

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2018-CP-400-6344

Appellate Case # 2019-001488

MB Hutson/ MB Hudson

Appellant.

v.

Penn America Insurance Company,
Global Indemnity Group, Inc.,
Timothy J. Newton, Esq. and
J. R. Murphy, Esq., John Doe #1 and
John Doe #2APP-PA et al. Emergency Motion.doc

Respondents.

**APPELLATE’S EMERGENCY MOTION TO HAVE OPEN HEARING DUE TO
RESPONDENTS COMMITTING EXTRINSIC FRAUD ON THE SOUTH
CAROLINA COURT OF APPEALS AND ITS JUDGES**

The United States Court of Appeals for the Sixth Circuit has delineated five (5) elements of conduct that constitute extrinsic fraud upon the court:

1. “On the part of an officer of the court;”
2. “That is directed to the ‘judicial machinery’ itself;”
3. “That is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth;”

RECEIVED
JUL 06 2020
SC Court of Appeals

4. "That is a positive averment or is concealment when one is under a duty to disclose;" and
5. "That deceives the court."

--Demjanjuk v. Petrovsky, 10 F.3d 338, 348 (6th Cir. 1993)

Appellant makes this EMERGENCY MOTION due the fact that Respondents Tim Newton, J R Murphy and Christian Stegmaier, Esq. as attorney for the respondent insurance companies, are actively perpetrating extrinsic fraud against the Honorable Appeals Court and the Honorable Judges. Such extrinsic fraud and concealment disgraces and damages the Honorable Court system and is a direct attack to prevent justice for this Appellant. In addition, extrinsic fraud creates irreparable harm to both the Court and Honorable Judges including irreparable harm to the Appellant. This motion is time sensitive due to the fact that this fraud is active and prevents Appellant the opportunity from his case being heard and believed. These Respondents are licensed in the State of South Carolina and each took an oath (required by the South Carolina Appellate Court Rule 402 K). Appellant lists evidence below that shows Respondent's (including Christian Stegmaier, Esq.) are actively carrying out extrinsic fraud upon the Honorable Appellate Court, as they did formerly on the lower court with Judge Nettles, by actively plotting against this Appellant's cry to be heard in order to protect themselves from professional and financial repercussions for their breaking the professional oath and the SC Rules for Professional Conduct:

1. Respondents Tim Newton, Esq., J R Murphy, Esq. and Christian Stegmaier, Esq. for Penn America Insurance Company / Global Indemnity Group, Inc. *all* had copies of attorney Laura Paton's filing prepared on August

8, 2016, who was hired by Penn America and Global Indemnity Group to represent Appellant, in a Counter Complaint against TLC Holdings, LLC, in favor of Appellant which clearly outlined the depth of the underlying fraud and extrinsic fraud upon the courts. Respondents engaged and paid attorney Paton to zealously investigate, develop a defense for and represent this Appellant in SC State Court. Paton stated that she prepared the attached document based on her investigation and her review of all contracts, paperwork and legal records. Her attached document clearly shows in detail that TLC Holdings, LLC's attorneys committed the initial and underlying extrinsic fraud. Respondents Newton and Murphy filed a complaint to terminate Appellant's insurance in the middle of the Federal Court suit that reflects their blatant efforts to distance themselves from the underlying fraud and possible subsequent litigations. Laura Paton, Esq. (SC) and Frank Gordon, Esq. (NC) were both then hired by the insurance companies to represent this Appellant against TLC Holdings, LLC in SC state court. The insurance companies and all the attorneys then knew of the underlying Extrinsic Fraud. Yet, they allowed the extrinsic fraud to go undisclosed to the court systems. At that point, Respondents had an "insured" (this Appellant) being sued by attorneys who orchestrated and perpetrated the original Extrinsic Fraud upon the Court. Since this Appellant's attorneys and insurance companies (Respondents in this Appellate case) did not choose the professional and ethical action of disclosing the crime of Extrinsic Fraud by fellow attorneys, they consequently lost all the cases which were against this Appellant. This left Appellant with a \$3.5M judgment and

millions in losses. At that time, Appellant was unaware of the fraud that had been discovered by these Respondents. Through the original Extrinsic Fraud, TLC Holdings' attorneys had purposefully and without disclosure, trapped Appellant into becoming responsible for \$22M and other damages.

Respondent Tim Newton, Esq. openly admitted to Appellant that he, and the insurance companies which he represented (Respondents), had become fully aware of that underlying fraud through their investigations and studying the documents. Respondents, however, refused to expose the fraud and the extrinsic fraud carried out by TLC Holdings' attorneys in the courts which was not only illegal, but prevented the various judges from ruling properly and with justice because they were unaware of and never heard the undisclosed parties' voice, the original extrinsic fraud carried out by TLC Holdings, LLC and their attorneys. Laura Paton (hired by Penn America and Global Indemnity prepared and typed this attached response based on her professional and personal investigation. She then emailed it to Appellant to electronically execute the same for filing, which she filed.

2. All Respondents were aware that Tim Newton, Esq. (who represented Penn America and Global Indemnity at that time) wrote the attached sixteen (16) paragraph letter (herein attached) written by Newton on August 13, 2018, to Appellant. Respondent Newton fully understood what he was writing, which was to advise and equip Appellant to file a lawsuit against those entities which he (Newton) was about to negotiate a settlement with on behalf of the Insurance Companies. In that email, Respondent Newton even

sites case law that he had researched (see item16) regarding *Chewning v. Ford Motor Co.*, 354 S.C. 72, 579 S.E. 2d 605 (2003), adding at the bottom of the 16 paragraph letter, "*If you need the documents supporting the above, let me know*". The letter speaks for itself clearly outlining that Newton, who was counsel for Penn America and Global Indemnity, knew or should have known, of the extrinsic fraud of which such fraud is required to be disclosed and reported to the tribunal legal department by all attorneys.

"It hard to see why TLC and its lawyers should not have, in good faith, simply told you (and the court) that the Big Water Resort property was undevelopable because it was already obligated to double lifetime memberships as a private club. It appears that could easily have averted the entire fiasco. Since attorneys were involved, and it resulted in your inability to present your case in court, and possibly led to the sanctions order and judgment against you, there might possibly be extrinsic fraud on the court to support setting aside the Consent Order. See Chewning v. Ford Motor Co. 354 S.C. 72, 579 S. E. 2d 605 (2003). However, that is something you would have to follow up with on your own. I can't undertake that. Possibly Frank could file a motion if Penn-America approves it, but he and I both have agreed to put everything on hold until the mediation".

3. When Appellant informed Newton (who was then still representing the insurance companies) that he was going to expose the 16 point letter to Penn America (now also a Respondent), Newton threatened to sue Appellant. Newton also stated that if Appellant did show his 16 point letter to the Insurance Company or any other party, "Appellant would not be or could not be a Christian". In a later conversation, Newton stated that if Appellant did expose the letter "*It would be like throwing me under the bus.*" Shortly after the letter was exposed to the Insurance Companies, Penn America and Global fired Respondents Newton and Murphy (Murphy & Grantland). Thus, Christian Stegmaier, Esq. of Collins and Lacy P.C. became counsel for Penn America / Global Indemnity. After now

having received information, documents and other real evidence, Stegmaier has admittedly had many discussions with Newton and Murphy, who willfully are violating and continuing to violate SCRCF Rules. Never has anyone ever written a letter to Appellant advising him that even though Appellant is the insured, Penn America and Global made the decision not to defend Appellant in order to remove the extrinsic fraud and consequently, Appellant would be irreparably harmed and destroyed due to a business decision to overlook the extrinsic fraud.

SCRCF Rule 4.1 Truthfulness In Statements to Others

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person;*
or
- (b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.*

Respondents were aware of Appellant's suffering and the impending doom and irreparable harm to Appellant should they choose not to expose the underlying Extrinsic Fraud when they discovered it, yet they chose NOT to defend insured, Appellant, as the attached case law clearly sets a precedent for them so to do. Respondents Newton, Murphy, Penn America and Global Indemnity simply elected not to defend *while fully understanding* that if Respondents did not defend Appellant, by exposing the Extrinsic Fraud enacted against him, it would doom Appellant. Respondents chose to protect the perpetrators, "fellow attorneys" and merely engage in "a fake show of representing this Appellant," i.e. they pretended to represent Appellant while ignoring their professional and moral responsibility to expose the underlying Extrinsic Fraud they discovered . By

choosing to conceal the crime, rather than expose it, these Respondents became equally guilty of the Extrinsic Fraud. Their engagement therein remains active to this day and upon this Honorable Appellate Court. Respondents had a moral and legal obligation to inform Appellant that Penn America, et. al., Appellant's insurance company(s), had simply *made a business decision not to defend* (to get this case off their books) Appellant although they were required to --by law--, *nor did any of the Respondents advise Appellant that due to their joint decision not to defend Appellant, he would be ruined despite Appellant having had paid all premiums for full protection.* See: Discovered and cited by Respondent Newton in his 16 point letter of August 13, 2018, received by Appellant via email (and attached). *Not one* of the Respondents had the courage to advise the Appellant that his doom was going to be directly and consequentially caused by the Insurance company(s) choosing not to defend/disclose the underlying Extrinsic Fraud. All Respondents understood that they could be hauled into court as a result of their supporting TLC's attorneys' Extrinsic Fraud. Nevertheless, they chose to take the risk and become part and parcel to the Extrinsic Fraud: *they were each, and thereby all, concealing critical, criminal information from the Courts* while fully understanding the fatal consequences to the insured, this Appellant. Respondents pretended that they were defending the Appellant. However, they knew full well they would never win. Their farce continues to this day and in this honorable Appellate court. The Respondents still refuse to disclose to the Appeals Court that they orchestrated a mission to hush all knowledge about the fraud initiated by their fellow attorneys and that they "professionally" concealed that truth as they appeared before

many Circuit, State, and now Appellate Judges. Respondents concealed the attorney plotted and executed plan against Appellant in the courts.

