RECEIVED
May 20 2026
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE ORIGINAL JURISDICTION

The Honorable H. Steven DeBerry, IV
C/A Case No.: 2025-CP-33-00076
Appellate Case No.: 2026-

CHARLES A. TRANT, M.D., ….……... Respondent,

v.

MAGMUTUAL INSURANCE COMPANY,…….. Petitioner.

PETITION FOR COMMON LAW
WRIT OF CERTIORARI

In just a few short weeks—beginning on June 15, 2026—a jury will be empaneled to determine whether Petitioner/Defendant MagMutual Insurance Company ("MagMutual") acted in bad faith in connection with an underlying medical malpractice verdict against Respondent/Plaintiff Charles A. Trant, M.D. ("Dr. Trant") that exceeded the applicable policy limits. Damages being sought by Dr. Trant in this bad faith case are substantial.

At first glance, nothing may seem out of the ordinary, but a fundamental problem exists and has existed since this case was filed in February 2025. The problem is no one, including the Marion County jury who will be asked to decide the bad faith case, will have a clue whether Dr. Trant was liable in the underlying case, what the amount of damages are, or whether there is any

damage at all. The excess verdict handed down against Dr. Trant in the underlying medical malpractice case is ***not final*** and is being vehemently challenged on appeal by both Dr. Trant and his employer. Until that appeal is resolved, Dr. Trant's asserted bad faith damages are contingent, his alleged injury is not fixed, and his claims have not even accrued. Proceeding to trial now forces premature litigation of a conditional dispute that may be mooted, substantially reduced, or materially altered by the appellate outcome. What's more is that a trial at this point-in-time would undoubtedly result in the disclosure of attorney-client privileged communications and work product from the underlying case while that case is still pending on appeal. In other words, if the underlying case is to be retried post-appeal, no one will be able to un-ring this prejudicial bell.

Luckily, an easy fix exists. Although it appears this exact issue has not been ruled upon by our South Carolina appellate courts, other jurisdictions to address this issue have either: (i) dismissed without prejudice the pending bad faith litigation as not yet ripe in light of the pendency of the underlying appeal or (ii) stayed the bad faith litigation until the underlying case has completed the appellate process. To be sure, as a matter of near-universal law across the country, a bad faith dispute cannot go forward to trial while the underlying excess verdict is on appeal and not yet final. And this Court has already explained that a stay is the remedy to be employed in similar types of derivative litigation. *See Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016) (holding a stay is required in a legal malpractice case when the client has appealed the underlying verdict).

This makes perfect sense. Will the underlying case be reversed? Will the verdict be reduced, and if so, to what degree? Will a new trial be ordered? Will the verdict stand? No one knows what will happen in the future with respect to the appeal and ultimate resolution of the underlying case. But what we do know is that moving forward with a lengthy trial at this

juncture—with both sides armed heavily with speculation, hypotheticals, and privileged/confidential information—would not only be materially prejudicial to MagMutual and violative of elementary notions of due process, but it would also constitute an enormous waste of valuable resources held by the circuit court, jurors, clients, and counsel. The waste here is not theoretical; if the underlying verdict is reversed, vacated, or reduced, the resources consumed and the prejudice inflicted will have served no legitimate end.[1] Because of the large scope of this looming June 15, 2026 trial, the circuit court has already ordered the Marion County Clerk's Office to summon 300 potential jurors for service in the hopes of obtaining a workable jury pool.

Because the circuit court discounted the numerous grounds for pausing this bad faith case and denied MagMutual's requests for a stay, MagMutual respectfully requests extraordinary relief from this Court. Pursuant to Rule 245 of the South Carolina Appellate Court Rules, MagMutual requests this Court to grant its petition for a common law writ of certiorari and direct that the pending case be stayed until the appeal in the underlying medical malpractice action is fully and finally resolved. At that time, Dr. Trant's claim (if any) against MagMutual will have accrued, and the parties will be able to litigate a ripe matter without the impact of substantial prejudice.[2]

BACKGROUND

I. The Non-Final Underlying Case

On July 13, 2022, Demetrice Utley, Individually and as Personal Representative of the Estate of Taylor Danielle Price, filed a medical malpractice action against McLeod Physician Associates II ("MPA II"), Marion County School District, and Dr. Trant. *See* C/A No. 2022-CP-

[1] Even if the underlying case is affirmed on appeal, the circuit court would still have committed reversible error by allowing trial on a claim that had not yet accrued.

[2] Because of the obvious time concerns with trial quickly approaching, MagMutual has also filed a motion to expedite or in the alternative, to issue a temporary stay continuing this case beyond the June 15, 2026 term of court to afford, if necessary, a more-comprehensive review by the Court.

33-00362 ("Underlying Case"). Dr. Trant was the pediatric cardiologist who saw and treated Decedent Price only one time almost three years prior to her unfortunate death. The record indicates that Decedent Price had no other cardiac complaints from the time she saw Dr. Trant to the time she tragically passed away from a rare and difficult condition to diagnose called Arrhythmogenic Right Ventricular Dysplasia ("ARVD") (found at autopsy).

