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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2019-001488

RECEIVED
MAY 18 2020
SC Court of Appeals

MB Hutson/MB Hudson, ... Appellant,

v.

Penn America Insurance Company,
Global Indemnity Group, Inc.,
Timothy J. Newton, Esq., J.R. Murphy, Esq.,
John Doe #1, John Doe #2, ... Respondents.

**RESPONDENTS PENN AMERICA INSURANCE COMPANY
AND GLOBAL INDEMNITY GROUP, INC.'S
RESPONSE IN OPPOSITION TO APPELLANT'S MOTION TO EXCEED PAGE LIMITS
AND
MOTION TO STRIKE APPELLANT'S INITIAL "REPLY BRIEF"**

COMES NOW Respondents Penn America Insurance Company and Global Indemnity Group, Inc. (collectively "Respondents PAIC"), by and through their undersigned counsel, pursuant to Rule 240, SCACR, and file this response in Opposition to Appellant's "Motion to Allow Appellant to Exceed Response Length by Five Pages" and move to Strike Appellant's Initial "Reply Brief" entitled "Appellant's Response to (Penn America, et al.) Respondent's Initial Brief," served on May 4, 2020, and in support thereof states the following:

Background/Introduction

This appeal arises from the trial court's grant of summary judgment in favor of Respondents based upon the voluminous motions, memoranda, and exhibits, and following a hearing on the motions. Respondents PAIC issued a Commercial General Liability Policy to their named insured, BWR, Inc. d/b/a Big Water Resort, for which Appellant Hutson was a corporate officer. In late 2010, Appellant entered into a Lease Purchase Agreement with TLC Holdings, LLC, for the land on which the Big Water Resort was located and a Membership Interest Purchase Agreement making him to sole member of Big Water Resort, LLC. In 2011, an ejectment action ensued against Appellant, wherein Appellant asserted counterclaims alleging fraud in the original transaction. The parties reached a Settlement Agreement and a Consent Order was entered in 2012. However, Appellant was ultimately evicted in 2014 based upon a finding he defaulted under the terms the settlement agreement, resulting in the automatic termination of the Lease Purchase Agreement. (See TLC Holdings, LLC v. M.B. Hudson a/k/a M.B. Hutson, Case No. 11-CP-14-602).

Appellant was subsequently sued in two separate but related lawsuits, one in South Carolina federal court and one in South Carolina state court. The federal court litigation was class action brought by members of the Big Water Resort campground against TLC Holdings, in which Appellant was sued under a third-party claim for equitable indemnity. (See Big Water Resort, LLC, et al. v. TLC Holdings, LLC, C/A: 2:14-1583-DCN-MGB). The state court litigation was a defamation action by TLC Holdings against Hutson arising from postcards he allegedly sent to members of the campground. (See TLC Holdings, LLC, et al. v. M.B. Hudson a/k/a M.B. Hutson, Case No. 2015-CP-14-0615). Respondents PAIC provided Appellant with a defense in both

actions, subject to a full reservation of rights, but ultimately resolved both lawsuits within the policy limits and with no personal exposure to Appellant.

Nonetheless, Appellant filed the instant lawsuit against Respondents PAIC and their coverage counsel, Respondents Tim Newton and J.R. Murphy, asserting a variety of claims in contract and tort. Appellant complains that the insurer did not pursue his counterclaims against TLC Holdings, which he instead pursued *pro se* and lost, or otherwise undertake an independent action to set aside the 2012 Consent Order. Judge Nettles granted the Respondents' respective dispositive motions by Orders entered July 18, 2019, from which Appellant appealed.

Appellant filed his Initial Brief of Appellant in this matter on March 3, 2020. Respondents PAIC filed their Initial Brief of Respondent in this matter on April 23, 2020. On May 4, 2020, Appellant served a copy of a 30-page filing, entitled "Appellant's Response to (Penn America, et al.) Respondent's Initial Brief," which is the subject of this motion to strike.¹ Also on May 4, 2020, Appellant served a "Motion to Allow Appellant to Exceed Response Length by Five Pages," requesting either that the Court approve his exceeding the page limit for his response by five pages or permit him an opportunity to reduce his response by five pages.

Discussion

"The South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State." Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992). "A **pro se** litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law." State v. Burton, 356 S.C. 259, 265, n. 5, 589 S.E.2d 6,

¹ Respondents Timothy Newton and J.R. Murphy are *pro se* and filed a separate, joint initial brief. On April 27, 2020, Appellant served a Response to the Newton/Murphy brief, which is not the subject of this motion.