3. On October 23, 2018, Appellant writes the attached letter to the mediator (Bill Lyles) located in Charleston, South Carolina, putting him on notice regarding the extrinsic fraud and copied Tim Newton. Appellant is told at that time to stay away from any settlement. At this point, all Respondents had full knowledge of the extrinsic fraud yet simply looked the other way and took steps to prohibit the Appellant/insured from interfering. Appellant, who should have won all of his cases, instead, found himself at the hands of the Respondents as he remained the victim of the on-going Extrinsic Fraud. These Respondents, by their avoidance of duty, became part and parcel of the fraud's proliferation. It continues now, even in this Appellate Court! Respondents have concealed these facts to protect fellow attorneys, prevent legal punishment on the attorney group(s) and thereby cementing Appellant's losses in court and making Appellant their sacrifice on the bloody alter of self pride and the perpetuation of fraud to protect fellow attorneys. Appellant has filed an official complaint with the South Carolina Bar. The Bar wrote back and said they would wait to see what the Court was going to do or act upon prior to them taking any actions. Now it is up to the Appellate Court:

Appellant asks that the Honorable Appeals Court:

1. set down a live hearing requiring the Appellant, Tim Newton, JR Murphy and Christian Steigmaier be sworn in and allow Appellant and Judges to examine each individual. Hopefully, this action may

encourage the lawyers to tell the truth and no longer conceal pertinent information, bringing this case to an end, as all courts carry the responsibility to require lawyers to be truthful and faithful to their oath;

2. order a stay all other Appellate actions or pending actions regarding this case until this EMERGENCY MOTION can be heard and ruled on;
3. Take a bold stand to not only prevent this extrinsic fraud from continuing, but also send a message through the legal system, and in fact, throughout the country that the ethics outlined in the SCRCP (for South Carolinians) and other professional national and state standards are for ALL attorneys to adhere to. Courts cannot administer justice when officers of the Court are committing extrinsic fraud inside the Courts and placing pleadings in the United States mail to the Honorable Appeals Court. Fraud is illegal and being pushed by the attorneys intentionally via the USPS is not at all acceptable in these United States. How can we expect law and order when those who oversee it do not?
4. Take immediate action to set examples for other lawyers. These lawyers should not carry a badge designating them as "Officer of the Court."

Appellant has provided sufficient evidence to fully establish these allegations.

July 1, 2020



M B Hutson, Pro Se
Post Office Box 2755
Orangeburg, South Carolina 29116-2755
(803) 308-2714

Respectfully submitted,

CARLOCK COPELAND & STAIR, LLP

By: Laura Paris Paton

Laura Paris Paton
S.C. Bar No.:74125
R. Michael Ethridge
S.C. Bar No.:16892
Matthew T. Hemingway
S.C. Bar No.: 101235
40 Calhoun Street, Suite 400
Charleston, SC 29401
843-727-0307
lpaton@carlockcopeland.com
methridge@carlockcopeland.com
mehemingway@carlockcopeland.com

Counsel for the DEFENSE ONLY of Defendant M.B. Hutson a/k/a M.B. Hudson

prepared by LAURA PATON August 8, 2016

**FURTHER RESPONDING AND AS COUNTER-CLAIMS AGAINST
TLC HOLDINGS, LLC, RICHARD CLARK, JIMMY S. LOVELL, AND JOHN DOE
CORPORATIONS**

40. Defendant Hutson reasserts and realleges its Answers and Defenses as if restated herein verbatim.

41. That the Court has jurisdiction over the parties and subject matter hereto as the allegations in the present Complaint and the Counter-Claims arise out of transactions regarding land and businesses located in Clarendon County, South Carolina.

42. That on or about 2010, Defendant Hutson was introduced to TLC Holdings, LLC's owners Richard Clark and Steve Lovell (hereinafter collectively TLC parties) by real

estate agent Susan Stroman for the purpose of purchasing the land at 5215 Dingle Pond Road, Summerton, SC (hereinafter “the property”).

43. That Richard Clark, Steve Lovell, with James Thigpen, owned and operated TLC Holdings, LLC.

44. That Richard Clark and Steve Lovell, with James Thigpen, owned and operated BWR.

45. That Richard Clark and Steve Lovell controlled, owned and operated other corporate entities, hereinafter referred to as “John Doe Corporations”, which were created to perform single purpose functions in order to effectuate the sole will of Messrs. Clark and Lovell.

46. That in or around December 2010, Defendant Hutson met with the TLC parties and advised the TLC parties that he sought to purchase the lake-front land at 5215 Dingle Pond Road, Summerton, SC, close the campground currently operating at the property, and develop water-front condominiums on the land.

47. That during the December 2010 meeting the TLC parties advised Defendant Hutson that the property was owned by TLC Holdings and the campground business was owned by Big Water Resort, LLC (“BWR”).

48. That during the December 2010 meeting the TLC parties advised Mr. Hutson that in order to purchase the land, he would be required to purchase BWR as well.

49. That during the December 2010 meeting the TLC parties advised Mr. Hutson that there was water and sewer adjacent to the property for development but failed to disclose the moratorium of approximately 5 years preventing development of the property.

50. That during the December 2010 meeting the TLC parties advised Mr. Hutson that BWR had no known debt.

51. That during or after the December 2010 meeting the TLC parties advised Mr. Hutson that BWR had an annual income of approximately \$200,000.00.

52. That during and after the December 2010 meeting, the TLC parties concealed BWR's \$300,000 annual losses.

53. That during the December 2010 meeting the TLC parties advised Mr. Hutson that BWR had no accounting records.

54. That during the December 2010 meeting the TLC parties advised Mr. Hutson that the value of BWR was \$500,000 and the value of the land at 5215 Dingle Pond Road, Summerton, SC was \$6 million.

55. That TLC parties and Mr. Hutson negotiated for Mr. Hutson to lease the land with the option to purchase in 12 months for \$6 million or 24 months for \$7 million.

56. That during the December 2010 meeting the TLC parties and Mr. Hutson discussed the length of the Lease Purchase Agreement so that Mr. Hutson would have sufficient time to secure the necessary permits to develop the property.

57. That prior to executing the Lease Purchase Agreement and the Membership Interest Purchase Agreement (hereinafter collectively “the Agreements” attached as Exhibits A and B), Mr. Hutson searched the property title record; no liens or encumbrances were found.

58. That prior to purchase by Mr. Hutson, the TLC parties negotiated with Black River Electric for underground power.

59. That prior to purchase by Mr. Hutson, the TLC parties received, but refused to pay, for the cost of installation of the underground power.

60. That prior to purchase by Mr. Hutson, the TLC parties did not disclose the outstanding bill for installation of underground power encumbering the land and BWR.

61. That subsequent to the December 2010 meeting, the TLC parties and Mr. Hutson executed the Membership Interest Purchase Agreement for BWR and a Lease Purchase Agreement for the property at 5215 Dingle Pond Road, Summerton, SC (hereinafter collectively “the Agreements”).

62. That the Membership Interest Purchase Agreement includes a representation by the TLC parties, “(T)here are no actions, suits, or proceedings either at law or equity ... or to the knowledge of the Sellers threatened.”

63. That the Membership Interest Purchase Agreement includes a representation by the TLC parties that, “Seller represents, warrants and covenants to Purchaser as follows: “(the business is) In compliance with all laws regulations and orders applicable to its business.”

64. That the Membership Interest Purchase Agreement includes a representation by the TLC parties representing that they had “good and marketable title to all of its properties and assets.”

65. That the Lease Purchase Agreement includes representations by the TLC parties ensuring that they have good and marketable title to the land at 5215 Dingle Pond Road, Summerton, SC.

FOR A FIRST CAUSE OF ACTION
(Fraud or, in the Alternative, Negligent Misrepresentation – Failure to Disclose Encumbrances on the Property as to the TLC Parties)

66. That prior to execution of the Agreements, the TLC parties knew that there were approximately 700 “Retail Membership Agreements” encumbering the property.

67. That prior to the execution of the Agreements, the TLC parties knew or should have known that the Retail Membership Agreements are timeshares subject pursuant to South Carolina code and subject to the recording requirements of Sections 27-32-10 through 27-32-250 of the 1976 Code are designated as Article 1 of Chapter 32, Title 27, and entitled 'Vacation Time Sharing Plans'."

68. That the TLC parties knowingly and / or negligently failed to disclose and / or concealed information that the Retail Membership Agreements provided that each holder: 1) a right to use campground facilities, and services solely for members recreational and enjoyment, (emphasis supplied), 2) this right to use the facilities ranges from 5 years up to two life times.

