

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Jul 13 2020

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2019-001488

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
RETURN TO APPELLANT'S EMERGENCY MOTION FOR HEARING**

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

Respondents Penn America Insurance Company and Global Indemnity Group, Inc. ("Respondents PAIC") responds to Appellant's "Emergency Motion to Have Open Hearing Due to Respondents Committing Extrinsic Fraud on the South Carolina Court of Appeals and Its Judges," as follows:

INTRODUCTION

This appeal arises from the trial court's July 18, 2020 Orders granting the dispositive motions in favor of Respondents in the pro se action filed against them by Appellant. Respondents

PAIC issued a Commercial General Liability Policy to their named insured, BWR, Inc. d/b/a Big Water Resort, for which Appellant was a corporate officer. Respondents PAIC provided Appellant with a defense, subject to a reservation of rights, in two lawsuits. Both lawsuits were resolved within policy limits and without any personal liability to Appellant.

Nonetheless, Appellant sued Respondents PAIC and their coverage counsel, Respondents Newton and Murphy, in state court, asserting a variety of claims in contract and tort. These claims centered around the alleged failure of the insurer to pursue counterclaims on Appellant's behalf, or otherwise undertake an independent action to set aside a 2012 Consent Order based upon a theory of "extrinsic fraud."

Plaintiff's Emergency Motion for Hearing alleges that extrinsic fraud continues to be perpetrated in this Court and seeks an evidentiary hearing in the appellate court, as well as some action against attorneys Newton, Murphy and Stegmaier. As discussed more fully *infra*, Appellant's motion seeks relief outside of this Court's appellate jurisdiction and is based upon bald allegations of fraud and misconduct. Accordingly, Appellant's Emergency Motion should be denied.

RELEVANT PROCEDURAL HISTORY

The Initial Brief of Appellant and Designation of Matter was filed on March 3, 2020 and the Initial Briefs and Designations of the respective Respondents were filed on April 2, 2020 and April 23, 2020.

Appellant filed two "Responses" to the Initial Briefs, the first directed at the Newton/Murphy Brief and filed April 27, 2020 and the second directed at the PAIC Brief and filed

May 7, 2020. Appellant also filed a Motion to Exceed Page Limit related to his Reply to the PAIC Brief.¹

On May 18, 2020, Respondents PAIC filed both a Response in Opposition to Appellant's Motion to Exceed Page Limits and a Motion to Strike Appellant's "Reply Brief" entitled "Appellant's Response to (Penn America, et al.) Respondent's Initial Brief." Appellant did not any subsequent reply or return.

On June 15, 2020, Respondent Newton filed a Motion to Strike aimed at Appellant's initial brief and reply briefs. Appellant did not file any return.

On June 21, 2020, Appellant sent undersigned counsel an e-mail with a PDF document entitled "Appellate's [sic] Emergency Motion to Have Open Hearing Due to Respondents Committing Extrinsic Fraud on the South Carolina Court of Appeals and Its Judges." Unclear whether this Motion was filed with the Court or properly served upon Respondents, on July 2, 2020, Respondents PAIC requested an extension of time to respond. However, on July 6, 2020,² Appellant filed his Emergency Motion to Have Open Hearing Due to Respondents Committing Extrinsic Fraud on the South Carolina Court of Appeals and Its Judges ("Emergency Motion").

On July 9, 2020, the Respondents filed a joint Motion to Dismiss based upon Appellant's failure to serve the Record on Appeal. Also, on July 9, 2020 Respondent Newton filed a Return

¹ On May 14, 2020, Appellant filed a Motion to Expedite Appeal. Respondents filed a Return in opposition to the motion on May 19, 2020. On May 20, 2020, Appellant was informed by letter from the Clerk's Office that no action would be taken on the Motion to Expedite because it was premature.

² Though Appellant's Certificate of Service lists the motion as mailed on July 1, 2020, the post-marked envelope in which the motion arrived was post-marked July 2, 2020.

to Appellant's Emergency Motion³ and a Memorandum in Support of his Motion to Strike and the Motion to Dismiss.

This Return to Appellant's Emergency Motion by Respondents PAIC follows.

LAW/ANALYSIS

I. The "Emergency" Relief Requested by Appellant is Not Cognizable Relief to be Granted During an Appeal

As an initial matter, other than Appellant's request that the case be held in abeyance pending resolution of his motion, Appellant's Emergency Motion seeks relief that is not within this Court's appellate jurisdiction to provide.

Appellant's motion seeks the following relief from this Court: (1) "Set down a live hearing requiring the Appellant, Tim Newton, JR Murphy and Christian Steigmaier [sic] be sworn in and allow Appellant and Judges to examine each individual;" (2) Stay this matter until his Emergency motion is heard and ruled upon; (3) "Take a bold stand to not only prevent this extrinsic fraud from continuing, but also send a message" that "ALL attorneys" are bound by ethical rules and statutes; and (4) "Take immediate action to set examples for other lawyers. These lawyers should not carry a badge designating them as 'Officer of the Court.'" (Emergency Motion, pp. 8-9). Thus, Appellant requests an evidentiary hearing where he examines the pro se Respondents (who are former coverage counsel for PAIC) and current counsel for Respondents PAIC and, seemingly, that this Court impose some sort of sanctions against these three attorneys.

