful occupant up to \$53,000 for medical expenses for bodily injury suffered in an accident. However, the Fund will not pay medical expenses in excess of \$3,000 when other insurance is available to pay such costs.

4. EXCLUSIONS

- a. IMPORTANT EXCLUSIONS INCLUDE:
 - i. Aircraft Liability.
 - ii. Loss caused by disease, suicide, self inflicted injury, war, mental infirmity or hernia.
 - iii. Workers' Compensation Liability.
 - iv. Preventive medicines, routine examinations, eyeglasses, contact lens, hearing aids, artificial limbs and orthopedic devices.
 - v. Cosmetic surgery, except for repair of injured body part.

G. POLLUTION LIABILITY - UNDERGROUND STORAGE TANKS (UST'S) (Form CD07 02-07)

1. DEFINITIONS

- a. "Claim" means a written demand made against the Insured for Damages.

- b. "Damages" includes monetary awards or settlements for compensatory damages or reasonable and necessary costs or expenses incurred to remove, treat, neutralize, contain, or clean up any petroleum product.
- c. "Environmental Impairment" means the release, spillage, leakage, emission, discharge, escape, leach, or disposal from a UST containing petroleum products.
- d. "Environmental Injury" means impairment or diminution of or interference with any governmental right protected by law.
- e. "Insured" means the entity and any director, officer or employee.
- f. "Personal Injury" means bodily injury, sickness, disease, mental anguish, shock, disability or death.
- g. "Pollution Clean-up Liability" means the obligation of the insured to remove, treat, neutralize, contain or clean up any petroleum product.
- h. "Property Damages" means physical injury to or destruction of tangible property, including loss of use.

2. COVERAGES

The Fund will pay on behalf of the insured all sums (up to the policy limits) which the insured shall become legally obligated to pay as damages because of: (a) personal injury, property damage or environmental injury for claims arising out of an environmental impairment, (b) pollution clean-up liability arising from an environmental impairment. Policy provides claims-made coverage.

3. IMPORTANT EXCLUSIONS INCLUDE

- a. Any damages resulting from an environmental impairment occurring prior to the original policy inception date if the environmental impairment was known or should have been known.
- b. Liability arising out of failure to comply with any Statute, regulation or ordinance.
- c. Workers' Compensation Liability.
- d. Bodily injury to fellow employees.
- e. Property damage to property owned by or in the care, custody or control of the insured.
- f. Liability assumed under contract.
- g. Automobile, aircraft and watercraft liability.
- h. Routine and normal clean-up.
- i. Nuclear risks.

- j. War risks.
- k. Environmental impairments at inactive or closed locations unless the location is listed in the Declarations, owned by the insured and properly closed and deactivated.
- l. Fines or punitive damages.

4. LIMITS OF LIABILITY

The most the policy will pay for any single environmental impairment is \$1,000,000, with a \$1,000,000 annual aggregate for all claims and pollution clean-up liability. The limit applies regardless of the number of people against whom a claim is made.

Note: The Fund is no longer accepting new underground storage tanks for coverage.

H. AIRCRAFT INSURANCE

1. DESCRIPTION OF COVERAGE

The Fund provides insurance coverage for aircraft owned and operated by the State of South Carolina through a private carrier.

2. COVERAGES

Third party liability: \$10,000,000 maximum per occurrence

Medical Expenses: \$10,000 maximum each person

Aircraft Physical Damage: Stated amounts

I. WATERCRAFT INSURANCE

1. DESCRIPTION OF COVERAGE

The Fund purchases insurance coverage for watercraft in excess of 26 feet that are owned and operated by the State of South Carolina.

2. COVERAGES

Third party liability: \$600,000 each accident

Medical Expenses: \$1,000 each person

Hull Physical Damage: Stated amounts

SECTION II - RENEWAL PROCEDURES

A. GENERAL PROCEDURE

Approximately 60 days prior to the policy anniversary date, the Fund mails or a representative delivers renewal notices to each insured. At that time, the insured should review current coverages and make any necessary changes. The insured's name, address, contact person and phone number should also be checked for accuracy. Any changes may be made on the renewal notice. The renewal notice must be signed and returned to the Fund, even if there are no changes.

B. ADDITIONAL PROCEDURES

1. PROPERTY

The insured should review the property appraisal report, comparing current replacement value to current insured value as shown on the renewal notice. It is important to insure property to value. The insured should also review the schedule of properties insured to determine if any additions or deletions are necessary. An Insurance Reserve Fund representative will meet with you to discuss the policy renewal and answer any questions about coverages.