69. That the TLC parties advised Mr. Hutson that the Retail Membership Agreements could be terminated / divested such that he could proceed with development of the property.

70. That the TLC parties knowingly and / or negligently failed to record the timeshares encumbering the property as required by statute and, therefore, hid from disclosure the encumbrances upon the property prior to Defendant Hutson's execution of the Agreements.

71. That the TLC parties had a statutory duty to record the encumbrances pursuant to Sections 27-32-10 through 27-32-250 of the 1976 Code are designated as Article 1 of Chapter 32, Title 27, and entitled 'Vacation Time Sharing Plans'."

72. That Mr. Hutson and his attorney performed title searches with the Clarendon County Register of Deeds prior to purchase and no encumbrances as to the time shares were found.

73. That the TLC parties had a pecuniary interest in knowingly and / or negligently concealing the encumbrances on the property to induce Mr. Hutson to enter into the Agreements to secure a maximum profit to the TLC parties and to disgorge a failing business.

74. That as a result of the TLC parties actively, intentionally, knowingly, willfully, wantonly, recklessly, and / or negligently failing to record the timeshares encumbering the property, they knowingly and / or negligently concealed such encumbrances which require disclosure by statute and induced Mr. Hutson to enter into the Agreements.

75. That in relying on the fraudulent representations and / or negligent misrepresentations, Mr. Hutson did materially change his position entering into the Agreements without knowledge of the timeshares believing, as was represented by the TLC parties, that the property was unencumbered.

76. That, as a result of such fraudulent and / or negligent misrepresentations, Mr. Hutson has been damaged, and continues to be damaged, and has suffered pecuniary loss as a direct and proximate result of his reliance on the TLC parties representations.

77. Therefore, as a direct and proximate result of the TLC parties' actions, Mr. Hutson is entitled to actual, direct, consequential, incidental, special, and punitive damages as aforesaid, all in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of same or any other waiver or other limitation are null, void, unenforceable, and subject to rescission as a matter of law.

FOR A SECOND CAUSE OF ACTION
(Fraud, or in the Alternative, Negligent Misrepresentation – Material Misrepresentation as to Financial Position as to the TLC Parties)

78. That prior to execution of the Agreements, the TLC parties advised Mr. Hutson that the value of BWR was \$500,000 and the value of the land at 5215 Dingle Pond Road, Summerton, SC was \$6 million.

79. That prior to execution of the Agreements, the TLC parties advised Mr. Hutson that BWR had an annual income of approximately \$200,000.00.

80. That prior to execution of the Agreements, the TLC parties did not advise Mr. Hutson that BWR was operating at a substantial loss upwards of \$300,000 per year, outstripping its income.

81. That prior to execution of the Agreements, the TLC parties advised Mr. Hutson that BWR had no accounting records.

82. That prior to execution of the Agreements, the TLC parties knew that the operating expenses of BWR exceeded its income.

83. That prior to execution of the Agreements by Mr. Hutson, the TLC parties negotiated with Black River Electric for underground power.

84. That prior to execution of the Agreements by Mr. Hutson, the TLC parties received, but refused to pay, for the cost of installation of the underground power.

85. That prior to execution of the Agreements by Mr. Hutson, the TLC parties did not disclose the outstanding bill for installation of underground power encumbering the land and BWR.

86. That Mr. Hutson had a right to rely, and did rely, on the various representations of the TLC parties' as to the condition of their business and its encumbrances, including, but not limited to, those representations expressly outlined in the Agreements signed by the TLC parties.

87. That the TLC parties actively, intentionally, willfully, wantonly, recklessly, and / or negligently misrepresented and / or concealed the financial condition, including, but not limited to, the operating costs and expenses of BWR, to induce Mr. Hutson to purchase BWR and enter into the Agreements.

88. That the TLC parties actively, intentionally, willfully, wantonly, recklessly, and / or negligently misrepresented and / or concealed the financial condition, including, but not limited to, the annual income of BWR and accounting records of BWR, to induce Mr. Hutson to purchase BWR and enter into the Agreements.

89. That the TLC parties actively, intentionally, willfully, wantonly, recklessly, and / or negligently misrepresented and / or concealed the financial condition, including, but not limited to, the debt owed to Black River Electric, to induce Mr. Hutson to purchase BWR and enter into the Agreements.

90. That as a result of the TLC parties' intentional, active, willful, wonton, and / or reckless and / or negligent misrepresentations and / or concealments, inducing Mr. Hutson to enter into the Agreements, he has suffered irreparable harm including, but not limited to, significant financial harm.

91. Therefore, as a direct and proximate result of the TLC parties' actions, Mr. Hutson is entitled to actual, direct, consequential, incidental, special, and punitive damages as aforesaid, all in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of same or any other waiver or other limitation are null, void, unenforceable, and subject to rescission as a matter of law.

FOR A THIRD CAUSE OF ACTION
(Defamation / Libel Per Se as to the TLC parties)

92. That on or about April 3, 2014, the TLC parties wrote to the members of the Big Water Resort Campground the letter at Exhibit C.

93. That in their correspondence, the TLC parties included untrue statements impugning Mr. Hutson's performance as one-time owner of Big Water Resort.

94. That the TLC parties' correspondence was made with actual and / or implied malice and intended to degrade and reduce the character and / or reputation of Mr. Hutson to others.

95. That as a direct and proximate result of the TLC parties' actions, including, but not limited to, the malicious publication of libelous materials to the members of the Big Water Resort, Mr. Hutson is entitled to actual, direct, consequential, incidental, special, and punitive damages as aforesaid, all in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of same or any other waiver or other limitation are null, void, unenforceable, and subject to rescission as a matter of law.

AS A FOURTH CAUSE OF ACTION AGAINST THE TLC PARTIES
**(Breach of Contract Accompanied by a Fraudulent Act, or, in the alternative,
Breach of Contract)**

96. That the TLC entities and Defendant Hutson entered into the Agreements as outlined above.

97. That the Agreements contained certain provisions as outlined above including, but not limited to:

- a. Warranties as to good and marketable title to all its properties and assets;
- b. Seller represents, warrants and covenants to Purchaser as follows: . . . further, there are no actions, suits, or proceedings, either at law or equity . . . or to the knowledge of Sellers, threatened;
- c. Seller represents, warrants and covenants to Purchaser as follows: (e.) In compliance with all laws, regulation and orders applicable to its business"

98. That in breach of the afore mentioned Agreements, the TLC entities:

- a. Did not have marketable title and, in fact, such title was encumbered by timeshares;
- b. That a substantial outstanding debt was owed Black Water Electric which could lead to litigation;
- c. That the TLC entities failed to record timeshares as required by statute; and
- d. Other such breaches as may be determined.

99. This constitutes a breach of the Agreements with Mr. Hutson and accompanying this breach was the fraudulent acts:

- a. Knowingly failing to disclose the outstanding debts of BWR, including, but not limited to, Black Water Electric;
- b. Advising Mr. Hutson that no financial records were kept as to BWR to conceal the losses / financial condition of the company;
- c. Failing to record encumbrances required by statute as outlined above;
- d. Advising Mr. Hutson that the Retail Memberships could be divested to allow for development of the lakefront land as discussed; and,
- e. Other such concealments / misrepresentations as may be discovered.

100. The TLC entities either knew or should have known of said defects, all of which proximately caused the damage hereinabove and hereinafter described and entitles Mr. Hutson to punitive damages.

AS A FIFTH CAUSE OF ACTION AGAINST THE TLC PARTIES
(Violation of the South Carolina Unfair Trade Practices Act S.C. Code § 39-5-10, et seq.)

101. The TLC parties and the John Doe Corporations' creation of BWR and the subsequent offering and sale of BWR and the lease-purchase of the property, along with other representations to the holders of the Retail Membership Agreements in BWR, potential purchasers of BWR pre-dating Mr. Hutson's purchase, and the public at large, constituted the conduct of trade and commerce within the meaning of S.C. Code Section 39-5-20(a).

102. The TLC parties and the John Doe Corporations, and each of them, through their acts and omissions including, but not limited to, the following particulars, conducted unfair and deceptive practices within the meaning of S.C. Code Section 39-5-140(a) and 27-31-430, S.C. Code of Laws as amended:

- a) in failing to disclose the Vacation Time Shares encumbering the property;
- b) In failing to record the memberships as required pursuant to Sections 27-32-10 through 27-32-250 of the 1976 Code are designated as Article 1 of Chapter 32, Title 27, and entitled 'Vacation Time Sharing Plans';
- c) In failing to pay and subsequently hiding the debt owed to Black River Electric;
- d) in failing to provide any additional consideration for subsequent attempts to modify their agreement;
- e) in failing to properly disclose the true conditions of the business and properties at issue in the Agreements and putting them into the stream of commerce;
- f) in making false representations as to the condition of the business and properties at issue in the Agreements and/or representations as to the condition of the business and properties at issue in the Agreements in reckless disregard as to the truth of the representations; and
- g) In failing to analyze and preserve reserves for maintenance and operation of the business and concealing same.

