STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	
	)	
ROBERT GEATHERS and	)	
DEBRA GEATHERS, h/w	)	Civil Action No. 2019-CP-38-00550
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
NATIONAL COLLEGIATE	)	
ATHLETIC ASSOCIATION	)	
	)	
Defendant.	)	
	)	

DEFENDANT'S MOTION AND BRIEF IN SUPPORT OF MOTION TO ENFORCE THE DAMAGES CAP UNDER THE SOLICITATION OF CHARITABLE FUNDS ACT

PLEASE TAKE NOTICE that Defendant National Collegiate Athletic Association ("NCAA"), by and through its undersigned counsel, pursuant to Rules 50(b) and 59(e) of the South Carolina Rules of Civil Procedure, S.C. Code Ann. § 33-56-180(A), and the inherent authority and responsibility of the Court, hereby respectfully moves this Honorable Court to enforce the damages cap under the Solicitation of Charitable Funds Act, by finding that there is one occurrence each for Plaintiffs Robert and Debra Geathers and reducing the jury's total damages award to $600,000, *i.e.*, $300,000 for each Plaintiff. In support of this motion, the NCAA states as follows:

I. ARGUMENT

A. Standard

The South Carolina Solicitation of Charitable Funds Act provides that "a person sustaining an injury or dying by reason of the tortious act … may recover in an action brought against the charitable organization only the actual damages he sustains in an amount not exceeding the limitations on liability imposed in the South Carolina Tort Claims Act in Chapter 78 of Title 15."

S.C. Code Ann. § 33-56-180(A). The Tort Claims Act provides that "no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved." S.C. Code Ann. § 15-78-120(a)(1). Under the Tort Claims Act, "'[o]ccurrence' means an unfolding sequence of events which proximately flow from a single act of negligence." S.C. Code Ann. § 15-78-30(g).

A plaintiff alleging an injury under the Solicitation of Charitable Funds Act bears the burden of proof. *Chastain v. AnMed Health Foundation*, 694 S.E.2d 541, 543-44 (S.C. 2010). If a plaintiff alleges multiple occurrences, he bears the burden of proving each occurrence. *Id.*

The damages cap under the Tort Claims Act is "mandatory" and "self-executing," so that "courts must apply the statutory cap to actions brought pursuant to the Act." *See Parker v. Spartanburg Sanitary Sewer Dist.*, 607 S.E.2d 711, 716 (S.C. Ct. App. 2005); *Campbell v. City of North Charleston*, 848 S.E.2d 788, 794 (S.C. Ct. App. 2020).

B. The Total Amount of The Jury Award Must Be Reduced To $600,000

The total jury award in favor of Plaintiffs must be capped at $600,000, *i.e.*, $300,000 for each Plaintiff, per the South Carolina Solicitation of Charitable Funds Act. S.C. Code Ann. § 33-56-180(A) (referencing S.C. Code Ann. § 15-78-120(a)(1)).

The Court previously granted the NCAA's partial motion for summary judgment, finding that the NCAA is a charitable organization for purposes of the Solicitation of Charitable Funds Act. *See* Order, Oct. 6, 2023. The Court held that "Plaintiffs' damage award is to be capped in accordance with Section 33-56-180(A)." *Id.*; *see also* Memorandum Opinion and Order at 10, Nov. 21, 2023.

The statutory damages cap in the Tort Claims Act, which is incorporated by and made

applicable to this case by Section 33-56-180(A) of the Solicitation of Charitable Funds Act, provides that "no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved." S.C. Code Ann. § 15-78-120(a). The Tort Claims Act defines "occurrence" as "an unfolding sequence of events which proximately flow from a single act of negligence." S.C. Code Ann. § 15-78-30(g).

