

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Appellate Case No. 2019-000182
Circuit Court Case No. 2016-CP-10-04062

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SC Court of Appeals

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

v.

Southern States Police Benevolent Association, Inc., ... Appellant.

RECORD ON APPEAL

VOLUME I

James Edward Bradley, SC Bar #66130
Moore Taylor Law Firm, P.A.
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160
ward@mttlaw.com

J. Andrew Yoho, SC Bar #100803
Boyle, Leonard & Anderson, PA
28 Hasell Street
Charleston, SC 29401
843-576-4141
AYoho@Insurance-Counsel.com

Barry Goheen, *Pro hac vice*
FisherBroyles, LLP
4279 Roswell Road, Suite 208
Atlanta, GA 30342
(678) 592-9507
Barry.Goheen@fisherbroyles.com

*Attorneys for Appellant Southern States
Police Benevolent Association, Inc.*

Ronald L. Richter, Jr.
(SC Bar No. 66377)
Scott M. Mongillo (SC Bar No. 16574)
Peoples Building
18 Broad Street, Mezzanine
Charleston, South Carolina 29401
Telephone 843.573.9900
Facsimile 843.573.0200
ronnie@blandrichter.com
scott@blandrichter.com

Eric S. Bland (SC Bar No. 64132)
1500 Calhoun Street
Post Office Box 72
Columbia, South Carolina 29202
Telephone 803.256.9664
Facsimile 803.256.3056
ericbland@blandrichter.com

Andrew J. Savage, III SC Bar #4946
Savage Law Firm
15 Prioleau St.
Charleston, SC 29401
(843)720-7470
andy@savlaw.com

Carl E. Pierce, II SC Bar #7946
Joseph C. Wilson, IV SC Bar #63002
Daniel F. Lynch, IV SC Bar #102767
Pierce, Hems, Sloan & Wilson, LLC
PO Box 22437
Charleston, SC 29413-2437
(843)722-7733
carlpierce@phswlaw.com
joewilson@phswlaw.com
daniellynch@piercesloan.com

*Attorneys for Respondents Donald
Stanley and Sean Reiter, Individually
and as Class Representatives*

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-10-4062

Donald Stanley
PLAINTIFF(S)

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

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

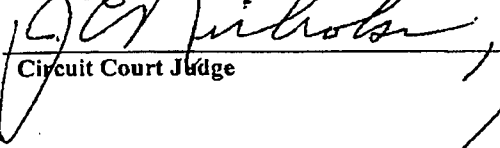
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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

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

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

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


Circuit Court Judge

2117
Judge Code

7/27/17
Date

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-10-4062

Donald Stanley
PLAINTIFF(S)

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

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

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☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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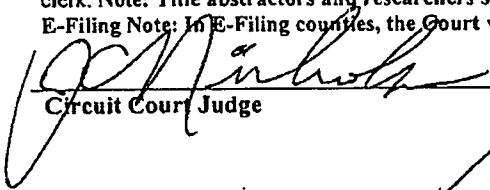
IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Plaintiff's Motion to Strike, filed on 4/14/2017 and argued before this Court on 4/26/17 is denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
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E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2117
Judge Code

7/27/17
Date

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-10-4062

Donald Stanley
PLAINTIFF(S)

Southern States Police Benevolent Assoc.
DEFENDANT(S)

Submitted by:

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

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☐ 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: This matter came before the Court on November 14, 2017, for Defendant's Motion for Summary Judgment filed on October 23, 2017. Viewing the evidence in the light most favorable to the nonmoving party, Defendant's motion is Denied, finding a scintilla of evidence exists giving rise to a genuine issue of material fact.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

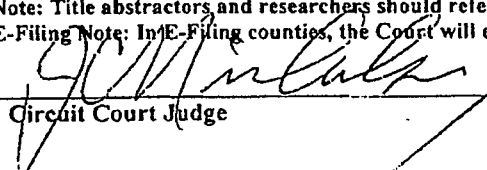
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Circuit Court Judge

2117
Judge Code

11/15/2017
Date

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Donald Stanley and Sean Reiter,)
Individually and as Class)
Representatives,)
)
v.)
)
Southern States Police Benevolent)
Association, Inc.)
)

Defendant.

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

**ORDER CERTIFYING PLAINTIFF
CLASS**

FILED
2016 JUN -3 AM 11:00
CLERK OF COURT

This matter is before the Court on the motion of Plaintiffs Donald Stanley and Sean Reiter to certify this matter as a class action pursuant to Rule 23 of the South Carolina Rules of Civil Procedure. Plaintiffs seek certification of the following class:

All residents of South Carolina who participated in the Defendant's Legal Defense Benefit Plan by paying member dues to the Defendant in exchange for benefits of said Plan from August 4, 2013 to August 4, 2016.

Excluded from the class are Defendant's current and former executive and local board members or executive level officers, employees, and persons that timely and properly exclude themselves from the class. Based on the foregoing, the Court certifies the class.

FACTUAL ALLEGATIONS

Defendant Southern States Police Benevolent Association, Inc. ("PBA") is a corporation organized and existing under the laws of the State of Georgia. Plaintiff Stanley is a Lieutenant with the Charleston County Sheriff's Department and is a member in good standing of the PBA and has been such for over 21 years. Plaintiff Reiter was at all times relevant a law enforcement officer with the Charleston County Sherriff's Department and/or the City of North Charleston. Plaintiffs allege the PBA invites police officers in the States of Georgia, South Carolina, North Carolina, Virginia, West Virginia, Arkansas, Tennessee, and Louisiana to become members of the PBA.

There are approximately 42,000 members of the PBA in all states. In 2016, the PBA had 2,575 members in South Carolina.

The Plaintiffs allege that members of the PBA pay monthly dues to the PBA in exchange for several benefits, but primarily a "Legal Defense Benefit Plan" (sometimes referred to as the "Plan"). Plaintiffs contend the monthly dues for South Carolina members are \$23.00, and that Plan promises to provide a legal defense and cover related costs to an officer member who is accused of a crime while performing his or her official duties as police officers. Plaintiffs further contend the Legal Defense Benefit Plan is actually a policy of insurance which the PBA was not licensed to sell in any of the States in which it transacts business. Alternatively, Plaintiffs claim that the Legal Defense Benefit Plan is a prepaid legal services plan which the PBA was not licensed to sell in any of the States in which it transacts business.

After this suit was filed, the PBA applied to the South Carolina Department of Consumer Affairs to become licensed as a prepaid legal benefits plan pursuant to S.C. Code § 37-16-10, *et seq.* Although the Department of Consumer Affairs granted this request, Plaintiffs' claims are primarily focused on the actions of Defendant PBA in the years leading up to the filing of the Complaint and prior to the PBA seeking licensure. Plaintiffs assert that during that time, the Defendant PBA not only failed to have a license to operate as an insurer or prepaid legal benefits plan, it also was not in compliance with the statutory requirements of such plans, namely that the plan had to allow members to choose their own attorneys. S.C. Code § 37-16-50. The PBA assigned attorneys to its members from a panel chosen by the PBA. The PBA has denied these allegations.

Plaintiffs also claim that the PBA failed to disclose the terms of the Plan to its members, including a clause that purportedly allows the PBA to withhold the benefits that its members pay

for if it determines that the member "has committed an intentional, deliberate and/or illegal act." Plaintiffs also assert that by selling the Plan, the Defendant PBA never revealed it lacked proper licensure and authority to sell insurance. The PBA has also denied these allegations. Plaintiffs seek injunctive relief and damages, namely a rescission of the Plan and a refund of member dues or premiums paid, together with additional relief.

Plaintiffs have alleged causes of action against the Defendant PBA for breach of contract, negligence, breach of fiduciary duty, unjust enrichment, fraud in the inducement, negligent misrepresentation, and injunctive relief. In addition to alleging that the PBA has operated as an insurer without appropriate authority or oversight and that it failed to disclose the terms of the Plan to its members, Plaintiffs have also alleged that PBA has violated other duties, including: (1) the duty to maintain sufficient reserves, capital, and surplus; (2) the duty to maintain adequate records and be subject to supervision and regular audits by appropriate state authorities; (3) the duty to prepare and submit reports to state authorities to demonstrate adherence to reserve, capital, and surplus requirements; (4) the duty to handle and account for premiums paid by insureds; (5) the duty to renew policies and not cancel policies in bad faith; (6) the duty to conduct its business in a fair and honest manner; (7) the duty to act in good faith in the solicitation, sell, negotiation and issuance of policies; (8) the duty to act in good faith and in the best interests of the class members in the handling and adjustment of claims made against those policies; and (9) the duty to comply with other laws, statutes and regulations enacted for the benefit of insureds as discovery may show.

Defendant PBA made a motion to dismiss the Amended Complaint for failure to state a claim under Rule 12(b)(6), SCRCF, primarily arguing that Plaintiffs did not have standing to bring a suit for the failure to obtain appropriate licenses as an insurer or prepaid legal benefit plan and that Plaintiffs had not suffered any legally cognizable damages. The Honorable J.C. Nicholson

denied this motion by order dated July 27, 2017. Defendant PBA thereafter made a motion for summary judgment on similar grounds, which Judge Nicholson denied by order dated November 15, 2017.

LEGAL FINDINGS

Rule 23(a) of the South Carolina Rules of Civil Procedure governs certification of classes:

- (a) Prerequisites to a Class Action.** One or more members of a class may sue or be sued as representative parties on behalf of all only if the court finds
- (1) the class is so numerous that joinder of all members is impracticable,
 - (2) there are questions of law or fact common to the class,
 - (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class,
 - (4) the representative parties will fairly and adequately protect the interests of the class, and
 - (5) in cases in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds one hundred dollars for each member of the class.

“The class-action device saves the resources of both the courts and the parties by permitting an issue potentially affecting every class member to be litigated in an economical fashion under Rule 23.” Grazia v. SC State Plastering, LLC, 390 S.C. 562, 703 S.E.2d 197, 204 (2010) (quoting Califano v. Yamasaki, 442 U.S. 682, 701, 99 S.Ct. 2545, 2557, 61 L.Ed.2d 176 (1979)). The South Carolina Supreme Court has expressed the viewpoint that class actions are favored in this state:

Our state class action rule differs significantly from its federal counterpart. The drafters of Rule 23, South Carolina Rules of Civil Procedure (SCRCP) intentionally omitted from our state rule the additional requirements found in Federal Rule 23(B), Federal Rules of Civil Procedure (FRCP). By omitting the additional requirements, Rule 23, SCRCP, endorses a more expansive view of class action availability than its federal counterpart.

Littlefield v. South Carolina Forestry Comm'n, 337 S.C. 348, 523 S.E.2d 781, 784 (1999).

Moreover, the South Carolina Supreme Court has affirmed the certification of a class of insurance policyholders to protect the interests of those policyholders in the insurance reserves held by a fraternal benefit association, Ex parte Rowley, 200 S.C. 174, 20 S.E.2d 383, 387-88

(1942) (“The interests and claims of the policyholders sought to be protected and preserved in this action are principally against the reserve funds of the association and it seems to us that all the policyholders form a most appropriate class for application of the statute.”).

Upon a motion for class certification, it will be incumbent on the circuit court to determine whether or not the action meets each of the five prerequisites that proponents of class certification are required to prove. Grazia, 703 S.E.2d at 204. It is within a trial court's discretion whether a class should be certified. Tilley v. Pacesetter Corp., 333 S.C. 33, 508 S.E.2d 16, 21 (1998). Additionally, “[a] court may not look to the merits when determining whether to certify a class.” Id.; King v. Am. Gen. Fin., Inc., 386 S.C. 82, 687 S.E.2d 321, 324 (2009).

Proponents of the class certification have the burden of proving the prerequisites of class certification have been met. Waller v. Seabrook Island Prop. Owners Ass'n, 300 S.C. 465, 467–68, 388 S.E.2d 799, 801 (1990). Defendant PBA has suggested that this is an evidentiary burden, but the Court in Waller considered the pleadings in reaching its class certification decision. See also 2 H. Newberg, Newberg on Class Actions, §7.20 (3d Ed. 1992) (The initial class determination should usually be made on the well-pled allegations of the Complaint.). Allegations of class facts usually constitute a prima facie showing of entitlement to maintain a class action. Id. Once a plaintiff has demonstrated a preliminary showing that the legal requirements of Rule 23 have been met, the burden of proof is upon the defendant to demonstrate otherwise. Newberg, §7.22 at 7.74–75. Accordingly, Plaintiffs do not have to prove their substantive claims as part of the class certification procedure.

I. THE ACTION SATISFIES THE NUMEROSITY REQUIREMENT.

Pursuant to Rule 23(a)(1), the proposed class must be so numerous that joinder of all individual members as parties would be impractical. The minimum number required for class certification has been held to be between 20 and 40. See Swanson v. American Consumer

Industries, 415 F.2d 1326, 1333 (7th Cir. 1969) (40 class members sufficient); Bates v. Tenco Services, Inc., 132 F. R. D. 160, 162 (D.S.C. 190) (180 Plaintiffs in one subdivision satisfied numerosity requirement); Damerson v. Sinai Hosp. of Baltimore, 595 F. Supp. 1401, 1408 (D.Md. 1984) (a class with as few as 25 to 30 members raises a presumption that joinder would be impractical). The proposed class herein clearly satisfies this requirement. Defendant PBA has acknowledged in its discovery responses that it had over 2,500 members in South Carolina in 2016. This plainly satisfies the numerosity requirement.

II. THERE ARE QUESTIONS OF LAW AND FACT COMMON TO THE CLASS.

Rule 23(a) next requires that a class action include sufficient common questions of law and fact between the class members.

It is important to note that the subsection does not demand that all questions of law and fact be common, only that there be common issues among the class. In fact, a single common issue will suffice if it is important enough. It also follows that the mere existence of individual issues does not defeat class action status.

McGann v. Mungo, 287 S.C. 561, 340 S.E.2d 154, 158 (Ct.App. 1986) (quoting H. Lightsey & J. Flanagan, South Carolina Civil Procedure at 19 (2d ed. 1985)); Central Wesleyan College v. W.R. Grace & Co., 143 F.R.D. 628 (D.S.C. 1992), aff'd, 6 F.3d 177 (4th Cir. 1993).

Critically, “[n]ot every issue in the case must be common to all class members.” Gardner v. S.C. Dep’t of Revenue, 353 S.C. 1, 21–22, 577 S.E.2d 190, 200–01 (2003) (quoting O’Connor v. Boeing North Amer., Inc., 184 F.R.D. at 311, 329 (C.D.Cal.1998)).

Courts also look favorably upon class action treatment where, as here, standardized conduct is directed uniformly to all of the class members. Mitchell-Tracey v. United General Title Insurance, 237 F.R.D. 551, 557 (D.Md. 2006); Chisolm v. TranSouth Fin. Corp., 194 F.R.D. 538, 559 (E.D.Va. 2000) (“[C]ourts have consistently found a common nucleus of operative facts when the defendants are alleged to have directed standardized conduct toward the putative class

members, or where the class claims arise out of standard documents.”) (internal quotations omitted); see also Blackie v. Barrack, 524 F.2d 891, 902-905 (9th Cir. 1975) (holding that common questions of law and fact abound where alleged claim involves uniform written documents like news releases). Additionally, “[t]he existence of routine and standardized practices giving rise to numerous claims weigh in favor of finding commonality, as well as typicality.” Mitchell-Tracey v. United Gen. Title Ins. Co., 237 F.R.D. 551, 557 (D.Md. 2006); see also Williams v. Empire Funding Corp., 183 F.R.D. 428 (E.D.Pa. 1998) (finding commonality among class members for claims involving standardized contracts and sales and referral practices).

In the current matter, there are several common issues of law and/or fact that pervade the Plaintiffs’ class. All class members are similarly situated to the Plaintiffs in that the proposed class members are all current or former members of Defendant and have paid Defendant membership dues to receive benefits under the Legal Defense Benefit Plan. Defendant PBA’s Policy, which governs the terms of the Plan, applies to all members, but Plaintiffs contend the limitations contained in the Policy remained unknown by all members. The members were all presented with the same marketing pitch and the same documents and forms. The members even pay the same dues to the Defendant PBA, \$23.00 a month.

Issues of law that are common to the entire class and can be decided on a class-wide basis include, but are not limited to: (1) whether Defendant is acting as an unregistered and unlicensed insurance company in South Carolina; (2) whether Defendant is acting as an unregistered and unlicensed prepaid legal benefit in South Carolina; (3) whether proposed class Plaintiffs have standing to bring a cause of action in this matter; (4) whether the proposed class Plaintiffs have suffered legally compensable damages; (5) whether Defendant, as an unauthorized insurer, has the right to file an answer in this matter pursuant to S.C. Code § 38-25-550(a); (6) whether Defendant

has maintained sufficient reserves to fulfill its obligations to the class; (7) whether Plaintiffs are entitled to injunctive or declaratory relief; and (8) whether Defendant has created and followed appropriate standards and acted in good faith.

Defendant PBA has not identified any differences among class members that would overcome this list of common issues that can and should be decided on a class-wide basis. Defendant has consistently argued in this matter, both before this Court and before Judge Nicholson, that Plaintiffs and the putative class members lack standing to bring these claims and have not suffered legally cognizable damages. Both of these issues are common to all class members and can and should be decided on a class-wide basis. Certainly, the class certification stage is not the time to make rulings on the substance of any claims or defenses, Tilley, 508 S.E.2d at 21, and the strength or weakness of any particular defense or claim is not a factor in determining class status.

Defendant PBA has argued that damages in this matter would require individual assessments. This argument overlooks two facts. First, every member paid the same amount to Defendant PBA, \$23.00 a month. "The measure of damages is not based upon the benefits named in the policy but upon the premiums paid." Ross v. Am. Income Life Ins. Co., 232 S.C. 433, 440, 102 S.E.2d 743, 746 (1958). Second, even if there is some divergence among class members in their damages, either due to length of time as a member or due to the receipt of benefits under the plan, such damages or deductions are easily calculated on a class wide basis and certainly do not predominate over the common factors cited about that bind the class.

As in many class action matters, the liability issues that are common to the class far outweigh the damage issues that might separate the class. As stated by the Fourth Circuit Court of Appeals, "[t]he possibility that individualized inquiry into Plaintiffs' damages claims will be

required does not defeat the class action because common issues nevertheless predominate.”

Gunnells v. Healthplan Servs., Inc., 348 F.3d 417, 427-29 (4th Cir. 2003)

In summary, this matter is well-suited to class action status. Defendant PBA has argued several defenses that apply equally to all class members, and it would appear that these defenses are going to be the primary issues in this litigation. Accordingly, commonality is present and supports class certification.

III. PLAINTIFFS' CLAIMS ARE TYPICAL OF THE CLAIMS OF THE CLASS.

Rule 23(a)(3) requires that the claims of the class representatives be "typical of the claims of the class." SCRCp, 23(a)(3). For the purposes of Rule 23(a), the representative party's claims are "typical" if they arise from the same conduct that gives rise to the claims of the class members and if the claims of the claimants are based on the same legal theories. Central Wesleyan College v. W.R. Grace & Co., 243 F.R.D. 628, 637 (D.S.C. 1992); see also 1 H. Newberg, Newberg on Class Actions §3.13 at 167 (2d Ed. 1985).

The test focuses on similarity of legal and remedial theories of claims of named and unnamed plaintiffs. Bates v. Tenco Services, Inc., 132 F.R.D. 160, amended, 132 F.R.D. 165 (D.S.C. 1990). To some extent, the analysis of the typicality requirement coincides with the court's determination of the commonality issue. The claim of a plaintiff is to be considered "typical" of the claims of the class members if the claim arises from the same event, facts or conduct which has given rise to the claims on behalf of the other class members. As stated by Judge Sol Blatt Jr.:

The typicality test does not require that the representatives have identical claims which other members of the class might present. The question of typicality focuses on the similarity of the legal and remedial theories of claims of the named and unnamed plaintiffs . . . Whether each potential member of the class has suffered the same degree of harm, or each and every type of harm, does not preclude a finding of typicality.

Bates v. Tenco Services, Inc., 132 F.R.D. 160, 163 (D.S.C. 1990).

Plaintiffs' claims are not only similar to but also typical of the claims of all class members. Each class member is a former or present dues paying member of Defendant PBA. One of the named Plaintiffs is a current member of the PBA, and the other is a former member of PBA. Each class member was covered by Defendant PBA's Legal Defense Benefit Plan. Each class member also has an interest in the resolution of the common questions of fact and law set forth above. Since there is no significant difference between the claims of the Plaintiffs and the other class members, typicality is satisfied.

IV. PLAINTIFFS WILL FAIRLY AND ADEQUATELY PROTECT THE INTERESTS OF THE CLASS.

Rule 23(a) also requires that the Plaintiffs be able to fairly and adequately represent and protect the interests of all class members in proceeding with prosecution of the matter as a class action. In determining whether Plaintiffs are adequate class representatives, the court should look at two criteria: (1) the representative must have common interests with the unnamed members of the class; and (2) it must appear that the representative will vigorously prosecute the interests of the class through qualified counsel. Runion v. U.S. Shelter, 98 F.R.D. 313 (D.S.C. 1983), cited with approval in Waller v. Seabrook Island Property Owners Ass'n, 300 S.C. 465, 388 S.E.2d 799 (1990). "The adequacy of plaintiffs' counsel, like that of the individual plaintiffs, is presumed in the absence of specific proof to the contrary." S.C. Nat. Bank v. Stone, 139 F.R.D. 325, 330-31 (D.S.C. 1991). Furthermore, Courts generally hold that the employment of competent counsel assures vigorous prosecution. Id. at 331.

Plaintiffs' claims are identical to the claims of the other proposed class members. Plaintiffs have no interests that are antagonistic to the class. There is no evidence that the Plaintiffs or their attorneys would not be adequate representatives of the class. Indeed, in their depositions, both named Plaintiffs have stated that they are pursuing this action in the interests of all PBA members.

Counsel for Defendant PBA has speculated that some class members are opposed to this action. Such speculation, if relevant, would destroy every class certification effort. Instead, South Carolina encourages the use of opt-out classes to address this issue. Here, Plaintiffs have requested an opt-out class, and this Court is certifying an opt-out class to allow any members opposed to the action to opt-out of the class. Plaintiffs have therefore satisfied the adequacy element.

V. THE AMOUNT IN CONTROVERSY REQUIREMENT HAS BEEN MET.

Rule 23(a)(5), SCRCP provides that: "in cases in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds one hundred dollars for each member of the class." Rule 23(a)(5) does not require \$100 in damages, but that the *amount in controversy* exceed \$100. The proposed class seeks recovery for all dues paid by class members to Defendant. Class member dues are \$23.00 per month. Thus, anyone who has been a member of Defendant for five months or more has paid more than \$100. This is the *amount in controversy*, and, consequently, this factor is satisfied. Therefore, the Court finds that Plaintiffs have met the amount in controversy requirement.

VI. DEFENDANT'S ARGUMENTS DO NOT PRECLUDE CLASS CERTIFICATION.

Defendant's arguments against class certification, which were laid out in detail in their Memorandum in Opposition to Class Certification, focused on the merits, an alleged lack of evidence supporting the Rule 23 factors, and the purported insufficiency of Plaintiffs' claims, namely arguing that for class adjudication, and Plaintiffs lacked standing to bring this suit and also lacked damages. These arguments have already been rejected by Judge Nicholson, and Tilley makes it clear that class certification is not grounded on a consideration of the merits. Indeed, the arguments and defenses presented by Defendant are common to the entire class and, therefore, support class certification and a class-wide determination of these legal issues.

CONCLUSION

IT IS THEREFORE ORDERED THAT:

a. the Court certifies this matter as a class action and certifies the following class of plaintiffs:

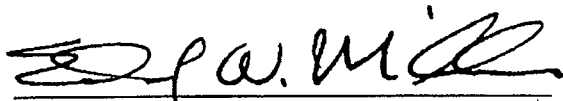
All residents of South Carolina who participated in the Defendant's Legal Defense Benefit Plan by paying "member dues" to the Defendant in exchange for benefits of said Plan from August 4, 2013 to August 4, 2016.

Excluded from the class are Defendant's current and former executive and local board members or executive level officers, employees, and persons that timely and properly exclude themselves from the class. Based on the foregoing, the Court certifies the class.

b. Counsel for the Plaintiffs are appointed as class counsel for the Plaintiff class.

c. Any notices required by the law and the South Carolina Rules of Civil Procedure shall be given to the class in a form and manner to be determined by the Court upon application by Plaintiffs or Defendants. In the interim, no party shall communicate with the class members regarding this class action and the allegations contained herein.

IT IS SO ORDERED.


THE HONORABLE EDWARD W. MILLER

December 31, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

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

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

**ORDER DENYING DEFENDANT'S
MOTION FOR RECONSIDERATION**

FILED
2019 JAN 28 PM 2:59
JULIE A. STRONG
CLERK OF COURT

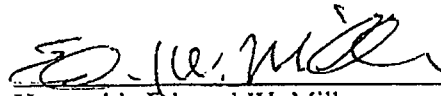
THIS MATTER CAME before the Court upon Southern States Police Benevolent Association, Inc.'s Motion for Reconsideration.

It appears and I so hold that this Court did not err in finding that Plaintiffs Donald Stanley and Sein Reiter, Individually and as Class Representatives (hereinafter "Plaintiffs") satisfied the commonality, typicality, and adequacy requirements of Rule 23 of the South Carolina Rules of Civil Procedure and class certification is proper.

It further appears and I so hold that these issues have been addressed and rejected repeatedly in this Court's rulings on Southern States Police Benevolent's Memo in Opposition to Plaintiffs' Motion for Class Certification, Motion to Dismiss, and Motion for Summary Judgment.

Accordingly, for the reasons set forth on the record and herein, the Court **DENIES** Southern States Police Benevolent's Motion for Reconsideration and will not reconsider nor reverse certification of Plaintiffs' injunctive relief class.

AND IT IS SO ORDERED!


Honorable Edward W. Miller
Court of Common Pleas

January 24, 2019

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) FOR THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CIVIL ACTION NUMBER: 2016-CP-10- 4062

Donald Stanley, Individually and as
Class Representative,

vs.

Southern States Police Benevolent
Association, Inc.

Defendant.

COMPLAINT

(Breach of Contract, Fraudulent Inducement,
Negligent Misrepresentation)

Jury Trial Demanded

BY

JULIE J. ARTHUR
CLERK OF COURT

2016 AUG -4 PM 4:55

FILED

The Plaintiff, complaining of the conduct of the Defendant herein, alleges as follows:

Class Allegations

1. Plaintiff, Donald Stanley, is an individual and resident of Berkeley County, South Carolina.

2. Defendant Southern States Police Benevolent Association, Inc. ("PBA") is a corporation organized and existing under the laws of the State of Georgia, which transacts business in the States of Georgia, South Carolina, North Carolina, Virginia, West Virginia, Kansas, Arkansas, Tennessee and Louisiana.

3. The PBA invites police officers in the States of Georgia, South Carolina, North Carolina, Virginia, West Virginia, Kansas, Arkansas, Tennessee and Louisiana to become "members" of the PBA. Members of the PBA pay monthly "dues" to the PBA in exchange for a "Legal Defense Benefit Plan" (sometimes referred to as the "Plan"). According to the Plan, it provides a legal defense and related costs to an officer member who is accused of a crime while performing his or her official duties as police officers.

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

5. To these officers, the benefit which the Plan purportedly offers is very attractive

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

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

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

8. Plaintiff is a representative of a proposed class consisting of the following:

All persons during the class period who participated in the Defendant's Legal Defense Benefit Plan by paying "member dues" in the approximate amount of \$23.50 per month to the Defendant in exchange for benefits of said Plan and who have paid a total of \$100.00 or more to the PBA.

9. Upon information and belief, the PBA currently has approximately 42,000 members spread over nine States (Georgia, South Carolina, North Carolina, Virginia, West Virginia, Kansas, Arkansas, Tennessee and Louisiana), each of whom pays approximately \$23.50 per month to participate in the PBA's Legal Defense Benefit Plan.

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

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

12. In short, the PBA is not licensed as an insurer in any State in which it offers its Legal Defense Benefit Plan. As the Legal Defense Benefit Plan is a policy of insurance and the

PBA lacks licensure to sell its policies of insurance, it has sold unauthorized insurance policies to its members who are entitled to a rescission of the Plan and to a refund of "member dues" or premiums paid, together with additional relief as set forth herein.

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

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

15. As a certified law enforcement officer and member in good standing of the PBA, the class representative will fairly and adequately protect the interests of the class.

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

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

actions) spread over nine different States.

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

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

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

Factual Background

21. Over the years, the Plaintiff has been present at meetings of police officers at which agents of the Defendant appeared for the purpose of selling memberships in the PBA.

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

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

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

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

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

- a. "The Legal Defense Benefit will be provided to Southern States PBA members only in those cases where a lawsuit or criminal accusation results from professional acts or omissions which arise out of and in the scope of their duties as a law enforcement officer." **Section 1.A. Coverage and Eligibility.**
- b. "The Benefit shall consist of the payment by Southern States PBA of attorney's fees and directly related Court costs." **Section 1.B. Coverage and Eligibility.**
- c. "The term 'arising out of and in the scope of their duties' as used in this Policy encompasses actions or omissions of a member while in the performance of regularly assigned law enforcement duties for his/her employment agency. The benefit is not designated to cover a member while he/she is off-duty or engaged in off-duty employment." **Section 1.E. Coverage and Eligibility.**
- d. "Coverage under the benefit is intended to apply to cases where a member has taken some type of direct law enforcement action consistent with his/her responsibilities as a law enforcement officer. It is not intended to apply to non-law enforcement actions, including, but not limited to, personnel, employment decisions (hiring, discipline or termination of employees), management decisions

dealing with procedural operation or physical facilities of the law enforcement agency (validity of agency rules, procedural orders or a facilities capacity) or instances where no direct law enforcement action on the part of the member is alleged to have taken place (vicarious liability or liability based on a theory of respondent superior)." **Section 1.G. Coverage and Eligibility.**

- e. "The Association CEO or the Director of Legal Services (DLS) will authorize all requests for legal services under the Benefit if it is determined that the following criteria are met:
- i. The requesting officer is a current member in good standing of Southern States, PBA,
 - ii. He/she was a member of the Association at the time of the incident,
 - iii. He/she remains a member in good standing from the date of incident until conclusion of the adversarial proceedings,
 - iv. The incident was the result of the MEMBER's performance of or pursuit of his/her official duties as a law enforcement officer, and
 - v. The request for coverage was submitted by the member and received by the Association within ten (10) calendar days after the member received official notification of the civil suit or criminal accusation and active representation of the member is undertaken by a legal defense benefit attorney.
 - vi. The member contracts the assigned attorney within five (5) days of receiving notification from the association specifying the name and phone number of such attorney.

vii. The member cooperates in the preparation and defense of the case by remaining available for contact upon reasonable notice from the association or assigned counsel.” **Section 1.B. Benefit Administration.**

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

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

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

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

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

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

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

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

33. The Policy is insurance.

34. The membership "dues" are actually premiums.

35. The PBA engages in an elaborate scheme to evade the regulatory oversight of the various insurance commissions from the States in which it transacts business by referring to its insurance policy as a "benefit plan" and by referring to the premiums paid by its insureds as "member dues."

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

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

38. In the State of Georgia, no person shall sell, solicit or negotiate insurance without being authorized to do so by the State. See for example, Ga. Code Ann. 33-23-4.

39. Upon information and belief, the PBA is not licensed to sell or issue policies of insurance in the State of Georgia and has never been so licensed.

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

41. In the State of South Carolina, no person shall sell, solicit or negotiate insurance without being authorized to do so by the State. See for example, S.C. Code Ann. 38-43-20.

42. Upon information and belief, the PBA is not licensed to sell or issue policies of insurance in the State of South Carolina and has never been so licensed.

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

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

45. Upon information and belief, the PBA is not licensed to sell or issue policies of insurance in the State of North Carolina and has never been so licensed.

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

47. In the State of Virginia, no person shall sell, solicit or negotiate insurance without being authorized to do so by the State. See for example, Va. Code Ann. 38.2-1802.

48. Upon information and belief, the PBA is not licensed to sell or issue policies of insurance in the State of Virginia and has never been so licensed.

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

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

51. Upon information and belief, the PBA is not licensed to sell or issue policies of insurance in the State of West Virginia and has never been so licensed.

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

53. In the State of Kansas, no person shall sell, solicit or insurance without being authorized to do so by the State. See for example, Kansas Code 299.040.

54. Upon information and belief, the PBA is not licensed to sell or issue policies of insurance in the State of Kansas and has never been so licensed.

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

56. In the State of Arkansas, no person shall sell, solicit or negotiate insurance without being authorized to do so by the State. See for example, A.C.A. 23-64-201.

57. Upon information and belief, the PBA is not licensed to sell or issue policies of insurance in the State of Arkansas and has never been so licensed.

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

59. In the State of Tennessee, no person shall sell, solicit or negotiate insurance without being authorized to do so by the State. See for example, T.C.A. 56-6-103.

60. Upon information and belief, the PBA is not licensed to sell or issue policies of insurance in the State of Tennessee and has never been so licensed.

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

62. In the State Louisiana, no person shall sell, solicit or negotiate insurance without being authorized to do so by the State. See for example, LSA-R.S. 22.64.

63. Upon information and belief, the PBA is not licensed to sell or issue policies of insurance in the State of Louisiana and has never been so licensed.

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

65. In the State Alabama, no person shall sell, solicit or negotiate insurance without being authorized to do so by the State. See for example, Ala. Code 1975, 27-3-27.

66. Upon information and belief, the PBA is not licensed to sell or issue policies of insurance in the State of Alabama and has never been so licensed.

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

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

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

69. With regard to every class member during the class period, the Defendant sold the class members policies of insurance which it was not authorized to sell.

70. The fact that the Defendant was not authorized to enter into contracts with the class members is so fundamental of a breach of the contract that the only proper remedy is a rescission of each and every such contract and a return to each and every class member of the monies paid to the Defendant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

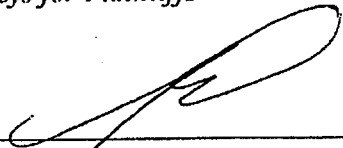
WHEREFORE, the Plaintiff, on his own behalf and on behalf of the class of members he represents, prays for a judgment against the PBA both for actual damages, in an amount equal to

the dues or premiums paid by PBA members during the class period, together with prejudgment interest thereon, as well as an award of punitive damages in an amount deemed sufficient to impress upon the Defendant the seriousness of its conduct and to deter such similar conduct in the future, as well as an award of attorney's fees and costs and such additional relief as the Court deems just and proper.

Charleston, South Carolina

8/4/, 2016

Attorneys for Plaintiffs



Ronald L. Richter, Jr.
Scott M. Mongillo
Peoples Building
18 Broad Street, Mezzanine
Charleston, South Carolina 29401
(843) 573-9900
ronnie@blandrichter.com
scott@blandrichter.com

Eric S. Bland
1500 Calhoun Street
Post Office Box 72
Columbia, South Carolina 29202
(803) 256-9664
ericbland@blandrichter.com

Andrew J. Savage, III, Esquire
SAVAGE LAW FIRM
15 Prioleau Street
Charleston, South Carolina 29401
(843) 720-7470
andy@savlaw.com

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

EXHIBIT A
COMPLAINT

Legal Defense Benefit Plan

SOUTHERN STATES POLICE BENEVOLENT ASSOCIATION, INC.

POLICY NO. 00-16

LEGAL DEFENSE BENEFIT

BACKGROUND:

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

POLICY:

Section 1. Coverage and Eligibility

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

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

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

Section 2. Benefit Administration

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

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Legal Defense Benefit
Page 4

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

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

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

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

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

Section 4. Limitations, Restrictions and Exemptions

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

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

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

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

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

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

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

Section 5. Cessation of Legal Defense Benefit Plan

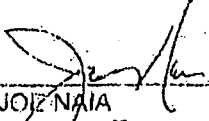
- A. In the event the Association Board of Directors shall determine that the Legal Defense Benefit Plan is no longer feasible for whatever reason, Southern States P.B.A. shall promptly notice each member of the Association by U.S. mail, first class, to the member's address, as listed in the Association's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

Section 6. Definitions

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

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

Former SSPBA Policy 90-01


JOE NAJA
Secretary-Treasurer

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

EXHIBIT B
COMPLAINT

Southern States Police Benevolent Association, Inc. Wallet Card

**SOUTHERN STATES
POLICE BENEVOLENT ASSN., INC.**

1-800-233-3506 • www.sspba.org



**Donald
Stanley**

ID # 89120

Member Since 10/11/1994

20 YEAR MEMBER THE VOICE OF POLICE BENEVOLENCE

LEGAL DEFENSE PLAN

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

SHOOTING

DEATH IN CUSTODY

CRIMINAL

CIVIL

ACCIDENT WITH DEATH OR SERIOUS INJURY

Contact PBA immediately: 1-800-233-3506

More detailed information, including limitations, available upon request. To receive benefits, you must have continuing active membership from the time of incident through period of assistance. For all other assistance, prior approval must be obtained. Contact your chapter president or SSPBA.

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

EXHIBIT C
COMPLAINT

Southern States Police Benevolent Association, Inc. Website Screenshot



SOUTHERN STATES PBA

WHY JOIN? ([HTTPS://WWW.SSPBA.ORG/GEN/ARTICLES/WHY_JOIN_68.JSP](https://www.sspba.org/gen/articles/why_join_68.jsp))WHO CAN JOIN? ([HTTPS://WWW.SSPBA.ORG/GEN/ARTICLES/WHO_CAN_JOIN_564.JSP](https://www.sspba.org/gen/articles/who_can_join_564.jsp))LEGAL ([HTTPS://WWW.SSPBA.ORG/GEN/ARTICLES/LEGAL_DEPARTMENT_125.JSP](https://www.sspba.org/gen/articles/legal_department_125.jsp)) STATE DIVISIONS MEMBER CENTERGOV AFFAIRS ([HTTPS://WWW.SSPBA.ORG/GEN/ARTICLES/GOVERNMENTAL_AFFAIRS_124.JSP](https://www.sspba.org/gen/articles/governmental_affairs_124.jsp)) SSPBA STAFF

Legal benefits PBA members receive

No other law enforcement association even comes close

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

Shooting and Serious Injury Incidents

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

Civil Suits and Criminal Action

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

Grievance and Disciplinary Representation

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

With PBA's Legal Defense Benefit...

"Do I need committee approval?"

NO!

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

NO!

"Will personalities be involved in my request?"

NO!

"Will inner-circle politics be involved?"

NO!

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

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

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

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

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

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

SOUTHERN STATES PBA NEWS

View All (<https://www.sspba.org/gen/chapters/>)

114TH US CONGRESS UPDATE JULY 2016

([HTTPS://WWW.SSPBA.ORG/GEN/ARTICLES/114TH_US_CONGRESS_UPDATE_JULY_2016_630.JSP](https://www.sspba.org/gen/articles/114th_US_Congress_Update_July_2016_630.jsp))

August 2, 2016

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

[more](#)

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

PRAYING FOR BATON ROUGE ([HTTPS://WWW.SSPBA.ORG/GEN/ARTICLES/PRAYING_FOR_BATON_ROUGE_628.JSP](https://www.sspba.org/gen/articles/praying_for_baton_rouge_628.jsp))

July 18, 2016

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

[more](#)

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

PRAYING FOR DALLAS ([HTTPS://WWW.SSPBA.ORG/GEN/ARTICLES/PRAYING_FOR_DALLAS_627.JSP](https://www.sspba.org/gen/articles/praying_for_dallas_627.jsp))

July 8, 2016

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

[more](#)

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

LEGAL AID

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

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

Meet the Legal Staff

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

What We Are Up To

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

Need to Know

(https://www.sspba.org/gen/articles/What_you_need_to_know_when_you_need_legal_aid_88.jsp)

Garrity Rule

(https://www.sspba.org/gen/articles/Garrity_Information_Protect_yourself_Know_your_rights_monitors_civil_rights_89.jsp)

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

Legal FAQ

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

Contact Legal

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

MEDIA CENTER

About the SSPBA

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

SSPBA Board

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

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

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

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

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

GET INVOLVED

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

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

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

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

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

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

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

Google+ (<http://visitor.r20.constantcontact.com/manage/optin/ea?v=00110R116q2zxH8sPuO6Kolw%3D%3D>)

LinkedIn (<https://www.linkedin.com/company/sspba>)

YouTube (<https://www.youtube.com/user/sspba>)

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

MEMBER CENTER

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

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

Retired Members

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

Military/Active Duty

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

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

GOVERNMENTAL AFFAIRS

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

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

Governmental Affairs FAQ

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

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

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

vs.)

Southern States Police Benevolent)
Association, Inc.)

Defendant.

AMENDED COMPLAINT

Jury Trial Demanded

FILED
2016 NOV 22 PM 1:37
JULIE J. ARMSTRONG
CLERK OF COURT

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

Class Allegations

1. Plaintiff, Donald Stanley, is an individual and resident of Berkeley County, South Carolina, who was at all times relevant hereto a member in good standing with the Southern States Police Benevolent Association.

2. Plaintiff, Sean Reiter, is a resident of New Jersey, who was at all times relevant hereto a member in good standing with the Southern States Police Benevolent Association.

3. Defendant Southern States Police Benevolent Association, Inc. ("PBA") is a corporation organized and existing under the laws of the State of Georgia, which transacts business in the States of Georgia, South Carolina, North Carolina, Virginia, West Virginia, Kansas, Arkansas, Tennessee and Louisiana.

4. The PBA invites police officers in the States of Georgia, South Carolina, North Carolina, Virginia, West Virginia, Kansas, Arkansas, Tennessee and Louisiana to become "members" of the PBA. Members of the PBA pay monthly "dues" to the PBA in exchange for a "Legal Defense Benefit Plan" (sometimes referred to as the "Plan"). According to the Plan, it provides a legal defense and related costs to an officer member who is accused of a crime while performing his or her official duties as police officers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Factual Background

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

selling memberships in the PBA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36. The Policy is insurance.

37. The membership "dues" are actually premiums.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

86. Class members have not breached the insurance contracts.

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

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

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

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

**For a Second Cause of Action
Negligence**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Charleston, South Carolina

11/22, 2016

Attorneys for Plaintiffs



Ronald L. Richter, Jr.
Scott M. Mongillo
Peoples Building
18 Broad Street, Mezzanine
Charleston, South Carolina 29401
(843) 573-9900
ronnie@blandrichter.com
scott@blandrichter.com

Eric S. Bland
1500 Calhoun Street
Post Office Box 72
Columbia, South Carolina 29202
(803) 256-9664
ericbland@blandrichter.com

Andrew J. Savage, III, Esquire
SAVAGE LAW FIRM
15 Prioleau Street
Charleston, South Carolina 29401
(843) 720-7470
andy@savlaw.com

Carl E. Pierce, II, Esquire
Joseph C. Wilson, IV, Esquire
Pierce, Hems, Sloan & Wilson, LLC
The Blake House
321 East Bay Street (29401)
Post Office Box 22437
Charleston, South Carolina 29413
(843) 725-7705
carlpierce@phswlaw.com
joewilson@phswlaw.com

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

EXHIBIT A
COMPLAINT

Legal Defense Benefit Plan

SOUTHERN STATES POLICE BENEVOLENT ASSOCIATION, INC.

POLICY NO. 00-16

LEGAL DEFENSE BENEFIT

BACKGROUND:

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

POLICY:

Section 1. Coverage and Eligibility.

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

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

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

Section 2. Benefit Administration

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

Policy No. 00-16
Legal Defense Benefit
Page 4

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

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

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

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

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

Section 4. Limitations, Restrictions and Exemptions

- A. A member will be entitled to an attorney under the Legal Defense Benefit in civil actions when the member is a co-defendant, in his/her individual capacity, with his/her employer and when punitive damages are sought against the member. (The litigation preparation shall be confined to the issue of punitive damages). The Association CEO or the Director of Legal Services reserve the right to review the costs and expenditures each month to determine if they have been incurred within the coverage set forth.
- B. The Benefit will not provide legal services in civil matters wherein punitive damages are not sought unless the member is sued individually and the employer refuses representation; or unless the employer is going to settle the claim and the employer has admitted wrongdoing on behalf of the member without the member's consent.

- C. The Director of Legal Services may direct that a case assigned to a legal defense attorney be monitored by the attorney in the following cases: (a) cases in which the member is being actively represented by the employer; (b) civil cases in which the member is being actively represented by the employer and the member is satisfied with representation being provided, and (c) civil cases in which the member is only a nominal party and the case is designed to test the legality of an employer's practice, policy or rule enforced by the member.

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

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

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

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

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

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

Section 5. Cessation of Legal Defense Benefit Plan

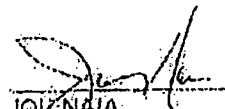
- A. In the event the Association Board of Directors shall determine that the Legal Defense Benefit Plan is no longer feasible for whatever reason, Southern States P.B.A. shall promptly notice each member of the Association by U.S. mail, first class, to the member's address, as listed in the Association's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

Section 6. Definitions

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

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

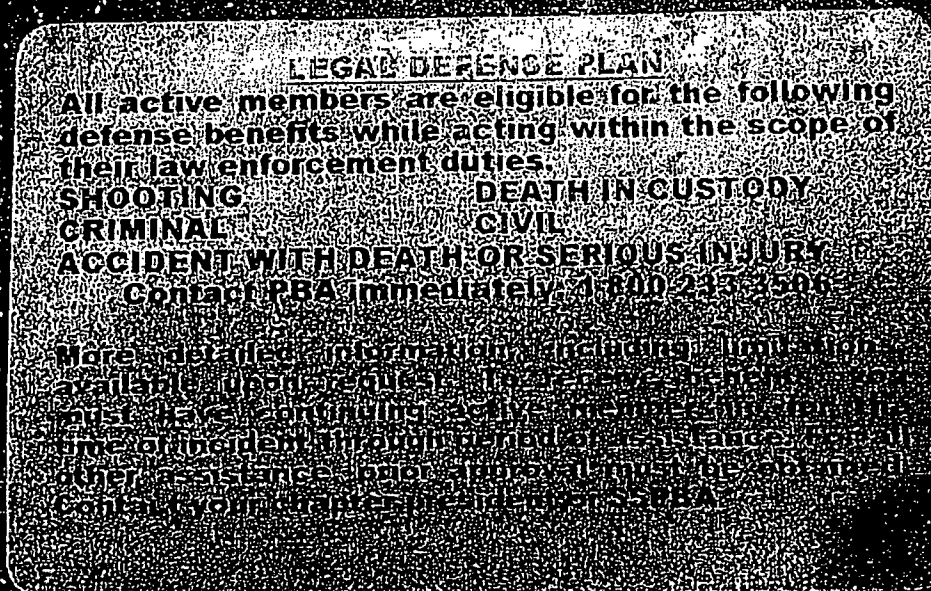
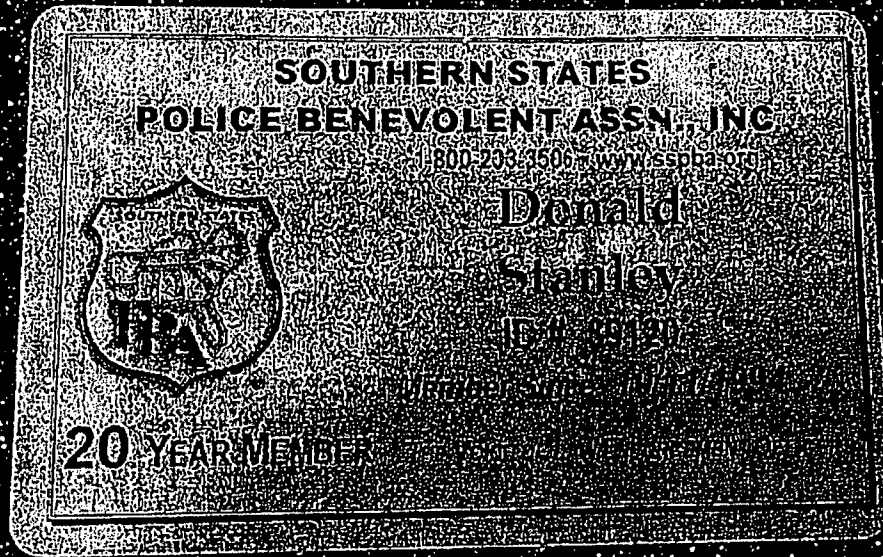
Former SSPBA Policy 90-01


JOLINDA
Secretary-Treasurer

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

EXHIBIT B
COMPLAINT

Southern States Police Benevolent Association, Inc. Wallet Card



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

EXHIBIT C
COMPLAINT

Southern States Police Benevolent Association, Inc. Website Screenshot



SOUTHERN STATES PBA

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

Legal benefits PBA members receive

No other law enforcement association even comes close

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

Shooting and Serious Injury Incidents

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

Civil Suits and Criminal Action

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

Grievance and Disciplinary Representation

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

With PBA's Legal Defense Benefit...

"Do I need committee approval?"

NO!

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

NO!

"Will personalities be involved in my request?"

NO!

"Will inner-circle politics be involved?"

NO!

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

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

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

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

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

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

SOUTHERN STATES PBA NEWS

View All (<https://www.sspba.org/gen/chapters/>)

114TH US CONGRESS UPDATE JULY 2016

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

August 2, 2016

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

[more](#)

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

PRAYING FOR BATON ROUGE ([HTTPS://WWW.SSPBA.ORG/GEN/ARTICLES/PRAYING_FOR_BATON_ROUGE_628.JSP](https://www.sspba.org/gen/articles/praying_for_baton_rouge_628.jsp))

July 18, 2016

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

[more](#)

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

PRAYING FOR DALLAS ([HTTPS://WWW.SSPBA.ORG/GEN/ARTICLES/PRAYING_FOR_DALLAS_627.JSP](https://www.sspba.org/gen/articles/praying_for_dallas_627.jsp))

July 8, 2016

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

[more](#)

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

LEGAL AID

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

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

Meet the Legal Staff

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

What We Are Up To

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

Need to Know

(https://www.sspba.org/gen/articles/What_you_need_to_know_when_you_need_legal_aid_88.jsp)

Garrity Rule

(https://www.sspba.org/gen/articles/Garrity_Information_Protect_yourself_Know_your_rights_89.jsp)

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

Legal FAQ

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

Contact Legal

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

MEDIA CENTER

About the SSPBA

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

SSPBA Board

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

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

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

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

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

GET INVOLVED

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

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

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

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

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

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

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

Visitor List (<http://visitor.r20.constantcontact.com/manage/optIn/ea7v=00110Rll6q2xIH8sPu06K0lw%3D%3D>)

Go High Five (https://www.sspba.org/gen/articles/Go_High_Five_188.jsp)

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

MEMBER CENTER

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

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

Retired Members

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

Military/Active Duty

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

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

GOVERNMENTAL AFFAIRS

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

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

Governmental Affairs FAQ

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

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
DONALD STANLEY AND SEAN
REITER, INDIVIDUALLY AND AS
CLASS REPRESENTATIVES,

Plaintiffs,

v.

SOUTHERN STATES POLICE
BENEVOLENT ASSOCIATION, INC.,

Defendant.

) IN THE COURT OF COMMON PLEAS
) THE NINTH JUDICIAL CIRCUIT

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

) ANSWER TO AMENDED COMPLAINT

) (JURY TRIAL REQUESTED)

FILED
2017 JAN 23 PM 4:15
JULIE J. ANDERSON
CLERK OF COURT

The Defendant responds to the Amended Complaint as follows:

FOR A FIRST DEFENSE

1. Unless specifically admitted in this Answer, the Defendant denies each and every allegation of the Complaint.

FOR A SECOND DEFENSE

2. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

3. The Defendant admits the allegations of paragraph 1.

4. The Defendant admits only that Reiter was at one time a member of the Southern States Police Benevolent Association, and denies the remaining allegations of paragraph 2 as stated.

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

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

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

8. In response to paragraph 6, the Defendant admits that it provides the legal defense benefit in accordance with the terms of the legal defense plan. The Defendant admits that a legal defense can be expensive. The Defendant denies the remaining allegations of paragraph 6.

9. In response to paragraph 7, the Defendant admits the legal defense benefit is extended to all members, according to the terms of the plan. The Defendant denies the allegations of paragraph 7.

10. The Defendant denies the allegations of paragraph 8.

11. In response to Paragraph 9, the Defendant admits the Plaintiff is a Lieutenant with the Charleston County Sheriff's Department and is a member in good standing of the PBA where he has been a member in good standing for many years.

12. The Defendant denies the allegations of paragraph 10.

13. The Defendant denies the allegations of paragraph 11.

14. The Defendant denies the allegations of paragraph 12.

15. In response to paragraph 13, the Defendant admits it has members in southeastern states including Georgia, South Carolina, North Carolina, Virginia, West Virginia, Arkansas, Tennessee, and Louisiana. The Defendant admits that membership dues are \$23.00 per month. The Defendant denies the remaining allegations of paragraph 13.

16. The Defendant denies the allegations of paragraphs 14 and 15.

17. In response to paragraph 16, the Defendant admits it is not licensed as an insurance company. The Defendant denies the remaining allegations of paragraph 16.

18. The Defendant denies the allegations of paragraphs 17, 18, 19, and 20.

19. In response to paragraph 21, the Defendant admits it has a list of current members. The Defendant denies the remaining allegations of paragraph 21.

20. The Defendant denies the allegations of paragraph 22.

21. The Defendant denies the allegations of paragraph 23.

22. The Defendant denies the allegations of paragraph 24.

23. In response to paragraph 25, the Defendant admits that it does not cap or limit the amount of money spent to defend a member in accordance with the terms of the Legal Defense Plan. The Defendant denies the remaining allegations of paragraph 25.

24. The Defendant denies the allegations of paragraph 26. The Defendant admits it never told its members or prospective members that it was an insurance company.

25. The Defendant denies the allegations of paragraph 27.

26. In response to paragraph 28, the Defendant admits membership recruiters are partially paid based on recruitment. The Defendant denies the remaining allegations of paragraph 28.

27. In response to paragraph 29, the Defendant admits the Legal Defense Benefit is administered according to its terms set forth in Policy Number 00-16. The Defendant admits a copy of the Legal Defense Benefit is attached as Exhibit A to the Complaint. The Defendant responds to the lettered allegations as follows:

- a. The Defendant admits this sub-paragraph accurately quotes from the Legal Defense Benefit.
- b. The Defendant admits this sub-paragraph accurately quotes from the Legal Defense Benefit.
- c. The Defendant admits this sub-paragraph accurately quotes from the Legal Defense Benefit with the following changes: "or" should read as "of," and "employment" should read as "employing."
- d. The Defendant admits this sub-paragraph accurately quotes from the Legal Defense Benefit except that the second "facilities" should say "facility's."

- e. The Defendant admits this sub-paragraph accurately quotes from the Legal Defense Benefit except that it quotes from Section 2.A. instead of Section 1.B.
- f. The Defendant admits this sub-paragraph accurately quotes from the Legal Defense Benefit except that it quotes from Section 4.D., not Section 1.D.

28. In response to paragraph 30, the Defendant admits it issues a wallet card to its members which summarizes the Legal Defense Benefit. The Defendant admits that a copy of a wallet card which has been issued to its members is attached as Exhibit B to the Complaint.

29. In response to paragraph 31, the Defendant admits that paragraph 31 quotes from Exhibit B which is a copy of a wallet card which has been issued by the Defendant.

30. In response to paragraph 32, the Defendant admits that the Legal Defense Benefit is administered with no cap and no limit. The Defendant admits that a copy of its website is attached as Exhibit C to the Complaint. The Defendant denies the remaining allegations of paragraph 32.

31. In response to paragraph 33, the Defendant admits that the Legal Defense Benefit does not have caps or limits. The Defendant admits that the Legal Defense Benefit does exclude certain conduct and conditions. The Defendant denies the remaining allegations of paragraph 33.

32. The Defendant denies the allegations of paragraphs 34, 35, 36, 37, and 38.

33. In response to paragraph 39, the Defendant admits that, prior to this lawsuit, it never received an opinion letter or inquiry from any insurance commission regarding its member benefit. The Defendant denies the remaining allegations of this paragraph.

34. In response to paragraph 40, the Defendant admits that, as of the filing of this lawsuit, it had never received an opinion letter from an attorney regarding its legal defense benefit. The Defendant denies the remaining allegations of paragraph 40.

35. In response to paragraphs 41 and 42, the Defendant admits those provisions which are consistent with Georgia law. The Defendant denies the remaining allegations of paragraphs 41 and 42.

36. In response to paragraph 43, the Defendant admits it is not licensed to sell or issue insurance in the State of Georgia and has not been licensed to issue or sell insurance in the State of Georgia.

37. The Defendant denies the allegations of paragraph 44.

38. In response to paragraphs 45 and 46, the Defendant admits those provisions which are consistent with South Carolina law. The Defendant denies the remaining allegations of paragraphs 45 and 46.

39. In response to paragraph 47, the Defendant admits that it is not licensed to sell or issue insurance in the State of South Carolina and that it has not been licensed to sell or issue insurance in South Carolina.

40. The Defendant denies the allegations of paragraph 48.

41. In response to paragraphs 49 and 50, the Defendant admits those provisions which are consistent with North Carolina law. The Defendant denies the remaining allegations of paragraphs 49 and 50.

42. In response to paragraph 51, the Defendant admits that it is not licensed to sell or issue insurance in the State of North Carolina and that it has not been licensed to sell or issue insurance in North Carolina.

43. The Defendant denies the allegations of paragraph 52.

44. In response to paragraphs 53 and 54, the Defendant admits those provisions which are consistent with Virginia law. The Defendant denies the remaining allegations of paragraphs 53 and 54.

45. In response to paragraph 55, the Defendant admits that it is not licensed to sell or issue insurance in the State of Virginia and that it has not been licensed to sell or issue insurance in Virginia.

46. The Defendant denies the allegations of paragraph 56.

47. In response to paragraphs 57 and 58, the Defendant admits those provisions which are consistent with West Virginia law. The Defendant denies the remaining allegations of paragraphs 57 and 58.

48. In response to paragraph 59, the Defendant admits that it is not licensed to sell or issue insurance in the State of West Virginia and that it has not been licensed to sell or issue insurance in West Virginia.

49. The Defendant denies the allegations of paragraph 60.

50. In response to paragraphs 61 and 62, the Defendant admits those provisions which are consistent with Kansas law. The Defendant denies the remaining allegations of paragraphs 61 and 62.

51. In response to paragraph 63, the Defendant admits that it is not licensed to sell or issue insurance in the State of Kansas and that it has not been licensed to sell or issue insurance in Kansas.

52. The Defendant denies the allegations of paragraph 64.

53. In response to paragraphs 65 and 66, the Defendant admits those provisions which are consistent with Arkansas law. The Defendant denies the remaining allegations of paragraphs 65 and 66.

54. In response to paragraph 67, the Defendant admits that it is not licensed to sell or issue insurance in the State of Arkansas and that it has not been licensed to sell or issue insurance in Arkansas.

55. The Defendant denies the allegations of paragraph 68.

56. In response to paragraphs 69 and 70, the Defendant admits those provisions which are consistent with Tennessee law. The Defendant denies the remaining allegations of paragraphs 69 and 70.

57. In response to paragraph 71, the Defendant admits that it is not licensed to sell or issue insurance in the State of Tennessee and that it has not been licensed to sell or issue insurance in Tennessee.

58. The Defendant denies the allegations of paragraph 72.

59. In response to paragraphs 73 and 74, the Defendant admits those provisions which are consistent with Louisiana law. The Defendant denies the remaining allegations of paragraphs 73 and 74.

60. In response to paragraph 75, the Defendant admits that it is not licensed to sell or issue insurance in the State of Louisiana and that it has not been licensed to sell or issue insurance in Louisiana.

61. The Defendant denies the allegations of paragraph 76.

62. In response to paragraphs 77 and 78, the Defendant admits those provisions which are consistent with Alabama law. The Defendant denies the remaining allegations of paragraphs 77 and 78.

63. In response to paragraph 79, the Defendant admits that it is not licensed to sell or issue insurance in the State of Alabama and that it has not been licensed to sell or issue insurance in Alabama.

64. The Defendant denies the allegations of paragraph 80.

65. The Defendant denies the allegations of paragraphs 81 and 82.

66. In response to paragraph 83, the Defendant realleges its previous allegations and denials.

67. The Defendant denies the allegations of paragraphs 84 and 85.

68. In response to paragraph 86, the Defendant denies that it has entered insurance contracts and therefore denies the allegations of paragraph 86.

69. The Defendant denies the allegations of paragraphs 87, 88, 89, and 90.

70. In response to paragraph 91, the Defendant realleges its previous allegations and denials.

71. The Defendant denies the allegations of paragraphs 92, 93, 94, 95, and 96.

72. In response to paragraph 97, the Defendant realleges its previous allegations and denials.

73. The Defendant denies the allegations of paragraphs 98, 99, and 100.

74. In response to paragraph 101, the Defendant realleges its previous allegations and denials.

75. The Defendant denies the allegations of paragraphs 102, 103, 104, and 105.

76. In response to paragraph 106, the Defendant realleges its previous allegations and denials.

77. The Defendant denies the allegations of paragraphs 107, 108, 109, 110, 111, 112, 113, and 114.

78. In response to paragraph 115, the Defendant realleges its previous allegations and denials.

79. The Defendant denies the allegations of paragraphs 116, 117, 118, 119, 120, 121, and 122.

80. In response to paragraph 123, the Defendant realleges its previous allegations and denials.

81. The Defendant denies the allegations of paragraphs 124, 125, 126, and 127.

FOR A THIRD DEFENSE

82. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

83. The Plaintiffs' Complaint fails to state a claim upon which relief can be granted and should be dismissed with prejudice under Rule 12(b)(6).

FOR A FOURTH DEFENSE

84. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

85. This Court does not have jurisdiction over the matters alleged in the Complaint.

86. In particular, the Complaint alleges transactions between the Southern States Police Benevolent Association which is a non-profit, member run Georgia corporation and members in other states.

87. The Complaint purports to bring claims for members of the Southern States Police Benevolent Association in states other than South Carolina.

88. Thus, the Complaint alleges membership transactions between the Southern States Police Benevolent Association as a Georgia corporation and members in other states which are not South Carolina.

89. As a result, these membership transactions have no connection to South Carolina.

90. This Court does not have jurisdiction over this dispute pursuant to Constitutional Due Process.

91. The South Carolina Long-Arm Statute exercises jurisdiction over transactions taking place in the State of South Carolina or performed within the State of South Carolina.

92. The Plaintiff is attempting to bring an action on behalf of members of other states against the Southern States Police Benevolent Association which is a Georgia non-profit, member run corporation.

93. As a result, this Court does not have jurisdiction over these members, and the Complaint should be dismissed for lack of jurisdiction as to members outside the State of South Carolina pursuant to the United States Constitution, the South Carolina Constitution, the South Carolina Long-Arm Statute, and the South Carolina Door Closing Statute South Carolina Code Section 15-5-150.

FOR A FIFTH DEFENSE

94. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

95. The allegations in the Complaint relate solely to the licensing of the Southern States Police Benevolent Association.

96. The allegations of the Complaint purport to bring an action against the Southern States Police Benevolent Association for selling unlicensed insurance products.

97. There is no private cause of action recognized for selling unlicensed insurance products.

98. In fact, violations of the insurance code do not give rise to a civil cause of action.

99. Instead, violations of the insurance code are enforced only through criminal action or action of the Insurance Commission, and this matter should be dismissed with prejudice.

FOR A SIXTH DEFENSE

100. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

101. The Plaintiffs and the Plaintiff Class have no damages whatsoever.

102. The Plaintiffs and the Plaintiff Class have received the benefit of their bargain.

103. In fact, no damages are specifically alleged in the Complaint.

104. Not only does the Complaint not allege any damages, the Plaintiffs and the class which they purport to represent have not been damaged in any way.

105. As a result, the Plaintiffs' claims should be dismissed for lack of damages.

FOR A SEVENTH DEFENSE

106. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

107. Pursuant to South Carolina Rule of Civil Procedure 23, for a class to exist, each member must have \$100.00 or more in damages.

108. Neither the Plaintiffs nor any class members have damages of any sort.

109. As a result, this matter cannot be pursued as a class action.

FOR AN EIGHTH DEFENSE

110. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

111. Rule 23(b)(1) of the South Carolina Rules of Civil Procedure requires that, in actions brought by shareholders or members, the Complaint be verified.

112. The Complaint is not verified.

113. As a result, the Complaint should be dismissed.

FOR A NINTH DEFENSE

114. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

115. Rule 23(b)(1) of the South Carolina Rules of Civil Procedure requires that:

“The Complaint shall also allege with particularity the efforts, if any, made by the Plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and his reasons for his failure to obtain the action or for not making the effort.”

116. The Complaint does not contain the efforts or an explanation of why the Plaintiffs have not taken the efforts before filing a lawsuit as required by Rule 23.

117. As a result, the Complaint should be dismissed.

FOR A TENTH DEFENSE

118. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

119. The Plaintiffs are not sufficient representatives of the purported class as they have no damages whatsoever.

120. As a result, the claims should be dismissed.

FOR AN ELEVENTH DEFENSE

121. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

122. The proposed Plaintiff Class has received the benefits of membership in the Southern States Police Benevolent Association including, but not limited to, the following:

- a. Governmental affairs and lobbying efforts on behalf of police officers;

- b. Screening and endorsements for candidates of public office;
- c. Accidental death benefits up to \$60,000;
- d. Access to Police Benevolent Association's staff attorneys for advice or counsel;
- e. Copies of the Southern States Police Benevolent Association's magazine, *Blue Review*;
- f. A legal defense benefit for the performance of official duties within the accepted standards of the profession; and
- g. Representation in disciplinary or grievance proceedings.

123. As the members have received these benefits in exchange for their membership dues, they have received the benefit of their bargain.

124. Since the members have received the benefit of their bargain, they do not have a claim against the Southern States Police Benevolent Association as they have received the benefits of the Association which they bargained for and paid for.

FOR A TWELFTH DEFENSE

125. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

126. To the extent the Complaint alleges membership transactions between the Defendant Georgia nonprofit corporation and members of other states, those transactions are controlled either by Georgia law or the law where the members reside.

127. The claims made in the Complaint are not recognized in other states as follows:

- a. ALABAMA: Alabama law contains a statutory exemption for legal assistance provided by employee organizations to members. *See*, Alabama Code § 27-43-4.
- b. ARKANSAS: Arkansas law contains a statutory exemption for legal assistance provided by an employee association. *See*, Arkansas Code § 23-91-203(3).
- c. GEORGIA: Georgia law does not provide a cause of action for violation of insurance regulations. *See*, State Farm v. Hernandez Auto Painting, 312 Ga App. 756, 719 S.E.2d 597 (2011)
- d. LOUISIANA: Louisiana law does not regulate the legal benefit plan.
- e. MISSISSIPPI: Mississippi law does not regulate the legal benefit plan.
- f. NORTH CAROLINA: North Carolina law does not regulate the legal benefit plan.
- g. SOUTH CAROLINA: South Carolina law exempts legal service plans from insurance regulation.
- h. TENNESSEE: Tennessee law contains a statutory exemption for legal assistance provided by an employee association. *See*, Tennessee Code § 56-43-103.
- i. VIRGINIA: Virginia law does not regulate the legal benefit plan.
- j. WEST VIRGINIA: The West Virginia Supreme Court has ruled legal benefit plans are not subject to insurance regulation. *See*, Poling v. Pre-Paid Legal Services, 212 W.Va. 589, 575 S.E.2d 199, n.2. (2002).

128. For these reasons, this Complaint should be dismissed with prejudice.

FOR A THIRTEENTH DEFENSE

129. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

130. The Defendant does no business and has no members that live and work in Kansas.

131. As a result, any claims regarding Kansas law should be dismissed.

FOR A FOURTEENTH DEFENSE

132. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

133. The Defendant pleads the statute of limitations as a defense.

134. In particular, the defendant pleads the South Carolina three-year statute of limitations and where applicable the one-year statute in the Consumer Protection Code.

135. To the extent applicable, the Defendant pleads the statute of limitations in the other states named in the complaint.

FOR A FIFTEENTH DEFENSE

136. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

137. To the extent the Consumer Protection Code applies to this dispute, the Plaintiffs have failed to follow its statutory requirements, including failure to notify the Department of Consumer Affairs.

FOR A SIXTEENTH DEFENSE

138. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

139. The Plaintiffs lack standing to bring this action and have failed to present a justiciable controversy as they have never had a matter denied, an obligation breached, or a request refused by the Defendant.

FOR A SEVENTEENTH DEFENSE

140. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

141. The Plaintiffs and the uncertified plaintiff class have received the benefit of their bargain, and allowing the recovery of the amounts sought in the complaint would unjustly enrich them. As a result, the Plaintiffs are estopped from bringing the claims for refunds of dues paid set forth in the complaint.

FOR AN EIGHTEENTH DEFENSE

142. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

143. The claims of the Plaintiffs are barred by the doctrine of laches.

FOR A NINETEENTH DEFENSE

144. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

145. The Plaintiffs had no right or entitlement to rely upon any representations allegedly made by Defendant, which representations are hereby specifically denied.

FOR A TWENTIETH DEFENSE

146. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

147. The Plaintiffs' claims are barred by the doctrine of waiver.

FOR A TWENTY-FIRST DEFENSE

148. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

149. At all relevant times, Defendant exercised the necessary degree of care and skill maintained by other benevolent associations under similar conditions and in like circumstances.

FOR A TWENTY-SECOND DEFENSE

150. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

151. Any award of punitive or exemplary damages in this action would be in violation of the rights of Defendant under the United States Constitution and the Constitution of the State of South Carolina.

FOR A TWENTY-THIRD DEFENSE

152. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

153. The Plaintiffs' claims are not ripe as Plaintiffs have never had a matter denied, an obligation breached, or a request refused by Defendant.

FOR A TWENTY-FOURTH DEFENSE

154. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

155. Defendant was not contractually obligated to pursue licensure to offer its benefits to police officers in any state that it conducts business, and thus, did not breach any contract with Plaintiffs.

FOR A TWENTY-FIFTH DEFENSE

156. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

157. The Defendant did not owe Plaintiffs the duties alleged by Plaintiffs and, as a result, Plaintiffs are not entitled to recover.

FOR A TWENTY-SIXTH DEFENSE

158. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

159. To the extent Plaintiffs have sustained any damage, which is specifically denied, they are barred from recovery, in whole or part, by their failure to mitigate damages.

FOR A TWENTY-SEVENTH DEFENSE

160. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

161. The Plaintiffs have failed to plead fraud with the requisite particularity.

FOR A TWENTY-EIGHTH DEFENSE

162. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

163. The Plaintiffs have failed to allege any specific false representation by Defendant.

FOR A TWENTY-NINTH DEFENSE

164. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

165. The Plaintiffs lack standing to request an injunction, have failed to properly plead the elements of a cause of action for an injunction, and cannot meet the elements necessary to impose an injunction.

FOR A THIRTIETH DEFENSE

166. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

167. Plaintiffs cannot meet the requirements of Rule 23 of the South Carolina Rules of Civil Procedure.

168. Plaintiffs have failed to allege that Plaintiffs or any proposed class members have damages that exceed \$100.00.

169. The proposed class is not so numerous that joinder of all members of the proposed class is impracticable

170. There are no questions of law or fact common to the proposed class.

171. The claims or defenses of the representative parties are not typical of the claims or defenses of the proposed class.

172. The representative parties are unable to fairly and adequately protect the interest of the proposed class

FOR A THIRTY-FIRST DEFENSE

173. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

174. The Plaintiffs lack standing to pursue claims under the laws of states in which they do not reside or in which they have suffered no injury.

FOR A THIRTY-SECOND DEFENSE

175. Each and every defense as set forth above is hereby reasserted and realleged as fully as if set forth verbatim.

176. The Plaintiffs are barred from their equitable claims by their absence of clean hands.

WHEREFORE, the Defendant Southern States Police Benevolent Association asks that the Complaint be dismissed with prejudice and for such other relief as the Court deems fair and equitable.

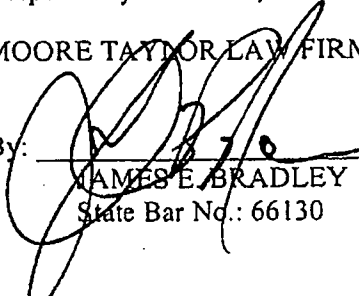
SIGNATURE BLOCKS TO FOLLOW

1700 Sunset Boulevard (29169)
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160

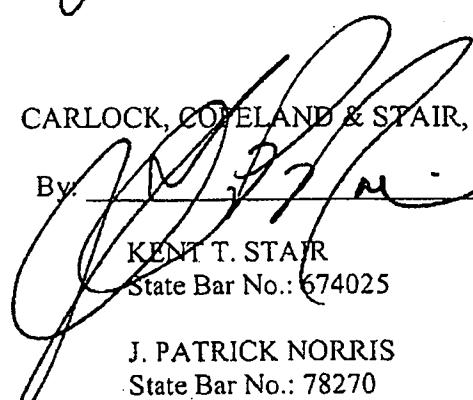
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
843-727-0307

Respectfully submitted,

MOORE TAYLOR LAW FIRM, PA

By:  For
JAMES E. BRADLEY
State Bar No.: 66130

CARLOCK, COVELAND & STAIR, LLP

By:  For
KENT T. STAIR
State Bar No.: 674025

J. PATRICK NORRIS
State Bar No.: 78270

J. ANDREW YOHO
State Bar No.: 100803

*Attorneys for Defendant Southern States
Police Benevolent Association, Inc.*

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
Donald Stanley, et al.,	)	CASE NO. 2016-CP-10-04062
	)	
PLAINTIFFS,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	
	)	
Southern States Police	)	
Benevolent Association, Inc.,	)	
	)	
DEFENDANT.	)	

October 22, 2018

Charleston, South Carolina

B E F O R E:

The Honorable Edward W. Miller

A P P E A R A N C E S:

Ronald L. Richter, Esquire
For the Plaintiff

Joseph C. Wilson, Esquire
For the Plaintiff

James Edward (Ward) Bradley, Esquire
For the Defense

S. Jahue (Jake) Moore, Esquire
For the Defense

Certified Transcript Provided For: Ward Bradley

Phyllis Norton, CVR-Master, Nationally Certified Verbatim Court Reporter
636 Long Point Road, Unit G, #74, Mt. Pleasant, South Carolina 29464
PNorton@sccourts.org

ROA 000105

I N D E XHEARING

-- 03

EXHIBITS - None ProfferedCERTIFICATION OF TRANSCRIPT

-- 57

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

1 MR. RICHTER: Your Honor, Ronnie Richter and Joe Wilson
2 for the plaintiffs. And with the court's permission we
3 would like to bifurcate the argument if that is okay. I am
4 going to give you the background, and Joe is going to hit
5 the mechanics of the law a little more specifically.

6 THE COURT: Okay.

7 MR. RICHTER: Your Honor, this is our motion for a
8 class certification. The parties are police officers. We
9 represent a purported class of police officers who
10 participate in a benefit plan that is administered by the
11 Southern States Police Benevolent Association. I may refer
12 to them as the PBA just because it is a little quicker.

13 The PBA was organized in 1987 in the State of Georgia.
14 It is a nonprofit corporation. Attached to our complaint,
15 Your Honor, were three exhibits. I have got an extra copy
16 for your convenience.

17 THE COURT: Yeah, that will be good.
18 (WHEREUPON, binder provided to the court.)

19 MR. RICHTER: So, Your Honor, Exhibit A to the
20 complaint --
21 (WHEREUPON, counselors confer.)

22 MR. RICHTER: Exhibit A to the complaint, Your Honor,
23 is a copy of the policy.

24 Our central complaint is that for the period of time
25 embraced by this lawsuit the PBA was operating as an illegal

1 insurance company in the State of South Carolina selling a
2 policy of insurance which it was not authorized to sell.
3 That is the primary thrust of the complaint.

4 So Exhibit A is the policy. Now there is a bit of a
5 misnomer in the word here. This is an internal policy of
6 the PBA. I don't want to represent to the court this is a
7 policy that issues to members.

8 But the way they administered their plan was pursuant
9 to this policy which is ripe with the language of insurance.
10 It describes covered events. It describes exclusions. It
11 describes benefits. It reads and looks like a policy of
12 insurance.

13 Your Honor, the second exhibit to the complaint is a
14 wallet card. Not unlike a wallet card you would get from
15 your automobile insurer or health insurer. But it instructs
16 a member what you were supposed to do if you have a coverage
17 event and how you are supposed to process your claim. And
18 these cards are issued to all members of the plan.

19 Exhibit C is language from the company's website that
20 explains exactly what it is that they do. And the short and
21 succinct, what they represent is, if you as a police officer
22 are involved in an office-related shooting we provide a
23 legal defense to you. It is a legal defense benefit plan.
24 And we do it with no caps and no limits.

25 That is the representation. That is the plan that they

1 have sold to approximately twenty-three thousand members in
2 nine states, including we believe -- I'm sorry, forty-four
3 thousand members in nine states, including we believe to be
4 about twenty-three hundred members in the State of South
5 Carolina.

6 So, Your Honor, on April 4th, 2015, Michael Slager shot
7 and killed Walter Scott. Michael Slager was a member of the
8 PBA. On April 4th, 2015, he was provided with a legal
9 defense by David Aylor a local lawyer who participated in
10 the plan. Four days later on April 8th, 2015, the PBA
11 issued a letter discontinuing Mr. Slager's benefits under
12 the plan.

13 Our law firm brought a lawsuit at that time. And that
14 lawsuit was filed in federal court before Judge Norton. It
15 contained causes of action, as you might imagine, arising
16 from alleged unfair claims practices acts, bad faith, those
17 types of causes of action.

18 On August 3rd, 2016, Judge Norton issued an interim
19 order in that case. And this was not the issue before the
20 court, but it was kind of telling as to the court's point of
21 view. We were contending in that lawsuit that on behalf of
22 Michael Slager the PBA was operating as an illegal insurance
23 company and through bad faith terminated his policy when he
24 was involved in an officer-related shooting.

25 In a footnote to an order dated August 3rd, 2016, Judge

1 Norton made this comment: It seems a mite curious that an
2 insurer who issues a policy that covers a criminal
3 accusation on the one hand can withdraw benefits if a member
4 has committed an intentional, deliberate or illegal act
5 criminally; but this is a question for another day.

6 That day never came in the Michael Slager case
7 because that case resolved shortly thereafter. However the
8 rank-and-file of the PBA did not like the way the Michael
9 Slager situation was handled and members were complaining to
10 the PBA that they thought it was unfair.

11 They were all pitching in \$23.50. They were all
12 pitching it in for the common risk that if any one of us is
13 involved in an officer-related shooting we are all going to
14 be covered.

15 And they didn't think it was fair that Michael Slager
16 four days after the shooting would have his policy canceled
17 by the PBA.

18 In that lawsuit we learned that effectively there was
19 one decision maker, a gentleman named Jack Roberts who was
20 then the president of the PBA. He is no longer in that
21 office. He is not present here today.

22 But he described himself in that lawsuit as, quote,
23 unquote, the decision-maker. And so to decide the outcome
24 of that policy and the coverage it went to a single person.
25 And we have had concern about that as well.

1 So, Your Honor, we -- we filed our lawsuit in August of
2 2016 making some of the -- most of the same complaints that
3 were present in the Slager case that never ultimately got
4 addressed. Also asking for injunctive relief to force the
5 PBA to come into compliance with state law, that they would
6 have to be subject to some regulatory scheme. You can't
7 take 44,000 checks a month for \$23 and do nothing.

8 If you are an insurance company there's going to be
9 reserve requirements, there is going to be oversight, there
10 is going to be something that ensures that you can actually
11 cover the risk that you undertake to cover.

12 And so part of what we asked for in our class action
13 lawsuit was injunctive relief. So having been sued now in a
14 class-action for the first time in history of the PBA since
15 1987 they have never done this, operating in nine states
16 they sought to approach the states in which they operated to
17 seek to come into compliance with the state laws.

18 And in some states they got opinions of counsel to tell
19 them we don't think you have to do anything here. Other
20 states took other actions.

21 For example, in the State of Georgia they applied to
22 the State of Georgia. And the application was essentially
23 the same in each state; and that was to urge the states that
24 they really weren't anything, that they were a hybrid member
25 benefit plan not really subject to regulation but still

1 offering to the State to come into compliance if the State
2 disagreed.

3 Well, the State of Georgia looked at the PBA and said
4 in an order that the licensee has acted as a prepaid legal
5 service plan in the State of Georgia from 1987 to 2016 and
6 failed to obtain the requisite license to lawfully do so as
7 required by the provisions of Georgia law. They were
8 ordered to pay a fine of \$13,250 and to come into compliance
9 with the laws in the State of Georgia.

10 They went to our neighbor to the north, North Carolina,
11 with the same approach, we don't really think that we are
12 anything, we think we are a private member benefit plan, we
13 don't think any regulation is required.

14 The State of North Carolina looked at the PBA and said
15 in an opinion letter of March 15, 2017, we are of the
16 opinion that the arrangement in question constitutes a
17 contract of insurance and it must be authorized by a
18 licensed insurer.

19 So in the State of North Carolina what the answer was
20 was for the PBA to create and control a captive insurance
21 company. Which they have done. So to come into compliance
22 in the State of North Carolina they have created this
23 captive insurance company that they administer themselves in
24 North Carolina.

25 So in South Carolina the PBA hires former consumer

1 advocate Steve Hamm, who is a private lawyer now with
2 Richardson Plowden, a very good lawyer, to petition our
3 current consumer advocate.

4 And a letter was written on November 7th. And, Your
5 Honor, I have an extra copy of that letter for you.

6 (WHEREUPON, document presented to the court.)

