

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 II

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(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:

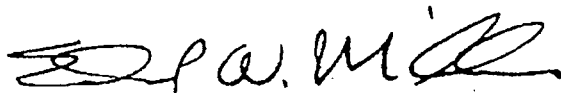
All residents of South Carolina who participated in the Defendant's Legal Defense Benefit Plan by paying "member dues" to the Defendant in exchange for benefits of said Plan from August 4, 2013 to August 4, 2016.

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

EXHIBIT B

10/22/18 Transcript

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:

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For the Plaintiff

Joseph C. Wilson, Esquire
For the Plaintiff

James Edward (Ward) Bradley, Esquire
For the Defense

S. Jahue (Jake) Moore, Esquire
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ROA 000508

I N D E XHEARING

-- 03

EXHIBITS - None ProfferedCERTIFICATION OF TRANSCRIPT

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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.

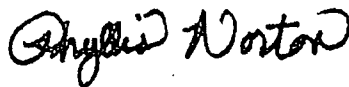
20 (WHEREUPON, the hearing concluded.)

(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

EXHIBIT C

Memorandum in Opposition to Plaintiffs' Motion for Class Certification

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

) THE SOUTHERN STATES POLICE
) BENEVOLENT ASSOCIATION, INC.'S
) MEMORANDUM IN OPPOSITION TO
) PLAINTIFFS' MOTION FOR CLASS
) CERTIFICATION

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Defendant, Southern States Police Benevolent Association, Inc. (hereinafter "PBA") respectfully submits this Memorandum in Opposition to Plaintiffs' Motion for Class Certification.

INTRODUCTION

This case involves a request to certify a class action involving South Carolina members of the PBA based on the flawed premise the PBA is in the business of selling insurance without a license. The PBA offers as part of an overall membership benefit package a legal defense plan that provides an attorney to PBA members who in the course of their employment have been involved in a critical incident (such as an officer involved shooting, accident, or death in custody), accused of a crime, or sued. The two purported class representatives have received the benefits of their PBA memberships including the provision of legal counsel. In addition, Plaintiff Donald Stanley, who is a dues-paying member of the PBA, is *currently* being provided counsel by the PBA in an unrelated legal matter. Moreover, the named plaintiffs have admittedly never been denied a benefit by the PBA and have failed to put forth evidence of any

other members of the purported class who have been denied a benefit under the PBA's plan. Despite those facts, Plaintiffs are seeking reimbursement of all membership dues paid to the PBA and rescission of their memberships based on the allegation the PBA has engaged in the illegal sale of insurance. Despite the lack of any such determination by the South Carolina Insurance Director and in the face of a decision that the PBA is regulated by the South Carolina Department of Consumer Affairs, Plaintiffs seek certification of a class action to strip the PBA of its South Carolina membership, force disgorgement of dues voluntarily paid, and leave members of the PBA without the benefits bargained for in their membership. For the reasons outlined herein, certification of the purported class is inappropriate under Rule 23, SCRCP, and the Motion should be denied.

FACTUAL BACKGROUND

A. The Southern States Police Benevolent Association (PBA)

The PBA is a labor organization distributing funds and resources on behalf of its members. A Georgia nonprofit corporation in existence since 1987, the PBA was formed to promote the welfare of law enforcement officers, and operates for the advancement of programs to improve working conditions for officers, reduce the hazards of law enforcement, and enhance the professionalism of law enforcement.

The PBA, which exists for the benefit of its members, consists of police officers across Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia. The PBA engages in lobbying and political activity on behalf of its membership, and is a 501(c)(5) tax exempt labor organization.

The PBA is funded by membership dues. It exists to secure the needs of police officers and offers members the following benefits:

- 1) Governmental affairs and lobbying for police officers' interests;
- 2) Screening and endorsement of candidates for public office;
- 3) Accidental death benefits;
- 4) Access to PBA staff attorneys for advice or counsel;
- 5) The police magazine Blue Review;
- 6) A legal defense benefit for the performance of official duties within accepted standards of the profession; and,
- 7) Representation in disciplinary and grievance proceedings.

The PBA Board of Directors consists of PBA members and governs the organization.

Under the legal defense benefit listed above, the PBA provides its members an attorney at no-cost in the event a member is involved in a critical incident or is sued as the result of actions taken during their employment as a law enforcement officer. The legal defense benefit became the focus of litigation following the shooting of Walter Scott. North Charleston Police Officer Michael Slager, then a PBA member, was denied benefits under the legal defense benefit plan. Litigation between Slager and the PBA was later settled and voluntarily dismissed by Slager.

The PBA is regulated as a prepaid legal company under the umbrella of the South Carolina Department of Consumer Affairs. In December of 2016, the PBA voluntarily reached out to the Department of Consumer Affairs to determine whether it fell within the Department's authority. The Department issued an opinion on March 31, 2017 finding the PBA was a prepaid legal company and was subject to the Department's regulation. The PBA has since registered with the Department of Consumer Affairs and paid a \$13,000 filing fee to come into compliance with the Department's regulations. (See Ex. A).

B. The Lawsuit's Allegations

In the instant action, Donald Stanley, a Lieutenant with Charleston County Sheriff's Office and current member of the PBA, and Sean Reiter, a former officer with the North Charleston Police Department and former PBA member, have sued the PBA as purported class representatives alleging the following causes of action: (1) Breach of Contract; (2) Negligence; (3) Breach of Fiduciary Duty; (4) Unjust Enrichment and Restitution; (5) Fraud in the Inducement; (6) Negligent Misrepresentation; and (7) Injunctive Relief.

While the Complaint contains 125 numbered allegations, the wrongful conduct alleged concerns selling insurance without a license. The Complaint alleges the PBA's legal defense benefit is insurance, the PBA is not licensed to sell insurance, and, thus, Stanley and Reiter, as well as the purported class, should recover the dues they paid as members because the PBA is not licensed to sell insurance. The Complaint does not allege that any member has been wrongfully denied the legal defense benefit or that any member has been damaged in any way other than the voluntary payment of dues to the PBA.

Plaintiffs now seek certification of a South Carolina class of current and former PBA members. The goal of the purported class is to seek rescission of the legal defense plan and a refund of all member dues voluntarily paid to the PBA.

ARGUMENT

I. PLAINTIFFS CANNOT SATISFY THE REQUIREMENTS OF RULE 23, SCRPC

Plaintiffs bear the burden of persuasion in class certification. Here, Plaintiffs have failed to set forth an evidentiary record which will support the granting of class certification. Waller v.

Seabrook Island Prop. Owners Ass'n, 300 S.C. 465, 467-68, 388 S.E.2d 799, 801 (1990). A class is not maintainable as a class action simply by virtue of its designation as such in the pleadings. In re American Medical Sys., Inc., 75 F. 3d 1069, 1079 (6th Cir. 1996). Rather, a plaintiff bears the burden of proving she has established each of the prerequisites of a class. Waller v. Seabrook Island Prop. Owners Ass'n, 300 S.C. 465, 467-68, 388 S.E.2d 799, 801 (1990) (citing Windham v. American Brands, Inc., 565 F.2d 59 (4th Cir. 1977)). "It is imperative the court apply a rigorous analysis to assure the prerequisites of Rule 23(a) have been satisfied." Waller, 388 S.E.2d at 801 (citation omitted). If the plaintiff fails to satisfy any one of the Rule 23(a) requirements, that failure is fatal to a motion to certify a class. Id.; see also Ferguson v. Charleston Lincoln Mercury, Inc., 344 S.C. 502, 510, 544 S.E.2d 285, 289 (Ct. App. 2001). The class action was designed as "an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." Califano v. Yamasak, 442 U.S. 682, 700-01, (1979). This exception is not warranted here.

Proponents of class certification bear the burden of proving all five prerequisites. Under Rule 23(a), SCRPC the prerequisites are:

- (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) 'the representative parties must fairly and adequately protect the interests of the class;' and
- (5) 'the amount in controversy must exceed \$100.00 for each member of the class.'

Gardner v. S.C. Dept. of Revenue 353 S.C. 1, 577 S.E.2d 190 (2003). The Plaintiffs, as proponents of class certification, have the burden of proving that each of these pre-requisites to class certification has been met. Id.; citing Waller, 300 S.C. 465, 388 S.E.2d 799 (1990); Windham v. American Brands, Inc., 565 F.2d 59 (4th Cir. 1977), cert. denied, 435 U.S. 968, 98

S.Ct. 1605 (1978). The failure of the proponents to satisfy any one of the pre-requisites is fatal to class certification. Id., citing Waller, supra., citing Tolbert v. Daniel Const. Co., 332 F.Supp. 772 (D.C.S.C. 1971). As discussed below, Plaintiffs are unable to satisfy any of the requirements of SCRCP, Rule 23(a); therefore, Plaintiffs' Motion for Class Certification must be denied.

A. Numerosity

The topic of numerosity has not been extensively discussed by South Carolina courts, thus, there has not been a definitive ruling in this state on the requisite number of parties to satisfy the numerosity element of Rule 23. However, the importance of the numerosity requirement should not be overlooked, as all members of the class will be bound by the judgment. Rippey v. Denver U.S. Nat. Bank, 260 F. Supp. 704, 712 (D. Colo. 1966).

"Practicability of joinder depends on the size of the class, ease of identifying its numbers and determining their addresses, facility of making service on them if joined in the action, and their geographic dispersion." Lott v. Westinghouse Savannah River Co., 200 F.R.D. 539, 550 (D.S.C. 2000) (quoting Kilgo v. Bowman Transp. Inc., 789 F.2d 859, 878 (11th Cir. 1986). "No bright line test exists for determining numerosity; instead, the determination rests on the court's practical judgment in light of the particular facts of the case." Id. However, Plaintiffs do have a burden to demonstrate that the proposed class size makes it impracticable for class members to bring individual actions. The mere speculation of counsel and conclusory assumptions and allegations with respect to the size of the class is insufficient to satisfy the numerosity requirement. Lloyd v. Industrial Bio-Test Labs. Inc., 454 F.Supp. 807 (D.C.N.Y. 1978). The proponent of certification must provide sufficient reliable information from which the approximate number of class members can be ascertained before a court can find joinder impracticable. Al Barnett & Son, Inc. v. Outboard Marine Corp., 64 F.R.D. 43 (D.C. Del. 1974).

Moreover, "[a] small class militates against certification." CL-Alexanders Laing & Cruickshank v. Goldfield, 127 F.R.D. 454, 455-56 (S.D.N.Y. 1989).

In their Motion, Plaintiffs estimate that the purported class has "at least several thousand members." (Mem for Class Cert. p.10). However, Plaintiffs have not provided the court with sufficient, reliable information from which the approximate number of class members can be ascertained thus, failing to meet their burden. See Gardner v. S.C. Dept. of Revenue 353 S.C. 1, 577 S.E.2d 190 (2003) (the Plaintiffs, as proponents of class certification, have the burden of proving that each of these pre-requisites to class certification has been met.).

Moreover, as will be discussed more fully herein, the practicalities of the class action are wholly negated by the individual assessment of each proposed class member that will be required if this class is to be certified.

B. Commonality

To establish commonality, a party must show "there are questions of law or fact common to the class." Rule 23, SCRPC. In other words, a party must set forth the existence of "significant common, legal, or factual issues" which bind the proposed class together. Gardner, 353 S.C. at 20-22, 577 S.E.2d at 200-01 (quoting Boggs v. Divested Atomic Corp., 141 F.R.D. 58, 64 (S.D. Ohio 1991)). Not every issue must be common to all class members; however, the class must share a determinative issue. Pope v. Heritage Cmty., Inc., 395 S.C. 404, 422, 717 S.E.2d 765, 774 (Cl. App. 2011). To satisfy commonality and reach certification, a determinative issue must overshadow all issues. Questions that are not dispositive but only "propel the action into a posture where judicial scrutiny is necessary for just adjudication" do not establish the

commonality requirement. Gardner, 353 S.C. at 22, 577 S.E. 2d at 200. (quoting Stott v. Haworth, 916 F.2d 134, 145 (4th Cir.1990)).

Class certification is not appropriate where factual differences are the crux of a predominant legal issue. Id. "A representative class cannot exist where the court must investigate each plaintiff's prejudice claim where it is one of the two predominate issues in the case." Id. Critically, "a representative plaintiff cannot establish commonality . . . if the court must investigate each plaintiff's individual claim." Id. (quoting Peoples v. Wendover Funding Inc., 179 F.R.D. 492, 498 (D. Md. 1998)).

"Requiring such individualized examination negates the benefits of a class action suit." Gardner, 353 S.C. at 22, 577 S.E.2d at 201. "The very purpose of a class action is to avoid the necessity of requiring each member of the class to prove the elements of the cause of action." O'Quinn v. Beach Associates, 372 S.C. 95, 104, 249 S.E.2d 734, 738 (1978). "A court determines the existence of commonality among defendants by examining the plaintiffs' claims and the defendants' anticipated defenses." 353 S.C. at 22, 577 S.E.2d at 201.

In their Motion, Plaintiffs have set forth a variety of common questions that may apply to the purported class. However, this case boils down to two common questions of law: 1) whether the PBA was selling insurance without a license, and, 2) whether Plaintiffs were damaged by that action. Even if the PBA has sold insurance without a license, a point the PBA refutes, Plaintiffs cannot prevail unless they establish they were damaged by that action. See Gardner (discussing the need to prove damage necessary to recover from violation of statute and that proof of damages requires individual assessment and negated class action benefit). Plaintiffs focus their

arguments on the first question and a sundry of minor factual issues, but ignore the crux of the common question of law – whether the alleged violation of law has actually resulted in damage.

As a general rule, a party must establish prejudice as the result of another's failure to follow mandatory statutory procedure. Gardner, 353 S.C. at 14, 577 S.E.2d at 197. Moreover, the very causes of action pled by Plaintiff's require a showing of damages. The claims and their elements follow:

(1) Breach of Contract:

- a. a binding contract entered into by the parties;
- b. a breach or unjustifiable failure to perform the contract; and
- c. damages suffered by the plaintiff as a direct and proximate result of the breach.

Fuller v. Eastern Fire & Casualty Insurance Co., 240 S.C. 75, 124 S.E.2d 602, 610 (1962) (burden on plaintiff to prove contract, its breach, and damages caused by such breach).

(2) Negligence:

- a. a duty of care owed by the defendant to the plaintiff;
 - b. a breach of that duty by a negligent act or omission; and
 - c. damages proximately resulting from the breach.
- Crolley v. Hutchins*, 300 S.C. 355, 387 S.E.2d 715 (Ct. App. 1989).

(3) Breach of Fiduciary Duty:

- a. the existence of a fiduciary duty;
- b. a breach of that duty owed to the plaintiff by the defendant, and
- c. damages proximately resulting from the wrongful conduct of the defendant.

RFT Management Co., LLC v. Tinsley & Adams, LLP, 399 S.C. 322, 732 S.E.2d 166 (2012).

(4) Unjust Enrichment/*Quantum Meruit*:

- a. a benefit conferred upon the defendant by the plaintiff;
- b. a realization of that benefit by the defendant; and
- c. retention by the defendant of the benefit under conditions that make it unjust to retain it without paying its value.

Myrtle Beach Hosp. v. City of Myrtle Beach, 341 S.C. 1, 532 S.E.2d 868 (2000).

- (5) **Fraud in the Inducement:**
A plaintiff must prove the nine elements of fraud, including damages arising from the fraudulent act, as well as the following three elements:
- a. the alleged fraudfeasor made a false representation relating to a present or preexisting fact;
 - b. the alleged fraudfeasor intended to deceive him; and,
 - c. that plaintiff had a right to rely on the representation made to him.
- Moseley v. All Things Possible, Inc.*, 388 S.C. 31, 694 S.E.2d 43 (2010).
- (6) **Negligent Misrepresentation:**
- a. a false representation made by the defendant to the plaintiff;
 - b. a pecuniary interest by the defendant in making the statement;
 - c. a duty of care owed by the defendant to see that truthful information was communicated to the plaintiff;
 - d. the defendant breached the duty by failing to exercise due care;
 - e. the plaintiff justifiably relied on the representation; and
 - f. the plaintiff suffered a pecuniary loss as a direct and proximate result of reliance on the representation.
- Hurst v. Sandy*, 329 S.C. 471, 494 S.E.2d 847, 852 (Cl. App. 1997).

To argue that the element of prejudice as the result of the conduct complained of is not the predominate legal question at issue is misguided. Put simply, in order to obtain the relief requested there must be a showing of damage. As a prerequisite for relief, the element of damage must by its very nature serve as a predominate legal issue in this matter.

Plaintiffs would have this Court believe, by submitting what they believe to be a common question concerning PBA's status of under the Insurance Code, commonality is automatically satisfied; however, Plaintiffs have not, and cannot, put forth any case law or statute entitling Plaintiffs to the relief sought as the result of a licensing violation under the Insurance Code. In fact, a violation of the insurance licensing statutes does not create a private right of action. The PBA denies it is an insurance company. Instead, it is regulated by the Department of Consumer Affairs, with which it is now properly registered. (See Memorandum from Department of Insurance attached as ex. B). But, even if the PBA was an unlicensed insurance company, the lack of licensure does not create a cause of action for an individual or a class. Insurance

As a result, there is no private cause of action for operating as an unlicensed insurer as alleged in the Complaint.

In addition, Plaintiffs' claim for rescission of the membership contract creates an untenable scenario for a class action. "Rescission is an equitable remedy that attempts to undo a contract from the beginning as if the contract had never existed." Anderson Cty. v. Preston, No. 5490, 2017 S.C. App. LEXIS 82, at 34 (Ct. App. Aug. 16, 2017) (quoting Ripley Cove, LLC, 406 S.C. at 413, 751 S.E.2d at 669; Mortg. Elec. Sys., Inc. v. White, 384 S.C. 606, 615, 682 S.E.2d 498, 502 (Ct. App. 2009)). Rescission returns the parties to their position prior to making the contract. Rescission, as a remedy, returns the parties to the status quo ante. Ellie, Inc. v. Mitsuichi, 358 S.C. 78, 95, 594 S.E.2d 485, 494 (Ct. App. 2004); See also First Equity Inv. Corp. v. United Serv. Corp. of Anderson, 299 S.C. 491, 496, 386 S.E.2d 245, 248 (1989) ("Rescission entitles the party to a return of the consideration paid as well as any additional sums necessary to restore [the party] to the position occupied prior to the making of the contract.").

In the case at hand, Plaintiffs' pursuit of this remedy will require not only the return of the dues paid to the PBA, but will also require Stanley, Reiter, and members of the class to return the benefits received from the PBA. In other words, rescission also requires the PBA be placed in its pre-contract position. Under this theory of recovery, the Court will be tasked with making an individual determination for each member of the class to ascertain the amount of dues paid the PBA and the costs of benefits provided by the PBA in order to properly implement rescission of each membership. Such a result would be burdensome for the court to undertake and completely negate the purpose of the class action. See Gardner, 353 S.C. at 22, 577 S.E. 2d at 200 (holding a plaintiff cannot establish commonality if the court must investigate each plaintiff's claim as individual examination negates the benefits of a class action).

Accordingly, in order for Plaintiffs and the proposed class to obtain the relief requested, Plaintiffs must prove they were damaged by the PBA's actions, which in turn requires each member of the class to individually prove the elements of the cause of action. The factual determination of prejudice is the crux of the predominate legal issue in this case which, negates the commonality element. Moreover, Plaintiffs' pursuit of rescission will necessitate a case-by-case determination by the court of fee paid versus benefits received. According to the Supreme Court, a representative class cannot exist where the court must investigate each plaintiff's prejudice claim when it is a predominate issue in the case. As stated in Gardner, "[r]equiring such individualized examination negates the benefits of a class action suit." Plaintiffs cannot show that commonality exists in this instance; therefore, Plaintiffs' Motion should be denied.

C. Typicality

To establish the typicality requirement, the "claims or defenses of the representative parties [must be] typical of the claims or defenses of the class." Pope v. Heritage Cmtys., Inc., 395 S.C. 404, 422, 717 S.E.2d 765, 774 (Ct. App. 2011). "The representative party's interest in prosecuting his own case must simultaneously tend to advance the interests of the absent class members." Deiter v. Microsoft Corp., 436 F.3d 461, 466-67 (4th Cir. 2006). "For that essential reason, plaintiff's claims cannot be so different from the claims of absent class members that their claims will not be advanced by plaintiff's proof of his own individual claim." Id.

The typicality requirement focuses on the characteristics of the would-be class representative. Typicality entails an inquiry as to whether the named plaintiff's individual circumstances are markedly different or the legal theory upon which the claims are based differs from that upon which the claims of other class members will be based. The typicality requirement focuses on the consideration of whether the representatives' interests are truly

aligned and consistent with those of the class members. Smith v. The B&O Railroad Company, 473 F.Supp. 572 (D.C.Md. 1979). Moreover, typicality entails consideration of whether the plaintiffs can prove they have been injured by the same conduct has injured other class members and whether plaintiffs' claims are based upon conduct that is not unique to the named plaintiffs. Osgood v. Harrah's Entertainment, Inc., 202 F.R.D. 115, 124 (D.N.J. 2001). Here, as demonstrated below, Plaintiffs fail to satisfy these requirements.

