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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.

**APPELLATE'S MOTION TO ALLOW APPELLANT TO INCLUDE EVIDENCE
FORMERLY FILED IN THIS APPEALS CASE PROVING EXTRINSIC FRAUD
UPON THE APPEALS COURT BY THE RESPONDENTS**

COMES NOW, Appellant who requests that certain, but necessary and critical, papers (herein attached) and formerly filed in this Appellate Court be made a part of this Record of Appeal. *Should this motion not be granted to Appellant, it will be impossible for Appellant to have his case 'fully heard' due to intentional extrinsic fraud and concealment being perpetrated against this Honorable Appeals Court and Judges by Respondents. Such acts are illegal and cannot be allowed as they destroy justice. I pray that these documents*

are granted into Appellant's Record of Appeal. Respondents are hiding behind Appellant's failed cases as frivolous instead of being truthful: Respondents are not exposing their knowledge of, nor their failure to report, that Extrinsic Fraud as required by law. Therefore, the undisclosed, underlying extrinsic fraud upon the courts in those cases (which were lost) were directly due to Respondents' knowledge of, and failure to report, that extrinsic fraud. Respondents' illegal actions are crippling this Appellant. Respondents *continue* their concealment to this Appellate Court, thereby becoming co-conspirators of the fraud upon the court(s).

These documents are:

1. APPELLANTS RESPONSE TO RESPONDENTS PENN AMERICAN INSURANCE COMPANY AND GLOBAL INDEMNITY GROUP, INC'S MOTION FOR AND MEMORANDUM IN SUPPORT OF IMPOSITION OF SANCTIONS AGAINST APPELLANT. (Filed July 27, 2020.)
2. APPELLANT'S RESPONSE TO (PENN AMERICA, et, al.) RESPONDENTS' INITIAL BRIEF. (Filed August 6, 2020.)

Respectfully Submitted on the 3rd of September, 2020



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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 breach 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, SCRCF 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 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 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 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.

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 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 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 their 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.

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 the 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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PROOF OF SERVICE ON NEXT PAGE:

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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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

KXX

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2018-CP-400-6344

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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.

APPELLATE'S RESPONSE TO RESPONDENTS PENN AMERICA INSURANCE
COMPANY AND GLOBAL INDEMNITY GROUP, INC'S MOTION FOR AND
MEMORANDUM IN SUPPORT OF IMPOSITION OF SANCTIONS AGAINST
APPELLANT FILED ON JULY 24, 2020

Comes now the Appellant, victim/pro se, who brings the spotlight to the Honorable
Appeals Court of these facts:

I. This Appeals case is due to Respondents' deception, fraud, breach of contract
and Extrinsic Fraud:

A. All materials that Respondents have filed are irrelevant to this complaint and merely an attempt to mislead, distract and ultimately continue to conceal from the courts:

- 1. their willful, contrived actions to harm and do disservice to the insured, this Appellant, rather than to expose the guilt of Respondents' colleagues (fellow attorneys who structured the underlying Extrinsic Fraud upon the Courts), while**
- 2. masking their own (these Respondents') subsequent guilt in not disclosing that Extrinsic Fraud (which was initially perpetrated by TLC's lawyers on the courts in a real estate scam) against the courts in contrived actions against these Respondents' insured, this Appellant, AND**
- 3. that these Respondents, still attempting to protect their fellow attorneys, chose to co-conspire and conceal that Extrinsic Fraud upon the Court rather than expose that Extrinsic Fraud upon the Courts, which would have exonerated their insured, this Appellant in former actions which Respondents are trying to fabricate those court "losses" as caused by the Appellant—rather than admitting the cause was Respondents' failure to expose their colleague attorneys and inform the courts of the underlying Extrinsic Fraud which would have nullified those actions.**
- 4. Therefore, they have now become participants themselves in the cover-up of that Extrinsic Fraud upon the courts and**

the subsequent cover up which they are now playing out
before this honorable Appellate Court.

B. Respondents 1) violated the law, 2) violated their Oath, 3) violated Rule 402, and also 4) violated Rule 3.3 (CANDOR TOWARD THE TRIBUNAL)—inserted below.

