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THE STATE OF SOUTH CAROLINA
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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 # — Respondents.

RECORD ON APPEAL
BINDER 3 of 4
p. 847- 1341

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CORRECTED, AMENDED INDEX

ORDERS Page #

1. Nettles' Order Granting Defendants' Penn Am. Ins. Co. & Global Ind. Group Inc.'s Motion for Summary Judgment, (filed July18, 2019)..... 1

2. Nettles' Order Granting Defendants Newton & Murphy's Dispositive Motion for Summary Judgment, (filed July 18, 2019) 27

PLEADINGS

3. CP Summons and Complaint (filed 12 / 5 / 2018) 52

4. CP Amended Summons and Complaint (filed 12 / 28 / 2018). 65

5. EXHIBITS to Amended Complaint (# 1.1 through #13.0) (filed 1 / 3 / 19). 87

1.1 - 1.3 Retail Membership Term Agreement (samples) 88

2.0 J.S. Lovell Deposition excerpt 95

3.0 Paton, Esq. "Amended Ans./ Complaint / Counter Claims Back 97

4.0 Tim Newton, Esq.'s Email (8/13/18) to Hutson. 122

5.0 Lease Purchase Agreement 126

6.0 Membership Interest Purchase Agreement 159

7.0 Letter from T.J Newton, Esq. to M B Hutson (11/8/18) 172

8.0 Email from T J Newton to M B Hutson (11/19/18) 178

9.0 Settlement Agreement (4 /13 /2012) 180

10.0 Consent Order (4/13/2012) 189

11.0 Federal Complaint 198

12.0 Federal Court "Plaintiff's Memo. in Support of its Motion for Summary Judgment' 217

13.0 Complaint (Jury Trial Demanded) (filed 12/7/2015) 225

MOTIONS, ANSWERS AND MEMORANDA

6. Newton & Murphy's Motion to Dismiss (filed 2/12/19) 232

7. Penn America Ins. Co & Global Indemnity Group, Inc.'s Answer to Amended Complaint (Jury Trial Demanded) (2/14/19) 233

8. Plaintiff's Memorandum to Defendants' Newton/Murphy's Response

with Exhibits 14.0 – 30.0 below (filed 5/7/2019) 245

14.0 Hutson email to Newton 10/28/18 256

15.0 Hutson email to Newton with attachment 10/30/18 258

16.0 Newton email feedback w/ link 10/22/18 273

17.0 Hutson e-mail to Newton & Fournier & response 276

18.0 Hutson email w/ attach to Newton, Paton, Esq., et al. . . 279

19.0 Hutson email to Newton, Fournier, Digiovanni, et al 282

20.0 Hutson email w/ attach to Mediator, Newton, Wilkerson & Temple (Ins. Co.) 284

21.0 Hutson email to Newton 11/1/18 "Extrinsic fraud" . . . 288

22.0 Hutson email to Newton & Fournier of Global Indemnity 4 /29/19 291

23.0 *"Insurance Recovery Law"* (Mar. 26, 2014) Manatt. . . .294

24.0 S.C. Federal Dist. Ct: Insurer May Act in Bad Faith by Considering Extrinsic Evidence to Deny Duty to Defend 304

25.0 "The Duty to Defend: The Four(ish) Corners Rule 308

26.0 "Courts typically determine an insurer's duty to" 316

27.0 "Insurance Against Being Wrongly Sued: The duty

to defend even when extrinsic fact suggests no coverage: 318

28.0 The Atty's Duty to the Court Against Concealment, Nondisclosure and Suppression of Information as Coextensive w/ the Duty NOT to Allow Fraud to Be Committed upon the Court 323

29.0 Ray v. Ray (SC) 339

30.0 Hutson email to Fournier (Global Ind.); Newton, Glenn Paul (Global Ind.) 11/6/18 w/attach (p. 342) 340

9. Newton's Memorandum in Support of Motion to Dismiss or Motion for Sum. Jdgmt. (w/ Ex's A – AA) filed 5/30/19) 346

Ex. "A" Reed v. Big Water Resort 368

Ex. "B" "Reed v. Big Water Resort" 386

Ex. "C" "Order Granting Sum. Jdgmt. 396

Ex. "D" "Summons & Complaint "(TLC) 409

Ex. "E" "Ans. & Counter & Affirm Def. & Motion To Dismiss & 3rd Party Complaint 415

Ex. "F" "Summons & Amended Complaint for Legal Malpractice 434

Ex. "G" "Order" # 11-CP-14-602 455

Ex "H" "Ans. to Amended Complaint & Pro Se Counter-Claims Back 468

BEGIN BINDER 2 of 4

Ex "I" "Settlement Agreement and Release of Certain Claims" 494

Ex "J" "Order of Dismissal / Motion" 500

Ex. "K" "Federal Order (# 2:14-cv-01583) 506

Ex. "L" "Dismissal with Prejudice" 515

Ex. "M" " Verdict Form" 518

Ex. "N" "Notice of Appeal" (Gordon) 521

Ex. "O" "PL's Memorandum in Opp. to Def.'s Mot for Stay of Execution of Jdgmt. 524

Ex. "P" "Satisfaction of Judgment." 528

Ex. "Q" Order Granting Summary Judgment 531

Ex. "R" Summons and Complaint (Hutson) 547

Ex. "S" Judgment 558

Ex. "T" Hutson Summons and Complaint (Atlantic Coast Properties w/ Agmt. and extensions). 561

Ex. "U" Dismissal Order . . . . . MBH v. ACP. 584

Ex. "V" Redirected Voicemail Messages, etc. 588

Ex. "W" Hutson: Federal Court Filing 620

Ex. "X" Federal Ct. Response by Hutson 625

Ex. "Y" Federal Ct. Filings by Hutson 633

Ex. "Z" Hutson email to realtor 643

Ex. "AA" Substitution of Counsel, asst. Motions 645

10. Newton's Amended Motion to Dismiss for Summary Jdgmt. (filed 6/5/19) 649

11. Newton's Reply Memo. in Support / Summary Jdgmt. (filed 6/13/19) 650
Ex. "BB" Notice of Filing 660-662
Ex. "CC" TLC v BWR transcript w/aerials 663-679

12. PAIC & GIGI's Motion For Summary Judgment (filed 6/14/19) 680

13. Hutson's Supplemental to Memorandum (filed 6-19-19) 683
AFFIDAVIT of M. B. Hutson 703
Exhibit 31.0, and.....708
Hutson's Exhibit 32.0 (emails) w/ Mediator.....722

14. AFFIDAVIT of Timothy Newton (filed 6/24/19) 724

Corrected Exhibit #1: (Eject 156-315 @ 768-928) & (Eject 316-356 @ 727–767)

Exhibit #2: See "Appendix to the Record" below. 1376

Exhibit #3: "V" (001-032). 929

----------BEGIN BINDER 3 OF 4 , page 847----------

15. Newton's Amended Response to Plaintiff's Supplemental Memorandum *(filed 6/25/19) with* (177 pp.): 961

Exhibit DD 975

Exhibit EE 981

Exhibit FF 984

Exhibit GG 1015

Exhibit HH 1030

16. Murphy's Memorandum in Support of Motion to Dismiss (*filed 6/25/19)* 1138

17. PAIC's Memorandum in Support of Motion for Summary Judgment (filed 6/25/19). 1140

Exhibit "A"..... 1164

Exhibit "B" 1258

TRANSCRIPT

18. Complete TRANSCRIPT of motions hearing held before the Hon. Judge Michael Nettles on June 26, 2019 (64 pp.) 1277

CERTIFICATES

19. CERTIFICATE OF COMPLIANCE. 1341

----------BEGIN BINDER 4 OF 4 , page 1342----------

APPENDIX TO THE RECORD . . . . . .p. 1342

(Originally submitted by a Respondent, (at their request and with Appellant's permission per Rule 212), which was inadvertently left out of the record):

Exhibit 2 to Affidavit of Timothy Newton : ***"Clarendon County Public Index," filed June 25, 2019 (5 pp.)***

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STATE OF SOUTH CAROLINA COUNTY OF CLARENDON	IN THE COURT OF COMMON PLEAS CASE NO.: 11-CP-14-602
TLC Holdings, LLC, Plaintiff, vs. M.B. Hudson a/k/a M.B. Hutson, Defendant.	**NOTICE OF MOTION AND MOTION FOR ORDER REQUIRING TENANT TO PAY ALL RENT DUE, OR, IN THE ALTERNATIVE, FOR APPOINTMENT OF RECEIVER**
M. B. Hudson a/k/a M. B. Hutson, Defendant and Third Party Plaintiff, v. Richard U. Clark, Jimmy S. Lovell and James C. Thigpen, Third Party Defendants.	

The Plaintiff, TLC Holdings, LLC, ("Plaintiff", "TLC" or "Landlord"), landlord of Defendant, M.B. Hudson a/k/a M.B. Hutson ("Defendant", "Hutson", or "Tenant"), hereby moves the court for: (a) an order pursuant to S.C. Code Ann. §§ 27-37-150 and 27-37-155 requiring Tenant to pay Rent (as defined in the Lease) owed to Landlord through January 30, 2012 and Rent that continues to accrue until this Motion is heard; or (b) in the alternative, for an order appointing a receiver to manage the Premises (as defined herein), pursuant to South Carolina Rule of Civil Procedure 66 and S.C. Code Ann. §§ 15-65-10 *et. seq.*

I. Motion for Rents.

Tenant has failed to comply with the requirements of S.C. Code Ann. §§ 27-37-150 and 27-37-155. Landlord filed a Breach of Lease and Ejectment action on or about December 14,

2011 for Tenant's failure to pay Rent and other sums due under the terms of the Lease Purchase Agreement (the "Lease") dated December 15, 2011, by and among Landlord, Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen, and Tenant, for property located in Clarendon County, South Carolina commonly known as the Big Water Resort (the "Premises"). A copy of the Lease is attached hereto and incorporated herein by reference as Exhibit "A." As shown by the Complaint on file with the Court, Tenant owed Landlord the sum of $78,186.44 as of November 22, 2011. Rent continues to accrue since the filing of the above-referenced action. Accordingly, as of the date of this Motion and pursuant to the terms of the Lease, the sum of $165,840.07 as of January 26, 2012 is now due and owing from Tenant to Landlord. A chart showing the amounts due from Tenant to Landlord through January 26, 2012 is attached hereto and incorporated herein by reference as Exhibit "B."

Plaintiff duly served Tenant and its counsel with the Summons, Complaint, Application for Ejectment and Rule to Vacate or Show Cause. Tenant, through his counsel, filed an answer or other responsive pleading in response to the Complaint. Tenant requested a jury trial. However, Tenant failed to pay Landlord Rent in contravention to the terms of the Lease. Therefore, Tenant is in violation of, without limitation, S.C. Code Ann. §§ 27-37-150 and 27-37-155 for failing to pay Landlord Rent through the date of this Motion, which amounts to the sum of $165,840.07 as of January 26, 2012. Accordingly, Plaintiff is entitled to the immediate payment of $165,840.07 as of January 26, 2012, together with Rent accruing after that date in accordance with the Lease. If Tenant fails to pay Landlord this amount, then pursuant to S.C. Code Ann. §§ 27-37-150 and 27-37-155, Tenant must be evicted from the Premises without a jury trial.

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

II. Motion to Appoint Receiver.

In the alternative to the foregoing, Plaintiff hereby moves for an Order appointing a Receiver to manage the Premises, pursuant to South Carolina Rule of Civil Procedure 66 and South Carolina Code Sections 15-65-10 *et. seq.* Plaintiff requests that the Court grant the Receiver power and authority necessary and appropriate to do the following: (i) to take possession of said Premises, and manage and maintain the same during the pendency of this action; and (ii) to collect the rents, revenues and profits from the Premises, and hold such rents and profits pending further Order of this Court in the foregoing action. Plaintiff does not seek to grant the Receiver the power to operate the "Big Water Club", which is a separate business operation held by a separate entity which is not a party to this action, and which is owned by Hutson, but does seek to empower the Receiver to recover possession of the Premises from Hutson and the Big Water Club if the Rent owing under the Lease is not paid as required thereunder.

The grounds for this motion are that (a) the Plaintiff has an apparent right to the Premises that is the subject of the action by virtue of the termination of the Lease in October, 2011; (b) the Premises is currently in the possession of Hutson, a party adverse to Plaintiff; and (c) the Premises, or its rents, revenues and profits, are in danger of being lost or materially injured or impaired. Without limiting the foregoing, as set forth more fully in the affidavit of Richard U. Clark attached hereto as Exhibit "C", Hutson has failed to pay: (a) the property taxes owing upon the Premises, jeopardizing the loss of the same at a delinquent tax sale if Plaintiff had not paid the taxes itself; (b) various insurance premiums required to be maintained under the Lease, which has caused the possible loss of liability insurance coverage protecting the Premises and

TLC; and (c) rent owing to the South Carolina Public Service Authority for the lakefront portion of the Premises, jeopardizing the value of the remainder of the Premises.

In addition, as set forth more fully in the affidavit of Richard U. Clark, it appears that Hutson intentionally misled Plaintiff about his true identity prior to the execution of the Lease. In numerous conversations, and in the Lease and other documentation executed concurrently therewith by the parties, Defendant identified his surname as "Hudson" when in fact it is "Hutson". A search of the public records indicates that Defendant Hutson has a history of arrests, criminal warrants, and public complaints related to his business practices, facts which Plaintiff was unable to discover before the Lease was signed due to Hutson's intentional misrepresentation of his name. See Clark Affidavit ¶ 13. Those facts would have led TLC to refuse to sign the Lease had it been able to investigate Defendant's true identity before the Lease was signed. See Clark Affidavit ¶¶ 13 and 14. Defendant's prior record, coupled with his concealment of his true identity, evidences that the Premises are in danger while in his possession.

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This Motion is based on the exhibits attached hereto, the pleadings on record, any additional supporting and/or responsive affidavits, South Carolina law, and the pleadings on file with the Court, a supporting memorandum to be filed with the Court as well as the argument of counsel. The motion is further based upon such other materials and evidence that may be submitted to the Court at the hearing on this Motion or otherwise.

WOMBLE, CARLYLE, SANDRIDGE & RICE, LLP

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ATTORNEYS FOR PLAINTIFF

February 16, 2012
Charleston, South Carolina

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ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

LEASE PURCHASE AGREEMENT

THIS LEASE PURCHASE AGREEMENT (this "Agreement") is made as of the ____ day of December, 2010 (the "Effective Date"), by and between **TLC HOLDINGS, LLC**, a South Carolina Limited Liability Company ("TLC" or "Landlord"), **RICHARD U. CLARK, JIMMY S. LOVELL** and **JAMES C. THIGPEN** (collectively, the "Members", and together with TLC, the "Seller"), and **M. B. HUDSON, AND/OR HIS HEIRS, SUCCESSORS AND PERMITTED ASSIGNEES** ("Purchaser").

WITNESSETH:

WHEREAS, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase, (a) the following described premises in Clarendon County, South Carolina, herein sometimes called the "Premises" being more particularly described on the attached EXHIBIT "A" along with all furniture, fixtures, equipment, machinery, vehicles and other personal property that may be owned, leased, licensed or otherwise in the possession of TLC (collectively the "Property") and (b) all membership interests of the Members in TLC (hereinafter "Stock"); and

WHEREAS, from the Effective Date until such time that the sale of the Premises to Purchaser shall be consummated, Seller agrees to lease the Premises to Purchaser as provided below.

NOW, THEREFORE, for and in consideration of the premises and the covenants and agreements herein contained and for Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby mutually covenant and agree as follows:

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

SECTION 1
PURCHASE AGREEMENT

1.1. Purchaser hereby agrees to purchase the Premises, Property and Stock from Seller and Seller hereby agrees to sell the Premises, Property and Stock to Purchaser as provided herein. Such purchase transaction shall close not later than December 30, 2012 (the "Closing"), provided, however, that Purchaser may accelerate the Closing by providing Seller written notice of Purchaser's intent to close the transaction no less than (a) ten (10) days from the date of the written request by Purchaser, if all mortgages upon the Premises have previously been satisfied; or (b) ninety (90) days from the date of the written request by Purchaser, if any such mortgage encumbers the Premises.

1.2. The parties ultimately intend for this transaction to be a sale of Stock of Seller, which has all right, title and interest in Premises and Property. In such event, the Premises and Property shall remain the property of TLC at Closing, and the Purchaser shall purchase and assume, and the Members shall sell and assign, the Stock in TLC to Purchaser at Closing. The purchase price for the Premises, Property and Stock (the "Purchase Price") shall be either the Incentive Purchase Price or the Standard Purchase Price, as defined herein. In the event Purchaser closes the purchase prior on or before September 1, 2011, the Purchase Price for the Premises, Property and Stock shall be an amount equal to Six Million and 00/100 Dollars ($6,000,000.00) ("Incentive Purchase Price"). If the closing is after September 1, 2011, the Purchase Price for the Premises, Property and Stock shall be an amount equal to Seven and 00/100 Dollars ($7,000,000.00) ("Standard Purchase Price").

1.3. Purchaser shall have the exclusive right to close on any portion of the Premises, which is unimproved, in tracts of one (1) acre or more (each, a "Subparcel") at any time during the term of the Agreement for a Purchase Price of One Hundred Forty-Five Thousand and

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

00/100 Dollars ($145,000.00) per acre. Such closing shall occur as soon as practical after written request is sent from Purchaser to Seller pursuant to Section 20, not to exceed ninety (90) days from the date of the written request except in the event the Seller has been unable to obtain a release on said Subparcel(s) from the Bank that currently holds a first position mortgage on the Premises within 90 days following receipt of Purchaser's written request (hereinafter the "Release Period"). If such event occurs prior to September 1, 2011, the right to purchase the Premises for the Incentive Purchase Price shall be extended for one (1) day for each day that Seller fails to obtain a release of the Premises after the expiration of the Release Period. Any such closing proceeds shall be applied to the Purchase Price for the entire Premises.

The parties acknowledge that the Purchaser intends to develop and construct condominiums or other residential dwelling structures on certain portions of the unimproved Premises. In the event Purchaser closes on any one or more unimproved Subparcel(s) as referenced in this Section 1.3, Purchaser shall pay thirty-five percent (35%) of the gross profits from the sale of any and all residential dwelling units to the Seller which shall be applied to reduce the Purchase Price for the entire Premises. As used herein, "gross profits" means the gross sales proceeds, reduced only by Purchaser's actual costs of construction of any improvements on such land. Purchaser shall be prohibited from selling such Subparcel(s), or portions thereof, except as part of the bona fide sale thereof at retail to an arm's length third party purchaser unaffiliated with Seller. If Purchaser fails to close on the entire property within the timeframes set forth in this Agreement, Seller shall have the option to repurchase any undeveloped parcel released under this Paragraph 1.3 for the price paid by Purchaser to Seller for such parcel, and an option to repurchase any improved parcel that has not been resold under the terms of this Paragraph 1.3 for the price paid by Purchaser for such parcel plus the actual costs of

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

the improvement(s) undertaken thereon by Purchaser. The provisions of this section shall survive the Closing (until such time as Seller has received the entire Purchase Price owing under this Agreement in cash) and any termination of this Agreement.

1.4. At Closing, the Purchase Price due hereunder, less adjustments and expenses provided herein, will be paid to Seller, either: (i) in cash, by cashier's check, or by wire transfer; or (ii) by Purchaser executing a Promissory Note payable to the Seller for an amount up to and including the full Purchase Price, to be financed for five (5) years at six percent (6.0%) interest per annum, based on a twenty (20) year amortization. Payments on said Promissory Note shall be made monthly to the Seller, with all amounts owing thereunder to be paid not later than the maturity date five (5) years following Closing. The Promissory Note shall be secured by a first position mortgage on the Premises conveyed at said Closing, and by a first-priority, perfected security interest in the Stock.

In the event the $500,000.00 purchase price for The Big Water Resort, LLC, a South Carolina limited liability company, which has common members of the Seller herein, is financed by Promissory Note made from Purchaser to Members, the terms and conditions of which are more particularly set forth in the Membership Interest Purchase Agreement of even date herewith, then both Promissory Notes shall provide that a default under either one of the Promissory Notes will be deemed a default under the other Promissory Note, thereby permitting Seller to seek all rights and remedies available therein, including but not limited to foreclosure on the Premises and Stock.

1.5. At the Closing, in exchange for the Purchase Price, the Members shall convey to Purchaser or its designee, by assignment agreement, all of the Stock in TLC; provided that, at and as of Closing, TLC hold marketable title to the Premises, subject to (i) utility and drainage

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

easements of record, (ii) the rights of the public in any streets and highways, if any, adjoining the Land, (iii) zoning and building laws, ordinances, resolutions, and regulations, (iv) ad valorem real estate taxes and assessments for public improvements not due and payable as of the date of closing, and (v) any additional encumbrances subject to which Seller accepted title to the real property being conveyed. Purchaser shall, within ninety (90) days after the Effective Date, investigate Seller's title to the Premises and identify any exceptions to title which are not acceptable to Purchaser (any such exception being referred to herein as a "Title Exception"). Purchaser shall within ninety (90) days after the Effective Date provide Seller notice of any such Title Exception. If Purchaser does not notify Seller in writing of Title Exceptions within ninety (90) days after the Effective Date, then Purchaser shall be deemed to have accepted title to the Premises with all exceptions and conditions. If Purchaser timely notifies Seller of Title Exceptions (other than Title Exceptions that can be cured by the payment of money to satisfy any liens as of the Closing, which Title Exceptions shall be cured as of Closing), Seller may (but shall not be required to) cause all Title Exceptions to be deleted as exceptions from the title commitment, as the case may be, on or prior to thirty (30) days prior to Closing (the "Cure Deadline"). If Seller fails or refuses to cure any Title Exceptions prior to the Cure Deadline, then Purchaser may, as its sole and exclusive remedy for the existence of, or Seller's failure to cure, such Title Exceptions before the Cure Deadline, elect to terminate this Agreement, or waive its right to terminate this Agreement in writing and accept the title commitment with all uncured Title Exceptions. If Purchaser terminates this Agreement pursuant to this Section 1.5, then neither party shall have any further obligation under this Agreement, except for such obligations of the parties as are expressly stated to survive the termination of this Agreement.

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Each party shall be responsible for and shall pay fifty percent (50%) of all other closing costs. Each party shall be responsible for the fees of its respective counsel.

1.6. Seller shall use the closing proceeds to have any lien or encumbrance on the Premises and Stock released.

1.7. Upon the completion of the purchase transaction, but not prior thereto (whether or not any delay in the completion of or the failure to complete such purchase shall be the fault of Seller), this Agreement and all obligations hereunder (including, but not limited to, the obligations to pay Rent) shall terminate with respect to any portion of the Premises being purchased, provided that neither party shall be released with respect to obligations and liabilities of Purchaser and Seller, actual or contingent, under this Agreement which arose on or prior to the date of the closing of the purchase, or which expressly survive the termination of this Agreement.

1.8. This Purchase Agreement shall not be assigned or transferred by the Purchaser without the prior written consent of Seller, which shall not be unreasonably withheld.

1.9. In the event of any default or breach of Purchaser's obligations under this Section 1, Seller shall be entitled to terminate this Agreement and retain all rent paid hereunder, and in addition, to specifically enforce Purchaser's obligations under Section 11.2 herein. In the event of any default or breach of Seller's obligations under this Section 1, Purchaser may, in the alternative, either terminate this Agreement or requiring specific performance on the part of Seller. Purchaser and Seller each hereby waive the right to money damages against the other party for matters arising out of this Agreement.

1.10. Purchaser hereby acknowledges that Seller has made no representations or warranties regarding the Premises. Purchaser has inspected the Premises to Purchaser's

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complete and total satisfaction. Purchaser (i) is accepting the Premises for purposes of the lease as provided in provisions below; and (ii) at the time of Closing will be purchasing the Premises on an "AS IS" basis, that is, with all defects that may exist, if any, except as otherwise provided herein.

SECTION 2
TERM AND POSSESSION

2.1. Unless the Primary Term is extended upon the mutual agreement of the parties, the primary term of this Agreement (the "Primary Term") shall commence on January 1, 2011 and shall expire on the earlier of December 30, 2012 or the actual date of Closing.

2.2. Possession of the Premises shall pass to Purchaser on January 1, 2011, provided that Purchaser has closed on its purchase of The Big Water Resort, LLC.

SECTION 3
PREMISES

TLC leases the Premises and Property to Purchaser, and Purchaser leases the Premises and Property from TLC, on the terms and conditions set forth in this Agreement.

SECTION 4
RENT

During the Primary Term of this Agreement, including any extensions thereof, Purchaser shall pay TLC as rent (the "Rent") for the Premises the sum of Ten Thousand and 00/100 Dollars ($10,000.00) per month for the first seven (7) months of the Primary Term, and the sum of Eight Thousand and 00/100 Dollars ($8,000.00) per month for the remaining months in the Primary Term. Rent shall be paid in advance on the first day of each month during the Primary Term, without demand or deduction, to TLC at its notice address for Richard U. Clark as set forth in Section 20, or at such other place as Seller may designate by written notice to Purchaser. The

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

first monthly rent payment is due on or before January 1, 2011, being the date that Purchaser receives possession.

SECTION 5
TAXES; PERMITTED CONTESTS

5.1. Purchaser shall pay all real estate taxes and assessments levied against the Premises which become due and payable during the Primary Term. However, any installments of taxes and assessments relating to the periods at the commencement of the Primary Term shall be prorated between Purchaser and TLC based on the number of days during the applicable taxing period each party shall occupy the Premises. Seller shall furnish to Purchaser copies of tax bills together with statements of the amount due from Purchaser. Purchaser shall pay those amounts within 30 days after receipt of Seller's statements. Purchaser shall provide Seller a copy of the receipt from the tax collector as proof of payment within the 30 days from the date of payment. Purchaser's obligations under this Section shall survive the expiration or termination of this Agreement.

5.2. Purchaser shall not be required, nor shall Seller have the right, to pay, discharge, or remove any taxes, charges, liens or encumbrances, or to comply with any legal requirements applicable to the Premises or the Land, as long as Purchaser contests the existence, amount, or validity of the matter in question by appropriate proceedings and Purchaser provides written notice to Seller of such contest proceeding. This right of Purchaser to withhold performances while proceedings are pending shall apply only if Purchaser's proceedings effectively prevent any lien, sale, forfeiture, or loss of the Premises or Land or Seller's rights under this Agreement. Nothing contained in this Section shall be deemed to relieve Purchaser from any obligation to pay the Rent. Purchaser shall pay to Seller at least one hundred (100%) of the contested amount

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

as reasonable security (the "Contest Security") as may be demanded by Seller to insure ultimate payment of the amounts and compliance with the legal requirements contested, and/or any potential sale or forfeiture of the Premises or any rent or other sum required to be paid by Purchaser under this Agreement. Seller may use the Contest Security to pay any amount reasonably necessary to release any lien or prevent any sale, forfeiture, or loss of the Premises. Any portion of the Contest Security not required for such purpose shall be returned to the Purchaser.

SECTION 6
UTILITIES

During the Primary Term, Purchaser shall obtain and pay for all sewer, water, electric, heat, trash removal, and other utility services furnished to or consumed on the Premises. Seller shall not be required to provide any utility service to Purchaser and shall not be responsible for any interruption in service.

SECTION 7
INSURANCE

7.1. Immediately upon commencement of the Primary Term, Purchaser shall procure and maintain, at Purchaser's sole expense (i) employer's liability and worker's compensation insurance as prescribed by applicable law; (ii) comprehensive general liability insurance (with products, completed operations, dramshop and independent contractors coverage) and comprehensive automobile liability insurance, all on an occurrence basis, with single-limit coverage for personal and bodily injury and property damage of at lease Five Million Dollars ($5,000,000) for each occurrence, and (iii) any other insurance as required from time to time by any franchisor. In connection with all significant construction at the Premises during the Primary Term, Purchaser shall cause the general contractor to maintain with an insurer approved by Seller and Purchaser comprehensive general liability insurance (with products, completed

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

operations and independent contractors coverage) in at least the amount of Five Million Dollars ($5,000,000) for each occurrence with Seller named as additional insured. Purchaser shall name Seller, franchisor and any mortgagee as additional insureds under these policies.

7.2. Purchaser shall keep the Buildings insured against loss by fire and all the risks and perils usually covered by an "all risk of physical loss" endorsement to a policy of fire insurance upon property comparable to the Premises, in an amount equal to not less than the greater of the replacement cost of the Buildings or the Purchase Price, and with Seller and any other holder of any mortgage on the Premises as additional insureds as their interests may appear.

7.3. The policies required by Sections 7.1 and 7.2 shall contain an agreement by the insurer that it will not cancel the policy except after ten (10) days prior written notice to Seller and Purchaser and that any loss otherwise payable under the policy shall be payable notwithstanding any act or negligence of Seller or Purchaser that might, absent such agreement, result in a forfeiture of all or a part of the insurance payment.

7.4. At the commencement of the term of this Agreement, Purchaser shall deliver to Seller certificates of the insurance required to be maintained under this Section. Purchaser shall also deliver to Seller at least ten (10) days prior to the expiration date of any such policy (or of any renewal policy), certificates for the renewal policy of this insurance.

SECTION 8
WAIVER OF LIABILITY AND SUBROGATION

Seller and Purchaser on behalf of themselves and all others claiming under them, including any insurer, waive all claims against each other, including all rights of subrogation, for loss or damage to their respective property (including, but not limited to, the Premises) arising from fire, smoke damage, windstorm, hail, vandalism, theft, malicious mischief, and any of the

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

other perils normally insured against in an "all risk of physical loss" insurance policy, regardless of whether insurance against those perils is in effect with respect to such party's property and regardless of the negligence of either party; provided, however, that this release shall be applicable and in force and effect only with respect to loss or damage fully covered by insurance and occurring during such time. As the Purchaser's insurance policy shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or prejudice the right of the Purchaser to recover thereunder. If either party so requests, the other party shall obtain from its insurer a written waiver of all rights of subrogation that it may have against the other party. If extra costs shall be charged therefor, each party shall advise the other thereof and of the amount of the extra cost, and the other party at its election, may pay the same, but shall not be obligated to do so.

SECTION 9
INDEMNIFICATION

Purchaser shall indemnify and hold Seller harmless against any and all claims, liabilities, damages, or losses resulting from injury or death of any person or damage to property occurring on or about the Premises or in any manner in conjunction with the use and occupancy of the Premises in whole or in part, unless the death, injury, or damage was sustained as a result of any tortuous or negligent act of Seller or Seller's agents.

SECTION 10
MAINTENANCE

Seller shall have no obligation for maintenance of the Premises whatsoever. During the Primary Term, Purchaser shall, at its sole expense,: (a) maintain the Premises in good condition, including but not limited to all structural, electrical, plumbing, and HVAC, excepting only for reasonable wear and tear; (b) provide all necessary maintenance, repair, and replacements of, and keep in good operating condition, the water, gas, electrical, plumbing, heating, ventilating, air

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

conditioning, and all other mechanical and utility systems and facilities serving the Premises; (c) keep the sidewalks, parking areas, and drives on or about the Premises in a clean, sightly, and sanitary condition; (d) maintain and preserve the quantity and quality of the soft goods inventory (e.g., bedding and towels) and all furniture, fixtures, and equipment such as beds, televisions, clocks, lamps, desks, chairs, etc., except for reasonable wear and tear and loss due to the ordinary course of business (collectively, the soft goods and the furniture, fixtures, and equipment shall be referred to herein as the "Personal Property"); and (e) keep all grass mowed, shrubbery trimmed, and the yards free of excessive weed growth, so that the lawns and yards shall at all times be maintained in a neat and presentable condition. Until Purchaser has consummated the purchase of the Premises, Seller shall maintain ownership of the Personal Property, including any additions thereto made in the ordinary course of the operation of the Premises as a resort and campground due to wear and tear. Purchaser shall assume Seller's existing service and maintenance contracts related to the Premises (the "Service Contracts") including, without limitation, any property management system, the pest control agreement, the fire extinguisher service agreement, and any sprinkler system service contract. If Purchaser shall terminate any Service Contracts prior to the expiration of any such contract, Purchaser shall be solely responsible for any early termination expenses. Prior to such time that title to the Premises shall be conveyed to Purchaser, Purchaser shall notify Seller of any proposed changes it intends to make to the Service Contracts. Seller shall have the right, within its reasonable discretion, to approve or reject any proposed changes to the Service Contracts.

SECTION 11
ALTERATIONS

11.1. Purchaser shall have the right to make structural modifications, alterations and improvements listed on the attached EXHIBIT "B" without the Seller's prior written approval, in

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

addition to paving, installation of sewer water lines, drilling of water wells, obtaining dock permits, obtaining architectural and engineering approval as necessary. Seller may, at Seller's sole discretion, require Purchaser to provide bonds to ensure the construction and completion of any Alterations prior to commencement by Purchaser.

11.2. As part of such Alterations, Purchaser shall repave all private roads, parking lots and recreational vehicle ("RV") parking spaces on the Premises within seven (7) months following execution of this Agreement.

11.3. All modifications, alterations, and improvements shall be made in a good and workmanlike manner and shall not weaken the structure of the Buildings or materially lessen its value. All modifications, alterations, and improvements shall become the property of Seller at the expiration or earlier termination of this Agreement. Purchaser may, without Seller's consent, make nonstructural modifications, alterations, and improvements. Purchaser shall promptly pay its contractors and materialmen for all work done and performed by Purchaser, so as to prevent the assertion or imposition of liens upon or against the Premises.

11.4. Purchaser shall not remove any Personal Property from the Premises without replacing the removed Personal Property with new Personal Property of like quality. Purchaser may, without Seller's consent, install temporary partitions, shelves, bins, equipment, trade fixtures, and other personal property. Those items installed by Purchaser, other than replacement Personal Property as provided elsewhere herein, shall remain Purchaser's property and may be removed by Purchaser prior to the expiration or earlier termination of this Agreement.

11.5. Purchaser shall repair any damage to the Premises caused by that removal. Purchaser shall be solely responsible, at its own expense, for any and all improvements to the Premises required by any governmental or regulatory agency (collectively referred to as

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

"Required Improvements"). No amounts spent by Purchaser for the Required Improvements shall reduce or change the Purchase Price in any manner.

SECTION 12
DAMAGE AND DESTRUCTION

If, during the Primary Term, or any extension thereof, the Premises are damaged by fire or other casualty so as to be rendered untenantable either in whole or in substantial part, Purchaser, within thirty (30) days of receipt of any insurance proceeds shall pay the Purchase Price to the Seller and Seller shall deliver a deed to the damaged Premises to Purchaser each as provided in Section 1 above.

SECTION 13
CONDEMNATION, LOSS OF ACCESS

If (i) all or part of the Premises shall be taken or condemned by a competent authority for a public or quasi-public use or purpose or if there is a negotiated purchase by such authority under threat of a taking (collectively, a "taking"), and if the loss of the part so taken substantially interferes with the use of the Premises by Purchaser, or (ii) due to any such taking, access to the Premises by motor vehicles as operated by Purchaser, its contractors, and its customers in the course of Purchaser's business as previously conducted is impaired or terminated, then Purchaser shall be entitled to all condemnation proceeds due to Seller as a result of such taking and Purchaser shall purchase the Premises from Seller as provided in Section 1 above.

SECTION 14
DEFAULT

14.1. If any of the following events ("defaults") shall occur: (i) Purchaser fails to pay the rent or any other sums payable by Purchaser under this Agreement (other than those obligations set forth in Section 1), and the failure continues for a period of fifteen (15) business days after the date due and payable; or (ii) Purchaser fails to perform any other obligations under

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

this Agreement (other than those obligations set forth in Section 1) and the failure continues for thirty (30) days after written notice from Seller, or for an unreasonable period of time if thirty (30) days is not reasonably sufficient time to repair, remedy, or correct the obligation breached, and Purchaser commences cure within such thirty (30) day period and diligently pursues cure to completion, then Seller may re-enter the Premises, with or without terminating this Agreement; and if Seller so elects by giving written notice to Purchaser, Seller also may terminate this Agreement. If Seller at any time terminates this Agreement for any default other than those arising under Section 1, then, in addition to any other remedy it may have, it may recover from Purchaser all reasonable damages it may incur by reason of the default, including the cost of recovering the Premises, specific performance of Purchaser's obligation to purchase the Premises under Section 1, and the value at the time of termination of the excess, if any, of the amount of rent and charges reserved in this Agreement for the remainder of the term over the then reasonable rental value of the Premises for the remainder of the stated term, both figures being discounted to present value. Alternatively, Seller may elect to keep this Agreement in effect and recover monthly from Purchaser an amount equal to the rent and other charges due less the amount, if any, of any rentals which Seller may receive by reletting the Premises; however, nothing contained in this Section shall be deemed to impose upon Seller any duty to relet the Premises beyond the duties to mitigate, if any, imposed by law.

14.2. If Purchaser shall fail to make any payment within fifteen (15) business days after the date due, a late payment of five percent (5%) of the payment shall be due. If Purchaser shall fail to perform any act required to be made or performed under this Agreement, Seller, without waiving or releasing any obligation or default, may (but shall be under no obligation to), at any time, and upon reasonable notice to Purchaser, make the payment or perform the act for the

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

account of and at the expense of Purchaser, and may enter upon the Premises for that purpose and take all actions as may be necessary to correct Purchaser's breach. No such entry shall be deemed an eviction of Purchaser. All sums so paid by Seller and all costs and expenses (including, but not limited to, reasonable attorneys' fees and expenses) so incurred, together with interest at the rate of ten percent (10%) per annum from the date of payment, shall constitute additional rent and shall be paid by Purchaser to Seller on demand.

14.3. In the event Purchaser is in default under the terms of this Agreement, other than the payment of Rent, then in any such event Seller may provide written notice of such default to Purchaser pursuant to this Section. Upon the expiration of thirty (30) days following the giving of such notice, if Purchaser (i) has failed to cure such default or (ii) in the case of a default (other than the payment of money) which by its nature cannot be completely cured within such thirty (30) day period, Purchaser does not within such period commence to cure the default, and diligently pursue and complete the cure in a reasonable period of time, then in either such event Seller may do all things necessary or desirable to remedy such default and perform the obligations of Purchaser which have not been fully or properly performed. Purchaser hereby irrevocably appoints Seller as his attorney-in-fact to enter upon the property and to complete the Building Improvements and the Purchaser Improvements and perform any other obligation of Purchaser that Purchaser has not fully and properly performed. Purchaser shall immediately upon demand reimburse for all costs and expenses incurred by Seller in connection with the foregoing plus interest to make such payment within thirty (30) days of written demand, and Seller may set off the amount of all costs and expenses incurred by Seller in connection with the foregoing, plus interest at the rate set forth in Section 14.2 against rent payment coming due under this Agreement.

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

14.4. The aforementioned 30-day period of time permitted for Seller to cure its default and the periods of time permitted for Purchaser to cure defaults hereunder shall be extended if the default cannot be cured within the time period allowed herein, so long as such party is diligently and continuously attempting to cure. The cure periods shall also be extended for any period of time during which the defaulting party is delayed in, or prevented from, curing due to fire or other casualty, or acts of God, strikes, lockouts, power shortages or outages, enactment, adoption, or promulgation of new laws, or the application or enforcement of laws. Notwithstanding the foregoing, there shall be no extended period in which to cure a monetary default.

SECTION 15
USE OF PREMISES

The Premises may be used, occupied, or sublet by Purchaser for the campground, hospitality, resort, retail fuel station and store business and any other uses as may be permitted by law, ordinance and/or zoning regulations and in the ordinary course of business without Seller's prior written consent, except that Purchaser shall not be entitled to request any change in permitted use or zoning laws affecting the Premises prior to Closing absent Seller's prior consent.

SECTION 16
COMPLIANCE WITH LAWS

During the Primary Term, Purchaser, at its expense, shall comply with all present and future laws and regulations applicable to its use and occupancy of the Premises. Purchaser agrees to hold Seller harmless from any cost, expense, or liability that may be imposed or assessed against Seller in connection with Purchaser's noncompliance with any such law, regulation, or requirements.

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

SECTION 17
REPAIRS

Purchaser shall be obligated to make, and Seller shall have no responsibility for, any structural repairs, modifications, or additions to the Premises, including, but not limited to, any repairs, modifications or additions to the Premises required pursuant to the Americans with Disabilities Act.

SECTION 18
ASSIGNMENT AND SUBLETTING

In accordance with the campground, hospitality and resort industry, Purchaser shall have the right to sublet all or any portion of the Premises in the normal course of business without the prior written consent of Seller. Notwithstanding the foregoing, Purchaser shall be able to assign this Agreement, whether in whole or in part, with the prior written consent of Seller, which shall not unreasonably be withheld. Any such assignment shall require the Assignee to assume and become bound to perform and observe all of the covenants and agreements of Purchaser under this Agreement. No such assignment shall relieve the assignor of its obligations hereunder..

TLC currently holds a lease from South Carolina Public Service Authority ("SCPSA"). Seller will use its reasonable best effort to obtain any and all approvals for the sublease thereof to Purchaser. Any and all payments to SCPSA under this lease shall be the sole responsibility of Purchaser. Any lease payments previously made to SCPSA by Seller shall be prorated as of January 1, 2011, and on that date, Purchaser shall reimburse Seller for the unexpired portion of the prepaid lease term.

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

SECTION 19
SUBBORDINATION OF LEASE

Seller hereby warrants and represents that the existing lease for the portion of the Premises containing the retail fuel station and store shall be subordinate to this Agreement. Seller hereby assigns to Purchaser any and all rents and income from the retail fuel station and store lease.

SECTION 20
NOTICES

All notices to be given to either party shall be deemed given if made in writing and deposited in the United States mail, postage prepaid, return receipt requested, and addressed to the parties at the following addresses:

SELLER:
TLC HOLDINGS, LLC
James C. Thigpen
P.O. Box 1257
7860 Wash Davis Road
Summerton, South Carolina 29148

Richard U. Clark
3124 Great Wood Way
Knoxville, Tennessee 37922

Jimmy S. (Steve) Lovell
20 Ambriance Drive
Burr Ridge, Illinois 60527

PURCHASER:
M. B. HUDSON
c/o ANDREW F. TUCKER, ESQ.
385 2nd Avenue, Suite 1
Dayton, Tennessee 37321

Either party may change its notice address by giving notice of the change to the other.

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

SECTION 21
MORTGAGES AND LIENS

Seller currently has two (2) liens encumbering the Premises. It is clearly understood between the parties that Seller shall not allow any further or additional liens to be placed or encumber the Premises at any time during the Primary term or any extension thereof.

There are two pending actions relating to the campground property in the Court of Common Pleas for Clarendon County, South Carolina, one captioned *First Citizens Bank vs. Thigpen, et al.*, Case No. 08-CP-14-559, and the second captioned *Edwards vs. TLC Holdings, et al.*, Case No. 09-CP-14-58. Seller covenants, consents and agrees that these actions shall be dismissed or otherwise addressed on or before Closing on the entire Premises, so that said pending legal actions shall in no way encumber the Property or hinder said Closing. There is no other pending or threatened litigation, nor any legal or administrative action of any kind or character whatsoever, affecting the Property or any portion thereof.

Purchaser shall not permit any liens, whether consensual, judgment or statutory, to be placed on or encumber the Premises. Should any such lien be asserted or filed, Purchaser shall bond against or discharge the same within ten (10) days after written request by Seller. In the event Purchaser fails to remove said lien within said ten (10) days, Seller may, at its sole option, elect to satisfy and remove the lien by paying the full amount claimed or otherwise, without investigating the validity thereof. Seller's election to discharge liens as provided hereunder shall not be construed to be a waiver or cure of Purchaser's default hereunder

SECTION 22
SUCCESSORS AND ASSIGNS

Subject to the provisions of Section 14, this Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and permitted assigns of Seller and Purchaser.

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

SECTION 23
PURCHASER'S PROPERTY

All trade fixtures, furnishings, equipment, and other personal property placed or maintained on the Premises shall be at Purchaser's sole risk, and Seller shall not be liable for any loss or damage to such property from any cause whatsoever, and shall not provide any insurance on such property.

SECTION 24
QUIET ENJOYMENT

Seller covenants that, if Purchaser pays the rent and performs all of its obligations under this Agreement, Purchaser shall peaceably and quietly enjoy and possess the Premises throughout the term subject only to the conditions set forth in this Agreement.

SECTION 25
SIGNS

Any and all signs placed on the Premises by Purchaser shall be maintained in compliance with all applicable governmental laws and regulations.

SECTION 26
NONWAIVER

No waiver of any condition or covenant of this Agreement by either party shall be deemed to imply or constitute a further waiver of the same or any other condition or covenant, and nothing contained in this Agreement shall be construed to be a waiver on the part of Seller of any right or remedy in law or otherwise.

SECTION 27
RIGHT OF ENTRY

Upon reasonable notice to Purchaser, Seller shall have the right to enter the Premises during normal business hours to examine its condition; to make any repairs Seller deems

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

necessary for the safety, preservation, or improvement of the Premises. Each entry by Seller in accordance with this Section 27 shall be made in such a manner as will not unreasonably interfere with Purchaser's use of the Premises.

SECTION 28
ENVIRONMENTAL MATTERS

28.1. Seller represents and warrants to Purchaser that to the best of Seller's knowledge, as of the date hereof, no "Hazardous Substances" (as hereafter defined), or any other toxic material or medical waste are present on or in the Building or Land, other than fuel sold by the convenience store, or other amounts used in the ordinary course of the businesses operated upon the Premises (and, as to those, all are in material compliance with applicable law), and Seller shall indemnify Purchaser against any and all claims, demands, liabilities, losses and expenses, including consultant fees, court costs and reasonable attorneys' fees, arising out of any breach of the foregoing warranty.