When evaluating the typicality requirement, this Court must conduct a "rigorous analysis" into the characteristics of the class representatives and whether those claims advance the absent class members interests. See Waller, 300 S.C. at 467-68, 388 S.E.2d at 801 (1990) ("It is imperative the court apply a rigorous analysis to assure the prerequisites of Rule 23(a) have been satisfied."). Moreover, similar to commonality, Plaintiffs' claims and damages, as well as the defenses to those claims and damages must be consistent. To make this determination, it is important to understand what the named plaintiffs are seeking and their interests in prosecuting this claim.

Both Stanley and Reiter have testified that their goal is to ensure the PBA is properly regulated so that the circumstances surrounding the Slager denial does not occur again. (See Dep. of D. Stanley p.107, line 5-p.110, line 20; Dep. of S. Reiter p.56, line p.57, line14). Stanley and Reiter both blame the Slager denial on the lack of proper oversight; however, neither plaintiff could offer any examples of how they personally, or any other PBA member, has been damaged by the PBA outside of Slager. As a result of the Slager denial, Stanley and Reiter, as purported class representatives, are seeking rescission of the class members PBA membership and a refund of dues paid to the PBA by members of the class.

With that background in mind, the question posed by Rule 23 is whether a Slager-inspired lawsuit, thinly veiled as a request for oversight, with the end goal of terminating memberships and disgorgement of fees is typical and representative of the proposed class of PBA members. The PBA would offer these claims are not typical of the purported class, but represent the efforts of two individuals who are seeking a monetary reward at the expense of former and current PBA members.

To satisfy the typicality element of Rule 23, Plaintiffs bear the burden of proving the purported class is supportive of the claims that: 1) the PBA should be regulated as an insurance company; 2) the lack of licensure has caused damage to the class; 3) the memberships of the class should be rescinded; and, 4) the class is entitled to a full refund of dues paid to the PBA. Plaintiffs have produced no evidence that any other individuals who have or continue to voluntarily pay monthly membership dues to the PBA are desirous of that outcome. There has been no evidence presented that any other PBA member desires rescission of their membership. There has been no evidence presented that any former PBA member desires their membership dues be refunded. Moreover, there has been no evidence that any PBA member, past or present, desires the PBA be regulated as an insurance company or the perceived lack of oversight has resulted in any damage to any PBA member. In fact, in their responses to Interrogatories, Plaintiffs have failed to identify any witnesses beyond Stanley, Reiter, and PBA employees and officers as witnesses in this matter. (See Ex. C).

To argue the interests of the proposed class members would be served by Stanley and Reiter's drastic objectives is disingenuous, absent any evidence to support such a contention. The intentions laid out by Plaintiffs are not positive for PBA members, but would result in the rescission of their membership, and will ultimately result in a negative impact for those desiring

to remain a member with the PBA and receive the benefits they signed up to receive. Plaintiffs have not met their burden of establishing their claims as typical of the purported class. Accordingly, the Plaintiffs' Motion should be denied.

D. Adequacy of Representation

Rule 23(a)(4) SCRPC requires the representative party fairly and adequately protect the interests of the class. This requirement, like the typicality requirement, focuses on the proposed class representative. The South Carolina Supreme Court in Waller adopted the South Carolina district court's criteria set forth in Runion v. U.S. Shelter, 98 F.R.D. 313 (D.S.C. 1983). Waller at 468. In Runion, the court looked at two primary issues when determining whether a representative will fairly and adequately protect the interests of the class. The first is whether the representative has interests common with the unnamed members of the class, a requirement that has been interpreted to mean that the class representative should not have a significant antagonistic or conflicting interest to the unnamed members. The second is whether the named Plaintiff will vigorously prosecute the claims of the class members.

The PBA takes exception to Plaintiffs' claims that they are able to fairly represent and protect the interests of all class members. As discussed hereinabove, Plaintiffs are seeking a drastic remedy as it relates to the class members' relationship with the PBA. The PBA provides many services to its members, including lobbying efforts, accidental death benefits, advice and representation, and the oft-mentioned legal defense benefit. Current PBA members are paying dues to receive those benefits. The stated goal of this action is to judicially force the rescission of memberships and disgorgement of membership dues paid.

Plaintiffs fail to acknowledge that individuals included within the purported class rely on those significant benefits and are members of the PBA for valid and important reasons. For example, the PBA is currently providing legal counsel to seventy South Carolina PBA members, including Plaintiff Stanley. (See Affidavit of Charles Cordell attached as Ex. D). If Plaintiffs are successful, the memberships of those seventy members will be rescinded and the benefit of counsel removed. Further, under Plaintiffs' theory of rescission, such a recovery will require that both Plaintiffs and the PBA be returned to the status quo prior to the contract. Rescission, as a remedy, returns the parties to the status quo ante. Miccichi, 358 S.C. at 95, 594 S.E.2d at 494. In many instances, particularly involving those who have had an attorney provided by the PBA, members of the class may be required to compensate the PBA for the cost of the benefit provided in the event the cost of the benefits received exceeds the membership dues paid. This scenario may well come into play with respect to the class representatives who have both been provided the benefit of counsel by the PBA. Accordingly, Plaintiffs' pursuit of rescission not only would strip class members of their benefits and membership, but could result in monies being owed to the PBA by individual class members.

Plaintiffs' pursuit of rescission and disgorgement is not representative of a fair and adequate effort to protect the interests of *all* class members. Rather, Plaintiffs' efforts are adverse to PBA members who wish to remain members and retain their benefits. This is evidenced by the purported class representative's own testimony. Plaintiff Reiter admitted in his deposition that this lawsuit is seeking to shut the PBA down in its current form, and further acknowledged that he was unaware of any other member who shared that goal. (See Dep of S. Reiter p.45, line 10-p.46, line 3). The efforts by Plaintiffs to force a rescission of memberships, thus ending the benefits so many have paid for and relied upon, would likely be considered

repugnant by many of the proposed class. See Waller, 300 S.C. at 468, 388 S.E.2d at 801 ("The kind of antagonism that will defeat the maintenance of a class action is the kind which relates to the subject matter in controversy, as when the named representative has a claim which conflicts with the economic interests of the class."). For these reasons, Plaintiffs' Motion should be denied.

In addition to the lack of proper representation on the part of the class representatives, there are conflicts with class counsel that should preclude certification. While the PBA does not take issue with the ethics or legal ability of Plaintiffs' counsel, the Bland and Richter firm has previously represented a Plaintiff that sued a member of the purported class. (See Affidavit of Charles Cordell, Ex. D) In addition, counsel of record, Andrew Savage, has previously provided legal representation to PBA members under the legal defense benefit plan he/they now criticize. (See Ex. D). Mr. Savage has represented several members of the purported class, most notably, Mr. Savage has represented both of the class representatives under the PBA legal defense benefit plan. (See Ex. D). Plaintiffs contend the legal defense benefit plan raises ethical questions, a point the PBA vehemently denies. Mr. Savage's status of counsel for the proposed class presents a potential conflict as Mr. Savage's prior conduct as a lawyer under the PBA legal defense plan is one of the very defenses the PBA will rely on in countering Plaintiffs' claims of unethical practices. The PBA submits these potential conflicts be taken into consideration when evaluating certification under Rule 23.

E. Amount in Controversy

Rule 23(a)(5), SCRCF, mandates that the amount in controversy exceeds one hundred dollars for each member of the class. Plaintiffs claim they are entitled to a refund of all dues paid to the PBA during their membership period, thus satisfying the one hundred dollar requirement

of Rule 23. However, this bald allegation is not sufficient to establish this element of Rule 23. See In re American Medical Sys., Inc., 75 F. 3d 1069, 1079 (6th Cir. 1996) (stating a class is not maintainable as a class action simply by virtue of its designation as such in the pleadings); Waller, 300 S.C. at 467-68, 388 S.E.2d at 801 (1990) (stating a plaintiff bears the burden of proving she has established each of the prerequisites of a class and "[i]t is imperative the court apply a rigorous analysis to assure the prerequisites of Rule 23(a) have been satisfied.").

Stanley and Reiter do not allege any damages in their complaint other than dues they voluntarily paid as PBA members. See, Amended Complaint, ¶¶ 90, 94, 100, 104, 113, and 122. In addition, the PBA asked Stanley and Reiter to list their damages. Stanley and Reiter responded to the PBA's interrogatory as follows:

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.

(See Ex. C).

Likewise, neither Mr. Stanley nor Mr. Reiter have testified to any damages. Mr. Stanley testified as follows:

Q All right. Has the PBA done anything to damage you?

MR. RICHTER: Object to the form.

A I think that the -- the -- I think the damages come in, in the -- the fact that -- the -- the potential of damages to me. I mean, I would -- could I be involved in the same situation that Michael Slager was and have -- have coverage denied. You know, I mean, we pay dues to support each other and the bottom line is that it -- it fell through in that case.

BY MR. BRADLEY:

Q Right. And Mr. Slager's been resolved, so --

A Yes, sir.

Q -- I -- I can't talk about the details of -- with it, because it's -- but -- but for the fact that it's been resolved, it's sealed.

A Sure.

Q My question is, how have you been damaged by something the PBA has done?

A Again, I think that the -- the potential for the damage is there, based on the -- if -- if I was involved in a similar situation.

Q All right. So would it be fair to say, as we sit here today, Mr. Stanley, the damage to you is something that could happen in the future?

MR. RICHTER: Object to the form.

A Not only something that could happen in the future, but I -- you know, my money also was there to support Michael Slager --

Q Right.

A -- and it -- it wasn't extended to him.

Q So as far as you're concerned, that damage is you think the organization made the wrong decision as to Mr. Slager?

A Yes, sir.

Q All right. Besides the fact of Mr. Slager, which has been resolved, what I want to know is how are you damaged by something the PBA has done.

A I think that I'm damaged in that -- in -- in the fact that -- again, the potential for damage, as well as the fact that I paid for -- my -- my dues don't go just for me. They go for other -- other law enforcement officers.

Q Right.

A And the fact that coverage was denied for him, I -- I think that is damaging.

Q Fair enough. So let's start from the beginning, then. The damages to you are you think Mr. Slager should have been defended by the PBA?

A Yes, sir.

Q All right. And you're concerned that in the future you might need the PBA and the PBA might not defend you?

A I'm -- I'm concerned that there could be a similar situation and the PBA decides they're not covering. And there's no oversight for that.

Q All right. So my question is, besides what might happen to you in the future -- or to somebody else in the future -- and besides what happened to Mr. Slager, have you been damaged in any way by the PBA?

A Besides those? No, sir.

(Dep. D. Stanley, p.74, L.3 - p.76, L.16) (emphasis added).

Sean Reiter also testified that he had no damages as follows:

BY MR. BRADLEY: -

Q Other than Michael Slager, have you been damaged by the PBA in any way?

A Yeah. I was damaged when Mike was damaged. Other than that, I don't know of any other members. Again, it hasn't been made public, so. But anyone who has been damaged, then, yes, I have been.

Q Right. But you don't have any knowledge of anyone that's been damaged?

A No, sir.

Q And other than Michael Slager, do you know of anyone that's been damaged by the PBA?

A No, sir.

(Dep. S. Reiter, p.43, ll. 2-14)(emphasis added).

In addition to Stanley and Reiter's lack of damages, the PBA hired an attorney to represent both Stanley and Reiter at their request; that attorney is Andrew Savage - the same attorney who is now suing the PBA on their behalf. (See Dep. of D. Stanley pp. 131-138 and S. Reiter Dep. pp. 63-65). Additionally, Stanley is currently being represented by attorney Abigail Walsh through the PBA on an unrelated civil matter. (See Dep. of D. Stanley pp. 124-125)(See also Ex. D). Thus, both Stanley and Reiter have received representation of an attorney from the PBA when requested. Furthermore, Plaintiffs have failed to put forth any evidence of any PBA member past or present, aside from Mr. Slager, has ever been denied a benefit by the PBA. Accordingly, absent any evidence to the contrary, Plaintiffs have failed to establish the one hundred dollar damage threshold.

In addition to the lack of damages, there is no legally cognizable theory of recovery that would entitle Plaintiffs to a refund of dues paid to the PBA as the result of a licensing violation. As discussed hereinabove, the insurance licensing statute does not create a private right of action.

Accordingly, absent any damages caused by the PBA, Plaintiffs are not entitled to any recovery due to the PBA's alleged failure to be properly licensed.

Moreover, South Carolina has explicitly rejected claims to recover money due to the lack of proper licensure. The residential contractor's licensing statutes prohibit an unlicensed residential contractor from suing to recover for work which requires a license. S.C. Code Ann. Ann. § 40-59-30. Even with this explicit bar, South Carolina courts do not allow a homeowner to recover money paid for work done solely because a homebuilder lacks a license. In Lenz v. Walsh, 362 S.C. 603, 608 S.E.2d 471 (Ct. App. 2005), the homebuilder sued to collect money due for the construction of a home. Id. The homeowners counter claimed for costs to complete the home. Id. The trial court dismissed the homebuilder's claim because the homebuilder did not have the required license. Id. The court ruled against the homeowner because the homeowners' counterclaim was for less than the amount owed to the builder. Id.

The Court of Appeals affirmed both rulings. Id. While the homebuilder could not enforce the contract because it lacked a license, the lack of a license by itself did not create a claim for the homeowners. Id. It held that "a homeowner may not recover payments already made to an unlicensed contractor merely because the contractor did not hold a license when the contract was executed." Id. at 608. 608 S.E.2d 473.

The Court of Appeals set forth its reasoning as follows:

- (1) The statutes requiring licenses do not specifically authorize the recovery of money paid;
- (2) Such laws are penal in nature and must be strictly construed;
- (3) The specification of particular penalties precludes the addition of other penalties by judicial interpretation;
- (4) Allowing recovery of such payments is not necessary to effectuate the policy of licensing statutes; and

- (5) Equity and principles of restitution do not require that unlicensed contractors be completely uncompensated or that contracting homeowners receive the completed construction without cost.

362 S.C. 608, 608 S.E.2d 473 (citing Hawkins v. Holland, 388 S.E.2d 221 (NC. Ct. App. 1990))

See also, Maurice T. Brunner, Annotation, *Recovery Back of Money Paid to Unlicensed Person Required by Law to Have Occupational or Business License or Permit to Make Contract*, 74 A.L.R.3d 637, 642-44 (1976) (citing the same five factors).

Likewise, the South Carolina insurance licensing statutes do not explicitly authorize the recovery of amounts paid for failure to hold a license. In fact, the insurance licensing statutes impose other penalties for failure to hold a license. See, S.C. Code Ann. § 38-2-10 (administrative penalties for violation of insurance law); § 38-2-20 (penalties for conviction of misdemeanor); § 38-2-30 (penalties for acting without a license); § 38-5-160 (injunction, receivership); § 38-25-320 (penalty for unauthorized insurer); § 38-25-330 (penalty for violation of chapter); § 38-25-360 (personal liability on contracts of unauthorized insurers). As a result, there is no civil claim to recover money for the failure to have a license.

Furthermore, the named Plaintiffs have received the benefit of their bargain. They have received PBA supplied attorneys when requested. Indeed, they were pleased enough with the attorney assigned to them - Andrew Savage - that they hired him to sue the PBA for return of their membership dues. As they have received the benefit of their bargain, Stanley and Reiter are not entitled to the return of the dues they voluntarily paid. Like the homeowners in Lenz v. Walsh and Hawkins v. Holland, Stanley and Reiter should not be allowed to voluntarily pay for a benefit, receive the benefit with no complaint, and then recover back the money paid for the benefit.

South Carolina and North Carolina are not the only states to hold this way. In Fausnight v. Perkins, 994 So. 2d 912 (2008), the Alabama Supreme Court cited Lenz v. Walsh in holding that an unlicensed homebuilder need not return funds received for an otherwise acceptable job. It also quoted from *The Law of Restitution* to support its holding as follows:

When services contracted for have been performed by an unlicensed person, *courts nearly always have denied restitution of payments made for such services*. In the usual case there is no unjust enrichment of the unlicensed person, since he merely received the agreed compensation for services performed. This is the reason, either expressed or implicit, in most of the cases denying restitution although other reasons sometimes are given. The fact that an unlicensed person will not be permitted to recover compensation for his work, either on the contract or on principles of restitution, does not make his retention of a payment for such services an unjust enrichment. This is exemplified in the decisions rejecting his action to recover for uncompensated work, while at the same time denying the defendant's counterclaim seeing restitution of payments made for the work.

2 George E. Palmer, *The Law of Restitution* § 8.3(b) (1978).

In addition, Plaintiffs have not put forth any evidence any of the proposed class members have any claim for restitution as alleged. Rather, both plaintiffs have admitted they are personally unaware of any PBA member that has ever been denied a benefit aside from Michael Slager which has been resolved.

Therefore, Plaintiffs have failed to meet their burden concerning the damage threshold set forth in Rule 23. Accordingly, Plaintiffs' Motion should be denied.

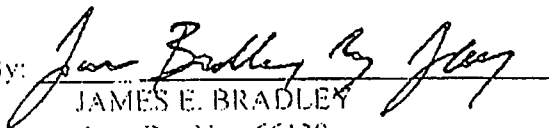
CONCLUSION

The named Plaintiffs, under the guise of serving as representatives of former and current South Carolina members of the PBA, are not seeking the oversight and regulation of the PBA, that has been accomplished through the action of the South Carolina Department of Consumer

Affairs. Rather, Plaintiffs are seeking this Court's aid in an effort to dismantle the PBA of its South Carolina membership in exchange for a class action award. The ramifications of this action reach far beyond the award of money, but will result in the rescission of memberships for law enforcement officers across the state that have paid, relied upon, and have or are *currently* receiving the benefits bargained for through their PBA membership. The proposed class seeks harm to many of its members and should not be certified.

Respectfully submitted,

MOORE TAYLOR LAW FIRM, PA

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May 2, 2018

Kelly H. Rainsford, Esquire
Deputy of Regulatory Enforcement
S.C. Department of Consumer Affairs
P.O. Box 5757
Columbia, SC 29250-5757

Re: Southern States Police Benevolent Association, Inc.
Our File No.: 8897.0001

Dear Kelly:

In follow up to our telephone conference and understanding regarding settlement of any and all issues between the South Carolina Department of Consumer Affairs ("Department") and our client, Southern States Police Benevolent Association, Inc. ("SSPBA"), enclosed please find a check in the amount of Thirteen Thousand and No/100 Dollars (\$13,000.00) together with a copy of this letter. The tender from SSPBA and acceptance of the check by the Department shall resolve any and all issues to present date between the Department and SSPBA, ~~whether known or unknown~~, and it is understood that this resolution is made in cooperation with the Department, on a doubtful and disputed basis, and to avoid incurring additional expense and cost after the parties has worked together for resolution. *KJR*

Thank you again. Everyone was able to work together for resolution. The Department's recognition and consideration of SSPBA's self-reporting, registration correcting efforts, and cooperation is appreciated. If you should have any questions, please do not hesitate to let us know. To acknowledge receipt of the enclosed check and the resolution of this matter, it is respectfully requested that you please sign the bottom of this letter and return a copy of this letter to our office.

Sincerely,

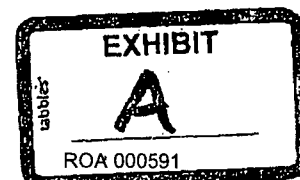
[Signature]
Steven W. Hamm
C. Jo Anne Wessinger Hill

SWH/JWH:tbj

Enclosures

Receipt, Acknowledgement and Agreement to the above herein is provided this 9th day of May, 2018.

[Signature]
Kelly H. Rainsford, Esquire





Pre-Paid Legal Services

(Issued upon June 8, 2000)

To: Property and Casualty Insurers

From: Mr. Ernst N. Csiszar, Director

Subject: Pre-Paid Legal Services

Legislation has been enacted recently that affects the Property and Casualty Industry. Bill 4939 was signed on June 6, 2000 and takes effect on July 1, 2000. This bulletin is intended to bring the provisions of that Act to the attention of insurers in South Carolina.

The contact person for this Bulletin is Ms. Nancy Hoffman, Casualty Actuary, 300 Arbor Lake Drive, Suite 1200, Columbia, SC 29223, Phone 803-737-6230, Fax 803-737-6233, E-mail nhoffman@doi.sc.gov. If Ms. Hoffman is not available, ask for an employee of the Property and Casualty Division.

The definition of "Legal Insurance" is deleted in the following section:

SECTION 2. Section 38-1-20(26) of the 1976 Code, as amended by Act 181 of 1993, is further amended to read: "(26) Reserved."