C. Respondent's Penn America/Global including Christian Stegmaier are requesting the Honorable Appeals Court to Sanction Appellant for disgracing the Respondents due to the Extrinsic Fraud. Appellant notes that any officer of the Court who has taken the required *Oath* (rule 402) and fully understands Rule 3.3: *Candor Towards the Tribunal*, and who intentionally conceals critical evidence for the sole purpose of self preservation at the cost of disgracing, deceiving, plotting and defrauding the Honorable Court, is creating Extrinsic Fraud upon the court. Respondents are intentionally trying to make an innocent Plaintiff/Appellant appear to be a dishonest person who files suits merely to harass! The evidence presented shows otherwise. Respondents like this are chronic liars and need to be removed from the Honorable Court.

D. This case is primarily about Extrinsic Fraud Upon the Court and Deception on the Court for the purpose of a major attorney 'cover-up.' It includes the insurance company's Breach of Contract to their insured (Appellant), Negligence, and Failure to Perform Duties (namely their obligation "TO DEFEND"). All other papers filed by Respondents that do not address why Respondents did not report the Extrinsic Fraud are simply to confuse and distract the courts while they protect fellow lawyers who schemed illegally.

1. Refer to the Respondent Tim Newton's voluntarily (16) paragraph letter where he states:

(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 *Chewning v. Ford Motor Co.*, 354 S.C. 72, 579 S.E. 2d 605 (2003)".*

2. All Respondents were aware, including Christian Stegmaier who is sponsored by Penn America and paid by Penn America and Global, of the Extrinsic Fraud intentionally created by TLC's lawyers in the underlying cases. Appellant will again list some of the intentional fraud upon the lower courts and Federal courts by TLC's lawyers to show that extrinsic fraud continues in the Appeals Court.

a. Intentionally hid the fact that the Option to Purchase Agreement was fraudulent due to the fact that TLC and their attorneys fully understood that TLC could never sell the 108 acres due to an unrecorded 740 right to use memberships for 70 years.

b. Hid the fact to Defendant/Appellant that it would cost Defendant/Appellant \$22 million dollars to honor the 740 memberships caused by the continuous lost each year of \$350.00 dollars.

c. Hid the fact that TLC would never agree to enter into an agreement whereby Big Water Resorts could legally use the TLC's property in order to continue honoring the 70 year memberships. Each of the 740 Retail Membership Agreements (RMAs) provided the sole use of the very 108 acres that TLC and their attorneys prepared contracts that Defendant / Appellant executed to buy for clearly stated development purposes. The TLC attorneys prepared the contracts to sell the property while fully understanding that it was impossible to ever sell the property to Defendant/Appellant for development. The sole purpose of pretending that TLC could enter into that sales agreement was to defraud the Defendant/Appellant to buy Big Water Resort's failing business as a campground and becoming responsible for the hidden \$22 Million dollar liability over 70 years.

d. TLC prepared a financial statement showing a worth of \$1.7 million for the Big Water Resort when in fact the business was worth less than \$30,000.00 and was carrying a hidden \$22 Million dollar obligation.

e. TLC's attorneys prepared all contracts and were fully aware of all hidden situations and fraudulent facts. Each and every time TLC appeared in court it was with four to six of their lawyers. All fraudulent facts were hidden from the unsuspecting Defendant/Appellant as well as from the State and Federal Courts. TLC's lawyers committed fraud upon

both the S.C. State and the Federal Courts and Judges (by intentionally not disclosing the fraud their clients had committed against the unsuspecting Appellant. Rule 3.3 Candor Toward The Tribunal.

3. All the Respondents in this case had all the paperwork, all contracts, filings and depositions which provided them with full access to the truth, that fraud existed. Because Extrinsic Fraud upon the Courts was underlying all actions against this Appellant, it was extrinsic fraud on the part of these Respondents to not report that underlying Extrinsic Fraud to the courts and stop the proceedings.

a) NOTE: At the first mediation hearing of which Appellant was invited, Appellant revealed most of the fraud committed by TLC and their attorneys. Respondent Tim Newton and Kim Jackson for Torus Insurance (Umbrella Carrier) were present. They both fully understood the Extrinsic Fraud. *All* Respondents fully understood that the lawyers for TLC had willfully plotted and concealed the fraud against this Appellant. They took NO ACTION TO DISCLOSE IT.