7 And through this letter the PBA said to the State of
8 South Carolina, look, we don't think that we are anything
9 subject to regulation, we will cease our activities
10 temporarily while you the State of South Carolina take a
11 look at what we are doing and tell us if you agree or
12 disagree.

13 On March 31st, 2017, the State of South Carolina
14 responded and told the PBA -- and this is at the end of the
15 first paragraph on Page 1: Based on this information and
16 other information gathered during the course of our review
17 it is the Department's opinion that the legal benefit
18 offered by the SS PBA constitutes prepaid legal services and
19 thus is subject to the code.

20 On Page 2 at the bottom they have instructed PBA that
21 it is a prepaid legal company offering and providing prepaid
22 legal services in South Carolina, as such the company shall
23 comply with all applicable provisions of the code, that PBA
24 can make application for registration through the licensure
25 gateway.

1 All right. Your Honor, that -- they may or may not
2 have since that time come into compliance with South
3 Carolina code. That doesn't address the problem of a
4 lawsuit which is what were you before you were regulated,
5 before you came into the licensure. And that is the period
6 of time embraced by our complaint.

7 Our complaint would continue to maintain that before
8 you were licensed and authorized to transact business in the
9 State of South Carolina you were not and that it was
10 improper for you to have gathered those premiums, it was
11 improper for you to have taken that benefit from the class,
12 and the class seeks to disgorge that money.

13 Two times we have been in this courtroom before Judge
14 Nicholson; once on a motion to dismiss, once on summary
15 judgment.

16 Your Honor, I suspect you are going to hear many of the
17 same arguments today from the PBA. Twice they have been
18 denied. Both in a motion to dismiss and in summary
19 judgment. This Court has held that these issues are ripe
20 for determination by a jury.

21 The thrust of the argument which I expect you are going
22 to hear again today is that there is not standing to pursue
23 an action for the purchase of a policy of insurance from an
24 unlicensed insurance company.

25 That matter has been addressed at motion to dismiss.

1 That matter has been addressed at motion for summary
2 judgment. It has been denied twice.

3 Your Honor, in discovery in this case part of what has
4 peaked the concern and the curiosity of the lawsuit is what
5 is becoming of this money.

6 After the lawsuit began this e-mail issued to the
7 membership.

8 (WHEREUPON, document provided to the court.)

9 And it was an effort to assuage concerns because they
10 were hearing a lot of feedback from members that were not
11 happy about the Slager situation. And they were assured
12 that, look, in the year 2015 alone we have paid out one
13 point seven million dollars in -- to lawyers under this
14 plan.

15 (WHEREUPON, document provided to the court.)

16 Well, part of the problem with that is ---

17 MR. MOORE: Your Honor, if I might, counsel continues
18 to place many pieces of paper before you which are not
19 properly authenticated to be considered part of the record.

20 I believe they have the burden of proof in regard to
21 class certification. We don't -- I guess we have no
22 objection to them continuing to hand up papers, but I think
23 we would object to any consideration of documents which are
24 before the court which are not properly authenticated and
25 proper.

1 I don't want to interrupt counsel, but I would point
2 out that they have the burden of proving class certification
3 and none of the documents they have placed into evidence
4 were properly notarized nor properly authenticated. And I
5 thank you.

6 THE COURT: Okay

7 MR. RICHTER: Your Honor, I assure you if I have handed
8 you a document it is a document that they have produced to
9 us in discovery.

10 THE COURT: Okay.

11 MR. RICHTER: Your Honor, the tax returns -- and these
12 are just the face pages of the returns. For the year 2013,
13 for example, they generated eight point two million in gross
14 revenues. '14, 9,085,000 in revenues. '15, the year that
15 they told the membership don't be concerned because we paid
16 lawyers \$1.7 million, they took in over \$10,000,000 dollars.
17 '16, over \$11,000,000.

18 And so what says that they have the ability to cover
19 the risk that they have undertaken by issuing all of these
20 benefits or policies or whatever you want to call them.

21 Well, we put that question to Wayne Tubb who is the CFO
22 for the Southern States Police Benevolent Association. And
23 at his deposition on Page 14 he was asked: Do you attempt
24 to forecast the financial need represented by the number of
25 cases handled by the PBA at any given time?

1 Answer: No, because that is generated by the cases
2 that come in and are assigned.

3 So there is an anticipated idea in mind for an upcoming
4 year based on the prior year, the various prior years, but
5 we have no idea what is coming up.

6 So, you know, you might come up with a budget and that
7 budget will be exceeded or it will be less.

8 And, Your Honor, that is again central to the concern
9 in the lawsuit is they are issuing these policies, 44,000
10 now; there is no forecast of the risk, there's no reserve
11 requirements, there's no oversight.

12 We don't know if they have come into compliance yet or
13 not with the prepaid legal scheme. Part of the reason we
14 suspect they have not is what the prepaid legal statute says
15 is that in a contract of insurance that you sell that it is
16 the insured who has the right to choose counsel.

17 So we don't know today that they have cured their
18 problem by issuing a policy in which the insureds have the
19 exclusive right to choose their counsel.

20 Your Honor, I am offering you one final exhibit and
21 then I will turn the floor over to Mr. Wilson.
22 (WHEREUPON, document presented to the Court.)

23 MR. RICHTER: These were represented to be through
24 discovery - and this is their document, not ours - the South
25 Carolina numbers for the PBA.

1 And, again, we believe the membership to be about 2,300
2 members based on what they have told us in discovery. But
3 if you will look at 2014 South Carolina membership dues
4 generated \$461,000; money paid out to lawyers \$36,000.

5 2015, \$524,000 raised from South Carolina members;
6 \$33,000 paid out to lawyers.

7 2016, \$618,000 taken in from members; \$66,000 paid out
8 to members.

9 So if it is a prepaid legal benefit plan it apparently
10 takes them about \$10 to administer a dollar worth of
11 benefit. And the class certainly has an issue with that as
12 well.

13 Thank you, Your Honor. I will yield the floor to Mr.
14 Wilson.

15 THE COURT: All right. Thank you.

16 MR. WILSON: Your Honor, Joe Wilson also here for the
17 plaintiffs.

18 And I am just going to try to stick with some of the
19 law of the class-action involved that we are here today.
20 And it is important to remember -- you know, I have been
21 looking at the defendant's memorandum in opposition to class
22 certification, and the entire memorandum is a repeat of
23 their summary judgment and motion to dismiss. It is all
24 about the substance of the claims. There is very very
25 little about the class-action factors, the four factors that

1 the court is supposed to consider.

2 In our courts, especially Tilly, the Supreme Court
3 opinion at 508 S.E. 2nd 16, it is very clear that a court is
4 not to look at the merits when determining whether to
5 certify a class.

6 But it is really ironic here, as was explained by my
7 co-counsel, that these merits arguments that are being made
8 are that the plaintiffs don't have standing and the
9 plaintiffs haven't suffered any damages.

10 Those are two class-wide legal issues. We are here
11 today not to reach a determination as to whether our clients
12 have damages or whether they have standing. We are here
13 today to figure out what is the best way to get to those
14 answers procedurally speaking. And those are clearly
15 class-wide issues.

16 If Mr. Reiter and Mr. Stanley don't have standing then
17 none of their brethren in the police force have standing.
18 If Mr. Reiter and Mr. Stanley have not suffered damages then
19 none of their brethren in the police force have suffered
20 damages.

21 So these are common issues. And as I am sure Your
22 Honor is aware, the most important factor in a class
23 certification such as this is whether common issues
24 predominate differing issues among the class issues.

25 And I would submit that the best evidence that common

1 issues dominate in this case is the defendant's own brief in
2 this. Because everything they argue in that brief, every
3 substantive issue they bring up, is a class-wide issue.
4 There is no room between the class representatives and the
5 rest of the class that they are representing.

6 Are they suggesting -- we have 2,500 members in South
7 Carolina alone. Are they suggesting that it would be a
8 better method for the court to go through these legal issues
9 2,500 times and have 2,500 different judges make a
10 determination on these substantive issues?

11 Even the damages in this case which are usually the
12 problem you face, certainly the problem that is raised on
13 commonality, even the damages of this case are uniform.
14 Every single one of these members have paid the same dues,
15 23.50 a month. Every single one of them has paid at least
16 \$100, which is the amount in controversy required.

17 There are clearly -- there is clearly numerosity. You
18 have already seen there are at least 2,500 members. That is
19 clearly enough to cover the numerosity issue.

20 And there is clearly commonality. There are many many
21 common issues. And we will just go down the list of those
22 common issues.

23 I mean the big one of course is whether defendant was
24 acting as an unregistered and unlicensed insurance company.
25 That is a common issue.

1 Whether defendant was acting as an unregistered and
2 unlicensed prepaid legal benefit plan. That is a common
3 issue for the whole class.

4 Whether the class plaintiffs have the right to bring a
5 cause of action in this matter. That is a standing issue
6 that is common to the whole class.

7 Whether -- and I don't want to get too deep into the
8 substance of this. But we have made an argument, a motion
9 that we have not attempted to rehash several times; but
10 there's a statute in South Carolina 38-25-550 that says an
11 unauthorized insurer does not have the right to file an
12 answer or make an appearance in South Carolina. So that is
13 an issue that is common to the whole class.

14 Whether the defendant had maintained sufficient
15 reserves.

16 Whether the plaintiffs are entitled to injunctive or
17 declaratory relief, which we had pled.

18 And whether defendant has created and followed
19 appropriate standards in its role as an insurance company or
20 as a prepaid legal benefit plan or as a benevolent
21 association, a benevolent association that pays ten percent
22 of its dues to provide its members coverage.

23 And that whole panoply of standards, you know, involves
24 whether they handled the premiums correctly, whether they
25 were renewing or canceling member's policies following a

1 standard of care, were they following an appropriate
2 standard of care in handling and adjusting its member's
3 claims, in denying its member's claims, and appointing
4 member attorneys - and this was mentioned by Mr. Richter -
5 as a prepaid legal benefit plan.

6 And I actually have a copy of this statute if I may
7 approach the Court.

8 (WHEREUPON, document provided to the Court.)

9 Which defendants now argue that it has been certified
10 as a prepaid legal benefit plan.

11 Well, one of the requirements is that the member gets
12 to choose their own attorney. And that was clearly not the
13 case in the years past. Nor have we seen any plan that
14 allows its members to choose its attorneys today.

15 And that might factor into the damages that we are
16 looking at, namely the 90 percent of the dues that are not
17 going to the members' attorneys.

18 Perhaps if the members were allowed to choose their own
19 attorney some larger percentage of those dues would go to
20 the benefits that they paid for.

21 And again I just can't reiterate enough, substantive
22 arguments such as lack of standing or lack of damages do not
23 defeat commonality. They support commonality because they
24 are class-wide arguments.

25 There is also an issue that has been raised and we have

1 been hearing that -- before I get to that I do have one
2 other case that I wanted to hand up just because the
3 defendant have provided a lot of legal support.

4 This is the Rowley case where our South Carolina
5 Supreme Court did certify a class for a benevolent
6 association for the class members seeking to recover from
7 that benevolent association. Much like we are trying to do
8 here today.

9 And a quote from Rowley: The interest and claims of
10 the policyholders sought to be protected and preserved in
11 this action are principally against the reserve funds of the
12 Association and it seems to us that all policyholders form a
13 most appropriate class for application of the statute.

14 And that has been reiterated in some later cases as
15 well.

16 There has been an undercurrent of suggestion in both
17 the pleadings - and we have already heard it today - that
18 plaintiffs have to prove something at the class
19 certification stage.

20 I want to make it clear what we are talking about here.
21 The class certification stage is largely based on the
22 pleading of the complaint. It is not an evidentiary showing
23 as long as a prima facie showing is made.

24 The defendants have cited Waller which is a Supreme
25 Court case, 388 S.E. 2nd 799. And they have cited it

1 inappropriately, suggesting that there is an evidentiary
2 burden here. That is not what Waller says.

3 Waller states: Proponents of class certification have
4 the burden of proving these prerequisites class
5 certification have been met.

6 Yes, we have the burden of proof. No, it is not
7 evidentiary.

8 And to prove the point Waller goes on and cites to the
9 complaint in that case in its analysis of whether class
10 certification is appropriate.

11 (WHEREUPON, phone disturbance.)

12 So just in conclusion. And I would like to have the
13 opportunity maybe to respond to if there is any kind of
14 class certification argument as opposed to a substantive
15 argument.

16 But I feel like that there is a real problem here with
17 the last exhibit that Mr. Richter handed up where in 2016 in
18 South Carolina alone \$618,000 in dues collected, 66,000 paid
19 out to referral attorneys who were the attorneys who
20 represent police officers who were accused, and in that same
21 year \$4 million in compensation paid out to PBA employees,
22 about a dozen employees.

23 So every member of that Benevolent Association has
24 every right to know where 90 percent of its dues are going
25 and how this company can continue to call itself a nonprofit

1 legal benefit association when they are only using ten
2 percent of the dues and they are not allowing its members to
3 choose their own attorneys, when they are not licensed as an
4 insurance company, and they were not licensed as a prepaid
5 legal benefit plan.

6 Thank you, Your Honor.

7 THE COURT: All right. Thank you very much.

8 MR. BRADLEY: Thank you, Judge. My name is Ward
9 Bradley. I am here for the Police Benevolent Association
10 with my partner Jake Moore.

11 Mr. Moore has represented the PBA for about 20 years.
12 And he has let me be a part of this too. And I appreciate
13 that. He is here on their behalf as well.

14 Andy Yoho is here as well from the Carlock Copeland
15 firm who works with us.

16 And we have the people of the PBA here in the back:
17 Julie Fletcher who is their chief legal counsel. René Dixon
18 who is the chief operating officer. Wayne Tubb is the chief
19 financial officer. Charlie Cordell and Jim Wright who are
20 both lawyers with the PBA.

21 And we represent the officer members of the PBA.

22 Before I talk about what the PBA is, briefly -- and I
23 don't want to burden the court too much with that. I will
24 state the important details of it. I do want to talk about
25 what we are doing here today. Because my impression was

1 that we were going to have a hearing with information from
2 which the court could make a decision on whether to certify
3 a class.

4 So far we haven't had any information at all. We have
5 had a lot of talking, but we haven't had any facts put in
6 the record. There has been no testimony. As far as I can
7 there is no one who is going to testify. There's been no
8 affidavits. They have taken a bunch of depositions but they
9 didn't put any of the deposition testimony into evidence.

10 They did put -- hand up some documents to the court
11 which they haven't authenticated. But they really those
12 documents don't set up the basis for a class action and the
13 five factors the court is supposed to analyze.

14 Our understanding of what the court is supposed to do
15 in this situation is analyze the facts that were put before
16 it and come to a conclusion of whether this case in line
17 with the requirements of a class action in South Carolina is
18 an appropriate case for class certification.

19 And in order to do that the court needs to have some
20 facts in front of it from which to make that decision.
21 Which is why we have been undergoing discovery for two
22 years.

23 I have a case that I would like to hand up to court if
24 I may. And I have one for your clerk. If I have
25 permission, Your Honor.

1 THE COURT: Yes. Sure.

2 MR. BRADLEY: Thank you, Judge.

3 (WHEREUPON, documents provided to the Court.)

4 MR. BRADLEY: So this is the case actually Mr. Wilson
5 mentioned. It is Waller versus Seabrook Island Property
6 Association.

7 What I am talking about is there on the second page. I
8 am not making this up. This isn't coming from Ward Bradley.
9 This is the Supreme Court of South Carolina.

10 And I have just highlighted the language just to make
11 it a little quicker to get there. It says the proponents of
12 the class certification have the burden of proving these
13 prerequisites of class certification have been met.

14 It uses words that lawyers are real familiar with and
15 so are a judge, burden of proving. My understanding of
16 proving means some sort of fact.

17 Now I understand they don't have to prove their entire
18 case. But they do have to prove something on all of the
19 elements of a class action in order for their class to be
20 certified and to convince you that this is an appropriate
21 case to certify as a class and to undergo the additional
22 burdens that come from class certification.

23 It even goes on and says it is imperative on the
24 court - which is you I guess, Judge - to apply rigorous
25 analysis to assure the prerequisites of Rule 23(a) have been

1 satisfied.

2 And to do that you have to have facts in front of you.
3 And as far as I can tell, you don't have any because they
4 haven't put any.

5 They have put in the complaint with which contains
6 their allegations. But just the allegations in the
7 complaint aren't enough to certify a class. You have got to
8 have some fact, some affidavit, some deposition. There is
9 nothing here at all.

10 So the way I see this today -- and I was a bit
11 surprised. I expected we would see something. Is there is
12 not any information from which you can make a decision here
13 today to certify the class because they haven't provided you
14 the information which is incumbent on them to provide it for
15 you to decide whether they have met the numerosity, the
16 commonality, the typicality, the representativeness, and the
17 damages, five factors that are in the South Carolina class
18 actions law. They haven't put any proof of any of those
19 factors.

20 So there is nothing really that could support a
21 decision to certify a class. Even if it was appropriate
22 they haven't given you the facts to make that decision
23 today.

24 I don't want to stop there. But that is the very first
25 big problem that comes up. And I have my prepared remarks

1 about the law and how the case lines up. And I think they
2 have to come up with some fact. And they don't have any.

3 I do want to talk about the PBA a little bit because
4 they mentioned in what it is. The PBA is essentially what
5 they call themselves as a labor union light. It is
6 essentially a labor union of police officers.

7 But as we know, public employee labor unions are not
8 favored in the Southeast, which is where they operate. They
9 are a 501 C-5 organization which is the Internal Revenue
10 Code for a nonprofit organization. Essentially for a labor
11 union. But they don't have collective bargaining like labor
12 unions do.

13 So what they do instead is they represent police
14 officers who choose to be members. And you pay, members,
15 \$23 a month for membership. It is not required of any job.
16 But you can -- you can join voluntarily.

17 And they lobby on behalf of police officers. They
18 monitor legislation for police officers. They hire
19 lobbyists in the states where they represent police
20 officers. They help organize local chapters of police
21 officers to advocate on their own behalf. They are in
22 communication with police officers and answer legal
23 questions in many situations.

24 They also purchase life insurance for police officers.
25 In the event police officer is killed on duty that life

1 insurance pays out to the family of the police officer.

2 They publish a publication called Blue Review which is
3 issues of interest to police officers.

4 And they also - and this is what has led to this
5 lawsuit - provide what is called a legal benefit. And it
6 says in accord with our policies if you need a lawyer at an
7 administrative hearing, if you need a lawyer in a civil
8 hearing, if you need a lawyer in a criminal situation for
9 something that happens in the scope of your duties as a
10 police officer, we will provide it to you.

11 And so that is a part of what the PBA does. It is
12 essentially a union but not quite a union because they don't
13 do collective bargaining like a union that you are familiar
14 with do. And they represent police officers who choose to
15 join. And one of the benefits is that they do appoint
16 lawyers in a situation where members need them. That is
17 absolutely true.

18 But it is not the sole purpose of what we are doing
19 here. It is part of what the PBA does for its memberships.
20 And it is not uncommon for unions to actually do that.
21 Unions do it in a lot of different places.

22 And the PBA did it for years and years and years, and
23 no one raised a question about it. There'd never been a
24 question where someone said, hey, you are an insurance
25 company, you are a prepaid legal services provider. No one

1 had ever raised a question.

2 And so when the PBA got sued by Mr. Richter and Mr.
3 Bland for not defending Mr. Slager out of the shooting that
4 was here in Charleston they raised the point then and in a
5 class action that they filed after that that, hey, you are
6 an insurance company, you have to be licensed.

7 So the PBA did what you would expect someone who would
8 do when they get that kind of accusation made against them.
9 They looked into it to see, hey, are we supposed to be
10 licenses, what are we.

11 And so they went and looked at the law. They hired
12 people to look at the law. And they hired people to look to
13 deal with the State and figure out what we were.

14 And so in order to show you why we are not an insurance
15 company, like they keep saying that we are, I have some
16 information I would like to just quickly go through.

17 I have a copy here to make it easier and faster. May I
18 approach, Your Honor?

19 THE COURT: Yes.

20 MR. BRADLEY: Thanks, Judge.

21 (WHEREUPON, document provided to the Court.)

22 MR. BRADLEY: All right. So this was emailed to the
23 court and to the opposing counsel last week. I just -- so
24 in case there is any question.

25 So the first thing they did was look into it and say,

1 hey, are we an insurance company like they say we are.

2 But we are not. And here's why: Up until the year
3 2000 insurance companies regulated -- the Insurance
4 Department of Insurance and the insurance code for South
5 Carolina regulated companies that basically sold prepaid
6 legal benefits. Which is what the State has decided that we
7 are. We didn't think we were anything. We thought we were
8 essentially a union defending its members.

9 But the State of South Carolina has decided we are a
10 prepaid legal benefits provider. Which I will get to,
11 because I think it is material.

12 But up until the year 2000 the Department of Insurance
13 regulated what they call legal insurance, prepaid legal
14 benefits.

15 And if you will look at Tab 1 you will see the law that
16 was passed that year. And that law took out even right
17 there in the very beginning just where it states the purpose
18 of the law, Judge, in all caps, they are going to establish
19 procedures for a company to offer prepaid legal services
20 including registrations with the Department of Consumer
21 Affairs. And it also says it deletes the definition of
22 legal insurance from the insurance code.

23 So the General Assembly passed a law in 2000 which the
24 governor signed which indicates that prepaid legal services
25 plans are not regulated by the Department of Insurance.

1 And it sets forth a statutory framework for the
2 consumer advocate to regulate prepaid legal insurance. And
3 it even sets forth penalties if you don't do what the
4 consumer advocate says you are supposed to do.

5 All right. So if you look at Tab 2, just if the Court
6 is interested there, that is the old version of the code
7 from before 2000.

8 In Definition Number 26 is what used to be called legal
9 insurance in South Carolina until 18 years ago, which meant
10 the assumption of a contractual obligation for the sole
11 purpose of providing specified legal services or
12 reimbursement for legal expenses in consideration of the
13 specified payment for an interval of time.

14 Which is similar to something that the PBA does. That
15 until 2000 was part of the insurance code. Now it is part
16 of the Consumer Protection code. And that -- this is the
17 old law that the General Assembly changed in 2000. Okay,
18 that is at Tab 2.

19 So when that happened - if you will look at Tab 3 - the
20 Department of Insurance said, hey, we don't regulate these
21 anymore.

22 And the director Ernest Csiszar actually issued a
23 memorandum that says at the bottom: Prepaid legal service
24 contract will be regulated by the South Carolina Department
25 of Consumer Affairs.

1 He is basically saying to everybody who is interested,
2 the Department of Insurance isn't going to regulate this.
3 So there is no way even if the PBA wanted to register with
4 the Department of Insurance that it could. Because the
5 Department of Insurance takes the position that it doesn't
6 regulate this portion of what we do.

7 The next tab, Tab 4, is correspondence. And Mr.
8 Richter handed some of this up. We hired Steve Hamm who
9 used to be at the consumer advocate to say, hey, what do we
10 do here.

11 He wrote a letter. This Tab 4 is another one of the
12 letters. Mr. Richter handed you a couple of them. And it
13 says what we have been doing; we have been offering this as
14 part of what we do and we have told you all about it and you
15 have fined us \$13,000. Which the Act says they can fine
16 somebody for not doing what they are supposed to do.

17 So the Department of Consumer Affairs looked into it
18 and fined them \$13,000. And Kelly Rainsford there is the
19 director of the regulatory enforcement.

20 The next tab is actually signed by Kelly Rainsford on
21 behalf of the State of South Carolina Consumer Advocate's
22 Office which says essentially agreeing with what Hamm put in
23 the letter, which was we didn't think we were regulated by
24 you, you say that we are, you fined us \$13,000, here is the
25 \$13,000, we are going to do what we have to do to come into

1 compliance, and now we are registered and regulated.

2 And the State of South Carolina through Kelly Rainsford
3 signed that and said, hey, yeah, we regulate you; you didn't
4 do what you were supposed to do, and you paid us \$13,000 for
5 it like we are statutorily allowed to charge you a penalty
6 for not doing something you are supposed to do.

7 And so we paid it. And now we are in compliance with
8 what we are supposed to do.

9 So I don't think there's any question whatsoever that
10 this portion of what the PBA does is regulated, according to
11 the Consumer Affairs, as a prepaid legal benefit. And it is
12 not defined by the South Carolina code or accepted by the
13 South Carolina Department of Insurance of insurance of any
14 sort.

15 And the interesting thing is they keep saying that it
16 is insurance. They have -- they have given you no law to
17 say that. Because there is none.

18 The only law says we are a prepaid legal benefits
19 program. And the State of South Carolina has said that to
20 us when we asked them what are we supposed to do. They said
21 you are supposed to pay us \$13,000 to register as a legal
22 benefits provider. Which we have done.

23 So there is just nothing to support it. They have just
24 kind of made it up. And it sounds good, but there is
25 nothing that supports it whatsoever.

1 So the next thing that's important here is in order to
2 maintain a class action -- they really didn't talk about the
3 five factors which were in Rule 23. But one of those
4 factors is they have to have damages. And Rule 23 actually
5 says they have to have damages of \$100 per person. And they
6 don't have any damages.

7 And here's why. There is no one in the class that has
8 a damage at all. There is no wrong that they have alleged
9 that we have done to any member of the class.

10 We looked through their discovery responses. And the
11 first thing we said -- which we sent them interrogatories.
12 And we said, hey, what are your damages. Because that is an
13 important thing we need to know. We have been here for two
14 years, what are your damages now.

15 They responded to that interrogatory request and said
16 our damages are -- will be set forth in discovery.

17 And I have got a copy here of our brief that has that
18 attached. Judge, may I approach briefly?

19 (WHEREUPON, document presented to the Court.)

20 Thank you for your patience.

21 So if you look back in the attachments is a copy - I am
22 not sure where it is. It might be "C", Tab C there - of
23 their responses to our discovery. And we asked them what is
24 in the standard rules of civil procedure, set forth an
25 itemized statement of all damages claimed to have been

1 sustained by the plaintiff.

2 And the answer is: Plaintiff is still discovering --
3 conduct -- conducting discovery of this issue.

4 Answer: No damages at all.

5 And that hasn't been changed in two years. Now so we
6 deposed the two people that they say are their class
7 representatives, Mr. Stanley and Mr. Reiter who is no longer
8 a police officer but lives in Pennsylvania.

9 And if you look, the last exhibit to that is actually
10 excerpts from Mr. Stanley's deposition and Mr. Reiter's
11 deposition.

12 And on Page 76 of Mr. Stanley's deposition, which is
13 there, I ask him: So my question is besides what might
14 happen to you in the future or to somebody else in the
15 future and besides what happened to Mr. Slager - because
16 this was all tied together - have you been damaged in any
17 way by the PBA besides those?

18 No, sir.

19 So their own class rep said he has no damages. No
20 damage at all. And if you look at Mr. Reiter's deposition
21 on Page 43, which is the next deposition there that we have
22 submitted, I say on Page 43 at Line 9: But you don't have
23 any knowledge of anyone that has been damaged?

24 Answer: No, sir.

25 Other than Michael Slager do you know of anyone that

1 has been damaged by the PBA?

2 No, sir.

3 So we asked them in discovery. They didn't give us an
4 answer. We asked the only people we have to depose, their
5 clients, who said no.

6 And then we look to the complaint. And the complaint
7 doesn't recite any damages either. But what it does say
8 is - and it is the same thing they have argued today - is
9 that they are entitled to rescission.

10 And actually on Page 3 of their memorandum they
11 basically set out their theory of this case that the PBA has
12 sold unauthorized insurance policies to its members who are
13 entitled to a rescission of the plan.

14 So the best I can tell is the only thing they have to
15 argue is rescission of these contracts. And that is not a
16 damage; that is an equitable remedy.

17 So I want to talk about really briefly, and as briefly
18 as I can be, about the cases in South Carolina that talk
19 about damages and how you get damages.

20 Because the only thing they say we have done wrong is
21 we weren't licensed. That's the only thing that they can
22 say is -- they say, well, you should have been licensed as
23 an insurance company. We admit we weren't. But the law in
24 South Carolina says we are not ---

25 THE COURT: Let me ask you this. Why wouldn't you want

1 the whole thing, every potential plaintiff, to be included
2 in this, when if you are correct in what you are saying,
3 when it gets thrown out?

4 MR. BRADLEY: Because it is expensive. It is time
5 consuming. We have to send it to all of our members. We
6 don't want to do any of that. And we think that this should
7 be thrown out.

8 There is nobody else who has complained but these
9 people.

10 THE COURT: Well, if I'm -- I am coming into the middle
11 of a big ---

12 MR. BRADLEY: Right.

13 THE COURT: --- dog fight. Has it -- has it not
14 already been determined that you are not entitled to summary
15 judgment; am I correct about that?

16 MR. BRADLEY: That is true. Although the only -- we
17 got no reason for that. Whether it was to continue to
18 conduct discovery -- they argued they hadn't had a chance to
19 conduct discovery.

20 It is -- and I am not -- they -- this is true that when
21 we argued summary judgment Judge Nicholson denied summary
22 judgment at that point. But they indicated they hadn't had
23 an opportunity to conduct the discovery they needed to
24 conduct.

25 So I mean I guess we can move for summary judgment

1 again now that they have used it.

2 Judge Nicholson didn't -- all he did was Form 4,
3 denied. And certainly not being able to contact discovery
4 is a legitimate basis to deny summary judgment motion.

5 I don't know why Judge Nicholson decided to deny it.
6 He didn't say. He doesn't have to. But it is certainly not
7 any stamp of approval on the merits of the case or the
8 merits of a class action. A class action requires ---

9 THE COURT: Well, they are just saying ---

10 MR. BRADLEY: --- damages too.

11 THE COURT: They are not -- they don't care about the
12 merits of the case; they just care about whether or not
13 under 23 they are entitled to certification.

14 MR. BRADLEY: Right, but I don't think that is -- the
15 test is they have to come forward with evidence to prove the
16 factors for certification. And one of those is damages.
17 They have to show that they have been damaged.

18 THE COURT: A hundred dollars a member.

19 MR. BRADLEY: Yes, sir ---

20 THE COURT: I think what they alleged was that they --
21 all the members are paying 23.50 a month.

22 MR. BRADLEY: That is ---

23 THE COURT: For a period ---

24 MR. BRADLEY: Well it is \$23.

25 THE COURT: If I'm not mistaken the plaintiffs are just

1 alleging there is a finite time period where they are
2 entitled to whatever relief they are seeking; is that right?

3 MR. BRADLEY: Well, that is part of it. And that ---

4 THE COURT: Is that right?

5 MR. BRADLEY: I think you are putting your finger on
6 the problem ---

7 THE COURT: Wait a minute. Let me just be clear about
8 this.

9 MR. RICHTER: Yes, sir, if they have come into -- if
10 they have come into compliance there would be a look-back
11 period of time for the time they were not in compliance.

12 THE COURT: So they are ---

13 MR. BRADLEY: Yes.

14 THE COURT: So they are alleging the \$23 a month
15 during that period of time which would exceed I presume \$100
16 for ---

17 MR. BRADLEY: Right, they are alleging that they are
18 entitled to receive that money back. They haven't given a
19 reason that they are entitled to receive it or anything to
20 prove that they are entitled to receive it. They have just
21 said they are entitled to receive it.

22 THE COURT: I have gotcha.

23 MR. BRADLEY: There is no legal theory that supports
24 what they are saying. And that is what I -- what I will
25 talk about next. And it is in those attachments.

1 For instance, the case of Lenz versus Welch. Which is
2 right there, Number 6. All right. And that was a similar
3 case in this, it was a dispute between a homeowner and a
4 contractor and the contractor had built a house and they
5 were arguing about it. And the homeowner said, hey, you
6 don't have a license to be a contractor - just like they are
7 saying we didn't have a license to be a prepaid legal
8 benefits provider - therefore I am entitled to receive the
9 money back that I paid to you.

10 And the court of -- and the trial judge said: No, we
11 agree there is a statute that says contractors can't collect
12 for work they did if they are not licensed; but there is no
13 basis to say you are entitled to receive money back you have
14 already paid and received a benefit for.

15 So the South -- the trial judge -- and the South
16 Carolina Court of Appeals affirmed it. Said, hey, just
17 because somebody doesn't have a license is not a cause of
18 action.

19 And that's on the last page, Page 3, of Lenz versus
20 Walsh. I have got it highlighted.

21 THE COURT: Yes.

22 MR. BRADLEY: And it says, you know, there is no cause
23 of action to recover payments because the contractor doesn't
24 have a license.

25 And if you look in the first column on that page they

1 set forth of a sort of a five-factor test that the Court of
2 Appeals is applying to see, you know, hey, should we allow
3 this to happen, what should we do.

4 The first factor is the statutes requiring licenses do
5 not specifically authorize the recovery of money paid. That
6 is exactly the same here. There is no statute that says
7 they can get what they are asking. They don't have one
8 because one doesn't exist.

9 Second, such laws are penal in nature and must be
10 strictly construed. That is true as well. Because we had
11 to pay a \$13,000 fine to the Consumer Advocate's Office.

12 Three, a specification of particular penalties
13 precludes the addition of other penalties by judicial
14 interpretation. Which is what they are trying to do here,
15 Judge.

16 And the consumer -- the consumer advocate law, which
17 was at Tab 1 actually says at 37-16-70 a prepaid legal
18 services company violating this chapter is subject to any
19 combination of the following: an administrative cease and
20 desist order, an administrative fine, or a revocation of
21 their registration.

22 It sets out what the penalties are for violating the
23 act. Which we have already received and paid. So that is
24 the same thing as the argument on this.

25 Four, allowing the recovery of such payments is not

1 necessary to effectuate the policy of licensing statutes.
2 Don't know anything different about the policy of this
3 licensing statute from the one for contractors. Especially
4 since the contractor licensing statute has a particular
5 provision that says you can't get paid for work you do
6 without a license. And our statute doesn't have anything
7 like that.

8 And finally five, equity in the principles of
9 restitution do not require that unlicensed contractors be
10 completely uncompensated.

11 Okay. So what they are saying is we don't think it is
12 equitable for you to get a fine house and then say you get
13 the money back when there is nothing wrong with the house
14 except the man didn't have a license.

15 And that is what we are saying. We haven't done
16 anything wrong. We have provided every benefits that we
17 have promised to provide. We have done what our members
18 have asked of us. We had done what we promised to them.
19 The only wrong they can point to is you didn't have the
20 license.

21 And so the Supreme -- the Court of Appeals has said
22 that is not a cause of action. And therefore they don't
23 have any damages because they don't have a cause of action
24 to do that. And one of the things they have got to prove is
25 damages.

1 The next case there is Atkins versus the Department of
2 Corrections. Which is similar. And the reason we have this
3 one in addition to Lenz is this was a class action case.

4 And in that case there were a bunch of prisoners who
5 were working in prison industries. And there was a
6 particular statute that said prisoners are supposed to get
7 paid the going rate for the work that they do. And they
8 weren't getting paid that. So they sued the Department of
9 Corrections.

10 And the Supreme Court said, yeah, we recognize that
11 there is a statute that says you are supposed to get paid
12 the going rate and we recognize that you weren't getting
13 paid that, but there is no private cause of action here for
14 you to enforce a statutory violation.

15 And it is there on Page 4 of the opinion, it says the
16 legislative intent to grant or withhold a private right of
17 action for violation of the statute or failure to perform a
18 statutory duty is determined primarily from the language of
19 the statute.

20 Okay. And in this respect the general rule is the
21 statute which does not purport to establish a civil
22 liability but merely makes provision to secure the safety or
23 welfare of the public as an entity is not subject to
24 construction established in civil liability.

25 So that is -- that class action even though it was a

1 clear violation of the statute, the Supreme Court said it
2 doesn't create a private cause of action because it doesn't
3 say that so you don't get a private cause of action.

4 The next case, also in a class action setting, similar,
5 was Gardner versus the South Carolina Department of Revenue.
6 And in Gardner the General Assembly passed a law that said
7 that if you owe money to a government entity they can
8 essentially take it out of your tax return. But that law
9 required that an entity notify you about the problem before
10 they did it.

11 And nobody was doing that. So it was admitted that the
12 state entities were taking the money out of the people's tax
13 returns and not giving them the notice that was required to
14 be done with the Act.

15 And the Supreme Court in looking at that -- the trial
16 judge said, hey, you admit that you weren't doing this, the
17 statute says you are supposed to; summary judgment for the
18 plaintiffs and I certify the class.

19 And on appeal the Supreme Court said, no.

20 All right. And if you'll look on Page 9 the basis for
21 that is - and it is there is it highlighted - as a general
22 rule a party must establish prejudice as a result of
23 another's failure to follow mandatory statutory procedure.

24 And the court held they couldn't show that they were
25 prejudiced and therefore it wasn't proper for a class-action

1 and it wasn't proper because they didn't have any damages
2 they could show they were prejudiced by.

3 Even on the last page, Page 12, it says plaintiffs
4 cannot prevail unless they establish they were prejudiced by
5 the insufficiency. That is highlighted as well.

6 Point being that they have to show some sort of damage.
7 And the Supreme Court has said it in several situations
8 that you have to show damage in order to maintain this
9 class-action.

10 They can't show any damage because the only wrong they
11 can show is we weren't licensed with the Consumer Advocate's
12 Office. They don't have anybody who said you didn't do
13 something you were supposed to do other than not have a
14 license. And that's not a basis to recover money. So they
15 can't show damages.

16 The only thing that they are arguing is, you should
17 rescind this transaction. Which means give us back the
18 dues. But rescission is not that simple, right. Rescission
19 says Party A, this is a bad transaction, we will give you
20 back the money, car dealer you get the car back. If you are
21 rescinding for instance a car transaction, right.

22 You can't say, hey, the car is not what you told me it
23 was going to be, please give me my money back and I will
24 keep the car. That is not what rescission says. Which is
25 what they are arguing.

1 Rescission says, hey, we are going to unwind this
2 transaction. Car dealer, you give the money back to the
3 purchaser; purchaser, you give the car back to the car
4 dealer.

5 And here's the problem with that and the reason they
6 can't really show it. First of all you can't unwind it
7 because the money has been paid. It has gone out to provide
8 the services we promised to the other members.

9 We have hired lawyers to defend people in
10 administrative proceedings and civil proceedings and
11 criminal proceedings. We settled the Slager case. That was
12 part of it as well.

13 We provide the magazine. We provide lobbying. We
14 provide organization. We have got a staff of people that
15 work on behalf of police officers. They have received those
16 benefits.

17 And not only that, not only that, but their two
18 plaintiffs, Mr. Stanley and Mr. Reiter, have both received
19 attorneys from the PBA.

20 So they have paid the money and they have gotten a
21 lawyer. In fact, Mr. Stanley has a lawyer right now that
22 the PBA has hired to defend him.

23 And so if you really want to rescind the transaction
24 like they are arguing is their damage under the rule, you
25 have got to make them pay the money back too.

1 So they have to pay us. We have to get paid back the
2 money that we have expended on behalf of their class to hire
3 lawyers for these people. That is what a rescission remedy
4 is.

5 That's the problem with their damages analysis is to
6 say, well, just rescission handles it. Because you have to
7 give us all of the money back.

8 First, there is no law that says that. And second, if
9 that is what you were going to do members of this class
10 would have to pay back money for the services they received
11 pursuant to dues that they pay. So that is a big problem.

12 And it goes to the other three parts of a class action
13 which are commonality, typicality, and representativeness.
14 Right, those are the other three that we haven't talked
15 about.

16 And here is why. You have to have a common issue
17 across the whole class. Well, I will tell you; I will bet
18 those police officers that have a lawyer right now that the
19 PBA is hiring to defend them don't want to pay back the
20 money that the PBA has paid for that lawyer.

21 That creates tension in the class. These members that
22 they are saying, hey, we all have the same interest, they
23 don't all have the same interests. Because somebody out
24 there, these other people that we have defended - and it is
25 in the affidavit of Mr. Cordell which is attached to our

1 brief and we have submitted to the court - that indicates in
2 the recent time we had 70 people we have hired lawyers for.
3 It is in Mr. Cordell's affidavit. Those people might have
4 to pay it back if we rescind everything.

5 So the problem with their damages is this. They don't
6 have any.

7 What they try to allege is rescission in order to
8 overcome that. Not only is there no law that says that,
9 every bit of law that there is says the opposite.

10 Finally, if they really are going to stand on
11 rescission and the court finds that that is the law of South
12 Carolina then they have created tension within their own
13 class because they have destroyed the commonality and the
14 typicality requirement.

15 Their own clients have received lawyers from the PBA
16 with whom they said - and their depositions are attached -
17 that they were pleased.

18 Nobody has said the PBA has done a single thing wrong
19 other than not have a license.

20 And so those reasons. First they have got to come
21 forward with some evidence to stand -- to prove that they
22 are entitled to class certification - which they have handed
23 you none - to back up what you do.

24 Second, they have got to come up with some kind of
25 damages and a cause of action that is credible on some level

1 that would justify the damages they seek. Which they
2 haven't. And we have even asked them what their damages
3 are, and they have never said.

4 Third, if they are going to do rescission, which is
5 what they are telling the court today, that is going to
6 create tension in their own group of class that they are
7 saying. Because it destroys the commonality. Because a lot
8 of these people have had lawyers assigned to them.

9 So for those reasons we don't believe a class action is
10 appropriate. And we appreciate your attention, Judge.

11 THE COURT: All right.

12 MR. BRADLEY: Mr. Moore would like to clean up whatever
13 I have missed ---

14 THE COURT: Okay.

15 MR. BRADLEY: --- if you don't mind, Judge.

16 MR. MOORE: Your Honor, I really don't have a whole lot
17 to add to what Mr. Bradley has had to say. But I would like
18 to answer the court's question. Because the court asked a
19 very good and proximate question, as the court generally
20 does.

21 THE COURT: Yes, of course.

22 MR. MOORE: Your Honor, you asked the question well why
23 wouldn't you want to have it all decided in one class. And
24 if I might answer that question. The answer is no.

25 I have represented the PBA for about 20 years now.

1 Normally I get a call about two o'clock in the morning to go
2 to some scene where someone has been shot or where there has
3 been a serious wreck after a chase. They wake me up. I go
4 to a scene. And I have dealt with numerous cases for PBA
5 over the years. So I am very familiar with them. A
6 longtime client. A very reputable bunch.

7 The problem is that the PBA is very jealous of its
8 credibility. They're -- with -- as with many union type
9 organizations there are factors inside the police community
10 which say, ah, it is not worth anything, don't do it, why
11 pay. And then there are factors inside which say it is a
12 good thing.

13 And these people put on seminars. They lobby the
14 Legislature. They have regular chapter meetings where they
15 come and attend. They do educational programs. They really
16 do try as hard as they can to foster their membership.

17 And they do what they can to jealously guard the
18 credibility of the organization. And they know that if
19 suddenly they started getting letters from lawyers, opt in,
20 opt out of a class action that, gee, they're stolen from and
21 so forth, that they are going to be hurt. It is going to
22 stir up the membership.

23 The next thing we know the telephones are going to
24 start ringing. And it is just going to be one more matter
25 that is going to basically stir up people who are members of

1 an organization and they are going to have to answer
2 questions on what is this.

3 Additionally, we are not going to have 2,300 individual
4 lawsuits. If we were under the impression that we were
5 going to have 2,300 individual lawsuits maybe we would be
6 better off to have everything handled at one time. But for
7 the 20 years I have been representing these people there
8 have been zero lawsuits.

9 And one of the things I know is the best predictor of
10 the future is what has happened in the past. And we don't
11 think we are going to have to deal with 2,300 lawsuits. We
12 don't think we are going to have to deal with one unless we
13 deal with a class certification.

14 The membership has been happy for 20 years with the way
15 this has been handled. We have a very large membership and
16 a large support in Columbia, Greenville, and Charleston as
17 well as the outlying areas. And this lawsuit is not going
18 to take place.

19 So the only way these 2,300 actions get brought is if
20 they are joined in a class-action. If they are not joined
21 in a class-action they are not going to get brought.

22 No one else has ever sued us over anything like this.
23 And nobody is going to sue us.

24 And that is why plaintiffs want a class action because
25 they want to stir up the membership and they want to

1 basically bring actions on behalf of people who have no
2 desire at all to bring an action.

3 And there will be a prejudice to us if it is done.
4 Every day that goes by, the statute of limitations basically
5 runs. And what they are trying to do is to basically stir
6 the matter up and to basically bring the matter before the
7 court in a giant fashion.

8 Additionally, what they want to do is to have a class
9 certification of people who have no injury and who are
10 satisfied so that they know if they can establish a class of
11 people that they basically then can go to mediation and try
12 to force a settlement of an issue that is not really an
13 issue. This is not an issue with anybody.

14 That is what they are trying to do is basically
15 compound in exponential fashion the number of people they
16 claim to represent so they can basically take money from a
17 benevolent association which is a valid nonprofit
18 organization of impeccable reputation. They -- there won't
19 be 2,300 claims. They simply are trying to increase the
20 exposure to take money from a non-profit police society,
21 which we think is wrong.

22 We just - there's not going to be 2,300 claims.
23 There's not going to be 23 claims, unless there is a class
24 certification.

25 So the reason why we don't want it done is because

1 there is not a controversy among 2,300 people. And the only
2 thing that is going to happen is that class certification is
3 going to hurt a legitimate benevolent association because it
4 is going to force the taking of money from it by way of a
5 settlement which they hope and think will take place. And
6 it will also force filing of claims where no one is
7 basically happy.

8 Mr. Bradley is absolutely right in regard to damages
9 too. They have the burden of proof. And they have got to
10 prove a hundred dollars.

11 The value of the claim certainly is not the amount of
12 the dues. The dues go for -- go to maintain the office
13 staff, goes to lobbying, it goes to help promote the life
14 insurance that we provide. It goes for the educational
15 material. And the office staff is all over the southeast
16 providing assistance and benefits to police that need help.

17 What is the value? That is the question. What is the
18 value of the -- of that portion of the dues that goes to
19 prepaid legal. The answer is we don't know.

20 Certainly all \$23 a month doesn't go to prepaid legal.
21 How much does? They haven't told us that. What they told
22 us is they don't know. And yet they have got the burden of
23 proof to prove the hundred dollars. And they haven't done
24 that.

25 You know, we have asked them in written discovery; we

1 asked both of their clients in deposition under oath, have
2 you got a hundred dollars worth of damages.

3 No.

4 And rescission certainly doesn't mean that -- if
5 rescission were the case the \$23 a month, all of these
6 people have gotten the benefit of the regular meetings, the
7 lobbying, the legal information, and all -- the life
8 insurance, all of the other services, which have basically
9 been provided.

10 They have to prove the \$100 threshold. We don't have
11 to disprove it.

12 And the Supreme Court has said we have got to
13 scrutinize that. Well, if we scrutinize that we ask them
14 how much -- how much of the \$23 do you claim has gone for
15 prepaid legal.

16 They don't know. They don't tell us. They haven't
17 told the court. And they haven't established their burden
18 of proof in regard to the \$100.

19 So there is a very legitimate and honest reason as to
20 why we very much oppose class certification. Class
21 certification will hurt a very legitimate nonprofit
22 organization that I have had the honor to work with for 20
23 years.

24 It is not just a matter of resolving 2,300 cases at one
25 time. It is a matter of resolving two cases and the other

1 twenty-three hundred will more than likely never see the
2 inside of a court. They have never been here before.

3 So I just wanted to take that moment to try and answer
4 the court's question as to why class certification is we
5 believe not only something that they haven't proven but
6 there is a very honest and legitimate reason as to why we
7 would oppose class certification.

8 And I have tried to establish those factors as I
9 understand them honestly on the record. We vehemently
10 oppose class certification.

11 Thank you, sir.

12 THE COURT: Okay. Thank you.

13 MR. RICHTER: Very briefly?

14 THE COURT: Yes.

15 MR. RICHTER: Very briefly, Your Honor. And, Your
16 Honor, I am disinclined to apologize if the PBA will have to
17 answer some real questions from its members.

18 But its damage is a misnomer, and it is a red herring.
19 It is the amount of controversy. It is not damages.

20 All of the arguments they make about what the damages
21 are or are not are issues in common to the class. Those are
22 issues for another day.

23 This is going to be a close paraphrase of Judge
24 Nicholson. And I don't want to misquote it. And if I say
25 it wrong my classmate and friend Ward Bradley will correct

1 me.

2 But I remember him saying at the motion to dismiss: I
3 don't care what the consumer advocate says that you are;
4 this is matter of law and this is a court of law and I will
5 tell you what you are and what you were during that period
6 of time that you were not licensed.

7 I remember that pretty distinctly that he said words to
8 that effect.

9 And on the summary judgment it is true that discovery
10 was incomplete. But that was not the basis for the denial
11 of the summary judgment.

12 And here is his Form 4 order where it was on the merits
13 and it was based upon a showing of evidence at the summary
14 judgment.

15 WHEREUPON, document provided for the court.)

16 And to simplify a matter -- it is in the written block
17 at the bottom where he is explaining the denial.

18 This says nothing about ongoing discovery or AT&T
19 versus Bowman or the stuff you would expect to see. It says
20 that he finds that there is a material issue of fact. That
21 was his finding in summary judgment.

22 And to simplify something they are trying to make sound
23 very complicated, what the complaint says is you lie to us.
24 That is what the complaint says. You told us that if any
25 one of us, any one of the 44,000 of us, is involved in a

1 shooting you are going to be there, no caps, no limits.
2 That is the promise. And you lied. Because you walked on
3 Michael Slager four days after the shooting and how could
4 you decide four days after a shooting the criminal guilt of
5 Michael Slager when the matter was not even teed up for
6 prosecution yet. But that is what they did.

7 And not a committee, not a group, not an adjuster. A
8 single decision-maker back in Georgia four days after the
9 shooting looked at the videotape and said we are out,
10 coverage denied.

11 And there was an upwelling in the PBA community. They
12 know that. Maybe there won't be 2,300 lawsuits. I don't
13 know. A lot of people were upset. A lot of people didn't
14 like the way that was handled. And the thrust of the
15 lawsuit says you lied to all of us because you promised us.

16 And the part of the deposition testimony is - it is in
17 the transcript that they even offered the court - that they
18 don't like the report is the part where Reiter and Stanley
19 say the same thing:

20 How was I damaged?

21 You lied to me. You induced me to pay \$23.50 a month
22 because you promised me like you promised 44,000 people that
23 if any one of us is in trouble you are there for us.

24 And that proved not to be true. And so whether that
25 sounds in disgorgement or rescission or fraud damages, there

1 are six causes of action. Negligent misrepresentation,
2 fraud, fraud on the inducement. It is a whole lot more than
3 you just weren't licensed as an insurance company.

4 And Judge Nicholson heard all of that at summary
5 judgment and said I am sending it forward. So really the
6 only issue today is is there \$100 in controversy.

7 Of course there is. These people were members for
8 years and years and years paying \$23 a month that they just
9 say they were lied to and induced to pay.

10 Is their commonality? All these questions are in
11 common for the class. Even the issues that are raised by
12 the defense. Of course they are common. We will deal with
13 those down the line.

14 I think it is a really an uncomplicated matter at the
15 end of the day, Your Honor. Respectfully we ask that you
16 certify the class and we move on.

17 THE COURT: Okay. Thanks.

18 I am not going to rule from the bench. I am going to
19 take a look at all of the stuff. Okay.

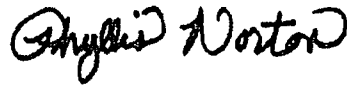
20 (WHEREUPON, the hearing concluded.)

(NOTE: Please contact the court reporter for additional copies or certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on October 22, 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.



PHYLLIS NORTON, CVR

Date: November 4, 2018

Certified Transcript Provided For: Ward Bradley

Certification Reference #2018-1104 Original

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State of South Carolina) County of Charleston) Donald Stanley, Individually) 2016-CP-10-4062 and as Class Representative,) Plaintiff,) V.) Video Deposition of Southern States Police) Donald Stanley Benevolent Association, Inc.,) Defendant.) Date: January 5, 2017 Time: 10:41 a.m. Location: 18 Broad Street Charleston, South Carolina Reported by Kathleen M. Owens-Hays	STIPULATIONS It is stipulated by and between counsel for the respective parties that all objections are reserved until the time of trial, except as to the form of the questions. This video deposition is being taken pursuant to Rule 30 of the South Carolina Rules of Civil Procedure to be used for all purposes allowed thereunder. ----- The reading and signing of this deposition is waived by the deponent and counsel for the respective parties. Whereupon, Donald Stanley, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified as follows: EXAMINATION BY MR. BRADLEY: Q Mr. Stanley, my name's Ward Bradley. I'm a lawyer, and today I'm going to take your deposition. Do you understand that? A Yes, sir. Q All right. Do you know what a deposition is? A I've had a brief explanation given to me. Yes,																												
APPEARANCES For the Plaintiff: Ronald L. Richter, Jr., Esq. Eric Bland, Esq. BLAND RICHTER, LLP Charleston, SC For the Defendant: James Edward Bradley, Esq. MOORE TAYLOR LAW FIRM, P.A. West Columbia, SC Also present: Amy Simons (videographer) Charlie Cordell Joni Fletcher INDEX <table><tr><td>Stipulations</td><td>03</td></tr><tr><td>Examination by Mr. Bradley</td><td>03</td></tr><tr><td>Examination by Mr. Richter</td><td>142</td></tr><tr><td>Further Examination by Mr. Bradley</td><td>150</td></tr></table> EXHIBITS <table><tr><td>Defendant's 1, Complaint</td><td>21</td></tr><tr><td>Defendant's 2, PBA press release</td><td>121</td></tr><tr><td>Defendant's 3, Complaint, Akilou Smith lawsuit</td><td>124</td></tr><tr><td>Defendant's 4, 6/23/16 letter to Ms. Jackson from Ms. Walsh</td><td>126</td></tr><tr><td>Defendant's 5, 6/28/16 Consent to Release Information form</td><td>127</td></tr><tr><td>Defendant's 6, PBA record of 2005 incident</td><td>129</td></tr><tr><td>Defendant's 7, 9/27/05 letter to Ms. Fletcher from Mr. Savage</td><td>130</td></tr><tr><td>Defendant's 8, 3/17/05 Consent to Release Information form</td><td>131</td></tr><tr><td>Defendant's 9, 3/10/05 letter to Mr. Savage from Ms. Fletcher</td><td>132</td></tr><tr><td>Defendant's 10, Fee schedule from Mr. Savage</td><td>135</td></tr></table>	Stipulations	03	Examination by Mr. Bradley	03	Examination by Mr. Richter	142	Further Examination by Mr. Bradley	150	Defendant's 1, Complaint	21	Defendant's 2, PBA press release	121	Defendant's 3, Complaint, Akilou Smith lawsuit	124	Defendant's 4, 6/23/16 letter to Ms. Jackson from Ms. Walsh	126	Defendant's 5, 6/28/16 Consent to Release Information form	127	Defendant's 6, PBA record of 2005 incident	129	Defendant's 7, 9/27/05 letter to Ms. Fletcher from Mr. Savage	130	Defendant's 8, 3/17/05 Consent to Release Information form	131	Defendant's 9, 3/10/05 letter to Mr. Savage from Ms. Fletcher	132	Defendant's 10, Fee schedule from Mr. Savage	135	1 sir. 2 Q What is a deposition? 3 A I can be asked basically any questions pertaining to the lawsuit, personal questions, such -- such of that nature. 4 All right. Before we go farther, I want to make sure you understand. A deposition is where I, as a lawyer, ask you, as a witness, questions. Do you understand that? 5 Yes, sir. 6 The court reporter sitting to my left, she writes down every question I ask and every answer you give. Do you understand that? 7 Yes. 8 The answers and the questions can later be used in a court of law, just as if there was a judge sitting in this room with us today. Do you understand that? 9 Yes. 10 All right. If I ask you a question, you have to answer it, unless your lawyer instructs you otherwise. Do you understand that? 11 Yes, sir. 12 If you do not understand a question, will you ask me to clarify it?
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Page 5	Page 7
1 A Yes. 2 Q All right. If I ask you a question and you 3 answer it, I'm going to assume you understood it. Is 4 that fair? 5 A Yes, sir. 6 Q All right. And because we're taking a 7 deposition and writing down everything you say, you 8 need to answer with words, rather than noises or 9 gestures, as people sometimes do by shaking their 10 head or saying uh-huh or huh-uh. Can you do that for 11 us today? 12 A Yes, I can. 13 Q All right. You took a oath to tell the truth. 14 Do you recall that? 15 A Yes, sir. 16 Q And do you know what that means? 17 A Yes, sir. 18 Q What does that mean? 19 A It means I have to tell the truth, under penalty 20 of perjury if I don't. 21 Q That's exactly right. 22 What is your name? 23 A Donald Stanley. 24 Q Have you ever used any other name besides Donald 25 Stanley?	1 14. 2 Q How old is your stepson? 3 A He's 24. 4 Q Where do you and Cathleen live? 5 A Goose Creek, South Carolina. You want specific 6 address? 7 Q Sure. 8 A 109 Deer Run -- and that's two words -- Court. 9 Q How long have you lived there? 10 A Thirteen years. 11 Q Do you attend church anywhere? 12 A On occasion. 13 Q Where do you attend church? 14 A Old Fort Baptist. 15 Q Old Fork Baptist? 16 A Baptist. Yes, sir. 17 Q Is it a fork, like you eat with? 18 A No. Fort, F-O-R-T. 19 Q Fort. Fort, with armaments. Like a Fort 20 Jackson? 21 A Correct. 22 Q All right. Is that a family church or just one 23 that you attend? 24 A Just one that we attend. 25 Q How long have you attended church there?
Page 6	Page 8
1 A No, sir. 2 Q Do you have a middle name? 3 A Gene. 4 Q Is that with a G? 5 A Yes, sir. 6 Q All right. What is your Social Security number? 7 A [REDACTED]. 8 Q What is your South Carolina driver's license 9 number? 10 A [REDACTED]. 11 Q What is your date of birth? 12 A [REDACTED]. 13 Q Are you married? 14 A Yes. 15 Q What is your wife's name? 16 A Cathleen. 17 Q How long have you and Cathleen been married? 18 A Seventeen years. 19 Q Have you been married to anyone else besides 20 Cathleen? 21 A No, sir. 22 Q Do you have any children? 23 A Yes. 24 Q How many children do you have? 25 A I have a stepson and a son that's -- my son is	1 A Probably four or five years. 2 Q Are you a member of any groups or clubs at the 3 church? 4 A No, sir. 5 Q Are you a member of any groups or clubs, at all? 6 A Boy Scouts. My -- my son's in Boy Scouts. I'm 7 treasurer for our troop. 8 Q What troop? 9 A Troop 716. 10 Q Were you a Boy Scout, yourself? 11 A No, sir. 12 Q All right. And you're members -- your son is a 13 member of that troop? 14 A Yes, sir. 15 Q Where does he go to school? 16 A He goes to Stratford High School. 17 Q That's a public school in Goose Creek? 18 A Yes, sir. 19 Q All right. Where does your stepson live? 20 A Goose Creek. 21 Q Does he live with you? 22 A No, sir. 23 Q Is he employed? 24 A Yes. 25 Q What does he do for a living?

Page 9		Page 11	
1 A	He's a police officer at North Charleston Police	1 Q	Where is that?
2	Department.	2 A	It's based out of Minnesota, I believe. They
3 Q	Is he a member of the Southern States PBA?	3	have brick and mortar campuses throughout the United
4 A	No, sir.	4	States.
5 Q	Has he ever been a member of the Southern States	5 Q	Okay. Where did you attend?
6	PBA?	6 A	I actually -- I attended online.
7 A	No, sir.	7 Q	Okay. So it's an online degree? Is that --
8 Q	All right. Is your wife in law enforcement?	8 A	Yes, sir.
9 A	Yes.	9 Q	-- what you would call it? When did you receive
10 Q	Is she employed outside the home?	10	that?
11 A	Yes.	11 A	Probably two years ago.
12 Q	Where does she work?	12 Q	Okay. And what is it in?
13 A	She works for the North Charleston Police	13 A	It's in criminal justice.
14	Department.	14 Q	Where did you go to high school?
15 Q	What is her job there?	15 A	Tri-Cities Christian School in --
16 A	She's a lieutenant. She's assigned to	16 Q	Where?
17	Investigations Unit.	17 A	-- Blountville, Tennessee.
18 Q	How long has she worked there?	18 Q	When did you graduate?
19 A	Twenty-three years.	19 A	1989.
20 Q	Is she a member of the Southern States PBA?	20 Q	Did you serve in the Armed Forces, at all?
21 A	Yes, sir.	21 A	No, sir.
22 Q	How long has she been a member?	22 Q	All right. Where -- when did you get involved
23 A	Probably 20 years. Somewhere in that ---	23	in law enforcement?
24 Q	Can you spell her name? I'm sorry, I didn't	24 A	1994. I ---
25	mean to interrupt you.	25 Q	How did you get involved in law enforcement?
Page 10		Page 12	
1 A	That's okay.	1 A	I -- a friend of mine was -- that I worked with
2 Q	Did you say 20 years?	2	-- became a reserve with North Charleston Police
3 A	Yeah. Somewhere in that vicinity.	3	Department. He, in turn, got hired on at North
4 Q	All right. How do you spell your wife's name?	4	Charleston Police Department and I got involved in
5 A	C-A-T-H-L-E-E-N.	5	the Reserve Program.
6 Q	All right. Do you have any other family that	6 Q	And are you -- what force are you in, Goose
7	lives in Charleston County?	7	Creek?
8 A	I have an aunt that lives in Charleston County.	8 A	No. Charleston County Sheriff's Office.
9 Q	What's her name?	9 Q	All right. What is your job there?
10 A	Susan.	10 A	I'm a patrol lieutenant.
11 Q	Is it Susan Stanley?	11 Q	What does that mean that you do every day?
12 A	No, ma'am -- or sir. Leonard, L-E-O-N-A-R-D.	12 A	I supervise two sergeants and -- we're slotted
13 Q	Any other family in Charleston County?	13	for 22 deputies. There's 18 on the team at this
14 A	No, sir.	14	time, so I -- basically, I'm the supervisor over all
15 Q	All right. Besides being active as the	15	of them. I'm -- I -- assigned to permanent night
16	treasurer of Troop 716 of the Boy Scouts, do you have	16	shift, so I'm the night shift commander basically.
17	any other extracurricular clubs or activities you're	17 Q	All right. Just -- do you just work in the
18	involved in?	18	office mainly? Or do you work on patrol?
19 A	No, sir.	19 A	Patrol.
20 Q	All right. How far did you go in school?	20 Q	Okay. So you're on night patrol, as a
21 A	Completed my bachelor's degree.	21	supervising lieutenant?
22 Q	Where did you graduate from?	22 A	Yes, sir.
23 A	Herzing University.	23 Q	Okay. How long have you had that position?
24 Q	Can you spell that for me?	24 A	Three years.
25 A	H-E-R-Z-I-N-G.	25 Q	All right.

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1 A Just over three.
2 Q Did you attend the Academy here in South
3 Carolina?
4 A Yes, I did.
5 Q When did you graduate?
6 A 1995. I believe it was August or September of
7 1995.
8 Q Do you have any special designations or talents,
9 within the -- within the police force?
10 A Not sure I understand...
11 Q Well, like a special weapons designation, as
12 part of the MAIT Team, part of the special SWAT
13 investigation unit -- anything of that nature?
14 A I have -- I'm assigned a couple of collateral
15 duties. I'm -- I'm assigned to our command post --
16 our mobile command post, as well as I'm assigned to
17 -- it's called the Lowcountry Incident Management
18 Team. It's a Type 3 Incident Management Team that --
19 basically, we're responsible for the lower portion of
20 South Carolina.
21 Q And what sort of things does it do, Incident
22 Management Team?
23 A It -- say if there's an -- an -- an ongoing
24 incident, such as maybe a wildfire, for example. Our
25 team would come in and help to establish incident

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1 command and identify, say, logistical stuff, if they
2 need equipment, manpower, and basically try to
3 coordinate all that.
4 Q Okay. How did you get to South Carolina from
5 Tennessee? What brought you here?
6 A My parents moved here in 1990, I believe it was.
7 My father went into business with my uncle, who's now
8 deceased. They had a car dealership.
9 Q Okay. Do your parents still live here?
10 A My mother does. She lives in Goose Creek, also.
11 Q All right. What about your father?
12 A He's -- he's living in Tennessee now.
13 Q Okay. What job were you involved in, before you
14 were in law enforcement?
15 A I was an automotive mechanic.
16 Q All right. Do you have any hobbies?
17 A Occasionally fishing, working on cars
18 occasionally. About it.
19 Q Have you ever been arrested?
20 A No, sir.
21 Q All right. Are you capable of giving honest and
22 truthful testimony today?
23 A Yes, sir.
24 Q Are you under the influence of any medicine,
25 whatsoever, that would affect your ability to

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1 understand questions and answer them honestly?
2 A No, sir.
3 Q Besides this lawsuit, have you ever been in a
4 lawsuit?
5 A I am a defendant in a lawsuit at this time.
6 Q What lawsuit is that?
7 A A gentleman is suing myself, along with several
8 other members of the Sheriff's Office.
9 Q Is that the Akilou Smith case?
10 A Yes, sir.
11 Q All right. Is there any other lawsuits you've
12 ever been involved in?
13 A No, sir.
14 Q All right. Do you know Sean Riater at all?
15 A I do.
16 Q How do you know him?
17 A He formerly worked at the Sheriff's Office years
18 ago. And I know at -- he left there and went to work
19 for the North Charleston Police Department, and I
20 believe he's with the railroad now, as a law
21 enforcement officer.
22 Q With the railroad where?
23 A That, I'm -- I'm not sure.
24 Q When you say the railroad, what railroad?
25 A I don't know if it's -- I'm not sure if it's CSX

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1 or Norfolk Southern or what specific agency it is.
2 I'm not sure.
3 Q Is he in South Carolina?
4 A I don't believe so.
5 Q Okay. When did he leave South Carolina?
6 A I couldn't tell you that.
7 Q Do -- how do you know that he's working for the
8 railroad?
9 A That's just my understanding. My -- my wife had
10 told me at one point that he left their agency and
11 went to work for a railroad.
12 Q And so you don't know exactly when he did that?
13 A No, sir.
14 Q All right. And you don't know where he lives?
15 A No, sir.
16 Q All right. And do you know where he lived when
17 he was in South Carolina?
18 A No, I do not.
19 Q How well do you know Sean?
20 A Just a passing acquaintance. That's about it.
21 Q So you wouldn't know how to get in touch with
22 him?
23 A No, sir.
24 Q All right. And you don't know where he lives
25 now?

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1 A No, I do not.
2 Q Do you know if he's a member of the Southern
3 States PBA?
4 A I believe he is, but I'm -- I really don't know.
5 Q Have you ever talked to him about this lawsuit?
6 A No, sir.
7 Q All right. Do you know how long he worked in
8 Charleston?
9 A I do not.
10 Q Do you know what rank he was?
11 A I believe when he left the Sheriff's Office, he
12 was a deputy, and I think he was a sergeant when he
13 left North Charleston.
14 Q Do you know whether he ever served in the Armed
15 Forces?
16 A I -- I have no idea.
17 Q And you don't know how long he worked in
18 Charleston either?
19 A No, sir.
20 Q All right. Do you have any other association,
21 other than just a casual acquaintance with him?
22 A No, sir.
23 Q All right. Do you know Michael Slager at all?
24 A I do.
25 Q All right. How do you know Michael Slager?

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1 A I know him through my wife. She -- I think at
2 one time he worked on her team, possibly. I'm not a
3 hundred percent certain about that, but I know him
4 through her.
5 Q And -- and how well do you know Michael Slager?
6 A An acquaintance. I mean, you know, sometimes we
7 may eat dinner together or that type of thing.
8 Q So, like, you and your wife and he and his wife
9 would go to dinner together occasionally?
10 A After his arrest is when I got to know him. I
11 didn't know him before that.
12 Q Okay.
13 A So basically we -- any -- any time we've had any
14 -- you know, went to dinner or anything like that,
15 it's had to be at his residence, due to the bond
16 restrictions.
17 Q Okay. So have you spent some time trying to
18 support him through this time with his family?
19 A Yes, sir.
20 Q Okay. And you and your wife have done that
21 together?
22 A Yes.
23 Q So you've been over to his home to eat dinner
24 with him?
25 A Yes.

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1 Q And spent time with him at his house?
2 A Yes, sir.
3 Q And since he's on -- is he still on house
4 arrest, or do you know?
5 A I really don't know. I haven't spoke with him
6 in -- it's probably been several months since I've
7 talked to him.
8 Q Okay. Your association with him was reaching
9 out to a fellow law enforcement officer who was in a
10 difficult situation?
11 A Yes, sir.
12 Q All right. And, through that, you and your wife
13 would go eat dinner at his house?
14 A Eat dinner, or if they needed anything we'd help
15 them out. Just ---
16 Q Bring them things to their house --
17 A Sure.
18 Q -- if they needed it? Anything else that you
19 would do? Take care of his kids or help him in any
20 other way?
21 A I did help take care of his child, at one point.
22 They had a infant child. On maybe one or two
23 occasions, watched the kid while they had court
24 proceedings or something of that nature. I helped
25 him repair his car before.

Page 20

1 Q Okay. So you've helped him to fix his car,
2 cared for his children, had dinner with him and his
3 wife at his house?
4 A Yes, sir.
5 Q Any other association with him?
6 A No, sir.
7 Q And this has pretty much happened since he was
8 arrested?
9 A Yes, sir.
10 Q Okay. And this was you and your wife just
11 reaching out to a fellow law enforcement officer,
12 trying to support him at a difficult time?
13 A Yes, sir.
14 Q Okay. Have you ever been denied anything you've
15 requested from the PBA?
16 A No, sir.
17 Q Besides Michael Slager, do you know anyone else
18 who has?
19 A No.
20 Q All right. Are you a member of the PBA now?
21 A Yes, sir.
22 Q All right. Have you read the complaint that
23 your name is on?
24 A Yes, I have.
25 MR. BRADLEY: (To the court reporter.) Make

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1 that the first exhibit.
2 (To Mr. Richter.) Do you want a copy, Ron?
3 MR. RICHTER: Yeah. Thanks.
4 MR. BRADLEY: I think you already -- it's what
5 you sent me, but --
6 MR. RICHTER: Yeah.
7 MR. BRADLEY: -- if you want a copy, there it
8 is.
9 (Defendant's Exhibit Number 1 marked
10 for identification.)
11 BY MR. BRADLEY:
12 Q Mr. Stanley, I'm showing you what's marked as
13 Exhibit 1 to your deposition, which I understand to
14 be the Complaint. That has your name on it, where
15 you have sued the Southern States Police Benevolent
16 Association; is that correct?
17 A Yes, sir.
18 Q And you've read this complaint?
19 A I have.
20 Q Do you agree that everything in this complaint
21 is true?
22 A To the best of my knowledge. Yes, sir.
23 Q Is it based on your knowledge of how the
24 Southern States Police Benevolent Association
25 operates?

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1 A Well, a lot of it -- obviously, I can't write
2 the complaint; it's based on what attorneys
3 interpret. So I had to go off of what they know.
4 Q Right.
5 A But to the best of my knowledge.
6 Q All right. And you -- you authorized putting
7 your name on it?
8 A I did.
9 Q And you believe everything in it to be true?
10 A Yes.
11 Q And you stand behind what's in it?
12 A Yes, sir.
13 Q When did you join the PBA?
14 A I'm sorry?
15 Q When did you join the PBA?
16 A 1994. I believe it was October.
17 Q What did you have to do to join the PBA?
18 A Filled out an application and paid the
19 membership fee.
20 Q What was the membership fee?
21 A That, I don't recall.
22 Q Was it about like 10 dollars or something like
23 that?
24 A I -- honestly I don't recall. It's been so many
25 years ago.

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1 Q Okay. How -- how do you pay your dues? Under
2 what mechanism? Do you just write a check once a
3 year, or is it deducted from your account?
4 A I -- either I write a check once a year now or I
5 pay it by credit card --
6 Q Okay.
7 A -- or debit card.
8 Q But you pay them once a year?
9 A Yes, sir.
10 Q All right. And you're still a member; right?
11 A I am.
12 Q Do you believe the PBA is defrauding law
13 enforcement officers?
14 MR. RICHTER: Object to the form. You can
15 answer.
16 THE DEPONENT: My concern is, is that the PBA is
17 not operating under regulations such as what an
18 insurance company would operate under.
19 BY MR. BRADLEY:
20 Q Okay. But my question is just, do you believe
21 the PBA is defrauding law enforcement officers?
22 MR. RICHTER: Object to the form.
23 A Yes, I do.
24 BY MR. BRADLEY:
25 Q All right. Why are you still a member, if you

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1 think it's being -- defrauding law enforcement
2 officers?
3 MR. RICHTER: I'll instruct him not to answer,
4 to the extent that the answer would require
5 attorney-client privilege information. Beyond that,
6 you're free to answer.
7 BY MR. BRADLEY:
8 Q I -- I don't need to know anything that you've
9 talked to any lawyer about. My question just, if you
10 believe the PBA is defrauding law enforcement
11 officers, why did you pay your dues this December?
12 A I'm -- I don't know how far I can explain this
13 without getting into attorney-client privilege, but
14 it was based on the recommendation of the attorneys.
15 Q All right. Why did you join the PBA?
16 A 1994, when I was a reserve, I was with another
17 officer who ultimately was involved in a shooting
18 situation and he was a member of the PBA. They sent
19 representation to the scene, which was Andy Savage.
20 At that point, I -- I spoke with him about it and I
21 ended up joining.
22 Q Who was the officer?
23 A Joe Stephens.
24 Q Did you say Joe Stephens?
25 A Yes, sir.

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1 Q Is he still on the force? 2 A He's retired now. 3 Q Does he still live around here? 4 A He lives in Moncks Corner, I believe. 5 Q Okay. When you saw Andy Savage in 1994 and you 6 were in the reserves, was he your lawyer at that 7 time? 8 A Not at that time. No, sir. 9 Q Okay. What did he tell you about being in the 10 PBA and joining? 11 A I don't think I spoke with Andy about it at that 12 time. 13 Q Okay. Where did you get the information about 14 joining the PBA, then, from Joe Stephens? 15 A Yes, sir. From Joe. 16 Q All right. Have you held any leadership roles 17 with the PBA? 18 A I was once on the local board for North -- well, 19 I don't know how the chapters are broke up or 20 anything like that, but I served as a board member 21 when I worked for North Charleston Police Department 22 for a short period of time. 23 Q When was that? 24 A I would only be guessing, but I would say 1997. 25 Somewhere in that range.	1 you. 2 Q So you remember going to the headquarters in 3 McDonough, Georgia -- 4 A Yes, sir. 5 Q -- and having a meeting there; is that correct? 6 A I think it was a couple days. It was over a 7 couple-day period. 8 Q Okay. Do you remember anybody that you met with 9 there? 10 A I remember the president, Jack Roberts. Other 11 than that, I really don't remember any of the other 12 people. 13 Q You remember they trained you how to operate 14 board meetings? 15 A To some extent. Yes, sir. 16 Q And you -- you remember they discussed 17 recruiting more people to be in the PBA? 18 A I think part of it was about recruiting, but I 19 couldn't be specific. 20 Q Do you remember anything else from the meetings? 21 A No, sir. 22 Q Did they ever talk to you about the structure of 23 the PBA and what it did? 24 A I don't recall that. 25 Q Did they ever tell you the PBA was an insurance
Page 26	Page 28
1 Q How long were on the board? 2 A I'm not sure. I don't even know how long the 3 terms run. I would guess six months to a year, but 4 I'm really not certain. 5 Q While you were on the board, what sort of things 6 did you do? 7 A Basically we tried to recruit other -- other 8 members within the agency. I wasn't really active in 9 it, so I -- I didn't have a whole lot of involvement 10 in it. I attended a few board meetings here and 11 there, but that was about it. 12 Q Have you ever been to McDonough, Georgia, to the 13 headquarters? 14 A Yes, sir. 15 Q When -- how did you wind up doing that? 16 A They sent a group of us from -- once I -- after 17 I got onto the board, they had some type of training 18 that we went to up there. 19 Q What was the training? 20 A It was about the PBA. I mean, I -- again, it's 21 been so long ago, I -- from what I recall, I think 22 part of it was about recruiting, but -- well, one 23 thing that stuck out was about how to run board 24 meetings under -- I think it's Robert's Rules of 25 Order. But other than that, I really couldn't tell	1 company? 2 A No. 3 Q Has anyone ever told you the PBA is an insurance 4 company? 5 A The -- nobody has told me the PBA is an 6 insurance company. It's just come to my attention 7 that they're operating as an insurance company. 8 Q Why do you think they were operating as an 9 insurance company? 10 A Because they're -- the principle that -- that 11 you're paying them for coverage. You're -- you're 12 paying your -- your premiums for -- for coverage 13 basically, and when you need coverage they're 14 supposed to cover you. 15 Q Right. 16 A Such as what a insurance company would be for. 17 Q Did they ever tell you this is coverage or 18 insurance coverage? 19 A Not -- I don't think they used those words 20 specifically. 21 Q Okay. That's your word? The coverage word is a 22 word you're using? 23 A Yes, sir. 24 Q That's not a word they used? 25 A Not that I recall. No, sir.

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1 Q All right. And when you were on the board, did
2 you learn about how the PBA is run, who's responsible
3 for running it?
4 A I -- I don't recall specifically. I do know
5 that -- that Jack Roberts was the president at the
6 time. I don't know -- basically I don't know how the
7 matters were handled. I don't recall that.
8 Q Do you remember electing officers when you were
9 on the board?
10 A We had -- we did elect officers. I think we
11 elected a treasurer. Or we might not -- I don't even
12 know if we elected a treasurer. I think we had a
13 local chapter president, but I'm -- I'm not sure,
14 though. It's been so long ago.
15 Q Right. But you're aware, at that time and now,
16 that the PBA is run by the membership?
17 MR. BRADLEY: Object to the form.
18 A I'm -- I am not specifically aware of that, no.
19 I -- I do know that members take a part.
20 BY MR. BRADLEY:
21 Q Right. But, I mean, who elects the people that
22 are in charge of the PBA, the board?
23 A As far as locally, it would be -- they -- they
24 would -- people within the agency would vote, that
25 are members.

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1 Q All right. The membership elects the officers;
2 right?
3 A Right. But as --
4 Q That's the way --
5 A -- far as ---
6 Q -- it was in 1997; right?
7 A Yes, sir.
8 Q That's the way it is now; right?
9 A I assume. I just -- I -- I haven't received a
10 ballot in quite some time.
11 Q Okay.
12 A Now, I do recall we used to get ballots sent to
13 us.
14 Q Right. And you know it's a non-profit
15 organization?
16 A I have -- I believe I recall seeing that. Yes,
17 sir.
18 Q Do you know what the purpose of the PBA is?
19 A To cover police officers in the event they need
20 legal services.
21 Q That's the only purpose of it, as far as you
22 know?
23 A I'm sure there are other purposes, but I'm not
24 sure what.
25 Q Well, what were the purposes that you remember

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1 of it, when you were on the board?
2 A My main concern was -- was legal coverage --
3 Q All right.
4 A -- in the event that -- involved in a similar
5 situation, such as a shooting or something like that.
6 Q But you know that's not all the PBA does?
7 A Correct.
8 Q What are the -- some of the other things it
9 does?
10 A They will represent you for matters related to
11 your employment, as far as I know, as far as
12 disciplinary issues.
13 Q Right.
14 A Other than that, I'm not really certain.
15 Q All right. Don't they help pick candidates to
16 endorse? You're aware of that, aren't you?
17 A I do recall, years ago, that when Scarlett
18 Wilson was running for solicitor, the PBA endorsed
19 her.
20 Q All right. And you know that the PBA supports
21 officers who are in trouble? You know that, don't
22 you?
23 A Yes, sir.
24 MR. RICHTER: Object to the form.
25 BY MR. BRADLEY:

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1 Q All right. And that the PBA helps officers
2 who've had some tragedy in their life, maybe even not
3 even related to being a police officer?
4 A I'm not aware of that.
5 Q Okay. And are you aware the PBA publishes a
6 police magazine for its members?
7 A Yes, sir.
8 Q All right. And it trains the local boards on
9 how to run their organizations?
10 A Yes, sir.
11 Q All right. And you're aware that it also
12 lobbies on behalf of police officers in state and
13 federal governments?
14 A That's my understanding.
15 Q Isn't that one of the things that you'd want
16 from the PBA to do?
17 A I wouldn't -- I wouldn't have -- I don't object
18 to that. I mean, I do agree that we need people
19 representing us, yes.
20 Q All right. And you'd agree that the purpose of
21 the PBA is to support police officers, wouldn't you?
22 MR. RICHTER: Object to the form.
23 A That's the general intended purpose is -- what
24 it should be, yes.
25 BY MR. BRADLEY:

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1 Q And that's what you were doing when you were an
2 officer -- a local officer?
3 A That -- I assume so.
4 Q Right.
5 A My -- my attempt was to -- to try and learn more
6 about it and take some part in it.
7 Q Right. To support your fellow officers?
8 A Yes, sir.
9 Q All right. 'Cause that's the whole purpose of
10 the PBA, is to support police officers?
11 MR. RICHTER: Object to the form.
12 A To the best of my knowledge.
13 BY MR. BRADLEY:
14 Q All right. In lots of different ways?
15 A I assume.
16 Q Well, I mean, you know that they lobby for
17 police officers; right?
18 A That's my assumption. I mean, I -- I don't -- I
19 don't know what they lobby for --
20 Q Right.
21 A -- but I -- from what I recall, I think they do
22 have lobbyists.
23 Q And you know they help organize police officers
24 into chapters?
25 A As far as I know, yes, sir. Yeah.

