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SC Court of Appeals

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 #2 — Respondents

APPELLANT'S RESPONSE TO (PENN AMERICA, et. al.) RESPONDENTS' INITIAL BRIEF

Comes now Appellant who responds to the Initial Brief of Respondents Penn America Insurance Company, Global Indemnity Group, Inc., et. al.

The Respondents (Penn America 'master') and (Attorneys TJ Newton and JR Murphy, 'servants') were provided with all contracts, documents and papers and had ample time to investigate. They fully understood Appellant's position of having been defrauded by way of fraud and extrinsic fraud by TLC Holdings, LLC and their lawyers in underlying actions (a $6M real

estate project in Manning, South Carolina). Insured Appellant had paid thousands of dollars to the Respondent Insurance Companies, for protection should the need ever exist. Penn America, thru Murphy & Grantland (Murphy and Newton, Respondents) employed Laura Paton, Esq. to represent Appellant. She researched this case and wrote an in-depth account, copying Respondents and Appellant. Portions of her work will be cited below verifying Respondents had full and detailed knowledge of facts as stated by Appellant.

Respondents never advised Appellant / victim that by intentionally NOT exposing the identified, underlying, extrinsic fraud, that they would be directly causing Appellant to lose any and all court hearings and the subsequent jury trial on defamation (the latter, of which resulted in a recorded $3.5 million judgment against this Appellant, which still cripples this Appellant). Respondents, nevertheless, chose to assure Appellant that they *would represent him* while actually Respondents were choosing to cooperate with TLC Holdings, LLC's attorneys in lawsuits against Appellant. This collaboration was only realized by this Appellant when that collaboration became so overt during the defamation trial that the Judge stated aloud in court that he had "never seen *opposing* attorneys get along so well together in all my years as a judge." Consequently, this Appellant was never truly defended nor was his case heard; Appellant was destroyed. The recorded $3.5M judgment continues to harm his Appellant.

Respondents had decided that they were not going to address the underlying extrinsic fraud --even at the cost of sacrificing this Appellant. However, Insurance Companies all across this country have been held accountable for acting in bad faith all hoping to evade expenses for themselves, rather than provide the coverage and representation due to their insured. (*See S.C. F.D.C. Feb. 6, 2017 WL 479507, at *3-4 (D.S.C. Feb. 6, 2017*). Therein the court concluded that the trier of fact could find *the insurer acted in bad faith*, and declined the insurer's motion for summary judgment on the bad faith claims.

Additionally, the courts have upheld that the insurer's "duty to defend, is not strictly controlled by the complaint, and Extrinsic Facts known by the insurer may be considered." USAA Prop. & Cas. Ins. Co. v. Clegg, 661 S.E.2d 791, 798 (S.C. 2008).

These Respondents, professional insurance companies and their attorneys, had a legal and moral obligation to bring that underlying extrinsic fraud to the attention of both the Courts and Judges. Instead, Respondents concealed the Fraud upon the Courts from the Courts, the jury, and the Judges, and intentionally threw hundreds of irrelevant pages having nothing to do with this case. Respondents:

A) required Appellant to be confronted with a jury trial knowing full well that Appellant had no chance of prevailing due to the intentional, existing, extrinsic fraud and lack of concern for the Appellant who had been victimized by TLC Holdings, LLC and their attorneys,

B) informed Appellant that if he failed to appear for the Jury trial his coverage would be denied, while fully understanding that Appellant was going to lose due to Respondents' intentionally failing to disclose to the Judge and jury that extrinsic fraud existed, and that this Appellant's case would never be heard during the jury trial or any other hearing until the extrinsic fraud was addressed. The following Codes and Rulings were blatantly ignored and violated by these Respondents:

"Fraudulent, deceptive, or otherwise illegal conduct by a participant in a proceeding before a tribunal or legislative body is inconsistent with fair administration of justice, and it should NEVER be participated in or condoned by lawyers."--ABA CODE, EC 8-5

A LAWYER SHALL NOT 'engage in conduct involving dishonest, fraud, deceit, or misrepresentation, nor be guilty of willful misconduct." DR 1-102(A) (4).
The court specifically upheld that ***"by not disclosing information to the court, Sullins had perpetrated a fraud on the court."*** --Sullins v. State Bar 15 Cal. 3d 609, 542 P. 2d 631 125 Cal. Rptr. 471 (1975), cert. denied 425 U.S. 937 (1976).