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

c. All of the Respondents were fully aware of the extrinsic fraud carried out by TLC's lawyers yet no Respondent ever brought it to the court(s) attention: not then, and not since!

d. Had the Respondents disclosed this prior to the Lower Court hearing under Judge Nettles, Nettles would have thrown out and dismissed any defense in behalf of the Respondent's and ruled totally for the Plaintiff / Appellant, and this case would have all ready been sent to a jury, Appellant would no longer be indigent, and would have not suffered the resultant health issues and great Depression.

NOTE: At this point, Appellant is fighting for his life while the Respondent's still continue to refuse to admit they intentionally did not report the extrinsic fraud although they fully understood it. *These actions make Respondents guilty and co-conspirators of the extrinsic fraud.*

Merrimack-Webster's Dictionary of Law: "a fellow conspirator-Under Federal law, a statement made by a co-conspirator during and to further the conspiracy is admissible as evidence, but there must be other evidence establishing both the conspiracy and the defendant's participation".

The term "defendant's participation" is abundantly clear. All Respondents participated in not disclosing the extrinsic fraud upon the courts to the courts. This includes not exposing it to this Honorable Appellate Court. More than being honorable, Respondents prioritize protecting themselves and their fellow attorneys (as stated to Appellant by Respondent Tim Newton). All Respondents were fully aware

of all the related fraud perpetrated by TLC's officers of the Court and Respondents who willfully chose to hide the extrinsic fraud and protect their fellow attorneys/colleagues ~~in order to reach~~ and conclude by way of making an approx.. \$2 Million dollar settlement with TLC knowing full well that Appellant would be doomed forever.

The Annotated South Carolina Rules of Professional Conduct (2016 Edition) states: "Rules 3.3 (a)(3) prohibits a lawyer from offering evidence that the lawyer knows to be false. If the lawyer learns that material evidence offered by the lawyer, the lawyer's client, or a witness called for the client is false, the lawyer must take "reasonable remedial measures, including, if necessary, disclosure to the tribunal."

Appellant reminds the Honorable Appeals Court that the Respondents had full knowledge that their filing(s) were false due to their intentional former concealments from the Courts that damaged this Appellant and caused this Appellant not to have his case fully heard. They further understood that tilting the scales totally in favor of the Respondents would once again, leave this Appellant without Justice.

All Respondents, representing the Insurance Companies had an exclusive duty to defend and protect this Appellant (since Appellant was the insured) from TLC's lawsuits which involved underlying Extrinsic Fraud and prevented this Appellant from ever having his case heard in the lower courts.

All Respondents were aware of the Extrinsic Fraud and that they had a duty to disclose to all the courts, including this Honorable Appeals Court (See RULE 3.3: CANDOR TOWARDS THE TRIBUNAL –cited below).

All Respondents fully understood that:

- the underlying Extrinsic Fraud would cause this Appellant, the insured, to lose in each court ruling, and
- *each* attorney had a legal duty to report the underlying Extrinsic Fraud to the court (including Christian Stegmaier, Esq in this case), BUT

All Respondents elected not to report such fraud, and chose rather to become co-conspirators with TLC attorneys' Extrinsic Fraud, knowing that such actions would destroy the future of this Appellant.

The Court of Appeals is the very Court that requires each attorney to take his professional oath (Rule 402) to become "officers of the court." Appellant asks this Honorable Appeals Court to have an emergency hearing: nothing prevents the Appeals Court from investigating the truth, clearing the court and stopping this cancerous Extrinsic Fraud spreading from lawyer to lawyer. Extrinsic Fraud destroys the credibility of the court.

Respondents, continuing to be evasive and deceitful, cannot produce any law that prevents the Honorable Appeals Court from investigating Extrinsic Fraud being perpetrated in their own court. In fact, case law is already established compelling the Appellate Court Judges thru "inherent authority" to act.