Insurance statutes that referred to legal insurance are repealed.

SECTION 4. Sections 38-75-510 and 38-75-510 of the 1976 Code are repealed.

Prepaid legal services will no longer be statutorily defined as insurance under South Carolina Law. Prepaid legal service contracts will be regulated by the S.C. Department of Consumer Affairs.



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, Individually and as
Class Representative,)

vs.)

Southern States Police Benevolent
Association, Inc.)

Defendant.)

PLAINTIFF'S ANSWERS TO
DEFENDANT'S FIRST SET OF
INTERROGATORIES

TO: JAMES EDWARD BRADLEY, ESQ., ATTORNEY FOR DEFENDANT:

The Plaintiff Donald Stanley, Individually and as Class Representative, ("Plaintiff"), in answer to Defendant Southern States 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:

GENERAL OBJECTIONS

Plaintiff objects to the entire set of Defendant's discovery requests on the following grounds, which are hereby incorporated by reference in Plaintiff's responses to individual discovery requests below:

GENERAL OBJECTION NO. 1

Plaintiff states that trial preparation and factual investigation are ongoing. Plaintiff's responses to these discovery requests are based on information known to Plaintiff at this time. Plaintiff reserves the right, however, to make reference at the trial or at any hearing in this action to facts and documents not identified in these responses, the existence or relevance of which is later discovered by Plaintiff or his counsel. To the extent the information contained herein



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 responds 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.

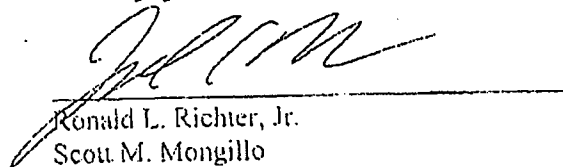
ANSWER:

See Depositions of Plaintiffs.

Charleston, South Carolina

8/17, 2017

Attorneys for Plaintiffs



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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

Rebecca D. Fawcett

4. Currently, the PBA is providing legal counsel under the legal defense benefit plan to seventy PBA members that reside in South Carolina who have open legal defense matters.

5. Plaintiff Donald Stanley is currently a member of the PBA. Upon his request, Mr. Stanley is currently being provided an attorney by the PBA under the legal defense benefit plan. Mr. Stanley is being represented by attorney Abigail Walsh.

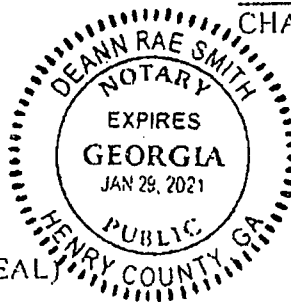
6. Previously, Attorney Andrew Savage has represented PBA members through the legal defense benefit plan. In addition to several members of the purported class, Mr. Savage has previously represented both Donald Stanley and Sean Reiter under the PBA legal defense benefit plan. Mr. Savage was paid by the PBA for legal services rendered on behalf of Stanley and Reiter.

7. The PBA previously provided an attorney to a PBA member that was being sued in a civil action by a Plaintiff represented by the law firm of Bland Richter, LLC. That case bore the caption Hammond et al v. City of Seneca Police Department et al (South Carolina District Court 8:2015-cv-04031).

FURTHER AFFIANT SAYETH NAUGHT

Charles Cordell
CHARLES CORDELL

SWORN to before me this
10 day of July, 2018



Deann Rae Smith (SEAL)

Deann Rae Smith
Printed Name of Notary Public of Georgia

My Commission Expires: 1/29/21

State of South Carolina)
)
County of Charleston)

Donald Stanley, Individually 2016-CP-10-4062
and as Class Representative,)
)
 Plaintiff,)

v.)
)
Southern States Police)
Benevolent Association, Inc.,)
)
 Defendant.)

Video Deposition
of
Donald Stanley

Date: January 5, 2017

Time: 10:41 a.m.

Location: 18 Broad Street
 Charleston, South Carolina

Reported by
Kathleen M. Owens-Hays

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.

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.

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?

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 Siager's
22 case.

23 Q You -- you disagreed with the decisions that were
24 made at the highest level of the PBA?

25 A With that, yes, sir.

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

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:

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.

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

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.

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 its witnessed by

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

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.

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 --

EXHIBIT D

Stanley Deposition

State of South Carolina)

)

County of Charleston)

Donald Stanley, Individually)
and as Class Representative,)

2016-CP-10-4062

Plaintiff,)

)

V.)

Video Deposition
of

Southern States Police)
Benevolent Association, Inc.,)

Donald Stanley

Defendant.)

)

Date: January 5, 2017

Time: 10:41 a.m.

Location: 18 Broad Street
Charleston, South Carolina

Reported by
Kathleen M. Owens-Hays

A P P E A R A N C E S

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

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2 It is stipulated by and between counsel for the
3 respective parties that all objections are
4 reserved until the time of trial, except as to
5 the form of the questions.

6 This video deposition is being taken pursuant to
7 Rule 30 of the South Carolina Rules of Civil
8 Procedure to be used for all purposes allowed
9 thereunder.

11 The reading and signing of this deposition is
12 waived by the deponent and counsel for the
13 respective parties.

15 Donald Stanley, being duly sworn and cautioned
16 to speak the truth, the whole truth, and nothing
17 but the truth, testified as follows:

19 BY MR. BRADLEY:

22 Do you understand that?

24 Q All right. Do you know what a deposition is?

25 A I've had a brief explanation given to me. Yes,

1 sir.

2 Q What is a deposition?

3 A I can be asked basically any questions
4 pertaining to the lawsuit, personal questions, such
5 -- such of that nature.

6 Q All right. Before we go farther, I want to make
7 sure you understand. A deposition is where I, as a
8 lawyer, ask you, as a witness, questions. Do you
9 understand that?

10 A Yes, sir.

11 Q The court reporter sitting to my left, she
12 writes down every question I ask and every answer you
13 give. Do you understand that?

14 A Yes.

15 Q The answers and the questions can later be used
16 in a court of law, just as if there was a judge
17 sitting in this room with us today. Do you
18 understand that?

19 A Yes.

20 Q All right. If I ask you a question, you have to
21 answer it, unless your lawyer instructs you
22 otherwise. Do you understand that?

23 A Yes, sir.

24 Q If you do not understand a question, will you
25 ask me to clarify it?

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 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 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?

- 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?

1 A He's a police officer at North Charleston Police
2 Department.

3 Q Is he a member of the Southern States PBA?

4 A No, sir.

5 Q Has he ever been a member of the Southern States
6 PBA?

7 A No, sir.

8 Q All right. Is your wife in law enforcement?

9 A Yes.

10 Q Is she employed outside the home?

11 A Yes.

12 Q Where does she work?

13 A She works for the North Charleston Police
14 Department.

15 Q What is her job there?

16 A She's a lieutenant. She's assigned to
17 Investigations Unit.

18 Q How long has she worked there?

19 A Twenty-three years.

20 Q Is she a member of the Southern States PBA?

21 A Yes, sir.

22 Q How long has she been a member?

23 A Probably 20 years. Somewhere in that ---

24 Q Can you spell her name? I'm sorry, I didn't
25 mean to interrupt you.

1 A That's okay.

2 Q Did you say 20 years?

3 A Yeah. Somewhere in that vicinity.

4 Q All right. How do you spell your wife's name?

5 A C-A-T-H-L-E-E-N.

6 Q All right. Do you have any other family that

7 lives in Charleston County?

8 A I have an aunt that lives in Charleston County.

9 Q What's her name?

10 A Susan.

11 Q Is it Susan Stanley?

12 A No, ma'am -- or sir. Leonard, L-E-O-N-A-R-D.

13 Q Any other family in Charleston County?

14 A No, sir.

15 Q All right. Besides being active as the

16 treasurer of Troop 716 of the Boy Scouts, do you have

17 any other extracurricular clubs or activities you're

18 involved in?

19 A No, sir.

20 Q All right. How far did you go in school?

21 A Completed my bachelor's degree.

22 Q Where did you graduate from?

23 A Herzing University.

24 Q Can you spell that for me?

25 A H-E-R-Z-I-N-G.

1 Q Where is that?

2 A It's based out of Minnesota, I believe. They
3 have brick and mortar campuses throughout the United
4 States.

5 Q Okay. Where did you attend?

6 A I actually -- I attended online.

7 Q Okay. So it's an online degree? Is that --

8 A Yes, sir.

9 Q -- what you would call it? When did you receive
10 that?

11 A Probably two years ago.

12 Q Okay. And what is it in?

13 A It's in criminal justice.

14 Q Where did you go to high school?

15 A Tri-Cities Christian School in --

16 Q Where?

17 A -- Blountville, Tennessee.

18 Q When did you graduate?

19 A 1989.

20 Q Did you serve in the Armed Forces, at all?

21 A No, sir.

22 Q All right. Where -- when did you get involved
23 in law enforcement?

24 A 1994. I ---

25 Q How did you get involved in law enforcement?

1 A I -- a friend of mine was -- that I worked with
2 -- became a reserve with North Charleston Police
3 Department. He, in turn, got hired on at North
4 Charleston Police Department and I got involved in
5 the Reserve Program.

6 Q And are you -- what force are you in, Goose
7 Creek?

8 A No. Charleston County Sheriff's Office.

9 Q All right. What is your job there?

10 A I'm a patrol lieutenant.

11 Q What does that mean that you do every day?

12 A I supervise two sergeants and -- we're slotted
13 for 22 deputies. There's 18 on the team at this
14 time, so I -- basically, I'm the supervisor over all
15 of them. I'm -- I -- assigned to permanent night
16 shift, so I'm the night shift commander basically.

17 Q All right. Just -- do you just work in the
18 office mainly? Or do you work on patrol?

19 A Patrol.

20 Q Okay. So you're on night patrol, as a
21 supervising lieutenant?

22 A Yes, sir.

23 Q Okay. How long have you had that position?

24 A Three years.

25 Q All right.

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

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

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 Rieter 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

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?

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?

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.

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.

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

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?

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.

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

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.

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 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 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

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.

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.

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

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:

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:

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.

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.

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 the -- the legal defense is -- was called,
24 in all the materials, a member benefit policy, wasn't
25 it?

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

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

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

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

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?

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 -- 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 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.

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 --

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?

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.

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?

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?

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

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

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.

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

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 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 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.

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

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

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 --

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

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

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.

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.

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

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

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

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.

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

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.

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?

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?

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.

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

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.

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.

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.

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?

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 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 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

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

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 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 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 --

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.

1 Q All right. I understand it's your belief that
2 the PBA should be regulated as an insurance company.
3 Right?

4 A Yes, sir.

5 Q Given that, at this point, it has not been and
6 we're arguing about that, do you know of any money
7 that the PBA has taken from anyone that it should not
8 have taken?

9 MR. RICHTER: Object to the form.

10 A I would have no knowledge of it.

11 BY MR. BRADLEY:

12 Q Do you object to the PBA to -- continuing to
13 receive dues, at this point?

14 A I wouldn't object to them continuing to receive
15 dues if merely they would fall under insurance
16 regulations. I -- I -- the bottom line is I think
17 they need to be regulated. I think there needs to be
18 some oversight.

19 Q You think that they should be regulated by the
20 government as an insurance company?

21 A I do.

22 Q I understand that.

23 All right. Now, given that you believe that, do
24 you think it's wrong for them to accept dues, at this
25 point, when they're not being done that way?

1 MR. RICHTER: Object to the form.

2 A The -- my problem comes, in that there is the
3 lack of oversight. I mean, I -- I don't know whether
4 they should continue to accept dues or not, to be
5 honest with you.

6 BY MR. BRADLEY:

7 Q All right. Well, you've paid --

8 A I think --

9 Q -- your dues after bringing a lawsuit?

10 A I did.

11 Q So do you think the PBA should continue to
12 accept dues from members?

13 MR. RICHTER: Object to the form.

14 A I believe that if they do continue to accept
15 dues, that they need to fall under regulations and
16 they need to -- need to have oversight. I don't -- I
17 don't specifically -- I -- quite honestly, I don't
18 know whether they should continue to accept without
19 that or not. I don't know.

20 BY MR. BRADLEY:

21 Q Okay. Do you know of anything fraudulent the
22 PBA has done?

23 MR. RICHTER: Object to the form.

24 BY MR. BRADLEY:

25 Q Once again, excluding Mr. Slager.

1 MR. RICHTER: Object to the form.

2 A Not that I'm aware.

3 BY MR. BRADLEY:

4 Q Do you know anything negligent the PBA has done?

5 MR. RICHTER: Object to the form..

6 A I -- I -- again, I don't know if it falls under
7 negligence or not, but as far as the -- the lack
8 of -- of being regulated as an insurance company, I
9 -- I don't know if it falls under that or not. It's
10 more in the legal arena.

11 BY MR. BRADLEY:

12 Q Other than not being regulated as an insurance
13 company, do you know of anything the PBA has done
14 that's negligent?

15 MR. RICHTER: Object to the form.

16 A Not to my knowledge.

17 BY MR. BRADLEY:

18 Q And other than Mr. Slager and not being
19 regulated as an insurance company, do you know of
20 anything, ever, the PBA has done that it should not
21 have done?

22 MR. RICHTER: Object to the form.

23 A Not to my knowledge.

24 BY MR. BRADLEY:

25 Q All right. Do you know of any false

1 representations that the PBA has ever made?

2 MR. RICHTER: Object to the form.

3 A Not to my knowledge.

4 BY MR. BRADLEY:

5 Q Okay. Take a look at paragraph 124 of your
6 complaint, if you would.

7 THE DEPONENT: Can we take a break, at some
8 point?

9 MR. BRADLEY: Oh, yeah. We can take a break
10 right now.

11 THE DEPONENT: Okay.

12 (Off the record from 11:58 a.m. until
13 12:16 p.m.)

14 BY MR. BRADLEY:

15 Q Mr. Stanley -- well, before we broke, we were
16 gonna look at paragraph 124 of your complaint.
17 Whenever you're ready, just let me know.

18 A Sure.

19 Q Are you ready?

20 A Oh, I'm ready. Yes, sir.

21 Q Okay.

22 A I --

23 Q Good, good.

24 A I thought you understood I was.

25 Q All right. All right. Paragraph 124, you say

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 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 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

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.

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

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.

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?

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

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 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 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.

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.

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:

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

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?

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

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.

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?

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.

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

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:

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

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 --

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

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

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:

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

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

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.

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

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 --

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 4, 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

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 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 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?

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

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.

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?

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

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.

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.

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?

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 its witnessed by

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

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.

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 --

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

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

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 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 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?

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

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

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

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.

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

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,

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 --

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

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,

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

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?

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.

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

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

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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EXHIBIT E

Reiter Deposition

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON)
3)
4 Donald Stanley and Sean) CASE NO.:
5 Reiter, Individually and as) 2016-CP-10-4062
6 Class Representatives,)
7)
8 Plaintiffs,) Videotaped Deposition
9) of
10 vs.) Sean P. Reiter
11)
12)
13 Southern States Police)
14 Benevolent Association,)
15 Inc.,)
16)
17 Defendant.)
18)
19)
20)
21)
22)
23)
24)
25)

13 Date: September 28, 2017

14 Time: 10:48 a.m.

15 Location: Turner Padgett Graham & Laney, PA

16 40 Calhoun Street, Suite 400

17 Charleston, SC 29401

18

19

20

21 Reported by
22 Teri L. Sampson, RPR

23

24

25

1 APPEARANCES

2 For the Plaintiffs: Ronald L. Richter, Jr., Esq.
3 Scott M. Mongillo, Esq.
4 Bland Richter, LLP
Charleston, South Carolina

5 For the Defendant: James Edward Bradley, Esq.
6 Moore Taylor Law Firm, P.A.
West Columbia, South Carolina
7 J. Andrew Yoho, Esq.
8 Carlock Copeland
Charleston, South Carolina

9
10 Also Present: Doug White, Videographer
Charlie Cordell
11 Beth Dyke
Joni Fletcher
12

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1

STIPULATIONS

2

It is stipulated by and between counsel for

3

the respective parties that all objections

4

are reserved until the time of trial,

5

except as to the form of the questions.

6

This deposition is being taken pursuant to

7

the South Carolina Rules of Civil

8

Procedure.

9

- - - -

10

The reading and signing of this deposition

11

is waived by the deponent and counsel for

12

the respective parties.

13-

Whereupon,

14

Sean P. Reiter, being duly sworn and

15

cautioned to speak the truth, the whole truth, and nothing

16

but the truth, testified as follows:

17

EXAMINATION

18

BY MR. BRADLEY:

19

Q Mr. Reiter, my name is Ward Bradley. I'm a lawyer,

20

and today I'm going to take your deposition. Do you

21

understand that?

22

A Yes, sir. And just -- it's Reiter, not Reiter.

23

Q Thank you.

24

A Yes, sir.

25

Q Do you know what a deposition is?

1 A I do, sir.

2 Q What is a deposition?

3 A It's sworn testimony taken outside of a courtroom.

4 Q That's part of what a deposition is. Let's make
5 sure we understand the whole thing. A deposition is
6 where I, as a lawyer, ask you, as a witness,
7 questions. Do you understand that?

8 A Yes, sir.

9 Q The court reporter sits to my left. She writes
10 down each question and each answer. Do you
11 understand that?

12 A Yes, sir.

13 Q Because she's writing down everything we say, you
14 need to answer with words rather than gestures or
15 noises so she doesn't have to guess at your meaning.
16 Can you do that?

17 A Yes, sir.

18 Q If you don't do that, I may ask you to clarify.
19 I'm not trying to embarrass you or be unpleasant. I
20 just want to make sure the court reporter doesn't
21 have to guess at what it is you have to say. Is
22 that fair?

23 A Yes, sir. I understand.

24 Q All right. You've taken an oath to tell the truth.
25 Do you recall that?

- 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 New Jersey.

2 Q What is your date of birth?

3 A 4/30/78.

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?

- 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?

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?

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 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 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

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

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 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 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?

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

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 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 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.

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

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?

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.

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?

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?

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?

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,

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

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 --

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 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 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.

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.

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

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.

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

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

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?

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

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

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

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.

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.

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 --

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

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

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

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

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?

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.

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?

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

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

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 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 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

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.

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

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.

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

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?

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

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

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

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.

1 A Yes, sir.

2 Q All right. And this says, "I, Sean Reiter, member
3 of the Southern States Police Benevolent
4 Association"; is that correct?

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
9 information regarding your representation with the
10 PBA?

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
17 FOR I.D.)

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
23 marked Exhibit 3, which I believe are minutes from
24 your chapter's meeting starting December 8th, 2014.
25 Is that correct?

1 A That's what it appears to be, yes.

2 Q All right. Okay. And does that -- as you look at
3 these minutes, is that when you were elected the
4 secretary?

5 A Yes, sir.

6 Q It's even highlighted right there, okay. And so
7 after that, you were responsible for putting the
8 minutes together?

9 A Yes, sir.

10 Q All right. I'm looking at a page there, one, two,
11 three, four, five, sixth page. Under Item 6, "New
12 Business," whenever you get there, let me know.

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
17 with meeting attendance were discussed. It was
18 decided to have the next meeting in a more suitable
19 location." Then below that, it says, "The general
20 direction of the chapter was discussed. Is the goal
21 to have a large, active chapter with a possible"
22 large -- "lodge, or simply make an effort to
23 increase membership and help ensure officers are
24 covered with legal protection?" Do you see that?

25 A Yes, sir.

1 Q All right. Is -- did you write that in there? Is
2 that part of what you reported?

3 A Yes, sir.

4 Q Okay. So the goals of the organization were
5 actually discussed at the meeting; right?

6 A Of our chapter, yes.

7 Q All right. And the people who were making the
8 decisions about the chapter were the chapter
9 officers; right?

10 A Yes, sir.

11 Q Okay. No one at the PBA told you how you had to do
12 things regarding that?

13 A Maybe not at this meeting, but I'm sure we received
14 some guidance as to how the meeting was supposed to
15 run from Beth when --

16 Q Right, not how the meeting has to run, but just
17 whether or not you would have an active, more social
18 chapter, or what was going to happen was up to the
19 chapter to make that decision?

20 A Yes, sir.

21 Q Okay. All right. So if you flip through to the
22 eighth page in there, it's got another meeting with
23 Aubrey Richardson and you being there.

24 A Eight pages from where we just were, or --

25 Q Eight pages from the beginning. It's dated June

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

4 June 9th, 2015; is that correct?

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

9 violence law and the body camera law?

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

14 regarding Slager?

15 A Yes, sir.

16 Q Okay. Do you recall anything about what was

17 discussed at this meeting then?

18 A I do not.

19 Q Okay. Is this the meeting you were talking about

20 where you talked to someone and said, hey, I feel

21 like Slager should have been defended?

22 A I do not recall what was said at this specific

23 meeting, no.

24 Q All right. Do you know who Tom Conroy is?

25 A No.

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

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?

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.