Likewise, by not disclosing information that they knew, via their research and review of documents, to the court, ALL Respondents, including Penn America Insurance Company(s), also perpetrated fraud on the court and acted in bad faith. Respondents *must be held accountable* for their fraud upon the court and subsequent damages to this Appellant.

NOTE: Not reporting the underlying extrinsic fraud and having the underlying fraudulent order cleared, was not only a breech of their professional duties, it was akin to demanding a kidnapped Appellant to get out of the trunk of a car at gun point and ordered to walk into the woods for execution.

Respondent refers to a Settlement Agreement executed by Appellant and Penn America (p. 15 of Respondent PAIG's initial brief). Appellant reminds the Honorable Appellate Court that the Supreme Court has ruled that no settlement is valid when intentional fraud is part of the settlement agreement. (Zurich Insurance Company PLC v. Colin Hayward). At the time of the Settlement Agreement, Respondents were acting in bad faith, attempting to evade their duty to defend against the known Extrinsic Fraud in the underlying Settlement Agreement and Consent Order executed by TLC Holdings, LLC's attorneys, who were the authors of the underlying Extrinsic Fraud upon the Court with the insured, this Appellant. It has already been established in the courts that EVEN "*if it is not clear from the face of the complaint that the policy provides coverage, but coverage could exist...the insurer must investigate and give the insured the benefit of the doubt that the insurer has a duty to defend.*" (Campbell v. Ticor Title Ins. Co., 209 P.3d 859, 861 (Wash 2009.) Penn America was also, thereby, ignoring the rulings against insurance companies that even when "*the allegations of the complaint are controlling and, even if ambiguous, must be construed most favorably to the insured to establish the duty to defend.*" (Baron Oil Company v. Nationwide Mut. Fire Ins. Co., 470 So. 2d 810 (Fla. App. 1985); accord

Merchs. Fast Mortor Lines, Inc., supra at 141. Case law clearly supports that these Respondents *had an unquestionable duty to defend* this Appellant, their insured. They did not.

By not addressing the underlying extrinsic fraud, and acting in bad faith, Penn America, and those employed by them, became participants themselves, engaged in the fraud and extrinsic fraud. Woo v. Fireman's Fund Ins. Co. 164 P, 3d 454, 459 (Wash, 2007), has already established that "*The insurer may not rely on facts extrinsic to the complaint to deny the duty to defend, and may do so only to trigger the duty.*"

As a result of Respondents failure to act appropriately on behalf of this Appellant, their insured, the following results befell this Appellant:

1) was prevented from prevailing against TLC Holdings, LLC and their owners (worth multi-millions) (hereinafter TLC) in a defamation jury trial. TLC had initially and intentionally deceived and defrauded this Appellant (and the Honorable SC Courts) in a case directly underlying that defamation action. Respondents were supposedly acting on *behalf* of this Appellant (then Defendant).

2) Suffered great financial losses including:

   a) Appellant's becoming indigent for *years* with only an approximate monthly income of $650.00,

   b) -losing potential income from three (3) development opportunities directly due to those Court losses and the recorded $3.5M judgment on his record,

   c) not being compensated for work and monies lost in Big Water Resort,

   d) not to be compensated for the mental stress and loss of years suffered with extreme depression directly due to those unjust long-term financial losses and humiliation, to the point of seriously considering suicide, but resulting

instead, by Appellant having sought medical assistance and being subsequently referred to a psychiatrist due to the severe depression.