As such, the Tort Claims Act states that an "occurrence" is "an unfolding sequence of events" "proximately flowing" from an act of negligence which results in "loss." *See* S.C. Code Ann. §§ 15-78-30(g), 15-78-120(a). Under this definition, there is an occurrence for each different sequence of events causing a loss. If a defendant's tortious actions only give rise to ***one sequence of events causing a loss***, then there is ***only one occurrence under the Tort Claims Act***.[1] *See Boiter v. S.C. Dept. of Transp.*, 712 S.E.2d 401, 406-07 (S.C. 2011) (interpreting S.C. Code Ann. § 15-78-30(g) such that multiple negligent acts combine "to form a single act of negligence" if they are within one "unfolding sequence of events").

The NCAA reasserts its position that the number of occurrences under the Tort Claims Act is a question of law for the Court.[2] But even if the Court disagrees, the NCAA is entitled to judgment notwithstanding the verdict on the number of occurrences because Plaintiffs failed to

[1] By contrast, if a defendant's tortious actions give rise to separate "sequence[s] of events," *i.e.*, two or more independent series of events that are not developing or evolving from a common set of events, then there are multiple "occurrences" under the Tort Claims Act. *Boiter*, 712 S.E.2d at 406-07.

[2] *See* Defendant's Brief For A Ruling On The Issue of Occurrences, 4-6, Sept. 27, 2024. As discussed in that brief, *Boiter* is the only South Carolina Supreme Court case to substantively apply the definition of "occurrence." The Court held that the issue is a "question[] of statutory construction" and determined the number of occurrences as a matter of law. *See Boiter*, 712 S.E.2d at 405-06. In *Boiter*, the jury returned a verdict in favor of the plaintiffs and awarded them $1.875 million each for their claims against the DOT and DPS. *Id.* at 402-03. The trial court granted the defendants' motion to reduce the verdict under the Tort Claims Act to $300,000 for each plaintiff based on a holding that there was only one occurrence. *Id.* at 403. The Supreme Court reversed, holding that the "[q]uestions of statutory construction are a matter of law" and "the facts here present a classic case of two occurrences." *Id.* at 405.

adduce evidence of more than one occurrence under the Tort Claims Act. *See* Tr., 40:13-17, Oct. 22, 2025 (the Court: the number of occurrences "is a factual issue for the jury. We'll see what the jury says. And if they come up with 15, we'll deal with it on post-trial motions.").

In Question No. 4 of the Verdict Form, the jury determined that there were 47 occurrences for Plaintiffs' negligence claim. Verdict Form at 2, Oct. 24, 2025. Plaintiffs' evidence at trial, however, showed at most one unfolding[3] sequence of events resulting in a loss to Robert Geathers: the NCAA's acts or omissions that allegedly resulted in Mr. Geathers' exposure to head injuries from playing football which caused latent neurodegenerative brain disease. As the Court recognized, Plaintiffs' theory of the case was that "at the most" the NCAA committed negligence by: (i) failing to enact football rules to make the game safer; (ii) failing to implement a concussion protocol; and (iii) failing to warn Robert Geathers about the risks of latent neurodegenerative brain disease. *See* Tr., 40:2-17, Oct. 22, 2025 (the Court summarizing Plaintiffs' theory of the case as the NCAA's "failure to warn, change the rules, [implement] concussion protocols" "[b]ecause their theory is that but for the NCAA not fixing any of those three things, Plaintiff would not have suffered the injuries," so there were "at the most" three occurrences); Tr., 41:21-24, 42:12-43:9, 50:7-25, Oct. 23, 2025 (during closing argument, Plaintiffs' counsel summarized the NCAA's "three failures" as the failure to enact football rules, failure to enact a concussion protocol, and failure to provide information to football players).

These alleged actions or inaction are all part of same unfolding sequence of events that resulted in Mr. Geathers allegedly suffering head injuries that caused subsequent latent neurodegenerative disease. Accordingly, Plaintiffs failed to adduce evidence of more than one

[3] "Unfold" is defined as to "develop" or "evolve." *See Unfold*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/unfold (last visited Oct. 21, 2025).

occurrence under the Tort Claims Act.