2. TORT LIABILITY

The annual premium for tort coverage is based on the number of employees, by specific category. The categories of employees are printed on the renewal notice. The insured is responsible for providing the employee count. The Fund has developed guidelines to help you classify and count your employees. The guidelines are included in Section V of this manual. Please complete the prepaid legal and other endorsements. It is important to mark all choices for optional coverages that apply.

3. MEDICAL PROFESSIONAL LIABILITY

Renewal Procedure for Medical Professional Liability

The annual premium for coverage is based on the insureds types of exposures. The renewal worksheet should be reviewed carefully to be sure it accurately shows the current exposures of the entity. A visit is made around the renewal date to discuss the policy and any anticipated changes.

Once the worksheet is reviewed it should be signed and returned even if there are no changes.

4. AUTOMOBILE

a. LIABILITY

The insured is to indicate on the renewal notice the number of vehicles owned or operated under long term lease and the plan of coverage desired. A complete schedule of these vehicles should be forwarded to the Fund with the renewal notice each year. The listing should include the year, make, model and serial number of each vehicle.

b. PHYSICAL DAMAGE

The renewal notice indicates the vehicles insured for the coverage. The insured should check for accuracy, making any additions or deletions.

5. SCHOOL BUS ACCIDENT (STATE AND DISTRICT OWNED ROUTE VEHICLES)

The Insured is to report the number of route buses in each school district.

6. SCHOOL ACTIVITY BUS ACCIDENT (SCHOOL DISTRICT OWNED/CONTRACTED VEHICLES)

The Insured is to provide a listing of all activity vehicles owned or contracted. The listing is to include the seating capacity of each vehicle.

7. AIRCRAFT (STATE FLEET)

A listing of currently insured aircraft is sent to the insured. All information should be reviewed for accuracy including hull and equipment values. A list of approved pilots and their current ratings should be returned with the worksheet.

8. POLLUTION LIABILITY - UST'S

The insured is to update the renewal notice as needed. (Note: The Fund is no longer accepting new underground storage tanks for coverage.)

9. WATERCRAFT

A listing of currently insured watercraft over 26 feet is sent to the insured. All vessel information should be reviewed including the hull and equipment values. An up date list of operators and their current certifications should be returned with the worksheet.

SECTION III - COVERAGE CHANGES DURING THE POLICY PERIOD

Write, fax or e-mail your Insurance Reserve Fund representative giving the following information.

A. PROPERTY

1. BUILDING AND PERSONAL PROPERTY

- a. Effective date to begin, end or change coverage.
- b. Segment number (if applicable).
- c. Name or description of building.
- d. Location of the property (911 address or street # and name, city and zip code).
- e.
 - i. Replacement value of building to add or
 - ii. New replacement value (if applicable).
- f.
 - i. Replacement value of contents to add or
 - ii. New replacement value (if applicable).
- g. Type of construction (frame, masonry, etc.).
- h. Use of the building (occupancy).

2. INLAND MARINE

- a. Effective date to begin, end or change coverage.
- b. List of property to insure (description, identification number).
- c.
 - i. Value of property to add or
 - ii. New value (if applicable).

3. DATA PROCESSING EQUIPMENT

- a. Automatic coverage up to \$500,000 (report within 60 days).
- b. List of equipment not required.

B. TORT LIABILITY

1. Automatic coverage/deletion of employees during a policy period.
2. Employee count at renewal establishes premium for policy period.

C. MEDICAL PROFESSIONAL LIABILITY

1. The Insured should send written notification to the Fund of additions or deletions to the policy during the policy year.
2. An Endorsement is generated with pro rata charge and mailed to the insured.

D. AUTOMOBILE LIABILITY

1. LIABILITY

- a. Automatic coverage for newly acquired vehicles until next renewal date. No report necessary until renewal. At renewal an audit is generated to account for any changes during the year.

2. PHYSICAL DAMAGE

- a. Effective date to begin, end or change coverage.
- b. Segment number (if applicable).
- c. Year, make, model and serial number of vehicle.
- d. Original cost new of vehicle.

E. SCHOOL BUS ACCIDENT (STATE AND DISTRICT OWNED ROUTE VEHICLES)

1. Automatic coverage until next renewal date.

F. AIRCRAFT

Please contact Athena Westernen at 803-737-0023 to request changes.

G. POLLUTION LIABILITY (UNDERGROUND STORAGE TANKS)

1. Provide written request to cancel coverage.

H. WATERCRAFT

Please contact Athena Westernen at 803-737-0023 to request changes.