Appellant cites no precedent for the relief he seeks, and none exists.

³ To the extent not inconsistent with the arguments contained herein, Respondents PAIC incorporate by reference and joints in the arguments made in Newton's Return to Appellant's Emergency Motion.

The Court of Appeals is not a trial court that receives testimony and evidence. See S.C. Code Ann. 14-8-200 (stating Court of Appeals jurisdiction is “appellate only”); see also Durant v. Durant, 35 S.C. 604, 14 S.E. 391, 391 (1892) (“Inasmuch, therefore, as the jurisdiction of this court is of an appellate character, and its power is confined to a review of what occurred in the trial below, we do not think we have the right to add to or take anything from the facts of the case as they transpired in the circuit court, or to recommit the record to that court for the purpose of having any evidence inserted in the “case” unless it is made to appear that such evidence was in fact adduced at the trial.”). The only state appellate court with original jurisdiction, which is exercised cautiously, is the South Carolina Supreme Court. See Rule 245, SCACR.

This Court’s jurisdiction in this matter is to consider and decide the appeal from the orders granting the Respondent’s respective dispositive motions. The Court may also grant relief pursuant to the four pending motions properly attendant to this appeal, which include: Appellant’s pending Motion to Exceed Page Limits; Respondents PAIC’s Motion to Strike; Respondent Newton’s Motion to Strike; and Respondents’ joint Motion to Dismiss.

Furthermore, the task of regulating lawyers in South Carolina falls to the Office of Disciplinary Counsel and the Commission on Lawyer Conduct. While Respondents PAIC are not inviting such a complaint, there is a process in place for addressing actual instances of lawyer misconduct. The filing of an Emergency Motion in this Court requesting some vague form of attorney discipline against opposing counsel and lawyer litigants is not proper.

Lastly, nothing in Appellant’s Emergency Motion evinces any actual emergency warranting relief. **The only thing preventing disposition of this appeal currently is Appellant’s own failure to serve the Record on Appeal.**

II. Appellant's Allegations That Counsel for Respondents PAIC Committed Fraud or Violated the Rules of Professional Conduct are Unfounded and Untrue.

As discussed more fully in Respondent Newton's Return to Appellant's Emergency Motion, filed July 9, 2020, Appellant has been relying on his own false narrative to allege fraud and extrinsic fraud for years. There is no "plot" against Appellant other than that which he has created in his own mind.

The allegations contained in the pro se counterclaims filed by defense counsel Laura Paton on Appellant's behalf do not evidence that the insurer or their counsel had knowledge of any "original" or continued extrinsic fraud being perpetrated against any court in this State. Respondent Newton's correspondence with Appellant is likewise absent of any evidence he, or by extension Respondents PAIC, knew of, ignored, or engaged in any fraud.

Respondents PAIC have not denied that the pro se counterclaims were filed by attorney Paton in the course one of the underlying lawsuits. Similarly, Respondents PAIC have not denied the existence of Newton's correspondence with Hutson. **Rather, Respondents PAIC have denied these documents—or any others in the record—provide a legal basis for any of the claims asserted by Appellant against Respondents PAIC. The trial court agreed in the case at bar and granted summary judgment. The issue on this appeal is whether the trial court's ruling was proper.**

As is his custom, Appellant has repackaged the same false claims that have been rejected by both state and federal judges **for years** and simply broadened their scope to now allege that undersigned counsel is part of the same fraud and conspiracy against him.

Appellant writes:

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.

(Appellant's Emergency Motion, pp. 5-6).

Undersigned counsel has, as would be expected, consulted with the other Respondents during the defense of this frivolous lawsuit and the instant appeal therefrom. This is not improper. Nothing in the Record or otherwise has given undersigned counsel the slightest inclination any attorney misconduct has occurred.

CONCLUSION

Based upon the foregoing, Respondents PAIC respectfully request that this Honorable Court deny Appellant's Emergency Motion for Hearing.

Respectfully submitted,



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

**RESPONDENTS PAIC'S RETURN TO
APPELLANT'S EMERGENCY MOTION FOR
HEARING**

Columbia, South Carolina
July 13, 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 PAIC'S RESPONSE TO APPELLANT'S EMERGENCY MOTION FOR HEARING by causing the same to be deposited in a United States Postal Service mailbox, postage prepaid, addressed to the following:

MB Hutson/MB Hudson
Post Office Box 2755
Orangeburg, SC 29116
Pro Se Appellant

John R. Murphy, Esquire
Timothy J. Newton, Esquire
Post Office Box 6648
Columbia, SC 29260
Pro Se Respondents

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ATTORNEYS FOR RESPONDENTS PENN
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GLOBAL INDEMNITY GROUP, INC.

Dated: July 13, 2020



Christian Stegmaier | D: 803.255.0454 | E: cstegmaier@collinsandlacy.com

July 13, 2020

VIA U.S. MAIL AND EMAIL

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

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Jul 13 2020

SC Court of Appeals

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 PAIC'S Response to Appellant's Emergency Motion For Hearing** in the above referenced matter. Please file the original and return a clocked copy of same in an envelope provided for your convenience.

Pursuant to the Supreme Court's Amended Order "re: Operation of the Appellate Courts During the Coronavirus Emergency" (2020-05-29-02, Appellate Case No. 2020-000447), no additional copies are 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

July 13, 2020

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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