The requisite fraud on the court occurs where "it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering

the presentation of the opposing party's claim or defense." *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir. 1989) . . . The trial court has the inherent authority, within the exercise of sound judicial discretion, to dismiss an action when a plaintiff has perpetrated a fraud on the court, or where a party refuses to comply with court orders. *Kornblum v. Schneider*, 609 So. 2d 138, 139 (Fla. 4th DCA 1992).
(Emphasis, mine.)

Once this Appeals Court identifies that all Respondents are in violation of such rules, no rule or law prevents the Appeals Court from bringing action against the Respondents, and even from making an immediate ruling to reverse this case and send it to a jury. Appellant nor the Courts deserves the torture of more time wasted. Once put on notice of Extrinsic Fraud, the Honorable Court *is obligated* to seek satisfaction for the Appellate. Any actions filed by its perpetrators, dishonest officers of the Court, should be suspended until the court achieves satisfaction and responds accordingly and in favor of the truth and this Appellant.

Appellant challenges this court to immediately investigate the allegation(s) of Extrinsic Fraud and upon satisfaction that the Extrinsic Fraud exists, exonerate this Appellant without further delay. Respondents are betraying the Honorable Court's trust as officers of the court.

RULE 3.3: CANDOR TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) apply when the lawyer is representing a client before a tribunal as well as in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. These duties continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Comment

[1] This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0(q) for the definition of "tribunal." It also

applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, paragraph (a)(3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

[2] This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

Representations by a Lawyer

[3] An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare Rule 3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation

prescribed in Rule 1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with Rule 1.2(d), see the Comment to that Rule. See also the Comment to Rule 8.4(b).

Legal Argument

[4] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(2), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

Offering Evidence

[5] Paragraph (a)(3) requires, that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.

[6] If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness's testimony will be false the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

[7] The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in criminal cases. Counsel, however, may allow the accused to give a narrative statement if the accused so desires, even if counsel knows that the testimony or statement will be false. See also Comment [9]. When a narrative statement is offered under these circumstances, the lawyer may not examine the witness or use the false testimony in the closing argument.

[8] The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See Rule 1.0(h). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

[9] Although (a)(3) only prohibits a lawyer from offering evidence the lawyer knows to be false, it permits the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate. Because of the special protections historically provided criminal defendants, however, this Rule does not permit a lawyer to refuse to offer the testimony of such a client where the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify. See also Comment [7].

Remedial Measures

[10] Having offered material evidence in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be

surprised when the lawyer's client, or another witness called by the lawyer, offers testimony the lawyer knows to be false, either during the lawyer's direct examination or in response to cross examination by the opposing lawyer. In such situations or if the lawyer knows of the falsity of testimony elicited from the client during a deposition, the lawyer must take reasonable remedial measures. In such situations, the advocate's proper course is to remonstrate with the client confidentially, advise the client of the lawyer's duty of candor to the tribunal and seek the client's cooperation with respect to the withdrawal or correction of the false statements or evidence. If that fails, the advocate must take further remedial action. If withdrawal from the representation is not permitted or will not undo the effect of the false evidence, the advocate must make disclosure to the tribunal. It is for the tribunal then to determine what should be done making a statement about the matter to the trier of fact, ordering a mistrial or perhaps nothing.

[11] The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth finding process which the adversary system is designed to implement. See Rule 1.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court.

Preserving Integrity of The Adjudicative Process

[12] Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise unlawfully communicating with a witness, juror, court official or other participant in the proceeding, unlawfully destroying or concealing documents or other evidence or failing to disclose information to the tribunal when required by law to do so. Thus, paragraph (b) requires a lawyer to take reasonable remedial measures, including disclosure if necessary, whenever the lawyer knows that a person, including the lawyer's client, intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding.

Duration of Obligation

[13] A practical time limit on the obligation to rectify false evidence or false statements of law and fact has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed.

