

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF LEXINGTON)	
)	
Willie and Shonda Simpkins,)	C.A. No. 2018-CP-32-
Individually and as the Personal)	
Representative of the Estate of Lewis)	
Simpkins, Deceased,)	
)	
)	
Plaintiffs,)	
)	SUMMONS
vs)	
)	
South Carolina Board of Education,)	
Lexington County School District,)	
South Carolina High School League,)	
and Lexington Count,)	
)	
)	
Defendants.)	

TO: THE DEFENDANTS ABOVE NAMED:

You are hereby summoned and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to have a copy of your Answer to the Complaint served upon the subscriber at Post Office Box 2800, Greenville, South Carolina 29602, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within that time, judgment by default will be rendered against you for the relief demanded in the Complaint.

PARHAM SMITH & ARCHENHOLD, LLC

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Attorney for the Plaintiff

Dated: 6/18/2018
Greenville, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF LEXINGTON)	Case No.: 2018-CP-32-
)	
Willie and Shonda Simpkins,)	
Individually and as the Personal)	
Representatives of the Estate of)	
Lewis Simpkins, Deceased,)	
)	
Plaintiffs,)	
)	
vs.)	COMPLAINT
)	(JURY TRIAL DEMANDED)
)	
South Carolina Board of Education;)	
Lexington County School District;)	
South Carolina High School League;)	
and Lexington County,)	
)	
Defendants.)	
_____)	

The Plaintiffs, through undersigned counsel below, would show unto this Honorable Court, that:

INTRODUCTION

1. This is an action to hold the Defendants accountable for the wrongful death of Lewis Nathaniel Simpkins, age 14, who died on August 10, 2016 after suffering a fatal heat related injury during an outdoor football practice administered and negligently mismanaged by Defendants in 95 degree heat index temperature conditions.

THE PARTIES, JURISDICTION, AND VENUE

2. Lewis Simpkins (hereinafter “Lewis,” “Simpkins,” or “Decedent”) was a fourteen year-old student from Lexington County, South Carolina when he died on August 10, 2016.

3. The Plaintiffs, Willie L. Simpkins and Shonda Simpkins, are residents of the State of South Carolina, and the natural parents of Lewis Simpkins, and are the duly appointed Personal Representatives of the Estate of Lewis Simpkins.

4. They bring this action on behalf of the Decedent's estate, for damages recoverable pursuant to Section 15-5-90 of the South Carolina Code (1976, as amended). This is known as a survival action and brought on behalf of the estate of the decedent.

5. They also bring the claim for the damages recoverable by the statutory beneficiaries of Decedent's estate pursuant to Section 15-51-10, et. seq., of the South Carolina Code (1976, as amended). This is known as a wrongful death action and is brought on behalf of the statutory beneficiaries of the decedent.

6. The South Carolina Board of Education (hereinafter "SCBE") is located in Richland County, South Carolina.

7. The Lexington County School District (hereinafter "LCSD") is located in Lexington County, South Carolina. River Bluff High School is a member school of the Lexington County School District and is located in Lexington County, South Carolina. Upon information and belief, Lexington County School District is believed to be the entity which controls and maintains the actions and/or inactions of the employees of River Bluff High School.

8. The South Carolina High School League (hereinafter "SCHL") is located in Richland County, South Carolina. Upon information and belief,

River Bluff High School is a member school of the SCHL.

9. Lexington County is, upon information, the entity which provides funding, resources, and other material things to the LCSD. Lexington County makes decisions which control the actions of LCSD.

10. This Court has jurisdiction over the parties to, and the subject matter of this action, and venue in Lexington County is proper under S.C. Code Ann. §§ 15-7-10, et seq., in that the majority of all of the alleged acts or omissions giving rise to the causes of action occurred in Lexington County.

APPLICABLE LAW TO ALL CLAIMS

11. The negligent acts, omissions and liability of all Defendants includes their agents, principals, employees, and/or servants, both directly and vicariously, pursuant to principals of corporate liability, apparent authority, agency, ostensible agency, and/or respondeat superior.