Dr. Trant and MPA II were sued for alleged medical negligence and gross negligence. MagMutual received notice of the Underlying Case and retained counsel to defend MPA II and Dr. Trant. The matter was thoroughly investigated, written discovery was exchanged, depositions were conducted, and defense experts were retained.

After discovery was completed, the Underlying Case was called for trial before a Marion County jury on November 4, 2024.[3] Following a weeklong trial, the jury returned (i) a verdict of negligence against MPA II; (ii) a finding of two occurrences; (iii) a finding of gross negligence against Dr. Trant; and (iv) an award of actual damages in the amount of $30 million. After the denial of a flurry of post-trial motions and a request for reconsideration, the circuit court entered judgment against Dr. Trant in the amount of $29,870,000 (adjusting for the School District's settlement). MPA II was found to be jointly and severally liable for $2,400,000 of that amount.

Dr. Trant and MPA II filed a timely notice of appeal on March 5, 2025. *See* App. Case No. 2025-000434. The matter is currently pending at the court of appeals,[4] and final briefing was completed in January 2026. The parties to the Underlying Case are waiting for oral argument to be scheduled. The appellate court issues presented by Dr. Trant and MPA II include *inter alia* (i)

---

[3] Prior to trial, a settlement agreement was reached between Plaintiff and Marion County School District, and the School District was dismissed from the case. Nevertheless, despite there no longer being a single Marion County defendant, the matter proceeded—over defendants' objections—in Marion County.

[4] Supersedeas bonds have been filed pending the outcome of the appeal.

improper venue; (ii) no evidence to support findings of gross negligence and proximate cause; (iii) errors in jury instructions; (iv) excessive verdict; and (v) improper application of the protections afforded by the South Carolina Solicitation of Charitable Funds Act. Importantly, the briefing submitted by Dr. Trant and MPA II, through skilled appellate counsel, contains numerous colorable arguments that, if granted by our appellate courts, would result in a myriad of varying outcomes—any one of those much different from the non-final judgment entered by the circuit court.

II. The Pending Insurance Coverage Case

Before a notice of appeal could even be filed, on February 10, 2025, Dr. Trant filed the instant lawsuit against MagMutual, arising out of the Underlying Case. *See* C/A Case No.: 2025-CP-33-00076. There, Dr. Trant set forth causes of action against MagMutual for: (i) breach of contract; (ii) bad faith; negligence; gross negligence; recklessness; willful and wanton conduct; intentional infliction of emotional distress / outrage; and (iii) statutory violations of bad faith. Dr. Trant's requested relief from MagMutual included "liability for excess judgment" and related interest.[5]

Upon receipt and review of the Complaint, MagMutual requested that Dr. Trant voluntarily dismiss or stay the lawsuit, considering the judgment against Dr. Trant is not final; however, Dr. Trant declined to do so. As a result, MagMutual moved to dismiss the Complaint on ripeness grounds, or in the alternative, requested the circuit court stay the bad faith case pending the

[5] On May 20, 2025, only a few months after the Complaint had been filed, Dr. Trant filed an Offer of Judgment as to MagMutual in the amount of $32,350,396.86, in which he represented that the figure was comprised of the judgment plus interest that would be owed by Dr. Trant twenty days from the date of its filing. MagMutual has no reason to disbelieve that Dr. Trant will attempt to board a higher damages figure at trial grounded upon the existence of the contingent non-final verdict.

resolution of the appeal to prevent further disclosure of privileged or work product information that could jeopardize the ongoing appeal or any potential retrial of the case. The circuit court denied MagMutual's motion on April 4, 2025. But also, the circuit court observed at the hearing the problems of this derivative litigation being grounded in a hypothetical situation:

> Certainly I understand the contingency that's looming out there, what it may or may not be in the future. . . . Having [ruled against MagMutual's request], certainly, by consent or by motion at any time, I don't know of any reason why the defense couldn't, after litigation takes place in this matter for any amount of time, it may come to a point where, you know, a Motion to Stay this case is more appropriate or more compelling in the future based on these same arguments.

In light of the circuit court's ruling, the parties moved forward with extensive discovery, including several hard-fought discovery disputes about privileged/confidential documents. After discovery was concluded, and with a June 15, 2026 trial date on the horizon, MagMutual filed renewed motions to stay on March 31 and April 2, 2026, respectively, asserting its same concerns surrounding the existence of a non-final verdict in the calculus of liability/damages; the necessary disclosure of protected information in order to adequately try this case; the significant prejudice stemming from a premature trial; and the need to preserve judicial resources. The same exact "contingency" observed by the circuit court at the genesis of this case continues to dwarf this matter moving forward to trial.

