

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

SEP 28 2020

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2019-001488

MB Hutson/MB Hudson,Appellant,

v.

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

**RESPONDENTS' JOINT MOTION TO DIRECT APPELLANT TO CORRECT RECORD
ON APPEAL AND HOLD FINAL BRIEFING DEADLINES IN ABEYANCE**

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

Respondents Penn America Insurance Company and Global Indemnity Group, Inc. ("Respondents PAIC"), Timothy J. Newton ("Newton") and J.R. Murphy ("Murphy") (collectively "Respondents"), jointly move to this Court to enter and Order directing Appellant to correct the Record on Appeal and holding final briefing deadlines in abeyance, and in support thereof state as follows:

INTRODUCTION

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

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

Nonetheless, Appellant sued Respondents PAIC and their coverage counsel, Respondents Newton and Murphy, in state court, asserting a variety of claims in contract and tort. These claims centered around the alleged failure of the insurer to pursue counterclaims on Appellant's behalf, or otherwise undertake an independent action to set aside a 2012 Consent Order based upon a theory of "extrinsic fraud." The Circuit Court found that Appellant's claims against Respondents could not be sustained for a myriad of reasons discussed fully in the Orders on file with this Court as attachments to the Notices of Appeal.

Instead of focusing on the actual issues before this Court regarding the propriety of the lower court's rulings, Appellant has lobbed allegations that Respondents and their counsel are now active perpetrators of fraud both in the underlying action and in this appeal. Appellant even requested that this Court convene an evidentiary hearing to investigate the "extrinsic fraud" he contends is being perpetrated. Appellant's motion was denied.

On July 28, 2020, this Court ordered Appellant to comply with the applicable page limits for briefing and file an Amended Reply Brief, which he did on or about August 6, 2020. Thus, the Record on Appeal in this matter was due to be served upon Respondents on September 8, 2020.

On September 8, 2020, Appellant delivered a large stack of documents to Respondents. However, the content and format of the Record prepared by Appellant were deficient in numerous respects.

On September 11, 2020, in an effort to avoid additional motions practice, Respondents sent correspondence to Appellant identifying all of the deficiencies in the Record on Appeal in detail and requested Appellant seek additional time from this Court to correct them. See Exhibit A, attached hereto, Sept. 11, 2020 Deficiency Letter).

On or about September 15, 2020, Appellant served a Request for Extension, which states: “Appella[nt] filed his Record on Appeal on September 8, 2020. Appella[nt] requests an extension of thirty (30) days beginning upon his receipt of notice from the Appellate Court identifying the specific deficiencies which might exist.”¹

In light of Appellant’s position that he will not correct the Record on Appeal until ordered to do so by this Court, Respondents file this Motion to Direct Appellant to Correct Record on Appeal and Hold Final Briefing in Abeyance.

Pursuant to the appellate rules, Respondents final briefs are currently due on September 28, 2020. Rule 211(a), SCACR.

APPLICABLE LAW

The South Carolina Appellate Court Rules provide what is required with respect to the designation of matter to be included in the Record on Appeal, the Record on Appeal, and final briefing. With respect to the designation, Rule 209 provides:

The Designation must clearly identify what the party desires to have included in the Record on Appeal, and the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]. A party shall not include any matter in his Designation which is not relevant to the appeal.

¹ It is unclear to Respondents whether Appellant both served and filed the Record on Appeal on September 8, 2020. If the Court requires a copy of the original Record prepared by Appellant in order to rule upon this mediation, Respondents will provide the same to the Court.

Rule 209(b), SCACR.

The timing, content, format, and certification of the Record on Appeal are governed by Rule 210. Of relevance here, Rule 210(a) requires the appellant to serve a copy of the Record on Appeal on each party who has served a brief within thirty days after service of the last brief. Rule 210(a), SCACR. The appellant must also immediately file proof of service of the Record with the clerk of the appellate court. Id. The appellant must file the Record on Appeal no later than the date his brief(s) are due under Rule 211. Rule 210(b), SCACR.