12. At all times referenced in this Complaint and as to all allegations in this Complaint, the agents, principals, employees and/or servants of each Defendant were acting within the course and scope of their employment.

13. That all of the above-named Defendants are jointly and severally liable as to all damages alleged herein since their negligent, grossly negligent, reckless, and wanton acts and omissions, singularly, or in combination, are a proximate cause of Plaintiffs' damages, injuries and losses and Plaintiffs' Decedent's damages, injuries and losses.

FACTS APPLICABLE TO ALL CLAIMS

14. The young Decedent, Lewis Simpkins, was an outstanding high school football player in his hometown of Lexington, South Carolina. Lewis was a

hulking 6-foot-2 and 270 pound defensive tackle who had hoped to eventually play at Clemson University. Lewis was also a member of the Fellowship of Christian Athletes and concert band. As a musician, Lewis played the trumpet as well as percussion.

15. The SCHL is an organization which creates policies and procedures for interscholastic athletic programs for participating schools in South Carolina.

16. Lexington County School District was a member of the SCHL.

17. In order to have a football program for the high school in the City of Lexington, in Lexington County, South Carolina, the SCBE made it mandatory for a school participating in its athletic programs to be a member of the SCHL.

18. Upon information and belief, LCSD capitulated in this request and made it known that its high schools had to abide by the rules and regulations of the SCHL in order to be able to field a football team.

19. A proper heat-acclimatization plan in high school athletics is essential to minimize the risk of exertional heat illness during the preseason practice period.

20. The goal of the acclimatization period is to enhance exercise heat tolerance and the ability to exercise safely and effectively in warm to hot conditions.

21. The majority of heat illnesses occur in football players, during the month of August, when according to heat index measurements, the environmental conditions are in the “dangerous” risk categories.

22. Practice for the 2016 River Bluff football season began on July 29, 2016. Several of the full pad practices were canceled between August 3rd – August 8th due to thunderstorms, lightning, and heavy rain.

23. For the time period of July 29 – August 9, 2016, the high temperature in

Lexington County measured between 90 degrees to 101 degrees.

24. On August 9, 2016, River Bluff High School played Greenwood High School in a scrimmage. River Bluff lost the scrimmage handily and the defense did not perform well.

25. On August 10, 2016, River Bluff football team had a full pads practice. According to former players, it was the hardest practice they had ever had. The practice was a punishment of sorts for the poor performance in the scrimmage against Greenwood the day prior. The heat index during practice was 95 degrees according to the National Weather Service. People should exercise “extreme caution” with prolonged exposure to heat index conditions above 90, according to the weather service’s general warning about heat indices. River Bluff’s football team practiced for more than two hours in the conditions.

26. The practice started with a somewhat new drill where players did double teams in a three-man rotation. Many players, including Lewis, had difficulty during the practice.

27. Near the end, the team huddled and Coach Bennett briefly spoke to them. The coaches then had the players run gassers. Lewis struggled and was in the back behind everyone. After running gassers, the players thought practice was over; however, practice continued.

28. Coaches then had the defensive players do “up downs.” During “up downs,” Lewis had trouble getting up and could barely lift his feet when chopping them. After several of these, Lewis leaned on his knee and ultimately could not get up. Coaches yelled for the players to get him up and keep going. Lewis did one more “up down” and then rolled over and again could not get up. Lewis was gasping for air.

29. Lewis was carried off the field into the training room. He was short of breath and cramping up.

30. Lewis was initially able to respond to several questions, but continued to struggle breathing, and then his head dropped forward and he became unresponsive. 911 was called. Lewis's shirt was cut open and an AED was attached. The AED stated "no shock advised, start CPR." CPR was attempted until EMS arrived.

31. Resuscitation efforts were unsuccessful and Lewis was transported to Lexington Medical Center. He remained in asystole throughout and was pronounced dead at 8:22 p.m. According to the autopsy, external environmental factors (heat and humidity) were noted to likely have contributed to his death.

