STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Penn America Insurance Company and Global Indemnity Group, LLC, Plaintiffs/Counter-Defendants, vs. Morris Beach Hutson a/k/a M.B. Hutson, Defendant/Counter-Plaintiff. Morris Beach Hutson a/k/a M.B. Hutson Third-Party Plaintiff, vs. Timothy J. Newton, Esq.; Murphy & Grantland, P.A.; Christian Stegmaier, Esq.; and Collins & Lacy P.C., Third-Party Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT C.A. No: 2020-CP-40-03810 **ORDER GRANTING PLAINTIFFS PENN AMERICA INSURANCE COMPANY AND GLOBAL INDEMNITY GROUP, LLC'S MOTION FOR TEMPORARY INJUNCTION**

This matter came before the Court upon Plaintiffs Penn America Insurance Company and Global Indemnity Group, LLC's Motion for Preliminary Injunction, as well as other motions. A hearing on the motions was held on October 15, 2020, before the Honorable Robert E. Hood. Plaintiffs/Counter-Defendants Penn America Insurance Company ("PAIC") and Global Indemnity Group, LLC ("Global") were represented by Christian Stegmaier, Esquire. Mr. Stegmaier also represented himself and Collins & Lacy P.C. as Third-Party Defendants. Third-Party Defendants Timothy J. Newton, Esq. and Murphy & Grantland, P.A. were represented by John Grantland, Esquire and Timothy Newton, Esquire. Defendant/Counter-Plaintiff/Third-Party Plaintiff Morris

Beach Hutson a/k/a M.B. Hutson ("Hutson") appeared *pro se*. Having considered the written filings and exhibits, the oral presentations at the hearing on October 15, 2020, and the applicable law, this Court grants Plaintiffs Penn America Insurance Company and Global Indemnity Group, LLC's Motion for Preliminary Injunction. The Court presents its findings and conclusions below.

PROCEDURAL BACKGROUND

Plaintiffs PAIC and Global initiated the instant matter with the filing of a Complaint and Motion for Temporary Injunction on August 10, 2020. Defendant Hutson responded with the filing of his own Counterclaims and Third-Party Claims, a partial Answer to the Complaint, and his own Motion for Temporary Injunction. The Plaintiffs, Counter-Defendants, and Third-Party Defendants then filed their respective motions to stay, strike, and dismiss Hutson's filings.

The following motions were heard in an in-person hearing at the Richland County Judicial Center on October 15, 2020:

1. Plaintiffs' Motion for Temporary Injunction against Hutson;
2. Hutson's Motion for Temporary Injunction against Counter-Defendants and Third-Party Defendants;
3. Third-Party Defendants Murphy & Grantland and Newton's Motion to Dismiss or for Summary Judgment;
4. PAIC, Global, Stegmaier, and Collins & Lacy's Motion to Stay/Strike/Dismiss Hutson's Amended Counterclaims and Third-Party Claims and Motion for Injunction;
5. PAIC, Global, Stegmaier, and Collins & Lacy's Motion to Strike Portions of Hutson's "Answer"; and
6. PAIC, Global, Stegmaier, and Collins & Lacy's Motion to Strike Hutson's "Notice of Extrinsic Fraud" and "Memorandum to Defendant's Amended Cross Complaint."

This Order addresses the first motion, Plaintiffs' Motion for Temporary Injunction against

Hutson.[1]

LEGAL STANDARD

"A preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law." Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 586-87, 694 S.E.2d 15, 17 (2010) (holding that there is no additional "balancing the equities" requirement). When seeking a preliminary injunction, the plaintiff need not prove an absolute legal right; the plaintiff need only present "a fair question to raise as to the existence of such a right." Williams v. Jones, 92 S.C. 342, 347, 75 S.E. 705, 710 (1912). The determination of whether to grant an injunction should not be based on the merits of the underlying case except insofar as the merits may assist the trial court in determining whether a prima facie showing has been made. MailSource, LLC v. M.A. Bailey & Assocs., 356 S.C. 363, 368, 588 S.E.2d 635, 638 (Ct. App. 2003) (citing Transcon. Gas Pipe Line Corp. v. Porter, 252 S.C. 478, 481, 167 S.E.2d 313, 315 (1969)). "Once a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits." Helsel v. City of North Myrtle Beach, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992) ("[I]t would have been improper for the hearing judge who issued the temporary injunction to make a finding upon the facts in such a manner as to affect the merits of the case.").