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1 Q All right. And you know that they endorse
2 political candidates on behalf of police officers?
3 A Yes, sir.
4 Q All right. And you know that they publish a
5 magazine for police officers?
6 A Yes, sir.
7 Q And you know that they support police officers
8 in other ways?
9 A I -- that would be my assumption. I -- I don't
10 know for certain, because I haven't had firsthand
11 knowledge of it. But I assume they would.
12 Q All right. And you know that they also provide
13 lawyers for police officers, in situations where they
14 need them?
15 A That's my understanding to what they're supposed
16 to do. Yes, sir.
17 Q All right. And as far as you know, in every
18 situation that you ever know of, they've done all
19 those things, just like they promised, except for the
20 dispute with Mr. Slager?
21 A Mr. Slager's situation is the only one that I'm
22 aware of.
23 Q All right. And you understand that's been
24 resolved?
25 A I -- I don't know whether it has or not.

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1 Q Well, it has been.
2 A Okay.
3 Q Mr. Slager is resolved and that's done. That's
4 over.
5 Do you know, besides Mr. Slager, of any person,
6 anywhere, where the PBA has not done what they
7 promised to do?
8 A I'm not aware of it. No, sir.
9 Q All right. Did you ever receive an insurance
10 policy from the PBA?
11 A Received guidelines on coverage. I don't know
12 if you'd consider it policy or not.
13 Q Have you ever received any document, anywhere,
14 that says it's an insurance policy from the PBA?
15 A No, sir.
16 Q All right. Have you ever received any member
17 benefit policy from the PBA and reviewed it yourself?
18 A There was -- I think on the pamphlet or -- or
19 the application, there was -- I don't know if it
20 contained all of the policies or not, the -- but
21 recall there were policies of -- listed on there, I
22 believe.
23 Q And then -- the legal defense is -- was called,
24 in all the materials, a member benefit policy, wasn't
25 it?

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1 A I can only assume. It's -- it's been so long
2 since I've seen one.
3 Q Okay. And you've never seen anything that says
4 it's an insurance policy?
5 A No, sir.
6 Q And you've never been charged anything that says
7 it's an insurance premium?
8 A No, sir.
9 Q All right. Have you ever requested to see a
10 policy or anything of that nature?
11 A No, I have not.
12 Q All right. Did anyone associated with the PBA
13 ever tell you it was selling insurance?
14 A No, sir.
15 Q All right. Is there anything ever, that you've
16 ever seen written down, where the PBA has represented
17 that it's selling insurance?
18 A No, sir.
19 Q All right. Have you ever made any request of
20 the PBA that PBA has refused to honor?
21 A No, sir.
22 Q Everything you've ever asked the PBA to do, it's
23 done?
24 A That I've personally asked, yes, sir.
25 Q And as far as you know, that's true for every

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1 law enforcement officer that's a member, except for
2 Mr. Slager?
3 A As my -- far as I know. I -- I don't have
4 specific knowledge if there's been other instances or
5 not, so...
6 Q You don't know of anybody, in any law
7 enforcement capacity, that's ever been denied
8 something from the PBA?
9 A No, sir.
10 Q All right. Even talking to different people
11 with the -- in law enforcement, you've never heard of
12 it?
13 A No, sir.
14 Q All right. Have you ever asked around? Like,
15 talked to your fellow officers, Hey, y'all ever have
16 a problem with the PBA?
17 A I have not.
18 Q All right. How did you feel about what happened
19 with Mr. Slager and the PBA?
20 A I was basically disgusted about it. You know,
21 we -- as a member, we pay dues to -- to support not
22 only myself, but other members. And I -- I felt that
23 it was completely inappropriate. It ultimately came
24 down to one guy's decision.
25 Q Right. You -- you thought it was improper that

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1 the PBA decided not to defend Mr. Slager?
2 A Yes, sir.
3 Q All right. Besides that decision, has the PBA
4 ever done anything that you thought was improper?
5 A No, sir.
6 Q All right. And now that you've learned that the
7 PBA has resolved the dispute with Mr. Slager and
8 Mr. Slager is satisfied with what the PBA has done,
9 does that change your feeling about the PBA at all?
10 A You know, my feelings are that they need to be
11 regulated. And that's part of the -- what was
12 brought to light, is that they're not regulated in
13 any manner. There's no oversight. We really don't
14 know where the money's being spent, who's making the
15 decisions.
16 Q Who is in charge of where the money's being
17 spent and who makes decisions?
18 A I have no idea.
19 Q Would it be the members, the people who are
20 elected by the membership?
21 A I -- I -- I don't know. I mean --
22 Q Have you ever asked that question?
23 A I've never asked. No, sir.
24 Q Have you ever asked, Hey, who's making all the
25 decisions about how to spend money, and this, that

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1 and the other?
2 A I have not.
3 Q Have you ever gone to your local chapter
4 officers to ask them that?
5 A No, sir. I don't even know who they are.
6 Q You don't even know who your chapter officers
7 are?
8 A No, sir.
9 Q Have you ever made any attempt to ask this
10 question, before you sued the PBA?
11 A No, sir.
12 Q Have you ever asked any other police officer,
13 Hey, what's going on with the PBA, who's making these
14 decisions?
15 A No.
16 Q Why didn't you --
17 MR. RICHTER: Object to the form.
18 BY MR. BRADLEY:
19 Q -- if you're concerned about it?
20 A I -- basically I felt that it would play itself
21 out and we'll find out where it needs to go and --
22 Q Well --
23 A -- take it from there.
24 Q -- I mean, I'm assuming you were concerned that
25 the PBA was not -- you didn't like the way they were

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1 making decisions?
2 A No, I do not.
3 Q Okay.
4 A Not with -- not with -- specifically with
5 Michael Slager, sir.
6 Q Absolutely. But you realize that's resolved?
7 Mr. Slager has dismissed his lawsuit. PBA has
8 entered into an agreement with him, and everyone has
9 walked away from that.
10 A No -- if you say so.
11 Q It's a matter of --
12 A I haven't spoken --
13 Q -- public record.
14 A I haven't spoken with Mr. Slager about it,
15 so ---
16 Q I understand. But there's no dispute. It's --
17 it's on file with the courthouse --
18 A Sure.
19 Q -- that it's resolved.
20 Now that that's resolved, have you made any
21 inquiry into, Hey, who's making these decisions,
22 who's electing these people, or who's in charge?
23 A I have not.
24 Q And since you're concerned about how the PBA
25 works, why haven't you made those inquiries?

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1 MR. RICHTER: Object to the form. 2 A The -- when this situation developed, I 3 explained to Andy Savage that -- which, he was aware 4 I was a PBA member. I explained to him that if 5 there's any way at all -- 6 MR. RICHTER: Well, don't -- wait -- let me 7 instruct him not to discuss -- 8 MR. BRADLEY: Yeah. 9 MR. RICHTER: -- communications he's -- 10 MR. BRADLEY: That's fair. 11 MR. RICHTER: -- had with Andy Savage. 12 THE DEPONENT: Yes, sir. 13 BY MR. BRADLEY: 14 Q If Andy's representing you, it would be improper 15 for you to say what he's told you. And your -- 16 A Yes, sir. 17 Q -- lawyer is absolutely right to tell you not 18 say it. And I agree. I'm not gonna get in that 19 fight with you. 20 My question is just this. You said you were so 21 concerned about the PBA and it's not regulated and 22 who's making the decisions, where does the money go; 23 did you ever ask anybody involved with the PBA to 24 answer those questions for you -- 25 A I did not.	1 Q Did you ever write a letter to them and say, can 2 you explain what's going on? 3 A No, I did not. 4 Q All right. You just sued them? 5 A Yes, sir. 6 Q Well, if you're so concerned about how it's 7 working, why didn't you just ask a question before 8 you brought a lawsuit? 9 A I -- the bottom line is -- is that I do feel 10 they need to be regulated. I don't have -- 11 basically, I don't have a mechanism that -- that -- 12 who -- who would I contact? I mean, the -- the --- 13 Q I don't know. Why don't you -- 14 A One -- 15 Q -- ask your -- 16 A One -- one man in charge -- 17 Q -- local board? 18 A One man in charge made the decision to drop the 19 coverage. And as far as I know, he was the head of 20 the organization. I don't know if he still is or 21 not, but -- 22 Q Well, do you know that there's a local board for 23 your group? 24 A I am aware there is a board, but I don't know -- 25 Q All right.
Page 42	Page 44
1 Q -- before you sued them? 2 A No, sir. 3 Q Why didn't you, if these are your fellow police 4 officers? 5 A I -- basically, I'm -- I'm leaving that up to 6 the attorneys to determine whether it -- it was being 7 operated as it should be or not. 8 Q Well, you know you have a local chapter 9 president; right? 10 A I -- I assume we do. I -- I don't know. I 11 haven't seen --- 12 Q Well, you were on the board. You know how it 13 works; right? 14 A Yes, sir. Uh-huh. 15 Q And you know there's a local chapter president 16 for every chapter; right? 17 A There should be. Yes, sir. Yeah. 18 Q All right. Did you ever go to any member of the 19 local board and say, Hey, I've got a real problem 20 here? 21 A No, sir. 22 Q Did you ever go to the local chapter president 23 and say, What are y'all doing, this doesn't seem 24 right to me? 25 A No, sir.	1 A -- who's on it. 2 Q Okay. And you're aware there's a local chapter 3 president? 4 A I -- I would assume so. Yes, sir. 5 Q Do you know Dave Soderberg? 6 A I do know him, yes. 7 Q Did you -- do you know he's active with the PBA? 8 A I do. I don't know what his role is right now. 9 Q You know he's the Senior Vice President for the 10 whole organization? 11 A I -- I was not aware of that. No, sir. 12 Q He works in the same department with you, 13 doesn't he? 14 A No, he works at Goose Creek -- 15 Q Okay. 16 A -- Police Department. 17 Q He works at a department in the town where you 18 live? 19 A Correct. 20 Q And you know it? 21 A I've -- by passing him. I don't have a phone 22 number or anything like that. 23 Q Well, you can -- 24 A In other words -- 25 Q -- find Dave Soderberg --

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1 A -- if I ran into him, I would know him and he
2 would know me.
3 Q You can pick up the telephone and find Dave
4 Soderberg in --
5 A I'm --
6 Q -- five minutes, couldn't you?
7 A I'm sure I could, yes, sir.
8 Q All right. And he's the president for the
9 entire state of South Carolina.
10 A Okay.
11 Q Well, you know he's been active in the
12 organization for years; right?
13 A Yes, sir.
14 Q So you've heard of him?
15 A Uh-huh. Yes, sir.
16 Q 'Cause he's been active in it for at least five,
17 ten years; right?
18 A I don't know how long he's been active, but I
19 know it's been some time.
20 Q And all you could do -- you could've picked up
21 the phone and called Dave.
22 MR. RICHTER: Object to the form.
23 A Yes, sir.
24 BY MR. BRADLEY:
25 Q Well, why didn't you?

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1 MR. RICHTER: Object to the form.
2 A I don't have an answer for that. I ---
3 BY MR. BRADLEY:
4 Q Okay. Why don't you call him now, if you have a
5 concern about how it runs?
6 A I don't feel it would be appropriate, at this
7 point.
8 Q Well, if you're concerned about how an
9 organization you're a member of runs, why don't you
10 run for office in it?
11 A I haven't considered that.
12 Q All right. You just sued it instead?
13 A Yes, sir.
14 Q All right. Take a look at paragraph 24 of your
15 complaint. Each paragraph has a number --
16 A Sure.
17 Q -- so find the one that says 24, here.
18 A (Deponent complies.)
19 Q Are you there, Mr. Stanley?
20 A I am.
21 Q All right. It says, Over the years, Plaintiff
22 Stanley has been present at meetings of police
23 officers in Charleston County at which agents of the
24 Defendant appeared for the purpose of selling
25 memberships in the PBA.

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1 Is that true?
2 A Yes, sir.
3 Q All right.
4 A I think that that -- there's been
5 representatives, basically trying to increase
6 membership or...
7 Q So people come and say, Hey, you should be a
8 member of the PBA?
9 A Yes, sir.
10 Q Who are those people?
11 A I have no idea.
12 Q When were those meetings?
13 A I couldn't tell you that. It's -- it's -- it's
14 been years since I've been to a meeting.
15 Q How many meetings have you been to?
16 A I couldn't give you an answer to that, either.
17 I ---
18 Q Where were the meetings?
19 A We used to host them at various hotels.
20 Radisson Inn in North Charleston. I believe what
21 used to be the Sheraton in North Charleston, they've
22 -- they've held meetings there.
23 Q Were these meetings of the PBA or meetings where
24 all -- where all law enforcement officers were
25 invited to come and talk about what the PBA would do?

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1 A They -- anybody would be invited to talk about
2 what the PBA would do.
3 Q All right. Were these normal PBA meetings or
4 were they special recruiting meetings?
5 A No, most of the time it was involving the board
6 issues, as well.
7 Q So you're talking about membership meetings of
8 the PBA, at which other law enforcement officers were
9 invited to come?
10 A Yes, sir.
11 Q And so the people that were there were the
12 elected board members for the local chapter?
13 A Yes, sir.
14 Q And sometimes somebody from Georgia -- the main
15 office -- would come and talk too; right?
16 A I don't know if they were from Georgia or where
17 they're from; but yes, we did have people come and
18 talk to us.
19 Q Well, you know they had offices in McDonough,
20 Georgia?
21 A Yes, sir. Yeah.
22 Q 'Cause you've been there?
23 A Correct.
24 Q And so people would come from there to the
25 meeting; right?

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1 A I -- again, I don't know where they came from.
2 I -- my --
3 Q All right.
4 A -- assumption would be they came from there, but
5 I'm not really certain.
6 Q Somebody would come from the main PBA to meet
7 with the chapter; right?
8 A That would be my assumption, is that -- where
9 they were from. But again, I -- I can't tell you
10 specifically where -- whether they were, you know,
11 from upper part of the board in South Carolina or if
12 it was from the main chapter -- or the main
13 organization, itself, out of Georgia.
14 Q And the elected board would be there too?
15 A Yes, sir.
16 Q All right. And they would have a meeting to
17 talk about issues that were important to police
18 officers?
19 A Yes, sir.
20 Q What kind of issues would they talk about?
21 A Again, it's kinda -- it's -- it's stretching
22 out, because of the years, but, you know, the --
23 basically the representation from the PBA and what
24 they will do for you.
25 Q All right. So one thing they talked about is

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1 what the PBA would do?
2 A What I recall, yes, sir.
3 Q All right. And what would they say?
4 A You know, I mean, you get involved into a
5 situation where you need an attorney, such as a -- a
6 shooting or an accident, or basically any -- anything
7 that -- where somebody is -- I guess you would say
8 use of force has taken place. The -- they could --
9 they could provide representation.
10 Q Okay. That's one of the things that they would
11 say at this meeting?
12 A I -- I can't give you verbatim what
13 specifically, but --
14 Q Not asking that. I --
15 A Yeah.
16 Q I understand it's in your words.
17 A Yes, sir.
18 Q Anything else that they would say at these
19 meetings?
20 A Again, it's been so long ago, I'd -- I really
21 couldn't tell you.
22 Q Did they talk about what's going on with the
23 local chapter?
24 A I don't recall that.
25 Q Did they talk about issues of concern to police

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1 officers, nationally or locally?
2 A I don't -- I don't recall that --
3 Q Did they have --
4 A -- as well.
5 Q -- elections for the board?
6 A From what I recall, the elections -- or if --
7 you're specifically talking about electing board
8 members to the board?
9 Q Yes.
10 A I remember, years ago, they used to send -- we
11 -- we -- you'd receive it in the mail. It would be
12 a --
13 Q They send you a paper ballot in the mail
14 sometimes?
15 A There you go. Thank you. I was trying to --
16 Q Right.
17 A -- think of the word.
18 Q And sometimes they would have the elections at a
19 meeting of the membership?
20 A I don't recall doing elections at the meetings,
21 but I do recall the --
22 Q When was the last --
23 A -- the paper ballots.
24 Q -- one of these meeting that you went to?
25 A It -- it's probably been back in the 90's.

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1 Q Okay. So you haven't been to a meeting in 20
2 years, of the PBA?
3 MR. RICHTER: Object to the form.
4 A Well --
5 BY MR. BRADLEY:
6 Q Well, how long ago was --
7 A -- somewhere in that vicinity.
8 Q -- the last meeting you went to? All right.
9 A Yes, sir.
10 Q At least 15, and probably 20 years, since you've
11 been to a PBA meeting?
12 A Yes, sir.
13 Q So all these representations that you're talking
14 about at meetings, in paragraph 24, took place at
15 least 15, and perhaps even 20 years ago?
16 A Yes, sir.
17 Q All right. In the last 15 years, have you heard
18 any of these representations that you're talking
19 about?
20 A I've been told that they had a -- a meeting
21 where they tried to recruit members after the Michael
22 Slager incident, and it was -- it was at North
23 Charleston. I don't know specifically -- I -- I'll
24 put it this way. A lot of North Charleston police
25 officers were at the meeting. I don't know if it

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1 was -- 2 Q Right. 3 A -- it was specifically at their agency or 4 elsewhere. 5 Q Right. 6 A Just word of mouth that I heard about that one. 7 Q There was a recent meeting, after Mr. Slager was 8 arrested? 9 A It was actually after his coverage was dropped. 10 I don't know how long after. 11 Q All right. And what happened at this meeting? 12 A My understanding is that -- that a lot of the 13 law enforcement officers there were not very happy 14 with the PBA. And I -- I don't know if it was 15 confrontational or not, as far as with the 16 representative, but I don't think it was a successful 17 meeting, is my understanding. 18 Q Okay. And who is it that told you this? 19 A I want to say my wife, but it could have been -- 20 I mean, it very well could have been somebody else. 21 I think it was my wife, though. 22 Q Do you know -- then was your wife at the 23 meeting? 24 A No, sir. 25 Q So your wife told you that somebody else told	1 Q All right. That is what took place 15 or 20 2 years ago? That's what you're talking about? 3 A From what I recall. Yes, sir. 4 Q Okay. So whatever you're talking about, in 5 paragraph 25 of your complaint, took place 15 or 20 6 years ago? 7 A Yes, sir. 8 Q All right. And then in paragraph 26, you say 9 the Defendant never revealed that it lacked a proper 10 license, and this sort of thing, in selling the Plan. 11 That's also what took place 15 or 20 years ago? 12 A Well, it's been over the course of my 13 membership. I've -- I've never been -- it's never 14 been brought to my attention that they were not 15 licensed -- 16 Q I -- I understand that. 17 A -- as an insurance company. 18 Q I understand that you believe, for some reason, 19 that they are an insurance company. Right? 20 A I think they're acting the same as an insurance 21 company would. 22 Q I understand that's your opinion. 23 My question is, paragraph 26 says, In selling 24 the Plan -- you see how it starts? 25 A Yes, sir.
Page 54	Page 56
1 her that they had a meeting that didn't go well? 2 A Yeah. Yes, sir. 3 Q All right. Do you know the person that told 4 your wife about the meeting? 5 A No, sir. I don't. 6 Q Do you know the name of any person that was at 7 this meeting? 8 A I do not. 9 Q Could you find out the names of people who were 10 at the meeting? 11 A I -- I may be able to. I'm not a hundred 12 percent certain. 13 Q How would you go about doing that? 14 A I would start by asking my wife -- 15 Q Okay. 16 A -- if she knew. 17 Q Okay. But the meetings that you're talking 18 about, in paragraph 24 of your complaint, took place 19 15 or 20 years ago? 20 A Yes, sir. 21 Q All right. And see in paragraph 25, there where 22 it says, In selling the merits of membership to the 23 PBA, the Defendant advanced one benefit in particular 24 -- all that sort of thing that you've got there? 25 A Yes, sir.	1 Q And when you're saying that, when they were 2 selling the plan, you're talking about 15 or 20 years 3 ago when you were at the meeting? 4 A Yes, sir. 5 Q All right. Because you haven't been to any 6 meetings in 15 or 20 years? 7 A Correct. 8 Q So you don't know what's happened at any of 9 those? 10 A I couldn't tell you specifically. No, sir. 11 Q All right. So you don't know that, when you're 12 alleging in paragraph 6 (sic) that the -- when the 13 Defendants were signing up people to be members, that 14 they did any of this stuff, 'cause you weren't there? 15 MR. RICHTER: Object to the form. 16 A I don't know specifically what was presented at 17 the meetings. 18 BY MR. BRADLEY: 19 Q All right. And then in paragraph 27 -- do you 20 see that one? 21 A Yes, sir. 22 Q Okay. It says, In selling the Plan -- that's 23 the way that paragraph starts out too; right? 24 A Yes, sir. 25 Q And once again, in your complaint, you're

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1 talking about selling the plan when you were at the
2 meetings 15 or 20 years ago?
3 A Yes, sir.
4 MR. RICHTER: Object to the --
5 BY MR. BRADLEY:
6 Q All right.
7 MR. RICHTER: Object to the form.
8 BY MR. BRADLEY:
9 Q And you say that we -- the Defendant, the PBA,
10 played upon the fear of financial devastation. Do
11 you see that?
12 A Yes, sir.
13 Q Is that what happened 15 or 20 years ago?
14 A Yes, sir.
15 Q Do you have any information that it's happened
16 recently?
17 A I don't.
18 Q Do you have any information it's happened in the
19 last 15 years?
20 A I've seen no -- well, I -- I don't have any
21 information. No, sir.
22 Q All right.
23 A No.
24 Q Okay. And you don't remember the names of
25 anybody who was at these meetings, 15 or 20 years

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1 ago?
2 A No, sir.
3 Q But you do remember that the local board was at
4 the meeting?
5 A From -- I don't know that all the local board
6 was there, but I think for the most part, yes, sir.
7 Q All right. And that the -- the officers of the
8 board were there? People like you, Dave Soderberg,
9 who were officers --
10 A I don't --
11 Q -- in the organization?
12 A I don't recall Dave attending our meetings. I
13 think he might've been on a different chapter. I'm
14 not certain.
15 Q Fair enough. In your chapter -- and we're
16 talking about -- are you talking about North
17 Charleston?
18 A Yes, sir.
19 Q Okay. You remember going to the meetings and
20 the North Charleston officers were there?
21 A Yes, sir.
22 Q And when I say officers, I mean the officers of
23 the organization --
24 A Correct. Yes, sir.
25 Q -- who had been elected by the membership --

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1 A Right. Yes, sir.
2 Q -- to do what the membership wanted?
3 A Yes, sir.
4 Q All right. And when you were elected as an
5 officer, was it in North Charleston?
6 A Yes. I was at North Charleston at that time.
7 Q All right.
8 A Yes, sir.
9 Q And it -- was it your understanding that, as an
10 officer of the PBA, that your job was to do what was
11 best for the membership?
12 A I -- from what I recall, I -- I think the point
13 of -- of our local chapter was to actually try and
14 recruit more membership. Specifically -- I -- I
15 don't recall what we were supposed to do, as far as
16 -- other than recruitment, basically.
17 Q All right. Certainly recruitment is -- was one
18 of the goals of the organization; right?
19 A Yes, sir. Yes, sir.
20 Q But, there were other things the organization
21 did. It'd take care of police officers; right?
22 A I -- I would assume.
23 Q But you don't know what they are?
24 A I don't specifically know of instances.
25 Q Have you been active at all in the PBA, in the

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1 last 15 or 20 years?
2 A No, sir. Other than a member, that's it.
3 Q Have you ever volunteered to do anything on any
4 of their groups or committees?
5 A No, sir.
6 Q All right. Have you ever done anything to help
7 the organization thrive or survive?
8 MR. RICHTER: Object to the form.
9 A No, sir.
10 BY MR. BRADLEY:
11 Q All right. All right. What's your
12 understanding -- you said that -- in your complaint,
13 that the PBA talked about the legal defense benefit
14 at the meetings; right?
15 A Yes, sir.
16 Q All right. And what was your understanding of
17 what the legal defense benefit was?
18 A That if you were involved in a situation, such
19 as a shooting, you would be provided representation,
20 there's no caps or limits on the amount of money that
21 would be spent.
22 Q All right. And is it your understanding that
23 that's been honored, except in the situation of
24 Mr. Slager?
25 A As far as I know. I mean, I don't know if

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1 there's any other instances out there, other than
2 this one with Mr. Slager.
3 Q Do you have any belief that the no-cap, no-limit
4 representation was dishonest?
5 A I don't -- I don't want to say dishonest, but I
6 -- I think it was misleading and -- specifically with
7 Michael Slager.
8 Q I understand that.
9 A But --
10 Q And as far as I understand, Mr. Slager --
11 A -- other than that --
12 Q -- we've resolved our difference with
13 Mr. Slager.
14 A Yes, sir.
15 Q Mr. Slager thought one thing, PBA thought
16 another. That was disputed in our court system and
17 has been resolved.
18 A Uh-huh.
19 Q Okay. So I'm not talking about that, 'cause
20 that case is over.
21 Besides Mr. Slager, do you have any reason to
22 believe that, in any situation, the PBA has ever
23 misrepresented anything to you?
24 A As -- as far as -- previously you were talking
25 about a cap and limit.

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1 Q Right.
2 A Referring to that, I -- I don't -- I don't have
3 any reason to believe that they have, other than,
4 like I already said, the Michael Slager incident.
5 Q Absolutely. Beside -- with Mr. Slager out, do
6 you have any information that anything anybody with
7 the PBA has ever done has been dishonest?
8 A Not -- not to my knowledge.
9 Q All right. Do you have any knowledge of
10 anything anybody with the PBA has done that's
11 fraudulent?
12 MR. RICHTER: Object to the form.
13 A I -- I don't -- I don't know if it would fall
14 under fraudulent or not, as far as -- I mean, it's
15 still my belief that they need to be regulated. I --
16 if -- if that's --
17 BY MR. BRADLEY:
18 Q I understand. I -- I understand that you
19 believe that the PBA should be regulated as an
20 insurance company.
21 A Yes, sir.
22 Q All right. Now that we've got that understood,
23 do you know of anything that the PBA has ever done
24 that's fraudulent?
25 MR. RICHTER: Object to the form.

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1 A Not specifically. No, sir.
2 BY MR. BRADLEY:
3 Q All right. In general, do you know of anything
4 at all that the PBA has ever done that's fraudulent?
5 MR. RICHTER: Object to the form.
6 A Not -- best of my knowledge.
7 Q All right. Do you know, besides Mr. Slager, of
8 anybody who's ever been denied anything from the PBA?
9 A No, sir. I'm not aware of any.
10 Q All right. Do you know of anytime anybody from
11 the PBA tried to mislead anyone?
12 A Not that I'm aware of.
13 Q Okay. And you don't know of anytime anybody
14 from the PBA told a lie?
15 A Not that I recall. No, sir.
16 Q All right. Or anytime they misrepresented the
17 truth?
18 A Not that I recall.
19 Q Is there anything that you think the PBA should
20 have told you that they didn't tell you?
21 A The only thing that -- the only thing that I
22 think that should have been told is -- and I'm
23 reverting back to Michael Slager's situation -- is
24 that one man made the decision. It wasn't a decision
25 made by a group or by a board. I think it's a lot to

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1 put on one person.
2 Q All right. As an organization, you feel like it
3 should be a group of people who make the decision
4 whether or not to extend the member benefit?
5 A I think, at a minimum, it -- it -- it -- I don't
6 think it should be up to one individual. I'll put it
7 that way.
8 Q Absolutely. Right. And is it your position
9 that you think that the PBA should tell people that
10 one person is the -- under the procedure, that one
11 person was making the ultimate decision?
12 A I really don't know what the proper way of
13 handling that would be.
14 Q Right.
15 A As I -- and -- and I'm -- I'm -- will revert
16 back to I think that if it was regulated, I think it
17 would be a little bit -- it -- it'd be more -- a
18 little more standardized --
19 Q All right.
20 A -- and there would be methods which they would
21 have to go by -- laws they would have to abide by.
22 Q You mean, if they were regulated as an insurance
23 company --
24 A Yes, sir.
25 Q -- they would have to be regulated by the

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1 Insurance Commission?

2 A Yes, sir.

3 Q All right. I understand that that's your

4 position. My question is, is there something that

5 the PBA either hid from you or should have told you?

6 Anything at all?

7 A Other than the fact that, again, it was left up

8 to one person's decision. No -- other than that, no,

9 sir.

10 Q Is there anything at all that the PBA hid or

11 should have told anybody, that you know of?

12 MR. RICHTER: Object to the form.

13 A Other than that, I'm -- I don't -- don't think

14 so.

15 BY MR. BRADLEY:

16 Q Did you ever read the member benefit yourself,

17 before you brought this lawsuit?

18 A I -- I've seen -- I can't say that I've seen it

19 entirely. I possibly have, but I -- I have read

20 through a good bit of it.

21 Q All right. Did you read it after you brought

22 the lawsuit or before you brought the lawsuit?

23 A Well, when I joined, there was a portion of the

24 member benefit -- or I assume it was a portion, it

25 may have been the whole member benefit -- that was

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1 provided on the -- on the paperwork -- on the

2 application. I've also since looked at it, since

3 what happened with Mr. Slager.

4 Q Right. And it does say that the Chief Officer

5 is the person that makes the ultimate decision.

6 MR. RICHTER: Object to the form.

7 A It may say that. I -- I don't recall seeing

8 that specifically.

9 BY MR. BRADLEY:

10 Q You don't recall?

11 A Yes, sir. It --

12 Q But it -- but if it does, it's been written down

13 the whole time, that that's who makes the ultimate

14 decision?

15 MR. RICHTER: Object to the form.

16 A I couldn't answer that.

17 BY MR. BRADLEY:

18 Q All right. Do you know of anything the PBA has

19 done to hide that, in any way?

20 MR. RICHTER: Object to the form.

21 A Not that I'm aware of.

22 BY MR. BRADLEY:

23 Q All right. One of the things you allege in your

24 lawsuit is that you received a wallet card from the

25 PBA.

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1 A Yes, sir.

2 Q Do you have it with you today?

3 A I do.

4 Q Take a look -- it's attached to the complaint.

5 It's an exhibit there, Exhibit B. Whenever you're

6 ready -- there, Mr. Stanley, tell me.

7 A Yes, sir. I'm here.

8 Q All right. Is this a copy of the wallet card

9 that the PBA sent to you?

10 A Yes, it is.

11 Q All right. Is there anything on this wallet

12 card that is incorrect?

13 MR. RICHTER: Object to the form.

14 A I don't see anything that would be incorrect.

15 BY MR. BRADLEY:

16 Q All right. Is there anything on it that you

17 believe to be deceitful?

18 A Nothing that stands out.

19 Q Is there anything on it that you believe is a

20 lie?

21 A No, sir.

22 Q Is there anything on it that the PBA has ever

23 refused to honor for you?

24 A Not for me, specifically. No, sir.

25 Q Okay. And other than Michael Slager, is there

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1 anything on it that the PBA has ever refused to honor

2 for anyone you know of?

3 A Not that I know of.

4 Q Okay. Do you have any complaint, whatsoever,

5 with the wallet card you were issued?

6 A No, sir.

7 Q Do you think it deceived you, by -- in some way?

8 A No, sir.

9 Q Do you think it deceived anyone in any way?

10 MR. RICHTER: Object to the form.

11 A I -- just the mere wallet card itself, I don't

12 see it as being deceptive.

13 BY MR. BRADLEY:

14 Q All right. Okay. Have you ever talked to

15 anybody who's a member of the PBA in North Carolina

16 about this?

17 A I have not.

18 Q How about Virginia?

19 A No, sir.

20 Q Louisiana?

21 A No, sir. I don't --

22 Q West Virginia?

23 A No, sir.

24 Q Arkansas?

25 A No, sir.

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1 Q Tennessee?
2 A No, sir.
3 Q Alabama?
4 A No, sir.
5 Q Kansas?
6 A No, sir.
7 Q Have you ever talked to anybody, in any of those
8 states, about the PBA and the problem you have with
9 it?
10 A No, sir.
11 Q All right. Do you know of anything the members
12 of the PBA in those states have to do with South
13 Carolina?
14 MR. RICHTER: Object to the form.
15 A Well, as far as the -- they all pay dues into
16 the same organization.
17 BY MR. BRADLEY:
18 Q Right. But the organization is not based in
19 South Carolina; right?
20 A Correct.
21 Q You know the organization is based in Georgia?
22 A Yes, sir.
23 Q So, for instance, somebody who's in North
24 Carolina is a member of the Georgia organization;
25 right?

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1 A I don't know specifically how the breakdown is
2 on that. I mean, I don't know if it falls under
3 Georgia or not, to be honest with you.
4 Q Right. Well, you know the PBA is based in
5 Georgia?
6 A Yes, sir.
7 Q And you've actually been to the headquarters?
8 A Yes, sir.
9 Q And what's it look like? What's the building
10 like?
11 A I couldn't even tell you, it's been so many
12 years ago. I haven't --
13 Q It's nothing fancy, is it?
14 A I don't -- I don't recall it being fancy.
15 Q It's just a little brick building?
16 A It didn't stick out in my mind as being fancy,
17 so...
18 Q Out in the middle of a field in McDonough,
19 Georgia; right?
20 A I don't recall.
21 Q Okay. How big was it?
22 A I don't recall that either.
23 Q It's one story?
24 A I -- I don't recall.
25 Q Do you remember anything about it, at all?

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1 A It's -- nothing remarkable, that stood out to
2 me.
3 Q It's certainly not anything fancy, where
4 somebody spent a bunch of money on it?
5 A No, sir.
6 Q All right. Pretty simple building?
7 A I -- I would assume. I -- again, I don't even
8 recall what it looked like.
9 Q Right. So the fact that law enforcement
10 officers from these other states are members of an
11 organization in Georgia, how does that affect South
12 Carolina?
13 MR. RICHTER: Object to the form.
14 A The -- well, all our -- all our dues are paid in
15 -- the -- it's not just support for me, it's support,
16 you know, for every other member. Basically what I
17 pay wouldn't pay for covering me, legally, just by
18 myself. I mean, it takes a pool. And I think that's
19 how it's affected.
20 BY MR. BRADLEY:
21 Q But how does it affect somebody in North
22 Carolina?
23 MR. RICHTER: Object to the form.
24 A They fall under the same thing we do, as far as
25 -- I mean, the situation like Michael Slager's.

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1 Q All right. Do you know of any connection the
2 police officers of those eight states we just
3 discussed would have to South Carolina, at all?
4 A Just the PBA.
5 Q But that's -- that's a connection to the PBA
6 that's in Georgia; right?
7 MR. RICHTER: Object to the form.
8 A It's in Georgia, but, I mean, it's operated in
9 each state.
10 BY MR. BRADLEY:
11 Q Right. It has members in all those states?
12 A Yes, sir.
13 Q And it has members in South Carolina?
14 A Yes, sir.
15 Q All right. But that's the only connection, that
16 you know of?
17 A As far as I know.
18 Q That police officers in these other states, as
19 you've alleged in your complaint, are also members of
20 the PBA?
21 A As -- to the best of my knowledge. Yes, sir.
22 Q And the PBA is based in Georgia, as far as you
23 know?
24 A Their home office, yes, sir.
25 Q And people in South Carolina are members of the

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1 PBA too?
2 A Yes, sir.
3 Q All right. But you don't know of any connection
4 the police officers in North Carolina, Virginia,
5 Louisiana, West Virginia, Arkansas, Tennessee,
6 Alabama or Kansas have to South Carolina?
7 MR. RICHTER: Object to the form.
8 A I -- I wouldn't know.
9 BY MR. BRADLEY:
10 Q All right. Have you done anything to publicize
11 this lawsuit, at all?
12 A I have not.
13 Q So you haven't posted on the Internet or
14 anything?
15 A I have not.
16 Q Have you gone on any chat groups or anywhere,
17 where you've typed in, Hey, I'm gonna sue the PBA, or
18 anything about it?
19 A No, sir.
20 Q Have you gone on any public forum, at all, and
21 expressed your concerns about the PBA or how
22 Mr. Slager's situation was handled?
23 A I have not.
24 Q Have you sent out any letters about it, at all?
25 A No, sir.

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1 Q Have you sent out any e-mails about it, at all?
2 A No, sir.
3 Q All right. Has the PBA done anything to damage
4 you?
5 MR. RICHTER: Object to the form.
6 A I think that the -- the -- I think the damages
7 come in, in the -- the fact that -- the -- the
8 potential of damages to me. I mean, I would -- could
9 I be involved in the same situation that Michael
10 Slager was and have -- have coverage denied. You
11 know, I mean, we pay dues to support each other and
12 the bottom line is that it -- it fell through in that
13 case.
14 BY MR. BRADLEY:
15 Q Right. And Mr. Slager's been resolved, so --
16 A Yes, sir.
17 Q -- I -- I can't talk about the details of --
18 with it, because it's -- but -- but for the fact that
19 it's been resolved, it's sealed.
20 A Sure.
21 Q My question is, how have you been damaged by
22 something the PBA has done?
23 A Again, I think that the -- the potential for the
24 damage is there, based on the -- if -- if I was
25 involved in a similar situation.

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1 Q All right. So would it be fair to say, as we
2 sit here today, Mr. Stanley, the damage to you is
3 something that could happen in the future?
4 MR. RICHTER: Object to the form.
5 A Not only something that could happen in the
6 future, but I -- you know, my money also was there to
7 support Michael Slager --
8 BY MR. BRADLEY:
9 Q Right.
10 A -- and it -- it wasn't extended to him.
11 Q So as far as you're concerned, that damage is
12 you think the organization made the wrong decision as
13 to Mr. Slager?
14 A Yes, sir.
15 Q All right. Besides the fact of Mr. Slager,
16 which has been resolved, what I want to know is how
17 are you damaged by something the PBA has done.
18 A I think that I'm damaged in that -- in -- in the
19 fact that -- again, the potential for damage, as well
20 as the fact that I paid for -- my -- my dues don't go
21 just for me. They go for other -- other law
22 enforcement officers.
23 Q Right.
24 A And the fact that coverage was denied for him, I
25 -- I think that is damaging.

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1 Q Fair enough. So let's start from the beginning,
2 then. The damages to you are you think Mr. Slager
3 should have been defended by the PBA?
4 A Yes, sir.
5 Q All right. And you're concerned that in the
6 future you might need the PBA and the PBA might not
7 defend you?
8 A I'm -- I'm concerned that there could be a
9 similar situation and the PBA decides they're not
10 covering. And there's no oversight for that.
11 Q All right. So my question is, besides what
12 might happen to you in the future -- or to somebody
13 else in the future -- and besides what happened to
14 Mr. Slager, have you been damaged in any way by the
15 PBA?
16 A Besides those? No, sir.
17 Q All right. So your only damage is what might
18 happen in the future and what has already happened to
19 Mr. Slager?
20 MR. RICHTER: Object to the form.
21 A As far as I -- as far as I'm concerned, those
22 are the -- the significant things that stick out in
23 my mind. Yes, sir.
24 BY MR. BRADLEY:
25 Q Is there anything else?

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1 A Not that I'm aware of. 2 Q 'Cause you've received the benefit of your 3 bargain with the PBA? 4 MR. RICHTER: Object to the form. 5 A Not necessarily. I mean, I -- my dues go to -- 6 BY MR. BRADLEY: 7 Q I mean -- 8 A -- pay for other members, as well. 9 Q -- you're being defended, right now, by the PBA? 10 A I am. Yes, sir. 11 Q And you've been defended by the PBA in the past? 12 A No, sir. 13 Q Didn't Mr. Savage get hired to investigate an 14 incident you were involved in, in the past? 15 A I wasn't specifically involved and I wasn't 16 represented by him. It was another officer that was 17 involved. 18 Q All right. You're being defended by the PBA 19 right now, though? 20 A Yes, sir. 21 Q Okay. So has the PBA done anything to break its 22 word to you? 23 MR. RICHTER: Object to the form. 24 A I think that the word was broken when -- when 25 they dropped coverage for Mr. Slager.	1 Q Goose Creek is not that big. 2 A No. 3 Q So you could probably -- no matter where he 4 lives in Goose Creek, you could probably drive to his 5 house in 15 minutes. 6 A If he lives in Goose Creek, yes, sir. 7 Q Okay. All right. And you could ask him what 8 kind of records does the PBA keep? 9 A Sure. 10 Q But you haven't done that? 11 A No, sir. 12 Q All right. Do you know of anytime the PBA has 13 canceled anyone's membership wrongfully? 14 MR. RICHTER: Object to the form. 15 A I -- I don't -- I -- I don't know for certain 16 whether Michael Slager's membership was canceled or 17 not. 18 BY MR. BRADLEY: 19 Q Right. 20 A I would have to say no. 21 Q All right. Do you know of anything, outside -- 22 I understand how you feel about Mr. Slager -- outside 23 of Mr. Slager, anything the PBA has ever done that's 24 dishonest or unfair? 25 A My -- the -- the only thing that I -- I would
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1 BY MR. BRADLEY: 2 Q Understand. That's been resolved. Besides -- 3 A Yes, sir. 4 Q -- Mr. Slager, has the PBA done anything to deny 5 you the benefit of your bargain with the PBA? 6 A Besides Mr. Slager? No, sir. 7 Q All right. Do you have any reason to believe 8 that the PBA does not keep adequate records? 9 A I have no reason to -- to believe that. 10 Q Okay. Have you ever asked whether the -- what 11 records it keeps or how it keeps them? 12 A No, sir. 13 Q If you wanted to find out how it keeps records, 14 how could you find out? 15 A I'm not sure. I assume contact the PBA. 16 Q I mean, you'd probably call Dave Soderberg; 17 right? 18 A I assume I could. 19 Q Or you could go over to his house? He doesn't 20 live that far from you. 21 A I have no idea where he lives at. 22 Q Well, he's an officer in Goose Creek. 23 A Yes, sir. 24 Q And you live in Goose Creek. 25 A Yes, sir.	1 consider -- I -- I don't know if it's dishonesty, 2 but -- is -- is the fact that basically their -- 3 their plan mimics an insurance plan and they're not 4 regulated. 5 Q All right. 6 A And that -- 7 Q I understand that's your opinion, is that they 8 should be regulated as an insurance company. 9 A Yes, sir. 10 Q Right? 11 A Uh-huh. 12 Q And that they're not and that's wrong; is 13 that -- 14 A Yes, sir. 15 Q -- correct? 16 A Yes, sir. 17 Q All right. So my question, though, is -- is, do 18 you know of anything the PBA has ever done that's 19 dishonest or unfair? 20 MR. RICHTER: Object to the form. 21 A Other than that, that's -- 22 BY MR. BRADLEY: 23 Q Is that -- do you -- 24 A -- basically it. 25 Q -- think that's dishonest, what the PBA is

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1 doing? 2 A I don't know if it's dishonest or if it's 3 misleading. I -- I mean, I -- I think it's improper. 4 Q I understand you believe it's improper and they 5 should be regulated by the government as an insurance 6 company. Right? 7 A Yes, sir. 8 Q All right. Has the PBA, as far as you know, 9 ever said that it's an insurance company? 10 A Not that I'm aware of. 11 Q Do you know of anything the PBA has done that's 12 dishonest, as far as representing or taking any 13 action whatsoever? 14 A Not to -- not to the best of my knowledge. No, 15 sir. 16 Q All right. Do you know of anything the PBA has 17 done, outside of how it treated Mr. Slager, that you 18 think is unfair? 19 A Outside of Mr. Slager, I don't -- I don't think 20 so. 21 Q Do you know of anything the PBA has ever done 22 that's in bad faith? 23 MR. RICHTER: Object to the form. 24 A Not to my knowledge. 25 BY MR. BRADLEY:	1 Q All right. Do you know of any promise that the 2 PBA has made, to you or anyone else, besides 3 Mr. Slager, that it's broken? 4 A Not that I'm aware of, other than the situation 5 with Mr. Slager. 6 Q All right. Do you know of any person, including 7 you but not Mr. Slager, who's been deceived or 8 injured by the PBA, in any way? 9 A Do I know -- can you repeat -- 10 Q Sure. 11 A -- it again? I'm sorry. 12 Q Besides Mr. Slager, which has -- 13 A Yes, sir. 14 Q -- been resolved -- that's not a part of this 15 lawsuit -- 16 A Right. 17 Q -- do you know of anyone who's been deceived or 18 injured by the PBA? 19 A Well, I mean -- I -- I -- the bottom line is I 20 feel that, in -- in a way, that the memberships -- 21 all the members were deceived, in the fact that we 22 were told we were gonna be provided coverage and one 23 of our members wasn't. 24 Q Okay. And like I said -- 25 A No, other than -- other --
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1 Q Do you know of anything the PBA has ever done to 2 breach any contract that it has? 3 MR. RICHTER: Object to the form. 4 A I would have no knowledge of that. 5 BY MR. BRADLEY: 6 Q No contract -- 7 A No. 8 Q -- with you it's ever breached; right? 9 MR. RICHTER: Object to the form. 10 A Not to my knowledge. 11 BY MR. BRADLEY: 12 Q Besides Mr. Slager, do you know of any situation 13 where you believe the PBA has breached any agreement 14 it has with anyone? 15 A Other than Mr. Slager, I don't know of any 16 specifically. No, sir. 17 Q All right. Okay. Besides Mr. Slager and 18 besides your concern that you might not be covered in 19 the future, if you need the PBA, do you know of 20 anybody, anywhere, that's been damaged by the PBA? 21 Any member? 22 A No, not specifically. No, sir. 23 Q In general, do you know of any damages to any 24 member? 25 A Not that -- not that I recall.	1 Q -- besides that one member -- 2 A -- other than that -- other than that, it's -- 3 no, sir. 4 Q Besides Mr. Slager, you don't know of anything 5 the PBA has done to deceive or injure any of its 6 members? 7 A No, sir. 8 Q All right. Do you know of anything the PBA -- 9 besides Mr. Slager -- has done to violate your rights 10 or anyone's rights? 11 A Not that I'm aware of. 12 Q Do you believe -- do you know of any way that 13 the PBA has taken money that it's not entitled to 14 have? 15 MR. RICHTER: Object to the form. 16 A I'm not -- not that I'm aware of. I -- I don't 17 -- other than memberships, I don't know how they 18 obtain money. 19 BY MR. BRADLEY: 20 Q All right. Do you know -- do you think it's 21 wrong for the PBA to accept membership dues? 22 A I don't necessarily think that it's wrong for 23 them to -- for them to accept dues. I -- I think 24 that the problem comes in without -- the lack of 25 oversight.

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1 the PBA is operating illegally and in violation of 2 insurance laws. Do you see that? 3 A Yes, sir. 4 Q All right. Did you ever contact any insurance 5 commissioners with your concerns about the PBA? 6 A No, sir. 7 Q All right. Did you contact the Consumer 8 Advocate in South Carolina or anybody else, regarding 9 your concerns with the PBA? 10 A No, sir. 11 Q Why -- why not? 12 MR. RICHTER: Object to the form. 13 A I -- I wouldn't have the knowledge of who to 14 contact and how to handle that. I'll leave it up to 15 the attorneys. 16 BY MR. BRADLEY: 17 Q Well, I mean, you -- you could call the 18 Insurance Commission, couldn't you? 19 A I assume I could. 20 Q Did you ever try to do that? 21 A No, sir. 22 Q Okay. All right. Is there any amount of money 23 that you think the PBA should pay to you? 24 MR. RICHTER: Object to the form. 25 A I think that the PBA should actually look at	1 MR. RICHTER: Object to the form. 2 A I think over -- over the years, that they should 3 have been properly licensed and operated as an 4 insurance company, and I think that that was the key 5 part that was not held to. 6 BY MR. BRADLEY: 7 Q So you think because they didn't -- weren't 8 properly licensed, that you should receive all your 9 dues back? 10 A I do. 11 Q After you've received the services that the dues 12 were there to pay? 13 A At the -- at the time, I didn't realize, when I 14 -- when I called upon the PBA to represent me in the 15 -- the lawsuit. 16 Q Uh-huh. Are you gonna -- 17 A I --- 18 Q -- pay back the PBA for all of the lawyers' 19 bills they've paid on your behalf? 20 MR. RICHTER: Object to the form. 21 A I'm not prepared to answer that. I really don't 22 know. 23 BY MR. BRADLEY: 24 Q Okay. So what you want is the dues back, but 25 you don't want to pay back the benefits you've
Page 90	Page 92
1 refunding all the dues that have been paid. 2 BY MR. BRADLEY: 3 Q You think that the PBA should refund all of the 4 dues? 5 A Yes, sir. 6 Q Do you want to continue to be defended by the 7 PBA? 8 A I would prefer that the PBA refund the dues, and 9 if they -- 10 Q Stop -- 11 A -- want to continue operating business, to fall 12 under regulations. 13 Q So you want the PBA to refund all the dues and 14 continue to defend you in the lawsuit? 15 A The -- I'll put it this way. I'm willing to 16 give up their defending me in that lawsuit -- 17 Q All right. 18 A -- based on them doing the right thing. 19 Q All right. And the right thing, you think, is 20 to refund all the dues? 21 A To refund the membership dues and to -- if they 22 want to continue doing business, to fall under 23 insurance regulations. 24 Q All right. And what's the basis that you have 25 for saying they should refund all the dues?	1 received? 2 MR. RICHTER: Object to the form. 3 A I'm not prepared to answer that, 'cause I -- I 4 don't know. I haven't had time to --- 5 BY MR. BRADLEY: 6 Q All right. 7 A I don't even know how much they've paid, if they 8 paid anything. 9 Q All right. You admit that you received the 10 benefit of having a lawyer assigned to defend you? 11 A Yes, sir. 12 Q All right. But you want the dues back anyway -- 13 A Yes, sir. 14 Q -- because you think they should have a license 15 as an insurance company? 16 A Yes, sir. 17 Q And you think they should give everybody's dues 18 back? 19 A Yes, sir. 20 Q And what about all of the other people they're 21 defending now, those people, they shouldn't defend 22 them either? 23 A I -- I don't have an opinion on that. I really 24 don't know. I don't know where they need to go with 25 that.

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1 Q How are they gonna pay to defend police
2 officers, if they've sent all the dues back?
3 A That's something that'll have to be figured out.
4 I -- I don't know. I don't know how much money the
5 PBA has.
6 Q All right. Have you ever asked how much money
7 the PBA has?
8 A I have not.
9 Q All right. Do you know who runs the PBA?
10 A I assume the CEO -- President -- I'm ---
11 Q Do you know who makes the ultimate decisions for
12 the PBA?
13 A I assume the CEO does --
14 Q Would it surprise you --
15 A -- or the President.
16 Q -- to know that it's a board of police officers,
17 who are members?
18 MR. RICHTER: Object to the form.
19 A I would be surprised at that, because that
20 wasn't the case with Michael Slager.
21 BY MR. BRADLEY:
22 Q All right. Based -- where did you get all this
23 information on Michael Slager?
24 MR. RICHTER: Instruct not to answer, to the
25 extent that it would require attorney-client

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1 privilege. Beyond that, you're free to answer.
2 BY MR. BRADLEY:
3 Q Besides what your lawyers told you about Michael
4 Slager, do you know who makes the ultimate decisions
5 for the PBA?
6 A My understanding is that the President made the
7 ultimate decision.
8 Q Who makes a decision to hire or fire that
9 President?
10 A I have no idea.
11 Q All right. Would it be a surprise to know that
12 Dave Soderberg is one of the people who makes that
13 decision?
14 A I -- I wouldn't be surprised to -- but I -- I
15 have no knowledge of it.
16 Q Well, you served on a local board, didn't you?
17 A Yes, sir.
18 Q So you're aware that local boards elect the
19 state presidents; right?
20 A I don't recall that. It -- I mean, it's a
21 possibility, but I don't recall it.
22 Q All right. And you don't know that the state
23 presidents sit on the board of the PBA?
24 A I didn't know how all that part of it
25 functioned.

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1 Q All right. And you don't know that every year
2 there's a treasurer's report to the entire state
3 presidents, to account to for every penny that the
4 PBA spends and takes in?
5 A I was not aware of that.
6 Q All right. And --
7 A No, sir.
8 Q -- you don't know that Dave Soderberg, in the
9 same town where you work, is one of those people?
10 A No -- well, he doesn't work in the same town. I
11 work --
12 Q He lives --
13 A -- for Charleston County, but --
14 Q He -- all right.
15 A -- he works in Goose Creek.
16 Q He works in Goose Creek, where you live?
17 A Yes.
18 Q And you know him?
19 A I know him in passing. I mean, I don't ---
20 Q And you know he's affiliated with the PBA?
21 A I do know that, yes.
22 Q And you've never asked him how it runs?
23 A No, sir.
24 Q And you don't know that he's the state president
25 for the state of South Carolina?

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1 A I was not aware of that.
2 Q And you don't know that he's on the board of the
3 PBA?
4 A I knew that he held some kind of board position,
5 but I didn't know what.
6 Q Did you know that the board is who decides how
7 to spend money for the PBA?
8 A I don't know how they do it.
9 Q All right. And the board's who decides to hire
10 or fire all of the people who work for the PBA?
11 A I have no idea. I mean, if you say so. I
12 mean...
13 Q All right. You're aware that the PBA is
14 ultimately run by the membership?
15 MR. RICHTER: Object to the form.
16 BY MR. BRADLEY:
17 Q Did you know that?
18 A I'm not --
19 MR. RICHTER: Same.
20 A -- specifically aware of how it's ran. I don't
21 -- I don't know if -- as a member, I mean, I didn't
22 know that I had any part in the decision on who ran
23 things.
24 BY MR. BRADLEY:
25 Q Did you know -- have you been active at all in

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1 the PBA in the last 15 years? 2 A I've been a member for the last 15. 3 Q Have you ever done -- have you even gone to a 4 meeting in the last 15 years? 5 A I have not. 6 MR. BLAND: That's been asked and answered. 7 BY MR. BRADLEY: 8 Q Have you ever -- 9 MR. BRADLEY: Wait -- wait -- wait. Stop. I 10 would ask that one person object, and that's not a 11 proper objection, unless you want to shut down the 12 deposition. All right. 13 MR. BLAND: Don't badger him. Just answer your 14 -- or ask the question -- 15 MR. BRADLEY: No, no, no -- one person gets to 16 answer questions -- gets to object. 17 MR. BLAND: It's -- what are you gonna do, call 18 a judge? I'm just asking you be respectful and just 19 answer -- 20 MR. BRADLEY: I am -- 21 MR. BLAND: -- the question -- 22 MR. BRADLEY: -- being respectful. 23 MR. BLAND: -- ask him questions. 24 MR. BRADLEY: I'm gonna ask him questions. 25 BY MR. BRADLEY:	1 feel better if they were regulated. 2 Q And what you mean is you want them regulated by 3 an insurance commission, as an insurance company? 4 A Yes, sir. 5 Q All right. Do you know if the PBA is 6 accountable to its members, in any way? 7 A I don't know. I'm not sure. 8 Q All right. And you've never asked any of those 9 questions? 10 A I have not. 11 Q All right. And you've just decided that it's an 12 insurance company? 13 MR. RICHTER: Object to the form. 14 A Based on the information I've received, yes. 15 BY MR. BRADLEY: 16 Q The information from your lawyers? 17 A Yes, sir. 18 MR. RICHTER: Object to the form. 19 BY MR. BRADLEY: 20 Q All right. Any information from anybody, other 21 than your lawyers, that thinks it's an insurance 22 company? 23 MR. RICHTER: Object to the form. 24 A I don't know what other people think, sir. I'm 25 not sure.
Page 98	Page 100
1 Q Do you have any idea who makes the decisions for 2 the PBA? 3 A I would assume that it'd be the President. 4 Q All right. Do you know who hires the President? 5 A I have no clue. 6 Q Do you know who owns the PBA? 7 A I have no idea. 8 Q All right. Do you know who the PBA is 9 accountable to? 10 A I do not. 11 Q All right. Do you know that the PBA has a 12 yearly report that goes to every state president, 13 that shows where every penny is spent? 14 A No, sir. I did not know that. 15 Q Assuming that's true, do you think that's 16 accountability to the members? 17 MR. RICHTER: Object to the form. 18 A I don't know, because I don't know what those 19 reports have. I don't know -- I -- I don't know. 20 BY MR. BRADLEY: 21 Q Have you ever asked to see one? 22 A I have not. 23 Q Would it make you feel that the PBA is doing 24 something decent, if you actually saw the reports? 25 A I don't know that it would. I think I would	1 BY MR. BRADLEY: 2 Q No, no. My question is, has anybody besides 3 your lawyers told you that the PBA is an insurance 4 company? 5 MR. RICHTER: Object to the form. 6 A No, sir. 7 BY MR. BRADLEY: 8 Q All right. Has anybody besides your lawyers 9 told you the PBA is operating illegally? 10 MR. RICHTER: Object to the form. And instruct 11 him not to answer the questions with regard to what 12 his lawyers told him. 13 MR. BRADLEY: I -- I understand that -- 14 MR. RICHTER: There's -- there's no waiver of 15 privilege here. 16 MR. BRADLEY: -- 100 percent. 17 MR. RICHTER: Okay. 18 BY MR. BRADLEY: 19 Q I don't want to know what your lawyers told you. 20 Besides your lawyers, has anyone ever told you the 21 PBA is operating illegally? 22 A Not that I'm aware of. 23 Q Besides your lawyers, have you asked anybody if 24 the PBA is operating illegally? 25 A No, sir.

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1 Q All right. In -- in paragraph 126 of your
2 complaint you say that, The actions of the PBA have
3 and will continue to result in irreparable harm, loss
4 and damage to the Plaintiff and the class members.
5 Do you see that?
6 A Yes, I do.
7 Q Do you know the Plaintiff is you?
8 A Yes, sir.
9 Q All right. What's the irreparable harm the PBA
10 is causing you?
11 A A lot of this is -- is language put in by the
12 attorneys. I can't specifically say --
13 Q Okay.
14 A -- what the irreparable (sic) damage is -- or
15 irreparable.
16 Q Do you know what the word irreparable means?
17 A Can't be fixed; correct?
18 Q Right. Is there anything the PBA is doing
19 that's damaging you in a way that cannot be fixed?
20 A Well, at --
21 MR. RICHTER: Object to the form.
22 A At the time, the -- the issue with Michael
23 Slager, in my opinion, was irreparable damage. I
24 mean --
25 BY MR. BRADLEY:

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1 Q Fair enough. Besides Michael Slager, which has
2 been resolved -- it's a matter of public record -- is
3 there anything that the PBA is doing, to you or to
4 anybody, that is resulting in damage that cannot be
5 fixed?
6 MR. RICHTER: Object to the form.
7 A I'm -- I'm not sure if I can answer that or not,
8 sir. I --
9 BY MR. BRADLEY:
10 Q The question is, do you know of anything that
11 the PBA is doing to damage you or anyone else, that
12 is causing irreparable harm?
13 A As far as the -- the fact that they're -- I
14 don't know if this -- it falls under it or not, but
15 the fact that they're not regulated.
16 Q How is that harming you?
17 A There's no oversight.
18 Q Fair enough. I understand that's your position.
19 How is that harming you? That's my question.
20 A Well, the potential harm is -- is -- is there.
21 Q What's the potential harm?
22 A If I'm involved in the same type of situation
23 that Michael Slager was and one person decides not to
24 defend me.
25 Q Right. The potential harm is you might be

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1 involved in a shooting situation and the PBA might
2 decide not to defend you?
3 A Right.
4 Q Okay. Do you have any idea what the odds are of
5 that happening?
6 A I just --
7 MR. RICHTER: Object to the form.
8 A Not something I'd -- the odd that I'd like to --
9 BY MR. BRADLEY:
10 Q All right.
11 A -- even play.
12 Q All right. You haven't lost any money by being
13 a member of the PBA, have you?
14 MR. RICHTER: Object to the form.
15 A Other than my dues. I mean...
16 BY MR. BRADLEY:
17 Q And you've received everything you're supposed
18 to receive, in exchange for your dues?
19 A With the -- with the exception of Michael Slager
20 being covered at the time.
21 Q Right.
22 A Yes, sir.
23 Q Besides Michael Slager, everything you're
24 entitled to receive as a result of paying your dues,
25 you have received?

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1 A To the best of my knowledge.
2 Q All right. So the PBA has done -- besides
3 Michael Slager, has done nothing to harm you?
4 MR. RICHTER: Object to the form.
5 A Well, you say they've done nothing to harm, but,
6 I mean, the whole -- the potential for me to be
7 involved in a situation in which the PBA decides to
8 drop coverage -- I couldn't recover from that, unless
9 an attorney said I'm gonna take care of this.
10 BY MR. BRADLEY:
11 Q If you were involved in a situation in the
12 future and if the PBA did not defend you, that would
13 be harm; right?
14 A Right.
15 Q All right. What has the PBA done to date, as we
16 sit in this room, to harm you?
17 A I feel that I'm harmed in the fact that I pay
18 dues, just like every other member does, to support
19 other law enforcement officers, and Michael Slager
20 was not supported.
21 Q Right. Michael Slager's been resolved, though.
22 Besides Michael Slager, what has the PBA done to harm
23 you?
24 A That's what I just stated. I -- I --
25 Q The answer is the PBA has done nothing to harm

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1 you?
2 A I feel that I've been harmed in the fact that
3 I'm paying dues, just like every other member --
4 Q Right.
5 A -- to support other members, within the PBA, and
6 that didn't hold true for Michael Slager.
7 Q Right. And that's been resolved. You
8 understand that, though, don't you? Michael Slager
9 has --
10 A Well, that may have been monetarily --
11 Q -- dismissed his lawsuit.
12 A -- resolved, but what kind of damage has been
13 sustained, prior, that has nothing --
14 Q He's been satisfied --
15 A -- to do with money?
16 Q -- with whatever damage it is.
17 A Well, I don't know that he's been satisfied.
18 Q He dismissed his lawsuit voluntarily.
19 A I mean, that's -- that's up to Michael.
20 Q Well, I understand that. But that's not part of
21 that lawsuit. You understand that, don't you?
22 A I understand that.
23 Q Okay. So as far as this lawsuit, the PBA has
24 done nothing to harm you?
25 MR. RICHTER: Object to the form.

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1 A Again, I think that the PBA has harmed me in the
2 fact that I pay dues, just like every other member
3 does, to support the other members in -- that are
4 part of the PBA; and the fact that they dropped
5 Michael Slager, I think it's a harm to all of us.
6 BY MR. BRADLEY:
7 Q All right. Other than Michael Slager, anything
8 the PBA has done to harm you?
9 A Other than Michael Slager, no, sir.
10 Q All right. I think earlier you said you wanted
11 the PBA to do the right thing. Is that what you
12 said? Something like that?
13 A I -- I don't recall, sir.
14 Q Well, is that true, you'd want the PBA to do the
15 right thing?
16 A Well, in any case, I'd like everybody to do the
17 right thing. Yes, sir.
18 Q Fair enough. And you want the PBA to follow the
19 rules, as they apply to the PBA?
20 A I -- I'm not sure I understand the question.
21 Q You want the PBA to follow the law, just like
22 all of us have to follow the law?
23 A Yes, sir.
24 Q All right. Do you agree that the PBA provides a
25 valuable service to law enforcement officers?

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1 A I think that they do provide a valuable service.
2 However, I think there needs to be oversight of that
3 service. I -- I think that, you know, we -- we've
4 seen what the loophole is.
5 Q All right. You're concerned about the decisions
6 the PBA has made on how to do its business?
7 A Yes, sir.
8 Q And that's why you've brought this lawsuit?
9 A I'm -- the lawsuit's been brought because the
10 PBA is not regulated and I feel that they're
11 operating as an insurance company.
12 Q All right. So your concern is the PBA is not
13 doing its business the way it should be, it should be
14 compliant with insurance regulations?
15 A Yes, sir.
16 Q But besides that, you haven't been damaged?
17 A I'll go back to the fact that I -- I think that
18 all the members have been damaged in the fact that we
19 all pay dues to support each other --
20 Q Right.
21 A -- and that fell through, in Michael Slager's
22 case.
23 Q You -- you disagree with the decisions that were
24 made at the highest level of the PBA?
25 A With that, yes, sir.

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1 Q And you believe they should have made different
2 decisions?
3 A I think they should've looked into it.
4 Q All right. And the basis of your lawsuit is
5 those decisions that the PBA made?
6 MR. RICHTER: Object to the form.
7 A The basis of the lawsuit is the fact that
8 they're -- they're operating in the same manner as an
9 insurance company and they're not regulated as an
10 insurance company is.
11 BY MR. BRADLEY:
12 Q Your dispute with them, and why you brought the
13 lawsuit, is you are concerned with the decisions they
14 made on complying with insurance laws?
15 A It's brought because they're not complying with
16 the insurance laws. Yes, sir.
17 Q Exactly.
18 A Yes, sir.
19 Q If the PBA was complying with insurance laws, in
20 your opinion, you would have no complaint?
21 MR. RICHTER: Object to the form.
22 A If they were complying with insurance laws?
23 BY MR. BRADLEY:
24 Q Right.
25 A I don't think that I would, no, sir, 'cause I

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1 don't think --
2 Q All right.
3 A -- the situation would've happened with Michael
4 Slager.
5 Q Right. Okay. The main problem is the decisions
6 that they're making, as far as how they comply with
7 insurance laws?
8 MR. RICHTER: Object to the form.
9 A The -- well, I mean, the main part is the fact
10 they're not regulated by insurance laws, if that's
11 what you're asking.
12 BY MR. BRADLEY:
13 Q Right. You -- I understand that. I think what
14 you're saying is they should be following insurance
15 laws and they're not following insurance laws; right?
16 A I think they --
17 MR. RICHTER: Objection.
18 A -- should be regulated --
19 MR. RICHTER: Objection.
20 A -- under insurance regulations.
21 BY MR. BRADLEY:
22 Q And that's what your main dispute is?
23 MR. RICHTER: Object to the form.
24 A That they're not regulated?
25 BY MR. BRADLEY:

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1 Q That they're not compliant with whatever these
2 insurance laws are, that you say they should comply
3 with.
4 A Well, that's what the lawsuit's about. Yes,
5 sir.
6 Q All right. And leaving Michael Slager out,
7 that's your -- that's the only problem you have with
8 the PBA?
9 MR. RICHTER: Object to the form.
10 A That -- the -- the fact that they're not
11 regulated?
12 BY MR. BRADLEY:
13 Q The fact that they're not compliant with the
14 insurance laws you believe they should comply with.
15 A That -- I mean, that is -- that is the main
16 focus here. Yes, sir.
17 Q All right. Is there any other focus, other than
18 that?
19 MR. RICHTER: Object to the form.
20 A Not that I -- not that I recall.
21 BY MR. BRADLEY:
22 Q All right. Do you who Chris Skinner is?
23 A No, sir.
24 Q All right.
25 A Think I've heard the name, but I don't know who

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1 it is.
2 Q All right. Do you know what the benefits of PBA
3 membership are, all of them or any of them?
4 A Well, the primary benefits is -- is the legal
5 coverage, in the event of a incident with --
6 Q Do you agree that --
7 A -- work.
8 Q -- PBA performs governmental affairs in lobbying
9 for police?
10 A I assume they do. I mean, I don't have any
11 knowledge of exactly what they lobby for and what --
12 Q Do you have --
13 A -- they don't. I mean --
14 Q I'm sorry. I didn't mean to interrupt you.
15 A That's okay.
16 Q Go ahead.
17 Do -- do you have any complaint about how they
18 perform the governmental affairs in lobbying?
19 A I -- I don't know exactly what they do, so I
20 don't -- I -- I couldn't complain about it, 'cause
21 I'm not sure of what they do.
22 Q All right. Do you know that the PBA provides
23 screening endorsement of candidates for office?
24 A Well -- like we talked earlier, I do recall them
25 endorsing one of our local solicitor races at --

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1 Q Right.
2 A -- one point.
3 Q Do you have any complaint about how the PBA does
4 that?
5 A I -- I didn't particularly endorse that
6 candidate, but really didn't have any bearing on --
7 on it.
8 Q Okay. Do you -- do -- are you aware the PBA
9 provides accidental death benefits for police
10 officers killed in the line of duty?
11 A Yes, sir. Uh-huh.
12 Q Do you have any complaint about that?
13 A I do not.
14 Q All right. Do you -- are you aware that the PBA
15 allows access to PBA's attorneys for advice?
16 A I -- I do recall reading that somewhere, at one
17 point, I believe.
18 Q Do you have any complaint about that, at all?
19 A No, sir.
20 Q You're aware that the PBA publishes Blue Review,
21 a magazine for the officers ---
22 A Yes. I -- I haven't seen it in some time. I
23 don't know if it's online now or if it's --
24 Q All right.
25 A -- because I -- I haven't received one in the

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1 mail in a long time.

2 Q Do you have any complaint about that?

3 A No -- no, sir.

4 Q All right. And I -- I think we talked about the

5 legal defense benefit; right, earlier?

6 A Yes, sir.

7 Q All right. And there's actually two things that

8 the PBA does under that. One is provides

9 representation in employment-related disputes --

10 A Uh-huh.

11 Q -- and the other one is for shooting-type

12 incidents -- incidents like that, in the line of

13 duty.

14 A Yes, sir.

15 Q Right?

16 Do you have any complaint about the

17 representation in employment-related disputes?

18 A I've never used them, so, I mean, I don't -- I

19 don't have anything to complain about, about that.

20 Q Okay. Your main complaint is, for the

21 representation in the shooting-type incidents, that

22 they're not regulated as an insurance company?

23 MR. RICHTER: Object to the form.

24 A Well, I think it kinda covers everything they

25 do, I think is -- I mean, they're providing insurance

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1 benefits. They're providing death benefits.

2 BY MR. BRADLEY:

3 Q So you think that the death benefits they

4 provide are -- shouldn't be provided? Or there's --

5 A No, I think they should be --

6 Q -- something -- they're doing it wrong?

7 A I think they should be provided, but I think,

8 again, it needs to be regulated. I think there needs

9 to be oversight.

10 Q Are you aware of whether or not that's done

11 through an insurance company?

12 A I have no idea.

13 Q Have you inspected it, at all, to --

14 A I have --

15 Q -- find out?

16 A I have not.

17 Q All right. Going back to the legal defense

18 benefit is the problem that the shooting-type

19 incidents coverage or benefit is not regulated as an

20 insurance company; right?

21 MR. RICHTER: Object to the form.

22 A Well, again, I think that, as an entire process,

23 that the coverages that they're extending, I think

24 all of it should be regulated in some manner.

25 BY MR. BRADLEY:

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1 Q So you think, whether they provide the legal

2 defense benefit or not, they should be regulated?

3 A I --

4 MR. RICHTER: Object to the form.

5 A Well, that's the primary reason for the -- that

6 -- that we would sign up, as law --

7 BY MR. BRADLEY:

8 Q Right.

9 A -- enforcement officers, is for the defense

10 benefits.

11 Q I understand that's -- to you, that's the best

12 benefit?

13 A To me, it is. Yes, sir.

14 Q Okay. All right. To you, that's what you want

15 from the PBA?

16 A Yes, sir.

17 Q And the other things are okay, but not really

18 what's driving you --

19 A Well, I'm ---

20 Q -- to be a member?

21 A The -- the thing that convinced me to sign up

22 was the fact of the representation that they provided

23 with no caps and no limits.

24 Q Right.

25 A And I think all of it's important, but I -- I

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1 think -- to me, that was the most important aspect.

2 Q Absolutely. But it's not the only thing the PBA

3 does?

4 A I mean, I don't know exactly what all they do,

5 but they do do more than that, I know.

6 Q Right. All right. You know that they provide

7 representation in -- in grievance proceedings, like

8 if you get in trouble on the job, an employment-type

9 thing?

10 A That's my understanding. Yes, sir.

11 Q All right. Do you have a problem with how

12 they've done that?

13 MR. RICHTER: Object to the form.

14 A I've never dealt with that end of it, so I

15 couldn't tell you whether I have issue -- I mean, I

16 don't -- I don't specifically know of any issues that

17 have arisen from it.

18 BY MR. BRADLEY:

19 Q As we sit here, you don't have an issue with

20 that, personally?

21 MR. RICHTER: Object to the form.

22 A Other than the fact I think it still needs to

23 fall under being regulated, but that's it.

24 BY MR. BRADLEY:

25 Q Okay. And you think the regulation should be by

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1 -- as an insurance company?

2 A Well, I -- I mean, the -- the bottom line is

3 they're operating pretty much in the same manner as a

4 insurance company, so I -- I -- I don't -- I don't

5 see any other avenue of it but to -- for them to fall

6 under those regulations.

7 Q Right. And you've received everything you're

8 entitled to from the PBA, right?

9 MR. RICHTER: Object to the form.

10 BY MR. BRADLEY:

11 Q You, personally?

12 A I don't know specifically what you're asking me

13 for.

14 Q Is there anything that you've ever requested of

15 the PBA that it has not done for you?

16 MR. BRADLEY: Object to the form.

17 A I -- I mean, anytime I've -- well, I've only

18 contacted them one time and they provided an attorney

19 for me.

20 BY MR. BRADLEY:

21 Q All right.

22 A If that's what you're asking.

23 Q Sure. All right. Let's look at Exhibit A to

24 your complaint.

25 Whenever you're ready, Mr. Stanley.

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1 A Sure.

2 Q All right. Have you read this legal defense

3 benefit?

4 A I have. I went over the entire complaint, which

5 included that.

6 Q So you've read the legal defense benefit which

7 is attached to Exhibit A?

8 A Yes.

9 Q All right. And this is the basis of your

10 lawsuit, that this should be insurance?

11 A This should be regulated as insurance. Yes,

12 sir.

13 Q Is there anything wrong -- else wrong with the

14 legal defense benefit, in your opinion?

15 MR. RICHTER: Object to the form.

16 A Quite honestly, there's so much legal -- I mean,

17 it -- it -- the legal terms and stuff that are

18 involved and -- these things are drafted by

19 attorneys. I'm not an attorney, so I -- it's kinda

20 hard for me to sit here and assess whether something

21 else should be added in --

22 BY MR. BRADLEY:

23 Q Just --

24 A -- or not. I ---

25 Q Just asking you, as far as you know, is there

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1 anything that you see wrong with the legal defense

2 benefit, other than you believe it should be

3 regulated as an insurance company?

4 A Other than --

5 MR. RICHTER: Object to the form.

6 A -- the fact that it needs to be regulated, I

7 don't -- I don't know. I don't believe so.

8 BY MR. BRADLEY:

9 Q All right. Exhibit C to your complaint looks

10 like a printout from the PBA's website. Is that

11 correct?

12 A It says it's a website screenshot of the SSPBA.

13 Q Is that what it is?

14 A That's what it appears to be.

15 Q I mean, do you agree that? It's your complaint.

16 A I don't have any reason to think it's not.

17 Q All right. Is there anything on this printout

18 from the website that is untrue?

19 MR. RICHTER: Object to the form.

20 A I don't know specifically if anything is not

21 truthful in it.

22 BY MR. BRADLEY:

23 Q Okay. Is there anything in this that you

24 consider deceitful or dishonest?

25 A Well, the -- the whole thing of the -- under --

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1 under the legal defense benefit of the PBA, only four

2 simple questions are asked. In my opinion, Michael

3 Slager wasn't provided those same benefits. Item

4 number 6, there, indicates that an incident within

5 the scope of your official duties or while performing

6 a law enforcement function -- yet, he was denied

7 coverage.

8 Q Right. And I understand that. And Mr. Slager

9 has been resolved.

10 My question is, is there anything on here that

11 you consider dishonest?

12 MR. RICHTER: Object to the form.

13 A Well, that in itself, being that it didn't stand

14 up.

15 BY MR. BRADLEY:

16 Q For Mr. Slager, that they did not --

17 A For Mister --

18 Q -- defend Mr. Slager?

19 A Correct.

20 Q Oh, okay.

21 A So on its own, I mean --

22 Q Besides the fact that they --

23 A -- is it gonna be honest for me, or is it ---

24 Q Besides the fact that they did not defend

25 Mr. Slager, is there anything on here that you

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1 consider dishonest or deceitful or disingenuous, in 2 any way? 3 MR. RICHTER: Object to the form. 4 A Not that comes to mind. No, sir. 5 BY MR. BRADLEY: 6 Q All right. And besides Mr. Slager, which has 7 been resolved, do you know of any situation where the 8 PBA has not honored any of the promises on this 9 printout? 10 A Besides Mr. Slager, no, I'm not aware of any. 11 Q And besides Mr. Slager, everything on this page, 12 as far as you know, is true? 13 MR. RICHTER: Object to the form. 14 A Best of my knowledge. 15 BY MR. BRADLEY: 16 Q And it's been honored for you -- every time 17 you've called, it's been honored? 18 MR. RICHTER: Object to the form. 19 A Well, you say every time. I've only called them 20 once, and that -- that one time they did honor it. 21 BY MR. BRADLEY: 22 Q Okay. 23 A Yes, sir. 24 Q All right. 25 (Defendant's Exhibit Number 2 marked	1 things that PBA does is support fellow members when 2 they have problems in their lives? 3 A Yes, sir. 4 Q Do you think that's an appropriate thing for the 5 PBA to do? 6 A I -- I think it's good that they do that. Yes, 7 sir. 8 Q All right. You support that activity of the 9 PBA? 10 A Well, I think it's a good thing. I mean, I 11 don't necessarily know that there's anything wrong 12 with it. 13 Q Okay. All right. I mean, you would agree that 14 one of the things that PBA does is go around and take 15 up donations and help out people who need it, in the 16 law enforcement community, when tragedy strikes? 17 A Apparently so. I mean, this is the first I've 18 seen of it, but I'm -- I -- I wouldn't doubt that 19 they do that. 20 Q Okay. And would you agree that the purpose of 21 the PBA is to purport -- promote the welfare of law 22 enforcement officers? 23 MR. RICHTER: Object to the form. 24 BY MR. BRADLEY: 25 Q That's what its charter says?
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1 for identification.) 2 BY MR. BRADLEY: 3 Q All right, Mr. Stanley, when you're ready. 4 A Thank you. 5 Q I'm showing you what's marked as Exhibit 2 to 6 your deposition -- 7 A Yes, sir. 8 Q -- which is a printout from a press release from 9 the PBA. Have you seen this before? 10 A I don't believe I have. 11 MR. RICHTER: I'll take a minute, discuss it 12 with him. 13 MR. BRADLEY: Oh, yeah. Yeah, sure you can. 14 (Off the record from 12:47 p.m. until 15 12:51 p.m.) 16 BY MR. BRADLEY: 17 Q Okay. Mr. Stanley, we're looking at Exhibit 2, 18 which is a PBA press release. Have you ever seen 19 this before? 20 A I have not. 21 Q All right. Were you involved, at all, when the 22 South Carolina PBA gave checks to the police officers 23 in Columbia whose houses were damaged? 24 A No, sir. I didn't know anything about it. 25 Q All right. Do you realize now that one of the	1 MR. RICHTER: Object to the form. 2 A I would assume. I mean, I don't know what they 3 mean by -- by promote welfare, but... 4 BY MR. BRADLEY: 5 Q It's basically do things to help law enforcement 6 officers. 7 A That would sound right. Yes, sir. 8 Q Okay. And based on -- upon your experience with 9 the PBA, just -- I know you had disagreement with 10 them about Mr. Slager. But without talking about 11 Mr. Slager, that's what the PBA does, is help law 12 enforcement officers? 13 A That's what they're designed for. Yes, sir. 14 Q And that's what they do, as well; right? 15 A Well, with respect to Michael Slager, I don't 16 think they did their due diligence on that, but I'm 17 sure there are plenty of other cases where they did 18 the right thing. 19 Q Right. Okay. 20 (Defendant's Exhibit Number 3 marked 21 for identification.) 22 BY MR. BRADLEY: 23 Q Mr. Stanley, I'm showing you Exhibit 3 to your 24 deposition, which is, I think the complaint and the 25 answer of the -- I think Akilou Smith lawsuit we

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1 talked about earlier. Is that --
2 A Yes, sir.
3 Q -- right?
4 A Yeah, I don't know how you pronounce it, but
5 yes, sir.
6 Q And this is the situation where you called the
7 PBA recently?
8 A It is.
9 Q All right. And the PBA hired a lawyer to help
10 you with that, right?
11 A Yes, sir.
12 Q Okay. Just like it promised to do?
13 A Yes, sir.
14 Q And that lawyer was Abigail Walsh?
15 A Yes, it was.
16 Q Did she meet with you? Did you meet with
17 Ms. Walsh?
18 A Yes, sir.
19 Q Okay.
20 A I met with her once.
21 Q Were you satisfied with her helping you?
22 A I -- quite honestly, I don't think there's been
23 enough involvement yet, to know whether I'm satisfied
24 or not. I don't have any reason not to be. It --
25 Q Okay.

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1 A I -- you know, basically I met with her once
2 and -- I guess as the process goes, she's sitting
3 like a second chair to the -- to the County
4 attorneys.
5 Q At -- at this point, you don't have any problem
6 with how this matter's been handled by the PBA?
7 A No, sir.
8 (Defendant's Exhibit Number 4 marked
9 for identification.)
10 BY MR. BRADLEY:
11 Q Mr. Stanley, I'm showing you what's marked as
12 Exhibit 4 to your deposition, which I think is a
13 letter from Ms. Walsh to Robin Jackson, regarding her
14 being involved, on your behalf, in this lawsuit.
15 A Yes, sir.
16 Q All right. And you got a copy of this letter?
17 A I believe I got a copy on e-mail --
18 Q Okay.
19 A -- I -- I think.
20 Q I mean, you received a copy of this letter --
21 A I'm --
22 Q -- somehow?
23 A I'm sure I have. Yes, sir.
24 Q And you're okay with this too? This was fine
25 with you?

