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**Mar 23 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
The Honorable Robert E. Hood, Circuit Court Judge

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Appellate Case No. 2020-001708  
Civil Action Case No. 2020-CP-40-03810

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Penn America Insurance Company and Global Indemnity Group, Inc.,

Plaintiff/Counter-Defendants,

v.

Morris Beach Hutson a/k/a M.B. Hutson,

Defendant/Counter-Plaintiff,

AND

Morris Beach Hutson a/k/a M.B. Hutson,

Third-Party Plaintiff,

v.

Timothy J. Newton, Esq.; Murphy & Grantland, P.A.; Christian Stegmaier, Esq.;  
and Collins & Lacy P.C.,

Third-Party Defendants.

of whom Morris Hutson is the Appellant,

and Penn America Insurance Company; Global Indemnity Group, LLC; Timothy J. Newton, Esq.;  
Murphy & Grantland, P.A.; Christian Stegmaier, Esq.; and Collins & Lacy P.C. are the  
Respondents.

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**RESPONDENTS TIMOTHY J. NEWTON AND MURPHY & GRANTLAND, P.A.'S  
JOINDER OF MOTION TO STRIKE APPELLANT'S "MEMORANDUM" FILED  
MARCH 5, 2021, APPELLANT'S "NOTICE" FILED MARCH 8, 2021, AND  
APPELLANT'S "REPLY BRIEF" FILED MARCH 10, 2021**

## **AND REQUEST FOR SANCTIONS**

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

Pursuant to Rule 269 of the South Carolina Appellate Court Rules and other applicable authority, Respondents Timothy J. Newton and Murphy & Grantland, P.A. (hereinafter collectively “Newton”), file this Memorandum joining Respondent Penn America Insurance Company, Global Indemnity Group, Inc., Christian Stegmaier, Esq., and Collins & Lacy P.C.’s (hereinafter collectively “Penn-America”) Motion to Strike Appellant’s “Memorandum” filed March 5, 2021, Appellant’s “Notice” filed March 8, 2021, and Appellant’s “Reply Brief” filed March 10, 2021. <sup>1</sup>

Newton hereby incorporates the facts and arguments set forth in Penn-America’s Motion into this Memorandum. In further support of their Motion, Newton would show the following.

Appellant Morris Beach Hutson has proclaimed to this Court that Respondents are engaging in ongoing fraud upon the court. He has now sued a sitting state judge and incorporated allegations against that judge into this appeal. Hutson has accused a court reporter of fraudulently altering a transcript in the proceedings before that judge. He is copying his filings to the Governor, the Attorney General, the Commission on Judicial Conduct, the Commission on Lawyer Conduct, the Office of Disciplinary Council, and the news media. Hutson is attempting to make a spectacle of this case. One would think that Hutson has some issue of major public importance to litigate in the public arena.

Yet Hutson’s self-described “Silver Bullet” is his merely his self-serving and speculative allegation that Respondents have all of TLC Holdings, LLC’s (hereinafter “TLC”) documents. As Penn-America correctly argues, this argument fails procedurally because it was first raised in this appeal. <sup>2</sup> Newton would further show that Hutson’s untimely allegation is false and without merit.

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<sup>1</sup> Penn-America’s Motion to Strike was filed on March 22, 2021.

<sup>2</sup> This is the second appeal in which Hutson has raised the same issues.