[1] Contemporaneous with the entry of the instant Order, the Court is entering Orders denying Hutson's Motion for Temporary Injunction against Counter-Defendants and Third-Party Defendants; granting Third-Party Defendants Murphy & Grantland and Newton's Motion to Dismiss or for Summary Judgment; and granting Plaintiff's three motions to strike. The Court's findings and conclusions in these additional Orders are incorporated herein by reference.

FINDINGS OF FACT

The documentation provided by the parties reflects that in December 2010, Hutson entered into a Membership Interest Purchase Agreement with Richard U. Clark, Jimmy S. Lovell, James Thigpen, and The Big Water Resort, LLC related to the outstanding membership interests in The Big Water Resort, LLC. Contemporaneously therewith, Hutson also entered into a Lease Purchase Agreement with TLC Holdings, LLC ("TLC"), Richard U. Clark, Jimmy S. Lovell and James Thigpen related to the purchase of property in Clarendon County, South Carolina, including a campground known as "Big Water Resort," a convenience store facility and adjacent land known as the "Big Water Country Store and Restaurant," and a 57.81 acre tract known as "Roger's Tract."

In December 2011, TLC filed an ejectment action against Hutson alleging he defaulted on the terms of the Lease Purchase Agreement. TLC Holdings, LLC v. Hutson, Case No. 2011-CP-14-602 (Clarendon Cnty. Ct. Comm. Pleas) ("the Ejectment Action"). Hutson filed counterclaims against TLC in the Ejectment Action in which he asserted that various misrepresentations and material omissions were made with respect to the Subject Property and that TLC and its members interfered with the Property's development and operation. The parties agreed to settle the Ejectment Action, and the Settlement Agreement was adopted into a Consent Order filed April 13, 2012.

Following Hutson's default under the terms of the 2012 Settlement Agreement and Consent Order, TLC sought to evict Hutson from the Big Water Resort property. Following a hearing, the Honorable George C. James, Jr., entered an order on March 21, 2014, which enforced the terms of the Consent Order and Settlement Agreement. Judge James found that Hutson's claims that TLC "made 'verbal assurances' to Hutson that were incorrect, or that [TLC] failed to make 'important disclosures' to him" were the same claims alleged in the 2012 action and resolved pursuant to the 2012 Settlement Agreement and Consent Order.

Global is the parent company of PAIC, a member of Penn-America Group, which offers specialty property and casualty products designed for small businesses. PAIC issued commercial general liability (CGL) policy number PAC7045167 to "BWR, Inc. d/b/a Big Water Resort" as the named insured ("the Policy"). The Policy was in effect from October 16, 2013 through April 7, 2014. Hutson was the principal in BWR, Inc., a now defunct corporation formerly organized and existing under the laws of the State of South Carolina. Pursuant to the Policy, PAIC provided a defense and indemnity to Hutson in two lawsuits, known as the Class Action and the Defamation Action. Big Water Resort, LLC, *et al.* v. TLC Holdings, LLC, C/A: 2:14-1583-DCN-MGB (D.S.C.) ("the Class Action"); TLC Holdings, LLC, et al. v. Hutson, Case No. 2015-CP-14-0615 (Clarendon Cnty. Ct. Comm. Pleas) ("the Defamation Action").