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1 A Yes, sir.
2 Q Okay.
3 (Defendant's Exhibit Number 5 marked
4 for identification.)
5 BY MR. BRADLEY:
6 Q All right. Mr. Stanley, I'm showing you what's
7 marked as Exhibit 5 to your deposition, which I
8 believe is a form that you signed. Is that correct?
9 A Yeah, it is. Yes, sir.
10 Q All right. Was this the consent form with the
11 PBA when Ms. Walsh was helping you with the lawsuit?
12 A Uh-huh. Yes, sir.
13 Q All right. And were you okay with -- with
14 signing this?
15 MR. RICHTER: Object to the form.
16 A I had no objection to signing it.
17 BY MR. BRADLEY:
18 Q Okay. All right. When all this happened, were
19 you planning to sue the PBA at that time?
20 A No, sir. At that time, I didn't have the
21 understanding and realization that they weren't
22 falling under insurance regulations.
23 Q All right.
24 A Huh-uh.
25 Q Did you have the same concerns about Officer

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1 Slager at that time?
2 A I had the same concerns about Officer Slager at
3 the time, yes, sir. As far as the fact that the PBA
4 had dropped coverage for him.
5 Q I mean, did you have any reason that you did not
6 want the PBA to be hiring Ms. Walsh and communicating
7 with her about your defense in the Akilou Smith
8 lawsuit?
9 A I had -- can you -- I'm sorry. Can you repeat
10 the question?
11 Q Sure. Sure. When you were involved in this,
12 back in June of 2016, did you have any concerns about
13 the PBA getting a lawyer for you or having the
14 information released to the PBA so they could work
15 with the lawyer and help take care of you?
16 A No, sir, I didn't.
17 Q All right. Do you think the PBA did anything
18 wrong in hiring Ms. Walsh in -- at your request?
19 A No, sir.
20 Q All right. Do you remember, in 2005, when there
21 was an investigation about a woman who said she had
22 been hit by a car -- or a child who said they had
23 been hit by a car?
24 A Yes, sir.
25 Q All right. Let's take a look at this.

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1 (Defendant's Exhibit Number 6 marked
2 for identification.)
3 BY MR. BRADLEY:
4 Q What I'm showing you is a record from the PBA.
5 Let's see. This is Exhibit 6 and this is a record
6 that somehow you were involved in this investigation.
7 So I'm just showing it to you, to see if you can --
8 if this helps you recall that you were involved in
9 this investigation with attorney Andy Savage.
10 A I remember the incident, but I don't remember
11 ever talking to Andy Savage about it.
12 Q Okay. So this helps you remember that there was
13 the accusation that some member had run over a child,
14 but you don't remember Andy Savage being involved?
15 A I don't.
16 Q Okay. Do you remember there being an
17 investigation?
18 A Yeah. I remember that the Highway Patrol --
19 South Carolina Highway Patrol came and investigated
20 it. At the time, we were looking for -- we were
21 working on a homicide and we were in the Russelldale
22 -- Russelldale area of North Charleston. There was a
23 little girl who was crossing the street and she fell
24 down on the sidewalk. I stopped to ask her if she
25 was okay and she said yes, so I left.

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1 Probably an hour later, we had to come back over
2 there. Apparently somebody else called in, claiming
3 we hit the little girl with the car. Highway Patrol
4 investigated it and found -- I guess they found it
5 was false. And never was anything else came about
6 it.
7 Q You don't remember Andy Savage being involved?
8 A I don't.
9 Q All right. Let's take a look at this, then.
10 (Defendant's Exhibit Number 7 marked
11 for identification.)
12 BY MR. BRADLEY:
13 Q Mr. Stanley, I'm showing you what's marked as
14 Exhibit 7 to your deposition, which is a letter from
15 Andy Savage when he investigated this matter. Have
16 you seen this letter before?
17 A I have not.
18 Q The reason I ask is, it says it's carbon-copied
19 to you from Andy Savage on the back.
20 A I don't recall ever receiving that.
21 Q Okay.
22 A It -- it very well might have been delivered to
23 our agency and it never got to me, or...
24 Q You don't remember interacting with Andy Savage
25 at all, on this?

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1 A I do not. No, sir.
2 Q Okay. Do you remember the PBA providing a
3 lawyer for you and Pacheco and Anderson?
4 MR. RICHTER: Object to the form.
5 A I didn't recall that at all.
6 BY MR. BRADLEY:
7 Q All right. And as far as you know, Andy Savage
8 didn't represent you?
9 A I don't recall him representing me.
10 Q All right.
11 A Quite honestly, I don't -- I didn't know anybody
12 had contacted the PBA on it.
13 Q Okay.
14 (Defendant's Exhibit Number 8 marked
15 for identification.)
16 BY MR. BRADLEY:
17 Q Mr. Stanley, I'm showing you what's marked as
18 Exhibit 8 of your deposition.
19 A Yes, sir.
20 Q This appears to be a consent to release
21 information that, on its face, is signed by you.
22 A That -- apparently it is.
23 Q Did you sign that?
24 A Apparently I did.
25 Q All right. And it looks like it's witnessed by

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1 Cathleen Stanley. Is -- is that your wife's
2 signature?
3 A Yes, sir. That's my wife's signature.
4 Q And is that your signature on this document?
5 A That would be.
6 Q And does that help you remember that Andy Savage
7 was hired by the PBA to represent you?
8 A Well, obviously, he was, but I -- I still don't
9 recall even dealing with Andy on it.
10 Q Okay. You remember -- now that we see your
11 signature and your wife's signature on this document,
12 would you agree that Andy Savage was hired to
13 represent you on that?
14 A I would agree with that, yes, sir. Based on the
15 fact that I signed the form. But surprisingly, I --
16 I have no recollection of even talking to Andy about
17 this.
18 Q Okay. And I guess you don't have any complaint,
19 since you don't have any memory of -- of it?
20 A I have no complaints. That's correct.
21 Q All right.
22 (Defendant's Exhibit Number 9 marked
23 for identification.)
24 BY MR. BRADLEY:
25 Q Mr. Stanley, I'm showing you what's marked as

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1 Exhibit 9 in -- this is a letter from Joni Fletcher
2 at the PBA to Andy Savage, referencing you, Anderson
3 and Pacheco, regarding he'll represent you guys.
4 A Yes, sir.
5 Q The reason I show it to you -- well, first of
6 all, have you ever seen this letter before?
7 A I -- I don't recall seeing it.
8 Q Okay.
9 A I --
10 Q All right.
11 A I'm actually kinda surprised at the other stuff,
12 'cause I don't recall that. But...
13 Q Okay. Do you see down there, where it says it's
14 carbon-copied to you?
15 A Yes, sir. I see that.
16 Q Would you have been moving or had a different
17 address, back in 2005? Like, going from one address
18 to another or anything like that?
19 A No, sir.
20 Q All right. Is the address on this letter, where
21 it says 109 Deer Run Court -- is that where you lived
22 in March of 2005?
23 A That is where I lived. Yes, sir.
24 Q But you don't remember receiving this letter?
25 A I do not.

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1 Q Okay. All right. And since you don't remember
2 anything about dealing with Andy Savage, I -- do you
3 have any complaints about how the PBA responded in
4 that situation?
5 A Well, again, I didn't even realize they did.
6 Q Okay.
7 A I didn't recall they did, anyway. I --
8 Q Okay.
9 A I don't know if -- Michael Anderson may have
10 been the one who contacted them. I -- he was another
11 detective at the time.
12 Q Okay.
13 A I -- I really don't even -- obviously I signed a
14 release, but I don't recall any details of -- of
15 this, other than the accusations about what happened.
16 Q Right. And after seeing these documents, would
17 you agree now that the PBA hired Andy Savage to
18 represent you on this investigation?
19 A Oh, yes, sir. Uh-huh.
20 Q All right. And since you don't remember
21 anything about it, do you have any reason to be
22 dissatisfied with what he did?
23 A I have no reason at all.
24 Q All right. And you think Andy's a good lawyer;
25 right? You've got --

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1 A Oh, yes, sir.
2 Q -- no complaint about that, do you?
3 A No, sir.
4 MR. BRADLEY: All right. I'd like to take a
5 break now, if that's okay.
6 (Off the record from 1:05 p.m. until
7 1:16 p.m.)
8 (Defendant's Exhibit Number 10 marked
9 for identification.)
10 BY MR. BRADLEY:
11 Q All right. Mr. Stanley, I'm showing you Exhibit
12 10, which I believe to be Andy Savage's bill for work
13 done on the investigation that we talked about
14 earlier. Have you seen this before?
15 A No, sir. I have not.
16 Q All right. Earlier you said some indication of
17 you didn't know if the PBA had paid the lawyers that
18 it hired to defend you. Would you agree that the PBA
19 has paid people to defend you now?
20 MR. RICHTER: Object to the form.
21 A I don't recall saying that, but I -- I wouldn't
22 doubt that the PBA pays the attorneys.
23 BY MR. BRADLEY:
24 Q Okay. All right. Good.
25 I apologize if I've already done this, but I

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1 just want to make sure. You have not made any
2 complaint to the Insurance Commission of South
3 Carolina or any other state; is that true?
4 A That is true.
5 Q And you have not made any complaint with the
6 Department of Consumer Affairs in South Carolina or
7 any state; is that correct?
8 A That is correct.
9 Q All right. And do you realize that the PBA is
10 governed by a board of members who are elected by the
11 state leadership for each state?
12 MR. RICHTER: Object to the form.
13 A I know -- I was familiar with the local level,
14 but as far as the upper level, I didn't know exactly
15 how they were --
16 BY MR. BRADLEY:
17 Q All right.
18 A -- elected, or don't recall.
19 Q But assuming that each state has a state
20 president and those people sit together on a board
21 that makes that ultimate policy decisions and hiring
22 and firing decisions for the PBA, do you have any
23 problem with that leadership structure?
24 MR. RICHTER: Object to the form.
25 A I don't necessarily know that I have a -- a

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1 problem with the leadership structure. I mean -- I 2 mean, the whole crux of this -- this thing is the 3 fact there's no oversight over that, though. 4 BY MR. BRADLEY: 5 Q Right. Would you have any other way that you 6 think the PBA should be governed, other than by a 7 member-elected board? 8 A I think they should be regulated through state 9 insurance regulations. 10 Q Would you prefer to have an insurance 11 regulations making the decisions or having your 12 fellow officers making the decisions? 13 MR. RICHTER: Object to the form. 14 A Well, the issue comes up that we already saw 15 with Michael Slager. The fact that that fell 16 through -- 17 BY MR. BRADLEY: 18 Q Right. 19 A -- and it was one person's decision, and that -- 20 that's where a lot of the issue resides at. 21 Q And I understand you disagree with that 22 decision. 23 A Yes, sir. 24 Q Ultimately, in any situation, whether it's 25 insurance or whether it's a member benefit, sometimes	1 Slager, that didn't quite happen. 2 BY MR. BRADLEY: 3 Q I understand you disagree with that decision. 4 A Yes, sir. 5 Q But do you agree that the ultimate decision 6 should be made by your fellow officers? 7 A I don't know whether that would be more 8 appropriate or whether there's another method. I'm 9 -- I'm not quite sure. 10 Q What would the other method be? 11 A That's what I just said. I'm not -- I'm not 12 quite sure if there is another method. 13 Q Would you prefer that a insurance adjuster make 14 the decisions or that police officers make the 15 decisions? 16 MR. RICHTER: Object to the form. 17 A I don't know quite whether -- I mean, the -- the 18 bottom line is, as it stands, it -- it basically came 19 down to one guy's decision. And I -- I -- I think 20 there needs to be more to it than just one individual 21 saying we're not covering this. 22 BY MR. BRADLEY: 23 Q I -- I understand that. And that -- the man 24 that you're talking about is hired and fired by 25 police officers. You understand that, don't you?
Page 138	Page 140
1 decisions are made that one person might agree with 2 and another person would disagree with; correct? 3 A That -- that would be correct. 4 Q All right. And if this entity was found to be 5 insurance and regulated by an insurance commissioner, 6 do you know of any reason the decisions would be any 7 different than the way they're made now? 8 MR. RICHTER: Object to the form. 9 A I just -- I feel that there would be more 10 oversight. It wouldn't be left up to one person. 11 BY MR. BRADLEY: 12 Q All right. And where do you get that belief 13 from? 14 A There's -- if they're regulated, there -- 15 there's guidelines they have to follow. 16 Q Do you know what those guidelines are? 17 A I would have no clue exactly what the guidelines 18 are. 19 Q Do you know how things would be differently, if 20 it was regulated? 21 A Specifically, no, sir. 22 Q All right. Do you trust your fellow officers to 23 make good decisions? 24 MR. RICHTER: Object to the form. 25 A In most cases. But as we saw with Michael	1 A That's -- that's what you're telling me. I 2 mean, I don't have any reason to doubt that. 3 Q Right. Wouldn't you prefer the ultimate 4 decisions to be made, right or wrong, by police 5 officers, over an insurance adjuster? 6 MR. RICHTER: Object to the form. 7 A Well, I mean, I don't necessarily know that it 8 would be an insurance adjuster that makes the 9 decision, anyway. I don't know exactly how the 10 process would work, other than the fact that they 11 would -- they would have to follow guidelines and be 12 regulated. 13 BY MR. BRADLEY: 14 Q All right. Do you understand that if the PBA is 15 found to be an insurance company, as you allege, that 16 what would happen is insurance adjusters would make 17 the decision instead of police officers? 18 MR. RICHTER: Object to the form. 19 A I don't know that for certain, but I really 20 don't know if that would be a bad thing or -- I -- I 21 think we can do better than what we're doing right 22 now. Put it that way. 23 BY MR. BRADLEY: 24 Q Right. Have you ever taken any steps to try and 25 do anything, besides suing the PBA, to try to improve

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1 the system?
2 MR. RICHTER: Object to the form.
3 A I did join the FOP Legal Defense fund.
4 BY MR. BRADLEY:
5 Q Right.
6 A Because I -- once I realized this happened with
7 Michael Slager, I -- I felt like, in the end, if
8 anything did happen, I didn't want to rely on the
9 fact that I may get dropped. So my wife and myself
10 both decided to go ahead and -- and join the FOP's
11 Legal Defense fund.
12 Q Right. My question is -- I -- I think you said
13 earlier you thought things could've been done better.
14 A Yes, sir.
15 Q Is that correct?
16 A Yes, sir.
17 Q Have you, yourself, taken any steps -- besides
18 filing a lawsuit -- to try and improve how things are
19 done with the PBA?
20 MR. RICHTER: Object to the form.
21 A I have not. No, sir.
22 BY MR. BRADLEY:
23 Q And at the end of the day, do you have any
24 opinion on whether or not police officers should be
25 making these decisions or insurance adjusters should

Page 142

1 make them?
2 A I really don't know --
3 MR. RICHTER: Object to the form.
4 A -- what would be the better thing, or a
5 combination. I'm not really sure.
6 BY MR. BRADLEY:
7 Q Do you know who makes the decisions for the
8 Fraternal Order of Police?
9 A As far as I know, it's regulated through an
10 insurance company.
11 Q But do you know who the people are? Do you know
12 they're insurance adjusters?
13 A I'm -- I'm not aware of exactly who is and who
14 isn't. I -- I haven't had -- and luckily, I've not
15 had to contact them and -- and use their services,
16 obviously. But I don't know exactly the process that
17 you go through to -- to get that.
18 MR. BRADLEY: Okay. I don't have any more
19 questions.
20 EXAMINATION
21 BY MR. RICHTER:
22 Q Officer Stanley, I just have a few questions for
23 you.
24 A Yes, sir.
25 Q The -- the dues that you pay, they're

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1 approximately 23 dollars a month to the PBA -- or
2 have paid in the past?
3 A I don't know what it comes out to. I think it's
4 247 a year, or 235. Somewhere in that range. I --
5 Q All right.
6 A I don't know what the average is, though --
7 Q All right. You --
8 A -- a month.
9 Q You don't believe that they're setting up an
10 escrow account for Officer Stanley and squirreling
11 that money to the side, in the event that you ever
12 have a claim, do you?
13 A No, sir. I do not.
14 Q And you understand the only way that the plan
15 works is if lots of people pay the same amount of
16 money, based upon the promise that if any one of you
17 needs the service it's available; right?
18 A Yes, sir.
19 Q And is that not ultimately the promise that's
20 made to you, that if we all put in together, that if
21 any one of us has a need there's a fund there for all
22 of us?
23 A That's ultimately what it boils down to.
24 Q All right.
25 A Yes, sir.

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1 Q And so, is -- is it not harmful to you and
2 damaging to you, when you pay your money in and it's
3 not used in the method that was prescribed?
4 A Yes, sir.
5 Q All right. So when you paid your money in, did
6 you pay it in just for yourself or did you pay it in
7 on behalf of all of the members who, likewise, paid
8 the same sum?
9 A It all goes together. It goes -- you know,
10 we're all supporting each other.
11 Q And you paid your money to support Michael
12 Slager too, didn't you?
13 A Yes, sir.
14 Q And Michael Slager's individual claim with the
15 PBA may be resolved, but is your -- is your claim
16 resolved, surrounding the fact that the money that
17 you paid for his beneficial interest and the
18 interests of all other members was not used in the
19 way that you intended?
20 A I'm sorry. Can you repeat? I -- I got
21 distracted.
22 Q Yeah. Michael Slager's claim may be resolved.
23 A Yes, sir.
24 Q But are you resolved? Are you happy with the
25 way that your money was spent and the way the PBA

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1 handled the Michael Slager situation?

2 A No, sir.

3 Q All right. Did you sign a settlement agreement

4 in the Michael Slager case?

5 A I did not.

6 Q Did you get an e-mail that was sent to the

7 membership that explained that, in calendar year

8 2015, if I'm not mistaken, 1.7 million dollars was

9 spent on lawyers defending police officers by the

10 PBA, did you get that?

11 A I don't recall getting that.

12 Q The PBA says it has 44,000 members. Do you

13 understand that?

14 A Yes.

15 Q More or less? Who all pay about 23 dollars a

16 month, which is a little over a million dollars a

17 month. If they spent 1.7 million dollars in one year

18 alone, did the PBA ever explain to you what happened

19 to the other 10-plus million dollars that it

20 collected?

21 A No, sir.

22 Q All right. Is there any accounting that's gone

23 -- that's sent to the general membership?

24 A No, sir.

25 Q At -- at your church, at the end of the year,

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1 does -- does it explain the money that came into the

2 till and how it was used throughout the year?

3 A Yes, sir.

4 Q All right. Is there anything as simple as an

5 accounting in a bulletin or a memo, that explains to

6 you, as a member, this is the money that we took in

7 and this is how we spent that money?

8 A No, sir.

9 Q In your years with the -- with the PBA, have you

10 ever received such an accounting?

11 A No, sir. Not that I've -- I don't recall ever

12 receiving a breakdown of -- of expenses.

13 Q I think we -- we'll all agree that the

14 accommodations in McDonough are modest. And if

15 that's true -- so overhead is lean and you pay 1.7

16 million dollars for the lawyers -- do you know what

17 happens to the other 10 million dollars?

18 A I have no idea.

19 Q All right. Do you -- do you know if the PBA is

20 able to cover the risk that it undertakes, through

21 its plan?

22 A I would assume so, based on --

23 Q Okay. Do you have any finances --

24 A -- the amount of money, but I have no specific

25 knowledge as to --

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1 Q All right.

2 A -- whether they could or not.

3 Q Do you know if they have reserves that are set

4 aside, that are sufficient to cover the risk that --

5 A I do not know.

6 Q -- they seek to cover through their plan?

7 A No, sir. I do not.

8 Q All right. Now, take a look at Exhibit Number

9 2. The headline says that the Police Benevolent

10 Foundation and the South Carolina PBA delivered

11 checks. You see that?

12 A Yes, sir.

13 Q Okay. Do you know what the Police Benevolent

14 Foundation is, that's separate and apart from the

15 South Carolina PBA?

16 A I've -- I've heard of it. I've never really

17 looked into it, other than -- it's a foundation that

18 raises money for things like this, as far as I know.

19 But I -- I'm not -- I don't have specific knowledge

20 exactly what they do.

21 Q All right. You -- you don't believe that this

22 money that was given to these police officers came

23 out of the dues that were collected from you and from

24 the other members of the plan, do you?

25 A I don't think so. I mean, if -- if I remember

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1 correctly, when you pay your dues, there's a -- a box

2 you can check and you can add -- I think it's a

3 certain amount -- or a specific amount to donate

4 money to the -- the Police Benevolent Foundation.

5 But --

6 Q Yeah, look at the last paragraph. Doesn't it

7 indicate that these folks were touched by the

8 donations that were raised for the officers?

9 A Yes, sir. According to the Columbia Chapter

10 President.

11 Q All right. So -- so this money was not money

12 paid by the PBA, was it?

13 A I -- as far as I know. I don't -- I don't think

14 it was.

15 Q Does the article indicate that it was, in fact,

16 money that was raised by donations?

17 A I mean, it appears that for --

18 Q In --

19 A -- through the donations --

20 Q Yeah, they --

21 A -- I guess, to the Police Benevolent Foundation.

22 Q And -- and the PBA's involvement was to deliver

23 the checks?

24 A It appears so. Yes, sir.

25 Q And -- and -- and, I guess, to make a headline,

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1 to create the appearance that it actually provided
2 the money?
3 A Possibility. Yes, sir.
4 Q All right. Other than driving for -- paying for
5 the gas that was in the car that was used to deliver
6 the checks, are you -- do you have any knowledge of
7 the PBA paying anything towards these officers who
8 had damaged homes after the hurricane?
9 A No, sir.
10 Q All right. And do you believe accidental death
11 benefits are insurance?
12 A Yes, sir.
13 Q If I sold you your dream home and it turned out
14 that I was not a licensed real estate agent, do -- do
15 you think it would be fair and appropriate for you to
16 ask me to surrender my commission back to you?
17 A I do. Yes, sir.
18 Q Okay. In other words, if it was illegal for me
19 to have sold you the house, do you think it would be
20 proper for me to keep the money?
21 A No, I do not.
22 Q All right. If -- if I, as a lawyer, provided
23 you with a service and you paid me money and it
24 turned out I wasn't licensed to practice law, do you
25 think it would be appropriate for me to keep the

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1 money?
2 A No, I do not.
3 Q Well, what if I got you a great result, I won
4 your case --
5 A I --
6 Q -- do you think I should keep the money?
7 A No, I do not.
8 Q All right. If I'm a surgeon and I operate on
9 you and I save your life and you pay me money for
10 that, and it turns out I was never licensed to
11 practice medicine, do you think it would be proper
12 for me to keep the money?
13 A No, sir.
14 Q All right. In any of those circumstances, might
15 you ask for the money back?
16 A Yes, sir.
17 MR. RICHTER: All right. All right. Those are
18 all my questions.
19 FURTHER EXAMINATION
20 BY MR. BRADLEY:
21 Q I have a few quick questions. Mr. Stanley --
22 A Yes, sir.
23 Q -- all those questions about the finances of the
24 PBA and do you know what they are, have you ever
25 asked?

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1 A I have not. No, sir.
2 Q Do you want to know what they are?
3 A At this -- at this point, I -- I would leave it
4 up to the attorneys to sort through this mess.
5 Q Well, if you're interested, why didn't you ask?
6 MR. RICHTER: Object to the form.
7 A At the time, I didn't have a reason to be.
8 BY MR. BRADLEY:
9 Q Okay. The Police Benevolent Foundation is run
10 by the PBA, isn't it?
11 A I would assume so. I know it's connected, but I
12 don't know exactly how it's ran. Not ---
13 Q And members make donations; right?
14 A I know that you can donate to it, but I don't
15 know how else they get money. I -- I -- I don't have
16 enough involvement, or never have, not -- in that, to
17 know.
18 Q Right. Because the donations are
19 tax-deductible. That's why it's a separate
20 foundation.
21 A Okay.
22 Q Do you know that?
23 A I had no knowledge of that. No, sir.
24 Q Have you ever made a donation, yourself, to it?
25 A No, sir.

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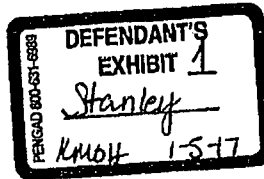
1 Q Did you know that 50 cents out of the \$23.50,
2 that -- that you can elect for 50 cents of that to go
3 the Police Benevolent Foundation?
4 A I wasn't aware of that.
5 Q Okay. Do you agree that the PBA raised the
6 money for these police officers whose houses were
7 damaged?
8 A I have no idea whether they did or not. I mean,
9 I don't know exactly if all the money came from the
10 Benevolent Foundation or --
11 Q Somewhere it came from the police officers who
12 were members of the PBA; right?
13 MR. RICHTER: Object to the form.
14 A I -- honestly, I don't know. I mean, it --
15 BY MR. BRADLEY:
16 Q Okay.
17 A It -- all it says is -- is they delivered
18 checks. I don't --
19 Q Right.
20 A I don't have any specific knowledge as to -- I
21 mean, were the checks even from the Police Benevolent
22 Foundation, were they from a bank? I don't -- I
23 don't know. I'm not disputing the fact that -- that
24 they've delivered the money and that they raise the
25 money. I don't -- I just don't know the method of

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1 it.
2 Q Do you think it was a useful and good thing to
3 do?
4 A Oh, I have no doubt that that's a good thing to
5 do.
6 Q All right. Do you have any reason to think the
7 PBA was doing it just to -- so they look good?
8 A I don't know if that was the reason behind it or
9 not. I mean, I -- I don't know what's in somebody
10 else's mind, sir.
11 Q Sure. Did you do anything to help all those
12 police officers whose houses got flooded?
13 A Not in Columbia. No, sir.
14 Q All right. Do you have a problem with the PBA
15 or the Police Benevolent Foundation trying to help
16 out police officers?
17 A I have no issue with that. No, sir.
18 MR. BRADLEY: Okay. I don't have any more
19 questions.
20 MR. RICHTER: That's all.
21 FURTHER DEPONENT SAITH NOT.
22 (Whereupon, there being no further
23 questions, the deposition was concluded
24 at 1:33 p.m.)
25

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1 (*This transcript may contain quoted material. Such
2 material is reproduced as read or quoted by the speaker.)
3 (**Certificate accompanies sealed original only.)
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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

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

vs.)

Southern States Police Benevolent
Association, Inc.)

Defendant.)

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

AMENDED COMPLAINT

Jury Trial Demanded

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

Class Allegations

1. Plaintiff, Donald Stanley, is an individual and resident of Berkeley County, South Carolina, who was at all times relevant hereto a member in good standing with the Southern States Police Benevolent Association.

2. Plaintiff, Sean Reiter, is a resident of New Jersey, who was at all times relevant hereto a member in good standing with the Southern States Police Benevolent Association.

3. Defendant Southern States Police Benevolent Association, Inc. ("PBA") is a corporation organized and existing under the laws of the State of Georgia, which transacts business in the States of Georgia, South Carolina, North Carolina, Virginia, West Virginia, Kansas, Arkansas, Tennessee and Louisiana.

4. The PBA invites police officers in the States of Georgia, South Carolina, North Carolina, Virginia, West Virginia, Kansas, Arkansas, Tennessee and Louisiana to become "members" of the PBA. Members of the PBA pay monthly "dues" to the PBA in exchange for a "Legal Defense Benefit Plan" (sometimes referred to as the "Plan"). According to the Plan, it provides a legal defense and related costs to an officer member who is accused of a crime while performing his or her official duties as police officers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Factual Background

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

selling memberships in the PBA.

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

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

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

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

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

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

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

- iii. He/she remains a member in good standing from the date of incident until conclusion of the adversarial proceedings,
- iv. The incident was the result of the MEMBER's performance of or pursuit of his/her official duties as a law enforcement officer, and
- v. The request for coverage was submitted by the member and received by the Association within ten (10) calendar days after the member received official notification of the civil suit or criminal accusation and active representation of the member is undertaken by a legal defense benefit attorney.
- vi. The member contracts the assigned attorney within five (5) days of receiving notification from the association specifying the name and phone number of such attorney.
- vii. The member cooperates in the preparation and defense of the case by remaining available for contact upon reasonable notice from the association or assigned counsel." **Section 1.B. Benefit Administration.**
- f. "Southern States PBA reserves the right to withhold approval of any benefits and to withdraw approval of any benefits if it is determined at any time that the member has committed an intentional, deliberate and/or illegal act, either civilly or criminally." **Section 1.D. Limitations, Restrictions and Exemptions.**

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

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

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

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

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

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

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

36. The Policy is insurance.

37. The membership "dues" are actually premiums.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

73. In the State of Louisiana, no person shall act as an insurer unless properly qualified, and no person shall transact the business of insurance without complying with the appropriate laws. La. Stat. Ann. §§ 22:12, et seq.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

86. Class members have not breached the insurance contracts.

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

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

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

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

**For a Second Cause of Action
Negligence**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Charleston, South Carolina

11/22, 2016

Attorneys for Plaintiffs



Ronald L. Richter, Jr.
Scott M. Mongillo
Peoples Building
18 Broad Street, Mezzanine
Charleston, South Carolina 29401
(843) 573-9900
ronnie@blandrichter.com
scott@blandrichter.com

Eric S. Bland
1500 Calhoun Street
Post Office Box 72
Columbia, South Carolina 29202
(803) 256-9664
erichbland@blandrichter.com

Andrew J. Savage, III, Esquire
SAVAGE LAW FIRM
15 Prioleau Street
Charleston, South Carolina 29401
(843) 720-7470
andy@savlaw.com

Carl E. Pierce, II, Esquire
Joseph C. Wilson, IV, Esquire
Pierce, Hems, Sloan & Wilson, LLC
The Blake House
321 East Bay Street (29401)
Post Office Box 22437
Charleston, South Carolina 29413
(843) 725-7705
carlpierce@phswlaw.com
jocwilson@phswlaw.com

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

EXHIBIT A
COMPLAINT

Legal Defense Benefit Plan

SOUTHERN STATES POLICE BENEVOLENT ASSOCIATION, INC.

POLICY NO. 00-16

LEGAL DEFENSE BENEFIT

BACKGROUND:

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

POLICY:

Section 1. Coverage and Eligibility

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

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

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

Section 2. Benefit Administration

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

Policy No. 00-16
Legal Defense Benefit
Page 4

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

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

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

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

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Page 5

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

Section 4. Limitations, Restrictions and Exemptions

- A. A member will be entitled to an attorney under the Legal Defense Benefit in civil actions when the member is a co-defendant, in his/her individual capacity, with his/her employer and when punitive damages are sought against the member. (The litigation preparation shall be confined to the issue of punitive damages). The Association CEO or the Director of Legal Services reserve the right to review the costs and expenditures each month to determine if they have been incurred within the coverage set forth.
- B. The Benefit will not provide legal services in civil matters wherein punitive damages are not sought unless the member is sued individually and the employer refuses representation; or unless the employer is going to settle the claim and the employer has admitted wrongdoing on behalf of the member without the member's consent.

- C. The Director of Legal Services may direct that a case assigned to a legal defense attorney be monitored by the attorney in the following cases: (a) cases in which the member is being actively represented by the employer; (b) civil cases in which the member is being actively represented by the employer and the member is satisfied with representation being provided, and (c) civil cases in which the member is only a nominal party and the case is designed to test the legality of an employer's practice, policy or rule enforced by the member.

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

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

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

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

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

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

Section 5. Cessation of Legal Defense Benefit Plan

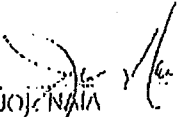
- A. In the event the Association Board of Directors shall determine that the Legal Defense Benefit Plan is no longer feasible for whatever reason, Southern States P.B.A. shall promptly notice each member of the Association by U.S. mail, first class, to the member's address, as listed in the Association's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

Section 6. Definitions

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

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

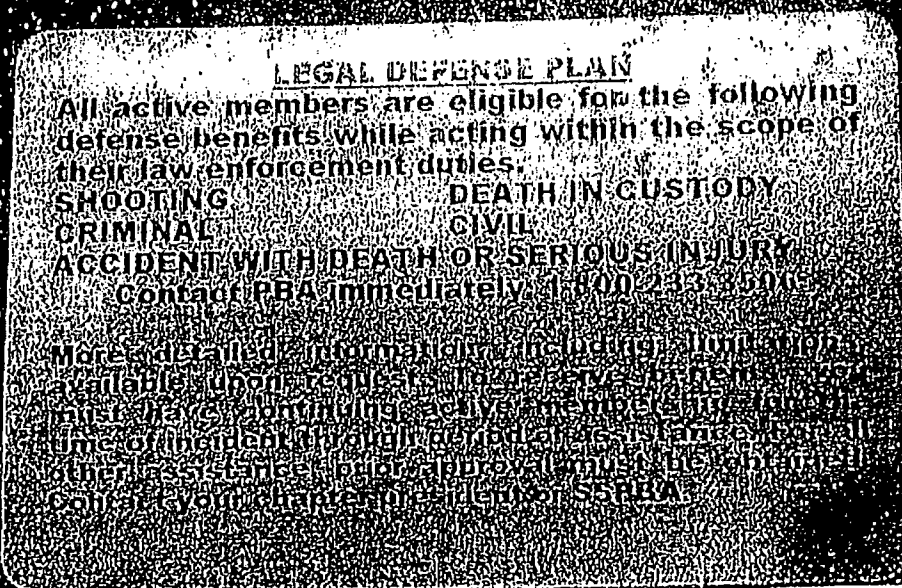
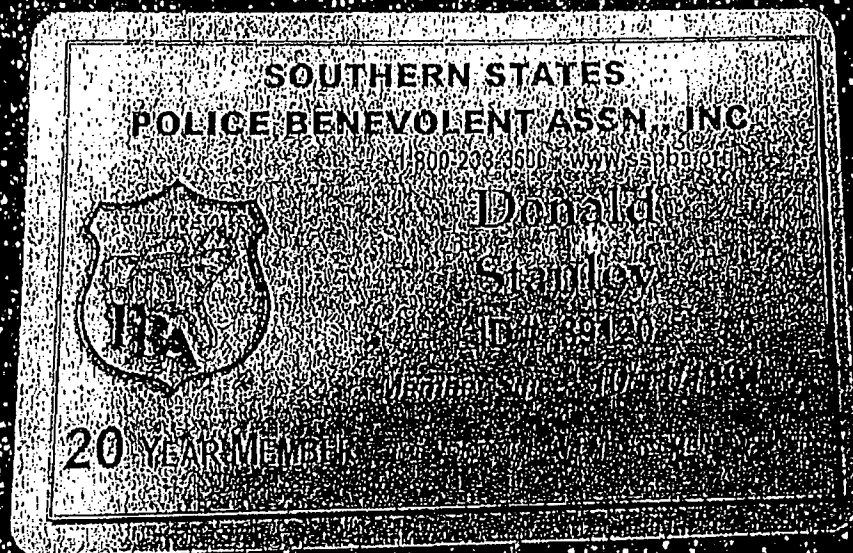
Former SSPBA Policy 90-01


JOE NALA
Secretary-Treasurer

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

EXHIBIT B
COMPLAINT

Southern States Police Benevolent Association, Inc. Wallet Card



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

EXHIBIT C
COMPLAINT

Southern States Police Benevolent Association, Inc. Website Screenshot



SOUTHERN STATES PBA

WHY JOIN? ([HTTPS://WWW.SSPBA.ORG/GEN/ARTICLES/WHY_JOIN_68.JSP](https://www.sspba.org/gen/articles/why_join_68.jsp))WHO CAN JOIN? ([HTTPS://WWW.SSPBA.ORG/GEN/ARTICLES/WHO_CAN_JOIN_564.JSP](https://www.sspba.org/gen/articles/who_can_join_564.jsp))LEGAL ([HTTPS://WWW.SSPBA.ORG/GEN/ARTICLES/LEGAL_DEPARTMENT_125.JSP](https://www.sspba.org/gen/articles/legal_department_125.jsp)) STATE DIVISIONS MEMBER CENTERGOV AFFAIRS ([HTTPS://WWW.SSPBA.ORG/GEN/ARTICLES/GOVERNMENTAL_AFFAIRS_124.JSP](https://www.sspba.org/gen/articles/governmental_affairs_124.jsp)) SSPBA STAFF

Legal benefits PBA members receive

No other law enforcement association even comes close

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

Shooting and Serious Injury Incidents

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

Civil Suits and Criminal Action

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

Grievance and Disciplinary Representation

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

With PBA's Legal Defense Benefit...

"Do I need committee approval?"

NO!

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

NO!

"Will personalities be involved in my request?"

NO!

"Will inner-circle politics be involved?"

NO!

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

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

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

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

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

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

SOUTHERN STATES PBA NEWS

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

114TH US CONGRESS UPDATE JULY 2016

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

August 2, 2016

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

more

(https://www.sspba.org/gen/articles/114TH_US_CONGRESS_UPDATE_JULY_2016_630.jsp)

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

July 18, 2016

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

more

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

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

July 8, 2016

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

more

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

LEGAL AID

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

Legal Benefits (https://www.sspba.org/gen/articles/Legal_Benefits_63.jsp)

Meet the Legal Staff

(https://www.sspba.org/gen/articles/Meet_the_Legal_Staff_156.jsp)

What We Are Up To

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

Need to Know

(https://www.sspba.org/gen/articles/What_you_need_to_know_when_you_need_legal_aid_101.jsp)

Garrity Rule

(https://www.sspba.org/gen/articles/Garrity_Information_Protect_yourself_Know_your_rights_102.jsp)

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

Legal FAQ

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

Contact Legal

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

MEDIA CENTER

About the SSPBA

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

SSPBA Board

(https://www.sspba.org/gen/chapters/Southern_States_PBA_77_Board.jsp)

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

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

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

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

GET INVOLVED

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

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

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

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

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

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

Twitter (https://www.sspba.org/gen/articles/Follow_us_on_twitter_204.jsp)

Visitor's List (<http://visitor.r20.constantcontact.com/manage/optIn/eatv=00110R16q2x1H8sPuOGK0w%3D%3D>)

Don't Light Up for a Minute (<http://www.pbfl.org>)

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

MEMBER CENTER

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

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

Retired Members

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

Military/Active Duty

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

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

GOVERNMENTAL AFFAIRS

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

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

Governmental Affairs FAQ

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



SOUTH CAROLINA DIVISION

WHY JOIN? ([HTTPS://WWW.SSPBA.ORG/GEN/ARTICLES/WHY_JOIN__68.JSP](https://www.sspba.org/gen/articles/why_join__68.jsp))

WHO CAN JOIN? ([HTTPS://WWW.SSPBA.ORG/GEN/ARTICLES/WHO_CAN_JOIN__564.JSP](https://www.sspba.org/gen/articles/who_can_join__564.jsp))

LEGAL ([HTTPS://WWW.SSPBA.ORG/GEN/ARTICLES/LEGAL_DEPARTMENT_125.JSP](https://www.sspba.org/gen/articles/legal_department_125.jsp)) STATE DIVISIONS MEMBER CENTER

GOV AFFAIRS ([HTTPS://WWW.SSPBA.ORG/GEN/ARTICLES/GOVERNMENTAL_AFFAIRS_124.JSP](https://www.sspba.org/gen/articles/governmental_affairs_124.jsp)) SSPBA STAFF

The Police Benevolent Foundation and South Carolina PBA deliver checks to Columbia police officers affected by flood

Dec 15, 2015



Several Columbia police officers pictured after they received their checks from the Police Benevolent Foundation.

Pictured L to R: Columbia Police Officer Petoskey, Sergeant Calby, Investigator Scott, Corporal Walsh, Corporal Walker, Sergeant Williams, South Carolina PBA Columbia Chapter President Joseph Czeladko, and SCPBA President Dave Soderberg.

On Monday, December 14, 2015 the South Carolina Division of the Southern States PBA presented several Columbia police officers with checks from the Police Benevolent Foundation. Nine Columbia police officers' homes sustained major damage during the flood caused by Hurricane Joaquin in October. The Police Benevolent Foundation and the South Carolina Division of the Southern States PBA rallied behind several Columbia police officers that were greatly affected by the flood.

South Carolina PBA President Dave Soderberg and Columbia Chapter President Joseph Czeladko were both in attendance. Soderberg and Czeladko were very appreciative of the enormous show of support that the officers received from the donations. "People sometimes forget that these officers lost their homes, but they were still out there working during the flood. It really speaks volumes about them. They were so taken aback by the outpouring of support that they received from the donations," said Soderberg.

Columbia Chapter President Joseph Czeladko was also very touched by the donations raised for the officers. He said, "[It] was an emotion filled day, we were able to disperse those donations and I cannot begin to describe the gratefulness we have for the people who donated, supported and gave with their heart to us all during that time. I thank you. We thank you. You are amazing."



COLUMBIA NEWS

VIEW ALL ([HTTPS://WWW.SSPBA.ORG/GEN/ARTICLES/](https://www.sspba.org/gen/articles/the_police_benevolent_foundation_and_south_carolina_pba_deliver_checks_to_columbia_police_officers_affected_by_flood)

THE POLICE BENEVOLENT FOUNDATION AND SOUTH CAROLINA PBA DELIVER CHECKS TO COLUMBIA POLICE OFFICERS AFFECTED BY FLOOD

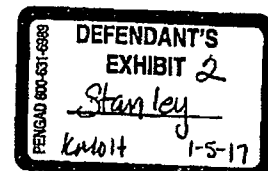
([HTTPS://WWW.SSPBA.ORG/GEN/ARTICLES/](https://www.sspba.org/gen/articles/the_police_benevolent_foundation_and_south_carolina_pba_deliver_checks_to_columbia_police_officers_affected_by_flood)
December 15, 2015
On Monday, December 14, 2015, the South Carolina Division of the Southern States PBA and the Police Benevolent Foundation rallied behind several Columbia police officers that were greatly affected by the flood.
(https://www.sspba.org/gen/articles/the_police_benevolent_foundation_and_south_carolina_pba_deliver_checks_to_columbia_police_officers_affected_by_flood)

THE COLUMBIA CHAPTER MOURNS THE LOSS OF THE ASHLEY VINCENT, THE WIFE OF PBA MEMBER AND LAW ENFORCEMENT OFFICER MATTHEW VINCENT

([HTTPS://WWW.SSPBA.ORG/GEN/ARTICLES/](https://www.sspba.org/gen/articles/the_columbia_chapter_mourns_the_loss_of_the_ashley_vincent_the_wife_of_pba_member_and_law_enforcement_officer_mattew_vincent)
August 7, 2015
The PBA Columbia Chapter mourns the loss of Ashley Vincent, the wife of law enforcement officer Matthew Vincent. Ashley passed away in her sleep after yielding a medical facility with complaints of stomach pains.
(https://www.sspba.org/gen/articles/the_columbia_chapter_mourns_the_loss_of_the_ashley_vincent_the_wife_of_pba_member_and_law_enforcement_officer_mattew_vincent)

SCPBA COLUMBIA CHAPTER GOES BALD

([HTTPS://WWW.SSPBA.ORG/GEN/ARTICLES/SCPBA_COLUMBIA_CHAPTER_GOES_BALD](https://www.sspba.org/gen/articles/scpba_columbia_chapter_goes_bald)
February 28, 2013
Have you ever considered what it might take to help save someone's life?
(https://www.sspba.org/gen/articles/scpba_columbia_chapter_goes_bald)



LEGAL AID
Legal News
(https://www.sspba.org/gen/articles/legal_department_125.jsp)

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MEMBER
CENTER
(https://www.sspba.org/gen/articles/who_can_join__564.jsp)

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About the SSPBA
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GOVERNMENTAL
AFFAIRS
(https://www.sspba.org/gen/articles/governmental_affairs_124.jsp)



Legal Benefits	Why Join?	My Account	SSPBA Board	Candidate
(https://www.sspba.org/benefits/why-join/)	(https://www.sspba.org/benefits/why-join/)	(https://www.sspba.org/benefits/why-join/)	(https://www.sspba.org/benefits/why-join/)	(https://www.sspba.org/benefits/why-join/)
Meet the Legal Staff	Donate	Retired Members	Press Contact	(https://www.sspba.org/gen/elections.jsp)
(https://www.sspba.org/gen/elections.jsp)	(https://www.sspba.org/gen/elections.jsp)	(https://www.sspba.org/gen/elections.jsp)	(https://www.sspba.org/gen/elections.jsp)	(https://www.sspba.org/gen/elections.jsp)
What We Are Up To	The Foundation	(https://www.sspba.org/gen/elections.jsp)	News	(https://www.sspba.org/gen/sepalnews.jsp)
(https://www.sspba.org/gen/sepalnews.jsp)	(https://www.sspba.org/gen/sepalnews.jsp)	(https://www.sspba.org/gen/sepalnews.jsp)	(https://www.sspba.org/gen/sepalnews.jsp)	(https://www.sspba.org/gen/sepalnews.jsp)
Need to Know	Facebook	(https://www.sspba.org/gen/sepalnews.jsp)	Videos	(https://www.sspba.org/gen/sepalnews.jsp)
(https://www.sspba.org/gen/sepalnews.jsp)	(https://www.sspba.org/gen/sepalnews.jsp)	(https://www.sspba.org/gen/sepalnews.jsp)	(https://www.sspba.org/gen/sepalnews.jsp)	(https://www.sspba.org/gen/sepalnews.jsp)
Garry Rule	Twitter	(https://www.sspba.org/gen/sepalnews.jsp)		
(https://www.sspba.org/gen/sepalnews.jsp)	(https://www.sspba.org/gen/sepalnews.jsp)	(https://www.sspba.org/gen/sepalnews.jsp)		
Simple Will	Join PDF Mailing	(https://www.sspba.org/gen/sepalnews.jsp)		
(https://www.sspba.org/gen/sepalnews.jsp)	(https://www.sspba.org/gen/sepalnews.jsp)	(https://www.sspba.org/gen/sepalnews.jsp)		
Legal FAQ	(https://www.sspba.org/gen/sepalnews.jsp)	(https://www.sspba.org/gen/sepalnews.jsp)		
(https://www.sspba.org/gen/sepalnews.jsp)	(https://www.sspba.org/gen/sepalnews.jsp)	(https://www.sspba.org/gen/sepalnews.jsp)		
Contact Legal	(https://www.sspba.org/gen/sepalnews.jsp)	(https://www.sspba.org/gen/sepalnews.jsp)		
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	PBA Store	(https://www.sspba.org/gen/sepalnews.jsp)		
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

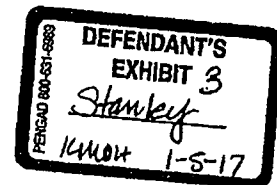
CHARLESTON DIVISION

AKILIOU SMITH,	)	C/A No.: 2:16-cv-655-PMD-BM
	)	
Plaintiff,	)	
v.	)	COMPLAINT
	)	(Jury Trial Demanded)
CHARLESTON COUNTY;	)	
THE CHARLESTON COUNTY	)	
SHERIFF'S OFFICE; and	)	
JAMES L. JACKO and DONALD	)	
STANLEY in their respective	)	
INDIVIDUAL capacities,	)	
	)	
Defendants.	)	

Plaintiff Akiliou Smith, by and through his undersigned counsel, complaining of Charleston County; the Charleston County Sheriff's Office; and James L. Jacko and Donald Stanley in their respective individual capacities, alleges as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) & (4) and personal jurisdiction over the parties.
2. Plaintiff is a citizen and resident of Charleston County in the state of South Carolina.
3. Upon information and belief, each Defendant is a citizen and resident of Charleston County, South Carolina.
4. All of the acts giving rise to the causes of action in this Complaint occurred in Charleston County, South Carolina.
5. Venue is proper under 28 U.S.C. § 1391(b).



FACTUAL BACKGROUND

6. Upon information and belief, Charleston County is a duly authorized county created pursuant to the laws of the State of South Carolina. At all times relevant hereto, Charleston County, its agents, servants and employees operated, maintained and controlled the Charleston County Sheriff's Office, including all sheriff's deputies and employees thereof. Upon information and belief, Charleston County is responsible for the policies, practices and customs of the Charleston County Sheriff's Office as well as hiring, training, supervising, and controlling and disciplining its deputies and other employees.

7. Upon information and belief, the Charleston County Sheriff's Office is a political subdivision of Charleston County and is a county entity organized and created pursuant to the laws of the State of South Carolina. Along with Charleston County, the Charleston County Sheriff's Office is responsible for the policies, practices and customs of the Charleston County Sheriff's Office as well as the hiring, training, supervising, controlling and disciplining of its deputies and other employees.

8. At the various times giving rise to the causes of action set forth in this Complaint, upon information and belief, James L. Jacko was employed by the Charleston County Sheriff's Office and on duty, acting individually and under the color of state law.

9. At the various times giving rise to the causes of action set forth in this Complaint, upon information and belief, Donald Stanley was employed by the Charleston County Sheriff's Office and on duty, acting individually and under the color of state law.

10. Furthermore, at all times relevant hereto James L. Jacko and Donald Stanley were commissioned law enforcement officers elected or appointed to serve all people in Charleston County regardless of race, gender, religious affiliation or socioeconomic status. James L. Jacko

and Donald Stanley further knew or should have known Plaintiff enjoyed constitutional rights to be free from unnecessary government interference, intrusion, and force that belonged to him regardless of his race.

11. Plaintiff is informed and believes that prior to December 07, 2015, James L. Jacko and Donald Stanley had been trained and certified by the South Carolina Law Enforcement Division in the proper use of a handgun. James L. Jacko and Donald Stanley were authorized in each officer's capacity as a commissioned law enforcement officer to carry a firearm.

12. On December 07, 2015, James L. Jacko and Donald Stanley were in fact carrying department issued firearms.

13. Plaintiff is further informed and believes that prior to December 07, 2015, each Defendant had undergone basic law enforcement training at the South Carolina Criminal Justice Academy pursuant to S.C. Code Sec. 17-5-130 and had undergone 16 hours of annual training by the South Carolina Law Enforcement Training Council for each subsequent year.

14. Upon information and belief, on December 07, 2015, James L. Jacko and Donald Stanley responded to a call regarding a suspicious person and suspected burglary on Kano Street, Johns Island, South Carolina. The caller, the homeowner, came home to find an unknown individual in her home. The individual identified himself as Shawn Freeman and indicated that he knew the homeowner's daughter. The individual left the home on foot upon request by the homeowner.

15. At approximately 8:33 P.M., the homeowner provided Charleston County 9-1-1 dispatch with a description of the individual in addition to his name. She described the person as a black male, wearing a jean jacket and jean pants, between twenty-five (25) and thirty (30) years

of age, five-feet five-inches (5' 5") tall, weighing approximately 150 pounds, with a short "afro" hair cut approximately two inches tall, and a possible little beard.

16. Upon information and belief, multiple Charleston County Sheriff's Office Deputies arrived at Kano Street at approximately 9:01 P.M.

17. While standing near his porch in his front yard, at approximately 10:09 P.M., Plaintiff was approached by an unknown person with a dog shining a flashlight at him and calling to him. Plaintiff retreated to the safety of his home and locked his door. The unknown individual did not identify himself as a law enforcement officer or state his purpose.

18. Out of concern for his safety, after Plaintiff retreated to the safety of his home where he called 9-1-1 to report the suspicious person that approached him in his yard. Plaintiff recounted the events to the 9-1-1 operator.

19. While still on the phone with 9-1-1 dispatch, Defendants James L. Jacko and Donald Stanley kicked in Plaintiff's door and forced entry to his home.

20. Plaintiff did not provide any oral or written consent to entry into his home.

21. Neither James L. Jacko nor Donald Stanley possessed a search warrant for the search or entry into Plaintiff's home.

22. Plaintiff is not named Shawn Freeman.

23. Plaintiff does not match the physical description of the suspect provided by the Ghana Street homeowner. Plaintiff is five-feet seven-inches tall and weighs approximately 275 pounds. The only similarity between the Plaintiff and suspect is they are African-American males.

24. Plaintiff was not wearing similar clothing to the clothing described by the Ghana Street homeowner. Plaintiff was attired in his work uniform, which consists of khaki-colored

cargo pants and a green-colored work jacket with the company name and logo prominently displayed.

25. After Defendants James L. Jacko and Donald Stanley forced entry into Plaintiff's home, they immediately placed him in handcuffs, knocking the phone out of his hands and onto the floor. Plaintiff was seized by Defendants through the threat of deadly force and while displaying Defendants' department-issued firearms. Plaintiff suffered these violations of his civil rights in the presence of his minor daughters, his wife, and his parents-in-law.

26. Defendants then removed Plaintiff from inside his home and placed him outside where they attempted to perform a "show-up" identification. However, the Ghana homeowner told deputies from the Charleston County Sheriff's Office that Plaintiff was not the suspect.

27. Defendants did not have any reasonable basis to seize Plaintiff.

28. Defendants did not have any reasonable basis to search Plaintiff or his home.

**COUNTS ONE AND TWO- DEPRIVATION OF PLAINTIFF'S FOURTH
AMENDMENT RIGHTS ACTIONABLE UNDER 42 U.S. CODE § 1983**
(As to Defendants James L. Jacko and Donald Stanley in their respective individual capacities)

29. Plaintiff reincorporates and realleges all preceding paragraphs as if fully set forth herein.

30. Defendants Jacko and Stanley at all times relevant to this Complaint acted under color of state law and exercised power possessed by virtue of state law as commissioned law enforcement officers.

31. Defendants' conduct as more fully set forth above deprived Plaintiff of his rights, privileges, or immunities secured by the Fourth Amendment to the Constitution of the United States.

32. Particularly, Defendants Jacko and Stanley's conduct deprived Plaintiff of his rights protected by the Fourth Amendment of the Constitution of the United States, guaranteeing citizens the right "to be secure in their persons...against unreasonable...seizures" of the person and their right to be free from unnecessary governmental interference.

33. Defendants conducted an unlawful and unreasonable stop and furthermore used excessive force during the unconstitutional seizure of Plaintiff.

34. Defendants' actions were not objectively reasonable in light of the facts and circumstances, and Defendants conducted an unreasonable stop and seizure of Plaintiff.

35. As a direct and proximate result of Defendants' unreasonable seizure of Plaintiff and use of excessive force, Plaintiff has suffered and continues to suffer tremendous and irreparable emotional and mental harm and is entitled to nominal, actual, and punitive damages.

COUNT THREE- DEPRIVATION OF PLAINTIFF'S FOURTH AMENDMENT RIGHTS
ACTIONABLE UNDER 42 U.S. CODE § 1983

(As to Defendants James L. Jacko and Donald Stanley in their respective individual capacities)

36. Plaintiff reincorporates and realleges all preceding paragraphs as if fully set forth herein.

37. Defendants Jacko and Stanley at all times relevant to this Complaint acted under color of state law and exercised power possessed by virtue of state law as commissioned law enforcement officers.

38. Defendants' conduct as more fully set forth above deprived Plaintiff of his rights, privileges, or immunities secured by the Fourth Amendment to the Constitution of the United States.

39. Particularly, Defendants Jacko and Stanley's conduct deprived Plaintiff of his rights protected by the Fourth Amendment of the Constitution of the United States, guaranteeing citizens the right "to be secure in their houses...against unreasonable...searches."

40. Defendants conducted an unlawful and unreasonable search of Plaintiff's home wherein Defendants, without a warrant, consent, or any exigency, kicked in Plaintiff's door and entered the sanctity of his home.

41. Defendants' actions were objectively unreasonable in light of the facts and circumstances, and Defendants conducted an unreasonable search of Plaintiff's home.

42. As a direct and proximate result of Defendants' unreasonable search of Plaintiff's home, Plaintiff has suffered and continues to suffer tremendous and irreparable emotional and mental harm and is entitled to nominal, actual, and punitive damages.

COUNT FOUR- FALSE IMPRISONMENT
(As to All Defendants)

43. Plaintiff reincorporates and realleges all preceding paragraphs as if fully set forth herein.

44. Defendant Jacko and Defendant Stanley's conduct of kicking in Plaintiff's door, handcuffing him at gunpoint, and forcibly removing him from his home deprived Plaintiff of his liberty without justification. Defendant Jacko and Defendant Stanley were acting within the scope of employment with Defendant Charleston County Sheriff's Office.

45. Defendant Jacko and Defendant Stanley intentionally restrained Plaintiff.

46. There was no lawful basis for Defendant Jacko and Defendant Stanley's restraint and imprisonment of Plaintiff.

47. As a direct and proximate result of Defendant Jacko and Defendant Stanley's false imprisonment of Plaintiff, Plaintiff has suffered and continues to suffer tremendous and irreparable emotional and mental harm and is entitled to actual and punitive damages.

COUNT FIVE – INVASION OF PRIVACY
(As to All Defendants)

48. Plaintiff reincorporates and realleges all preceding paragraphs as if fully set forth herein.

49. All actions taken by Defendant Jacko and Defendant Stanley were intentional and performed within the scope of their employment with Defendant Charleston County Sheriff's Office.

50. Defendant Jacko and Defendant Stanley intentionally kicked Plaintiff's door in and intentionally forced entry into Plaintiff's home during the nighttime hours.

51. The forced entry into Plaintiff's home was a substantial and unreasonable invasion of Plaintiff's privacy.

52. As a direct and proximate result of Defendant Defendant Jacko and Defendant Stanley's Invasion of Privacy of Plaintiff, Plaintiff has suffered and continues to suffer tremendous and irreparable emotional and mental harm and is entitled to actual and punitive damages.

COUNT SIX – TRESPASS
(As to All Defendants)

53. Plaintiff reincorporates and realleges all preceding paragraphs as if fully set forth herein.

54. Defendant Jacko and Defendant Stanley intentionally entered onto the land of Plaintiff and forced entry into his home. Defendants interfered with Plaintiff's right to possession of his property.

55. Defendants' forced entry into Plaintiff's home and onto Plaintiff's land was a reckless, willful, and wanton disregard for Plaintiff's rights.

56. As a direct and proximate result of Defendants' Trespass, Plaintiff has suffered and continues to suffer damages to be shown at trial. Plaintiff specifically pleads for punitive damages due to the reckless, willful, and wanton nature of Defendants' actions.

COUNT SEVEN – NEGLIGENCE
(As to All Defendants)

57. Plaintiff reincorporates and realleges all preceding paragraphs as if fully set forth herein.

58. At all times relevant to this action, Defendant Sheriff's Deputies were employees, agents, and legal representatives of the Charleston County Sheriff's Office and were acting within the scope of employment and under color of law.

59. Defendant Charleston County Sheriff's Office is responsible for the actions of Defendant Sheriff's Deputies on December 07, 2015.

60. Plaintiff at all times pertinent hereto was acting in a reasonable and prudent manner and was within his legal rights, on his property, and had not violated any law.

61. At all times relevant hereto, Defendants owed Plaintiff the duty of care and caution that any reasonable person would have used under the circumstances then and there prevailing and a duty of care to avoid violating the rights of the Plaintiff.

62. Defendants breached such duties and the injuries and harm to Plaintiff were the direct, foreseeable, and proximate cause of the negligent and careless, and willful, wanton, and reckless, and grossly negligent acts/ omissions of Defendants as described herein above.

63. Due to the willful, wanton, reckless, grossly negligent, and negligent acts of Defendants, Plaintiff is entitled to recover actual, nominal, and punitive damages in amounts to be determined by a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a trial by jury on all issues presently raised or that may be raised in any of the pleadings hereafter and further seeks:

- i. Judgment against Defendant for actual, special and punitive damages in the amount to be determined by the jury;
- ii. To award Plaintiff reasonable attorney fees, costs, and expenses against Defendant, pursuant to 42 U.S.C. § 1988 and all other applicable law; and
- iii. For all other and further relief as the Court and jury deem just and proper.

Respectfully submitted,

McLEOD LAW GROUP, LLC
Post Office Box 21624
Charleston, South Carolina 29413
(843) 277-6655

/s/ W. Mullins McLeod, Jr.

W. Mullins McLeod, Jr., No. 7142
Jacqueline LaPan Edgerton, No. 11710
D. Ellis Roberts, No. 11467
Michael Thomas Cooper, No. 12198

March 1, 2016
Charleston, South Carolina

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

AKILIOU SMITH,

Plaintiff,

v.

CHARLESTON COUNTY; THE
CHARLESTON COUNTY SHERIFF'S
OFFICE; and JAMES L. JACKO and
DONALD STANLEY in their respective
INDIVIDUAL capacities,

Defendants.

C/A No.: 2:16-cv-655-PMD-BM

ANSWER
(Jury Trial Demanded)

Come now the Defendants, Charleston County Sheriff's Office, James L. Jacko, and Donald Stanley,¹ ("Answering Defendants") and respectfully answer Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE
(Qualified General Denial)

All specifically not admitted herein should be deemed denied.

JURISDICTION AND VENUE

1. Calls for legal conclusion requiring no response.
2. Upon information and belief, admit.
3. Upon information and belief, admit.
4. Admit.
5. Calls for legal conclusion requiring no response.

FACTUAL BACKGROUND

6. Admit that Charleston County is a duly authorized county created pursuant to the laws of

¹ Charleston County is moving to be dismissed from this action by way of a Motion to Dismiss filed by all Defendants.

the State of South Carolina. Deny the remainder.

7. Deny that Charleston County Sheriff's Office is a political subdivision of Charleston County or a county entity. Admit that Charleston County Sheriff's Office is responsible for the policies, practices, and customs of the Charleston County Sheriff's Office as well as the hiring, training, supervising, controlling, and disciplining of its deputies and other employees, however, deny that this responsibility is shared with Charleston County.

8. Admit only that Deputy Jacko was employed by the Charleston County Sheriff's Office at the time of this incident and was acting within the course and scope of his employment.

9. Admit only that Deputy Stanley was employed by the Charleston County Sheriff's Office at the time of this incident and was acting within the course and scope of his employment.

10. Admit only that the individual defendants are commissioned law enforcement officers with duties to serve and protect the citizens they serve. Further admit that the individual defendants are cognizant of the rights under the Constitution. Deny any additional or inconsistent allegations.

11. Admit.

12. Admit.

13. Deny as stated as S.C. Code Ann. § 17-5-130 pertains to coroner qualifications.

14. Admit.

15. Answering Defendants would show that Paragraph 15 alleges certain statements in a 911 recording. Answering Defendants submit that the actual recording is the best evidence and would refer to that recording in response to this paragraph.

16. Admit.

17. Deny as stated.

18. Lack knowledge or information as to what Plaintiff was thinking. However, admit that Plaintiff made a 911 call. Deny any additional or inconsistent allegations.

19. Deny as stated.

20. Admit, but would show that the deputies made an exigent entrance based on the information they had at that time.

21. Admit, but would show that the deputies made an exigent entrance based on the information they had at that time.

22. Admit.

23. Deny as stated.

24. Lack knowledge or information as to exactly what Plaintiff was wearing.

25. Deny as stated.

26. Admit that Plaintiff was brought outside and after the victim advised the deputies that Plaintiff was not the suspect, Plaintiff was released and not arrested.

27. Deny.

28. Deny.

COUNTS ONE AND TWO – DEPRIVATION OF PLAINTIFF'S FOURTH AMENDMENT
RIGHTS ACTIONABLE UNDER 42 U.S. CODE § 1983

(As to Defendants James L. Jacko and Donald Stanley in their respective individual capacities)

29. Requires no response.

30. Admit.

31. Deny.

32. Deny.

33. Deny.

34. Deny.

35. Deny.

COUNT THREE – DEPRIVATION OF PLAINTIFF'S FOURTH AMENDMENT RIGHTS
ACTIONABLE UNDER 42 U.S. CODE § 1983

(As to Defendants James L. Jacko and Donald Stanley in their respective individual capacities)

36. Requires no response.

37. Admit.

38. Deny.

39. Deny.

40. Deny.

41. Deny.

42. Deny.

COUNT FOUR – FALSE IMPRISONMENT
(As to All Defendants)

43. Requires no response.

44. Deny as stated, but admit that Defendants Jacko and Stanley were acting within the scope of employment with the Sheriff's Office.

45. Admit that Plaintiff was brought outside and after the victim advised the deputies that Plaintiff was not the suspect, Plaintiff was released and not arrested.

46. Deny.

47. Deny.

COUNT FIVE – INVASION OF PRIVACY
(As to All Defendants)

48. Requires no response.

49. Deny as stated, but admit that Defendants Jacko and Stanley were acting within the scope of employment with the Sheriff's Office.

50. Deny as stated.

51. Deny.

52. Deny.

COUNT SIX – TRESPASS
(As to All Defendants)

53. Requires no response.

54. Deny as stated.

55. Deny.

56. Deny.

COUNT SEVEN – NEGLIGENCE
(As to All Defendants)

57. Requires no response.

58. Admit.

59. Calls for legal conclusion requiring no response.

60. Deny.

61. Calls for legal conclusion requiring no response.

62. Deny.

63. Deny.

FOR A SECOND DEFENSE
(Rules 8 and 12)

64. Plaintiff has failed to state a cause of action for which relief can be granted. Further, this Complaint should be dismissed for all applicable reasons in accordance with Rule 12 and Rule 8 of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Waiver, *Estoppel*, Laches, Acquiescence, Stale Demand, Statute of Limitations, Service of Process, No Proximate Cause)

65. Plaintiff's claims are barred, in whole or in part, by the doctrines of *estoppel*, laches, waiver, acquiescence, stale demand, service of process, statute of limitations, and the acts of the defendants were not the proximate cause of the injuries.

FOR A FOURTH DEFENSE
(Sole Negligence/Comparative Negligence)

66. Answering Defendants assert that Plaintiff is solely negligent for his suffering and injuries or in the alternative is comparatively negligent.

FOR A FIFTH DEFENSE
(Sovereign Immunity - Tort Claims Act)

67. As to any violation of common law or state law, Answering Defendants assert the provisions of the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, *et seq.*, as a defense and assert that they do not waive any of the rights, privileges or immunities therein, including but not limited to Eleventh Amendment immunity.

FOR A SIXTH DEFENSE
(Intervening and Superseding Negligence)

68. That if Answering Defendants were negligent, which is specifically denied, the injuries and damages sustained by Plaintiff, if any, were due to and caused by and were the direct and proximate result of the intervening and superseding acts or omissions of others for which Answering Defendants are not liable.

FOR A SEVENTH DEFENSE
(Qualified Immunity)

69. The actions/inactions and conduct of Answering Defendants, to the extent they actually occurred, were objectively reasonable under the circumstances of which they were aware. Their actions did not violate any clearly established constitutional, federal, or statutory right of which a reasonable official should have known, and they are therefore entitled to qualified immunity.

FOR AN EIGHTH DEFENSE
(No Constitutional Violation)

70. The alleged actions/inactions claimed by Plaintiff did not rise to the level of a constitutional violation and Plaintiff did not suffer any infringement of constitutional and/or federal rights, privileges, or immunities.

FOR A NINTH DEFENSE
(Emotional Distress)

71. Any claims by Plaintiff for the intentional infliction of emotional distress are not actionable and are barred by the plain language of the South Carolina Tort Claims Act.

FOR A TENTH DEFENSE
(Failure to Mitigate)

72. Plaintiff's claims are barred or must be reduced by his failure to mitigate damages should there be any damages.

FOR AN ELEVENTH DEFENSE
(Third Party Liability)

73. Answering Defendants assert that if anyone is liable to Plaintiff, all of which is specifically denied, it is a third party.

FOR A TWELFTH DEFENSE
(Absence of Bad Faith, Malice or Corrupt Motive)

74. Answering Defendants during the performance/non-performance of the alleged actions did not perform any act/inaction in bad faith, with corrupt motives, or in a malicious manner, and Answering Defendants are therefore immune from suit.

FOR A THIRTEENTH DEFENSE
(Punitive Damages Unconstitutional)

75. Punitive damages are not recoverable against Answering Defendants not only due to the unconstitutionality, but also in accordance with S.C. Code Ann. § 15-78-120(b).

FOR A FOURTEENTH DEFENSE
(Eleventh Amendment Immunity)

76. The Complaint, as drafted, sues the State of South Carolina through its agents. Plaintiff is prohibited from suing the defendants, as doing so would be equivalent of suing the State of South Carolina and in violation of the Eleventh Amendment to the United States Constitution.

Wherefore, having fully answered the Complaint, Answering Defendants hereby pray that the Complaint be dismissed with prejudice; that Plaintiff be responsible for all costs and fees associated with defending this action; and for all such further relief as this court deems just and proper. In addition, Answering Defendants reserve the right to amend to allege additional affirmative defenses or other defenses as they become known throughout the course of discovery.

[signature on following page]

s/ Robin L. Jackson

SANDRA J. SENN (Fed. ID No. 05761)

ROBIN L. JACKSON (Fed. ID No. 07465)

Senn Legal, LLC

Post Office Box 12279

Charleston, South Carolina 29422

(843) 556-4045

(843) 556-4046 (fax)

Sandy@SennLegal.com

Robin@SennLegal.com

Attorneys for Defendants

June 13, 2016

Charleston, South Carolina

WILLIAMS & WALSH
ATTORNEYS AT LAW

LAUREN T. WILLIAMS | ABIGAIL B. WALSH

June 23, 2016

Via First Class Mail

Robin Lilley Jackson, Esquire
Senn Legal, LLC
P.O. Box 12279
Charleston, SC 29422

*File Stanley
SCL-0034*

Re: Akiliou Smith v. Charleston County; The Charleston County Sheriff's Office; and James L. Jackson and Donald Stanley in their respective individual capacities
Civil Action No.: 2:16-cv-655-PMD-BM

Dear Robin:

Lt. Donald Stanley has provided me with a copy of a civil action filed by Akiliou Smith, against Lt. Stanley, concerning an incident on December 7, 2015

Lt. Stanley, as a Police Benevolent Association (PBA) member, requested legal counsel concerning this matter, and I am representing him in this capacity.

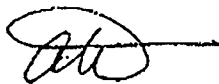
My intent is to simply monitor your representation of Lt. Stanley and not to file a notice of appearance or become actively involved. If a conflict of interest should develop, please let me know immediately.

I would appreciate receiving copies of any key pleadings or court orders so that I can stay on top of this litigation. Perhaps I can give you a call on a periodic basis to get an oral update.

Should you have any questions, please do not hesitate to contact me.

With best wishes, I remain

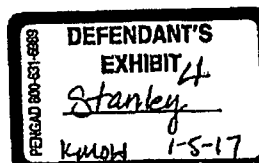
Sincerely,



Abigail B. Walsh

ABW/ah

cc: Police Benevolent Association
Lt. Donald Stanley



Member: Donald Stanley, II; RQ#: SC16-0036
Type of Case: Civil Lawsuit
Agency: Charleston County Sheriff's Office
Chapter: Coastal Chapter
Attorney: Ms. Abigail B. Walsh

CONSENT TO RELEASE INFORMATION

I, Donald Stanley, a member of Southern States Police Benevolent Association, Inc. (hereinafter "PBA") have asked for and received from the PBA the legal services of Abigail Walsh, the attorney assigned to represent me.

By signature below, I hereby freely consent to allow my attorney to submit periodic reports to the PBA Legal Department concerning his/her legal representation. I understand that these reports will be held in strict confidence and may include progress reports, details of communications, legal opinions, scheduling of hearings or other information necessary to monitor the status of my case.

Donald Stanley
MEMBER

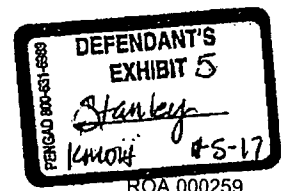
[Signature]
WITNESS

6/28/14
DATE

AHC 6/28/14

**PLEASE RETURN THIS CONSENT FORM TO
THE SSPBA LEGAL DEPT. AS SOON AS
POSSIBLE VIA U.S. MAIL, FACSIMILE OR
EMAIL TO:**

**770-389-3829
1-866-915-3425
LEGAL@SSPBA.ORG**



09/29/2005

SOUTHERN STATES POLICE
BENEVOLENT ASSOCIATION, INC.

PBA OF SOUTH CAROLINA
REQUEST FOR SERVICE

Name	DONALD G STANLEY II			Record Status	ACTIVE
Address	109 DEER RUN CT GOOSE CREEK, SC 29445				
Member Date	10/11/1994			Action Code	Y
Home Phone	(843) 863-1319			Status	A
Work Phone	(843) 572-7300	Other Phone			
Chapter	5010 COASTAL CHAPTER				
Agency	0300 CHARLESTON COUNTY SHERIFFS OFFICE				
RQ #	SC05-0011	Scope	N	Last Update	09/29/2005
Date Filed	03/10/2005	Bargaining Unit	N	Incident Date	03/09/2005
				Close Date	09/29/2005
Type	LDA	LEGAL DEFENSE-ACCIDENT OR INJURY		Scan Date	/ /
Prepared by	289	JODI PEYTON			
# Assigned to		From	To		
1 5019	ANDREW SAVAGE	03/09/2005	09/29/2005	Brief	
2		/ /	/ /	Brief2	
3		/ /	/ /		

Comments

► Created: 03/10/2005 11:13 Modified: 03/10/2005 11:16 By: JJP
Per telephone call from JD Hobbie and e-mail from Atty Andy Savage's office - member was involved in an accident where a woman stated that member ran over (struck) her child then left the scene. Atty's office stated two other member were involved in the incident - Michael Anderson (SC05-0010) and Christopher Pacheco (SC05-0012). Atty Savage was contacted by JD Hobbie who responded to the scene.

Assignment letter faxed and mailed to atty this date.

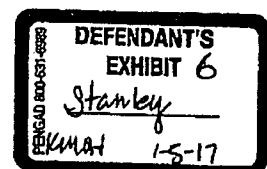
Copy of RQ e-mailed to Richard Banks.

► Created: 04/06/2005 14:49 Modified: / / By: LIO
Signed consent form received this date via fax.

► Created: 09/29/2005 09:50 Modified: / / By: HAD
Update per Atty. Savage - A preliminary inquiry by the State Highway Patrol and an internal inquiry by the Charleston County Sheriff's Department determined that no further investigation was appropriate. No sanctions were imposed.

Six months have passed and no civil claim has been filed against any of the SSPBA members involved in this incident, therefore, we are closing our file.

Case closed.



SAVAGE & SAVAGE, P.A.

ATTORNEYS AT LAW

15 PROLEAU STREET

POST OFFICE BOX 1002

CHARLESTON, SC 29402

TEL. (843) 720-7470 FAX (843) 720-7478

<http://www.savlaw.com>

ANDREW J. SAVAGE, III
Certified Criminal Trial Advocate - NBTA
DAVID L. SAVAGE

MICHELE P. FORSYTHE
DAVID W. WOLF
Of Counsel

September 27, 2005

Joni J. Fletcher, Esquire
Southern States Police Benevolent Association, Inc.
1900 Brannan Road
McDonough, GA 30253-4310

Handwritten: (circled) *close*
HAD
9-29-05

RE: Micheal Anderson
RQ#: SC05-0010
Christopher D. Pacheco
RQ#: SC05-0012
Donald G. Stanley
RQ#: SC05-0011

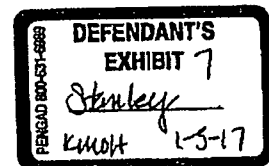
Dear Joni:

I am writing to provide an update on the investigation involving the above referenced SSPBA Members.

On March 9, 2005 at 1735 hours, I received a telephone call from the Charleston County Sheriff's Office advising me that a report had been made that three SSPBA Members were involved in an alleged hit and run.

While investigating the whereabouts of a suspect involved in an ongoing investigation, Detectives Anderson, Pacheco and Stanley were canvassing a residential neighborhood with a reputation of being a hot spot of criminal activity. When Detective Stanley made a lawful stop at a traffic sign, a young girl crossed the street at a safe distance in front of him and fell upon reaching the sidewalk on the opposite side of the street. The child immediately got back on her feet, apparently uninjured, and continued to her destination. In the meantime, an "interested party" made a report that she witnessed a Charleston County law enforcement vehicle strike the young girl.

A preliminary inquiry by the State Highway Patrol and an internal inquiry by the Charleston County Sheriff's Department determined that no further investigation was appropriate. No sanctions were imposed.



Joni J. Fletcher, Esquire
September 27, 2005
Page Two

Six months have passed and no civil claim has been filed against any of the SSPBA Members involved in this incident, therefore, we are closing our file.

Once again I want to thank you for the opportunity to assist Detectives Anderson, Pacheco, and Stanley. All three detectives continue to enjoy excellent reputations in both the law enforcement community and the community at large.

With best wishes, I remain

Sincerely,

Andrew J. Savage, III

AJS,III/kkn

cc: Detective Michael A. Anderson
Detective Christopher D. Pacheco
Detective Donald G. Stanley
Ms. Jodi Peyton (via email)



**SOUTHERN STATES
POLICE BENEVOLENT ASSOCIATION, INC.**

Legal Services

1900 Brannan Road, McDonough, GA 30253-4310

(770) 389-5391 • (800) 233-3506

Fax: (770) 389-3829 • (866) 915-3425

email: legal@sspba.org

March 10, 2005

VIA FACSIMILE (843) 720-7478 AND U.S. MAIL

Mr. Andrew J. Savage
Savage & Savage
P.O. Box 1002
Charleston, SC 29402

Re: Michael A. Anderson; RQ# SC05-0010
1456 Crossbill Trail, Goose Creek, SC 29445-8232
Home Phone No. (843) 797-5059
Donald G. Stanley, II; RQ#: SC05-0011
109 Deer Run Court, Goose Creek, SC 29445
Home Phone No. (843) 863-1319
Christopher D. Pacheco; RQ#: SC05-0012
106 Santee Court, Summerville, SC 29483-1938
Home Phone No. (843) 821-1108

Dear Andy:

This correspondence is to confirm that you were contacted by Southern States PBA on March 9, 2005, regarding an accident involving our members listed above. Please provide us with a summary and status of the incident at your earliest convenience.

Enclosed is a Consent to Release Information form that needs to be completed and signed by the members. Please return a signed copy to this office as soon as possible. Please use the above RQ number for any billing or correspondence regarding this matter.

Please be advised PBA cannot continue services if the case falls outside coverage requirements. Events triggering such a change of status include, but are not limited to, a lapse in the member's dues payments, facts showing a willful criminal act by the member, or the member's resignation from his department. Should PBA services stop, continued funding for this action will be the responsibility of the member.

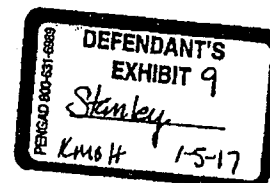
I appreciate your cooperation in this matter.

Sincerely,

Joni J. Fletcher
Director of Legal Services

JJF/ljo
Encl.

cc: Michael A. Anderson
Donald G. Stanley, II
Christopher D. Pacheco



The Voice of Law Enforcement Officers

ROA 000263

SAVAGE & SAVAGE, P.A.
15 Prioleau Street
Post Office Box 1002
Charleston, SC 29402
Telephone: 843-720-7470
Facsimile: 843-720-7478

#5019

Michael Anderson
c/o PBA
1900 Brannan Road
McDonough-GA 30253

SC05-0010

Page: 1
November 01, 2005
Account No: 2503044-0Z
Statement No: 15813

FEES CHARGED THROUGH 11/01/2005

	Rate	Hours	
03/09/2005 Telephone conference with Robert Smith of the Charleston County Sheriff's Office.	85.00	0.25	21.25
Met with three SSPBA Members at CCSC Headquarters, assisted in preparation of statements, and interviewed members of the command staff.	85.00	4.00	340.00
03/10/2005 Preparation of initial letter to SSPBA regarding incident.	85.00	1.00	85.00
Preparation of letters to SSPBA Members enclosing consent forms.	85.00	0.25	21.25
05/31/2005 E-mail correspondence with Lt. Paul Tittle of the Charleston County Sheriff's Office.	85.00	0.25	21.25
Charleston County Common Pleas Docket Search for civil case filing.	85.00	0.10	8.50
09/26/2005 Research of Charleston County Common Pleas for civil case filing.	85.00	0.10	8.50
Preparation of letter to SSPBA re: update and closing case.	85.00	0.50	42.50
For Current Services Rendered		6.45	548.25

Total Current Work

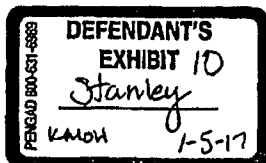
BALANCE DUE

548.25

\$548.25

OK-788
8/10/05

492



Page 1		Page 3	
1	STATE OF SOUTH CAROLINA)	1	STIPULATIONS
2	COUNTY OF CHARLESTON)	2	It is stipulated by and between counsel for
3	Donald Stanley and Sean) CASE NO.: 2016-CP-10-4062	3	the respective parties that all objections
4	Reiter, Individually and as)	4	are reserved until the time of trial,
5	Class Representatives,)	5	except as to the form of the questions.
6	Plaintiffs,) Videotaped Deposition	6	This deposition is being taken pursuant to
7	vs.) of	7	the South Carolina Rules of Civil
8	Southern States Police) Sean P. Reiter	8	Procedure.
9	Benevolent Association,)	9	-----
10	Inc.,)	10	The reading and signing of this deposition
11	Defendant.)	11	is waived by the deponent and counsel for
12		12	the respective parties.
13	Date: September 28, 2017	13	Whereupon,
14	Time: 10:48 a.m.	14	Sean P. Reiter, being duly sworn and
15	Location: Turner Padgett Graham & Laney, PA	15	cautioned to speak the truth, the whole truth, and nothing
16	40 Calhoun Street, Suite 400	16	but the truth, testified as follows:
17	Charleston, SC 29401	17	EXAMINATION
18		18	BY MR. BRADLEY:
19		19 Q	Mr. Reiter, my name is Ward Bradley. I'm a lawyer,
20		20	and today I'm going to take your deposition. Do you
21		21	understand that?
22	Reported by	22 A	Yes, sir. And just -- it's Reiter, not Reiter.
23	Teri L. Sampson, RPR	23 Q	Thank you.
24		24 A	Yes, sir.
25		25 Q	Do you know what a deposition is?