103. The conduct of The TLC parties in their ownership and management of TLC Holdings, BWR, and the John Doe Corporations, as described above, was knowing and willful, and the TLC parties knew or should have known that such conduct was a violation of S.C. Code Section 39-5-20 and 27-31-430.

104. Mr. Hutson is a person within the meaning of S.C. Code Section 39-5-140(a) and has suffered actual, direct, and proximate damages as a direct and proximate result of unfair and deceptive acts of the TLC parties, in an amount to be determined by the trier of fact.

105. The aforesaid acts of the TLC parties impact the public interest in that they constituted unfair and deceptive acts and have the potential for repetition and, in fact, occurred at the execution of the Agreements and may continue to occur as the TLC entities engage in other enterprises related to the Retail Memberships and BWR and, as such, are acts which can, have and will affect the public at large by repetition.

106. These unfair and deceptive acts are acts which will affect members of the public, beyond the parties to the above-described transactions, in the form of other consumers who may be injured by purchasing new memberships or other such timeshare that the TLC parties and the John Doe Corporations offer on the land which, upon information and belief, those entities, and / or the amalgamated John Doe Corporations own and operate whereby placing members of the public in danger of harm.

107. Mr. Hutson is entitled to be compensated pursuant to S.C. Code Section 39-5-140(a) for the above-described actual, incidental, consequential, and special damages, as well as costs, interest, and attorney's fees, and to recover three (3) times these damages by reason of the knowing and willful nature of the unfair and deceptive acts by Defendants and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

AS A SIXTH CAUSE OF ACTION
(Amalgamation, Alter Ego Liability and Piercing the Corporate Veil as to the TLC Parties and the John Doe Corporations)

108. The TLC parties, by and through various instrumentalities and alter-egos and other companies to be named at a later date were the original developers and / or operators of BWR.

109. That the TLC parties, with their John Doe Corporations, combined and joined together through various instrumentalities, alter egos, and amalgamated entities, to facilitate to process of developing BWR, encumbering BWR with various debts, and concealing such debts from Mr. Hutson.

110. The TLC parties created and controlled numerous and various entities (hereinafter the John Doe Corporations) to be expressly named at a later date, for the sole purpose of the activities solely relating to development and sale of memberships related to BWR.

111. The TLC parties and the John Doe Corporations created and controlled these sham entities for the sole purpose of enabling it to transact a portion of its business under an alternate corporate guise and to avoid claims such as those set forth herein. These entities, and each of them, were merely a facade for the operations of Messrs. Lovell and Clark to achieve their financial goals and to perpetrate the activities more particularly described herein.

112. The subservient entities in fact manifested no separate interest of their own and that there was an amalgamation of corporate interests, entities, and activities so as to blur the legal distinction between The TLC parties and the John Doe Corporations and the sham corporations, shareholders, officers, agents, partners, employees, assets, and each of them.

113. The TLC parties created entities which were created to perform single purpose functions in order to effectuate the sole will of the TLC parties to perpetuate the acts described herein. Despite the creation of these sham entities and despite the sham entities appearing in name only on some contracts, letters, deeds, and/or other documents, the TLC parties and the John Doe Corporations actively and directly in the activities herein, and in fact put BWR in the stream of commerce.

114. The TLC parties and the John Doe Corporations created and controlled numerous and various John Doe Corporations / corporate entities for the sole purpose of the planning, development, design, construction, management, purchase, sale of memberships, and other activities solely relating to BWR as described more particularly herein.

115. The sham entities established by the TLC parties and / or the John Doe Corporations were and are characterized by one or more of the following: (1) being undercapitalized; (2) failing to observe corporate formalities; (3) failing to pay dividends; (4) Insolvency; (5) Lack(ed) proper records; (6) siphoning of funds by its members and/or affiliates; and (7) was used as a mere facade for the operation of the dominant shareholders, members, associates, and affiliates.

116. Upon information and belief, each shared the same mailing / emailing address, the TLC parties and the John Doe Corporations directly received payment and disbursed payment for obligations relating to the sham entities, the sham entities had no shareholders and/or officers of their own, no separation of accounting and bookkeeping functions, and/or the TLC parties and the John Doe Corporations directly contracted for the sham entities in the name of the TLC parties and the John Doe Corporations.

117. The TLC parties and the John Doe Corporations directed and oversaw the fraudulent / negligent actions described herein.

118. There would exist a broad element of injustice and fundamental unfairness if the acts of the TLC parties, including Messrs. Lovell, Clark, and TLC Holdings, LLC, and the John Doe Corporations, and each of them individually, were not regarded as the acts of one another.

119. At the time BWR and the Lease-Purchase Agreement were offered and placed into the stream of commerce by the TLC parties and the John Doe Corporations, the faulty defects and deficiencies heretofore described were hidden and concealed through the acts and omissions of the TLC parties and the John Doe Corporations.

120. That the TLC parties and the John Doe Corporations, knew or should have known of the existence of the said defects and deficiencies, which were unknown by and / or concealed from Mr. Hutson.

121. These hidden defects, including, but not limited to, defective, un-marketable title and outstanding and oppressive debts, which unbeknownst to Mr. Hutson, rendered the business and the Lease-Purchase Agreement undevelopable and worthless.

122. The resulting actual, incidental, consequential and special damages, and continue to do so through the date of this filing.

123. Mr. Hutson suffered damages and injuries when the TLC parties and the John Doe Corporations put BWR and the properties described in the Lease-Purchase Agreement into the stream of commerce and continue to be damaged and injured through the date of this filing.

124. As a direct and proximate result thereof, the TLC parties and the John Doe Corporations are liable to the Plaintiffs for actual, incidental, consequential, special and punitive damages, all in an amount to be determined by the trier of fact, and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

WHEREFORE, Defendant / Cross-Claimant Hutson respectfully request that this Honorable Court:

- a) Dismiss any and all claims filed by the TLC entities.
- b) Enter judgment in favor of the Defendant / Counter-Claimant Hutson and against all Plaintiffs jointly and severally, in an amount to be determined for actual, incidental, consequential, special, and punitive damages.

- c) Find that the TLC parties and their John Doe Corporations have engaged in unfair trade practices and knowingly did so thereby entitling Defendant / Counter-Claimant Hutson to treble damages.
- d) Award attorneys' fees and costs to the Defendant / Counter-Claimant Hutson; and
- e) Award such other and further relief as the Court may deem just and proper.

Respectfully submitted,

By: M.B. Hutson
M. B. Hutson, Pro Se as to Counter-Claims
803.308.2714

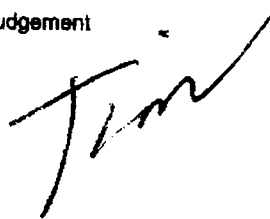


EXHIBIT 4.1

Fwd: Setting aside the Judgement

Mr. H <hmr226621@gmail.com>

👤 \$ Reply all ▾

Mon 8/13, 12:52 PM

ods06535cpc ▾

Inbox

This item will expire in 24 days. To keep this item longer, apply a different label.

Label: 30 days Delete CPC mailbox (1 month) Expires: 9/12/2018 12:52 PM

Begin forwarded message:

From: "Tim J. Newton" <tnewton@murphygrantland.com>

Date: August 13, 2018 at 10:49:58 AM EDT

To: "Mr. H" <hmr226621@gmail.com>

Subject: RE: **Setting aside the Judgement**

Mr. Hutson,

I need to remind you that I don't represent you and I can't represent you because I represent Penn-America. To the extent there is a common interest, I note the following:

1. Renee Roark testified at trial in the defamation action that you contacted her in October 2010 looking for waterfront property to develop.
2. Susan Stroman admitted at trial sending you an e-mail dated November 11, 2010 in which she indicated the campground could possibly be moved or the members bought out. However, she denied having said that on behalf of TLC.
3. The alleged lease between Big Water Resort, LLC and TLC Holdings, LLC, if it existed, was never recorded, although it was for a term of more than a year.
4. The membership agreements between the campground members and Big Water Resort, LLC were never recorded. Possibly they should have been, since they granted campground members a rights to use Big Water Resort, LLC's facilities for life plus the lifetime of a survivor. See S.C. Code s 27-33-30 (requiring "any . . . agreement for the use . . . of real estate" to be recorded).
5. There is some case law indicating lifetime memberships are for the duration of the club member, and can only be terminated for cause. Paul Gabrillis, Inc. v. Dahl, 154 Or. App. 388, 961 P.2d 865 (Or. Ct. App. 1998); Martin v. Town & Country Dev., Inc., 230 Cal. App. 422, 41 Cal. Rptr. 47 (Cal. Ct. App. 1964).

0 of 0

...