28.2. Except for Hazardous Substances or other toxic materials or medical waste brought, kept, or used in the Premises in commercial quantities similar to those quantities usually kept on similar premises by others in the same business, profession, or medical specialty, and which are used and kept in compliance with applicable public health, safety, and environmental laws, Purchaser shall not allow any Hazardous Substance or other toxic material or medical waste to be located in, on, or under the Premises or allow the Premises to be used for the manufacturing, handling, storage, distribution, or disposal of any Hazardous Substance or other toxic material.

28.3. Purchaser shall at all times and in all respects comply with all federal, state, or local laws, ordinances, regulations, and orders applicable to the Premises or the use thereof relating to industrial hygiene, the handling, storage and disposal of medical waste, environmental

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

protection, or the use, analysis, generation, manufacture, storage, disposal, or transportation of any Hazardous Substance, toxic material, or medical waste.

28.4. If Purchaser becomes aware of the presence of any Hazardous Substance in or on the Premises (except for those Hazardous Substances or other toxic material or medical waste brought, kept, or used in the Premises by Purchaser in commercial quantities similar to those quantities usually kept on similar premises by others in the same business, profession, or medical specialty and which are used and kept in compliance with applicable public health, safety, and environmental laws) or if Purchaser, or the Premises, becomes subject to any order of any federal, state, or local agency to repair, close, detoxify, decontaminate, or otherwise cleanup the Premises, Purchaser shall, at its own cost and expense, carry out and complete any repair, closure, detoxification, decontamination, or other cleanup of the Premises; provided that Purchaser shall not be responsible for any of the foregoing relating to any Hazardous Substance, or other toxic materials, or medical waste located on, in, or under the Premises on the date of this Agreement, all of which shall be the responsibility of Seller pursuant to Section 28.1. If Purchaser fails to implement and diligently pursue any such repair, closure, detoxification, decontamination, or other cleanup of the Premises, Seller shall have the right, but not the obligation, to carry out such action and to recover all of the costs and expenses from Purchaser.

28.5. "Hazardous Substances" as such term is used in this Agreement means any hazardous or toxic substance, material, or waste regulated or listed pursuant to any federal, state, or local environmental law, including without limitation, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act, the Resource Conversation and Recovery Act, the Federal Insecticide, Fungicide, Rodenticide Act, the Safe Drinking Water Act, and the Occupational Safety and

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Health Act, except for any reference to petroleum or petroleum products. The parties hereby acknowledge that the Premises has a retail gasoline and diesel service station located thereon, and any reference to Hazardous Substances specifically exclude petroleum or petroleum products.

SECTION 29
PARTIAL INVALIDITY

If any provision of this Agreement or its application to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of that provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

SECTION 30
MEMORANDUM OF LEASE

In addition to the execution of this Agreement, the parties shall execute a memorandum of this agreement in recordable form, which, in addition to the matters which may be required by applicable law, shall also include a description of the Premises leased hereunder, and those provisions (other than the amount of rent and the Purchase Price) requested by any party hereto.

SECTION 31
ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties and cannot be amended unless the amendment is in writing and executed by the party against whom the enforcement of the amendment is sought.

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

IN WITNESS WHEREOF, this Agreement has been executed as of the date and year written herein below.

SELLER:
TLC Holdings, LLC

James C. Thigpen, Member, TLC Holdings, LLC
Date:

Richard U. Clark, Member, TLC Holdings, LLC
Date:

Jimmy S. (Steve) Lovell, Member, TLC Holdings, LLC
Date: 12/15/10

PURCHASER:

M. B. Hudson

Date: 12/16/10

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

[Signatures on Next Page]

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TLC Holdings, LLC

James C. Thigpen, Member, TLC Holdings, LLC
Date: 12/15/10

Richard U. Clark, Member, TLC Holdings, LLC
Date: _____

Jimmy S. (Steve) Lovell, Member, TLC Holdings, LLC
Date: _____

PURCHASER:

M. B. Hudson

Date: 12/15/10

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

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SELLER:
TLC Holdings, LLC

James C. Thigpen, Member, TLC Holdings, LLC
Date:_____

Richard U. Clark, Member, TLC Holdings, LLC
Date: 12/15/2010

Jimmy S. (Steve) Lovell, Member, TLC Holdings, LLC
Date:_____

PURCHASER:

M. B. Hudson

Date: 12/15/2010

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

EXHIBIT A _ A legal description of the TLC real property

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

EXHIBIT A

A. CAMPGROUND KNOWN AS BIG WATER RESORT:

All that certain piece, parcel or tract of land lying, being and situate in School District No. 1 of Clarendon County, South Carolina, containing 30.44 acres according to plat hereinafter described and measuring and bounding as follows: beginning at an old iron found on the North bound exit ramp right of way from Interstate 95 at Exit 102, thence N 62 degrees 24'24" E for 3.66 feet along the right of way to a concrete monument, thence N 62 degrees 08'56" E for 120.09 feet along the right of way to an iron, thence N 70 degrees 36'47" E for 160.27 feet along the right of way to an iron, thence N 79 degrees 57'21" E for 93.40 feet along the right of way to a concrete monument, thence N 82 degrees 19'44" E for 190.85 feet along the right of way to a concrete monument, thence N 81 degrees 00'07" E for 82.23 feet along the right of way to an iron, thence N 74 degrees 05'12" E for 189.38 feet along the right of way to an iron, thence N 72 degrees 17'50" E for 38.91 feet along the right of way to an iron, thence S 56 degrees 09'56" E for 439.73 feet along the property line of lands being conveyed to Lee-Moore Oil Company, Inc. to an iron, thence S 56 degrees 09'26" E for 114.35 feet along the property line of land being conveyed to Lee-Moore Oil Company, Inc. to an iron, thence S 56 degrees 09'26" E for 253.97 feet along the property line of W. R. Williams to a concrete monument found on the 33 foot right of way of SC Highway S-14-390, thence S 33 degrees 10'55" W for 219.18 feet along the right of way to an iron, thence S 56 degrees 49'43" W for 1356.96 feet along the property line of Robert Malanuk to a concrete monument, thence N 25 degrees 40-07" W for 660.32 feet along the property line of the South Carolina Public Service Authority to an iron, thence N 25 degrees 42' W for 77.70 feet along the property line of the South Carolina Public Service Authority to a concrete monument, thence N 47 degrees 35' W for 248.5 feet along the property line of the South Carolina Public Service Authority to an iron, thence N 39 degrees 05'14" E for 394.98 feet along the right of way of Interstate 95 to the point of beginning. SUBJECT HOWEVER, to an easement to the Carolina Power and Light Company recorded in Deed Book A-26 at Page 165, also easement for absorption field recorded in Deed Book A-61 at Page 342, also sign lot and right of way recorded in Deed Book A-126 at page 478 and an easement from W. R. Williams, et al recorded in Deed Book A-109 at Page 551. SUBJECT to Black River Electric Coop. Power line easement as shown on plat described below. Subject to any visible and unrecorded easements and right of ways not revealed by current survey.

For a more particular description, reference may be had to a plat by H. F. Oliver, Surveyor, dated February 19, 1988, recorded in the Office of the RMC for Clarendon County in Plat Book 39 at page 123.

FOR DERIVATION, SEE BELOW.

Said tract being designated as Clarendon Tax Map No. 035-05-00-001-00.

TRACT II:
ALSO: All that piece, parcel, or tract of land lying, being and situate in School District No. 1 of Clarendon County, South Carolina, containing 3.21 acres on a plat hereinafter referred to, and bounding and measuring as follows: on the Northeast by SC Highway S-14-400 and measuring thereon 243.71 feet; on the Southeast by SC Highway S-14-390 and measuring thereon 618.30 feet; on the Southwest by lands of Lee Moore Oil Company, Inc. and measuring thereon 253.99 feet; on the Northwest by lands of Lee Moore Oil Company, Inc. and measuring thereon 755.15 feet.

For a more particular description of said tract reference may be had to a plat made by H. F. Oliver, Surveyor, dated March 15, 1988, recorded in the Office of the RMC for Clarendon County in Plat Book 44 at Page 36.

Said tract being designated as Clarendon Tax Map No. 035-06-02-007-00.
Said tracts having been conveyed to TLC Holdings, LLC by Deed of The Big Water Resort, LLC, dated 23 April, 2003, recorded on 9 May, 2003 in the Office of the RMC for Clarendon County in Deed Book A-497 at Page 00009.

TOGETHER WITH the Leasehold interest in that certain Lease between the Seller and the South Carolina Public Service Authority, pertaining to the waterfront property adjacent to the premises above described.

All buildings, fixtures, equipment used in the operation of the campground facility located on the above described premises.

SUBJECT HOWEVER to those certain Restrictive Covenants dated 3 November, 2003, recorded in the Office of the RMC for Clarendon County and any Amendments thereto and subject to certain Contracts between the Optionor and members of The Big Water Resort and others.

SUBJECT FURTHER, to all easements and rights of way of record.

B. CONVENIENCE STORE. That certain convenience store facility and the lands adjacent thereto known as "Big Water Country Store and Restaurant" described as follows:

All that piece, parcel or tract of land with buildings and improvements located thereon lying, being and situate Northwest of the Intersection of SC Highway S-14-390 and SC Highway S-14-400 in School District 1 of Clarendon County, South Carolina, containing 3.73 acres, being designated as Tract 2A on the plat

MBA

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hereinafter referred to and bounding and measuring as follows: On the Northeast by Tract B on said plat and measuring thereon 439 feet; on the Southeast by the right of way of SC Highway S-14-400 and measuring thereon 318.4 feet; on the South by the intersection of SC Highway S-14-390 and SC Highway S-14-400, and measuring thereon 68.4 feet; On the Southwest by right-of-way of SC highway S-14-390, and measuring thereon 367.8 feet; on the Northwest by the arc of the curve of an intersection of an access strip and SC Highway S-14-390 and measuring thereon along said arc 50.58 feet and by said access strip and measuring thereon 338 feet.

For a more particular description of said tract, reference may be had to a plat made by H.F. Oliver, RLS, dated February 23, 1973, recorded in the Office of the Clerk of Court for Clarendon County in Plat Book 25 at Page 94, whereon said tract is designated as Tract 2A.

FOR DERIVATION, SEE BELOW.

Said premises being designated as Clarendon Tax Map Parcel N. 035-06-02-005-00.

ALSO:
All that certain piece, parcel, or tract of land, lying, being, and situate in School District No. 1 of the County of Clarendon, State of South Carolina, containing 2.50 acres and being designated as Tract B-1, according to plat hereinafter described and measuring and bounding, now or formerly, as follows: On the Northeast by lands of Ruby P. Levi, and measuring thereon 428.96 feet; On the Southeast by Tract B-2, and measuring thereon 304.55 feet; On the Southwest by lands of H.F. Swilley, a 50 foot access strip and lands of C&M Petroleum, and measuring thereon 281.99 feet; and on the Northwest by Highway Right-of-Way, and measuring thereon 340.64 feet.

For a more particular description, reference may be had to a plat by R.G. Mathis Land Surveying dated November 2, 1988, and recorded in the Office of the Clerk of Court of Clarendon County in Plat Book 42 at Page 86.

ALSO:
All of that certain piece, parcel, or strip of land, shown as an "Access Strip" on that certain plat prepared by H.F. Oliver, RLS, dated February 23, 1973, and recorded in the Office of the Clerk of Court in Plat Book 25 at Page 94, according to which plat, said property is bounded, now or formerly, and measures as follows: On the Northeast by Tract B on said Plat and measuring thereon a distance of 50 feet; On the Southeast by Tract 2-A and measuring thereon a distance of 338 feet; On the Southwest by the right-of-way of S.C. Highway S-14-390; and on the Northwest by Tract 1-A, and measuring thereon a distance of 338 feet.

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ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

SUBJECT, HOWEVER, to such easements of right-of-way for utilities and roadways as shall appear upon said plats.

FOR DERIVATION, SEE BELOW.

Above Tract B-1 and Access Strip being designated as Clarendon TMP#035-06-02-008-00.

ALSO:
All that piece, parcel, or tract of land together with any improvements located thereon, lying and being situate in Clarendon County, South Carolina, being designated as Tract B-2 on the plat hereinafter referred to, containing 2.5 acres and bounding, now or formerly, and measuring as follows: On the North by lands of Ruby P. Levi and measuring thereon 357.64 feet; On the East by the right-of-way of South Carolina Highway S-14-400, and measuring thereon 304.55 feet; On the South by lands of H.F. Swilley and measuring thereon 357.64 feet; On the West by Tract B-1 on said Plat, and measuring thereon 304.55 feet.

Above tracts having been conveyed to TLC Holdings, LLC by Deed of Santee Interstate Systems, Inc., Shawn M. Reardon and Cynthia C. Reardon by Deed dated 18 September, 2003, and recorded in the Office of the RMC for Clarendon County in Deed Book A-508, at Page 310.

Said lot begin designated as Clarendon County Tax Map Parcel No. 035-06-02-002-00.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise appertaining to the above tracts.

C. ROGER'S TRACT
All that certain piece, parcel or tract of land, lying, being and situate in the County of Clarendon, State of South Carolina, containing 57.81 acres, more or less, being described as follows: Beginning at an iron new ly placed on the 33 foot right-of-way of South Carolina Highway S-14-300, thence, North 30 degrees, 50 feet, 7 inches, East for 3346.76 feet along the 33 right-of-way of South Carolina Highway S-14-390 and South Carolina Highway S-14-400 to an old concrete monument. Thence, North 77 degrees, 20 feet, 33 inches, East for 71.68 feet along a site angle created by a 90 degrees Bend in South Carolina Highway S-14-400 to an old concrete monument. Thence, South 58 degrees, 20 feet, 23 inches, East for 1555.29 feet along the right-of-way of South Carolina Highway 400 to a new iron. Thence, South 71 degrees, 39 feet, 58 inches, West for 908.20 feet along the property line of the South Carolina Public Service Authority to an old concrete monument. Thence, South 49 degrees, 33 feet, 49 inches, West for 350.86 feet along the property line of the South Carolina Public Service Authority to an old concrete monument. Thence, South 45 degrees, 50 feet, 18 inches, West for 1076.74 feet

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

along the property line of the South Carolina Public Service Authority to an old concrete monument. Thence, South 64 degrees, 37 feet, 33 inches, West for 634.11 feet along the property line of the South Carolina Public Service Authority to an old concrete monument. Thence, South 56 degrees, 47 feet, 48 inches, West for 524.93 feet along the property line of the South Carolina Public Service Authority to an old concrete monument. Thence, South 57 degrees, 28 feet, 19 inches, West for 350.08 feet along the property line of Robert Malenvik to the point of beginning.

For a more particular description of said tract, reference may be had to a plat made by H. F. Oliver, RLS, dated 17 March 1988, recorded in the Office of the Clerk of Court for Clarendon County in Plat Book 39 at Page 204.

Said premises having been conveyed to TLC Holdings, LLC by deed of Rodney L. Rogers dated May 19, 2008 and recorded May 21, 2008 in the Office of the Clerk of Court for Clarendon County in Deed Book A-699 at Page 275.

Said tract being designated as Clarendon County Tax Map Parcel Number 035-00-00-013-00.

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

EXHIBIT B - A list of improvements that Purchaser wishes to make w/o additional approvals from Seller.

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

EXHIBIT B

(Amounts Owing by Defendant under Lease Purchase Agreement as of 1/26/12)

BASE RENT, CALCULATED AS FOLLOWS:		$58,000.00
July 2011	$10,000.00	
August 2011	8,000.00	
September 2011	8,000.00	
October 2011	8,000.00	
November 2011	8,000.00	
December 2011	8,000.00	
January 2012	8,000.00	
RENT DUE AND OWING TO SCPSA		$22,860.00
LIABILITY INSURANCE (1) $5679.85 (2) $7646.59		$13,326.44
PROPERTY TAXES		$71,653.63
TOTAL		**$165,840.07***

* -- Exclusive of (but Plaintiff reserves the right to collect, pursuant to the terms of the Lease Agreement) interest, late fees, and Plaintiff's attorneys' fees and litigation costs, together with other damages and amounts allowed under the Lease Purchase Agreement or applicable law, all of which are to be added to the foregoing amounts and are owing by Defendant.

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON TLC Holdings, LLC, Plaintiff, vs. M.B. Hudson a/k/a M.B. Hutson, Defendant.	)	IN THE COURT OF COMMON PLEAS CASE NO.: 11-CP-14-602 **AFFIDAVIT OF RICHARD U. CLARK**
M. B. Hudson a/k/a M. B. Hutson, Defendant and Third Party Plaintiff, v. Richard U. Clark, Jimmy S. Lovell and James C. Thigpen, Third Party Defendants.	)	

COMES NOW, Richard U. Clark, who, being duly sworn, deposes and says as follows:

1. I am a Member of Plaintiff TLC Holdings, LLC ("TLC" or the "Company"), and have personal knowledge of the matters contained in this affidavit. I am duly authorized by TLC to give this affidavit on its behalf.

2. I have read the Complaint, the Application for Ejectment, and the Motion for Order Requiring Tenant to Pay All Rent Due or, in the Alternative, for Appointment of Receiver (the "Motion") filed in this action by Plaintiff and know the contents thereof, and the same are true to the best of my knowledge, except as to the matters therein stated to be on information and belief, and as to those matters, I believe them to be true.

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

3. In or around December, 2010, I was introduced to the Defendant in this action, M.B. Hudson a/k/a Morris B. Hutson ("Defendant" or "Hutson"). In the numerous conversations I had with him, he consistently identified himself as being named "M.B. Hudson".

4. Hutson approached TLC about purchasing the Clarendon County real property which is the subject of this action and which is commonly known as the Big Water Resort (the "Property"). At the time that he approached us, the Property was not listed or being actively marketed for sale.

5. When Hutson approached us and offered to purchase the Property, he originally offered to structure the transaction as a traditional purchase agreement whereby he would purchase the Property within 60 business days following the date the contract was signed, paying the entire purchase price at that closing. There was no lease component in his initial proposal.

6. However, before a purchase agreement was signed, and while he was conducting his due diligence investigations about the Property, Hutson discovered that there was no available water and sewer capacity to support the construction of new development at the Property, and that future development of the Property would require the extension or expansion of additional sewer facilities to the Property. He disclosed this information to Steve Lovell (another TLC member) and me before any agreement was executed.

7. Hutson advised Lovell and me that, in light of the additional time and money that such infrastructure would require, he wanted to structure our agreement not as an "all cash" purchase within 60 business days following the date the contract was signed, but instead as a "lease/purchase" arrangement, which included both (a) a right to purchase the Property within two years (not 60 business days), and (b) a lease of the Property, which would permit Hutson, during the course of up to two years, to take possession of the Property, paying monthly rent and operating expenses related

thereto, and operating the Big Water Club thereon, while he proceeded to extend or expand water and sewer capacity to the Property in order to facilitate the future development he envisioned.

8. The foregoing discussions occurred prior to the drafting and negotiation of the Lease Purchase Agreement which is the subject of this action.

9. Based on the statements Hutson made to me prior to the execution of any agreement, I am informed and believe that he was fully aware of the lack of water and sewer capacity for future development at the Property before he executed the Lease Purchase Agreement.

10. Hutson had his attorney prepare the Lease Purchase Agreement, including his requested 2-year lease of the Property. That Lease Purchase Agreement (the "Lease", the "Lease Purchase Agreement", or the "Agreement") was executed on or about December 15, 2010, by and among TLC, Defendant, Lovell, James C. Thigpen and me.

11. Pursuant to the commercial lease contained within the Agreement, TLC delivered possession of the Property to Hutson, who has remained in possession of the Property since that time.

12. After the Lease was executed, I learned that the Defendant is not named "M.B. *Hudson*", as he had identified himself in all prior communications with Lovell and me, but is instead named "Morris B. *Hutson*". In numerous conversations with Lovell and me, and in various legal documents executed by him and TLC in conjunction with the Lease, the Defendant had always identified his last name as "Hudson".

13. After discovering that the Defendant's true last name was "Hutson", and not "Hudson", I conducted an investigation of "Morris Hutson". In the course of that investigation, I obtained evidence from a public records search that revealed, among other things, that Hutson had been an interstate fugitive from Georgia, extradited from the State of Florida, and had been involved

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

in real estate or business transactions in Tennessee and Georgia for which the other parties had filed or posted public complaints against his conduct.

14. Irrespective of whether these public records showing the existence of civil and criminal complaints against the Defendant are true and correct – and I am not saying that they are – TLC, Lovell and I would not have executed the Agreement with the Defendant had we known of the existence of those complaints and records beforehand.

15. Upon information and belief, had Hutson disclosed his true identity to Lovell and me prior to the execution of the Lease, allowing us to investigate him adequately, we would have discovered complaints and records against him, and TLC and we would not have executed the Lease Purchase Agreement.

16. Since the Lease was executed, Hutson has failed to pay TLC, the landlord under the Lease, rent and other sums due under the terms of the Lease. As shown by the Complaint on file with the Court, Tenant owed Landlord the sum of $78,186.44 as of November 22, 2011. Rent continues to accrue since the filing of the above-referenced action.

17. As of January 26, 2012, Hutson owes TLC the sum of $165,840.07 under the terms of the Lease, exclusive of interest, late fees, and Plaintiff's attorneys' fees and litigation costs, all of which are owing under the terms of the Lease. A schedule showing the amounts due from Tenant to Landlord through January 26, 2012 is attached hereto and incorporated herein by reference as **Exhibit "A"**.

18. Pursuant to the Lease Purchase Agreement, as a result of Hutson's numerous breaches thereof, TLC terminated the Lease Purchase Agreement as of October 17, 2011, by written notice delivered to Hutson.

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

19. Despite the termination of the Lease Purchase Agreement in October, 2011, and despite not having paid Rent owing since July, 2011, more than seven (7) months ago, Hutson has continued to occupy the Property and refuses to vacate the same.

20. Despite not having paid the Rent owing to TLC under the Lease, Hutson has continued to receive rents, revenues and profits from the Property, including, without limitation, rents owing by the truck stop operator and rents received from certain cabin or storage rentals. In addition, Hutson is operating his business, the Big Water Resort, upon the Property, and, upon information and belief, he is collecting dues and other revenues from his Big Water Resort club members.

21. Without limiting the foregoing, Hutson has also failed to pay rent owing to South Carolina Public Service Authority for a portion of the Big Water Resort situated along Lake Marion, as required under the Lease. As a result of Hutson's failure, TLC was required to pay such amounts to protect the leasehold interest. The amounts that TLC advanced, which are properly owing by Hutson to TLC, are shown on **Exhibit "A"**.

22. Hutson has failed to pay the real estate taxes owing upon the Property, as required under the Lease. As a result of Hutson's failure, TLC was required to pay such amounts to avoid delinquency and possible tax sale of the Property. The amounts that TLC advanced, which are properly owing by Hutson to TLC, are shown on **Exhibit "A"**.

23. Hutson has failed to pay the insurance owing upon the Property, as required under the Lease. As a result of Hutson's failure, TLC was required to pay the premiums on such policies to protect the Property. The amounts that TLC advanced, which are properly owing by Hutson to TLC, are shown on **Exhibit "A"**.

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

24. In early February, I received another notice that the insurance that Hutson is required to maintain under the Lease to protect the Property and TLC was scheduled to be cancelled for nonpayment of premiums. TLC advanced funds to pay the premium on the prior policy (the amounts of which are included on **Exhibit "A"**), but that policy is about to lapse and, according to this February notice, Hutson has failed to pay this premium, further jeopardizing TLC and the Property to uninsured liability.

25. I am informed and believe that Hutson has failed to pay certain utility bills owing for the Property, as required under the Lease. I am informed and believe that as a result of Hutson's failure, electricity service to the Property was suspended during this winter, which jeopardized the Property and improvements thereon.

26. Since the Lease was executed, Hutson has collected various rentals, dues and revenues from the lease or operation of the Property, all without paying the rent he owes to TLC as landlord under the Lease, as well as the taxes, insurance, and certain other operating expenses pertaining to the Property.

27. As a result of Hutson's breach of the Lease, TLC terminated the Lease, and is entitled to possession of the Property.

28. The property remains in the possession of Hutson, who is retaining the rents and profits thereof, all of which, along with the Property itself, are in danger of being lost or materially injured or impaired.

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

29. I am informed and believe that Defendant does not have sufficient working capital to preserve and protect the rents and profits derived from the Property, further jeopardizing those revenues to which Plaintiff is entitled under the Loan Documents.

FURTHER AFFIANT SAYETH NOT.

Richard U. Clark

SWORN to before me this 15th day of February, 2017.

Notary Public for Tennessee
My Commission Expires: 11-30-2013

CHRISTI R. TAYLOR
STATE OF TENNESSEE NOTARY PUBLIC
Comm. Exp. 11-30-2013
BLOUNT COUNTY

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

EXHIBIT A

(Amounts Owing by Defendant under Lease Purchase Agreement as of 1/26/12)

BASE RENT, CALCULATED AS FOLLOWS:		$58,000.00
July 2011	$10,000.00	
August 2011	8,000.00	
September 2011	8,000.00	
October 2011	8,000.00	
November 2011	8,000.00	
December 2011	8,000.00	
January 2012	8,000.00	
RENT DUE AND OWING TO SCPSA		$22,860.00
LIABILITY INSURANCE (1) $5679.85 (2) $7646.59		$13,326.44
PROPERTY TAXES		$71,653.63
TOTAL		**$165,840.07***

* -- Exclusive of (but Plaintiff reserves the right to collect, pursuant to the terms of the Lease Agreement) interest, late fees, and Plaintiff's attorneys' fees and litigation costs, together with other damages and amounts allowed under the Lease Purchase Agreement or applicable law, all of which are to be added to the foregoing amounts and are owing by Defendant.

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

CERTIFICATE OF SERVICE

I do hereby certify that on the 16th day of February, 2012, I served a copy of the within *NOTICE OF MOTION AND MOTION FOR ORDER REQUIRING TENANT TO PAY ALL RENT DUE, OR, IN THE ALTERNATIVE, FOR APPOINTMENT OF RECEIVER* to Counsel of Record in the within entitled matter by sending a copy of the same in an envelope with the correct postage prepaid addressed to:

Paul Weissenstein, Jr.
Weissenstein Law Firm, LLC
106 Broad Street
P.O. Box 2446
Sumter, SC 29151-2446

ATTORNEYS FOR DEFENDANT

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON TLC HOLDINGS, LLC Plaintiff, vs. M.B. HUDSON a/k/a M.B. HUTSON Defendant.	)))))))))	IN THE COURT OF COMMON PLEAS THIRD JUDICIAL CIRCUIT CASE NO.: 2011-CP-14-602 **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**

Plaintiff's Attorney:	Defendant's Attorney:
Thomas L. Harper, Jr., Bar No. 11553 Address: Womble Carlyle Sandridge & Rice, LLP PO Box 999, Charleston, SC 29402 Phone: 843/722-3400Fax 843/723-7398 E-mail: tharper@wcsr.com Other: ____	Paul Weissenstein, Jr., Bar No. ____ Address: Weissenstein Law Firm, LLC 106 Broad Street, PO Box 2446 Sumter, SC 29151-2446 Phone: 803/418-5700 Fax803/934-1505 E-mail: ____ Other: ____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion for Order Requiring Tenant to Pay All Rent Due, et al.
Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant — Date submitted: 2/10/12

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ ____
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: ____
- ☐ Other: ____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: ____	JUDGE CODE ____ Date: ____

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

WOMBLE CARLYLE SANDRIDGE & RICE
A PROFESSIONAL LIMITED LIABILITY COMPANY

5 Exchange Street
Charleston, SC 29401

Mailing Address:
Post Office Box 999
Charleston, SC 29402
Telephone: (843) 722-3400
Fax: (843) 723-7398
www.wcsr.com

February 16, 2012

THOMAS L. HARPER, JR.
ATTORNEY AT LAW
E-Mail: tharper@wcsr.com
DIRECT DIAL: 843-720-4636
FAX: 843-723-7398

VIA FEDERAL EXPRESS
Clarendon County Clerk of Court
Clarendon County Courthouse
3 West Keitt Street
Manning SC 29102

Re: TLC Holdings, LLC vs. M.B. Hudson a/k/a M.B. Hutson
Case No. 11-CP-14-602
WCSR File No. 78195.0006.0

Dear Sir/Madam:

Please find enclosed for filing in the above matter the original and one copy of the Plaintiff's Notice of Motion and Motion for Order Requiring Tenant to Pay all Rent Due, Or, In the Alternative, For Appointment of Receiver. I have also enclosed the motion coversheet and our check in the sum of $25.00. Please return a clocked in copy to me in the envelope provided. By copy of this letter I am serving the Defendant, through his counsel of record, with the same. Thank you for your assistance in this matter.

Sincerely yours,

Thomas L. Harper, Jr.

TLH/dlh
Enclosure(s)
Cc: Paul Weissenstein, Esquire (w/encl.)

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON TLC Holdings, LLC, Plaintiff, v. M. B. Hudson a/k/a M. B. Hutson, Defendant.	IN THE COURT OF COMMON PLEAS THIRD JUDICIAL CIRCUIT CASE NUMBER: CASE NO.: 2011-CP-14-602 **PLAINTIFF'S REPLY TO COUNTERCLAIMS**
M. B. Hudson a/k/a M. B. Hutson, Defendant and Third Party Plaintiff, v. Richard U. Clark, Jimmy S. Lovell and James C. Thigpen, Third Party Defendants.	

Plaintiff TLC Holdings, LLC ("**Plaintiff**"), responding to the Counterclaims of Defendant M. B. Hudson a/k/a M. B. Hutson ("**Hutson**" or "**Defeudant**"), respectfully shows this Court as follows:

FOR A FIRST DEFENSE

1. Plaintiff denies each and every allegation contained in the Answer and Counterclaim and Affirmative Defense and Motion to Dismiss and Third Party Complaint (collectively, "**Answer and Counterclaim**") not specifically hereinafter admitted. All terms not defined herein shall have the definitions contained in the Plaintiff's Complaint.

2. Paragraphs (a) – (d) and 1-31 of Defendant's Answer and Counterclaim are

responses to the Plaintiff's Complaint and require no response from Plaintiff and/or Third Party Defendants. To the extent a response is required, Plaintiff denies each and every allegation stated therein except for the allegations admitted by Defendant in the Plaintiff's Complaint.

AS TO THE COUNTERCLAIMS AND THIRD-PARTY CLAIMS

3. In response and by way of reply and answer to Paragraphs 32 and 33 of Defendant's Answer and Counterclaim, Plaintiff incorporates by reference its responses contained in the preceding paragraphs.

4. Upon information and belief, Plaintiff admits the allegations contained in Paragraph 34.

5. Plaintiff admits the allegations contained in Paragraph 35.

6. In responding to Paragraph 36 of Defendant's Answer and Counterclaim, Plaintiff only admits so much of said paragraph that alleges that Third-Party Defendants are members of the Plaintiff. By way of further response, Plaintiff craves reference to the terms of the Lease Purchase Agreement and denies any allegations inconsistent therewith. Plaintiff denies the remaining allegations set forth in Paragraph 36 and demand strict proof thereof.

7. Plaintiff admits the allegations contained in Paragraph 37.

8. In responding to Paragraph 38 of Defendant's Answer and Counterclaim, Plaintiff craves reference to the documents on file with the Clarendon County Register of Deeds Office and denies any allegations inconsistent therewith. The remaining allegations are conclusions of law to which no response is required. To the extent a response is required, Plaintiff denies same and demand strict proof thereof.

9. In responding to Paragraph 39 of Defendant's Answer and Counterclaim, Plaintiff only admits so much of said paragraph that alleges Plaintiff, Third Party Defendants and

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Defendant entered into a Lease Purchase Agreement. Accordingly, Plaintiff craves reference to the terms of the Lease Purchase Agreement and denies any allegations inconsistent therewith. By way of further response, Plaintiff cannot admit or deny that the Lease Purchase Agreement attached to the Complaint is a true and accurate copy of the document, and therefore denies same and demands strict proof thereof.

IN RESPONSE TO THE CLAIM, COUNTERCLAIM AND FIFTH DEFENSE

10. In response and by way of reply and answer to Paragraph 40 of Defendant's Answer and Counterclaim, Plaintiff incorporates by reference its responses contained in the preceding paragraphs.

11. In responding to Paragraph 41 of Defendant's Answer and Counterclaim, Plaintiff craves reference to the documents on file with the Clarendon County Register of Deeds Office and denies any allegations inconsistent therewith. By way of further response, Plaintiff craves reference to the terms of the Lease Purchase Agreement and denies any allegations inconsistent therewith. Plaintiff denies the remaining allegations set forth in Paragraph 41.

12. Plaintiff denies the allegations in Paragraph 42 of Defendant's Answer and Counterclaim.

13. In responding to Paragraph 43 of Defendant's Answer and Counterclaim, Plaintiff craves reference to the terms of the Lease Purchase Agreement and denies any allegations inconsistent therewith. Plaintiff denies the remaining allegations set forth in Paragraph 43.

14. In responding to Paragraph 44 of Defendant's Answer and Counterclaim, Plaintiff denies that a copy of a letter of the Town of Summerton was attached as an exhibit to the Defendant's Answer and Counterclaim. Plaintiff denies that it was aware of any moratorium. Plaintiff denies the remaining allegations set forth in Paragraph 44.

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

15. In responding to Paragraph 45 of Defendant's Answer and Counterclaim, Plaintiff craves reference to the terms of the Lease Purchase Agreement and denies any allegations inconsistent therewith. By way of further response, Plaintiff denies the remaining allegations set forth in Paragraph 45.

16. In responding to Paragraph 46 of Defendant's Answer and Counterclaim, Plaintiff lacks sufficient information to form a belief as to the truth of the allegations set forth in the last three sentences of Paragraph 46 of Defendants' Answer and Counterclaim since the allegations pertain to the Defendant and others and are not against them. To the extent the allegations are against them, Plaintiff denies same and demand strict proof thereof. By way of further response, Plaintiff craves reference to the terms of the Lease Purchase Agreement and denies any allegations inconsistent therewith. Plaintiff denies any remaining allegations set forth in Paragraph 46.

17. In responding to Paragraph 47 of Defendant's Answer and Counterclaim, Plaintiff lacks sufficient information to form a belief as to the truth of the allegations since they do not know the intended definition of the term "contract." To the extent a response is required, Plaintiff craves reference to the terms of the "contract" and denies any allegations inconsistent therewith.

18. Plaintiff denies the allegations in Paragraph 48 of Defendant's Answer and Counterclaim. Without limiting the foregoing, Plaintiff alleges and would show that, prior to the execution of the Lease Purchase Agreement, Defendant expressly raised and discussed with some of the Third Party Defendants that Defendant was aware of the lack of available sewer capacity at the real property which is the subject of the Lease Purchase Agreement, and that the Lease Purchase Agreement was revised at Defendant's request prior to its execution to reflect the

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

additional time Defendant would require to obtain such additional capacity.

19. Answering Paragraph 49 of Defendant's Answer and Counterclaim, Plaintiff craves reference to the terms of the Lease Purchase Agreement and denies any allegations inconsistent therewith. Plaintiff denies any remaining allegations set forth in said Paragraph, including, without limitation, any allegation that the pending litigation has impaired Defendant's ability to purchase the subject property.

20. In responding to Paragraph 50 of Defendant's Answer and Counterclaim, Plaintiff craves reference to the terms of the Lease Purchase Agreement and denies any allegations inconsistent therewith. Plaintiff denies the remaining allegations set forth in Paragraph 50 and demand strict proof thereof.

IN RESPONSE TO THE CLAIM, COUNTERCLAIM AND SIXTH DEFENSE

21. In response and by way of reply and answer to Paragraph 51 of Defendant's Answer and Counterclaim, Plaintiff incorporates by reference its responses contained in the preceding paragraphs

22. Plaintiff lacks sufficient information to form a belief as to the truth of the allegations set forth in the last two sentences of Paragraph 52 of Defendant's Answer and Counterclaim, and therefore denies same and demands strict proof thereof. Plaintiff denies that the Lease Purchase Agreement was drafted by the Seller, but admits that it was executed by Plaintiff. Upon information and belief, no individual named "M.B. Hudson" executed the Lease Purchase Agreement, as the Defendant is properly named "Morris B. Hutson". Upon information and belief, Mr. Hutson concealed his correct name in an effort to prevent Plaintiff and the Third Party Defendants from discovering Mr. Hutson's prior history of deception in real estate transactions spanning various states, including, without limitation, Tennessee and Georgia.

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

By way of further response, Plaintiff craves reference to the terms of the Lease Purchase Agreement and denies any allegations inconsistent therewith. Plaintiff denies all remaining allegations against it and demand strict proof thereof.

23. Plaintiff denies the allegations set forth in Paragraph 53 of Defendant's Answer and Counterclaims and demands strict proof thereof.

IN RESPONSE TO THE CLAIM, COUNTERCLAIM AND SEVENTH DEFENSE

24. In response and by way of reply and answer to Paragraph 54 of Defendant's Answer and Counterclaim, Plaintiff incorporates by reference its responses contained in the preceding paragraphs.

25. Plaintiff only admits so much of the allegations in Paragraph 55 that alleges Defendant is in possession of the property subject to this Ejectment Action, but Plaintiff maintains that Defendant is wrongfully in possession of said property. By way of further response, Plaintiff craves reference to the terms of the Lease Purchase Agreement and denies and allegations inconsistent therewith. Plaintiff denies all remaining allegations in said Paragraph and demand strict proof thereof.

26. Some of the allegations contained in Paragraph 56 of Defendant's Answer and Counterclaims are conclusions to which no response is required. To the extent a response is required, Plaintiff denies same and demand strict proof thereof. Plaintiff denies the remaining allegations set forth in Paragraph 56 of Defendant's Answer and Counterclaims and demands strict proof thereof.

IN RESPONSE TO THE CLAIM, COUNTERCLAIM AND EIGHTH DEFENSE

27. In response and by way of reply and answer to Paragraph 57 of Defendant's Answer and Counterclaim, Plaintiff incorporates by reference its responses contained in the

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

preceding paragraphs.

28. In responding to Paragraph 58 of Defendant's Answer and Counterclaim, Plaintiff is without sufficient information to admit or deny that a moratorium existed and therefore denies same. Plaintiff denies that an individual named "M.B. Hudson" executed the Lease Purchase Agreement. Plaintiff denies that Defendant was unaware of the lack of excess water or sewer capacity for additional development upon the property prior to the execution of the Lease Purchase Agreement. Plaintiff craves reference to the terms of the Lease Purchase Agreement and denies any allegations inconsistent therewith. Plaintiff denies the remaining allegations set forth in Paragraph 58 and demand strict proof thereof.

29. Plaintiff denies the allegations set forth in Paragraphs 59 and 60 of Defendant's Answer and Counterclaims and demands strict proof thereof.

IN RESPONSE TO THE CLAIM, COUNTERCLAIM AND NINHTH DEFENSE

30. In response and by way of reply and answer to Paragraph 61 of Defendant's Answer and Counterclaim, Plaintiff incorporates by reference its responses contained in the preceding paragraphs.

31. Plaintiff denies the allegations set forth in Paragraph 62 and subsections (a) – (d) of Defendant's Answer and Counterclaims and demand strict proof thereof.

IN RESPONSE TO THE CLAIM, COUNTERCLAIM AND TENTH DEFENSE

32. In response and by way of reply and answer to Paragraph 63 of Defendant's Answer and Counterclaim, Plaintiff incorporates by reference its responses contained in the preceding paragraphs.

33. Plaintiff only admits so much of Paragraph 64 as alleges that the property subject to this action is known as Big Water Resort and has members who come upon the property, and

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

occasionally bring guests. Plaintiff denies all remaining allegations set forth and said Paragraph them and demand strict proof thereof.

34. In responding to Paragraph 65 of Defendant's Answer and Counterclaim, Plaintiff craves reference to the terms of the Lease Purchase Agreement and denies any allegations inconsistent therewith. Plaintiff denies the remaining allegations set forth in Paragraph 65 and demand strict proof thereof.

35. Plaintiff denies the allegations set forth in Paragraph 66 of Defendant's Answer and Counterclaims and demands strict proof thereof.

IN RESPONSE TO THE CLAIM, COUNTERCLAIM AND ELEVENTH DEFENSE

36. In response and by way of reply and answer to Paragraph 67 of Defendant's Answer and Counterclaim, Plaintiff incorporates by reference its responses contained in the preceding paragraphs.

37. In answering Paragraph 68 of Defendant's Answer and Counterclaim, Plaintiff admits that it and the Third Party Defendants executed the Lease Purchase Agreement. Upon information and belief, Plaintiff denies that an individual named "M.B. Hudson" executed the Lease Purchase Agreement, or that the Defendant who has made an appearance in this case, and who executed the Lease Purchase Agreement, is or has ever legally been named "M.B. Hudson". Plaintiff is informed and believes that Morris B. Hutson concealed his true identity and deceived Plaintiff and the Third Party Defendants as to his true identity in inducing them to execute the Lease Purchase Agreement, which they would not have done had they been aware of the true identity of Defendant. By way of further response, Plaintiff craves reference to the terms of the Lease Purchase Agreement and denies any allegations inconsistent therewith.

38. Answering Paragraph 69 of Defendant's Answer and Counterclaim, Plaintiff

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

craves reference to the terms of the Lease Purchase Agreement and denies any allegations inconsistent therewith. Plaintiff denies any remaining allegations set forth in said Paragraph.

39. In responding to Paragraph 70 of Defendant's Answer and Counterclaim, Plaintiff cannot admit or deny such allegations since it does not know Defendant's intended meaning of the term "Agreement" since it is not defined. To the extent "Agreement" means Lease Purchase Agreement, Plaintiff craves reference to the terms of the Lease Purchase Agreement and denies any allegations inconsistent therewith and demand strict proof thereof. Without limiting the foregoing, Plaintiff would respond that utilities were installed at the subject property, but denies that it has refused to pay amounts owning by it therefor. Plaintiff denies any remaining allegations set forth in said Paragraph.

40. In responding to Paragraphs 71 and 72 of Defendant's Answer and Counterclaim, Plaintiff is without sufficient information to admit or deny the allegations contained therein and therefore denies same. Plaintiff maintains that Defendant was responsible to pay the utilities furnished to or consumed on the Premises, and Defendant breached the Lease Purchase Agreement for, among other things, failure to pay for the utilities. Plaintiff denies the remaining allegations set forth in Paragraph 71 and 72 and demands strict proof thereof.

41. Plaintiff denies the allegations set forth in Paragraph 73 and demand strict proof thereof.

42. Plaintiff denies the allegations set forth in Paragraph 74 and demand strict proof thereof. Without limiting the foregoing, Plaintiff would allege that Defendant is not entitled to use Plaintiff's taxpayer identification number for the provision of services to Defendant. Upon information and belief, Plaintiff further denies that electricity service to the property was terminated as a result of the actions of Plaintiff or the Third Party Defendants, but instead alleges

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

that such termination was a result of the failure by Defendant to pay amounts owing by Defendant to the utility provider.

43. Plaintiff lacks sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 75 of Defendant's Answer and Counterclaim, and therefore denies same and demand strict proof thereof.

44. Plaintiff denies the allegations set forth in Paragraph 76 and subsections (a) – (g) of Defendant's Answer and Counterclaims and demands strict proof thereof.

IN RESPONSE TO THE CLAIM, COUNTERCLAIM AND TWELTH DEFENSE

45. In response and by way of reply and answer to Paragraph 77 of Defendant's Answer and Counterclaim, Plaintiff incorporates by reference its responses contained in the preceding paragraphs.

46. Plaintiff admits the allegations set forth in Paragraph 78, but would further allege that the amounts owing under the Lease Purchase Agreement have continued to accrue and exceed those amounts at present.

47. Plaintiff denies the allegations set forth in Paragraphs 79 and 80 and demand strict proof thereof.

IN RESPONSE TO THE CLAIM, COUNTERCLAIM AND THIRTEENTH DEFENSE

48. In response and by way of reply and answer to Paragraph 81 of Defendant's Answer and Counterclaim, Plaintiff incorporates by reference its responses contained in the preceding paragraphs.

49. Plaintiff lacks sufficient information to form a belief as to the truth of the allegations set forth in Paragraph 82 of Defendant's Answer and Counterclaim and therefore denies same and demand strict proof thereof. Without limiting the foregoing, Plaintiff denies

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

that an individual named "Hudson" executed the Lease Purchase Agreement, or that the Defendant who has made an appearance in this case, and who executed the Lease Purchase Agreement, is or has ever legally been named "Hudson". Plaintiff is informed and believes that Morris B. Hutson concealed his true identity and deceived Plaintiff and the Third Party Defendants as to his true identity in inducing them to execute the Lease Purchase Agreement, which they would not have done had they been aware of the true identity of Defendant.

50. Plaintiff lacks sufficient information to form a belief as to the truth of the allegations set forth in Paragraphs 83 and 84 of Defendant's Answer and Counterclaim and therefore denies same and demand strict proof thereof.