32. A report card from the University of Connecticut's Korey Stringer Institute shows that South Carolina only meets one of the seven minimum best practices recommendations laid out by the institute, which partners with such organizations as the National Football League and National Athletic Trainers' Association. The institute was founded in part by the widow of an NFL football player who died from exercise-caused heat stroke in 2001.

33. The seven guidelines, which set recommendations for heat acclimation procedures, have been adopted many of the southern states including North Carolina and Georgia, as well as Alabama, Mississippi, Arkansas and Texas. They have not been adopted by South Carolina.

34. Lewis is survived by his parents, Willie and Shonda; his adult brothers; Joshua, Justice, William and Jashun; and his sister, Shontia.

35. The negligent, careless, reckless, wanton, grossly negligent and intentional actions of the Defendants singularly, or in combination, contributed to the

agonizing death of the Decedent, including the fear and struggle Decedent underwent prior to his death.

36. The negligent, careless, reckless, wanton, grossly negligent, and intentional actions of the Defendants singularly, or in combination, contributed to the death of Lewis Simpkins, thus depriving his beneficiaries of his love and companionship.

FIRST CAUSE OF ACTION
(Wrongful Death - Negligence/Gross Negligence/Negligence Per Se)

37. Plaintiffs hereby incorporate by reference and re-allege every allegation of Paragraphs 1 through 36 of this Complaint as if fully set forth herein.

38. At all times, the employees and/or agents of each of the Defendants had a duty to the Decedent, and in general to all high school football players in the State of South Carolina, due to their special relationship with these young athletes. Specifically, the Defendants had a duty and responsibility to operate the football program in a reasonably safe manner and to protect the health and safety of its student athletes. Further, the Defendants owed a duty to its football players to develop, plan, and execute a conditioning drill that was reasonably safe and that would not endanger the lives of its players.

AS TO THE SCBE

39. Employees and/or agents of the South Carolina Board of Education breached their duty to Lewis Simpkins and were negligent, careless, reckless, wanton, grossly negligent, and willful, and/or acted in reckless disregard for the safety of Lewis Simpkins, in one or more of the following ways:

- a. In failing to have in place policies and procedures to properly train and/or monitor its employees, or if such procedures were in place, in

- failing to enforce them;
- b. In failing to have in place adequate policies and procedures to mandate compliance by high school coaches and athletic trainers with statutes, laws, and regulations regarding the safety of high school students, or if such policies and procedures were in place, in failing to enforce them;
 - c. In failing to have in place an adequate safety program for the safety and protection of high school athletics (particularly football) or if such program was in place, in failing to implement it;
 - d. In failing to use discretion through its employees and/or agents, when such employees and/or agents had the opportunity to weigh alternatives or considerations and making a conscious choice on courses of action and failed to do so;
 - e. In having its employees and/or agents fail to utilize accepted professional standards appropriate to resolve the issue before them and use any discretion in enacting, following, promulgating, implementing, or creating policies, procedures, rules or regulations for the safety and protection of high school athletes; and
 - f. In failing to have its employees and/or agents comply with known policies, procedures, rules or regulations in regard to high school football, high school coaches, high school athletic trainers, or any other person charges with ensuring compliance and safety with issues related to safety and protection of high school athletes, for whom such policies, procedures, rules or regulations were enacted, so as to constitute negligence per se.

40. The actions of SCBE above, in regard to allegations of a breach of duty to Decedent, exhibited an absence of care necessary under the circumstances and involved an intentional, conscious failure to do something which was incumbent upon SCBE to do, or alternatively, intentional conduct by SCBE that it should not have undertaken.

AS TO SCHL

41. Employees and/or agents of the South Carolina High School League breached their duty to Lewis Simpkins and were negligent, careless, reckless, wanton, grossly negligent and willful and/or acted in reckless disregard for the safety of Lewis Simpkins in one or more of the following ways:

- a. In failing to have in place policies and procedures to properly train and/or monitor its employees, or if such procedures were in place, in failing to enforce them;
- b. In failing to have in place adequate policies and procedures to mandate compliance by high school coaches and athletic trainers with statutes, laws, and regulations regarding the safety of high school students, or if such policies and procedures were in place, in failing to enforce them;
- c. In failing to have in place an adequate safety program for the safety and protection of high school athletics (particularly football), or if such program was in place, in failing to implement it;
- d. In failing to use discretion through its employees and/or agents, when such employees and/or agents had the opportunity to weigh alternatives or considerations and making a conscious choice on courses of action and failed to do so;