7. The Lease-Purchase Agreement pertains to all of TLC's property at the Big Water Resort site.
8. The Membership Interest Purchase Agreement in Big Water Resort, LLC does not specify what property is subject to the campground membership agreements.
9. The Settlement Agreement dated March 30, 2012 is between TLC Holdings, LLC (and its principals) and Hutson only. TLC is represented as the landlord, and Hutson is represented as the tenant. Big Water Resort, LLC and the campground members are not parties.
10. The Settlement Agreement, in para. 5, obligates Hutson to submit a Qualified Plat for a proposed subdivision "as shown on Exhibit 'A' attached hereto." There are provisions for an acreage release, and it appears the payments owed to TLC may be paid from the proceeds of the subdivision and sale of parcels of the property.
11. The copy of this Settlement Agreement that was made an exhibit at Hutson's bankruptcy deposition had two hand drawings immediately after the last page, which reads "Exhibit A." These drawings depict the approximate location of the proposed development as being on the campground parcel.
12. Despite the language in the Lease-Purchase Agreement and the Settlement Agreement that the subdivision and sale pertained to unimproved portions of the property, the letter that TLC's attorney Tom Harper submitted to the Clarendon County Planning Commission with TLC's approval depicts a development on the campground property.
13. The Consent Order filed April 13, 2012 incorporates the Settlement Agreement but does not otherwise mention Big Water Resort, LLC or the campground members. It reads as if it pertains to a mere landlord-tenant dispute.
14. Bonnie Youmans testified at trial (by way of her deposition) that she thought all of TLC's property was part of the Big Water Resort campground and she would have considered it a violation of the campground memberships to have developed condominiums on the campground property. This testimony was unopposed.
15. I can see how you could argue that the Consent Order is invalid because it attempts to adjudicate the rights of parties not before it. If you were ordered to develop property that was subject to lifetime use rights, that probably should have been brought to the court's attention. Furthermore, I can see how you could argue you did not realize you were being obligated to violate the rights of the campground members by developing since TLC never specified exactly which property was subject to the campground memberships.
- ★ { 16. It's hard to see why TLC and its lawyers should not have, in good faith, simply told you (and the court) that the Big Water Resort property was undevelopable because it was already obligated to double lifetime memberships as a private club. It appears that could easily have averted the entire fiasco. Since attorneys were involved, and it resulted in your inability to present your case in court, and possibly led to the sanctions order and judgment against you, there might possibly be extrinsic fraud on the court to support setting aside the Consent Order. See Chewing v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (2003).

However, that is something you would have to follow up with on your own. I can't undertake that. Possibly Frank could file a motion if Penn-America approves it, but he and I both have agreed to put everything on hold until the mediation.

I highly recommend that you get a lawyer involved, even if it's a pro bono lawyer. If you need the documents supporting the above, let me know.

Tim N.



...

M & G**Murphy & Grantland, P.A.**

Tim J. Newton, Esquire

tnewton@murphygrantland.com

Post Office Box 6648

Columbia, South Carolina 29260

803-782-4100 ext. 1242

803-454-1242 dd

803-782-4140 fax

www.murphygrantland.com

Please be advised that this e-mail and any files transmitted with it are confidential attorney client communications or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy, or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited.

From: Mr. H <hmr226621@gmail.com>**Sent:** Saturday, August 11, 2018 9:04 PM**To:** Tim J. Newton <tnewton@murphygrantland.com>**Subject:** Setting aside the Judgement

RULE 402

ADMISSION TO PRACTICE LAW

(Applicable to Applications for Admission Filed On or After August 1, 2016)¹

(a) Purpose. This rule provides for the admission of persons to practice law in South Carolina. A person admitted under this rule is eligible to be a regular member of the South Carolina Bar under Rule 410 of the South Carolina Appellate Court Rules. Other rules provide for the issuance of limited certificates of admission and pro hac vice admission in South Carolina.

(b) Definitions.

(1) ABA Approved Law School: A law school that was approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association at the time the degree was conferred. An approved law school includes a school that is provisionally approved by the Council.²

(2) Board of Law Examiners: The Board established by section (k) of this rule.

(3) Committee on Character and Fitness: The Committee established by section (l) of this rule.

(4) Existing UBE Score: A Uniform Bar Examination (UBE) score previously obtained in South Carolina or another jurisdiction.

(5) Filing: For the purposes of this rule, filing means:

(i) delivering the document to the Clerk of the Supreme Court;

(ii) depositing the document in the U.S. mail, properly addressed to the Clerk of the Supreme Court, with sufficient first class postage attached; or

(iii) uploading the document or information on the Bar Admissions page of the South Carolina Judicial Department Website to the extent that electronic filing is provided by that website.³

The date of filing shall be the date of delivery, the date of mailing, or the date of uploading.

(6) MPRE: The Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners.⁴

(7) Supreme Court: The Supreme Court of South Carolina.

(8) UBE: The Uniform Bar Examination prepared by the National Conference of Bar Examiners. The UBE is composed of the Multistate Performance Test (MPT), Multistate Essay Examination (MEE), and the Multistate Bar Examination (MBE), which are prepared by, given, and graded in accordance with the standards established by the National Conference of Bar Examiners.⁵

(c) Qualifications for Admission. Except as provided in section (j) below, no person shall be admitted to the practice of law under this rule unless the person:

(1) is at least twenty-one (21) years of age;

(2) is of good moral character;

(3) has received a JD or LLB degree from an ABA Approved Law School. An applicant who has applied to take the UBE in South Carolina and has not provided proof of graduation by July 10th

for the July UBE or February 10th for the February UBE shall not be allowed to sit for the examination. An applicant, however, who has not graduated may sit for the UBE in South Carolina if the law school certifies in writing that the applicant has completed all requirements for graduation by July 10th for the July examination or February 10th for the February examination; the applicant must provide proof of graduation by April 1st following the February examination or October 1st following the July examination;

(4) has been found qualified by a panel of the Committee on Character and Fitness;

(5) has received a score of 266 or higher on the UBE administered in South Carolina or any other jurisdiction. A UBE score that is more than three (3) years old may not be used to satisfy this requirement. For a UBE administered in February, this three (3) year period shall begin on March 1st following the examination. For a UBE administered in July, this three (3) year period shall begin on August 1st following the examination. Applications seeking admission based on an existing UBE score from another jurisdiction will not be accepted until May 1, 2017;

(6) has received a scaled score of at least seventy-seven (77) on the MPRE. This score must be from an administration of the MPRE that occurred within three (3) years of the date on which the application for admission is filed with the Clerk of the Supreme Court. While an application for admission can be filed without proof of completion of this requirement, applicants are warned that failure to timely submit proof of completion of this requirement can significantly delay admission as indicated by section (h)(2) of this rule;

(7) is not disbarred, suspended from the practice of law, or the subject of any pending disciplinary proceeding in another jurisdiction;

(8) has successfully completed a Course of Study on South Carolina Law. The content and method of delivery of this Course of Study shall be determined by the Board of Law Examiners. The Course of Study may not be taken prior to the filing of a complete application with the Clerk of the Supreme Court. Successful completion of the Course of Study may be used to satisfy the requirements of this rule for subsequent applications filed within three (3) years of the date of completion of the Course of Study. Applicants are warned that the failure to promptly complete this requirement can significantly delay admission as indicated by section (h)(2) of this rule; and

(9) has paid the fees required by this rule and taken the oath or affirmation specified by section (h)(3) of this rule.

(d) Application for Admission.

(1) Filing Application. Any person desiring to be admitted to practice law under this rule shall file an application for admission with the Clerk of the Supreme Court. The application form shall be approved by the Committee on Character and Fitness and shall be available on the Bar Admissions page of the South Carolina Judicial Department Website. An application will not be considered complete until both the fully completed application (along with any required attachments) and fee(s) are received by the Clerk of the Supreme Court. The application fees shall be paid by check or money order made payable to the Clerk of the Supreme Court.

(2) Applications for Admission Based on an Existing UBE Score. Applications based on an existing UBE Score (as defined in section (b) of this rule) will not be accepted for filing until May 1, 2017. On and after that date, these applications may be filed at any time. If based on a UBE Score from another jurisdiction, the applicant must have the score transferred to South Carolina by the National Conference of Bar Examiners.⁶

The non-refundable application fee shall be \$1,000. If the applicant has been admitted to practice law for more than one (1) year in another state, the District of Columbia, or another country at the time the application for admission is filed, the applicant shall pay an additional fee of \$750. If the application is withdrawn, the applicant shall not be entitled to a refund of the application fee(s) or to have the application fee(s) credited to a later application.

(3) Applications for Admission Where the Applicant Will Take the UBE in South Carolina. Applications for admission shall be accepted from December 1st to January 31st for the July UBE and from August 1st to September 30th for the February UBE for applicants who desire to take the UBE in South Carolina. The non-refundable application fee shall be:

(i) \$1,000 for applications filed from December 1st to January 10th or from August 1st to August 31st.

(ii) \$1,500 for applications filed during the remainder of the application periods. If the applicant has been admitted to practice law for more than one (1) year in another state, the District of Columbia, or another country at the time the application is filed, the applicant shall pay an additional fee of \$750. If the application is withdrawn or the applicant fails to sit for the examination, the applicant shall not be entitled to a refund of the application fee(s) or to have the application fee(s) credited to a later application.

An applicant taking the UBE in South Carolina must sit for all portions of the examination in South Carolina, and may not use scores from a previous examination to satisfy this requirement.

(4) Applicants Who Have Failed to Receive a Qualifying Score on Three or More Bar Examinations. An applicant who has failed to receive a qualifying score on three or more bar examinations shall not be eligible to sit for the UBE in South Carolina until at least one (1) year following the administration of the last bar examination resulting in a non-qualifying score. For the purpose of this provision, an applicant shall be treated as receiving a non-qualifying score on a bar examination if: (1) the applicant failed a bar examination in South Carolina prior to February 2017; or (2) the applicant sat for the UBE in this or any other jurisdiction and failed to receive a score of 266 or higher.

