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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 BRIEF OF PETITIONER

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INTRODUCTION

On June 5, 2026, this Court issued an order granting Petitioner MagMutual Insurance Company's ("MagMutual") request for a temporary stay of a June 15, 2026 trial to allow the Court adequate time to consider whether the insurance bad faith case brought by Respondent Charles A. Trant, M.D. ("Dr. Trant") is ripe while the underlying case for which it is based remains pending on appeal. The Court requested additional briefing on this issue, and briefing was submitted by MagMutual and Dr. Trant. MagMutual now submits this reply brief to address a few of the arguments advanced by Dr. Trant.

ARGUMENT

Nothing set forth in Dr. Trant's brief alters the straightforward and commonsense conclusion that a stay in this matter is necessary until the appeal in the underlying medical malpractice case ("Underlying Case") is resolved. If anything, Dr. Trant's submission—albeit inadvertently—quietly echoes the fundamental structural problems and critical unknowns that exist, and it underscores the substantial prejudice that will continue to magnify should this matter march forward to a 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 claim has yet to accrue or ripen. MagMutual is not asking this Court to embrace a radical position. In fact, as explained in its Petitioner's brief, virtually every court that has faced this issue has already determined that a bad faith claim has not accrued while the underlying excess judgment continues to be litigated on appeal. A stay should be issued here to allow the parties the opportunity to understand exactly what they may need to litigate in the future.

I. **<u>The correct standard of review is de novo</u>.**

Dr. Trant insists that abuse of discretion is the proper standard of review for the Court to apply when considering the circuit court's order denying MagMutual's motion to stay (Resp. Br. at 1-2); however, he is mistaken.

Although Dr. Trant may be correct that in general, the decision to grant or deny a stay is left to the circuit court's discretion, *Thompson v. Swicegood*, 430 S.C. 648, 659, 845 S.E.2d 920, 925 (Ct. App. 2020), with respect to the critical issue pending before the Court, he places the proverbial "cart before the horse."

The ripeness issue this Court is being asked to consider is a primary question of law that must be resolved **<u>prior</u>** to any secondary consideration of whether a stay should or should not have been granted as the proper relief. Our courts treat justiciability—to include ripeness—as a mandatory preliminary inquiry that must be resolved before a court may even turn to the merits. *See Jowers v. S.C. Dep't of Health & Envtl. Control*, 423 S.C. 343, 815 S.E.2d 446, 451 (2018). And questions of justiciability are reviewed de novo. *Id.* at 354, 815 S.E.2d at 452. It is only **<u>after</u>** a de novo finding of ripeness would an appellate court even need to consider a circuit court's decision to grant or deny relief in the form of a stay pursuant to an abuse of discretion standard. But if the case is not ripe, then moving forward to trial would be reversible error.

II. **<u>This matter is properly before the Court via MagMutual's petition in light of the exceptional circumstances presented by the circuit court's sustained refusal to issue a stay.</u>**

Before getting to the issue that this Court requested the parties address through supplemental briefing, Dr. Trant spends time pointing out that the question pending before the Court is interlocutory in nature and does not fall into the categories set forth in S.C. Code Ann. §

14-3-330. (Resp. Br. at 9-11). To be clear, MagMutual has never claimed that this issue is immediately appealable pursuant to S.C. Code Ann. § 14-3-330.

MagMutual—understanding the interlocutory nature of the circuit court's orders denying its request to stay the case—did not take the traditional appellate route because it recognized that the bad faith litigation has not yet "arrived at the end of the road." *Mid-State Distribs., Inc. v. Century Imps., Inc.*, 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993). That's why MagMutual filed a petition for a common law writ of certiorari. Although Dr. Trant claims "MagMutual makes no attempt to establish this Court's jurisdiction to hear this interlocutory appeal . . . " (Resp. Br. at 10), he ignores that MagMutual cited the South Carolina Constitution, statutory law, case law, and Appellate Court Rules to demonstrate that this Court does have jurisdiction to consider this issue through the grant of a common law writ of certiorari.

At bottom, MagMutual firmly believes this petition presents a set of exceptional circumstances that would permit this Court's immediate interlocutory review. And in light of those exceptional circumstances presented, the Court should respectfully grant the petition and issue a stay.

III. Dr. Trant's bad faith case is not ripe, and it will not become ripe until the Underlying Case is final.

A. The case that Dr. Trant wants to take to trial is entirely contingent on the non-final verdict in the Underlying Case.

Dr. Trant's argument can be boiled down to one point. He insists that the bad faith case is ripe for immediate trial because MagMutual subjected him to emotional and reputational damages stemming from how MagMutual "handled" or "processed" the Underlying Case.[1] The circuit court

[1] To be sure, this is a failure to settle case as opposed to some sort of handling or processing case. Although Dr. Trant cites 3 paragraphs from his 173-paragraph complaint to assert that he has raised damages as a result of MagMutual's handling of the claim, a close reading of even those

agreed, unfortunately, and adopted Dr. Trant's argument when it noted 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 contingency still looms.