- e. In having its employees and/or agents fail to utilize accepted professional standards appropriate to resolve the issue before them and use any discretion in enacting, following, promulgating, implementing or creating policies, procedures, rules or regulations for the safety and protection of high school athletes;
- f. In failing to have its employees and/or agents comply with known policies, procedures, rules or regulations in regard to high school football, high school coaches, high school athletic trainers, or any other person charges with ensuring compliance and safety with issues related to safety and protection of high school athletes, for whom such policies, procedures, rules or regulations were enacted, so as to constitute negligence per se;
- g. Failing to provide sufficient rest periods during strenuous and extremely difficult conditioning drills;
- h. Allowing and/or encouraging players who exhibited physical distress to continue with the conditioning drill;
- i. Failing to provide adequate medical and emergency personnel and adequate medical equipment during the conditioning drill;
- j. Failing to provide proper supervisors during the conditioning drill who should recognize when a player is in physical distress;
- k. Negligently organizing and executing the conditioning drill;
- l. Failing to call for appropriate emergency assistance in a timely manner;
- m. Failure of the training staff to appropriately administer medical assistance in a timely manner;

- n. Failing to maintain an adequate emergency plan;
- o. Failing to identify symptoms of overexertion; and
- p. Failing to properly instruct, educate, train, and supervise its coaches and athletic training staff.

42. The actions of SCHL above, in regard to allegations of a breach of duty to Decedent, exhibited an absence of care necessary under the circumstances and involved an intentional, conscious failure to do something which was incumbent upon SCHL to do, or alternatively, intentional conduct by SCHL that it should not have undertaken.

AS TO LCSD

43. Employees and/or Agents of the Lexington County School District breached their duty to Lewis Simpkins and were negligent, careless, reckless, wanton, grossly negligent and wilful and/or acted in reckless disregard for the safety of Lewis Simpkins in one or more of the following ways:

- a. In failing to have in place policies and procedures to properly train and/or monitor its employees, or if such procedures were in place, in failing to enforce them;
- b. In failing to have in place adequate policies and procedures to mandate compliance by high school coaches and athletic trainers with statutes, laws, and regulations regarding the safety of high school students, or if such policies and procedures were in place, in failing to enforce them;
- c. In failing to ensure the safety of the Decedent;
- d. In failing to use discretion through its employees and/or agents, when such employees and/or agents had the opportunity to weigh

alternatives or considerations and making a conscious choice on courses of action and failed to do so;

- e. In having its employees and/or agents fail to utilize accepted professional standards appropriate to resolve the issue before them and use any discretion in enacting, following, promulgating, implementing or creating policies, procedures, rules or regulations for the safety and protection of high school athletes; and
- f. In having its employees and/or agents fail to comply with known policies, procedures, rules or regulations in regard to high school football, high school coaches, high school athletic trainers, or any other person charges with ensuring compliance and safety with issues related to safety and protection of high school athletes, for whom such policies, procedures, rules or regulations were enacted, so as to constitute negligence per se.

44. The actions of LCSD above, in regard to allegations of a breach of duty to Decedent, exhibited an absence of care necessary under the circumstances and involved an intentional, conscious failure to do something which was incumbent upon LCSD to do, or alternatively, intentional conduct by LCSD that it should not have undertaken.

AS TO LEXINGTON COUNTY

45. Employees and/or agents of the County of Lexington, breached their duty to Lewis Simpkins and were negligent, careless, reckless, wanton, grossly negligent, and wilful and/or acted in reckless disregard for the safety of Lewis Simpkins in one or more of the following ways:

a. In having its employees and/or agents fail to utilize accepted professional standards appropriate to resolve the issue before them and use any discretion in enacting, following, promulgating, implementing, or creating policies, procedures, rules or regulations for the safety and protection of high school athletes.

