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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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In The Original Jurisdiction

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The Honorable H. Steven DeBerry, IV
Civil Action No. 2025-CP-33-00076
Appellate Case No.: 2026-001165

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Charles A. Trant, M.D. ..... Respondent,

vs.

Mag Mutual Insurance Company, ..... Petitioner.

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**RETURN TO PETITION FOR COMMON LAW WRIT OF CERTIORARI**

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Petitioner/Defendant Mag Mutual Insurance Company ("MagMutual"), seeks the extraordinary relief of a common law writ of certiorari, along with expedited consideration and a temporary stay; arguing that if the requested relief is denied and this case proceeds with the date-certain jury trial on June 15, 2026, "no one will be able to un-ring this prejudicial bell." (Petition, p.2).

Respondent/Plaintiff Charles A. Trant, M.D. ("Dr. Trant") argues this circumstance is of Mag Mutual's own making: they seek further delay to avoid the consequence of their delay thus far.

Mag Mutual seeks this extraordinary writ to review the trial court's denial of their *second* Motion to Stay; the *first* having been denied over a year ago on April 4, 2025; wherein Judge DeBerry found:

> I FIND that delaying the determination of Plaintiff's action would not serve the Court's overriding goal of ensuring fairness and substantial justice. It could take years before appeals of the underlying medical malpractice case are resolved and the "finality" of judgment Mag Mutual argues is required is achieved. Accepting the allegations, and reasonable inferences, of the complaint as true; not only has the Plaintiff been prejudiced by Mag Mutual's conduct, but that harm would continue to impact the Plaintiff exponentially as those appeals make their way through the courts.
>
> Dr. Trant has a right to not only seek justice for the alleged wrongs he has suffered via civil litigation, but to see the actual conclusion of that civil litigation. As controlling case law supports Plaintiff's causes of action being ripe and justiciable, the Court cannot in good conscience delay the matter just because Mag Mutual wishes the actual damages suffered be established with mathematical certainty.

(Order, April 4, 2025, p.14, **Exhibit A** to this Return).

Mag Mutual felt no urgency to seek this Court's review of that Order over a year ago; nor did they appeal that order to the Court of Appeals.

Presumably, they recognized that an appeal of a denial of a motion to stay is interlocutory. See Edwards v. SunCom, 369 S.C. 91 (2006)(order granting a stay not immediately appealable); Carolina Water Serv. v. Lexington County Joint Mun. Water and Sewer Comm'n., 373 S.C. 96 (2007)(order lifting stay not immediately appealable).

Over five months ago, on November 25, 2025, Mag Mutual notified the Hon. Michael G. Nettles that they refused to comply with his Order compelling the production of an August 28, 2024 internal Mag Mutual memorandum.[1]

Cognizant that discovery orders are not immediately appealable, while sanction orders are, Mag Mutual asked the trial court to sanction them so that they could appeal the sanction – and effectively stay the case.

Dr. Trant asked Judge Nettles to reserve contempt sanctions for determination by the trial judge, so as to avoid a delay of trial, (May 19, 2026, Plaintiff's Omnibus Resp. in Opp., p.30-32); and moved to set a trial date, which Mag Mutual opposed.

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[1] Of note, one week *before* that internal memorandum was prepared, Defense trial counsel, J. Boone Aiken, sent Mag Mutual an urgent letter notifying them that the trial court had "concluded that the jury could find and recover damages from Dr. Trant personally if they find gross negligence," and had ordered the production of Dr. Trant's personal financial information. Aiken urged Mag Mutual to reconsider their no-pay position and attempt to settle the case. (Compl. ¶¶58-60).

Mag Mutual did not reconsider its refusal to protect Dr. Trant. However, they did apparently consider their own bad faith exposure.

While Mag Mutual had originally described the memorandum in its privilege log as containing "underlying case analysis"; in a later filing, they described the memo as containing an analysis "regarding the risk to MagMutual from a potential future claim made against MagMutual by Dr. Trant."

Thus, Mag Mutual was analyzing its own bad faith exposure almost three months *before* the underlying trial in November 2024.

The day *after* the internal memorandum was generated, Mr. Aiken wrote Mag Mutual again; warning them that "Dr. Trant would be financially crippled" by a potential jury verdict; reminding them that "we have expressed grave concerns about taking this case to verdict in Marion County"; and urging them that he had "never pressed so hard to try to secure settlement authority" in his 50 years of practice. (Compl. ¶¶62-63).

Mr. Aiken's warnings went unheeded.

Judge Nettles reserved any ruling on sanctions, and on December 11, 2025, Chief Administrative Judge DeBerry issued a scheduling order setting the case for date certain trial on June 15, 2026.