SECTION IV – CANCELLATION AND NON-RENEWAL

1. Policies may be cancelled by the named insured by mailing the Fund a 90 day written advance notice stating when the cancellation should be effective. A political subdivision may cancel all policies with the Fund by mailing to the Fund a 90 day written advance notice as provided in §15-78-140 of the South Carolina Code of Laws.
2. The Fund may cancel any policy for non-payment of premium by mailing a notice of cancellation giving not less than 30 days notice of the cancellation as provided in §15-78-160 of the South Carolina Code of Laws.
3. If a policy is cancelled in accordance with (1) or (2) above, earned premium shall be computed in accordance with the customary short rate table and procedure. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.
4. The term "non-renewal" shall mean "cancellation" if the insured is ceasing all coverages with the Fund and conditions as provided in sections (1), (2) and (3) above apply.

SECTION V - WHAT TO DO IF YOU HAVE A LOSS

A. PROPERTY

1. Give immediate written notice to the Insurance Reserve Fund. (Claims can be reported on – line at newclaims@irf.sc.gov.)
2. Protect property from further damage.
3. Separate damaged property from undamaged and make an inventory of destroyed, damaged and undamaged property.
4. Within 60 days after loss, unless extended by the Fund, render to the Fund a signed and sworn "Proof of Loss."

B. TORT LIABILITY

1. Give written notice to the Insurance Reserve Fund of any occurrence that may give rise to a claim. The notice should report all known facts, i.e. date, time and place, injured party(ies), witnesses, description of event, etc.
2. Immediately upon receipt of suit papers or any other written demand to pay damages:
 - a. Call the Insurance Reserve Fund, Claims Department @ 803-737-0020.
 - b. Forward original documents to the Fund along with the name of person served and time and date served.

C. MEDICAL PROFESSIONAL LIABILITY

1. Give written notice to the Insurance Reserve Fund of any occurrence that may give rise to a claim. The notice should report all known facts, i.e. date, time and place, injured party(ies), witnesses, description of event, etc.
2. Immediately upon receipt of suit papers or any other written demand to pay damages:
 - a. Call the Insurance Reserve Fund, Medical Professional Liability @ 803-737-0020
 - b. Forward original documents to the Fund along with the name of person served and time and date served.

D. AUTOMOBILE

- a. Give immediate notice to of all new claims to QBE Specialties Claim Service.

Phone Number: 1-800-206-1913 or
Fax Number: 1-608-825-0435

Automobile Claims can also be reported on the website.

Website: www.scs-irfreporting.com

b. Information needed by the adjusters includes:

1. Report on the accident, i.e., time, place, cause, etc.
2. Name of driver, agency name and agency address.
3. Name of other driver, if applicable.
4. Name(s) of injured parties.
5. Name(s) of any witnesses.

E. SCHOOL BUS ACCIDENT (STATE AND DISTRICT OWNED)

1. Immediately call the Ramsey Adjustment Service at:

Phone Number: 1-800-982-8667 or

Fax Number: 803-772-0630

2. Information needed by the adjusters includes:

1. Report on the accident, i.e., time, place, cause, number of injured parties, etc.
2. Name of other driver, if applicable.
3. Name(s) of any witnesses.

F. POLLUTION LIABILITY (UNDERGROUND STORAGE TANKS)

1. Give written notice to the Insurance Reserve Fund, Claims Department of any occurrence that may give rise to a claim. The notice should report all known facts, i.e., date, time and place, injured party(ies), witnesses, description of event, etc.
2. Immediately upon receipt of suit papers or any other written demand to pay damages.
 - a. Call the Insurance Reserve Fund
 - b. Forward original documents to the Fund along with the name of person served and time and date served.

G. AIRCRAFT

1. Immediately report accident to the Stuart Hope Agency, Incorporated at:

803-771-7766 (Columbia Area)

1-800-342-4673 (Outside Columbia Area)

H. WATERCRAFT

1. Immediately report accident to the Stover Company, Incorporated at:

864-271-8080

SECTION VI - OTHER

A. TORT CLAIMS ACT

1. DEFINITIONS

- a. Torts are wrongs for which civil actions may be brought.
- b. Liability is a legal responsibility to another party.
- c. Tort liability is a legal responsibility to pay another party because of the commission of a wrong.