3) The mental torment, inflicted upon Appellant, a 70+ year old man was directly caused by ***Respondents' intentional refusal and failure to execute their duties to:***

a) expose and address the underlying Extrinsic Fraud in underlying Court rulings, despite case law that requires attorney(s) to do so, and

b) faithfully adhere to established ethical, professional responsibilities.

c) now, at seventy-five years of age, Appellate is *still* struggling to receive justice from the Court System, and its officers, who are sworn in to:

i. ***"not pursue or maintain any suit or proceeding which appears to me to be unjust"*** (injustice was fully disclosed by their attorney L. Paton, Esq.)

ii. ***" nor maintain any defenses except those I believe to be honestly debatable under the law of the land."*** (Paton, Esq. laid out and shared the fraud in contracts prepared by TLC's lawyers and other paper work,

iii. ***"maintain the dignity of the legal system...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."*** –Lawyer's Oath, SCRCP page one. (emphases mine)

One would reasonably assess that the "for profit/malice, so help me God," is clearly violated by Penn America's "Settlement" which Respondent clung to in his Initial Brief, and to which motivation was disclosed by Respondent Tim Newton's e-mail to this Appellant at

10:54AM on November 30, 2018, stating "... and Torus ... "threatened to sue Penn America if it didn't hurry up and settle." No regard was given for the destruction of the insured-Appellant.

Respondent, Penn America, further states on page 25 of his initial brief, "In order to prevail on a claim for fraud a plaintiff must prove...

(1) **"a representation"...** Respondents stated that they would represent to protect Appellant. The Appellant was holder of their Insurance Policy and Penn-America engaged employees in their home office legal department in Pennsylvania, Murphy and Grantland and other legal representation, including attorneys, Laura Paton, Esq. of Charleston, SC and Frank Gordon, from Raleigh, NC. Gordon, Esq. appeared with Appellant in SC during the defamation jury trial court in which the $3.5M judgment was recorded against this Appellant. Not even the slightest hint of a defense was made and NO MENTION of the known underlying Extrinsic Fraud upon all of the courts was made...and TLC's attorneys were right in the court representing TLC's claim for Defamation against this Appellant. (Recall that this was the Judge who was cited above for remarking on the amazing collaboration between the opposing attorneys.

(NOTE: Paton, Esq. nor other attorneys, formerly engaged by Penn America, were present then. One can only ask why the changes, except perhaps there are some lawyers out there with ethics who would not play Penn America's game. The last one, Gordon, was recruited from out of state yet was licensed in South Carolina.)

(2) **"its falsity."** Respondent's fully understood they could never win nor protect Appellant without addressing the underlying extrinsic fraud and subsequent order. Yet, at all times, representatives at Penn America convinced Appellant they would fight to win his cases. One must ask WHY did they not inform this Appellant that they:

i. could not succeed due to the underlying extrinsic and related fraud,

ii. would not be able to successfully defend this Appellant, and

iii. refused to address the underlying fraud, which they knew, because Paton knew and reported in great detail to the carrier company.

(3) **"its materiality"** Respondent's and attorneys (noted above) were given access to all documents and thereby should have fully understood the facts of why this Appellant was being fraudulently sued and defrauded. Furthermore, being trained attorneys, they each should have been able to recognize that the underlying case and contract was fraudulent and that Extrinsic Fraud had taken place at the initial court ruling under Judge George James. There, TLC's attorney hid from court and from the hundreds of contractual holders of Retail Membership Agreements (who held contractual "rights to use the land" for up to two lifetimes) that the landowners (TLC) had agreed to sell the land within two (2) years under that Settlement Agreement and Consent Order for private home development. TLC's attorneys thereby denied those land use agreement holders a voice and an opportunity to be heard. The proof of this lies in their winning a follow-up Federal Class Action Suit 2:14-CV-01583-DCN-MGB. Further evidence shows that at least one attorney (Respondent / Newton) *did recognize* that Extrinsic Fraud. (See Respondent Newton's 16 point letter to Hutson emailed 8/13/2018 and submitted to the lower court as Hutson's Exhibit 4.1-4.3. Therefore, the attorneys knew, but did not act on the Appellant's behalf, instead, *attorneys intentionally chose to conceal the known fraud* protecting their fellow attorneys instead of the courts and this Appellant, who at that time was their insured.