The Class Action lawsuit was brought in federal court by a group of Big Water Resort campground members against TLC and its members. TLC then asserted third-party claims for equitable indemnification against Hutson. Hutson also asserted counterclaims against TLC. TLC and Hutson filed cross motions for summary judgment , which were ruled upon in favor of TLC on May 20, 2016. Federal District Judge David C. Norton later also entered an Order granting sanctions against Hutson, explaining:

> Hutson has established a pattern of making misrepresentations to the court, of making unsupported allegations of unethical and criminal conduct by third-party plaintiffs, and of using the judicial process as a mechanism of harassment. His meritless filings have wasted untold hours of the court's time. He lacks any evidence to support his counterclaims and other allegations against third-party plaintiffs. Indeed, Hutson routinely fails to provide factual or legal support for anything he files with the court. Accordingly, the court finds that sanctions are appropriate under the court's inherent power.

Class Action, Norton Order Granting Sanctions, Oct. 6, 2017.

The Defamation Action was instituted by TLC in state court on December 7, 2015. TLC's

claims related to statements made by Hutson in the postcard he sent to campground members and certain statements Hutson made to the attorney who represented the campground members in the Class Action. Hutson raised identical counterclaims against TLC in the Defamation Action as he raised in the Class Action, which were also disposed of on summary judgment by the Honorable R. Ferrell Cothran, Jr. TLC's claims in the Defamation Action proceeded to a jury trial. The jury returned a verdict of Three Million Five Hundred Thousand Dollars ($3,500,000) on January 26, 2018. The case was mediated during appeal and resolved.

PAIC retained Murphy & Grantland, P.A. as coverage counsel and instituted a coverage action on June 14, 2016. Penn-America Insurance Company v. BWR, Inc., et al., C/A: 2:16-cv-01943-DCN (D.S.C.) ("the Coverage Action"). On or about September 16, 2016, Hutson entered into a Settlement Agreement and Release of Certain Claims with PAIC. PAIC paid Hutson the sum of Nine Thousand Five Hundred Dollars ($9,500.00) as consideration for the Settlement Agreement and Release in the Coverage Action.

Following resolution of both lawsuits without any personal liability to Hutson, Hutson initiated a lawsuit against PAIC, Global, and their coverage counsel, Timothy Newton and J.R. Murphy, on December 5, 2018. Hutson v. Penn America Ins. Co., et al., Case No. 2018-CP-40-06344 (Richland Cnty. Comm. Pleas) ("the Bad Faith Action"). Following a hearing before the Honorable Michael G. Nettles, the court granted summary judgment in favor of the defendants on all of Hutson's claims. Huston has appealed from those Orders, and the appeal is currently pending before the South Carolina Court of Appeals. Hutson v. Penn America Inc. Co., et al., Appellate Case No. 2019-001488 ("the Bad Faith Appeal").

Hutson has also separately sued attorney Paul Weissenstein, who represented him in the 2012 Ejectment Action and resulting Settlement Agreement. Hutson v. Weissenstein, Case No.

2018-CP-43-1583 (Sumter Cnty. Ct. Comm. Pleas) ("the Weissenstein Malpractice Action"). On February 25, 2019, the Honorable Kristi Curtis granted summary judgment in favor of Weissenstein based upon both the statute of limitations and the merits. Hutson appealed from that Order and the appeal remains pending. Hutson v. Weissenstein, Appellate Case No. 2019-873 (S.C. Ct. App.) ("the Weissenstein Appeal"). Hutson also sued attorneys Stephen "Chip" Burn and Sarah Gutherie and Burn Law Firm, LLC related to advice they purportedly gave him in the Ejectment Action. On April 10, 2019, the Honorable Frank R. Addy, Jr. entered an Order of Dismissal, finding that Hutson failed to cure the lack of expert affidavit or establish that such an affidavit was not necessary. Hutson did not appeal from the Order of Dismissal.