Mag Mutual then waited until March 31, 2026 to file a *second* Motion to Stay.[2]

The trial court denied their motion for the second time, on April 23, 2026, nearly a month ago. Still, Mag Mutual did not seek this urgent extraordinary writ.

Instead, they waited until May 4, 2026 to file a Motion to Reconsider the Court's denial of their second Motion to Stay; wherein, they attempted to raise, for the first time, new arguments which they had not raised before; and which they seek to argue to this Court (including their first, ever, reference to the Stokes-Craven Holding Corp. v. Robinson, 416 S.C. 517 (2016) decision upon which their Petition relies). The trial court denied the Motion to Reconsider as well.

Only now, 26 days before trial is set to begin, does Mag Mutual ask this Court to grant this urgent extraordinary writ on an expedited basis.

Mag Mutual's sudden urgency stands in stark contrast to the obstinate delay that has characterized their handling of this matter and the underlying matter thus far. Even now, they only seek prompt action to obtain the Court's aid in effecting delay – delay that the trial judges infinitely familiar with the specific facts of the matter have repeatedly refused to allow.

[2] Mag Mutual also filed an Amended Motion to Stay on April 2, 2026.

In fact, Mag Mutual's constant delay lies at the heart of Dr. Trant's bad faith action - intractable delay that has already irreparably harmed Dr. Trant and continues to do so at an alarming rate.

The trial court recognized the prejudice that Mag Mutual's delay has caused Dr. Trant, noting:

> This litigation, which has already, in one form or another, been going on for nearly four years, has by all accounts has taken a terrible toll on Dr. Trant. (See, e.g., Compl ¶60, 62)(wherein Mr. Aiken describes the emotional toll that the litigation was taking on Dr. Trant and his concern for his financial security).
>
> Moreover, the Judgment entered against him increases at the staggering rate of $286,254.00 per month.
>
> The Plaintiff is entitled to a timely remedy. Our Courts have often cited the maxim that "justice delayed is justice denied." See In re: Atwater, 397 S.C. 518, 528(2012).
>
> It should not be delayed any longer here.
>
> For the forgoing reasons the Motion to Stay is respectfully DENIED.

(Order, April 23, 2026, p.24).

The Court should not intervene to delay this matter any further.

## BACKGROUND

The following facts are uncontradicted in the record:[3]

[3] In addition to Dr. Trant's 45-page Complaint (**Exhibit B** to this Return), which excerpts documents from the record at-length, an extensive statement of the facts and supporting documents establishing the uncontradicted facts of the record was delivered to the trial court, *in camera*, as

On July 13, 2022, the estate of a thirteen-year-old child brought a medical malpractice action in Marion County against Dr. Trant, and his employer, McLeod Physician's Associates II ("McLeod"); alleging that his gross negligence resulted in her tragic and untimely death.

Mag Mutual insured Dr. Trant and McLeod under a $1.2 million liability policy that gave them complete and exclusive control of the litigation; including settlement decisions.

Mag Mutual delayed from the beginning: ignoring repeated pleas to settle the underlying medical malpractice action ("Price case") from their own chosen defense trial counsel, J. Boone Aiken, III; as well as pleas from general counsel for Dr. Trant's co-defendant, McLeod, Sonny Barnes and Christie Henderson; as well as pleas from Dr. Trant himself through his personal counsel.

Mr. Aiken, Mr. Barnes, and Mrs. Henderson, all experienced trial lawyers who had tried many cases in the area, each warned Mag Mutual that the underlying case would likely result in a plaintiff's verdict and that the likely award would exceed the policy limits.

exhibit B, and sub-exhibits B(1)-B(65) to Plaintiff's Response in Opposition to Mag Mutual's 2nd Motion to Stay, filed on April 2, 2026.

Mag Mutual also ignored the settlement recommendations, and requests for settlement authorization, from their own internal claims' analyst, from his supervisor, the claims' team lead, and from the Mag Mutual settlement committee.

Instead, one individual at Mag Mutual, Chief Claims Officer, Peter Rogers, made the decision, on the Friday afternoon before a mandatory mediation scheduled for Monday, July 1, 2024, to no-pay the case and take it to trial, leading Mag Mutual to cancel the mediation.

After Mr. Rogers decision and the cancellation of mediation, Mr. Aiken dutifully advised Dr. Trant to retain personal counsel.

Dr. Trant's personal counsel then wrote Mag Mutual, urging them to either settle the case *or* at a minimum, offer Dr. Trant protection from any excess verdict.

Mag Mutual refused; placing their own interests above their duty to their insured and failing protect Dr. Trant from the very real mental, emotional, reputational, physical, and economic injury that he has suffered and continues to suffer.