(4) "either knowledge of its falsity or a reckless disregard of its truth or falsity." Respondents fully understood they could not defend nor represent Appellant until the Extrinsic Fraud had been exposed and removed from the courts. Since they willfully chose NOT TO EXPOSE THE EXTRINSIC FRAUD UPON THE COURT, *they actively chose to allow the Extrinsic Fraud to remain and this Appellant's "representation and defense" to be a total farce.*

(5) "intent that the representation be acted upon." Respondents faithfully and repeatedly assured this Appellant of positive legal outcomes while they fully understood, as attorneys, that they would be defeated unless they exposed the Extrinsic Fraud. Respondents purported to be acting on the insured's defense (this Appellant) when, in fact, they were repeatedly defeated in court because the Respondents, attorneys "at law" did not expose the Extrinsic Fraud upon the Courts, *nor* the fraud against this Appellant, both of which shrouded this Appellant's case(s).

- Penn America's attorneys knew it would be impossible to present a victorious case for this Appellant, their insured, without first disclosing to the Courts and Judges that the contracts and underlying Settlement Agreement and Consent Order (all prepared by TLC Holdings, LLC's attorney, Thomas Harper, Esq., of Womble, Carlyle, Sandridge & Rice, of Charleston, and being actively defended by attorneys at another legal powerhouse, Turner Padgett, also of Charleston), were filled with fraud. Furthermore, the fraud had been signed by Judges in Orders who had confidence in the sworn oath taken by attorneys as officers of the court. The question is who will have the wherewithal, guts, fortitude, or courage to take on the criminal fraud being wielded by greedy attorneys in our halls of "Justice"? thus making it impossible for this Appellant to comply with the fraudulent contracts.

(6) "the hearer's ignorance of its falsity." Appellant relied upon what the Respondents told him (directly and/or indirectly through their hired attorneys at that time). Appellant believed them while not understanding that the extrinsic fraud would totally prevent a court victory for his insurer (Penn America, et. al.). Respondents knew they would not win justice for their insured (Appellant), or any rightful and just outcome based because of the Extrinsic Fraud Upon the

Courts, WHICH IS STILL IN PLACE DUE TO THEIR FAILURE TO REPORT IT, but these Respondents withheld that knowledge from the Appellant, their insured.

(7) "the hearer's reliance on its truth." Appellant fully believed in the insurance companies' protection, and that Appellant would acquire restitution. Appellant did not understand that the Extrinsic Fraud was being used by TLC' Holdings, LLC's attorneys so that this Appellant (not an attorney) would *never* win any hearings, motions, rulings or trials.

(8) "the hearer's right to rely thereon." Appellant believed that since he paid for the insurance protection if sued or damaged and was represented by this insurance carrier – and the umbrella company-- that the insurer would make it right for him. Appellant did not, and does not believe that he had ever acted in bad faith regarding the TLC contracts nor the Respondents'.

(9) "the hearer's consequent and proximate injury." Due to the intentional fraud perpetrated against Appellant, Appellant was prevented from making $5 million in developments that could not happen due to hidden defective title and approximately 20 other major and fraudulent issues cited by Laura Paton, Esq. which have been shown in Appellant's initial brief in the Circuit Court as EXHIBIT 3.0.

Respondent quotes, "A complaint is fatally defective if it fails to allege all nine elements of fraud." Clearly the aforementioned addresses ALL nine elements.