46. The actions of Lexington County above, in regard to allegations of a breach of duty to Decedent, exhibited an absence of care necessary under the circumstances and involved an intentional, conscious failure to do something which was incumbent upon Lexington County to do, or alternatively, intentional conduct by Lexington County that it should not have undertaken.

47. As a direct and proximate result of the negligent, careless, reckless, wanton, grossly negligent and wilful acts or inactions by Defendants, their agents and/or employees, and the breach of duties owed to Decedent by Defendants, the Plaintiffs' Decedent suffered from severe debilitating injuries which resulted in his death, as a result of which the Plaintiffs' Decedent's statutory beneficiaries have lost the aid, comfort, support, society and companionship of the Decedent, and have suffered severe and extreme emotional distress, anxiety, grief and sorrow, for which the Plaintiffs are entitled to recover on behalf of statutory beneficiaries, actual, special and consequential damages pursuant to Section 15-51-10, et. seq., of the South Carolina Code of Laws (1976, as amended) in an amount to be determined by a jury at the trial of this action.

SECOND CAUSE OF ACTION
(Survival Action - Negligence/Gross Negligence/Negligence Per se)

48. Plaintiffs hereby incorporate by reference and re-allege every allegation of Paragraphs 1 through 47 of this Complaint as if fully set forth herein.

49. As a direct and proximate result of the negligent, careless, reckless, wanton, grossly negligent and willful acts or inactions by Defendants, their agents and/or employees, and the breach of duties owed to Decedent by Defendants, the Plaintiffs' Decedent's estate, as aforesaid, has incurred expenses in the form of funeral, burial, and medical expenses. The Plaintiffs are further informed and do believe that, as a direct and proximate result of the negligence, carelessness, recklessness, wantonness, gross negligence, willfulness of the Defendants, and the breach of duties owed to Decedent by Defendants, as aforesaid, the Plaintiffs' Decedent suffered fear, physical pain and suffering, and mental and emotional distress and anguish in the time before his death, for which the Plaintiffs' Decedent's estate is entitled to an award of actual, special and consequential damages pursuant to Section 15-5-90, of the South Carolina Code of Laws (1976 as amended) in an amount to be determined by a jury at the trial of this action.

THIRD CAUSE OF ACTION
(Negligent Infliction of Emotional Distress)

50. Plaintiffs hereby incorporate by reference and re-allege every allegation of Paragraphs 1 through 49 of this Complaint as if fully set forth herein.

51. Willie Simpkins and Shonda Simpkins are the parents of Lewis Simpkins.

52. Willie Simpkins was at the River Bluff High School football practice on August 10, 2016, when the Decedent collapsed on the field, and later died.

53. Willie Simpkins was present on the sidelines, in the stands, and in the training room as his son was losing his life.

54. Willie Simpkins was a personal eyewitness to the situation involving his son as described above.

55. The Defendants were negligent in different ways singularly, or in combination, in bringing about the injuries and death of the Decedent.

56. The result of Defendants negligent conduct was the death of Lewis Simpkins witnessed by his parents.

57. Willie Simpkins suffered physical symptoms capable of objective diagnosis due to their emotional distress as well as severe and permanent injury as a result of the negligent infliction of emotional distress by the Defendants.

FOURTH CAUSE OF ACTION
(Unfair and Deceptive Trade Practices)

58. Plaintiffs hereby incorporate by reference and re-allege every allegation of Paragraphs 1 through 57 of this Complaint as if fully set forth herein.

59. Defendant SCHL represents itself as an organization whose goal it is to ensure safe interaction with high school athletes in different sporting events.

60. SCHL stipulates in some of their policies and procedures that they provide for the safety of athletes and of member schools in regard to interscholastic athletics.

61. In order for any high school to engage in interscholastic athletics in South Carolina, they are required to be a member of SCHL.

62. SCHL is supposed to provide guidance and instruction to high schools in South Carolina on how to maintain and ensure the safety and health of student athletes.