The trial, presided over by the Hon. R. Ferrell Cothran, Jr., went exactly as Mr. Aiken, Mr. Barnes, and Mrs. Henderson had predicted – badly.

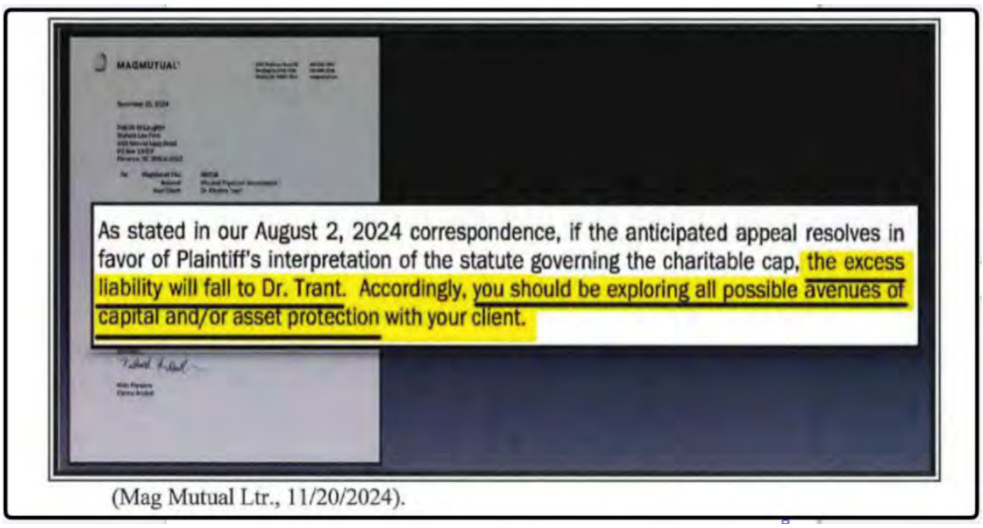
By the third day of trial, which Mr. Aiken described as a "train wreck" and "disastrous," Mag Mutual belatedly offered the policy limits of $1.2 million. (Compl. ¶¶80-82).

When, unsurprisingly, the plaintiff declined that offer, Dr. Trant offered $1.5 million of his own money, without success.

The jury returned a verdict of $30 million; along with a gross negligence finding against Dr. Trant. After Judge Cothran denied post-trial motions, the resulting judgment of $29,870,000 was entered against Dr. Trant on February 5, 2025; accruing interest at 11.5% compounded annually; i.e. approximately $286,254 per month.

That is to say, in the fifteen months since that judgment was entered, it has already increased by approximately $4.3 million dollars, and continuing.

Following the verdict, Dr. Trant again sought protection from Mag Mutual; asking them to "satisfy any judgment this verdict will result in against Dr. Trant personally, including any Offer of Judgment and post-judgment interest that may be due/ become due." (Compl. ¶96, McLaughlin Ltr., November 11, 2024, TDR-01040-01042). Mag Mutual responded:



(Mag Mutual Ltr., 11/20/2024).

(Compl. ¶97).

This is not a close case of bad faith.

The trial court has already found Dr. Trant has made a *prima facie* showing of bad faith (November 14, 2025 Order, p.2) and also found sufficient evidence to support a finding of punitive damages. (October 27, 2025 Order, p.9).[4]

**ARGUMENT**:

Faced with these damning facts, Mag Mutual seeks further delay; blithely telling this Court that "luckily, an easy fix exists." (Petition, p.2).

There is no "easy fix" to the reputational, emotional, mental, and physical and economic injury Mag Mutual's delay has caused, and continues to cause Dr. Trant.

The only relief that the law has to offer an insured for such blatantly bad faith conduct by their insurance carrier is the trial currently scheduled for June 15.

This Court recognized this reality while explaining its rationale for adopting the first party bad faith cause of action in Nichols v. State Farm, 279 S.C. 336 (1983). The Court found that "[a]bsent the threat of a tort action, the insurance company can, with complete impunity, deny any claim they wish, whether valid or not. *During the ensuing period following such a denial, the insurance company has the benefit of profiting on the use of the insured's money."* Nichols, at 340 (emphasis added).

[4] The October 27, 2025 and November 14, 2025 Orders were issued by the Hon. Michael G. Nettles.

For the reasons stated below, this Court should deny Mag Mutual's petition.

## I. The Denial of a Motion to Stay is Not Immediately Appealable

Article V, Section 5 of the South Carolina Constitution and S.C. Code §14-3-310 provide, "The Supreme Court shall have power to issue writs or orders of . . . certiorari . . . ."