2. BACKGROUND

The doctrine of sovereign immunity was applied in South Carolina until the spring of 1985. Basically, the doctrine gave governmental entities immunity in State Courts for liability resulting from negligent acts. The doctrine did not apply to employees. In the spring of 1985, the South Carolina Supreme Court abolished sovereign immunity as it had been applied to governmental entities, to be effective July 1, 1986. In response to the Supreme Court decision, the South Carolina General Assembly enacted the S. C. Tort Claims Act (Title 15, Chapter 78 of the S. C. Code of Laws.)

3. PURPOSE

The purpose of the Act was to insure an orderly transition from sovereign immunity to qualified and limited liability. The State and political subdivisions are to be liable for torts within the limitations of the Act and in accordance with the principles established therein.

4. BASIC PROVISIONS

- a. An employee of a governmental entity has immunity from liability and suit in State Courts unless:
 - i. it is proved that the employee's conduct was not within the scope of his/her official duties or
 - ii. the act constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.
- b. A person bringing an action against a governmental entity must name as a party defendant only the agency or political subdivision for which the employee was acting. If the employee is individually named in a suit, the agency or political subdivision of which the employee was acting must be substituted as the party defendant.
- c. A settlement or judgment in an action or a settlement of a claim under provisions of the Act constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence.
- d. For action or claim for damages (other than medical malpractice) brought under the provisions of the Act, the liability shall not exceed:

- i. \$300,000 per person because of a loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved.
 - ii. \$600,000 per occurrence regardless of the number of agencies or political subdivisions or claims or actions involved.
 - iii. \$1,200,000 per occurrence for claims resulting from the actions of employed physicians, surgeons and dentists.
- e. Political Subdivisions of the State may cover risks for which sovereign immunity was waived by the purchase of insurance from the Budget and Control Board (IRF), the purchase of insurance from a private carrier, self-insuring, or forming a pooled self-insurance pool.

If a political subdivision does not purchase its liability insurance from the Fund, it may not purchase any insurance through the Fund. Conversely, if a political subdivision purchases any insurance from the Fund, it must purchase all of its insurance through the Fund, to the extent coverage is available.

Any political subdivision may cancel all lines of insurance with the Budget and Control Board (IRF) if it gives ninety (90) days written notice to the Board.

f. CAVEATS

Provisions of the Act do not apply to actions brought in Federal Courts. A governmental entity and an employee can be sued in Federal Courts under the provisions of the Civil Rights Act of 1871 (42 USC 1983), commonly referred to as Section 1983. Also liability is unlimited (not capped) in Federal Court actions.

B. EMPLOYEE CLASSIFICATIONS – TORT LIABILITY

1. DEFINITIONS

a. LAW ENFORCEMENT PERSONNEL

Persons trained in the methods of law enforcement, crime prevention and detection and given authority to maintain the peace, safety and order. Includes all uniformed and non-uniformed sworn officers, including jailers.

b. DIRECTORS, EXECUTIVES AND MANAGERS

Members of any board/commission or persons who control or govern the affairs of the entity; and persons having managerial authority in the organization. Includes all persons who control or manage. Generally, persons above the first line supervisor are considered managers.

c. MAINTENANCE PERSONNEL

Persons responsible for the maintenance of buildings and grounds, roadways and sidewalks and the drivers/operators of mobile equipment. Include both skilled and non-skilled employees. Mobile equipment includes the following types of land vehicles: bulldozers, power shovels, graders, scrapers, rollers and other road construction or repair equipment, farm machinery, mowers, cranes, street sweepers or other cleaners, diggers, forklifts, and spraying, welding and building cleaning equipment. Does not include custodians or groundskeepers.

d. CLERICAL PERSONNEL

Persons who work in an office and perform such tasks as filing, keeping records and attending to correspondence.

e. VOLUNTEERS

Persons, who of their own free will, provide goods or services without financial gain.

f. ALL OTHERS

Persons who are not otherwise classified above.

2. EXAMPLES

The following examples are provided to assist you to properly classify your employees. The examples are not intended to be all inclusive. Each entity may have a unique or unusual occupation that will not fit concisely into the employee rating classifications used by the Fund. Please make an effort to fit all employees in a suitable category. However, if you need assistance in classifying an employee, please call Athena Westernen or Patti Trevathan at (803) 737-0020.

a. LAW ENFORCEMENT PERSONNEL INCLUDE, BUT ARE NOT LIMITED TO:

County/Town Policemen
County Sheriff Department
S. C. Highway Patrol Troopers
SLED Agents
ABC Agents
Wildlife Officers
Correctional Officers

b. DIRECTORS, EXECUTIVES AND MANAGERS INCLUDE, BUT ARE NOT LIMITED TO:

Board of Directors
City/Town Councils
County Council
Agency Commissioners
Mayors