The jury's determination that there were 47 occurrences cannot stand as a matter of law. The jury based its determination on Plaintiffs' closing argument that the NCAA was negligent each year it failed to address the dangers of head injuries between 1933 and 1980 (a difference of 47 years) and that each of these acts of negligence constitutes an occurrence. *See* Tr., 110:15-111:3, Oct. 23, 2025 ("So just think about this as negligence. Okay? Right? So it's a cupful of negligence, and each one of these pours. So we're not entitled to one bottle, we're entitled to every single drop, every single occurrence that you all find … Every single occurrence that you all find, every single ounce of negligence that you all find, every single unfolding sequence of events that you all find, and we argue in this case … That's what we're talking about, the failures from 1933 forward."); *id*. at 112:5-113:3 ("When you go to the back and you're thinking about occurrences or ways in which the NCAA has failed Robert Geathers, I think you have to remember that the first thing is that their job – their job was to keep the boys safe. That was their duty, that was their job, and they raised – they actually raised that risk by not offering information they knew that would've changed habits or promulgated rules and regulations to make sure people didn't have repeated head trauma. Each failure to do that is an occurrence."); *id.* at 115:15-20 ("And how many occurrences do you find? I think it goes all the way back to 1933, and I think their failures go all the way through 1980. That's what I'm arguing.").

Plaintiffs' closing argument and the jury's determination of occurrences based on that argument contradict South Carolina law. Equating each alleged tortious act to a separate "occurrence" improperly reads out of the statutory definition the words "an unfolding sequence of events," which plainly contemplates multiple "events," yet caps the number of "occurrences" for a single unfolding sequence of events to one, regardless of the number of acts or omissions within

that sequence of events. *See USAA Cas. Ins. Co. v. Rafferty*, 886 S.E.2d 222, 225 (S.C. 2023) (internal citations omitted) ("A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage[] or superfluous[.]"); *Boiter*, 712 S.E.2d at 405-06 (internal citations omitted) ("In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect."). Even under Plaintiffs' theory, a course of inaction over 47 years is a single "sequence of events."

Further, *Boiter* specifically rejected any notion that the number of "occurrences" is tied to the number of separate tortious acts. *See* 712 S.E.2d at 406 (rejecting respondent's argument to "focus on the number of negligent acts"; holding "we do not adopt a bright-line test based on the existence of multiple acts of negligence"). *Boiter* noted that "in many instances," multiple negligent acts, even committed by multiple entities, "would still equal but one occurrence." *Id.* at 407; *Chastain*, 694 S.E.2d at 541-543 (affirming the trial court's reduction of $2.2 million judgment to the $300,000 statutory cap based on a finding of one occurrence in a case where the plaintiff suffered injuries as a result of care by six nurses).

Regardless of the number of alleged separate tortious acts by the NCAA, they were all part of the same series or sequence of events that combined to cause the same loss: Mr. Geathers' exposure to head injuries playing college football, which allegedly caused him to sustain a brain injury. Plaintiffs, therefore, failed to adduce evidence of more than one "occurrence" under the Tort Claims Act. For this reason, the Court should find that there is one occurrence each for Robert and Debra Geathers under the Tort Claims Act and reduce the jury's total damages award to

$600,000, *i.e.*, $300,000 for each Plaintiff.[4]

Alternatively, the Court should find that there is a total of three occurrences for Robert Geathers' negligence claim, specifically one occurrence for each of Plaintiffs' alleged theories of negligence against the NCAA. *See* Tr., 40:9-17, Oct. 22, 2025 (the Court recognizing "at the most we have three occurrences here"). In this instance, the Court should reduce the jury's total damages award to $1,200,000 – $900,000 to Mr. Geathers based on a finding of three occurrences and $300,000 to Mrs. Geathers based on one occurrence.