Pursuant to this authority, this Court may use a common-law writ of certiorari to correct errors of law, particularly where a trial court exceeded its authority. State v. Price, 441 S.C. 423, 433, 895 S.E.2d 633, 638 (2023). See also, City of Columbia v. S.C. Pub. Serv. Comm'n, 242 S.C. 528, 532, 131 S.E.2d 705, 707 (1963) ("A writ of certiorari is used to keep an inferior tribunal within the scope of its powers.").

The Court has noted that it "will not, however, use a common-law writ of certiorari as a substitute for a party's right of appeal." Ex Parte Gregory, 58 S.C. 114, 115-116 (1900). Nor will the Court "generally accept matters on a writ of certiorari that can be entertained in the trial court or on appeal, a writ of certiorari may be used *when exceptional circumstances exist.*" In Re: Breast Implant Product Liability Litigation, 331 S.C. 540, 543, 504 S.E.2d 445, 447 fn 2 (1998)(emphasis added).

The Order denying Mag Mutual's Motion to Stay does not exceed the trial court's authority and is interlocutory.

The jurisdiction of this Court to hear interlocutory appeals is limited by statute to certain circumstances. See, S.C. Code Ann. §14-3-330 (Supp. 2010). Thus, it must be determined, as a threshold matter, whether the appeal falls within the categories prescribed by §14-3-330.

In light of this Court's prior decisions, the trial court's denial of Mag Mutual's motion to stay does not fall within the appellate authority set out by §14-3-330. See Edwards v. SunCom, 369 S.C. 91 (2006)(order granting a stay not immediately appealable); Carolina Water Serv. v. Lexington County Joint Mun. Water and Sewer Comm'n., 373 S.C. 96 (2007)(order lifting stay not immediately appealable).

In Edwards v. SunCom, this Court held that an Order granting a stay is not immediately appealable. Edwards at 94.

Applying §14-3-330 to an appeal of a ruling on a motion to stay, Edwards identified the relevant analysis to be whether the order "involve[d] the merits, affect[ed] a substantial right, or prevent[ed] a judgment from which an appeal may later be taken." Id. at 94.

The Court reasoned "[a]n order which involves the merits is one that must finally determine some substantial matter forming the whole or a part of some cause of action or defense." Id. (citation and internal quotation marks omitted). Moreover, the Court defined an order "affecting a substantial right" as one that "discontinued

an action [or] prevent[ed] an appeal." Id. (citation and internal quotation marks omitted).

Finding that the order, which granted a motion to stay, did not discontinue the proceeding, the Edwards Court held "an order granting a stay is not immediately appealable." Id. at 95. See also, Carolina Water Service, Inc. v. Lexington County Joint Mun. Water & Sewer Comm'n, 373 S.C. 96, 644 S.E.2d 681 (2007) (holding order lifting stay not immediately appealable).

The trial court's Order denying a stay does not fall within the Court's appellate jurisdiction; as it did not discontinue the action, nor prevent an ultimate appeal.

This Court has cautioned that it "will not, however, use a common-law writ of certiorari as a substitute for a party's right of appeal." Ex Parte Gregory, 58 S.C. 114, 115-116 (1900). Nor has the Court been willing to "generally accept matters on a writ of certiorari that can be entertained in the trial court or on appeal, a writ of certiorari may be used *when exceptional circumstances exist.*" In Re: Breast Implant Product Liability Litigation, 331 S.C. 540, 543 fn.2 (1998)(emphasis added).

The trial court's interlocutory ruling should be no exception.

Mag Mutual claims that they would suffer irreparable prejudice if the trial went forward and their trial strategy was "laid bare."

Judge DeBerry was unconvinced; finding "[i]ts hard to imagine what litigation strategy the Defense might employ in a hypothetical new trial that they did

not already use in the underlying trial. Mag Mutual certainly does not identify the strategy they left un-utilized in the underlying trial." (Order, April 23, 2026, p. 21-22.)

Likewise, as to Mag Mutual's claim that they would suffer irreparable prejudice from the disclosure of privileged material if the case were tried, Judge DeBerry held that Dr. Trant was the client in the underlying case, and any attorney-client privilege was Dr. Trant's to waive. See Order, April, 23, 2026, p. 22-24 (citing Chitty v. State Farm Mut. Auto Ins. Co., 36 F.R.D. 37 (D.S.C. 1964) among other authority for proposition that, even where common interest exists, otherwise privileged communications are not privileged as between co-clients in subsequent adverse proceeding between them).