51. Plaintiff denies the allegations set forth in Paragraphs 85 and 86 demand strict proof thereof.

IN RESPONSE TO THE CLAIM, COUNTERCLAIM AND FOURTEENTH DEFENSE

52. In response and by way of reply and answer to Paragraph 87 of Defendant's Answer and Counterclaim, Plaintiff incorporates by reference its responses contained in the preceding paragraphs.

53. In answering Paragraph 88 of Defendant's Answer and Counterclaim, Plaintiff admits that it and the Third Party Defendants executed the Lease Purchase Agreement. Upon information and belief, Plaintiff denies that an individual named "M.B. Hudson" executed the Lease Purchase Agreement, or that the Defendant who has made an appearance in this case, and who executed the Lease Purchase Agreement, is or has ever legally been named "M.B. Hudson". Plaintiff is informed and believes that Morris B. Hutson concealed his true identity and deceived Plaintiff and the Third Party Defendants as to his true identity in inducing them to execute the Lease Purchase Agreement, which they would not have done had they been aware of the true

identity of Defendant. By way of further response, Plaintiff craves reference to the terms of the Lease Purchase Agreement and denies any allegations inconsistent therewith. By way of further response, Plaintiff denies that Defendant is performing or attempting to perform the obligations of "Purchaser" under the Lease Purchase Agreement, and alleges that Defendant is in breach thereof.

54. Plaintiff denies the allegations set forth in Paragraphs 89, 90 and 91 and demand strict proof thereof.

55. Plaintiff is informed and believes that no response is required to the wherefore clause where Defendant claims he is entitled to relief, however, to the extent a response is required, Plaintiff denies same and demand strict proof thereof.

FOR A SECOND DEFENSE TO DEFENDANTS' COUNTERCLAIMS
(Failure to State a Claim)

56. Defendant has failed to state a cause of action in his Counterclaims and Third-Party Complaint upon which relief can be granted, and therefore, the Counterclaims and the Third Party Complaint must be dismissed pursuant to Rule 12 of the South Carolina Rules of Civil Procedure.

AS AN ADDITIONAL AFFIRMATIVE DEFENSE
(Failure to Mitigate)

57. Plaintiff pleads that Defendant is barred from recovery, in whole or in part, for failing to mitigate damages and/or failing to avoid avoidable consequences.

AS AN ADDITIONAL AFFIRMATIVE DEFENSE
(Estoppel/Waiver/Laches)

58. Some or all of Defendant's purported Counterclaims and Third Party claims are barred by the equitable doctrines of estoppel, waiver, and/or laches.

AS AN ADDITIONAL AFFIRMATIVE DEFENSE

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

(Unclean Hands)

59. Defendant's Counterclaims and Third Party claims are barred by the equitable doctrine of unclean hands.

AS AN ADDITIONAL AFFIRMATIVE DEFENSE
(Compliance with Applicable Law)

60. Plaintiff would show that any actions taken by Plaintiff and Third Party Defendants and/or procedures followed by Plaintiff and Third Party Defendants concerning the Plaintiff and Third Party Defendants and Lease Purchase Agreement were taken in good faith, in a reasonable manner, and that said actions and/or procedures were authorized by contract or law, reasonable in time and manner, and therefore, the Defendant is precluded from recovery against the Plaintiff and Third Party Defendants.

AS AN ADDITIONAL AFFIRMATIVE DEFENSE
(Good Faith)

61. With respect to the Defendant, Plaintiff and Third-Party Defendants have at all times acted in good faith and in compliance with any laws and contracts.

AS AN ADDITIONAL AFFIRMATIVE DEFENSE
(Prior Breach)

62. Plaintiff would show that some or all of Defendant's purported Counterclaims and Third Party Claims are barred by the Defendant's prior breach of the parties' contract.

AS AN ADDITIONAL AFFIRMATIVE DEFENSE
(Consent)

63. Plaintiff would show that Defendant's purported Counterclaims and Third Party Claims are barred by the doctrine of consent.

AS AN ADDITIONAL AFFIRMATIVE DEFENSE
(Failure to Perform)

64. Plaintiff would show that the Defendant failed to perform under the Lease

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Purchase Agreement, and, therefore, these claims must be dismissed.

AS AN ADDITIONAL AFFIRMATIVE DEFENSE
(Waiver)

65. Plaintiff would show that Defendant's purported Counterclaims and Third Party Claims are barred by the doctrine of waiver.

AS AN ADDITIONAL AFFIRMATIVE DEFENSE
(Compliance with the Lease Purchase Agreement)

66. Plaintiff incorporates by reference all of the terms, conditions, exclusions, exceptions, and limitations of the Lease Purchase Agreement and would show that it performed all of its obligations thereunder.

AS AN ADDITIONAL AFFIRMATIVE DEFENSE
(Setoff/Recoupment)

67. Plaintiff would show that the Defendant is in possession of property pursuant to the Lease Purchase Agreement and has promised to pay Rent and other sums to Plaintiff. Plaintiff would show that the Defendant has no basis for the affirmative relief he seeks in his Answer and Counterclaims, but if the court were to grant such relief, Plaintiff would be entitled to repayment for rent and other sums due under the Lease Purchase Agreement, plus interest, as a recoupment and/or setoff against such relief, and Plaintiff would also be entitled to an order of this Court recognizing and declaring Plaintiff's equitable right to repayment in full, plus interest.

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ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

WHEREFORE, having fully replied to the Counterclaims and Third Party Complaint of M. B. Hudson a/k/a M. B. Hutson, Plaintiff prays that this Court inquire into the matters and facts set forth in the pleadings, issue its Order dismissing the Counterclaims and Third-Party Claims of the Defendant and grant the relief requested by the Plaintiff in its Complaint.

WOMBLE CARLYLE SANDRIDGE & RICE PLLC

Thomas L. Harper, Jr. (S.C. Bar # 11553)
Jana Baker (SC Bar #72487)
5 Exchange Street
Charleston, SC 29401
(843) 722-3400

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
February 1, 2012

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON TLC Holdings, LLC, Plaintiff, v. M. B. Hudson a/k/a M. B. Hutson, Defendant.	)	IN THE COURT OF COMMON PLEAS THIRD JUDICIAL CIRCUIT CASE NUMBER: CASE NO.: 2011-CP-14-602 **CERTIFICATE OF SERVICE**
M. B. Hudson a/k/a M. B. Hutson, Defendant and Third Party Plaintiff, v. Richard U. Clark, Jimmy S. Lovell and James C. Thigpen, Third Party Defendants.	)	

I do hereby certify that on the 1st day of February, 2012, I served a copy of the within *REPLY TO ANSWER AND COUNTERCLAIMS OF DEFENDANT, FIRST INTERROGATORIES TO DEFENDANT and FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT* upon Counsel of Record in the within entitled matter by sending a copy of the same in an envelope with the correct postage prepaid addressed to:

Paul Weissenstein , Esq.
Weissenstein Law Firm, LLC
PO Box 2446
Sumter SC 29151-2446
ATTORNEY FOR DEFENDANT

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

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WOMBLE CARLYLE SANDRIDGE & RICE
A PROFESSIONAL LIMITED LIABILITY COMPANY

5 Exchange Street
Charleston, SC 29401

Mailing Address:
Post Office Box 999
Charleston, SC 29402
Telephone: (843) 722-3400
Fax: (843) 723-7398
www.wcsr.com

February 1, 2012

THOMAS L. HARPER, JR.
ATTORNEY AT LAW
E-Mail: tharper@wcsr.com
DIRECT DIAL: 843-720-4636
FAX: 843-723-7398

Clarendon County Clerk of Court
Clarendon County Courthouse
3 West Keitt Street
Manning SC 29102

Re: TLC Holdings, LLC vs. M.B. Hudson a/k/a M.B. Hutson
Case No. 11-CP-14-602
WCSR File No. 78195.0006.0

Dear Sir/Madam:

Please find enclosed for filing in the above matter the original and one copy of the Plaintiff's Reply to Counterclaims. Please return a clocked in copy to me in the envelope provided. By copy of this letter I am serving the Defendant, through his counsel of record, with the same. Thank you for your assistance in this matter.

Sincerely yours,

Thomas L. Harper, Jr.

TLH/dlh
Enclosure(s)
Cc: Paul Weissenstein, Esquire (w/encl.)

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January 25, 2012

DENISE L. HERLIHY
PARALEGAL
E-Mail: dherlihy@wcsr.com
Direct Dial: (843) 720-4651
Fax: (843) 723-7398

Clarendon County Clerk of Court
Circuit Court
Post Office Drawer E
Manning, SC 29102

RE: TLC Holdings, LLC vs. M.B. Hudson a/k/a M.B. Hutson
Case No. 11-CP-14-602
WCSR File No. 78195.0006.0

Dear Sir/Madam:

Enclosed for filing in your office please find an original and one copy of two separate *Affidavits of Service.* Please. return a filed copy of each affidavit to me in the enclosed self-addressed stamped envelope..

Please do not hesitate to contact me if you have any questions or concerns

Sincerely yours,

Denise L. Herlihy

/dlh
Enclosures

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AFFIDAVIT OF SERVICE

State of South Carolina **County of Clarendon** **Common Pleas Court**

Case Number: 11-CP-14-602

Plaintiff:
TLC Holdings, LLC
vs.
Defendant:
M B. Hudson a/k/a MB Hutson

For:
Womble Carlyle Sandridge & Rice

Received by FALCON EXPRESS SERVICES, LLC to be served on **A. Paul Weissenstein Jr., 106 Broad Street, Sumter, SC.** I, Betty Talley, being duly sworn, depose and say that on the 18 day of Jan, 20 12 at 1:25 p.m., executed service by delivering a true copy of the **Summons, Complaint, Verification, Rule to Vacate or Show Cause and Application for Ejectment** in accordance with state statutes in the manner marked below:

( ) INDIVIDUAL SERVICE: Served the within-named person.

(~~)~~ SUBSTITUTE SERVICE: By serving Laura L. Emrich as Its Secretary.

( ) POSTED SERVICE: After attempting service on ___/___ at _____ and on ___/___ at _____ to a conspicuous place on the property described herein.

( ) NON SERVICE: For the reason detailed in the Comments below.

Military Status: ( ) Yes or ( ) No If yes, what branch? _____

Marital Status: ( ) Married or ( ) Single Name of Spouse _____

COMMENTS:

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Betty Talley

Subscribed and Sworn to before me on the 18th day of January, 2012 by the affiant who is personally known to me.

NOTARY PUBLIC

PROCESS SERVER # _____
Appointed in accordance with State Statutes

FALCON EXPRESS SERVICES, LLC
P.O. Box 874
Charleston, SC 29402-0874
(843) 577-9696

Our Job Serial Number: 2012000094

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AFFIDAVIT OF SERVICE

State of South Carolina | County of Clarendon | Common Pleas Court

Case Number: 11-CP-14-602

Plaintiff:
TLC Holdings, LLC
vs.
Defendant:
M B. Hudson a/k/a MB Hutson

For:
Womble Carlyle Sandridge & Rice

Received by FALCON EXPRESS SERVICES, LLC to be served on **M. B. Hudson a/k/a M. B. Hutson, 5215 Dingle Pond Road, Summerton, SC 29418.** I, Betty Zolty, being duly sworn, depose and say that on the 18 day of Jan, 2012 at 11:50 m., executed service by delivering a true copy of the **Summons, Complaint, Verification, Rule to Vacate or Show Cause and Application for Ejectment** in accordance with state statutes in the manner marked below:

(X) INDIVIDUAL SERVICE: Served the within-named person.

( ) SUBSTITUTE SERVICE: By serving _____ as _____.

( ) POSTED SERVICE: After attempting service on ___/___ at _____ and on ___/___ at _____ to a conspicuous place on the property described herein.

( ) NON SERVICE: For the reason detailed in the Comments below.

Military Status: ( ) Yes or ( ) No If yes, what branch? _____

Marital Status: ( ) Married or ( ) Single Name of Spouse _____

COMMENTS:

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 18th day of JANUARY, 2012 by the affiant who is personally known to me.

NOTARY PUBLIC

Betty Zolty

PROCESS SERVER # _____
Appointed in accordance with State Statutes

FALCON EXPRESS SERVICES, LLC
P.O. Box 874
Charleston, SC 29402-0874
(843) 577-9696

Our Job Serial Number: 2012000093

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CLARENDON)	THIRD JUDICIAL CIRCUIT
)	CASE NUMBER: 2011-CP-14-602
TLC Holdings, LLC,)	
)	
Plaintiff(s),)	
)	
Vs.)	
)	LIS PENDENS
M. B. Hudson aka M. B. Hutson,)	
)	(Jury Trial Demanded)
Defendant and Third Party Plaintiff,)	
)	
Vs.)	
)	
Richard U. Clark, Jimmy S. Lovell and)	
James C. Thigpen,)	
)	
Third Party Defendants.)	

TO: THE DEFENDANTS ABOVE NAMED;

PLEASE TAKE NOTICE that an action has been commenced and is now pending by the Defendant and Third Party Plaintiff against the Plaintiff and Third Party Defendants, in regard to the property described on Exhibit A attached hereto consisting of five (5) pages whereby the Defendant and Third Party Plaintiff has alleged and claims an ownership interest in the property based on a Lease Purchase Agreement entered into between the parties dated December 15-16, 2010.

Sumter, SC
January 25, 2012

A. Paul Weissenstein, Jr.
Attorney for Defendant and
Third Party Plaintiff
PO Box 2446
Sumter, SC 29151
(803) 418-5700

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EXHIBIT A

A. CAMPGROUND KNOWN AS BIG WATER RESORT:

All that certain piece, parcel or tract of land lying, being and situate in School District No. 1 of Clarendon County, South Carolina, containing 30.44 acres according to plat hereinafter described and measuring and bounding as follows: beginning at an old iron found on the North bound exit ramp right of way from Interstate 95 at Exit 102, thence N 62 degrees 24'24" E for 3.66 feet along the right of way to a concrete monument, thence N 62 degrees 08'56" E for 120.09 feet along the right of way to an iron, thence N 70 degrees 36'47" E for 160.27 feet along the right of way to an iron, thence N 79 degrees 57'21" E for 93.40 feet along the right of way to a concrete monument, thence N 82 degrees 19'44" E for 190.85 feet along the right of way to a concrete monument, thence N 81 degrees 00'07" E for 82.23 feet along the right of way to an iron, thence N 74 degrees 05'12" E for 189.38 feet along the right of way to an iron, thence N 72 degrees 17'50" E for 38.91 feet along the right of way to an iron, thence S 56 degrees 09'56" E for 439.73 feet along the property line of lands being conveyed to Lee-Moore Oil Company, Inc. to an iron, thence S 56 degrees 09'26" E for 114.35 feet along the property line of land being conveyed to Lee-Moore Oil Company, Inc. to an iron, thence S 56 degrees 09'26" E for 253.97 feet along the property line of W. R. Williams to a concrete monument found on the 33 foot right of way of SC Highway S-14-390, thence S 33 degrees 10'55" W for 219.18 feet along the right of way to an iron, thence S 56 degrees 49'43" W for 1356.96 feet along the property line of Robert Malanuk to a concrete monument, thence N 25 degrees 40-07" W for 660.32 feet along the property line of the South Carolina Public Service Authority to an iron, thence N 25 degrees 42' W for 77.70 feet along the property line of the South Carolina Public Service Authority to a concrete monument, thence N 47 degrees 35' W for 248.5 feet along the property line of the South Carolina Public Service Authority to an iron, thence N 39 degrees 05'14" E for 394.98 feet along the right of way of Interstate 95 to the point of beginning. SUBJECT HOWEVER, to an easement to the Carolina Power and Light Company recorded in Deed Book A-26 at Page 165, also easement for absorption field recorded in Deed Book A-61 at Page 342, also sign lot and right of way recorded in Deed Book A-126 at page 478 and an easement from W. R. Williams, et al recorded in Deed Book A-109 at Page 551. SUBJECT to Black River Electric Coop. Power line easement as shown on plat described below. Subject to any visible and unrecorded easements and right of ways not revealed by current survey.

For a more particular description, reference may be had to a plat by H. F. Oliver, Surveyor, dated February 19, 1988, recorded in the Office of the RMC for Clarendon County in Plat Book 39 at page 123.

EJECT_000307

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

FOR DERIVATION, SEE BELOW.

Said tract being designated as Clarendon Tax Map No. 035-05-00-001-00.

TRACT II:
ALSO: All that piece, parcel, or tract of land lying, being and situate in School District No. 1 of Clarendon County, South Carolina, containing 3.21 acres on a plat hereinafter referred to, and bounding and measuring as follows: on the Northeast by SC Highway S-14-400 and measuring thereon 243.71 feet; on the Southeast by SC Highway S-14-390 and measuring thereon 618.30 feet; on the Southwest by lands of Lee Moore Oil Company, Inc. and measuring thereon 253.99 feet; on the Northwest by lands of Lee Moore Oil Company, Inc. and measuring thereon 755.15 feet.

For a more particular description of said tract reference may be had to a plat made by H. F. Oliver, Surveyor, dated March 15, 1988, recorded in the Office of the RMC for Clarendon County in Plat Book 44 at Page 36.

Said tract being designated as Clarendon Tax Map No. 035-06-02-007-00.
Said tracts having been conveyed to TLC Holdings, LLC by Deed of The Big Water Resort, LLC, dated 23 April, 2003, recorded on 9 May, 2003 in the Office of the RMC for Clarendon County in Deed Book A-497 at Page 00009.

TOGETHER WITH the Leasehold interest in that certain Lease between the Seller and the South Carolina Public Service Authority, pertaining to the waterfront property adjacent to the premises above described.

All buildings, fixtures, equipment used in the operation of the campground facility located on the above described premises.

SUBJECT HOWEVER to those certain Restrictive Covenants dated 3 November, 2003, recorded in the Office of the RMC for Clarendon County and any Amendments thereto and subject to certain Contracts between the Optionor and members of The Big Water Resort and others.

SUBJECT FURTHER, to all easements and rights of way of record.

B. CONVENIENCE STORE. That certain convenience store facility and the lands adjacent thereto known as "Big Water Country Store and Restaurant" described as follows:

All that piece, parcel or tract of land with buildings and improvements located thereon lying, being and situate Northwest of the Intersection of SC Highway S-14-390 and SC Highway S-14-400 in School District 1 of Clarendon County, South Carolina, containing 3.73 acres, being designated as Tract 2A on the plat

MBA

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hereinafter referred to and bounding and measuring as follows: On the Northeast by Tract B on said plat and measuring thereon 439 feet; on the Southeast by the right of way of SC Highway S-14-400 and measuring thereon 318.4 feet; on the South by the intersection of SC Highway S-14-390 and SC Highway S-14-400, and measuring thereon 68.4 feet; On the Southwest by right-of-way of SC highway S-14-390, and measuring thereon 367.8 feet; on the Northwest by the arc of the curve of an intersection of an access strip and SC Highway S-14-390 and measuring thereon along said arc 50.58 feet and by said access strip and measuring thereon 338 feet.

For a more particular description of said tract, reference may be had to a plat made by H.F. Oliver, RLS, dated February 23, 1973, recorded in the Office of the Clerk of Court for Clarendon County in Plat Book 25 at Page 94, whereon said tract is designated as Tract 2A.

FOR DERIVATION, SEE BELOW.

Said premises being designated as Clarendon Tax Map Parcel N. 035-06-02-005-00.

ALSO:
All that certain piece, parcel, or tract of land, lying, being, and situate in School District No. 1 of the County of Clarendon, State of South Carolina, containing 2.50 acres and being designated as Tract B-1, according to plat hereinafter described and measuring and bounding, now or formerly, as follows: On the Northeast by lands of Ruby P. Levi, and measuring thereon 428.96 feet; On the Southeast by Tract B-2, and measuring thereon 304.55 feet; On the Southwest by lands of H.F. Swilley, a 50 foot access strip and lands of C&M Petroleum, and measuring thereon 281.99 feet; and on the Northwest by Highway Right-of-Way, and measuring thereon 340.64 feet.

For a more particular description, reference may be had to a plat by R.G. Mathis Land Surveying dated November 2, 1988, and recorded in the Office of the Clerk of Court of Clarendon County in Plat Book 42 at Page 86.

ALSO:
All of that certain piece, parcel, or strip of land, shown as an "Access Strip" on that certain plat prepared by H.F. Oliver, RLS, dated February 23, 1973, and recorded in the Office of the Clerk of Court in Plat Book 25 at Page 94, according to which plat, said property is bounded, now or formerly, and measures as follows: On the Northeast by Tract B on said Plat and measuring thereon a distance of 50 feet; On the Southeast by Tract 2-A and measuring thereon a distance of 338 feet; On the Southwest by the right-of-way of S.C. Highway S-14-390; and on the Northwest by Tract 1-A, and measuring thereon a distance of 338 feet.

EJECT_000309

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SUBJECT, HOWEVER, to such easements of right-of-way for utilities and roadways as shall appear upon said plats.

FOR DERIVATION, SEE BELOW.

Above Tract B-1 and Access Strip being designated as Clarendon TMP#035-06-02-008-00.

ALSO:
All that piece, parcel, or tract of land together with any improvements located thereon, lying and being situate in Clarendon County, South Carolina, being designated as Tract B-2 on the plat hereinafter referred to, containing 2.5 acres and bounding, now or formerly, and measuring as follows: On the North by lands of Ruby P. Levi and measuring thereon 357.64 feet; On the East by the right-of-way of South Carolina Highway S-14-400, and measuring thereon 304.55 feet; On the South by lands of H.F. Swilley and measuring thereon 357.64 feet; On the West by Tract B-1 on said Plat, and measuring thereon 304.55 feet.

Above tracts having been conveyed to TLC Holdings, LLC by Deed of Santee Interstate Systems, Inc., Shawn M. Reardon and Cynthia C. Reardon by Deed dated 18 September, 2003, and recorded in the Office of the RMC for Clarendon County in Deed Book A-508, at Page 310.

Said lot begin designated as Clarendon County Tax Map Parcel No. 035-06-02-002-00.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise appertaining to the above tracts.

C. ROGER'S TRACT
All that certain piece, parcel or tract of land, lying, being and situate in the County of Clarendon, State of South Carolina, containing 57.81 acres, more or less, being described as follows: Beginning at an iron new ly placed on the 33 foot right-of-way of South Carolina Highway S-14-300, thence, North 30 degrees, 50 feet, 7 inches, East for 3346.76 feet along the 33 right-of-way of South Carolina Highway S-14-390 and South Carolina Highway S-14-400 to an old concrete monument. Thence, North 77 degrees, 20 feet, 33 inches, East for 71.68 feet along a site angle created by a 90 degrees Bend in South Carolina Highway S-14-400 to an old concrete monument. Thence, South 58 degrees, 20 feet, 23 inches, East for 1555.29 feet along the right-of-way of South Carolina Highway 400 to a new iron. Thence, South 71 degrees, 39 feet, 58 inches, West for 908.20 feet along the property line of the South Carolina Public Service Authority to an old concrete monument. Thence, South 49 degrees, 33 feet, 49 inches, West for 350.86 feet along the property line of the South Carolina Public Service Authority to an old concrete monument. Thence, South 45 degrees, 50 feet, 18 inches, West for 1076.74 feet

along the property line of the South Carolina Public Service Authority to an old concrete monument. Thence, South 64 degrees, 37 feet, 33 inches, West for 634.11 feet along the property line of the South Carolina Public Service Authority to an old concrete monument. Thence, South 56 degrees, 47 feet, 48 inches, West for 524.93 feet along the property line of the South Carolina Public Service Authority to an old concrete monument. Thence, South 57 degrees, 28 feet, 19 inches, West for 350.08 feet along the property line of Robert Malenvik to the point of beginning.

For a more particular description of said tract, reference may be had to a plat made by H. F. Oliver, RLS, dated 17 March 1988, recorded in the Office of the Clerk of Court for Clarendon County in Plat Book 39 at Page 204.

Said premises having been conveyed to TLC Holdings, LLC by deed of Rodney L. Rogers dated May 19, 2008 and recorded May 21, 2008 in the Office of the Clerk of Court for Clarendon County in Deed Book A-699 at Page 275.

Said tract being designated as Clarendon County Tax Map Parcel Number 035-00-00-013-00.

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EJECT_060311

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CLARENDON)	THIRD JUDICIAL CIRCUIT
)	CASE NUMBER: 11-CP-14-602
TLC Holdings, LLC,)	
)	
Plaintiff(s),)	ANSWER BY DEFENDANT TO
)	APPLICATION FOR EJECTMENT
)	(Jury Trial Demanded)
Vs.)	
)	
M. B. Hudson aka M. B. Hutson,)	
)	
Defendant.)	

The Defendant in this matter would respectfully show the court as follows:

1. On November 30, 2011, the Defendant was served with a Rule to Vacate or Show Cause. The Defendant filed a Notice of Motion and Motion to Dismiss in a response to that Rule to Vacate or Show Cause on December 8, 2011.

2. Thereafter, as part of the same civil action, the Plaintiff filed and served a Summons and Verified Complaint on the Defendant, and the Defendant then filed an Answer and Counterclaim and Affirmative Defense and Motion to Dismiss and Third Party Complaint and Verification in response to that Complaint.

3. The Plaintiff has now served on the Defendant a copy of the Application for Ejectment that gave rise to the Rule to Vacate or Show Cause to which the Defendant makes this additional response.

4. The Defendant is informed and believes that the Plaintiff commenced this action with the filing of a document titled an Application for Ejectment. The South Carolina Rules of Civil Procedure provide that "a civil action is commenced when a Summons and Complaint are filed with the Clerk of Court..." Rule 3(a) SCRCP. Rule 7(a) SCRCP sets forth the names of

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

pleadings, including a Complaint. That rule does not list as a pleading an Application for Ejectment. In fact, Rule 7 states in part "No other pleadings shall be allowed…".

5. For the reasons set forth herein, and for the reasons set forth in the previous motions and Answer, Counterclaim, Affirmative Defense and Third Party Complaint, the Defendant prays that the Application for Ejectment be denied, that the Complaint be dismissed, and that Defendant be granted such other and further relief as may be just and proper.

A. Paul Weissenstein, Jr.
Attorney for M.B. Hudson
PO Box 2446
Sumter, SC 29151
803-418-5700
pwlaw@ftc-i.net

Sumter, SC
January 23, 2012

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

A. Paul Weissenstein, Jr.

Weissenstein Law Firm, LLC
Attorney at Law
106 Broad Street
Post Office Box 2446
Sumter, South Carolina 29151-2446
Telephone: (803) 418-5700
Facsimile: (803) 934-1505
E-Mail: pwlaw@ftc-i.net

January 23, 2012

Honorable Beulah G. Roberts
Clerk of Courts, Clarendon County
PO Box 136
Manning, SC 29102

Re: TLC Holdings, LLC
Vs: M.B. Hudson a/k/a M.B. Hutson
2011-CP-14-602

Dear Ms. Roberts,

There is enclosed and presented to you for filing Answer by Defendant to Application for Ejectment. I have enclosed a copy of the first page that I ask you to clock in and return to me in the envelope provided.

Yours very truly,

A. Paul Weissenstein, Jr.

APWjr/lle
Enclosures
Cc: Thomas L. Harper, Jr., Esquire

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

WOMBLE CARLYLE SANDRIDGE & RICE
A PROFESSIONAL LIMITED LIABILITY COMPANY

5 Exchange Street
Charleston, SC 29401

Mailing Address:
Post Office Box 999
Charleston, SC 29402
Telephone: (843) 722-3400
Fax: (843) 723-7398
www.wcsr.com

January 6, 2012

DENISE L. HERLIHY
PARALEGAL
E-Mail: dherlihy@wcsr.com
Direct Dial: (843) 720-4651
Fax: (843) 723-7398

Clarendon County Clerk of Court
Circuit Court
Post Office Drawer E
Manning, SC 29102

RE: TLC Holdings, LLC vs. M.B. Hudson a/k/a M.B. Hutson
Case No. 11-CP-14-602
WCSR File No. 78195.0006.0

Dear Sir/Madam:

Enclosed for filing in your office please find an original and one copy of the *Affidavit of Service on M.B. Hudson a/k/a M.B. Hutson.* Please return a filed copy of the affidavit to me in the enclosed self-addressed stamped envelope..

Please do not hesitate to contact me if you have any questions or concerns

Sincerely yours,

Denise L. Herlihy

/dlh
Enclosures

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Exhibit V

Tim J. Newton

From:	Phone System
Sent:	Friday, August 10, 2018 11:00 AM
To:	Tim J. Newton
Subject:	Voicemail Message (WIRELESS CALLER > TNewton) From:98033082714
Attachments:	MSG01089.WAV

IP Office Voicemail redirected message

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Tim J. Newton

From:	Phone System
Sent:	Friday, August 10, 2018 2:47 PM
To:	Tim J. Newton
Subject:	Voicemail Message (WIRELESS CALLER > TNewton) From:98033082714
Attachments:	MSG01090.WAV

IP Office Voicemail redirected message

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Tim J. Newton

From: Mr. H <hmr226621@gmail.com>
Sent: Saturday, August 11, 2018 9:04 PM
To: Tim J. Newton
Subject: Setting aside the Judgement
Attachments: Blank.pages; ATT00001.txt

Total Control Panel Login

To: tnewton@murphygrantland.com Remove this sender from my allow list
From: hmr226621@gmail.com

You received this message because the sender is on your allow list.

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Reasons why the Settlement Agreement was Fraudulent:

1. There were over 700 family members who prepaid for two life times of "Sole Use" of the property held by TLC Holdings, LLC.

2. The Settlement Agreement agreed to by the Court and the Honorable Judge James ordered Hutson to purchase the 108 acres of land and develop the proposed subdivision in a confined time frame when in fact, the 108 acres was defective in title due to the 700 family members prepaid two life times "Sole Use" of all property.

3. Those 700 family memberships had been soled and in most cases, all monies had been pre-collected by TLC Holdings, LLC. All memberships had been pre-sold years prior to Hutson's arrival creating the defective title whereby no loans could be made for lot take out nor no loans could be obtained for construction for private occupation and ownership of new proposed homes to the general public due to the membership 70 year "Sole Use".

4. The defective property did not have public sewer or water which was required but a moratorium existed on such public water and public sewer preventing Hutson to move forward with the project being a factor in his inability to develop.

5. Hutson holds a sworn affidavit by an expert attorney outlining that the option to buy property was defective in title. TLC Holdings, LLC was aware of that fact at the time of the execution of the Settlement Agreement but withheld this information from the Court.

6. In addition, TLC Holdings, LLC three members also prepared a contract to sell the Big Water Resort to Mr. Hutson which required Hutson to accept and assume full responsibility of some 700 family members for up to 70 years all having "Sole Use" of the property which prevented Hutson from ever closing or purchasing the 109 acres.

7. TLC Holdings, LLC three members withheld the full knowledge that Big Water Resort owned no right to use any of the 108 acres of land nor was there any type of contractual agreement between TLC Holdings, LLC and the three members to allow Big Water Resort the right to provide said 108 acres to it's 700 family members. This action placed Big Water Resort in an impossible position to honor the long term contracts.

8. The entire contracts named Settlement Agreement and Consent order was fraud upon the Honorable Judge and Court and since such two orders were legally impossible to honor or comply to, such Settlement Agreement and Consent Order were and are null and void. The intentions of TLC and it's three members were to deceive and trick both Hutson, his attorney, the Judge and the Honorable Court.

9. TLC's only reason for conducting such dishonesty upon the Court was to gain an unfair advantage over Hutson causing Hutson to fail and be evicted.

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Tim J. Newton

From: Cynthia Exum <cindy.exum@gmail.com>
Sent: Saturday, August 11, 2018 9:25 PM
To: Tim J. Newton; Hutsen
Subject: consent order
Attachments: 3.1 Consent Order.pdf

Total Control Panel Login

To: tnewton@murphygrantland.com Remove this sender from my allow list
From: cindy.exum@gmail.com

You received this message because the sender is on your allow list.

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STATE OF SOUTH CAROLINA) COUNTY OF CLARENDON)	IN THE COURT OF COMMON PLEAS CASE NO.: 11-CP-14- 602
TLC HOLDINGS, LLC, Plaintiff, vs. M.B. HUDSON A/K/A M.B. HUTSON, Defendant.	**RULE TO VACATE OR SHOW CAUSE**

TO: M.B. HUDSON A/K/A M.B. HUTSON:

Upon application for ejectment filed by the Plaintiff in the above-referenced matter, you the Defendant and lessee of the premises noted in the Complaint are ordered to vacate the said premises immediately or to show cause before me at this court, located at 3 W. Keitt Street, Manning, South Carolina, within ten (10) days from the date of service of this verified pleading and rule why you should not be ejected from the said premises. FAILURE TO VACATE THE PREMISES OR TO RESPOND TO THIS COURT WITHIN THE TIME PERIOD SET ABOVE MAY RESULT IN THE ISSUANCE OF A WARRANT OF EJECTMENT.

AND IT IS SO ORDERED, this 29 day of November, 2011 in Manning, South Carolina.

/s/ R. Ferrell Cothran Jr.
Judge

2011 NOV 29 PM 2:51
BEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 11/29/11
Beulah G. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

ELECTRONICALLY FILED - 2019 Jun 25 3:36 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

CASE NO.: 2011-CP-14-00602

TLC HOLDINGS, LLC
Plaintiff,
vs.
M.B. HUDSON a/k/a M.B. HUTSON
Defendant.

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	Defendant's Attorney:
Jana B. Baker, Bar No. 72487 Address: Womble Carlyle Sandridge & Rice, LLP PO Box 999, Charleston, SC 29402 Phone: 843/722-3400Fax 843/723-7398 E-mail: ja_baker@wcsr.com Other:	., Bar No. ____ Address: Phone: ____ Fax____ E-mail: ____Other: ____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☑ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Rule to Vacate or Show Cause
Estimated Time Needed: ____ Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☑ Written motion attached
☑ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff /☐ Defendant — November 22, 2011 Date submitted

SECTION III: Motion Fee

☑ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: ____
- ☑ Other: Rule to Vacate or Show Cause

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE ____ Date: ____

CLERK'S VERIFICATION

Collected by:____ Date Filed: ____
☐ MOTION FEE COLLECTED: $ ____
☐ CONTESTED – AMOUNT DUE: $ ____

SCCA 233 (11/2003)

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WOMBLE CARLYLE SANDRIDGE & RICE
A PROFESSIONAL LIMITED LIABILITY COMPANY

5 Exchange Street
Charleston, SC 29401

Mailing Address:
Post Office Box 999
Charleston, SC 29402
Telephone: (843) 722-3400
Fax: (843) 723-7398
www.wcsr.com

November 22, 2011

THOMAS L. HARPER, JR.
ATTORNEY AT LAW
E-Mail: tharper@wcsr.com
DIRECT DIAL: 843-720-4636
FAX: 843-723-7398

VIA FEDERAL EXPRESS
Clarendon County Clerk of Court
Clarendon County Courthouse
3 West Keitt Street
Manning SC 29102

Re: TLC Holdings, LLC vs. M.B. Hudson a/k/a M.B. Hutson
Case No. 11-CP-14-_____
WCSR File No. 78195.0006.0

Dear Sir/Madam:

Please find enclosed for filing in the above matter the original and two copies of the Application of Ejectment and Rule to Vacate or Show Cause along with two checks, one for $150.00 to commence this action, and a second check in the amount of $25.00 representing the fee for the court's execution of the Rule to Vacate or Show Cause. Please have the presiding judge execute the Rule to Vacate or Show Cause, and return a copy of the executed Rule to Vacate together with the clocked in copies of the other pleading to me in the envelope provided. Thank you for your assistance in this matter.

Sincerely yours,

Thomas L. Harper, Jr.

TLH/dlh
Enclosure(s)

ELECTRONICALLY FILED - 2019 Jun 25 3:36 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CLARENDON	)	CASE NO.: 11-CP-14-_____
	)	
TLC HOLDINGS, LLC,	)	
	)	
Plaintiff,	)	
	)	**APPLICATION FOR EJECTMENT**
vs.	)	
	)	
M.B. HUDSON A/K/A M.B. HUTSON,	)	
	)	
Defendant.	)	
	)	

Plaintiff, TLC Holdings, LLC ("Plaintiff" or "Landlord"), by and through its undersigned counsel, states that Plaintiff is the landlord-lessor of the premises herein described. The premises are within the jurisdiction of Clarendon County and are located at **5215 Dingle Pond Road, Summerton, SC 29148, generally known as the "Big Water Resort"**.

Plaintiff further states that, with regard to the above-describes premises, a landlord - tenant relationship exists between the Plaintiff and the Defendant M.B. Hudson a/k/a M.B. Hutson ("Tenant" or "Defendant"), the tenant-lessee, as is evidenced by that certain Lease Purchase Agreement between Plaintiff and Defendant dated December 16, 2010, a copy of which is attached to this application (the "Lease").

Grounds for this ejectment are (1) that Tenant fails or refuses to pay the rent when due and when demanded; and (2) the terms and conditions of the lease have been violated by Tenant as set forth herein. Tenant has failed to pay rent owing for the period of July, 2011, through the date hereof (a total of five (5) months). Tenant has failed to maintain insurance as required by the Lease. Tenant has failed to pay the rental owing to the South Carolina Public Service Authority as required by the Lease. In addition, upon

ELECTRONICALLY FILED - 2019 Jun 25 3:36 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

information and belief, Tenant did knowingly and intentionally misrepresent his identity to Plaintiff by executing the Lease, and identifying himself during the negotiations thereof, as "M.B. Hudson", when his correct name is M.B. Hutson.

The total amount owing by Tenant as of November 22, 2011, equals $78,186.44, plus default interest, late charges, and Plaintiff's reasonable attorneys' fees, all as are due and owing to Plaintiff pursuant to the terms of the Lease.

WOMBLE, CARLYLE, SANDRIDGE & RICE, LLP

Thomas L. Harper, Jr. (ID No. 11553)
Five Exchange Street
P.O. Box 999
Charleston, SC 29402
(843) 722-3400

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
November 22, 2011

SWORN to and Subscribed before me,
this 22nd day of November, 2011.

Notary Public for South Carolina
My commission expires: 6-18-19

ELECTRONICALLY FILED - 2019 Jun 25 3:36 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

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Exhibit 2

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Clarendon County
Third Judicial Circuit
Public Index

TLC Holdings LLC VS M B Hudson

Case Number:	2011CP1400602	**Court Agency:**	Common Pleas	**Filed Date:**	11/29/2011
Case Type:	Common Pleas	**Case Sub Type:**	Real Prop/Other 499	**File Type:**	Jury
Status:	Settled	**Assigned Judge:**	Clerk Of Court C P, G S, And Family Court		
Disposition:	Withdrawn or Settled by Parties	**Disposition Date:**	04/05/2012	**Disposition Judge:**	Newman, Clifton
Original Source Doc:		**Original Case #:**			
Judgment Number:		**Court Roster:**			

Case Parties

Click the icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Baker, Jana Bebergal	5 Exchange Street P.O. Box 999 Charleston SC 29402				Plaintiff Attorney		11/29/2011
Belser, H Freeman	1901 Main Street, Suite 1550 Post Office Box 96 Columbia SC 29202				Defendant Attorney		03/07/2014
Burn, Stephen C. Jr. (Inactive)	945 East Main Street, Ste. D Lexington SC 29072				Defendant Attorney		03/07/2014
Byrd, R. Wayne	PO Box 2116 Myrtle Beach SC 29578				Plaintiff Attorney		01/08/2014
Harper, Thomas Lawton Jr.	PO Box 999 Charleston SC 29402				Plaintiff Attorney		01/14/2014
Hudson, M B					Defendant		03/17/2014
Belser, H Freeman	1901 Main Street, Suite 1550 Post Office Box 96 Columbia SC 29202				Defendant Attorney		03/07/2014
Weissenstein, A. Paul Jr.(Inactive)	106 Broad Street Sumter SC 29150				Defendant Attorney		01/14/2014
TLC Holdings LLC					Plaintiff		04/11/2012
Weissenstein, A. Paul Jr.(Inactive)	106 Broad Street Sumter SC 29150				Defendant Attorney		01/14/2014
Hudson, M B					Defendant		03/17/2014

Actions

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
TLC Holdings LLC	Other/Form 4 Order of the Court	Filing		03/21/2014-14:53		
Hudson, M B	Order/Consent Order to Be Relieved as	Order		03/11/2014-09:58		

	Counsel-Steven Burn					
Hudson, M B	Memo/Memo in Support of his position	Filing		03/07/2014-11:55		
Hudson, M B	Notice/Notice of Appearance	Filing		03/07/2014-11:55		
Burn, Stephen C. Jr.	Order/Consent Order to be Relieved as Counsel	Order		03/07/2014-10:45		
TLC Holdings LLC	Affidavit/Affidavit of Bonham Gardner	Filing		03/04/2014-09:17		
TLC Holdings LLC	Affidavit/Affidavit of M.B. Hudson	Filing		03/04/2014-09:15		
TLC Holdings LLC	Other/Notice of Bankruptcy and Certificate of Service	Filing		01/13/2014-11:52		
Hudson, M B	Notice/Notice and Substitution of Attorney and Service	Filing		01/08/2014-09:44		
TLC Holdings LLC	Affidavit/Affidavit of Personal Service	Filing		01/07/2014-10:40		
TLC Holdings LLC	Affidavit/Affidavit of Thomas L. Harper Jr. (2)	Filing		01/06/2014-10:44		
TLC Holdings LLC	Other/Entry of Appearance	Filing		01/02/2014-15:21		
Hudson, M B	Motion/Motion to Set Aside Afidavit of Default	Filing		12/30/2013-15:16	03/21/2014-15:16	
Hudson, M B	Motion/Motion For Restraining Order	Filing		12/30/2013-15:12	12/30/2013-15:12	
TLC Holdings LLC	Other/Temporary Restraining Order	Filing		12/30/2013-15:09		
TLC Holdings LLC	Affidavit/Affidavit of Default	Filing		12/11/2013-08:47		
TLC Holdings LLC	Other/Consent Order for Settlement Agreement	Filing		04/13/2012-09:12		
TLC Holdings LLC	Other/Form 4 Case Settled	Filing		04/11/2012-17:22		
Baker, Jana Bebergal	Notice of Motions Roster Publication Sent	Action		03/19/2012-12:12	04/05/2012-12:12	
Baker, Jana Bebergal	Notice of Motions Roster Publication Sent	Action		03/19/2012-12:12	04/05/2012-12:12	
Baker, Jana Bebergal	Notice of Motions Roster Publication Sent	Action		03/19/2012-12:12	04/05/2012-12:12	
Weissenstein, A. Paul Jr.	Notice of Motions Roster Publication Sent	Action		03/19/2012-12:12	04/05/2012-12:12	
Weissenstein, A. Paul Jr.	Notice of Motions Roster Publication Sent	Action		03/19/2012-12:12	04/05/2012-12:12	
Weissenstein, A. Paul Jr.	Notice of Motions Roster Publication Sent	Action		03/19/2012-12:12	04/05/2012-12:12	
TLC Holdings LLC		Motion				

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	Motion/Motion For Order Requiring Tenant to Pay all Rent Due			02/24/2012-08:28	04/05/2012-08:28	
TLC Holdings LLC	Notice/Notice of Motion	Filing		02/21/2012-08:27	04/05/2012-08:27	
TLC Holdings LLC	Other/Certificate of Service	Filing		02/06/2012-09:19	04/05/2012-09:19	
TLC Holdings LLC	Other/Plantiff's Reply tp Counterclaims	Filing		02/06/2012-09:18	04/05/2012-09:18	
TLC Holdings LLC	Affidavit/Affidavit of Service (2)	Filing		01/26/2012-14:25	04/05/2012-14:25	
TLC Holdings LLC	Lis Pendens ($10.00)	Filing		01/25/2012-16:15	04/05/2012-16:15	
Hudson, M B	Answer/Answer to Application for Ejectment	Filing		01/24/2012-16:06	04/05/2012-16:06	
TLC Holdings LLC	Affidavit/Affidavit of Service	Filing		01/10/2012-09:58	04/05/2012-09:58	
Hudson, M B	Other/Jury Demand	Filing		01/03/2012-16:57	04/05/2012-16:57	
Hudson, M B	Other/Affirmative Defense and third pary complaint w/ verifi	Filing		01/03/2012-16:56	04/05/2012-16:56	
Hudson, M B	Other/Counterclaim	Filing		01/03/2012-16:55	04/05/2012-16:55	
Hudson, M B	Answer/Answer	Filing		01/03/2012-16:55	04/05/2012-16:55	
Hudson, M B	Motion/Dismiss	Motion		01/03/2012-16:55	04/05/2012-16:55	
TLC Holdings LLC	Other/Verification	Filing		12/14/2011-10:43	04/05/2012-10:43	
TLC Holdings LLC	Summons & Complaint	Filing		12/14/2011-10:42	04/05/2012-10:42	
Hudson, M B	Motion/Motion For	Motion		12/08/2011-12:02	04/05/2012-12:02	
Hudson, M B	Notice/Notice of Motion	Filing		12/08/2011-12:01	04/05/2012-12:01	
TLC Holdings LLC	Summons & Complaint	Filing		11/29/2011-15:58	04/05/2012-15:58	

Financials

Summary

Fine/Costs:	$485.00	Total Paid for fine/costs:	$485.00	Balance Due:	$0.00

Costs

Description	Cost Code	Amount	Charge Action	Disbursed Amount
Lis Pendens $10	LISPEN	$10.00		$10.00
SCJD Filing Fee Proviso $50 / $25	SCJDPV	$50.00		$50.00
Motion/Order Filing Fee $25	MOTION	$25.00		$25.00
Motion/Order Filing Fee $25	MOTION	$25.00		$25.00
Motion/Order Filing Fee $25	MOTION	$25.00		$25.00
Motion/Order Filing Fee $25	MOTION	$25.00		$25.00
	CVFFCN	$44.00		$44.00

Civil Filing Fee County 44%/100%				
Motion/Order Filing Fee $25	MOTION	$25.00		$25.00
Motion/Order Filing Fee $25	MOTION	$25.00		$25.00
SCJD Filing Fee Proviso $50 / $25	SCJDPV	$50.00		$50.00
Civil Filing Fee State 56%	CVFFST	$56.00		$56.00
Motion/Order Filing Fee $25	MOTION	$25.00		$25.00
Civil Filing Fee State 56%	CVFFST	$56.00		$56.00
Civil Filing Fee County 44%/100%	CVFFCN	$44.00		$44.00

Payments

Payment Date	Receipt Number	Entered By	Transaction Type Code	Payment Amount
03/17/2014	7018	c14sbrang	PY	$25.00
12/31/2013	6799	c14sbrang	PY	$25.00
12/31/2013	6801	c14sbrang	PY	$25.00
02/24/2012	4947	c14sbrang	PY	$25.00
01/25/2012	4875	c14sbrang	PY	$10.00
01/03/2012	4787	c14sbrang	PY	$25.00
12/15/2011	4753	c14sbrang	PY	$150.00
12/08/2011	4738	c14sbrang	PY	$25.00
11/30/2011	4712	c14sbrang	PY	$25.00
11/29/2011	4705	c14sbrang	PY	$150.00

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Exhibit V

Tim J. Newton

From: Phone System
Sent: Friday, August 10, 2018 11:00 AM
To: Tim J. Newton
Subject: Voicemail Message (WIRELESS CALLER > TNewton) From:98033082714
Attachments: MSG01089.WAV

IP Office Voicemail redirected message

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Tim J. Newton

From:	Phone System
Sent:	Friday, August 10, 2018 2:47 PM
To:	Tim J. Newton
Subject:	Voicemail Message (WIRELESS CALLER > TNewton) From:98033082714
Attachments:	MSG01090.WAV

IP Office Voicemail redirected message

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Tim J. Newton

From: Mr. H <hmr226621@gmail.com>
Sent: Saturday, August 11, 2018 9:04 PM
To: Tim J. Newton
Subject: Setting aside the Judgement
Attachments: Blank.pages; ATT00001.txt

Total Control Panel Login

To: tnewton@murphygrantland.com Remove this sender from my allow list
From: hmr226621@gmail.com

You received this message because the sender is on your allow list.