Regarding content and organization of the Record on Appeal, Rule 210(c) provides:

The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter which was not presented to the lower court or tribunal. Matter contained in the Record on Appeal shall be arranged in the following order: the title page, index, orders, judgments, decrees, decisions, pleadings, transcript, charges, exhibits and other materials or documents, and a certificate by appellant. Each page of the Record on Appeal shall be numbered consecutively beginning with the index. Where a portion of a page of the trial transcript, or a page of an exhibit or document, is to be included in the Record on Appeal, the entire page shall be included. When a portion of an order, judgment, decision or pleading is to be included in the Record on Appeal, the entire order, judgment, decision or pleading shall be included in the Record, to include the caption and signature(s); provided, however, that the portion of a pleading showing verification or service shall not be included unless relevant to the appeal...

Rule 210(c), SCACR. Additionally, “[e]very Record on Appeal shall contain an index to the principal matters therein to include orders, judgments, decisions, pleadings, pretrial matters, opening statements, testimony, motions, closing arguments, jury charges, post-trial motions and exhibits.” Rule 210(e), SCACR. With respect to exhibits, “[p]hotographs, plats and diagrams, and other paper exhibits shall be inserted in the Record on Appeal where they can reasonably be

reduced or drawn to a size which permits them to be printed and inserted in the Record on Appeal, without folding more than one time.” Rule 210(f), SCACR.

Additionally, the Record on Appeal must be accompanied by a Certificate of Appellant, certifies “that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.” Rule 210(g), SCACR.

With respect to final briefs, their deadline and content are provided for in Rule 211. Each party must serve and file their final brief(s) within twenty days after service of the Record on Appeal. Rule 211(a), SCACR. The party must also file with the clerk proof that the final brief(s) has been served, and a certificate that his final brief(s) complies with Rule 211(b). *Id.* The content of the final briefs must be identical to the brief(s) previously served under Rule 208, except for the following:

(1) References to the Record. The references in the initial brief shall be revised to indicate where the material appears in the Record on Appeal. These revised references may be in place of or in addition to the initial references, and shall be in the form indicated by the following examples: (R. p. 15, line 4) (R. p. 75, lines 8-20) (R. p. 90, line 1-p. 101, line 14) (R. pp. 29-31).

(2) Correction of Typographical Errors and Misspellings. The party may correct obvious typographical errors and misspellings which were contained in the initial brief. No other changes may be made.

Rule 211(b), SCACR.

ARGUMENT

Respondents both received sets of documents from Appellant with substantially similar content, though there were some variations noted. Neither complied with the appellate rules. Unless and until Appellant corrects the Record on Appeal, the parties cannot serve and file their final briefs, as they cannot make the requisite references to the Record.

As explicated in the correspondence to Appellant, the following deficiencies were noted in the original Record prepared by Appellant:

Lack of Page Numbering. The Record is required to be consecutively paginated. See Rule 211(b)(1), SCACR (explaining that references in the initial brief shall be revised to indicate where the material appears in the Record on Appeal). The Record prepared has no page numbers.

Lack of Index. The Record is required to contain an Index. See Rule 210(e). While Appellant prepared a chart, the absence of corresponding page numbers renders the chart useless. A proper and complete Index must be added to the Record and include references to the page numbers of the Record where the documents can be found. This lack of pagination has led to inconsistencies in the order of the documents provided to the parties.

Inclusion of Matter Outside the Designation. The Record is not permitted to contain matters not included in the Designation of Matter to be Included in the Record on Appeal. See Rule 210(c), SCACR. The portions of the original Record numbered pages 2 through 10, which begin with a “Table of Contents” and end with a signature block dated September 8, 2020, appear an attempt to make additional arguments to the Court. The inclusion of this section in the Record is improper and must be removed.

Failure to Include Certain Designated Matter. The Record is required to include all matter designated to be included by any party under Rule 209. See Rule 210(c), SCACR. The following material designated by one or more of the Respondents is inaccurate or incomplete in the Record and must be corrected:

- a. With respect to the document labeled “Exhibit 4,” the Amended Complaint that should have been included in the Record is eighteen pages. Only the first six pages of the Amended Complaint are included in the Record behind “Exhibit 4.” The remaining pages were inserted in the midst of the document labeled “Exhibit 5.”²
- b. With respect to the document labeled “Exhibit 5,” the Exhibits that accompanied Hutson’s Amended Complaint consisted of 145 pages, labeled Exhibits 1.0 through 13.0. These documents are not exact reproductions of the exhibits filed with the Circuit Court or are missing. Specifically:

² In the copy of the Record provided to Murphy & Grantland, the Amended Complaint was provided in its entirety behind the page labeled “Exhibit 4.”