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

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 PBA 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.

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

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

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?

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:

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

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

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?

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 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 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

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.)

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EXHIBIT F

Amended Complaint

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

JULIE J. ARMSTRONG
CLERK OF COURT

2016 NOV 22 PM 1:37

FILED

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 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 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

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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.

- 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 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

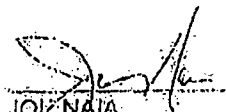
- A. In the event the Association Board of Directors shall determine that the Legal Defense Benefit Plan is no longer feasible for whatever reason, Southern States P.B.A. shall promptly notice each member of the Association by U.S. mail, first class, to the member's address, as listed in the Association's 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


JOL 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.**

1-800-223-3506 • www.sspba.org



Donald

Stanley

IC # 39120

Member Since: 10/10/1991

20 YEAR MEMBER

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: 1-800-223-3506

More detailed information, including limitations, available upon request. To receive benefits, member must have continuing active membership from 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/articles/5>)

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_80.jsp)

Garrity Rule

(https://www.sspba.org/gen/articles/Garrity_Information_Protect_yourself_Know_your_rights_84.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)

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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)

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

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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/ea?ve=00110R116q22x1H8sPu06Kolw%3D%3D>)

Google Analytics (<https://www.google.com/analytics>)

PD 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

) **MEMORANDUM IN SUPPORT OF THE**
) **SOUTHERN STATES POLICE**
) **BENEVOLENT ASSOCIATION, INC.'S**
) **MOTION TO DISMISS THE AMENDED**
) **COMPLAINT**

FILED
2017 APR 21 PM 4:33
JULIE J. ARMSTRONG
CLERK OF COURT

The Southern States Police Benevolent Association, Inc. (hereinafter "PBA") respectfully submits this Memorandum in support of its Motion to Dismiss Plaintiffs' Amended Complaint.

I. SUMMARY OF ARGUMENT

Plaintiffs have filed the instant lawsuit based upon claims that PBA is an insurer and acting in violation of the South Carolina Insurance Code by issuing a legal defense plan to its police officer members. Plaintiffs have not alleged a denial of any benefit under the legal defense plan – nor could they do so and remain compliant with the requirements of Rule 11, SCRCF. Instead they appear to argue PBA is not licensed as an insurer by the Department of Insurance and that alleged fact somehow entitles them to bring this action.

PBA denies that the Legal Benefit Plan that has served these plaintiffs without real – or alleged – failure is subject to regulation by the Director of the Department of Insurance. Any dispute over that issue is, however, a matter to be resolved administratively by the Director and not by these Plaintiffs in this litigation. In short, in the absence of allegation by either Plaintiff that he has been denied any benefit under the Plan, their Amended Complaint should be dismissed in its entirety for its failure to state a claim.

II. STATEMENT OF FACTS

Defendant PBA is a tax exempt 501(c)(5) that operates as a labor organization furthering the interests of its police officer members. The PBA operates in several of the southern states, including South Carolina. PBA provides its members numerous benefits, including legal representation for officer members who are accused of a crime while performing official duties as police officers. (Am.Compl. p.1, para 4). PBA emphatically denies that it is an insurer or that is it subject to any state's insurance regulations, including, but not limited to the South Carolina Insurance Code.

Plaintiffs Donald Stanley and Sean Reiter have brought the instant lawsuit in their individual capacity and as purported representatives of a purported, yet-to-be certified class. Plaintiff Stanley is a South Carolina resident and is currently a dues-paying members of the PBA (Am.Compl. p.1, para 1). Plaintiff Reiter is a former South Carolina PBA member and a current resident of New Jersey. (Am.Compl. p.1, para 2). Plaintiffs have asserted multiple causes of action against the PBA, which, for the reasons discussed herein, should be dismissed.

III. LEGAL STANDARD

A defendant may move to dismiss the plaintiff's complaint for "failure to state facts sufficient to constitute a cause of action" pursuant to Rule 12(b)(6), SCRCP. "A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true." Disabato v. S.C. Ass'n of Sch. Adm'rs, 404 S.C. 433, 441, 746 S.E.2d 329, 333 (2013); see also Turner v. Daniels, 404 S.C. 430, 431 n.1, 746 S.E.2d 40, 41 n.1 (2013) (noting under the standard of review applicable to Rule 12(b)(6) motions, we construe all of the facts in the appellant's well-pled complaint in the light most favorable to the appellant and presume those facts to be true). "If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, dismissal under Rule

12(b)(6) is improper." Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n, 407 S.C. 67, 74-75, 753 S.E.2d 846, 850 (2014).

IV. DISCUSSION

A. The PBA is Entitled to Dismissal Because Plaintiffs Have Failed to Present a Justiciable Controversy and Claim for Damages.

Plaintiffs have failed to present a justiciable controversy for this Court to decide. Rather, and as will be further discussed below in Sections B and C, Plaintiffs' allegations against PBA come under the purview of the Director of the Department of Insurance (hereinafter "the Director"), and are not properly before this Court. Furthermore, Plaintiffs have failed to present a justiciable controversy as they have not alleged they have been denied any benefit of their membership with PBA, particularly under the Legal Defense Plan (hereinafter "the Plan").

Before any action can be maintained, there must exist a justiciable controversy. Byrd v. Irmo High Sch., 321 S.C. 426, 430-31, 468 S.E.2d 861, 864 (1996). A justiciable controversy is 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. Id. Speculative damages are damages that depend upon future developments which are contingent, conjectural, or improbable. As a general rule, courts will find that all damages must be susceptible of ascertainment with a reasonable degree of certainty, and that uncertain, contingent, or speculative damages cannot be recovered in any action *ex contractu* or *ex delicto*. 56 Leinbach Inv'rs, LLC v. Magnolia Paradigm, Inc., 411 S.C. 466, 478, 769 S.E.2d 242, 249 (Ct. App. 2014)

In their Amended Complaint, Plaintiffs present factual background and arguments concerning the Plan offered by PBA. In Paragraph 7, Plaintiffs allege the Plan is attractive "in that members of the Plan view their individual contribution as being made for the benefit of all

other Plan members. . . .” Further, Plaintiffs, in Paragraphs 29 through 32, and in the exhibits to the Amended Complaint, set forth information regarding the Plan’s terms and conditions. Aside from alleging that the selling of the Plan is unauthorized, as discussed above, Plaintiffs have not presented any allegation that the actual terms of the Plan have been breached. The Amended Complaint makes no mention of any instance in which Plaintiffs Reiter or Stanley were denied any benefit of their membership with the PBA, and in fact, Plaintiffs do not allege *any* former or present member of the PBA has been denied any benefit. Rather, Plaintiffs’ only complaint is PBA is not licensed or authorized to do business by the Department of Insurance – a claim they have no standing to bring. See S.C. Code Ann. §§ 38-52-310 through 360 (setting forth the remedies and penalties for the unauthorized transaction of insurance business vesting the Director with the power to pursue those in violation of the Insurance Code). Absent an allegation that Plaintiffs have not received the benefits enumerated in the Plan, Plaintiffs have failed to set forth a cognizable claim that can be adjudicated by this Court.

In addition, as a result of their failure to allege any breach of the terms of the Plan or the denial of any benefit promised thereunder, Plaintiffs have failed to present a justiciable claim for damages. Under the allegations found in the Amended Complaint, aside from allegations concerning violations of the Insurance Code, Plaintiffs have received and, in Stanley’s case, continue to receive the benefits promised to them under the terms of the Plan. Simply stated, there is no allegation of damage for failure to receive what has been promised. Consequently, there is no controversy for this Court to adjudicate. Any harm Plaintiffs may claim under the terms of the Plan sounds, at best, in the form of an anticipatory breach as a result of not being properly regulated or governed by the Department of Insurance. However, such an allegation does not present a justiciable controversy. 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 this dispute of a contingent, hypothetical or abstract character.”).

In addition, it is important to note that even if PBA is an insurer and is in violation of the Insurance Code, which PBA expressly denies on both counts, such a situation does not render the contract between PBA and its members invalid. In fact, Section 38-25-540 provides “the failure of an insurer transacting business in this State to obtain a certificate of authority does not impair the validity of any act or contract of the insurer.” Accordingly, the contract between PBA and its members remains valid, regardless of Plaintiffs’ allegations. The mere allegation that PBA is not acting in accordance with the terms of the licensing requirement of the Insurance Code does not render PBA in breach of the terms of the contract; rather, the contract remains in force to the benefit of PBA members, including Stanley.

Accordingly, by failing to present any claim relating to a breach or denial of a benefit under the Plan, Plaintiffs have failed to set forth any cognizable claim for damages or a controversy for this Court to adjudicate. Therefore, Plaintiffs’ causes of action fail and should be dismissed.

B. The PBA is Entitled to Dismissal Because Plaintiffs lack a Private Right of Action and Standing to Bring Their Claims.

In addition to the failure to allege any cognizable claim of damages, Plaintiffs’ claims fail as a matter of law because they do not have a private right of action to bring this suit in the first place. Plaintiffs have attempted to allege numerous causes of action in their Amended Complaint, including, *inter alia*, breach of contract, negligence, breach of fiduciary duty. However, the common thread running through each cause of action, and the very crux of Plaintiffs’ Complaint against PBA is the assertion that the Legal Defense Plan offered by PBA is

"a policy of insurance which PBA is not licensed to sell in any of the States in which it transacts business." (Am.Compl. p.2, para 8). Plaintiffs' allegation that PBA failed to comply with insurance regulations and/or failed to obtain the appropriate licensure and authorization to sell insurance forms the basis of each cause of action.¹ In fact, Plaintiffs' claim that PBA is selling

¹ The Amended Complaint sets forth the following allegations:

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

85. 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 sell.

**For a second cause of Action
Negligence**

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.

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

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

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

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.

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

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.

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

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

insurance without the proper licensure is the *only* factual allegation attempting to give rise to their causes of action. Plaintiffs' Amended Complaint is fatally flawed in this regard, as there exists no private right of action for selling insurance without a license in this context.²

The General Assembly, through the South Carolina Insurance Code at S.C. Code Ann. § 38-1-10, *et. seq.*, has set forth the statutory parameters governing the issuance of insurance within the State. Section 38-25-110, prohibits an insurer from transacting insurance business in the State without a certificate of authority from the Director. S.C. Code Ann. § 38-25-110. In addition, Section 38-5-10, mandates every insurer doing business in South Carolina be licensed and supervised by the Director, with some limited exceptions. S.C. Code Ann. § 38-5-10. The Director is vested with the authority to "see that all laws of this State governing insurers . . . are faithfully executed" and to "institute civil actions, either through his office or through the Attorney General, relative to the business of insurance or the provisions of this title which he considers necessary to institute." S.C. Code Ann. §38-3-110(2)(4). Examinations or investigations regarding insurance related issues may be conducted by the Director or his designee and any resulting hearings must be held by the Director or his designee. S.C. Code Ann. § 38-3-150. The Insurance Code further provides for judicial review of any order or decision by the Director. S.C. Code Ann. § 38-3-210.

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

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

² Plaintiffs have asserted class action allegations in an attempt to bring claims on behalf of all former and current members of the PBA in the following states: Georgia, South Carolina, North Carolina, Virginia, West Virginia, Arkansas, Tennessee, and Louisiana. As of the date of PBA's Motion to Dismiss, Plaintiffs have not moved for class certification. Accordingly, the only claims at issue and state law in question are the claims by Stanley and Reiter under South Carolina law.

Plaintiffs allege PBA is an insurer and, as such, is in violation of the South Carolina Insurance Code for not being authorized and/or licensed by the Department of Insurance (hereinafter "the Department") to transact insurance business in South Carolina. PBA fervently denies this allegation. However, even assuming for the sake of this Motion that PBA is an insurer, Plaintiffs do not have a private right of action to enforce the provisions of the Code through a civil lawsuit.

Under Chapter 25 of the Insurance Code, which deals specifically with the unauthorized transaction of insurance business – the very allegation Plaintiffs allege here – the Code sets forth the remedies and penalties for violation of the statute and vests the right of pursuing enforcement of the code in the Director or his designee. S.C. Code Ann. § 38-25-310 (stating whenever the Director believes an insurer is violating the code, the Director, through the attorney general may cause a complaint to be filed in the Court of Common Pleas of Richland County to enjoin and restrain the insurer). The Code specifically provides that the Director is statutorily authorized to seek a restraining order and/or an emergency cease and desist order. S.C. Code Ann. §§ 38-25-310; 315. The Code further sets forth administrative fines and penalties for unauthorized insurers. S.C. Code Ann. §§ 38-25-320; 330; 360.

The Insurance Code does *not* create or allow for a private right of action for the violation of Sections 38-25-110 and 38-5-10. Rather, the General Assembly saw fit to entrust the enforcement of the Code to the Director. See S.C. Code Ann. §38-3-110(2)(4). The plain language of the Insurance Code concerning the unauthorized transaction of insurance business sets forth the legislative intent to (1) create an administrative and criminal penalty for violation of the statutes; (2) place the enforcement powers of the statute in the hands of the Director. The Insurance Code does not set forth or permit a private right of action in this regard.

South Carolina courts have examined whether the Insurance Code creates a private right of action for violation of the Insurance Code. In analyzing whether the Claims Practice Act of the Insurance Code provides for a private right of action, the Court has held that the Insurance Statute as a whole, “mandates the penalties for violating the statute.” Masterclean, Inc. v. Star Ins. Co., 347 S.C. 405, 415, 556 S.E.2d 371, 377 (2001). In addition, the Supreme Court noted, “[t]he Director of Insurance is vested with determining whether an insurer has violated the insurance code. Id. The Court concluded in this instances that the “statute clearly manifests legislative intent to create an administrative remedy and not a private right of action.” Id. See also, Gaskins v. S. Farm Bureau Cas. Ins. Co., 343 S.C. 666, 673, 541 S.E.2d 269, 273 (Ct. App. 2000) (finding the Insurance Code does not create a private right of action for alleged violations of section 38-59-20); Ocean Winds Council of Co-Owners, Inc. v. Auto-Owners Ins. Co., 241 F. Supp. 2d 572, 578 (D.S.C. 2002) (stating Section 38-59-20 does not create a statutory private cause of action for first-party claimants).

The statutory framework of the Insurance Code and case law demonstrate Plaintiffs lack the standing to bring their claims against PBA for the unauthorized transaction of insurance business. Title 25 of the Insurance Code establishes the Director as the only entity vested with the authority to initiate claims for transacting insurance without a license. Plaintiffs do not have a private right of action and cannot circumvent the Director’s authority in this regard. Accordingly, Plaintiffs are not real parties in interest and lack the standing to bring their claims, as the only real party in interest in this matter is the Director. Menezes v. WL Ross & Co., LLC, 403 S.C. 522, 547, 744 S.E.2d 178, 192 (2013) (stating to have standing one must generally have a personal stake in the subject matter of the lawsuit, i.e., one must be a real party in interest). Therefore, without a right of action, Plaintiffs’ cannot maintain any of the causes of action levied

against PBA, and, as such have failed to set forth a claim upon which relief can be granted. See Rule 12(b)(6), SCRCF. Accordingly, Plaintiffs' Amended Complaint should be dismissed.

C. PBA is Entitled to Dismissal of the Amended Complaint Because Plaintiffs' Claims Are Not Ripe.

Even if Plaintiffs could have a private right of action for violation of the Insurance Code (contrary to PBA's position set forth above), their action here would be premature as there has been no determination of any such violation. The determination of whether a violation of the Insurance Code has occurred must follow the procedures set forth in the Insurance Code, and more specifically Sections 38-25-310 through 360. The Code vests the Director, to the exclusion of all others, with the power to investigate and seek redress against insurers suspected of transacting insurance business without a certificate of authority. The sole remedy prescribed for violation of the prohibition of selling insurance without proper license is set forth in the Insurance Code; accordingly, as discussed more fully above, Plaintiffs cannot maintain a private right of action to determine this issue.

That said, unless and until PBA has been deemed an insurer and in violation of the Insurance Code through the mechanisms and procedures set forth by the statute, Plaintiffs cannot assert a violation has occurred, and do not have a claim that they have been damaged. See Waters v. S.C. Land Res. Conservation Comm'n, 321 S.C. 219, 227, 467 S.E.2d 913, 917-18 (1996) (stating a justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute). Stated another way, Plaintiffs' claims of damage as a result of a violation of the statute are not ripe unless a violation of the statute is adjudged; to find otherwise would allow for litigation premised upon a contingent, hypothetical, or abstract dispute. A determination by

the Director that PBA is an insurer and has indeed engaged in the unauthorized transaction of insurance business would be a prerequisite to any *attempted* claim by Plaintiffs that they have been arguably damaged, and such a finding has not occurred. See Colleton Cty. Taxpayers Ass'n v. Sch. Dist., 371 S.C. 224, 242, 638 S.E.2d 685, 694 (2006) (stating an issue that is contingent, hypothetical, or abstract is not ripe for judicial review).

While it is PBA's position that Plaintiffs cannot assert a claim against it for an alleged violation of the Insurance Code, at the very least, appropriate action by the Director as set forth in the Code would have to occur before any such claim could arguably be ripe for adjudication. Therefore, without a legally proper determination PBA has acted as an unauthorized insurer through the procedures set forth in Section 38-25-310, *et seq.*, Plaintiffs' individual causes of action, which all assume that such a violation has occurred, are not ripe for judicial determination.

D. The PBA is Entitled to Dismissal of the Amended Complaint Because Plaintiffs' Individual Causes of Action Fail to State a Claim Upon Which Relief Can be Granted.

As discussed hereinabove, each of Plaintiffs' claims set forth in the Amended Complaint should be dismissed as Plaintiffs lack standing and have failed to present a justiciable controversy or claim of cognizable damages. In addition to those grounds for dismissal, each of Plaintiffs' individual causes of action fail to present a claim upon which relief should be granted, and, accordingly, should be dismissed pursuant to Rule 12(b)(6), SCRPC.

i. Breach of Contract

Plaintiffs allege PBA has breached its contract by allegedly issuing an insurance policy without the proper authorization to do so. (Am.Compl. p.15, para 84-85). However, in their Amended Complaint, Plaintiffs set forth the terms of the agreement between Plaintiffs and PBA

concerning the Plan. The plain language of the Plan demonstrates the parties entered into a contractual relationship wherein PBA agreed to provide certain benefits in exchange for dues. (Am.Compl. p.5, para 29-p.8, para 32; exhibits A-C). The language of the Plan submitted within the Amended Complaint does not include any condition or provision under which the contract between Plaintiffs and PBA be one of insurance regulated by the State of South Carolina or otherwise. Instead, the contract, as specified by the terms quoted in the Amended Complaint, indicates the contract was for certain specified benefits under certain specified circumstances. Plaintiffs have not alleged any breach of the terms of the agreement as set forth in the Amended Complaint. Accordingly, without alleging an actual breach of the terms of the agreement, this cause of action must fail.

ii. Negligence

Plaintiffs allege PBA has acted negligently and breached a duty to Plaintiffs by failing to obtain proper licensure prior to issuing the Plan. However, Plaintiffs' negligence claim is flawed due to its reliance on the allegation that through PBA's alleged failure to obtain licensure by the Department of Insurance to sell insurance Plaintiffs are entitled to a private right of action as a result. As discussed more fully above, Plaintiffs do not have a private right of action for the unauthorized transaction of insurance business; moreover, there has been no determination PBA has engaged in the unauthorized transaction of insurance business. See Masterclean, Inc., 347 S.C. at 415, 556 S.E.2d at 377 (stating the Director of Insurance is vested with determining whether an insurer has violated the insurance code). Accordingly, without a right of action available, Plaintiffs' negligence claim fails as a matter of law and should be dismissed.

Moreover, even assuming *arguendo* Plaintiffs' allegations of a breached duty by the PBA are true (which PBA denies), Plaintiffs have failed to set forth an allegation of recoverable

damages under this claim. In addition to lacking a private right of action for any violation of the insurance code, Plaintiffs have not presented any claim the failure to register with the Insurance Department has caused them any damage. Moreover, even assuming PBA has failed to follow the requirements of South Carolina law, Plaintiffs have failed to allege they have suffered any interruption of services or the denial of any benefit. See Byrd, 321 S.C. at 430-31, 468 S.E.2d at 864 (stating that before any action can be maintained, there must exist a justiciable controversy); See also S.C. Code Ann. § 38-25-540 (stating the failure of an insurer to obtain a certificate of authority does not impair the validity of any contract of the insurer). Therefore, this cause of action should be dismissed.

iii. Breach of Fiduciary Duty

To establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant. RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P., 399 S.C. 322, 335-36, 732 S.E.2d 166, 173 (2012). Much like Plaintiffs' negligence cause of action, Plaintiffs' claim for breach of fiduciary duty is premised upon PBA's alleged breach of a duty by "soliciting, selling, negotiating, and issuing insurance policies without appropriate licensing and authorization." However, much like Plaintiffs' negligence action, the alleged breach of this purported duty is premised on an event that has not occurred. Without a determination PBA has violated the Insurance Code as set forth in Title 38, Chapter 25, Plaintiffs cannot establish a breach of any duty has occurred. See Colleton Cty. Taxpayers Ass'n, 371 S.C. at 242, 638 S.E.2d at 694 (stating an issue that is contingent, hypothetical, or abstract is not ripe for judicial review). This cause of action fails to state a claim upon which relief can be granted and therefore should be dismissed.

iv. Unjust Enrichment and Restitution

Plaintiffs contend they are entitled to restitution of all funds paid to the PBA as it accepted premiums for "insurance contracts that were not authorized by law." (Am.Compl.p.17, para 102). This cause of action should be dismissed under Rule 12(b)(6) because Plaintiffs' claim is based upon the presupposition PBA sold unauthorized insurance policies. Such a determination has not been made under the procedures of the Insurance Code and as such there is no basis for this cause of action. See Waters, 321 S.C. at 227, 467 S.E.2d at 917-18 (stating a justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute).