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Reasons why the Settlement Agreement was Fraudulent:

1. There were over 700 family members who prepaid for two life times of "Sole Use" of the property held by TLC Holdings, LLC.

2. The Settlement Agreement agreed to by the Court and the Honorable Judge James ordered Hutson to purchase the 108 acres of land and develop the proposed subdivision in a confined time frame when in fact, the 108 acres was defective in title due to the 700 family members prepaid two life times "Sole Use" of all property.

3. Those 700 family memberships had been soled and in most cases, all monies had been pre-collected by TLC Holdings, LLC. All memberships had been pre-sold years prior to Hutson's arrival creating the defective title whereby no loans could be made for lot take out nor no loans could be obtained for construction for private occupation and ownership of new proposed homes to the general public due to the membership 70 year "Sole Use".

4. The defective property did not have public sewer or water which was required but a moratorium existed on such public water and public sewer preventing Hutson to move forward with the project being a factor in his inability to develop.

5. Hutson holds a sworn affidavit by an expert attorney outlining that the option to buy property was defective in title. TLC Holdings, LLC was aware of that fact at the time of the execution of the Settlement Agreement but withheld this information from the Court.

6. In addition, TLC Holdings, LLC three members also prepared a contract to sell the Big Water Resort to Mr. Hutson which required Hutson to accept and assume full responsibility of some 700 family members for up to 70 years all having "Sole Use" of the property which prevented Hutson from ever closing or purchasing the 109 acres.

7. TLC Holdings, LLC three members withheld the full knowledge that Big Water Resort owned no right to use any of the 108 acres of land nor was there any type of contractual agreement between TLC Holdings, LLC and the three members to allow Big Water Resort the right to provide said 108 acres to it's 700 family members. This action placed Big Water Resort in an impossible position to honor the long term contracts.

8. The entire contracts named Settlement Agreement and Consent order was fraud upon the Honorable Judge and Court and since such two orders were legally impossible to honor or comply to, such Settlement Agreement and Consent Order were and are null and void. The intentions of TLC and it's three members were to deceive and trick both Hutson, his attorney, the Judge and the Honorable Court.

9. TLC's only reason for conducting such dishonesty upon the Court was to gain an unfair advantage over Hutson causing Hutson to fail and be evicted.

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Tim J. Newton

From: Cynthia Exum <cindy.exum@gmail.com>
Sent: Saturday, August 11, 2018 9:25 PM
To: Tim J. Newton; Hutsen
Subject: consent order
Attachments: 3.1 Consent Order.pdf

Total Control Panel Login

To: tnewton@murphygrantland.com Remove this sender from my allow list
From: cindy.exum@gmail.com

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CONSENT ORDER

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON	IN THE COURT OF COMMON PLEAS CASE NUMBER: 11-CP-14-602
TLC Holdings, LLC, Plaintiff, v. M.B. Hudson a/k/a M.B. Hutson, Defendant.	Judicata **CONSENT ORDER**
M.B. Hudson a/k/a M.B. Hutson, Defendant and Third Party Plaintiff, v. Richard U. Clark, Jimmy S. Lovell and James C. Thigpen, Third Party Defendants.	*Removed for redundancy: view on page 189.* 4/13/12

THIS MATTER comes before me pursuant to (a) a Motion for Order Requiring Tenant to Pay All Rent Due, or, in the Alternative, for Appointment of Receiver filed in the above-captioned action by Plaintiff, TLC Holdings, LLC ("Plaintiff", "TLC" or "Landlord"), against Defendant, M.B. Hudson a/k/a M.B. Hutson ("Defendant", "Hudson", or "Tenant"); and (b) a Motion to Dismiss filed by Defendant in this action.

BACKGROUND AND PROCEDURAL HISTORY

This action concerns a Lease Purchase Agreement dated December 15, 2010 (the "Lease" or the "Agreement"), by and among Plaintiff, as landlord, Hudson, as tenant, and Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen (the "Third Party Defendants"), for property located in Clarendon County, South Carolina, more fully

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EXHIBIT "A"

(Copy of Settlement Agreement)

SEE ATTACHED

Copy of Settlement Agreement was NOT ATTACHED.
Settlement Agreement is viewable in Record on p. 180.

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Tim J. Newton

From: Cynthia Exum <cindy.exum@gmail.com>
Sent: Saturday, August 11, 2018 9:27 PM
To: Tim J. Newton; Hutsen
Subject: title company letter
Attachments: C-Stewart Title Letter.pdf

Total Control Panel Login

To: tnewton@murphygrantland.com Remove this sender from my allow list
From: cindy.exum@gmail.com

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ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

From: hutson4444@gmail.com
Date: October 2, 2015 at 10:35:45 AM EDT
To: OFFICE MAX OB <ODS06535CPC@officedepot.com>, cindy exum <cindy.exum@gmail.com>
Subject: Fwd: 5215 Dingle Pond Rd, Summterton SC

Hutson
803.308.2714

Begin forwarded message:

From: Michael Medlock <Michael.Medlock@stewart.com>
Date: October 2, 2015 at 10:32:36 AM EDT
To: "hutson4444@gmail.com" <hutson4444@gmail.com>
Subject: 5215 Dingle Pond Rd, Summterton SC

108 Acres
Clarendon County

To Whom it May Concern:

I have been advised that the property mentioned above in encumbered by several hundred private membership and use agreements. These agreements do not appear in the public record; however, any title policy will contain exceptions to these interests once known to the company regardless of recording status.

If there are hundreds of membership agreements for exclusive use of portions of the property for 2 lifetimes, that is a cloud on title that would be excepted to in any title insurance policy.

My opinion is that no lending institution would lend on this as they would require a subordination and non-disturbance agreement from each interested party in order to obtain a clear title policy

Michael S. Medlock
South Carolina Underwriting Counsel
North Carolina State Counsel / Underwriting Counsel
Stewart Title Guaranty Company

South Carolina Office
4406-B Forest Drive, Suite 102
Columbia, SC 29206
O (803) 765-1631 | M (803) 414-6272 | F (866) 811-2066

North Carolina Office
831 E. Moorehead Street, Suite 355
Charlotte, NC 28202
O (704) 912-3542 | M (803) 414-6272

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Tim J. Newton

From: Mr. H <hmr226621@gmail.com>
Sent: Saturday, August 11, 2018 9:59 PM
To: Tim J. Newton
Subject: Slander Letter TLC.pdf
Attachments: Slander Letter TLC.pdf; ATT00001.txt

Tim, notice in this defamatory letter to the members, TLC states that all the property was owned by them and used for the members.

Also notice that they intentionally fail to tell the members that they sold me the Big Water Resort and memberships and I could not operate said business due to the lack of land and lack of contractual agreements.

We can checkmate the crooks and ride the 3.5 by getting the Fraudulent judgement set aside. I beg you to move quickly and let's get a game plan to move forward. Merely filing to set aside will cause TLC to fall to their feet.

TLC has been in the drivers seat long enough. Bill Padget put them in their place. We must do the same thing and fastttttttttt.

Total Control Panel Login

To: tnewton@murphygrantland.com Remove this sender from my allow list
From: hmr226621@gmail.com

You received this message because the sender is on your allow list.

Reed

EXHIBIT # 18-1

3rd P.D Response 2:14-CV01583-DCN-WWD

TLC Holdings, LLC
5215 Dingle Pond Rd.
Summerton, SC 29148
Ph: (803) 478-6336

Sander Letter

April 3, 2014

Members of Big Water Resort Campground

Re: Membership Agreements; New Management

Dear Member:

TLC Holdings, LLC is, and has been at all times since its development, the owner of the land and improvements on which the campground previously known as the Big Water Resort has been operated. In December of 2010, TLC Holdings, LLC entered into a Lease Purchase Agreement with M. B. Hutson. Under the terms of that Agreement and related documents, in addition to the various obligations that Mr. Hutson owed to TLC Holdings, Mr. Hutson assumed responsibility for the operation, maintenance, and upkeep of the Big Water Resort Campground. Before we signed the Agreement, Mr. Hutson assured TLC Holdings, LLC that his intentions were to continue to operate the campground on TLC Holdings, LLC's property, while developing the rest of the property in a way that complemented the resort and the club experience. Those assurances were important to TLC Holdings, LLC, and it agreed to proceed with the Agreement with Mr. Hutson.

Over the course of the last three (3) years, Mr. Hutson breached his obligations under the Agreement in numerous respects. Those breaches began just months after he took over the property. For example, he failed to pay rents he owed to TLC Holdings, LLC, and taxes owing to Clarendon County that were his responsibility under the Agreement. He failed to pave or repave the roads as required by the Agreement, which would have been a benefit to everyone at the campground. At times, he failed to carry insurance that was necessary to protect the property and the club. These breaches damaged TLC Holdings, LLC, and they hurt the property and the club operated on it. TLC Holdings, LLC has been forced to make tax payments and insurance payments to protect the property that were Mr. Hutson's responsibility under the Agreement.

Beginning in 2011, TLC Holdings has endeavored to enforce the obligations of Mr. Hutson with regard to the campground. As a result of Mr. Hutson's breaches, TLC Holdings, LLC sued him in state court back in 2011. Mr. Hutson has vigorously resisted TLC Holdings' efforts to enforce his obligations. After protracted litigation in the state court, when TLC Holdings, LLC was finally on the verge of success in evicting Mr. Hutson from the property, Mr. Hutson then filed for bankruptcy on January 8th of this year, delaying for a few more months TLC Holdings' recovery of the property. For all these months that Mr. Hutson has

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resisted TLC Holdings' efforts to recover the property, he has continued the breaches of the Agreement that have hurt TLC Holdings, LLC, and the club members who have used the property.

TLC Holdings, LLC has just been successful in regaining control of the property. The state court ruled that Mr. Hutson had breached the Agreement, and that TLC Holdings, LLC was permitted to terminate the Lease Purchase Agreement. As a result, Mr. Hutson is no longer in residence at the property, nor is he conducting any business on the campground property. Therefore, Mr. Hutson and his companies have no right to charge or receive payments of any kind whatsoever related to the campground.

As a result of TLC Holdings' successes in the state court and the bankruptcy court, TLC Holdings, LLC is now finally in control of the campground property for the first time since December, 2010. Much has changed over those three years, and it appears that much work is needed. TLC Holdings, LLC has decided to transfer the campground property, including the amenities, to an affiliated company named Ocoee, LLC. Thereafter, Ocoee, LLC intends to honor the terms of your Membership Agreements going forward, and will issue similar Campground Rules.

Unfortunately, because the records recovered by TLC Holdings, LLC from Mr. Hutson are incomplete in some respects, we ask that you provide to us your understanding of your current status with regard to your membership agreement with Big Water Resort. Please, also, provide us documentation of your payments of dues each year since 2010, including dues for calendar year 2014. If you have prepaid for any rentals in the campground, please also provide documentation of any such payments.

As noted, the records we received are incomplete. If you become aware of any member who did not receive this correspondence, please share it with them. Also, please ask them to contact us by phone at (803) 478-6336. You should also feel free to call that number if you have any questions. Ask for Mary Lou, who has worked at the property for years, or leave a message and she or another representative will be in touch.

For all of you Members who have paid your annual dues and charges and are in good standing for 2014 and prior years, your rights will be honored by Ocoee, LLC. Moreover, if you were otherwise current through 2013, but did not pay your dues for 2014, then TLC Holdings, LLC and Ocoee, LLC have agreed to give you sixty (60) days from the date of this letter to pay those dues. Please make checks payable to "Ocoee, LLC", not to "Big Water Resort".

We understand that this protracted litigation may have confused or frustrated you. It certainly has us. With it behind us, we are excited about the future. More information will follow from the new management in the coming weeks. In the meantime, thank you for your understanding, and please call us at the number above if you have any questions.

TLC Holdings, LLC

Tim J. Newton

From: Mr. H <hmr226621@gmail.com>
Sent: Saturday, August 11, 2018 10:03 PM
To: Tim J. Newton
Subject: Let's not give them any prior notice, simply serve them. This will cause them to gently fall apart while trying to act like the filing is no big deal. We know different. Filing this solves several major concerns.

Total Control Panel Login

To: tnewton@murphygrantland.com Remove this sender from my allow list
From: hmr226621@gmail.com

You received this message because the sender is on your allow list.

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Tim J. Newton

From: Mr. H <hmr226621@gmail.com>
Sent: Sunday, August 12, 2018 12:40 PM
To: Tim J. Newton
Subject: From Hutson
Attachments: Blank 2.pages; ATT00001.txt

Total Control Panel Login

To: tnewton@murphygrantland.com Remove this sender from my allow list
From: hmr226621@gmail.com

You received this message because the sender is on your allow list.

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Notes to Tim from Hutson

Failed to disclose that BWR was losing $300,000 per year.

Failed to disclose to me that because of that, BWR was be obligated for $20 million dollars to honor the hundreds of family members.

At the time of the Settlement Agreement which TLC pushed hard for, I did not know the following and TLC did:

A. All of the property except the small gas station was fully used by the family members and each family member had the "Sole Use" of all property causing defective title due to the "Sole Use" of all property, therefore, all monies I paid for the option to purchase was wasted and lost due to the fact I could never develop the property nor a divide small lots for a 200 lot subdivision.
B. It stated in the Option to Purchase that my method of paying for the property was to allow TLC to collect 35 percent of each individual lot sale at each individual closing.
C. TLC required me to buy and take ownership of BWR simultaneously executing the Option to purchase the 108 acres of land.
D. QUESTION: What did I receive by buying the BWR as required? After signing the Settlement Agreement and the Consent Order,
E. I later learned that the only thing I acquired was a hidden $20 million dollars worth of indebtedness in order to operate the campground for 70 years which was required.
F. BWR did not own ANY land to honor the hundreds of members who TLC had pre-collected the cost for the 70 years nor had TLC allocated any contractual agreement providing protection to BWR to be able to have land to service the $20 million dollars of obligation.
G. TLC furnished a fraudulent financial statement showing that BWR was worth $1,7 million dollars when in fact it was worth nothing leaving me no way to survive operating BWR nor buying the 108 acres due to defective title.
H. The Honorable Court merely took the word of the layers who drafted the Settlement Agreement and the Consent Order that all was well. It never entered into the Court's mind that the Court that TLC was withholding and concealing grave issues that would cause me not to be successful exposing me to many lawsuits. Hutson was doomed and consequently has lost 5 years of his life, profit on what could have been made with the land subdivision. This entire thing was pre planned and plotted.

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2018-CP-40-06344

MB Hutson/MB Hudson,

Plaintiff,

vs.

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

Defendants.

DEFENDANT TIMOTHY J. NEWTON'S AMENDED RESPONSE TO PLAINTIFF'S SUPPLEMENTAL MEMORANDUM

Defendant Timothy J. Newton submits the following Response to Plaintiff Hutson's "Supplemental To Memorandum" and Affidavit filed June 19, 2019. [1]

Newton denies Hutson's allegations in the above-referenced filings. However, mindful of the standard for dispositive motions, Newton would show that whatever Newton may have told Hutson about his claim of fraud upon the court is irrelevant because it is evident from the record that Hutson cannot prevail on such a claim.

I. Hutson developed his theory of fraud upon the court on his own.

As an initial matter, Hutson's theory of "extrinsic fraud upon the court" is not based upon Newton's "legal advice." As early as March 24, 2016, Hutson had filed legal memoranda in which he defined extrinsic fraud, differentiated it from intrinsic fraud, and discussed relevant case law. (Exh. W: Hutson Mem. in Resp. to TLC Mot. for Summ. J. at p. 2.) The factual basis for Hutson's theory did not come from Newton. Hutson has admitted and represented to courts in other proceedings in the Big Water Resort litigation that he discovered that all of the Big Water Resort

[1] Newton reserves his right to respond separately to any new material Plaintiff may file.

property was subject to the campground memberships through reading an unspecified judicial order in the Class Action [2] on December 15, 2015. (Exh. DD: Attachment to Emergency Mot. for Recons., p. 4.) Hutson has never specified which order he is referring to. Nonetheless, by his own admission, Hutson had the factual basis for his claim of fraud upon the court before any of the defendants were aware of the Big Water Resort litigation. Penn-America began defending Hutson on or about February 28, 2016. (See Exh. EE: Notice of Appearance.)

II. Hutson has no good faith basis for representing to courts and opposing parties that all of the property he purchased was campground property.

Furthermore, Hutson had no good faith basis for representing to Newton and Penn-America that he had grounds for setting aside Judge James' Order (Exh. G), or the Settlement Agreement and Consent Order (Am. Compl., Exh. 9.0 and 10.0), based upon fraud upon the court. By the time Hutson proposed this course of action to Newton in August 2018 (See Am. Compl., Exh. 4.0; Newton Mem. in Supp. of Mot. to Dism., Exh. V), courts had ruled that Hutson breached the Settlement Agreement (Exh. G: James Order), and thereby released TLC from any claims relating to the original purchase transaction and the Settlement Agreement. (Exh. C: Cothran Order.) Courts had also ruled that the Settlement Agreement was not procured by fraud. (Exh. A: R&R; Exh. B: Norton Order.) Hutson represented to Newton that he had recently found documentary evidence that TLC had promised the campground members that all of the property Hutson purchased was subject to the campground memberships.

If such information had been withheld at the time Hutson entered into the Settlement Agreement, Hutson might possibly have a claim for fraud upon the court. However, it appears that Hutson knew at the time he made this representation that it was false.

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[2] William Reed, et al., v. Big Water Resort, LLC, *et al.*, Civ. Action No. 2:14-cv-01583-DCN (D.S.C.).

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Prior to the time any defendants in this action became involved in the Big Water Resort litigation, Susan Stroman was deposed in the Class Action. (Exh. FF: Dep. of Stroman.) The deposition took place on May 20, 2015. (Id. at p. 1.) Hutson was present at this deposition. (Id. at p. 3.) None of the defendants in this action were there. Stroman was the realtor for TLC for purposes of the transaction that culminated in the Lease Purchase Agreement. [3] (Id. at 15.) Stroman was also a campground member. (Id. at p. 11.)

During direct examination, Stroman was asked which property was subject to the campground membership agreements. Stroman answered as follows:

> Q. As a club member, were you concerned that he may be taking away the land for your club?
>
> A. There was 57 acres across the road undeveloped that could have been developed, and at that time the sewer was coming down the road. There was plenty of land there.
>
> Q. So you assumed he was talking about the other land?
>
> A. There were also two additional undeveloped acres within the campground. There was plenty of land other than the campsites.

(Id. at pp. 32-33.) Not only was Hutson present at this deposition, he had the opportunity to personally cross-examine Stroman in his capacity as a *pro se* litigant. (Id. at pp. 3, 65.) Not only did Hutson have this opportunity, he in fact personally questioned Stroman about this testimony during his cross-examination. Her response was as follows:

> Q. Ma'am, if I leased the property with the exclusive option to purchase it, wasn't it your understanding from me, as you have earlier testified, that I wanted to develop the property for condominiums?
>
> A. Yes sir.

---

[3] Newton is not the only one about whom Hutson has misrepresented the nature of his relationship. (See Exh. FF: Dep. of Stroman at p. 45 (objecting to Hutson's testimony that Stroman was his realtor.)

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Q. And where did you discuss with me – what portion of the property did you talk with me about developing?

A. There are approximately two acres that were undeveloped within the 37 acres of the campground and 57 acres across the street. . . . .

(Id. at p. 86.) Hutson knew all the property he purchased was not campground property before Penn-America and its coverage counsel were even aware of the Big Water Resort litigation.

Furthermore, TLC argued in its Reply Memorandum in support of its motion for summary judgment as to Hutson's counterclaims in the Class Action that Hutson knew the property he could develop. (Exh. GG: TLC Reply Memo. at pp. 4-5.) The Lease Purchase Agreement only authorized Hutson to develop the *unimproved* portions of the property. (Id. at p. 5.)

TLC's motion for summary judgment as to Hutson's counterclaims was granted. (Exh. B: Norton Order.) Hutson may be collaterally estopped to argue that he did not know all the property could not be developed as a result of this order.

III. Hutson knows he was not defrauded in the 2012 Settlement Agreement.

Newton denies that he had any duty to prosecute Hutson's claim, as Hutson alleges. In fact, Newton repeatedly told Hutson that Newton could not represent him and he needed to retain counsel. (See Am. Compl, Exh. 4.0.) But even if Newton had such a duty, it is clear from the public record that Hutson's claim he was defrauded lacks merit.

Hutson alleged in this action that TLC failed to disclose to him that the Big Water Resort property was subject to the campground memberships. (Am. Compl., ¶ 11.) Hutson further claims that Newton's knowledge of this nondisclosure constitutes knowledge of the alleged fraud. (Newton Aff., Exh. 1: Ejectment Action, Pl's. Mem. filed May 7, 2019.) Hutson alleged:

> This evidence included an undisclosed and unrecorded title defect which was cloaking/masking a non-existent, long-term 'contractual lease' for the use of the land by the business operating thereon, which had sold hundreds of one to two lifetime agreements for a "right to use" the property for over seventy years and thereby made the Settlement Agreement and Consent Order which required

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

> Plaintiff to develop those previously unencumbered and now undevelopable 108 acres *fraudulent*.

(Id. at ¶ 5 (emphasis in original).) [4]

Hutson made this same allegation in the Ejectment action. [5] The Settlement Agreement and Consent Order Hutson claims were fraudulent were entered into in the Ejectment Action. (Am. Compl., Exh. 9.0 and 10.0.) The court file for that action is not available online. Therefore, Newton traveled to Manning and copied all of the relevant pleadings. (Aff. of Newton, ¶ 4.) The copies Newton made are attached as Exhibit 1 to the Affidavit (hereinafter "Exh. 1"). It turns out that Hutson filed an affidavit in the Ejectment action in which he testified as follows:

> 6. After the LPA and MIPA were executed in December 2010, I quickly learned that there were two major obstacles to the successful development of the Resort and the operation of the business. *Neither of these obstacles were disclosed to me prior to the signing of the LPA and the MIPA.*
>
> 7. The first obstacle was that TLC and [its principals] had entered into lifetime membership contracts with the members of the public that allowed them to use the Resort for free. These contracts, the full nature of which was not disclosed to me, substantially impaired my ability to operate the business at a profit, which in turn impaired my ability to fund the development. I was able to work my way through these problems only by (a) substantially reducing the number of employees at the Resort, and (b) reducing the number of memberships by increasing the costs at the Resort, which outraged the members.

(Exh. 1: Aff. of M.B. Hutson filed Mar. 4, 2014 (emphasis added).)

A. Hutson knew about the campground memberships when he purchased the property.

Hutson knows his allegations in this action, and in the Ejectment action, that he was not aware of the campground membership prior to his purchase of the Big Water Resort property, are

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[4] The property conveyed under the Lease Purchase Agreement, plus the leased waterfront property, totaled approximately 108 acres. (See Exh. CC: Dep. of TLC, Exh. 6 through 11.)

[5] TLC Holdings, LLC v. M.B. Hutson a/k/a M.B. Hutson, *et al.*, Civ. Action No. 2011-CP-14-00602.

false. Not only has this issue been judicially determined (Exh. A: R&R; Exh. B: Norton Order), it flies in the face of documentary evidence known to Hutson.

In the Defamation Action Penn-America defended, TLC and its principals alleged Hutson defamed them by mailing a postcard to the campground members asserting that they and Hutson were victims of a scam perpetrated by TLC. (Exh. C: Cothran Order, p. 4.) Hutson claimed truth as a defense. At trial, TLC offered the testimony of Hutson's realtor, Renee Roark She testified to the following:

- Hutson misrepresented his true name to her. (Exh. HH: Trial Tr. excerpts, p. 384.) Roark testified this was very unusual. (Id. at p. 408-09.)
- Hutson instructed Roark to "[f]ind out how many lifetime memberships there are and how long before all the yearly memberships expire." (Id. at pp. 388-90 and Pl. Exh. 13.)
- "Hutson was very familiar with the contract process." (Id. at p. 392.)
- As of November 10, 2010, Hutson knew there were lifetime memberships at the Big Water Resort property. (Id. at p. 393.)
- Roark sent an e-mail to Billy Coffey requesting his legal opinion regarding the impact the lifetime memberships had on the Big Water Resort property. (Id. at p. 395 and Pl. Exh. 14.) Susan Stroman's campground membership agreement was attached to this e-mail. (Id. at pp. 409-10) This e-mail is dated November 10, 2010. (Id. at p. 396). Coffey spoke with Roark and told her he would be glad to discuss it with Hutson. (Id. at p. 397.)

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

- Stroman discussed the implications of the campground membership agreements with Roark during Hutson's due diligence period. (Id. at p. 397-401 and Pl. Exh. 41.) Roark provided this information to Hutson. (Id. at pp. 399, 401.)
- Roark gave a copy of Stroman's membership agreement to Hutson. (Id. at p. 410.)
- Hutson discussed the possibility of moving the campground across the street with Roark. (Id. at pp. 419-20.)
- Hutson was concerned about "the red flags for title work where the lifetime memberships are concerned." (Id. at p. 422.) Roark asked Stroman how Hutson could get clear title to the property if there were lifetime memberships on it. (Id. at pp. 422-23, 25.)

Stroman also testified at trial. (Exh. HH: Trial Tr. excerpts, pp. 435-60.) Stroman testified that she discussed various possibilities of dealing with the campground memberships before Hutson purchased the property. (Id. at 452-55.)

Hutson was at this trial—he was the sole defendant. Thus, Hutson knows that his testimony in the Ejectment action, and his allegation in this action, that he did not know about the campground memberships when he purchased the property, are demonstrably false. As discussed above, Hutson knew which portions of the property he could develop and which portions he could not. Moreover, a review of the court filings in the Ejectment Action shows that Hutson had a plan for disposition of the campground memberships when he entered into the Settlement Agreement.

B. A review of the court filings in the Ejectment Action demonstrates that Hutson chose to attempt to develop condominiums on the campground property.

From the court filings in the Ejectment Action, it is evident that none of the defendants in this action were involved in that action. Hutson was represented by counsel throughout the course of the Ejectment Action. From its inception until January 3, 2014, Hutson was represented by Paul

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Weissenstein. Stephen "Chip" Burn was substituted as counsel for Hutson on January 8, 2014. (Exh. 1: Notice and Substitution of Attorney filed Jan. 8, 2014.) Freeman Belser appeared for Hutson after Burn was relieved as counsel. (Id.: Notice of Appearance filed Mar. 7, 2014.) Hutson has sued Weissenstein and Burn for malpractice. (Newton Mem., Exh. F and R.)

The court file indicates that TLC brought the action against Hutson seeking Ejectment. (Exh. 1:, Appl. For Ejectment, filed Nov. 29, 2011.) The Complaint also asserted a cause of action for Breach of Lease. (Id.: Complaint filed Dec. 14, 2011.) TLC alleged Hutson breached the Lease Purchase Agreement by failing to pay rent and insurance premiums. (Id. at ¶¶ 4-10.)

Hutson asserted numerous counterclaims. (Id.: Hutson Answer and Countercl. filed Jan. 3, 2012.) A review of Hutson's counterclaims demonstrates that most of his claims in this action were raised in the Ejectment Action. (Compare Hutson Supp. Mem. filed May 7, 2019 at p. 5.)

On February 24, 2012, TLC filed its Motion for Order Requiring Tenant to Pay All Rent Due, or, in the Alternative, for Appointment of a Receiver. TLC claimed that Hutson owed $165,840.07. (Exh. 1: TLC Mot., Exh. B.) A supporting Affidavit indicates that Hutson was fully aware of the lack of water and sewer capacity before he purchased the property. (Id.: TLC Mot filed Feb. 24, 2012, Aff. of Richard Clark, ¶ 9.) Clark averred he became concerned about Hutson when he learned that Hutson had misrepresented his true name for purposes of the transaction. (Id. at ¶ 12.) Clark testified he became even more concerned after a background check revealed that "Hutson had been an interstate fugitive from Georgia, extradited from the State of Florida, and had been involved in real estate or business transactions in Tennessee and Georgia for which the other parties had filed or posted public complaints against his conduct." (Id. at ¶ 13.)

The next document in the court file is the Settlement Agreement that Hutson claims the defendants in this case know is fraudulent. (Ejectment Action, Settlement Agreement dated Mar. 30, 2012; see also Compl. (in this action), Exh. 9.0.) Importantly, settlement negotiations are

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

confidential. None of the defendants in this action were parties to that settlement, but Hutson was a party. Thus, the only information accessible to the defendants in this action as to the terms of the settlement are those contained in the executed and filed document. It is Hutson who has direct personal knowledge of the settlement negotiations.

In the Settlement Agreement, Hutson agreed to submit a plat for approval of a proposed subdivision development on the property. (Exh. 1: Settlement Agreement, ¶ 5.) The location of the proposed development is depicted in Exhibit A. (Id.) Exhibit A is a drawing with handwritten notes indicating the "Approx Location" of the development. (Id.) The location marked appears to be on the campground property.

Hutson claims this is fraudulent. However, at the time this settlement was entered into, Hutson was the principal in Big Water Resort, LLC, which held the campground membership agreements. (Am. Compl., Exh. 1.0 and 6.0.) At that time, TLC was merely the landowner—it was Hutson who was operating the campground. Hutson had assumed the duty to protect the campground members through his purchase of Big Water Resort, LLC. If it was fraudulent to enter into a settlement in which Hutson agreed to develop and sell campground property, then it was Hutson himself who was perpetrating the fraud.

On December 11, 2013, TLC filed its Affidavit of Default. Hutson moved to set aside the default. (Exh. 1: Motion to Set Aside Aff. of Default, filed Dec. 30, 2013.) On the date set for the hearing, Hutson did not appear. Instead, he filed bankruptcy. (Exh. G: James Order.) The bankruptcy court lifted the stay for the limited purpose of determining whether Hutson had any equitable interest in the property. (Id.)

Hutson filed his Affidavit in support of his argument that he had an equitable interest in the property. (Exh. 1: Aff. of M.B. Hutson filed Mar. 4, 2014.) As discussed above, Hutson falsely represented to the court in this affidavit that he did not learn of the campground memberships until

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

after he purchased the property. (Id. at ¶ 6.) Hutson's argument that he had an equitable interest in the property only digs himself in deeper.

Hutson refers to his duty to the campground members in his capacity as principal in Big Water Resort, LLC as a "major obstacle." (Id. at ¶ 7.) Hutson testified that these campground memberships impaired his ability to develop and sell the property. (Id.) Hutson dealt with this by attempting to force the campground members to give up their lifetime memberships by (a) firing all the staff at Big Water Resort, and (b) raising costs to the campground members. These actions "outraged the members." (Id.) Thus, Hutson's own testimony, from his own mouth, is that he intentionally breached his duties to the campground members by attempting to force them out so he could build on the property, causing them to become outraged.

Hutson hired an expert to testify that he had an equitable interest in the property. Hutson's expert's Affidavit opined that Hutson "added significant value to the Big Water Resort" by, among other things, "chang[ing] the membership structure for the development, which provides a revenue stream that was not in existence before his arrival." (Exh. 1: Aff. of Bonham K. Gardner, ¶ 5.c.) Gardner notes the following in his report:

In the first paragraph at the top of page 3 of his report, Gardner states that in order for Hutson to develop an equitable interest in the property, he "needs to show evidence that fee simple estate can be obtained unencumbered." Gardner explains how Hutson went about accomplishing this: "Approvals for the proposed improvements can be obtained based on his involvement. Clear evidence that he has increased cash flow as a result of his direct management and business practices that were not part of the original business when purchase agreement was entered." (Id.) This demonstrates that Hutson was aware of the title issue associated with the campground memberships.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

On page 4, in the middle paragraph, Gardner expanded on this. After noting that Big Water Resort was advertised as a resort subject to lifetime memberships, Gardner described Hutson's actions:

> It is my understanding that Mr. Hu[d]son made the necessary business decisions to reduce the membership to the point that he could open the resort to the public. This decision by Mr. Hu[d]son has resulted in additional cash flow that did not exist when he executed the purchase agreement. The opinions I have made as to the memberships is based on verbal data that has been provided by Mr. Hu[d]son and data from past members.

(Exh. 1: report of Gardner.) Thus, Hutson's expert opined, based upon what Hutson told him, that the opening up of Big Water Resort to the public was the result of Hutson's efforts to develop an equitable interest in the property. The conversion of Big Water Resort from public to private was the core allegation of the campground members against TLC in the Class Action. See Order preliminary approving settlement, Reed v. Big Water Resort, LLC, 2016 WL 374816 at *1 (D.S.C. signed Feb. 1, 2016) ("The core allegation in the case was that the club was wrongfully converted from a private club to a public establishment.").[6]

Importantly, Gardner specified the parcels upon which Hutson claimed an equitable interest. (Exh. 1: Aff. of Gardner at p. 2.) The three parcels listed are identified by Tax Map number:

- 035-06-02-007-00 (3.2 acres – Fee Simple Estate)
- 035-06-02-001-00 (30.4 acres – Fee Simple Estate)
- 035-05-00-004-00 (5.77 acres – Leasehold Estate)

The parcel identified as Tax Map number 035-06-02-007-00 corresponds to Exhibit 7 to the Rule 30(b)(6) deposition of TLC Holdings, LLC taken in the Coverage Action. (See Exh. CC: Rule

[6] As a result of Newton and Penn-America's efforts, TLC's claims against Hutson have all been settled. Newton is not aware that the campground members have ever released their potential claims against Hutson. Such a claim would not be covered under Penn-America's policy.

30(b)(6) Dep. of TLC.) Hutson could not purchase or build on the parcel identified as Tax Map number 035-05-00-004-00 because this was waterfront property leased from Santee Cooper. (Exh. HH: Trial Tr. at p. 412-14.) The third parcel appears to be improperly identified. Tax Map number 035-06-02-001-00 is a 3.66-acre tract located across the interstate from Big Water Resort and owned by non-parties. The only 30.4-acre tract transferred through the Lease Purchase Agreement is Tax Map number 035-05-00-001-00. This corresponds to Exhibit 6 to TLC's deposition when it was taken in the Coverage Action. (See Exh. CC.)

Richard Clark testified that Exhibits 6 and 7 were part of the campground. (Exh. CC: Rule 30(b)(6) Dep. of TLC, p. 40.) Thus, the three parcels Hutson selected to claim an equitable interest in were: (a) the waterfront property that was leased from Santee Cooper which could not be developed, and (b) two parcels upon which the main portion of the campground was located. These were improved portions of the property upon which Hutson had no authorization to build under the terms of the Lease Purchase Agreement. (See Compl, Exh. 5.0, p. 3 ("The parties acknowledge that the Purchaser intends to develop and construct condominiums or other residential dwelling structure on certain portions of the *unimproved* Premises.") (emphasis added).)

Thus, the public court record from the Ejectment Action demonstrates that Hutson, with full knowledge of his duties to the campground members, contracted in the Settlement Agreement, (and received court approval in the Consent Order) to develop and sell, not the unimproved property he had a right to develop, but rather the improved property upon which the campground was situated. Hutson wanted to develop the waterfront property upon which the campground was situated, not the unimproved property across the street. [7] (Exh. HH: Trial Ts. at pp. 379, 412-14.)

[7] Hutson walked the property with Roark on Thanksgiving Day in 2010. He knew that the only waterfront property at Big Water Resort was the campground. (Exh. HH: Trial Tr. at pp. 403-04, 413-14.)

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Hutson entered into this Settlement Agreement to further his own interest as lessor / purchaser of the land in his own name. Hutson entered into this Settlement Agreement, and the Consent Order, despite the fact that he was also the principal in Big Water Resort, LLC, which owed the duties and lifetime memberships to the campground members. When he failed in this endeavor, Hutson blamed his own misconduct on TLC, which resulted in a $3,500,000 judgment against Hutson in the Defamation Action. After Penn-America paid its limit to settle that judgment, Hutson now seeks to blame his misconduct on Penn-America and its coverage counsel.

Hutson has admitted that even a layman should have seen this misconduct was wrongful. Hutson argued no affidavit was required in support of his malpractice claim against Burn because "a layperson, in any field of work, can clearly understand that the same property cannot be sold to two different entities for non-similar and exclusive purposes." (Exh. DD: Attachment to Emergency Mot. for Recons. ¶ 2.) Hutson thereby admits that he should have known he could not develop and sell property that he was obligated, as principal of Big Water Resort, LLC, to hold for the campground members.

Judge James ruled that Hutson breached the Settlement Agreement. (Exh. G: James Order.) It is this Order (along with the Settlement Agreement and Consent Order), that Hutson claims should be set aside based upon fraud upon the court. Hutson's argument to Judge James relied upon (a) a materially false misrepresentation (*i.e.*, that Hutson did not know about the lifetime campground memberships when he purchased the property) and (b) admitted, intentional breaches of the campground Retail Membership Agreements (see Am. Compl., Exh. 1.0).

Fraud upon the court is an equitable doctrine. Chewning v. Ford Motor Co., 354 S.C. 72, 82, 579 S.E.2d 605, 610 (2003); Bryan v. Bryan, 220 S.C. 164, 167, 66 S.E.2d 609, 610 (1951) ("There is no doubt that a court of equity has inherent power to grant relief from a judgment on the ground of fraud."). Equitable relief is not available to a party who has unclean hands. Straight

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

v. Goss, 383 S.C. 180, 206-07, 678 S.E.2d 443, 457–58 (Ct. App. 2009). At a minimum, the above facts from the case in which Hutson claims he was defrauded raise serious questions as to whether Hutson could recover for fraud upon the court due to his unclean hands. This is sufficient to defeat any claim Hutson may have that Defendants should have either reported the alleged fraud or acted on his behalf to attempt to counteract it.

Based upon the court record from the Ejectment Action, there simply are no grounds upon which Hutson, much less third-parties such as the defendants in this action, could reasonably conclude that provable and reportable fraud against Hutson occurred in that action. Accordingly, even if the Defendants in this action had a duty to report and/or prosecute Hutson's claim for fraud upon the court, there was no obligation to act in this case because it is evident from the court record in the Ejectment Action that Hutson has no meritorious claim he was defrauded.

CONCLUSION

Newton has previously established that Hutson cannot prove standing on his part or a duty on Newton's part. For the reasons set forth above, Hutson's claim fails on the merits even if Hutson overcomes those hurdles. Accordingly, Hutson's claims against Defendant Newton should be dismissed, and Newton should be dismissed as a party from this action.

Respectfully submitted,

s/Timothy J. Newton
Timothy J. Newton, Esquire
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Columbia, South Carolina 29260
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Columbia, South Carolina
June 25, 2019

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Exhibit DD

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON)

Civil Action No. **2018-CP-320-3879**

MB Hutson/MB Hudson,

Plaintiff

vs.

Stephen "Chip" Burn, Esq., Sara Guthrie, Esq.
Burn Law Firm, LLC
John Doe # 1, John Doe #2 .

Defendants

ATTACHMENT TO

EMERGENCY MOTION FOR RECONSIDERATION

Filed – 2019 MAR 18, AM 11:43

ATTENTION: Judge Addy

ORIGINAL

FILED
2019 MAR 26 PM 12:45
LISA COMER
CLERK OF COURT
LEXINGTON, SC

Additional rationale:

1. South Carolina Law: 1.1:335 Requirement of expert testimony is *generally* required to establish the standard of care, in a legal malpractice action. See McNair vs. Rainsford, 330 S.C. 332, 499 S.E. 499 S.E. 2d 488 (ct. app. 1998).

2. *HOWEVER*, In *Mali vs. Odom*, 295 S.C. 78, 367 S.E. 2d 166 (ct. app. 1998). The Court of Appeals recognized two exceptions to the requirement of expert testimony:

--When the subject matter is of common knowledge to layperson, and

--When the defendants own testimony establishes the standard of care.

(Id at 80-81, 367 S.E. 2d at 168.)

Plaintiff states that a layperson, in any field of work, can clearly understand that the same property cannot be sold to two different entities for non-similar and exclusive purposes. The Honorable Court has an obligation to recognize this factor. Therefore, this case should be sent to a Jury and any requirement to spend $5,000.00 dollars for an expert witness should be withdrawn by the Honorable Judge since Plaintiff is indigent, yet deserves Justice.

3. These Defendants originally filed for a "temporary restraining order." Therefore, through the Defendants' own filing/action(s), Defendants demonstrated what they perceived to

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

be their only practical filing option. Defendants blatantly stated that they believed that was their only option and furthermore stated that they did not believe it would be effective. Plaintiff hired the Burn Law Firm to protect him from eviction. They failed to address any defective title issues. Therefore, Plaintiff, hearing that his attorneys at Burn Law Firm held little hope for his outcome based on their filing, Plaintiff filed a Chapter Eleven in Bankruptcy Court hoping to protect his Equitable Interest. All was lost due to the lack of understanding the title defect by Defendants.

4. *The Defendants should have stopped the eviction and all forward movement legally by TLC Holdings, LLC (*hereinafter referred to as SELLERS*)* by filing an "Emergency Motion" asking the court to prevent SELLERS from moving any further regarding the eviction until the "exception to good title" was resolved. That action would have placed the responsibility to clear up the title defect on the SELLERS. It is now known that the SELLERS were not only acutely aware of that title defect, but also that they *could not* clear it up. Consequently, the SELLERS would have been required to make restitution to this Plaintiff and brought this entire saga to a proper end, long ago.

5. Therefore, had the Defendants made the proper choice and demanded that the SELLERS clear up the exception(s) to "good and marketable title," it would have prevented the enormous damages which have now resulted in this Plaintiff's indigent situation, and Plaintiff's having been sued multiple times by the SELLERS in both State and Federal Court[1] and bankruptcy. Plaintiff, a 75 year old senior citizen, has suffered great stress, mental stress, depression and hopelessness.

6. Defendants demonstrate no remorse, nor concern, for failing to execute their duty as counselors to recognize and appropriately represent and defend this Plaintiff, who was innocently defrauded by the SELLERS. Today, even though both Defendants carry malpractice insurance, they promptly preferred to hire an attorney, Calhoun Watson, Esq. to defend their

[1] 2:14-CV-01583-DCN-MGB and 2015-CP-14-615 (SELLERS v. this Plaintiff)

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

breach of duty, who has clearly stated to this Plaintiff that he does not represent their insurance company. Each time a response is filed by their counsel, Watson, they demonstrate their blatant attempt to wriggle out of any responsibility. Plaintiff paid Defendants thousands of dollars for protection from the eviction by SELLERS but Defendants failed Plaintiff.

7. After reading all the contracts (Lease Purchase Agreement (for the 108 acres); Membership Interest Purchase Agreement (business) and the Family Membership Agreements (for the sole use for up to 70+ years), why did the two Defendants, both seasoned attorneys, not recognize that the SELLERS were obligating property to two unrelated buyers for exclusive and conflicting purposes? It is simply a failure of fiduciary duty.