(5) Duty to Keep Application Current. Until admitted, an applicant is under a continuing obligation to keep the application for admission current and must update responses whenever there is an addition or a change to information previously filed with the Clerk of the Supreme Court. These updates must be filed with the Clerk of the Supreme Court along with all relevant documentation.

(6) Special Accommodations for Disabled Applicants. An applicant needing special accommodations for the administration of the UBE in South Carolina due to a disability shall submit a written request for such accommodations to the Board of Law Examiners. The procedure and forms to be used in making a written request shall be specified in the rules of the Board of Law Examiners.⁷ Unless the chair of the Board determines there is good cause to allow a late request, written requests for special accommodations must be submitted by November 1st for the February UBE and April 1st for the July UBE.

(e) False and Misleading Information. An applicant who knowingly provides false or misleading information in an application (to include any attachments to the application), document, or statement submitted or made to the Committee on Character and Fitness, the Board of Law

Examiners, or the staff of the Supreme Court shall be guilty of contempt of the Supreme Court and may be punished accordingly. For the purpose of this rule, false or misleading information shall include the knowing omission of material information by an applicant in the application (to include any attachments to the application) or in response to an inquiry by the Committee on Character and Fitness, the Board of Law Examiners or staff of the Supreme Court. Any allegation that an applicant has violated this section shall be investigated by the Committee on Character and Fitness using the procedures in sections (g) and (l)(5) of this rule. If it is determined that the applicant has violated this section, the Supreme Court may take such action as it deems appropriate. This may include, but is not limited to, finding the applicant in contempt, finding the applicant unfit for admission, prohibiting the applicant from using the results of the examination for admission, and/or preventing the applicant from reapplying for admission for up to five (5) years. Further, if the applicant has already been admitted, the Supreme Court may vacate the admission or discipline the lawyer under Rule 413 of the South Carolina Appellate Court Rules.

(f) Administration of the UBE in South Carolina.

(1) When Given. The UBE shall be administered twice each year on the last consecutive Tuesday and Wednesday in February and July. The MPT and MEE will be given on Tuesday, and the MBE will be given on Wednesday.

(2) Anonymous Grading; Prohibited Comments in Answer Sheets and Booklets. Applicants taking the UBE in South Carolina shall be assigned an identification number that shall be used for the purposes of taking and grading the examination. Except for the identification number and any other information the applicant may be directed to provide by those administering the examination, answer sheets or booklets for the examination shall contain no other information revealing the identity of the applicant. Any reference to the applicant's economic status, social standing, employment, personal hardship, or other extraneous information in the answer sheets or booklets is prohibited.

(3) Notification of Results. For applicants who take the UBE in South Carolina, the Clerk of the Supreme Court shall notify each applicant of the score received on the UBE and on the MBE. Additionally, the names of those receiving a score of 266 or higher on the UBE, and the identification numbers of those receiving a score of less than 266 on the UBE shall be posted on the Bar Admissions page of the South Carolina Judicial Department Website.

(4) Access to Examination Answers; Re-grading or Other Review. No applicant shall be given access to the answers the applicant submitted during a UBE taken in South Carolina. The results reported for the examination are final, and no applicant shall be allowed to seek re-grading or any other review of the results of the examination.

(5) Request for Verification of Multistate Bar Examination. While no review or inspection of the MBE will be permitted, an applicant who took the UBE in South Carolina may request a hand grading of the MBE. Any such request must be filed with the Clerk of the Supreme Court, along with the applicable fee, within fifteen (15) days of the date of the notification in (3) above.⁸

(6) Prohibited Contacts. An applicant shall not, either directly or through an agent, contact any member of the Board of Law Examiners or any member of the Supreme Court regarding the questions on any section of the examination, grading procedures, or an applicant's answers. This provision does not prohibit an applicant from seeking verification of the MBE score as permitted by (5) above.

(7) Cheating and Other Prohibited Acts. An applicant taking the UBE in South Carolina shall not:

(i) cheat or attempt to cheat on the UBE in South Carolina;

(ii) assist or attempt to assist another in cheating on the UBE in this or any other jurisdiction;

(iii) possess an item on the premises of the examination site or in the examination room if the possession of that item is prohibited by the Board of Law Examiners; or

(iv) remove or attempt to remove any testing material from the examination room or site.

Any allegation that an applicant has violated this section shall be investigated by the Committee on Character and Fitness using the procedures in sections (g) and (l)(5) of this rule. If it is determined that the applicant has violated this section, the Supreme Court may take such action as it deems appropriate. This may include, but is not limited to, finding the applicant unfit for admission, prohibiting the applicant from using the results of the examination for admission, and/or preventing the applicant from reapplying for admission for up to five (5) years. Further, if the applicant has already been admitted, the Supreme Court may vacate the admission or discipline the lawyer under Rule 413 of the South Carolina Appellate Court Rules. Finally, an applicant committing one of these prohibited acts shall be guilty of contempt of the Supreme Court and may be punished accordingly.

(g) Determination of Character and Fitness for Admission.

(1) Determination by Committee on Character and Fitness. The Committee on Character and Fitness shall consider the application and any further information it deems relevant to determine if the applicant has the requisite qualifications and character to be admitted to practice law in this state. The Committee shall notify the Clerk of the Supreme Court whether it finds the applicant qualified or unqualified and, if found to be unqualified, the Clerk shall notify the applicant of this finding. An applicant found to be unqualified shall not be allowed to sit for the UBE in South Carolina. If the Committee has not made a determination of the applicant's qualification by July 1st for the July examination or February 1st for the February examination, the applicant shall be allowed to sit for the examination, and the Committee shall make its determination after the examination is administered.

(2) Determination of Fitness of Certain Law Students. A student enrolled in an ABA Approved Law School who has a character problem that might disqualify the student from being admitted to practice law may have the matter resolved by filing a provisional application. The application shall be made on a form approved by the Committee on Character and Fitness and shall be filed in duplicate with the Clerk of the Supreme Court. Each request must be accompanied by a non-refundable fee of \$100. The Committee on Character and Fitness may begin an immediate investigation of the individual's character and shall promptly notify the individual of its determination. No adverse inference concerning an applicant's character and fitness shall be drawn because the applicant filed a provisional application, nor does the filing of a provisional application relieve an applicant from fully complying with the normal application process.

(3) Review by Supreme Court of Fitness Determination; Re-application. Any applicant dissatisfied with the determination of the Committee on Character and Fitness may petition the Supreme Court for review within fifteen (15) days of the date of the notification advising the applicant of the Committee's determination. The petition shall comply with the requirements of Rule 240 of the South Carolina Appellate Court Rules, to include the filing fee required by that

rule. An applicant who is found not to be qualified by the Committee or whose petition for review of the Committee's determination has been denied may not reapply for admission until two (2) years after the date of the notification advising the applicant of the Committee's determination.

(h) Admission.

(1) Admission Ceremonies. Admission ceremonies shall be conducted by the Supreme Court in February, May, September, and November. Applicants must have submitted proof of completion of all requirements for admission (see section (c) of this rule) at least ten (10) days prior to the scheduled date of the ceremony to participate in that ceremony. Applicants who take the February UBE in South Carolina are expected to have all requirements for admission completed for the May ceremony following the examination, and applicants who take the July UBE in South Carolina are expected to have all requirements for admission completed for the November ceremony following the examination. Applicants will be notified of the date and time of the admission ceremony.

(2) Special Admission Ceremonies. The Supreme Court may authorize an applicant to be admitted at a special admissions ceremony conducted before a justice, clerk or deputy clerk of the Court. An applicant seeking admission based on a bar examination administered in South Carolina must file a petition seeking to be admitted at a special ceremony. The petition must be based on a compelling circumstance such as illness or irreconcilable conflict which prevents the applicant from appearing at one of the ceremonies established in (1) above. Further, applicants who are ineligible to participate in one of the admission ceremonies established in (1) above due to their failure to timely submit proof of completion of the MPRE or the Course of Study on South Carolina Law are not eligible to be admitted at a special admission ceremony.

(3) Fee and Oath. To be admitted, the applicant must pay a fee of \$50 and take and subscribe the following oath or affirmation:

Lawyer's Oath

I do solemnly swear (or affirm) that:

I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been appointed, and that I will, to the best of my ability, discharge those duties and will preserve, protect, and defend the Constitution of this State and of the United States;

I will maintain the respect and courtesy due to courts of justice, judicial officers, and those who assist them;

To my clients, I pledge faithfulness, competence, diligence, good judgment, and prompt communication;

To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications;

I will not pursue or maintain any suit or proceeding which appears to me to be unjust nor maintain any defenses except those I believe to be honestly debatable under the law of the land, but this obligation shall not prevent me from defending a person charged with a crime;

I will employ for the purpose of maintaining the causes confided to me only such means as are consistent with trust and honor and the principles of professionalism, and will never seek to mislead an opposing party, the judge, or jury by a false statement of fact or law;

I will respect and preserve inviolate the confidences of my clients, and will accept no compensation in connection with a client's business except from the client or with the client's knowledge and approval;

I will maintain the dignity of the legal system and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will assist the defenseless or oppressed by ensuring that justice is available to all citizens and will not delay any person's cause for profit or malice;

[So help me God.]