"Quantum meruit is an equitable doctrine to allow recovery for unjust enrichment." Columbia Wholesale Co. v. Scudder May N.V., 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994). "Absent an express contract, recovery under quantum meruit is based on quasi-contract, the elements of which are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value." Pitts v. Jackson Nat'l Life Ins. Co., 352 S.C. 319, 339, 574 S.E.2d 502, 512 (Ct. App. 2002).

As cited within the body of the Amended Complaint, Plaintiffs agreed to specific terms and conditions governing the contractual relationship concerning the payment of dues and the benefits that follow. Plaintiffs have not raised a single allegation they have been denied any benefit under the plan or PBA received funds without providing the benefits PBA said it would provide. Absent a finding that PBA has violated the Insurance Code or allegations Plaintiffs have been denied benefits in violation of the terms of the Plan, Plaintiffs have failed to state a proper claim for unjust enrichment. Plaintiffs have paid dues and have realized the benefits of those

dues. As such, Plaintiffs' claim for unjust enrichment and restitution fails to set forth a claim upon which relief can be granted.

v. Fraud in the Inducement

Plaintiffs contend PBA falsely represented to its members, expressly or impliedly, it was an insurer authorized to sell the plan and knew or should have known it was not authorized so to do. (Am.Compl.p.18, para 107-109). A party asserting a claim for fraud in the inducement to enter into a contract must establish:

(1) a representation, (2) its falsity, (3) its materiality, (4) knowledge of its falsity or 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.

Brown v. Stewart, 348 S.C. 33, 41, 557 S.E.2d 676, 680 (Ct. App. 2001).

As a threshold matter, Plaintiffs have not alleged with the requisite particularity the nature of the fraud allegedly perpetrated upon them, and to the extent they seek to allege some misrepresentation, the allegations do not set forth a fraudulent misrepresentation that is material or could otherwise sustain an action for fraud. See Rule 9(b), SCRCP (stating In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity); Brown, 348 S.C. at 41, 557 S.E.2d at 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.").

The Amended Complaint alleges "over the years" Plaintiff Stanley attended several meetings for the PBA, where PBA allegedly sought to market and sell the Plan to police officers. (Am.Compl.p.4, para 24). Stanley contends PBA never revealed it allegedly lacked proper licensure and authority to sell insurance, "and to the contrary, gave every indication that it was so

authorized.” (Am.Compl.p.5, para 26). Interestingly, Plaintiff Reiter has failed to make a similar allegation. In fact, Reiter has failed to allege he attended any meetings with the PBA and has made no allegation that a representative of PBA ever made any representation or misrepresentation to him. Accordingly, even under Plaintiffs’ standard for pleading this count, Reiter has failed to properly allege a claim for fraud in the inducement and that cause of action should be dismissed.

As it relates to Stanley, although he has alleged he attended meetings where PBA discussed the Plan with police officers, he has not identified a specific fraudulent statement or representation that induced him to join PBA. Moreover, this claim for Fraud in the Inducement, like all of their causes of action, is premised upon the assumption PBA acted in contravention of the Insurance Code, a determination that has not been made. As there has been no finding that PBA is an insurer, violated the Insurance Code, and sold insurance policies without proper authorization, any alleged representation and/or omission by PBA to Stanley cannot be deemed false in support of this cause of action. See Brown, 348 S.C. at 41, 557 S.E.2d at 680 (stating the failure to prove any one of these elements is fatal to the claim of fraud in the inducement). In the same vein, without a finding PBA sold the policy without proper authorization, Plaintiffs’ contentions *at best* premature.

Plaintiffs’ fraud in the inducement claim lacks the factual support in the Amended Complaint to support the cause of action and is premised upon anticipated future events. Absent a specific recitation of the particular fraud PBA committed, identification of specific statements by PBA that it was an insurer selling insurance, and a finding PBA is in fact an insurer, the Plan is a form of insurance, and PBA was not authorized to sell the Plan, Plaintiffs’ cause of action for fraud in the inducement fails as a matter of law and should be dismissed.

VI. Negligent Misrepresentation

Plaintiffs further assert, by offering the Plan, PBA negligently misrepresented it was authorized to sell the plan under the Insurance Code.⁴ (Am.Compl.p.19, para 116). However, as discussed with regard to the fraud in the inducement section above, Plaintiffs have not identified a single statement constituting a false representation. Rather, Plaintiffs allege PBA “expressly or impliedly” represented it was authorized to sell the Plan. Even assuming (for the purposes of this motion only) PBA expressly represented to Plaintiffs it was authorized to sell the Plan under the South Carolina Insurance Code, there has not been any finding under Sections 38-25-310 through 360 that PBA was acting in violation of the Code. Once again, Plaintiffs’ claim assumes a fact that has yet to be determined through the explicit procedures set forth in the Insurance Code. See Colleton Cty. Taxpayers Ass’n, 371 S.C. at 242, 638 S.E.2d at 694 (stating an issue that is contingent, hypothetical, or abstract is not ripe for judicial review).

As discussed throughout this brief, there are specific procedures through which a determination is made concerning whether an insurer has engaged in the unauthorized transaction of insurance business. See S.C. Code Ann. §§ 38-25-310; 315. In this instance, such a determination has not been made. Absent a conclusion by the appropriate entity, through the statutory process initiated by the Director, that PBA has violated the Insurance Code, the elements necessary to the survival of this cause of action are not present.

⁴ A plaintiff in a negligent misrepresentation action, must prove:

- (1) the 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.

Brown, 348 S.C. at 42, 557 S.E.2d at 680-81.

In addition, it must not be overlooked that Plaintiff Reiter has not alleged in the Complaint that he ever personally was provided with any representation, false or otherwise, by PBA. Reiter has not set forth any contention he attended any meetings or was ever provided with any representation by an agent of PBA. As such, without a representation, there can be no justifiable reliance, and thus, no damage. Accordingly, the claim fails as alleged.

VII. Injunctive Relief

In their final cause of action, Plaintiffs set forth a claim for injunctive relief upon the premise that PBA "is operating illegally and in violation of insurance laws. . . ." (Am.Compl. p.20, para 124). Plaintiffs argue the actions of PBA have and will continue to "result in irreparable harm, loss and damage to Plaintiff and the class members." (Am.Compl.p.20, para 126). To obtain injunctive relief, a plaintiff must demonstrate that without such relief he will suffer irreparable harm, he has likelihood of success on the merits, and there is no adequate remedy at law. Hook Point, LLC v. Branch Banking & Tr. Co., 397 S.C. 507, 511, 725 S.E.2d 681, 683 (2012). Plaintiffs fail to meet these elements as there can be no irreparable harm, Plaintiffs have not alleged their likelihood of success on the merits, and an adequate remedy at law exists.

At the outset, it must be noted again that Plaintiff Reiter is no longer a member of PBA. As such, he has no standing to pursue an injunction as there is no possibility for him to suffer irreparable harm. By removing himself from the membership rolls and ceasing payment of dues, Reiter is clearly not at any risk of being damaged by the PBA's alleged activities. Similarly, even if PBA is acting in violation of the South Carolina insurance laws (which is adamantly denied), Stanley can make no valid claim 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.

As discussed in detail herein, there is no private right of action against an insurer who allegedly engages in the unauthorized transaction of insurance business. Instead, the law, through Sections 38-25-310 through 360, sets forth the remedy for such a violation. The Director is vested with certain powers to prosecute insurers who violate the law and impose certain penalties are prescribed by the Code. Plaintiffs' chief concern alleged in their request for injunctive relief is the lack of regulatory oversight of PBA. (Am.Compl.p.20, para 125). The Director is charged with ensuring insurers are subjected to the proper oversight. Simply stated, there is a clear and explicit remedy at law for the issues raised by Plaintiffs in their Amended Complaint. As such, Plaintiffs cannot maintain a claim for an injunction against PBA.

Furthermore, Plaintiffs have not alleged any instance whereupon they have been denied any benefit under the Plan. Assuming *arguendo* that PBA is in violation of the Insurance Code, there has been no allegation of a showing of irreparable harm such that Plaintiffs are at risk for not receiving the benefits contracted for. In their Amended Complaint, Plaintiffs indicate one of the chief reasons police officers join PBA is for the Plan and the risk of financial disaster if a police officer is embroiled in legal trouble over actions taken as a police officer. (Am.Compl.p.5, Para 26-27).

Plaintiffs have not set forth any allegation or concern regarding the unavailability of this benefit. Rather, Plaintiffs are requesting that this Court enjoin PBA from providing this benefit to PBA members who many need it. Plaintiffs request this Court specifically bar PBA from "adjusting claims." (Am.Compl.p. 20, para 127). Plaintiffs do not have a claim for irreparable harm, but through their efforts in seeking to enjoin PBA from acting, are working to cause

irreparable harm to the thousands of PBA members who rely on the benefits contracted for through their membership.

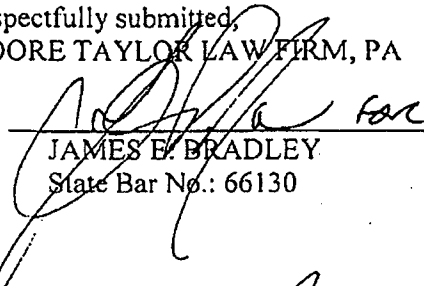
For the reasons discussed above, Plaintiffs' claim for an injunction fails to set forth a claim upon which relief can be granted. Accordingly, the claim should be dismissed.

CONCLUSION

In their Amended Complaint, Plaintiffs have failed to set forth *any* cause of action upon which relief can be granted. The determination of the issues raised by Plaintiffs are governed exclusively by the South Carolina Insurance Code and are not properly before this Court. Moreover, any claim Plaintiffs may have is not ripe for determination as Plaintiffs have not been damaged in any particular manner. Therefore, for the reasons discussed herein, in PBA's Motion to Dismiss, and through arguments put forth in the hearing of this matter, PBA is entitled to a complete dismissal of Plaintiffs' Amended Complaint.

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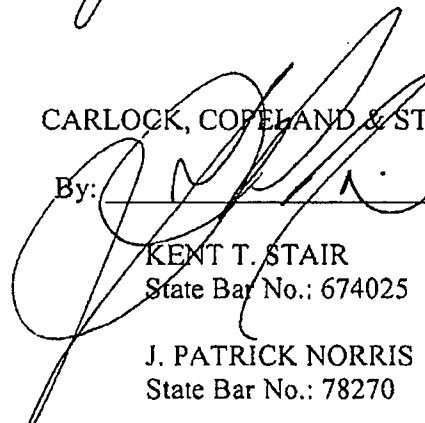
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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

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

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS**

FILED
2017 APR 21 PM 1:21
JULIE J. ARMSTRONG
CLERK OF COURT

This matter is before the Court on the motion of Southern States Police Benevolent Association, Inc. ("PBA") to dismiss the Amended Complaint of Plaintiffs Donald Stanley and Sean Reiter.¹ Plaintiffs hereby submit this Memorandum in Opposition to the Motion to Dismiss.

STANDARD

In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint. Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper. Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999); Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999). The complaint should not be

¹ Plaintiffs have filed a motion to strike Defendant's motion to dismiss and answer on the grounds that Defendant is an unauthorized insurer and, therefore, must file a bond or obtain a certificate of authority to transact the business of insurance prior to filing any pleadings in Court. S.C. Code Ann. § 38-25-550(a). Plaintiffs submit this memorandum merely to preserve their arguments. Plaintiffs maintain that the motion to dismiss should be struck and hereby adopt the motion to strike in full.

dismissed merely because the court doubts the plaintiff will prevail in the action. Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987).

FACTS

Defendant 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. 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 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 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. 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", a copy of which is attached to both the Amended Complaint and this Memorandum as **Exhibit A**). 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. A copy of the wallet card, which closely resembles a proof of insurance card, is attached to the Amended Complaint and this Memorandum as **Exhibit B**.

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.

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.

Although the PBA does not appear to dispute it in the motion to dismiss, it is clear that 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.”).²

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);

² The Court may take judicial notice at any stage of the proceedings. S.C. R. Evid. 201(f). 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).

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 explicitly and in great detail enumerated actions that constitute the unlawful and unauthorized conduct of insurance business:

- (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 engages in all of these actions in South Carolina.

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 PBA 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. 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.
- 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;
- i. The PBA contract attorneys submit bills to the PBA which the PBA audits and pays;
- j. The PBA contract attorneys provide periodic reports or updates to the PBA;

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);

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 has admitted that the Legal Defense Benefit Plan has all the elements of a contract of insurance.

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. THE PBA IS NEITHER LICENSED AS A PREPAID LEGAL SERVICE PROVIDER NOR IN COMPLIANCE WITH LAWS GOVERNING PREPAID LEGAL SERVICE PROVIDERS.

The PBA takes the position that its Legal Dense Benefit Plan is "legal assistance provided by employee organizations," a "legal service plan," or a "legal benefit plan," apparently depending on which State it is operating in. Answer, ¶ 127. This position was recently reiterated in a letter sent by attorney Steven W. Hamm on behalf of the PBA to the South Carolina Department of Consumer Affairs. Steven W. Hamm Letter, **Exhibit D.**³ However, the PBA has not registered as a Prepaid Legal Services plan in South Carolina or in any other State, and according to the Hamm Letter, the PBA now takes the position that such registration is not required. Importantly, the letter stands in stark contrast to the position taken by the PBA before

³ The Plaintiff does not intend to convert the Defendant's motion to a motion for summary judgment. The Plaintiff does request, however, that the Court take judicial notice of this communication from the Defendant to a State agency and to compare the position with other positions taken in this litigation and/or other litigation as described herein.

the Honorable David C. Norton. In briefing the United States District Court for the District of South Carolina, Charleston Division, the PBA urged the Federal Court that it was not subject to South Carolina's insurance regulations because it was a pre-paid legal service contract subject to the regulation of the Consumer Protection Code:

- "Thus, the PBA member benefit is not insurance in South Carolina. It is either not regulated as a member benefit, or regulated under the Consumer Protection Code." PBA Memorandum in Opposition to Plaintiff's Motion for Summary Judgment, p. 11, in the Matter of Michael Slager v. Southern States Police Benevolent Association, Inc., 2:15-cv-04536-DCN.

In South Carolina for instance, companies offering prepaid legal services of any kind must register with the Department of Consumer Affairs and post a \$50,000 bond. S.C. Code Ann. §§ 37-16-20, 37-16-40. The PBA has not done this. Contracts offering prepaid legal services must be filed with the South Carolina Department of Consumer Affairs "for approval prior to being offered to the general public or a segment of the general public." S.C. Code Ann. § 37-16-50. The PBA has not done this. Any person engaged in soliciting a prepaid legal services plan in South Carolina must be appointed by the company by a filing with the Department of Consumer Affairs. S.C. Code Ann. § 37-16-30. The PBA has not done this. Despite its assertion to the contrary, the PBA is not exempted from the South Carolina statute governing prepaid legal service companies, which covers any "entity offering prepaid legal services to the general public *or a segment of the general public.*" S.C. Code Ann. § 37-16-10(2) (emphasis added).⁴

⁴ Most of the other States in which the PBA sells insurance have similar registration and authorization requirements for legal services plans, and several of the States treat sellers of such plans as insurers. Ala. Code § 27-43-5; Arkansas Code § 23-91-208; Ga. Code Ann. § 33-35-4; Miss. Code Ann. § 83-49-7; N.C. Code Ann. § 84-23.1; Tenn. Code Ann. § 56-43-104; Va. Code Ann. § 38.2-4413. While some of these statutory codes exempt employee

Furthermore, any contract for prepaid legal services "must include a provision allowing the member or beneficiary the right to select the attorney of his choice when legal services are needed." S.C. Code Ann. § 37-16-50. The PBA Policy includes no such provision, and the PBA, in fact, chooses its members' attorneys. Thus, even if the PBA had attempted to register as a prepaid legal services plan with the South Carolina Department of Consumer Affairs, its application would have been rejected because it does not adhere to the clear requirements of such plans as set forth in S.C. Code Ann. §§ 37-16-10, et seq. In short, the PBA is not a registered or authorized prepaid legal services plan under South Carolina law or any other State's law and does not act like one either.

The American Bar Association has suggested several limits on prepaid legal services plans that the PBA does not comply with. Annotation, Prepaid Legal Services Plans, 93 A.L.R.3d 199 nn. 9 & 10. Ethical Consideration ("EC") 2-33 of the ABA Model Code of Professional Responsibility⁵ warns attorney who participate in such plans that their independence must be retained and that they should not be directed by an organization "in which

associates, that exemption only extends to legal services for matters relating to employment or occupation and would not cover the PBA. See e.g., Ala. Code § 27-43-4(3); Arkansas Code § 23-91-203(3)(A)(iv); Tenn. § 56-43-103(4)(C)(ii); Va. Code Ann. § 38.2-4401(4). There is no other grounds for the PBA to be exempt from these statutory schemes, which the PBA has ignored just as it has ignored licensing and regulatory requirements of traditional insurance companies.

⁵ EC 2-33 reads in full:

As a part of the legal profession's commitment to the principle that high quality legal services should be available to all, attorneys are encouraged to cooperate with qualified legal assistance organizations providing prepaid legal services. Such participation should at all times be in accordance with the basic tenets of the profession: independence, integrity, competence and devotion to the interests of individual clients. An attorney so participating should make certain that his relationship with a qualified legal assistance organization in no way interferes with his independent, professional representation of the interests of the individual client. An attorney should avoid situations in which officials of the organization who are not lawyers attempt to direct attorneys concerning the manner in which legal services are performed for individual members, and should also avoid situations in which considerations of economy are given undue weight in determining the attorneys employed by an organization or the legal services to be performed for the member or beneficiary rather than competence and quality of service. An attorney interested in maintaining the historic traditions of the profession and preserving the function of a lawyer as a trusted and independent advisor to individual members of society should carefully assess such factors when accepting employment by, or otherwise participating in, a particular qualified legal assistance organization, and while so participating should adhere to the highest professional standards of effort and competence.

considerations of economy are given undue weight in determining the attorneys employed by an organization or the legal services to be performed for the member or beneficiary rather than competence and quality of service." This Ethical Consideration recognizes the fact that there is an inherent conflict when the PBA is paying for legal services but not any judgment or penalty that might be rendered against its member. Due to this conflict, the ABA has adopted Disciplinary Rule 2-103(D)(4),⁶ which allows a lawyer to be recommended, employed, or paid

⁶ DR 2-13(D) reads in relevant part:

(D) A lawyer or his partner or associate or any other lawyer affiliated with him or his firm may be recommended, employed or paid by, or may cooperate with, one of the following offices or organizations that promote the use of his services or those of his partner or associate or any other lawyer affiliated with him or his firm if there is no interference with the exercise of independent professional judgment in behalf of his client:

(4) Any bona fide organization that recommends, furnishes or pays for legal services to its members or beneficiaries provided the following conditions are satisfied:

(a) Such organization, including any affiliate, is so organized and operated that no profit is derived by it from the rendition of legal services by lawyers, and that, if the organization is organized for profit, the legal services are not rendered by lawyers employed, directed, supervised or selected by it except in connection with matters where such organization bears ultimate liability of its member or beneficiary.

(b) Neither the lawyer, nor his partner, nor associate, nor any other lawyer affiliated with him or his firm, nor any non-lawyer, shall have initiated or promoted such organization for the primary purpose of providing financial or other benefit to such lawyer, partner, associate or affiliated lawyer.

(c) Such organization is not operated for the purpose of procuring legal work or financial benefit for any lawyer as a private practitioner outside of the legal services program of the organization.

(d) The member or beneficiary to whom the legal services are furnished, and not such organization, is recognized as the client of the lawyer in the matter.

