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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.: 2026-001165

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

v.

MAGMUTUAL INSURANCE COMPANY,…….. Petitioner.

REPLY IN SUPPORT OF PETITION FOR COMMON LAW WRIT OF CERTIORARI

Petitioner MagMutual Insurance Company ("MagMutual") filed a Petition for Common Law Writ of Certiorari with this Court on May 20, 2026, requesting a stay of an upcoming June 15, 2026 trial. On May 21, 2026, Respondent Charles A. Trant, M.D. ("Dr. Trant") filed his response in opposition. MagMutual now submits this short reply to address only a few of the flawed arguments set forth therein.[1]

ARGUMENT

Nothing set forth in Dr. Trant's response alters the straightforward and commonsense conclusion that a stay in this matter is necessary until the appeal in the underlying medical

[1] Although Dr. Trant spills a lot of ink in his attempts to place MagMutual in a negative light, MagMutual declines to respond to these many inaccurate representations as none is needed to address the narrow, important issue before the Court.

malpractice case ("Underlying Case") is resolved. If anything, Dr. Trant's submission—albeit inadvertently—echoes the fundamental structural problems that exist and underscores the substantial prejudice that will continue to magnify should this matter march forward to premature trial. MagMutual's argument is and has always been that until the parties know the final result of the Underlying Case, Dr. Trant's asserted bad faith damages are contingent, his alleged injury is not fixed, and his claims have yet to accrue. MagMutual is not asking this Court to embrace a radical position. In fact, as explained *ad nauseum* in its Petition, virtually every court that has faced this issue has determined that a bad faith dispute cannot go forward to trial while the underlying excess judgment continues to be fiercely litigated on appeal. A stay should be issued to permit the parties the opportunity to understand exactly what they may need to litigate in the future.

I. There is nothing nefarious about the timing of MagMutual's Petition.

Dr. Trant, throughout his response, claims that the issue MagMutual brings before the Court is ill-timed. In doing so, he appears to suggest that MagMutual should have filed this Petition sooner. Not so; the timing of the Petition is the result of MagMutual making every attempt to address the issue in the circuit court before seeking extraordinary relief from this Court.

This case was filed on February 10, 2025—before the parties to the Underlying Case could even file a notice of appeal. Since this bad faith action was filed, litigation has proceeded with haste. MagMutual immediately asked Dr. Trant to consent to a stay, and when he refused, MagMutual requested that the circuit court issue a stay in response to Dr. Trant's complaint. Although the circuit court declined to issue a stay, during argument, the circuit court requested the parties to move forward with discovery and indicated that it would consider the same request later in light of the "contingency that's looming out there." Although discovery was unnecessarily

difficult considering the obvious privilege and duty concerns while dueling matters were moving forward in opposite directions between an insured and his insurer, MagMutual navigated it as best as it could in accord with the circuit court's directive.[2]

When discovery closed on April 1, 2026, MagMutual immediately renewed its motion to stay on March 31 and April 2, 2026, respectively. The renewed motions were denied on April 23, 2026, and MagMutual timely filed a motion to reconsider which was denied on May 19, 2026, after a hearing. The very next day, on May 20, 2026, MagMutual filed its Petition with this Court. There is nothing wrong with allowing a circuit court to confirm its ruling before seeking extraordinary relief in the Supreme Court.

Dr. Trant also accuses MagMutual of "delay" and uses the term approximately 20 times throughout his response. MagMutual does not seek a stay simply to avoid a looming trial date; it seeks to halt the litigation of a bad faith claim that has not accrued and is not ripe. In his haste to bring this matter to trial, MagMutual simply brings this important and novel issue to the Court's immediate attention in the hope of saving years of preventable appeals and conserving the resources of all involved. To better explain, should Dr. Trant get to move forward with this trial and should he secure a verdict in his favor, the verdict (after years of appeals) would without question have to be vacated because the circuit court allowed a non-justiciable matter to proceed to trial prematurely.[3] MagMutual has a constitutional right to understand the case that it is litigating, and it cannot do so at this posture. So, what Dr. Trant perceives to be "delay" is a prudent request being made by MagMutual to avoid unnecessary substantial prejudice.

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[2] MagMutual and Dr. Trant are fighting lockstep in the appeal of the Underlying Case but are at the same time adverse in the bad faith case. This difficult situation is yet another reason why other jurisdictions stay bad faith cases while the underlying litigation remains pending.