Nevertheless, the circuit court denied the renewed motions to stay on April 23, 2026. MagMutual filed a timely motion to reconsider, and after hearing argument on May 18, 2026, the circuit court entered a Form-4 Order denying MagMutual's motion on May 19, 2026. The matter is now set for trial to begin on June 15, 2026.

LEGAL STANDARD

"The Supreme Court shall have power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus, and other original and remedial writs." S.C. CONST. art. V, § 5; *see also* S.C. Code Ann. § 14-3-310 (same). The South Carolina Appellate Court Rules allow an extraordinary writ to be issued "[i]f the public interest is involved, or if special grounds of emergency or other good cause exist why the original jurisdiction of the Supreme Court should be exercised." Rule 245(a), SCACR.

A writ of certiorari "is appellate in nature when used for purposes of reexamining the action of an inferior tribunal." *Fontaine v. Peitz*, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987). Exceptional circumstances include addressing an argument that may be waived or mooted by disclosure before appeal, *Hollman v. Woolfson*, 384 S.C. 571, 577, 683 S.E.2d 495, 498 (2009); addressing novel questions of law or issues of significant public interest, *Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 471, 674 S.E.2d 154, 160 (2009); correcting the lower court's disregard of some procedure prescribed by law, *Wyse v. Wolfe*, 129 S.C. 499, 499, 123 S.E. 818, 820 (1924); and to prevent irreparable harm, *S.C. Dept. of Parks, Recreation, and Tourism v. Brookgreen Gardens*, 309 S.C. 388, 389, 424 S.E.2d 465, 465 (1992).

ARGUMENT

This Court, respectfully, should grant MagMutual's petition for common law writ of certiorari, reverse the circuit court's denial of MagMutual's motions to stay, and direct the circuit court to stay the upcoming trial until the Underlying Case is fully resolved. From exceptional situations that are particularly time sensitive—to novel questions of South Carolina law that have the potential of becoming moot before a traditional appeal can take place—to an irreparable violation of due process rights and required disclosure of attorney-client privileged information—

to the circuit court's disregard of requisite mandates of justiciability and ripeness—this case checks every important box needed to justify the Court taking this issue in its Original Jurisdiction.

I. Dr. Trant's claims against MagMutual, predicated on a non-final excess verdict, are not ripe while the Underlying Case is on appeal.

A justiciable controversy must exist before litigants can step through the courthouse doors. *Jowers v. S.C. Dep't of Health & Env't Control*, 423 S.C. 343, 353, 815 S.E.2d 446, 451 (2018). An important component of justiciability is ripeness. *Id.* This Court has explained the concept of ripeness by defining what ripeness is not, stating "an issue that is contingent, hypothetical, or abstract is not ripe for judicial review." *Colleton Cty. Taxpayers Ass'n*, 371 S.C. at 242, 638 S.E.2d at 694. In other words, "[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." *Pee Dee Elec. Co-Op, Inc. v. Carolina Power & Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983). Ripeness is "peculiarly a question of timing," and its basic rationale is "to prevent the courts, through premature adjudication, from entangling themselves in abstract disagreements." *Crescent Homes SC, LLC v. CJN, LLC*, 445 S.C. 164, 912 S.E.2d 389 (Ct. App. 2024).

The trial scheduled for June 15, 2026, will ask a jury to determine whether MagMutual acted in bad faith and to award damages tied to an excess verdict. But the underlying excess verdict is not final. The appeal of the Underlying Case remains pending, and the amount—if any—of a final excess judgment is still unknown and has not been fixed. The Underlying Case may be reversed in its entirety, remanded for a new trial, or modified in a manner that imposes a substantial reduction of the verdict. Each of those outcomes would fundamentally alter the liability and/or damages calculus in this bad faith action. The mere possibility that the judgment will be affirmed does not render the instant question concrete; rather, it remains wholly contingent on the outcome

of proceedings not yet concluded. Again, it is the entry of a final excess judgment no longer subject to appeal that constitutes the "injury" necessary to sustain a bad faith action.

To see what this bad faith case is truly built upon and the impact of taking this non-ripe case to trial, look no further than Dr. Trant's alleged damages—"liability for excess judgment"; "interest post offer of judgment"; and "economic loss due to the pendency of [the Underlying Case], and the excess judgment." To state differently, Dr. Trant will soon ask a jury to presume that the Underlying Case will be affirmed on appeal, when the truth is that affirming is only one of a myriad of possible outcomes. Such an ask, especially in front of a jury, is exactly the "contingent, hypothetical or abstract" situation that our courts have counseled against. *See Colleton Cty. Taxpayers Ass'n*, 371 S.C. at 242, 638 S.E.2d at 694. A trial at this juncture invites the jury to determine liability and damages on a moving target, resulting in an advisory verdict untethered to a final underlying outcome. The risk of substantial prejudice is irrefutable.