8. MALPRACTICE: Given all these circumstances, the Defendants

(A.) were contracted to represent and defend the Plaintiff (Exhibit 10.0 "Notice and Substitution of Attorney");

(B.) failed to perform their fiduciary duty and recognize the title conflict outlined above;

(C.) caused direct and irrefutable legal, fiscal, financial, and mental damages to their client, this Plaintiff, in access of $2.2M due to subsequent and on-going legal proceedings from that initial conflict; and

(D.) resulted in the total loss of Plaintiff's equitable interest (EXHIBIT /Affadavit 8.0).

This collectively substantiates malpractice.

9. STATUTE OF LIMITATION:

A. Plaintiff's first partial awareness of a title defect on "*portions of the property*" was received on October 2, 2015, from the counsel for Stewart Title Company in

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

his short half-page letter[2]. However. Plaintiff had no information on which portions of that property were defective. since 108 acres were involved. Any action this Plaintiff could have taken could not be assumed without facts and full understanding for fear of a countersuit.

DILEMNA EXAMPLE: Should the IRS write the Plaintiff a letter stating that Plaintiff owes an undetermined amount of money and such money needed to be paid immediately, and the Plaintiff contacts the IRS asking what amount is due and why it is owed with no positive answer from the IRS, should the Plaintiff simple sign a blank check and mail that to the IRS?

Plaintiff acted allowing him to fall within the 36 month statute.

B. At the end of 2015, on the conclusion of the Federal Class Action lawsuit[3] filed in behalf of the family members who owned unrecorded. multiple years of 'rights to use' the land in their "Retail Membership Agreements,[4]" Plaintiff learned that **all** the land outlined in the Lease Purchase Agreement (108 acres), was included in the defective title classification. The Class Action won and SELLERS paid damages amounting to approximately $2M. Prior to that time. this Plaintiff had NO EVIDENCE that ALL the land represented in his "Lease Purchase Agreement" had defective title. Certainly, this Plaintiff was not sure enough to attempt to file a malpractice complaint against Defendants until that verdict from the Federal Court clearly ruled that. "no portions" but *the entire 108 acres* had a defective title. Therefore, Plaintiff's legal statute time started December 15, 2015, (the date of federal suit completed), and three years OR thirty-six months later. which ended on December 15, 2018. Plaintiff filed this suit on November 8, 2018, well within the 36 month statute, and prior to three years from his initial November 9, 2015 letter, albeit incomplete notice to Defendants. Should there still be a disagreement regarding that fact, the

[2] EXHIBIT 11.0, Letter from Michael S. Medlock. Esq. of Stewart Title Guaranty Company.
[3] 2:14-CV-01583-DCN-MGB
[4] Exhibits 1.1-1.3

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

responsibility lies within a Jury's responsibility to decide.

Plaintiff pleads with the Honorable Judge Addy to send this case to a Jury for proper Justice. Plaintiff is certainly prepared to try this case in front of a twelve (12) member Jury. The Honorable Court has a duty to allow this Plaintiff to be heard in front of a Jury based on the scintilla of evidence rule and an abundance of evidence including clear serious damages. The rule of common law principle that a motion for summary judgment, or for directed verdict, cannot be granted when there exists even the slightest amount of relevant evidence. The matter must be tried by a Jury.

Respectfully Submitted on this 26th day of March. 2019.

MB Hutson
P.O. Box 2755
Orangeburg, South Carolina 29116-2755
Telephone: (803) 308-2714

VERIFICATION OF SERVICE:

I CERTIFY that a copy has been EMAILED on the 26th day of March, 2019.

and placed in USPS on the 26th day of March, 2019. to:

Calhoun Watson. Esq.
Watson and Jordan. Attorneys for the Defendant
P.O. Box 11449
Columbia, SC 29211
cwatson@robinsongray.com
Telephone: (803) 929-1400

MB Hutson. Pro Se

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Exhibit EE

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

CIVIL ACTION NO.: 2:14-CV-01583-DCN

William Reed, Donna Reed, Bonnie Youmans, Jane Yates, Phillip Caulder, all individually and for the benefit and on behalf of all others similarly situated, Plaintiffs, vs. Big Water Resort, LLC, TLC Holdings, LLC, Richard Clark, James Thigpen, Jimmy "Steve" Lovell, and Ocoee, LLC, Defendants.	**NOTICE OF APPEARANCE**
TLC Holdings, LLC, Richard Clark, James Thigpen, Jimmy "Steve" Lovell, and Ocoee, LLC, Third-Party Plaintiffs, vs. M.B. Hutson a/k/a M.B. Hudson, Third-Party Defendant.	

PLEASE TAKE NOTICE that the undersigned attorneys hereby notify and advise this Court, the above-captioned parties, and all counsel of record that they are appearing as counsel for the defense only of Third-Party Defendant M.B. Hutson a/k/a M.B. Hudson in the above captioned matter. The undersigned hereby requests to be notified of any and all proceedings and

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

copied on all pleadings, discovery, motions and the like in matters regarding this action as attorneys for this Defendant.

Respectfully submitted,

CARLOCK COPELAND & STAIR, LLP

By: *s/ R. Michael Ethridge*
R. MICHAEL ETHRIDGE
Federal Bar No.: 7497

LAURA PARIS PATON
Federal Bar No.: 10506

MATTHEW T. HEMINGWAY
Federal Bar No.: 11946

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
843-727-0307

Attorneys for Third-Party Defendant M.B. Hutson a/k/a M.B. Hudson

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Exhibit FF

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

DEPOSITION OF SUSAN STROMAN

WILLIAM REED, DONNA REED, BONNIE YOUMANS, JANE YATES, PHILIP CALDER, all individually and for the benefit and on behalf of all others similarly situated,

Plaintiffs,

vs. Case No. 2:14-CV-01583-DCN-WWD

BIG WATER RESORT, LLC, TLC HOLDINGS, LLC, RICHARD CLARK, JAMES THIGPEN, JIMMY "STEVE" LOVELL, AND OCOEE, LLC,

Defendants.

(Caption continued on page 2.)

DEPONENT: SUSAN STROMAN
DATE: MAY 20, 2015
TIME: 9:59 AM
LOCATION: TURNER PADGET
COLUMBIA, SOUTH CAROLINA

REPORTED BY: JULIE K. LYLE, RPR/RMR/CRR
Registered Merit Reporter
Certified Realtime Reporter

CLARK & ASSOCIATES, INC.
P.O. Box 73129
Charleston, SC 29415
843-762-6294
WWW.CLARK-ASSOCIATES.COM

TLC HOLDINGS, LLC, RICHARD CLARK, JAMES THIGPEN, JIMMY "STEVE" LOVELL, AND OCOEE, LLC,

Third-Party Plaintiffs,

vs.

M.B. HUTSON, A/K/A M. B. HUDSON,

Third-Party Defendant.

APPEARANCES

APPEARING ON BEHALF OF PLAINTIFFS:
RICHARDSON, PATRICK, WESTBROOK & BRICKMAN, LLC
BY: BRADY R. THOMAS
P.O. Box 1368
Barnwell, SC 29812

FINKEL LAW FIRM, LLC
BY: WILLIAM R. PADGET
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APPEARING ON BEHALF OF DEFENDANTS:
TURNER PADGET GRAHAM & LANEY, P.A.
BY: R. WAYNE BYRD
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Myrtle Beach, SC 29577

APPEARING ON BEHALF OF DEFENDANT:
TURNER PADGET GRAHAM & LANEY, P.A.
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APPEARING ON BEHALF OF DEFENDANT:
WALL TEMPLETON
BY: NEIL S. HALDRUP
P.O. Box 1200
Charleston, SC 29402

APPEARING ON BEHALF OF SUSAN STROMAN:
LAW OFFICE OF WILLIAM H. JOHNSON
BY: WILLIAM H. JOHNSON
411 North Brooks Street
Manning, SC 29102

ALSO PRESENT: Steve Lovell
Richard Clark
M.B. Hudson
George Stroman
Jim Joyce

EXAMINATION

BY MR. THOMAS 4
BY MR. HUTSON 65
BY MR. THOMAS 117

EXHIBITS

Exhibit No. 145 Commission agreement 100

SUSAN STROMAN,
having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. THOMAS:

Q Hi, Ms. Stroman. I'm Brady Thomas. We met, I guess, briefly on Monday. I'm here to take your deposition today in the case involving the Reeds, et al., versus Big Water Resort, LLC, et al.

Under our rules, I'm required to tell you a couple of things at the beginning, and the first is, if you have any questions about the questions that I ask today, except to the extent it may relate to privilege, which I doubt they will, I'd appreciate if you could let me know and direct those questions to me as opposed to your counsel because it's important we understand each other.

Secondly, under our rules -- I don't think I'm going to show you any documents today, but under the rules, to the extent I do show you any documents, to the extent you have any questions about that

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Page 5

document, I'd appreciate if you let me know, and I'll do the best I can to make sure we both understand each other.

I do not anticipate this to be a very lengthy deposition. However, if at any time you wish to take a break for any reason, just let me know and I'll gladly accommodate you.

A Okay.

Q And with that being said, just if you could just give some general background about yourself.

Where are you from originally?

A Cameron, South Carolina.

Q Where is Cameron?

A Between St. Matthews and Elloree.

Q Okay. And if you could, just give me a brief sketch of your educational background.

A I have three years of college and all of high school.

Q Okay. And where did you go to college?

A University of Georgia.

MR. THOMAS: Okay. We've got

Page 6

another Bulldog down here at the end of the table.

MR. BYRD: Heck yeah.

Q And I understand that you're a realtor?

A Yes, sir.

Q And how long have you been in the -- have you been a realtor?

A 1986.

Q And what kind of real estate do you currently deal with?

A Mainly residential.

Q Do you do some commercial as well?

A Some.

Q And what company do you work with, if any?

A I own my own company. It's Premier Properties of the Carolinas.

Q And how long have you owned that?

A I bought Premier September of 2014.

MR. HUTSON: Excuse me. Could she repeat the name of the company?

Q Premier of the Carolinas?

A Premier Properties of the Carolinas.

Page 7

Q And geographically, what areas of the state do you normally deal with?

A From Manning to Summerville.

Q And who did you work with before that?

A Golden Bear.

Q And that's a Jack Nicklaus company?

A Yes.

Q How long were you with Golden Bear?

A February of 2014 until September of 2014.

Q Okay. And when you were with Golden Bear, were you also doing commercial and residential?

A Yes, sir.

Q And who were you with before that?

A AgentOwned Realty.

Q And how long were you there?

A From 2008 till 2014. Then I was previously with them from 1990 to 2003.

Q And where do you live now?

A Cameron, South Carolina.

Q And if this case goes to trial, we would have a jury pool from like the Lowcountry area of the state, and because of

Page 8

that, just for jury pool purposes, could you maybe give me an idea, if you have any relatives with different last names in the Lowcountry, what those last names might be?

A Keller.

Q How do you spell that?

A K-E-L-L-E-R.

Q Okay. Any others?

A No, sir.

Q Okay. And do you have any children?

A Yes, sir.

Q And how old are your kids?

A 44, 34, and I have a stepson who's 36.

Q Do any of them live in the Lowcountry by any chance?

A No, sir.

Q Okay. How long have you known Mr. Hutson?

A The fall of 2010.

Q Okay. And I know you were here for some of his testimony on Monday, and I'm just going to kind of walk you through, you know, how -- your business relationship with

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Page 9

Mr. Hutson.
When was the first time you spoke to him?
A Either late October or mid-November.
Q And who initiated that contact?
A His realtor.
Q And was his realtor, if I remember right, Ms. Roark?
A Yes.
Q Was it Renee Roark?
A Uh-huh.
Q Okay. And does she work for a different company than you did?
A Yes, sir.
Q What was the name of her company?
A Re/Max by The Lake.
Q Okay. And so did Ms. Roark, I guess, did she call you?
A Yes, sir.
Q And what did she say in that phone call?
A She contacted me in the fall, around Labor Day -- I don't recall the date -- and asked me if I had anyone that had

Page 10

commercial waterfront property that might be interested in selling because she had a client interested in property.
Q Okay. And what did you tell her?
A I told her I could make some phone calls.
Q Okay. And did you?
A Yes, sir.
Q And who did you call?
A As best I can remember, I contacted Helen Love at Coopers Landing, and I contacted Mr. Richard Clark with TLC.
Q And at that time was Mr. Clark listing some of his property for sale?
A No, sir.
Q Okay. And why did you contact Mr. Clark with TLC?
A I had a previous relationship with Mr. Clark and Mr. Lovell, and I thought they possibly would be interested in selling.
Q Okay. And what was your previous relationship with Mr. Clark and Mr. Lovell?
A My husband and I had looked into buying the Big Water, LLC, in 2009.
Q Okay. And at that time how did

Page 11

it -- well, how did that come about? Was Big Water, LLC, for sale?
A No, sir.
Q How did -- then what do you mean by you looked into buying?
A Just made a phone call and asked if they would be interested in selling the campground. We had always wanted to operate some sort of a property on the lake, a commercial venue on the lake.
Q And at that time were you a member of Big Water Resort?
A Yes, sir.
Q When did you buy your membership in Big Water Resort?
A 2008.
Q And when you reached out to Clark and Lovell in '09, were they interested in selling the LLC?
A They said we would discuss it.
Q Okay. And did you?
A Yes, sir.
Q And tell me about those conversations.
A We had a brief meeting with them,

Page 12

discussed what my husband and I could do and what they could do. And a proposal was put on the table, but my husband and I could not accept it.
Q So they told you a sales price?
A They had an appraisal on the property.
Q And how much was that?
A 7 million. 6 million to 7 million. I don't recall.
Q Okay. So approximately 6 to $7 million. And what all would you -- were you looking to buy?
A We were going to buy the members for Big Water, LLC, and an option to purchase the land at a later date.
Q And how much were they looking to sell just the membership in Big Water, LLC?
A The price we discussed was 500,000.
Q Did you have anybody do an evaluation on how much the membership interests were worth?
A No, sir.
Q And -- okay. So they -- I guess it was a joint proposal. It was the membership

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Page 13

for 500K and the rest of the land for whatever the remaining 6 or 7?
A Right.
Q And you guys weren't interested in it?
A We just couldn't financially do it.
Q Sure. And so, I guess, that following fall, that's -- because you knew that they may be interested in selling it, that's why you called Mr. Clark?
A Yes, sir.
Q And what do you recall about that conversation?
A Very hard to remember. I told him that a realtor colleague had approached me who had a client interested in buying commercial waterfront, did they have any interest in selling the property.
Q And what happened next in the sequence of events that I guess ultimately leads to Mr. Hutson's purchase?
A I think in a period of 30 to 45 days, Renee's relationship with Mr. Hutson, he was trying to do some due diligence, and it seemed like the questions were all being

Page 14

directed to me for the answers. And I think finally, maybe mid-November, he was supposed to come to town.
I didn't know his name other than Hutson by that time. He was to come take a tour of the property and was requesting some due diligence information before he made the trip. And he called me, and I referred him to the engineer who designed the property.
Q Okay. When you're saying he wanted due diligence and the questions would come to you, is Mr. Hutson calling you directly or is --
A His realtor called me for probably 30 days, and then finally -- I think she finally said, "I think he needs to call you directly. Is that okay?"
Q And at that time, had you signed a listing agreement with TLC?
A I never signed a listing agreement with TLC.
Q All right. And whose agent, if any, were you in the fall prior to him coming down? Were you -- on whose behalf were you acting on?

Page 15

A Please repeat that.
Q Yeah. That's an awkward question.
Who were you working for in that time period from the initial contact to when he came down in November?
A The seller.
Q Okay. Did Mr. Clark authorize you to act on TLC's behalf?
A Verbally.
Q Okay. And was that in that initial conversation when you called him?
A Yes, sir.
Q Okay. And what, if any, agreement did you have as far as what your compensation would be if the sale went through?
A I think 5 percent.
Q Okay. So I guess November time period he's coming down to do the site visit and Renee tells -- I assume you okayed for him to contact you directly when she asked?
A Uh-huh.
Q Okay. And then did he call you before he came?
A Yes, sir.
Q And what kind of due diligence

Page 16

questions, if any, was he asking?
A He wanted some engineered drawings about the sewer on the property.
Q Okay. And you got him in touch with the engineer?
A Correct.
Q Was there anything else he was looking into at that time?
A Typical due diligence questions.
Q And so did he eventually come down end of November?
A I heard that he did. I was not present, nor did I know he was coming.
Q Okay. Who told you that he had come down?
A Renee.
Q So did Renee show him around the property?
A Yes, sir.
Q But she didn't call you in advance to say, Listen, can we have permission to come down and look around?
A She said he was coming but was not -- unsure of the date.
Q Okay. And then when did you next

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

see -- or when did you first see Mr. Hutson?
A In December.
Q And tell me about that. Where were you?
A Lake James, North Carolina.
Q Where is that at?
A Near Asheville.
Q And how did you come about seeing him in Lake James?
A In my due diligence conversations with Mr. Hutson, he mentioned to me that he had quite a few investors that were developing property all over the southeast. And there was a marina and campground and development that my husband and I were interested in being a part of ownership, partial ownership, and I asked Mr. Hutson would his investors be interested in investing in something like this.
And he said that he didn't know; he'd have to take a look at it.
And I said I will -- I will pay you for your time to take a look, see what -- if they're interested.
And he said that his fee was

$7,500.
Q Okay. So ultimately that's how you ended up going up and meeting him up near Asheville?
A Right.
Q And who -- did he ever tell you who his investors were?
A No, sir.
Q Yeah. I was curious about it because I know it came up the other day. What ended up happening with that? You may have -- well, I know from Mr. Bird's question -- questioning, I assume that you paid him in cash?
A He asked for cash.
Q Yeah. Tell me about that, the --
A He wanted $7,500 cash to take a look at the property and do his research.
Q Did you think it was weird he was asking for cash?
A Yes, sir.
Q Okay. But, nonetheless, you went and got $7,500 in cash?
A Yes, sir.
Q Now, and I know Mr. Byrd said the

other day, did -- did he ask you for it to be in a paper bag?
A A manila envelope, as well as I remember.
Q Did you ask him why he wanted cash?
A Yes, sir.
Q And what did he tell you?
A I do not remember.
Q Okay. And did your husband accompany you on this trip to meet with him?
A Yes, sir.
Q And, I guess, tell me about it. Did you-all give him a tour of that facility?
A We met one of the owners of the LLC who owned the property, and he gave us all a tour, a detailed, long tour.
Q And just because I know that ultimately $7,500 came back to you, I assume nothing happened as far as purchasing the property using Mr. Hutson's investors?
A Correct.
Q Tell me, what did Mr. Hutson say at the end of the weekend? Was he interested in the property?
A It was one day.

Q Okay.
A Yes, sir. It's beautiful.
Q How did that deal fall apart?
A My husband and I reconsidered.
Q Were you-all going to be partners on the deal with Mr. Hutson?
A Mr. Hutson was not a part of the deal. He was trying to locate the financing.
Q Do you know approximately when in December that was? Is that prior to the contracts being drawn up on the --
A Around the 10th.
Q And just to tie the knot on it, when did you-all decide that you were reconsidering, not interested in doing that deal?
A By December 15th.
Q Okay. And I guess parallel to that time period, are there negotiations further between Mr. Hutson and TLC/Big Water Resorts for that transaction?
A That had been taken away from the realtors.
Q Okay. When did that happen?
A Around the first week of December.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Page 21

Q And prior to that, did Mr. Hutson make an offer on the property?
A No, sir.
Q Did -- did you convey a sales price that TLC and Big Water Resorts were looking for to Mr. Hutson prior to --
A I do not recall.
Q How was it -- and when you say it was "taken away from the realtors," how did that come about?
A Renee contacted me and said that the -- her client wanted the contract to be taken private and wanted to contact TLC directly.
Q And did you call Mr. Clark or --
A Yes, sir.
Q And what did Mr. Clark tell you in response to that?
A He said I'll talk to him, give him my number.
Q Were you concerned that you were going to be cut out of your 5 percent?
A Yes, sir.
Q And did you ask Mr. Clark anything in regards, you know, you do realize even if

Page 22

we do this that --
A No, sir.
Q No conversations about how you were going to get paid? You just --
A I don't discuss commissions. Never ever.
Q Okay. How do you make sure you get paid?
A 99 percent of the time I get paid.
Q Okay. But you did discuss commissions in your initial call with Mr. Clark?
A Yes.
Q So then did you, I guess, call Renee back and said yeah?
A Right.
Q Here's -- did you give her Clark's number?
A Yes.
Q Okay. Was Clark your primary contact?
A Yes, sir.
Q Did you ever talk to Mr. Thigpen about the transaction?
A No.

Page 23

Q Did you ever talk to Mr. Lovell about the transaction?
A I don't recall.
Q Okay. And when was the -- that was December -- you said December 1st?
A The first week.
Q First week. Okay.
When was the next time you heard something about the transaction involving the Big Water Resort?
A I received an e-mail from Andrew Tucker with an offer to lease to purchase. He asked me to please forward it to the seller.
Q Had you had any prior contacts with Andrew Tucker prior to that e-mail?
A I had a conversation with Mr. Tucker. Tucker, yeah. Mr. Tucker, I had a phone conversation with him.
Q What did you-all talk about?
A His client.
Q And what about his client?
A I just asked Mr. Tucker to, you know, give me some sort of a reference on his client.

Page 24

Q Okay. And when was that?
A I don't recall.
Q Was that prior to December?
A Yes, sir.
Q And why were you doing that?
A It wasn't prior to December. It was during that time frame.
Q Okay.
A Just to be sure.
Q Were you getting that reference for you in connection with the property near Asheville?
A No, sir.
Q Were you doing that on behalf of TLC?
A Yes, sir.
Q Was that something TLC asked you to do?
A No, sir.
Q And what did Mr. Tucker tell you about his client?
A He said that he had -- was representing Mr. Hutson and that was a good friend of his. And Mr. Hutson had a horse farm in Tennessee and was a close friend of

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Page 25

his.
Q Okay. Did you check with anybody else on background for Mr. Hutson?
A Renee.
Q And what did Ms. Roark tell you about him?
A She's very protective of her client. She did not release his first name or initials. His last name was spelled with a D. And she had no concerns that he could not pull off a development of this magnitude or real estate transaction of this magnitude.
Q Okay. Anybody else you talked to?
A I tried to Google him.
Q And what did you find on Google?
A Nothing.
Q Did you convey this information to Mr. Clark about your background check on Mr. Hutson?
A After December 10th, I let Mr. Clark know that I was doing some investigating.
Q Did you tell Mr. Clark that Mr. Hutson was a legit businessman?
A I didn't.

Page 26

Q Did you tell Mr. Clark that Mr. Hutson was capable of closing on this transaction?
A I didn't.
Q Did you represent to Mr. Clark that you had done a background check on Mr. Hutson and that he was legitimate?
A No.
Q Did you do anything to convey to TLC that gave them the right to rely on your advice that Mr. Hutson was legit?
MR. JOHNSON: Objection to the form of that question.
A You'll have to repeat it.
Q Yeah. Let me try to ask a better one.
So to be clear, did you convey any information to these gentlemen down here that they could rely upon as a basis for, you know, Mr. Hutson is legitimate and this deal is going to go forward?
MR. JOHNSON: I object to that. I don't think she's in a position to testify what she could rely upon.
But you may answer.

Page 27

A I don't recall.
Q Were you under the expectation that they were going to rely upon your representations about Mr. Hutson?
A No, sir.
Q And I think you understand the -- and did they ask you to verify Mr. Hutson's legitimacy?
A No.
Q Did you at any time make any statements to them verifying Mr. Hutson's legitimacy?
A I told them that I had talked with his attorney.
Q Okay. And --
A And his attorney verified that he was his close friend and his client and had known him for a long time.
Q But you didn't pass on any like -- anything beyond what simply Mr. Tucker told you?
A I didn't know anything.
Q Okay. And it wasn't your role in this transaction to vet Mr. Hutson's credibility for TLC?

Page 28

MR. JOHNSON: I object to that -- to the form of that question. I think that calls for a legal conclusion as well.
A I don't know. I don't use the term "vet."
Q Okay. Did you think that your job was to do a background check on Mr. Hutson for TLC upon which they could rely?
A No.
Q Okay.
A Same as any other client.
Q Okay. I mean, you weren't doing like a background check for them for --
A No.
Q -- part of business due diligence?
A No, sir.
Q And they didn't ask you to do that either?
A No. Same as any other client.
Q Let me see if I can repeat the question that my partner over here has.
When you do residential transactions, do you typically ask people to bring IDs to the closing?

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

A Yes.
Q And why is that?
A The attorney requires it.
Q Okay. And am I right that -- well, were you involved in the closing of this transaction?
A No, sir.
Q And did you ever ask Mr. Hutson for his ID?
A No.
Q And, to your knowledge, did anyone else?
A I do not know.
Q Who closed this deal?
A I do not know. Mr. Tucker, I assume.
Q When did you first start to have suspicions about Mr. Hutson, if ever?
A After my meeting in North Carolina.
Q And what were your suspicions at that point?
A I wasn't sure that he had the investors to put the money up for this deal.
Q And were you also concerned by the fact that he asked for cash?

A Yes, sir.
Q Did you convey any of those concerns to the TLC folks?
A Yes, sir, after the -- after the incident.
Q How soon after?
A Within five days.
Q And what did you tell the people at TLC?
A I told Mr. Clark about my experience and that I was going to start to do some investigating to see if Mr. Hutson could indeed perform.
Q Are you talking about the cash, the fact that this guy had asked you for cash?
A Repeat the question.
Q Did you tell Mr. Clark that Mr. Hutson had asked to be paid in cash?
A I do not recall.
Q Okay. But, in any event, you never told TLC that, in your opinion, Mr. Hutson could perform the transaction?
A No, sir.
Q When did you first learn that the transaction had closed, the Big Water deal?

A December the 31st.
Q And how did you learn about it?
A Somewhere along that time frame we were presented with a commission agreement that Mr. Hutson brought by the office and that he had signed, and I don't recall if TLC had signed it or not at that point.
Q Okay. And did he bring you any money at that time?
A No.
Q Did you ever make any commission off this transaction?
A No.
Q Now, what happened after that -- like you learned about it. He brings you the commission agreement -- with regard to your involvement in that transaction?
A Within just a few days, I had asked him to please not do the research on the property in North Carolina, that we changed our minds and please don't put forth any effort to do that. If there's any way we could get our money back, we'd appreciate it.
Q And what did he say?
A He said, "I will give you your

money back by the end of January."
Q And did he?
A He gave it back to me February, the first week of February.
Q Did you have to follow up with him?
A Twice.
Q In your conversations with Mr. Hutson prior to the transaction going down, did he ever tell you what he planned to do with the property?
A When Mr. Hutson first contacted me, he had an interest in building condominiums.
Q Did he ever talk to you about him continuing to operate the club?
A I don't recall.
Q As a club member, were you concerned that he may be taking away the land for your club?
A There was 57 acres across the road undeveloped that could have been developed, and at that time the sewer was coming down the road. There was plenty of land there.
Q So you assumed he was talking about the other land?
A There were also two additional

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

undeveloped acres within the campground. There was plenty of land other than the campsites.

Q Okay. Did he ever talk to you about the club itself or ask you any questions during his due diligence process.

A He asked me about the lifetime members.

Q When was that?

A I don't recall.

Q Okay. And what did he ask you about?

A He wanted more information about the memberships and exactly their privileges and how it worked.

Q I know you may not know the exact day. This is one of those lawyer questions I have to ask as a follow-up. Approximately when was that? Was that before you got cut out of negotiations, or do you think that was closer to the closing?

A No. No. It was in November when he was planning his visit and doing his due diligence.

Q Did you send him any copies of like

a membership agreement?

A I don't recall.

Q Did you --

A I didn't have one.

Q Did you explain to him how the process worked?

A As best I could.

Q And did you tell him that the club was a private club?

A Yes, sir.

Q And did you tell him, you know, that the membership interests lasted a lifetime plus a kid's lifetime?

A I don't recall.

Q Okay. But certainly you conveyed to him information concerning the club and what was going on prior to the -- him buying it?

A Conveyed to him what -- Big Water Lake Club, LLC, was members.

Q In other words, he should not have been surprised that these club memberships lasted a lifetime?

A Correct.

Q Okay. And just to tie up loose

ends, I think you may have already said this, but prior to your talking to these gentlemen down here about buying the property and the club, had you ever worked with them on anything else?

And "these gentlemen," for transcript purposes, are Mr. Clark and Mr. Lovell.

A No.

Q What about any of their entities? Same answer probably.

A Mr. Thigpen or Mr. Clark or Mr. Lovell? Please clarify.

Q Okay. Well, let's take them one at a time.

Had you done some stuff with Mr. Thigpen?

A Mr. Thigpen was one of the largest developers in Clarendon County.

Q So self-explanatory, you had crossed paths with him?

A Yes, sir.

Q And had you served as his realtor on transactions?

A No, sir.

Q Okay. But some of your people bought land from some of his?

A Right.

Q How about Mr. Clark? Had you ever had any business dealings with him?

A No, sir.

Q Okay. Mr. Lovell?

A No, sir.

Q Okay. What does your husband do?

A My husband owns Arendsen Awning Company in Orangeburg, South Carolina.

Q Okay. Cool.

When did you first become concerned about receiving any money for your work in putting together the deal between Hutson and TLC/Big Water Resorts?

A About September of 2011.

Q And why did you become concerned at that time?

A Things weren't looking good.

Q In what way?

A Deferred maintenance on the park.

Q The park started running down?

A The park was running down, and there had been several promises that were

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

made that were not fulfilled.
Q What kind of promises?
A Paving the roads.
Q When you say "promises," Hutson was telling the members he was going to do it?
A Yes, sir.
Q And the roads didn't get paved?
A No, sir.
Q How frequent were you doing -- frequently were you going to the club during that 2011 time period?
A I went twice to camp.
Q And approximately when?
A In the summer.
Q And you could tell when you went out there that somebody wasn't taking care of the place?
A Correct.
Q Did you inquire as -- at that -- you know, in that September time period to anybody whether or how you were going to get paid?
A Renee was on top of that and says that she had called me and said that -- and possibly had e-mailed me about -- we did not

have privy to the contract. It was our understanding that we should have been paid by that December, or at least a portion of the commission.
Q And so then what happened?
A We didn't get paid.
Q And did you ever reach out to Mr. Lovell and Mr. Clark about getting paid?
A I don't recall. I don't know.
Q Okay. Did you ever reach out to Mr. Hutson about getting paid?
A Renee did.
Q Okay. And what did Renee tell you?
A Might get paid, might not.
Q And I think you've already said this, but you never had any contact with Mr. Hutson -- "Where's my money?" -- any direct communications?
A I don't think so.
Q Same answer with TLC and their principals?
A I don't recall contacting them about my commission.
Q Okay. At some point did you just write it off, decide that you weren't going

to get paid?
A We wrote it off January 1, 2012.
Q And why at that point had you given up ever getting paid?
A It was Renee's understanding that we were to be paid and the property should have been closed by that December. That year, at the end of that year, there should have been some sort of a transaction, some compensation.
Q Okay. Mr. Hutson mentioned on Monday something to the effect of that there was a hush-hush deal about the availability of the property. Does that sound right to you?
A The property was not on the market for sale.
Q But did anybody ever tell you not to tell people that there was negotiations of a potential purchase of that property and the club?
A Renee sent me an e-mail about the confidentiality of her client.
Q Okay. So, in other words, the party that wanted confidence on that

transaction was Mr. Hutson?
A Yes, sir.
Q Okay. And did your clients convey to you that they wished for it to be kept quiet?
A They never asked me for a confidentiality agreement.
Q Sooner or later, they never gave you any indications that this should be kept secret?
A No, sir.
Q Did Mr. Hutson ever indicate to you that he wanted to develop the property and get rid of the club?
A He never -- repeat the question.
Q Did Mr. Hutson ever indicate to you that he had an intention of getting rid of the private club that was --
A No, sir.
Q Okay. During Hutson's due diligence -- and I think you may have already said this, but did you relate to him any financial information concerning the club and its operations?
A I don't recall.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Page 41

Q Okay. Did at any point they show you the contracts on the potential deal between Hutson and TLC/Big Water?
A I recall a commission agreement that we were allowed to see, and at some point after the closing, we were given maybe an unsigned draft. I don't recall receiving a signed contract.
Q Okay. Did you ever talk to the principals of TLC in the 2011 period about, you know, whether this transaction was going down?
A Repeat that. I'm sorry.
Q Did you ever talk to the principals of TLC about whether the transaction was going down in 2011?
A '11?
Q Yes, ma'am.
A I don't recall.
Q The only conversations you recall is you and Ms. Roark were talking about, you know, the commissions and your expectation that something was going to happen by December?
A Right.

Page 42

Q Okay. Besides your lawyer, Mr. Johnson, who else have you talked to about this lawsuit?
A My husband and partners at Sandy Shores.
Q Anybody else?
A No, sir.
Q Have you spoken to any of the lawyers at Turner Padget about what you know about this case prior to today?
A I've had a conversation with Mr. Byrd.
Q Okay. When was that?
A He had a meeting at our campground office with TLC, somebody, I don't recall who.
Q And what did you-all talk about?
A General talk. I don't recall what we talked about.
Q When was that?
A This past winter. Sometime over the winter months.
Q And was Mr. Clark at that meeting?
A I'm sorry. Mr. Byrd was not at that meeting. Mr. Byrd's associate was at

Page 43

that meeting. It was not Mr. Byrd himself. It was an associate from his law firm.
Q Was it that guy that was here yesterday, Carlyle, like a young guy with brown hair?
A No, that's not his name.
Q Was it a guy named Rene?
A Rene or Josh or Josey or --
Q It was the guy Rene Josey. Okay.
A Okay.
Q And so who all was at that meeting?
A Mr. Clark, Mr. Lovell, Rene Josey, and two IRS gentlemen.
Q Oh, really? Okay. And why were the IRS guys there?
A I do not know. I wasn't in the meeting.
Q Oh, so they weren't with you when you -- you didn't talk to the IRS?
A No, sir.
Q And did they show you any documents?
A No, sir.
Q Okay. Have you ever talked to Mr. Byrd, the guy down at the end of the

Page 44

table, about this case?
A I don't recall.
Q You don't know if you ever talked to him about this case?
A I saw him at a party in Orangeburg, a Budweiser party. I don't recall talking about this case.
Q Okay. How about the other good-looking guy with the red and blue tie at the end?
A No, sir.
Q Never talked to him?
A No, sir.
Q Okay. And have you spoken to any other of TLC's lawyers about this case?
A No, sir.
Q Have you ever been asked to sign any documents related to this case?
A No, sir.
Q Now, you were at the deposition on Monday of Mr. Hutson?
A Yes, sir.
Q How did that come about that you were there?
A As a member of the park, I felt

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Page 45

like I had the right to be there.
Q Who invited you?
A I invited myself.
Q How did you know about it?
A Because of my deposition, I asked when was Mr. Hutson being deposed.
Q Okay. Who did you ask?
A Mr. Clark.
Q Okay. And were you paid for your time in coming on Monday?
A No, sir.
Q Okay. When you were at Mr. Hutson's deposition on Monday, was there anything that he said that you felt was inaccurate?
A Yes, sir.
Q Like what?
A The main thing that I distinctly remember was that he said he contacted me first and early on and that I was his realtor, and that was not true. I'm not his realtor. I was contacted by Renee Roark.
Q All right. If you don't mind, we'll take a quick break, get some coffee, and make sure this guy doesn't have any

Page 46

better questions than I've asked.
(A recess was taken.)
Q Ms. Stroman, do you know a guy named Roger Wilson?
A I know who he is.
Q And were you aware that he has sued TLC Holdings in 2009 related to a commission that wasn't paid to him?
A No, sir.
Q And just for the record, who is he?
A He was a contractor that worked with Mr. Thigpen.
Q Did he hold a real estate license?
A Not to my knowledge.
Q Besides you and your husband, is somebody else paying your lawyer to be here today?
A No, sir.
Q Has anybody offered to reimburse you for your legal expenses with Mr. Johnson?
A Sandy Shores.
Q And is Sandy Shores going to be reimbursed by anybody else for those expenses?
A No, sir.

Page 47

Q So nobody has offered to reimburse Sandy Shores for that expense?
A Not to my knowledge.
Q And you're a partner in Sandy Shores, LLC?
A Yes, sir.
Q Why was that entity set up?
A To form a group of members to manage our park.
Q And do you derive compensation from your role with Sandy Shores?
A Not as far as a salary. No salaries.
Q You don't get any draws or anything like that?
A We get -- we got some dividends at the end of the year and reimbursed some monies, personal money, that we put in.
Q How much were the dividends?
A I don't recall.
Q Is that a profitable venture?
A No, sir.
Q Do you have an expectation that one day it will be?
A I don't know.

Page 48

Q I believe you said you purchased your membership in the Big Water Resort Lake Club in 2008?
A Yes, sir.
Q And at that time, was -- you mentioned this earlier -- was it a private club?
A Yes, sir.
Q How much did you pay for your membership?
A Approximately $6,800. That's my husband and myself, not just me.
Q Okay. When did you first become aware that the club had been openly converted to the public?
A Repeat the question.
Q When did you first become aware that the club had been openly converted to the public?
A I didn't know it was openly converted.
Q Okay. Never?
A I'm not sure of that question.
Q Okay. Is it your understanding that Mr. Hutson started letting the public

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Page 49

into your private club?
A I'm not sure when the public came to the park.
Q Okay. When was it openly being advertised as, you know, the public could go to the park?
A I'm not sure.
Q Were you ever mad at Mr. Hutson for letting riffraff in, like people like me off the street into your private club?
A No, sir.
Q There was never any concerns that Mr. Hutson was letting people off the street into your private club?
A I was not concerned that the public could come into the park.
Q Okay. And Sandy Shores today allows people from the general public to access your park?
A Yes, sir, but members have privileges --
Q Okay.
A -- over the public.
Q And was the public allowed to access the park prior to Sandy Shores having

Page 50

a role out there?
A Yes, sir.
Q You may have already said this, but I'm going to ask it again so I don't get yelled at over here.
Do you know when the public started coming into the Big Water Resort?
A No, sir.
Q Are memberships currently being marketed?
A No, sir.
Q And why not?
A Sandy Shores wants no part of memberships.
Q What would be the fair market value for rent of, you know, 50-plus acres, part of which is on the waterfront, on that lake?
A I can't answer that question.
Q Do you think Sandy Shores is leasing that property for below fair market value?
A Due to the condition of the park, I think Sandy Shores' rent is fair.
Q And what do you mean by "the condition"? The fact that members have

Page 51

obligations, rights to it?
A No, sir. I'm talking about the condition of the buildings and the grounds.
Q Okay. When you purchased your membership at Big Water Resort, was it your expectation that it was going to be private?
A I didn't have an expectation as to where it was going.
Q Okay.
A Our friends were all members and asked us to join.
Q Okay.
A And we joined.
Q Have you tried to sell your membership interest at any point?
A No, sir.
Q Have you heard of anybody else selling their membership interest out there recently?
A No, sir.
Q How many park members do you know?
A We don't have any members. We try to honor former members so that they feel that they can come enjoy the park.
Q Okay. So is -- the club under

Page 52

which you were a member, is that disbanded?
A Mr. Hutson owns that club.
Q And why do you try to honor former members' membership rights?
A Well, a lot of people that paid to be a member to enjoy the privileges of that park, we enjoyed the park, we had a good time there, and we wanted our park back as members. We wanted to be able to enjoy the park again.
Q How did this -- you know, how did Sandy Shores end up leasing the property?
A Some of the members from Big Water were at a park we had started to go to at Myrtle Beach. It was a membership, public/private park. And we were at the park, had a conversation about how beautiful that park was, and that the members had all bought stock in that park and had taken over the park.
And some of the members there at this weekend outing asked me was there any chance that we could have a park this nice. And so they started talking about it and said we sure would like to try to have our park

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Page 53

back like this.
Q Okay. So then what happened next?
A Members got together and had an informal chat and wanted to see what was going on with the park, you know, what was going -- is Mr. Hutson going to be there or was there any chance that the park was going to get some maintenance done, was it going to ever look like our park again, should we continue as members. What should we do? Should we walk away? Should we continue to pay our maintenance fees?
Q What did you decide to do?
A We decided to contact Mr. Lovell and Mr. Clark and see if they would actually talk to us about what might be happening in the park and if this was ever a possibility to buy stock in the park, for the members to purchase stock in the park. And I got elected to make that phone call --
Q Okay.
A -- because I knew him --
Q Sure.
A -- and I had his number.
Q Uh-huh.

Page 54

A I made the phone call, and he said, "Not at this time, but if that ever comes about, I'll let you know."
Q Okay. And what happened next?
A Nothing.
Q All right. Well, how did Sandy Shores come to be, then?
A I got a phone call in March of the following year to say that possibly April the 1st the park might be available.
Q Who called you?
A Mr. Clark.
Q Okay. And that's April 1, 2014?
A Right.
Q And then what happened?
A Several of the members that were at this meeting packed up their RVs and went to the park, tried to keep the park open and keep the power on and get the park back in good shape.
Q You-all did that?
A There was no agreement in place.
Q You read my mind. And then how did the agreement end up coming to be?
A Someone had to take over the park.

Page 55

Q Okay. Who set up the LLC?
A An attorney.
Q What attorney?
A Coffey, Chandler & Kent.
Q All right. Who hired them?
A Mr. and Mrs. Joyce, my husband and I, Russell and William Berry, and David and Kay Peeka.
Q Okay. Mr. Joyce, that's the guy down there in the white shirt?
A Uh-huh.
Q And did you have conversations with Mr. Clark about how the deal was going to be structured before you set up the LLC, or did that happen after you-all got the thing in place?
A I don't recall. I don't recall. I don't remember. It was chaos. It was a park in terrible disrepair, and Memorial Day was coming. We were just working.
Q Who negotiated the deal?
A All of the group. Anybody who wanted to participate could have participated in this group.
Q So who did?

Page 56

A You have Rose and William Berry, David and Kay Peeka, myself and George, Jim and Linda Joyce. Seemed like there was -- there was one more couple. Jerry and Donna Lieper maybe, and they had to drop out. They had health problems.
Q Okay. And how did the negotiations go down? Did you-all exchange paperwork or did you-all get together for a face-to-face conference?
A Mr. Clark and Mr. Lovell came down to help keep the power on, pay a past-due power bill that nobody else had authority to. Mr. Clark and Mr. Lovell came down, and they kept the phones on.
Q Okay.
A They got a $21,000 power bill paid. They stepped in and took charge, and we started cleaning up.
Q Okay. Did Mr. Clark and Mr. Lovell tell you guys that they wanted to honor the club memberships?
A Yes, sir.
Q And then is there like draft paperwork or -- I'm just curious as to how

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Page 57

the negotiations went, if any.
A We wanted to put a group of members or all of the members together to buy stock in the park and couldn't do it.
Q Why not?
A Just wasn't -- wasn't possible to pull it together.
Q Did Mr. Clark and Mr. Lovell tell you that they had refused to take back over Big Water Resort, LLC, from Mr. Hutson?
A I didn't discuss it with them.
Q They just told you stock's not an option?
A They said Mr. Hutson had bought Big Water, LLC.
Q Okay.
A He owned it.
Q And they told you TLC owns the land?
A Oh, I knew TLC owned the land.
Q And then who proposed the lease deal?
A The members that were at the meeting.
Q And these gentlemen were receptive?

Page 58

A They weren't sure what they were going to do at that time.
Q Okay.
A It was a bit overwhelming.
Q How long after that meeting did you-all finalize the lease?
A Probably September.
Q Was there paperwork exchanged, like negotiating the price of the lease?
A Verbally.
Q Okay. Was there a realtor representing you?
A No, sir.
Q Did a lawyer participate in the closing of the lease?
A Yes, sir. A Sandy Shores, LLC, lawyer reviewed the lease with Mr. Harper.
Q And that's somebody that you-all had from Coffey?
A Uh-huh.
Q Did Mr. Harper prepare the lease?
A I don't recall who prepared it, Coffey or Harper prepared it.
Q Do you continue to pay your annual maintenance dues?

Page 59

A Yes, sir.
Q Why is that?
A Have all the enjoyment of the park again now. The park looks beautiful.
Q And who do they go to, the maintenance fees?
A They go to Sandy Shores. Palmetto Shores. I'm sorry. Palmetto Shores.
Q How does that work? You're saying Hutson owns the club. Did -- how did that transition of who got the maintenance fees go?
A We don't have members. We just try to honor the folks who were members that were active. And if they wanted to continue to enjoy the product at a reduced rate, along with a long list of privileges for members over our associates, they're not members anymore. They're not our members, but we honor their rights.
Q Okay. So did you-all reach out to that group and say, "Hey, listen. Pay us a maintenance fee and we'll give you some rights to the property"?