The oath or affirmation shall be administered during the ceremony, and all persons admitted shall sign their names in a book, kept for that purpose, in the office of the Clerk of the Supreme Court.

(i) Failure to be Admitted.

(1) Applicants Seeking Admission Based on An Existing UBE Score. If an applicant seeking admission based on an existing UBE score (as defined in section (b) of this rule) is not admitted within one (1) year of the date of the filing of the application, the applicant must file a supplemental application with the Clerk of the Supreme Court. The supplemental application shall be on a form prescribed by the Committee on Character and Fitness, and the applicant may not be admitted to the South Carolina Bar unless the Committee on Character and Fitness makes a re-determination that the applicant is qualified. The filing shall be accompanied by a fee of \$250. Further, the application for admission (along with the supplemental application) shall be treated as being withdrawn if the applicant fails to be admitted within two (2) years of the date of the filing of the application.

(2) Applicants Taking the UBE in South Carolina. If an applicant taking the UBE in South Carolina is not admitted within one (1) year of the date of the notification advising the applicant that the applicant has received a qualifying score on the UBE for admission, the applicant must file a supplemental application with the Clerk of the Supreme Court. The supplemental application shall be on a form prescribed by the Committee on Character and Fitness, and the applicant may not be admitted to the South Carolina Bar unless the Committee on Character and Fitness makes a re-determination that the applicant is qualified. The filing shall be accompanied by a fee of \$250. Further, the application for admission (along with the supplemental application) shall be treated as being withdrawn if the applicant fails to be admitted within two (2) years of the date of the notification advising the applicant that the applicant has received a qualifying score on the UBE for admission.

(j) Admission of Certain Law Professors. A person serving as the Dean or as a tenured professor at the University of South Carolina School of Law or the Charleston School of Law may be admitted to practice law in this State without complying with the requirements of sections (c)(5) (qualifying UBE score), (c)(6) (qualifying MPRE scaled score), and (c)(8) (successful completion of Course of Study on South Carolina Law) of this rule if the Dean or professor:

(1) has been admitted to practice law in the highest court of another state or the District of Columbia for at least five (5) years;

(2) has been a full-time and continuous member of the faculty of the law school with the rank of assistant professor of law or higher for the previous three (3) or more complete academic years; and

(3) has been recommended for admission by the Dean of the law school, or in the case of the Dean, by the President of the University of South Carolina or the Chairman of the Board of Directors of the Charleston School of Law.

The application for admission shall be made on a form prescribed by the Committee on Character and Fitness, and shall be filed with the Clerk of the Supreme Court. The application shall be accompanied by a non-refundable application fee of \$1,000. The Dean or professor must comply with all other requirements of section (c) of this rule. If found qualified by the Committee on Character and Fitness, the Dean or professor shall be admitted upon taking the oath and paying the fee specified by section (h) of this rule.

(k) Board of Law Examiners.

(1) Members. The Board of Law Examiners shall consist of members of the South Carolina Bar who are actively engaged in the practice of law in South Carolina and who have been members of the South Carolina Bar for at least seven (7) years. Members of the bar who are inactive members, judicial members, military members, administrative law judge or workers' compensation commission members, retired members, or limited members shall not be appointed to the Board. The Board members shall be appointed by the Supreme Court for three (3) year terms and shall be eligible for reappointment. At least one member shall be appointed from each Congressional District. In case of a vacancy on the Board, the Supreme Court shall appoint a member of the South Carolina Bar to serve the remainder of the unexpired term.

(2) Chair; Secretary. The Supreme Court shall appoint a chair from among the members of the Board of Law Examiners. The Clerk of the Supreme Court shall serve as secretary of the Board ex officio.

(3) Duties. The Board of Law Examiners shall conduct the UBE in South Carolina. The Board shall be responsible for grading the MPT and the MEE portions of the examination. The Board shall develop a Course of Study on South Carolina Law that an applicant must successfully complete prior to being admitted under this rule. The content and method of delivery of this Course of Study shall be determined by the Board. The Board may promulgate rules and regulations including those relating to the accommodation of applicants with disabilities. These rules and regulations shall not become effective until at least ninety (90) days after they are approved by the Supreme Court.

(l) Committee on Character and Fitness.

(1) Members. The Committee on Character and Fitness shall consist of twelve (12) members of the South Carolina Bar who shall be appointed by the Supreme Court for five (5) year terms. Members of the bar who are inactive members, judicial members, military members, administrative law judge or workers' compensation commission members, retired members, or limited members shall not be appointed to the Committee. In case of a vacancy on the Committee, the Supreme Court shall appoint a member of the South Carolina Bar to serve the remainder of the unexpired term.

(2) Chair; Secretary. The Supreme Court shall appoint a chair and a secretary from among the members of the Committee on Character and Fitness.

(3) Panels and Meetings. The members shall be divided by the chair into panels composed of three (3) members. The chair may rotate membership on the panels, and may substitute members between panels. Panels shall meet when scheduled by the chair or the Committee, and the full Committee may meet to consider administrative matters. Meetings of the Committee other than periodic meetings may be called by the chair upon the chair's own motion and shall be called by the chair upon the written request of three members of the Committee.

(4) Quorum. A quorum for a meeting of the full Committee shall be seven (7) members, and a quorum for a panel shall be three (3) members.

(5) Duties. The Committee on Character and Fitness shall investigate and determine whether an applicant for admission possesses the qualifications prescribed by this rule as to age, legal education, and character. The applicant must establish to the reasonable satisfaction of a majority of a panel that the applicant is qualified. In conducting investigations, a panel may take and hear testimony, compel by subpoena the attendance of witnesses, and require the applicant to appear for a hearing before a panel or for a personal interview before a single member of the Committee. An applicant will not be denied admission by the Committee without being afforded the opportunity for a hearing before a panel. Any member of the Committee may administer oaths and issue subpoenas. The Committee may adopt rules that shall become effective upon approval by the Supreme Court. In addition, the Committee shall perform the duties specified by Rule 33 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413 of the South Carolina Appellate Court Rules, and any other duties as directed by the Supreme Court.

(m) Confidentiality and Release of Information.

(1) The files and records maintained by the Board of Law Examiners, the Committee on Character and Fitness, and the Clerk of the Supreme Court relating to applications for admission, examinations, and admissions shall be confidential, and shall not be disclosed except as necessary for the Board, the Committee, or the Clerk of the Supreme Court to carry out their responsibilities. The Board of Law Examiners, the Committee on Character and Fitness, and the Clerk of the Supreme Court may disclose information to the National Conference of Bar Examiners and to the bar admission authorities in other jurisdictions, and may disclose the names of those persons who have received a score of 266 or higher on a UBE administered in South Carolina, or those who are or will be admitted and the date of their admission. Information may be released as provided by Rule 410(f) of the South Carolina Appellate Court Rules. The Supreme Court may authorize the release of confidential information to other persons or agencies.

(2) Beginning with the results of the February 2017 examination, the Clerk of the Supreme Court may release the following information to a law school regarding a graduate of that law school who has taken the UBE in South Carolina: the name of the graduate, the UBE and scaled MBE scores the graduate received, and the number of times the graduate has taken a bar examination in South Carolina. Any information released to law schools pursuant to this rule shall be kept confidential by the law school, shall only be used for statistical analysis, and shall only be released for purposes of reporting aggregated information to accrediting bodies. Each law school requesting the release of the above information shall, on a form approved by the Supreme Court, agree to comply with the confidentiality and use restrictions placed on this information

(n) Immunity.

(1) The Board of Law Examiners, the Committee on Character and Fitness, and the members, employees, and agents of the Board of Law Examiners or the Committee of Character and Fitness, are absolutely immune from all civil liability for conduct and communications occurring in the performance of their official duties relating to the examination, character and fitness qualification, and licensing of persons seeking to be admitted, readmitted, or reinstated to the practice of law.

(2) Records, statements of opinion, testimony and other information regarding an applicant for admission, readmission or reinstatement to the Bar communicated by any entity, including any person, firm, or institution, to the Board of Law Examiners, the Committee on Character and Fitness, or to the members, employees or agents of the Board of Law Examiners or Committee on Character and Fitness, are absolutely privileged, and civil suits predicated thereon may not be instituted.

1 Admissions based on the July 2016 or earlier bar examinations are governed by the prior version of Rule 402 which is available here. See Order of the South Carolina Supreme Court dated June 24, 2016 (prior rule "shall remain in effect for the July 2016 South Carolina Bar Examination and shall continue to govern all aspects of admission based on South Carolina Bar Examinations conducted prior to February 2017.").

2 Additional information on ABA Approved Law Schools is available at www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools.html.

3 The Bar Admissions page is located at www.sccourts.org/bar/index.cfm.

4 Additional information about the MPRE is available at www.ncbex.org.

5 Additional information regarding the content of the UBE is available at www.ncbex.org.

6 Information about UBE score transfers is available at www.ncbex.org/ncbe-exam-score-services/ube-score-services.

7 The Rules of the Board of Law Examiners are available at www.sccourts.org/courtReg/Part4AppendixA.html

8 The fee is currently fifty dollars (\$50) and must be paid by check or money order made payable to the National Conference of Bar Examiners.