In a very similar context, this Court has already spoken to when causes of action like Dr. Trant's ripen into existence and when stays of derivative litigation are required. In *Stokes-Craven Holding Corp. v. Robinson*, this Court addressed a legal malpractice cause of action that was predicated on an injury or damage caused by the failure of an underlying suit due to an attorney's alleged malpractice. 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016). This Court stated unequivocally:

> In [this] particular scenario, there can be no legal malpractice cause of action without an adverse verdict, judgment, or ruling. Thus, if a client appeals the matter in which the alleged malpractice occurred, any basis for the legal malpractice cause of action is stayed by Rule 241(a) while the appeal is pending. Furthermore, Rule 205 divests the lower court or administrative tribunal of jurisdiction over "*matters affected by the appeal*," which necessarily would include a legal malpractice cause of action that is based on the outcome of the appealed verdict, judgment, or ruling. . . . Consequently, until the appeal is resolved against the client, there is no legally cognizable

> cause of action for an attorney's alleged malpractice. Upon resolution of the appeal, a cause of action for legal malpractice accrues triggering the statute of limitations.

Id. (emphasis added). In the bad faith context, this Court's holding and reasoning in *Stokes-Craven* applies in full. Like there being no legal malpractice cause of action until the underlying appeal discussed in *Stokes-Craven* was resolved, there can be no cause of action for bad faith until the appeal in the Underlying Case is resolved. Just like a stay was the remedy in *Stokes-Craven*, a stay is needed here too.

Stokes-Craven demonstrates that the implications of Rule 205, SCACR are not confined only to the single case that is on appeal. *See id.* at 534, 787 S.E.2d at 494 ("Rule 205 divests the lower court or administrative tribunal of jurisdiction over '*matters affected by the appeal*' which necessarily would include a legal malpractice cause of action that is based on the outcome of the appealed verdict, judgment, or ruling."). And here, no one can credibly argue that the appeal in the underlying case has no impact on the bad faith case between Dr. Trant and MagMutual. In fact, every witness to this case has acknowledged such. Respectfully, Rule 205 has already divested the circuit court of jurisdiction, and a stay should be put in place.

Respectfully, the Court should issue a stay in this case until the conclusion of the Underlying Case's appeal.

II. Courts across the country routinely dismiss without prejudice or stay bad faith actions until the underlying excess judgment becomes final.

While South Carolina appellate courts have not squarely addressed this issue in the bad faith arena, other jurisdictions that have been confronted by this exact situation take a commonsense approach guided by the basic principles of claims accrual. In sum, bad faith actions dependent on the existence of an excess verdict cannot move forward while the underlying case is on appeal. Courts spanning multiple circuits and states have consistently held that proceeding to

trial on claims grounded in bad faith while an appeal of the underlying verdict is pending would be premature, would render the bad faith claim unripe, and in federal courts, would deprive the court of subject matter jurisdiction under Article III.

Courts have chosen to adopt either a "majority rule" or a "minority rule" as to when this type of claim accrues. The *majority rule* is that a bad-faith failure to settle claim accrues when the excess judgment becomes final and non-appealable. The *minority rule* is that a bad-faith failure to settle claim accrues only when the insured pays the excess judgment. Regardless of whether South Carolina chooses to ultimately adopt the majority rule or the minority rule, Dr. Trant's claims in this case against MagMutual have not yet accrued. MagMutual must note, however, that the majority rule appears to be more in line with South Carolina law considering this Court's similar decision on when a claim for legal malpractice accrues. *See Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 787 S.E.2d 485 (2016).

Start first with a recent decision addressing this issue from our South Carolina district court. In *Miller v. Mag Mutual Ins. Co.*, 2024 WL 3106214 (D.S.C. 2024), the plaintiff physician sued his professional insurance carrier for bad faith failure to settle after a verdict above policy limits was imposed on him in an underlying medical malpractice case. The insurer moved to dismiss, arguing the plaintiff's claims were not ripe because a claim for bad faith refusal to settle accrues only after an excess judgment is entered against the insured and the judgment may no longer be challenged on appeal. *Id.* at *2. Even though the district court was unable to find a decision of a South Carolina court addressing the situation, the district court was able to look at other jurisdictions across the country for guidance. It came to an easy determination that the case should be dismissed because the bad faith claim was not ripe for adjudication. *Id.* at *3-4. The district court found that "[u]nder either the majority or the minority rule, a claim for bad-faith refusal to

settle has not accrued if an appeal of the underlying judgment remains pending." *Id.* at *4. Although the district court's decision may be considered by some to be an "*Eerie* guess," it was certainly not radical for it to assume that South Carolina law would not depart from the sound reasoning employed by virtually every other jurisdiction that has considered the issue. *Id.* at *4 n.3 ("If presented with the issue at hand, the Court predicts that the Supreme Court of South Carolina would follow the rule embraced by the majority of courts and the leading treatises on the issue and hold that a claim for bad-faith refusal to settle is unripe during the pendency of an appeal of the underlying judgment against the insured.").