Further, Judge DeBerry found that "were the appellate courts to reverse the judgment and order a new trial in the Price action, the rules of evidence, as applied by the presiding judge, are designed by the Court precisely to protect the parties from the admission of privileged or any other improper or unduly prejudicial evidence during trial. Those rules protect all parties from the admission of evidence whose prejudicial effect outweighs their probative value. See, e.g., R. 401-403 S.C.R.E. The Defendant fails to explain why those rules that protect parties from undue prejudice in every other case are inadequate here." Id. at p. 24.

Finally, Judge DeBerry has, on the record, entertained with the parties the possibility of submitting a special verdict form to the jury; separating out economic and non-economic actual damages in order to address concerns regarding the pending appeal in the underlying matter, and has indicated a hearing will be scheduled the week of June 8th, 2026 to consider the 14 Motions in limine filed by Mag Mutual, among other pre-trial motions.

The trial court has thoughtfully weighed, and continues to weigh, the parties' competing interests in order to achieve a fair and prompt determination of the merits of this case; as is the trial court's authority, and its charge.

Mag Mutual asks this Court to take the extraordinary step interrupting and delaying those proceedings. The Court should decline to do so.

## II. The Case is Ripe

On April 23, 2026, Judge DeBerry denied MagMutual's request for a stay, specifically finding the case ripe for determination.

In doing so, Judge DeBerry specifically noted that Mag Mutual had conceded the established South Carolina law that, even if their appeal of the underlying medical malpractice verdict was successful, Dr. Trant could still have a viable bad faith action. Judge DeBerry found:

> Our Courts have defined a bad faith claim "to include not just nonpayment of a legitimate claim but how that claim was processed." Hood v. United Services Auto Assoc., 2025 S.C. LEXIS 1 (Opinion No. 28249, January 8, 2025)(citing Mixon,

> Inc. v. American, 349 S.C. 394, 400 (Ct. App. 2002)(citing Tadlock Painting Co. v. Maryland Cas. Co., 322 S.C. 498, 504 (1996) and holding "the covenant of good faith and fair dealing extends not just to the payment of a legitimate claim, but also the manner in which it is processed.").
>
> In Tadlock, our Supreme Court held that an action for bad faith in the carrier's *handling* of an insurance claim could continue, even in the absence of any breach of an express contractual provision. See, Tadlock, at 504.
>
> Thus, even if the appeal in the Price action were successful, or if Defendant Mag Mutual, ultimately, satisfied the excess judgment, the Defendant's bad faith would not be absolved, nor would Plaintiff's actions arising from the Defendant's handling of the Price claim and the resulting Judgment entered against him, be extinguished. Id.
>
> In their Reply Brief [to Defendant's Second Motion for Stay], the Defendant concedes this point. The Defendant acknowledges "Defendant does not dispute that Plaintiff may ultimately possess a bad-faith claim – *even in the event these underlying judgment is reversed*." (Def. Reply Brf., April 8, 2026, p. 1)(emphasis added).

(Order, April 23, 2026, p.17-18)(emphasis in original).

Mag Mutual now takes a contrary position; arguing "[l]ike 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." (Pet. p. 10).

In reply to the Dr. Trant's response to their Rule 59(e) motion below, Mag Mutual argued, for the first time, that the case is actually already stayed because

Rule 205 SCACR has "already divested this Court of jurisdiction"; citing Stokes-Craven Holding Corp. v. Robinson, 416 S.C. 517 (2016). (May 15, 2026, Reply, p. 3-4).

Even assuming that this argument is preserved for appellate review,[5] Stokes-Craven involved a *legal malpractice* cause of action, not a bad faith action. Moreover, under the specific facts of that case, the the Stokes-Craven Court found:

> However, the case that we address today is a legal malpractice cause of action that is predicated on an injury or damage caused by the failure of an underlying suit due to an attorney's alleged malpractice. ***In that particular scenario, there can be no legal malpractice cause of action without an adverse verdict, judgment, or ruling***.

Stokes-Craven, at 534 (emphasis added).

In the bad faith context, however, the Court has not made an excess verdict, much less one affirmed after an appeal, a prerequisite to a *bad faith* cause of action.

To the contrary, in Tadlock Painting Co. v. Maryland Cas. Co., 322 S.C. 498, 504 (1996), this Court held that an action for bad faith in an insurance carrier's handling of an insurance claim could continue, even in the absence of any breach of an express contractual provision. See Tadlock, at 504.

[5] This argument is contrary to a previous position taken by Mag Mutual, and was raised for the first time in a Rule 59(e) motion. *See* Hayne Federal Credit Union v. Bailey, 327 S.C. 242, 251 (1997) ("Judicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation."); Johnson v. Sonoco Prods. Co., 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) ("An issue may not be raised for the first time in a motion to reconsider.").

