

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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IN THE ORIGINAL JURISDICTION

S.C. SUPREME COURT

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.

**MAGMUTUAL’S RETURN TO MOTION TO DETERMINE WHETHER THE
APPENDIX SHOULD BE SEALED**

On July 6, 2026, Respondent Charles A. Trant, M.D. (“Dr. Trant”) filed a motion with the Court asking it to determine whether his proposed Appendix, submitted presently for *in camera* review, should be sealed or whether the proposed Appendix should be made open to the public. Therein, he fails to make any true legal analysis or argument as to whether certain portions of the Appendix should be sealed or unsealed. He just asks the Court to make this call.

Dr. Trant acknowledges that “the majority of the documents contained in the Appendix come from the file of trial defense counsel” in the Underlying Case. In fact, a large portion of the documents contained within his proposed Appendix have been designated as “Confidential” in discovery by Petitioner MagMutual Insurance Company (“MagMutual”) pursuant to the circuit

court's confidentiality order. These documents, to name a few, include various portions of the claims file from the Underlying Case, internal communications with defense counsel from the Underlying Case, deposition and trial summaries from the Underlying Case authored by defense counsel, and deposition transcripts in this case from various fact and expert witnesses discussing confidential matters. It is unclear whether Dr. Trant takes a position as to whether the documents set forth in the Appendix should be sealed or unsealed, but he has called upon this Court to make the determination.¹

“[A]ccess to judicial records is not absolute.” *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). With respect to the analysis of whether documents should be sealed or not sealed, some courts outside of South Carolina consider the request in light of whether a dispositive or non-dispositive motion is pending before the court. *Id.* at 1179. Such a distinction makes sense in this situation. Specifically, the public has less of a need for access to court records attached only to non-dispositive motions because those documents are usually “unrelated, or only tangentially related, to the underlying cause of action.” *Id.* (quoting *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33 (1984)). Of course, here, this Court is not being asked to consider a dispositive motion but is rather being asked to determine whether a temporary stay should be issued based upon an unripe bad faith claim being litigated prematurely. Regardless of the level of scrutiny to be applied here by the Court, there are documents contained in the Appendix that should be sealed.

¹ It is curious as to why Dr. Trant would oppose this material being sealed. MagMutual has consistently fought to maintain confidentiality over various documents that have legitimate potential to negatively impact the appeal of the Underlying Case and any possible re-trial. MagMutual has a duty to defend Dr. Trant in the Underlying Case, and it takes this duty seriously. MagMutual is genuinely trying its best to comply with this duty while simultaneously defending itself in this derivative litigation.

Out the gate, MagMutual must note the obvious for the Court’s benefit—its review of the Appendix is not needed to resolve the purely legal question of ripeness.² Nevertheless, MagMutual takes no issue with the Court reviewing Dr. Trant’s Appendix *in camera* if the Court would find it helpful to better understand the prejudicial impact of the premature litigation below. Despite Dr. Trant’s covert attempts to continue to paint MagMutual in a negative light and to litigate the merits of the bad faith case before this Court, MagMutual would submit that a review of the Appendix, if anything, supports its core ripeness argument and its requested relief. The Appendix sheds additional light on the thorny issues of confidentiality and privilege that MagMutual has been forced to navigate while prematurely litigating an unripe claim for bad faith.

Again, MagMutual takes no issue with the Court reviewing the Appendix *in camera*. However, MagMutual would respectfully request that this Court place certain documents contained therein under seal. *See Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253 (4th Cir. 1998) (“The mere existence of a First Amendment right of access or of a common law right of access to a particular kind of document does not entitle the press and the public to access in every case”). Rule 41.1 of the South Carolina Rules of Civil Procedure sets forth various factors

² Dr. Trant appears to argue this Appendix is needed due to MagMutual’s “offhand” comment that his prior return “contained ‘many inaccurate representations’ of fact.” (Mot. at 1). However, Dr. Trant completely misinterprets MagMutual’s comment from prior briefing. MagMutual simply noted that Dr. Trant’s previous submission contained numerous jabs at MagMutual that were both inaccurate and unnecessary to resolution of the narrow issue before the Court. To name a few examples of the jabs from that briefing, Dr. Trant: (i) accused MagMutual of seeking delay and acting with “obstinate delay” throughout the litigation; (ii) claimed MagMutual was taking contrary positions and raising brand new arguments to this Court; (iii) accused MagMutual of ignoring pleas from Dr. Trant to settle “from the beginning”; and (iv) classified this matter as “not a close case of bad faith.”