Take next *Connelly v. State Farm Mutual Automobile Insurance Company*, 135 A.3d 1271 (Del. 2016), in which the Delaware Supreme Court conducted what has been considered the most comprehensive review of the national landscape on this issue. After extensively researching the topic, the *Connelly* court held as a matter of first impression that "a claim that an insurer acted in bad faith when it refused to settle a third-party insurance claim accrues when an excess judgment against an insured becomes final and non-appealable." *Id.* at 1281. The Delaware Supreme Court's reasoning for adopting this majority rule is sound and bears repeating:

> The majority rule—that a bad-faith failure-to-settle claim against an insurer accrues only once there is a final and non-appealable judgment—advances several important policy objectives. First, the majority rule reduces the possibility of a conflict of interest between the insurer and the insured. If we were to accept State Farm's position, an insured would have to bring a cause of action against the insurer while expecting the insurer to zealously defend her interests in the underlying insurance claim. For its part, the insurer would have to expect the insured to fulfill her obligation to participate in the defense of the underlying claim while the insured's own bad-faith claim against the insurer is stayed. Second, the majority rule protects insurers from "bad faith claims for failing to settle even the most frivolous claims if the third-party claimant was willing to settle within the policy limits." Finally, the rule saves the insured litigation costs that may turn out to be unnecessary if the court does not order an excess judgment. As important, the majority

> rule avoids wasting judicial resources because it prevents the court from having to address premature claims before the insured can plead damages and the court can assess the reasonableness of the insurer's refusal to settle.

Id. at 1277-78 (footnotes omitted). In further support of its holding, the *Connelly* court also cited a litany of decisions from other jurisdictions[6] and learned treatises.[7] Although *Connelly* did not address specifically the "stay or dismiss" question, the main throughline in *Connelly* is that in instances in which a bad faith claim is grounded on an underlying excess verdict, the insured's cause of action has not accrued—or simply has not ripened into existence—until the underlying appeal becomes final.

Here, whether to stay or dismiss is less consequential since the instant matter is pending in our state circuit court as opposed to a federal court with narrower jurisdictional limits. But admittedly, courts appear to have gone different ways on this, perhaps, semantic issue. *See, e.g.*, *Illinois Nat. Ins. Co. v. Bolen*, 53 So.3d 388, 389-90 (Fla. Dist. Ct. App. 2011) (favoring a stay) ("We agree that the bad faith claim may not proceed until the UM carrier's appeal has been finally determined. The same concerns that impel abatement of the bad faith claim in the first instance remain until the insurer's claims of error resulting in an excess verdict are resolved against them on appeal."); *Romano v. Am. Cas. Co. of Reading, Pa.*, 834 F.2d 968 (11th Cir. 1987) (favoring a dismissal) (affirming dismissal of a bad faith claim as premature because the underlying excess verdict was still on appeal).

Accordingly, based on the overwhelming support of other jurisdictions dealing with this exact situation, MagMutual requests this Court to enter a stay of the pending proceedings until resolution of the appeal in the Underlying Case.

---

[6] *Id.* at 1276, n.17.

[7] *Id.* at 1277, n.18.

III. The circuit court's analysis in denying the request for stay was clearly erroneous.

As mentioned above, the circuit court has now *twice* denied MagMutual's requests for stay. In its most recent Order denying MagMutual's renewed motion for stay, the circuit court ultimately found "Plaintiff's cause of action is fit for judicial determination, and not abstract, hypothetical, or conditional." (Order at 21); *but see Oliver B. Cannon & Son, Inc. v. Fidelity and Cas. Co. of N.Y.*, 484 F. Supp. 1375, 1389 (D. Del. 1980) (noting the potential "absurd result" of requiring litigation on damages that are not final and noting the amount of damages had already "changed several times as the results of various appeals in the underlying action" and the real possibility that a plaintiff might recover "damages, for 'liability,' which it ultimately did not have to pay"). Although the circuit court's reasoning to get to this incorrect conclusion is difficult to track, one thing is more than certain.[8] The denial of a stay was clearly erroneous and in conflict with virtually every other jurisdiction in America.[9] With utmost respect to the circuit court, the Order does

---

[8] The circuit court accepted Plaintiff's proposed order with little to any modification.