Respondents have repeatedly demonstrated in their briefs that none of them ever represented either Hutson or TLC. Hutson offered no evidence to the contrary in his initial reply brief. Moreover, this is evident from public records:

- Newton has never represented either Hutson or TLC in any matter.
- Respondent Penn-America has never represented either Hutson or TLC with respect to the Big Water Resort litigation. Penn-America fulfilled its contractual duty to defend Hutson in two prior actions, the Class Action<sup>3</sup> and the Defamation Action.<sup>4</sup> (Penn-America's Mot., p. 3.) However, liability insurers do not represent their insureds. The attorneys who defended Hutson, Laura Paton and Frank Gordon, represented Hutson only. Sentry Select Ins. Co. v. Maybank Law Firm, LLC, 426 S.C. 154, 157, 826 S.E.2d 270, 271 (2019). Paton and Gordon did not represent Penn-America. Anything TLC produced in the Class Action and the Defamation Action was produced to Hutson, not to Penn-America.
- The only action to which Penn-America and TLC were both parties is the declaratory judgment action Penn-America filed in mid-2016 ("the Coverage Action").<sup>5</sup> As can be verified from public records, Penn-America and TLC were adverse parties in the Coverage Action. Penn-America was the plaintiff; TLC and its principals were defendants.

Thus, the only access Penn-America and/or Newton (Penn-America's counsel in the Coverage Action) had to TLC's documents was through the process of discovery in the Coverage Action.

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<sup>3</sup> Reed v. Big Water Resort, LLC, Civ. Action No. 2:14-cv-01583-DCN (D.S.C.).

<sup>4</sup> TLC Holdings, LLC, et al. v. Hutson, Civ. Action No. 2015-CP-14-00615 (Clarendon Cnty. Comm. Pl.).

<sup>5</sup> Penn-America Ins. Co. v. BWR, Inc., et al., Civ. Action No. 2:16-cv-01943-DCN (D.S.C.).

Respondents have demonstrated that the fraud Hutson alleges must relate to the release in his 2012 Settlement Agreement <sup>6</sup> with TLC in a prior action (“the Ejectment Action”) <sup>7</sup> that was enforced against Hutson long before any Respondents were notified of the underlying Big Water Resort litigation. (Compare Newton Exh. 26 (policy dec page) with Penn.-Am. Mot. for Inj. filed Aug. 10, 2020, Exh. A (James Order), p. 9.) Any fraud relating to the original Land Deal <sup>8</sup> is barred by *res judicata*. Reed v. Big Water Resort, LLC, No. 2:14-cv-01583-DCN, 2016 WL 7438449 at (D.S.C. filed May 20, 2016). In order to set aside the release, Hutson must demonstrate “fraud [that] induced him to enter into the Release.” Reed v. Big Water Resort, LLC, C/A: 2:14-1583-DCN-MGB, 2016 WL 7435620 at \*14 (D.S.C. signed Apr. 5, 2016), report and recommendation adopted, Reed, 2016 WL 2935891 at \*9.

Hutson could prove fraudulent inducement by showing that TLC, through counsel, intentionally concealed key documents from Hutson and the court in the Ejectment Action. Chewning v. Ford Motor Co., 354 S.C. 72, 84, 579 S.E.2d 605, 611 (2003). The E-mail from Newton that Hutson has waved around for the past two years <sup>9</sup> observes that Hutson *might* be able to prove fraud upon the court if he can show that TLC withheld information that none of the property involved in the 2010 Land Deal and the 2012 Settlement Agreement could be developed. This inquiry, by its very nature, requires access to privileged documents evidencing TLC’s representations to Hutson during the negotiations leading to the 2012 Settlement Agreement. See Fesmire v. Digh, 385 S.C. 296, 305-10, 683 S.E.2d 803, 808-10 (Ct. App. 2009); Rule 408, SCRE.

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<sup>6</sup> See Penn-Am. Mot. to Strike Answer filed Sept. 28, 2020, Exhs. E and F.

<sup>7</sup> TLC Holdings, LLC, et al. v. Hutson, Civ. Action No. 2015-CP-14-00615 (Clarendon County Comm. Pl.).

<sup>8</sup> See Newton Init. Br. filed Mar. 9, 2021, p. 3.

<sup>9</sup> See Hutson Init. Br. filed Mar. 10, 2021, pp. 21-23 of 33; Newton Init. Br., p. 11.