Finally, if the Court does not adjust the verdict in favor of the NCAA on the issue of occurrences, the Court must, at a minimum, apply the statutory cap in the Tort Claims Act to reduce the jury's damages award in favor of Mrs. Geathers from $8 million to $300,000. The jury's determination of 47 occurrences plainly applied only to occurrences relating to Mr. Geathers' negligence claim against the NCAA. The jury was not asked to determine the number of occurrences for Mrs. Geathers' loss of consortium claim. In any event, Plaintiffs presented no evidence to support multiple occurrences for Mrs. Geathers' loss of consortium claim. Nor could they when loss of consortium arises out of "the loss of the services, society, and companionship of the spouse," *see Pratt v. Amisub of SC, Inc.*, 912 S.E.2d 268, 275 (S.C. Ct. App. 2025), which is an unfolding sequence of events that can only happen once. Without evidence of or a determination by the jury of multiple occurrences, Plaintiffs cannot meet their burden to establish multiple occurrences for Mrs. Geathers. *See Chastain*, 694 S.E.2d at 543-44 (reducing jury verdict to $300,000 when plaintiff failed to meet its burden to show there was more than occurrence).

[4] Both Section § 33-56-180(A) of the Solicitation of Charitable Funds Act and Section § 15-78-120(a) of the Tort Claims Act impose a limitation of liability per "person," *i.e.*, per plaintiff. *See* S.C. Code § 33-56-180(A); S.C. Code Ann. § 15-78-120(a).

II. CONCLUSION

For the foregoing reasons and those set forth in the NCAA's Motion For Judgment Not Withstanding The Verdict, the NCAA respectfully requests that the Court grant its Motion To Enforce Charitable Cap Under The Solicitation of Charitable Funds Act, and reduce the jury's total damages award to Plaintiffs to $600,000.

Respectfully submitted,

GALLIVAN, WHITE & BOYD P.A.

By: */s/ John E. Cuttino*
John E. Cuttino, S.C. Bar #1519
1201 Main Street (29201)
Post Office Box 7368
Columbia, South Carolina 29202
TEL: (803) 724-1714
FAX: (803) 779-1767
jcuttino@gwblawfirm.com

Andrew K. Fletcher, Esquire
(*Admitted pro hac vice*)
Paul H. Tzur, Esquire
(*Admitted pro hac vice*)
Richard Weibley, Esquire
(*Admitted pro hac vice*)
Christopher C. Wilcoxson, Esquire
BLANK ROME LLP
One Logan Square
130 N. 18th St.
Philadelphia, PA 19103
TEL: (215) 569-5500
FAX: (215) 832-5473
andrew.fletcher@blankrome.com

AND

C. Brad Hutto, Esquire
WILLIAMS & WILLIAMS
ATTORNEYS AT LAW
Post Office Box 1084
Orangeburg, South Carolina 29115
TEL: (803) 534-5218
FAX: (803) 928-5190
cbhutto@williamsattorneys.com

Attorneys for Defendant National Collegiate Athletic Association

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CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2025, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and electronic service.

John Kassel, Esq.
Thiele McVey, Esq.
KASSEL McVEY
1330 Laurel St.
Columbia, SC 29201

David D. Langfitt, Esq.
LANGFITT PLLC
P.O. Box 302
Gladwyne, PA 19035

Bakari Sellers, Esquire
STROM LAW FIRM
6923 N. Trenholm Road
Columbia, SC 29206

GALLIVAN, WHITE & BOYD P.A.

By: */s/ John E. Cuttino*
John E. Cuttino, S.C. Bar #1519
1201 Main Street (29201)
Post Office Box 7368
Columbia, South Carolina 29202
TEL: (803) 724-1714
FAX: (803) 779-1767
jcuttino@gwblawfirm.com

Andrew K. Fletcher, Esquire
(*Admitted pro hac vice*)
Paul H. Tzur, Esquire
(*Admitted pro hac vice*)
Richard Weibley, Esquire
(*Admitted pro hac vice*)
Cody Wilcoxson, Esquire
(*Admitted pro hac vice*)
BLANK ROME LLP
One Logan Square
130 N. 18th St.
Philadelphia, PA 19103
TEL: (215) 569-5500
FAX: (215) 832-5473
andrew.fletcher@blankrome.com

AND

C. Brad Hutto, Esquire
WILLIAMS & WILLIAMS
ATTORNEYS AT LAW
Post Office Box 1084
Orangeburg, South Carolina 29115
TEL: (803) 534-5218
FAX: (803) 928-5190 cbhutto@williamsattorneys.com