[9] *See, e.g.*, *Miller v. MagMutual Ins. Co.*, 2024 WL 3106214 (D.S.C. 2024) (discussed above); *Connelly v. State Farm Mut. Auto. Ins. Co.*, 135 A.3d 1271, 1277 (Del. 2016) (discussed above); *Romano v. Am. Cas. Co. of Reading, Pa.*, 834 F.2d 968, 970 (11th Cir. 1987) (holding a bad faith action was not ripe because the insured "might later be found not liable in the underlying tort action" on appeal); *Taylor v. State Farm Mut. Auto. Ins. Co.*, 913 P.2d 1092, 1095-96 (1996) ("Those jurisdictions that have addressed the issue have held that an insured's claim for its insurer's bad faith refusal to settle accrues when the excess judgment in the underlying case becomes final. Neither the court of appeals nor State Farm cites any case to the contrary, and our research has produced none."); *Boyd Bros. Transp. Co. v. Fireman's Fund Ins. Co.*, 540 F. Supp. 579, 582 (M.D. Ala. 1982), *aff'd* 729 F.2d 1407 (11th Cir. 1984) (explaining that in cases alleging negligence or bad faith of the insurer in the conducting or settling of litigation, the rule again is that the cause of action does not accrue until the underlying litigation has ended); *Lexington Ins. Co. v. Royal Ins. Co. of Am.*, 886 F. Supp. 837, 841-42 (N.D. Fla. 1995) (holding "a cause of action for bad faith failure to settle a claim does not arise until there has been a final determination of the insured's liability and the claimant's damages, including the resolution of any appeals. Therefore, . . . [the] bad faith claim has not yet accrued."); *Vanderloop v. Progressive Cas. Ins. Co.*, 769 F. Supp. 1172, 1175 (D. Colo. 1991) (finding a bad faith cause of action did not accrue until the underlying judgment on appeal became final); *Amdahl v. Stonewall Ins. Co.*, 484 N.W.2d 811, 813 (Minn. Ct. App. 1992) ("Finality of the underlying suit is necessary to establish not only the existence of damages but also the extent."); *Evans v. Mut. Assur., Inc.*, 727 So. 2d 66, 67 (Ala.

nothing but underscore the litany of hypothetical, contingent, and abstract situations that the parties have been plagued with in litigating a claim that has not yet accrued.

As primary justification for denying the stay, the circuit court tried its best to distinguish between (i) a bad faith failure to settle a claim and (ii) a bad faith processing/handling of a claim. *Id.* at 6-7. The circuit court noted that "even if" the appeal in the Underlying Case were successful, or "even if" MagMutual ultimately satisfied the excess judgment, Plaintiff's bad faith claims would not be totally absolved due to Plaintiff's complaints arising from MagMutual's handling of the claim. *Id.* at 7. It further explained, "[a] potential reversal of the excess judgment after years on appeal, and following years of litigation below, would not cure the emotional injury, the damage to the insured's reputation and financial position, or any other legally cognizable injury from the insurer's failure to settle and the resulting entry of the judgment against him." *Id.* at 9.

The circuit court's order conflates the possibility of a cause of action with its ripeness for adjudication. Regardless of whether there can exist any sort of bad faith processing/handling claim independent of a bad faith failure to settle claim under the facts of this case, there is no way to divorce these claims from the non-final verdict in the underlying case. For example, if the appeal is reversed and Dr. Trant is absolved, or if Dr. Trant gets a new trial in which he succeeds, MagMutual's "processing/handling" of the claim certainly looks reasonable and is something a jury would be entitled to consider. More importantly, a "processing/handling" claim is only a very

---

1999) (explaining an insured's claim against liability insurer to recover for bad faith failure to settle within policy limits did not accrue and was thus not actionable until a final judgment was entered against the insured in excess of the limits); *Morgan v. State Farm Mut. Auto. Ins. Co.*, 488 P.3d 743, 748 (2021) ("A bad faith cause of action based on an adverse judgment does not accrue until the underlying judgment becomes final and non-appealable."); *Leitstein v. QBE Ins. Corp.*, 609 F. Supp. 2d 1311, 1312 (S.D. Fla. 2009) ("Plaintiff's action is premature, as the fact that Defendant has not exhausted its appellate remedies means that the determination of liability in favor of Buckley made in the underlying case cannot be considered final for purposes of a bad faith action.").

small portion of the case that Dr. Trant intends to take to trial in a few short weeks. It is undeniable that Dr. Trant seeks to use the existence of the non-final $30 million dollar verdict in his requests for a large amount of damages to the jury. However, an essential element to Dr. Trant's bad faith claim requires him to be required to pay an excess judgment.

The circuit court's reasoning to allow this case to move forward now on grounds that Dr. Trant *might* have a cause of action against MagMutual regardless of the impact of the underlying verdict being upheld or reversed at some future date has been flatly rejected by other courts. In *Romano v. American Casualty Company of Reading, Pa.*, the Eleventh Circuit Court of Appeals dealt with a similar situation. 834 F.2d 968 (11th Cir. 1987). There, an auto accident gave rise to a substantial verdict above policy limits. The verdict was appealed. Prior to disposition of the appeal, the insured sued his insurer for bad faith failure to settle a claim that resulted in a judgment in excess of his policy limits. The *Romano* plaintiff made (unsuccessfully) the same argument to avoid dismissal on ripeness grounds that Dr. Trant made in opposition to the stay that was adopted by the circuit court. *Id.* at 969 ("The appellant asserts that he is entitled to recover for the harm suffered by his good name and credit as well as for the pain and suffering he experienced upon entry of the excess judgment independently of any relief he might seek in the amount of the excess judgment; reversal of the underlying judgment would not extinguish his claim.").[10] The Eleventh Circuit held it was unnecessary to reach the question of *what damages* the claimant may eventually recover in a bad faith suit. Rather, "the pivotal element" is "whether, absent an excess judgment, there exists the very basis for maintaining the action." *Id.* The *Romano* Court held, "Because the