Page 60

A They pay their maintenance fees and they want to continue to use the park as they always have, they can use the park. The maintenance fees goes toward the pool upkeep, upkeep of the park, everything in general that's required by that park. And these folks get certain privileges. They get reservations in advance. They get a free boat ramp.
Q Yeah, I'm following you.
A They get free day privileges.
Q And I guess where I'm confused is you got Big Water Resort over here and you say that it's not honoring its memberships to the people. Is that fair?
A That's --
Q But Sandy Shores over here is a different entity?
A Palmetto Shores.
Q Palmetto Shores. Palmetto Shores doesn't have members, but they're helping them people out, right?
A Yes, sir.
Q And that -- Palmetto Shores is collecting the maintenance fees, something

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Page 61

similar to what Big Water Resort used to do?
A Yes, sir.
Q And I guess what I'm asking is, how did the money end up going to Palmetto Shores instead of Big Water Resort?
A Because all the money Palmetto takes in is going right back into that park.
Q And are you a principal of Palmetto Shores as well?
A Principal?
Q A member. Do you have an ownership interest?
A We don't have members.
Q Okay. What is Palmetto Shores now? Is it a legal entity?
A It's the name of the campground.
Q How did the people that used to be members over here know that they need to send the money over here to Palmetto Shores?
A They were walking in the door every day, hundreds. Anybody that was interested in was coming in the door.
Q So you just told them by word of mouth? They showed up and you'd say, "Hey, listen" --

Page 62

A I don't recall sending out a letter. I don't recall sending out a letter from our company. These folks were very distraught coming in the door.
Q And were they very distraught because Big Water Resort, LLC, breached its contract with the members?
A They were distraught because their park looked like a -- their park looked terrible.
Q And did you feel that Mr. Hutson, on behalf of Big Water Resort, LLC, fulfilled the obligations that were owed to the members of the club?
A I don't know. I didn't attend the park.
Q You said you did, though? You said it was run down.
A Well, I rode through the park, and over the years I looked at the park, but I wasn't a big player of what was going on at the park.
Q And it's your testimony that Mr. Hutson did everything right and fulfilled his obligations to the members as the owner

Page 63

of Big Water Resorts, LLC?
A No.
MR. JOHNSON: Objection.
A No.
Q Did Mr. Hutson not fulfill his obligations to the members of Big Water Resorts, LLC?
A I don't know.
Q Okay. Were you happy with his ownership of the club when he had it?
A No, sir.
Q And what did he do that you felt was in violation of your club agreement, if anything?
A He didn't take care of the park.
Q Okay. Anything else?
A He let all the staff go.
Q Anything else?
A I wouldn't swim in the pools. I wouldn't stay in the cabins. The visual appearance of the park was not good.
Q Anything else he did?
A Since I was not at the park, I don't know.
Q Okay. That's fair.

Page 64

Has anybody ever approached you as a realtor in that area with an interest in selling their membership?
A No, sir.
Q Is it your understanding there's an active market for these memberships out there now?
A I don't know.
Q I think you said earlier you're not aware of anybody trying to sell their memberships currently.
A No, sir.
Q As a realtor, do you believe that a private membership in a club that is now open to the public has a market?
A As a realtor?
Q Yes, somebody that, you know --
A I don't see where a realtor has anything to do with the private membership of the park.
Q Just somebody that has an idea of the fair market value?
A Repeat that question, please.
Q Sure. Is there a -- in your experience, professional experience, does a

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Page 65

private membership to a club that is now open to the public have a market?
A Yes, sir.
Q Okay. Any opinion as to value?
MR. JOHNSON: I object to that question. She's here as a fact witness. I don't know that she's competent to give an opinion on that.
Q You have no opinion?
A No, sir.
Q Do you think your club membership is still worth $6,400?
A Due to the economy, I'm not sure what the value of the membership is at this time.
Q Ms. Stroman, I'm going turn you over to Mr. Hutson as he may have some questions for you. I really appreciate your time, though.
A Okay.
EXAMINATION
BY MR. HUTSON:
Q I've always called you Susan Yeomans. Is that the last name, Yeomans?

Page 66

A No.
Q Can you pronounce it?
A Stroman.
Q Stroman. Okay.
Back in December 2010, you testified that you and I had some conversations about the Big Water Resort.
A Yes, sir.
Q Do you remember the formula that you gave me, based on the fact that you knew that I wanted to develop the park, as to how few campsites that you indicated that could exist without creating perhaps a lawsuit?
A I do not recall giving you a formula or of -- for a certain number of campsites --
Q And you're under oath and you --
A -- do not recall giving you a formula.
Q You had no formula?
A No, sir. I don't recall one.
Q You don't remember using the term of 15 --
A No, sir.
Q -- campsites?

Page 67

A No, sir. No.
Q In your mind and your understanding that I wanted to develop the campground, knowing full well there was no sewer across the road on the 50 acres that you referred to earlier, how would you envision me developing the campground for condominiums to be sold to the public, yet honoring the memberships as you so well knew that were in existence? And those memberships were for approximately 60 years.
A I know nothing of 60 years.
Q Have you ever seen any of the memberships?
A I have a membership.
Q Does your membership give you life plus life?
A No.
Q Had you ever heard or seen anyone that had a membership that offered life plus an additional life, which would estimate around 60 years, less the time that the park was opened?
A I've heard of lifetime memberships and deluxe memberships.

Page 68

Q And what was the difference, ma'am, in the life membership and the deluxe membership?
A Mine is a life membership.
Q What is the difference?
A I do not know.
Q Was it that a -- one membership allowed a member to sell their membership?
MR. JOHNSON: Objection. She said she didn't know.
Q Have you ever spoke with anybody that had either membership?
A Yes, sir. Yes, sir.
Q So you're still unable to answer that question that I asked a moment ago?
A You can sell a membership and pay a transaction --
MR. JOHNSON: Hold on. I'm not sure -- which question are you referring to?
Q Can you, in your opinion, sell the membership that you have?
A Yes, sir.
Q And what are the terms of that sale?

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Page 69

A As I recall, you pay a membership transfer fee to BWR.
Q Is that the only requirement?
A To the best of my knowledge.
Q So if you met somebody that had a desire to buy your membership and you wanted to sell it, as long as you and this individual agreed on a price, you could sell it?
MR. JOHNSON: I object. That calls for speculation, and she's not here for that.
MR. HUTSON: Not only is she a member, but she's a realtor and she's got a lot of experience, or should have, in transfers of real estate and property.
Q Are you unable to answer that question?
MR. JOHNSON: I object to the form based on the fact that it called for speculation.
A Rephrase.
Q Ma'am, you knew -- is it fair -- is it true that you were aware that a contract had been entered into and signed by TLC and

Page 70

myself?
A Yes.
Q And about what time do you remember that happening?
A December 31st of 2010.
Q All right. At that time, isn't it true that TLC signed an agreement with you for $350,000 commission to you and Renee in writing, signed?
A There was a commission agreement that was brought by my office, and I believe you brought it back. And there was a commission to be paid, but I do not remember the amount.
Q All right. Let me ask the question again.
At the time that you had a commission contract for $350,000, who signed that contract with you? Was it TLC, Richard Clark, and yourself?
A No, sir.
Q So you're testifying that there was never a signed contract between yourself and TLC for $350,000?
A I don't recall one.

Page 71

Q Wouldn't you normally keep a contract like that if you had entered into a commission for $350,000?
A I do not recall signing a contract with TLC.
Q Do you recall a verbal agreement that TLC would pay you $350,000?
A I recall a verbal contract that the commission would be 5 percent of the sales price.
Q And that -- that verbal was between you and TLC?
A Yes, sir.
Q And was that prior to the closing or was that after the closing?
A At closing.
MR. JOHNSON: Excuse me. Was -- restate your question. I think there was an issue about what happened prior or after closing.
Q The question basically was, was there a verbal agreement of $350,000, if it weren't in writing, that you had with TLC as commission to be shared with yourself, your company, and Renee?

Page 72

A I don't recall the number.
Q So $350,000 doesn't sound like an accurate number?
A I was thinking it was 300.
Q But the agreement, is it true that TLC had agreed to pay you that money?
A They agreed to pay 5 percent of the sales price at the closing of the property.
Q Okay. Now, let me ask you, you are a realtor, a trained person in property. You've got some knowledge about developments. I'm sure that you have sold lots or homes and lots that developers had in subdivisions during the time that you've been a realtor.
How is it if -- and you were aware, is this true, that the club at the time that I purchased it had approximately 700 members or more?
I'll ask that question first. The amount of members that you had indicated to me when I bought the property was about how many?
A I don't recall.
Q Do you recall that maybe it was 50 members? 100? 1,000?

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

A I recall closer to 600.
Q 600?
A (Nods head.)
Q Okay. So your agreement of the commission was with TLC and yourself. And isn't it uncommon to have a verbal commitment for a commission and it not be in writing by a real estate company regarding a sale of $350,000 or 300,000?
A We didn't have a listing on the property.
Q I know. But you -- you anticipated a commission based on your work as a real estate agent, and apparently you and Renee looked to -- tell me if I'm wrong -- to TLC to pay the commission, and they apparently agreed to pay you 300,000 or 350,000. And isn't it strange that you don't have a written agreement with them on a real estate commission?
A Once that contract went private, we lost control.
Q Did you -- have you ever entered into or made a sale on a piece of property and never bothered to get something in

writing as to your commission when you were actively involved in making that sale?
A Repeat the question.
Q Prior to 2000, December 10, have you ever been involved in a real estate transaction whereby you instigated a sale but didn't bother to have anything in writing as to what you were to be paid as a realtor?
A Repeat that question again.
Q Can you remember at any time as long as you have been a realtor, prior to the end of 2010, did you ever instigate and work and make a sale happen without having a written commission agreement?
A I don't recall.
Q So you don't recall if you've ever -- do you ever recall having a written agreement on a sale on a piece of property? Not talking about Big Water Resort.
A No, sir.
Q So is that something that you occasionally happened to think about that you want to get in writing or is that a requirement? Is that like protocol?
A A commission is a negotiable -- is

always negotiable.
Q I understand what "negotiable" means, but isn't it true that any and all realtors always get a written commitment as to what they're going to be paid from the sale of a closing that they instigated?
A No.
MR. JOHNSON: I certainly object to that. She can't testify as to what any and all realtors do.
Q Do you consider it strange or unusual -- or better than that. Have you ever, since you've been a realtor, been involved in a real estate transaction that closed whereby you were denied a copy of the contract?
A This is the first one.
Q Did you find that somewhat strange?
A Yes, sir.
Q Do you remember discussing that with me, that you had concerns about not seeing the contract?
A I discussed it with my broker.
Q Do you remember talking to me about it as well?

A No, sir.
Q Does protocol require, as a realtor or a broker, that you be required to have a copy of the contract?
MR. JOHNSON: Object to that question, the form of it based on "protocol."
Q During the business transaction of a real estate deal, as a realtor or a broker, doesn't your broker require something in writing about your commission as well as a copy of the signed executed contract of a purchase agreement?
A In my office we don't concentrate on commissions. We concentrate on getting the job done.
Q So are you implying that whether it's 5 percent or 6, 8 percent or 1 percent, it doesn't matter?
A That's correct.
Q Really?
A Yes, sir.
Q So your testimony is, as a realtor, you really don't care about if you get a commission or if you don't or what the amount is?

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

MR. JOHNSON: Objection to the form, but you can answer.

Q Isn't that what you just testified to?

A We do not focus on commissions is what I testified to.

Q Have you ever known of a professional company that never focused on what they were going to get paid? Have you ever --

A As a realtor, I do not focus on the amount of the commission.

Q Well, ma'am, let me ask you, why is it that once the property was closed and you had made it a point to have a conversation with TLC in reference to your real estate commission -- and you testified that you had an agreement with them, TLC, for the payment of a commission at closing; is that correct?

A At the closing of a sale, not the closing of a lease.

Q I understand, the closing of a sale.

And in your mind, are you testifying -- a few minutes ago you used the

word "partial commission." Did that indicate that perhaps "partial" meant that portions of the property would be closed at a time whereby you would get a portion of your commission?

A Yes, possibly.

Q All right. So let me ask you, ma'am, at what point in time did you have that understanding?

A It was my understanding that if any of the property was actually sold and closed, that we would be paid commission on that parcel.

Q All right. At the time that I entered into -- with your help and Renee's help, at the time that I entered into the contract to purchase the property, weren't you aware that there was a defective title on the property, a lien held by a bank which was in litigation between TLC and the bank and it had bad title?

MR. JOHNSON: Objection to the form of that. I think it calls for facts not in evidence.

Q Were you aware that there was a

lien on the property, ma'am?

A I was aware that you were leasing the property, not purchasing it.

Q Well, let me ask you how that would work. If I had an option to purchase at any time portions or all of the property, wouldn't a defective title, bad title, prevent me from purchasing?

MR. JOHNSON: Objection to the form of that.

THE WITNESS: Can I answer that?

MR. JOHNSON: You may.

A If there was a lien on the property and the seller paid the lien, you could close on the property.

Q Ma'am, how long was the lien on the property after I bought the property?

A I do not -- I never knew --

Q You have no idea?

A -- you bought the property.

Q After I had a right to buy the property under a lease purchase agreement, would you have any idea about how long that defective title stayed in place?

A I knew nothing of a defective title.

Q Well, if the bank had a lien on the property and there was litigation in court and I couldn't get clear title to the property, as a realtor, you should know that I would not be able to close the property. Would that be a fair statement?

A No.

Q So how do you envision a buyer closing a piece of property if it's got defective title?

A A lien on a property is not a defective title.

Q Can you get clear title with a lien on the property, of any property?

A Yes, sir.

Q And how is that to be done?

MR. JOHNSON: Objection. Again, she is a fact witness here, and that is calling for opinion and expert testimony she's -- she's not in a position to give.

MR. HUTSON: But she is a realtor. And she's just indicated she knows how, and I'm asking her how.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Page 81

MR. JOHNSON: You may answer if you can.
A If you purchase a piece of property that has a lien on it and the seller pays that lien off at the closing table, you have -- you can close on the property.
Q What if I were to tell you the lien stayed on the property for a year and a half after December 10th -- around the month of -- the day around the 16th of -- December 10th? Could I close any portion of the property if it had a lien on it for a year and a half?
A If the bank released the mortgage.
Q But what if the bank wouldn't release it?
A That's not for me to say.
Q Ma'am, I'm asking that again. What if the bank wouldn't release it and the lien was in place? Could I get clear title to the property?
You're a professional realtor. You understand the question.
A I don't know the circumstances with the bank and the lien.
Q But you understand what a lien is?

Page 82

A True.
Q So with a lien on the property for a year and a half, can you anticipate any way, without the bank agreeing to release portions, how as -- how I as a buyer could close any portion of the property?
MR. JOHNSON: Mr. Hutson, you've asked that three times.
MR. HUTSON: She's not answered it.
MR. JOHNSON: She has said that she does not know the circumstances. Therefore, she's unable to answer it. So I'm going to ask you that you move on.
MR. HUTSON: I've outlined to her the time frame that the lien was in place, and I'm saying to her that it was approximately -- or let's assume that it was a year and a half after I had signed the lease purchase which provided me the right to close at any given time. How could I close, as a professional realtor, with a lien on the property?
MR. JOHNSON: Again, she answered that she was not aware of the

Page 83

circumstances and therefore she could not give you an answer on that.
Q So did you testify just a moment ago that you were aware that there was a lien on the property at the time that I was negotiating it?
A I did not testify to that.
Q Were you aware of a lien on the property at any time?
A I didn't investigate the title of the property.
Q So you didn't know if I had good title or not? That was not your concern?
A That was not my job.
Q Okay. So tell me, how is it that you started out with a verbal agreement of $300,000 and, according to your testimony, you never got a written contract for your commissions, why is it that a month later I signed an agreement with you to pay you $300,000 and you signed it as well and Renee signed it as well? Why did you require me to sign when you didn't require TLC to sign?
A I was not a party to what you-all did on that contract in --

Page 84

Q But you were --
A -- in Tennessee.
Q Ma'am, you were a party of negotiating and instigating the sale of the Big Water Resort, were you not?
A Yes, sir.
Q But, again, you never worried about your real estate commission? You just trusted TLC that they were going to pay you $300,000 or 350,000 once --
A When you entered into investigating this property, this was to be a real estate cash sale. When it turned into a lease, we never know if we'll ever get paid.
Q Were you contacted by TLC at any given time letting you know that the property was under a lease option to purchase?
A We were not privy to that contract, but we heard that you-all had signed paperwork in Tennessee in December, and after that date, you came by the office with a commission agreement and said that you-all had renegotiated some commission and that you would be paying it as you closed on the property or if and when you closed on the

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

property.
Q Do you ever remember telling me that TLC had broke their commitment to pay you and they reduced the amount that they wanted to pay to the tune of $50,000?
A I recall you telling Renee that you would be paying the commission.
Q But you don't remember you telling me that TLC had broken their commitment to you and they reduced the amount of money that they were going to pay you?
A I recall you telling us that.
Q So Richard Clark never told you anything like that, ma'am?
A You told us that.
Q So let me get this right, if I may. You're testifying that I come to you and told you that Richard Clark, who you had agreed with -- had an agreement for a commission, so I told you they -- that they weren't going to pay you? Is that what you're testifying?
A I -- no, that's not what I'm testifying.
Q What are you --
A I testified that you came by the

office with a commission agreement to pay Renee and myself and Kim Matthews, who's also a part of this, and you signed it and I signed it and Renee signed it. Now, whether you were to be reimbursed at closing, I don't know.
Q Ma'am, if I leased the property with the exclusive option to purchase it, wasn't it your understanding from me, as you have earlier testified, that I wanted to develop the property for condominiums?
A Yes, sir.
Q And where did you discuss with me -- what portion of the property did you talk with me about developing?
A There are approximately two acres that were undeveloped within the 37 acres of the campground and 57 acres across the street. The sewer was coming down the highway, going to a new condominium project, and so it was on the highway. And the -- as the condominiums were developed in 2000 -- I don't remember the year they were developed, but sewer was on the road.
Q But, ma'am, in 2010, the month of

December, there was a moratorium on the sewer.
Now I'm just -- for the record, my question is --
MR. BYRD: Object to the form of the question.
Q -- at any time, did you have conversations with any of the TLC members regarding trying to acquire -- them trying to acquire city water and sewer?
A In my opinion, they didn't need city water and sewer.
Q Now, back when you were negotiating buying the campground yourself, you and your husband, did you ever look into whether or not you had ample sewer capabilities there at Big Water --
A Yes.
Q -- on the septic tanks?
A Yes.
Q And you were convinced that you had that?
A We had approximately 119 sites with sewer -- septic availability for 125 sites.
Q Can you describe to me the contents

of the agreement? And let's just assume that it was a verbal agreement on the sale of the property between you and your husband and TLC.
MR. JOHNSON: I object to the form of that. Her testimony was there was never an agreement.
MR. HUTSON: She stated earlier that she had negotiated the property and decided not to do it. Chickened out. Quote, chickened out.
MR. BYRD: Object to the form of the question.
Q Do you remember using that phrase a few minutes ago --
A No.
Q -- to Mr. Thomas?
A No.
Q Do you remember ever telling me that you had negotiated buying the campground but you couldn't come up with the $500,000 that they wanted down?
A Yes.
Q At the time that you wanted to buy the campground, would it be fair to say that

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

you did a due diligence to try to see if the campground was making any money or losing any before you verbally attempted to enter into a contract?
A Yes.
Q And what was your findings?
A My findings were that the members pay their maintenance fees the first part of the year and that you had to make it on those maintenance fees to the end of the year.
Q So at any time during that period of due diligence, if you will, did you ever have the opportunity to understand what it really costs to operate the campground?
A I had an idea.
Q And how much was that, approximately, ma'am, including all the bills, salaries, electrical, repairs, upkeep?
A At that time, I recollect it being about 21,000 a month to operate the campground.
Q 21,000 a month?
A Right.
Q So let's see if I've got this figured right. That includes an electric

bill, which normally ran around 9- to $15,000 a month. How were you going to pay employees and maintain the campground on perhaps 5- or $6,000 a month, plus make a profit?
A I wasn't.
Q So you were anticipating buying the campground knowing that you weren't going to make a profit?
A I didn't do the deal.
Q Is that the reason why you didn't do the deal, because it was not profitable, in your opinion? Is that why you chickened out?
MR. BYRD: Object to the form of the question.
MR. JOHNSON: Object to the form of the question.
Q Did you back out because you had a dislike for Mr. Clark or TLC?
MR. BYRD: Object to the form of the question.
Q That's a fair question, ma'am.
MR. BYRD: The objection stands.
MR. HUTSON: I believe that

she's obligated to answer the question.
MR. BYRD: The objection stands.
MR. JOHNSON: Would you restate the question you believe is on the table?
MR. HUTSON: Sure.
Q The reason that you so-called chicken out --
MR. BYRD: Object to the form of the question.
Q -- backed out, was it because you reached the conclusion that the campground was a losing proposition? Would that be the reason that you backed out?
A I've never used the term "chickened out."
MR. BYRD: Excuse me just a minute. Can we take a short break here? We're out of coffee, and I've asked the folks to help us here.
(Off-the-record discussion.)
Q Ma'am, did you -- prior to my purchasing the lease option and the memberships, were you ever aware that TLC had

attempted to sell the property to any other entity --
MR. BYRD: Objection to the form of the question.
Q -- the Big Water Resort?
THE WITNESS: Do I answer that question?
MR. JOHNSON: The question has been objected to.
MR. HUTSON: It's a fair question.
MR. JOHNSON: Restate your question, then, so she can understand it.
Q Prior to December 2010, were you aware, any time prior to that time, of a potential sale or buyer or of the fact that TLC was desperately trying to sell the property?
MR. BYRD: Object to the form of the question.
A No.
Q You were not?
A No.
Q Can you explain to me the lease agreement that you have with TLC at the

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

present time on the campground?
A I don't personally have a lease agreement with TLC.
Q So you have nothing in writing with respect to operating the campground?
A I'm a member of an LLC.
Q Does the LLC have an agreement with TLC?
A I do not believe the agreement is with TLC because there is no -- I don't know who the agreement is with.
Q So as a professional realtor and an investor in Big Water, in the new campground under the name that you -- Sandy Shores, I guess, you don't have anything, to your knowledge, in writing, whether it's by the LLC or by the company name, with TLC? You don't know anything about any terms or rights or conditions or what you're supposed to pay TLC, ma'am?
A I don't work in the office.
Q So your testimony is you don't have any knowledge as to what the company that you are a member and a stock owner in, you have no idea what you are obligated to TLC for?

MR. BYRD: Object to the form of the question.
Q Ma'am, who writes the checks at your campground?
A Our bookkeeper.
Q Do you have a lease with TLC regarding that campground?
A Sandy Shores, LLC, has a lease with an LLC, and I'm not sure who the LLC is.
Q Have you ever seen that document?
A Yes, sir.
Q So back to my earlier question. What are the terms of that agreement?
A It's stated in the agreement.
Q So if you've seen it and read it, does your memory fail you on any -- on any terms regarding that agreement?
A It's all stated in the agreement.
Q Ma'am, you're a licensed realtor. And you're testifying that you've seen the agreement but you don't know anything about an agreement that you have with an operation that you're involved with?
MR. BYRD: Object to the form of the question.

MR. JOHNSON: That's not her testimony. Her testimony is that the terms are in the lease agreement and you should look there for any explanation.
Q Ma'am, during the time that you took over the campground, has TLC subsidized or advanced monies to you to help operate the campground?
MR. BYRD: Object to the form of the question.
MR. HUTSON: That's a pretty simple question.
MR. BYRD: The form is incorrect, however.
Q Ma'am, during the time that you've operated the campground, has TLC advanced any monies?
MR. JOHNSON: I also object to the form of the question.
Q Ma'am, have you received any money from TLC since you acquired the campground?
MR. JOHNSON: Same objection.
MR. BYRD: Object to the form of the question.
Now, Mr. Hutson, I know you're

pro se. Let me just say what the problem is.
MR. HUTSON: Yes, sir.
MR. BYRD: She has testified she has not entered into any agreement, and she has also testified that it is an agreement with an LLC. And, more importantly, Mr. Hutson, you have a copy of that lease agreement which has been produced in this litigation. So structure your sentences consistent with what you understand the facts are and we can move along. That's the only thing that we have a problem with.
MR. HUTSON: I understand. Unfortunately, I don't have a copy of that lease agreement.
MR. BYRD: Well, it's been produced to you, Mr. Hutson.
Q Ma'am, you used the expressional terms earlier that you wanted to take -- you and the members wanted to "take back the park."
Do you remember saying that?
A We wanted to enjoy the park again.
Q You wanted to take it back. You wanted to get it back, the members did?

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

A We wanted our park to look like it did when we joined.
Q The members?
A The members.
Q The members?
At this point in time, how many nonmembers do you have in that campground? What would be the percentage?
MR. JOHNSON: Objection. And it's the same objection. You're referring it to -- you're referring to her as "you." She has testified, again, she does not operate the campground.
Q So, ma'am, what is your job at the campground?
A I make sure the cabins are ready. I don't have a job at the campground.
Q Do you get a paycheck?
A No, sir.
Q Are you aware of any advancement -- advancements of monies since you've been there of which you were able to have some of that money during the time that you've operated or the LLC has operated the campground?

A I don't understand the question.
Q Since the time that you have been there at the campground operating it, working there at the campground, are you aware of any money -- since you don't get paid -- have you ever been paid? Have you ever been compensated for what, almost a year of work?
A No, sir.
Q Nor has your husband?
A No, sir.
Q The members that you referred to that you're honoring or the company is honoring, do you remember testifying to that a few minutes ago?
A Yes.
Q Have you, or anybody that you're aware of, bothered to check the contracts to see if, in fact, the contracts give one life plus a lifetime membership?
MR. JOHNSON: I'd object to the form of that question. She can testify as to what she's done. She can't testify as to what others may have done.
You may answer.
A I don't -- I don't have any part of

the daily workings of that campground. I work a full-time job, and so does my husband.
Q What is your full-time job?
A I work as a realtor.
Q How many hours a day would you estimate that you're at the campground?
A Three.
Q Did you have a real estate office in the front office?
A I have a personal office.
Q Where is that located?
A In the administration building.
Q So you operate a real estate company inside the campground?
A No, sir.
MR. JOHNSON: Objection.
A No.
Q So where is this office?
A I don't understand the question.
Q The question is, where is the office that you operate your real estate company that you just mentioned?
A Isle of Palms.
Q It's not on the property of Big Water Resort --

A No.
Q -- or the new campground name?
So do you have a copy of an agreement that you and I entered into it, and Renee, about real estate commissions?
A I remember a commission agreement that you brought to Renee and I, as I stated before, and you signed it. I signed it. Renee signed it.
Q And when do you think that was signed?
A In the spring of 2011.
Q Could you give me an approximate month?
A No.
(Exhibit No. 145 was marked for identification.)
MR. JOHNSON: You're going to question her about that?
MR. HUTSON: Yes. I'd like her to review that.
MR. JOHNSON: Since it hasn't been produced to her, I'd -- I'm allowed to talk to her before you question her.
(A recess was taken.)

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Q I'll wait for her to take a look at that first page.
A Yes, sir.
Q And, ma'am, could you read that?
A "In reference to the sales contract dated December 15th, 2010, between M.B. Hudson" -- with a D -- "and Big Water Resort, LLC, and TLC Holdings, LLC, for the purchase of tax map number" --
MR. BYRD: This lady is trying to take down what you say. Could you slow down just a little bit?
A -- "for the purchase of tax map number 035-05-00-001-00, 035-06-02-007-00, 035-06-02-005-00 and access strip tax map number 035-06-02-008-00, address 5215 Dingle Pond Road, Summerton, South Carolina, I95 at Exit 102. Commission due to the realtors is $300,000, one-half due to Re/Max by the Lake, Manning, South Carolina, and one-half due to AgentOwned Realty, Santee, South Carolina. 25 percent referral fee is due to Kim Matthews and to be paid by 50/50 split by RE/MAX by the Lake and AgentOwned Realty. All real estate commissions paid in advance

by the buyer, M.B. Hudson, to realtors will be reimbursed to Mr. Hudson at final closing of the property by the sellers, TLC Holdings, LLC, and Big Water Resort, LLC, by assignment, signed," buyer, nothing. Seller, looks like Mr. Hudson's signature under "Seller." Realtors, Renee Roark, realtor, Re/Max by the Lake; Susan Stroman, AgentOwned Realty; and witnessed by Angela Williams.
Q All right. Thank you, ma'am.
And that contract was in reference to a sale for Big Water Resort, LLC; is that correct?
A All of those purchases of all of those tax map numbers from Big Water Resort, LLC, and TLC Holdings, LLC.
Q Okay. Ma'am, when I was removed from the property, that contract was still in force, was it not? Or did you -- did you write a termination letter on that contract?
A I never had a contract.
Q Excuse me?
A Excuse me?
Q Aren't you looking at it?
A This is an addendum. There's no

contract here.
Q Are there signatures on that?
A There is no date on this addendum.
Q It doesn't read December 15th at the very top?
A That's -- it says, "In reference to the sales contract dated December 15th, 2010." I was not privy to that contract and it's not here.
Q Ma'am, your signature is on that contract, is it not?
A This is an addendum --
Q I understand what an addendum is.
A -- for the commission.
Q Okay. But that's what I'm talking about.
A I don't understand the question.
Q Okay. So the question is -- I'll repeat it.
Is that contract which reads "Addendum," which you know what that means, isn't that a part of a contract? The addendum is a revised change in something regarding the contract. Isn't that normal use for an addendum?

MR. BYRD: Object to the form of the question.
Q Why -- ma'am, why did you sign that addendum?
A This addendum was brought to my office and is superseded by another commission agreement that I have in my file that was brought when the contract was signed on December the 31st. There's another commission agreement that supersedes this addendum.
Q Between myself and you?
A And Re/Max by the Lake and AgentOwned Realty. Not me.
Q Well, you signed as your company, did you not?
A I signed as Susan M. Stroman, AgentOwned Realty.
Q And was that not your company?
A I was a partner in that company.
Q Who owned it?
A Liz Loadholt.
Q Was she the broker?
A Yes, sir.
Q But you have a right to sign the

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Page 105

contract, did you not?
A This is an addendum about commission. This is not a contract.
Q Did you have a right to sign the addendum regarding the commission that you were to be paid?
A Yes, sir.
Q All right. My question, then, is, at what point in time do you think that that contract expired, that addendum expired?
A That date is on that contract.
Q Excuse me?
A Whatever date that contract expired this addendum expired. But this addendum was superseded by another addendum.
Q You mentioned earlier that you took in and you-all continued to take in members?
MR. JOHNSON: Objection to the form of that. I don't recall testimony to that effect.
MR. HUTSON: Ms. Stroman stated earlier that they do accommodate members.
Q Are those members -- are you referring to them as members? Were they, in

Page 106

fact, or are they still actually Big Water Resort members, or did you enter into a new agreement with them under the new name of the company?
MR. JOHNSON: Objection. That question has been asked and answered.
MR. HUTSON: I don't remember an answer at all to that question. This is the first time I've asked it.
MR. JOHNSON: It was asked in direct testimony.
To move things along, you may answer again.
THE WITNESS: Sandy Shores, LLC, has entered into no agreement with these members of Big Water.
Q Okay. So, in other words, the members that still come there and you honor their memberships under the name of Big Water Resort because their memberships apparently are still with Big Water Resort; is that correct?
A They're not with Palmetto Shores.
Q Well, ma'am, who else could it be with?

Page 107

A I cannot answer that. They have no membership agreement with Palmetto Shores.
Q So when someone calls for a reservation and they say they're a member, how does the company figure out if they're to give them a discount because they were a member?
MR. BYRD: Object to the form of the question.
Q Because you stated earlier that you give a discount to members, give them a special rate.
A Members.
Q Those were Big Water Resort members, were they not?
A Yes, sir.
Q Approximately what amount of discount do they get? Can you explain approximately how much they are charged when they come to visit or to camp?
A I don't work in the office, but I can tell you that the public pays approximately $46 a night, including tax, and a member pays $23 a night and is given one free night a month.

Page 108

Q Now, that's for a camper?
A Right.
Q And what about the cabins?
A A member pays considerably less for a cabin also.
Q Ma'am, have you ever contacted a company that builds campers and buses, if you will, which are campers similar to what you own and found out how many watts in 24 hours that that unit would burn?
A No, sir.
Q Wouldn't it be a good thing to do in order to know that perhaps the electricity is costing more than what you're charging to rent to the member?
A Not my job.
Q So who actually runs the campground? Who is the spokesperson? Who is the decision-maker at the campground?
A The decisions at the campground are made by all of the LLC members in weekly meetings.
Q So you're part of the decision-making?
A In a weekly meeting.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Q So the group has never had a discussion about how much does a large camper cost for one night, meaning 24 hours?
A No, sir.
Q Ma'am, does DHEC come out and inspect the pools?
A Yes, sir.
Q And how often would you estimate that they come out?
A DHEC doesn't announce when they're coming. They have come once a month, once every two months, but they come.
Q Okay. Are you aware that while I operated the campground, the pools were open and DHEC inspected them as well and approved them?
A I would assume.
Q Did you earlier, because I'm not sure that I heard you right, did you use the word Billy Coffey in a conversation or a -- while you were testifying earlier today?
A I used the word "Coffey" as in law firm.
Q So would that be perhaps Billy Coffey?

A No, sir.
Q Would you think that that law firm has a conflict of interest with TLC?
A The law firm handles real estate for me and several of the other members.
Q Are you aware that TLC sued Billy Coffey's law firm?
MR. BYRD: Object to the form of the question.
A No.
Q Are you aware that it was in the newspapers?
A No.
Q You worked with an employee by the name of Ernestine for a while, did you not? Or did the company work a black lady by the name of Ernestine?
A For one week. And I don't recall anybody hiring Ernestine. She was there when we went in.
Q Who paid for the calls for installing the rocks on the roads since the campground has been in operation by your group?
THE WITNESS: Can I answer that

question?
MR. JOHNSON: If you know.
A Sandy Shores, LLC, Palmetto Shores RV Resort paid for all improvements in that park.
Q So you are aware of that?
And how much did they spend to put that rock in?
A I do not keep the books and I do not pay the bills.
Q But you're a part of the weekly group meeting that makes the decisions?
A I was not part of that decision.
Q Okay. Is it possible that TLC paid for that?
A No, sir.
Q Now, back to my question about the real estate addendum. Could it be, in your mind, construed that that agreement is still in effect since Big Water Resort, LLC, still exists?
A Mr. Hutson, in my mind, that contract expired on January 1 of 2012. We got no commission. We threw it in the trashcan and we moved on with our lives,

never to see a commission or a contract or any part of the contract expire. It was over.
Q So, ma'am, let me ask you, as a professional realtor, when a contract expires due to certain situations, isn't the realtor required to give a notice to the buyer that the contract has expired?
MR. JOHNSON: Mr. Hutson, it's impossible for her to answer that question. I object to the form of it.
Q Let me ask it another way. How many times -- since you've been doing business as a realtor and you had a listing agreement and the contract went into default, have you ever given or do you always give a written notice to that potential buyer?
MR. JOHNSON: I've got to object to the form of that, Mr. Hutson. There's too many questions in there. Please restate.
MR. HUTSON: I will.
Q As a professional realtor, in dealing with hundreds -- I'm assuming hundreds of properties in your lifetime, do

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Page 113

you remember ever if a contract did not close, that your company, the real estate company, never bothered to give anything in writing to the buyer that he was in default and the contract had terminated?

A My real estate company did not represent the buyer.

Q Are you talking about Big Water Resort?

A In this particular instance, my real estate company had no reason to contact the buyer.

Q Well, in this addendum agreement here, the agreement is between you and I?

MR. JOHNSON: Object to the form of that question.

Q Is it not? I mean, my name is on it and your name is on it.

A And Re/Max by the Lake is on it and AgentOwned Realty is on it.

Q Right. So -- so I'll ask the question a little more straight.

Did you ever give notice that the contract had expired and that the agreement was terminated? Did you ever give it in

Page 114

writing?

A I never saw the contract. For the fourth time, I never saw the contract.

Q So your testimony is that you've never -- up until today, you've never seen the lease purchase agreement?

MR. JOHNSON: Objection to the form. That's not her testimony.

Q Let me ask you a question. Have you ever seen the lease option purchase agreement signed between myself and TLC?

A To the best of my knowledge, I never saw it. I saw a commission agreement that supersedes this commission agreement.

Q Ma'am, you don't remember me ever giving you -- you a copy of that contract?

A No, sir. You brought us a commission agreement.

Q I think I'm almost finished. One second.

So back to my question as to who is fully in charge of the campground presently, you're saying it's the group. Am I understanding you correctly?

A Yes.

Page 115

Q Are you required to be at the meeting each time they have a weekly meeting?

A No, sir.

Q And I asked you earlier, and I think that you mentioned it, but I'll ask it again. I'm sorry for forgetting.

How many hours a day do you estimate -- or a week do you estimate that you are inside that campground?

A I don't recall.

Q Do you have a camper that stays in that campground that you reside in from time to time?

A Not at the present time.

Q But have you had it there in the last three months?

A Yes, sir. My husband does.

Q Was it there from the time that I left and you and your group took over?

A Part of the time.

Q How many months would you estimate that camper -- it's a big camper -- how many months do you think it's been there?

A 10.

Q 10 months?

Page 116

A (Nods head.)

Q Okay. Does the group require armbands, wristbands of people who come in to camp?

A No.

Q And why is that?

A An armband is only required to go in the swimming pool, not to camp.

Q Does the same rule apply to cabins?

A Correct.

Q Do you have members that -- or the public that want to just come and swim for the day and you give them an armband or a wristband?

A That's not allowed.

Q What is not allowed?

A The public cannot come in and swim for a day.

Q So all of the public that's present and living in the campground which occupy the majority of those cabins at the present time, they don't -- they don't have -- they don't have -- they're not required to have a wristband to go in the pools?

MR. BYRD: Object to the form

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of the question.
Q So you do have public nonmembers in the campground; is that correct?
A Not on a permanent basis.
Q What is your definition of "permanent"?
A Two days, three days.
Q What about the people, employees that are working for the State or some company that's doing that intersection beyond Highway 6 about 3 miles from the campground? Are any of those groups of people staying at the campground?
A One.
Q One individual?
A One individual? All right.
MR. HUTSON: I don't think I have any more questions.
MR. JOHNSON: Okay.
MR. HUTSON: Thank you, ma'am.
MR. BYRD: We have none.
MR. THOMAS: I have one question.
EXAMINATION

BY MR. THOMAS:
Q And I apologize in advance for the asked and answered objection that's coming. I'm pretty sure you've said this, but I just want to be real clear.
To your knowledge, does Sandy Shores, LLC, have any contractual obligations to the Big Water campground members?
A Please repeat that.
Q Sure. To your knowledge, does Sandy Shores, LLC, have any contractual obligation to Big -- Big Water campground members?
A No.
Q Okay. Thanks.
MR. HUTSON: For the record, I want to make sure that I get a copy of the exhibit that's been laid over there.
(Deposition concluded at 12:53 PM)

CERTIFICATE OF REPORTER
STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, Julie K. Lyle, Notary Public for the State of South Carolina at Large, do hereby certify that the witness in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and location therein stated; that the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed by computer-aided transcription; that the foregoing is a full, complete, and true record of the testimony of the witness and of all objections made at the time of the examination; and that the witness was given an opportunity to read and correct said deposition and to subscribe the same.

Should the signature of the witness not be affixed to the deposition, the witness shall not have availed himself of the opportunity to sign or the signature has been waived.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal on June 5, 2015, at Charleston, Charleston County, South Carolina.

Julie K. Lyle, RPR/RMR/CRR
REGISTERED PROFESSIONAL REPORTER
REGISTERED MERIT REPORTER
CERTIFIED REALTIME REPORTER
My commission expires 7/22/2024

DEPONENT CORRECTION SHEET

I, the undersigned, SUSAN STROMAN, 373 Nates Store Road, Cameron, South Carolina, 29030, do hereby certify that I have read the foregoing deposition and wish to make the following clarifications and/or corrections, if any.

PAGE	LINE	CHANGE	REASON

SUSAN STROMAN
Date:

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

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Exhibit GG

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

CIVIL ACTION NO. 2:14-cv-01583-DCN-MGB

William Reed, Donna Reed, Bonnie Youmans, Jane Yates, Phillip Caulder, all individually and for the benefit and on behalf of all others similarly situated,

Plaintiffs,

vs.

Big Water Resort, LLC, TLC Holdings, LLC, Richard Clark, James Thigpen, Jimmy "Steve" Lovell, and Ocoee, LLC,

Defendants.

TLC Holdings, LLC, Richard Clark, James Thigpen, Jimmy "Steve" Lovell, and Ocoee, LLC,

Third-Party Plaintiffs,

vs.

M. B. Hutson a/k/a M. B. Hudson,

Third-Party Defendant.

THIRD-PARTY PLAINTIFFS' REPLY TO THIRD-PARTY DEFENDANT'S MEMORANDUM IN OPPOSITION TO THIRD-PARTY PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Third-Party Plaintiffs TLC Holdings, LLC, Richard Clark, James Thigpen, Jimmy "Steve" Lovell, and Ocoee, LLC (collectively, "Third-Party Plaintiffs"), by and through their undersigned attorneys, hereby submit this Reply to Third-Party Defendant M. B. Hutson a/k/a M. B. Hudson's ("Hutson") "Memorandum in Response to Third-Party Plaintiffs' Motion for Summary Judgment as to Third-Party Defendant's Counterclaims" (Dkt. No. 264).

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ARGUMENT

I. Third-Party Plaintiffs are entitled to summary judgment because all undisputed facts support Third-Party Plaintiffs' motion for summary judgment. Hutson has submitted no evidence supporting his arguments or demonstrating that summary judgment would be improper.

Hutson's eleventh-hour response to Third-Party Plaintiffs' Motion for Summary Judgment (filed at Dkt. No. 183) contains the same empty and tired allegations he has made in every one of his filings to date. Critically, he submitted no evidence whatsoever along with his memorandum, and he has submitted none that supports his arguments whatsoever during the course of this litigation. All he has to offer are unsupported, ridiculous assertions, which are insufficient to defeat a motion for summary judgment.

Hutson states in his memorandum that Third-Party Plaintiffs have never denied his claims, but have only argued he has never presented evidence of them. Lest there be any confusion, let the Court be clear: Third-Party Plaintiffs deny, unequivocally, all of Hutson's allegations of wrongdoing, fraud, and misrepresentation. Hutson's allegations are wholly false, and his repeated failure to produce any evidence in their support is a clear indication of their contrived nature.

In fact, not only does no evidence exist which supports Hutson's allegations, but significant evidence exists which directly contradicts them. Hutson has alleged throughout these proceedings that he was unaware that he was purchasing a campground with lifetime memberships on it, as this fact was never disclosed to him. He has testified, however, that not only were both he and the lawyer[1] representing him in the transaction aware of the existence of

[1] It is undisputed that Hutson was represented by counsel during the December 2010 transactions in which he purchased Big Water Resort, LLC and entered into the Lease–Purchase Agreement with TLC Holdings, LLC. *See* Ex. 1, Hutson deposition excerpt, 47:3 – 49:18.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

the campground memberships prior to the transaction's closing date,[2] but the two of them had also reviewed the membership agreements prior to closing.[3] Furthermore, Third-Party Plaintiff Lovell had provided Hutson's attorney with a schedule of the debts and obligations of Big Water Resort, LLC, which listed, as an obligation, "Membership Agreements with ~720 members in The Big Water Lake Club."[4] The term of those memberships was listed as "Varies." The evidence also shows that Hutson was absolutely aware in November 2010 that the campground memberships were measured in lifetimes.[5]

Hutson has also alleged that he would not have purchased the campground had he known about the lifetime memberships, as they prevented him from developing the property, which was his ultimate desire. This is false.[6] The campground did not prevent him from developing the

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[2] *See* Ex. 1, 29:7-25; Ex. 2, Hutson Rule 2004 examination excerpt, 140:6 – 141:21.

[3] Ex. 1, 56:13-21, 78:15 – 79:6.

[4] Ex. 1, Exhibit 106 to deposition; Ex. 1, 44:16 – 47:6; Ex. 2, 366:5-18. The schedule of debts and obligations was attached to the Membership Interest Purchase Agreement, which was the instrument by which Hutson purchased Big Water Resort, LLC. For a copy of the Membership Interest Purchase Agreement, see Ex. 1, Exhibit 105 to deposition; Ex. 2, Exhibit 6 to Examination.

[5] Renee Roark, who was Hutson's real estate agent in the transaction (*see* Ex. 1, 21:18 – 23:13), sent an email on November 11, 2010 to an attorney seeking advice, on Hutson's behalf, on how to terminate the lifetime memberships and on what impact, if any, the memberships had on title to the property. The email explicitly states that Hutson "is concerned about the 'life time' members," and attached to that email was a copy of one of the membership agreements. A copy of this email is attached hereto as Exhibit 3 and is also filed with the Court at Dkt. No. 240-1.

That same date, Ms. Roark sent an email to Susan Stroman, the realtor representing the sellers in the transaction, quoting the following language from an email Hutson had sent to Ms. Roark: "Find out how many lifetime memberships there are and how long before all yearly memberships expire." A copy of this email is attached hereto as Exhibit 4 and is also filed with the Court at Dkt. No. 169-1. Hutson's assertion that he was unaware of the lifetime memberships is simply beyond belief.

[6] In fact, Hutson has submitted to this Court a picture of a map (Ex. 5, also filed at Dkt. No. 200-1, p. 18) which delineates where the existing campsite is ("Existing RV/Camper Sites") and where he would be able to develop ("Phase 1" and "Phase 2 (Future)"). He is well aware that his

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

other portions of the property; in fact, the Lease–Purchase Agreement permitted him to develop *only* the unimproved portions of the land. Page 3 of that Agreement states that "[t]he parties acknowledge that the Purchaser intends to develop and construct condominiums or other residential dwelling structures on certain portions of the *unimproved* Premises."[7]

Hutson also repeatedly refers to the minutes from the January 2009 members meeting of Big Water Resort, LLC. Those minutes, which are attached hereto as Exhibit 7, discuss the financial difficulties the campground was experiencing in light of the economic recession and set forth several remedial options going forward.