Furthermore, Respondent cites at the top of page 26 in his Initial Brief, what Respondent Tim Newton wrote to Appellant, "I need to remind you that I don't represent you I can't represent you because I represent Penn-America. To the extent there is a common interest, I note the following" :

> Paragraph 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." (referring to the owners of the aforementioned Retail Membership Agreements assuring long term "right to use" the land

and its amenities.) "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 blighted to violate the rights of the campground members by developing since TLC never specified exactly which property was subject to the campground memberships".

Paragraph 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 undeveloped 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)".

Appellant reminds the Court that there is no common interest since the person who wrote paragraph (15) and (16) was Timothy Newton, Esq., another Respondent in this case who, in his own words, ' represented Penn America and did not represent Appellant'. The question is why did Newton (Penn America's servant attorney) give Appellant legal advice including the 16 paragraph letter citing case law to support his 16 paragraph letter? Paragraph (15) and (16) makes one wonder why Penn America's attorney would write such an incriminating letter to the insured, this Appellant. This is yet another reason why this case should have complete discovery and a jury trial for these two paragraphs certainly reflect that 'master' and 'servant' were very much aware of the extrinsic fraud. Discovery will open up the complete truth.

In summary, Courts generally liberally construe the allegations of the complaint and resolve any doubt in favor of a defense for the insured..."extrinsic facts KNOWN BY THE INSURER (emphasis mine) can create a defense obligation even where the complaint is silent as to those facts...unpleaded facts that potentially trigger coverage under the policy can lead to extra contractual exposure for the insurer." "The Duty to Defend: The Four(ish) Corners Rule" Rawls, R. Steven, Nov. 2009.

All Respondents are guilty of bad faith, deception, fraud, cover-up, concealing the true facts from the Courts which only creates more fraud upon the courts. Such conduct is not to be allowed within the Court systems and against Honorable Judges who are trying to make sense out of the information that is provided to them in order to make an honest ruling. The Court system cannot function honorably while Extrinsic Fraud is active and covered up by "Officers of the Court."

These Respondents simply pretended, in bad faith, to represent the insured in order to get the case off their books (and not be sued by Torus). This scenario victimized this Appellant. Why did these Respondents never inform this Appellant that they could "never win" on behalf of this Appellant – their client and policyholder? It is because they were being negligent of their duty to defend and operating in bad faith.

What was the purpose of pretending to represent Appellant once Respondents were aware of the Extrinsic Fraud, when they were unwilling to bring it to the attention of the Court and Judges? Those actions are fraudulent to the Appellant, Courts and Judges. Penn America was acting in bad faith and should be held accountable for that.

As outlined earlier, here is some of the evidence, authored by Laura Paton, Esq. (hired by Penn America) to investigate and represent Appellate. This was submitted to all Respondents and

submitted by this Appellant to the lower court as Exhibit 3.0. All Respondents had a copy or access to her work:

47. That during the December 2010 meeting the TLC parties advised Appellant 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 $300,000.00 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 an 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 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").

.....(Repetitive sections were skipped for the purposes of meeting page limitations.).....

62. 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.

.....(Repetitive sections were skipped for the purposes of meeting page limitations.).....

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

66. 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.

.....(Repetitive sections were skipped for the purposes of meeting page limitations.).....

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 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'.

.....(Repetitive sections were skipped for the purposes of meeting page limitations.).....

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

73. 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 to statute and induced Mr. Hutson to enter into the Agreements.

.....(Repetitive sections were skipped for the purposes of meeting page limitations.).....

75. That in relying on the fraudulent representation 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. 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.

.....(Repetitive sections were skipped for the purposes of meeting page limitations.).....

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 upward 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 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, to induce Mr. Hutson to purchase BWR and enter into the Agreements.

.....(Repetitive sections were skipped for the purposes of meeting page limitations.).....

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 owned 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. (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 now limited to, the malicious publication jof 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.

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 alw 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 aforementioned 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;

100. 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 and amended:

a) by 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 I 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 representation as to the condition of the business and properties at issue in the Agreements an/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.