[3] But, if MagMutual prevails at a premature trial, Dr. Trant would be judicially estopped from claiming error on ripeness ground.

II. This case is not ripe, and the case law relied upon by the circuit court and Dr. Trant say so.

Buried beneath the pages of "mud" that Dr. Trant throws at MagMutual is an unconvincing argument as to the merits. The circuit court and Dr. Trant believe that even if the appeal in the Underlying Case goes in Dr. Trant's favor, Dr. Trant **may** still have a cause of action against MagMutual for the way MagMutual "handled" or "processed" the Underlying Case. Whether this is true or not (and no one can know presently), the case that Dr. Trant intends to present to a Marion County jury embraces the existence of the underlying non-final verdict and requests damages under the presumption that it is final and unalterable. But let's assume Dr. Trant prevails on appeal and prevails at a new trial. This material evidence would be crucial to support MagMutual's processing and/or handling of the Underlying Case, and it is something that is impossible to know at this juncture.

The cases that Dr. Trant cite do not provide the cover that he so desperately seeks. None come close to suggesting that a bad faith claim can proceed to trial while the underlying matter for which the bad faith is grounded is pending on appeal.

Tadlock Painting Co. v. Maryland Cas. Co., 322 S.C. 498, 473 S.E.2d 52 (1996) is very much inapposite. *Tadlock* involved a situation in which the existence of the insured's underlying liability and the amount of the underlying damages caused were fixed and final—not contingent, hypothetical, or abstract. *Id.* at 500, 473 S.E.2d at 53 ("Insured ended up personally settling each of the claims . . . . Insured ***then*** brought a bad faith action against Insurer for damages caused by Insurer's actions." (emphasis added)). And, despite Dr. Trant's tortured interpretation of *Campbell v. State Farm Mut. Auto. Ins. Co.*, 840 P.2d 130 (Utah 1992), it plainly is supportive of MagMutual's argument with respect to the timing of parties litigating a bad faith claim. Even

though the *Campbell* court recognized that a bad faith claim could exist despite the insurer satisfying the excess judgment, the court stated clearly—

> Thus, 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. Although Dr. Trant's mental gymnastics are impressive, *Campbell* clearly states that, even for a claim like the one Dr. Trant asserts he is bringing, he "must wait" for final disposition of the Underlying Case. Whatever proposition Dr. Trant believes *Tadlock* and *Campbell* stand for, they do not bless this case moving forward on unknown issues of liability and damages.

One quick comment on *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016), since it is directly on point and requires a stay be issued. Dr. Trant's plea for this Court to find this unpreserved is entirely without merit. The rules of **issue** preservation are not prohibitive of a party citing additional case law for an argument that they have been making all along. From day one of this bad faith litigation, MagMutual has argued that this matter is affected by the appeal of the Underlying Case and as a result, must be stayed. *Stokes-Craven* simply provides additional support for this resounding argument that has been erroneously discounted at every juncture.

III. Damages, if any, are not-final, and Dr. Trant should not be allowed to weaponize contingent and speculative damages in his favor.

As noted in MagMutual's Petition, Dr. Trant seeks an award of damages to include "liability for excess judgment" and related interest. Dr. Trant's claim that his damages are not speculative lacks merit, and the cases he cites do not come close to supporting his untenable

position. For example, in *Pearson v. Bridges*, 344 S.C. 366, 544 S.E.2d 617 (2001), this Court found expert testimony concerning future medical expenses to be admissible for purposes of determining the extent of a plaintiff's injury. And in *Garrison v. Target Corp.*, 435 S.C. 566, 869 S.E.2d 797 (2022), the Court held that potential harm that could have arisen from a defendant's actions was an appropriate consideration for an award of punitive damages.

However, MagMutual is unaware of any case that would suggest that Dr. Trant may use the existence of a contingent non-final judgment to support each and every one of his claims and to ask a jury to award him damages based on the existence of a contingent non-final judgment. But that is exactly what he intends to do at trial, and such an overt act underscores the prejudice that flows from litigating this claim that has yet to accrue.

CONCLUSION

A myriad of results are at play with the appeal of the Underlying Case, and no one has a crystal ball. But a stay solves all the problems that have stemmed and will continue to stem from the litigation of an unripe claim for bad faith. Respectfully, the Court should grant MagMutual's Petition and stay this case.

(*signature page to follow*)

Respectfully submitted,

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