- i. None of the Exhibits are marked with their respective exhibit numbers from the Circuit Court filing in the upper right corner.
 - ii. An e-mail dated August 8, 2016 is included but was not a part of the Circuit Court filing.
 - iii. Exhibit 5.0 does not have the handwritten notations included in the copy filed with the Circuit Court, includes a page entitled “Exhibit A” that is completely void of the text below, and is missing the page entitled “Exhibit B.”
 - iv. Exhibit 9.0 should be an eight-page Settlement Agreement and a one-page plat. The first two pages are separated from the remaining pages by the portion of “Exhibit 4” placed within “Exhibit 5.”
 - v. Exhibit 13.0 is missing page 3 in the copy provided to Murphy & Grantland and page 3 is out of order in the Record provided to Collins & Lacy.
- c. With respect to the document labeled “Exhibit 7,” the Motions hearing transcript should be the last item to appear in the Record. See Rule 210(c), SCACR.
 - d. With respect to the document labeled “Exhibit 10,” the relevant designation provided: “Newton’s Memorandum in Support of Motion to Dismiss, filed May 30, 2019 (310 pages total, including Exhibits A through AA).” Appellant included only the text of the Memorandum and none of the Exhibits thereto.
 - e. With respect to the document labeled “Exhibit 11,” the relevant designation provided: “Newton’s Reply Memorandum in Support of Summary Judgment with Exhibits BB and CC, filed June 13, 2019 (30 pages total).” Appellant included only the text of the Reply Memorandum and none of the Exhibits thereto.
 - f. With respect to the document labeled “Exhibit 10,” page 7 of Newton’s Reply Memorandum is missing.
 - g. With respect to the document labeled “Exhibit 20,” the relevant designation provided: “PAIC’s Memorandum in Support of Summary Judgment with Exhibits A and B, filed June 25, 2019 (134 pages total).” Appellant included only the text of the Memorandum and none of the Exhibits thereto.

- h. The Record does not include the material designated in Appellant’s Designation of Matter, which Appellant filed on November 12, 2019. Specifically, Appellant designated the “RICHLAND COUNTY COMMON PLEAS Case History for Case 2018CP4006344.” Though Appellant attached the two-page document to your designation, unless you intend to withdraw your designation, it must be included in the Record.

Inconsistency in Preparation. With respect to the documents labeled “Exhibit 13,” “Exhibit 14,” and “Exhibit 15,” though they appear to be provided in their entirety, the pages were scrambled in the copy provided to Murphy & Grantland.

Lack of Certificate of Appellant. The Record lacks the Appellant’s Certification required by Rule 210(g), SCACR, that “the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.”

As the party who brought this appeal, it is Appellant’s responsibility to correct these deficiencies with the service of a corrected Record on Appeal. Only after a proper and complete Record on Appeal is received can the parties prepare, serve, and file their final briefs.

CONCLUSION

Based upon the foregoing, Respondents respectfully request that this Honorable Court grant Respondents’ Joint Motion to Direct Appellant to Correct Record on Appeal and Hold Final Briefing Deadlines in Abeyance.

Specifically, Respondents request that the Court enter an Order directing Appellant to rectify the deficiencies outlined in the instant motion and serve a corrected Record on Appeal that is consecutively paginated, includes an Index, and contains only and all matter designated for inclusion in the Record, with identical copies being served to the parties (and thereafter filed with the Court) and the requisite accompanying Certificate of Appellant.

Respondents further request that the deadlines for their final briefing be held in abeyance until after service of the corrected Record on Appeal.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

s/Christian Stegmaier

CHRISTIAN STEGMAIER

S.C. Bar No. 68648

cstegmaier@collinsandlacy.com

LAURA R. BAER

S.C. Bar No. 101076

lbaer@collinsandlacy.com

COLLINS & LACY, P.C.