[10] A stay pending the outcome of the appeal in the Underlying Case would not prejudice Dr. Trant in any manner. To the extent Dr. Trant alleges to have suffered reputational or emotional harm, those alleged injuries would already be fixed and will not worsen by waiting for the underlying appeal to be resolved.

essential element of the appellant's claim may be reversed on appeal, it is logical to require its disposition before it may form the basis for another claim." *Id.* at 970; *see also Fortson v. St. Paul Fire & Marine Ins. Co.*, 751 F.2d 1157, 1161 (11th Cir. 1985) ("Allowing a plaintiff to proceed first against the insurer under a . . . good faith failure to settle claim could lead to the insurer being held liable for bad faith failure to settle even though its insured might later be found not liable in the underlying tort action.").

To support its reasoning in continuing to allow this matter to move forward, the circuit court cited a litany of cases that have nothing to do with the issue at bar, and when read in their entirety, actually offer clear support for a stay. For example, the circuit court relied primarily on this Court's decision in *Tadlock Painting Co. v. Maryland Cas. Co.*, 322 S.C. 498, 473 S.E.2d 52 (1996). In *Tadlock*, this Court addressed a bad faith claim against an insurer for the insurer's actions in dealing with claims arising out of damages caused by the insured's industrial painting job. Importantly, it was a first-party property damage claim, and the existence of the insured's liability stemming from the paint job and the damages caused by the paint job was fixed and final—not contingent, hypothetical, or abstract. The *Tadlock* Court, answering a certified question, narrowly held that a cause of action could possibly exist for breach of the implied covenant of good faith and fair dealing by an insured against his or her insurer for consequential damages allegedly suffered because of the insurer's bad faith handling of third-party claims. *Id.* at 504, 473 S.E.2d at 55. *Tadlock* stands for nothing more, and it certainly does not stand for this Court's blessing that a bad faith case can move forward to trial when the existence of liability and damages to a third party in the underlying action on which the bad faith claims are predicated are unknown.

The circuit court's Order also spends a great amount of time discussing *Campbell v. State Farm Mut. Auto. Ins. Co.*, 840 P.2d 130, 140 (Utah Ct. App. 1992). Despite many citations to *Campbell*, the circuit court did not address the only portion of *Campbell* that actually mattered:

> Furthermore, we point out that this statement is not inconsistent with our view that the insured's cause of action does not accrue until final disposition of the underlying claim, an insured may not know whether he has a "colorable" claim that the insurer's conduct was unreasonable. Nevertheless, the fact [t]hat [the insured] must await final disposition of the original action to determine whether he has a colorable claim against the insurer does not alter the fact that the conduct alleged to be unreasonable occurred at an earlier stage of the original lawsuit, and that the unreasonable conduct can be a proximate cause of injury before the final disposition as well as after.

Id. at 140, n.20 (internal citations omitted). The underlying judgment in *Campbell* was final and non-appealable when the case was allowed to move forward. Interestingly, the *Campbell* plaintiff—just like Dr. Trant—first tried to pursue a bad faith claim while the appeal of the underlying action was ongoing, and the case was "dismissed without prejudice, pending the final disposition of the underlying action." *Id.* at 135.

Many of the other cases cited by the circuit court to justify its reasoning to allow this matter to proceed prematurely to trial all dealt with a final judgment not pending on appeal. *See Robinson v. N.C. Farm Bureau Ins. Co.*, 86 N.C. App. 44 (N.C. 1987) (insurance company had already paid the fire claim); *Chitty v. State Farm Mut. Ins. Co.*, 38 F.R.D. 37 (D.S.C. 1965) (no indication that the underlying excess verdict was being appealed); *Lee v. Nationwide Ins. Co.*, 286 F.2d 295, 295-96 (4th Cir. 1961) (payment of excess verdict is not prerequisite to suit); *Torrez v. State Farm Mut. Auto. Ins. Co.*, 705 F.2d 1192, 1202 (10th Cir. 1982) (holding "the cause of action for bad faith by State Farm did not accrue until the judgment was final").

Additionally, the circuit court unconvincingly distinguished the case law that was directly on point. The circuit court explained "[t]hose cases do not stand for the proposition that a bad faith case is not ripe, and cannot be tried, until the judgment in the underlying case is final and non-appealable. Rather, they address a different issue: when should the statute of limitations clock begin[] to run in a bad faith action." *Id.* at 15-16. However, this reasoning suffers a fundamental defect. A statute of limitations begins to run whenever a cause of action exists. Until that point in time to trigger the shot clock for a statute of limitations' analysis, no cause of action exists as it is not ripe.