See also Order, April 23, 2026, p.9, citing and quoting Campbell v. State Farm Mut. Auto. Ins. Co., 840 P. 2d 130, 140-141 (Utah Ct. App. 1992)(subsequent decision rev'd on other grnds., 538 U.S. 408 (2003))(carrier's eventual payment of an excess judgment rendered against its insured in a suit by a third party did not bar the insured's claim that the insurer acted in bad faith by earlier refusing to settle the claim within policy limits)(cited with approval by the South Carolina Supreme Court in Tadlock Painting Co. v. Maryland Cas. Co., 322 S.C. 498, 504, fn. 4 (1996)).

Curiously, Mag Mutual argues that the Utah Court of Appeals decision in Campbell, cited with approval by the Court in Tadlock, actually "supports the exact argument MagMutual has been making to the Court." (May 15, 2026, Reply, p.2).

Selectively, and out of context, Mag Mutual cites footnote 20 in Campbell, in which the Utah Court held that their holding "is not inconsistent with our view that the insured's cause of action does not accrue until final disposition of the underlying claim against the insured. In this regard we agree with the Larraburu court …". Campbell, at 141, fn. 20. (See Pet. p.18).

There, the Campbell Court cited a previous Utah decision for the proposition that the statute of limitations clock does not start to run until the end of the underlying appeal – not that a plaintiff must wait until the resolution of the appeal to bring his bad faith case.

The footnote in Campbell goes on to provide, "[t]hus, 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 unreasonable conduct can be a proximate cause of injury before the final disposition as well as after.*" Campbell, at 141, fn. 20 (emphasis added).

Thus, the holding in Campbell that the Utah statute of limitations for bad faith does not start running until the end of the appeal in an underlying case does not conflict with their conclusion that a Utah plaintiff may have a cause of action for bad faith, and damages as a result, based on what happened before the conclusion of the appeal in the underlying case.

The Campbell Court never held that a plaintiff *could not* bring a bad faith case before the end of the underlying appeal – only that he did not have to.

Mag Mutual argued to the trial court that in Campbell, "the plaintiffs filed suit against their insurer for bad faith in July of 1986. In April of 1987, the plaintiff's bad faith action "*was dismissed without prejudice, pending the final disposition of the underlying action*." (May 15, 2026, Reply, p.2, citing to Campbell at 135).

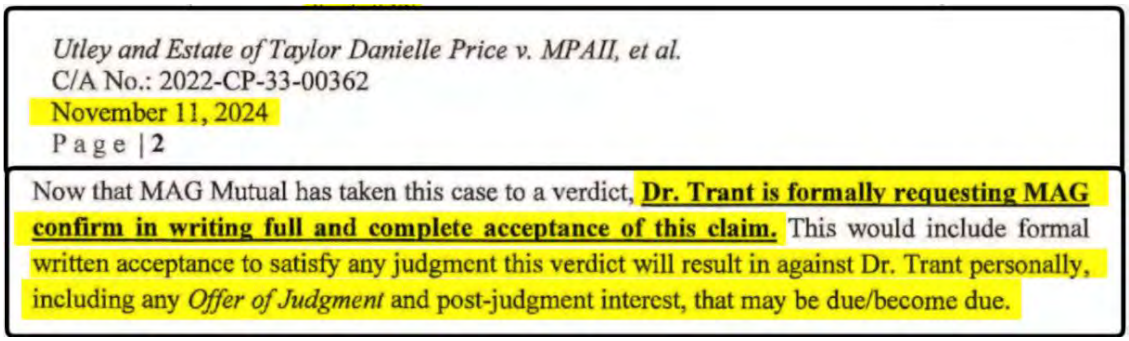
Mag Mutual ignored the fact that the trial court in Campbell, whose stay they argued the trial court in this case should adopt, was reversed by the Utah Court of Appeals in that same case; in an opinion cited by this Court with approval in Tadlock.

Mag Mutual also conspicuously omitted the fact that the insurer in Campbell responded to that bad faith lawsuit by filing a motion to dismiss in August, 1986:

> …wherein [State Farm] declared that a bad faith cause of action would never accrue because "***the moment judgment is affirmed on appeal, assuming the Supreme Court does affirm, State Farm will immediately pay the judgment in full, together with all interest and costs.***" Thus, the first time that State Farm ***indicated an unconditional willingness to pay the excess judgment*** was in August, 1986, approximately three years after entry of judgment against Campbell.

Campbell at 135 (emphasis added).