This Court can easily verify, should it be so inclined, that Penn-America did not even *request* privileged documents from TLC in the Coverage Action. Penn-America expressly limited its discovery request to “non-privileged settlement documents.” TLC only produced non-privileged documents to Penn-America.

The limitations on Penn-America and Newton’s access to TLC’s documents was displayed during the Rule 30(b)(6) deposition of TLC, which has been made an exhibit in this litigation. (Newton Exh. 9.) TLC’s designated witness testified that Hutson told TLC when they entered into the Land Deal that Hutson only intended to develop unimproved portions of the property. (Id. at p. 25.) Newton then inquired as to which portions of the Land Deal property were parts of the campground. (Id. at 27.) TLC’s counsel objected to this line of questioning on several grounds. Specifically, TLC’s counsel objected that the questions: “A, have nothing to do with coverage, B, have been explored *ad nauseum* and C, are not part of your 30(b)(6) notice.” (Id. at p. 32.) TLC’s counsel contended that Newton was “really trying to retry the merits of those underlying actions” in which extensive discovery had already been conducted. (Id. at p. 30.)

TLC’s counsel’s objections were well-founded. Although Penn-America’s Rule 30(b)(6) designation was arguably broad enough to cover these topics (see id. at p. 32 at ll. 10-20), the issue was not sufficiently relevant to the questions of liability coverage for Newton to pursue the matter further. Liability insurers lack standing to litigate the underlying issues concerning liability. Ex parte Builders Mut. Ins. Co., 431 S.C. 93, 99-100, 847 S.E.2d 87, 90-91 (2020). Moreover, TLC’s motion for summary judgment as to Hutson’s counterclaims had already been granted in both the Class Action <sup>10</sup> and the Defamation Action. <sup>11</sup> Newton had to curtail his questioning.

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<sup>10</sup> Reed, 2016 WL 2935891 at \*9; Penn-Am. Mot. for Inj. filed Aug. 10, 2020, Exh. C.

<sup>11</sup> See Penn-Am. Mot. for Inj. filed Aug. 10, 2020, Exh. E.

Nevertheless, Newton persisted long enough to obtain TLC's sworn testimony regarding the Land Deal property. TLC's witness testified that all of the property was not part of the campground. (Newton Exh. CC, pp. 39-40.)

This alone moots all of Hutson's arguments and authorities supporting his alleged duty to report fraud. TLC testified Hutson could have built upon the undeveloped portions of the Land Deal property. The E-mail upon which Hutson relies recounts that the boundaries of the campground were unspecified. (See Hutson Init. Reply Br. filed Mar. 10, 2021, p. 22 of 33, ¶¶ 6-8.) By what means could Respondents, whose involvement began years later in different actions, investigate to determine the truth or falsity of TLC's testimony? Since Respondents could not verify whether Hutson could have built upon the property, how could Respondents "know" fraud was committed?

Hutson subsequently obtained expert testimony opining that the attorney who represented Hutson in the 2012 Settlement Agreement, who is not a party to this appeal, violated the standard of care. (Newton Exh. 17: Aff. of Mark Hardee.) Hutson represented to Newton that they had discovered that all of the Land Deal property was part of the campground. (Hood Dismissal Order, p. 5.) Significantly, Hutson and his expert, Mark Hardee, had access to privileged documents from the negotiation culminating in the 2012 Settlement because Hutson was a party to that action. Newton and Penn-America had no access to that information.

It is preposterous for Hutson to argue that Penn-America and/or Newton have documents that are unavailable to Hutson. It is Hutson who has the greatest access to TLC's documents. Hutson was a party to every single case in the Big Water Resort litigation. Hutson physically moved onto the Land Deal property and ran the campground for several years. (See Penn-Am. Mot. for Inj. filed Aug. 10, 2020, Exh. A (James Order) (ordering Hutson to vacate the Land Deal

property). To this day, Hutson apparently remains the principal in Big Water Resort, LLC, which operates the campground.<sup>12</sup> Hutson alone has standing to invoke the powers of discovery to obtain the documents he seeks.