(e) Any member or beneficiary who is entitled to have legal services furnished or paid for by the organization may, if such member or beneficiary so desires, select counsel other than that furnished, selected or approved by the organization for the particular matter involved; and the legal service plan of such organization provides appropriate relief for any member or beneficiary who asserts a claim that representation by counsel furnished, selected or approved would be unethical, improper or inadequate under the circumstances of the matter involved and the plan provides an appropriate procedure for seeking such relief.

(f) The lawyer does not know or have cause to know that such organization is in violation of applicable laws, rules of court and other legal requirements that govern its legal service operations.

(g) Such organization has filed with the appropriate disciplinary authority at least annually a report with respect to its legal service plan, if any, showing its terms, its schedule of benefits, its subscription charges, agreements with counsel, and financial results of its legal service activities or, if it has failed to do so, the lawyer does not know or have cause to know of such failure. (emphasis added)

by a for-profit⁷ prepaid legal services organization, but only if the member employs, directs, supervises, and selects his or her own attorney, which the PBA does not allow, and only if the organization files required reports with the appropriate disciplinary authority, which the PBA has not done.

The fact that the PBA is not authorized to act as a prepaid legal service provider or an insurance company does not mean that the PBA is nothing. The PBA had every opportunity to follow the regulatory requirements of either the Department of Insurance and/or the Department of Consumer Affairs in transacting its business. It chose to register with neither. The PBA has left it to this Court to evaluate its conduct and to determine as a matter of law what it is and what it is not. One can only surmise that the PBA wishes for the present court to accept its newly revised position that it is in reality “nothing” and is therefore subject to no oversight from any agency in South Carolina. To the contrary, taking \$23.50 per month from over 40,000 people makes the PBA “something” – it makes them an insurer.

III. PLAINTIFFS HAVE STATED CLAIMS AGAINST THE PBA FOR BREACH OF CONTRACT, NEGLIGENCE, AND OTHER TORTS.

The PBA claims that Plaintiffs have no standing to bring this action or challenge the PBA’s authority to operate an insurance company without State authority or supervision. This is a misstatement of the Amended Complaint and also the law. Plaintiffs have adequately pled causes of action against the PBA for breach of contract, negligence, and other torts. The PBA is arguing that its only duties to Plaintiffs arise out of statute, and no insurance statute creates a private cause of action. The PBA’s premise is not the law.

⁷ Although the PBA claims it is a non-profit, it has not been able to explain where or how it spends nearly \$12 million in dues it collects every year. Upon information and belief, it only pays a fraction of these premiums out to attorneys representing members.

An affirmative legal duty may be created by statute, a contractual relationship, status, property interest, or some other special circumstance. McCullough v. Goodrich & Pennington Mortg. Fund, Inc., 373 S.C. 43, 644 S.E.2d 43, 46 (2007); Madison v. Babcock Ctr., Inc., 371 S.C. 123, 638 S.E.2d 650, 656–57 (2006).

Plaintiffs are members of the PBA and, therefore, have a relationship with the PBA that creates duties flowing from the PBA to the Plaintiffs. Some of those duties are set out in the Policy. Policy, **Exhibit A**. The common law of South Carolina creates additional duties owed by the PBA to the Plaintiffs. Plaintiffs have pled several different theories that create duties flowing from the PBA to Plaintiffs that have been breached.

These legal duties that flow from the parties' relationships and agreements have led other courts to approve complaints against entities that provide insurance or similar services without the appropriate licensing and authority. See, e.g., Olukoya v. American Ass'n of Cab Companies, Inc., 219 Ga.App. 508, 465 S.E.2d 715 (1995) (illegal attempt to sell insurance could constitute an element of a RICO claim); American Ass'n of Cab Companies, Inc. v. Parham, 291 Ga.App. 33, 661 S.E.2d 161, 167 (2008) (self-insured cab companies' misrepresentations of their financial condition proximately caused plaintiff harm by compromising his ability to satisfy a judgment against them).

Similarly, South Carolina courts have recognized that the unauthorized practice of law can result in the loss of both legal and equitable claims, even though such finding is not grounded in any language found in a statute. Wachovia Bank, N.A. v. Coffey, 389 S.C. 68, 698 S.E.2d 244 (Ct. App. 2010), aff'd as modified, 404 S.C. 421, 746 S.E.2d 35 (2013). In the Coffey opinion, the Court of Appeals held:

The unauthorized practice of law is inherently prejudicial to not only the parties involved in the instant transaction but also to the public at large for the reason so

cogently stated in [State v. Buyers Serv. Co., 292 S.C. 426, 357 S.E.2d 15 (1987)]:

The reason preparation of instruments by lay persons must be held to constitute the unauthorized practice of law is not for the economic protection of the legal profession. Rather, it is for the protection of the public from the potentially severe economic and emotional consequences which may flow from erroneous advice given by persons untrained in the law.

Buyers, 292 S.C. at 431, 357 S.E.2d at 18.

Coffey, 698 S.E.2d at 248. The Court of Appeals in Coffey affirmed the dismissal of the bank's lawsuit on these common law principles even though there is "no private right of action in South Carolina for the unauthorized practice of law." Franklin v. Chavis, 371 S.C. 527, 640 S.E.2d 872,877 (2007).

The reasoning in Coffey applies with equal force here. In operating an unauthorized insurance company, the PBA is engaged in inherently prejudicial conduct that can result in potentially severe economic and emotional consequences to its insureds. Even if there is no private right of action for the unauthorized conduct of the insurance business, the Plaintiffs are entitled to seek common law remedies for the actions of the PBA that are based on the PBA's failures to adhere to the standard of care that authorized insurers are required by statute to follow.

A final analogy can be drawn from the South Carolina Rules of Professional Conduct, Rule 407, SCACR. Comment 7 of the Scope of the Rules of Professional Conduct explains that "[v]iolation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached," and the Rules "are not designed to be a basis for civil liability." Rule 407, SCACR, Scope, comment 7. However, the same comment also states: "Nevertheless, since the Rules do establish standards of conduct

by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct." Id.

So, again, even though a statute or a rule implies or explicitly states that it does not create a cause of action, it can still act as evidence of a standard of conduct. In other words, even if there is no explicit cause of action created under South Carolina's Insurance Code, the PBA is not insulated from any and every claim arising out of its agreements with its members or arising out of the standard of conduct owed to its members, including standards that can be discerned from the common law, the PBA's "Policy," and even the Insurance Code.

FRAUDULENT INDUCEMENT

The South Carolina Supreme Court long ago recognized that South Carolina residents who have paid premiums to out-of-state unauthorized insurers are entitled to pursue a cause of action for fraudulent inducement against such unauthorized insurers. Ross v. American Income Life Ins. Co., 232 S.C. 433, 102 S.E.2d 743, 746-47 (1958). In Ross, the Supreme Court considered and approved two different claims against an unauthorized insurer. One of those claims was for fraudulent inducement for the payment of premiums, not arising out of any particular claim, loss, or cancellation. See also Hodge v. Reserve Life Ins. Co., 229 S.C. 326, 92 S.E.2d 849 (1956) (considering an action for the fraud and deceit in the solicitation of the policy, not "for breach of the conditions of the policy or for loss occurring thereunder."). The case was allowed to proceed even though the "only" damages suffered by the second plaintiff were the payment of premiums. This is precisely what Plaintiffs have pled in this matter.

BAD FAITH

The claims made by Plaintiffs are analogous to bad faith claims against an insurance company, long recognized in South Carolina. As an insurance company or even as a company

offering insurance-like benefits, the PBA has a duty to act in good faith in dealing with its insureds or its members. Nichols v. State Farm Mut. Auto. Ins. Co., 279 S.C. 336, 306 S.E.2d 616 (1983). This situation is no different than the relationship between an insurer and its insured explored in Nichols, which gave insureds a tort cause of action against its insurer for bad faith. Like any insured, the PBA's members possess no bargaining power and no means of protecting themselves from poor treatment by the PBA. Id. at 619. Absent the threat of a tort action, the PBA "can, with complete impunity, deny any claim they wish, whether valid or not." Id.

The PBA is proposing a far broader freedom than State Farm ever dreamed of in the Nichols case: the freedom to operate without supervision and with complete impunity regarding its members. South Carolina law has created liability in tort for insurers that operation in bad faith, and there is no conceivable reason for not extending that liability where, as here, the insurer is operating without a license, without supervision, and without any obligation at all to insure that it can and will protect its members.

DUTIES OWED BY ASSOCIATIONS TO MEMBERS

Plaintiffs have pled, and the PBA has not denied, that they are or were members of the PBA. It is widely recognized that associations owe their members a duty to act with due care and in good faith. See Int'l Longshore & Warehouse Union v. ICTSI Oregon, Inc., 15 F. Supp. 3d 1075, 1101 (D. Or. 2014) (associations are subject to bad faith claims by its members); Berryman v. Merit Prop. Mgmt., Inc., 152 Cal. App. 4th 1544, 1558, 62 Cal. Rptr. 3d 177, 189 (2007) ("An association has a fiduciary relationship with its members.").

BREACH OF CONTRACT AND IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

Plaintiffs have alleged a breach of contract, including a breach of the implied covenant of good faith and fair dealing. Plaintiffs and the PBA have a contractual relationship in that the

PBA has promised to provide Plaintiffs with legal representation in certain circumstances. The PBA owes additional duties as part of the implied covenant of good faith and fair dealing. Every contract, including every insurance contract, in South Carolina includes an implied covenant of good faith and fair dealing. Commercial Credit Corp. v. Nelson Motors, Inc., 247 S.C. 360, 147 S.E.2d 481, 484 (1966); Tadlock Painting Co. v. Maryland Cas. Co., 322 S.C. 498, 473 S.E.2d 52, 53 (1996). See also Kimball v. Better Bus. Bureau of W. Florida, 613 F. App'x 821, 825 (11th Cir. 2015) (Member of an association has standing to bring a breach of contract claim against an association); S. Walk at Broadlands Homeowner's Ass'n, Inc. v. OpenBand at Broadlands, LLC, 713 F.3d 175, 182 (4th Cir. 2013) (a party to a contract containing allegedly illegal provisions often will have standing to challenge that contract).

As part of its promises under the agreement between the PBA and Plaintiffs, the PBA has implied that it will maintain sufficient reserves to fulfill that promise. The PBA has other implied duties of fair dealing, such as the implied duty to deal with Plaintiffs' fairly and in good faith when Plaintiffs make a "claim" for the coverage promised by the PBA. All of these duties are supported by the law and by the fact alleged in Plaintiffs' Amended Complaint.

BREACH OF FIDUCIARY DUTIES

Similarly, a fiduciary relationship is founded on the trust and confidence reposed by one person in the integrity and fidelity of another. Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct.App.2003); Redwend Ltd. Partnership v. Edwards, 354 S.C. 459, 581 S.E.2d 496 (Ct.App.2003); Steele v. Victory Sav. Bank, 295 S.C. 290, 368 S.E.2d 91 (Ct.App.1988). A fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence. Hendricks v. Clemson Univ., 353 S.C. 449, 578 S.E.2d 711

(2003); O'Shea v. Lesser, 308 S.C. 10, 416 S.E.2d 629 (1992); SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990); Regions Bank, 582 S.E.2d at 444; Steele, 368 S.E.2d at 93.

Plaintiffs have entrusted the PBA with their dues in reliance upon the understanding that the PBA will maintain sufficient reserves to cover Plaintiffs' demands for legal representation and will have appropriate procedures in place to ensure those demands are treated fairly and in good faith. These are hallmarks of a fiduciary relationship.

CASES CITED BY THE PBA ARE NOT RELEVANT

The cases cited by the PBA are inapposite. The Courts in Masterclean, Inc. v. Star Ins. Co., 347 S.C. 405, 556 S.E.2d 371 (2001), and Ocean Winds Council of Co-Owners, Inc. v. Auto-Owners Ins. Co., 241 F.Supp.2d 572, 577-78 (D.S.C. 2002), both held that there is no private cause of action under the South Carolina Insurance Trade Practices Act and Claims Practices Act.

Plaintiffs have not brought a cause of action for violation of the Trade Practices or Claims Practices Acts. As set out above, the PBA's duties to Plaintiffs are not limited to duties that might arise out of a statute. Plaintiffs have brought claims for breach of contract, negligence, breach of fiduciary duties, unjust enrichment, fraud in the inducement, negligent misrepresentation, and injunctive relief, and all of those relationships and duties arise outside of any statutory duty.

Based on the foregoing, Plaintiffs have properly pled claims for breach of contract, negligence, breach of fiduciary duties, unjust enrichment, fraud in the inducement, negligent misrepresentation, and injunctive relief. Further, Plaintiffs allegations plead facts that indicate that the PBA owes duties to Plaintiffs under the common law and outside of any duties that might arise from insurance statutes.

IV. PLAINTIFFS ARE ENTITLED TO BRING AN ACTION FOR THE UNAUTHORIZED TRANSACTION OF INSURANCE.

In addition to being entitled to bring claims for breach of contract, negligence, and other torts, Plaintiffs are entitled to bring an action against the PBA for transacting an unauthorized insurance business in South Carolina and collecting premiums from the Plaintiffs in doing so.

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.* The Chapter implicitly authorizes the pursuit of claims against entities that are engaged in the unauthorized transaction of the insurance business. S.C. Code Ann. § 38-25-510, *et seq.* Although the primary subject of the section is how service is obtained against out-of-state unauthorized insurers, the section plainly contemplates lawsuits by individuals against such unauthorized insurers. Otherwise, there would simply be no need for the section. See Ross v. American Income Life Ins. Co., 232 S.C. 433, 102 S.E.2d 743, 746-47 (1958); Hodge v. Reserve Life Ins. Co., 229 S.C. 326, 92 S.E.2d 849 (1956) (considering an action for the fraud and deceit in the solicitation of the policy, not "for breach of the conditions of the policy or for loss occurring thereunder.").

V. PLAINTIFFS HAVE STANDING AND HAVE SUFFERED AN INJURY COGNIZABLE AT LAW.

STANDING

The PBA claims that Plaintiffs lack standing to sue under S.C. Code § 38-59-30. First, as pointed out above, Plaintiffs are not suing under this Code section. Second, there is a common law cause of action for bad faith claims practices in any case, Nichols v. State Farm Mut. Auto. Ins. Co., 279 S.C. 336, 306 S.E.2d 616, 619 (1983), again demonstrating that the common law can create a cause of action where a statute does not.

Plaintiffs are not asserting claims under the laws of states in which they do not reside. They are seeking class action status to include class members from other states. Class certification is not currently before the Court and not properly the subject of a motion to dismiss.

Similarly, the PBA has asserted that Plaintiffs have failed to plead that their damages are in excess of one hundred dollars for each member of the class, as required by Rule 23(a), SCRCF. Again, this is an issue for class certification, not a motion to dismiss. In any case, the Amended Complaint does demonstrate that Plaintiffs' damages, and the damages of all class members, including payment of premiums well in excess of one hundred dollars. Alternatively, this damage requirement only applies if "the relief primarily sought is not injunctive or declaratory." Rule 23(a), SCRCF. Plaintiffs seek a declaratory judgment that the PBA is an unauthorized insurance company.

DAMAGES

Plaintiffs have suffered and alleged damages, namely the payment of premiums to the PBA, and have alleged causes of action to return those premiums. See Ross v. American Income Life Ins. Co., 232 S.C. 433, 102 S.E.2d 743, 746-47 (1958); Hodge v. Reserve Life Ins. Co., 229 S.C. 326, 92 S.E.2d 849 (1956) (considering an action for the fraud and deceit in the solicitation of the policy, not "for breach of the conditions of the policy or for loss occurring thereunder.").

In addition, Plaintiffs have alleged damages related to the PBA's failure to comply with the laws and standards expected of insurance companies in South Carolina. As an example, these damages include the PBA's failure to maintain appropriate reserves, which put the Plaintiffs at risk of not receiving the benefit that they have paid for over the years. Similarly, due to the PBA's failures, Plaintiffs have no way of insuring that the PBA will comply with

standards applicable to insurers related to transparency, handling of claims in good faith, or cancelling policies in good faith.

VI. PLAINTIFFS HAVE PROPERLY PLED A CLAIM FOR INJUNCTIVE RELIEF.

Plaintiffs have also pled a claim for the equitable remedy of injunctive relief. An injunction, like all equitable remedies, is granted as a matter of sound judicial discretion, not as a matter of legal right. Johnson v. Phillips, 315 S.C. 407, 433 S.E.2d 895 (Ct. App. 1993), aff'd in part and rev'd in part on other grounds, remanded sub nom., Smith v. Phillips, 318 S.C. 453, 458 S.E.2d 427 (1995).

To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law. Denman v. City of Columbia, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010). Injunction actions have been used to determine statutory construction. See, e.g., Denman, 691 S.E.2d at 465. Plaintiffs have pled these elements of injunctive relief.

In addition, injunctive relief, as an equitable remedy, is aimed at prospective issues rather than past wrongs. Sanford v. South Carolina State Ethics Com'n, 385 S.C. 483, 685 S.E.2d 600 (2009) (An injunction can issue where some irreparable injury is *threatened*.); Brooks v. South Carolina R. Co., 8 Rich.Eq. 30 (1855). See also Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004) (The purpose behind the Declaratory Judgment Act is to “provide for declaratory judgments without awaiting a breach of existing rights.”).

Plaintiffs in effect are seeking a declaratory judgment that the PBA is an unauthorized insurer. “Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed.” S.C. Code

Ann. § 15-53-20. "A contract [like the PBA's "Policy"] may be construed either before or after there has been a breach thereof." S.C. Code Ann. § 15-53-40.

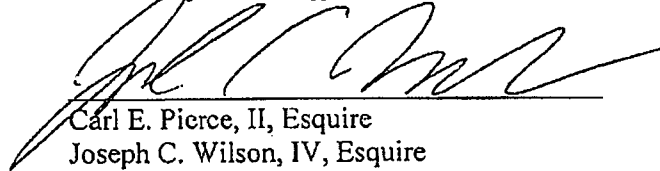
In short, although Plaintiffs have alleged damages, even if they had not alleged damages, they would still be entitled to injunctive relief.

CONCLUSION

Based on the foregoing, Plaintiffs would respectfully request that the Court deny Defendant's Motion to Dismiss. In the alternative, to the extent that the Court finds that any cause of action was inadequately pled, Plaintiffs would ask for the opportunity to amend their complaint to correct any perceived deficiencies.

April 21, 2017

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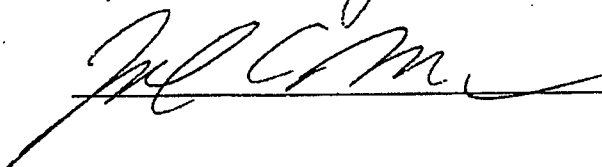
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CERTIFICATE OF SERVICE

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 1st day of April, 2017

A handwritten signature in black ink, appearing to read "Eric S. Bland", written over a horizontal line.

F

SOUTHERN STATES POLICE BENEVOLENT ASSOCIATION, INC.

POLICY NO. 00-16

LEGAL DEFENSE BENEFIT

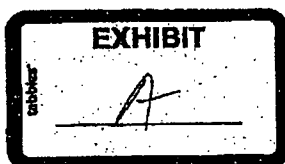
BACKGROUND:

In order to provide legal defense benefits to the members of 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.



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Legal Defense Benefit
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- 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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Legal Defense Benefit
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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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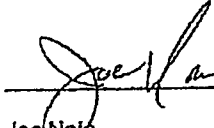
- B. Thirty (30) days after the notice is mailed, the P.B.A.'s obligation under this plan shall cease, ~~except in those incidents where representation of a member had already been undertaken~~. Where representation had been undertaken prior to the end of the thirty (30) day period, the provisions of this Plan shall continue to apply.

SECTION 6. DEFINITIONS

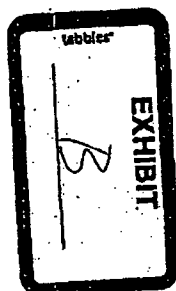
- A. As used in this Policy the term "Director of Legal Services" is defined as that individual on the Association staff designated by the CEO to be in charge of the Legal Department of the Association, and to assist in the administration of this policy.

ADOPTED: 10 June 2000
EFFECTIVE DATE: 10 June 2000
AMENDED: 24 July 2004
AMENDED: 18 June 2010
CEO EFFECTIVE: 8 June 2012
AMENDED: 4 November 2015

Former SSPBA Policy 90-01

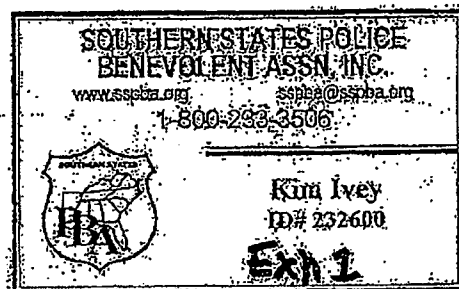

Joe Nala
Secretary-Treasurer

SSPBA/Discovery Docs000078



SSPBA/Discovery Docs000119

ROA 000949



MIRANDA

You have the right to remain silent. Anything you say can and will be used against you in court. You have the right to speak to an attorney and to have an attorney present before any questioning. If you cannot afford an attorney, one will be provided for you if you are charged with a crime. 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 administrative or criminal matter. If you are told that this is a criminal matter, or if you are administrated, 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 subject yourself to disciplinary action.
4. Only answer those questions which are asked of you.
5. Understand that should you resign, you lose all appeal rights and limit PBA representation in this matter.
6. Always conduct yourself professionally.