Plaintiffs have provided copies of numerous e-mails from Hutson to counsel for PAIC and Global, Newton, Murphy, and others threatening to bring a new lawsuit against them and claiming that they are all co-conspirators in the original fraud he claims was perpetrated by TLC in the land deal and 2012 settlement. On June 21 and 22, 2020, Huston told counsel for PAIC, Christian Stegmaier that he was "having to seriously consider bringing a[n] immediately separate action against you for participating with Tim Newton and JR Murphy in extrinsic fraud upon the Appeals Court and the lower Court." He added: "I plan to serve the insurance companies copies of the complaint as well as serving you." On July 6, 2020, Hutson wrote: "If I don't hear from you within the next (5) business days, I will proceed with a complaint in State or Federal Court against you." On July 27, 2020, Hutson accused the Plaintiffs and Third-Party Defendants of "concealing extrinsic fraud" and stated: "I plan to take these immoral actions to court rightaway [sic]. I have an abundance of evidence showing my damages and mental depression and stress that you have caused me intentionally and continue to cause on a daily basis. All are warned."

On August 8, 2020, two days before Plaintiffs initiated the instant action, Hutson wrote: "Have no choice but to move forward with a new needed complaint, 'Defamation by way of Extrinsic Fraud' naming Christian Stedmaier [sic], Tim Newton, JR Murphy, Penn America and Global. Soon I will file the same 'Defamation by way of Extrinsic Fraud' against Turner Padgett and Tom Harper." Then, following service with the instant Complaint and Motion for Preliminary Injunction, Hutson responded by filing counterclaims and third-party claims.

At the hearing before this Court, Hutson was provided ample opportunity to explain the nature of the fraud he is alleging against Plaintiffs and the Third-Party Defendants and how it differs what has been asserted in the past, including before Judge Nettles. Hutson pointed to two pieces of correspondence he received from Newton, who was acting in his capacity as coverage counsel for PAIC at the time. They include an August 13, 2018 e-mail and a November 8, 2018 letter. The e-mail states that, based on Huston's allegations, "there *might possibly* be extrinsic fraud on the court" but advises that Newton cannot provide legal advice or representation to Hutson regarding the same. (emphasis added). The November 8, 2018 letter denies that PAIC or its counsel has "acknowledged the existence of fraud upon the court." While Hutson claims that the two letters are inconsistent, the Court disagrees. The August 13 e-mail did not acknowledge the existence of fraud—it provided that fraud "might possibly" exist. There is no evidence that Newton had actual knowledge of any fraud or perpetrated any fraud himself.

CONCLUSIONS OF LAW

"The purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it." Compton v. S.C. Dep't of Corr., 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011). In determining whether a preliminary injunction is proper, the Court is not ruling on the merits of the permanent injunction and request to classify Hutson as a vexatious

litigant. Rather, the Court evaluates whether Plaintiffs will suffer immediate, irreparable harm without the injunction, the likelihood of Plaintiffs' success on the merits, and whether there is an adequate remedy at law. See id.; Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 586-87, 694 S.E.2d 15, 17 (2010). In doing so, the Court examines the merits of the underlying case only to the extent necessary to determine whether the plaintiff has made a sufficient prima facie showing of entitlement to relief. Helsel v. City of North Myrtle Beach, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992).

A. Immediate and Irreparable Harm to Plaintiffs

The Court agrees that Plaintiffs will suffer irreparable harm associated with the time and costs they will incur in defending against further litigation by Hutson and they cannot be adequately compensated with monetary damages in light of Hutson's limited financial resources. Hutson has filed numerous motions in past litigation in state and federal court, as well as in the pending appeal, which impose a substantial burden of time and money for preparation of responses. A lack of response risks that the Court interpret the motion as unopposed. The issuance of this preliminary injunction will further preserve the status quo while the Court of Appeals considers the rulings on summary judgment by Judge Nettles.