That protection is precisely the protection Dr. Trant began requesting from Mag Mutual on July 23, 2024 (Compl. ¶50), all the way through trial, and after the verdict on November 11, 2024:

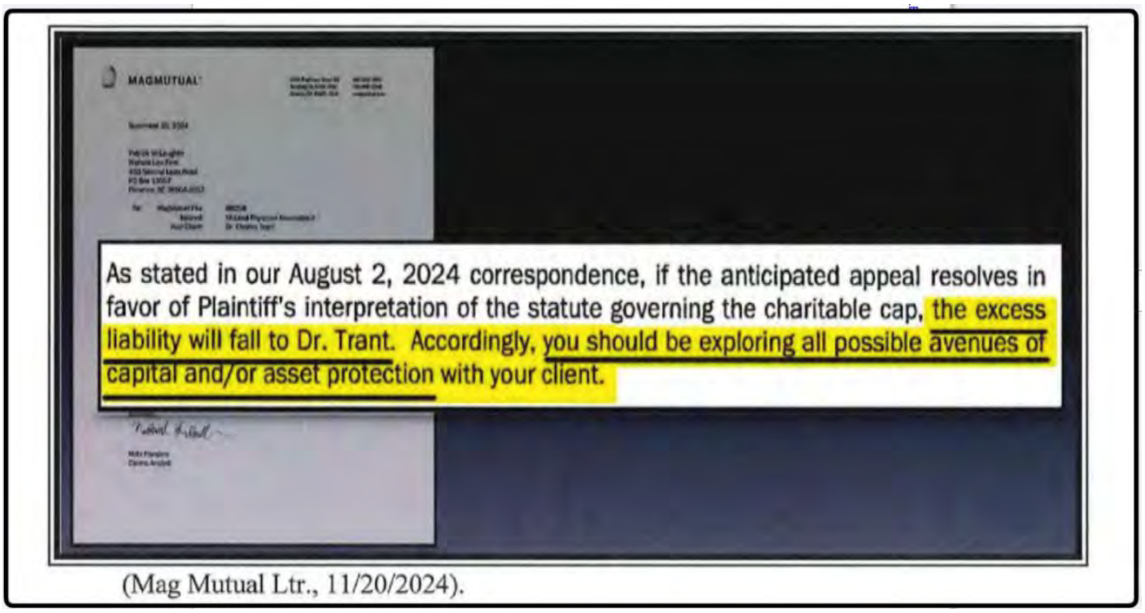


*Utley and Estate of Taylor Danielle Price v. MPAII, et al.*
C/A No.: 2022-CP-33-00362
November 11, 2024
Page | 2

Now that MAG Mutual has taken this case to a verdict, **Dr. Trant is formally requesting MAG confirm in writing full and complete acceptance of this claim.** This would include formal written acceptance to satisfy any judgment this verdict will result in against Dr. Trant personally, including any *Offer of Judgment* and post-judgment interest, that may be due/become due.

(Compl. ¶96 & TDR-01042).

Unlike the insurer in Campbell,[6] Mag Mutual has repeatedly told Dr. Trant that he is on his own and that he should act to protect his finances:



(Mag Mutual Ltr., 11/20/2024).

(Compl. ¶97).

Faced with this Court's precedent in Tadlock, Mag Mutual turns to other jurisdictions; arguing that the trial court's ruling was clearly erroneous "and in conflict with virtually every other jurisdiction in America." (Pet. p. 14).

Remarkably, Mag Mutual argues that the trial court clearly erred and exceeded its authority by failing to follow the law of other jurisdictions. Moreover, a close inspection of the cases cited by Mag Mutual as representing the consensus view of "virtually every other jurisdiction in America" reveals that many actually represent

[6] Payment of the excess judgment did *not* excuse State Farm's bad faith in Campbell.

the view of states that have adopted views of the law of bad faith contrary to those established in South Carolina.

For example, of the eleven cases that Mag Mutual cites as representing "every other jurisdiction in America" four are from Florida, or Federal cases interpreting Florida law. (See Pet. p. 15-16).

Mag Mutual particularly relies on Romano v. American Cas. Co. Of Reading, Pa., 834 F.2d 968 (11th Cir. 1987). (See Pet. p. 16). In Romano, the U.S. Eleventh Circuit Court of Appeals interpreted Florida state law on bad faith. The Romano court held that, *in Florida*, breach of an express contractual provision is a prerequisite to a bad faith cause of action. Romano, at 969-970 (citing a Florida case, Fidelity and Cas. Of N.Y. V.. Cope, 462 So. 2d 459 (Fla. 1985).

Romano's holding and Florida's law are directly contrary to the South Carolina Supreme Court's holding in Tadlock, wherein, this Court held that *in South Carolina* a breach of an express contractual provision *was not* a prerequisite to a bad faith cause of action. Tadlock, at 504, 55.