.....(Repetitive sections were skipped for the purposes of meeting page limitations.).....

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 pubic 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, beyong the parties to the above-described transactions, in the form of ther 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 ell 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.

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, combines 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 façade 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 Corporation directed and oversaw the fraudulent / negligent actions described herein.

.....(Repetitive sections were skipped for the purposes of meeting page limitations.).....

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 Leas-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.

All respondents had access to what Paton prepared, including the fraudulent contracts and other papers reflecting fraud and Extrinsic Fraud. The Penn America Insurance Respondents should have contacted Appellant to inform him that they would not take Appellant's case since (as they have proven by their actions, and more accurately their INACTIONS) they refused to disclose the fraud and extrinsic fraud since the attorneys representing TLC Holdings, LLC never disclosed the fraudulent facts to the Courts nor to the Judges, thus elevating their crime of creating the fraud to extrinsic fraud.

In addition, Respondent / Newton's 16 paragraph letter to Appellant, written prior to the Jury trial, clearly shows Respondents were aware of fraud / extrinsic fraud. Instead, all respondents acted as if Appellant had a chance to win his cases in order to negotiate restitution. Respondents fully understood that Appellant was going to be badly damaged financially and destroyed. This case needs to be sent for Jury trial where all attorneys and other witnesses can be sworn to tell the truth. Respondents never have admitted verbally, or in writing, that they were aware that they could not win any of the cases against Appellant because they refused to report the Extrinsic Fraud...which was legally and morally imperative.

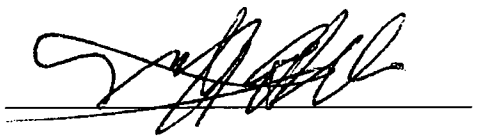
Furthermore, by not addressing this in the Appellate Court, additional Extrinsic Fraud upon the Court is being enacted by the Respondents. They knew or should have known, they failed to act when they should have acted. They are guilty of bad faith, fraud, and should be held accountable and forced to fully indemnify this Appellant.

Appellant cannot complete his preparations for trial without discovery nor can Appellant win this case without taking this to a jury. The actions of all Respondents are the very reason that the public does not trust insurance companies and their lawyers. In this case, all Respondents have deceived the Courts and Judges. Respondents should have never settled with TLC Holdings, LLC knowing that fraud and extrinsic fraud was the sole reason TLC and their lawyers always won.

Similar attempts have already been made in South Carolina and across America whereby insurance carriers attempted to circumvent their duty to defend fraud. Presented herein was evidence that the courts have already ruled against bad faith actions all across this country. Rules beyond the State of South Carolina in the America Bar Association already address fraudulent actions by attorneys and damages to victims such as this Appellant has suffered at the hands of Penn America, et. al. This Appellant remains waiting for this Appellate Court to move on his

behalf for indemnification and removal of the judgments wrongly placed upon him. Reverse this case immediately and order the same to a jury. Kick out the Respondents now due to their fraud.

August 6, 2020



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AUG 10 2020
SC Court of Appeals

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 #2 — Respondents

PROOF OF SERVICE

I certify that I have served the ***RESPONSE TO INITIAL BRIEF OF RESPONDENT, PENN AMERICA***, et. al., with a copy of this Proof of Service on Penn America Insurance Company, Global Indemnity Insurance Company, J. R. Murphy, Esq., and Timothy Newton, Esq. by depositing a copy of it in the United States Mail, postage prepaid, on August 6, 2020, addressed to the insurance companys' attorney of record, Christian Stegmaier, Esq., @ Post Office Box 12487, Columbia, South Carolina 29211-12487, and also to J.R. Murphy, Esq. and Timothy J. Newton, Esq., both of Murphy and Grantland, P.A. (both acting as Pro Se, of record), BOTH at Post Office Box 6648, Columbia SC 29260-6648.

August 6, 2020

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