One of those options, listed on the second page of the minutes, is "sale [of] Big Water LLC/Lease TLC assets to buyer." One of the "cons" listed for this option is, "Cannot sell leased real estate for extended period of time." Hutson has seized on this sentence, apparently interpreting it as an admission by Third-Party Plaintiffs that the campground memberships constituted individual leases, which prevented the property from being sold. However, it is clear that "leased real estate" refers to the campground as a whole, which would be leased from TLC Holdings, LLC to a third party. If the campground business—i.e., Big Water Resort, LLC—were sold to a buyer, but that buyer did not also purchase the underlying real estate from TLC Holdings, LLC, but, only leased it, then TLC Holdings would be unable to secure a buyer for that property in light of the fact that it was leased to a third party.

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obligation to operate the campground did not interfere with his ability to develop the remainder of the property.

[7] Ex. 6, Lease–Purchase Agreement, p. 3 (emphasis added). A review of the property description in Exhibit A to the Agreement reveals that only a minority of the acreage being sold under that Agreement was subject to the campground.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Furthermore, even if the campground membership agreements were leases, which by their explicit terms they were not,[8] Hutson was well aware of their existence prior to purchasing the resort. In other words, accepting his argument as plausible and construing the evidence in a light most favorable to him still does not defeat the facts that (1) he was aware of the existence of the campground prior to purchasing it, (2) both he and his lawyer reviewed the campground membership agreements prior to closing, and (3) he was aware that the campground memberships were measured by lifetimes. It is of no consequence whether those memberships were leases or not, as he was fully aware of what he was purchasing.

Hutson has further alleged that Third-Party Plaintiffs breached the Lease–Purchase Agreement by selling him land with defective title, arguing that the campground membership agreements constitute leases which are title defects. Setting aside the fact that the membership agreements are not leases, as discussed above, and that there are no such title defects, Hutson had a duty under the Lease–Purchase Agreement to perform an investigation of title:

> Purchaser shall, within ninety (90) days after the Effective Date, investigate Seller's title to the Premises and identify any exceptions to title which are not acceptable to Purchaser (any such exception being referred to herein as a "Title Exception"). Purchaser shall within ninety (90) days after the Effective Date provide Seller notice of any such Title Exception. If Purchaser does not notify Seller in writing of Title Exceptions within ninety (90) days after the Effective Date, then Purchaser shall be deemed to have accepted title to the Premises with all exceptions and conditions.

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[8] *See, e.g.*, Ex. 8, Reed Membership Agreement, Paragraph 1: "…Member acquires no legal or beneficial interest in BWR or its assets and *no right or interest in property*, contact [sic] rights or business of BWR" (emphasis added).

Furthermore, the agreements have the sub-heading "Retail Agreement" and state in the introductory paragraph that they "give[] the Member the right to use all present and future BWR campground facilities and services." Paragraph 3 states that "Member may use all of BWR's present and future campground recreation facilities on a day use basis . . . . Member usage is subject to space availability on a first come first served basis among all Members. There are no pre-assignment of or exclusive rights to specific campsites." This language is wholly inconsistent with Hutson's assertion that the membership agreements constitute leases.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Ex. 6, p. 5. Accordingly, even if Hutson's contentions were correct, which they are not, he is barred from now raising them. Under the contract that he signed, he deemed title to the property to be satisfactory and accepted it accordingly.

Additionally, Hutson frequently raises allegations of wrongdoing by Third-Party Plaintiffs regarding the issue of water and sewer access on the property. This issue was raised and litigated by Hutson in the state court action (*see* Dkt. No. 183-5, pp. 7, 10) and later released by Hutson in the Settlement Agreement (Dkt. No. 183-6). He is barred from re-litigating this issue.

Finally, Hutson has alleged during the course of this matter that prior to his arrival on the property, Third-Party Plaintiffs withheld information from him about the resort's operations and financial records.[9] He, of course, has presented no evidence of this. In fact, on December 16, 2010, Third-Party Plaintiff Lovell emailed the resort's office manager and instructed her to cooperate with Hutson's requests prior to the closing.[10] This claim, like all of his other claims, is barred by the Settlement Agreement and state court orders.

In sum, Hutson has not produced a single shred of evidence in opposition to Third-Party Plaintiffs' motion for summary judgment. He rambles on about fraud and misrepresentation without actually providing any evidence of such. He cannot avoid the application of res judicata simply by making outlandish, unsupported allegations that lack any measure of truth. In light of the fact that he has not produced even a scintilla of evidence in support of his position, the Court should grant Third-Party Plaintiffs' motion.

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[9] Ex. 1, 54:1 – 55:20.

[10] A copy of this email is attached hereto as Exhibit 9 and is filed with the Court at Dkt. No. 169-2.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

II. Hutson is not entitled to relief under Rule 60(b) of the Federal Rules of Civil Procedure.

Even if the Court is inclined to give consideration to the arguments Hutson raises in his memorandum, he has failed to demonstrate that he is entitled to relief under Rule 60(b), F.R.C.P. Hutson argues that Third-Party Plaintiffs perpetrated fraud on him, which would obviate the otherwise-preclusive effect of the state court orders discussed in Third-Party Plaintiffs' Motion. Rule 60(b)(3), F.R.C.P., does provide that "[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for . . . fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party."

Hutson's first problem, however, is that he has failed to file a Rule 60 motion as required by the rule's plain language. Further, he has failed to establish the requisite factors for a successful Rule 60(b) showing. "[A] moving party [under Rule 60(b)(3)] must establish three factors . . . : (1) the moving party must have a meritorious [claim]; (2) the moving party must prove misconduct by clear and convincing evidence; and (3) the misconduct prevented the moving party from fully presenting its case." Tyson v. Ozmint, 246 F.R.D. 517, 519 (D.S.C. 2007) (citing Schultz v. Butcher, 24 F.3d 626 (4th Cir. 1996)). Additionally, "[e]ven where a moving party satisfies the Schultz three prong test, a district court must balance the competing policies favoring the finality of judgments and justice being done in view of all the facts, to determine within its discretion, whether relief is appropriate in each case." Id. (internal quotation marks omitted). Hutson has produced zero evidence of any of the three factors, and he certainly has not demonstrated why any balancing test should tilt in his favor.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

More importantly, this Court is not the proper court for Hutson to seek Rule 60(b) relief in. A Rule 60(b) motion must be filed in the court that rendered the disputed judgment.[11] And finally, a rule Rule 60(b)(3) motion from Hutson would be time-barred under Rule 60(c), which provides that "[a] motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." This one-year bar is absolute. *See* Woodale P'ship v. City of Charleston, 2012 U.S. Dist. LEXIS 140896, at *7-8 (D.S.C. Sept. 28, 2012) ("Rule 60(c)(1) prohibits the filing of a motion for relief from judgment more than one year 'after the entry of judgment.' The court has no discretion to ignore the plain language of a federal rule.").

Accordingly, to the extent Hutson seeks relief under Rule 60(b), his argument utterly fails, and the Court should grant Third-Party Plaintiffs' motion for summary judgment.

III. Hutson is not entitled to relief under Rule 60(d) of the Federal Rules of Civil Procedure.

To the extent that Hutson seeks to set aside the state court orders under Rule 60(d)(3),[12] his arguments fall well short. The rule provides that a court has the "power to . . . set aside a judgment for fraud on the court." Fraud upon the court is different than common law fraud:

> [N]ot all fraud is considered to be fraud on the court. Great Coastal Express, Inc. v. Int'l Bhd. of Teamsters, 675 F.2d 1349, 1356 (4th Cir. 1982). Courts have held that fraud on the court "should be construed very narrowly," and "is typically confined to the most egregious cases, such as bribery of a judge or juror, or improper influence exerted on the court by an attorney, in which the integrity of

[11] *See, e.g.*, Mason v. Judges of the United States Court of Appeals, 952 F.3d 423, 425-26 (D.C. Cir. 1991) (stating that Rule 60(b) authorizes only "a motion in the court and in the action in which the judgment was rendered"); Bd. of Trustees v. Elite Erectors, Inc., 212 F.3d 1031, 1034 (7th Cir. 2000) (same); McMillan v. MBank Forth Worth, N.A., 4 F.3d 362, 366 n.8 (5th Cir. 1993) (same); Pentagen Techs. Int'l Ltd. v. CACI Int'l, Inc., 282 Fed. App'x 32, 34 (2nd Cir. 2008) (same).

[12] Subsections (d)(1) and (d)(2) are inapplicable. Rule 60(d)(1) concerns independent actions filed to obtain relief from a judgment, and 60(d)(2) concerns defendants who did not receive notification of the action.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

> the court and its ability to function impartially is directly impinged." Id. "By contrast, perjury and fabricated evidence alone, being evils which can be exposed by the normal adversary process, do not constitute grounds for relief as 'fraud on the court.'" Rainwater v. Mallas, C/A No. 94-1122, 1994 U.S. App. LEXIS 37124, 1994 WL 712570, at *2 (4th Cir. Dec. 23, 1994) (per curiam) (citing Great Coastal Express, 675 F.2d at 1357); *see also* In re Genesys Data Techs., Inc., 204 F.3d 124, 130-31 (4th Cir. 2000).

Gallipeau v. Ham, 2014 U.S. Dist. LEXIS 48785, at *2-3 (D.S.C. Apr. 9, 2014). The Fourth Circuit recently provided a helpful discussion of the rule, making clear that fraudulent conduct between parties is not enough:

> Fraud on the court is not your "garden-variety fraud." . . . [N]ot only must fraud on the court involve an intentional plot to deceive the judiciary, but it must also touch on the public interest in a way that fraud between individual parties generally does not.
>
> We have likewise underscored the constricted scope of the fraud on the court doctrine. In Great Coastal, we held that fraud on the court is a "nebulous concept" that "should be construed very narrowly" lest it entirely swallow up Rule 60(b)(3). We stressed that this doctrine should be invoked only when parties attempt "the more egregious forms of subversion of the legal process . . . , those that we cannot necessarily expect to be exposed by the normal adversary process." Even the "perjury and fabricated evidence" present in Great Coastal, which were "reprehensible" and unquestionable "evils," were not adequate to permit relief as fraud on the court because "the legal system encourages and expects litigants to root them out as early as possible." Instead, the doctrine is limited to situations such as "bribery of a judge or juror, or improper influence exerted on the court by an attorney, in which the integrity of the court and its ability to function impartially is directly impinged."
>
> [W]e [have] held that fraud on the court involves "corruption of the judicial process itself" and thus the doctrine cannot support allegations involving a "routine evidentiary conflict." To hold otherwise, we found, would "seriously undermine[] the principle of finality" by permitting "parties to circumvent the Rule 60(b)(3) one-year time limitation." [W]e [have also] recognized that "[c]ourts and authorities agree that fraud on the court must be narrowly construed" or it would "subvert the balance of equities" contained within Rule 60(b)(3). "Because the power to vacate a judgment for fraud upon the court is so free from procedural limitations, it is limited to fraud that seriously affects the integrity of the normal process of adjudication."

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Fox v. Elk Run Coal Co., 739 F.3d 131, 135-36 (4th Cir. 2014) (citations omitted). Here, Hutson has not even alleged such egregious conduct, much less provided evidence of it. Indeed, he has not provided evidence of any wrongdoing whatsoever. Accordingly, to the extent Hutson seeks relief under Rule 60(d), his request must be denied.

CONCLUSION

In light of the above, Third-Party Plaintiffs request that this Court grant their Motion for Summary Judgment.

Respectfully submitted,

s/Wayne Byrd
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Attorneys for Defendants & Third-Party Plaintiffs

March 15, 2016

EXHIBIT 3

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Print

Close

Big Water life time membership info.

From: **Renee Roark** (reneeroark@hotmail.com)
Sent: Thu 11/11/10 10:52 AM
To: Claudia (claudia@coffeychandlerkent.com)
1 attachment
Big Water membership.pdf (920.9 KB)

Mr. Coffey,

Attached is Susan's lifetime membership info. regarding Big Water camp ground. My buyer is concerned about the "life time" members and the impact they can have on the future development of the property. In other words, in your opinion, what is the easiest, legal way to terminate the lifetime memberships of Big Water? Will these memberships have an impact on obtaining clear title for the property?

Would it be better for you to call him and talk to him OR draft an email to him? PLease let me know your thoughts. I can also give him your number if you would rather him call you.

Thanks,

Renee Roark, Realtor ☺
Multi-Million Dollar Producer
Re/Max by the Lake
Manning, South Carolina

803-460-4373-cell
803-433-7355 ext.104 -office
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EXHIBIT 4

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Print Close

Request regarding Big Water

From: **Renee Roark** (reneeroark@hotmail.com)
Sent: Wed 11/10/10 9:26 PM
To: Susan Stroman Jill James (thestromanteam@gmail.com); Kim Matthews (kimmatthews192@msn.com)

Susan and Kim,

I received any email from my client requesting the following information. I STRESS to BOTH of you to NOT discuss anything regarding the possibility of this transaction or any details we discuss regarding this transaction with anyone other than the owners/parties involved. As you will see from my buyers email, this is extremely important for this transaction to take place. Let's work dilligently together to put this deal together for ALL parties involved! I really appreciate your help, willingness, and cooperation in this process. I am sure this deal will not be easy and will require A LOT of time and effort but I am confident we can make it happen!

1. Get a survey plat, normally they are about 18 inches by 24 inches. Hopefully, it will show by scale all buildings and docks including any pools and all camping spaces. Would like to see every improvement located and showed on this survey plat.

2. Make arrangements to have full access to all buildings and have that access approved prior to my arrival. I do not wish to be known nor introduced to anyone during my visit, if a contract is to submitted, one of my attorneys will provide the special stipulations and you may provide the balance on your standard real estate forms. Do not discuss with anyone about anything regarding this project other than the persons you need to ask questions to and do not give out any information.

3. Find out who is the most knowledgeable person is regarding any and all improvements that have been made to this property. Merely state that you have an individual or company interested and you need certain information as soon as possible.

4. Find out how many lifetime memberships there are and how long before all yearly memberships expire.

Do not discuss any pros and cons with anyone until I say different. Get this information as soon as you can, once obtained I will come there. No need for me to come there without the plat and information. I do not wish to meet anyone other than yourself and please discuss with no one of my arrival. No One. Do not discuss nor give out any information regarding the buyer or what the buyer has in mind. I will video and take pictures while there or send an engineer to do so. Let me know how you are progressing. **Please remember, strategy is everything and gossip/leaks information is a killer. I spend my time for money reasons.**

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OK..above is copy & pasted from my buyers email! As you see, he means business so please lets honor his wishes and keep everything confidential! Let me know what I can do to help get this information together asap!

Thanks again!

Renee Roark, Realtor ☺
Multi-Million Dollar Producer
Re/Max by the Lake
Manning, South Carolina

803-460-4373-cell
803-433-7355 ext.104 -office
803-236-0871-home

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EXHIBIT 5

14

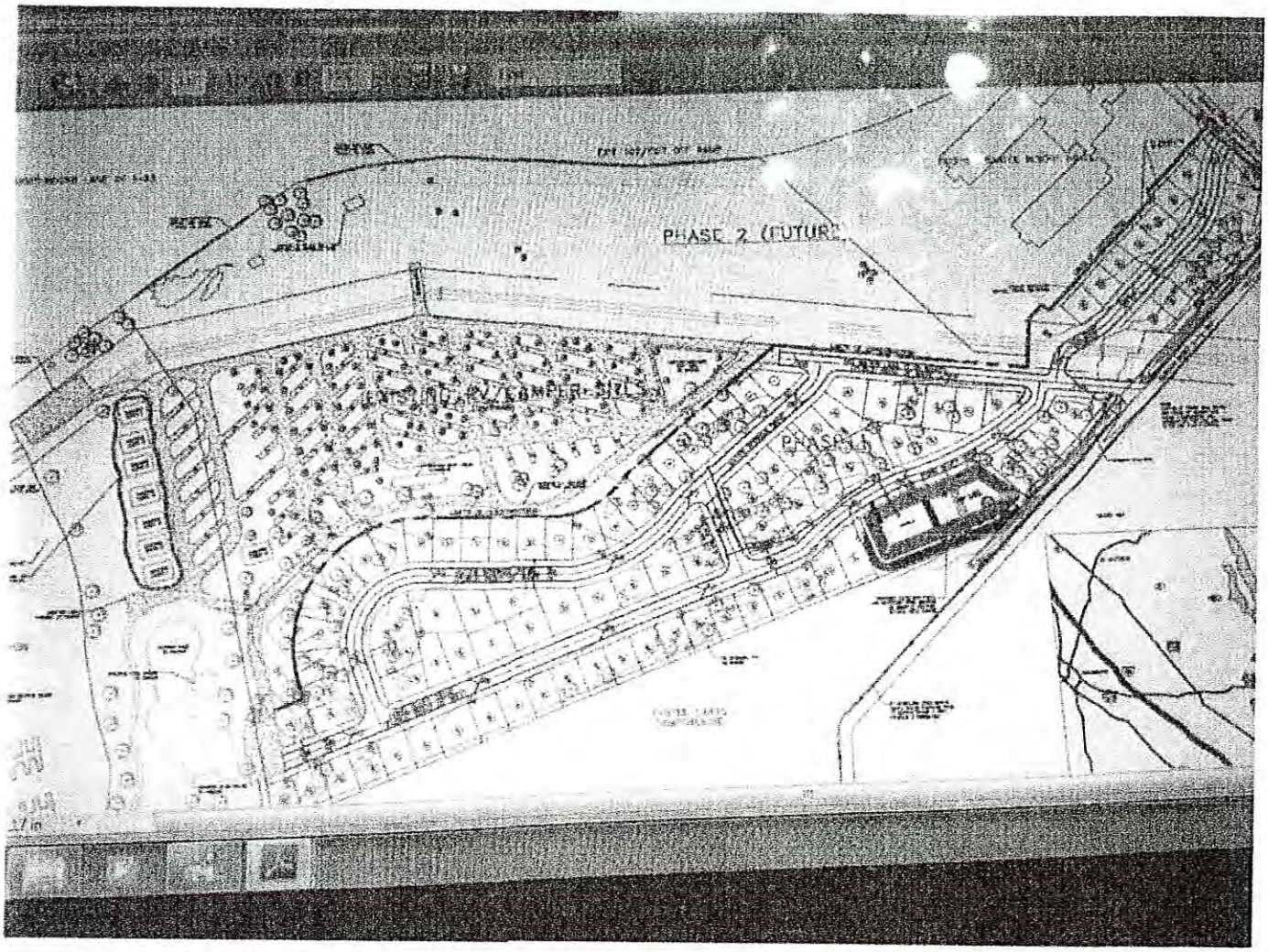

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Exhibit HH

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STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF CLARENDON)

TLC HOLDINGS)
PLAINTIFF,)

v.) TRANSCRIPT OF RECORD
15-CP-14-615

M.B. HUTSON,)
DEFENDANT.)

January 22-25, 2018
Manning, South Carolina

B E F O R E :

THE HONORABLE GEORGE M. MCFADDIN, JR., JUDGE;
AND JURY

A P P E A R A N C E S:

JOHN S. WILKERSON, III, ESQ.
R. WAYNE BYRD, ESQ.
WILLIAM H. JOHNSON, ESQ.
Attorneys for the Plaintiff

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Attorneys for Defendant

FRANCES B. RAY, RPR
Circuit Court Reporter

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

INDEX

	Page
Pretrial matters	1
Qualifying of jury panel	11
Striking of the jury	27
Preliminary remarks by the Court	31
Opening remarks by Mr. Wilkerson	39
Opening remarks by Mr. Gordon	54
Richard Clark:	
Direct examination	72
Proffered examination	186
Cross-examination	197
Redirect examination	310
William R. Padgett:	
Direct examination	317
Cross-examination	357
Redirect examination	364
Renee Roark:	
Direct examination	376
Cross-examination	411
Redirect examination	433
Susan Stroman:	
Direct examination	430
Cross-examination	450
Redirect examination	459
Steve Lovell:	
Direct examination	461
Cross-examination	518
Directed verdict motion	582
Deposition of Bonnie Youmans	603
M.B. Hutson:	
Direct examination	605
Cross-examination	667
Direct verdict motion	699
Charges	704
Closing argument by Mr. Wilkerson	708
Closing argument by Mr. Gordon	725
Rebuttal argument by Mr. Wilkerson	749

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

E X H I B I T S

STATE'S:

No.	Description	I.D./EVD.
1	Lease purchase agreement	8/136
2	Hutson email	8/136
3	Letter from Harper	8/136
4	Tucker email	8/136
5	Linda Baxley email	8/136
6	Hutson attorney letter	8/136
7	Weissenstein letter	8/136
8	Eviction papers	8/136
9	Weissenstein letter	8/136
10	Big Water annual financials 2003-2010	8/136
11	Consolidated financials Big Water	8/136
12	Postcard	8/136
12-A	Postcard	8/136
13	Roark email	8
14	Roark email	8
15	Big Water, LLC membership interest purchase agreement with schedules	8/136 8/136
16	Lovell email to Tucker	8/136
17	RV park business plan	8/136
18	TLC financials	8/136
19	Lease purchase agreement	8/136
20	Big Water Resort, LLC minutes of members meeting	8/136
21	Spreadsheet	8/136
21-A	Adjustments for Thigpen's capital contribution deficiencies	8/136
22	TLC letter to members	8/136
23	Motion for temporary restraining order	8/136
24	Judge James' order	8/136
25	Hutson memo re: Claims	8
26	Email from Stroman	8/136
27	Class action Complaint	8/136
28	Class action amended Complaint	8/136
29	Clark email to Lovell	8/136
30	Class certification pleadings	8/136
30-B	Coversheet	8/136
31	Consent order and settlement agreement	8/136
32	Affidavit of default	8/136
33	Summons and Complaint	8/136
34	Lovell email to Baxley	8/136
35	Ripoff reports	8
36	Order sanctioning Hutson	8/697
37	Eight-five small photos	8/136

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

E X H I B I T S (CONT.)

STATE'S:

No.	Description	I.D./EVD.
38	Google earth photo	8/136
39	Lovell to Clark - Hutson contract issues	8/136
40	Roark to Kay Shirer	8/136
41	Roark to Stroman	8/136
42	Roark to Timmons	8/136
43	Roark to Stroman	8/136
44	Roark to Stroan	8/136
45	Clark to thestromanteam	8/136
46	Stroman to Lovell and Clark	8/136
47	Clark to Lovell	8/136
48	Clark to Lovell and Harper	8/136
49	Clark to Harper and Lovell	8/136
50	Harper to Lovell and Clark	8/136
51	Harper to Harper and Lovell	8/136
52	Lovell to Harper	8/136
53	Lovell to Clark and Harper	8/136
54	Tucker to Clark and Lovell	8/136
55	Tucker to Clark and Lovell	8/136
56	Clark to Lovell	8/136
57	Harper to Lovell and Clark - site plan	8/136
58	Plat (brochure)	8/136
59	Harper to Clark and Lovell	8/136
60	Lovell to Aftlegal@gmail.com	8/136
61	Tucker to Clark and Lovell	8/136
62	Baxley to Lovell and Clark	8/136
63	Chart	8
64	Harper to Clark and Lovell	8/136
65	Harper to Clark and Lovell	8/136
66	Photo	137/136
67	Sales price from TLC	137/137

DEFENDANT'S:

No.	Description	I.D./EVD.
1	BWR Family Adventures brochure	603/605
2	BWR Lake Club rules and regulations	603/605
3	BWR Family Adventures for Life advertisement	603/605

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

E X H I B I T S (CONT.)

DEFENDANT'S:

No.	Description	I.D./EVD.
4	Mission Statement & About the Owners	603/605
5	Letter from Thigpen to Clark & Lovell	603/605
6	BWR business scenarios	603/605
7	BWR business plan	603/605
8	Email re: press release fact sheet	603/605
9	BWR fast facts	603/605
10	BWR 2004 marketing plan	603/605
11	BWR feature story	603/605
12	Letter to Summerton mayor from Thigpen re: Water and sewer services	603/605 603/605
13	Letter to Summerton mayor from B.P. Barber & Associates re: Possible water line extension	603/605 603
14	Letter to Thigpen from Summerton mayor re: Denial to fulfill water service request	603/605
15	Letter to Thigpen from Timmons Engineering re: BWR analysis for condos	603/605
16	Email to M.B. Hutson from Ken Parnell re: Tap fee	603/605
17	Email to Ken Parnell from M.B. Hutson re: Number of tie-ins to be given	603/605
18	Letter to Charles Parnell from Public Works of Summerton re: Water and service for proposed BWR cabin developments	603/605
19	Correspondence to Mr. Hutson from Summerton Public Works re: SC DHEC approval of wastewater system improvements	603/605
20	Email chain re: Summerton capacity and consent order and moratorium	603
21	Email from Clark to Lovell	603/605
22	Email chain re: Fiscal issues	603/605
23	BWR members meeting	603/605
24	TLC members meeting	603/605
25	Emails from Lovell re: BWR &TLC capital calls	603/605
26	Letter from BWR to Robert & Laura Fowler re: Collection of account balance	603/605
27	BWR U.S. Return of Partnership Income	603/605
28	Email from Clark to Lovell	603/605
29	Email from Lovell to Andrew Tucker re: list of debts and obligations	603/605
30	Total fixed assets list	603/605

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

E X H I B I T S (CONT.)

DEFENDANT'S:

No.	Description	I.D./EVD.
31	BWR financial condition	603/605
32	Title search	603/605
33	Emails re: Wiring instructions	
34	Lease purchase agreement	603/605
35	Membership Interest Purchase Agreement	603/605
36	Assignment of Membership Interest Agreement	603/605
37	Pledge Agreement	603/605
38	Payments by Hutson	603/605
39	Letter from Wells Fargo re: Financing	603/605
40	Promissory note	603/605
41	Letter to Hutson from Rikard Enterprises	603/605
42	Emails to Mr. Hutson from camp members	603
43	Email from Charles & Diane Degnan	603
44	Email from David & Sybil Lawrence	603
45	Email from Lori Longhurst	603
46	Email from Tracy & Fran Inman	603
47	Email from member to Mr. Hutson	603
48	BWR map and contact information for Kelly Coker and Larry Stewart	603/605
49	Email from Christopher H. Jones	603
50	Letter from Van & Kim Owens	603
51	Email from Mickey Grant & Rubin Watford	603
52	Correspondence from Bonnie Youmans	603
53	Email from GErald & Jane Yates	603
54	Handwritten correspondence from Roger Jordan	603
55	Letter from T.D. Williams re: McLeod membership	603
56	Letter from James Jackson re: McLeod membership	603
57	Complaints from campers	603
58	Postcard sent to BWR members	603/605
59	BWR membership agreement with Reeds	603/605
60	BWR membership agreement with Youmans	603/605
61	BWR membership agreement with Caulders	603/605
62	Membership purchase price and payment schedule re: Yates	603/605
63	Lifetime & Deluxe Lifetime Retail Membership Agreement	603/605
64	Class action settlement	603/605

E X H I B I T (CONT.)

DEFENDANT'S:

No.	Description	I.D./EVD.
65	4/13/12 letter from Harper to Clarendon County	603/605
66	Phase 2 plan	603/605
67	3/3/14 letter, TLC to campers	603/605
68	Plat	603/605
69	Plat - Big Water Resort	603/605
70	Tax partial photo	603/605
71	Tax parcel photo	603/605
72	Tax parcel photo	603/605
73	Tax parcel photo	603/605
74	Tax parcel photo	603/605
75	Tax parcel photo	603/605
76	Email	603/605
77	Email	603/605
78	Email	603/605
79	Email	603/605

COURT'S:

1	Ripoff report	512
2	Deposition of Bonnie Youmans	605

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

MR. GORDON: No, sir.

THE COURT: Sir, would you bring them in please.

(WHEREUPON, the jury was returned to the courtroom at approximately 9:39 a.m., and the following proceedings commenced in open court.)

THE COURT: Good morning to y'all. Mr. Wilkerson, whenever you're ready.

MR. WILKERSON: Your Honor, the plaintiff calls Ms. Renee Roark.

THE CLERK OF COURT: I need you to raise your right hand, place your left hand on the Bible and repeat your name please. Renee Roark.

WHEREUPON,

RENEE ROARK,

having been duly sworn by the Clerk, testified as follows:

THE CLERK OF COURT: I want you to step around and watch your step.

DIRECT EXAMINATION

BY MR. JOHNSON:

Q Good morning, Ms. Roark.

A Good morning.

Q I'm gonna kind of peep around this TV and look at

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

you, okay, 'cause I want to make sure the jurors can see you, okay?
A Yes, sir.
Q Am I pronouncing your name correctly?
A Yes.
Q Okay, Roark. All right. Ms. Roark, where do you live?
A Manning, South Carolina.
Q Okay. How long have you lived here in Clarendon County?
A For 18 years.
Q 18 years. And what do you do for a living?
A I'm a real estate agent.
Q A real estate agent?
A Yes, sir.
Q If I had ever been involved in a real estate transaction how would you describe what it is that you do?
A I work with buyers and sellers to find property that they are looking for and help them with the transaction from the beginning to the end.
Q Okay. And just generally, Ms. Roark, how are you paid for what you do?
A Through commissions. Whenever the property sells is when I get paid, the majority of the time.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Q Okay. What is the name of the company for which you work?
A Remax Summit.
Q Remax Summit?
A Summit, yes, sir.
Q And what type of real estate do you normally find yourself working with?
A I would say probably 90 percent of my realty business is residential, and the majority of the residential is waterfront property on Lake Marion.
Q So you're very familiar with Lake Marion and the surrounding area, correct?
A Yes, sir.
Q And you've been working, again, this area. Is that what you've been doing for most of your 18 years?
A Yes, sir.
Q And in addition to your work as a realtor do you have something else that you do?
A I am. I'm a real estate instructor with Carolina School of Real Estate, and I have been teaching pre-license classes predominantly which are classes in which the people have to take in order to become a licensed realtor, for the last five years.
Q So in order to do what you do you have to obtain

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

a license from the State of South Carolina; is that correct?
A That's correct.
Q And you actually teach the courses that those who want one of those licenses have to go through; is that right?
A That's correct.
Q Okay, all right. Now Ms. Roark, are you familiar with a gentleman by the name of Mr. M.B. Hutson?
A Yes, sir.
Q And how is it that you know him?
A He contacted me about real estate, waterfront real estate on Lake Marion in order to develop.
Q Okay. And do you know when this was?
A It was sometime in October of 2010.
Q Okay. Ms. Roark, I'm gonna hand up a collection of documents.

MR. JOHNSON: And Your Honor, all of these documents are in the book, but they have not yet been admitted into evidence so we will go through that, okay, and they're in this document.

MR. GORDON: What number is it?

MR. JOHNSON: I was gonna hand her all of the collection that she'll be going through. They're all, I had understood that they've only been

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ID'd, not admitted.

THE COURT REPORTER: What number is it?

MR. WILKERSON: Well, we have, I can give you the list. That would be 13 and 14 are the only ones that aren't ---

MR. JOHNSON: I also have 40, 42, 43, 41.

MR. WILKERSON: I think 13 and 14 are in evidence without objection. I retract it, Your Honor, these items are in evidence without objection.

THE COURT: All right.

MR. GORDON: No objection, Your Honor.

THE COURT: Thank you, sir.

BY MR. JOHNSON:

Q So I've just handed you some documents and that they are, as I said, in evidence and we're going to discuss those and use them. First of all, I direct your attention to Plaintiff's Exhibit Number 40. You have that in front of you, Ms. Roark?

A Yes.

Q And as we go through this, Wanda is going to bring these up on this screen and for all we know we might be watching Let's Make a Deal over here, but we're obviously going to be looking at your documents, okay, so, but we'll just ask to you read

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

the copy that you have.
A Yes.
Q Okay. Now what is this document, Exhibit 40?
A This is an email that I sent to a real estate agent by the name of Kay Shire that was representing the folks, the developers for North Shore condominiums. And North Shore Condominiums are a group of condominiums in Clarendon County off exit 102 that are waterfront.
Q Okay.
MR. JOHNSON: Will you bring up the language of the email, Wanda.
BY MR. JOHNSON:
Q Okay. Now, so let's go back. This is an email you sent and it references Mr. Hutson, correct?
A Yes.
Q Okay. So does this help you place in time when you first heard from Mr. Hutson?
A Yes.
Q Okay. And so when would that have been?
A Sometime at the end of October of 2010.
Q Of 2010. So we're talking seven or plus years ago, right?
A Correct.
Q Okay. Now, how did your contact with Mr. Hutson

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

come about?
A He called me on the phone — I'm not exactly sure how he got my name and number — and said he was interested in some acreage, some waterfront acreage on Lake Marion to develop.
Q Okay. Waterfront acreage on Lake Marion?
A Yes, sir.
Q Okay. Did he talk to you, did he give you more specifics about what he wanted to do?
A He said that he had, he was finishing up several projects, a marina and maybe some other condominiums, or something of that nature, I don't exactly remember, and that he was looking for another project, waterfront project in South Carolina.
Q Now when someone says I'm looking for waterfront acreage on Lake Marion, what's that mean to you?
A It means commercial acreage because, and also there's very few places that would even fit the bill for Lake Marion because the majority of Lake Marion, what can be developed is already developed.
Q Okay.
A Especially the waterfront section.
Q And does it tell you anything about the sophistication of knowledge and experience of the

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

person making that call?
A Yes. After we talked about different things and we discussed how expensive waterfront property is on Lake Marion, especially when you're talking about acreage and the commercial aspect that goes along with Santee Cooper in order to develop on Lake Marion shores.
Q All right. Now this particular email we're looking at, it really has nothing to do with TLC Holdings, does it?
A No, sir.
Q All right. It just helps you place in time when your first contact with Mr. Hutson was, right?
A Correct.
Q Because when he called you're looking wherever you can find for property, right?
A Yes. And in this particular situation I knew that the developer still owned an allotment, you know, like ten or so units at North Shore development and that they were willing to sell them as an allotment; and that's kind of what he was interested in, was seeing the property to see if he would be interested in buying the remainder of the unit at North Shore Condos that the developer still owned.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Q Okay. And with this particular property evidently you had to register him as a--
A That's correct.
Q --a potential buyer?
A That's correct.
Q And so you obtained his name; is that correct?
A That is correct.
Q And you provided this particular lady who was representing these other folks with his name; is that right?
A That's correct.
Q And you used the name that he gave you; is that right?
A That's correct.
Q And how did you spell Hudson when you sent that over?
A H-U-D-S-O-N.
Q And is that the way he spelled his name to you?
A That's correct.
Q Okay, all right. Now this particular transaction did not come to fruition; is that correct?
A That is correct.
Q In other words, it didn't happen, I should say.
A That's correct.
Q All right, now, did you eventually begin a

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

discussion about the property we've been referring to as Big Water Campground that's owned by TLC Holdings?
A Yes.
Q And how did you, how were you aware that there may be a possibility of a sale of that property?
A The other agent that is involved, Susan Stroman and Kim Matthews, are good friends of mine. We actually work for the same real estate company. And when Mr. Hutson contacted me about waterfront property, he was not specific about any particular piece of property. However, as I stated before, there were very few pieces of Lake Marion property that could be developed in the way he wanted to develop it. One of them was the remainder of North Shore Condos which is how Kay Shire got involved. The other was a piece of property that Kim Matthews' father owned, which is Randolph's Landing, and so I inquired about that. And whenever that would not work or suit his needs, she told me that Susan Stroman had been in contact with the sellers of Big Water and that they expressed an interest in possibly selling so that is where that came about.
Q Okay. And did you mention that to Mr. Hutson?
A I did.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Q And did he appear to be interested?
A He did.
Q Okay. How did that conversation or discussion about Big Water, how did that progress, what happened next?
A I gave him the basic and I contacted Susan. She provided the basic information about Big Water. I sent him everything that is available on public record. You know, you can go on the Clarendon County website and look up any type of information about any particular piece of property in Clarendon County that you are interested in, and so I pulled all the plats and all the information off of the public website and emailed it to him. And whenever I did, he showed an interest and he had additional questions that he wanted answered prior to coming to South Carolina to look at the property.
Q Did you know where he was?
A He told me he was from Chattanooga, Tennessee.
Q Okay, all right.
MR. WILKERSON: Let's look at Exhibit 13, Wanda.
BY MR. WILKERSON:
Q And while she's pulling it up, can you just tell us what this Exhibit 13 is?

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

A This is an email that I sent to Susan Stroman and Kim Matthews regarding questions that Mr. Hutson had for the property at Big Water.
Q Okay. And this is — we're talking about a period of time — well, what's the date of this email?
A November the 10th of 2010.
Q So some two weeks or more after that last, the first one we looked at, correct?
A Yes.
Q Okay. And we're talking about emails. Is that that a common way for realtors in 2010 to communicate?
A Yes, it's still a common way today because we have documentation. You know, our job is to have documentation on the transactions so that we can help the buyers and sellers stay on track with things.
Q Okay. And what was your purpose in sending this email?
A To get information regarding Big Water Resort.
Q All right. I want to, it may be a little strange, but for this particular email I'd like to skip down to the bottom.
MR. WILKERSON: Wanda, the paragraph that

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

begins "Okay".
BY MR. WILKERSON:
Q Renee, would you read that last paragraph.
A "Okay. Above is a copy and pasted from my buyers email. As you can see, he means business so please let's honor his wishes and keep everything confidential. Let me know what I can do to help get this information together ASAP. Thanks again, Renee Roark."
Q Okay. So what you're saying there is the information above, the words above, you actually copied and pasted from an email you received from Mr. Hudson, right?
A That is correct. I took the information that he emailed me, the questions that he emailed me, and I copied them and put them on the email, pasted them on the email that I sent Susan so that no wording was changed and I knew exactly what he was asking for and Susan and Kim knew exactly what he was asking for.
Q Okay, all right.
MR. WILKERSON: But next let's look -- with that in mind, well first, let's look at the very first paragraph, Wanda, the larger one there.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

BY MR. WILKERSON:
Q Okay. Renee, would you read that paragraph.
A "I received an email from my client requesting the following information. I stress to both of you to not discuss anything regarding the possibility of this transaction or any details we discussed regarding this transaction with anyone other than the owners or parties involved. As you will see from my buyer's email, this is extremely important for this transaction to take place. Let's work diligently together to put this deal together for all parties involved. I really appreciate your help, willingness, and cooperation to this process. I am sure this deal will not be easy and will require a lot of time and effort, and I am confident we can make it happen."
Q Okay. And those are actually your words?
A Those are actually my words.
Q Okay, so those are your words. And again, obviously this need for confidentiality, he had, he had stressed that to you; is that correct?
A Yes, sir.
Q Okay, all right. And so after that, and from here on the rest are his words; is that correct?
A That's correct. Up until the very last paragraph

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

that I just read.
Q All right, well let's look at the paragraph numbered one. Okay. And I believe it says get a survey plat and some other things; and you have that, we have it here. Is there anything that confirms that these were his words and not yours in that paragraph?
A Yes, because my counterpart, Susan Stroman, I have been in the real estate for business for 18 years, and they have been in the real estate business a lot longer than I have. Therefore, if that was my words I would not have had to tell her, you know, what a plat is. He says in here, normally they are about 18 inches by 24 inches. I mean, we look at plats every day in our business so me talking to another real estate agent, I would not need to give them that bit of information. They are professionals just like I am; they would know exactly what I was talking about.
Q Okay. And but the gist, and the gist of this was he's looking for a plat of the property, correct?
A Yes, with improvements which means all of the buildings that, you know, the water system, the sewer system, or whatever else may be on that particular piece of property.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Q Okay. All right, let's look at the paragraph number two. In this paragraph there's another, more instructions directly from Mr. Hutson, correct?
A Yes.
Q And he says there -- well, would you read that.
A "Make arrangements to have full access to all buildings and have that access approved prior to my arrival. I do not wish to be known, nor introduced to anyone during my visit. If a contract is to be submitted, one of my attorneys will provide the special stipulations and you may provide the balance of your standard real estate forms. Do not discuss with anyone about anything regarding this project other than the persons you need to ask questions to and do not give out any information."
Q Okay. Can you -- what's that second sentence say again?
A "I do not wish to be known, nor introduced to anyone during my visit. If a contract is to be submitted, one of my attorneys will provide the special stipulations and you may provide the balance on your standard real estate forms."
Q Okay. Now, in your experience is this common in the way you do business as a realtor?
A This is not common in working with the normal

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

average consumer in a real estate transaction. The normal average consumer would not know the difference — or to be begin with, would not know the difference between our real estate forms, our South Carolina standard forms, and any other forms. One of the reasons why consumers work with realtors is to make sure they have all the legal aspects of a contract that they need in order to purchase a piece of property for their protection. And in this situation Mr. Hutson was very familiar with the contract process, and he knew that we would need special wording and special things in our South Carolina contracts.

Q Okay. All right, let's move to the paragraph number 3. Would you just read that.

A "Find out who is the most knowledgeable person in regarding any and all improvements that have been made to this property. Merely state that you have an individual or company interested, and you need certain information as soon as possible."

Q So again he states that he doesn't want anyone to know who it is that's looking for this property, correct?

A That is correct.

Q Okay, all right.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

MR. WILKERSON: We can just skip that one, Wanda. If we can pull up number 4.

BY MR. WILKERSON:

Q Okay, all right. Let's look at number 4. Would you read that one.

A "Find out how many lifetime memberships there are and how long before all yearly memberships expire."

Q Okay. Did you know what he was referring to in regard to these lifetime memberships?

A The only information I had provided him, which was basic information that Susan Stroman originally provided me. And in that information was, you know, the type of campsites there was, how many cabins there was, the number of campsites there, the potential for future development, and that there was lifetime memberships there. That's what they originally did was sell lifetime memberships for the campers to enjoy.

Q But in other words, as of November 10th, 2010, Mr. Hutson knew that lifetime memberships were an issue at this property; is that correct?

A He was -- yes, sir. I don't know about an issue, but he was aware that the campground had lifetime memberships.

Q Okay, all right. And the remainder of that

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

paragraph, I don't know that you have to read it, but what is it emphasizing there?
A "To not discuss any pros or cons with anyone until he says different. To get this information as soon as you can. Once obtained I will come there, no need for me to come there without a plat and information. I do not wish to meet anyone other than yourself and please discuss with no one of my arrival, no one. Do not discuss, nor give out any information regarding the buyer or what the buyer has in mind. I will video and take pictures while there and send an engineer to do so. Let me know how you are progressing. Please remember, strategy is everything and gossip/leaks information is a killer. I spend my time for money reasons." And I don't know if you can see that, but he actually underlined that last sentence in his email --
Q That he spend his time for money reasons.
A That's exactly right, in the email that he sent me.
Q Okay, all right. So that email went out to the ones that's named there who were Susan Stroman, Jill James, and Kim Matthews, correct?
A That's correct.
Q And all of those were --

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

A Licensed real estate agents.
Q And as far as you were concerned, they were acting on behalf of the seller of the property, right?
A That is correct.
Q Or the owner of the property?
A That's correct.
Q Okay, all right. Do you recall what happened, if anything, after that, and you feel free to refer to the exhibit 14.
A Yes. After that information I was not familiar with lifetime memberships myself. I felt like that was something that was above my legal comprehension as a real estate agent so I inquired to help Mr. Billy Coffey, which is a real estate attorney in Manning, South Carolina.
MR. WILKERSON: Can you pull up, Wanda, number 14.
BY MR. WILKERSON:
Q Okay, so this is an email to Mr. Coffey; is that right?
A That's correct.
Q It actually states that it's to Claudia. Do you know who that is?
A Claudia is his assistant. Everything that goes

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

to Mr. Coffey goes through his secretary, and then she, you know, makes sure that he gets it and he responds accordingly.

Q So you are -- this is a direct question from you to a real estate attorney in Clarendon County?

A That's correct.

Q And at this time are you acting on your own or are you acting on behalf of someone else?

A I'm acting on behalf of Mr. Hutson.

Q Okay. Because at this time he's your client; is that right?

A He is my client, yes, sir.

Q And so you're trying to find information for him?

A That's correct.

Q And on his behalf you reached out to a real estate attorney in Clarendon County to find out what the impact of these lifetime memberships would be; is that correct?

A That is correct.

Q Okay. And I guess the last part of that you asked, you mention that it may be better for him to speak directly with Mr. Hutson.

A That is correct.

Q Okay. And what's the date of that email?

A November 11th, 2010.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Q So that's the day after you had sent the request for information to Susan Stroman?
A Susan, that's correct.
Q Okay, all right. Now, do you know, do you recall did you ever get a response from Mr. Coffey to this email?
A Mr. Coffey called me on the phone and stated that, you know, he would be glad to talk with Mr. Hutson regarding these lifetime memberships and explain to him the process of how they work or answer any type of questions that he had.
Q Okay. Did you have any further conversations with Mr. Coffey on this issue?
A Not that I can recall.
Q All right. Let's look next at Exhibit Number 41. Can you tell us what this is.
A This is another email that was sent to Susan Stroman regarding more questions that Mr. Hutson had regarding Big Water campground.
Q Now this is actually a three page exhibit, correct?
A That is correct.
Q And it's one of these email threads that contains a copy of a conversation going back and forth, right?