Ex 2



NOTICE

2108 HUNTER ST
MIDLAND, TX 79701
(806) 554-1700



1-800-223-2506

SOUTHERN STATES
POLICE BUREAU INVESTIGATION

DEPT. 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.

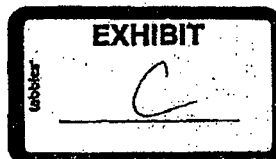
No. 2:15-cv-04536-DCN

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



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 Midgette 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.



DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

August 3, 2016
Charleston, South Carolina

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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

RECEIVED

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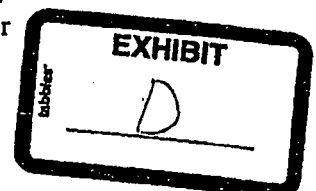
DEPT. OF CONSUMER
AFFAIRS

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 000961

Carri Grube Lybarker
Page 2
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,

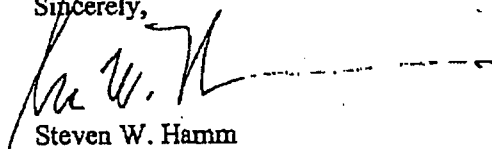
Carri Grube Lybarker
Page 3
November 7, 2016

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

) **THE SOUTHERN STATES POLICE**
) **BENEVOLENT ASSOCIATION, INC.'S**
) **SUPPLEMENTAL MEMORANDUM IN**
) **SUPPORT OF ITS MOTION TO DISMISS**
) **THE AMENDED COMPLAINT**

FILED
2017 APR 25 PM 4:27
JULIE J. BENTLEY
CLERK OF COURT

The Southern States Police Benevolent Association, Inc. (hereinafter "PBA") limited its Memorandum in Support of Defendant's Motion to Dismiss to matters alleged within the Complaint, as it understood should be done under Rule 12(b)(6), SCRCP. In their Memorandum in Opposition to PBA's Motion to Dismiss (hereinafter "Plaintiffs' Memo"), however, Plaintiffs attached various items that were not within the record and invited the Court to take judicial notice of them.¹ PBA does not object to the Court's taking judicial notice of those items, but it similarly requests the Court to consider materially related matters.

I. Exhibit C to Plaintiffs' Memorandum (Order of Judge Norton)

On page 8 of their Memorandum, under the heading "THE PBA IS ENGAGED IN THE UNAUTHORIZED TRANSACTION OF INSURANCE BUSINESS IN SOUTH CAROLINA", Plaintiffs quote a footnote in an Order from The Honorable David C. Norton, issued during prior federal court litigation. (Michael Slager v. SSPBA, Inc., 2:15-cv-04536-DCN). This quote was included in Plaintiffs' Memo in this matter for the proposition that Judge Norton "recognized that the PBA is operating as an insurer that is not subject to any oversight." They do not suggest the comment acts as any kind of legal finding that PBA was engaged in the

¹ Plaintiffs request that the Court take judicial notice of Exhibit C to Plaintiffs' Memorandum (Order of Judge Norton in Slager v. PBA, 2:15-cv-04536-DCN) and Exhibit D to Plaintiffs' Memorandum (November 7, 2016 Letter from Steven Hamm to Department of Consumer Affairs).

unauthorized transaction of insurance business in South Carolina, as their "heading" states. Indeed, from a reading of the entire Order, it is clear that such issue was not before the court for consideration at that time. Instead, that issue would have been addressed by Judge Norton in the parties' cross motions for summary judgment.² In PBA's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment³ in that litigation, Judge Norton was informed of the Bulletin issued by the Director of the South Carolina Department of Insurance on June 8, 2000, that stated: "*Prepaid legal services will no longer be statutorily defined as insurance under South Carolina Law. Prepaid legal service contracts will be regulated by the S.C. Department of Consumer Affairs*" (emphasis added). A copy of this Bulletin is attached to this Memorandum as Exhibit 1 and, PBA similarly urges this Court to take judicial notice of this long-standing proclamation by the State's Insurance Director.

II. Exhibit D to Plaintiffs' Memorandum (Steve Hamm Letter to Department of Consumer Affairs)

On page 12 of their Memorandum, Plaintiffs refer to a letter written by attorney Steve Hamm on behalf of PBA to the South Carolina Department of Consumer Affairs, and they attach a copy of the letter to their Memorandum as Exhibit D. Asking this Court to again take judicial notice of the letter "and to compare the position with other positions taken in this litigation and/or other litigation as described [in their Memorandum]" Plaintiffs then argue the position taken by the PBA in the letter "stands in stark contrast to the position taken by the PBA before the Honorable David C. Norton." In an effort to support that statement, they say "the PBA urged the Federal Court that it was not subject to South Carolina's insurance regulations *because it was a pre-paid legal service contact subject to the regulation of the Consumer Protection Code.*" (emphasis added). Incredibly, in support of *that* statement, they quote the following from PBA's Federal Court Memorandum:

² Plaintiff Slager dismissed his action before Judge Norton ruled upon either of those motions.

³ Cited and partially quoted on page 13 of Plaintiffs' Memorandum.

"Thus, the PBA member benefit is not insurance in South Carolina. It is *either not regulated as a member benefit or* regulated under the Consumer Protection Code." (emphasis added).

No fair reading of that statement can support the conclusion that PBA told Judge Norton that it "was subject to the regulation of the Consumer Protection Code." Instead, PBA stated it was *either* not regulated *or* if it was subject to regulation, it would be under the Consumer Protection Code rather than the Insurance Code. Mr. Hamm's letter reveals that is the same message conveyed to the Department of Consumer Affairs: In the second paragraph of his letter, Mr. Hamm⁴ stated:

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 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.

Mr. Hamm then expanded on his logic and reasoning as to why he did not consider the PBA Plan to be subject to the regulations of that Department. More than four months after receipt of Mr. Hamm's letter, the Department of Consumer Affairs advised Mr. Hamm and PBA that the Department disagreed with PBA's position and was of the opinion that "the legal benefit offered by the SSPBA constitutes prepaid legal services and, thus, is subject to the [Consumer

⁴ Hamm served as head of the South Carolina Department of Consumer Affairs from 1981 to 1994 and is, therefore unusually familiar with its operation, jurisdiction and purposes.

Protection] Code." (See Exhibit 2 to this Supplemental Memorandum, which would likewise be subject to judicial notice by this Court). While continuing to believe in the propriety of its position, as stated by Mr. Hamm in his letter, the SSPBA will timely comply with the requests and directions set forth by the Department of Consumer Affairs in its recent letter.

CONCLUSION

Plaintiffs' Amended Complaint is based on the (erroneous) theory and allegation that PBA is an unauthorized insurer, acting in violation of the Insurance Code. For the reasons set forth in PBA's Motion to Dismiss and its Memorandum in Support of that Motion, Plaintiffs' Amended Complaint should be dismissed. When the extraneous materials that Plaintiffs have sought to add to the discussion are more fairly and fully explored, they do nothing but undergird the propriety of that requested dismissal.

Respectfully submitted,

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

Pre-Paid Legal Services

(Issued upon June 8, 2000)

To: Property and Casualty Insurers

From: Mr. Ernst N. Csiszar, Director

Subject: Pre-Paid Legal Services

Legislation has been enacted recently that affects the Property and Casualty Industry. Bill 4939 was signed on June 6, 2000 and takes effect on July 1, 2000. This bulletin is intended to bring the provisions of that Act to the attention of insurers in South Carolina.

The contact person for this Bulletin is Ms. Nancy Hoffman, Casualty Actuary, 300 Arbor Lake Drive, Suite 1200, Columbia, SC 29223, Phone 803-737-6230, Fax 803-737-6233, E-mail nhoffman@doi.sc.gov. If Ms. Hoffman is not available, ask for an employee of the Property and Casualty Division.

The definition of "Legal Insurance" is deleted in the following section:

SECTION 2. Section 38-1-20(26) of the 1976 Code, as amended by Act 181 of 1993, is further amended to read: "(26) Reserved."

Insurance statutes that referred to legal insurance are repealed.

SECTION 4. Sections 38-75-510 and 38-75-520 of the 1976 Code are repealed.

Prepaid legal services will no longer be statutorily defined as insurance under South Carolina Law. Prepaid legal service contracts will be regulated by the S.C. Department of Consumer Affairs.





Carri Grube Lybarker
Administrator/
Consumer Advocate

The State of South Carolina Department of Consumer Affairs

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Celebrating Over 40 Years of Public Service

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Ware Shoals
Carlisle Kennedy
Lexington
W. Fred Pennington, Jr.
Taylors

Via US and Electronic Mail

Steve W. Hamin, 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.

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THE STATE OF SOUTH CAROLINA

Department of Consumer Affairs

SSPBA- Hamm

March 31, 2017

Page 2 of 3

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.



THE STATE OF SOUTH CAROLINA

Department of Consumer Affairs

SSPBA- Hamm

March 31, 2017

Page 3 of 3

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

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

)
) **MEMORANDUM IN OPPOSITION TO**
) **PLAINTIFFS' MOTION TO STRIKE THE**
) **SOUTHERN STATES POLICE**
) **BENEVOLENT ASSOCIATION, INC.'S**
) **ANSWER AND MOTION TO DISMISS**
)

FILED
2017 MAY -8 PM 4:35
JULIE S. ARMSTRONG
CLERK OF COURT

The Southern States Police Benevolent Association, Inc. (hereinafter "PBA") respectfully submits this Memorandum in opposition to Plaintiffs' Motion to Strike.

I. SUMMARY OF ARGUMENT

Plaintiffs' Motion to Strike should be denied because it is procedurally flawed and substantively without merit. Improperly and untimely made under Rule 12(f), SCRCF, the motion is premised on the allegation that PBA is an "unauthorized insurer" that is subject to the requirements of Section 38-25-550(a). While PBA adamantly denies that allegation in this litigation and otherwise, by Plaintiff's own filings in this case they state the purpose of this litigation is to establish that fact. Thus, unless and until that highly disputed fact is established, PBA cannot be compelled to post a bond or otherwise conduct itself in this litigation as though it is, in fact, an "unauthorized insurer." The Motion should be denied so the case might proceed for the ultimate determination that Plaintiffs seek to make the conclusion of the litigation - subject to PBA's currently pending Motion to Dismiss.

II. BACKGROUND

Plaintiffs have filed the instant action alleging multiple causes of action premised upon the factual allegation that PBA is an insurer and has engaged in the unauthorized transaction of insurance business. In response to Plaintiffs' Amended Complaint filed January 23, 2017, PBA

- 2) Screening and endorsement of candidates for public office;
- 3) Accidental death benefits through Chubb Insurance;
- 4) Access to PBA staff attorneys for advice or counsel;
- 5) The police magazine Blue Review;
- 6) A legal defense benefit for the performance of official duties within accepted standards of the profession; and
- 7) Representation in disciplinary and grievance proceedings.

(Affidavit of C. Cordell, ¶ 5; ex. A).

Dues paid by members are paid in a single payment per month in exchange for all of the above benefits of membership. No portion of dues is segregated or broken out specifically for any one benefit. Additionally, PBA does not provide general legal services for its members. The only legal benefits provided are related to the members' duties as law enforcement officers.

Plaintiffs' claim the Legal Defense Benefit Plan (hereinafter "the Plan"), offered as one of the benefits of PBA membership which provides legal representation for officer members who are involved in critical incidents, accused of a crime while performing official duties as police officers, or sued for duty related incidents, is insurance and should be regulated by the South Carolina Department of Insurance. PBA has denied this assertion and moved to dismiss Plaintiffs' Amended Complaint. PBA is not an insurer, does not come under the purview of the Insurance Code, and is not subject to Section 38-25-550(a).

III. LAW

The South Carolina Insurance Code found at Section 38-1-10, *et. seq*, governs the insurance industry in South Carolina. Section 38-5-10 mandates that every insurer doing business in South Carolina "must be licensed and supervised by the director [of the Department of Insurance] or his designee" with some exceptions. S.C. Code Ann. § 38-5-10 (2016). The

Director of the Department of Insurance is vested with the authority to “see that all laws of this State governing insurers . . . are faithfully executed” and to “institute civil actions, either through his office or through the Attorney General, relative to the business of insurance or the provisions of this title which he considers necessary to institute.” S.C. Code Ann. §38-3-110(2)(4) (2016). Examinations or investigations regarding insurance related issues may be conducted by the Director or his designee and any resulting hearings must be held by the Director or his designee. S.C. Code Ann. § 38-3-150 (2016). The Insurance Code further provides for judicial review of any order or decision by the Director. S.C. Code Ann. § 38-3-210 (2016).

Chapter 25 of the Insurance Code, at issue here, deals specifically with unauthorized insurance transactions. The Code provides that it is unlawful for an insurer to transact insurance business in South Carolina without a certificate of authority. S.C. Code Ann. § 38-25-110 (2016). The Code vests the Director with the authority to seek a restraining order against an unauthorized insurer based on “evidence satisfactory” to the Director. The Code instructs the Director to utilize the Attorney General to file a Complaint with the Court of Common Pleas in Richland County to enjoin and restrain the insurer. S.C. Code Ann. § 38-25-315 (2016). In addition, the Code allows the Director to issue a cease and desist letter to any unauthorized insurer with accompanying review by the Administrative Law Court. S.C. Code Ann. § 38-25-315 (2016). Chapter 25 further enables an unauthorized insurer in South Carolina to participate in litigation, but requires it to either post a bond to secure any payment of any final judgment or procure a certificate of authority to transact business of insurance in South Carolina. S.C. Code Ann. §§ 38-25-540;38-25-550.

IV. ARGUMENT

A. PBA is Not an Insurer

The threshold determination as to whether PBA is an unauthorized insurer and subject to the prerequisites to pleading under section 38-25-550(a), is whether PBA is an insurer. PBA has denied Plaintiffs’ repeated assertions and undaunted insistence that PBA comes under the purview of the Insurance Code. A review of the benefits offered by PBA to its members and a

corresponding analysis of the South Carolina Insurance Code clearly indicates Plaintiffs' contentions are in error.

At the outset, Plaintiffs set forth several particulars they believe puts PBA into the insurance category. Plaintiffs contend PBA is involved in pooling the risks of its members and has entered into contracts with its members to exchange dues for an agreement to provide "indemnity . . . against the determinable contingency of legal costs related to 'Civil Suits and Criminal actions.'" (Plts' Motion to Strike p.10). In addition, Plaintiffs set forth a litany of "attributes" that PBA's Plan shares with an insurance policy. (Plts' Motion to Strike pp. 11-12). Despite their fervent argument that PBA is an insurer (and thus an unauthorized insurer), Plaintiffs' claims fail to meet the mark in several key areas.

In South Carolina, the rules governing the practice of insurance are governed by the South Carolina Insurance Code found at S.C. Code Ann. § 38-1-10, *et. seq.* The Insurance Code sets forth the following key definitions necessary to this discussion:

(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.

S.C. Code Ann. § 38-1-20.

To be an insurer, as Plaintiffs' suggest, PBA must be engaged in insurance business; however, the Insurance Code indicates PBA is in fact not an insurer. Per the statutory definition, insurance involves one of two things: (1) a contract to indemnify or (2) a contract to pay a specified amount upon determinable contingencies. In their Motion to Strike, Plaintiffs contend PBA, through the Legal Defense Plan ("the Plan"), has contracted with its members "to provide

indemnity . . . against the determinable contingency of legal fees and costs" related to civil and criminal proceedings, and has thus engaged in the practice of insurance.

Under Plaintiffs' analysis, PBA is offering contracts for indemnity to its members. In South Carolina, indemnity is defined as a "form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party." *First Gen. Servs. v. Miller*, 314 S.C. 439, 442, 445 S.E.2d 446, 448 (1994) citing *Winnsboro v. Wiedeman-Singleton*, 303 S.C. 52 at 56, 398 S.E.2d 500 at 502 (Ct.App. 1990), affirmed 307 S.C. 128, 414 S.E.2d 118 (1992). In *Winnsboro*, the Court of Appeals explored the concept of indemnity and explained:

A right to indemnity may arise by contract (express or implied) or by operation of law as a matter of equity between the first and second party.

...

A familiar example of contractual indemnity is the third party liability insurance policy. Under such a policy, the insurer (the first party) agrees to pay the insured (the second party) the amount of any damages the insured may become legally liable to pay a third party. In this situation the insured's liability to the third party is often (though not necessarily) based on the insured's own fault (e.g., negligent operation of an automobile, failure to maintain premises in safe condition). That is, the second party may be an at fault party.

Winnsboro, 303 S.C. at 56, 398 S.E.2d at 502. PBA's Legal Defense Plan is not indemnity. The Plan does not compensate PBA members for any loss or damage incurred to a third party. In fact, the Plan does not compensate for *any* loss or damage. Rather, the Plan simply provides an attorney to a member in "cases where a lawsuit or criminal accusation results from professional acts or omissions which arise out of their duties as a law enforcement officer." (Legal Defense Benefit Plan attached as Ex. B). Under the Plan, the member does not incur any costs, loss, or damage to be indemnified from, instead, the member is provided an attorney whose services are paid for through PBA. PBA contracts with panel counsel and pays counsel directly for providing

services to members, rather than merely indemnifying the members for legal costs incurred. Moreover, PBA does not indemnify members for any judgment, damages, or loss in the event of a judgment or fine, but only provides counsel. The provision of an attorney to a member is not a form of compensation, is not indemnity, and is not insurance – it is simply a benefit of being a member of PBA.

In addition, insurance is also defined as a contract to “pay a specified amount upon determinable contingencies.” *See* S.C. Code Ann. § 38-1-20(25). Once again, the Plan does not pay anything to a member. Rather, the Plan provides an attorney for a member. Moreover, the Plan does not limit the costs of counsel to a “specified amount.” Instead, the Plan provides for an attorney with no cap on expenses. PBA does not restrict the use of the Plan to coverage limits like an insurance policy. The provision of legal counsel with no cap on cost does not fall within the definition of insurance in South Carolina. Therefore, if PBA’s Plan is not a contract for indemnity and is not a contract for a specified amount upon a determinable contingency, it cannot be insurance under the Insurance Code, and thus, is not subject to the pleading prerequisites of Section 38-25-550(a).

In their Motion to Strike, Plaintiffs note on several occasions that PBA is involved in the pooling or spreading of risks for its members. Plaintiffs cite several cases for this proposition from outside South Carolina to prove the point that engagement in risk transference is by its very nature insurance. However, Plaintiffs have not cited any South Carolina law in support of this contention, and while such a consideration may factor into an academic discussion of “what insurance is” as a concept, it is of no import here. As evident from the statutory definition of insurance, there is no mention of the transfer of risk requirement. The Supreme Court has acknowledged this fact and stated “our statutory definition of insurance does not even reference

risk transference, but instead requires a contractual agreement to pay or indemnify.” *S.C. Prop. & Cas. Ins. Guar. Ass’n v. Carolinas Roofing & Sheet Metal Contractors Self-Ins. Fund*, 315 S.C. 555, 559, 446 S.E.2d 422, 425 (1994). While pooling of risk may form part of the definition of insurance in other jurisdictions or in antiquity, Plaintiffs are not entitled to a Motion to Strike based on the Code of Hammurabi cited in Plaintiffs’ Motion. Rather, in South Carolina the definition of insurance is based entirely upon the South Carolina Insurance Code – a code that does not recognize PBA’s Plan as insurance.

Not only is the PBA Plan not insurance under the statutory definition of insurance, the South Carolina General Assembly, the Director of the Department of Insurance, and the Administrator of the Department of Consumer Affairs all agree the Plan is not insurance. Former South Carolina Code Section 38-1-20(26)¹ defined legal insurance as a regulated product under the insurance code. *See*, S.C. Code Ann. § 38-1-20(26) (Law. Co-op. 1976) (containing statute as existed in 1999) (attached as ex. C). Thus, South Carolina statutory Insurance Law in 1999 specifically included legal insurance as insurance. In 2000, the South Carolina Legislature removed this definition from the Insurance Code and repealed Sections 38-75-510 and 38-75-520 which regulated legal insurance as insurance. 2000 S.C. Acts 328 (H.B. 4939 effective July 1, 2000) (attached as ex. D).

In response, the South Carolina Department of Insurance issued a memorandum indicating that “prepaid legal services will no longer be statutorily defined as insurance” and that “prepaid legal service contracts will be regulated by the S.C. Department of Consumer Affairs.