There is nothing inappropriate about MagMutual disagreeing with Dr. Trant’s portrayal of this disputed case. And Dr. Trant can certainly disagree with MagMutual. This is why the case is in litigation.

for consideration when determining whether information should be sealed. These factors include: (1) the need to ensure a fair trial; (2) the need for witness cooperation; (3) the reliance of the parties upon expectations of confidentiality; (4) the public or professional significance of the lawsuit; (5) the perceived harm to the parties from disclosure; (6) why alternatives other than sealing are not available to protect legitimate private interests; and (7) why the public interest, including public health and safety, is best served by sealing the documents. Rule 41.1, SCRCP.³

To be clear, MagMutual does not ask the Court to retroactively seal any documents contained in the Appendix that have already been filed publicly or contain purely public information. For example, the Appendix contains copies of case law, statutes, various motions, legal memoranda, and orders from the circuit court. Nothing requires those documents to be sealed.

However, certain documents found in the Appendix warrant this Court's protection from public disclosure. MagMutual submits these documents fall into two primary categories. First, certain documents contained in the Appendix should be treated as strictly confidential as they contain MagMutual's protected proprietary information. Second, other documents contained in the Appendix should be treated as conditionally confidential so long as the Underlying Case is pending.

As to those documents MagMutual considers to be strictly confidential, the Appendix includes multiple documents that contain information detailing MagMutual's proprietary claim evaluations and other claim assessment strategies.⁴ Compelling reasons and good cause exist to

³ The fact that none of the information contained in the Appendix is necessary to resolve the legal issue pending before the Court provides additional support for the Court sealing portions of the Appendix.

⁴ As set forth in Dr. Trant's Index to the Appendix, these documents would include *inter alia* Exhibits 2, 3, 4, 5, 11, 14, 15, 16, 19, and 21.

keep this information private. As an insurance company specializing in medical malpractice defense, MagMutual draws on decades of experience and compilation of internal data to assist in its assessment of pending litigation. MagMutual also utilizes a proprietary predictive claims analysis to evaluate cases and help develop litigation strategy. The documents contained in the Appendix demonstrate the internal processes and pertinent information MagMutual uses to evaluate claims, and MagMutual does not disclose this information to the general public. This information, if left unprotected, would be harmful to MagMutual's business operations as other insurance companies in the medical malpractice business or other insurance companies wanting to start afresh in the medical malpractice insurance business could use this information to compete against MagMutual. This Court has already recognized such information is deserving of restricted access. *See Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 10, 630 S.E.2d 464, 469 (2006) (explaining public access to court records may be restricted in situations involving trade secrets); *see also Pulse Electronics, Inc. v. U.D. Electronic Corp.*, 530 F. Supp. 3d 988 (S.D. Cal. Mar. 31, 2021).⁵

Additionally, as to those documents MagMutual considers to be confidential so long as the Underlying Case is not final, there are numerous deposition transcripts and communications between defense counsel, adjusters, clients, etc. that discuss legal analysis, strengths, weaknesses, and defense strategy with respect to the Underlying Case.⁶ These documents fall under attorney

⁵ With respect to the specific Rule 41.1, SCRCF factors, all favor the sealing of this information in this situation. Of importance, this is a narrow dispute between Dr. Trant and MagMutual. The information contained in these documents is information that MagMutual has the expectation of privacy and disclosure of this information would cause legitimate harm to its business operations. Sealing these documents is the only way to protect MagMutual's legitimate private interests.

⁶ As set forth in Dr. Trant's Index to the Appendix, these documents would include *inter alia* Exhibits A, B, 7, 8, 10, 12, 13, 16, 20, 22, 23, 24, 25, 26, 27, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63.

client privilege and/or attorney work product protections. As discussed in prior briefing with respect to substantial prejudice, access to those documents from the Underlying Case and from this case could negatively impact the appeal and/or a potential future trial of the Underlying Case. The factors discussed in Rule 41.1 envision situations like this and favor the sealing of this information. Although these documents should remain confidential at present, after the Underlying Case becomes final, MagMutual would agree that confidential designation would no longer be required.

In summary, MagMutual has no objection to the Court considering Dr. Trant's Appendix *in camera*. MagMutual would however oppose those documents referenced herein, especially those already marked "Confidential" in discovery, from being made available to the public. Those documents should be sealed.⁷

(signature page to follow)

⁷ Because Dr. Trant did not take a firm position in his motion as to whether these documents should be sealed or unsealed, MagMutual would object to him taking a clear antagonistic position in reply and foreclosing MagMutual's opportunity to respond to those arguments.

Respectfully submitted,

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