9 n. 5 (2003). While technical rules are often applied with “much less stringency,” “established rules of procedure are not to be discarded, either in the trial court or on appeal, merely because the defendant has been his own lawyer.” State v. Hollman, 232 S.C. 489, 498, 102 S.E.2d 873, 877 (1958), overruled on other grounds by Stevenson v. State, 335 S.C. 193, 516 S.E.2d 434 (1999).

Upon review of Appellant’s May 4, 2020 filing, Respondents PAIC noted the following irregularities and failures to comply with the South Carolina Appellate Court Rules:

- a. Appellant’s filing is titled “Appellant’s Response to (Penn America, et al.) Respondent’s Initial Brief.” This is not the title of a filing contemplated under Rule 208, SCACR, which provides for the filing of a Reply Brief.
- b. Appellant’s filing fails include a table of contents with page references, as is required for reply briefs pursuant to Rule 208(b)(3), SCACR.
- c. Appellant’s filing fails include a table of authorities with reference to the pages where they are cited, as is required for reply briefs pursuant to Rule 208(b)(3), SCACR.
- d. Appellant’s filing fails include references to the Record, as is required for all briefs pursuant to Rule 208(b)(4), SCACR.
- e. Appellant’s filing fails to comply with the format requirements of Rule 268, SCACR.

Additionally, Appellant’s filing exceeds the 25-page limit on Reply Briefs provided in Rule 208(b)(5), SCACR. While Appellant filed a contemporaneous motion to exceed the page limit, his motion sets forth no basis for granting the motion or certification that Appellant first attempted to draft his filing in compliance with the page limits. The content of Appellant’s response is primarily a regurgitation of matters previously set forth in his Initial Brief, in addition to improper

assertions and arguments, as discussed *infra*. Accordingly, Appellant's motion to exceed the page limits should be denied and his "Reply Brief" should be stricken in its entirety.

In addition to these significant failures to comply with the Rules, Appellant's filing raises an issue for the first time in reply and asserts facts not supported by any evidence designated to be included in the Record on Appeal. See Glasscock, Inc. v. U.S. Fid. & Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 692 (Ct. App. 2001) ("[A]n argument made in a reply brief cannot present an issue to the appellate court if it was not addressed in the initial brief."); Rule 208(b)(4), SCACR ("The brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged."). Specifically, Respondents PAIC move to strike the following from Appellant's May 4, 2020 filing:²

a. On pages 12: "This is yet another reason why this case should have complete discovery...."; and on page 29: "Appellant cannot complete his preparations for trial without discovery." To the extent this is an attempt to assert a defense under Rule 56(f), SCRCF, no such argument was presented to the trial court and no such issue was raised in Appellant's initial brief.

b. On page 2: "Respondents, nevertheless, chose to assure Appellant that they would represent him while actually respondents were choosing to cooperate with TLC Holdings, LLC's attorneys in lawsuits against Appellant. This collaboration was only realized by this Appellant when that collaboration became so overt in the defamation trial that the Judge even stated aloud in court that he had 'never seen "opposing" attorneys get along so well together in all his years as a

² Though Respondents PAIC focus narrowly on these new assertions, Appellant's filings in the trial court and this court are rife with errors, contradictions, and misrepresentations, the most serious of which are addressed in Respondents PAIC's brief.

judge.” These assertions are made for the first time on reply and without evidence in the Record to support them.

c. On page 3, alpha-numeral b: “[Respondents] informed Appellant that if her failed to appear for the Jury trial his coverage would be denied... and that this Appellant’s case would never be heard during the jury trial or any other hearing until the extrinsic fraud was addressed.” These assertions are made for the first time on reply and without evidence in the Record to support them.

d. On page 6, numeral 4: “Respondents cause this Appellant... not to be compensated for the mental stress and loss of years suffered with extreme depression directly due to those exorbitant long-term financial losses and humiliation, to the point of seriously considering suicide, resulting, instead, by Appellant having sought medical assistance and was subsequently referred to a psychiatrist due to the severe depression.” These assertions are made for the first time on reply and without evidence in the Record to support them.

e. On page 8: “[A]nd where the Judge presiding was openly amazed at the collaboration between the attorneys representing the TLC Holdings, LLC and this Appellant. Laura Paton and other attorneys, formerly engaged by Penn America were not present then. One can only ask why the changes, except perhaps there are some lawyers out there with ethics who would not play Penn America’s game.” These assertions are made for the first time on reply and without evidence in the Record to support them.

f. On page 9: “Respondents always assured Appellant of positive results....” This assertion is made for the first time on reply and without evidence in the Record to support it.

g. On page 29, “Instead, all respondents acted as if Appellant had a chance to win his cases in order to negotiate restitution.” This assertion is made for the first time on reply and without evidence in the Record to support it.