Last amended by Order dated December 21, 2016.

October 23, 2018. **Notice to all Parties**

Good afternoon Bill Lyles and Tim Newton:

The United States Court of Appeals for the Sixth Circuit has set forth five elements of fraud upon the court which consist of conduct:

"1. On the part of an officer of the court; 2. That is directed to the 'judicial machinery' itself; 3. That is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth; 4. That is a positive averment or is concealment when one is under a duty to disclose; 5. That deceives the court."

—Demjanjuk v. Petrovsky, 10 F.3d 338, 348 (6th Cir. 1993).

Please Note that the following contributes to my case being currently prepared to have the 2012 Settlement Agreement and Consent Order "Set Aside" due to Fraud Upon the Court.

Womble Carlyle Sandridge & Rice (WCS&R) and Turner Padgett Graham & Laney (TPG&L) are engaged in fraud and extrinsic fraud upon the Court beginning in 2011 and continuing to the present time. Such extrinsic fraud upon the Courts has no statute limitation.

WCS&R's Thomas Harper authored fraudulent contracts, which structured and concealed the fraud by his clients, TLC Holdings, LLC, both in December, 2010 (Lease Purchase Agreement and Membership Interest Purchase Agreement) and wrote the Settlement Agreement and Consent Order for the Honorable Judge George James in 2012. All were extrinsic fraud upon the Court and against me, as the Purchaser.

TPG&L's Wayne Byrd openly defended WCS&R's documents, along with other attorneys from his firm, including the fraud therein, which continues today.

I am putting you on NOTICE that should you^{mt} participate in negotiations to settle with Penn America Insurance Company and attorneys/Officers of the Court including TLC Holdings, LLC, Turner Padgett Graham & Laney P.A. or Womble Carlyle Sandridge &

Rice while the existing extrinsic fraud continues, I will hold you and your firms responsible for participating in fraudulent moneys, and sue accordingly. I will file this 20 days to set aside the fraudulent judgment based on the Extrinsic Fraud upon the Court. <

The Judgement and money settlement is tainted due to the fraud which makes Penn American Insurance Company's money not useable. I strongly advise that neither you nor your firms be part of negotiating and assisting either side for any settlement agreement for I plan to file to set aside the fraudulent 2012 Settlement Agreement and Consent Order prior to your meeting planned for November 2, 2018.

I am also putting Tim Newton of Penn America Insurance on notice not to negotiate any moneys for settlement with Womble Carlyle Sandridge & Rice, Turner Padgett Graham & Laney, or TLC Holdings, LLC until after my set aside complaint has concluded.

Should Penn America engage with mediation with any parties on this matter, I will hold them responsible, suing them for their actions, as the extrinsic fraud continues to exist. I would appreciate a response from both Bill Lyles and Tim Newton to the same.

Respectfully,

MB Hutson

803 308 2714
1545 Biltmore Street
Orangeburg, South Carolina
29115

Cc: John Wilkerson and Betty Temple:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
)
)
)
)
_____)

AFFIDAVIT OF MARK W. HARDEE

Qualifications

- a. I graduated from the University of South Carolina School of Law in 1986 and began working as an Assistant Public Defender in Richland County.

Approxmently November 1988, I went to work as an Associate with the law firm of Lewis Babcock Plescones and Hawkins (later Lewis, Babcock and Hawkins). Within several years I became a partner. My practice at Lewis Babcock and Hawkins concentrated on Business Litigation, Legal Malpractice and Attorney and Judicial Ethical matters. During that time I handled many legal malpractice matters and represented lawyers and Judges in disciplinary actions. I also acted as special prosecutor on an Office of Disciplinary Counsel matter. I left the firm in 2003 to start my own practice, the Hardee Law Firm, and continued to concentrate on business litigation, legal malpractice and legal ethics matters.
- b. I have spoken at several CLE's on ethics matters, and I have been retained as an expert witnesses in matters regarding legal ethics, and the standard of care for practicing attorneys.
- c. I was admitted to the South Carolina Bar in 1986, US District Court 1988, I was admitted to the US Court of Appeals for the Fourth Circuit in 1995, US Court of Appeals for the Fifth Circuit in 2000, US Court of Appeals for the Tenth Circuit

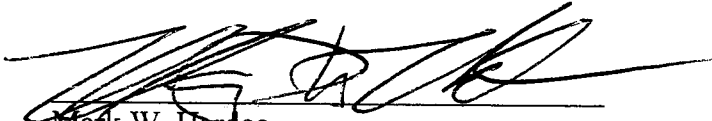
2002, US Court of Federal Claims in 1999 and the US Court of Appeals Federal Circuit in 2001.

- d. I have appeared in court in several jurisdictions throughout the United States. Based on my background, practicing and studying law as it relates to legal ethics as it pertains to both legal malpractice issues, as well as disciplinary issues, and the fact that I have also represented small local businesses in South Carolina for over 25 years.
- e. I am qualified to issue an opinion as to whether or not attorney Paul Weissenstein committed malpractice in his representation of M. B. Hutson in the TLC Holding Inc. litigation involving Big Water Resort.
- f. I have reviewed numerous documents including pleadings and court orders and I have extensively interviewed M. B. Hutson.

Opinion

- g. It is my opinion that M. B. Hutson retained Paul Weissenstein to represent him in litigation involving TLC Holdings LLC and Big Water Resort.
- h. M. B. Hutson intended to purchase and develop property on lake Marion through a lease purchase agreement which also included an on going business.
- i. Unknown to Mr. Hutson was that a title defect existed on the property due to hundreds of 70 year right to sole use agreements which had been sold by TLC Holdings LLC and Big Water Resort.
- j. Mr. Hutson was unaware that these agreements constituted a title defect on the property which would keep him from developing the property as planned.

- k. The project was doomed from the start due to the title defects and other misrepresentations made by TLC Holding LLC.
- l. When TLC Holdings LLC brought an eviction action against M. B. Hutson, he retained Paul Weissenstein to defend him and prosecute valuable counterclaims against TLC Holdings LLC.
- m. Mr. Weissenstein advised Mr. Hutson that he had no defenses to the eviction or knew of no facts supporting his counter claims. This was even though there was ample evidence that TLC Holdings LLC had made numerous misrepresentations and concealed relevant and material statements of fact regarding the usefulness and ability to develop the property.
- n. Mr. Hutson was not properly advised of the application and effect of the release Mr. Hutson was offered to end the litigation. Therefore, he settled the case and signed the release.
- o. Mr. Weissenstein fell below the standard of care expected of attorneys in similar situations at the time, by failing to advise Mr. Hutson that the existence and effect of the long term leases would prevent him from ever developing the property as he intended, and that his default of the settlement agreement was inevitable, and that he would forever be barred from prosecuting and using as a defense the fraud perpetrated on him by TLC Holding LLC.
- p. It is my opinion to a reasonable degree of certainty that Paul Weissenstein committed malpractice in his advice to, and representation of, M. B. Hutson in the above described matter.



Mark W. Hardee

SWORN TO before me

this 3 day of AUGUST, 2018



NOTARY PUBLIC FOR SC

My Commission Expires: 3-11-21

J. MICHAEL TAYLOR

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2018-CP-400-6344

Appellate Case # 2019-001488

RECEIVED

JUL 06 2020

SC Court of Appeals

MB Hutson/ MB Hudson

Appellant,

v.

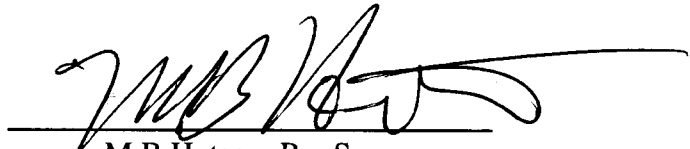
Penn America Insurance Company,
Global Indemnity Group, Inc.,
Timothy J. Newton, Esq.,
J.R. Murphy, Esq., John Doe #1 and
John Doe #2

Respondents.

PROOF OF SERVICE

I certify that I have served the **APPELLATE'S EMERGENCY MOTION TO HAVE OPEN HEARING DUE TO RESPONDENTS COMMITTING EXTRINSIC FRAUD ON THE SOUTH CAROLINA COURT OF APPEALS AND ITS JUDGES** on Penn America Insurance Company & Global Indemnity Insurance Company, addressed to their attorney of record, Christian Stegmaier, at Collins & Lacy, 1330 Lady St., 6th Floor, Columbia, SC 29201, and also to J. R. Murphy, Esq., and Timothy Newton, Esq. (both acting as Pro Se, of record, and both at Murphy & Grantland, P.A. at Post Office Box 6648, Columbia, SC 29260.

July 1, 2020

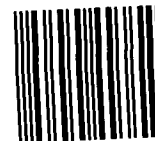


M B Hutson, Pro Se
Post Office Box 2755
Orangeburg, South Carolina 29116-2755

(803) 308-2714



1000



29211

U.S. POSTAGE PAID
FCM LG ENV
ORANGEBURG, SC
29115
JUL 02, 20
AMOUNT

\$2.80

R2304M116024-14

SC Court of Appeals
Post Office Box 11629
Columbia, SC 29211