Page 2		Page 4	
1	APPEARANCES	1 A	I do, sir.
2	For the Plaintiffs: Ronald L. Richter, Jr., Esq.	2 Q	What is a deposition?
3	Scott M. Mongillo, Esq.	3 A	It's sworn testimony taken outside of a courtroom.
4	Bland Richter, LLP	4 Q	That's part of what a deposition is. Let's make
5	Charleston, South Carolina	5	sure we understand the whole thing. A deposition is
6	For the Defendant: James Edward Bradley, Esq.	6	where I, as a lawyer, ask you, as a witness,
7	Moore Taylor Law Firm, P.A.	7	questions. Do you understand that?
8	West Columbia, South Carolina	8 A	Yes, sir.
9	J. Andrew Yoho, Esq.	9 Q	The court reporter sits to my left. She writes
10	Carlock Copeland	10	down each question and each answer. Do you
11	Charleston, South Carolina	11	understand that?
12	Also Present: Doug White, Videographer	12 A	Yes, sir.
13	Charlie Cordell	13 Q	Because she's writing down everything we say, you
14	Beth Dyke	14	need to answer with words rather than gestures or
15	Joni Fletcher	15	noises so she doesn't have to guess at your meaning.
16	INDEX	16	Can you do that?
17	Examination by Mr. Bradley..... 3	17 A	Yes, sir.
18	Examination by Mr. Richter.....77	18 Q	If you don't do that, I may ask you to clarify.
19	EXHIBITS	19	I'm not trying to embarrass you or be unpleasant. I
20	Defendant's	20	just want to make sure the court reporter doesn't
21	Exhibit Description Page	21	have to guess at what it is you have to say. Is
22	1 Amended Complaint.....31	22	that fair?
23	2 PBA of South Carolina Request for	23 A	Yes, sir. I understand.
24	Service and related documents.....63	24 Q	All right. You've taken an oath to tell the truth.
25	3 Minutes.....65	25	Do you recall that?

Page 5

1 A Yes, sir.
2 Q Do you know what that means?
3 A It means I have to tell the truth.
4 Q It means a little bit more in this situation. It
5 means if you were to be found to not tell the truth,
6 you could be subject to penalties of perjury in
7 court because this is an official court proceeding.
8 Do you understand that?
9 A Yes, sir.
10 Q All right. If I ask you a question and you do not
11 understand it, will you ask me to clarify it?
12 A Yes, sir.
13 Q All right. If I ask you a question and you do not
14 ask me to clarify it, I'm going to assume you
15 understood it. Is that fair?
16 A Yes, sir.
17 Q All right. What is your name?
18 A Sean Reiter.
19 Q Do you have a middle name, Mr. Reiter?
20 A Patrick.
21 Q What is your Social Security number?
22 A [REDACTED]
23 Q What is your driver's license number?
24 A It is [REDACTED].
25 Q What state is it issued in?

Page 6

1 A New Jersey.
2 Q What is your date of birth?
3 A [REDACTED].
4 Q Do you have any family that lives in South
5 Carolina?
6 A My brother and his wife live in Columbia.
7 Q What are their names?
8 A Tim Reiter and Renee Reiter.
9 Q What does Tim do for a living?
10 A He's in human resources.
11 Q Where does he work?
12 A He took a new job. He was working for South
13 Carolina BlueCross, but he took a -- a different
14 job. I'm not sure of the name of the company.
15 Q All right. Are you married?
16 A I am.
17 Q What's your wife's name?
18 A Brittany Fieldson.
19 Q How long have you and Miss Fieldson been married?
20 A It will be a month in November -- or, I'm sorry, a
21 year in November.
22 Q All right. Have you been married before, or is
23 this your first wife?
24 A It's my second marriage.
25 Q Who were you married to before?

Page 7

1 A Nicole Bailey.
2 Q When were you and Miss Bailey divorced?
3 A In 2010.
4 Q Do you have any children?
5 A I do not.
6 Q All right. How far did you go in school?
7 A I have a master's degree.
8 Q From where?
9 A Norwich University.
10 Q Where is Norwich University?
11 A Vermont.
12 Q What's your master's degree in?
13 A International relations.
14 Q Where did you get your bachelor's degree?
15 A Marshall University.
16 Q And what is it in?
17 A It's a double major in history and criminal
18 justice.
19 Q When did you receive that?
20 A In 2002.
21 Q Where did you graduate high school?
22 A Holy Cross High School in Delran, New Jersey.
23 Q Have you served in the armed services?
24 A I have not.
25 Q Have you worked for the federal government?

Page 8

1 A No, sir.
2 Q Where did you work in South Carolina?
3 A I worked for the Charleston County Sheriff's Office
4 and the North Charleston Police Department.
5 Q When did you work for the Sheriff's Office?
6 A From 2002 to 2009 -- no, I'm sorry, 2007.
7 Q All right. Did you say the North Charleston Police
8 Department?
9 A Yes, sir.
10 Q So the City of North Charleston Police?
11 A Correct.
12 Q How -- when did you work for them?
13 A From 2009 to 2016. And in between the two, I had
14 my own business.
15 Q What was your own business?
16 A It was a private investigations and security
17 consulting firm.
18 Q Did you do process serving at that time?
19 A Yes. I think only three or four times, though.
20 Q Did you work for Mr. Savage's office at all?
21 A No, I did not.
22 Q Okay. Why did you leave the North Charleston
23 Police Department?
24 A I got a job in New Jersey with CSX Transportation.
25 Q What are you doing there?

Page 9	Page 11
1 A I'm a special agent. 2 Q What does that mean? What's a special agent? 3 A It's a railroad police officer. 4 Q Okay. Why did you leave the -- North Charleston 5 for the CSX job? 6 A It was a better opportunity for me and my family. 7 Q Okay. What led you to come to South Carolina to 8 work for Charleston? 9 A I graduated -- I was accepted to the South Carolina 10 Police Corps and graduated from there, and part of 11 the -- the deal with that program, you had to choose 12 a police department to work for and apply to that 13 department, and Charleston County happened to be one 14 of the -- the departments in that program, and that 15 was where I chose to go. 16 Q What led you to South Carolina? 17 A With my brother living here, I had been down 18 several times and liked it enough that I wanted to 19 move there. 20 Q Okay. Did you tell me you got your bachelor's 21 degree in 2002? 22 A Yes, sir. 23 Q And you began working for the Charleston County 24 Sheriff's Office in 2002? 25 A Yes, sir.	1 Q Is that the first job you got after you left North 2 Charleston? 3 A Yes. 4 Q Did you have that job in place before you left? 5 A Yes. 6 Q Okay. Was there any dissatisfaction with working 7 for North Charleston is why you left? 8 A No. It was strictly a better opportunity for me. 9 Q Okay. Do you have any hobbies? 10 A I play ice hockey. 11 Q Do you go to church anywhere? 12 A I do not. 13 Q Are you a member of any groups or clubs? 14 A No. 15 Q Are you a member of the Fraternal Order of Police? 16 A I am. 17 Q Okay. Are you a member of any other clubs? 18 A No. 19 Q All right. Or professional associations? 20 A No, sir. 21 Q When did you join the Fraternal Order of Police? 22 A Earlier this year. 23 Q Why did you join the Fraternal Order of Police? 24 A For legal protection, and it's -- it's an active 25 lodge in New Jersey, so that way I could meet other
Page 10	Page 12
1 Q Okay. When did you attend Norwich University to 2 receive your master's? 3 A It -- it's an online program. I did it from -- I 4 guess I started in 2007 to 2009. 5 Q Online master's program? 6 A Yes, sir. 7 Q Is this an accredited university? 8 A It is. 9 Q By the American Association of Universities? 10 A I don't know which accreditation group it's under, 11 but it is accredited, yes. 12 Q Okay. And when did you receive that online 13 master's degree? 14 A That was -- I'd say I think it was 2007, so maybe 15 it was 2005 to 2007 I did that. 16 Q Okay. What is your address? 17 A 406 Miller Avenue, M-I-L-L-E-R, in Hamilton, New 18 Jersey, 08610. 19 Q How long have you lived there? 20 A About three months. 21 Q Where did you live before you lived there? 22 A I lived at 3 Kosene Street. It's K-O-S-E-N-E, and 23 that's in Woodbridge, New Jersey, 07095. 24 Q Do you still work for CSX? 25 A I do.	1 railroad cops. 2 Q Okay. So for social reasons and legal protection? 3 A Yes, sir. 4 Q All right. Have you ever been arrested? 5 A No, sir. 6 Q Is there any reason you cannot give honest and 7 truthful testimony today? 8 A No, sir. 9 Q Have you ever been in a lawsuit besides this 10 lawsuit? 11 A No, sir. 12 Q All right. Do you know Donald Stanley? 13 A I do. 14 Q How do you know him? 15 A We briefly worked together at the Charleston County 16 Sheriff's Office; and when I worked for North 17 Charleston, I would see him occasionally on patrol. 18 Q Have you discussed this lawsuit with him? 19 A I have not. 20 Q Okay. Did he talk to you about this lawsuit at 21 all? 22 A No, sir. 23 Q How did you find out about this lawsuit? 24 A I believe I read about it in the paper. 25 Q All right. Were you living in Charleston at the

Page 13	Page 15
1 time or in New Jersey? 2 A I'm not sure. 3 Q Well, how did you come to get involved in the 4 lawsuit? 5 A Once I found out about the lawsuit, I contacted the 6 law firm and expressed interest in joining the -- 7 the lawsuit. 8 Q Why were you interested in joining the lawsuit? 9 A I wanted to ensure that members of the PBA would 10 not ever have the potential to have their legal 11 defense claim denied again. 12 Q Did it have something to do with Michael Slager? 13 A Yes, sir. 14 Q All right. Do you know Michael Slager? 15 A I do. 16 Q How do you know Michael Slager? 17 A We worked together at North Charleston Police 18 Department. 19 Q Would you consider him your friend? 20 A I'd consider him more of a colleague and 21 acquaintance. 22 Q Were you upset that the PBA did not assume the 23 defense of Michael Slager? 24 A Yes, sir. 25 Q Is that what led you to joining the lawsuit?	1 be wrong. 2 Q When did you go to begin work at CSX? 3 A Two days after I left North Charleston. 4 Q Okay. So it was in June of 2016? 5 A Yes. 6 Q All right. What was your rank in North Charleston? 7 A I was a sergeant. 8 Q Do you ever see Michael Slager? 9 A No, sir. 10 Q When was the last time you saw him? 11 A Several years. I haven't -- since his incident, I 12 have not seen him. And prior to that, I probably 13 hadn't seen him for six months. 14 Q Okay. Have you ever discussed this lawsuit with 15 Michael Slager? 16 A No, sir. 17 Q Have you read the complaint that has your name on 18 it? 19 A Yes, sir. 20 Q Did you authorize it to be filed in your name? 21 A Yes, sir. 22 Q Is everything in it true? 23 A Yes, sir. 24 Q There is no falsehoods in that complaint as far as 25 you know?
Page 14	Page 16
1 A Yes, sir. 2 Q Okay. Have you been in touch with Michael Slager 3 at all? 4 A I have not. 5 Q Do you realize that the PBA settled the lawsuit 6 with Michael Slager? 7 A Yes, sir. 8 Q Okay. All right. Do you see Donald Stanley at all 9 socially? 10 A No, sir. 11 Q When was the last time you saw him? 12 A Well, it's been at least a year and a half -- or 13 longer than a year and a half. That's how long I've 14 been gone. 15 Q Okay. So the last time you saw him would have been 16 when you were working at North Charleston? 17 A Yes, sir. 18 Q And when did you leave North Charleston? 19 A June of last year. 20 Q June of 2016? 21 A Yes, sir. 22 Q Okay. So do you remember what day in June was your 23 last day working as a police officer in North 24 Charleston? 25 A I don't. I -- I want to say June 4th, but that may	1 A There are no falsehoods in that complaint, yes, 2 sir. 3 Q All right. Why did you join the PBA? 4 A For legal defense. 5 Q Okay. Any other reasons? 6 A It was my hope -- well, when I joined, it was 7 strictly for legal defense. Later on, I had hoped 8 to make it more of a fraternal organization, but 9 that did not happen. 10 Q Okay. So the idea was it would be more of a social 11 organization, but it didn't meet what you wanted on 12 that? 13 A Correct. 14 Q Okay. What did you have to do to join the PBA? 15 A Fill out -- probably filled out an online form and 16 gave my credit card number. 17 Q How did you pay your dues, by credit card? 18 A Generally, yes. 19 Q Okay. When you joined the PBA, what did you 20 believe you were joining? 21 A A Legal Defense Fund. 22 Q Is that similar to the Fraternal Order of Police or 23 different? 24 A The Legal Defense Fund? 25 Q Well, when you were joining the PBA, did you think

Page 17	Page 19
1 you were joining something like the Fraternal Order 2 of Police, or did you think it was a different sort 3 of a thing? 4 A I didn't really know about the Fraternal Order of 5 Police at the time when I started. It was just 6 recommended to me by other deputies that the PBA was 7 the option to choose, so that's what I chose. 8 Q Okay. All right. And the reason you joined the 9 PBA was the Legal Defense Fund? 10 A Yes, sir. 11 Q And you were elected as a leader for your local 12 chapter; right? 13 A Yes, sir. 14 Q Why did you stand for that? 15 A I don't understand the question. 16 Q Sure. Why did you stand up and say, I would like 17 to be a leader in the local chapter? 18 A There were four people at the meeting, and I was 19 nominated and elected and didn't want to let my 20 colleagues down. I didn't go there with the intent 21 to become one of the Board members for the chapter, 22 but that's just how it ended up. 23 Q How long were you a Board member for the chapter? 24 A About a year. 25 Q Okay. When you were a Board member for the	1 numbers, pending legislation, and more of a social 2 role for the PBA? 3 A Yes, sir. 4 Q Is there anything else that you-all discussed in 5 meetings? 6 A That's what comes to mind. 7 Q Okay. Why did you resign as the secretary? 8 A When I left the state, I was no longer a member of 9 the PBA. 10 Q Were you dissatisfied in any way with the PBA when 11 you left? 12 A Yes. 13 Q Okay. Why were you dissatisfied? 14 A I was definitely let down by what happened with 15 Michael Slager, and it appeared to me that what 16 mattered to the PBA was getting people signed up for 17 the Legal Defense Fund. And with what happened to 18 Michael, their focus on numbers, that just didn't 19 sit well with me. 20 Q You were upset because the PBA didn't defend 21 Michael Slager; is that what it is? 22 A Yes. Well, that, and they continued to press us to 23 recruit people, and so it just -- trying to bring 24 people in to what may not be a trusted environment, 25 I did not like the idea of that.
Page 18	Page 20
1 chapter, what things did you do? 2 A I was the secretary, so I took notes at our 3 meetings. 4 Q Did you-all discuss policies and what the PBA would 5 do? 6 A Policies in terms of what? 7 Q Just what the PBA's role was, how social it was 8 going to be, what was -- what positions it took in 9 different situations, what you would like for the 10 PBA to do. 11 A Generally the meetings revolved around membership 12 numbers, and whether they were up or down from the 13 previous month. 14 Q Okay. Did you discuss anything else at meetings? 15 A Occasionally relevant court cases might be brought 16 up by one of the members. Or the one thing that I 17 do remember, PTSD bill was presented, and someone 18 mentioned that at one of the meetings. 19 Q So you discussed current legislation that might 20 affect police officers? 21 A Occasionally, yes. 22 Q Okay. And did you discuss your idea of more of a 23 social club for police officers? 24 A I did. 25 Q Okay. So we know that you discussed membership	1 Q All right. Did you feel like the PBA had broken 2 your trust in some way by declining to defend 3 Michael Slager? 4 A Absolutely. 5 Q Was there any other reason for your dissatisfaction 6 with the PBA? 7 A Well, the -- it was -- when I brought up the -- the 8 ideas to make it a more social event or even sponsor 9 local events, I was just told that that's not what 10 they do. 11 Q Who were the people that told you this? 12 A Beth Dyke was -- 13 Q Okay. 14 A -- a representative that attended some of our 15 meetings. 16 Q Okay. So she was a representative of the PBA 17 organization? 18 A Yes, sir. 19 Q Okay. She wasn't a local officer? 20 A I believe she's from Tennessee. 21 Q Right. And you know she's a retired police officer 22 herself? 23 A Yes. 24 Q Okay. All right. Is there any other people that 25 were interested in doing the social -- making the

Page 21

1 PBA more social, other people onboard?
2 A Yeah, we -- I mean, we attempted to. We had -- we
3 would host our meetings at restaurants in an effort
4 to bring people out, but I don't think we ever had
5 more than two people show up to a meeting outside of
6 the Board members.
7 Q Right. But everyone was invited to come to the
8 meetings?
9 A Correct.
10 Q Okay. Were you ever trained on how the PBA works?
11 A No, sir.
12 Q Are you aware that the PBA members elect people to
13 sit on the Board that govern the PBA?
14 A No.
15 Q Okay. Do you know how the PBA works, how it's run?
16 A In what manner?
17 Q Sure. Who is responsible for deciding who is in a
18 leadership position and makes the decisions for the
19 PBA?
20 A No, I don't.
21 Q Okay. Do you have any idea how you think it should
22 run?
23 A No.
24 Q Okay. Did you use any services from the PBA while
25 you were a member?

Page 22

1 A Yes.
2 Q What services did you use?
3 A I had a car accident involving a pedestrian that
4 was a -- a fatal accident, and I contacted the PBA
5 after the accident.
6 Q Were you satisfied with what you received at that
7 time?
8 A Yes and no. There was quite a delayed response
9 because whoever I spoke to on the phone could not
10 locate my membership, so it was several hours before
11 an attorney was finally contacted to meet me at
12 headquarters.
13 Q Okay. So you were dissatisfied that it took a few
14 hours to get a lawyer to you?
15 A Yes, sir.
16 Q What time of day did all of this happen?
17 A It was nighttime.
18 Q All right. But you agree that you had a lawyer
19 within a couple of hours?
20 MR. RICHTER: Object to the form.
21 A (Continuing) Yes, sir.
22 Q Okay. And that lawyer was Andy Savage?
23 A Yes, sir.
24 Q Were you pleased with what Mr. Savage did for you?
25 A Yes, sir.

Page 23

1 Q Did you find anything else to find fault with how
2 the PBA reacted to this situation?
3 A No, sir.
4 Q All right. I understand that you were unhappy with
5 the way the PBA handled Michael Slager's situation.
6 Is there any other conduct of the PBA that you were
7 dissatisfied with?
8 A There could be, but there's no way for me to know
9 if something is going on that I would be unhappy
10 with. If things are going on behind the scenes --
11 Q Right.
12 A -- I'm not going to know about it.
13 Q Well, I'm not asking you about things that you
14 don't know. I'm just asking you about things that
15 you do know. Do you have any other reason to be
16 dissatisfied with the PBA other than its handling of
17 Michael Slager's defense?
18 A Well, it -- yes. The way that it's set up when an
19 officer requests legal defense, if it's -- the
20 decision is up to a single person or two people
21 within the PBA organization. I don't think that's
22 the way that the fund should be handled. I think it
23 would be better suited if it fell under either a
24 prepaid legal or as an insurance company.
25 Q Okay. So you don't like the way it's structured?

Page 24

1 A Correct.
2 Q All right. Is there anything besides the handling
3 of the Michael Slager case that you thought the PBA
4 just did this wrong by me or I've been injured or
5 something has gone wrong?
6 A Well, any -- any officer that has had an issue,
7 I've had an issue, because it is a joint fund. So,
8 anybody who's been wronged, then, yes, I've been
9 wronged at the same time.
10 Q Right. So who are those people that have been
11 wronged?
12 A If it hasn't been made public, there's no way for
13 me to know.
14 Q All right. So the only person that you know of
15 that's been wronged, in your opinion, is Mr. Slager?
16 A He's the only one that I am aware of, yes.
17 Q Right. And you understand that they've settled
18 their differences with Mr. Slager?
19 A Yes, sir.
20 Q Okay. All right. Besides Mr. Slager, is there any
21 other person that you're upset with how the PBA has
22 handled it?
23 A Again, if it hasn't been paid public, I wouldn't
24 know about it.
25 Q So that means you don't know of anyone else?

Page 25

1 A Correct.
2 Q Okay. Besides providing a lawyer for you with the
3 fatality on your shift, has the PBA done any other
4 services for you?
5 A No, sir.
6 Q All right. Did anyone tell you that the PBA was an
7 insurance company?
8 A No, sir.
9 Q Did anyone tell you the PBA was selling insurance?
10 A No, sir.
11 Q Did anyone ever send you an insurance policy for
12 the PBA?
13 A No, sir.
14 Q Did you ever ask for an insurance policy?
15 A No, sir.
16 Q Has anyone ever told you that the PBA was trying to
17 sell insurance or selling insurance?
18 A I haven't been told that, but as I have examined
19 it, then that's what it appears to be to me.
20 Q Who told you the PBA was selling insurance?
21 A That's what I just said. Nobody has told me that,
22 but --
23 Q No one has told you that, right, okay. Has any --
24 you ever seen anything written down anywhere that
25 said the PBA sold insurance?

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1 A No, sir.
2 Q Did you ever have the impression that the PBA was
3 selling insurance?
4 A Yes.
5 Q And how did you have that impression?
6 A As I've -- with Mike Slager's case, and then me
7 reading through the policies, they read much like an
8 insurance policy. And then the determination on how
9 a claim is approved or denied, to me it should be an
10 insurance policy, or set up as an insurance company.
11 Q In your personal opinion, it should be an insurance
12 policy?
13 A Yes, sir.
14 Q Okay. So when you read the policy from the PBA,
15 you thought it read like an insurance policy?
16 A Yes, sir.
17 Q And that's the reason you had the impression they
18 were selling insurance?
19 A Yes, sir.
20 Q Is there anything else that gave you that
21 impression?
22 A The -- generally the -- even on the web page, how
23 it -- just how it's worded, you give us money.
24 If -- it sets it up as if it's a policy. You pay
25 your dues. If you're an active member at the time,

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1 you're in good standing, and I forget what the --
2 the other points are, then you'll be provided
3 coverage. And that sounds a lot like my automobile
4 insurance. I pay money; as long as I'm up-to-date
5 on my payments, I'm covered.
6 Q Okay. Anything else?
7 A No, sir.
8 Q All right. Has the PBA ever refused any request
9 from you?
10 A Any request that they deny to anybody is a denial
11 to me.
12 Q That's not the question I asked. My question is,
13 has the PBA ever refused any request from you?
14 A Again, I'd say a denial to any member is a denial
15 to me because it's a group fund.
16 Q Has the PBA ever refused anything that you have
17 asked the PBA to do?
18 A No.
19 Q All right. And the only member you know of that
20 you're upset with that the PBA has denied is Michael
21 Slager?
22 A Yes.
23 Q All right. Have you ever asked for anything from
24 the PBA that you did not receive?
25 A I did when -- when I was a Board member. I asked

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1 assistance in sponsorship of a charity hockey game
2 that I was putting together, and I was denied that.
3 Q Okay. So you asked the PBA to sponsor a charity
4 hockey game?
5 A Yes.
6 Q When did this happen?
7 A Shortly after Beth Dyke first arrived. I -- I -- I
8 couldn't even give you the month or anything like
9 that, but...
10 Q Sometime in 2015?
11 A It could be. Again, I'm not really sure, but --
12 Q Who did you ask that question of?
13 A To Beth Dyke.
14 Q What did Miss Dyke tell you about --
15 A She said that's not generally something that the
16 PBA does.
17 Q Okay. So they said we wouldn't sponsor the charity
18 hockey game?
19 A Correct.
20 Q Did you feel that the PBA had some obligation to
21 sponsor the charity hockey game?
22 A I wouldn't call it an obligation, but it would have
23 been the right thing to do if...
24 Q You think it would have been the right thing to do
25 to sponsor the charity hockey game with the PBF --

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1 PBA funds? 2 A Yes. 3 Q Okay. Any particular reason for that, or that's 4 just your opinion? 5 A Well, part of the -- with her trying to get our 6 chapter started up again, part of the idea was to 7 bring people in and make it more a attractive option 8 for them, and that certainly would have been a good 9 way to draw recruitment and good advertising. 10 Q Right, okay. Did you ever meet with any recruiters 11 or anybody who said we're a recruiter for the PBA? 12 A I don't know if that's what Beth's role was or not, 13 but other than that, no. 14 Q Beth Dyke was the only person from the PBA entity 15 that you met with? 16 A Yes, sir. 17 Q Other than your fellow police officers? 18 A Yes, sir. 19 Q Okay. Who got you interested in joining the PBA, 20 coming to the meetings? 21 A I want to say Kristin Graziano is the one that -- 22 that I -- that contacted me to say that, and I guess 23 this was 2015, we're trying to start making the 24 chapter more active. 25 Q And Kristin was in the PBA at that time?	1 request denied by the PBA. 2 A No. 3 (AMENDED COMPLAINT MARKED DEFENDANT'S 4 EXHIBIT NO. 1 FOR I.D.) 5 MR. BRADLEY: This is the complaint if you 6 guys want a copy of it, you can have it. I'm sure 7 you already have one, but you can have another one. 8 BY MR. BRADLEY: 9 Q Are you ready? Okay. Mr. Reiter, I'm showing you 10 the complaint that's been filed with your name that 11 we talked about earlier. It's marked as Exhibit 1. 12 A Yes, sir. 13 Q All right. The second paragraph there, do you see 14 where the numbers are on the left? 15 A Yes, sir. 16 Q And it's got your name, and it says you live in New 17 Jersey. That's correct, right? 18 A Yes, sir. 19 Q All right. And it says that you are a member of 20 the Southern States Police Benevolent Association; 21 right? 22 A Yes, sir. 23 Q And when did your membership with that association 24 lapse? 25 A When I moved to New Jersey.
Page 30	Page 32
1 A Yes. 2 Q And a fellow police officer? 3 A Yes. 4 Q At North Charleston? 5 A Charleston County Sheriff's Office. 6 Q Okay. Do you know whether Kristin is still there? 7 A I do not. 8 Q Are you still in touch with Kristin Graziano at 9 all? 10 A No. 11 Q Have you ever seen any representation anywhere that 12 PBA was trying to sell insurance? 13 A Not explicitly, that didn't say this is an 14 insurance policy, but it's my interpretation of it, 15 that, yes, it is. 16 Q Do you know of anyone besides Michael Slager who 17 has had any request denied of the PBA other than the 18 charity hockey game? 19 MR. RICHTER: Object to the form. 20 A (Continuing) Again, I wouldn't -- I don't think the 21 PBA is going to publish a list of people who have 22 been denied their claim, so... 23 Q I didn't ask that question at all. I just asked if 24 you know of anyone anywhere other than Michael 25 Slager and your charity hockey game that's had a	1 Q So that would have been in June of 2016? 2 A Yes, sir. 3 Q Okay. So before this lawsuit was filed, your 4 membership had lapsed, or you just didn't renew it? 5 A Correct. 6 Q Okay. All right. Take a look on page 4 there. 7 The paragraphs have numbers just to make it easier 8 to get to them. It's paragraph 24. 9 A Yes, sir. 10 Q It says, "Over the years, Plaintiff Stanley has 11 been present at meetings of police officers in 12 Charleston County, at which agents of the Defendant 13 appear for the purpose of selling memberships in the 14 PBA." Do you see that? 15 A Yes, sir. 16 Q Have you been to any meetings like that, or seen 17 anything of that nature? 18 A No, sir. 19 Q Okay. All right. The reason that you joined the 20 PBA was on the recommendation of Kristin Graziano; 21 right? 22 A No, sir. She's the one that recommended in 2015 23 coming -- that the chapter was becoming more active. 24 I joined in 2002. 25 Q Okay. All right.

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1 A Just on other deputies suggesting it.
2 Q And who would have been the people who suggested
3 it?
4 A I have no idea who specifically.
5 Q So would it be fair to say the reason you joined
6 was based on the recommendation of other people that
7 were members that you worked with?
8 A Yes, sir.
9 Q Okay. All right. Do you know of any harm that the
10 PBA is doing to anyone?
11 MR. RICHTER: Object to the form.
12 A (Continuing) Well, when -- when Michael was harmed,
13 I was harmed.
14 Q I understand that --
15 A It's --
16 Q And I got that. When Michael was harmed, you were
17 harmed, in your opinion; correct?
18 A Yes, sir.
19 Q All right. Beyond that, do you know of any other
20 harm that the PBA is doing?
21 A No, sir.
22 Q All right. And as to Mr. Slager, Officer Slager, I
23 understand, and I'm not questioning your opinion
24 that the PBA made the wrong decision as to him and
25 harmed him. Would you agree that that matter is

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1 resolved?
2 A I have no direct knowledge of that, no.
3 Q Okay. Assuming it is resolved, do you know of any
4 way that the PBA is harming Mr. Slager now?
5 A I haven't talked to him, so I wouldn't know.
6 Q All right. Okay. Did anyone from the PBA ever
7 talk about the legal defense benefit at any of the
8 meetings you went to?
9 A I'm sure it came up. I only attended meetings from
10 2015 on. I don't believe there were meetings prior
11 to that.
12 Q Okay. So did anyone come and talk about the legal
13 defense benefit at any of the meetings you went to?
14 A Beth may have.
15 Q The only person that you think might have would
16 have been Beth?
17 A Yes, and --
18 Q Do you have any -- I'm sorry. Go ahead.
19 A I'm sorry. I know that they did recruitment at
20 North Charleston headquarters during this time, but
21 I did not attend those.
22 Q All right. Do you have any specific recollection
23 of Beth or anyone else talking about the legal
24 defense benefit of the PBA to you?
25 A No, sir.

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1 Q All right. Do you know of anyone at the PBA that's
2 ever told a lie?
3 MR. RICHTER: Object to the form.
4 A (Continuing) I -- I wouldn't know if they lied
5 because they're lying, so...
6 Q I understand that. I'm not asking as if you were
7 God. I'm asking as if you are you, Mr. Reiter, do
8 you know of any lies that the PBA told to anyone?
9 A I have never specifically caught a lie that they
10 have told me. I can't speak for lies they have told
11 other people, but --
12 Q Are you aware of any other lies that the PBA --
13 that someone may have told you, well, the PBA told
14 me a lie, anything of that nature?
15 A Nobody has told that to me, no.
16 Q All right. Have you heard it anywhere or read it
17 anywhere that the PBA is telling lies?
18 A No, sir.
19 Q Okay. Have you ever believed the PBA was
20 misrepresenting the truth to you or any other
21 officer?
22 A I believe it misrepresents the Legal Defense Fund
23 when it is, in actuality, an insurance fund but
24 being represented as an independent fund.
25 Q The representations you're aware of were that it

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1 was not an insurance fund, and you think that it
2 should be an insurance fund?
3 A Absolutely, yes, sir.
4 Q Okay. But the representations that were made, as
5 you understand it, were true, that it's not an
6 insurance fund?
7 MR. RICHTER: Object to the form.
8 A (Continuing) That will be decided in a court of
9 law, I imagine.
10 Q Well, I understand that. But as to your knowledge,
11 was there ever an untruthful representation made by
12 the PBA or anybody associated with it regarding what
13 it was or what it was doing?
14 MR. RICHTER: Object to the form.
15 A (Continuing) To this point, no.
16 Q Okay.
17 A But that could change.
18 Q Is there anything that you believe the PBA should
19 have told you that you were not told?
20 A I think that -- and I understand that it is now
21 published; I don't know if it was prior. But, the
22 fact that there are -- the head of the Legal Defense
23 Fund can make a decision whether or not to provide
24 an attorney in a case, and then the CEO can either
25 veto that or accept his decision. And I would say

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1 at the time, in my younger years, I had no idea it
2 was up to one person whether or not I would get an
3 attorney.
4 Q So you think that you should have been -- should
5 have been told more about how the process of
6 providing an attorney worked?
7 A Yes, sir.
8 Q All right. How do you think that process should
9 work?
10 A I believe if it is set up as an insurance company
11 with a trained adjuster or a claims agent looking at
12 it, and they can make a decision which may or may --
13 which would not, then, be based on public perception
14 and how it may ultimately affect the PBA.
15 Q All right. Other than the mechanism for providing
16 a lawyer to an officer who may need one, is there
17 anything else that you feel like the PBA should have
18 told you that it did not tell you?
19 A No, sir.
20 Q All right. Do you feel anyone from the PBA has
21 deceived you in any way, or tried to deceive you in
22 any way?
23 A No.
24 Q All right. Did you receive a wallet membership
25 card when you were a member of the PBA?

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1 A I may have. I don't know.
2 Q Well, take a look at Exhibit B to your complaint.
3 A (Witness complied with request of counsel.)
4 Q All right. Are you there, Mr. Reiter?
5 A Yes.
6 Q My understanding is this is the wallet card that
7 Officer Stanley had. Do you recall ever having a
8 wallet card like this?
9 A I do not recall, no.
10 Q Okay. So you wouldn't have relied on anything like
11 this wallet card because you don't even remember
12 seeing one?
13 A Correct.
14 MR. RICHTER: Object to the form.
15 BY MR. BRADLEY:
16 Q Okay. All right. Do you know of anything that's
17 on this wallet card that is deceitful or not true in
18 any way?
19 MR. RICHTER: Object to the form.
20 A (Continuing) Well, I would say that as long as --
21 it says as long as you're an active member through
22 the time of your incident, you're covered. And in
23 that case, that did not happen with Mike Slager, so
24 I would say that is deceitful, yes.
25 Q All right. Anything else other than Michael

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1 Slager?
2 A No, sir.
3 Q All right. Have you ever talked to anyone at the
4 PBA from North Carolina?
5 A No, sir.
6 Q Virginia?
7 A No, sir.
8 Q Louisiana?
9 A No, sir.
10 Q West Virginia?
11 A No, sir.
12 Q Arkansas?
13 A No, sir.
14 Q Tennessee?
15 A No, sir.
16 Q Alabama?
17 A No, sir.
18 Q Kansas?
19 A No, sir.
20 Q Do you know any members from those states?
21 A I may. I don't -- I mean, I know police officers
22 in some of those states. I'm not aware of any that
23 are members, though.
24 Q As you sit here today, to the best of your memory,
25 do you know of any person that's a member of the PBA

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1 from any of those states?
2 A No, sir.
3 Q All right. Have you talked to anyone from any of
4 those states about this lawsuit?
5 A No, sir.
6 Q All right. Have you talked to anyone from any of
7 those states about the PBA?
8 A No, sir.
9 Q All right. Have you taken any steps to get other
10 people to join in this lawsuit and sue the PBA?
11 A No, sir.
12 Q All right. Have you gone on to the Internet and
13 made any postings about this lawsuit or any
14 dissatisfaction you have with the PBA?
15 A No, sir.
16 Q Have you sent out any emails or letters about the
17 lawsuit or your dissatisfaction with the PBA?
18 A No, sir.
19 Q Do you know anyone in any of those states I
20 mentioned that's been damaged by the PBA?
21 A They were all damaged when Mike Slager was denied
22 his claim. When one of us is --
23 Q Right.
24 A -- damaged, we're all damaged.
25 Q Other than the Michael Slager claim, do you know of

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1 any person in any of those states or in South
2 Carolina who has been damaged by the PBA in any way?
3 A Nothing has been made public about anyone else, so,
4 no, I don't.
5 Q All right. Do you know of anything that the PBA
6 has done along the lines of failing to keep adequate
7 records?
8 A No, sir.
9 Q Do you know of anything the PBA has done to
10 wrongfully cancel someone's membership?
11 A No, sir.
12 Q Do you know of anything dishonest or unfair that
13 the PBA has done?
14 MR. RICHTER: Object to the form.
15 A (Continuing) I wouldn't know it if they did.
16 Q I understand. Other than Michael Slager, which I
17 understand your dispute with, do you know of any
18 dishonest or unfair action that the PBA has taken?
19 MR. RICHTER: Object --
20 A I do not have any direct knowledge, no.
21 MR. RICHTER: Object to the form.
22 BY MR. BRADLEY:
23 Q Do you have any indirect knowledge of anything
24 dishonest or unfair that the PBA has done?
25 A No, sir.

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1 MR. RICHTER: Object to the form.
2 BY MR. BRADLEY:
3 Q Do you know of anything that the PBA has done in
4 bad faith?
5 MR. RICHTER: Object to the form.
6 A (Continuing) Yeah. They -- they took Mike Slager's
7 money every month.
8 Q Other than your dispute about Michael Slager, do
9 you know of anything the PBA has done in bad faith?
10 A No, sir.
11 Q All right. Do you know of anything the PBA has
12 done to breach any contract it had with you?
13 MR. RICHTER: Object to the form.
14 A (Continuing) The breach of contract with Michael
15 was a breach with me.
16 Q All right. Other than Michael Slager, do you know
17 of anything the PBA has done to breach a contract
18 with you?
19 A No, sir.
20 MR. RICHTER: Object to the form.
21 BY MR. BRADLEY:
22 Q And other than Michael Slager, do you know of
23 anything the PBA has done to breach a contract with
24 anyone?
25 A I wouldn't know if they did, so, no.

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1 MR. RICHTER: Object to the form.
2 BY MR. BRADLEY:
3 Q Other than Michael Slager, have you been damaged by
4 the PBA in any way?
5 A Yeah. I was damaged when Mike was damaged. Other
6 than that, I don't know of any other members.
7 Again, it hasn't been made public, so. But anyone
8 who has been damaged, then, yes, I have been.
9 Q Right. But you don't have any knowledge of anyone
10 that's been damaged?
11 A No, sir.
12 Q And other than Michael Slager, do you know of
13 anyone that's been damaged by the PBA?
14 A No, sir.
15 Q All right. Do you know of any promise the PBA has
16 made that it has broken to you or anyone other than
17 Michael Slager?
18 A No, sir.
19 Q All right. Do you know of anything the PBA has
20 done to violate your rights or anyone's rights other
21 than Michael Slager?
22 A No, sir.
23 Q Do you know of any way the PBA has been unjustly
24 enriched?
25 A In --

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1 MR. RICHTER: Object to the form.
2 A -- what manner? I don't understand what you're --
3 Q Taking money that it is not entitled to receive.
4 MR. RICHTER: Object to the form.
5 A (Continuing) As the -- it is set up now, yes.
6 Every monthly due it accepts from people, it should
7 not be accepting. Until it's aligned as an
8 insurance company or a prepaid legal, then, yes,
9 it -- it's not entitled to those monies.
10 Q Okay. All right. So, do you know of anything the
11 PBA has taken or received that you believe it should
12 not receive? Is that all the dues?
13 A Yes.
14 Q And it should not get any of those dues?
15 A No, sir.
16 Q All right. Did you receive a lawyer when you
17 needed one?
18 A Yes, sir.
19 Q Did you have to pay anything for the lawyer?
20 A No, sir.
21 Q And I know the lawyer took a couple of hours before
22 the lawyer get there; right?
23 A Yes, sir.
24 Q Other than the delay of a couple of hours before
25 the lawyer get there -- got there, did you have any

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1 complaints about a lawyer when you needed one?
2 A No, sir.
3 Q Do you know of anybody else other than Slager that
4 had any complaints about getting a lawyer from the
5 PBA when they needed one?
6 A No, sir.
7 Q All right. Take a look at paragraph 124. This 7th
8 cause of action, do you see it there, Mr. Reiter?
9 A Yes, sir.
10 Q Do you understand this lawsuit asked to shut the
11 PBA down?
12 MR. RICHTER: Object to the form.
13 A (Continuing) In its current form, yes.
14 Q Is that what you want to have happen?
15 A Yes.
16 Q Do you know of anybody besides you and Officer
17 Stanley that wants to shut the PBA down?
18 MR. RICHTER: Object to the form.
19 A (Continuing) Directly, no, I don't know.
20 Q Or indirectly.
21 A I'm sure there will be other people to come
22 forward; but at this point, Don and I are the ones
23 that have stepped up at the helm of this.
24 Q But based on the knowledge that you have as you sit
25 here, do you know of any person anywhere other than

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1 Mr. Stanley that wants to shut this PBA down?
2 MR. RICHTER: Object to the form.
3 A (Continuing) No.
4 Q Do you know of anyone other than Mr. Stanley and
5 you who agrees with the allegations in this
6 complaint?
7 A No, sir.
8 Q Paragraph 126 says, "The PBA will cause irreparable
9 harm, loss and damage to you and to other class
10 members." Do you see that?
11 A Yes, sir.
12 Q What is the irreparable harm that you're suffering?
13 MR. RICHTER: Object to the form.
14 A (Continuing) The idea that at any moment another
15 officer could be involved in a critical incident and
16 not receive coverage because the PBA deemed it
17 unworthy of counsel, and they could then lose their
18 homes, their jobs, their savings, that's a
19 terrifying thought to a police officer.
20 Q Is there any other irreparable harm besides that
21 idea?
22 A No, sir.
23 Q All right. Do you know of any irreparable harm
24 other than that idea to anybody besides you?
25 A I'm pretty sure Mike Slager probably feels that he

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1 suffered some irreparable harm.
2 Q You realize Mike Slager has settled his lawsuit
3 against the PBA?
4 A I do, but that doesn't undo the -- the stress and
5 worry that he and his wife were put through during
6 this time.
7 Q Okay. Do you agree that the PBA provides valuable
8 services to officers?
9 (Cell phone interruption.)
10 BY MR. BRADLEY:
11 Q All right. Do you agree that the PBA provides
12 valuable services to officers?
13 A The legal defense is a valuable service, yes.
14 Q All right. Is any of the other services it
15 provides, like the legislation or social aspects,
16 valuable?
17 A I think -- I joined strictly for the legal defense.
18 I was not concerned with legislation, and there is
19 clearly no effort to make it a social institution.
20 Q At least in your chapter there wasn't, right?
21 A Correct.
22 Q Okay. And when you asked for a lawyer, you
23 received one; right?
24 A Yes, sir.
25 Q Okay. When did you bring your concerns about the

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1 PBA to the PBA Board?
2 A Within a month or two of our meetings starting back
3 up.
4 Q What did you do to bring those concerns up?
5 A I spoke them. I don't understand how you're asking
6 me.
7 Q Sure. I understand you were upset with the
8 handling of Michael Slager's defense.
9 A Yes, sir.
10 Q What I want to know is how did you express your
11 concerns about the PBA other than suing the PBA?
12 A I was approached by a couple of different officers
13 at North Charleston, wanting to -- to know what
14 happened. I called the legal defense team at PBA
15 headquarters. I don't recall who I spoke to, but I
16 just -- I told them who I was, and that I wanted to
17 find out a little bit more about what happened so
18 that I could tell our members. And obviously, he
19 couldn't tell me much. But I -- if I recall, he
20 just said it was a violation of policy, and that
21 was -- that was it. That was the explanation.
22 Q So you called someone at the PBA headquarters who
23 told you it was a policy violation?
24 A Yes.
25 Q But you don't know who you called?

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1 A No, sir.
2 Q Do you know when you called them?
3 A I don't.
4 Q Okay. Did you ever talk to the local leadership
5 about your concerns?
6 A Who?
7 Q Well, how about the state president, Dave Soderberg
8 from Charleston?
9 A I didn't. I wasn't aware there was a state
10 president.
11 Q Okay. Do you know who Dave Soderberg is?
12 A I've heard the name.
13 Q Do you understand he is a local police officer from
14 the Charleston area?
15 A Again, I don't know him. I've just heard his name.
16 I have no idea who he is, though.
17 Q You don't know that he serves on the Board of the
18 PBA?
19 A No, sir.
20 Q Okay. Other than calling the person that you can't
21 remember at the PBA, did you talk to anybody else
22 with the PBA leadership or administration about your
23 concerns?
24 A It was brought up at meetings where Beth Dyke was
25 present.

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1 Q All right. What did Miss Dyke tell you about it?
2 A She had no information to give us, or wouldn't give
3 us information. I don't know what the case was.
4 Q Okay. So you discussed it at a chapter meeting?
5 A Yes, sir.
6 Q Okay. What was the discussion, that the chapter
7 felt that Slager should have been defended?
8 A Absolutely.
9 Q All right. Okay. So you discussed it at a chapter
10 meeting, and you called a person, you can't remember
11 who it was, at the PBA headquarters?
12 A Yes, sir.
13 Q Did you ever write a letter or anything?
14 A No, sir.
15 Q Did you ever send an email about your concerns?
16 A No, sir.
17 Q Okay. Did you ever try and follow the concerns,
18 talk to the Board at the PBA in any way?
19 A I wouldn't even know how -- what -- which board? I
20 don't know what board you speak of.
21 Q You understand the PBA is governed by a Board of
22 police officers who are elected by police officers?
23 A I was never aware of that, no.
24 Q All right. Okay. Do you understand that the PBA
25 is run by police officers?

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1 A That's what you're telling me, yes.
2 Q You didn't even know that when you brought the
3 lawsuit?
4 A No, sir.
5 Q Did you try and find that out before you brought
6 the lawsuit?
7 A I don't know -- to what end?
8 Q Well, I assume you were unhappy with the decision
9 the PBA made; right?
10 A That is correct.
11 Q All right. Did you make any effort to find out who
12 made the decision and why they made the decision?
13 A I was -- when I made the phone call, I -- I got a
14 blunt answer, and, to me, that was the end of it. I
15 don't know how -- if the PBA wanted to tell me more,
16 then whoever I spoke to could have very easily
17 transferred me to somebody who would provide me more
18 information, but I got the -- his answer and that
19 was the end of this conversation.
20 Q Okay. So you didn't try to talk to the leadership
21 directly?
22 MR. RICHTER: Object to the form.
23 A (Continuing) I very well could have been. I don't
24 know who it was I spoke to.
25 Q Okay. You didn't talk to Dave Soderberg who is the

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1 local leader from South Carolina?
2 A No.
3 Q And you didn't try to address the Board in any way?
4 MR. RICHTER: Object to the form.
5 A (Continuing) No.
6 Q And you didn't write a letter, write anything down?
7 A No.
8 Q And you didn't send an email?
9 A No.
10 Q All right. Do you know who the local officers are
11 for the PBA?
12 A No, sir.
13 Q Do you know who Chris Skinner is?
14 A No, sir.
15 Q Do you know he was a police officer and the
16 president of the PBA?
17 A I don't know him.
18 Q All right. And you don't know Dave Soderberg,
19 either?
20 A No, sir.
21 Q All right. Did you talk to your local president?
22 A He was at meetings, yes.
23 Q All right. What did he have to say about it?
24 A I was the one that had the most information because
25 I called. I don't think he even called or did

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1 anything to find out. 2 Q Okay. What did you expect in return for being a 3 member of the PBA? 4 A That as long as I was acting in the line of duty, I 5 would be provided an attorney. 6 Q Anything else you expected from being a member of 7 the PBA? 8 A No, sir. 9 Q Did you receive what you expected? 10 A I did, yes. 11 Q All right. Do you know the PBA does governmental 12 affairs and lobbying for police officers? 13 A I have heard that, yes. 14 Q And you've been exposed to it yourself because you 15 talked about the lobbying efforts at your meeting? 16 A It had nothing to do with the PBA. 17 Q Okay. 18 A They were not at all involved with that. It was 19 another officer spearheading that who I -- I don't 20 know whether or not he was a member, but it was not 21 a PBA-related event. Someone just brought it up at 22 the meeting. 23 Q You were discussing the Post-Traumatic Stress 24 Disorder legislation at a PBA meeting? 25 A Yes, sir.	1 A Yes, sir. 2 Q All right. Do you have any criticism of that 3 magazine? 4 A No, sir. 5 Q All right. And we talked about the legal defense 6 benefit and your criticism as it applied to Mr. 7 Slager; right? 8 A Yes, sir. 9 Q Do you have any other criticism of the legal 10 defense benefit other than Mr. Slager? 11 A How the -- the structure is -- is set up, yes, I 12 have criticism of that. It needs to be regulated. 13 Q All right. You're aware that the PBA also provides 14 representation and grievance proceedings and 15 disciplinary proceedings for police officers? 16 A Yes, sir. 17 Q Do you have any criticism of that? 18 A Yes. Twice our chapter had to take a vote on 19 whether or not to provide an attorney for two 20 officers, and it -- I don't think it should have 21 been up to us to decide. 22 Q You don't think the local chapter should have a 23 voice in it? 24 A It should be automatic. It shouldn't be anyone 25 other than an adjuster. Someone files a claim, I
Page 54	Page 56
1 Q But it didn't have anything to do with the PBA? 2 A I -- as far as I know, they were not involved with 3 moving that forward in the legislature. 4 Q Do you have any criticism of the governmental 5 affairs work that the PBA does? 6 A I have no idea what work they have done or are 7 doing, so, no, I could not criticize it. 8 Q All right. Are you aware that the PBA does 9 screening and endorsement of candidates for office? 10 A I believe I do. 11 Q Do you have any criticism of that work the PBA 12 does? 13 A No, sir. 14 Q Are you aware the PBA provides accidental death 15 benefits for officers? 16 A Yes, sir. 17 Q All right. Do you have any criticism of that? 18 A No, sir. 19 Q All right. Do you -- are you aware that the PBA 20 also provides attorneys to just call and ask advice? 21 A I did not know that, no. 22 Q All right. Do you have any criticism of that? 23 A No, sir. 24 Q You know that the PBA publishes a magazine for 25 police officers?	1 need representation, you're in good standing, yes. 2 It shouldn't be up to the four or five guys to 3 decide that who don't have any training. 4 Q Okay. Do you have any other expectations of the 5 PBA? 6 A In terms of what? 7 Q Anything we haven't gone over that you think that 8 they're supposed to do. 9 MR. RICHTER: Object to the form. 10 A (Continuing) No. I mean, incident happens, phone 11 call is made, you have an attorney. That's pretty 12 cut and dry. 13 Q All right. And you received what you believe you 14 were entitled to from the PBA? 15 A Yes, sir. 16 Q All right. Take a look at Exhibit A to your 17 lawsuit. 18 A (Witness complied with request of counsel.) 19 Q Whenever you're ready, Mr. Reiter. 20 A I am ready. 21 Q This is the legal defense benefit that you are 22 suing about; correct? 23 A Yes, sir. 24 Q All right. What is wrong with it? 25 MR. RICHTER: Object to the form.

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1 A (Continuing) On paper, I don't think there's
2 anything wrong with it. How it's actually
3 implemented is what I have issue with.
4 Q That's the decision as to Mr. Slager?
5 A Slager, anybody. The -- the fact that one or two
6 people can decide yes or no, that's what I -- I take
7 issue with, and there's no oversight to that.
8 Q How would you improve it?
9 MR. RICHTER: Object to the form.
10 A (Continuing) If it's structured like an insurance
11 company where there are checks and balances, and if
12 a claim's denied, you have an appeal process that
13 you can go through, so I think setting this up in
14 that manner is what needs to happen.
15 Q Have you ever worked for an insurance company?
16 A No, sir.
17 Q Why do you believe all of those things you just
18 said happen with insurance companies?
19 A I've never had a -- a claim denied with my
20 insurance company when I made one, so...
21 Q I mean, you just said that there is an appeals
22 process for an insurance company and a board that
23 reviews and these sorts of things. Why do you think
24 all that?
25 A I know that that's in place. I know that if my

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1 claim is denied, I can appeal the claim with the
2 company.
3 Q How do you know that?
4 A I read. I don't --
5 Q Your insurance policy gives you that right?
6 A I don't -- I -- I don't know if it's --
7 Q What insurance policy have you ever seen that says
8 that?
9 A I -- I have no idea.
10 Q Okay. I'm just curious as to why you believe
11 that's how an insurance company works. Do you have
12 any basis for that?
13 A No. I've -- I have researched it a little bit and
14 read that you're able to appeal a claim if your
15 claim is denied.
16 Q Where did you read that?
17 A Probably insurance websites.
18 Q Do you know what an ERISA plan is? |
19 A I do not.
20 Q All right. Okay. Did you ever talk to the chapter
21 president at all about your concerns?
22 A It was brought up at -- at meetings more than once,
23 yes.
24 Q Who was that, who was the chapter president?
25 A I think it's -- Aubrey Richardson was his name.

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1 Q All right. So you talked to Aubrey Richardson
2 about your concerns?
3 A Yes.
4 Q And what did Aubrey tell you?
5 A He didn't have any information about what happened
6 any more than anybody else. At -- at the meeting
7 where I brought up my phone call to Georgia, that
8 was as much information as was disseminated at our
9 meeting because no one else had information.
10 Q Okay. Take a look at Exhibit C to your complaint.
11 A (Witness complied with request of counsel.)
12 Q What's wrong with this?
13 MR. RICHTER: Object to the form.
14 A (Continuing) This would certainly lead one to
15 believe that as long as these four stipulations are
16 met, you're going to get an attorney. And clearly,
17 there is the chance that that may not happen,
18 despite the fact that these four things are met.
19 Q All right. Because the PBA denied the attorney to
20 Michael Slager?
21 A Because the option for them to deny anybody's claim
22 exists.
23 Q Right.
24 A That's the problem. Not just Mike, the fact that
25 it could happen to anybody, anytime they make a

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1 phone call.
2 Q Right, okay. Anything else wrong with Exhibit C?
3 MR. RICHTER: Object to the form.
4 A (Continuing) No, sir.
5 Q Other than Michael Slager, do you know of any of
6 the promises in Exhibit C that PBA has ever broken?
7 A I -- I don't think the PBA would make it public if
8 they did, so, no, I don't.
9 Q It doesn't say insurance anywhere on Exhibit C,
10 does it?
11 A No, sir.
12 Q Is there any falsehood in Exhibit C, or lies or
13 misrepresentations?
14 A Yes. I believe the guarantee of coverage is a
15 falsehood, because you may not get your coverage --
16 Q Okay, show me --
17 A -- because one person -- well, if you -- if the
18 four things are met here, you're getting an
19 attorney. So even though you meet those four
20 things, you may not get an attorney, so I believe,
21 yes, that is a falsehood. It doesn't say asterisk,
22 as long as the chief legal officer says yes below
23 it.
24 Q Right. It does say it has to be within the scope
25 of your duties; right?

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1 A Yes.
2 Q Okay. What is your understanding of the purpose of
3 the PBA?
4 A To provide an attorney when members who have paid
5 their dues need one.
6 Q Okay. Where did you get that idea from, what other
7 people told you, or what you saw at the website, or
8 some other materials?
9 A I'm reading it right here.
10 Q No, I'm just -- the purpose of the PBA, what's the
11 purpose of the organization? Is that -- your
12 concern is that's all you see is the purpose of it?
13 A No. But, I mean, that's -- for me personally,
14 that's why I joined, was for legal defense.
15 Q Okay. All right. Did you -- I don't want to beat
16 this to death. You know that the PBA is run by a
17 Board of Directors who are members of the PBA;
18 right?
19 A You have told me that, yes. I was not aware of the
20 structure of it.
21 Q Okay. Did you make any inquiry into any of that
22 before you sued the PBA?
23 A No, sir.
24 Q All right. I want to talk to you a little bit
25 about the June 24th, 2004, incident where you hit a

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1 person. Do you recall that?
2 A Yes, sir.
3 Q All right. And after that happened, you called the
4 PBA, right?
5 A Yes, sir.
6 Q All right. And they hired a lawyer for you. I
7 understand you thought it took too long. But, they
8 did hire one that day for you?
9 A Yes, sir.
10 Q And that was Andy Savage?
11 A Yes, sir.
12 Q And you're satisfied with what he did for you?
13 A Yes, sir.
14 Q Did Andy Savage meet with you?
15 A Yes, sir.
16 Q Did he discuss what could happen?
17 MR. RICHTER: Objection. I'm instructing
18 him not answer as to anything his counsel told him.
19 BY MR. BRADLEY:
20 Q You don't have to tell me what he said. Did you
21 have a discussion with Andy Savage about what you
22 were facing?
23 A I would imagine. I -- it's a long time ago. I
24 don't remember exactly what was discussed.
25 Q Well, you remember meeting with him, he came to

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1 talk to you?
2 A Yes, sir.
3 Q Okay. And he followed up with the police
4 authorities on your behalf?
5 A I -- I don't recall.
6 Q Okay. And you even signed a waiver for him to talk
7 to the PBA about your case?
8 A I don't recall doing that.
9 Q All right. Okay.
10 MR. BRADLEY: Mark that.
11 (PBA OF SOUTH CAROLINA REQUEST FOR SERVICE
12 AND RELATED DOCUMENTS MARKED DEFENDANT'S EXHIBIT NO.
13 2 FOR I.D.)
14 A (Continuing) Thank you.
15 MR. BRADLEY: Here you go, guys.
16 MR. RICHTER: Thank you.
17 BY MR. BRADLEY:
18 Q All right. I'm showing you what's marked as
19 Exhibit 2 to your deposition, Mr. Reiter, which is a
20 stack of documents that I believe is associated with
21 the June 2004 incident. Can you take a look at
22 those?
23 A Yes, sir.
24 Q And confirm that?
25 MR. RICHTER: Ward, have these been

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1 produced in discovery?
2 MR. BRADLEY: Honestly, I think so, but I
3 can't guarantee that to you. If you want to
4 discuss it with him off the record, that's fine.
5 MR. RICHTER: Yeah, let's take a break.
6 (Whereas, the deposition recessed briefly.)
7 BY MR. BRADLEY:
8 Q All right. I've shown you what's marked as Exhibit
9 2 to your deposition, which are some documents
10 regarding the provision of a lawyer in 2004 as a
11 result of an accident you were involved in. Look at
12 the third page in there. It looks like a bill from
13 Andy Savage's office?
14 A Yes, sir.
15 Q You didn't ever receive that bill, did you?
16 A No, sir.
17 Q All right. That was paid by the PBA, as far as you
18 know?
19 A As far as I know, yes, sir.
20 Q Okay. All right. And you didn't have to pay Mr.
21 Savage at all?
22 A No, sir.
23 Q All right. And if you'd look, it looks like this.
24 It's about the eighth page in. It says, "Consent to
25 Release Information," at the top.

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1 A Yes, sir. 2 Q All right. And this says, "I, Sean Reiter, member of the Southern States Police Benevolent Association"; is that correct? 3 4 5 A Yes, sir. 6 Q All right. And you signed this document? 7 A Yes, sir. 8 Q Okay. So you consented to Mr. Savage sharing information regarding your representation with the PBA? 9 10 11 A Yes, sir. 12 Q All right. Did you have a problem with that? 13 A No, sir. 14 Q Okay. All right. All right. 15 MR. BRADLEY: Mark this. 16 (MINUTES MARKED DEFENDANT'S EXHIBIT NO. 3 FOR I.D.) 17 18 A (Continuing) Thank you. 19 MR. BRADLEY: Is this Exhibit 3? 20 COURT REPORTER: Yes, sir. 21 BY MR. BRADLEY: 22 Q All right. Mr. Reiter, I'm showing you what's marked Exhibit 3, which I believe are minutes from your chapter's meeting starting December 8th, 2014. Is that correct? 23 24 25	1 Q All right. Is -- did you write that in there? Is that part of what you reported? 2 3 A Yes, sir. 4 Q Okay. So the goals of the organization were actually discussed at the meeting; right? 5 6 A Of our chapter, yes. 7 Q All right. And the people who were making the decisions about the chapter were the chapter officers; right? 8 9 10 A Yes, sir. 11 Q Okay. No one at the PBA told you how you had to do things regarding that? 12 13 A Maybe not at this meeting, but I'm sure we received some guidance as to how the meeting was supposed to run from Beth when -- 14 15 16 Q Right, not how the meeting has to run, but just whether or not you would have an active, more social chapter, or what was going to happen was up to the chapter to make that decision? 17 18 19 20 A Yes, sir. 21 Q Okay. All right. So if you flip through to the eighth page in there, it's got another meeting with Aubrey Richardson and you being there. 22 23 24 A Eight pages from where we just were, or -- 25 Q Eight pages from the beginning. It's dated June
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1 A That's what it appears to be, yes. 2 Q All right. Okay. And does that -- as you look at these minutes, is that when you were elected the secretary? 3 4 5 A Yes, sir. 6 Q It's even highlighted right there, okay. And so after that, you were responsible for putting the minutes together? 7 8 9 A Yes, sir. 10 Q All right. I'm looking at a page there, one, two, three, four, five, sixth page. Under Item 6, "New Business," whenever you get there, let me know. 11 12 13 A It says "2 of 3" at the top? 14 Q Yeah, yeah, that's it. 15 A Yes, sir. 16 Q It says Item No. 6, "New Business. "Again, issues with meeting attendance were discussed. It was decided to have the next meeting in a more suitable location." Then below that, it says, "The general direction of the chapter was discussed. Is the goal to have a large, active chapter with a possible" large -- "lodge, or simply make an effort to increase membership and help ensure officers are covered with legal protection?" Do you see that? 17 18 19 20 21 22 23 24 25 A Yes, sir.	1 18th, 2015. It's an email with minutes. 2 A Oh, okay, the email. Yes, sir. 3 Q Okay. It looks like the minutes for a meeting on June 9th, 2015; is that correct? 4 5 A Yes, sir. 6 Q And it says you and Aubrey Richardson were there? 7 A Yes, sir. 8 Q Okay. And then they -- you discussed new domestic violence law and the body camera law? 9 10 A Yes, sir. 11 Q And then how many people were members? 12 A Yes, sir. 13 Q Okay. And then you talked about the questions regarding Slager? 14 15 A Yes, sir. 16 Q Okay. Do you recall anything about what was discussed at this meeting then? 17 18 A I do not. 19 Q Okay. Is this the meeting you were talking about where you talked to someone and said, hey, I feel like Slager should have been defended? 20 21 22 A I do not recall what was said at this specific meeting, no. 23 24 Q All right. Do you know who Tom Conroy is? 25 A No.

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1 Q Okay. Was Tom Conroy at this meeting, you don't
2 know?
3 A I don't know.
4 Q All right. Okay. The next item, it says,
5 "Attorney options and legal coverage discussed.
6 There is serious dissatisfaction with one of our
7 assigned attorneys." Do you see that?
8 A Yes, yes.
9 Q It says Item No. 6?
10 A Yep, I got it.
11 Q Okay. Do you -- do you remember talking about
12 that?
13 A Yes, that I do.
14 Q All right. And there was some lawyer that had been
15 assigned that people were not happy with that
16 lawyer's representation?
17 A Yes.
18 Q Okay. And the chapter had the option not to use
19 that lawyer anymore; right?
20 A I don't know.
21 MR. RICHTER: Object to the form.
22 BY MR. BRADLEY:
23 Q Okay. Was that -- was the discussion that you were
24 deciding you didn't want that lawyer anymore; right?
25 A I don't remember specifically if we tried to have

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1 him removed or what it was. I just remember it
2 coming up, yes.
3 Q Do you remember anybody who was at the meeting
4 besides you and Aubrey Richardson?
5 A No.
6 Q Do you ever remember having any contact with PBA
7 and saying this lawyer does not suit our purposes?
8 A No.
9 Q All right.
10 MR. RICHTER: Was Exhibit 3 previously
11 produced? I don't see Bates stamp numbers.
12 MR. BRADLEY: You know, I don't know, Ron.
13 MR. RICHTER: Okay.
14 MR. BRADLEY: Or it might be what I'm
15 working on now. Let's mark this as the next one.
16 (MARCH 03, 2017, EMAIL MARKED DEFENDANT'S
17 EXHIBIT NO. 4 FOR I.D.)
18 COURT REPORTER: Exhibit 4.
19 A (Continuing) Thank you.
20 BY MR. BRADLEY:
21 Q All right, Mr. Reiter, I'm showing you what's been
22 marked as Exhibit 4, which is email correspondence
23 between you and Beth Dyke.
24 A Yes, sir.
25 Q Do you recall that?

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1 A I do.
2 Q All right. And so when you moved, I guess, she
3 sent you an email saying I'm sorry that you are
4 leaving; right?
5 A Yes.
6 Q And even asking if you're still in law enforcement,
7 what were you doing; right?
8 A Yes, sir.
9 Q Okay. And you responded, "I'm still in law
10 enforcement, although I would have taken anything
11 that came along at this point"?
12 A Yes, sir.
13 Q What was the purpose of that? I mean, why were you
14 saying that?
15 A Being friendly.
16 Q Did you just --
17 A I don't know.
18 Q Did you just want a different job, or were you --
19 A I always look to advance my career. So if an
20 opportunity came along outside of law enforcement
21 that I felt was a better opportunity for me, I would
22 have taken it.
23 Q Okay. All right. Did you have any dissatisfaction
24 with the PBA at this time?
25 A Yes. It was an ongoing dissatisfaction.

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1 Q Right.
2 A Since the day Mike Slager was denied his attorney,
3 that's when dissatisfaction kicked in, yes.
4 Q Okay. Why didn't you express that to Miss Dyke
5 when she was asking you what's going on?
6 A I don't really think she was asking me what's going
7 on. She just said, "I enjoyed seeing you; best
8 wishes and stay safe." She didn't inquire --
9 Q Right.
10 A -- as to my level of satisfaction.
11 Q But your response was "Thanks. I took a job out of
12 state; that's the only reason."
13 A She doesn't -- I mean, again, just being polite. I
14 don't think that airing my grievances to her again
15 would have -- it didn't do any good when I was the
16 active secretary, so in an email after I had already
17 left, I don't see the point in bringing it up again
18 with her.
19 Q All right. But you told her the only reason you
20 left was because you took a job out of state; right?
21 A I would have stayed, absolutely. My -- part of the
22 reason that I remained in the PBA was so that I
23 would have an inside track, or be able to get
24 information for other officers. Had I stayed, I
25 would have joined the FOP and gone with their legal

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1 protection, as well. But, my goal in remaining
2 secretary was so that I could have better
3 information to disseminate to my fellow officers.
4 Q Right. My question is, you told Beth Dyke on
5 September 7th, 2016, that the only reason you quit
6 the FBA was because you took a job out of state.
7 Was that true at that time?
8 A That is true that is what I said to her, yes.
9 Q All right. And so you didn't tell her anything
10 about your dissatisfaction with Slager at that time?
11 A It had been brought up at previous meetings, so,
12 again, I didn't feel the need to bring it up having
13 already left. That's why I didn't write a
14 dissertation to her about my feelings on the
15 subject.
16 Q Well, you didn't say anything at all, dissertation,
17 nothing?
18 A She already -- she already knew how I felt, so...
19 Q Okay. All right.
20 MR. BRADLEY: Let's mark this. Are we on
21 5?
22 COURT REPORTER: Five.
23 (RESPONSE TO DISCOVERY REQUESTS MARKED
24 DEFENDANT'S EXHIBIT NO. 5 FOR I.D.)
25 A (Continuing) Thank you.

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1 Q Mr. Reiter, I'm showing you what's marked as
2 Exhibit 5 to your deposition, which is your lawyer's
3 responses to our discovery requests. Have you ever
4 seen these before?
5 A I -- I can't say for sure whether or not I've seen
6 them.
7 Q Okay. Take a look at the second page there where
8 it says, "Responses to Request for Production."
9 A Okay.
10 Q And it says, "Please produce all documents in any
11 format associated with the allegations in the
12 complaint." Do you have any documents of any sort
13 associated with this lawsuit?
14 A No, sir.
15 Q Do you know of any documents of any sort associated
16 with this lawsuit?
17 A No, sir.
18 Q All right. The next one asks for all photographs,
19 diagrams, drawings, or similar material. Likewise,
20 do you know of anything that would be responsive to
21 that request?
22 A No, sir.
23 Q Okay. All right. If you flip through until you
24 get to Plaintiff's Answers to Defendant's First Set
25 of Interrogatories. If you keep going, you'll get

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1 to a page that at the bottom it says, "Answers to
2 Interrogatories."
3 A Yes, sir.
4 Q All right. And the first one says, "Give the names
5 and addresses of persons known to the Plaintiff or
6 Counsel to be witnesses." Do you see that?
7 A Yes, sir.
8 Q Do you know of any witnesses?
9 A No, sir.
10 MR. RICHTER: Object to the form.
11 BY MR. BRADLEY:
12 Q All right. All right. I know you would be a
13 witness and Mr. Stanley, and you might say Mr.
14 Slager?
15 A Yes, sir.
16 Q Besides the three of you, do you know of any
17 witnesses whatsoever that would have anything to
18 testify to about related to the allegations in this
19 lawsuit?
20 MR. RICHTER: Object to the form.
21 A (Continuing) I do not have any personal knowledge
22 of anyone who has -- could be a witness to this, no.
23 Q Okay. Look on the next page where your lawyers
24 have listed a bunch of people. At the top is Donald
25 Stanley's name and then Sean Reiter's name. Do you

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1 see that?
2 A Yes, sir.
3 Q Do you know any of these people on this list, even
4 who they are?
5 A I do not.
6 Q Okay. All right. If you'll go to the next page,
7 the question three says, "Set forth an itemized
8 statement of all damages exclusive of pain and
9 suffering claimed to have been sustained by the
10 Plaintiff." Do you see that?
11 A Yes, sir.
12 Q Do you know of any damages that you could set forth
13 there?
14 MR. RICHTER: Object to the form.
15 A (Continuing) Well, any monies that I have paid.
16 And in the way that things are run now, essentially
17 they're ill-gotten gain.
18 Q So you think you're entitled to receive your dues
19 back for all the dues you paid?
20 MR. RICHTER: Object to the form.
21 A (Continuing) I wouldn't say all of my dues. I
22 think that would be up to -- to be decided in a
23 court of law.
24 Q Okay. But you received everything the PBA promised
25 you, right?

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1 A When anyone is declined or denied their service,
2 then I did not. Denial to one is a denial to all.
3 Q Right.
4 A So I can't say that I have received everything,
5 because anybody else who is denied service --
6 Q Okay.
7 A -- then that affected me, also, yes.
8 Q Outside of Mr. Slager, since we've resolved our
9 differences with Mr. Slager, do you know of any
10 damages to anybody other than Mr. Slager?
11 A No, sir.
12 Q Okay.
13 MR. BRADLEY: Let's take a break, but I may
14 be finished. If you-all want to ask some
15 questions, you can, obviously, but I just want to
16 take a break and talk to my clients.
17 MR. RICHTER: We'll ask a few. Want to
18 take a break first? I think we need to change
19 the media anyway.
20 (Short recess taken.)
21 MR. BRADLEY: I don't have any other
22 questions for Mr. Reiter.
23 MR. RICHTER: I have just a few.
24 EXAMINATION
25 BY MR. RICHTER:

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1 Q Mr. Reiter, let me get you to look back at Exhibit
2 No. 1, which is a copy of the lawsuit in this case.
3 A Yes, sir.
4 Q And your attention had been drawn to paragraph 124.
5 If you'll take a look at that with me on page 20.
6 A Yes, sir.
7 Q And as I recall the questions, they were to the
8 effect that your lawsuit seeks to shut own the PBA.
9 Do you remember those questions?
10 A Yes, sir.
11 Q Take a look at paragraph 127 with me. It says in
12 part, "Based on the foregoing, the Plaintiffs on
13 behalf of themselves and the entire class, hereby
14 seeks preliminary and permanent injunctive relief to
15 bar Defendant PBA from operating as an insurer
16 without proper authority and license." Do you see
17 that?
18 A Yes, sir.
19 Q So what your lawsuit seeks is to compel the PBA to
20 comply with the law?
21 A Yes, sir.
22 Q Is that right?
23 A Yes, sir.
24 Q All right. And as I understand their answers, at
25 least two them, one is we don't have to, and the

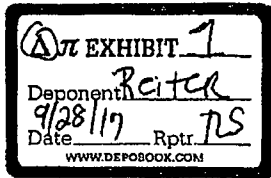
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1 other is perhaps we don't want to. Are those
2 answers satisfactory?
3 A Not at all.
4 Q All right. So your lawsuit is audacious enough to
5 say to an organization of police officers, we would
6 like for you to comply with the law?
7 A Yes.
8 Q Is that what your lawsuit says?
9 A Yes, sir.
10 Q Okay. And your lawsuit is not for the purported
11 purpose of shutting down the PBA, is it?
12 A No, sir.
13 Q When you were a member of the PBA, you understand
14 that currently the PBA has approximately 44,000
15 members?
16 A Yes, sir.
17 Q So it's made 44,000 separate promises that it will
18 provide a legal defense if an officer needs one;
19 correct?
20 A Yes, sir.
21 Q What did the PBA tell you during the time that you
22 were an officer about its financial ability to
23 actually honor those promises?
24 A They never told us anything.
25 Q What did it tell you about what reserves it

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1 maintained, so that if they had multiple claims at
2 the same time, that they would actually have the
3 money there to fulfill the promise that they made?
4 A They've never told us anything about the reserves.
5 Q All right. Do you know if they maintain a reserve?
6 A I do not know.
7 Q In the year 2015, the PBA sent an email to its
8 membership stating that it had spent 1.7 million
9 dollars in legal fees on behalf of its members. Did
10 you receive a copy of that email?
11 A I -- I may have. I don't -- I'm not sure.
12 Q Well, if it spent 1.7 million in 2015, and it had
13 44,000 members paying \$23.50, then it collected
14 roughly \$12,400,000.00 in the same period of time.
15 Do you understand that?
16 A Yes, sir.
17 Q Did the PBA ever explain to you what became of the
18 rest of the money?
19 A No, they did not.
20 Q All right. Do you know of a charitable
21 organization that takes five dollars to administer
22 one?
23 A No, sir.
24 Q All right. Did you join the PBA because you were
25 looking for a lobbyist group?

Page 81	Page 83
1 A No, sir. 2 Q Did you join the PBA because you wanted a copy of 3 their newsletter? 4 A No, sir. 5 Q Would you pay the PBA \$23.50 a month to get a copy 6 of their newsletter? 7 A No, sir. 8 Q When you had an incident and you called the PBA, 9 you called soon after the incident happened; right? 10 A Yes, sir. 11 Q How did you have the number? 12 A I guess it had come in my membership information, 13 or I got it off the Internet. 14 Q All right. Do you -- does that refresh your 15 recollection that you may have had a wallet card? 16 A I -- I could have, yes, sir. 17 Q Does the wallet card encourage a member that if 18 something happens, you'll call the number and 19 we'll -- we'll appoint a lawyer for you? 20 A Yes, sir. 21 Q You said you didn't attend recruitment meetings at 22 the City of North Charleston Police Department, but 23 you were aware that they took place; correct? 24 A Yes, sir. 25 Q And at a recruitment meeting, what is it that the	1 Q Is that what the PBA sells at recruitments, the 2 fear that a member may lose their house, their job, 3 their savings? 4 A Absolutely. 5 MR. BRADLEY: I -- I object to that 6 question, too. 7 BY MR. RICHTER: 8 Q Is that the basis upon which the PBA encourages 9 members that it should join the Legal Defense Fund? 10 A Correct. 11 MR. BRADLEY: I object to that question, 12 too. 13 BY MR. RICHTER: 14 Q Did you have any expectation that your \$23.50 a 15 month was funding the Sean Reiter fund? 16 A No. It goes into the general fund to protect every 17 member. 18 Q Did you have any expectation that if it was a fund 19 of one, that it would be enough money to provide you 20 with a legal defense? 21 A No, it definitely would not be. 22 Q Did you understand that you were pooling the risk 23 with other people when you contributed your money? 24 A Yes, sir. 25 Q And did you expect that others were doing the same
Page 82	Page 84
1 PBA seeks to sell in order to entice members to 2 join? 3 A The Legal Defense Fund is the -- 4 MR. BRADLEY: I object to that question. 5 MR. RICHTER: Sorry? 6 MR. BRADLEY: I just objected to the 7 question. Sorry. Go ahead. 8 BY MR. RICHTER: 9 Q Do you have personal knowledge that the PBA, in 10 seeking to recruit members, sells or advances its 11 Legal Defense Fund? 12 A Yes. 13 Q So the reason to join the PBA is that you'll be 14 protected by the fund? 15 A Correct. 16 Q Are accidental death benefits insurance? 17 A Yes. 18 Q Do you know? 19 A It sounds -- I mean, it could be. 20 Q You said, in answering questions about irreparable 21 harm, and this is going to be a close paraphrase, so 22 correct me if I'm wrong, that the harm is the fear 23 that you may lose your house, your job, and your 24 savings? 25 A Yes, sir.	1 for you? 2 A Yes, sir. 3 Q Such that a breach of a promise to any of you is a 4 breach of a promise to all of you? 5 A Absolutely. 6 MR. RICHTER: All right. That's all I 7 have. 8 MR. WARD: All right. 9 (Deposition concluded at 12:43 p.m.) 10 (*This transcript may contain quoted 11 material. Such material is reproduced as read or 12 quoted by the speaker.) 13 (**Certificate accompanies only sealed 14 original.) 15 16 17 18 19 20 21 22 23 24 25



STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

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

vs.)

Southern States Police Benevolent
Association, Inc.)

Defendant.

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

AMENDED COMPLAINT

Jury Trial Demanded

FILED
2016 NOV 22 PM 1:37
JULIE J. ARMSTRONG
CLERK OF COURT

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

Class Allegations

1. Plaintiff, Donald Stanley, is an individual and resident of Berkeley County, South Carolina, who was at all times relevant hereto a member in good standing with the Southern States Police Benevolent Association.

2. Plaintiff, Sean Reiter, is a resident of New Jersey, who was at all times relevant hereto a member in good standing with the Southern States Police Benevolent Association.

3. Defendant Southern States Police Benevolent Association, Inc. ("PBA") is a corporation organized and existing under the laws of the State of Georgia, which transacts business in the States of Georgia, South Carolina, North Carolina, Virginia, West Virginia, Kansas, Arkansas, Tennessee and Louisiana.

4. The PBA invites police officers in the States of Georgia, South Carolina, North Carolina, Virginia, West Virginia, Kansas, Arkansas, Tennessee and Louisiana to become "members" of the PBA. Members of the PBA pay monthly "dues" to the PBA in exchange for a "Legal Defense Benefit Plan" (sometimes referred to as the "Plan"). According to the Plan, it provides a legal defense and related costs to an officer member who is accused of a crime while performing his or her official duties as police officers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Factual Background

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

selling memberships in the PBA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36. The Policy is insurance.

37. The membership "dues" are actually premiums.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

73. In the State of Louisiana, no person shall act as an insurer unless properly qualified, and no person shall transact the business of insurance without complying with the appropriate laws. La. Stat. Ann. §§ 22:12, et seq.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

86. Class members have not breached the insurance contracts.

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

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

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

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

**For a Second Cause of Action
Negligence**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Charleston, South Carolina

11/22, 2016

Attorneys for Plaintiffs



Ronald L. Richter, Jr.
Scott M. Mongillo
Peoples Building
18 Broad Street, Mezzanine
Charleston, South Carolina 29401
(843) 573-9900
ronnie@blandrichter.com
scott@blandrichter.com

Eric S. Bland
1500 Calhoun Street
Post Office Box 72
Columbia, South Carolina 29202
(803) 256-9664
erichbland@blandrichter.com

Andrew J. Savage, III, Esquire
SAVAGE LAW FIRM
15 Prioleau Street
Charleston, South Carolina 29401
(843) 720-7470
andy@savlaw.com

Carl E. Pierce, II, Esquire
Joseph C. Wilson, IV, Esquire
Pierce, Hems, Sloan & Wilson, LLC
The Blake House
321 East Bay Street (29401)
Post Office Box 22437
Charleston, South Carolina 29413
(843) 725-7705
carlpierce@phswlaw.com
joewilson@phswlaw.com

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

EXHIBIT A
COMPLAINT

Legal Defense Benefit Plan

SOUTHERN STATES POLICE BENEVOLENT ASSOCIATION, INC.

POLICY NO. 00-16

LEGAL DEFENSE BENEFIT

BACKGROUND:

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

POLICY:

Section 1. Coverage and Eligibility.

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

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

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

Section 2. Benefit Administration

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

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

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

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

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

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

Section 4. Limitations, Restrictions and Exemptions

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

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

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

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

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

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

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

Section 5. Cancellation of Legal Defense Benefit Plan

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

Section 6. Definitions

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

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

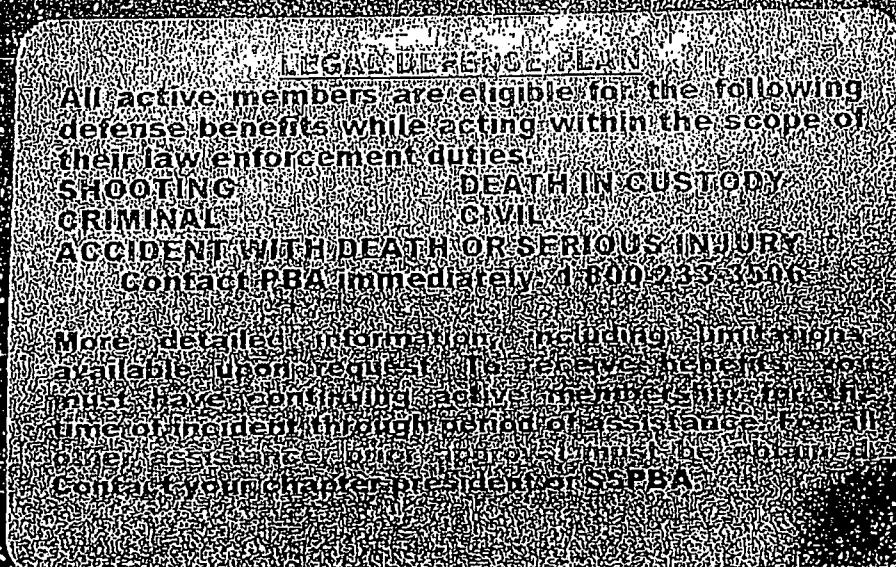
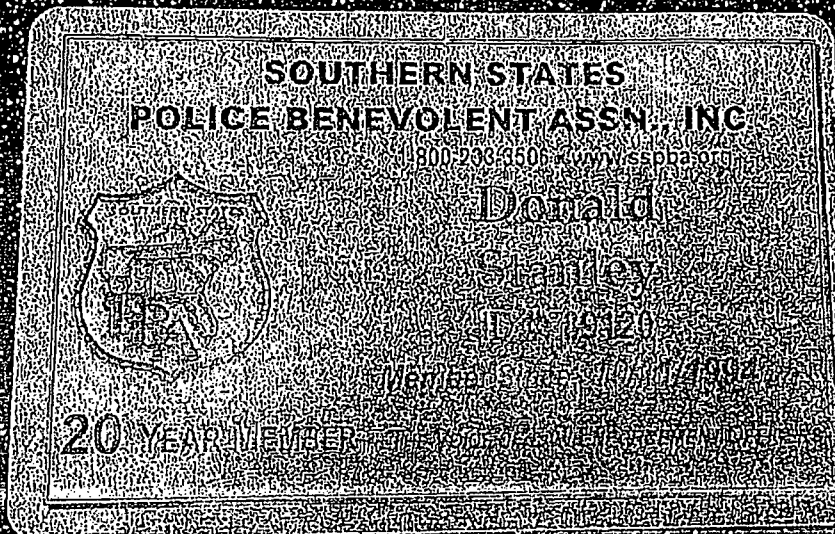
Former SSPBA Policy 90-01


JOY NATA
Secretary-Treasurer

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

EXHIBIT B
COMPLAINT

Southern States Police Benevolent Association, Inc. Wallet Card



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

EXHIBIT C
COMPLAINT

Southern States Police Benevolent Association, Inc. Website Screenshot



SOUTHERN STATES PBA

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

Legal benefits PBA members receive

No other law enforcement association even comes close

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

Shooting and Serious Injury Incidents:

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

Civil Suits and Criminal Action:

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

Grievance and Disciplinary Representation

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

With PBA's Legal Defense Benefit:

"Do I need committee approval?"