As discussed above, this Court cited, with approval, the Utah Court of Appeals in Campbell v. State Farm, which, in turn, explicitly rejected the Florida position (as well as Oregon's), "[w]e reject these cases, first, because Florida and Oregon frame the insurer's duty more narrowly as sounding only in contract, not tort, …"

Campbell, at 141, fn. 22. See also Tadlock, at 503-504 (citing Campbell with approval, at fn. 4).

In similar fashion, Mag Mutual cites cases that do not actually 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, the cases cited by Mag Mutual address a different issue: when should the statute of limitations clock begin to run in a bad faith action?

For example, Mag Mutual cites Connelly v. State Farm Mut. Life Ins. Co., 135 A.3d 1271 (Del. 2015). There, the Delaware Supreme Court noted "[t[he resolution of this appeal turns on a single issue: When does a claim that an insurer acted in bad faith by failing to settle a third-party insurance claim accrue *for the purposes of the statute of limitations*?" Id. (emphasis added). The Connelly Court did not determine, or even address the question for which Mag Mutual cites it: whether a third-party bad faith action brought prior to the completion of the appeal in the underlying case is ripe for adjudication.

Likewise, Mag Mutual cites the Arizona Supreme Court's decision in Taylor v. State Farm Mut. Auto Ins. Co., 93 P.2d 1092 (Ariz. 1996). Taylor considered when the statute of limitations begins to run on bad faith actions.

The trial court considered each of these cases, and others, and concluded:

> Neither of these opinions involve facts, such as are presented to the Court in this case: a Defendant's Motion to Stay a Plaintiff's action

> alleging bad faith resulting in significant actual injury to [his] reputation, financial position, and emotional and physical well-being, which damage is increasing dramatically with every day that passes by operation of the accrual of post judgment interest: where the Plaintiff seeks judicial determination to remedy and protect himself from the escalation of prejudice.
>
> This Court looks to the precedent set by our own Supreme Court in Tadlock Painting Co. v. Maryland Cas. Co.; where, as set out above, the Court held that a breach of an express contractual provision of an insurance contract (as in the contractual obligation to pay a judgment) is not a prerequisite to a bad faith action.

(Order, April 23, 2026, p.17).

Thus, the trial court correctly concluded that Dr. Trant had presented an actionable and ripe cause of a for bad faith; resulting in damages to Dr. Trant's personal and professional reputation, emotional and physical well-being, and financial position, which could not be absolved by Mag Mutual obtaining an ultimate reversal on appeal.

### III. The Plaintiff's Damages are Not Speculative

The trial court also rejected Mag Mutual's argument that the judgment pending against Dr. Trant was speculative; noting that the "entry of an excess judgment against Dr. Trant is more than reasonably certain to occur. It already has. Dr. Trant also offers evidence that he has already suffered irreparable damage (including damage to his reputation and emotional and physical well-being) that will not be reversed, even if the Judgment ultimately is." (Order, April 23, 2026, p.20).

The trial court reasoned "[w]hat is uncertain is the Defendant's prediction that the judgment, that exists today, may be reversed in the future." Id.

The trial court held "[i]n any event, determining the extent of future damages is the role of the jury. 'It is the duty of the jury to estimate, as best it can, the future damages which are reasonably certain to be accrued by the Plaintiff.' Pearson v. Bridges, 344 S.C. 366, 373 (2001)." Id.

Further, in the recent case Garrison v. Target Corp., 433 S.C. 566 (2022), this Court considered the proper consideration of *potential damage* as support for a punitive damages award. There, a child was pricked by a syringe in a store parking lot. The child's parents, naturally, feared that they may contract a disease as a result; which, thankfully, never materialized.

In considering the resulting punitive damages award against the store, this Court held "[a]lthough [the child] did not ultimately contract a disease from the syringe, the trial court erred in failing to consider *any* potential harm in the ratio calculation, including the harm likely to result to other customers due to Target's failure to maintain the parking lot in a reasonably safe condition." Garrison, at 585 (emphasis in original).

Thus, in addition to the irreparable damages that Dr. Trant has suffered and the future damages that are reasonably certain to occur, the jury, for punitive

damages purposes, may consider the *potential harm* to Dr. Trant, and other insureds due to Mag Mutual's failure to place the interests of their insureds above their own.

Such considerations are not speculative. They are the proper province of the jury.

## CONCLUSION

Petitioner/Defendant Mag Mutual has filed this Petition for an extraordinary writ, seeking review of an interlocutory Order; denying their second Motion to Stay. They do so in an attempt to achieve the delay that the trial court, thoroughly familiar with the case and controversy, has refused to provide.

Respondent/Plaintiff Dr. Trant requests that the Court deny the Petition and decline to intervene and delay the trial scheduled on June 15, 2026.

Respectfully submitted,

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