B. Plaintiffs' Likelihood of Success on Merits

In evaluating this element, the court must determine only the *likelihood* of whether the Plaintiff will prevail on the merits based on the allegations in its complaint. See Compton v. S.C. Dep't of Corr., 392 S.C. at 367, 709 S.E.2d at 642. The Complaint alleges that Hutson is a vexatious litigant and seeks a permanent injunction against the initiation of *pro se* litigation against Plaintiffs or any of their officers, agents, servants, employees, attorneys, affiliates, successors and assigns, without first obtaining leave of Court. See Ramantanin v. Poulos, 240 S.C. 13, 25, 124 S.E.2d 611,

617 (1962) (recognizing a court of equity's power to prevent continued and vexatious litigation, but that there must be a showing of the pendency of other litigation between the parties or the threat of further litigation to serve as the basis for issuance of the injunction). Here, Plaintiffs have set forth a prima facie case for their request for injunctive relief, including the pendency of other litigation between the parties—the current appeal in the South Carolina Court of Appeals—and multiple threats of further litigation by Hutson, further evidenced by his counterclaims in this matter.

C. Lack of Adequate Remedy at Law

As discussed *supra*, the Court agrees that Rule 11 sanctions and the Frivolous Proceedings statute do not provide an adequate remedy at law because Hutson does not have the financial means to pay any monetary award to Plaintiffs.

D. Posting of Bond

Rule 65(c), SCRCP, provides that:

> Except in divorce, child custody and non-support actions where the giving of security is discretionary, no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

AJG Holdings, LLC v. Dunn, 382 S.C. 43, 49, 674 S.E.2d 505, 508 (Ct. App. 2009). In Atwood Agency v. Black, our Supreme Court ruled that the circuit court erred in requiring only a nominal security bond of $250, because it erroneously assumed the injunction is proper instead of providing an amount sufficient to protect appellants in the event the injunction is ultimately deemed improper. 374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007).

Here, the injunctive relief requested is not aimed at preventing or allowing commercial activity. Rather, its granting limits Hutson's *pro se* access to the state court. However, the fraud allegations Hutson attempts to raise have already been raised before the Honorable Michael G.

Nettles. Hutson remains free to represent himself in the currently pending appeal from Judge Nettles' Order. Thus, even if this preliminary injunction is found to be in error, there will be no significant costs or damages incurred by Hutson. Nonetheless, Rule 65 requires the giving of security in a sum deemed proper by the Court.

CONCLUSION

IT IS ORDERED Plaintiffs Penn America Insurance Company and Global Indemnity Group, LLC's Motion for Preliminary Injunction is hereby **GRANTED**. Unless and until Appellate Case No. 2019-001488 is concluded, Defendant Morris Beach Hutson a/k/a M.B. Hutson is prohibited from filing any further *pro se* litigation in state court in South Carolina (a) against Penn America Insurance Company, Global Indemnity Group, LLC, Collins & Lacy, P.C., Christian Stegmaier, Laura Baer, Murphy & Grantland, P.A., John Robert "J.R." Murphy, John Grantland, and/or Timothy Newton, or (b) related to the claims already ruled upon by the Honorable Michael G. Nettles.[2]

IT IS FURTHER ORDERED, pursuant to Rule 65(c), Plaintiffs are directed to file proof of bond, in the amount of Five Thousand and no/100 ($5,000.00) Dollars within five business days of entry of this Order. The bond shall serve as security for all claims with respect to this Preliminary Injunction, and any additional injunctive relief ordered by the Court in this action.

AND IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]

[2] This injunction does not prevent Huston from continuing to pursue his current appeal from Judge Nettles' Order granting summary judgment in Appellate Case No. 2019-001488.

Richland Common Pleas

Case Caption: Penn America Insurance Company , plaintiff, et al vs Morris Beach Hutson , defendant, et al

Case Number: 2020CP4003810

Type: Order/Temporary Injunction

So Ordered

s/ R.E. Hood #2164