¹ The former version of Section 38-1-20 prior to the 2000 Amendment defined legal insurance as:

(26) "Legal insurance" means the assumption of a contractual obligation for the sole purpose of providing specified legal services or reimbursement for legal expenses in consideration of a specified payment, for an interval of time, which services are rendered by an individual duly admitted or permitted to practice law in the jurisdictions in which the services were performed.

S.C. Code Ann. § 38-1-20

(South Carolina Department of Insurance Bulletin, Pre-Paid Legal Services, June 8, 2000)
(Available on internet at <http://doi.sc.gov/documentcenter/view/6951>, attached as ex. E). Act 328 also set up procedures for companies to offer prepaid legal services. It enacted Code Section 37-16-10 as part of the Consumer Protection Code which defines prepaid legal services as:

Legal services or reimbursement for legal services provided by an individual licensed or admitted to practice law in which the services are to be rendered, and which are provided in return for a predetermined, specified, periodic fee.

S.C. Code Ann. §37-16-10(3).

According to Act 328 and the South Carolina Insurance Commission, after July 1, 2000, prepaid legal service contracts are no longer statutorily defined as insurance but are regulated by the South Carolina Department of Consumer Affairs.

In addition, the South Carolina Insurance Code allows the Insurance Department to license specific types of insurance. These types include life insurance; accident and health insurance; property insurance; casualty insurance; surety insurance; marine insurance; title insurance; and multiple lines insurance. *See*, S.C. Code Ann. §38-5-30. But, the insurance code does not allow the department to license legal services insurance.

In light of this fact, in response to a letter sent to by PBA through counsel Steven Hamm (attached as Ex. F), the Department of Consumer Affairs issued a letter with its determination that PBA is a prepaid legal service contract and comes under the regulation of the Consumer Protection Code. (Ex. G). Although PBA originally argued to the Department that it was not governed by the Consumer Protection Code, PBA has complied with its directive, has applied for registration as a prepaid legal services provider, and has been given permission by the Department to continue its recruiting efforts. The determination that PBA falls under the purview of the Department of Consumer Affairs as a prepaid legal service contract, is at the

express exclusion of the Insurance Code. PBA cannot be both a prepaid legal services plan under the Consumer Code and simultaneously be regulated by the Department of Insurance as Plaintiffs contend.

Accordingly, as PBA does not fit the statutorily defined definition of an insurer under the South Carolina Insurance Code and does fit the definition of a prepaid legal service contract under the Consumer Code, PBA is not an insurer, and thus, cannot be an unauthorized insurer under Section 38-25-550(a). Therefore, Plaintiffs' Motion to Strike should be denied on the merits, in addition to being denied based on the procedural flaws which burden the motion to be discussed more fully herein.

Although Plaintiffs' Motion is based entirely upon the statutorily created rules governing unauthorized insurers, a brief discussion of the common law definitions of insurance further bolsters the fact that PBA is not providing insurance services to its members. The mere existence of indemnification language does not create insurance. 1-21 New Appleman on Insurance Law Library Ed. §1.03(b)(i). In addition, the payment upon a future contingency does not establish that a relationship is insurance. *Id.* To determine whether a relationship involves the sale of insurance, courts generally look to the "principal objective and purpose" test. *Id.* This test originated in *Jordan v. Group Health Association*, 107 F.2d 239 (D.C. Cir. 1939). In support of its ruling, the D.C. Circuit decided an exchange of medical services for a monthly fee was not insurance. The Court stated as follows:

That an incidental element of risk distribution or assumption may be present should not outweigh all other factors. If attention is focused only on that feature, the line between insurance or indemnity and other types of legal arrangement and economic function becomes faint, if not extinct. This is especially true when the contract is for the sale of goods or services on contingency. But obviously it was not the purpose of the insurance statutes to regulate all arrangements for assumption or distribution of risk. That view would cause them to engulf practically all contracts, particularly conditional sales and contingent service

agreements. The fallacy is in looking only at the risk element, to the exclusion of all others present or their subordination to it. The question turns, not on whether risk is involved or assumed, but on whether that or something else to which it is related in the particular plan is its principal object and purpose.

Id. at 247-248.

The Fourth Circuit Court of Appeals stated the test this way when interpreting Virginia Law:

[A] small element of 'insurance' should not be construed to bring a transaction within the reach of the insurance regulatory laws unless the transaction involves 'one or more of the evils at which the regulating statutes were aimed' and the element of risk transfer and distribution gives the transaction its distribution character. (Quoting R. Keeton, Insurance Law §8.2(c) (1971)).

GAF Corporation v. County Board, 629 F.2d 981, 987 (4th Cir 1980).

In *GAF Corporation v. County Board*, the school district alleged GAF's shingle warranty was subject to Virginia insurance law. The warranty read like an insurance contract. It contained exclusions and inclusions. The warranty insured against failure for causes not related to defective shingles. It included coverage for risk unrelated to defects in the shingles insuring against leaks caused by faulty workmanship as well. Nevertheless, the Circuit Court overturned the District Court and ruled that GAF's warranty was not insurance though it had many of the functions of an insurance contract. The Court viewed the transaction as a whole and found it was not the sale of insurance.

Thus, if sale of a service or good predominates, rather than indemnity, the contract is not insurance. 1-27 New Appleman on Insurance Law Library Ed. §1.03(3)(b)(iii) (citing *Boyle v. Orkin Extermination Co.*, 578 So. 2d 786 (Fla. Dist. Ct. App. 1991) (lifetime termite damage guarantee is not contract of insurance); *Barberton Rescue Mission, Inc. v. Ins. Div. of Iowa*, 586 N.W.2d 352 (Iowa 1998) (Christian Newsletter, through which medical costs were spread among

subscribers, was not an "insurance contract" as a matter of law); *Rayos v. Chrysler Credit Corp.* 683 S.W.2d 546 (Tex. App. 1985) (five year/50,000 mile warranty not contract of insurance).

The principal object of the PBA membership is not "indemnity" or even the payment of "a specified amount upon distributable contingencies." See S.C. Code Ann. §38-1-20(25) (definition of insurance). The PBA member benefit does not promise indemnity or payment of funds. Instead, it provides an attorney to a qualifying member. The PBA member benefit does not obligate the PBA to pay the member or a third party indemnity or a "specified amount upon determinable contingencies." See, S.C. Code Ann. §38-1-20(25). Instead, it provides a qualifying member the services of an attorney. Thus, the PBA member benefit does not meet the common law or South Carolina Code's definition of insurance.

Likewise, PBA membership is not the sale of insurance. As noted above, PBA membership provides a package of benefits including:

- 1) Governmental affairs and lobbying efforts for police officer interests;
- 2) Screening and election of candidates for public office;
- 3) Accidental death benefits;
- 4) Access to PBA staff attorneys for advice;
- 5) The PBA police magazine, Blue Review;
- 6) A legal defense benefit for performance of official duties within the accepted standards of the profession; and
- 7) Legal representation in disciplinary and grievance proceedings.

(Affidavit of C. Cordell, ¶ 5, ex. A).

Moreover, PBA does not operate like an insurance carrier. Officers submit a membership application to the PBA, but there is no screening of members. The only requirement is that a

member be involved in law enforcement. The PBA does not represent itself as selling insurance. It does not issue declaration pages or insurance policies. Rather, its member benefit is a standing policy of the PBA maintained by its leadership. The PBA hires recruiters who encourage law enforcement officers to join. But, it does not offer memberships through insurance agents. It does not underwrite members to assess their risk as an insurance company would. The member benefit does not read like an insurance policy. It has no endorsements or declarations pages. The member benefit does not promise "indemnity," "payment of a specified amount upon determinable contingencies" or payment at all. See, S.C. Code Ann §38-1-20(25).

Accordingly, PBA and its Plan do not meet the statutory or common law definitions of insurance. Moreover, as a result of legislative action, the Plan is regulated under the auspices of the South Carolina Department of Consumer Affairs through the Consumer Protection Code, and thus, is not insurance. Therefore, because PBA is not an insurer, it cannot be an unauthorized insurer and is not subject to the pleading prerequisites of section 38-25-550(a).

B. Plaintiffs Cannot Bring a Private Right of Action for The Unauthorized Practice of Insurance and, Thus, Cannot Prosecute a Motion Under the Insurance Code.

The common thread throughout Plaintiffs' Amended Complaint is the repeated allegation that PBA is an unauthorized insurer. This contention is the basis for each of Plaintiffs' causes of action and undergirds their entire claim. However, even if PBA is an unauthorized insurer, which PBA fervently denies, Plaintiffs lack the ability to assert a private right of action for violation of the Insurance Code.

South Carolina courts have explored this issue in a similar context in the case of *Lenz v. Walsh*.² In *Lenz*, the Court considered cross suits involving an unlicensed contractor and a homeowner. The Court determined application of Section 40-59-130, that bars an unlicensed

² 362 S.C. 603, 608 S.E.2d 471 (Cl. App. 2005).

contractor from bringing an action to enforce the terms of a contract, consequentially barred the contractor from foreclosing on a mechanic's lien against homeowners. The Court then explored whether a homeowner may recover payments made to an unlicensed builder under a residential construction contract. The Court of Appeals adopted the reasoning and holding from North Carolina,³ and determined homeowners could not recover payments to the unlicensed builder. The Court, discussing licensing statutes, set forth the grounds for its holding as follows:

(1) the statutes requiring licenses do not specifically authorize the recovery of money paid; (2) such laws are penal in nature and must be strictly construed; (3) the specification of particular penalties precludes the addition of other penalties by judicial interpretation; (4) allowing the recovery of such payments is not necessary to effectuate the policy of licensing statutes; and (5) equity and the principles of restitution do not require that unlicensed contractors be completely uncompensated or that contracting homeowners receive the completed construction without cost.

Lenz, 362 S.C. at 608, 606 S.E.2d at 473.

Pursuant to that reasoning, the Court of Appeals determined that generally, "a homeowner may not recover payments already made to an unlicensed contractor merely because the unlicensed contractor did not hold a license when the contract was executed." The Court further discussed the homeowner's claim and noted the homeowners voluntarily made payments for materials under the contract that were used toward construction of their home. Accordingly, the Court of Appeals held that allowing the homeowners' requested recovery "would be indistinguishable from allowing them to recover money paid directly to the builder to purchase construction materials." *Id.*, 362 S.C. at 609, 608 S.E.2d at 474.

The facts presented in *Lenz* dovetail with what Plaintiffs are seeking to accomplish in this action. Plaintiffs, despite contracting for, voluntarily paying for, and receiving the benefits under the Plan, are now seeking recession of the dues paid to PBA based merely upon the fact that

³ *Hawkins v. Holland*, 97 N.C. App. 291, 388 S.E.2D 221 (N.C. CT. APP. 1990).

PBA is not licensed by the Department of Insurance. While it is PBA's position it is not an insurer and should not be regulated by the Department of Insurance, Plaintiffs' insistence that PBA is in violation of the law, even if true, does not entitle them to pursue an action for recovery of dues based solely upon that contention.

Like the homeowners in *Lenz*, Plaintiffs are seeking recovery of money paid to PBA despite having received the benefits of the Plan. In fact, both Plaintiffs have received the benefit of the Plan through the provision of Attorney Andy Savage as their attorney. (Affidavit of Joni Fletcher Ex. H). In addition, Plaintiff Stanley, who remains a member of PBA, is *currently* being defended by an attorney provided and paid for by PBA.⁴ *Id.* Plaintiffs' claim mirrors the homeowners' in *Lenz*, and merely seeks recovery of funds due to PBA's status as an alleged unlicensed insurer and not because of any instance of damage.

Moreover, the application of section 38-25-550 is somewhat problematic in this instance. Plaintiffs seek to compel PBA to file with the court a bond "to secure the payment of any final judgment." However, as discussed more fully in PBA's Motion to Dismiss and supporting memoranda, Plaintiffs have not alleged they have ever been denied a benefit under the Plan, and thus, fail to allege any damage. Plaintiffs also appear to be seeking rescission of the funds paid to PBA. However, there is no basis for this claim either.

In addition to the ruling set forth in *Lenz*, that a plaintiff cannot recover funds paid for violation of a licensing statute, Plaintiffs cannot seek rescission of their agreements with PBA because of its alleged violation of the Insurance Code. Under the Code, the mere fact that an insurer is operating unlicensed in the state, as Plaintiffs allege PBA is, does not render the

⁴ PBA's pending Motion to Dismiss is premised, in part, on the fact that Plaintiffs do not allege the denial of any benefit under the Plan. In considering the pending Motion to Dismiss, the fact that Plaintiff Stanley is actually taking advantage of the very benefit of which he complains, bolsters PBA's argument that the Plaintiffs' Amended Complaint should be dismissed.

contract void. *See* S.C. Code Ann. § 38-25-540 (stating “[t]he failure of an insurer transacting insurance business in this State to obtain a certificate of authority does not impair the validity of any act or contract of the insurer.”). Plaintiff Stanley is acting in accordance with this statute as he remains, under his own volition, an active member of PBA and currently receiving the benefit of an attorney under the Plan despite arguing the Plans illegality. (Affidavit of Joni Fletcher Ex. H). In addition, Plaintiff Reiter is no longer a member of PBA and has no agreement or contract to seek rescission of. In sum, Reiter and Stanley do not have a claim for damage as a result of being denied a benefit under the Plan and do not have a basis for any claim of rescission or disgorgement of dues paid to PBA. Therefore, absent a monetary claim of damages against PBA, there would be no basis for a bond under section 38-25-550 to “secure the payment of any final judgment,” even if (contrary to everything set forth above) PBA were determined to be an unauthorized insurer.

In addition, as discussed in greater detail in PBA’s Motion to Dismiss and supporting memoranda, the South Carolina Insurance Code does not authorize a private right of action against an alleged insurer for failing to adhere to the licensing requirement imposed by the Code. Rather, the Director of the Department of Insurance is vested with the authority to investigate, move to enjoin, or mandate a halt of such activity. *See* S.C. Code Ann. §§ 38-25-110, 315. Further, the Insurance Code sets forth the penalties for violations of the licensing requirement. *See* S.C. Code Ann. §§ 38-25-320, 330, 360. The reasoning employed in *Lenz* is instructive here, similar to the licensing requirement for contractors, (1) the licensing requirement of the Insurance Code does not specifically authorize recovery of money paid, (2) penal laws must be strictly construed, and (3) the specification of particular penalties precludes the addition of others. *See Lenz*, 362 S.C. at 608, 606 S.E.2d at 473. Accordingly, absent a private right of

action for violation of the licensing requirement of the Insurance Code or for the unauthorized transaction of insurance business, Plaintiffs in this matter cannot maintain a claim against PBA. Consequently, Plaintiffs' underlying claim fails as a matter of law, and accordingly, the instant motion should be denied.

C. Plaintiffs are Not Entitled to A Dispositive Ruling at This Stage of the Litigation.

Plaintiffs' argument is premised on the *alleged* conclusion that PBA is an "unauthorized insurer" in South Carolina and must litigate as though that *alleged* conclusion has been established. As shown above, PBA adamantly disputes that premise and is confident that conclusion will never be established. Interestingly, in their Amended Complaint Plaintiffs recognize the ultimate purpose of their litigation is to the establish that conclusion and seek the (highly disputed) damages they contend will flow as a result. For example, in Paragraph 19 of their Amended Complaint, they define the "core issues presented" in the litigation to be "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." Similarly, In their Memorandum in Opposition to Defendant's Motion to Dismiss, Plaintiffs state that "Plaintiffs seek a declaratory judgment that the PBA is an unauthorized insurance company" and that, "Plaintiffs in effect are seeking a declaratory judgment that the PBA is an unauthorized insurer." (Plts' Memo in Opp to Motion to Dismiss pp.24-24). Simply stated, if Plaintiff's goal of the litigation is to establish that PBA is an "unauthorized insurer," it is premature for them to begin the case with a Motion that is premised upon that conclusion having already been reached.

D. Plaintiffs' Motion is Improper Under Rule 12(f), SCRPC.

Plaintiffs' Motion to Strike has the unusual dilemma of being premature substantively and late procedurally. Rule 12(f), SCRPC, provides:

(f) Motion to Strike. Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

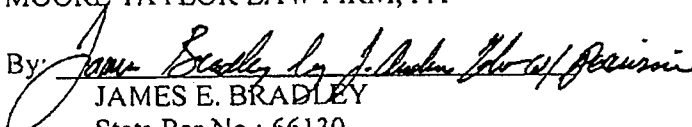
Plaintiffs' Motion to Strike does not meet the parameters set forth in Rule 12(f). As Plaintiffs' Motion notes, PBA filed its Motion to Dismiss and Answer to the Amended Complaint on January 23, 2017. Rule 12(f) requires any Motion to Strike to follow within 30 days after the service of the subject pleading. Plaintiffs' motion fails in this regard as it was served and filed on April 14, 2017, eighty-one days after the filing of PBA's Answer and Motion.

Furthermore, the purpose of a Motion to Strike is to strike from a pleading "any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Rule 12(f), SCRPC. Plaintiffs' Motion does not argue PBA's Answer or Motion to Dismiss falls into any of those categories; moreover, Plaintiffs are not seeking to strike specific defenses or claims as the Rule anticipates. *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 114, 682 S.E.2d 871, 874 (Ct. App. 2009) (stating "[a]ny objections to impertinent or scandalous matters in a pleading are properly raised by a party in a motion to strike." (emphasis added)). Rather, Plaintiffs are seeking to use the Motion to Strike as a vehicle for arriving at a legal conclusion and an end-run around the very litigation they initiated. PBA's defenses to Plaintiffs' Amended Complaint are well founded, material, and pertinent to the claims levied against it. In addition, PBA's Motion to Dismiss is supported by statutes, case law, and is properly made under the Rules of Civil Procedure. Plaintiffs have failed to set forth a proper Motion to Strike, and, accordingly, the Motion should be denied.

V. CONCLUSION

Through their untimely Motion to Strike, Plaintiffs are seeking to use this Court to obtain a dispositive ruling that is contrary to the Insurance Code, case law, the General Assembly, the Director of the Department of Insurance, and the Administrator of Consumer Affairs. The mere allegation that PBA is an insurer does not render it subject to Section 38-25-550(a) and does not render PBA's pleadings susceptible to striking. Rather, a simple reading of the Code, application of the law, and analysis of the Plan leads to the inescapable conclusion that PBA is not an insurer, not engaged in the unauthorized transaction of insurance business, and is not subject to the penalties of Section 38-25-550(a). Therefore, PBA requests Plaintiffs' Motion to Strike be denied.

Respectfully submitted,
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5. The PBA exists to serve the needs of police officers. In particular, some of the benefits the organization provides are: 1) governmental affairs and lobbying efforts on behalf of police officers; 2) screening and endorsements for candidates of public office; 3) accidental death benefits up to \$60,000; 4) access to Police Benevolent Association's staff attorneys for advice or counsel; 5) copies of the Southern States Police Benevolent Association's magazine, Blue Review; 6) a legal defense benefit for the performance of official duties within the accepted standards of the profession; and 7) representation in disciplinary or grievance proceedings.

6. The PBA is governed by a board of directors of current and former law enforcement officers who are members of the association. It has local chapters in each area governed by local officers who are elected by the membership.

7. The PBA has never held itself out as selling insurance or represented itself as an insurance company.

8. The PBA has never been accused of selling insurance until the filing of a prior lawsuit by former North Charleston Police Officer Michael Slager. The PBA's status as a 501(c)(5) tax exempt labor organization has never been questioned regarding the provision of legal member benefits.

9. On November 7, 2016, PBA, through attorney Steven Hamm, sent a letter to the South Carolina Department of Consumer Affairs (attached as Exhibit A). The letter set forth PBA's position as to why it considered itself exempt from the Department's regulation, but requested that the Administrator of the Department provide an opinion as to PBA's status under the Consumer Protection Code.

10. PBA received an Opinion Letter from the South Carolina Department of Consumer Affairs dated March 31, 2017, setting forth the Department's opinion that "the legal

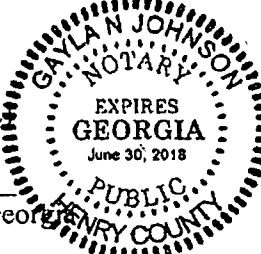
benefit offered by the [PBA] constitutes prepaid legal services and, thus, is subject to the [Consumer Protection] Code." (attached as Exhibit B).

11. Following the issuance of the Opinion Letter, PBA submitted an application with the Department of Consumer Affairs on 4/25/17 and manifested its intent to comply with the Department's decision and the requirements of the South Carolina Consumer Protection Code.

FURTHER AFFIANT SAYETH NAUGHT

Charles Cordell
CHARLES CORDELL

SWORN to before me this
2nd day of May, 2017

Gayle N. Johnson (SEAL) 
Gayle N. Johnson
Printed Name of Notary Public of Georgia
My Commission Expires: 6-30-18

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,

EXHIBIT

B

tabbies

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