Ex Parte Proceedings

(14) Ordinarily an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material

facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

Withdrawal

[15] Normally, a lawyer's compliance with the duty of candor imposed by this Rule does not require that the lawyer withdraw from the representation of a client whose interests will be or have been adversely affected by the lawyer's disclosure. The lawyer may, however, be required by Rule 1.16(a) to seek permission of the tribunal to withdraw if the lawyer's compliance with this Rule's duty of candor results in such an extreme deterioration of the client-lawyer relationship that the lawyer can no longer competently represent the client. Also see Rule 1.16(b) for the circumstances in which a lawyer will be permitted to seek a tribunal's permission to withdraw. In connection with a request for permission to withdraw that is premised on a client's misconduct, a lawyer may reveal information relating to the representation only to the extent reasonably necessary to comply with this Rule or as otherwise permitted by Rule 1.6.

Last amended by Order dated April 15, 2015.

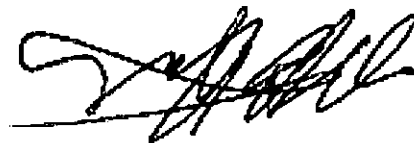
Therefore, this victim/Appellate prays that this honorable court:

1. investigate, reverse, and remand this case to a jury.
2. refuse to allow Respondents further involvement in this case due to their extraordinary Extrinsic Fraud upon the Court (no court should associate with officers of the court committing pre-planned and intentional fraud), and
3. Deny Respondent's motion for sanctions against Appellant as Respondents' actions are intentionally illegal before the Honorable Court.

“Requisite fraud on the court occurs where “it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system’s ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party’s claim or defense.” *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir. 1989). . . . The trial court has the inherent authority, within the exercise of sound judicial discretion, to dismiss an action when a plaintiff has perpetrated a fraud on the court, or where a party refuses to comply with court orders. *Kornblum v. Schneider*, 609 So. 2d 138, 139 (Fla. 4th DCA 1992). (Emphasis, mine.)”

This Appellant cries and prays for this Court to rectify what Respondents have and are committing against this Appellant and the Court. Appellant, now 76 years old, has become indigent from this long-term extrinsic fraud. Give this Appellant, who is fighting for his life, justice!

Filed on this 27th day of July, 2020.



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(803) 308-2714
hutson4444@gmail.com

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., J.R. Murphy,
Esq., John Doe #1 and John
Doe #2,

Respondents,

PROOF OF SERVICE

I certify that I have served the APPELLATE'S RESPONSE TO PENN AMERICA'S RETURNS TO APPELLANT'S EMERGENCY MOTION FOR HEARING 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 July 27, 2020, addressed to the insurance companies' 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), at Post Office Box 6648, Columbia SC, 29269-6648.

July 27, 2020



M B Hutson, Pro Se
Post Office Box 2755
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(803) 308-2714
Hutson4444@gmail.com

Tim

Fwd: Setting aside the Judgement

Mr. H <hmr226621@gmail.com>
Mon 8/13, 12:52 PM
ods06535cpc

Reply all

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).

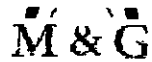
7. The Lease-Purchase Agreement pertains to all of TLC's property at the Big Water Resort site.
8. The Membership Interest Purchase Agreement in Big Water Resort, LLC does not specify what property is subject to the campground membership agreements.
9. The Settlement Agreement dated March 30, 2012 is 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 *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.

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.





Murphy & Grantland, P.A.

Tim J. Newton, Esquire

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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

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

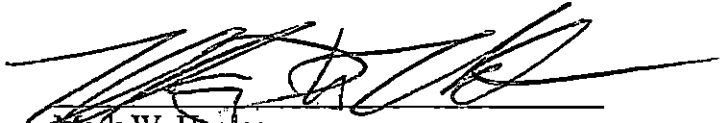
2002, US Court of Federal Claims in 1999 and the US Court of Appeals Federal Circuit in 2001.

- 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, 2016



NOTARY PUBLIC FOR SC
My Commission Expires: 3-11-21

J. MICHAEL TAYLOR

MB Hutson
POB 2755
Orangeburg, SC 29116



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Motion

CASE # 2019-001488



ATTN: CLAIRE Allen