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Columbia, SC 29211

(803) 255-0404 (phone)

(803) 771-4484 (fax)

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

s/John R. Murphy (with permission)

JOHN R. MURPHY, ESQUIRE

S.C. Bar No. 7941

jrmurphy@murphygrantland.com

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PRO SE RESPONDENT

s/Timothy J. Newton (with permission)

TIMOTHY J. NEWTON, ESQUIRE

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PRO SE RESPONDENT

**RESPONDENTS' JOINT MOTION TO DIRECT
APPELLANT TO CORRECT RECORD ON
APPEAL AND HOLD FINAL BRIEFING
DEADLINES IN ABEYANCE**

Columbia, South Carolina
September 25, 2020

EXHIBIT A



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

September 11, 2020

VIA EMAIL & UNITED STATES MAIL

M.B. Hutson
Post Office Box 2755
Orangeburg, SC 29116
hutson4444@gmail.com and hmr226621@gmail.com

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

Dear Mr. Hutson:

We appreciate your efforts at complying with your duty to prepare the Record on Appeal in the above-referenced appeal, which was delivered to our office on September 8, 2020. However, upon review of the voluminous documents delivered to our office, we note several deficiencies in the content and preparation of the Record, which must be corrected before the Record is filed with the Court and before the Respondents can prepare their final briefs.

The South Carolina Appellate Court Rules governs the requirements of a Record on Appeal. The text of the Rules are available on-line, including at www.sccourts.org under the Quick Links section "Court Rules." Based upon our review of the Rules and the Record, we note the following deficiencies, which are problems in both the Record provided to our office and to Murphy & Grantland unless otherwise noted:

1. The Record is required to be consecutively paginated. See Rule 211(b)(1), SCACR (explaining that references in the initial brief shall be revised to indicate where the material appears in the Record on Appeal). The Record you prepared has no page numbers. Consecutive page numbers must be added to the Record.
2. The Record is required to contain an Index. See Rule 210(e). While you prepared a chart, the absence of corresponding page numbers renders the chart useless. A proper and complete Index must be added to the Record and include references to the page numbers of the Record where the documents can be found. This lack of pagination has led to inconsistencies in the order of the documents provided to our office and to Murphy & Grantland.
3. The Record is not permitted to contain matters not included in the Designation of Matter to be Included in the Record on Appeal. See Rule 210(c), SCACR. The portions of your Record numbered pages 2 through 10, which begin with a "Table of Contents" and end

with a signature block dated September 8, 2020, appear an attempt to make additional arguments to the Court. The inclusion of this section in the Record is improper and must be removed.

4. The Record is required to include all matter designated to be included by any party under Rule 209. See Rule 210(c), SCACR. The following material designated by one or more of the Respondents is inaccurate or incomplete in the Record and must be corrected:
 - a. With respect to the document you labeled “Exhibit 4,” the Amended Complaint that should have been included in the Record is eighteen pages. Only the first six pages of the Amended Complaint are included in the Record behind “Exhibit 4.” The remaining pages were inserted in the midst of the document labeled “Exhibit 5.”¹
 - b. With respect to the document you labeled “Exhibit 5,” the Exhibits that accompanied your Amended Complaint consisted of 145 pages, labeled Exhibits 1.0 through 13.0. These documents are not exact reproductions of the exhibits filed with the Circuit Court or are missing. Specifically:
 - i. None of the Exhibits are marked with their respective exhibit numbers from the Circuit Court filing in the upper right corner.
 - ii. An e-mail dated August 8, 2016 is included but was not a part of the Circuit Court filing.
 - iii. Exhibit 5.0 does not have the handwritten notations included in the copy filed with the Circuit Court, includes a page entitled “Exhibit A” that is completely void of the text below, and is missing the page entitled “Exhibit B.”
 - iv. Exhibit 9.0 should be an eight-page Settlement Agreement and a one-page plat. The first two pages are separated from the remaining pages by the portion of “Exhibit 4” placed within “Exhibit 5.”
 - v. Exhibit 13.0 is missing page 3 in the copy provided to Murphy & Grantland and page 3 is out of order in the Record provided to our office.
 - c. With respect to the document you labeled “Exhibit 7,” the Motions hearing transcript should be the last item to appear in the Record. See Rule 210(c), SCACR.
 - d. With respect to the document you labeled “Exhibit 10,” the relevant designation provided: “Newton’s Memorandum in Support of Motion to Dismiss, filed May 30, 2019 (310 pages total, including Exhibits A through AA).” You included only the text of the Memorandum and none of the Exhibits thereto.
 - e. With respect to the document you labeled “Exhibit 11,” the relevant designation provided: “Newton’s Reply Memorandum in Support of Summary Judgment with

¹ In the copy of the Record provided to Murphy & Grantland, the Amended Complaint was provided in its entirety behind the page labeled “Exhibit 4.”