63. The iterations and actions of SCHL are misleading, false, and made in bad faith.

64. Defendant SCHL's employees are not sufficiently trained to provide the type of services they represent they provide, to create the services, and/or to implement the safety rules necessary to protect high school athletes.

65. The actions of SCHL are unfair and deceptive as well as immoral, unethical, and/or oppressive.

66. The Decedent is the intended beneficiary of the supposed actions of the Defendant SCHL.

67. Defendants SCHL's acts are deceptive and unfair and have a public impact. They cause harm to high school students and are subject to repetition, and indeed occur repeatedly.

68. Plaintiffs and Decedent suffered special damages and harm as a result of the deceptive and unfair trade practices of Defendant SCHL.

SEPARATE AND INDEPENDENT ACTS OF DEFENDANTS

69. Plaintiffs hereby incorporate by reference and re-allege every allegation of Paragraphs 1 through 68 of this Complaint as if fully set forth herein.

70. The actions and/or inactions of each Defendant in this case were independent and separate acts of negligence and/or gross negligence. The care required by employees and/or agents of the different Defendants, singularly, or in combination, in this case rose to a level that exhibited an absence of care that was necessary under the circumstances and involved an intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do.

71. Some of the actions by specific Defendants, by themselves, constitute independent and separate acts of negligence.

72. The Defendants' actions and/or inactions did not combine to form a single act of negligence.

73. This case involves two or more separate and distinct entities committing independent and separate acts of negligence.

74. There are multiple allegations against each entity, but in short, SCHL failed to enact policies and safety rules to ensure the safety of high school athletes.

75. SCBE failed to ensure that any policies from SCHL were valid and also failed to create its own policies or supervise local school boards in creating or implementing safety rules to ensure the safety of high school athletes.

76. LCSD is the regulating entity of River Bluff High School and the employer of the principal, athletic director, athletic trainer, and coach of the River Bluff High School football team.

77. Each of these employees committed separate and independent acts of negligence which singularly, or in combination, contributed to the injuries and death of the Decedent.

78. Upon information and belief, Lexington County is the entity which funds and employs the persons who were supposed to be ensure the safety of high school athletes in Lexington County.

79. Each of the acts complained of in this Complaint by EACH separate entity by itself could have been the sole proximate cause of the injury of Lewis Simpkins.

80. There is no causal connection between the actions and/or inactions of each Defendant in bringing about the death of Lewis Simpkins.

81. The actions of each separate entity did not unfold into a single event. Further, the separate and independent acts or omissions of each Defendant by itself did not unfold into one single event causing injury or death to Lewis Simpkins.

82. Each specific act of negligence by itself pled against any entity could have brought about the injuries and death to Lewis Simpkins.

83. The jury in this matter could find that any, or all, or some portion of the Defendants' negligence or gross negligence, or any other cause of action by itself, brought about the injuries or death of Lewis Simpkins.

84. Even if the jury were to find more than one Defendant brought about the injuries and death of Lewis Simpkins through its/their actions and/or inactions, the actions and/or inactions of each Defendant could be found to have brought about the injuries and death of Lewis Simpkins separate and independent of any other Defendant.

85. The actions or inactions of Defendants were separate and independent acts of negligence which did not constitute an unfolding sequence of events which caused the injury and death of Lewis Simpkins; each and every separate act of negligence by any Defendant could have been the sole and proximate cause of the injury and death of Lewis Simpkins.

86. The Plaintiffs have alleged different causes of action and allegations of wrongdoing by all defendants in this case for which the Plaintiffs are entitled to recover an amount of actual, special and consequential damages to be determined by a jury at the trial of this action against Defendants.

WHEREFORE, the Plaintiffs respectfully pray for judgment against all Defendants and for all actual damages, special damages, consequential damages, in

an amount to be determined by the jury at the trial of this action. Additionally, Plaintiffs pray for judgment against these Defendants for the costs and disbursements of this action and for such other and further relief as this court deems just and proper.

s/Robert W. Jones

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June 18, 2018
Greenville, South Carolina

JURY REQUEST

The Plaintiffs hereby respectfully request a trial by jury.

s/Robert W. Jones

Robert W. Jones, #79000