The circuit court discounted the impact of trying a case on a non-final verdict. It explained, "the fact of the entry of the excess Judgment of February 5, 2025 is not speculative. It happened. It exists. What is uncertain is the Defendant's prediction that the Judgment, that exists today, may be reversed in the future." *Id.* at 19-20. However, the circuit court's description of the judgment as "very real and present" does not resolve the looming uncertainty, because the question is not whether the judgment exists on a sheet of paper, but rather whether it survives after appellate review. The circuit court's comments on allowing Dr. Trant to present inherent speculation to the jury is shocking—"The determination of damages, including future damages, is the province of the jury and our Supreme Court allows the jury 'wide latitude' in making that determination. The Court will allow the jury to make their determination here." Allowing this matter to proceed to trial at this stage gives life to the very real concerns that other jurisdictions have highlighted and could potentially award Dr. Trant a windfall for a liability that he may never be responsible to pay.

IV. Allowing this case to continue to move forward would be prejudicial to the Underlying Case and would waste judicial resources.

If this case goes prematurely to trial, it could significantly prejudice the continued defense of Dr. Trant and MPA II in the Underlying Case appeal. Through the allegations in his Complaint,

Dr. Trant has already disclosed privileged and proprietary information in connection with the Underlying Case. And although a confidentiality order relieved some of this anxiety in discovery, the trial of this case will necessarily require the disclosure of additional attorney-client privileged information and attorney work product that will not only be open to the public, but to the plaintiff in the Underlying Case pending on appeal.[11]

Should a new trial be ordered at the conclusion of the appeal, Dr. Trant's and MPA II's "playbook" concerning trial strategy and mental impressions of counsel will be laid bare for anyone to see, significantly hampering and prejudicing the defense of the Underlying Case. MagMutual not only has a duty to defend Dr. Trant, but it also has the right to do so, and Dr. Trant has a corresponding duty to cooperate in that defense. He is not permitted to substantially prejudice that defense. *Portrait Homes - S.C., LLC v. Pennsylvania Nat'l Mut. Cas. Ins. Co.*, 442 S.C. 515, 565 (Ct. App. 2023); *Pharr v. Canal Ins. Co.*, 233 S.C. 266, 280 (1958) (noting that it is the duty of the insured to assist in "securing and giving evidence and doing whatever [is] reasonably necessary to afford the insurer an opportunity to defend and to protect itself and the insured in all of their rights. . . ."). Furthermore, Dr. Trant is not permitted to substantially prejudice and jeopardize MPA II's defense by pushing this case to trial prematurely. Although Dr. Trant may wish to waive attorney-client privilege, those communications were made jointly in the defense of both Dr. Trant and MPA II. MPA II has not waived its right to privilege.

The concerns laid out in this Petition are exactly why the law concerning the accrual of a bad faith claim exists. The concerns set forth by the Delaware Supreme Court in *Connelly* (detailed

[11] Dr. Trant has indicated that he plans to call as a witness at trial the attorney who represented the plaintiff in the Underlying Case.

above) are on full display in this case and illustrate the real-world issues that counsel has had to grapple with in defending this premature action.

Additionally, allowing this case to march forward to trial before the Underlying Case's appeal is resolved would needlessly expend substantial judicial and public resources. Absent a stay, the circuit court will preside over a trial that serves no purpose and consumes public resources. The pending trial in this matter has already trigged Marion County to summon 300 potential jurors for service, and the County will incur the costs of summoning and compensating jurors for a multi-day "mock trial" that would be an exercise in futility. A stay avoids these inefficiencies and preserves resources of all involved.

CONCLUSION

If at the conclusion of the appeal of the Underlying Case Dr. Trant's claims against MagMutual ripen into existence, then and only then can he have his day in court. However, until the parties are no longer arguing about a contingent, hypothetical, and abstract issue, a stay must be issued. Accordingly, MagMutual respectfully requests this Court grant its request for a common law writ of certiorari and impose a stay to prevent substantial prejudice.

(*signature page to follow*)

Respectfully submitted,

SMITH ROBINSON

s/ G. Murrell Smith, Jr.
G. Murrell Smith, Jr., SC Bar No. 66263
Post Office Box 580
Sumter, SC 29151
T: (803) 778-2471
murrell@smithrobinsonlaw.com

-AND-

Austin T. Reed, SC Bar No. 102808
3200 Devine Street
Columbia, SC 29205
T: (803) 254-5445
austin.reed@smithrobinsonlaw.com

GALLIVAN, WHITE & BOYD, P.A.

A. Johnston Cox, SC Bar No. 9081
P.O. Box 7368
Columbia, SC 29202
T: (803) 724-1728
jcox@gwblawfirm.com

WEINBERG WHEELER HUDGINS GUNN & DIAL, LLC

John C. Bonnie, SC Bar No. 62997
3344 Peachtree Road, NE, Suite 2400
Atlanta, GA 30326
T: (404) 832-9514
jbonnie@wwhgd.com

Attorneys for Petitioner/Defendant MagMutual

May 20, 2026