For example, let's assume Dr. Trant prevails on appeal and prevails at a new trial. This material evidence would be crucial to support MagMutual's defense against any claim that it improperly processed and/or handled the Underlying Case. And it is information that is still impossible to know at this juncture.[2] However, what we do know at present is that the case that Dr. Trant plans to present to a Marion County jury embraces the existence of the underlying non-final verdict and requests damages (to include the entirety of the underlying verdict and other consequential and punitive damages stemming from the full verdict amount) under the presumption that it is final and unalterable.

Accordingly, even if Dr. Trant has a separate claim for how MagMutual handled or processed the Underlying Case, it too is not ripe.

B. The cases relied upon by Dr. Trant demonstrate this case is not ripe.

The cases that Dr. Trant cites do not provide the cover that he so desperately seeks. None comes 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.

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paragraphs (and the rest of his complaint) show those purported damages arise out of MagMutual's alleged bad faith failure to settle. (Resp. Br. at 24).

[2] Dr. Trant cites to *Hood v. USAA*, 445 S.C. 1, 910 S.E.2d 767 (2025), where this Court provided stern caution to litigants attempting to bring meritless bad faith claims. Although the facts of *Hood* are distinguishable at present, if Dr. Trant succeeds on appeal but still wants to bring a claim against MagMutual, *Hood* indicates that Dr. Trant would have to reevaluate his potential bad faith claim based on this not-yet-known critical information to determine whether such claim would have merit.

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 regarding 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 and unequivocally that the insured "must await final disposition of the original action" to figure out whether he has such a colorable claim. *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 claims he is bringing (in very small part), he is required to wait for final disposition of the Underlying Case. Until then, his bad faith case is not ripe. 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.

C. MagMutual's citation to *Stokes-Craven* is both on point and preserved.

MagMutual maintains that this Court has already provided the necessary guidance on how to address unripe derivative litigation via its opinion in *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 534, 787 S.E.2d 485, 494 (2016). Dr. Trant's plea for this Court to find this argument unpreserved is quite telling, but it is without merit. (Resp. Br. at 14-15). 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.[3] 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. Aside from this weak preservation argument, Dr. Trant does nothing of substance to distinguish *Stokes-Craven* with respect to the merits of this case, nor could he.

D. 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 Petitioner's brief, 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 is absurd, 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. Nothing in *Pearson* or *Garrison* comes close to addressing the problems here.

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 still flows from litigating this claim that has yet to accrue.

[3] As aptly stated by this Court in *State v. Morales*, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023), appellate courts do not apply issue preservation rules "in a technical manner as if this is some sort of game of 'gotcha' elevating form over substance to trap lawyers so as to prevent the appeal of a legitimate issue."

E. Dr. Trant misunderstands the convergence between an accrual, ripeness, and statute of limitations analyses in this case.

Dr. Trant tries his best to distinguish this case from the mountain of authority cited by MagMutual in support of this ripeness question. In doing so, he claims that the cases MagMutual cites "do not actually stand for the proposition that a bad faith case is not ripe" for trial until final judgment. (Resp. Br. at 26-27). Rather, he contends those cases address when "the statute of limitations clock begin[s] to run in a bad faith action." *Id.* at 26. But Dr. Trant's position is both confusing and incorrect. Whatever distinction he tries to make here is one without a difference.

Civil actions in South Carolina can only be commenced after a cause of action has accrued. S.C. Code Ann. § 15-3-20. And a "statute of limitations begins to run at the time the cause of action accrues." *King v. James*, 388 S.C. 16, 26, 694 S.E.2d 35, 40 (Ct. App. 2010). "The fundamental test for determining whether a cause of action has accrued is whether the party asserting the claim can maintain an action to enforce it." *Id.* However, it is well-established that a party cannot "maintain" an action that is not ripe. *See Jowers v. S.C. Dep't of Health and Envtl. Control*, 423 S.C. 343, 353, 815 S.E.2d 446, 451 (2018) ("Our courts will not address the merits of any case unless it presents a justiciable controversy."). So, whether Dr. Trant wants to call it ripeness, claim accrual, or triggering of the statute of limitations, none has yet to occur.

CONCLUSION

A myriad of results remain at play while the appeal of the Underlying Case remains pending, and no one has a crystal ball. A stay addresses all the problems that have unearthed and will continue to grow from the litigation of an unripe claim for bad faith. Respectfully, the Court should grant MagMutual's petition and stay this case.

Respectfully submitted,

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