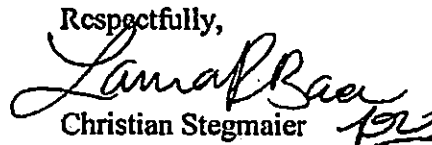
Exhibits BB and CC, filed June 13, 2019 (30 pages total).” You included only the text of the Reply Memorandum and none of the Exhibits thereto.

- f. With respect to the document you labeled “Exhibit 10,” page 7 of Newton’s Reply Memorandum is missing.
 - g. With respect to the document you labeled “Exhibit 20,” the relevant designation provided: “PAIC’s Memorandum in Support of Summary Judgment with Exhibits A and B, filed June 25, 2019 (134 pages total).” You included only the text of the Memorandum and none of the Exhibits thereto.
 - h. The Record does not include the material designated in your Designation of Matter, which you filed on November 12, 2019. Specifically, you designated the “RICHLAND COUNTY COMMON PLEAS Case History for Case 2018CP4006344.”
5. With respect to the documents you labeled “Exhibit 13,” “Exhibit 14,” and “Exhibit 15,” though they appear to be provided in their entirety, the pages were scrambled in the copy provided to Murphy & Grantland.
 6. The Record lacks the Appellant’s Certification required by Rule 210(g), SCACR, that “the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.” Though you attached the two-page document to your designation, unless you intend to withdraw your designation, it must be included in the Record.

In its current incomplete state, without any pagination, Respondents cannot convert their initial briefs to final briefs. Thus, we are writing to you in an effort to provide you with an opportunity to request additional time from the Court to correct the deficiencies noted above. If you do not request an extension from the Court by Wednesday, September 16, 2020, or if you file the Record on Appeal in its current state, we will be forced to engage in additional motions practice in the appellate court.

We will be filing a Response in Opposition to your recent motion seeking to add to the Record on Appeal. Therein we intend to notify the Court of the current dispute over the content and format of the Record on Appeal and our efforts to resolve the same.

Thank you for your attention to this matter.

Respectfully,

Christian Stegmaier

CS/lrb

cc (via email):

J. R. Murphy, Esquire
Timothy Newton, Esquire

CERTIFICATE OF SERVICE

I, the undersigned, attorney for Respondents Penn America Insurance Company and Global Indemnity Group, Inc., do hereby certify that I have this date served the foregoing RESPONDENTS' JOINT MOTION TO DIRECT APPELLANT TO CORRECT RECORD ON APPEAL AND HOLD FINAL BRIEFING DEADLINES IN ABEYANCE by causing the same to be deposited in a United States Postal Service mailbox, postage prepaid, addressed to the following:

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

RECEIVED

SEP 28 2020

SC Court of Appeals

s/ Christian Stegmaier

CHRISTIAN STEGMAIER

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

Dated: September 25, 2020



RECEIVED

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

SEP 28 2020

SC Court of Appeals

September 25, 2020

VIA U.S. MAIL AND EMAIL

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201
ctappfilings@sccourts.org

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

Dear Ms. Kitchings:

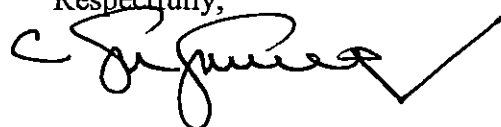
Please find enclosed the unbound original of *Respondents' Joint Motion to Direct Appellant to Correct Record on Appeal and Hold Final Briefing Deadlines in Abeyance*, together with our firm's check in the amount of \$50.00 for filing in the above referenced matter.

Also enclosed is the unbound original of *Respondents' Joint Motion to Strike (1) Final Brief of Appellant, and (2) Appellant's Reply to Respondents' Joint Return to Appellant's Motion to Supplement the Record on Appeal*, together with our firm's check in the amount of \$50.00 for filing in the above referenced matter.

Pursuant to the Supreme Court's Amended Order "re: Operation of the Appellate Courts During the Coronavirus Emergency" (2020-05-29-02, Appellate Case No. 2020-000447), we have not included any additional copies. If any additional copies are required, please let us know.

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

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

Respectfully,

Christian Stegmaier

CS/net
Encl.

The Honorable Jenny A. Kitchings

September 25, 2020

Page 2

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

M. B. Hutson, Appellant *pro Se*

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

Tim Newton, Esquire, Murphy and Grantland, PA



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Collins & Lacy
ATTORNEYS AT LAW

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The Honorable Jenny A. Kitchings
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