NO!

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

NO!

"Will personalities be involved in my request?"

NO!

"Will inner-circle politics be involved?"

NO!

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

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

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

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

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

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

SOUTHERN STATES PBA NEWS

View All (<http://www.sspba.org/whatstrending>)

114TH US CONGRESS UPDATE JULY 2016

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

August 2, 2016

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

[more](#)

(https://www.sspba.org/gen/articles/114th_US_CONGRESS_Update_July_2016_630.jsp).

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

July 18, 2016

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

[more](#)

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

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

July 8, 2016

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

[more](#)

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

LEGAL AID

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

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

Meet the Legal Staff

(https://www.sspba.org/gen/articles/Meet_the_Legal_Staff/2_156.jsp)

What We Are Up To

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

Need to Know

(https://www.sspba.org/gen/articles/What_you_need_to_know_when_you_need_legal_aid/84.jsp)

Garrity Rule

(https://www.sspba.org/gen/articles/Garrity_Information_Protect_yourself_Know_your_rights/82.jsp)

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

Legal FAQ

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

Contact Legal

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

MEDIA CENTER

About the SSPBA

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

SSPBA Board

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

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

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

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

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

GET INVOLVED

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

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

Donate (<https://donatetoworknetworkforgood.org/PBF>)

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

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

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

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

Join the RSS Feed (<http://visitor.r20.constantcontact.com/manage/optin/e37v=00110R16q2x1H8sfu06K0w%3D%3D>)

Get high quality legal advice (https://www.sspba.org/gen/articles/Get_high_quality_legal_advice/87.jsp)

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

MEMBER CENTER

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

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

Retired Members

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

Military/Active Duty

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

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

GOVERNMENTAL AFFAIRS

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

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

Governmental Affairs FAQ

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

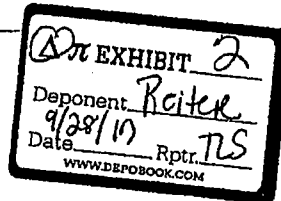
12/16/2004

SOUTHERN STATES POLICE
BENEVOLENT ASSOCIATION, INC.

FBA OF SOUTH CAROLINA
REQUEST FOR SERVICE

Name	SEAN PATRICK REITER		Record Status	ACTIVE
Address	262 C STEFAN DR CHARLESTON SC 29412			
Member Date	02/12/2003		Action Code	I
Home Phone	(843) 343-5445		Status	A
Work Phone	(843) 554-4700	Other Phone		
Chapter	5010 COASTAL CHAPTER			
Agency	0300 CHARLESTON COUNTY SHERIFFS OFFICE			
RQ #	SC04-0018	Scope	N	Last Update 12/16/2004
Date Filed	06/25/2004	Bargaining Unit	N	Incident Date 06/24/2004
				Close Date 11/02/2004
Type	LDA	LEGAL DEFENSE-ACCIDENT OR INJURY	Scan Date	/ /
Prepared by	306	NATALIE LINDSLEY		
# Assigned to		From	To	
1	5019 ANDREW SAVAGE	06/25/2004	11/02/2004	Brief
2		/ /	/ /	Brief2
3		/ /	/ /	

Comments



5) NOTES

Created: 06/25/2004 09:57 Modified: / / By: NL
Per Kristen in Andy Savage's office - Andy Savage was contacted by John Oliver regarding member being involved in an on duty accident.

Created: 06/25/2004 10:11 Modified: / / By: NL
Per GKD - Assigned to Atty Savage. Assignment letter faxed and mailed this date.

Created: 06/25/2004 11:12 Modified: 06/25/2004 11:23 By: NL
Per John Midgette - Member hit a pedestrian and killed them. Atty Andrew Savage responded to scene at Riviera Ave. at I-528.

Copy of RQ mailed to Gary Martin.

Created: 06/29/2004 14:22 Modified: / / By: NL
Per update from Atty Andrew Savage dated June 25, 2004 - Member was involved in a vehicle v. pedestrian accident on Rivers Ave. near the intersection of I-526 in North Charleston, SC. Member was responding to a reported child abduction. He noticed the pedestrian crossing the three lanes of eastbound traffic at a distance in front of him that made an impact unavoidable. Pedestrian received massive head injuries from an impact with the windshield. Despite an immediate medical response, the victim was pronounced dead at the Medical University of SC. It appears that the accident was unavoidable and member's actions were appropriate. I anticipate that we will provide a statement early next week. I am cautiously optimistic about the outcome of this case. I do not anticipate any criminal charges. It is likely that there will be a civil case arising from this incident brought by the deceased's family.

Created: 07/06/2004 10:11 Modified: / / By: LIO
Update per Atty. Savage's e-mail dated 7/1/04 - Great News! Cleared by SCHP.
Speed calculation is 40 MPH.

Created: 11/02/2004 11:50 Modified: 11/02/2004 11:55 By: HAD
Update per attorney Andrew Savage, III 10/29/04 - I am pleased to advise you that Charleston County Sheriff Deputy Sean P. Reiter has been cleared of any wrongdoing in an accident he was involved in on June 24, 2004. We do not anticipate any criminal charges or the filing of a civil action in this matter and we are therefore closing our file.

Case closed per Attorney Andrew Savage.

Created: 12/16/2004 10:03 Modified: / / By: VMP
VMP - Called atty Savage to get permission to publish case in newsletter. He was not in the office. I spoke with Kristin, his paralegal and left a message with her about why I was calling. She will e-mail me as soon as she gets answer from atty Savage.

SAVAGE & SAVAGE, P.A.
16 Prioleau Street
Post Office Box 1002
Charleston, SC 29402
Telephone: 843-720-7470
Facsimile: 843-720-7478

#5019

NOV 1 2004

Sean Patrick Reiter
RQ# SC-04-0018
c/o PBA
1900 Brennan Road
McDonough GA 30253-4310

Page: 1
October 29, 2004
Account No: 2406130-02
Statement No: 14950

FEES CHARGED THROUGH 10/29/2004

		Rate	Hours	
06/25/2004	Multiple telephone calls from Amy Wilson re: accident.	85.00	0.25	21.25
	Telephone call to Amy Wilson re: accident.	85.00	0.15	12.75
	Telephone call to Amy Wilson to update contact information.	85.00	0.15	12.75
	Telephone call to Sean Reiter to obtain initial information.	85.00	0.25	21.25
	Multiple attempted telephone calls and return call from Sean Reiter to schedule an appointment.	85.00	0.25	21.25
	Telephone call to Grady Dukes re: Deputy involved in accident.	85.00	0.20	17.00
	Telephone call to Grady Dukes re: Sean Reiter and obtain RQ#.	85.00	0.25	21.25
06/28/2004	Attempted telephone call and return call from Paul Tittle regarding Sean Reiter.	85.00	0.25	21.25
	Conference in the office with Sean Reiter to review status of case and complete statement.	85.00	1.00	85.00
06/29/2004	Telephone conference with Paul Tittle from CCSO re: Sean Reiter.	85.00	0.15	12.75
07/01/2004	Telephone conference with Sean Reiter; e-mail correspondence	85.00	0.35	29.75
07/06/2004	MAITE TEAM, SCHP Cpl. Myrick conference	85.00	0.75	63.75
	Telephone call to Sean Reiter regarding Cpl. Myrick; scheduled appointment.	85.00	0.25	21.25
07/07/2004	Conference in the office with client; preparation of correspondence to SCHP	85.00	1.25	106.25
	Telephone conference with client to review accuracy of letter prepared to send to SCHP	85.00	0.25	21.25
07/21/2004	Attempted telephone call to Cpl Myrick with SCHP; sent email.	85.00	0.10	8.50
08/04/2004	Attempted Telephone call to Cpl. Myrick, SCHP; sent email	85.00	0.10	8.50
	Telephone conference with Cpl Myrick of the SCHP; email correspondence	85.00	0.10	8.50

Sean Patrick Reller

Page: 2
October 29, 2004
Account No: 2406130-02
Statement No: 14950

		Rate	Hours	
08/18/2004	Telephone call to Cpl. Myrick with SCHP; email correspondence	85.00	0.10	8.60
	Attempted telephone call to Sean Reller; left detailed message on voicemail.	85.00	0.10	8.50
09/01/2004	Telephone conference with Sean Reller	85.00	0.20	17.00
09/02/2004	Attempted telephone call to and return call from Cpl. Myrick	85.00	0.15	12.75
	SCHP Male Team; email correspondence	85.00	0.10	8.50
	Telephone call to client; email correspondence			
09/13/2004	Telephone conference with Cpl. Myrick of the SCHP, research of website, and email correspondence.	85.00	0.25	21.25
09/28/2004	Telephone call to Cpl. Myrick with SCHP MAIT team regarding status of report.	85.00	0.10	8.50
10/14/2004	E-mail correspondence with Sheridan Spoon re: FOIA request	85.00	0.15	12.75
10/15/2004	E-mail correspondence with Sheridan Spoon.	85.00	0.10	8.50
10/29/2004	E-mail correspondence with Sheridan Spoon of the SCDPS.	85.00	0.15	12.75
	Preparation of letter to Joni Fletcher closing file.	85.00	0.50	42.50
	For Current Services Rendered		7.95	675.75
	Total Current Work			675.75

BALANCE DUE

\$675.75

OK-78
11/4/04
GAB

Savage & Savage, P.A.

ATTORNEYS AT LAW

15 PRIOLIAU STREET

POST OFFICE BOX 1002

CHARLESTON, SC 29402

Tel. (843) 720-7470 Fax (843) 720-7478

<http://www.savlaw.com>

ANDREW J. SAVAGE, III*

*Certified Criminal Trial Advocate - NBTA

DAVID L. SAVAGE

DAVID W. WOLF

October 29, 2004

Joni Fletcher, Esquire
Director of Legal Services
Southern States Police Benevolent Association, Inc.
1900 Braman Road
McDonough, GA 30253-4310

RE: Sean Patrick Reiter

RO#: SC-04-0018

Dear Joni:

~~I am pleased to advise you that Charleston County Sheriff Deputy Sean P. Reiter has been cleared of any wrongdoing in an incident he was involved in on June 25, 2004.~~

In a letter dated June 25, 2004, I sent Jim Mullins an initial report outlining the facts and circumstances of the accident. After a thorough investigation, the South Carolina Highway Patrol's MAIT Team determined that Deputy Reiter did not contribute to the accident.

~~We do not intend to file any criminal charges or the filing of a civil action in this matter and we are therefore closing our file.~~ I want to thank you for giving us this opportunity to represent Deputy Reiter. He is well thought of in both the law enforcement and civilian community.

With best wishes, I remain

Sincerely,

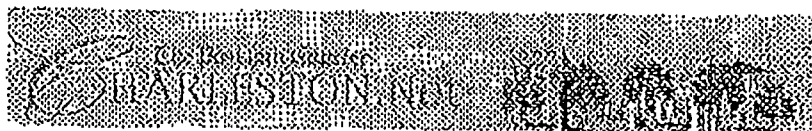
Andrew J. Savage, III

AJS, III/kkn

Enc: "State clears deputy in death of pedestrian," The Post and Courier, September 29, 2004;
(1 page)

Final invoice from Savage & Savage, P.A. date October 29, 2004; (2 pages)

cc: Deputy Sean P. Reiter, w/ enclosed copy of newspaper article



State clears deputy in death of pedestrian

BY GLENN SMITH
Of The Post and Courier Staff

State investigators have cleared a Charleston County sheriff's deputy of wrongdoing in a June accident that killed a 58-year-old pedestrian in North Charleston.

Deputy Sean Reiter was responding to a call June 24 when his cruiser struck Charles L. Paulhamus on Rivers Avenue near the Interstate 526 exit. Paulhamus died a short time later at an area hospital.

Witnesses have said the deputy tried to stop the cruiser before it hit Paulhamus, but his vehicle was traveling too fast. Witnesses also said the cruiser's blue lights were not turned on at the time.

The S.C. Highway Patrol announced Wednesday, however, that its investigation has cleared the 26-year-old deputy of contributing to the accident.

Investigators determined that Paulhamus was crossing the road near Target Street, an intersection where there is no designated crosswalk. Paulhamus was struck after traveling across two lanes of traffic and entering the lane closest to the median, troopers said.

Investigators also concluded that Reiter's cruiser was driving within the posted limit in a range between 34 and 46 mph at the time of the accident, according to the Highway Patrol.

Reiter, who has been with the sheriff's office for nearly two years, was placed on paid administrative leave while the accident was under investigation. He now has returned to active duty, said Sheriff's Capt. Dana Valentine.

Valentine declined to comment on the results of the state's investigation.

Paulhamus was struck about 10 yards from the spot where 41-year-old Asberry Wylder was shot and killed by North Charleston police on Nov. 7. The shooting occurred after Wylder stole meat from a nearby Piggly-Wiggly and stabbed an officer in the chest as police tried to apprehend him, police said.

Wylder's brother, who witnessed the accident, has said Paulhamus was renting a trailer on his family's property on James Bell Drive, one block from Target Street.

Grady's PBA

update

From: "Andrew J. Savage III" <andy@savlaw.com>
To: <Hombiker2@aol.com>; "Ashley Kay" <Ashley@savlaw.com>; "Cheryl Savage" <CHERYL@savlaw.com>; "Crystal Frank" <Crystal@savlaw.com>; "Kristen K. Nettles" <kristen@savlaw.com>; <gdukes@sspba.org>
Sent: Thursday, July 01, 2004 12:20 PM
Subject: (Matter No. [2406130]) (In Re: Sean Patrick Reiter) Sean Reiter
7/1/2004 12:10:51 PM (AJS) Return call to Sean @ 343-5445. Great news! Cleared by SCHP. Speed calculation is 40 MPH.

Jgo

07/02/2004

ROA 000328

SAVAGE & SAVAGE, P.A.

ATTORNEYS AT LAW

15 FRENCHMAN LANE

PO BOX 1002

CHARLESTON, SC 29402

TEL: (843) 720-7470 FAX: (843) 720-7470

<http://www.savlaw.com>

ANDREW J. SAVAGE, III

Certified Criminal Trial Advocate - NCSTA

DAVID I. SAVAGE

DAVID W. WOLF

June 29, 2004

Via Facsimile (866) 915-3425

Mr. Jim Mullins

Director of Legal Services

Southern States Police Benevolent Association, Inc.

1900 Brannen Road

McDonough, GA 30253-4310

RE: Sean Patrick Reiter

RQ#: SC-04-0018

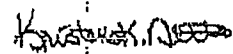
Dear Mr. Mullins:

Per your request, please find enclosed the Consent to Release Information executed by PBA Member Sean Patrick Reiter.

If you have any questions, please do not hesitate to contact our office.

With best wishes, I remain

Sincerely,



Kristen K. Nettles

Legal Assistant to

Andrew J. Savage, III

/kkn

Enc: Consent to Release Information; (1 page)

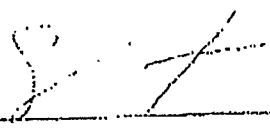
JUN 25 04 11:00a

p.2

CONSENT TO RELEASE INFORMATION

I, Sean Reiter, a member of Southern States Police Benevolent Association, Inc. (hereinafter "PBA") have asked for and received from the PBA the legal services of Andrew J. Savage III, the attorney assigned to represent me.

By signature below I hereby freely consent to allow my attorney to submit periodic reports to the PBA Legal Department concerning my legal representation. I understand that these reports will be held in strict confidence and may include progress reports, legal opinions, scheduling of hearings or other information necessary to monitor the status of my case.


Member6/29/04
Date

cc: Attorney Assigned
PBA Legal Department

Tuesday, June 29, 2004.max

ROA 000330

Savage & Savage

6/26/2004 10:11 PAGE 1/3 RightFax

SAVAGE & SAVAGE, P.A.

ATTORNEYS AT LAW

15 PRUDENTIAL CENTER

POST OFFICE BOX 1002

CHARLESTON, SC 29402

TEL. (843) 720-7470 FAX (843) 720-7478

<http://www.savage.com>

ANDREW J. SAVAGE, III

DAVID L. SAVAGE

Certified Criminal Trial Advocate - RBTAA

WILLIAM E. MCCOURE

DAVID W. WOLF

TELEFAX COVER LETTER

THIS MESSAGE IS INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

=====

TO: Mr. Jim Mallins
FAX NO.: 1,8669153425,,,1420

FROM: Cheryl Savage

DATE: Saturday, June 26, 2004 10:11:16 AM

NO. OF PAGES: 03

=====

MESSAGE/DOCUMENT(S):

IF YOU DO NOT RECEIVE ALL PAGES,
PLEASE CONTACT Cheryl Savage AT (803) 720-7470

ROA 000331

SAVAGE & SAVAGE, P.A.

ATTORNEYS AT LAW

15 FRIEDLAND STREET

PO BOX 1002

CHARLESTON, SC 29402

Tel (843) 720-7470 Fax (843) 720-7470

<http://www.savagesc.com>

ANDREW J. SAVAGE, III

Certified Criminal Trial Advocate - NCITA

DAVID L. SAVAGE

DAVID W. WOLF

June 25, 2004

Via Facsimile (866) 915-3425

Mr. Jim Mullins

Police Benevolent Association, Inc.

1900 Brannan Road

McDonough, GA 30253-4310

RE: Deputy Sean Patrick Reiter
Charleston County Sheriff's Office
RQ# SC-04-0018

Dear Jim:

At approximately 9:30 p.m. last night I received a phone call seeking legal assistance for PBA member Sean P. Reiter. Deputy Reiter was involved in a vehicle v. pedestrian accident on Rivers Avenue near the intersection of Interstate 526 in North Charleston, South Carolina. The initial report that I received was that the pedestrian was seriously injured and that Deputy Reiter was being escorted by internal affairs to the Charleston County Sheriff's Office Headquarters. I immediately left my residence to confer with Deputy Reiter.

It appears that, at the time of the accident, Deputy Reiter was responding to a reported child abduction. He was en route to a location on Rivers Avenue without his siren or blue lights being activated. The route that he was traveling is a six-lane divided highway. He was traveling eastbound and the location he was responding to is adjacent to the westbound lanes of travel. The posted speed limit in the response location is forty-five (45) miles per hour. It is believed Deputy Reiter was traveling in light to medium traffic (exact speed unknown, but within ten to fifteen miles per hour of the posted speed limit) when he noticed the pedestrian crossing the three lanes of eastbound traffic at a distance in front of him that made an impact unavoidable. Deputy Reiter did his best to avoid hitting the pedestrian. Despite his effort, the pedestrian was struck causing damage to the hood and windshield of his vehicle.

The pedestrian received massive head injuries from an impact with the windshield. Despite an immediate medical response, the victim was pronounced dead at the Medical University of South Carolina within hours of the incident.

Mr. Jim Mullins
June 25, 2004
Page Two

The South Carolina Highway Patrol MATE Team was asked by the Sheriff to lead the investigation of the accident. In conversations with the team members last night, it appears that the accident was unavoidable and Deputy Reiter's actions were appropriate. I did not have an opportunity to listen to the dispatch tapes, but they will play a key role in the appropriateness of Deputy Reiter's response (no lights or siren) and speed. At my advice, Deputy Reiter did not provide a statement to his supervisors, internal affairs, or the highway patrol yesterday evening. I anticipate that we will provide a statement early next week.

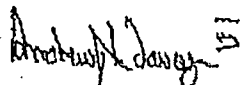
At the time of this incident, Deputy Reiter was on probation as a result of an earlier off-duty incident which resulted in a ten-day suspension. Despite his probationary status, Deputy Reiter enjoys an excellent reputation for his on-job performance with both his colleagues and immediate supervisors.

I am cautiously optimistic about the outcome of this case. Unless the MATE Team's investigation reveals information that was not available last night, I do not anticipate any criminal charges. It is likely that there will be a civil case arising from this incident brought by the deceased's family. In light of Deputy Reiter's history with the department, I am guarded in my outlook regarding any administrative action.

I will send a further report as circumstances warrant. Thank you once again for allowing me this opportunity to represent PBA Member Sean P. Reiter.

With best wishes, I remain

Sincerely,



Andrew J. Savage, III

AJS,III/kkn

cc: Deputy Sean P. Reiter
Mr. Grady K. Dukes, via facsimile

SAVAGE & SAVAGE, P.A.

ATTORNEYS AT LAW

15 PROCEAU STREET

POST OFFICE BOX 1002

CHARLESTON, SC 29402

TEL. (843) 720-7470 FAX (843) 720-7478

<http://www.savlaw.com>

ANDREW J. SAVAGE, III*

*Certified Criminal Trial Advocate - NDPA

DAVID L. SAVAGE

DAVID W. WOLF

June 25, 2004

Via Facsimile (866) 915-3425

Mr. Jim Mullins

Police Benevolent Association, Inc.

1900 Brannan Road

McDonough, GA 30253-4310

RE: Deputy Sean Patrick Reiter
Charleston County Sheriff's Office
RQ# SC-04-0018

Dear Jim:

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It appears that, at the time of the accident, Deputy Reiter was responding to a reported child abduction. He was en route to a location on Rivers Avenue without his siren or blue lights being activated. The route that he was traveling is a six-lane divided highway. He was traveling eastbound and the location he was responding to is adjacent to the westbound lanes of travel. The posted speed limit in the response location is forty-five (45) miles per hour. It is believed Deputy Reiter was traveling in light to medium traffic (exact speed unknown, but within ten to fifteen miles per hour of the posted speed limit) when he noticed the pedestrian crossing the three lanes of eastbound traffic at a distance in front of him that made an impact unavoidable. Deputy Reiter did his best to avoid hitting the pedestrian. Despite his effort, the pedestrian was struck causing damage to the hood and windshield of his vehicle.

The pedestrian received massive head injuries from an impact with the windshield. Despite an immediate medical response, the victim was pronounced dead at the Medical University of South Carolina within hours of the incident.

JUN 28 2004

ROA 000334

Mr. Jim Mullins
June 25, 2004
Page Two

The South Carolina Highway Patrol MATE Team was asked by the Sheriff to lead the investigation of the accident. In conversations with the team members last night, it appears that the accident was unavoidable and Deputy Reiter's actions were appropriate. I did not have an opportunity to listen to the dispatch tapes, but they will play a key role in the appropriateness of Deputy Reiter's response (no lights or siren) and speed. At my advice, Deputy Reiter did not provide a statement to his supervisors, internal affairs, or the highway patrol yesterday evening. I anticipate that we will provide a statement early next week.

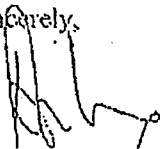
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I am cautiously optimistic about the outcome of this case. Unless the MATE Team's investigation reveals information that was not available last night, I do not anticipate any criminal charges. It is likely that there will be a civil case arising from this incident brought by the deceased's family. In light of Deputy Reiter's history with the department, I am guarded in my outlook regarding any administrative action.

I will send a further report as circumstances warrant. Thank you once again for allowing me this opportunity to represent PBA Member Sean P. Reiter.

With best wishes, I remain

Sincerely,



Andrew J. Savage, III

AJS, III/kcn

cc: Deputy Sean P. Reiter
Mr. Grady K. Dukos, via facsimile



**SOUTHERN STATES
POLICE BENEVOLENT ASSOCIATION, INC.**

Legal Services

1900 Brannan Road
McDonough, GA 30253-4310
(770) 389-5391 • (800) 233-3606
Fax: (770) 389-3829 • (866) 915-3425

June 25, 2004

VIA FACSIMILE (843) 720-7478 AND U.S. MAIL

Mr. Andrew J. Savage
Savage & Savage
P.O. Box 1002
15 Prioleau Street
Charleston, SC 29402

RE: Sean Patrick Reiter - RQ# SC04-0018
1174 Aruba Cir.; Charleston, SC 29412-8643
Home Phone - (843) 343-3445

Dear Mr. Savage:

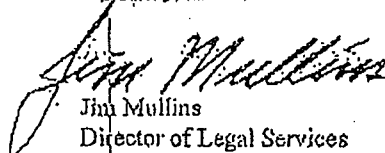
This correspondence is to confirm you were contacted by the Southern States PBA on May 25, 2004 in regards to an accident involving our member listed above. Please provide us with a summary and status of the incident at your earliest convenience.

Enclosed is a Consent to Release form that needs to be signed by the member and returned to this office as soon as possible. Please use the above RQ number for any billing and correspondence regarding this matter.

Please be advised PBA cannot continue services if member dues should lapse; if facts show a willful criminal act by the member or if the member resigns from his department. Should services stop then continued funding for this action will be the responsibility of the member.

I appreciate your cooperation in this matter and please contact me should you have any questions.

Sincerely,


Jim Mullins
Director of Legal Services

JLM/hl
Enclosure

cc: Mr. Sean Patrick Reiter

The Voice of Law Enforcement Officers

On Call - Emergency - JCM

REQUEST FOR SERVICE (RQ)



6-24-04
9:00 p.m.
Date and Time Received

- ☐ Grievance
☐ Disciplinary
☐ Other

- ☐ Legal
☒ Legal Defense Benefit

LDA

SC04-0018

NAME: <u>Charles "Shawn" Renter</u>	EMPLOYER: <u>Charleston</u>
SOCIAL SECURITY #: _____	WORK ADDRESS: <u>S.C.</u>
HOME ADDRESS: _____	WORK LOCATION: _____
HOME TELEPHONE #: () _____	WORK TELEPHONE #: () _____
CELL # <u>843.343-5445</u>	RANK: <u>County Deputy</u>
CHAPTER: _____	ASSIGNED TO: <u>Andrew Savage</u>
MEMBERSHIP COVERAGE VERIFIED BY: _____ Initial	PREPARED BY: <u>Dina JCM</u> Contacted yet? ☒ no ☐ yes
REPRESENTATION APPROVED BY: _____ Initial	

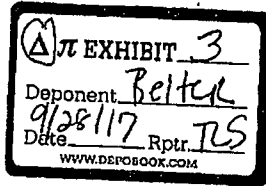
Date, Time and Place of Occurrence 6-24-04 @ 9:00 p.m.

PROBLEM: Member hit a pedestrian and killed them. Attorney Andrew Savage responded to scene at Rivera Ave @ I-528.

SERVICE REQUESTED: _____

WITNESSES: _____

NOTES: _____



COASTAL CHAPTER PEA CHAPTER MEETING MINUTES
SOUTH CAROLINA DIVISION DECEMBER 8, 2014

- I. Beth Dyke, Director of Organizational Services-Eastern Region called the December 8th meeting to order at 1815 hours at Kickin' Chicken (West Ashley location) 1179 Sam Rittenberg Blvd. Charleston, SC. Four (4) chapter members in attendance.

- II. Chapter Board election was held. Beth Dyke assisted them with the election process. The volunteer forms submitted were reviewed.

President: Nomination of Aubrey Richardson (City of Charleston Police Dept.) by Kristin Graziano, second by Jud Haithcock. No other nominations. All in favor none opposed.

Senior Vice President: Nomination of James Ryan, III (North Charleston Police Dept.) by Sean Reiter, second by Aubrey Richardson. No other nominations. All in favor none opposed.

Secretary: Nomination of Sean Reiter (North Charleston Police Dept.) by Kristin Graziano, second by Jud Haithcock. No other nominations. All in favor none opposed.

Board Members: Others that submitted Volunteer forms will be contacted and asked if they would be willing to serve.

The Three Standing Committees were discussed and will be selected at the next meeting.

Grievance: Jud Haithcock, (City of Charleston Police Dept.) Chairman, and Kristin Graziano will serve on the committee. The other member will be decided by at next meeting.

Membership: Will be selected at next meeting.

Political: Will be selected at next meeting.

- III. Committee Chairmen's Reports:

1. Grievance: None.
2. Political: None.
3. Membership: Totals of members from each department within the chapter were given.
4. Special Reports: None.

- IV. Old Business: None.

- V. New Business: Upcoming fundraiser for the Deputy Joe Matuskovic killed in the line of duty.

- VI. Date of Next Meeting will be Tuesday, January 13, 2015 at 7pm at the King Street Grill, second floor at the Mall.

Deann Smith

From: "Thomas Conroy" <tconroy@sspba.org>
To: "deann Smith" <dpsmith@sspba.org>; "Kelly Curran" <kcurran@sspba.org>; "Holly Doychak" <hdoychak@sspba.org>
Sent: Tuesday, January 20, 2015 10:37 AM
Subject: Fwd: Meeting Minutes Confirmation

Begin forwarded message:

From: <sspba@sspba.org>
To: <tconroy@sspba.org>
Subject: Meeting Minutes Confirmation
Date: January 20, 2015 at 10:03:47 AM EST



**South Carolina
Coastal Chapter**
1/13/15
Minutes of Meeting

Location:	King St Grill West Ashley
Board Officers:	President Aubrey Richardson; Present Vice President Jimmy Ryan; Absent Secretary Sean Reiter; Present
Board Members:	
Special Guest:	Beth Dyke
Item #1 Call to order:	Meeting called to order at 7:07pm by President.
Item #2 Adoption of agenda:	Motion to approve- President Second- Kristin Gaziano
Item #3 Reading and approval of the minutes:	Minutes read by President Motion to approve- Kristin Graziano Second- Jud Halthcock

1/20/2015

ROA 000339

Item #4: Committee Chairman's Report

**Political Affairs
Report:**

None

**Membership
Report:**

Numbers presented by President.

Grievance Report:

No issues noted by Jud Halthcock

Special Report:

None

Item #5: Unfinished Business

Item #1:

Appointing Committee Chairmen. Sabrina Cord nominated by Kristing Graziano and seconded by President. No decision made on Political Affairs chair.

Item #2:

Updates on Deputy Maluskovic Memorial Hockey Game

Item #3:

Item #4:

Item #6: New Business

Item #1:

Strategies discussed to increase membership and meeting attendance.

Item #2:

Item #3:

Item #4:

Item #7

**Date, time,
location of next
meeting:**

Mellow Mushroom Avondale 2/10/15 7:30pm.

Item #8

Adjournment:

**Chapter
Representative
Signature:**

Sean Reiter

Date Submitted:

01/20/2015

Time Submitted: 10:03:44 AM

1/20/2015

ROA 000341

Deann Smith

From: "Thomas Conroy" <tconroy@sspba.org>
To: "Holly Doychak" <hdoychak@sspba.org>; "Kelly Curran" <kcurran@sspba.org>; "deann Smith" <dpsmith@sspba.org>
Sent: Thursday, March 05, 2015 8:43 AM
Subject: Fwd: Meeting Minutes Confirmation

Begin forwarded message:

From: <sspba@sspba.org>
To: <tconroy@sspba.org>
Subject: Meeting Minutes Confirmation
Date: March 4, 2015 at 6:44:57 PM EST



**South Carolina
Coastal Chapter**
2/10/15
Minutes of Meeting

Location: Mellow Mushroom 19 Magnolia Rd

Board Officers: President Aubrey Richardson Vice President Jimmy Ryan
Secretary Sean Reiter

Board Members:

Special Guest:

Item #1 Called to order at 7:57pm by President Richardson
Call to order:

Item #2 Motion to approve: Aubrey Richardson Seconded: Sean Reiter
Adoption of agenda:

Item #3 Motion to approve: Aubrey Richardson Seconded: Sean Reiter
Reading and approval of the minutes:

3/5/2015

ROA 000342

Item #4: Committee Chairman's Report

Political Affairs Report: Mark Choate appointed by President Richardson.

Membership Report: Chairman not present.

Grievance Report: Chairman not present.

Special Report: None

Item #5: Unfinished Business

Item #1: None

Item #2:

Item #3:

Item #4:

Item #6: New Business

Item #1: Again, issues with meeting attendance were discussed. It was decided to have the next meeting in a more suitable location.

Item #2: The general direction of the chapter was discussed. Is the goal to have a large, active chapter with a possible lodge, or simply make an effort to increase membership and help ensure officers are covered with legal protection? There was no clear answer to this at the end of the meeting.

Item #3:

Item #4:

Item #7
Date, time, location of next meeting: 3/10/15 7:30pm 4800 Park Circle, North Charleston

Item #8
Adjournment: 8:45pm

Chapter Representative Signature: Sean Reiter

3/5/2015

ROA 000343

Date Submitted: 03/04/2015

Time Submitted: 6:44:50 PM

3/5/2015

ROA 000344

deann

From: sspba@sspba.org
Sent: Thursday, June 18, 2015 8:04 PM
To: tconroy@sspba.org; dpsmith@sspba.org; hdoychak@sspba.org; kcurran@sspba.org
Subject: Southern States PBA Meeting Minutes Submission

Hello! An SSPBA Meeting Minutes Form has been Submitted.

Southern States PBA Meeting Minutes Submission Form

Division: South Carolina
Chapter Name: Coastal
Date of Meeting: 6/9/15
Location: 4800 Park Circle North Charleston, SC

Board Officers: Aubrey Richardson, Sean Reiter Board Members:
Special Guest:

Item #1 Call to order: 7:35pm

Item #2 Adoption of agenda: Motion by Richardson, seconded by Reiter. No objections.

Item #3 Reading and approval of the minutes: Motion by Richardson, seconded by Reiter. No objections.

Item #4: Committee Chairman's Report

Political Affairs Report: New domestic violence law and body camera law recently passed by legislature.
Membership Report: Up 8 from last month. Goal of 500 members by year end.
Grievance Report: None
Special Report: None.

Item #5: Unfinished Business

Item #1: Member in attendance had questions about legal representation regarding Ofc Slager incident as well as attorney options.

Item #2:

Item #3:

Item #4:

Item #6: New Business

Item #1: Attorney options and legal coverage discussed. There is serious dissatisfaction with one of our assigned attorneys.

Item #2:

Item #3:

Item #4:

Item #7 - Date, time, location of next meeting: Conference call 7/7/15 @1930hrs.
Item #8 Adjournment: 7:47pm.

Name: Sean Relter
Email: sean_reiter@hotmail.com

Date: 2015-06-18 8:04 pm

End of message. Have a great day! Tom Conroy

deann

From: sspba@sspba.org
Sent: Monday, November 09, 2015 2:08 PM
To: tconroy@sspba.org; dpsmith@sspba.org; hdoychak@sspba.org; kcurran@sspba.org; gjohnson@sspba.org
Subject: Southern States PBA Meeting Minutes Submission

Hello! An SSPBA Meeting Minutes Form has been Submitted.

Southern States PBA Meeting Minutes Submission Form

Division: South Carolina
Chapter Name: Coastal
Date of Meeting: 07/07/2015
Location: Conference Call

Board Officers: Aubrey Richardson- President James Ryan- Vice President Sean Reiter- Secretary Board Members: Judson Haitchock- Grievance Chair Special Guest: N/A

Item #1 Call to order: Meeting was called to order at 1930 by Aubrey Richardson.

Item #2 Adoption of agenda: The agenda was set by Aubrey Richardson and seconded by Sean Reiter.

All in favor.

Item #3 Reading and approval of the minutes: The minutes from the last meeting were read by Sean Reiter and seconded by Aubrey Richardson. All in favor.

Item #4: Committee Chairman's Report

Political Affairs Report: None

Membership Report: We added 14 members and lost 4. Total membership is at 466.

Grievance Report: None

Special Report: None

Item #5: Unfinished Business

Item #1: None

Item #2: None

Item #3: None

Item #4: None

Item #6: New Business

Item #1: None

Item #2: None

Item #3: None

Item #4: None

Item #7 - Date, time, location of next meeting: Next meeting was set for 09/08/2015 at 1930 in a conference call.

Item #8 Adjournment: Meeting was adjourned by Aubrey Richardson, seconded by James Ryan.

Name: Aubrey Pitts Richardson III

Email: aprichardson3@gmail.com

Date: 2015-11-09 2:07 pm

End of message. Have a great day! Tom Conroy

deann

From: sspba@sspba.org
Sent: Tuesday, September 08, 2015 8:53 PM
To: tconroy@sspba.org; dpsmith@sspba.org; hdoychak@sspba.org; kcurran@sspba.org; gjohnson@sspba.org
Subject: Southern States PBA Meeting Minutes Submission

Hello! An SSPBA Meeting Minutes Form has been Submitted.

Southern States PBA Meeting Minutes Submission Form

Division: South Carolina
Chapter Name: Coastal
Date of Meeting: September 8, 2015 7:30 P.M.
Location: Conference Call

Board Officers: Aubrey Richardson, III President
James Ryan, III Sr. Vice President
Sean Reiter, Secretary
Board Members:
Special Guest: Beth Dyke, SSPBA

Item #1 Call to order: The meeting was called to order at 7:41 P.M. by Sr. Vice President, Jimmy Ryan because President, Aubrey Richardson had to work over.

Item #2 Adoption of agenda: None

Item #3 Reading and approval of the minutes: Beth Dyke read the minutes from the June meeting. Motion to approve by James Ryan, second by Sean Reiter. Aubrey Richardson joined the call at 7:42 P.M.

Item #4: Committee Chairman's Report

Political Affairs Report: S429 was discussed about support needed to make sure no change to psychological assistance for officers, after a critical or traumatic event.

Membership Report: (7) members deleted since the last month. President Richardson has been in contact with Sabrina Dunn about the deletions.

Grievance Report: None.

Special Report:

Item #5: Unfinished Business

Item #1: None.

Item #2:

Item #3:

Item #4:

Item #6: New Business

Item #1: Still trying to receive permission for the recruiter to come to Charleston City. Not allowed at this time.

Item #2:

Item #3:

Item #4:

Item #7 - Date, time, location of next meeting: November 10. 2015 7:30 P.M., location to be determined.

Item #8 Adjournment: Conference call/Meeting was completed at 8:03 P.M.

Name: Beth Dyke, SSPBA

Email: sean_reiter@hotmail.com, bdyke@sspba.org

Date: 2015-09-08 8:53 pm

End of message. Have a great day! Tom Conroy

Charlie Cordell

From: Beth Dyke <bdyke@sspba.org>
Sent: Friday, March 03, 2017 1:19 PM
To: Charlie Cordell
Subject: Fwd: Membership



Sent from my iPad

Begin forwarded message:

From: Sean Reiter <sean_reiter@hotmail.com>
Date: September 7, 2016 at 13:41:52 EDT
To: Beth Dyke <bdyke@sspba.org>
Subject: Re: Membership

I'm still in law enforcement. Although, I would have taken anything that came along at this point.

Sent from my iPhone

On Sep 7, 2016, at 1:39 PM, Beth Dyke <bdyke@sspba.org> wrote:

Are you still in law enforcement? Or have you chosen another career?

Sent from my iPad

On Sep 7, 2016, at 13:37, Sean Reiter <sean_reiter@hotmail.com> wrote:

Thanks. I took a job out of state. That's the only reason.

Sean

Sent from my iPhone

On Sep 7, 2016, at 1:34 PM, Beth Dyke <bdyke@sspba.org> wrote:

Sean,

I noticed on my monthly reports that you deleted from membership. I wanted to say that I'm sorry you have. I enjoyed meeting you and working with you on the Coastal chapter board. Best wishes and stay safe!

Beth Dyke
Southern States Police Benevolent Association, Inc.
Director of Organizational Services-Eastern Region
1-800-233-3506 ext. 395
(423) 552-4587 mobile
1 (866) 915-3425 Legal Fax
bdyke@sspba.org

CONFIDENTIALITY NOTICE: This e-mail message is for the sole use of the intended recipient(s) and may contain information that is confidential, privileged, and/or otherwise legally exempt from disclosure. If you are not the intended recipient, please delete this message and any attachments and notify the sender of the inadvertent transmission immediately. Thank you for your cooperation.

Sent from my iPad

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

PIERCE, HERNS, SLOAN & WILSON, LLC

ATTORNEYS AND COUNSELORS AT LAW

THE BLAKE HOUSE • 321 EAST BAY STREET
CHARLESTON, SOUTH CAROLINA 29401

POST OFFICE BOX 22437
CHARLESTON, SOUTH CAROLINA 29413

(843) 722-7733
(843) 722-7732 FAX
www.phswlaw.com

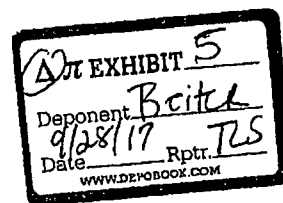
M. TODD RAINSFORD
CHRISTINA L. PERRIN
BENJAMIN C. SMOOT, II ♦
J. MORGAN FORRESTER
T.A.C. HARGROVE II

♦ MEMBER SC & VA BAR

Direct Dial: (843) 725-7705
Email: jcwilson@phswlaw.com

August 17, 2017

VIA EMAIL & U.S. MAIL.
James Edward Bradley, Esquire
Moore Taylor Law Firm
P.O. Box 5709
Columbia, SC 29171



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

Dear Ward:

Enclosed please find Plaintiff's Answers to Defendant's First Set of Interrogatories and First Set of Requests for Production. The only responsive documents we have are documents, pleadings, and depositions from the Slager v. SSPBA matter, which I believe you have.

With kind regards,

Sincerely,

Joseph C. Wilson, IV

Enclosures

cc: Kent T. Stair, Esquire (Via Email and U.S. Mail)
Ronald L. Richter, Jr., Esquire (Via Email)
Eric S. Bland, Esquire (Via Email)
Andrew J. Savage, Esquire (Via Email)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Donald Stanley, Individually and as
Class Representative,

vs.

Southern States Police Benevolent
Association, Inc.

Defendant.

) FOR THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CIVIL ACTION NO: 2016-CP-10-4062

) PLAINTIFF'S RSEPNSES TO
) DEFENDANT'S FIRST SET OF
) REQUESTS FOR PRODUCTION

TO: JAMES EDWARD BRADLEY, ESQ., ATTORNEY FOR DEFENDANT:

The Plaintiff Donald Stanley, Individually and as Class Representative ("Plaintiff"), in answer to Defendant South State Police Benevolent Association, Inc.'s Discovery requests and pursuant to Rules 26, 33 and 34 of the Federal Rules of Civil Procedure, hereby answers as follows:

RESPONSES TO REQUESTS FOR PRODUCTION

1. Please produce all documents of any nature whatsoever in any format whatsoever associated in any way to the allegations in the Complaint or that document in any way the claims made in this action.

RESPONSE:

Plaintiffs will produce all discoverable and requested non-privileged documents in their possession.

2. All photographs, diagrams, drawings, or other similar material relating to the claims set forth in the Complaint.

RESPONSE:

Plaintiffs will produce all discoverable and requested non-privileged documents in their possession.

3. All affidavits and statements of possible witnesses, whether written, oral, summarized, or otherwise reproduced in any manner identified by the Plaintiff in this action.

RESPONSE:

See depositions taken in this matter and in Michael Slager v. Southern States Police Benevolent Association, Inc., C/A No. 2:15-cv-04536-DCN, United States District Court for the District of South Carolina. These materials are already in the possession of Defendant and its counsel.

4. Any and all reports, memoranda, notes or other documents prepared by any expert witness identified by the Plaintiff in this action.

RESPONSE:

Plaintiffs have yet to retain any expert for testimony at trial at this time.

5. A curriculum vitae for each expert identified by the Plaintiff in this action.

RESPONSE:

Plaintiffs have yet to retain any expert for testimony at trial at this time.

6. Any documents (as defined in SCRCP 43(a)) and tangible things of whatsoever nature and description which you intend to introduce into evidence or to use as impeachment or evidence at the trial of the case.

RESPONSE:

Plaintiffs will exchange trial exhibits with Defendant at the appropriate time.

7. Any and all documents identified by the Plaintiff in his response to interrogatories submitted by the Plaintiff.

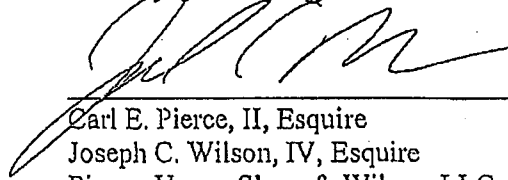
RESPONSE:

Plaintiffs will produce all discoverable and requested non-privileged documents in
their possession.

Charleston, South Carolina

8/17, 2017

Attorneys for Plaintiffs



Carl E. Pierce, II, Esquire
Joseph C. Wilson, IV, Esquire
Pierce, Hems, Sloan & Wilson, LLC
The Blake House
321 East Bay Street (29401)
Post Office Box 22437
Charleston, South Carolina 29413
(843) 725-7705
carlpierce@phswlaw.com
joewilson@phswlaw.com

Ronald L. Richter, Jr.
Scott M. Mongillo
Peoples Building
18 Broad Street, Mezzanine
Charleston, South Carolina 29401
(843) 573-9900
ronnie@blandrichter.com
scott@blandrichter.com

Eric S. Bland
1500 Calhoun Street
Post Office Box 72
Columbia, South Carolina 29202
(803) 256-9664
ericbland@blandrichter.com

Andrew J. Savage, III, Esquire
SAVAGE LAW FIRM
15 Prioleau Street
Charleston, South Carolina 29401
(843) 720-7470
andy@savlaw.com

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by email and mailing in the manner prescribed by the applicable Rule of Civil Procedure.

This _____ day of _____, 2017

differs in any respect from any prior responses to discovery, these responses shall be deemed to update and supersede such prior responses.

GENERAL OBJECTION NO. 2:

Defendant objects to Plaintiff's discovery requests in their entirety on the grounds that they are not reasonably framed in terms of the facts and subject matter of the present action, with the result that Defendant is called upon to speculate as to what information or material is relevant to the present case, if any, may be deemed to fall within the scope of these discovery requests as phrased. In addition, Defendant objects to this set of discovery requests to the extent that they seek the production of information or material not relevant to any matter at issue in this litigation or likely to lead to the discovery of relevant information or material. Defendant's responses, or production of documents, data, or other material, is not a waiver or admission that any such information, document, data, or other material is relevant or admissible in this matter.

GENERAL OBJECTION NO. 3:

Defendant objects generally to Plaintiff's discovery requests to the extent that they seek information or material protected by the attorney-client privilege, the protection afforded attorneys' work product, Rule 26, FRCP, or any other applicable privilege, protection or immunity from discovery. To the extent that these requests seek such privileged or protected information or material, Defendant will not provide such information. Moreover, even if Defendant inadvertently provides information or material protected from disclosure by the foregoing privileges or protections, Defendant does not waive their right to assert those privileges and/or objections to disclosure.

GENERAL OBJECTION NO. 4:

Defendant objects to each discovery request to the extent that it requests information or material in the possession of persons or entities that are not under Defendant's control.

GENERAL OBJECTION NO. 5:

Defendant objects to each discovery request to the extent that it is unreasonably cumulative and duplicative and can be obtained from some other source that is more convenient, less burdensome, or less expensive.

GENERAL OBJECTION NO. 6:

Defendant objects to each discovery request to the extent that the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resource, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

GENERAL OBJECTION NO. 7:

Defendant objects to Plaintiff's Interrogatories on the grounds that they exceed the limits set out in Rule 33(a)(1), FRCP. Defendant will respond to all the Interrogatories contained in this initial discovery request, but reserves the right to object to the Interrogatories or any future Interrogatories on the grounds that they exceed the limits set out in Rule 33(a)(1), FRCP.

Subject to the foregoing objections, which are specifically incorporated into each of the following answers, Defendant responses to Plaintiff's discovery requests as follows:

ANSWERS TO INTERROGATORIES

1. Give the names and addresses of persons known to the Plaintiff or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

Donald Stanley

Sean Reiter

Charlie Cordell

Joni Fletcher

Renee Dixon

Jack Roberts

Dave Soderberg

Dale Preiser

Chris Skinner

Joseph Woloszyn

Donald Scott

Joseph Naia

James Byrd

Johnny Bohanan

Scott Hicks

Kristopher Jarvis

Wayne Tubb

Carl McKoon

Donald English

Charlie Maddox

Andrew Valli

Jim Wright

Jodi Peyton

Jennifer Gossett

April Crumbley

Amy Barnett

Amy Coursey

J.D. Hobbie

Tommy Simpson

John Midgette

Joe Stiles

Gary Smith

Sean McGowan

Gayla Johnson

Tom Conroy

Jenna Lynn Warner

Jeff Fluck

Sabrina Dunn

Southern States Police Benevolent Association, Inc.

Daniel O. Clum

Robins Eskew Smith & Jordan

350 Country Club Drive, Suite C
Stockbridge, GA 30281

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the Plaintiff that relate to the claim or defense in the case.

ANSWER:

Plaintiff will produce documents responsive to this interrogatory.

3. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the Plaintiff.

ANSWER:

Plaintiff is still conducting discovery into this issue.

4. List the names and addresses of any expert witnesses whom the Plaintiff proposes to use as a witness at the trial of the case.

ANSWER:

Plaintiff has not retained any experts for testimony at trial at this point.

5. For each person known to the Plaintiff or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the Defendant of the important facts known to or observed by such witness or provide a copy of any written or recorded statements taken from such witness.

ANSWER:

Employees of Defendant are expected to testify regarding their work for Defendant, including Defendant's failure to obtain appropriate state licensing, and Defendant's effort, or lack thereof, to protect its members' rights in appointing counsel to its members.

6. Has Plaintiff ever been involved in a lawsuit? If so, please provide the data of the lawsuit, the county the lawsuit was filed in, the caption of the case, the nature of the case, and the outcome of the case.

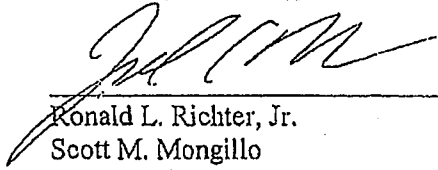
ANSWER:

See Depositions of Plaintiffs.

Charleston, South Carolina

8/17, 2017

Attorneys for Plaintiffs



Ronald L. Richter, Jr.
Scott M. Mongillo
Peoples Building
18 Broad Street, Mezzanine
Charleston, South Carolina 29401
(843) 573-9900
ronnie@blandrichter.com
scott@blandrichter.com

Eric S. Bland
1500 Calhoun Street
Post Office Box 72
Columbia, South Carolina 29202
(803) 256-9664
ericbland@blandrichter.com

Andrew J. Savage, III, Esquire
SAVAGE LAW FIRM
15 Prioleau Street
Charleston, South Carolina 29401
(843) 720-7470
andy@savlaw.com

Carl E. Pierce, II, Esquire
Joseph C. Wilson, IV, Esquire
Pierce, Hems, Sloan & Wilson, LLC
The Blake House
321 East Bay Street (29401)

Post Office Box 22437
Charleston, South Carolina 29413
(843) 725-7705
carlpierce@phswlaw.com
joewilson@phswlaw.com

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by email and mailing in the manner prescribed by the applicable Rule of Civil Procedure.

This 17 day of Aug., 2017

Kelly D. Forester

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
DONALD STANLEY AND SEAN
REITER, INDIVIDUALLY AND AS
CLASS REPRESENTATIVES,

Plaintiffs,

v.

SOUTHERN STATES POLICE
BENEVOLENT ASSOCIATION, INC.,

Defendant.

) IN THE COURT OF COMMON PLEAS
) THE NINTH JUDICIAL CIRCUIT

) CASE NO.: 2016-CP-10-4062

) **SOUTHERN STATES POLICE**
) **BENEVOLENT ASSOCIATION, INC.'S**
) **MOTION TO DISMISS PLAINTIFFS'**
) **AMENDED COMPLAINT**

FILED
2017 JAN 23 PM 4:35
JULIE A. CRISTOFANO
CLERK OF COURT

PLEASE TAKE NOTICE that Southern States Police Benevolent Association, (hereinafter "PBA"), pursuant to Rule 12(b) of the South Carolina Rules of Civil Procedure, by and through its undersigned attorneys, will move before the presiding judge on the tenth (10th) day after service hereof, or at such other time and place as is convenient to the Court and counsel, for an Order dismissing PBA from this action.

I. GENERAL GROUNDS FOR DISMISSAL AS TO EACH PLAINTIFF

The Amended Complaint is subject to dismissal, in whole or in part, as to each Plaintiff on multiple grounds, including, but not limited to, the following:

1. Failure to State a Claim

- Plaintiffs' claims fail to set forth a claim upon which relief can be granted as South Carolina does not recognize a private right of action for selling insurance without a license under the South Carolina Insurance Code. See Masterclean Inc. v. Star Ins., 347 S.C. 405, 556

S.E.2d 311 (2001); Ocean Wind Council of Co-Owners, Inc. v. Auto-Owners Ins., 241 F. Supp. 2d 572 (D.S.C. 2002).

- Plaintiffs cannot seek recovery of payments made to Defendant merely because Defendant was not licensed to sell insurance, because Plaintiffs have received the benefit of the bargain. See Lenz v. Walsh, 362 S.C. 603, 608 S.E.2d 471 (Ct. App. 2005) (holding plaintiffs could not recover payments made to unlicensed builder as payments went towards construction costs and fulfillment of the contract). Accordingly, Plaintiffs have failed to set forth a claim upon which relief should be granted.

2. Lack of Standing

- Plaintiffs lack standing to bring this claim because they are not real parties in interest. The Director of the Insurance Commission is the only entity vested with the authority to prosecute claims of selling insurance without a license. See S.C. Code § 38-59-30 (stating after notice and hearing the director may impose a penalty as prescribed by law for improper claims practices).

- Plaintiffs lack standing to pursue claims under the laws of states in which they do not reside or in which they have suffered no injury. See Griffin v. Dugger, 823 F.2d 1476, 1483 (11th Cir. 1987). Accordingly, Plaintiffs' initial efforts to assert or establish class action claims on behalf of those outside South Carolina and their request for an injunction of PBA's actions outside South Carolina should be dismissed.

3. Lack of Justiciable Controversy

- Plaintiffs have failed to present a justiciable controversy because they have not alleged they have been denied any benefit under the Legal Defense Benefit Plan (hereinafter "Plan") or set forth any factual basis for their claim of damages. See Byrd v. Irmo High Sch., 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996) (stating before any action can be maintained, there must exist a justiciable controversy – a real and substantial controversy "which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character.").

4. Claims are not Ripe for Adjudication

- Plaintiffs' claims are not ripe as Plaintiffs have not alleged that they or any member of the purported class have been denied any benefit under the Plan. See Orr v. Clyburn, 277 S.C. 536, 542, 290 S.E.2d 804, 807 (1982) (stating a justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a dispute of a contingent, hypothetical or abstract character).

5. No Damages

- Plaintiffs have not presented a justiciable claim for damages under any cause of action, as they have failed to allege how they were damaged by PBA's alleged actions. There is no allegation that PBA failed to provide any benefit set forth in the terms of the Plan. Accordingly, all of Plaintiffs' causes of action should be dismissed.

6. Punitive Damages

- Plaintiffs do not set forth any claim or cause of action sufficient to sustain an action for punitive damages. Therefore, all claims for that element of damages should be dismissed.

7. Failure to Meet Requirements of Rule 23(a)

- Plaintiffs have failed to set forth a proper claim for a class action pursuant to Rule 23(a), SCRCP in failing to properly plead that the amount in controversy exceeds one hundred dollars for themselves and for each member of the purported class.

8. Door Closing Statute

- The South Carolina Door Closing Statute (S.C. Code Ann. § 15-5-150 (2016)) excludes non-resident class members. See Farmer v. Monsanto Corp., 353 S.C. 553, 579 S.E.2d 325 (2003). Accordingly, Plaintiffs are barred from pursuing the establishment of any class that includes non-residents of the State of South Carolina whose membership in the PBA arises from any alleged act or omission of the PBA occurring in any State other than South Carolina. Therefore, all class allegations outside the confines of South Carolina should be dismissed.

II. GROUND FOR DISMISSAL OF PLAINTIFF REITER'S INDIVIDUAL CAUSES OF ACTION

In addition to the reasons set forth above, Plaintiff Reiter's individual causes of action are subject to dismissal for multiple reasons, including, but not limited to, the following:

1. First Cause of Action: Breach of Contract

- Plaintiff Reiter ("Reiter") and PBA entered into a contractual relationship wherein PBA agreed to provide benefits in exchange for dues. (See Exhibits A, B, and C of Plaintiffs' Amended Complaint).

- The contract between Reiter and PBA was for the provision of certain specified benefits under certain specified circumstances, and did not include any condition that the contract be one of insurance regulated by the State of South Carolina or otherwise.

- Reiter has not alleged that he has been denied any benefit to which he was or is entitled under the terms of the contract, or that PBA has breached any other term or condition of the contract.

- Reiter has not alleged any cognizable claim of damages as a result of any alleged breach of contract.

- Because Reiter has not alleged that he continues to hold any contract with PBA and since, to the contrary, he has alleged that he is no longer employed in such a way as to qualify for PBA membership, Reiter has no claim for rescission.

- For these and other reasons, Reiter's breach of contract claim should be dismissed.

2. Second Cause of Action: Negligence

- PBA owed Reiter no duty as alleged in Paragraph 92 of the Amended Complaint, nor does Reiter allege any other duty that could form the basis of a negligence claim.

- PBA did not breach any duty to Reiter, as alleged in Paragraph 93 or otherwise.
- Reiter has not alleged that the breach of any cognizable duty proximately caused him any damage.
- Reiter has alleged no recoverable damages.
- For these reasons, Reiter's negligence claim should be dismissed.

3. Third Cause of Action: Breach of Fiduciary Duty

- PBA did not owe Reiter a fiduciary duty, as alleged in Paragraph 98 or otherwise. See Pitts v. Jackson Nat'l Life Ins. Co., 352 S.C. 319, 331, 574 S.E.2d 502, 508 (Ct. App. 2002) (stating an applicant for an insurance policy does not stand in a fiduciary relationship with the insurer).

- PBA did not breach any fiduciary duty owed to Reiter, as alleged in Paragraph 99 or otherwise.
- Reiter has alleged no recoverable damages.
- For these reasons, Reiter's breach of fiduciary duty claim should be dismissed.

4. Fourth Cause of Action: Unjust Enrichment and Restitution

- Reiter does not allege that he paid for any benefits that he did not receive.
- Reiter does not allege that PBA received any money that it kept without providing the benefits PBA said it would provide.

- Having never denied Reiter any of the benefits for which Reiter paid, it would be inequitable and unconscionable to require PBA to forfeit the money it received to provide the benefits it agreed to provide.

- For these reasons, Reiter's unjust enrichment claim and request for restitution should be dismissed

5. Fifth Cause of Action: Fraud in the Inducement

- Reiter does not allege that he was in attendance at any meeting where the Plan was discussed, nor does he allege that any representative of the PBA made any representation or misrepresentation to him concerning the Plan.

- Reiter does not allege with the requisite particularity the nature of the fraud allegedly perpetrated upon him, and to the extent he seeks to allege some misrepresentation, his allegation does not allege a fraudulent misrepresentation that is material or could otherwise sustain an action for fraud. See Brown v. Stewart, 348 S.C. 33, 41, 557 S.E.2d 676, 680 (Ct. App. 2001) (stating the failure to prove any one of these elements is fatal to the claim of fraud in the inducement and noting "fraud is not presumed, but must be shown by clear, cogent, and convincing evidence.").

- Reiter does not allege that he relied upon any alleged misrepresentation.

- Reiter does not allege that he was damaged as a result of any fraudulent misrepresentation.

- For these reasons, Reiter's claim for fraud in the inducement should be dismissed.

6. Sixth Cause of Action: Negligent Misrepresentation

- Reiter does not allege that any false representations were made to him.
- PBA did not owe Reiter any duty as alleged in Paragraphs 118 or 119.
- Reiter does not allege that he relied, justifiably or otherwise, on any alleged misrepresentation allegedly made to him by PBA.
- Reiter does not allege the breach of any cognizable duty owed to him by PBA.
- Reiter does not allege any recoverable damages as a result of any alleged misrepresentation made to him by PBA.
- For these reasons, Reiter's claim for negligent misrepresentation should be dismissed.

7. Seventh Cause of Action: Injunctive Relief

- PBA is not acting illegally or in violation of South Carolina insurance laws.
- Even if PBA is acting illegally or in violation of the South Carolina insurance laws (which is adamantly denied), Reiter would have no private cause of action for injunctive relief.
- Even if PBA is acting illegally or in violation of the South Carolina insurance laws (which is adamantly denied), Reiter can make no claim that he will be harmed or damaged, irreparably or otherwise, since he is no longer a member of PBA and no longer has any contract with PBA.

- Reiter has failed to allege a likelihood of success on the merits to justify injunctive relief. See Hook Point, LLC v. Branch Banking & Tr. Co., 397 S.C. 507, 511, 725 S.E.2d 681, 683 (2012) (setting forth the elements of injunctive relief).

- Reiter has failed to allege that no adequate remedy at law exists to justify injunctive relief. Id.

- Injunctive relief is not necessary to protect Reiter's legal rights during pending litigation. See Bookhart v. Cent. Elec. Power Coop., Inc., 219 S.C. 414, 433, 65 S.E.2d 781, 789 (1951) (stating the complaint must allege the injunction is reasonably necessary to protect the legal rights of the plaintiff pending the litigation).

- This Court lacks the requisite jurisdiction to enjoin PBA from conducting business in Georgia, North Carolina, Virginia, Kansas, West Virginia, Arkansas, Tennessee, and Louisiana.

III. GROUNDS FOR DISMISSAL OF PLAINTIFF STANLEY'S INDIVIDUAL CAUSES OF ACTION

In addition to the reasons set forth above, Plaintiff Stanley's individual causes of action are subject to dismissal for multiple reasons, including, but not limited to, the following:

1. First Cause of Action: Breach of Contract

- Plaintiff Stanley ("Stanley") and PBA entered into a contractual relationship wherein PBA agreed to provide benefits in exchange for dues. (See Exhibits A, B, and C of Plaintiffs' Amended Complaint).

- The contract between Stanley and PBA was for the provision of certain specified benefits under certain specified circumstances and did not include any condition that the contract be one of insurance regulated by the State of South Carolina or otherwise.

- Stanley has not alleged that he has been denied any benefit to which he was or is entitled under the terms of the contract, or that PBA has breached any other term or condition of the contract.

- Stanley has not alleged any cognizable claim of damages as a result of any alleged breach of contract.

- Because Stanley is free to walk away from his association with the PBA and the Plan at any time, he can make no claim for rescission.

- For these and other reasons, Stanley's breach of contract claim should be dismissed.

2. Second Cause of Action: Negligence

- PBA owed Stanley no duty as alleged in Paragraph 92 of the Amended Complaint, nor does Stanley allege any other duty that could form the basis of a negligence claim as alleged in the Second Cause of Action.

- PBA did not breach any duty to Stanley, as alleged in Paragraph 93 or otherwise.

- Stanley has not alleged that the breach of any cognizable duty proximately caused him any damage.

- Stanley has alleged no recoverable damages.
- For these reasons, Stanley's negligence claim should be dismissed.

3. Third Cause of Action: Breach of Fiduciary Duty

- PBA did not owe Stanley a fiduciary duty, as alleged in Paragraph 98 or otherwise. See Pitts v. Jackson Nat'l Life Ins. Co., 352 S.C. 319, 331, 574 S.E.2d 502, 508 (Ct. App. 2002) (stating an applicant for an insurance policy does not stand in a fiduciary relationship with the insurer).

- PBA did not breach any fiduciary duty owed to Stanley, as alleged in Paragraph 99 or otherwise.

- Stanley has not alleged any recoverable damages.
- For these reasons, Stanley's' breach of fiduciary duty claim should be dismissed.

4. Fourth Cause of Action: Unjust Enrichment and Restitution

- Stanley does not allege that he paid for any benefits that he did not receive.
- Stanley does not allege that PBA received any money that it kept without providing the benefits PBA said it would provide.
- Having never denied Stanley any of the benefits for which Stanley paid, it would be inequitable and unconscionable to require PBA to forfeit the money it received to provide the benefits it agreed to provide.

- For these reasons, Stanley's unjust enrichment claim and request for restitution should be dismissed

5. Fifth Cause of Action: Fraud in the Inducement

- Stanley does not allege that any representative of the PBA made any representation or misrepresentation to him concerning the Plan.

- Stanley does not allege with the requisite particularity the nature of the fraud allegedly perpetrated upon him, and to the extent he seeks to allege some misrepresentation, his allegation does not allege a fraudulent misrepresentation that is material or could otherwise sustain an action for fraud. See Brown v. Stewart, 348 S.C. 33, 41, 557 S.E.2d 676, 680 (Ct. App. 2001) (stating the failure to prove any one of these elements is fatal to the claim of fraud in the inducement and noting "fraud is not presumed, but must be shown by clear, cogent, and convincing evidence.").

- Stanley does not allege that he relied upon any alleged misrepresentation.

- Stanley does not allege that he was damaged as a result of any fraudulent misrepresentation.

- For these reasons, Stanley's claim for fraud in the inducement should be dismissed.

6. Sixth Cause of Action: Negligent Misrepresentation

- Stanley does not allege that any false representations were made to him.

- The PBA did not owe Stanley any duty as alleged in Paragraphs 118 or 119.
- Stanley does not allege that he relied, justifiably or otherwise, on any alleged misrepresentation allegedly made to him by PBA.
- Stanley does not allege the breach of any cognizable duty owed to him by PBA.
- Stanley does not allege any recoverable damages as a result of any alleged misrepresentation made to him by PBA.
- For these reasons, Stanley's claim for negligent misrepresentation should be dismissed.

7. Seventh Cause of Action: Injunctive Relief

- PBA is not acting illegally or in violation of South Carolina insurance laws.
- Even if PBA is acting illegally or in violation of the South Carolina insurance laws (which is adamantly denied), Stanley would have no private cause of action for injunctive relief.
- Even if PBA is acting illegally or in violation of the South Carolina insurance laws (which is adamantly denied), Stanley can make no claim that he will be harmed or damaged, irreparably or otherwise, because he is free to voluntarily discontinue his association with the PBA and the Plan at any time.

- Stanley has failed to allege a likelihood of success on the merits to justify injunctive relief. See Hook Point, LLC v. Branch Banking & Tr. Co., 397 S.C. 507, 511, 725 S.E.2d 681, 683 (2012) (setting forth the elements of injunctive relief).

- Stanley has failed to allege that an no adequate remedy at law exists to justify injunctive relief. Id.

- Injunctive relief is not necessary to protect Stanley's legal rights during pending litigation. See Bookhart v. Cent. Elec. Power Coop., Inc., 219 S.C. 414, 433, 65 S.E.2d 781, 789 (1951) (stating the complaint must allege the injunction is reasonably necessary to protect the legal rights of the plaintiff pending the litigation).

- This Court lacks the requisite jurisdiction to enjoin PBA from conducting business in Georgia, North Carolina, Virginia, Kansas, West Virginia, Arkansas, Tennessee, and Louisiana.

IV. GROUNDS FOR DISMISSAL OF CLASS ACTION TO EXTENT PLAINTIFFS SEEK TO INCLUDE PLAINTIFFS OR PARTIES FROM STATES OTHER THAN SOUTH CAROLINA

Although Plaintiffs have yet to file a motion for class certification, Plaintiffs' class action claims are subject to dismissal as they are not proper under the South Carolina Door Closing Statute cited above. In addition, Plaintiffs' class action claims should be dismissed because they fail to meet the requirements of Rule 23(a), SCRPC in the following particulars:

1. Plaintiffs cannot maintain a class action because questions of law and fact concerning the requirements of insurance licensure are not common among the different states,

thus requiring an individualized analysis of the insurance laws for each of the nine states cited in the Amended Complaint.

2. Plaintiffs cannot maintain a class action because the claims of the representative parties are not typical of the claims of the purported class.

3. Plaintiffs' claims are based on state theories of recovery that will inevitably vary across the nine states cited in this action; accordingly, the questions of law, claims, and defenses will vary across the various states Plaintiffs seek to include in this action.

4. The regulation of insurance is a state-specific issue, resulting in differing laws and regulations governing the insurance industry. As such, Plaintiffs' claims are distinct from those of proposed class members in other states. Therefore, Plaintiffs' claims are not representative of the proposed class, and the claims and defenses of the proposed class will vary state to state.

5. The application of South Carolina law to every claim in this purported class action would be unconstitutional. See Phillips Petroleum Co. v. Shutts, 472 U.S. 797 (1985). Accordingly, any class claims involving PBA's actions outside of South Carolina should be dismissed.

6. Plaintiffs cannot maintain a class action because their claims are hostile to members of PBA who enjoy and rely upon the tangible benefits PBA offers its more than 45,000 members.

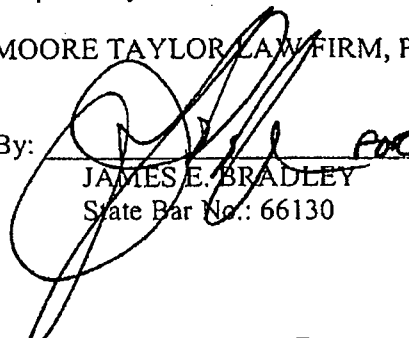
7. Plaintiffs cannot maintain a class action because Plaintiffs cannot fairly and adequately protect the interests of the class.

8. Plaintiffs have not alleged that the amount in controversy exceeds one hundred dollars for each member of the class.

For the reasons discussed herein, PBA is entitled to an Order dismissing the Amended Complaint in its entirety. This Motion is based on South Carolina law, the pleadings filed in this case, any supporting documents and/or memoranda to be submitted hereafter, and oral arguments presented at the hearing of this motion.

Respectfully submitted,

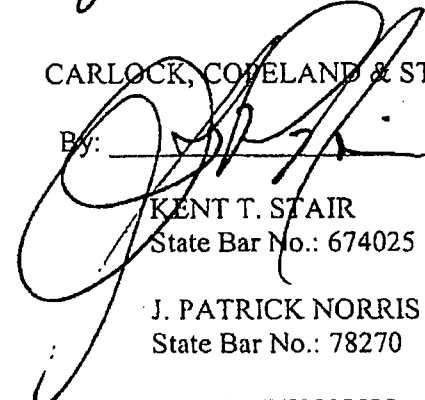
MOORE TAYLOR LAW FIRM, PA

By: 

JAMES E. BRADLEY
State Bar No.: 66130

1700 Sunset Boulevard (29169)
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160

CARLOCK, COPELAND & STAIR, LLP

By: 

KENT T. STAIR
State Bar No.: 674025

J. PATRICK NORRIS
State Bar No.: 78270

J. ANDREW YOHO
State Bar No.: 100803

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
843-727-0307

*Attorneys for Defendant Southern States
Police Benevolent Association, Inc.*

FOR THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2016-CP-10-4062

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION TO STRIKE DEFENDANT'S
ANSWER AND MOTION TO DISMISS**

Southern States Police Benevolent Association, Inc.

Defendant.

FILED
2017 APR 14 PM 12:42
JULIE J. ARMSTRONG
CLERK
ASSOCIATION,
Reiter by

FACTS

Defendant PBA is a corporation organized and existing under the laws of the State of Georgia, which transacts business in the States of Georgia, South Carolina, North Carolina, Virginia, West Virginia, Kansas, Arkansas, Tennessee and Louisiana. Amended Complaint, ¶ 3.

The PBA invites police officers in the States of Georgia, South Carolina, North Carolina, Virginia, West Virginia, Kansas, Arkansas, Tennessee and Louisiana to become "members" of the PBA. Members of the PBA pay monthly "dues" to the PBA in exchange for a "Legal Defense Benefit Plan" (sometimes referred to as the "Plan"). According to the Plan, it provides a legal defense and related costs to an officer member who is accused of a crime while performing his or her official duties as police officers. Amended Complaint, ¶ 4.

On average, PBA members pay \$23.50 per month in exchange for their membership, the primary benefit of which is the Legal Defense Benefit Plan. Amended Complaint, ¶ 5. To these officers, the benefit which the Plan purportedly offers is very attractive to officer members who are named in internal police investigations, criminal inquiries or are the target of a potential criminal action. It is common knowledge that a full drawn out defense for these cases in terms of attorneys' fees and costs can greatly exceed the annual compensation of the officer and quickly deplete any savings the officer may have. Amended Complaint, ¶ 6.

In this action, the Plaintiff contends that the Legal Defense Benefit Plan is actually a policy of insurance which the PBA was not licensed to sell in any of the States in which it transacts business. Amended Complaint, ¶ 8.

Plaintiff Stanley is a Lieutenant with the Charleston County Sheriff's Department and is a member in good standing of the PBA and has been such for over 21 years. Amended Complaint, ¶ 9. Plaintiff Reiter was at all times relevant a law enforcement officer with the Charleston County Sheriff's Department and/or the City of North Charleston. Amended Complaint, ¶ 10. Upon information and belief, the PBA currently has approximately 42,000 members spread over nine States (Georgia, South Carolina, North Carolina, Virginia, West Virginia, Kansas, Arkansas, Tennessee and Louisiana), each of whom pays approximately \$23.50 per month to

participate in the PBA's Legal Defense Benefit Plan. Amended Complaint, ¶ 13. This amounts to the collection of approximately \$11,844,000 in premiums every year.

The PBA is not licensed as an insurer in any State in which it offers its Legal Defense Benefit Plan. Amended Complaint, ¶ 16. The instant lawsuit claims that the Legal Defense Benefit Plan is a policy of insurance. Because the PBA lacks licensure to sell its policies of insurance, it has sold unauthorized insurance policies to its members who are entitled to a rescission of the Plan and to a refund of "member dues" or premiums paid, together with additional relief as set forth herein. Amended Complaint, ¶ 16.

In selling the Plan, the Defendant never revealed that it lacked proper licensure and authority to sell insurance, and to the contrary, gave every indication that it was so authorized and that the Plan was the best way possible for each and every member to protect themselves and their families from the potential financial devastation associated with being accused of a crime and being forced to retain the services of a lawyer. Amended Complaint, ¶ 26.

The Legal Defense Benefit Plan is administered pursuant to the rules of Policy 00-16 (hereinafter the "Policy", a copy of which is attached to both the Amended Complaint and this Motion as **Exhibit A**). In pertinent part, the Policy provides that:

- a. "The Legal Defense Benefit will be provided to Southern States PBA members only in those cases where a lawsuit or criminal accusation results from professional acts or omissions which arise out of and in the scope of their duties as a law enforcement officer." **Section 1.A. Coverage and Eligibility.**
- b. "The Benefit shall consist of the payment by Southern States PBA of attorney's fees and directly related Court costs." **Section 1.B. Coverage and Eligibility.**

- c. "The term 'arising out of and in the scope of their duties' as used in this Policy encompasses actions or omissions of a member while in the performance of regularly assigned law enforcement duties for his/her employment agency. The benefit is not designated to cover a member while he/she is off-duty or engaged in off-duty employment." **Section 1.E. Coverage and Eligibility.**
- d. "Coverage under the benefit is intended to apply to cases where a member has taken some type of direct law enforcement action consistent with his/her responsibilities as a law enforcement officer. It is not intended to apply to non-law enforcement actions, including, but not limited to, personnel, employment decisions (hiring, discipline or termination of employees), management decisions dealing with procedural operation or physical facilities of the law enforcement agency (validity of agency rules, procedural orders or a facilities capacity) or instances where no direct law enforcement action on the part of the member is alleged to have taken place (vicarious liability or liability based on a theory of respondent superior)." **Section 1.G. Coverage and Eligibility.**
- e. "The Association CEO or the Director of Legal Services (DLS) will authorize all requests for legal services under the Benefit if it is determined that the following criteria are met:
 - i. The requesting officer is a current member in good standing of Southern States, PBA,
 - ii. He/she was a member of the Association at the time of the incident,
 - iii. He/she remains a member in good standing from the date of incident until conclusion of the adversarial proceedings,

- iv. The incident was the result of the MEMBER's performance of or pursuit of his/her official duties as a law enforcement officer.
 - v. The request for coverage was submitted by the member and received by the Association within ten (10) calendar days after the member received official notification of the civil suit or criminal accusation and active representation of the member is undertaken by a legal defense benefit attorney.
 - vi. The member contracts the assigned attorney within five (5) days of receiving notification from the association specifying the name and phone number of such attorney.
 - vii. The member cooperates in the preparation and defense of the case by remaining available for contact upon reasonable notice from the association or assigned counsel." **Section 1.B. Benefit Administration.**
- f. "Southern States PBA reserves the right to withhold approval of any benefits and to withdraw approval of any benefits if it is determined at any time that the member has committed an intentional, deliberate and/or illegal act, either civilly or criminally." **Section 1.D. Limitations, Restrictions and Exemptions.**

The PBA also issues a wallet card to its members which summarizes the benefits and provides an explanation with regard to reporting claims. A copy of the wallet card is attached to the Amended Complaint and this Motion as **Exhibit B**.

For all intents and purposes, the Policy acts as an insurance policy. No caps or limits are included within the Policy itself. However, not unlike any other insurance policy, the Policy does include provisions for exclusions from coverage. The Policy provides a member with

indemnity protection against a known future contingency. The Policy allows a member to protect against the expense of a future contingency that would likely be too expensive to cover without the benefit of the Plan. The membership "dues" are actually premiums. Amended Complaint, ¶¶ 32-37.

The PBA engages in an elaborate scheme to evade the regulatory oversight of the various insurance commissions from the States in which it transacts business by referring to its insurance policy as a "benefit plan" and by referring to the premiums paid by its insureds as "member dues." Amended Complaint, ¶ 38. The PBA has never asked for nor received an opinion letter from any of the insurance commissions from the various States in which it sells insurance.

Every State in which the PBA markets its coverage requires an insurer to be authorized and registered by the State, most typically by the state's Department of Insurance. Ga. Code Ann. §§ 33-3-2, et seq.; Ga. Code Ann. §§ 33-23-4, et seq.; S.C. Code Ann. §§ 38-5-10, et seq., 38-25-10, et seq., 38-43-20, et seq.; N.C.G.S.A. §§ 58-3-5, et seq., 58-3-85, et seq., 58-33-26, et seq.; Va. Code Ann. §§ 38.2-1024, et seq., 38.2-1802, et seq.; W.V. Code Ann. §§ 33-3-1, et seq., 33-12-3; Kan. Stat. Ann. §§ 40-214, et seq., 40-2702, et seq., 40-244, et seq.; A.C.A. §§ 23-63-201, et seq., 23-64-201, et seq. (Arkansas); T.C.A. §§ 56-2-102, et seq., 56-6-103, et seq. (Tennessee); La. Stat. Ann. §§ 22.12, et seq., 22:1543, et seq.; Ala. Code §§ 27-1-5, et seq., 27-3-1, et seq., 27-3-27, et seq., 27-2-1, et seq., 27-3-27, et seq.

The PBA is neither licensed nor authorized to act as an insurer or solicit, sell, negotiate or issue policies of insurance in any of these States. Nevertheless, the PBA, both directly and by and through its agents and recruiters, acted as an insurer and sold policies of insurance to putative class members in each of these States. Amended Complaint, ¶¶ 41-80.

COMPLAINT

Plaintiffs have alleged causes of action against the PBA for breach of contract, negligence, breach of fiduciary duty, unjust enrichment, fraud in the inducement, negligent misrepresentation, and injunctive relief. The PBA has urged the Court to limit its review to a challenge of the PBA's ability to operate as an insurer without appropriate authority or oversight. In fact, Plaintiff has also alleged that PBA has violated other duties, including:

- a. the duty to maintain sufficient reserves, capital, and surplus;
- b. the duty to maintain adequate records and be subject to supervision and regular audits by appropriate state authorities;
- c. the duty to prepare and submit reports to state authorities to demonstrate adherence to reserve, capital, and surplus requirements;
- d. the duty to handle and account for premiums paid by insureds;
- e. the duty to renew policies and not cancel policies in bad faith;
- f. the duty to conduct its business in a fair and honest manner;
- g. the duty to act in good faith in the solicitation, sell, negotiation and issuance of policies;
- h. the duty to act in good faith and in the best interests of the class members in the handling and adjustment of claims made against those policies; and
- i. the duty to comply with other laws, statutes and regulations enacted for the benefit of insureds as discovery may show. Amended Complaint, ¶ 81.