Moreover, Hutson was provided with any non-privileged documents he sought while TLC's litigation against him was pending, as evidenced by Newton's E-mail.<sup>13</sup> (Newton Exh. V, p. EXH\_V\_000026.) Penn-America recognized Hutson's right, as putative insured, to discoverable documents generated in the Coverage Action. The E-mail expressly references Penn-America's common interest with Hutson as to TLC's claims against Hutson. (Hutson Init. Br., p. 21 of 33.) Nothing about the E-mail, or anything else Hutson has produced, suggests Newton and Penn-America withheld information from Hutson that might be material to his claims against TLC.

Hutson knows he can file action against TLC if he so chooses.<sup>14</sup> Chewning, 354 S.C. at 80, 579 S.E.2d at 609-10 (holding that there is no statute of limitations when a party seeks to set aside a judgment due to fraud upon the court). Neither Penn-America nor Newton have this ability because they lack standing. Ex parte Builders Mut. Ins. Co., 431 S.C. at 99-100, 847 S.E.2d at 90-91. Nothing Penn-America or Newton can do can prejudice Hutson's rights against TLC.

Hutson's entire premise for this protracted litigation amounts to "much ado about nothing." The "silver bullet" documents Hutson needs from TLC are not even discoverable by Penn-America or Newton. Only Hutson can exercise his right to obtain them. Even if Respondents somehow obtained documents that might be helpful for Hutson, it is not Respondents' job to parse through

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<sup>12</sup> The Penn-America policy was issued to a different entity, BWR, Inc. Neither Hutson nor TLC ever produced any evidence that Big Water Resort, LLC was an insured under Penn-America's policy. TLC produced Hutson's bankruptcy deposition in the Coverage Action to establish a connection between Hutson and BWR, Inc.

<sup>13</sup> Note that Hutson self-servingly deleted this portion of the E-mail in his "Silver Bullet" brief. Hutson Init. Br., p. 23 of 33.)

<sup>14</sup> See Newton Exh. 10, p. 1, ¶ 2.

them to make Hutson's case. Hutson is essentially trying to force Respondents to act as his lawyers against TLC. He is driving up insane litigation costs with his constant badgering, slander, and harassment of Respondents on a patently frivolous claim.

### CONCLUSION

For the reasons set forth above, in addition to the facts and arguments made by Penn-America in its Motion filed March 22, 2021, Hutson's March 5, 8, and 10 filings in this Court should be stricken. Newton and Murphy & Grantland, P.A. join in Penn-America's request for appropriate sanctions against Hutson for making false representations to the Court, for gross misconduct, and for attempting to turn this judicial proceeding into a circus.

These Respondents are *not* seeking to hold any deadline for the filing of the Record in Appeal in abeyance during the pendency of the instant Motion, as the content of the Record will not be affected by the Court's ruling. See Rule 240(b), SCACR.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

*s/ Timothy J. Newton*

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March 23, 2021  
Columbia, SC

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SC Court of Appeals

**CERTIFICATE OF SERVICE**  
(Appellate Case No. 2020-001708)

I, the undersigned, attorney for Respondents Timothy J. Newton and Murphy & Grantland, P.A. do hereby certify that I have this date served the foregoing **Joinder of Respondents Penn America Insurance Company, Global Indemnity Group, Inc., Christian Stegmaier, Esq., And Collins & Lacy P.C.’S Motion To Strike Appellant’s “Memorandum” filed March 5, 2021, Appellant’s “Notice” filed March 8, 2021, and Appellant’s “Reply Brief” filed March 10, 2021 and Request for Sanctions** upon all parties, by electronic mail and by placing a copy in the United States mail, postage prepaid, on March 23, 2021, addressed to the following:

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Dated: March 23, 2021