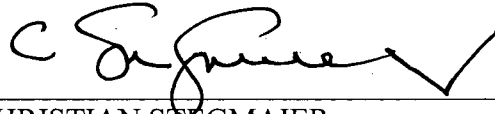
Accordingly, to the extent Appellant’s filing is not stricken in its entirety or leave is granted to file an Amended Reply Brief, these portions of the filing should be stricken. Appellant should also be required to properly title his filing and otherwise comply with the South Carolina Appellate Court Rules.

Conclusion

Based upon the foregoing, Respondents PAIC respectfully requests that this Honorable Court (1) deny Appellant’s motion to exceed the page limit for reply briefs, and (2) grant Respondents PAIC motion to strike Appellant’s “Reply Brief” served on May 4, 2020.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,
COLLINS & LACY, P.C.



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ATTORNEYS FOR RESPONDENTS PENN
AMERICA INSURANCE COMPANY AND
GLOBAL INDEMNITY GROUP, INC.

**RESPONDENTS PENN AMERICA
INSURANCE COMPANY AND GLOBAL
INDEMNITY GROUP, INC.'S RESPONSE
IN OPPOSITION TO APPELLANT'S
MOTION TO EXCEED PAGE LIMITS
AND MOTION TO STRIKE
APPELLANT'S INITIAL "REPLY BRIEF"**

Columbia, South Carolina
May 14, 2020

CERTIFICATE OF SERVICE

I, the undersigned, attorney for Respondents Penn America Insurance Company and Global Indemnity Group, Inc., do hereby certify that I have this date served the foregoing RESPONDENTS PENN AMERICA INSURANCE COMPANY AND GLOBAL INDEMNITY GROUP, INC.'S RESPONSE IN OPPOSITION TO APPELLANT'S MOTION TO EXCEED PAGE LIMITS AND MOTION TO STRIKE APPELLANT'S INITIAL "REPLY BRIEF" by causing the same to be deposited in a United States Postal Service mailbox, postage prepaid, addressed to the following:

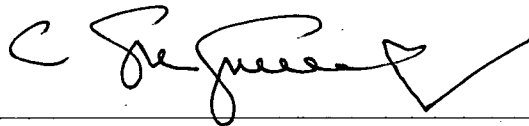
MB Hutson/MB Hudson
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ATTORNEYS FOR RESPONDENTS PENN
AMERICA INSURANCE COMPANY AND
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Dated: May 14, 2020



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May 14, 2020

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SC Court of Appeals

VIA UNITED STATES MAIL

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: MB Hutson/MB Hudson v. Penn America Insurance Company, Global Indemnity Group, Inc., Timothy J. Newton, Esq., J.R. Murphy, Esq., John Doe #1, and John Doe #2
Appellate Case No. 2019-001488
Claim No. 16011284
C&L File No. 000774-01021

Dear Ms. Kitchings:

Please find enclosed for filing the unbound original and one (1) copy of *Respondents Penn America Insurance Company and Global Indemnity Group, Inc.'s Response in Opposition to Appellant's Motion to Exceed Page Limits and Motion to Strike Appellant's Initial "Reply Brief"* in the above referenced matter. Also enclosed is our firm's check in the amount of \$50.00, representing the filing fee of same. Please file the original and return a clocked copy of same in an envelope provided for your convenience.

Pursuant to the Supreme Court's Order "re: Operation of the Appellate Courts During the Coronavirus Emergency" (2020-03-20-01), no additional copies are being provided. If any additional copies are required, please let us know.

By copy of this letter and enclosure, we are serving same on all parties.

Thank you for your time and attention. Should you have any questions or concerns, please do not hesitate to contact us.

Respectfully,

Christian Stegmaier

CS/net
Encl.

The Honorable Jenny A. Kitchings

May 14, 2020

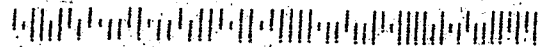
Page 2

cc (via U.S. Mail and email):

M. B. Hutson, Appellant *pro Se*

John Robert Murphy, Esquire, Murphy & Grantland, P.A.

Tim Newton, Esquire, Murphy and Grantland, PA



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