LEGAL ARGUMENT

I. THE PBA IS ENGAGED IN THE UNAUTHORIZED TRANSACTION OF INSURANCE BUSINESS IN SOUTH CAROLINA.

The PBA is operating as an unauthorized, unlicensed, unregistered, and unsupervised insurance company in South Carolina. In prior litigation, The Honorable David C. Norton recognized that the PBA is operating as an insurer that is not subject to any oversight. Norton Order, n. 1, **Exhibit C** ("It seems a might curious that an insurer, who issues a policy that supposedly covers a criminal accusation on the one hand, can withdraw benefits if a member 'has committed an intentional, deliberate and/or illegal act . . . criminally.' But this is a question for another day.").¹

The PBA has created a risk sharing scheme that is indistinguishable from the business of insurance. See Grp. Life & Health Ins. Co. v. Royal Drug Co., 440 U.S. 205, 211, 99 S. Ct. 1067, 1073, 59 L. Ed. 2d 261 (1979) ("The primary elements of an insurance contract are the spreading and underwriting of a policyholder's risk."); Allin v. Motorists' Alliance of America, 234 Ky. 714, 29 S.W.2d 19, 71 A.L.R. 695 (1930) (contract to furnish attorney to represent automobile owner in court actions is "insurance" as regards necessity for license to do business); Annotation, Prepaid Legal Services Plans, 93 A.L.R.3d 199 n. 2 (Originally published in 1979) ("Although not every prepaid legal services plan is operated by an insurance company, any prepaid plan is fundamentally an insurance scheme whereby the provider promises to deliver legal services when needed or to reimburse the subscriber under certain conditions.").

South Carolina law prohibits transacting an insurance business in South Carolina without appropriate authorization. S.C. Code § 38-25-10, *et seq.* South Carolina has declared that it is

¹ The Court may take judicial notice of documents that are a matter of public record, the authenticity of which cannot reasonably be questioned, including pleadings or orders from a related matter. S.C. R. Evid. 201(b); Doe v. Bishop of Charleston, 407 S.C. 128, 754 S.E.2d 494 n. 2 (2014); Hall v. Virginia, 385 F.3d 421, 424 n.3 (4th Cir. 2004).

unlawful for an unauthorized insurance company to engage in the following actions, all of which the PBA does:

- (1) The making of or proposing to make, as an insurer, an insurance contract.
- (2) The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.
- (3) The taking or receiving of any application for insurance.
- (4) The receiving or collection of any premium, commission, membership fees, assessments, dues, or other consideration for any insurance or any part thereof.
- (5) The issuance or delivery of contracts of insurance to residents of this State or to persons authorized to do business in this State.
- (6) Directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of another, any person or insurer in the solicitation, negotiation, procurement, or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters after effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this State. This section does not prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of their employer.
- (7) The transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning of the statutes relating to insurance.
- (8) The transacting or proposing to transact any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the insurance laws of this State.

S.C. Code Ann. § 38-25-110.

The PBA calls its contract a "Policy." The Policy's provisions fall squarely within the definition of insurance in accordance with South Carolina law. South Carolina Code § 38-1-20 states as follows:

(25) "Insurance" means a contract where one undertakes to indemnify another or pay a specified amount upon determinable contingencies. The term "insurance" includes annuities.

(33) "Insurer" includes a corporation, **fraternal organization**, burial association, other association, partnership, society, order, individual, or

aggregation of individuals engaging or proposing or attempting to engage as principals in any kind of insurance or surety business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships, and corporations.

(46) "Premium" means payment given in consideration of a contract of insurance.

S.C. Code Ann. § 38-1-20 (emphasis added).

Per South Carolina Code § 38-1-20, the Policy is a contract of insurance. First, the Policy is a contract or an exchange of promises. Members (or "insureds") promise to pay dues (or "premiums"). In exchange for the promise of payment, the PBA promises to provide indemnity for its members ("insureds") against the determinable contingency of legal fees and costs related to "Civil Suits and Criminal Actions."

Furthermore, the members' dues under the Legal Defense Benefit plan are unquestionably "Premiums" under the Code. If the members do not pay their monthly premium, their plan or coverage is terminated. In practice, the PBA collects approximately \$23.50 monthly from over 40,000 members to cover the monetary risk one of their members faces from "Civil Suits and Criminal Actions." The "Plan" only works if there is a large enough pool of members ("insureds"). While the PBA can call its contract whatever it chooses, the pooling of risk has been the essence of insurance since the concept was first introduced in the Code of Hammurabi (c. 1750 BC) when Mediterranean sailing merchants paid an additional fixed sum to a lender in exchange for the lender's guarantee to cancel the loan if the ship was lost at sea. The Defendant has transferred the risk of the individual onto the group and word games cannot escape this fact.

In addition to sharing the risk, the PBA's Policy shares the following attributes with an insurance policy:

a. The policy which the PBA administers defines covered events or risks (ie. determinable contingencies);

b. The policy which the PBA administers defines excluded events or risks (ie. exclusions);

c. The policy which the PBA administers provides the PBA with the right to withdraw coverage under certain circumstances;

d. The PBA makes coverage decisions. Deposition of Joni Fletcher, p. 13, l. 14-18, **Exhibit D**;

e. The PBA makes exclusionary decisions;

f. The PBA maintains a staff for the purpose of evaluating claims (ie. adjusters);

g. The PBA monitors claims;

h. The PBA contracts with attorneys to provide the coverage described in the policy, and the PBA chooses the lawyer. Deposition of Joni Fletcher, p. 13, l. 25 – p. 14, l. 12 and p. 21, ll. 11-13, **Exhibit D**;

i. The PBA contract attorneys submit bills to the PBA which the PBA audits and pays. Deposition of Joni Fletcher, p. 18, l. 17 – p. 19, l. 6, **Exhibit D**;

j. The PBA contract attorneys provide periodic reports or updates to the PBA. Deposition of Joni Fletcher, p. 29, ll. 9-14, **Exhibit D**;

k. The PBA employs professional recruiters (or agents) who are paid on a commission basis for the recruitment of members (or the placement of policies). Deposition of Jack Roberts, p. 34, l. 19 – p. 35, l. 15, **Exhibit E**;

l. The PBA has approximately 40,000 members who paid \$23.50 per month (ie. premiums) in exchange for coverage in the event that any one member experiences an event that

requires the services of a lawyer, services which they would otherwise be unable to afford without coverage.

In a prior lawsuit, the PBA's staff attorney Dale Preiser acknowledged that the Legal Defense Benefit Plan has all the elements of a contract of insurance:

Q: Are there determinable contingencies in policy 00-16?

A: Could you define that for me?

Q: Yeah. An event, a future event which is defined or determinable?

A: Yes.

Q: All right. And those future events would be if you're involved in an officer-related shooting, for example.

A: Yes.

Q: That's a determinable contingency under policy 00-16, is it not?

A: Yes.

Q: All right. And if that determinable contingency happens, then policy 00-16 says that the PBA is going to indemnify for that through providing a legal defense; correct?

A: No. I don't believe that would be a fair assessment. What we would do is we would screen for coverage. They have to be a member at the time of the incident. And then we have to make sure that it arises out of their law enforcement duties, and that within their jurisdiction, and that it meets all the requirements. We try to screen for intentional acts and things that might cause exclusion.

Q: All right. So within this policy, which is not insurance; correct?

A: Correct.

Q: All right. Within this policy we have covered event, correct?

A: Yes.

Q: We have exclusions?

A: Yes.

Q: We have determinable contingencies?

A: Yes.

Q: And we have a promise from the PBA that if the conditions of the policy are met, that coverage will be afforded?

A: Yes.

Q: All right. And we have 40,000 people who are chipping in \$23.50 a month, more or less, against this common risk; correct?

A: What's common risk?

Q: The common risk is that any one of them could find themselves in a situation where they need a lawyer which would cost a lot more than \$23.50; correct?

A: Yes.

Deposition of Dale Preiser, p. 21, l. 23 - p. 23, l. 22, **Exhibit F**.

The Legal Defense Benefit plan is a policy of insurance in accordance with South Carolina law. As a result, the PBA sold an illegal contract of insurance to Plaintiffs and all class members.

II. AS AN UNAUTHORIZED INSURER, THE PBA MUST EITHER DEPOSIT A BOND WITH THE CLERK OF COURT OR PROCURE A CERTIFICATE OF AUTHORITY TO FILE ITS MOTION TO DISMISS.

Chapter 25 of South Carolina's Insurance Code governs the unauthorized transaction of insurance business in South Carolina. S.C. Code Ann. § 38-25-10, *et seq.* Among other things, the Chapter imposes prerequisites to pleading by an unauthorized insurer:

(a) Before an unauthorized insurer files or causes to be filed any pleading in any court action, suit, or proceeding or any notice, order, pleading, or process in an administrative proceeding before the director or his designee instituted against the person or insurer, the insurer shall either:

(1) Deposit with the clerk of court in which the action, suit, or proceeding is pending, or with the director or his designee in administrative proceedings before the director or his designee, cash or securities, or file with the clerk of court or the director or his designee a bond with good and sufficient sureties, to be approved by the clerk or director or his designee, in an amount to be fixed by the court or director or his designee sufficient to secure the payment of any final judgment which may be rendered in the action or administrative proceeding.

(2) Procure a certificate of authority to transact the business of insurance in this State. In considering the application of an insurer for a certificate of authority, for the purposes of this paragraph, the director or his designee need not assert the provisions of Section 38-7-90 against the insurer with respect to its application if he determines that the insurer would otherwise comply with the requirements for a certificate of authority.

S.C. Code Ann. § 38-25-550.²

² This is part of the Uniform Unauthorized Insurers Process Act that has been adopted in most states. Numerous courts have found the bond requirement to be constitutional and enforceable. See, Curiale v. Ardra Insurance Company, Ltd., 88 N.Y.2d 268, 277, 667 N.E.2d 313, 319, 644 N.Y.S.2d 663, 669 (1996); Mid-American Indemnity Ins. Co. v. King, 22 S.W.2d 321, 327 (Tex. 1995); American Centennial Insurance Company v. Seguros La Republica, S.A., 1992 WL 147626 * 1 (S.D.N.Y., June 16, 1992); Trihedron Internat'l Assurance, Ltd. v. Superior Court, 218 Cal.App.3d 934, 946-48, 267 Cal.Rptr. 418, 425-26 (Cal.App.1990); Lakehead Pipe Line Co. v. Am. Home Assur. Co., 981 F. Supp. 1205, 1214 (D. Minn. 1997)

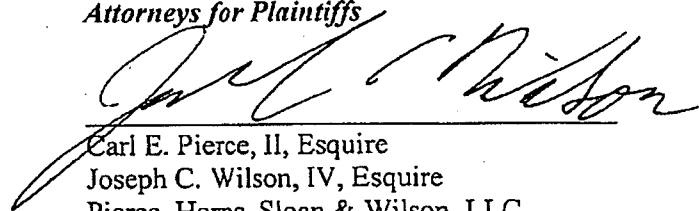
On January 23, 2017, the PBA filed both an Answer and a Motion to Dismiss. The PBA has neither filed a bond with the Charleston County Clerk of Court nor procured a certificate of authority to transact the business of insurance in this State. As such, it was not entitled to file any pleading in this Court. S.C. Code Ann. § 38-25-550(a).

CONCLUSION

Based on the foregoing, Plaintiffs would ask that the Court strike the PBA's Motion to Dismiss and Answer and require the PBA to comply with S.C. Code Ann. § 38-25-550(a) prior to re-filing any pleadings in this matter. If the PBA fails to comply with Section 38-25-550(a), Plaintiffs will move to hold it in default.

April 14, 2016

Attorneys for Plaintiffs



Carl E. Pierce, II, Esquire
Joseph C. Wilson, IV, Esquire
Pierce, Hems, Sloan & Wilson, LLC
The Blake House
321 East Bay Street (29401)
Post Office Box 22437
Charleston, South Carolina 29413
(843) 725-7705
carlpierce@phswlaw.com
joewilson@phswlaw.com

Ronald L. Richter, Jr.
Scott M. Mongillo
Peoples Building
18 Broad Street, Mezzanine
Charleston, South Carolina 29401
(843) 573-9900
ronnie@blandrichter.com
scott@blandrichter.com

Eric S. Bland
1500 Calhoun Street

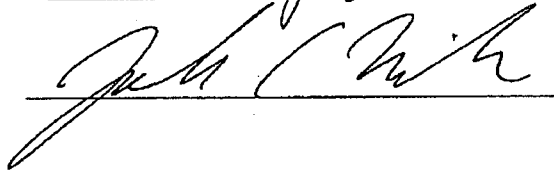
Post Office Box 72
Columbia, South Carolina 29202
(803) 256-9664
ericbland@blandrichter.com

Andrew J. Savage, III, Esquire
SAVAGE LAW FIRM
15 Prioleau Street
Charleston, South Carolina 29401
(843) 720-7470
andy@savlaw.com

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was
served on each party or counsel of record by email and mailing in the
manner prescribed by the applicable Rule of Civil Procedure.

This 14th day of April, 2017



A handwritten signature in black ink, appearing to read "Andrew J. Savage, III", is written over a horizontal line.

F

SOUTHERN STATES POLICE BENEVOLENT ASSOCIATION, INC.

POLICY NO. 00-18

LEGAL DEFENSE BENEFIT

BACKGROUND:

In order to provide legal defense benefits to the members of the Southern States P.B.A., the Board of Directors hereby adopts the following policy:

POLICY:

SECTION 1. COVERAGE AND ELIGIBILITY

- A. The Legal Defense Benefit will be provided to Southern States P.B.A. members only in those cases where a lawsuit or criminal accusation results from professional acts or omissions which arise out of and in the scope of their duties as a law enforcement officer. Representation will also be available at shooting scenes for incidents that resulted in personal injury, and at the scene of other incidents resulting in serious personal injuries caused by a member, arising out of that member's performance of or pursuit of his/her official duties. Where the attorney is made available will be determined by factors including, but not limited to, medical condition of the member, timeliness of the request for service and immediacy of the investigation.
- B. The Benefit shall consist of the payment by Southern States P.B.A. of attorney's fees and directly related Court costs.
- C. Members are entitled to legal defense and costs within the coverage provided regardless of the number of litigations involving a member during each year.
- D. Coverage is limited to actions stemming from incidents which occurred after May 1, 1984. Members must have been a Southern States P.B.A. member in good standing prior to the incident, and maintain membership in good standing status from time of incident, as well as throughout the litigation. If a member has joined Southern States P.B.A. from a similar organization subsequent to an incident which results in litigation, during the time of an organizational campaign where the P.B.A. was competing for collective bargaining certification rights held by another association, Southern States P.B.A. will pay the same benefits for legal defense as would have been provided by the Association to which he/she was a member.

EXHIBIT

A

SSPBA/Discovery Docs000071

- E. The term "arising out of and in the scope of their duties" as used in this Policy encompasses actions or omissions of a member while in the performance of regularly assigned law enforcement duties for his/her employing agency. The benefit is not designated to cover a member while he/she is off-duty or engaged in off-duty employment, unless the circumstances are such that it is apparent the member was justified in placing himself/herself on duty acting in his/her police capacity in order to effect an arrest and to protect persons or property from harm. In instances of off-duty employment, coverage will be provided only where the member's employing agency and secondary employer decline coverage of that member. By definition "scope of duties" involves taking actions in those geographic areas or situations where the member has law enforcement authority.
- F. In order for a member to be eligible for legal defense, the member must be in good standing and up to date in dues payments, and must remain in good standing during the litigation. If the member fails to remain in good standing, Southern States P.B.A. reserves the right to terminate its support.
- G. Coverage under the benefit is intended to apply to cases where a member has taken some type of direct law enforcement action consistent with his/her responsibilities as a law enforcement officer. It is not intended to apply to non-law enforcement actions including, but not limited to, personnel, employment decisions (hiring, discipline or termination of employees), management decisions dealing with procedural operation or physical facilities of the law enforcement agency (validity of agency rules, procedural orders or a facility's capacity) or instances when no direct law enforcement action on the part of the member is alleged to have taken place (vicarious liability or liability based on theory of respondent superior).
- H. A member must request P.B.A. representation at the time the member receives official notice of the civil suit or criminal indictment and active representation of the member is undertaken. If counsel other than P.B.A.'s is retained by the member either at the onset of the case or at any future time, legal defense benefit coverage may, at the sole discretion of P.B.A., be denied or discontinued.

SECTION 2. BENEFIT ADMINISTRATION

- A. The Association CEO or the Director of Legal Services (DLS) will authorize all requests for legal services under the Benefit if it is determined that the following criteria are met:

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Legal Defense Benefit
Page Three

1. the requesting officer is a current member in good standing of Southern States P.B.A.,
 2. he/she was a member of the Association at the time of the incident,
 3. he/she remains member in good standing from date of incident until conclusion of adversarial proceedings,
 4. the incident was the result of the MEMBER'S performance of or pursuit of his/her official duties as a law enforcement officer,
 5. the request for coverage was submitted by a member and received by the Association within ten (10) calendar days after the member received official notification of the civil suit or criminal accusation and active representation of the member is undertaken by a legal defense benefit attorney,
 6. the member contacts the assigned attorney within five (5) days of receiving notification from the Association specifying the name and phone number of such attorney, and
 7. the member cooperates in the preparation and defense of the case by remaining available for contact upon reasonable notice from the Association or assigned counsel.
- B. In instances where a timely request for representation is provided for in Section 2(A)5 has not been made, but the member is otherwise eligible for coverage, the member shall be responsible for all legal fees and costs incurred prior to the date the coverage is approved by the Association CEO.
- C. The Association CEO or the Director of Legal Services shall review all cases on a continuing basis to ensure proper representation is being provided to the member and that the monthly fees, costs and expenditures are being incurred within the coverage and limitations set forth by this policy.
- D. If the Director of Legal Services determines that the criteria listed above are not met, the Director of Legal Services may reject the request, subject to review by the Association CEO.

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- E. The request for representation shall include the name of the member and the member's Social Security number; a summary of the allegations; and the date of the Incident. Upon receipt and review, approval or disapproval of coverage will be provided to the member. At that time, if approval is granted, the Association CEO or his/her designee shall assign a Panel Attorney to handle the case.
- F. In cases involving emergency situations such as shootings, vehicular accidents involving serious injury inflicted by a member, or other instances requiring emergency response by an attorney, the division or chapter president may authorize the use of a Panel Attorney for the emergency situation. As soon as possible, the Association CEO or the Director of Legal Services for Southern States P.B.A. is to be advised of the incident telephonically. A written request and/or report is to follow. The assignment of an attorney to cover an emergency problem will not commit the Southern States P.B.A. Legal Defense Benefit to coverage of future legal fees and costs. An attorney may not proceed beyond the preliminary stages of an emergency situation without additional written approval from the Association CEO or the Director of Legal Services.

SECTION 3. LEGAL DEFENSE BENEFIT PANEL OF ATTORNEYS AND AUTHORIZED FEES

- A. Attorneys appointed to the Legal Defense Benefit Panel of Attorneys shall be in good standing with the State Bar Association in which they intend to represent members and be willing to represent members pursuant to the fee arrangement as established by the Association CEO.
- B. Attorney's fees will be paid on the basis of uniform hourly rates established by the Association CEO. Deviations from this rate may be approved by the Association CEO or the Director of Legal Services.
- C. The Benefit shall also consist of the payment of Appellate fees when authorized by the Association CEO. Appellate fees shall be established in the same method as attorney fees in (B) above.
- D. When an attorney accepts representation for a member, he or she may seek compensation for fees and costs from the Southern States P.B.A. Legal Defense Benefit if:

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1. The attorney receives written authorization for such representation from the Association CEO or the Director of Legal Services.
2. The attorney consents to the procedure, restrictions and limitations as set forth herein.
3. No later than the 10th of each month, the attorney shall file with the Association CEO or the Director of Legal Services of Southern States P.B.A. a detailed monthly status report of the case he/she is handling, together with an itemized statement of fees and costs. Costs will be paid pursuant to a schedule established by the Association CEO and/or the Director of Legal Services.
4. In civil cases wherein the employer is a party defendant, the attorney shall concentrate his/her efforts to protect the member against personal liability, unless the Association CEO or the Director of Legal Services authorizes otherwise.
5. Interlocutory appeals or writs of certiorari may be filed with written permission from the Association Director of Legal Services, after consultation with the CEO of Southern States P.B.A. All appeals from final orders, judgment and verdicts must also have prior written approval.
6. Upon completion of a case which has been concluded in favor of member, the attorney shall immediately file a motion for costs (and attorney's fees, if applicable). Southern States P.B.A. shall receive the benefit of an order granting recovery of attorney fees and assessed costs.

SECTION 4. LIMITATIONS, RESTRICTIONS AND EXEMPTIONS

- A. A member will be entitled to an attorney under the Legal Defense Benefit in civil actions when the member is a co-defendant in his/her individual capacity with his/her employer and when punitive damages are sought against the member. (The litigation preparation shall be confined to the issue of punitive damages). The Association CEO or the Director of Legal Services reserve the right to review the costs and expenditures each month to determine if they have been incurred within the coverage set forth.

- B. The Benefit will not provide legal services in civil matters wherein punitive damages are not sought unless the member is sued individually and the employer refuses representation; or unless the employer is going to settle the claim and the employer has admitted wrongdoing on behalf of the member without the member's consent.
- C. The Director of Legal Services may direct that a case assigned to a legal defense attorney be monitored by the attorney in the following cases: (a) cases in which the member is being actively represented by the employer; (b) civil cases in which the member is being actively represented by the employer and the member is satisfied with representation being provided, and (c) civil cases in which the member is only a nominal party and the case is designed to test the legality of an employer's practice, policy or rule enforced by the member.

When a case is in monitoring status, the legal defense attorney will not actively participate in litigation of the case but, instead, will consult with the member and review appropriate court documents to ensure the member's interests continue to be adequately protected. Should the legal defense attorney determine active representation is warranted, or should the member request active participation in the case, the Director of Legal Services will be informed of the proposed change in representation and the reasons for the change. If after review of the information provided, the Director of Legal Services agrees that such active participation is warranted, the legal defense attorney shall actively represent the member in the case as approved by the Association CEO or the Director of Legal Services.

- D. Southern States P.B.A. reserves the right to withhold approval of any benefits and to withdraw approval of any benefits if it is determined at any time that the member has committed an intentional, deliberate and/or illegal act, either civilly or criminally.
- E. Southern States P.B.A. reserves the sole right to settle a claim against a member based upon the recommendation of legal counsel and a determination by the Association CEO that such a course of action is in the best interest of Southern States P.B.A. Where such a determination is made, the member shall be afforded the option of accepting the settlement or obtaining private legal counsel, at his own expense, to continue the case. Should the member elect to continue litigation, all obligations of Southern States P.B.A. under the Legal Defense Benefit shall cease.

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- F. The Benefit will not pay for the cost of any appeal, interlocutory or final, civil or criminal, unless prior approval is first obtained from the Association CEO or the Director of Legal Services.
- G. The attorney for a member may seek permission from the Association CEO or the Director of Legal Services to allow the attorney to actively litigate a civil case involving a member when the employer has indicated a position that is adverse to the member and/or the representation afforded by the employer is detrimental to the member. If the Association CEO or the Director of Legal Services grants approval in that instance, the Legal Defense Benefit will cover those legal fees and costs. Permission must first be obtained. Approval under this paragraph may be made by the Director of Legal Services only in the absence of the CEO, is made to temporarily protect the member, and is to be reviewed by the CEO upon his/her return.
- H. A member who is being represented by the Association in any action, may not take any steps to amend the allegations and/or defenses to that action without the prior approval of the assigned legal defense attorney, if any, and the Director of Legal Services. Taking such an action will automatically release the Association from any requirements for coverage, if any, and give the Association the option to withdraw its representation from the action and to receive indemnification from the member for services provided up to the time the Association became aware of unapproved amendment.
- I. The Association will not provide legal defense benefit coverage as described in this policy to any member accused of criminal involvement where the member either admits such involvement or where, in the opinion of the Association CEO, there exists sufficient evidence of such involvement that providing such coverage could bring discredit to the Association and/or the law enforcement profession.
- J. All decisions of the Director of Legal Services are subject to review by the Association CEO.

SECTION 5. CESSATION OF LEGAL DEFENSE BENEFIT PLAN

- A. In the event the Association Board of Directors shall determine that the Legal Defense Benefit Plan is no longer feasible for whatever reason, Southern States P.B. A. shall promptly notify each member of the Association by U.S. mail, first class, to the member's address, as listed in the Association's membership list.

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Legal Defense Benefit
Page Eight

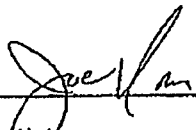
- B. Thirty (30) days after the notice is mailed, the P.B.A.'s obligation under this plan shall cease, except in those incidents where representation of a member had already been undertaken. Where representation had been undertaken prior to the end of the thirty (30) day period, the provisions of this Plan shall continue to apply.

SECTION 6. DEFINITIONS

- A. As used in this Policy the term "Director of Legal Services" is defined as that individual on the Association staff designated by the CEO to be in charge of the Legal Department of the Association, and to assist in the administration of this policy.

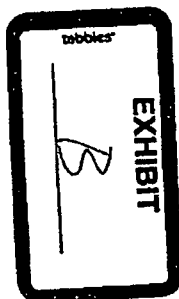
ADOPTED:	10 June 2000
EFFECTIVE DATE:	10 June 2000
AMENDED:	24 July 2004
AMENDED:	16 June 2010
CEO EFFECTIVE:	8 June 2012
AMENDED:	4 November 2015

Former SSPBA Policy 90-01



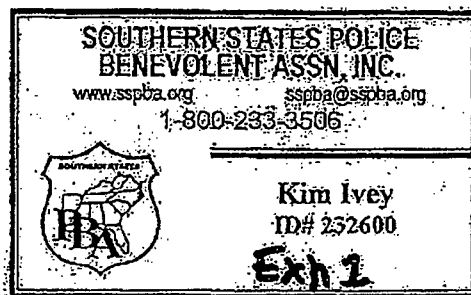
Joe Naja
Secretary-Treasurer

SSPBA/Discovery Docs000078



SSPBA/Discovery Docs000119

ROA 000404



MIRANDA

You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to speak to an attorney and to have an attorney present during any questioning. If you cannot afford an attorney, one will be provided for you at government expense. Knowing and understanding your rights as I have explained them to you, are you willing to answer any questions without an attorney present?



SOUTHERN STATES
POLICE BENEVOLENT ASSOCIATION
1-800-233-3506
www.sspba.org
The Voice of Law Enforcement Officers

LEGAL DEFENSE PLAN

All active members are eligible for the following defense benefits while acting within the scope of their law enforcement duties:

SHOOTING DEATH IN CUSTODY
CRIMINAL CIVIL

ACCIDENT WITH DEATH OR SERIOUS INJURY
Contact PBA immediately: 1-800-233-3506

More detailed information, including limitations, available upon request. To receive benefits, you must have continuing active membership for the time of incident through period of assistance. For all other assistance, prior approval must be obtained. Contact your chapter president or SSPBA.

OFFICER UNDER INVESTIGATION

Keep this card. If you are questioned or investigated, follow these instructions.

1. Contact PBA at 1-800-233-3506 as soon as possible. If you can, do so prior to making any statements or submitting any reports.
2. Ask why you are being questioned or investigated, specifically, ask whether it is an administrative or criminal matter. If you are told that this is a criminal matter, or if you are Mirandized, answer no further questions and contact PBA immediately.
3. If it is administrative and you are ordered to answer right away, be truthful. If you refuse to answer, you may suffer disciplinary action for insubordination.
4. Only answer those questions which are asked of you.
5. Understand that should you resign, you lose all appeal rights and further PBA representation in this matter.
6. Always conduct yourself professionally.

Exh 2



2155 Highway 42 S.
Mableton, GA 30252
(770) 389-5391 FAX: (866) 397-7722



SOUTHERN STATES
POLICE OFFICERS ASSOCIATION
1-800-293-3506

OFFICER UNDER INVESTIGATION

SSPBA/Discovery Docs000120

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

MICHAEL SLAGER,

Plaintiff,

v.

SOUTHERN STATES POLICE
BENEVOLENT ASSOCIATION, INC.,

Defendant.

No. 2:15-cv-04536-DCN

ORDER

This matter is before the court on plaintiff Michael Slager's ("Slager") motion to seal and motion for a protective order pursuant to Federal Rule of Civil Procedure 26(c). For the reasons set forth below, the court grants Slager's motions.

I. BACKGROUND

Slager is a resident of South Carolina, Compl. ¶ 1, and defendant Southern States Police Benevolent Association, Inc. ("the PBA") is a tax-exempt labor organization, incorporated and existing under the laws of Georgia, Answer ¶ 4, that was formed to further the interests of its police officer members, Def.'s Resp. 1. The PBA offers a legal defense benefit policy to its members in South Carolina. Pl.'s Mot. 1; Def.'s Resp. 1. Slager, who was an officer with the City of North Charleston Police Department at the time, initially purchased a legal defense benefit policy from the PBA on October 13, 2011, but elected to discontinue the policy in June 2012. Compl. ¶¶ 8-9, 27. Nevertheless, Slager reinstated the policy on January 31, 2013, and continued to pay his \$23.50 monthly premium through April 2015. *Id.* ¶ 10. The policy, in pertinent part, stated that the PBA would provide legal representation to its "members only in those

1



cases where a lawsuit or criminal accusation results from professional acts or omissions which arise out of and in the scope of their duties as a law enforcement officer.” Pl.’s Mot., Ex. A ¶ A. Under the policy, the legal defense benefit “consist[ed] of payment by [the PBA] of attorney’s fees and directly related [c]ourt costs.” Id. ¶ B.

On April 4, 2015, Slager was involved in an officer-related shooting that resulted in the death of Walter Scott (“the Walter Scott incident”). Pl.’s Mot. 2. At the time of the incident, Slager had a wallet card issued by the PBA that provided an emergency telephone number for him to call to obtain an attorney. Id. at Ex. B. Per the instructions on the wallet card, Slager called the PBA emergency line to report the shooting and spoke with John Midgette (“Midgette”), a nonlawyer employee of the PBA who was on call at the time. Id. at 2; Def.’s Resp. 2. According to Slager, the call was for the express purpose of securing legal representation pursuant to the legal defense benefit policy. Pl.’s Mot. 2.

Following the telephone conversation with Slager, Midgette assigned attorney David Aylor (“Aylor”) to represent Slager. Id. Thereafter, Slager gave a statement regarding the incident to the South Carolina State Law Enforcement Division (“SLED”) in Aylor’s presence. Def.’s Resp. 2. Upon completion of the oral statement, Slager and Aylor made plans to meet with SLED again to submit a written statement. Id. at 3. When the two met with SLED on April 7, 2015, officers showed them a video of the incident, after which Slager refused to complete a written statement and was placed under arrest. Id. Aylor withdrew from representation on the same day. Id.; Pl.’s Mot. 2. Slager then contacted the PBA and asked for a replacement lawyer, but in a letter dated April 8, 2015, the PBA informed Slager it would no longer “provide [him] representation

in this matter due to the intentional violation of [the] policy/law exclusion.”¹ Exhibit 1 attached hereto.

After the PBA declined to hire a replacement lawyer for Slager, he filed the instant lawsuit on November 10, 2015, alleging claims for breach of contract, bad faith, and unfair insurance practices. Def.’s Resp. 3; Compl. ¶¶ 50–85. The PBA filed an answer on December 14, 2015, denying liability. ECF No. 7. As part of discovery, Slager first deposed Dale Preiser (“Preiser”), an employee of the PBA. Def.’s Resp. 3. Slager asked Preiser to justify the PBA’s refusal to appoint a replacement lawyer for him, and Preiser referenced the SLED video and the statements Slager made to Midgette on the date of the incident. Def.’s Resp., Ex. G, Dep. Dale Preiser 72–89. Following Preiser’s deposition, on June 8, 2016, Slager filed a motion to seal and motion for a protective order “restricting the [PBA] from referencing, disclosing[,], or otherwise using communications between parties which are protected by the attorney client privilege.” ECF No. 23. Subsequently, during Slager’s deposition on June 13, 2016, the PBA asked questions regarding information Slager communicated to Midgette while trying to secure legal representation. Pl.’s Mot. 2. The PBA also inquired as to Slager’s current home address. Id. Slager’s counsel objected to the line of questioning and instructed Slager not to answer. Id.

Slager’s counsel consulted with opposing counsel pursuant to Local Rule 7.02, but the parties were unable to resolve the matter. Id. Therefore, Slager filed the present

¹ (It seems a might curious that an insurer, who issues a policy that supposedly covers a criminal accusation on the one hand, can withdraw benefits if a member “has committed an intentional, deliberate and/or illegal act . . . criminally.” But this is a question for another day.)

motion for a protective order on June 20, 2016. ECF No. 24. Slager seeks a protective order to prevent the PBA from using or otherwise disclosing any communication between him and Midgette regarding the Walter Scott incident. Id. at 5. In addition, Slager seeks to protect his home address from disclosure for the safety of his family. Id. at 6. The PBA filed a memorandum in opposition to Slager's motion on June 27, 2016, ECF No. 25, and the court held a hearing on July 18, 2016. The motion has been fully briefed and is ripe for the court's review.

II. STANDARD

Federal Rule of Civil Procedure 26(b)(1) limits the scope of discovery to "any nonprivileged matter that is relevant to any party's claim or defense." "The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden and expense" by forbidding or limiting the scope of discovery. Fed. R. Civ. P. 26(c)(1). "The scope and conduct of discovery are within the sound discretion of the district court." Columbus-Am. Discovery Grp. v. Atl. Mut. Ins. Co., 56 F.3d 556, 568 n.16 (4th Cir. 1995); see also U.S. ex rel. Becker v. Westinghouse Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating district courts are afforded "substantial discretion . . . in managing discovery").

"The party moving for a protective order bears the burden of establishing good cause." Webb v. Green Tree Servicing, LLC, 283 F.R.D. 276, 278 (D. Md. 2012). "Normally, in determining good cause, a court will balance the interest of a party in obtaining the information versus the interest of his opponent in keeping the information confidential or in not requiring its production." UAI Tech., Inc. v. Valutech, Inc., 122 F.R.D. 188, 191 (M.D.N.C. 1988). In other words, the district court "must weigh the

need for the information versus the harm in producing it.” A Helping Hand, LLC v. Baltimore Cty., Md., 295 F. Supp. 2d 585, 592 (D. Md. 2003) (quoting Valutech, 122 F.R.D. at 191). The district court, however, is afforded broad discretion “to decide when a protective order is appropriate and what degree of protection is required.” Seattle Times Co. v. Rhinehart, 467 U.S. 20, 36 (1984).

Local Rule 30.04(C) provides that “[c]ounsel shall not direct or request that a witness not answer a question, unless that counsel has objected to the question on the ground that the answer is protected by a privilege. . . .” The rule further states that “[c]ounsel directing that a witness not answer a question on those grounds or allowing their clients to refuse to answer a question on those grounds shall move the court for a protective order under Fed. R. Civ. P. 26(c) or 30(d)(3) within seven (7) days of the suspension or termination of the deposition.” Id. “When a party withholds information otherwise discoverable by claiming that the information is privileged . . . , the party must: (i) expressly make the claim; and (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.” Fed. R. Civ. P. 26(b)(5)(A).

III. DISCUSSION

Slager filed a motion to seal and motion for a protective order to prevent the PBA from using or otherwise disclosing any communication between Slager and the PBA regarding the Walter Scott incident. According to Slager, these communications are protected by the attorney-client privilege and implicate his Fifth Amendment privilege against self-incrimination. Slager further contends his statements to Midgett are

irrelevant because the PBA, in defending its decision to deny him the legal defense benefit under the policy, is precluded from pursuing a different defense from that which it asserted in the April 8, 2015 denial letter. The PBA, on the other hand, argues it is entitled to use Slager's statements to defend itself in the instant lawsuit.

In Washington v. National Service Fire Insurance Co., the Supreme Court of South Carolina considered whether an insurer was bound by the defense asserted in its letter denying coverage under an automobile insurance policy. 168 S.E.2d 90 (S.C. 1969). The insured in Washington had promptly given notice of the accident in question to the insurer, but the insurer denied coverage, arguing the substitution of the "owned automobile" under the policy relieved it of liability with respect to the collision. Id. at 92. Notwithstanding the reason offered in the denial letter, the insurer subsequently sought to "assert[] as a defense that it was not given notice of the Washington claim, nor were the suit papers forwarded to it as required by the policy." Id.

The Washington court noted "[i]t is well settled that an insurer which has denied coverage on some other basis is precluded from defending against an action on a liability policy on the ground that the insured failed to comply with its requirements as to notice and the forwarding of suit papers." Id. According to the court, "[t]he purpose of these policy requirements is to 'enable the insurer to inform itself promptly concerning the accident, to investigate the circumstances, and prepare a timely defense, if necessary on behalf of the insured. Compliance with such a provision is unnecessary and serves no good purpose where the insurer has disclaimed liability under the policy.'" Id. at 93. Because the insurer denied coverage on the ground that the vehicle listed in the policy had been effectively substituted for another vehicle prior to the accident, the court held

that the insurer was precluded from relying upon any of the insured's omissions regarding notice and the forwarding of suit papers as a policy defense against the insured in that case. Id.

Applying the Washington court's reasoning to the facts of the instant case, the court finds the PBA is precluded from asserting as a defense that it denied the legal defense benefit based upon Slager's alleged misrepresentations to Midgette regarding the Walter Scott incident. In the letter denying coverage, the PBA stated the following:

Upon review of your case, please be advised that the P.B.A. will be unable to provide representation in this matter due to the intentional violation of [the] policy/law exclusion.

Southern States P.B.A. policy states as follows:

"Southern States P.B.A. reserves the right to withhold approval of any benefits and to withdraw approval of any benefits if it is determined at any time that the member has committed an intentional, deliberate and/or illegal act, either civilly, criminally, or administratively."

Order, Ex. 1.

Thus, it is clear from the denial letter that the sole basis upon which the PBA sought to deny Slager the legal defense benefit was its belief that Slager's actions during the Walter Scott incident were "intentional, deliberate and/or illegal" and, as such, were excluded from coverage under the policy. The letter makes no mention of Slager failing to cooperate, failing to provide truthful and relevant information, or otherwise violating any duties set forth in the policy. As a result, under Washington, the PBA is precluded from asserting Slager's allegedly untruthful conversations with Midgette led it to deny the legal defense benefit to Slager. 168 S.E.2d at 92 ("It is well settled that an insurer which has denied coverage on some other basis is precluded from defending against an

action on a liability policy on the ground that the insured failed to comply with its requirements as to notice and the forwarding of suit papers”); see also, e.g., Cox v. Reliance Standard Life Ins. Co., 43 F. App’x 606, 610 (4th Cir. 2002) (holding an insurer waived the right to argue the insured’s death was not an accident and, thus, not covered by the policy given that the insurer’s letter denying the beneficiary’s claim for accidental death benefits stated only that, pursuant to a policy exclusion, the loss was not covered because the insured was engaged in a felony at the time of his death). Because the PBA is precluded from asserting this defense, the court finds Slager’s conversations with Midgette are simply irrelevant to the case at hand. See Fed. R. Civ. P. 26(b)(1) (limiting the scope of discovery to “any nonprivileged matter that is relevant to any party’s claim or defense”).

The court further finds the potential harm that could arise from the introduction of Slager’s statements—namely, the possible implications it could have on the indictments pending in state and federal court—far outweighs any interest in using this evidence to substantiate a defense that the PBA, as a matter of law, is precluded from asserting. See A Helping Hand, LLC, 295 F. Supp. 2d at 592 (stating the court “must weigh the need for the information versus the harm in producing it” (quoting Valutech, 122 F.R.D. at 191)); Afro-Lecon, Inc. v. United States, 820 F.2d 1198, 1202 (Fed. Cir. 1987) (providing the court “has the discretion to . . . impose protective orders and conditions ‘when the interests of justice seem[] to require such action’” (quoting Sec. & Exch. Comm’n v. Dresser Indus., Inc., 628 F.2d 1368, 1375 (D.C. Cir. 1980), cert. denied, 449 U.S. 993 (1980))); Washington, 168 S.E.2d at 92 (stating “an insurer which has denied coverage on some other basis is precluded from defending against an action on a liability policy on

the ground that the insured failed to comply with its requirements as to notice and the forwarding of suit papers"). The court acknowledges that a protective order is not necessarily required for Slager to assert his Fifth Amendment privilege against self-incrimination. See In re Grand Jury Subpoena, 836 F.2d 1468, 1471 (4th Cir. 1988) (holding that, "[a]bsent a grant of immunity, the deponents were entitled, with or without a protective order, to assert their [F]ifth [A]mendment privilege in answer to potentially incriminating questions in a civil proceeding"). Slager, of course, may exercise this privilege at any time. See id. Nevertheless, the court finds the irrelevance of the information the PBA seeks to introduce—coupled with the potential harm its revelation could cause Slager in the pending criminal indictments—constitutes "good cause" for the court to issue a protective order in this matter. See Webb, 283 F.R.D. at 278 (stating that a "party moving for a protective order bears the burden of establishing good cause"); Valutech, 122 F.R.D. at 191 ("Normally, in determining good cause, a court will balance the interest of a party in obtaining the information versus the interest of his opponent in keeping the information confidential or in not requiring its production.").

Finally, Slager asks the court to issue a protective order permitting him to refuse to disclose his home address, arguing such a measure is necessary for the safety of his family. In his memorandum in support of the motion, Slager notes that the state court "did not require [him] to list his current address on the bond paperwork because his previous home was firebombed." Pl.'s Mem. Supp. 6. Frankly, the court sees no reason why the PBA needs this information because—as Slager notes—his attorney will accept service on his behalf and he is under the confines of a criminal bond. Id. More importantly, the release of Slager's address could endanger the safety of his family.

Given that the potentially harmful consequences of requiring Slager to produce his current home address far outweigh the PBA's need for such information to defend itself in this lawsuit, the court finds Slager has shown good cause as to why he should not be required to disclose it. See A Helping Hand, LLC, 295 F. Supp. 2d at 592 (stating that, in deciding whether to issue a protective order, the court "must weigh the need for the information versus the harm in producing it" (quoting Valutech, 122 F.R.D. at 191)).

IV. CONCLUSION

For the foregoing reasons, the court **GRANTS** Slager's motion for a protective order to protect from disclosure his current home address as well as any statements he made to Midgette regarding the Walter Scott incident. In light of the court's decision as to this issue, the court finds Slager's motion to seal is **MOOT**.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'D. Norton', is written over a horizontal line.

DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

August 3, 2016
Charleston, South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

MICHAEL SLAGER,
Plaintiff,

vs.

CASE NO. 2:15-CV-04536-DCN

SOUTHERN STATES POLICE BENEVOLENT
ASSOCIATION, INC.,
Defendant.

- - -

Videotaped Deposition of JONI FLETCHER,

Taken by Ronald R. Richter, Jr.,

Before Amanda F. Hamlin,
Certified Court Reporter,

At the Southern States Police
Benevolent Association,
McDonough, Georgia,

On Tuesday, June 14, 2016,
Beginning at 12:38 p.m. and ending at 1:37 p.m.

EXHIBIT

D

1 A Right.

2 Q He still requires a legal defense
3 today; right?

4 A Right.

5 Q He's still being defended today;
6 right?

7 A Right.

8 Q Just not by the PBA?

9 A Right.

10 Q And so there is a legal defense
11 available to Michael Slager in this case;
12 correct?

13 A Correct.

14 Q The PBA has just decided it's not
15 going to provide it?

16 A The decision was made that this
17 incident fell outside of PBA coverage once we had
18 information in front of us that we had to review.

19 Q So as I understand it, you'll cover
20 officer-related shootings unless, in your
21 opinion, they were intentional?

22 A We certainly cover officer-related
23 shootings all of the time. We have hundreds of
24 shooting cases open at any given time.

25 Q All right. I understand that the PBA

1 contracts with lawyers who then represent the
2 members when a criminal matter or a disciplinary
3 action comes up; is that correct?

4 A Right. That's in addition to a
5 lawsuit, grievance matters. It's several
6 different types of categories of service.

7 Q So if I'm a PBA member and I have a
8 legal matter that arises out of my
9 responsibilities as a law enforcement officer, I
10 can apply to the benefit of the plan; correct?

11 A Right. If you're a PBA member at the
12 time of the incident.

13 Q And most specifically, that plan would
14 extend to an officer-related shooting?

15 A It does.

16 Q And what is an officer-related
17 shooting?

18 A That's an incident that arises --
19 there can be varying circumstances, of course,
20 but it's an incident where a PBA member has to
21 fire his weapon during the course of his duties.

22 Q All right. Tell me about your outside
23 attorneys.

24 How does an attorney become a PBA
25 contract lawyer?

1 Q If I have a history of disciplinary
2 proceedings, is that a disqualifier?

3 A We do rely on our membership to help
4 us in, number one, vetting the attorneys that are
5 added to the list. And if they are aware of
6 problems with a particular attorney and they let
7 us know about that, then we will then deactivate
8 that attorney if there is a reason to do so. We
9 certainly want them to be a professional
10 representative of PBA.

11 Q What is the current rate for
12 compensation?

13 A The standard rate is \$100 an hour.
14 Some are a little less, some are a little more.
15 But I would say the majority of our attorneys are
16 working for \$100 an hour.

17 Q So if I agree to accept the case as a
18 PBA contract lawyer, I would be bound to accept
19 the rate of \$100 an hour?

20 A Right. Unless we have some discussion
21 otherwise.

22 Q Do you audit the bills that you
23 receive for service?

24 A I do. I review the bills.

25 Q And is there any reconciliation of

1 those bills? Is there any adjustment that's made
2 on those bills?

3 A Yes. If they're charged at a higher
4 rate, we'll remind them. Typically, it's just an
5 oversight; but, yes, we'll remind them that they
6 had agreed to our rate.

7 Q Well, are there maximums as well?
8 Like, the maximum number of hours in a day or
9 the -- a maximum for travel as opposed to trial,
10 that kind of thing?

11 A We don't have maximums. I do watch,
12 you know, and review each bill that we receive to
13 make sure it's within reason as far as the
14 activity being required of that case.

15 Q Are the members who call the PBA for
16 representation, are they -- do they become
17 clients of the PBA, in your opinion?

18 A They're PBA members. That's how we
19 always refer to them.

20 Q No, but if a PBA member has a legal
21 event and calls here pursuant to the plan for the
22 express purpose of securing legal representation,
23 is that an attorney-client relationship that's
24 formed?

25 A Yes.

1 Q It is?

2 A Yes.

3 Q So the lawyers here are licensed to
4 practice law in South Carolina, for example?

5 A No, we're not licensed to practice law
6 in South Carolina.

7 Q So if I'm a South Carolina member and
8 I call here for the express purpose of securing
9 legal representation, do I have an attorney-
10 client relationship with this office?

11 A We believe so. When you're calling
12 and requesting legal service, we do believe that
13 there is -- we're going to treat it as such.
14 We're going to treat it confidentially.

15 Q You're going to treat it as a
16 privileged communication?

17 A We are.

18 Q That's made for the sole purpose of
19 securing representation?

20 A We are.

21 Q Understanding the representation won't
22 be here, it's going to be with a lawyer in South
23 Carolina?

24 A Right.

25 Q Correct?

1 A We certainly protect the
2 communications with our members.

3 Q All right. But when that
4 communication comes in and it's coming from South
5 Carolina, you know that this office, this
6 organization, is not going to provide legal
7 representation; correct?

8 A We're not going to be directly
9 assigned to represent that member in their state,
10 yes.

11 Q You are going to facilitate getting
12 that member to a South Carolina lawyer?

13 A Correct.

14 Q And so in that sense, you are an agent
15 or an extension of the South Carolina lawyer for
16 the purpose of receiving that phone call?

17 A Okay.

18 Q Is that fair?

19 A That's one way to look at it.

20 Q Would it be any different than the
21 member calling that lawyer's office directly and
22 talking to the paralegal at that office?

23 A I would say it would be comparable.

24 Q And the paralegal in that circumstance
25 would be there for the purpose of securing the

1 A Again, I was not party to the
2 conversation, but I have no reason to believe
3 that he went into any of that detail.

4 Q Did he tell you that "I think the
5 exclusion in the policy applies here"?

6 A No. He told us that he was
7 withdrawing.

8 Q Is there any formal reporting
9 requirement on the lawyers?

10 A We do ask that they provide us with
11 periodic updates on the status of the case.

12 Q What does that mean? What is
13 periodic? Monthly? Quarterly?

14 A Ideally, it's monthly.

15 Q Is there a format for those reports?

16 A No. No. And sometimes it just may be
17 details in the billing where we can see the
18 activity.

19 Q And what do you expect that report to
20 tell you? What content would you expect to see
21 in a report?

22 A If the investigation is still
23 underway. Again, I'm dealing with not only legal
24 defense, but also disciplinary proceedings, which
25 have different levels, typically. So I look

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

MICHAEL SLAGER,
Plaintiff,

vs.

CASE NO. 2:15-CV-04536-DCN

SOUTHERN STATES POLICE BENEVOLENT
ASSOCIATION, INC.,
Defendant.

- - -

Videotaped Deposition of JACK ROBERTS,

Taken by Ronald R. Richter, Jr.,

Before Amanda F. Hamlin,
Certified Court Reporter,

At the Southern States Police
Benevolent Association,
McDonough, Georgia,

On Tuesday, June 14, 2016,
Beginning at 9:37 a.m. and ending at 11:22 a.m.

- - -



1 happens to the surplus revenue as you increase
2 the membership?

3 A We put it in a bank.

4 Q And so do you know what's in the bank?
5 Is it the accounting department who would tell me
6 how that money is maintained?

7 A Yes, sir. They've got all of the
8 specific information you need on that.

9 Q Of the \$23, do you know how much is
10 ultimately expended in servicing the legal
11 benefit plan?

12 A Specifically, no, sir. But we have
13 folks that can tell you that, so...

14 Q But the plan does not run at a
15 deficit, from what you're telling me?

16 A Not in the past few years. There was
17 a time when I could barely make payroll, but we,
18 thank goodness, got past that, so...

19 Q Are your recruiters compensated in any
20 fashion by the number of recruits they bring in
21 to the membership?

22 A They're compensated -- and I'm not
23 sure what the figure is now, but they're given a
24 commission, if you want to call it that, for each
25 member that they bring in. A one-time

1 commission.

2 Q So if they recruit a member, they get
3 paid a commission?

4 A Yes, sir.

5 Q Is that commission based upon the
6 anticipated revenue stream that's going to flow
7 from that member?

8 A We're just trying to increase
9 membership, and having professional recruiters
10 works very well for us, so... It took me a long
11 time to implement that.

12 Q Do you know if insurance agents are
13 paid commissions when they sell policies of
14 insurance?

15 A I'm sure they are, yes, sir.

16 Q You understand that Michael Slager
17 shot Walter Scott on April 4th, 2015; correct?

18 A I know that Michael Slager shot
19 Mr. Scott. I don't remember the precise date,
20 no, sir.

21 Q I'm going to ask you to accept that
22 date as being accurate for our conversation.
23 Okay?

24 A Sure.

25 Q Tell me how you first learned of this

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

MICHAEL SLAGER,

C.A. NO.: 2:15-cv-04536-DCN

Plaintiff,

VS

SOUTHERN STATES POLICE
BENEVOLENT ASSOCIATION, INC.,

Defendant.

VIDEOTAPED

DEPOSITION OF: DALE PREISER

DATE: April 26, 2016

TIME: 10:11 a.m.

LOCATION: Moore Taylor Law Firm, P.A.
1700 Sunset Boulevard
Columbia, SC 29171

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: MICHELE E. BECKER,
Registered Merit Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

Fast Accurate & Friendly

Charleston, SC
(843) 722-8414

Hilton Head, SC
(843) 785-3263

Myrtle Beach, SC
(843) 839-3376

Columbia, SC
(803) 731-5224

Greenville, SC
(864) 784-7030

Charlotte, NC
(704) 573-3919



1 Q. Do you have any wallet cards with you
2 today?

3 A. Yes, I do.

4 Q. All right. Do you have a wallet card
5 from your health insurer?

6 A. Yes.

7 Q. Do you have a wallet card from your
8 auto insurer?

9 A. I do.

10 Q. All right. Are you a member of the
11 PBA?

12 A. No.

13 Q. Okay. The PBA issues wallet cards
14 too, doesn't it?

15 A. They do.

16 Q. Do you know what insurance is in South
17 Carolina?

18 A. No.

19 Q. All right. Do you know if it's a
20 contract whereby one undertakes to indemnify another
21 upon determinable contingencies?

22 A. Okay.

23 Q. Okay? Are there determinable
24 contingencies in policy 00-16?

25 A. Could you define that for me?

1 Q. Yeah. An event, a future event which
2 is defined or determinable.

3 A. Yes.

4 Q. All right. And those future events
5 would be if you're involved in an officer-related
6 shooting, for example.

7 A. Yes.

8 Q. That is a determinable contingency
9 under policy 00-16, is it not?

10 A. Yes.

11 Q. All right. And if that determinable
12 contingency happens, then policy 00-16 says that the
13 PBA is going to indemnify for that through providing
14 a legal defense, correct?

15 A. No. I don't believe that would be a
16 fair assessment. What we would do is we would
17 screen for coverage. They have to be a member at
18 the time of the incident. And then we have to make
19 sure that it arises out of their law enforcement
20 duties, and that within their jurisdiction, and that
21 it meets all the requirements. We try to screen for
22 intentional acts and things that might cause
23 exclusion.

24 Q. All right. So within this policy,
25 which is not insurance, correct?

1 A: Correct.

2 Q: All right. Within this policy we have
3 covered events, correct?

4 A: Yes.

5 Q: We have exclusions?

6 A: Yes.

7 Q: We have determinable contingencies,
8 correct?

9 A: Yes.

10 Q: And we have a promise from the PBA
11 that if the conditions of the policy are met, that
12 coverage will be afforded?

13 A: Yes.

14 Q: All right. And we have 40,000 people
15 who are chipping in \$23.50 a month, more or less,
16 against this common risk, correct?

17 A: What's common risk?

18 Q: The common risk is that any one of
19 them could find themselves in a situation where they
20 need a lawyer which would cost a lot more than
21 \$23.50, correct?

22 A: Yes.

23 Q: All right. And so we're all pooling

24 little money against the risk that we may have a
25 determinable contingency that could cost us a lot of

1 money, correct?

2 A. Could you --

3 Q. We as members of the PBA --

4 A. -- restate that for me?

5 Q. As members of the PBA, we are pooling

6 our small resources, against the contingency that any

7 one of us one day might have an event that requires

8 that we need a lawyer which is going to cost a lot

9 more than \$23.50, correct?

10 A. Yes.

11 Q. And if the conditions of the policy

12 are met, then coverage will be extended, correct?

13 A. Yes.

14 Q. And the coverage in this case is a

15 legal defense, no cap, no limit?

16 A. It is. But with the exclusions.

17 Q. If the coverage applies, it applies

18 with no caps and no limits?

19 A. Yes.

20 Q. All right. What do you think the
21 average cost of the defense is for a murder charge?

22 A. Well, I don't know. I haven't been
23 involved in any, I think, murder cases at this
24 point, but I know we -- well, actually, yes, we have
25 one that's taking place in North Carolina, the

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Donald Stanley and Sean Reiter,)
Individually and as Class Representatives,)
)
Plaintiffs,)

C/A No. 2016-CP-10-4062

vs.)

Southern States Police Benevolent)
Association,)
)
Defendant.)

**SOUTHERN STATES POLICE
BENEVOLENT ASSOCIATION'S
MOTION FOR SUMMARY JUDGMENT**

The Southern States Police Benevolent Association (PBA) moves for summary judgment on the grounds that the Plaintiffs have not been injured by the wrongs alleged in the Complaint. As a result, the lawsuit fails for lack of damages.

A brief summary of the reasons the PBA is entitled to Summary Judgment follows.

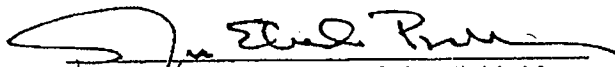
1. The PBA is a voluntary association of police officers offering legal defense of members as one of its benefits.
2. The Plaintiffs argue that the PBA is an unlicensed insurance company.
3. As a result of the PBA's lack of an insurance license, the Plaintiffs argue they and all members of the PBA are entitled to a refund of dues.
4. The Plaintiffs have never been denied a benefit or legal defense by the PBA.
5. The Plaintiffs have been deposed and testified that they have no personal damages other than the dues they have paid.
6. South Carolina does not recognize a claim for repayment of money solely because one party does not have a license to enter the contract. See, Lenz v. Walsh, 362 S.C. 603, 608 S.E. 2d 471 (Ct. App. 2005) (holding a homeowner may not recover amounts paid to a contractor simply because the contractor lacked a license.)
7. In addition, a violation of the South Carolina Insurance Licensing statute does not create a cause of action.

FILED
2017 OCT 23 PM 12:01
JULIE J. AMSTUTZ
CLERK OF COURT
BY

8. The Plaintiffs have both testified that no benefit has been denied to them.
9. As a result, the Plaintiffs have no damages and no standing to bring this lawsuit.

This motion relies upon the depositions, pleadings, and written discovery in this matter. At the appropriate time, these materials will be submitted to the Court and opposing counsel along with a memorandum in support of this motion.

Respectfully submitted,



James Edward Bradley, SC Bar # 66130
Moore Taylor Law Firm, P.A.
1700 Sunset Boulevard (29169)
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160
ward@mttlaw.com

Kent T. Stair, SC Bar # 674025
J. Andrew Yoho, SC Bar # 100803
Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401-3531
(843) 727-0307
Attorneys for Defendant

West Columbia, South Carolina
October 19, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Donald Stanley and Sean Reiter,)
Individually and as Class Representatives,)
vs.)

Southern States Police Benevolent)
Association, Inc.)

Defendant.)

FOR THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2016-CP-10-4062

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR CLASS CERTIFICATION**

FILED
2017 OCT 13 PM 4:06
CLERK OF COURT

TO: DEFENDANT

PLEASE TAKE NOTICE THAT Plaintiffs Donald Stanley and Sean Reiter hereby move that the Court certify this matter as a class action pursuant to Rule 23 of the South Carolina Rules of Civil Procedure. Plaintiffs seek certification of the following class:

All residents of South Carolina who participated in the Defendant's Legal Defense Benefit Plan by paying "member dues" to the Defendant in exchange for benefits of said Plan from August 4, 2013 to the present.

Excluded from the class are Defendant's board members or executive level officers, and persons that timely and properly exclude themselves from the class.

FACTS

Defendant Southern States Police Benevolent Association, Inc. ("PBA") is a corporation organized and existing under the laws of the State of Georgia. It transacts business in the States of Georgia, South Carolina, North Carolina, Virginia, West Virginia, Kansas, Arkansas, Tennessee and Louisiana. Amended Complaint, ¶ 3.

The PBA invites police officers in the States of Georgia, South Carolina, North Carolina, Virginia, West Virginia, Kansas, Arkansas, Tennessee and Louisiana to become "members" of the PBA. Members of the PBA pay monthly "dues" to the PBA in exchange for a "Legal

Defense Benefit Plan" (sometimes referred to as the "Plan"). The Plan promises to provide a legal defense and cover related costs to an officer member who is accused of a crime while performing his or her official duties as police officers. Amended Complaint, ¶ 4.

On average, PBA members pay \$23.50 per month in exchange for their membership, the primary benefit of which is the Legal Defense Benefit Plan. Amended Complaint, ¶ 5. The benefit which the Plan purportedly offers is very attractive to officer members who are named in internal police investigations, criminal inquiries, or are the target of a potential criminal action. A full drawn out defense for these cases in terms of attorneys' fees and costs can greatly exceed the annual compensation of the officer and quickly deplete any savings the officer may have. Amended Complaint, ¶ 6.

The Legal Defense Benefit Plan is actually a policy of insurance which the PBA is not licensed to sell in any of the States in which it transacts business. Amended Complaint, ¶ 8. Alternatively, the Legal Defense Benefit Plan is a prepaid legal services plan which the PBA is not licensed to sell in any of the States in which it transaction business. March 31, 2017 Lybarker Letter, Exhibit No 1.

Plaintiff Stanley is a Lieutenant with the Charleston County Sheriff's Department and is a member in good standing of the PBA and has been such for over 21 years. Amended Complaint, ¶ 9. Plaintiff Reiter was at all times relevant a law enforcement officer with the Charleston County Sherriff's Department and/or the City of North Charleston. Amended Complaint, ¶ 10. Upon information and belief, the PBA currently has approximately 42,000 members spread over nine States (Georgia, South Carolina, North Carolina, Virginia, West Virginia, Kansas, Arkansas, Tennessee and Louisiana), each of whom pays approximately \$23.50 per month to participate in the PBA's Legal Defense Benefit Plan. Amended Complaint, ¶ 13. This amounts

to the collection of approximately \$11,844,000 in premiums every year. The PBA pays out far less than this to the attorneys it retains.

The instant lawsuit claims that the Legal Defense Benefit Plan is a policy of insurance. Because the PBA lacks licensure to sell its policies of insurance, it has sold unauthorized insurance policies to its members who are entitled to a rescission of the Plan and to a refund of "member dues" or premiums paid, together with additional relief as set forth herein. Amended Complaint, ¶ 16.

In selling the Plan, the Defendant never revealed that it lacked proper licensure and authority to sell insurance. To the contrary, the PBA gave every indication that it was authorized to sell the Plan, and that the Plan was the best way possible for each and every member to protect themselves and their families from the potential financial devastation associated with being accused of a crime and being forced to retain the services of a lawyer. Amended Complaint, ¶ 26.

All the evidence as pled in the Amended Complaint plainly shows that the PBA is engaged in the business of offering insurance. The Legal Defense Benefit Plan is governed by a document that the PBA calls "Policy 00-16" (hereinafter the "Policy", Exhibit No. 2. The Policy looks like a standard insurance policy and contains the terms one would find in a standard insurance policy. In pertinent part, the Policy provides that:

- a. "The Legal Defense Benefit will be provided to Southern States PBA members only in those cases where a lawsuit or criminal accusation results from professional acts or omissions which arise out of and in the scope of their duties as a law enforcement officer." **Section 1.A. Coverage and Eligibility.**

- b. "The Benefit shall consist of the payment by Southern States PBA of attorney's fees and directly related Court costs." **Section 1.B. Coverage and Eligibility.**
- c. "The term 'arising out of and in the scope of their duties' as used in this Policy encompasses actions or omissions of a member while in the performance of regularly assigned law enforcement duties for his/her employment agency. The benefit is not designated to cover a member while he/she is off-duty or engaged in off-duty employment." **Section 1.E. Coverage and Eligibility.**
- d. "Coverage under the benefit is intended to apply to cases where a member has taken some type of direct law enforcement action consistent with his/her responsibilities as a law enforcement officer. It is not intended to apply to non-law enforcement actions, including, but not limited to, personnel, employment decisions (hiring, discipline or termination of employees), management decisions dealing with procedural operation or physical facilities of the law enforcement agency (validity of agency rules, procedural orders or a facilities capacity) or instances where no direct law enforcement action on the part of the member is alleged to have taken place (vicarious liability or liability based on a theory of respondent superior)." **Section 1.G. Coverage and Eligibility.**
- e. "The Association CEO or the Director of Legal Services (DLS) will authorize all requests for legal services under the Benefit if it is determined that the following criteria are met:
 - i. The requesting officer is a current member in good standing of Southern States, PBA,
 - ii. He/she was a member of the Association at the time of the incident,

- iii. He/she remains a member in good standing from the date of incident until conclusion of the adversarial proceedings,
 - iv. The incident was the result of the MEMBER's performance of or pursuit of his/her official duties as a law enforcement officer.
 - v. The request for coverage was submitted by the member and received by the Association within ten (10) calendar days after the member received official notification of the civil suit or criminal accusation and active representation of the member is undertaken by a legal defense benefit attorney.
 - vi. The member contracts the assigned attorney within five (5) days of receiving notification from the association specifying the name and phone number of such attorney.
 - vii. The member cooperates in the preparation and defense of the case by remaining available for contact upon reasonable notice from the association or assigned counsel." **Section 1.B. Benefit Administration.**
- f. "Southern States PBA reserves the right to withhold approval of any benefits and to withdraw approval of any benefits if it is determined at any time that the member has committed an intentional, deliberate and/or illegal act, either civilly or criminally." **Section 1.D. Limitations, Restrictions and Exemptions.**

The PBA also issues a wallet card to its members which summarizes the benefits and provides an explanation with regard to reporting claims and closely resembles a proof of insurance card. Exhibit No. 3.

For all intents and purposes, the Policy acts as an insurance policy. The Policy provides a member with indemnity protection against a known future contingency. The Policy allows a member to protect against the expense of a future contingency that would likely be too expensive to cover without the benefit of the Plan. The Policy includes exclusions from coverage. The membership "dues" are actually premiums. Amended Complaint, ¶¶ 32-37.

The PBA engages in an elaborate scheme to evade the regulatory oversight of the various insurance commissions from the States in which it transacts business by referring to its insurance policy as a "benefit plan" and by referring to the premiums paid by its insureds as "member dues." Amended Complaint, ¶ 38. The PBA has never asked for nor received an opinion letter from any of the insurance commissions from the various States in which it sells insurance.

Every State in which the PBA markets its coverage requires an insurer to be authorized and registered by the State, most typically by the state's Department of Insurance. Ga. Code Ann. §§ 33-3-2, et seq.; Ga. Code Ann. §§ 33-23-4, et seq.; S.C. Code Ann. §§ 38-5-10, et seq., 38-25-10, et seq., 38-43-20, et seq.; N.C.G.S.A. §§ 58-3-5, et seq., 58-3-85, et seq., 58-33-26, et seq.; Va. Code Ann. §§ 38.2-1024, et seq., 38.2-1802, et seq.; W.V. Code Ann. §§ 33-3-1, et seq., 33-12-3; Kan. Stat. Ann. §§ 40-214, et seq., 40-2702, et seq., 40-244, et seq.; A.C.A. §§ 23-63-201, et seq., 23-64-201, et seq. (Arkansas); T.C.A. §§ 56-2-102, et seq., 56-6-103, et seq. (Tennessee); La. Stat. Ann. §§ 22:12, et seq., 22:1543, et seq.; Ala. Code §§ 27-1-5, et seq., 27-3-1, et seq., 27-3-27, et seq., 27-2-1, et seq., 27-3-27, et seq.

The PBA is neither licensed nor authorized to act as an insurer or to solicit, sell, negotiate or issue policies of insurance in any of these States. Nevertheless, the PBA, both directly and by and through its agents and recruiters, acted as an insurer and sold policies of insurance to putative class members in each of these States. Amended Complaint, ¶¶ 41-80.

After the filing of this lawsuit, the PBA wrote to the South Carolina Department of Consumer Affairs seeking an opinion as to whether or not the PBA was a Prepaid Legal Services Company subject to regulation under S.C. Code § 37-16-10, *et seq.* November 7, 2016 Hamm Letter, Exhibit No. 4. The Department of Consumer Affairs concluded that PBA was a Prepaid Legal Services Company. March 31, 2017 Lybarker Letter, Exhibit No 1. Only after the filing of this lawsuit and after receiving an opinion from the Department of Consumer Affairs, the PBA finally became registered as a Prepaid Legal Services Company in June of 2017. Prior to that date, the PBA did not operate in compliance with the South Carolina statutes governing Prepaid Legal Services Companies.

In addition to not registering, the PBA did not pay the required bond, S.C. Code § 37-16-20, did not properly appoint its sales representatives, S.C. Code § 37-16-30, did not obtain approval for its contracts offering prepaid legal services, S.C. Code § 37-16-50, and did not offer members the right to select the attorney of his or her choice, S.C. Code § 37-16-50. Further, the PBA's repeated and systemic use of false, misleading, unfair and deceptive acts and practices is a violation of the Consumer Protection Code. S.C. Code § 37-16-80.

COMPLAINT

Plaintiffs have alleged causes of action against the PBA for breach of contract, negligence, breach of fiduciary duty, unjust enrichment, fraud in the inducement, negligent misrepresentation, and injunctive relief. In addition to alleging that the PBA has operated as an insurer without appropriate authority or oversight, Plaintiff has also alleged that PBA has violated other duties, including:

- a. the duty to maintain sufficient reserves, capital, and surplus;

- b. the duty to maintain adequate records and be subject to supervision and regular audits by appropriate state authorities;
- c. the duty to prepare and submit reports to state authorities to demonstrate adherence to reserve, capital, and surplus requirements;
- d. the duty to handle and account for premiums paid by insureds;
- e. the duty to renew policies and not cancel policies in bad faith;
- f. the duty to conduct its business in a fair and honest manner;
- g. the duty to act in good faith in the solicitation, sell, negotiation and issuance of policies;
- h. the duty to act in good faith and in the best interests of the class members in the handling and adjustment of claims made against those policies; and
- i. the duty to comply with other laws, statutes and regulations enacted for the benefit of insureds as discovery may show. Amended Complaint, ¶ 81.

LEGAL ARGUMENT

Rule 23(a) of the South Carolina Rules of Civil Procedure governs certification of classes:

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if the court finds

(1) the class is so numerous that joinder of all members is impracticable,

(2) there are questions of law or fact common to the class,

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class,

(4) the representative parties will fairly and adequately protect the interests of the class, and

(5) in cases in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds one hundred dollars for each member of the class.

Rule 23(a), SCRCP.

"The class-action device saves the resources of both the courts and the parties by permitting an issue potentially affecting every class member to be litigated in an economical fashion under Rule 23." Grazia v. SC State Plastering, LLC, 390 S.C. 562, 703 S.E.2d 197, 204 (2010) (quoting Califano v. Yamasaki, 442 U.S. 682, 701, 99 S.Ct. 2545, 2557, 61 L.Ed.2d 176 (1979)). The South Carolina Supreme Court has expressed the viewpoint that class actions are favored in this state:

Our state class action rule differs significantly from its federal counterpart. The drafters of Rule 23, South Carolina Rules of Civil Procedure (SCRCP) intentionally omitted from our state rule the additional requirements found in Federal Rule 23(B), Federal Rules of Civil Procedure (FRCP). By omitting the additional requirements, Rule 23, SCRCP, endorses a more expansive view of class action availability than its federal counterpart.

Littlefield v. South Carolina Forestry Comm'n, 337 S.C. 348, 523 S.E.2d 781, 784 (1999).

Moreover, the South Carolina Supreme Court has affirmed the certification of a class of insurance policyholders to protect the interests of those policyholders in the insurance reserves held by a fraternal benefit association, much like Defendant in this case. Ex parte Rowley, 200 S.C. 174, 20 S.E.2d 383, 387-88 (1942) ("The interests and claims of the policyholders *388 sought to be protected and preserved in this action are principally against the reserve funds of the association and it seems to us that all the policyholders form a most appropriate class for application of the statute.").

Upon a motion for class certification, it will be incumbent on the circuit court to determine whether or not the action meets each of the five prerequisites proponents of class certification are required to prove. Grazia, 703 S.E.2d at 204. It is within a trial court's discretion whether a class should be certified. Tilley v. Pacesetter Corp., 333 S.C. 33, 508 S.E.2d 16, 21 (1998). Additionally, "[a] court may not look to the merits when determining

whether to certify a class.” Id.; King v. Am. Gen. Fin., Inc., 386 S.C. 82, 687 S.E.2d 321, 324 (2009).

The initial class determination should usually be made on the well-pled allegations of the Complaint. 2 H. Newberg, Newberg on Class Actions, §7.20 (3d Ed. 1992). Allegations of class facts usually constitute a prima facie showing of entitlement to maintain a class action. Id. Once a plaintiff has demonstrated a preliminary showing that the legal requirements of Rule 23 have been met, the burden of proof is upon the defendant to demonstrate otherwise. Newberg, §7.22 at 7.74-75. Provided that a plaintiff’s contentions regarding the class issues are based upon a representation foundation, the Court should not deny certification because of a defendant’s challenge. If the facts as alleged by the plaintiff do not materialize, the Court has the ability to later decertify the class. Id.

I. **THE ACTION SATISFIES THE NUMEROSITY REQUIREMENT.**

Under Rule 23(a)(1) the proposed class must be so numerous that joinder of all individual members as parties would be impractical. The proposed class herein clearly satisfies this requirement. Defendant has over 42,000 members. It is estimated that there are at least several thousand members who are residents of South Carolina. This plainly satisfies the numerosity requirement. Clearly, the joinder of over 1,000 members would be impractical.

The minimum number required for class certification has been held to be between 20 and 40. See Swanson v. American Consumer Industries, 415 F.2d 1326, 1333 (7th Cir. 1969) (40 class members sufficient); Bates v. Tenco Services, Inc., 132 F. R. D. 160, 162 (D.S.C. 190) (180 Plaintiffs in one subdivision satisfied numerosity requirement); Damerson v. Sinai Hosp. of Baltimore, 595 F. Supp. 1401, 1408 (D.Md. 1984) (a class with as few as 25 to 30 members raises a presumption that joinder would be impractical). The Court has wide discretion on the

issue of numerosity, nonetheless, a number in excess of 1,000 clearly satisfies the requirement of numerosity.

II. THERE ARE QUESTIONS OF LAW AND FACT COMMON TO THE CLASS.

Rule 23(a) next requires that a class action include sufficient common questions of law and fact between the class members.

It is important to note that the subsection does not demand that all questions of law and fact be common, only that there be common issues among the class. In fact, a single common issue will suffice if it is important enough. It also follows that the mere existence of individual issues does not defeat class action status.

McGann v. Mungo, 287 S.C. 561, 340 S.E.2d 154, 158 (Ct.App. 1986) (quoting H. Lightsey & J. Flanagan, South Carolina Civil Procedure at 19 (2d ed. 1985)); Central Wesleyan College v. W.R. Grace & Co., 143 F.R.D. 628 (D.S.C. 1992), aff'd, 6 F.3d 177 (4th Cir. 1993).

In the current matter, there are several common issues of law and/or fact that pervade throughout the entire Plaintiff's class. All class members are similarly situated to the Plaintiff in that the proposed class members are all members of Defendant and have paid Defendant membership dues to receive benefits under the Legal Defense Benefit Plan. Common issues include:

- 1) whether Defendant is acting as an unregistered and unlicensed insurance company in South Carolina;
- 2) whether Defendant is acting as an unregistered and unlicensed prepaid legal benefit in South Carolina;
- 3) whether proposed class Plaintiffs have the right to bring a cause of action in this matter;
- 4) whether Defendant, as an unauthorized insurer, has the right to file an answer in this matter pursuant to S.C. Code § 38-25-550(a);

- 5) whether Defendant has maintained sufficient reserves;
- 6) whether Plaintiffs are entitled to injunctive or declaratory relief;
- 7) whether Defendant has created and followed appropriate standards and acted in

good faith in:

- a. the solicitation, sale, negotiation and issuance of policies;
- b. the amount it has charged its members;
- c. handling and accounting for premiums Defendant has collected;
- d. renewing or cancelling its members policies;
- e. handling and adjusting its members' claims;
- f. denying its members' claims;
- g. appointing its members' attorneys under the Legal Defense Benefit Plan

from a limited panel;

h. providing guidance to members' attorneys that have been appointed under the Legal Defense Benefit Plan;

i. its communications with members' attorneys, in particular maintaining the attorney-client privilege;

j. complied with all laws, statutes and regulations enacted for the benefit of insureds in South Carolina; and

k. otherwise conducting its business in a fair and honest manner.

III. PLAINTIFFS' CLAIMS ARE TYPICAL OF THE CLAIMS OF THE CLASS.

Rule 23(a)(3) requires that the claims of the class representation by "typical of the claims of the class." SCRCF, 23(a)(3). For the purposes of Rule 23(a), the representative party's claims are "typical" if they arise from the same conduct that gives rise to the claims of the class

members and if the claims of the claimants are based on the same legal theories. Central Wesleyan College v. W.R. Grace & Co., 243 F.R.D. 628, 637 (D.S.C. 1992); see also 1 H. Newberg, Newberg on Class Actions §3.13 at 167 (2d Ed. 1985).

The test focuses on similarity of legal and remedial theories of claims of named and unnamed plaintiffs. Bates v. Tenco Services, Inc., 132 F.R.D. 160, amended, 132 F.R.D. 165 (D.S.C. 1990). To some extent, the analysis of the typicality requirement coincides with the court's determination of the commonality issue. The claim of a plaintiff is to be considered "typical" of the claims of the class members if the claim arises from the same event, facts or conduct which has given rise to the claims on behalf of the other class members.

As stated by Judge Sol Blatt Jr.:

The typicality requirement does not require that the representatives have identical claims which other members of the class might present. The question of typicality focuses on the similarity of the legal and remedial theories of claims of the named and unnamed Plaintiffs. The Plaintiffs' claims for damages stem from effects of the defendants' activities on the Berman's property and their health, now, in the past and in the future. Whether each potential member of the class has suffered the same degree of harm, or each and every type of harm, does not preclude a finding of typicality. The named Plaintiffs have presented evidence indicating that they have suffered a wide variety of harm which persons similarly situated may have also suffered.

Bates v. Tenco Services, Inc., 132 F.R.D. 260, 163 (D.S.C. 1990).

Plaintiffs' claims are not only similar to, but also typical of the claims of all class members. Each member is a dues paying member of Defendant. Each member was covered by Defendant's Legal Defense Benefit Plan. Each member has an interest in the resolution of the common questions of fact and law set forth above. Since there is no significant difference between the claims of the Plaintiffs and the other class members, typicality is satisfied.

IV. PLAINTIFFS WILL FAIRLY AND ADEQUATELY PROTECT THE INTERESTS OF THE CLASS.

Rule 23(a) also requires that the Plaintiff be able to fairly and adequately represent and protect the interests of all class members in proceeding with prosecution of the matter as a class action. In determining whether Plaintiff is an adequate class representative, the court should look at two criteria – 1) the representative must have common interests with the unnamed members of the class; and 2) it must appear that the representative will vigorously prosecute the interests of the class through qualified counsel. Runion v. U.S. Shelter, 98 F.R.D. 313 (D.S.C. 1983), cited with approval in Waller v. Seabrook Island Property Owners Ass'n, 300 S.C. 465, 388 S.E.2d 799 (1990). “The adequacy of plaintiffs’ counsel, like that of the individual plaintiffs, is presumed in the absence of specific proof to the contrary.” S.C. Nat. Bank v. Stone, 139 F.R.D. 325, 330–31 (D.S.C. 1991). Furthermore, Courts generally hold that the employment of competent counsel assures vigorous prosecution. Id. at 331.

Plaintiffs’ claims are identical to the claims of the other proposed class members. Plaintiffs have no interests that are antagonistic to the class. There is no indication or evidence that the Plaintiffs or their attorneys would not be adequate representatives of the class. Plaintiffs have, therefore, satisfied the element adequacy.

V. THE AMOUNT IN CONTROVERSY REQUIREMENT HAS BEEN MET.

Rule 23(a)(5), SCRPC provides that: “in cases in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds one hundred dollars for each member of the class.” The proposed class seeks recovery for all dues paid by class members to Defendant. Class member dues are \$23.50 per month. Thus, anyone who has been a member of Defendant for five months or more has lost more than \$100. There is no evidence that any member remained a member for less than five months.

In addition, pursuant to the Seventh Cause of Action in Plaintiffs' Amended Complaint, Plaintiffs are seeking injunctive and declaratory relief, namely a declaration that the Defendant is operating illegally and in violation of insurance laws without any regulatory oversight at all. Consequently, Plaintiffs are seeking an injunction barring Defendant from continuing to operate as an unlicensed insurer.

In short, Plaintiffs have met the amount in controversy requirement.

CONCLUSION

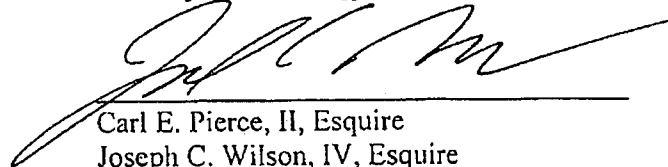
Based on the foregoing, Plaintiffs would respectfully request that the Court certify this matter as a class action and certify the following class of plaintiffs:

All residents of South Carolina who participated in the Defendant's Legal Defense Benefit Plan by paying "member dues" to the Defendant in exchange for benefits of said Plan from August 4, 2013 to the present.

Respectfully submitted,

11/13, 2017

Attorneys for Plaintiffs



Carl E. Pierce, II, Esquire
Joseph C. Wilson, IV, Esquire
Pierce, Hems, Sloan & Wilson, LLC
The Blake House
321 East Bay Street (29401)
Post Office Box 22437
Charleston, South Carolina 29413
(843) 725-7705
carlpierce@phswlaw.com
joewilson@phswlaw.com

Ronald L. Richter, Jr., Esquire
Scott M. Mongillo, Esquire
Peoples Building
18 Broad Street, Mezzanine
Charleston, South Carolina 29401

(843) 573-9900
ronnie@blandrichter.com
scott@blandrichter.com

Eric S. Bland, Esquire
1500 Calhoun Street
Post Office Box 72
Columbia, South Carolina 29202
(803) 256-9664
ericbland@blandrichter.com

Andrew J. Savage, III, Esquire
SAVAGE LAW FIRM
15 Prioleau Street
Charleston, South Carolina 29401
(843) 720-7470
andy@savlaw.com

CERTIFICATE OF SERVICE

16-CP-10-40002

I certify that on this date a copy of the foregoing was served on each party or counsel of record by email and mailing in the manner prescribed by the applicable Rule of Civil Procedure.

This 13 day of November, 2017

Rebecca D. Forrester

FILED
2017 NOV 13 PM 4:07
JULIE J. ALDRIDGE
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Donald Stanley and Sean Reiter,
Individually and as Class
Representatives,

vs.

Southern States Police Benevolent
Association, Inc.

Defendant.

) FOR THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CIVIL ACTION NO: 2016-CP-10-4062

) **PLAINTIFFS' SUPPLEMENT TO**
) **MOTION FOR CLASS CERTIFICATION**

FILED
JUL 12 PM 4:13
CLERK OF COURT
J. ARISTARONG

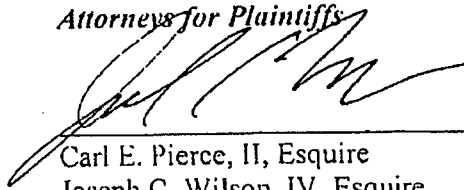
TO: DEFENDANT

Please find attached hereto Exhibits 1-4, which were inadvertently left out of the
Plaintiffs' Notice of Motion and Motion for Class Certification.

Respectfully submitted,

7/12, 2018

Attorneys for Plaintiffs



Carl E. Pierce, II, Esquire
Joseph C. Wilson, IV, Esquire
Pierce, Sloan, Wilson, Kennedy & Early, LLC
The Blake House
321 East Bay Street (29401)
Post Office Box 22437
Charleston, South Carolina 29413
(843) 725-7705
carlpierce@piercesloan.com
joewilson@piercesloan.com

Ronald L. Richter, Jr., Esquire
Scott M. Mongillo, Esquire
Peoples Building
18 Broad Street, Mezzanine
Charleston, South Carolina 29401

(843) 573-9900
ronnie@blandrichter.com
scott@blandrichter.com

Eric S. Bland, Esquire
1500 Calhoun Street
Post Office Box 72
Columbia, South Carolina 29202
(803) 256-9664
ericbland@blandrichter.com

Andrew J. Savage, III, Esquire
SAVAGE LAW FIRM
15 Prioleau Street
Charleston, South Carolina 29401
(843) 720-7470
andy@savlaw.com

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by email and mailing in the manner prescribed by the applicable Rule of Civil Procedure.

This 12 day of July, 2018

Kelly D. Forrester



The State of South Carolina Department of Consumer Affairs

2221 DEVINE STREET, STE 200
PO BOX 5757
COLUMBIA, SC 29250-5757

Carri Grube Lybarker
Administrator/
Consumer Advocate

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March 31, 2017

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Lexington
W. Fred Pennington, Jr.
Taylors

Via US and Electronic Mail

Steve W. Hanun, Esq.
Richardson Plowden
PO Drawer 7788
Columbia, SC 29202

RE: Opinion Request- Southern States Police Benevolent Association

Dear Steve:

You have requested an opinion regarding the applicability of the South Carolina Consumer Protection Code ("the Code"), Title 37, South Carolina Code of Laws¹ § 37-16-10 *et seq.* to the membership benefits offered and provided by the Southern States Police Benevolent Association ("SSPBA"). We are in receipt of your letters dated November 7, 2016, and December 2, 2016, as well as the additional information provided February 3, 2017, regarding the SSPBA, its membership requirements and member benefits, including the legal assistance component. Based on this information, and other information gathered during the course of our review, it is the Department's opinion that the legal benefit offered by the SSPBA constitutes prepaid legal services and, thus, is subject to the Code.

Persons offering and/or providing prepaid legal services must comply with the Code, specifically § 37-16-10 *et seq.*² The law prohibits any person or entity from commencing business in South Carolina without first registering the company and company representatives with the Department. *See* §§ 37-16-10(2), -20, -30, and -40. A prepaid legal company also must obtain a surety bond, must submit and receive approval of prepaid legal services contracts it seeks to utilize in South Carolina and is prohibited from engaging in false, misleading or deceptive acts or practices. *See* §§ 37-16-20, -50, and -80.

A "prepaid legal company" is defined as "a person or entity offering prepaid legal services to the general public or a segment of the general public." § 37-16-10(2). "Prepaid legal services" are "legal services or reimbursement for legal services provided by an individual

¹ Further reference to the South Carolina Code of Laws will be by Code section only.

² Effective July 1, 2000, prepaid legal services were no longer statutorily defined as insurance under South Carolina law, and the Department was granted the authority to regulate prepaid legal services. *See* 2000 S.C. Acts 328; South Carolina Department of Insurance Bulletin 2000-05, Pre-Paid Legal Services, June 8, 2000.

ADMINISTRATOR
Tel.: 803-734-4233
Fax: 803-734-4060

PUBLIC
INFORMATION
Tel.: 803-734-4298
Fax: 803-734-4060

CONSUMER
ADVOCACY
Tel.: 803-734-4234
Fax: 803-734-4060

ENFORCEMENT
EXHIBIT

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COMPLAINTS
Tel.: 803-734-4200
Fax: 803-734-4286

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Tel.: 803-734-4200
Fax: 803-734-4229

PROCUREMENT &
ACCOUNTING
Tel.: 803-734-0366
Fax: 803-734-4289

WEBSITE: WWW.CONSUMER.SC.GOV
E-MAIL: SCDOCA@SCCONSUMER.GOV

Toll Free in SC: 800-822-1594
TDD/TTY: 800-735-2905

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THE STATE OF SOUTH CAROLINA

Department of Consumer Affairs

SSPBA- Hamm

March 31, 2017

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licensed or admitted to practice law in the jurisdiction in which the services are to be rendered, and which are provided in return for a predetermined, specified, periodic fee." § 37-16-10(3).

SSPBA is a non-profit membership association for law enforcement officers. For a fee of approximately twenty-three dollars per month³, the member has access to a legal assistance benefit, among other services. Members can utilize the legal plan for incidents arising out of the performance of their law enforcement duties, including shootings, civil suits and employment law issues. When a member contacts SSPBA for legal assistance, the company assigns an appropriately licensed attorney to the individual for the provision of legal services. Per the description above, it is clear the services offered and provided by SSPBA constitute prepaid legal services. A member pays a predetermined, specified, periodic fee for the ability to contact the company and receive legal assistance. The SSPBA, as the offeror and provider of the prepaid legal service to law enforcement members, is a prepaid legal company.

In your letter dated November 7, 2016, you state SSPBA does not offer prepaid legal services to "the general public or a segment of the general public." We disagree. "General public" is not defined in the Code; however, when seeking to ascertain the meaning of an undefined statutory term, dictionaries may be utilized. Georgia Carolina Bail Bonds, Inc. v. City of Aiken and Goddard, 354 S.C. 18, 24, 579 S.E.2d 334, 337 (Ct. App. 2003). The Merriam-Webster Dictionary defines the "general public" as "all people of an area, country, etc." *The Merriam-Webster Dictionary*. <https://www.merriamwebster.com/dictionary/the%20general%20public>. SSPBA is a professional association of more than 44,000 law enforcement officers, a group the Department determines is a segment of the general public.

You further argue the services contracted for are not for personal, family or household purposes. Chapter 16 is void of any reference to this phrase. Neither the definition of prepaid legal services nor prepaid legal company conditions the application of the law on whether the services are being utilized for "personal, family or household purposes." Rather, as stated above, the legislature chose to focus on the intended buyer of prepaid legal services using the broad language of "general public or segment of the general public" to trigger applicability. The Department believes, however, in the case of SSPBA, the services provided are for the personal use and benefit of the law enforcement member. The services are not being provided to an entity or business, but to an individual as a result of actions taken by that individual. SSPBA promotional materials make the personal benefit/ use clear when stating services are provided to protect the "individual interests" of the member when named as a defendant in a civil or criminal action.

Therefore, the Department has determined SSPBA is a prepaid legal company offering and providing prepaid legal services in South Carolina. As such, the company shall comply with all applicable provisions of the Code. SSPBA can make an application for registration through the DCA Licensure Gateway at www.consumer.sc.gov or download forms from the website.

³ According to SSPBA promotional materials, the fee may be less or more based upon the payment options chosen by the member.



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SSPBA- Hamm

March 31, 2017

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Please also submit the following information to the Department on or before April 28, 2017, to assist in determining an appropriate settlement for violations of the prepaid legal law:

- Number of persons involved in direct selling or solicitation of persons on behalf of SSPBA from July 1, 2000 to present, including dates of employment in this capacity.
- Contracts utilized by SSPBA with members for the purposes of offering prepaid legal services from July 1, 2000 to present.

Please do not hesitate to contact me directly at 803-734-4236 should you have any questions or need any further information.

Best Regards,

Kelly H. Rainsford, Esq.
Deputy of Regulatory Enforcement

F

SOUTHERN STATES POLICE BENEVOLENT ASSOCIATION, INC.

POLICY NO. 00-18

LEGAL DEFENSE BENEFIT

BACKGROUND:

In order to provide legal defense benefits to the members of the Southern States P.B.A., the Board of Directors hereby adopts the following policy:

POLICY:

SECTION 1. COVERAGE AND ELIGIBILITY

- A. The Legal Defense Benefit will be provided to Southern States P.B.A. members only in those cases where a lawsuit or criminal accusation results from professional acts or omissions which arise out of and in the scope of their duties as a law enforcement officer. Representation will also be available at shooting scenes for incidents that resulted in personal injury, and at the scene of other incidents resulting in serious personal injuries caused by a member, arising out of that member's performance of or pursuit of his/her official duties. Where the attorney is made available will be determined by factors including, but not limited to, medical condition of the member, timeliness of the request for service and immediacy of the investigation.
- B. The Benefit shall consist of the payment by Southern States P.B.A. of attorney's fees and directly related Court costs.
- C. Members are entitled to legal defense and costs within the coverage provided regardless of the number of litigations involving a member during each year.
- D. Coverage is limited to actions stemming from incidents which occurred after May 1, 1984. Members must have been a Southern States P.B.A. member in good standing prior to the incident, and maintain membership in good standing status from time of incident, as well as throughout the litigation. If a member has joined Southern States P.B.A. from a similar organization subsequent to an incident which results in litigation, during the time of an organizational campaign where the P.B.A. was competing for collective bargaining certification rights held by another association, Southern States P.B.A. will pay the same benefits for legal defense as would have been provided by the Association to which he/she was a member.



SSPBA/Discovery Docs000071

- E. ~~The term "arising out of and in the scope of their duties"~~ as used in this Policy encompasses actions or omissions of a member while in the performance of regularly assigned law enforcement duties for his/her employing agency. The benefit is not designated to cover a member while he/she is off-duty or engaged in off-duty employment, unless the circumstances are such that it is apparent the member was justified in placing himself/herself on duty acting in his/her police capacity in order to effect an arrest and to protect persons or property from harm. In instances of off-duty employment, coverage will be provided only where the member's employing agency and secondary employer decline coverage of that member. By definition "scope of duties" involves taking actions in those geographic areas or situations where the member has law enforcement authority.
- F. In order for a member to be eligible for legal defense, the member must be in good standing and up to date in dues payments, and must remain in good standing during the litigation. If the member fails to remain in good standing, Southern States P.B.A. reserves the right to terminate its support.
- G. Coverage under the benefit is intended to apply to cases where a member has taken some type of direct law enforcement action consistent with his/her responsibilities as a law enforcement officer. It is not intended to apply to non-law enforcement actions including, but not limited to, personnel, employment decisions (hiring, discipline or termination of employees), management decisions dealing with procedural operation or physical facilities of the law enforcement agency (validity of agency rules, procedural orders or a facility's capacity) or instances when no direct law enforcement action on the part of the member is alleged to have taken place (vicarious liability or liability based on theory of respondent superior).
- H. A member must request P.B.A. representation at the time the member receives official notice of the civil suit or criminal indictment and active representation of the member is undertaken. If counsel other than P.B.A.'s is retained by the member either at the onset of the case or at any future time, legal defense benefit coverage may, at the sole discretion of P.B.A., be denied or discontinued.

SECTION 2. BENEFIT ADMINISTRATION

- A. The Association CEO or the Director of Legal Services (DLS) will authorize all requests for legal services under the Benefit if it is determined that the following criteria are met:

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1. the requesting officer is a current member in good standing of Southern States P.B.A.,
 2. he/she was a member of the Association at the time of the incident,
 3. he/she remains member in good standing from date of incident until conclusion of adversarial proceedings,
 4. the incident was the result of the MEMBER'S performance of or pursuit of his/her official duties as a law enforcement officer,
 5. the request for coverage was submitted by a member and received by the Association within ten (10) calendar days after the member received official notification of the civil suit or criminal accusation and active representation of the member is undertaken by a legal defense benefit attorney,
 6. the member contacts the assigned attorney within five (5) days of receiving notification from the Association specifying the name and phone number of such attorney, and
 7. the member cooperates in the preparation and defense of the case by remaining available for contact upon reasonable notice from the Association or assigned counsel.
- B. In instances where a timely request for representation is provided for in Section 2(A)5 has not been made, but the member is otherwise eligible for coverage, the member shall be responsible for all legal fees and costs incurred prior to the date the coverage is approved by the Association CEO.
- C. The Association CEO or the Director of Legal Services shall review all cases on a continuing basis to ensure proper representation is being provided to the member and that the monthly fees, costs and expenditures are being incurred within the coverage and limitations set forth by this policy.
- D. If the Director of Legal Services determines that the criteria listed above are not met, the Director of Legal Services may reject the request, subject to review by the Association CEO.

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- E. The request for representation shall include the name of the member and the member's Social Security number; a summary of the allegations; and the date of the incident. Upon receipt and review, approval or disapproval of coverage will be provided to the member. At that time, if approval is granted, the Association CEO or his/her designee shall assign a Panel Attorney to handle the case.
- F. In cases involving emergency situations such as shootings, vehicular accidents involving serious injury inflicted by a member, or other instances requiring emergency response by an attorney, the division or chapter president may authorize the use of a Panel Attorney for the emergency situation. As soon as possible, the Association CEO or the Director of Legal Services for Southern States P.B.A. is to be advised of the incident telephonically. A written request and/or report is to follow. The assignment of an attorney to cover an emergency problem will not commit the Southern States P.B.A. Legal Defense Benefit to coverage of future legal fees and costs. An attorney may not proceed beyond the preliminary stages of an emergency situation without additional written approval from the Association CEO or the Director of Legal Services.

SECTION 3. LEGAL DEFENSE BENEFIT PANEL OF ATTORNEYS AND AUTHORIZED FEES

- A. Attorneys appointed to the Legal Defense Benefit Panel of Attorneys shall be in good standing with the State Bar Association in which they intend to represent members and be willing to represent members pursuant to the fee arrangement as established by the Association CEO.
- B. Attorney's fees will be paid on the basis of uniform hourly rates established by the Association CEO. Deviations from this rate may be approved by the Association CEO or the Director of Legal Services.
- C. The Benefit shall also consist of the payment of Appellate fees when authorized by the Association CEO. Appellate fees shall be established in the same method as attorney fees in (B) above.
- D. When an attorney accepts representation for a member, he or she may seek compensation for fees and costs from the Southern States P.B.A. Legal Defense Benefit if:

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1. The attorney receives written authorization for such representation from the Association CEO or the Director of Legal Services.
2. The attorney consents to the procedure, restrictions and limitations as set forth herein.
3. No later than the 10th of each month, the attorney shall file with the Association CEO or the Director of Legal Services of Southern States P.B.A. a detailed monthly status report of the case he/she is handling, together with an itemized statement of fees and costs. Costs will be paid pursuant to a schedule established by the Association CEO and/or the Director of Legal Services.
4. In civil cases wherein the employer is a party defendant, the attorney shall concentrate his/her efforts to protect the member against personal liability, unless the Association CEO or the Director of Legal Services authorizes otherwise.
5. Interlocutory appeals or writs of certiorari may be filed with written permission from the Association Director of Legal Services, after consultation with the CEO of Southern States P.B.A. All appeals from final orders, judgment and verdicts must also have prior written approval.
6. Upon completion of a case which has been concluded in favor of member, the attorney shall immediately file a motion for costs (and attorney's fees, if applicable). Southern States P.B.A. shall receive the benefit of an order granting recovery of attorney fees and assessed costs.

SECTION 4. LIMITATIONS, RESTRICTIONS AND EXEMPTIONS

- A. A member will be entitled to an attorney under the Legal Defense Benefit in civil actions when the member is a co-defendant in his/her individual capacity with his/her employer and when punitive damages are sought against the member. (The litigation preparation shall be confined to the issue of punitive damages). The Association CEO or the Director of Legal Services reserve the right to review the costs and expenditures each month to determine if they have been incurred within the coverage set forth.

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- B. The Benefit will not provide legal services in civil matters wherein punitive damages are not sought unless the member is sued individually and the employer refuses representation; or unless the employer is going to settle the claim and the employer has admitted wrongdoing on behalf of the member without the member's consent.
- C. The Director of Legal Services may direct that a case assigned to a legal defense attorney be monitored by the attorney in the following cases: (a) cases in which the member is being actively represented by the employer; (b) civil cases in which the member is being actively represented by the employer and the member is satisfied with representation being provided, and (c) civil cases in which the member is only a nominal party and the case is designed to test the legality of an employer's practice, policy or rule enforced by the member.

When a case is in monitoring status, the legal defense attorney will not actively participate in litigation of the case but, instead, will consult with the member and review appropriate court documents to ensure the member's interests continue to be adequately protected. Should the legal defense attorney determine active representation is warranted, or should the member request active participation in the case, the Director of Legal Services will be informed of the proposed change in representation and the reasons for the change. If after review of the information provided, the Director of Legal Services agrees that such active participation is warranted, the legal defense attorney shall actively represent the member in the case as approved by the Association CEO or the Director of Legal Services.

- D. Southern States P.B.A. reserves the right to withhold approval of any benefits and to withdraw approval of any benefits if it is determined at any time that the member has committed an intentional, deliberate and/or illegal act, either civilly or criminally.
- E. Southern States P.B.A. reserves the sole right to settle a claim against a member based upon the recommendation of legal counsel and a determination by the Association CEO that such a course of action is in the best interest of Southern States P.B.A. Where such a determination is made, the member shall be afforded the option of accepting the settlement or obtaining private legal counsel, at his own expense, to continue the case. Should the member elect to continue litigation, all obligations of Southern States P.B.A. under the Legal Defense Benefit shall cease.

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- F. The Benefit will not pay for the cost of any appeal, interlocutory or final, civil or criminal, unless prior approval is first obtained from the Association CEO or the Director of Legal Services.
- G. The attorney for a member may seek permission from the Association CEO or the Director of Legal Services to allow the attorney to actively litigate a civil case involving a member when the employer has indicated a position that is adverse to the member and/or the representation afforded by the employer is detrimental to the member. If the Association CEO or the Director of Legal Services grants approval in that instance, the Legal Defense Benefit will cover those legal fees and costs. Permission must first be obtained. Approval under this paragraph may be made by the Director of Legal Services only in the absence of the CEO, is made to temporarily protect the member, and is to be reviewed by the CEO upon his/her return.
- H. A member who is being represented by the Association in any action, may not take any steps to amend the allegations and/or defenses to that action without the prior approval of the assigned legal defense attorney, if any, and the Director of Legal Services. Taking such an action will automatically release the Association from any requirements for coverage, if any, and give the Association the option to withdraw its representation from the action and to receive indemnification from the member for services provided up to the time the Association became aware of unapproved amendment.
- I. The Association will not provide legal defense benefit coverage as described in this policy to any member accused of criminal involvement where the member either admits such involvement or where, in the opinion of the Association CEO, there exists sufficient evidence of such involvement that providing such coverage could bring discredit to the Association and/or the law enforcement profession.
- J. All decisions of the Director of Legal Services are subject to review by the Association CEO.

SECTION 5. CESSATION OF LEGAL DEFENSE BENEFIT PLAN.

- A. In the event the Association Board of Directors shall determine that the Legal Defense Benefit Plan is no longer feasible for whatever reason, Southern States P.B. A. shall promptly notify each member of the Association by U.S. mail, first class, to the member's address, as listed in the Association's membership list.

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Legal Defense Benefit
Page Eight

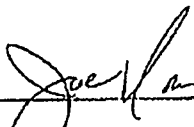
- B. Thirty (30) days after the notice is mailed, the P.B.A.'s obligation under this plan shall cease, except in those incidents where representation of a member had already been undertaken. Where representation had been undertaken prior to the end of the thirty (30) day period, the provisions of this Plan shall continue to apply.

SECTION 6. DEFINITIONS

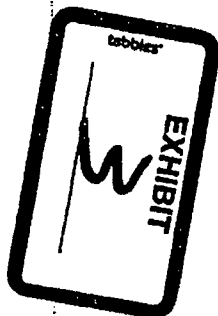
- A. As used in this Policy the term "Director of Legal Services" is defined as that individual on the Association staff designated by the CEO to be in charge of the Legal Department of the Association, and to assist in the administration of this policy.

ADOPTED:	10 June 2000
EFFECTIVE DATE:	10 June 2000
AMENDED:	24 July 2004
AMENDED:	16 June 2010
CEO EFFECTIVE:	8 June 2012
AMENDED:	4 November 2015

Former SSPBA Policy 90-01

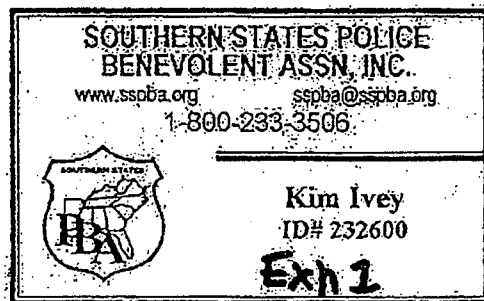


Joe Nala
Secretary-Treasurer



SSPBA/Discovery Docs000119

ROA 000463



MIRANDA

"You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to speak to an attorney and to have an attorney present during any questioning. If you cannot afford an attorney, one will be provided for you at government expense. Knowing and understanding your rights as I have explained them to you, are you willing to answer any questions without an attorney present?"



SOUTHERN STATES
POLICE BENEVOLENT ASSOCIATION

1-800-233-3506

www.sspba.org

The Voice of Law Enforcement Officers

LEGAL DEFENSE PLAN

All active members are eligible for the following defense benefits while acting within the scope of their law enforcement duties.

SHOOTING DEATH IN CUSTODY
CRIMINAL CIVIL

ACCIDENT WITH DEATH OR SERIOUS INJURY

Contact PBA immediately: 1-800-233-3506

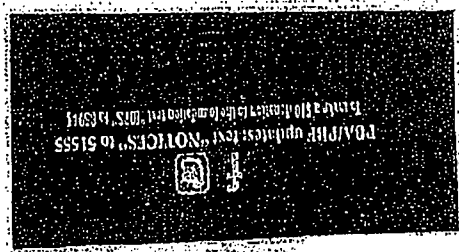
More detailed information, including limitations, available upon request. To receive benefits, you must have continuing active membership for the time of incident through period of assistance. For all other assistance, prior approval must be obtained. Contact your chapter president or SSPBA.

OFFICER UNDER INVESTIGATION

Keep this card if you are questioned or investigated, follow these instructions.

1. Contact PBA at 1-800-233-3506 as soon as possible. If you can, do so prior to making any statements or submitting any reports.
2. Ask why you are being questioned or investigated; specifically, ask whether it is an administrative or criminal matter. If you are told that this is a criminal matter, or if you are Mirandized, answer no further questions and contact PBA immediately.
3. If it is administrative and you are ordered to answer right away, be truthful. If you refuse to answer, you may suffer disciplinary action for insubordination.
4. Only answer those questions which are asked of you.
5. Understand that should you resign, you lose all appeal rights and further PBA representation in this matter.
6. Always conduct yourself professionally.

Ex 2



www.sspba.org

2155 Highway 42 S
Milledgeville, GA 30252
(770) 389-5391 • Fax: (866) 397-1722



1-800-233-2506

SOUTHERN STATES
POLICE BENEVOLENT ASSOCIATION

OFFICER UNDER INVESTIGATION

SSPBA/Discovery Docs000120

**RICHARDSON
PLOWDEN**
ATTORNEYS AT LAW

COLUMBIA P.O. Drawer 7788 • Columbia, SC 29202
1900 Barnwell St., Columbia, SC 29201 P 803.771.4400 F 803.779.0016

MYRTLE BEACH P.O. Box 3646 • Myrtle Beach, SC 29578
2103 Farlow St., Myrtle Beach, SC 29577 P 843.448.1008 F 843.448.1533

CHARLESTON P.O. Box 21203 • Charleston, SC 29413
171 Church St., Suite 150, Charleston, SC 29401 P 843.805.6550 F 843.805.6599

www.richardsonplowden.com

Reply to: Columbia
SWHamm@richardsonplowden.com
Direct: (803) 576-3713

November 7, 2016

VIA HAND DELIVERY

Carri Grube Lybarker, Esquire
Administrator and Consumer Advocate
SC Department of Consumer Affairs
2221 Devine Street, Ste 200
Columbia, SC 29250-5757

Re: Southern States Police Benevolent Association, Inc.
Our File No.: 8897.0001

Dear Lybarker:

I have been asked by the Southern States Police Benevolent Association ("SSPBA") to review its membership benefit program and offer an opinion on the possible application of the South Carolina Prepaid Legal Services statute. As an initial matter, SSPBA is a limited membership, non-profit professional membership association that does not provide any services to the general public or to any other segment of the general public. SSPBA, which has been in existence for almost 30 years, serves solely as a law enforcement membership association that is not open to the general public and provides certain limited and specific membership benefits only to its active law enforcement officer members. The SSPBA membership dues for law enforcement members are \$23 per month. Those benefits include AD & D through a third party insurer, input and legislative recommendations to state and local elected bodies regarding policies or proposals that should or should not apply to the law enforcement community, certain grievance proceedings assistance, training, general updates on matters affecting the law enforcement community and a legal defense benefit. There is no separate charge or fee for the legal defense benefit or for any of the SSPBA membership benefits. The legal defense benefit is simply one of the combined benefits of SSPBA membership.

As the Department is aware, legal services plans in South Carolina are not subject to insurance regulations. As such, SSPBA is not an insurer under South Carolina law. SSPBA, at most, offers very limited work related legal services only to its active dues paying law enforcement members. To date, the Department has not addressed whether



ROA 000465

Carri Grube Lybarker

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November 7, 2016

such a limited law enforcement work related membership association is subject to regulation under Chapter 16 of Title 37. SSPBA advised me that it concluded that it was not subject to regulation under Title 37 based on the fact that it only offers a very limited work related legal services benefit to its members. SSPBA membership is expressly limited to active law enforcement officers. After my own review of Chapter 16, I also concluded that Chapter 16 likely did not apply to the SSPBA membership benefit program. I certainly recognize that the Department might reach a different conclusion. As a result of possible differences of opinion regarding the application Chapter 16 to SSPBA, I bring this matter to your attention and look forward to working with the Department to resolve any differences that may exist.

The SSPBA legal defense benefit provides only active law enforcement members with access to legal counsel from attorneys licensed in South Carolina for possible law enforcement work related disputes. The legal services are available ONLY in circumstances where the SSPBA member was engaged in assigned law enforcement responsibilities and a question or challenge arose as to whether or not the active and dues paying SSPBA member acted lawfully and appropriately under the circumstances. Notably, the legal services benefit provided to SSPBA members does not apply to any personal, family or household transactions, actions or conduct. As a result, the legal services benefit does not include any general or consumer related legal services such as contract review, providing defenses for a possible mortgage foreclosure, advice addressing possible default in a consumer credit transaction; repossession of a members' vehicle or any other normal or routine personal, family or household use legal transactions or services.

I believe the Department could reasonably conclude that the South Carolina Prepaid Legal Services statute is limited in scope to assisting the general public in consumer related disputes, not in official work related conduct disputes. I believe that SSPBA has a substantial basis to determine that it is not covered by a general consumer protection statute such as Chapter 16. The statute specifically references a Prepaid Legal Services ("PLS") plan as providing legal services to the "general public" or a "segment of the general public". As noted above, SSPBA is not open or available to members of the general public, nor is it open to any segment of the general public not specifically employed in a law enforcement employment capacity. SSPBA is a fraternal member organization with specific and very limited membership criteria. In addition, there is no specific portion of the monthly dues benefit payment amount of \$23 per month allocated to any of the range services and benefits made available to SSPBA members, including the legal services benefit. As a matter of information to the Department, SSPBA has advised me that it has provided law enforcement related legal assistance to its active South Carolina law enforcement members on approximately 300 occasions in the last 10 years.

The General Assembly made an important public policy decision and distinction when it decided to place the Prepaid Legal Services statute under Title 37. Since its initial enactment in the mid 1970's, Title 37 has been generally focused and applied to personal,

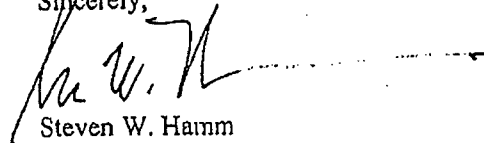
Carri Grube Lybarker
Page 3
November 7, 2016

family and household related transactions. The General Assembly did not adopt or enact any language in Chapter 16 of Title 37 that implies a legal construction of the statute intended to encompass the very specific and limited legal services benefits provided solely to SSPBA active law enforcement members. Chapter 16 makes broad reference to the general public or to a segment of the general public. As a result, I do not believe the Department has a clear basis to construe Chapter 16 in a manner that it necessarily applies to the SSPBA member benefits.

I have advised SSPBA that I will be discussing and sharing our interpretation of Chapter 16 with the Department. As a demonstration of respect to the Department, SSPBA has suspended its normal and ongoing law enforcement membership recruitment activities in South Carolina pending a final resolution of this novel legal question. SSPBA, its officers and members are committed to working with the Department to reach a mutually acceptable resolution of this matter. SSPBA will work with the Department to take every possible step to protect their long-standing reputation as an outstanding membership association committed to the highest standards of conduct and service as they work to advance the interests of their South Carolina law enforcement members.

I look forward to discussing this important SSPBA issue with representatives of the Department in the near future. Please feel free to call me with any questions that you might want me to address prior to any scheduled meeting.

Sincerely,



Steven W. Hamm

SWH/

cc: Kelly Rainsford, Esquire

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
DONALD STANLEY
AND SEAN REITER,
INDIVIDUALLY AND AS CLASS
REPRESENTATIVES,

Plaintiffs,

v.

SOUTHERN STATES POLICE
BENEVOLENT ASSOCIATION, INC.,

Defendant.

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-10-4062

DEFENDANT SOUTHERN
STATES POLICE BENEVOLENT
ASSOCIATION'S NOTICE AND
MOTION FOR RECONSIDERATION
OF ORDER CERTIFYING CLASS

[HEARING REQUESTED]

FILED
2019 JAN 16 PM 1:25
CLERK OF COURT

PLEASE TAKE NOTICE, pursuant to Rule 59(e), SCPCP, that Defendant, Southern States Police Benevolent Association, Inc. ("PBA"), submits this motion for reconsideration of the Court's order entered January 3, 2019, certifying a class in this matter (the "Order," attached as Exhibit A). For the reasons set forth below, PBA respectfully requests the Court reconsider the Order and decertify the class. PBA respectfully requests a hearing on this motion. See generally *Smith v. Progressive Halcyon Ins. Co.*, 2015 WL 4642794, *1 (S.C. Ct. App. Aug. 5, 2015) ("[Defendant] moved for reconsideration of this order [certifying the class]. ... Following a hearing on [defendant's] motion, the circuit court issued an order in which it vacated its prior order granting class certification.").

INTRODUCTION

In the Order, the Court certified a class defined as "[a]ll residents of South Carolina who participated in Defendant's Legal Defense Plan by paying member dues to the Defendant in exchange for benefits of said Plan from August 4, 2013 to August 4, 2016." (Order at 1.) PBA respectfully submits that the Court did not conduct the required "rigorous analysis" to determine whether Plaintiffs satisfied their burden to prove at least three of the five prerequisites for class

certification under South Carolina law. *See Gardner v. South Carolina Department of Revenue*, 353 S.C. 1, 21, 577 S.E.2d 190, 200 (2003) (“In deciding whether class certification is proper, the court must apply a rigorous analysis to determine each prerequisite is satisfied.”). In fact, the Order does not even reference this exacting standard. Accordingly, reconsideration, and decertification, are warranted for at least the following reasons:

First, the Court erred in finding that Plaintiffs established commonality. The mere allegation that all of the class members paid their monthly dues to PBA does not, standing alone, satisfy Rule 23(a)’s commonality requirement.¹ In fact, the “laundry list” of so-called “common issues” in the Order demonstrates precisely the opposite: that individual issues, including PBA’s defenses, substantially outweigh any common questions. As the Order notes, Plaintiffs have alleged seven separate cause of action ranging from breach of contract to fraud in the inducement. (Order at 3.) The elements of these causes of action are replete with individual issues that must be proven as to each class member. PBA requests that the Court reconsider whether, under the required “rigorous analysis” standard, Plaintiffs have met their burden to identify the types of common questions required for certification.

Second, the Court erred in finding that Plaintiffs demonstrated typicality. The Court found that “[s]ince there is no significant difference between the claims for the Plaintiffs and the other class members, typicality is satisfied,” but only cited the fact that Plaintiffs and the class members are or were participants in, and covered by, the Plan. (Order at 10.) These facts are insufficient to satisfy the typicality element. As Plaintiffs’ counsel explained at the hearing on the motion, Plaintiffs’ theory of the case is that PBA supposedly “lied” to its members by inducing them to pay \$23.50 a month,” adding: “you promised me like you promised 44,000

¹ The dues paid by the class members entitle them to PBA membership, which comes with multiple benefits, including the Legal Defense Benefit.

people that if any one of us is in trouble you are there for us.” (10/22/18 Tr., attached as Exhibit B, 55:21-23.) Plaintiffs, however, do not (and cannot) allege that PBA was “never there” for them. Indeed, the Order states that Plaintiff Stanley has been a member of PBA for “over 21 years,” and does not identify a single wrong directed to him by PBA over those two-plus decades before this lawsuit was filed. (Order at 1.) Plaintiff Reiter is not even a current member of PBA (*id.*) and, therefore, cannot possibly be denied future benefits by PBA. A rigorous analysis would have revealed this fatal flaw in Plaintiffs’ efforts to have the class certified.

Third, the Court erred in finding that Plaintiffs will fairly and adequately protect the interests of the class.² Plaintiff Stanley has been a member of PBA’s Plan for over two decades, and he was never denied any benefit or injured by PBA. Plaintiff Reiter alleges no injury by PBA and is not even a current PBA member. There is not a scintilla of evidence that, in all their years of PBA membership, they have been “lied to” or denied benefits by PBA. Further, the Court’s reliance on Plaintiffs’ request for an opt-out class fails to cure Plaintiffs’ inability to meet their burden to prove that they will fairly and adequately represent the class. A rigorous analysis of adequacy would reveal that Plaintiffs only seek to protect their own interests through this action – interests that are antagonistic to the rest of the class. For any or all of these reasons, the Court should reconsider the Order and decertify the class.

RELEVANT FACTUAL BACKGROUND

I. THE CASE AND PLAINTIFFS’ ALLEGATIONS

A detailed recital of the facts pertinent to class certification is contained in PBA’s Memorandum in Opposition to Plaintiffs’ Motion for Class Certification (“Memorandum,” attached as Exhibit C). In summary, Plaintiffs allege that PBA defrauded its South Carolina

² It is questionable whether the class definition, which excludes “current and former executive and local board members or executive level officers” (Order at 1), includes Plaintiffs.

members because PBA purportedly was required to obtain a license to sell insurance before offering its Plan benefits to its members.

PBA is a 501(c)(5) non-profit, tax-exempt labor organization that has been in existence since 1987. (Memo. at 2.) It operates as a labor organization for the welfare of its police officer members to improve working conditions, reduce the hazards of law enforcement, and enhance the professionalism of law enforcement. (*Id.*) PBA is funded by membership dues, and its benefits from those dues include lobbying efforts, endorsement of candidates for office, accidental death benefits, publication of a police magazine, a legal defense benefit, and representation in grievance and disciplinary matters in the administrative context. (*Id.*) The legal defense benefit provides, subject to the Plan's terms and conditions, payment for an attorney (at no cost to the member with no caps or limits) should a member ever be involved in a critical incident or sued as a result of actions taken as a result of his or her employment as a law enforcement officer, including any criminal investigation of PBA member. (*Id.* at 3.)

Plaintiff Stanley is a current PBA member and Plaintiff Reiter is a former PBA member. (Stanley Dep., attached as Exhibit D, 22:13-16, 23:10-11; Reiter Dep., attached as Exhibit E, 19:7-9.) Both Plaintiffs were local board members within the South Carolina PBA. (Stanley Dep. 25:16-22; Reiter Dep. 19:7-9.) They have sued PBA in this proposed class action, asserting claims for (1) breach of contract; (2) negligence; (3) breach of fiduciary duty; (4) unjust enrichment; (5) fraud in the inducement; (6) negligent misrepresentation; and (7) injunctive relief. (Am. Compl., attached as Exhibit F, ¶¶ 83-127.) Both Plaintiffs have been represented by attorneys provided by PBA under the Plan, and thus received their expected benefits. (Stanley Dep. 134:16-23; Reiter Dep. 64:8-65:14.) In fact, Mr. Stanley is currently represented by one such attorney. (Am. Compl., ¶ 22.) Plaintiffs do not claim that they or anyone in the class has

been denied a benefit under the Plan or damaged by PBA in any way whatsoever other than the voluntary payment of membership dues (Plaintiffs' Memorandum In Opposition To Defendants' Motion For Summary Judgment at 15), and they offer only a speculative allegation of future harm (the "idea that at any moment another officer could be involved in a critical incident and not receive coverage because the PBA deemed it unworthy of counsel"). (Reiter Dep. 46:12-18.)

II. THE COURT'S ORDER GRANTING CERTIFICATION

The Order acknowledged that "the Plan promises to provide a legal defense and cover related costs to an officer member who is accused on a crime while performing his or her official duties as police officers." (Order at 2.) The Order recites Plaintiffs' allegation that "the Legal Defense Benefit Plan is actually a policy of insurance which the PBA was not licensed to sell" or, alternatively, that "Plaintiffs claim that the Legal Defense Benefit Plan is a prepaid legal services plan." (*Id.*) The Order suggests that PBA was allegedly not in compliance with South Carolina's licensure requirements for legal defense plans, but that the main result was "that the plan had to allow members to choose their own attorneys" (*id.*), though Plaintiffs do not allege that they or any other PBA member was ever denied the right to make such a selection. The Court has not found that the legal defense plan was an insurance policy and/or a legal services plan.

Finally, the Order recites that "Plaintiffs also claim that the PBA failed to disclose the terms of the Plan to its members, including a clause that purportedly allows the PBA to withhold the benefits that its members pay for if it determines that the member 'has committed an intentional, deliberate, and/or illegal act'" and that "PBA never revealed it lacked proper licensure and authority to sell insurance." (*Id.* at 3.) Plaintiffs' efforts to frame this case as an insurance coverage case should remove it altogether from the class certification arena so that the

Court can decide whether there is an insurance policy and, if so, the extent of the coverage before having these issues implicitly decided by certifying a class.

III. ADDITIONAL FACTS THE COURT SHOULD HAVE CONSIDERED IN ASSESSING THE MOTION FOR CLASS CERTIFICATION

The Order omits discussion of several significant facts relevant to whether a class should be certified. The Order cites the Supreme Court's decision in *Waller v. Seabrook Island Prop. Owners Ass'n.*, 300 S.C. 465, 467-68, 388 S.E.2d 799, 801 (1990), for the proposition that "[t]he initial class determination should usually be made on the well-pled allegations of the Complaint." (Order at 5.) The Court's statement that "the Court in *Waller* considered the pleadings in reaching its class certification decision" (*id.*) is incomplete. There is no indication that the Supreme Court in *Waller* restricted its "rigorous analysis" to the pleadings. Instead, the *Waller* court expressly held that "it is imperative the court apply a rigorous analysis." *Id.* at 467, 388 S.E.2d at 801.

Additional facts the Court should have considered include: (1) Plaintiff Stanley's admission that "I think that they do provide a valuable service." (Stanley Dep., 107:1-3); (2) Plaintiff Stanley's testimony that his damages are what might happen in the future (*id.*, 76:1-22); and that he does not know how PBA would operate differently if it was regulated as an insurance agency (*id.*, 138:16-21); (3) Plaintiff Reiter's testimony that he knows of no one who has been damaged by PBA other than Michael Slager (who is not a party to this case) (*id.*, 43:9-14); (4) Plaintiff Reiter's description of his expectation of the PBA benefits as "I mean, incident happens, phone call is made, you have an attorney. That's pretty cut and dry." (*Id.*, 56:9-12); and (5) that Plaintiff Reiter received what he believed he was entitled to from PBA. (*Id.*, 13-15.)

RELEVANT PROCEDURAL HISTORY

On October 22, 2018, the Court conducted a hearing on Plaintiffs' motion for class certification. Plaintiffs did not appear at the hearing. During the hearing, Plaintiffs' counsel acknowledged that their "central complaint is that for the period of time embraced by this lawsuit PBA was operating as an illegal insurance company in the State of South Carolina selling a policy of insurance which is was not authorized to sell." (10/22/18 Tr. 3:24-4:2.) Near the conclusion of the hearing, Plaintiffs' counsel argued that PBA "lied" because it "walked on Michael Slager" (*id.*, 55:3-4), but conceded that "[m]aybe there won't be 2,300 lawsuits. I don't know. A lot of people were upset." (*Id.*, 55:12-13.) On January 3, 2018, the Court entered the Order certifying the class.

STANDARD FOR RECONSIDERATION

The Court may alter or amend its own decision under Rule 59(e), SCRCP, which states: "A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." The Supreme Court has held that "class certification may be altered at any time prior to a decision on the merits." *Salmonsens v. CGD, Inc.*, 377 S.C. 442, 454, 661 S.E.2d 81, 88 (2008). South Carolina law permits parties to use a Rule 59(e) motion "to call the court's attention to a possible misapprehension of an earlier argument, [and] also to revisit a previously raised argument." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004). PBA asks the Court to reconsider its Order and decertify the class.

ARGUMENT

"Proponents of the class certification bear the burden of proving [that the] prerequisites of class certification have been met." *Waller*, 300 S.C. at 408, 388 S.E.2d at 801 (citing *Windham v. American Brands, Inc.*, 565 F.2d 59 (4th Cir. 1977)). Rule 23(a), SCRCP, sets forth the five prerequisites:

- 1) The class must be “so numerous that joinder of all members is impracticable”;
- 2) There must be “questions of law or fact common to the class”;
- 3) The “claims or defenses of the representative parties [must be] typical of the claims or defenses of the class”;
- 4) “[T]he representative parties [must] fairly and adequately protect the interests of the class”; and
- 5) “[T]he amount in controversy [must] exceed[] one hundred dollars for each member of the class.”

Gardner, 353 S.C. at 20-21, 577 S.E.2d at 200. Failure to establish even one of those requirements “is fatal to the certification of a class.” *Waller*, 300 S.C. at 469, 388 S.E.2d at 802 (citing *Tolbert v. Daniel Const. Co.*, 332 F. Supp. 772 (D.S.C. 1971)). Furthermore, it is “imperative” that “the court apply a rigorous analysis to assure the prerequisites of Rule 23(a) have been satisfied.” *Id.* at 467, 388 S.E.2d at 801 (citing *Gen. Tel. Co. of Southwest v. Falcon*, 457 U.S. 147 (1982)); *Gardner*, 353 S.C. at 21, 577 S.E.2d at 200 (“In deciding whether class certification is proper, the court must apply a rigorous analysis to determine each prerequisite is satisfied.”). A “rigorous analysis” of the facts of this case shows that Plaintiffs have not met the commonality, typicality, or adequacy components of Rule 23(a), SCRCP.

I. THE COURT ERRED IN FINDING THAT PLAINTIFFS SATISFY THE COMMONALITY REQUIREMENT.

Under South Carolina law, “[a] court determines the existence of commonality” by “examining the plaintiffs’ claims and the defendants’ anticipated defenses.” *Gardner*, 353 S.C. at 22, 577 S.E.2d at 201. Here, the Order examined neither the specific claims Plaintiffs asserted nor PBA’s defenses to those claims. Accordingly, reconsideration is appropriate.

A. The Court Must Rigorously Analyze Plaintiffs' Claims And PBA's Defenses In Assessing Commonality.

The South Carolina Supreme Court has held that “[c]ommonality is met only where the class shares a determinative issue.” *Gardner*, 353 S.C. at 21-22, 577 S.E.2d at 201 (citing *Stott v. Haworth*, 916 F.2d 134, 145 (4th Cir. 1990)). Quoting another case, the Supreme Court in *Gardner* observed that “a representative plaintiff cannot establish commonality ... if the court must investigate each plaintiff’s individual claim.” *Id.* at 22, 577 S.E.2d at 201 (quoting *Peoples v. Wendover Funding Inc.*, 179 F.R.D. 492, 498 (D. Md. 1998)). Because “[a] court determines the existence of commonality among defendants by examining the plaintiffs’ claims and the defendants’ anticipated defenses,” the Court must consider the elements of Plaintiffs’ claims and PBA’s defenses within the context of the facts of this case. *Id.* at 22, 577 S.E.2d at 201. “In practical terms this means the party must articulate the existence of significant common, legal, or factual issues which bind the proposed class together.” *Id.* (quotations omitted). In cases where the “factual differences” between class members’ claims “are the crux of a predominant legal issue,” commonality does not exist. *Id.*

In the Order, the Court held that Plaintiffs demonstrated commonality because Plaintiffs and other class members paid dues, were purportedly subject to the same limitations in the Plan, and were “all presented with the same marketing pitch and the same documents and forms.” (Order at 7.) First, there is no evidence in the record that over 2,000 people were presented with “the same marketing pitch and the same documents and forms.” Second, and in any event, the Court then listed eight “issues of law that are common to the entire class and can be decided on a class-wide basis.” (*Id.*) None of these purported “common issues,” however, accounted for the individual elements of the causes of action upon which Plaintiffs’ Complaint is based. They are focused on the “insurance policy” and “legal defense plan” theories of liability, but the actual

elements of the causes of action in the Complaint are completely ignored. As discussed below, the Court should reconsider Plaintiffs' motion and apply a rigorous analysis to each cause of action as it relates to certification.

B. Plaintiffs' Tort Claims Are Inappropriate For Class Certification.

Plaintiffs assert four claims sounding in tort: breach of fiduciary duty, fraudulent inducement, negligence, and negligent misrepresentation. None is certifiable.

1. Plaintiffs' Breach of Fiduciary Duty Claim Should Not Be Certified.

Plaintiffs' breach of fiduciary duty claim is not certifiable. To prevail on a claim for breach of fiduciary duty, Plaintiffs "must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff[s] by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant." *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 335-36, 732 S.E.2d 166, 173 (2012). Plaintiffs offer no authority for the proposition that a fiduciary duty between PBA and Plaintiffs exists in the first place. The Amended Complaint simply states, in a conclusory manner, that PBA owed a fiduciary duty to the class, and that PBA breached the fiduciary duty of good faith and fair dealing by issuing insurance policies without a license. (Am. Compl. ¶¶ 98-99.) Mere legal assertions do not prove commonality.

Indeed, Plaintiffs' position that their relationship with PBA was one of insurer-insureds precludes any claim of breach of fiduciary duty. As the Court of Appeals has made clear, "a claim of a fiduciary relationship 'cannot rest upon the mere relationship of insurer and insured.'" *Pitts v. Jackson Nat'l Life Ins. Co.*, 352 S.C. 319, 336, 574 S.E.2d 502, 510 (2002) (quoting *Moses v. Mfrs. Life Ins. Co.*, 298 F. Supp. 321, 323 (D.S.C. 1968)). *Pitts* rejected an insurance-based class action alleging breach of fiduciary duty, and the Court should do the same here because there is no fiduciary duty running from PBA, the alleged insurer, and Plaintiffs. See

Hartsel ex rel. Hartsel v. Selective Ins. Co. of S.C., 2011 WL 11734337, *3 (S.C. Ct. App. May 18, 2011) (affirming dismissal of insured's fiduciary duty claim, as "an insurance relationship does not ordinarily give rise to a fiduciary duty") (citing *Pitts*); *Gaddy v. Guardian Life Ins. Co. of Am.*, 2009 WL 1393472, *3 (D.S.C. May 18, 2009) (citing *Pitts* and dismissing fiduciary duty claim).

Even if Plaintiffs could establish the existence of a fiduciary duty between PBA and the class, proving breach and damages would necessarily require individualized assessment by the Court. For instance, PBA's contractual responsibilities to those who availed themselves of the legal defense benefit under the Plan would be different than PBA's contractual responsibilities to members who did not utilize that benefit. Again, this is an innately fact-intensive and individualized inquiry that cannot be resolved on a classwide basis. See *Kitchens v. U.S. Shelter*, 1988 WL 108598, *3 (D.S.C. June 30, 1988) (reciting that court denied class certification to fiduciary duty claim "on the grounds that evidence of alleged ... breach of fiduciary duty [was] individual as to each class member and that each class member's claim would require separate evidence").

2. Plaintiffs' Fraud In The Inducement Claim Is Not Certifiable.

Plaintiffs' fraud in the inducement claim is inherently uncertifiable. Indeed, to prevail on that claim, Plaintiffs must prove nine elements to establish fraud *alone*, along with an additional three to establish fraud in the inducement:

To prevail on a cause of action for fraud, a Plaintiff must prove by clear, cogent and convincing evidence the following elements: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. To establish a claim or defense of fraud in the inducement, a plaintiff must prove the nine

elements of fraud as well as the following three elements: (1) that the alleged fraudfeasor made a false representation relating to a present or preexisting fact; (2) that the alleged fraudfeasor intended to deceive him; and (3) that he had a right to rely on the representation made to him.

Moseley v. All Things Possible, Inc., 388 S.C. 31, 35-36, 694 S.E.2d 43, 45 (Ct. App. 2010), *aff'd*, 395 S.C. 492, 719 S.E.2d 656 (2011) (internal quotations omitted) (emphasis added). It is inconceivable that each of those twelve elements could be resolved on a classwide basis, and Plaintiffs make no effort to argue that they can be.

In particular, the reliance element of the fraud claim precludes certification. The law is well-settled that the individualized nature of fraud-based claims, particularly as to establishing a plaintiff's reliance, the reasonableness of such reliance, and any subsequent injury and damages precludes certification. In a case applying South Carolina law, the Fourth Circuit Court of Appeals rejected certification of claims of fraud and negligent misrepresentation:

Indisputably, negligent misrepresentation and fraud require proof of reliance. *See Robertson v. First Union Nat'l Bank*, 350 S.C. 339, 565 S.E.2d 309, 313-14 (Ct. App. 2002) (recounting elements of negligent misrepresentation and fraud claims under South Carolina law). To establish fraud, a plaintiff must prove, *inter alia*, that the hearer relied on the truth of a fraudulent statement, and had a right to rely thereon. *Id.* To establish negligent misrepresentation, a plaintiff must prove, *inter alia*, that the plaintiff "justifiably relied on [a false] representation, and ... the plaintiff suffered a pecuniary loss as the proximate result of his reliance upon the representation." *Id.* at 14. Thus, both theories of liability require that the plaintiff demonstrate (1) actual reliance and (2) that the plaintiff had a right to rely on the misstatement (in the case of fraud) or that such reliance was justifiable under the circumstance (in the case of negligent misrepresentation). Almost inevitably, establishing these elements requires an individualized inquiry.

Gunnells v. Healthplan Servs., 348 F.3d 417, 434-35 (4th Cir. 2003) (emphasis original). Given the myriad different situations in which the class members find themselves, the Court could not possibly make an accurate determination as to all twelve factors of the fraudulent inducement

claim for 2,300 class members at once. Accordingly, Plaintiffs cannot show commonality with respect to their fraud claim.

3. Plaintiffs' Negligence And Negligent Misrepresentation Claims Require Individualized Assessment.

Nor are Plaintiffs' negligence and negligent misrepresentation claims certifiable. Generally, claims of negligence and negligent misrepresentation pled simultaneously are "essentially subsumed in the negligent misrepresentation cause of action." *Quail Hill, LLC v. Cty. of Richland*, 387 S.C. 223, 240, 692 S.E.2d 499, 508 (2010) ("[C]laims of negligence and negligent misrepresentation should be treated as solely one for negligent misrepresentation."); see also *Spelman v. Bayer Corp.*, 2012 WL 13047524, *4 (D.S.C. Dec. 17, 2012) (where "the core of [plaintiff's] allegations is reliance by [plaintiff] on alleged misrepresentations by [defendants]," the "negligence claim is actually a negligent misrepresentation claim").

To prove their negligent misrepresentation claim, Plaintiffs must establish six factors:

- (1) [T]he defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance on the representation.

Quail Hill, 387 S.C. at 240, 692 S.E.2d at 508 (quoting *West v. Gladney*, 341 S.C. 127, 134, 533 S.E.2d 334, 337 (Ct. App. 2000)). Plaintiffs have not alleged any actionable false representation to satisfy the first element.³ Individual issues permeate the other elements of this claim, particularly as to whether justifiable reliance occurred: Plaintiffs must establish that each

³ While Plaintiffs claim that PBA falsely represented "that it was authorized to sell the Plan" (Am. Compl. ¶ 116), the Supreme Court has observed that alleged "misrepresentations as to matters of law" do not give rise to liability for negligent misrepresentation. *Quail Hill*, 387 S.C. at 240, 692 S.E.2d at 508 (quotations omitted).

member of the class justifiably relied on a representation by PBA. “A determination of justifiable reliance involves the evaluation of the totality of the circumstances, which includes the positions and relations of the parties.” *Id.* at 241, 692 S.E.2d at 508. The position and relation of PBA to individual members necessarily differ based on the totality of the circumstances surrounding that member’s involvement with PBA. These relationships and positions cannot be accurately determined on a classwide basis. For instance, some members (such as the named Plaintiffs) received legal representation under the Plan, while some did not. Determining what constitutes justifiable reliance in these different contexts requires individualized inquiry. *See Spelman*, 2012 WL 13047524, *4 (quoting *Gunnells* and denying certification to negligent misrepresentation claim, as “each class member would be required to prove his reliance and require individualized inquiries into each class member’s circumstances”).⁴

In short, “[b]ecause proof of reliance is generally individualized to each plaintiff allegedly defrauded ... negligent misrepresentation claims are not readily susceptible to class action treatment, precluding certification of such actions as a class action.” *Id.* (quoting *Gariety v. Grant Thornton, LLP*, 368 F.3d 356, 362 (4th Cir. 2004)). The Court should deny certification to the negligent misrepresentation claim.

⁴ To the extent Plaintiffs purport to plead a claim sounding purely in negligence, that claim is barred by the economic loss rule, which precludes damages in negligence actions “where there is neither personal injury nor property damage.” *Sapp v. Ford Motor Co.*, 386 S.C. 143, 149, 687 S.E.2d 47, 50 (2009). Furthermore, a negligence claim cannot be certified because “such a claim raises questions of causation and injury which would require individual proof of causation.” *Spelman*, 2012 WL 13047524, *4.

C. Plaintiffs' Contract-Based Claims Are Not Appropriate For Certification.

1. Plaintiffs' Breach Of Contract Claim Does Not Implicate Common Issues And Requires Individualized Assessment.

To prove claims for breach of contract, Plaintiffs must show "the existence of a contract, its breach, and damages caused by such breach." *Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 652, 780 S.E.2d 263, 272 (Ct. App. 2015). Whether PBA breached a contract with a member of the Plan must be examined on an individual level.

Plaintiffs do not allege that PBA breached a contract through wrongful denial of any benefit under the Plan. Rather, Plaintiffs claim that PBA was not authorized to enter into the contracts and, therefore, breached the implied covenants of good faith and fair dealing. (Am. Compl. ¶ 85.) "However, there is no breach of an implied covenant of good faith where a party to a contract has done what provisions of the contract expressly gave him the right to do." *Hotel & Motel Holdings*, 414 S.C. at 653, 780 S.E.2d at 273 (quoting *Adams v. G.J. Creel & Sons, Inc.*, 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995)). Accordingly, to demonstrate a breach of the covenant, members of the class must show that PBA acted outside the provisions of their individual contracts. This necessarily requires an even more heightened level of fact-intensive, individualized inquiry, rendering a class action untenable.

To the extent the Court could find that PBA breached a duty by failing to seek proper guidance on licensure, any potential breach has since been cured. PBA sought proper authority for providing the Plan under South Carolina law, and it is currently regulated by the state through the South Carolina Department of Consumer Affairs. The element of breach is moot and, therefore, cannot be common to the class. The breach of contract claim is not certifiable.

2. Plaintiffs' Unjust Enrichment Claim Is Not Certifiable.

Nor is Plaintiffs' unjust enrichment claim certifiable. Plaintiffs allege, on behalf of themselves and the class, that PBA was unjustly enriched by collecting dues from its members for participation in the Plan, because it acted as an unlicensed insurer. (See Am. Compl. ¶ 103.) Unjust enrichment is an equitable doctrine, which permits recovery of the amount that the defendant has been unjustly enriched as the expense of the plaintiff(s). See *Dema v. Tenet Physician Servs.-Hilton Head, Inc.*, 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009); *Ellis v. Smith Grading and Paving, Inc.*, 294 S.C. 470, 473, 366 S.E.2d 12, 14 (Ct. App. 1988). To recover for unjust enrichment, Plaintiffs must prove that (i) the class members conferred a benefit upon PBA; (ii) PBA realized that benefit; and (iii) PBA retained the benefit under circumstances that make it unjust for PBA to retain the benefit without paying the class member its value. See *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 409, 581 S.E.2d 161, 167 (2003); *Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 341 S.C. 1, 8-9, 532 S.E.2d 868, 872 (2000).

Adjudicating the unjust enrichment claim would require the Court to investigate the individual circumstances surrounding each class member's claim. The Court would have to determine whether, based on each class member's unique circumstances, it would be "unjust" for PBA to retain that individual's membership dues from the time period in question. Making such a determination would require the Court to consider, among other things, if each class member received the bargained-for benefits in exchange for his Plan membership dues, or whether PBA unjustly retained that member's monthly dues.⁵ By its very nature, an unjust enrichment claim is

⁵ A class member may have received the benefit of their PBA membership dues in several ways, such as: receiving the Blue Review publication; being updated on legislation concerning police officers from PBA's monitoring efforts; benefiting from the efforts of lobbyists hired by PBA; receiving accidental death benefits from PBA; receiving representation in an internal disciplinary or grievance proceeding by PBA; receiving the opportunity to join a local police officer

unsuitable for resolution on a classwide basis. See *Melton ex rel. Dutton v. Carolina Power & Light Co.*, 283 F.R.D. 280, 290 n.7 (D.S.C. 2012) (because unjust enrichment claim required the factfinder to make numerous "individualized determinations," it was unlikely any "supposed common question" would be capable of classwide resolution).

D. PBA's Defenses To Plaintiffs' Claims Are Highly Individualized And Further Preclude Class Certification.

As detailed above, each of Plaintiffs' causes of action is permeated with individual issues that prevent their resolution on a classwide basis. But even if one or more of those claims could escape decertification, PBA's defenses to those claims constitute an independent basis to decertify the class. The Supreme Court requires that the court "examin[e] ... defendants' anticipated defenses to Plaintiffs' claims" in deciding certification. *Gardner*, 353 S.C. 21, 22, 577 S.E.2d at 201.

For example, such defenses as waiver, estoppel, and laches further demonstrate a lack of commonality. Waiver may occur when a party "possessed, at the time, actual or constructive knowledge of his rights or of all the material facts upon which they depended." *Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 344, 415 S.E.2d 384, 387-88 (1992). Similarly, under South Carolina law, estoppel "applies if a person, by his actions, conduct, words or silence which amounts to a representation, or a concealment of material facts, causes another to alter his position to his prejudice or injury." *State v. Hinojos*, 393 S.C. 517, 523, 713 S.E.2d 351, 354 (Cl. App. 2011). Some PBA plan members, for example, may have learned about the alleged "secret exclusion" in the PBA insurance policy and continued to pay monthly fees, thereby waiving their claims that they were "lied to" or otherwise not receiving the

advocacy group organized by PBA; or receiving legal representation from a lawyer whose services were paid for by PBA.

benefit of their bargain. Others may have accepted benefits with knowledge of such a provision and not paid them back, in which case they may be estopped from asserting the present claims. In *Melton*, the court cited *Janasik* and *Hinojos* in denying certification due to the presence of waiver and estoppel defenses. See 283 F.R.D. at 293. The same result should obtain here.

Still other class members likely waited too long to bring the present claims after learning of any such bad acts by PBA, thus entitling PBA to a laches defense. Noting that, under South Carolina law, “[w]hether laches applies in a particular situation is highly fact-specific, so each case must be judged on its own merits,” the *Melton* court held that “the fact-specific nature of laches” precluded class certification. 283 F.R.D. at 293 (quoting *Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 297, 519 S.E.2d 583, 599 (Ct. App. (1999))). In another case, a court held that “the affirmative defenses of comparative negligence ... and failure to mitigate” were individualized and would require the court “to inquire into each class member’s case to determine whether these affirmative defenses are valid.” *Robert Elliott Trucking, Inc. v. Caterpillar, Inc.*, 2012 WL 2918700, *8 (D.S.C. Mar. 21, 2012); see also *Spelman*, 2012 WL 13047524, *3 (agreeing that “potential defenses, such as ... estoppel, and comparative negligence,” were individualized and precluded class certification).

In *Gardner*, the Supreme Court reversed the grant of class certification where the trial court failed to assess the individualized nature of one of the defenses in the case. See *Gardner*, 353 S.C. at 21-22, 577 S.E.2d at 201 (“Defendants’ anticipated defenses center upon the predominant issue of whether Plaintiffs were prejudiced by the deficient notices,” which “necessitates forming legal arguments around the individual facts of each case. ...”). The Court must analyze PBA’s defenses as part of the decision whether to grant certification.

In short, the Court did not rigorously analyze the effect of PBA's defenses on class certification. Therefore, the Court should reconsider its Order and decertify the class.

II. PLAINTIFFS DO NOT SATISFY THE TYPICALITY REQUIREMENT.

A clear difference exists between the named Plaintiffs and other members of the class, precluding a finding of typicality. The two named Plaintiffs have both received representation by attorneys whose fees were paid for by the Plan. (*See* 10/22/18 Tr. 46:10-17.) They both reported that they were pleased with their representation. (*Id.*) In fact, at the time of the October 22 hearing, a PBA lawyer was working on behalf of Mr. Stanley. (*Id.*, 44:17-22.) Thus, Plaintiffs have both received perhaps the most important potential benefit of their PBA membership dues.

If Plaintiffs' argument is that PBA breached a duty to the 2,300 members in South Carolina, or was unjustly enriched by the receipt of their membership dues, then they are precisely the wrong individuals to bring these claims. It is undisputed that Plaintiff Stanley "is a member in good standing of the PBA and has been such for over 21 years" while Plaintiff Reiter is not a current PBA member, and, therefore, could not possibly have suffered the type of harm alleged. (Order at 1.) Further, PBA performed its duty to provide legal defense to both these Plaintiffs. The fact that Plaintiffs have not produced a representative who can claim they were denied a benefit by PBA shows the need for individualized assessment of the claims: not even the named Plaintiffs have grounds to assert the core claims of their case against PBA.

As a result, even if Plaintiffs could prove their own claims (and they cannot), doing so would not resolve the claims of putative class members who are situated differently than Plaintiffs. The Court of Appeals recently held that "[t]he possibility that the class includes claimants" whose claims potentially rest on different factual bases than the claims of the representative (in that case, the reason for the adjustment of their insurance claim payments) can

preclude a finding of typicality, warranting decertification of the class. *See Smith*, 2015 WL 4642794, *2. If a class member's claims against PBA were based upon denial of benefits, that would be a different factual basis than the Plaintiffs can allege in support of their own claims. Plaintiffs, therefore, cannot – establish typicality, requiring reconsideration.

Even if Plaintiffs could prove that their claims were typical of the class, South Carolina law requires more than “conclusory statement[s]” to satisfy the typicality requirement, which are all Plaintiffs have offered here. *Mulcahey v. Columbia Organic Chems. Co.*, No. 91-CP-40-3491, 1995 S.C. C.P. LEXIS 1, *8 (S.C. Ct. Com. Pl. Mar. 31, 1995). Plaintiffs allege that each class member was injured by PBA because PBA acted as an unlicensed insurer, issuing unauthorized “policies” through the collection of the \$23.50 monthly membership dues for participation in the Plan. (Am. Compl. ¶ 11.) Neither Plaintiff can offer any examples of how he personally, or any member of the class, has been similarly injured (or injured at all). They instead simply state the amount paid in membership dues constitutes an injury entitling themselves and class members to refunds and rescission of their Plan membership contracts. (*Id.*, ¶ 16.) Where “each Plaintiff will have been injured, if at all, in different ways and to different degrees,” South Carolina law instructs that “[e]ach Plaintiff must prove his own claim.” *Mulcahey*, 1995 S.C. C.P. LEXIS 1, *9. Moreover, typicality does not exist where “each member has unique damages which will require unique defenses.” *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 301, 705 S.E.2d 475, 478 (Ct. App. 2011). Such “proof issues ... prevent any claim from being ‘typical.’” *Mulcahey*, 1995 S.C. C.P. LEXIS 1, *9.

Fundamentally, Plaintiffs’ claims are a thinly veiled attempt to terminate memberships and disgorge PBA of membership fees voluntarily paid because Plaintiffs disagree with PBA’s decision to not provide legal representation to Michael Slager under the provisions of the Plan, a

matter that has been settled in another court. These claims are not typical of the class, but rather represent the efforts of two individuals to obtain a monetary reward at the expense of former and current PBA members. There has been no evidence presented that any other PBA members desire rescission of their memberships or that any former PBA members desire their membership dues to be refunded. Accordingly, Plaintiffs have failed to establish their claims as typical of the class, as required by Rule 23(a)(3), SCRCP.

III. THE COURT ERRED IN FINDING THAT PLAINTIFFS SATISFY THE ADEQUACY REQUIREMENT.

“The issue of whether a named plaintiff will adequately protect the interests of the class members is a question of fact which depends upon the circumstances of each case.” *Waller*, 300 S.C. at 468, 388 S.E.2d at 801 (citing *McGowan v. Faulkner Concrete Pipe Co.*, 659 F.2d 554 (5th Cir. 1981)). Plaintiffs are inadequate class representatives because, they possess an interest antagonistic to the class and, therefore, should be precluded from serving as representatives of the class under Rule 23(a)(4), SCRCP.

To determine adequacy the Court must assess “whether the named plaintiff has interests that are antagonistic or adverse to those of the rest of the class.” *Waller*, 300 S.C. at 468, 388 S.E.2d at 801 (citing *Runion v. U.S. Shelter*, 98 F.R.D. 313 (D.S.C. 1983)); accord *Middleton v. SunStar Acceptance Corp.*, 2000 WL 33385388, *4 (S.C. Com. Pl. Jan. 13, 2000) (“adequacy of representation requires that the proposed class representative be free from interests antagonistic to the interests of other class members”). “If so, that plaintiff will not be considered an adequate representative of the class.” *Waller*, 300 S.C. at 468, 388 S.E.2d at 801. A disqualifying antagonistic interest can include “when the named representative has a claim which conflicts with the economic interests of the class.” *Id.* The importance of this factor should be considered in light of the fact that “a plaintiff who sues on behalf of a class and the attorney representing the

class assume a fiduciary obligation to absent members of the class.” *Premium Inv. Corp. v. Green*, 283 S.C. 464, 470, 324 S.E.2d 72, 76 (Cl. App. 1984).

In his deposition, Mr. Reiter testified that he and Mr. Stanley had “stepped up at the helm” because they wanted to see PBA “shut down,” despite being unaware of any other members who shared that desire. (Reiter Dep. 45:10-46:7.) The stated goal of this action, then, is to judicially force the rescission of memberships and disgorgement of membership dues paid. This interest is antagonistic to the class, which consists of members of PBA’s Plan. Dismantling PBA, as Plaintiffs seemingly desire, would deprive those members of the benefit of the prepaid legal defense Plan and require them to immediately make alternative arrangements for legal representation for circumstances currently covered by the Plan.⁶ Plaintiffs’ claims toward this goal are against the economic interests of the class, due to the high cost of replacing the legal defense benefit and other Plan benefits (such as accidental death benefits) through individual, private resources. The other benefits provided by PBA discussed herein, such as lobbying efforts and accidental death benefits, for which these class members have voluntarily paid monthly dues, would also cease – all without any evidence that this is the desire of the approximately 2,300 absent class members. Plaintiffs have not identified any persons whose interests they are, in fact, fairly and adequately protecting. *Cf. Robert Elliott Trucking*, 2012 WL 2918700, *7 (denying certification where “Plaintiff has not established that any other member of the putative class has experienced the same problem with Defendant’s engine”).

In *Waller*, the Supreme Court considered a proposed class action wherein appellants sought to represent members of Seabrook Island Property Association. 300 S.C. at 466, 388

⁶ For example, PBA is currently providing legal counsel to 70 South Carolina PBA members, including Mr. Stanley. (See Aff. of Charles Cordell ¶ 2, attached as Ex. D to PBA’s Opposition to Plaintiffs’ Motion for Class Certification.)

S.E.2d at 800. The Court explained that “[t]he fact that a proposed class representative is a property owner in a large or highly populated development does not, in and of itself, qualify him to bring a class action on behalf of the remaining property owners.” *Id.* at 468, 388 S.E.2d at 801. The appellants, who were marshfront property owners, sought to invalidate a “special assessment to pay for beach renourishment ... [for] the primary benefit of ... beach lot owners.” *Id.* The Court held that the allegations revealed “interests which are adverse and antagonistic to beachfront property owners. Beachfront property owners who would directly benefit from the assessment would most certainly find this action repugnant to their interests. Consequently, appellants would be inadequate representatives of the putative class of *all* property owners.” *Id.* at 469, 388 S.E.2d at 801-02 (emphasis added). Similarly, in this case, Plaintiffs seek to invalidate PBA memberships as provided by the nonprofit for the primary benefit of its members. PBA members who directly benefit from memberships most certainly would find this action repugnant to their interests. Thus *Waller* precludes certification here.

Here, as in *Waller*, Plaintiffs have failed to “demonstrate they have no interest antagonistic to or in conflict with the interests of the named members of the class such that they are fairly and adequately able to protect the interests of the purported class.” 300 S.C. at 468, 388 S.E.2d at 801 (citing *Sullivan v. Winn-Dixie Greenville, Inc.* 62 F.R.D. 320 (D.S.C. 1974)). Plaintiffs’ efforts are antagonistic to the interests of PBA members who wish to remain members and retain their benefits. At the very least, their claims are antagonistic to the economic interests of those members of the class who cannot afford to suddenly retain private counsel in the absence of their PBA Plan benefits. Plaintiffs could significantly and unfairly harm other PBA members who receive benefits from their participation in the Plan. The Court should, therefore, reconsider its conclusion that Plaintiffs adequately represent the class. *See Harris v. Sand*

Canyon Corp., 274 F.R.D. 596, 568 (D.S.C. 2010) (“The court finds that the named plaintiffs would inadequately fill the role of class representatives because their action involves a host of factual and legal issues unique to them that are likely to distract from their representation of the class and risk putting the claims of the other class members in jeopardy.”).

IV. THE COURT SHOULD RECONSIDER AND REVERSE CERTIFICATION OF AN INJUNCTIVE RELIEF CLASS.

In all events, the Court should not certify Plaintiffs’ proposed injunctive relief class. Plaintiffs seek injunctive relief “to bar Defendant PBA from operating as an insurer without proper authority and license, including barring Defendant PBA from soliciting, marketing, selling and issuing insurance contracts and adjusting claims unless Defendant obtains proper authority and licensing from the states in which it is operating.” (Am. Compl., ¶ 127.) There is no basis to certify an injunctive relief class.

Here, Plaintiffs have not – and cannot – put forth any legal authority entitling them injunctive relief. In their Memorandum Opposing Summary Judgment (the only document in which Plaintiffs offered any caselaw pertaining to this claim), Plaintiffs merely cited South Carolina cases explaining that injunctive relief aims to potential future irreparable injury. (Pls.’ Opp. To MSJ at 17.) In their Amended Complaint, Plaintiffs assert that the future irreparable injury to the class would be PBA’s “acting without any regulatory oversight whatsoever,” and that they seek injunctive relief to “bar [PBA] from operating” and issuing the Plan “unless Defendant obtains proper authority and licensing.” (Am. Compl. ¶¶ 125, 127.) Because PBA has sought proper authority for providing the Plan under South Carolina law, and is currently regulated by the state through the South Carolina Department of Consumer Affairs, the speculative, hypothetical potential future irreparable injury Plaintiffs predict is factually impossible. *See Gardner*, 353 S.C. at 24 n. 14, 577 S.E.2d at 202 n. 14 (citing *Edisto Fleets, Inc.*

v. S.C. Tax Com'n, 256 S.C. 350, 182 S.E.2d 713 (1971), for the proposition that a "plaintiff cannot maintain a class action where [the] record indicates he was not directly harmed by defendants ['] actions"). The injunctive claim, therefore, cannot be common to the class.

Furthermore, as noted above, Plaintiffs went further in their depositions and demanded that PBA be dismantled, with all membership agreements rescinded and all membership dues refunded. In other words, Plaintiffs seek a mandatory injunction against PBA. There is absolutely no basis for one. "A mandatory injunction is an especially drastic remedy and is rarely granted." *Johnson v. Phillips*, 315 S.C. 407, 417, 433 S.E.2d 895, 901 (1993), *aff'd in part, rev'd in part on other grounds by Smith v. Phillips*, 318 S.C. 453, 458 S.E.2d 427 (1995). Furthermore "if the damage suffered by the party seeking a mandatory injunction is very small, a mandatory injunction is unduly oppressive and not in accordance with the principles upon which equitable relief is usually granted." *Johnson*, 315 S.C. at 417, 433 S.E.2d at 901.

Plaintiffs have made no effort to fit their case within the "rare[]" circumstances under which the "especially drastic remedy" of a mandatory injunction could be obtained. Their lack of damages further impairs that effort. Finally, most courts reject requests for a rescissory remedy on a classwide basis, and this Court should do so here. *See, e.g. Whitmire v. Adams*, 273 S.C. 453, 456, 257 S.E.2d 160, 163 (1979) (refusing relief in class action that sought rescission of deeds); *see generally Morris v. Wachovia Securities, Inc.*, 223 F.R.D. 284, 287 (E.D. Va. 2004) ("[A] majority of courts ... have refused to certify a class action where a rescissory remedy is sought.") (citing several cases).

CONCLUSION

"To certify this class action would be to open a Pandora's box from which would emerge scores of individual issues ... and untold temporal and financial costs." *Melton*, 283 F.R.D. at 302. "The failure of the proponents to satisfy any one of the prerequisites [of Rule 23] is fatal to

class certification.” *Waller*, 300 S.C. at 467, 388 S.E.2d at 801. Plaintiffs have failed to satisfy their burden as to at least three of those prerequisites. For the reasons set forth above, the Court should reconsider the Order granting class certification and decertify the class.

CARLOCK, COPELAND & STAIR, LLP

By: 

KENT T. STAIR
State Bar No.: 674025

J. PATRICK NORRIS
State Bar No.: 78270

J. ANDREW YOHO
State Bar No.: 100803

-and-

MOORE TAYLOR LAW FIRM, PA

JAMES E. BRADLEY
State Bar No.: 66130
1700 Sunset Boulevard (29169)
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160

*Attorneys for Defendant Southern States
Police Benevolent Association, Inc.*

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
843-727-0307

EXHIBIT A

Order

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Donald Stanley and Sean Reiter,)
Individually and as Class)
Representatives,)
)
v.)
)
Southern States Police Benevolent)
Association, Inc.)
)
)

Defendant.

FOR THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2016-CP-10-4062

**ORDER CERTIFYING PLAINTIFF
CLASS**

FILED
2016 JUL 13 PM 11:00
CLERK OF COURT

This matter is before the Court on the motion of Plaintiffs Donald Stanley and Sean Reiter to certify this matter as a class action pursuant to Rule 23 of the South Carolina Rules of Civil Procedure. Plaintiffs seek certification of the following class:

All residents of South Carolina who participated in the Defendant's Legal Defense Benefit Plan by paying member dues to the Defendant in exchange for benefits of said Plan from August 4, 2013 to August 4, 2016.

Excluded from the class are Defendant's current and former executive and local board members or executive level officers, employees, and persons that timely and properly exclude themselves from the class. Based on the foregoing, the Court certifies the class.

FACTUAL ALLEGATIONS

Defendant Southern States Police Benevolent Association, Inc. ("PBA") is a corporation organized and existing under the laws of the State of Georgia. Plaintiff Stanley is a Lieutenant with the Charleston County Sheriff's Department and is a member in good standing of the PBA and has been such for over 21 years. Plaintiff Reiter was at all times relevant a law enforcement officer with the Charleston County Sheriff's Department and/or the City of North Charleston. Plaintiffs allege the PBA invites police officers in the States of Georgia, South Carolina, North Carolina, Virginia, West Virginia, Arkansas, Tennessee, and Louisiana to become members of the PBA.

There are approximately 42,000 members of the PBA in all states. In 2016, the PBA had 2,575 members in South Carolina.

The Plaintiffs allege that members of the PBA pay monthly dues to the PBA in exchange for several benefits, but primarily a "Legal Defense Benefit Plan" (sometimes referred to as the "Plan"). Plaintiffs contend the monthly dues for South Carolina members are \$23.00, and that Plan promises to provide a legal defense and cover related costs to an officer member who is accused of a crime while performing his or her official duties as police officers. Plaintiffs further contend the Legal Defense Benefit Plan is actually a policy of insurance which the PBA was not licensed to sell in any of the States in which it transacts business. Alternatively, Plaintiffs claim that the Legal Defense Benefit Plan is a prepaid legal services plan which the PBA was not licensed to sell in any of the States in which it transacts business.

After this suit was filed, the PBA applied to the South Carolina Department of Consumer Affairs to become licensed as a prepaid legal benefits plan pursuant to S.C. Code § 37-16-10, *et seq.* Although the Department of Consumer Affairs granted this request, Plaintiffs' claims are primarily focused on the actions of Defendant PBA in the years leading up to the filing of the Complaint and prior to the PBA seeking licensure. Plaintiffs assert that during that time, the Defendant PBA not only failed to have a license to operate as an insurer or prepaid legal benefits plan, it also was not in compliance with the statutory requirements of such plans, namely that the plan had to allow members to choose their own attorneys. S.C. Code § 37-16-50. The PBA assigned attorneys to its members from a panel chosen by the PBA. The PBA has denied these allegations.

Plaintiffs also claim that the PBA failed to disclose the terms of the Plan to its members, including a clause that purportedly allows the PBA to withhold the benefits that its members pay

for if it determines that the member "has committed an intentional, deliberate and/or illegal act." Plaintiffs also assert that by selling the Plan, the Defendant PBA never revealed it lacked proper licensure and authority to sell insurance. The PBA has also denied these allegations. Plaintiffs seek injunctive relief and damages, namely a rescission of the Plan and a refund of member dues or premiums paid, together with additional relief.

Plaintiffs have alleged causes of action against the Defendant PBA for breach of contract, negligence, breach of fiduciary duty, unjust enrichment, fraud in the inducement, negligent misrepresentation, and injunctive relief. In addition to alleging that the PBA has operated as an insurer without appropriate authority or oversight and that it failed to disclose the terms of the Plan to its members, Plaintiffs have also alleged that PBA has violated other duties, including: (1) the duty to maintain sufficient reserves, capital, and surplus; (2) the duty to maintain adequate records and be subject to supervision and regular audits by appropriate state authorities; (3) the duty to prepare and submit reports to state authorities to demonstrate adherence to reserve, capital, and surplus requirements; (4) the duty to handle and account for premiums paid by insureds; (5) the duty to renew policies and not cancel policies in bad faith; (6) the duty to conduct its business in a fair and honest manner; (7) the duty to act in good faith in the solicitation, sell, negotiation and issuance of policies; (8) the duty to act in good faith and in the best interests of the class members in the handling and adjustment of claims made against those policies; and (9) the duty to comply with other laws, statutes and regulations enacted for the benefit of insureds as discovery may show.

Defendant PBA made a motion to dismiss the Amended Complaint for failure to state a claim under Rule 12(b)(6), SCRCF, primarily arguing that Plaintiffs did not have standing to bring a suit for the failure to obtain appropriate licenses as an insurer or prepaid legal benefit plan and that Plaintiffs had not suffered any legally cognizable damages. The Honorable J.C. Nicholson

denied this motion by order dated July 27, 2017. Defendant PBA thereafter made a motion for summary judgment on similar grounds, which Judge Nicholson denied by order dated November 15, 2017.

LEGAL FINDINGS

Rule 23(a) of the South Carolina Rules of Civil Procedure governs certification of classes:

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if the court finds

- (1) the class is so numerous that joinder of all members is impracticable,
- (2) there are questions of law or fact common to the class,
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class,
- (4) the representative parties will fairly and adequately protect the interests of the class, and
- (5) in cases in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds one hundred dollars for each member of the class.

“The class-action device saves the resources of both the courts and the parties by permitting an issue potentially affecting every class member to be litigated in an economical fashion under Rule 23.” Grazia v. SC State Plastering, LLC, 390 S.C. 562, 703 S.E.2d 197, 204 (2010) (quoting Califano v. Yamasaki, 442 U.S. 682, 701, 99 S.Ct. 2545, 2557, 61 L.Ed.2d 176 (1979)). The South Carolina Supreme Court has expressed the viewpoint that class actions are favored in this state:

Our state class action rule differs significantly from its federal counterpart. The drafters of Rule 23, South Carolina Rules of Civil Procedure (SCRCP) intentionally omitted from our state rule the additional requirements found in Federal Rule 23(B), Federal Rules of Civil Procedure (FRCP). By omitting the additional requirements, Rule 23, SCRCP, endorses a more expansive view of class action availability than its federal counterpart.

Littlefield v. South Carolina Forestry Comm'n, 337 S.C. 348, 523 S.E.2d 781, 784 (1999).

Moreover, the South Carolina Supreme Court has affirmed the certification of a class of insurance policyholders to protect the interests of those policyholders in the insurance reserves held by a fraternal benefit association, Ex parte Rowley, 200 S.C. 174, 20 S.E.2d 383, 387-88