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

A That is correct.
Q Okay. So we might understand it better if we go to the end and come back?
A That's correct. You can look on page 2 first.
Q All right, so let's, on page 2 down about mid range there's an email to Susan, correct?
A That is correct.
Q All right. Can you read that?
MR. WILKERSON: Wanda, if you can bring that part up.
THE WITNESS: It's dated November 11th, 2010, at 9:55 a.m., and it says, "Susan, what happens with a lifetime membership once the property is transferred to another owner or entity? Do you think the lifetime memberships will be a red flag for title work? The lifetime memberships seem to be an issue with my buyer. How do you suppose we get around it to make this work. Can you also call Mr. Jim Thigpen or ask one of his partners if they have a map showing where all the improvements, wells, tanks, water, sewer lines, parking pads, etc., are on the property. There has to be some engineering drawings somewhere for this information. I will be happy to call the engineer that drew it all out if you will get me the name and number.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Thanks, Renee Roark."
BY MR. WILKERSON:
Q Okay. So from that we can gather that you and Mr. Hutson had had a conversation about these lifetime memberships; is that fair to say?
A That's correct.
Q Okay. And again, you're trying to find out more information about these, correct?
A That is correct.
Q Okay. Now let's look at the response from Ms. Stroman. And particularly, well — and that bleeds between the two pages.
A It starts on page 1.
MR. WILKERSON: It starts on page 1, Wanda.
BY MR. WILKERSON:
Q Particularly, she begins by explaining about the engineering drawings, correct?
A That is correct.
Q Okay. And then she addresses these memberships, correct?
A That's correct.
Q Can you read what, how she responds to your questions about the memberships.
A "Memberships will transfer with the LLC. There

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

may be a possibility of moving the membership campground across the road keeping one address for all the resort or buying the members out individually."

Q And that goes to the next page. You can continue, Ms. Roark.

A Okay. "The yearly fees are due in January. If we were to go to contract by then, perhaps these owners would mail out a letter to all members January 1 stating that if their fees are not paid by January 31st their membership is voided. I feel certain that would eliminate some of them. On the average you lose ten percent per year. Members could also be given a credit to upgrade to something else. There are lots of positives to the members. January is the time to do whatever is to be done. I think the owners will be flexible with the amount of money paid for members. Remember, there is an accounts receivable for over 200,000-dollars on the books for financed members. With some creative thinking we can figure out the member situation, but we cannot ignore the members. Due to the economy most of them would love to have their money back, or at least some of it. There is always a few that will be difficult. Thanks, Susan."

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Q Okay. So there, that's information that you received about these memberships, and in the course — well, let's go back to the first page of this exhibit and let's see your response to her.
A "Thanks for the suggestions. I have forwarded them to Mr. Hutson. I have also emailed him Billy Coffey's number and suggested that he discuss the legalities of it with him. I will let you know about engineer drawings. Did you get my email from last night? If there is anything I can do to help to get information. Thanks, again."
Q So you're working hard to make this come together at this point; aren't you?
A Correct.
Q Okay. And can you tell from this point and based on the way you conduct business, would you have provided this information about the memberships to Mr. Hutson?
A Excuse me?
Q Would you have provided the information about the memberships to Mr. Hutson?
A Yes, I would have.
Q Okay. All right, let's move to Exhibit 42. And you really don't have to read all of this but, what is that, what's that a record of?

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

A Once again, this is a email feed to Mr. Billy Timmons which is an engineer that specializes in commercial development like underground utilities and placing condominium units and things like that, or buildings, anything. He pretty much does commercial property on land so that the buyers will know how the highest best use is for the property.
Q And again, I believe you're following up with Mr. Hutson's request for a drawing of the property; is that correct?
A That is correct.
Q And is this, in fact, a record that you did receive that?
A That is — well, I received the email from Mr. Timmons. I emailed Mr. Timmons regarding the drawing because we were told that he is the one, the engineer that had the drawings on that property. So I emailed Mr. Timmons and this is a feed, a email feed, of my conversation with Mr. Timmons.
Q Okay, all right. Now it is now November 23rd of 2010, correct?
A That is correct.
Q Have you met your client yet?
A I have not.
Q You've been working with him about a month; is

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

that correct?
A That is correct.
Q And you never laid eyes on him, correct?
A That is correct.
Q Did you, in fact, finally meet him face to face?
A I did meet him.
Q Okay. Tell us about that meeting, when and where.
A After Mr. Hutson received all the information that he had required, we agreed to meet at the Big Water property on exit 102, the campground on Thanksgiving day which happened to be November 25th in 2010.
Q Okay. Why did you meet him on, why did you give up your Thanksgiving day to meet with him?
A Because that's part of being a professional real estate agent. You work whenever your client needs you to work. And he was coming from out of town and he had that day to meet with me so my husband and I went to Big Water and met with him.
Q You carried your husband with you?
A I did.
Q Okay. Tell us about that meeting at Big Water Campground. What did you do and what was discussed?
A We met Mr. Hutson there. We walked the property.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

We were not able to go into any of the buildings or the facilities as, you know, it was off season and Thanksgiving so there was really no one there working; but that was the day that he could come so we decided to go ahead and meet. We walked the facility. I gave him, we went over the information that I'd already provided him prior to him coming. We went over the plats that I had pulled from the public record and tried to place them with the improvements, the infrastructure that were on the property. We talked about the Santee Cooper portion of the waterfront property. We looked at the docks. We looked at the peers. We talked about potential things that he could do to it, and he just kind of, he picked my brain as a professional real estate agent that had been selling real estate on Lake Marion for ten years and I listened to him as to the things that he was hoping to accomplish with this property or that he had planned to accomplish with this property.

Q Okay. And how did y'all leave it after that meeting?

A After that meeting he left or did whatever. He went his way and we went home, and he contacted me that following Monday.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Q Okay. And we might, could we refer to Exhibit 43, and tell us what this is Ms. Roark.
A This is a email feed, once again, from, or email from me and Susan Stroman regarding more information, more questions about the Big Water Campground.
Q Okay. And you sent this email to Ms. Stroman, correct?
A That is correct.
Q And when did you do that?
A Monday, November the 29th, 2010.
Q Okay. And so this was the Monday after Thanksgiving, right? Got back to work and jumped right on this?
A That is correct.
Q Okay, all right. And let's refer to Exhibit 44, if we could, and please tell us what that is.
A This is another email feed between me and Susan Stroman regarding additional questions that he wanted regarding Big Water Campground.
MR. WILKERSON: Can you bring up the first paragraph there, Wanda.
BY MR. WILKERSON:
Q Okay. You mentioned there something about a confidentiality agreement.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

A That is correct.
Q What do you, what's your statement about that?
A A confidentiality agreement is normally done in the commercial business of real estate whenever a buyer is requesting a lot of information regarding a company, especially financials and things like that, or things that a company uses in their day-to-day operations because the sellers generally do not want that information leaking out to the public, you know, so they ask for a confidentiality statement. And in this situation the sellers of Big Water had asked Susan to get a confidentiality statement from Mr. Hutson. We had talked about it many times, but Mr. Hutson never signed one. He never, you know, agreed to sign one. He never had a confidentiality statement signed. So this email, Susan is still saying, you know, we need a confidentiality statement signed in order to continue to go forward and provide him with this information. And I expressed to her that I have asked Mr. Hutson about a confidentiality statement several times, that he, I have gotten nowhere with him, you know, that he's not really, he's not signed one, he's not provided one, he's not been interested in one that we, you know, ones that we provided; and so therefore, we

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

were not getting anywhere with the confidentiality statement.
Q Despite his admonition or his demand to you that he be kept confidential; is that right?
A That is correct.
Q Okay. Now, after this date which I believe that date is November 29th.
A That's correct.
Q What was your involvement with the transaction that brought Mr. Hutson into possession of the Big Water Campground?
A My involvement was, as I stated earlier he was my client. We did have a buyers/agency agreement signed. He signed it with my brokerage that I worked for at the time. So my, as he stated before in the previous email, I did not draw up any kind of contracts to purchase or anything like that. His attorneys and the sellers' attorneys drew up all the contracts between them, which is very unusual because normally in the world of real estate, you know, I would be the one or along with an attorney to draw up the contracts to purchase. I would at least get to see a copy of it. I never saw a copy of the contract purchase between these two individuals, between the buyer, or the buyer and the

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

sellers. The only contract that we got was a commission statement stating that they were willing to pay us whenever this property closed and stated how much the commission would be.

Q Were you ever paid?

A No, sir.

Q So even though you worked as Mr. Hutson's client you were never paid?

A That is exact-- that's correct, yes.

Q Now, in all this time, and of course, when you have a client you're bound by the professional standards that apply to your profession about what you can disclose about a client; is that correct?

A That is correct.

Q Okay. And all this time you were working for Mr. Hutson and you, how did you understand that his name was spelled?

A H-U-D-S-O-N.

Q Did you ever learn that there is another spelling of that name?

A Throughout the process of different things that came about — and I don't exactly recall exactly when I found out that there may be possibility be an H-U-T-S-O-N spelling of his name which in the legal world of real estate, if you sign something illegal,

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

then it's no longer valid. So, like I said, I'm not, you know, exactly sure which way his name was supposed to be spelled; but he told me H-U-D-S-O-N.
Q Is that unusual in your experience to have someone misrepresent their name to you?
A That is very unusual in the world of real estate. It almost makes us, people to show ID. So if you work with a real estate agent and they ask to see your ID, remember this transaction because that's why.
Q When we were going through our documents I missed one, one point, and I'd like to refer you back to Exhibit 14, if you could. It was the second one, or maybe the third one you discussed.
A Yes.
Q That's that first email to Susan-- well, no, that's the first email to Mr. Coffey, correct?
A Correct.
Q When you sent that email there's a way you can send the document at the same time, right?
A That is correct.
Q And you had a document sent with that email, right?
A That is correct.
Q And what document did you send?

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

A It was Susan Stroman's, she is a lifetime member which is the other real estate agent that was representing the sellers and Big Water, and it was her actual lifetime membership because Mr. Hutson wanted to see what they looked like. He wanted to understand and we wanted to be able to explain to him the best of our knowledge regarding lifetime memberships. So she emailed me a copy or emailed me a copy of her actual lifetime membership so that I could provide it to Mr. Coffey for him to be able to discuss it with Mr. Hutson.

Q Okay. So again, we're talking about this lady Susan Stroman, and the jury is going to get to meet her 'cause she's out here, right?

A Right.

Q And she was actually a member of Big Water?

A That's correct.

Q That a little bit coincidental, right,——

A That is correct.

Q ——but it just so happened. So your client had questions about these lifetime memberships and y'all decided, let's show him exactly what it is, right?

A Exactly.

Q Did you provide a copy of Ms. Stroman's membership agreement to Mr. Hutson?

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

A I provided it to Mr. Coffey and I would presume that Mr. Coffey provided it to Mr. Hutson or discussed it with Mr. Hutson, you know, during their conversations because if you look at the email traffic further on, it says that Mr. Coffey has discussed the stuff with Mr. Hutson and that he is working on a contract for him.

Q Okay. Thank you, Ms. Roark, answer any questions Mr. Gordon may have.

MR. GORDON: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. GORDON:

Q Ms. Roark.

A Hello.

Q I'm Frank Gordon. I represent Mr. Hutson.

A Yes, sir.

Q I've got a few questions that are gonna be a lot like the ones you just answered.

A Okay.

Q Let me know if you can't hear me.

A Okay.

Q I'm gonna talk to you about the same exhibits really, Ms. Roark, but mine have different numbers on them, but I'll give you a copy of mine with the different number. We'll be real confused about

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

numbers and we'll pull them up on the screen also. Let me ask you about something that you just testified about, Ms. Roark. When Mr. Hutson first came to talk to you back in the Fall of -- well, not came, but talked to you over the phone I reckon, in the Fall of 2010 he told you he was looking for waterfront property to develop, correct?

A Correct.

Q And as you've indicated, there's not a whole lot of that around here?

A Correct.

Q Or at least there wasn't back in 2010. There may be more today.

A Well, there's a lot of waterfront property, but not acreage that can be developed on Lake Marion because a lot of the acreage that is still available on Lake Marion is owned by Santee Cooper. And so in order to develop Santee Cooper property, you have to enter into a commercial lease with them and that means you don't own the property at all. All you would own is the improvements on it, and Mr. Hutson really was not interested in not being able to own the majority at least of the property that he had improvements on.

Q And these folks, TLC, had a lease with Santee

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

River Corporation; didn't they?
A Santee Cooper, yes, they did.
Q Santee Cooper Corporation for the waterfront property ---
A Correct.
Q ---that we're talking about?
A That's correct.
Q And that waterfront, the campground was located on that waterfront property, right?
A Just a portion of it, not, not, I don't recall 'cause I haven't seen a plat on it probably since 2010; but, you know, the majority of that property that TLC holds is deeded property, means they own it. So the lease portion is just a strip basically on the waterfront property, and I cannot — I don't recall how big that strip is so I cannot say that some of the cabins and stuff that are waterfront are not on deeded land or whether they're on leased property. Like I said, I haven't looked at a plat, you know, in a long time to be able to clarify that; but there is leased property on that particular piece of property, which is not uncommon for Santee Cooper and on Lake Marion.
Q Okay. I'm sorry, the campground was on the waterfront; wasn't it?

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

A Yes, sir, it is.
Q Okay. Now, and you discussed the efforts that Mr. Hutson went to back in the Fall of 2010 through you to find out information about the property, right?
A That is correct. He ---
Q I'm sorry, you don't have to say it all again. You just discussed all that, right?
A We did, but his efforts were really, in other words, he gave me the que-- I asked, he asked the question and I provided the information or either provided the person that he needed to talk to about the information.
Q Yes, ma'am.
A He wasn't actually the one getting all this information himself at first.
Q Right, yes, ma'am. And so you were working on his behalf?
A That is correct.
Q And of course, like you just said a few minutes ago you wanted this deal to go through so you would get a commission?
A That's correct.
Q That's how you make money.
A Exactly right.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Q If the deals don't close you don't make money.
A That is correct.
Q Okay. So you're helping him out. In that process you folks in the real estate business have a phrase for it, it's called due diligence; isn't it?
A That is correct.
Q And D-U-E, diligence, means basically trying to find out what it is you're getting ready to buy.
A It's to provide him all of the information that I can legally find out about a piece of property so that he can make as my buyer the right choice for him based on the information that I provide him. Me, as the licensed agent, I don't help my buyers make information. I just provide them all the information that is available so that he can make an educated decision about whether he needs to go forward or the questions that he needs answered are what he needs to have done in order for him to feel confident enough for that transaction to close, and that was what my role is as a real estate agent. And it doesn't matter whether it's a ten thousand dollar piece of property or a ten million dollar piece of property, I treat everyone the same.
Q Yes, ma'am, 'cause you don't want your potential buyers you're representing to close on a piece of

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

property, and then after they close they find out something bad about it and then they're unhappy.
A That's correct. Real estate is a reputation business. And I only sell real estate in Clarendon County and I live in Clarendon County, and you know, I'm not going to do something — as I tell everybody, you're not gonna be walking in Wal-mart and me going out the other door 'cause I don't want to see you. That's not how I operate my business, you know, as a professional realtor.
Q You know, believe or not, I was just getting ready to ask you a question about Wal-Mart. The question is, you wouldn't want to go in Wal-Mart and buy a TV and take it home and plug it in and it doesn't work, would you?
A Correct.
Q All right, the same idea. You don't want to buy something and take it home and find out something is wrong with it.
A That's correct.
Q Okay. You wouldn't want to buy something, take it home and find out, well, this is a stink bomb, it's defective, it's got problems with it and I didn't find out about it during the due diligence?
A Well, real estate is a whole lot different than

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

TVs. In other words, there are third parties involved in real estate that have a whole lot more legalities than I do as a realtor. Real estate wise, if -- our job is as a professional realtor is to guide the individuals to make sure all of these I's are dotted and T's are crossed. In other words, to make sure the title work is done, to make sure any, you know, deficiencies as you're saying or bugs that he was talking about that could prevent a buyer from taking clear title, clear ownership to a piece of property. That is the things that we rely on real estate attorneys for. And so therefore, I wasn't as confident about the lifetime membership and how they work, so therefore, I brought a real estate attorney in that could help me with that process. And it's the same way, I write up or I help get the buyer to the part of my profession, and then I rely on a third party which is a title abstractor or a real estate attorney to do the legal things that I'm not licensed to do.

Q Yes, ma'am.

A And that's where we were. And so when a piece of prop-- when a piece of property transfers ownership that I have represented someone, the only thing that I'm responsible for is my due diligence as far as

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

making sure the contract was performed. In other words, the buyer did all of, everything that he was supposed to do, that he agreed to do within that contract. As far as the bugs and that type of thing, that's really beyond my scope of professionalism; that relies on a third party.
Q Oh, yes, ma'am. And the folks that are doing the deal need to do that kind of thing.
A I'm sorry?
Q I got you, I'm with you. Let's move to the next question.
A Okay.
Q The next question is, I wanted to ask you about a meeting you all had on Thanksgiving day in 2010. Y'all actually met at the property?
A That's correct.
Q And you walked around some, you told. You walked the property. You were not able to get into the buildings. I think you mentioned that no one else was there, right?
A I'm not, there were some campers there and people like that, but there was no personnel there. You know, the building at front wasn't open or anything like that.
Q Okay.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

A It was Thanksgiving.
Q I'm sorry?
A I said because it was Thanksgiving, a holiday.
Q Right.
A Uh-huh.
Q And I think you mentioned y'all also talked about the waterfront portion of the property and what could be done with it?
A We talked about Santee Cooper's involvement in the waterfront property as far as the lease was concerned and how that would transfer with the purchase of the property and, or at closing of the property and that you would have to get permission from Santee Cooper to do any type of improvements on their leased portion, on the portion that Santee Cooper owns. That, we did discuss that type of thing. And then we discussed future improvements, you know, what -- he had several different ideas. He wanted to add some more boat docks and things that were already there at the marina. He talked about buying, building some condominiums, and actually talked about moving the campground itself, leaving the cabins that were there, but moving the campground itself across the street because he had all of this waterfront access. And so it would kind

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

of be the best of both worlds, you know, for campers as well as condominium owners to enjoy the facility.
Q To develop condos right there on the waterfront and move the RV sites a little bit away off the waterfront?
A That's correct. And not all of them, just some of them, and leave the cabins where they were, but only to develop -- he could only develop condos on the deeded portion that he would have taken ownership of. He could not, you know, build condos on the leased portion that Santee Cooper owned.
Q And that's right along the water?
A Well, I don't know how big the marginal strip is and it depends on the lay of the land, you know, as far as how far up it came on, you know, the land. I mean, you know, it's different for each piece of property.
Q Okay. All right, well let's talk then about these emails again for just a few minutes if you can bear with me.
A Okay.
Q Let me ask you first about the one that's marked Defendant's Exhibit Number 76.
MR. GORDON: May I approach the witness, Your Honor?

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

THE COURT: Yes, sir.
BY MR. GORDON:
Q I want to hand you a copy of this exhibit, Ms. Roark, and I've highlighted some of it and I want to help you -- I want you to help me read through it. And we've got it on the TV so maybe the folks on the jury can see and maybe they can't. We'll read it out loud. You've already discussed this exhibit a few minutes ago, ma'am. This was Plaintiff's Exhibit 41.
A That's correct.
Q Yes, ma'am. This was the chain of emails. Really, I think it's three emails. The first one -- of course, they're in reverse order. The first one is from you to Ms. Stroman and then she responded and then you sent another email, right?
A That's correct.
Q So let's start on page 2 of it, which is really actually the first email. And at this time you're representing Mr. Hutson and Ms. Stroman is representing the sellers, TLC, Mr. Clarke, Mr. Lovell, and Mr. Thigpen, right?
A That is correct.
Q All right. And you wrote to Ms. Stroman on November 11th, 2010: "What happen with the lifetime

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

memberships once the property is transferred to another owner, entity? Do you think the lifetime memberships will be a red flag for title work? The lifetime memberships seem to be an issue with my buyer. How do you suppose we get around it to make this work?" So I want to -- that's the paragraph I really want to ask you about there, ma'am, your email. First the notion that the lifetime memberships will be a red flag for title work. As you told us you're not a legal expert and certainly know a lot about real estate, selling, buying and problems that arise, and that potentially was a problem in your mind?

A It was not, I mean, yes, that was a concern of Mr. Hutson. He is the one that asked, you know, that talked about the red flags for title work where the lifetime memberships are concerned.

Q Did you have any thoughts about that on his behalf?

A I asked the question like he asked me to do.

Q Okay. And then the fourth sentence of that paragraph, "How do you suppose we get around it to make this work, the lifetime memberships?"

A Correct.

Q So you're asking Susan how can we get around the

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

camper contract, right?
A I'm asking her how can we get clear title on this property if there is lifetime memberships or what do you suggest because, therefore, again, that's really not a question that Susan and I can answer because that's -- I mean, legally.
Q Right.
A You know, I would never advise my buyer and I'm sure she wouldn't either on the possibilities of doing something with a lifetime membership that we are not familiar with as far as title and the legal aspects of it.
Q Yes, ma'am. So let's look at her response on the same day back to you which starts over on page 1 of the exhibit and then goes over to page 2. And her response on that issue -- I just want to direct your attention to that second photograph that starts with the word memberships.
A Yes, sir.
Q "Memberships will transfer with the LLC," and again, we're talking about the camper memberships also referred to in this case as the camper contracts.
A Okay.
Q Okay? She says, "Those are gonna transfer with

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

the sale of the LLC." The next sentence, "There may be a possibility of moving the membership campground across the road." Let's stop there for a minute. And of course, you and Mr. Hutson had just talked about that. Or, I'm sorry, you remember talking about that about two weeks later on Thanksgiving?

A Correct.

Q Y'all discussed the possibility and Susan Stroman mentioned the possibility on behalf of the sellers that there might be a possibility of moving the campground across the road.

A That's correct.

Q All right. And then she says, "Or buying the members out individually." Buying back the camper contracts?

A Our, whatever the remaining money that they had paid in 'cause you have to remember these camp— these contracts, these folks, even though these contracts were 8400-dollars a piece, these folks that had these contracts didn't write out an 8400-dollar check. Most of them put 840-dollars down, okay, so there was a balance of it. So by this time, say for instance, they had paid in, you know, two or three thousand dollars on their membership of that 8400-dollar contract, well, Susan

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

had suggested that maybe since this was 2010 and, you know, we'd already had the bubble by then, the real estate market was not very good, that these folks would consider or may consider getting whatever money they had paid in back out.

Q They might be willing voluntarily just accept a refund of what they'd put in and quit the campground?

A Well, not necessarily quit. I mean, you know, they still had access as we discussed yesterday for the public; but they would no longer have a lifetime membership there. However, they would receive the money that they had already paid back. That was the notion or the suggestion that may be one way to do away with the lifetime memberships. But like I said, this was just suggestions that she had, you know, that may work in order -- if at this time there was title issues. We did not know whether there was gonna be title issues or not. That was Mr. Hutson's concern at this particular point.

Q Okay. So one way, y'all discussed that, you said do away with the lifetime memberships was maybe to buy some of them back?

A Exactly.

Q And then the next sentence says, "The yearly fees

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

are due in January. If we're going to go to contract by then," — that means finish this deal by then, right?

A That means put the deal together and have both parties sign because there was no way possible that we could possibly close within that time, but we could have the resort, the Big Water Resort, under contract which meant that Mr. Hutson was obligated to the seller and the sellers were obligated to the buyers and the seller could not sell it to anyone else in the event someone else came alone.

Q Okay. And so she's saying in this sentence, "The yearly fees are due in January. If we were to go to contract by then perhaps these owners" — and she's talking about her clients in that phrase, right, TLC and Mr. Clarke, Lovell -- "would mail out a letter." She's talking about her clients, right, "these owners"?

A I am not — okay, if we could go to contract by then, January 1, perhaps these owners would not — okay, yeah, I suppose that's who she's talking about.

Q Okay. Would mail out a letter to all members — that's campground members, right?

A Correct.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Q January 1st, stating that if their fees -- they had to pay annual fees each year, right?
A Correct.
Q If their fees are not paid by January 31st their membership is voided. That's in Ms. Stroman's sentence on behalf of her clients TLC, Clarke and Lovell says, right?
A She said perhaps.
Q Perhaps, that's right.
A Okay, that's the key word there because she doesn't know whether they would or not. She just said maybe this is an option.
Q She ---
A Perhaps means maybe.
Q She's representing them here, we've established that.
A That is correct.
Q And so that will be another way to get rid of the camp, the lifetime campground contracts; wouldn't it?
A That's what she said. She said that their membership would be voided if they -- but you know, it's like anything else. If you have a life insurance policy and you don't pay it by the due date, then what happens to it?

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Q Well---
A What happens to the life insurance policy?
Q Her next sentence tells becomes voided ---
THE COURT: Hold on, ma'am.
THE WITNESS: So ---
THE COURT: Ma'am, please slow down.
THE WITNESS: Okay.
THE COURT: First of all, you don't get to ask questions, okay?
THE WITNESS: I'm sorry.
THE COURT: I know you get into it. You're talking over each other.
Proceed, sir.
BY MR. GORDON:
Q Let's go to the next sentence, Ms. Roark.
A Okay.
Q Ms. Stroman says, "I feel certain that would eliminate some of them."
A Yes, that's what it says.
Q That would get rid of some of these lifetime contracts; wouldn't it?
A Can I elaborate on that?
Q I mean, that's what it says, right?
A That is exactly what it says.
Q Okay.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

A Okay.
Q "On the average, you lose ten percent per year. Members can also be given a credit, upgrade to something else. There are a lot of positives to the members. January is the time to do whatever is to be done. I think the owners will be flexible with the amount of money paid for the members." The owners, those are her clients, would be flexible with the amount of money paid to the owners, to the members. That's to buy them out, right?
A I'm not exactly sure if she was talking about owners as in TLC Holdings or if she was talking about owners of the lifetime memberships because she, you know, had talked about buying them out. In other words, I thought that meant that they would be happy to receive some money instead of none at all or ——
Q This ——
A Yeah.
Q Ms. Stroman's gonna be next and we'll ask her.
A Okay.
Q Okay? She goes on in the next paragraph, "With some creative thinking we can figure out the member situation, but we cannot ignore the members. Due to the economy most of them would love to have their

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

money back, or at least some of it. There is always a few that will be difficult." That's what she wrote, right?
A That's correct.
Q All right. And then let's go to the back on the first page of this Exhibit 76, ma'am. You responded to that email also on the same day.
A That's correct.
Q And you said to her, "Thanks for the suggestions. I have forwarded them to Mr. Hudson," right?
A That's correct.
Q All right. Let's go to Defendant's Exhibit 77.
MR. GORDON: May I approach the witness, Your Honor?
THE COURT: Yes, sir.
BY MR. GORDON:
Q Okay, Ms. Roark, this was short. This is the email you wrote -- actually, this kind of jumps forward to December 8th but, by December 8th Mr. Hutson was back to talking to you about a different property; wasn't he, ma'am?
A Well, as I stated before, we talked about several different properties because there are four that met his criteria for what he wanted on Lake Marion. This property that we're referring to is with Tim

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Matthews, and we had already discussed Randolph Landing which was owned by her dad.

Q And you've said in this email to Kim Matthews who is also a realtor, right?

A Correct.

Q Mr. Hutson is inquiring about other property -- that would be Randolph's Landing -- since Big Water may not work out.

A Correct.

Q I want to ask you about another document, ma'am. I don't think I need to really waste time going back and forth. You've already talked about this fact. This is in Defendant's Exhibit 78. Ms. Stroman wanted Mr. Hutson to sign a confidentiality agreement, right?

A That is correct.

Q She wanted that on behalf of her clients, right?

A That's correct.

Q And then let me ask you about one more document, ma'am, Defendant's Exhibit 79.

MR. GORDON: May I approach the witness, Your Honor?

THE COURT: Yes, sir.

BY MR. GORDON:

Q This one is brief also, Ms. Roark, and it also is

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

two emails that are kind of in reverse order. And let's look at the first email which was from the fella named Billy Timmons who's, has an engineering company here in Clarendon County. It's an email from him to you on November 22nd, 2010, right?

A Correct.

Q And he writes to you, "Renee, please send me a return email to verify that you got this." And he said in the next sentence, "The layout shown is very preliminary." Apparently he's attached a layout, some type of flat drawing of something.

A That's what it appears, but I don't exactly remember, and it doesn't show an attachment.

Q Is that generally what the word layout would mean in your business?

A It would -- yes, a layout would be improvements on a piece of property.

Q Some kind of drawing showing --

A Some type of drawing, improvements on a piece of property.

Q "The layout shown is very preliminary and to show how many units could fit while keeping some RV, some RV sites and cabins." That's what he wrote.

A Correct.

Q He's talking to you then about a drawing that

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

would show how many condominium units can fit in here while keeping some of the RV sites and the cabins?

A That's correct.

Q And that would mean moving some of the RV sites and the cabins like we've been talking about, right?

A Not the cabins, but RV sites.

Q Okay. And you forwarded that email to Mr. Hutson also, right?

A Correct.

Q Those are all my questions for you, Ms. Roark.

A Okay.

MR. GORDON: I'd like to come get my last piece of paper if that's all right, Your Honor.

THE COURT: Yes, sir.

MR. GORDON: Thank you.

THE COURT: Mr. Johnson.

MR. JOHNSON: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. JOHNSON:

Q Ms. Roark, just a followup on this question of due diligence. Now projecting on forward, we kind of quit talking about or we didn't have much after the beginning of December between you and any of these parties, right?

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

A Correct.
Q Was there a time when, in fact, you basically lost communication with Mr. Hutson?
A Yes. As time progressed and things weren't really moving as quickly as he had originally thought they were, whenever the closing date was approaching I had several, you know, attempts to communicate with Mr. Hutson and he did not reply to me or Ms. Stroman; and then eventually he said we weren't gonna be able to close at that particular time.
Q Okay. Now as far as when you were involved requesting information, were you ever denied any information?
A I was never denied any information.
Q Okay. And this question of these lifetime memberships, who was it that seemed to be really antagonistic against going on with the lifetime memberships?
MR. GORDON: Objection to antagonistic, Your Honor.
MR. WILKERSON: Okay.
BY MR. WILKERSON:
Q Who was it that seemed to be opposed to proceeding with a transaction, to proceeding with a

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

deal that included lifetime memberships?
A Mr. Hutson.
Q Thank you. Nothing further.
MR. GORDON: Nothing further, Your Honor.
THE COURT: You may step down.
MR. JOHNSON: Your Honor, please.
THE COURT: Yes, sir.
MR. BYRD: We will call Ms. Susan Stroman.
THE CLERK OF COURT: Raise your right hand, place your left hand on the Bible, repeat your name please.
THE WITNESS: Susan Stroman.
WHEREUPON,

SUSAN STROMAN,

having been duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION

BY MR. BYRD:
Q Good morning, Ms. Stroman.
A Good morning.
Q Would you tell the jury your name please.
A Susan Stroman.
Q And you live in the area?
A I live in Elloree, South Carolina.
Q Okay. Tell us a little bit about your education,

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Ms. Stroman. If you would, begin with the high school from which you graduated.
A I graduated from Orangeburg High School, went to the University of Georgia for two years.
Q And thereafter any additional education?
A Quite a few real estate courses and completion of my South Carolina broker's license.
Q Are you a registered real estate agent?
A Yes, sir, I am a licensed real estate broker.
Q And were you licensed in 2010 as a real estate ---
A Yes, sir.
Q Okay. Tell us, if you would, a little bit about your employment history; but I'm gonna ask you specifically before you do that, in 2010 with whom were you employed?
A I was employed with AgentOwned Realty in Santee, South Carolina.
Q Now tell us a little bit generally about your employment history beginning, if you would, when you were licensed as a real estate agent.
A I was licensed as a real estate agent in 1986 and was employed by Century 21 in Santee, South Carolina, and have continually worked in the Santee area for the past 32 years as a real estate agent

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

and then later a broker.
Q Do you remember the first time that you ever talked with Mr. M.B. Hutson?
A I talked with Mr. Hutson by phone in November of 2010.
Q And was that the first contact you had with him?
A I had contact with his broker Renee. That is the first contact I'd had with Mr. Hutson.
Q Okay. So before that you'd been in contact with Ms. Roark who was just up on the stand?
A Yes, sir.
Q Do you remember or is your recollection similar to Ms. Roark's with regard to communications the two of you had?
A Yes, sir.
Q When Ms. Roark asked you about your knowledge of property that might be available for what Mr. Hutson was looking for, how did you respond to that?
A Please repeat the question.
Q Yes, ma'am. Ms. Roark asked you if you knew any property that might satisfy what Mr. Hutson was looking for; is that correct?
A Yes, sir.
Q And do you recall what you told her?
A I told her that there were several properties at

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Exit 102 that were commercial, large tracts of commercial property on Lake Marion and that I could try to contact some of the owners and see if anyone would be interested in selling.

Q Now you referenced Exit 102. That's the exit on I-95?

A Yes, sir.

Q And is that the exit which is contiguous to Lake Marion, the big lake?

A Yes, sir.

Q And there's an exit there that you can get off of I-95 to get to the property which is the subject of this litigation, that is, Big Water Campground; is that correct?

A Yes.

Q Were there other properties that you were aware of other than Big Water Resort?

A I was aware that the Northshore partners would possibly sell some of their development because the economy was taking a dive at that time and they might be having some difficulties and they might be willing to sell off some of their undeveloped property, but I did not represent the partners. And there was another mobile home park there, Cooper' Landing, that Mrs. Cooper, Mrs. Love, I'm sorry,

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

owned that I contacted Mrs. Love also.
Q Okay. And how did you happen to know about Big Water Resort RV site?
A In 2009 my husband and I had contacted the owners of the land, TLC Holdings, and had talked with Mr. Lovell and Mr. Clark about the possibility of us purchasing Big Water.
Q And were they willing to talk with you about that possibility?
A They did talk with us about it, yes, sir.
Q And were you ultimately able to put any sort of purchase together?
A No, sir.
Q And why is that, Ms. Stroman?
A We weren't given the appraisal on that property, and it was just beyond our realm of being able to do it. We could not do it.
Q You just were not financially able to ---
A Correct.
Q Okay. I would ask you, please, if we could pull up exhibit 13. You see that document, Ms. Stroman?
A Yes, sir.
Q And you heard Ms. Roark testifying about that communication?
A Yes, sir.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Q Okay. And that is the email she sent to you and Kim Matthews which included a cut and paste from Mr. Hutson's email to her; is that correct?
A Yes, sir.
Q And did you receive that communication in November?
A Yes, sir.
Q Okay. And did you respond to the questions that Ms. Roark put to you about this piece of property?
A I do not recall.
Q Whether you did or not?
A I do not recall.
Q Okay. Do you recall that you had continuing discussions with Ms. Roark about this piece of property?
A Yes, sir.
Q Okay.
MR. BYRD: You can take that one down, Ms. Johnson.
BY MR. BYRD:
Q Do you recall, Ms. Stroman, that you assisted in providing the engineering drawings with regard to that property?
A Yes, sir, I provided Mr. Billy Timmons' name and phone number to Renee.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Q Okay. And he is the engineer that had prepared drawings with regard to that property?
A Yes, sir.
MR. BYRD: If you can put up Exhibit 14 please, ma'am.
BY MR. BYRD:
Q Ms. Stroman, did you know that Ms. Roark was communicating with attorney Billy Coffey in Manning?
A Yes, sir.
Q Okay. And did you understand that Mr. Coffey was representing Mr. Hutson as his lawyer?
A I knew that Mr. Hutson and Mr. Coffey were discussing the legalities of the memberships.
Q Okay. Thank you, ma'am.
MR. BYRD: You can take that down, Ms. Johnson, please. Exhibit 41, please, ma'am.
BY MR. BYRD:
Q Ms. Stroman, if you would take a minute or so and review that email chain that Ms. Roark talked about during her testimony.
A Yes, sir.
Q All right. Those emails indicate some of them are to you and some are from you. Are those emails actually what they reflect, communications between you and Ms. Roark?

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

A Yes.
Q All right.
MR. BYRD: Ms. Johnson, if you could pull up Exhibit 43 please. And could you blow that up just a little bit for me, Ms. Johnson, so we can read it.
BY MR. BYRD:
Q All right. In that exhibit that's an email from Ms. Roark to you, is that correct, Ms. Stroman?
A Yes, sir.
Q And she's asking you to provide the following information with regard to Big Water: "Square footage of all the buildings on the Big Water property, name of appraiser that did the last appraisal on Big Water, is it possible for Mr. Hutson to see last appraisal that was done?" Now were you aware that there was an appraisal on that property?
A Yes, sir.
Q And I believe you'd actually seen that appraisal when you and your husband were talking to them about ---
A Yes.
Q ---buying that property? And that was an appraisal that had been given to the owners of Big

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Water Resort; is that correct?
A That's correct.
Q Do you happen to recall what the appraised value was in that appraisal?
A To the best of my knowledge it was 7 million-dollars.
Q Okay. And then the question was the name of an MAI commercial appraiser. Do you know what MAI stands for, Ms. Stroman?
A No, sir.
Q Okay. But it is a title that is given to appraisers, is it?
A I do not know.
Q Okay. And did you know the name of an appraiser in the area that you could provide?
A Yes, sir.
Q And who was that?
A Dwight Stewart in Manning.
Q Okay. And also you were asked the name of the person or company that did the sewer system for Big Water. Did you know the answer to that question?
A I knew the engineer only, Billy Timmons.
Q And that was Billy Timmons ---
A Correct.
Q ---in Manning?

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

A Right.
Q And he's a registered engineer, correct?
A Yes, sir.
Q Okay. Now, we know that you had requested that Mr. Hutson sign a confidentiality agreement before you provided this information; is that correct?
A Yes, sir.
Q Did you ever get such a confidentiality agreement?
A Not, not that I can recall.
Q Did you honor the request from Ms. Roark to keep this matter confidential?
A Yes, sir.
MR. BYRD: Ms. Johnson, if you can please pull up Exhibit number 44.
BY MR. BYRD:
Q Take a minute to familiarize yourself of that exhibit. That's some more conversation about the confidentiality agreement that you were requesting, correct?
A Yes, sir.
Q And Ms. Roark says that she's gonna see if she can get Mr. Billy Coffey, attorney Billy Coffey, to provide that. Do you know, I think you've just answered that that was never provided?

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

A The confidentiality agreement, I do not recall ever having received one.
Q Okay.
MR. BYRD: Ms. Johnson, if you can pull up exhibit 26 please, ma'am.
BY MR. BYRD:
Q Ms. Stroman, I've just handed up to you what has been marked and entered into evidence in this case Exhibit Number 26. And you see, this is an email from you to Steve Lovell and Richard Clark, ——
A Yes.
Q ——correct?
A Yes, sir.
Q And you say, "Hi, Richard and Steve, please notice this offer has not been past Coffey's desk at all." And by that time you knew Billy Coffey was Mr. Hutson's lawyer; is that right?
A Evidently.
Q Okay. And it also says that he is not aware of the offer, that your comment to Richard Clark and Steve Lovell, correct?
A Yes, sir.
Q And then you state, "After reviewing this I found several typos in paragraph 15.3 and 15.4. The word seller should be buyer in all sentences. I also did

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

not see where he is getting any upfront" -- I"m sorry -- "any money upfront on the members except ten dollars." Now had Mr. Hutson communicated to you how he was gonna close this transaction, whether it was gonna be a cash deal or what?

A My first knowledge of the buyer was that he had planned to pay cash for this property.

Q Okay. So you felt it important to note to Mr. Clark and Mr. Lovell that this agreement provided no cash other than ten dollars?

A Correct.

Q And this is something that you received from Andrew Tucker, yet another Hutson law-- I beg your pardon, Mr. Hutson's lawyer in Tennessee?

A Yes, sir.

Q Okay. Do you know how Mr. Tucker knew to send the agreement to you?

A I would assume that Mr. Hutson gave him my information.

Q Okay. You had not had any communication before that time with Andrew Tucker, had you?

A Not that I can recall.

Q Okay.

MR. BYRD: If you can pull up Exhibit 46 please, Ms. Johnson.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

BY MR. BYRD:
Q I'm gonna hand you now, Ms. Stroman, Exhibit Number 46. If you would take a minute to familiarize yourself with that. And Ms. Stroman, you see this is December the 7th, the next day after you had forwarded the first draft to Richard Clark and Steve Lovell, correct?
A Yes, sir.
Q And you had noted some typographical errors which were in the first draft, that is, December 6th draft, correct?
A Yes, sir.
Q And you communicated to Mr. Tucker those typographical errors?
A I do not recall.
Q Okay. Do you recall receiving the second draft of this contract from December the 7th?
A Yes, sir.
Q And Mr. Tucker, again, is communicating directly with you, and at that time you were representing ——
A The sellers.
Q ——the sellers, okay. Thank you. And here he says, "Attached please find the revised lease purchase agreement to be signed by the sellers." Now if you would look, ——

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

MR. BYRD: If you could pull up the second page, Ms. Johnson, of this contract.

BY MR. BYRD:

Q In the lower right hand of that page are the initials of Mr. Hutson, correct?

A Yes, sir.

Q And if you would look at all of the pages of that agreement, has Mr. Hutson initialed every page?

A Yes, sir.

Q And if you would go please to page 21 of that document. And actually Mr. Hutson has already signed that agreement, correct?

A Yes, sir.

Q And it's December the 6th, 2010, he signed it and his initials are at the bottom, correct?

A Yes, sir.

Q Thank you, ma'am. After these two drafts, the one on December the 6th of 2010 and the one on December 7th, 2010, did you have any further involvement in this transaction that you recall?

A The only involvement I had after that was a commission agreement that Mr. Hutson brought by my real estate office and presented us with. It was for Renee and myself and a witness to sign.

Q Okay. And Mr. Hutson brought that to you?

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

A Yes, sir.
Q And it provided a commission?
A I do not recall if it was faxed to me by Renee or if Mr. Hutson actually brought it by, I don't remember.
Q All right. Did you put Mr. Clark in contact with Mr. Hutson directly?
A Yes, sir. At some point in the first of November Renee asked me that his client, or emailed me or called me, I don't recall, and said that his client would like for the contract to be taken private and would like to discuss with Richard to see directly and would they agree to do that. So I called Mr. Clark and asked him would he agree to talk with Mr. Hutson and meet with him and his attorney, and he said, yes, I will, give him my phone number.
Q So Mr. Clark authorized you to give Mr. Hutson Mr. Clark's telephone number; is that correct?
A Yes, sir.
Q All right. And as far as you know, other than the real estate commission agreement that you received that Mr. Hutson had signed, was there any further involvement in this transaction as far as you were concerned?
A None.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Q Thank you, Ms. Stroman, and answer any questions that Mr. Gordon might have of you.

THE COURT: Yes, sir.

MR. GORDON: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. GORDON:

Q Good morning, Ms. Stroman.

A Hi.

Q I'm Frank Gordon. I represent Mr. Hutson in this case, and I just have a few questions for you, ma'am. Mainly I want to ask about one exhibit. You've testified already in this case at a deposition, right, ma'am?

A Yes, sir.

Q And you testified that you were asked who were you working for at that time period from the initial contact to when he came down in November, when Mr. Hutson came down to the property. Your answer was, the seller: Question, did Mr. Clark authorize you to act on TLC's behalf? The answer was, verbally. That's the true testimony that he gave, right?

A Yes, sir.

Q So I want to ask you about Exhibit 76.

MR. GORDON: If we can pull that up, Your

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Honor. May I approach the witness?

THE COURT: Yes, sir.

BY MR. GORDON:

Q Ms. Stroman, I'm gonna give you a copy.

MR. BYRD: Is this Defendant or Plaintiff?

MR. GORDON: I'm sorry, Defendant's Exhibit 76.

BY MR. GORDON:

Q Ms. Roark and I were just talking about it a few minutes ago, you probably heard us, so this won't be too out of the blue for you. This is the three emails, the three email chain, so if we can start on the second page we'll start with the first email. And that's an email from Ms. Roark to you, right?

A Yes, sir.

Q And you see where I'm talking about there where she says Susan, comma?

A Yes, sir.

Q Okay. And this is November 11th, 2010 so this is before Thanksgiving. And she asks you, "Susan, what happens with the lifetime membership once the property is transferred to another owner/entity. Do you think the lifetime memberships will be a red flag for title work. The lifetime memberships seem to be an issue with my buyer. How do you suppose we

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

get around it to make this work." That's what she asked you, right, a couple of questions there.

I really want to focus on the last question. "How do you suppose we get around it to make this work." 'Cause that's a part of what you were responding to in your email response, right?

A Yes, sir.

Q How so we get around the lifetime memberships. And your email responses starts on the first page and goes over to the second page. And your email, I think, it's the same day, November 11th, 2010. Says to Ms. Roark — I'm looking at the second paragraph, ma'am. I think I've highlighted it on your copy too. It says, "Memberships will transfer with the LLC." So that's, again, the camper membership agreements?

A Yes, sir.

Q And you wrote in the next sentence, "There may be a possibility of moving the membership campground across the road." That means moving some of the RV sites across the road, right?

A Yes, sir.

Q And in this context in light of what Ms. Roark has told us, what y'all are discussing here since Mr. Hutson wanted to develop waterfront property is

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

moving some of the RV sites off the waterfront property and across the road so he can develop condominiums there, right?
A Yes, sir.
Q And the sentence goes on to say, well, it says, "There may be a possibility of moving the membership campground across the road or buying the members out individually." What was that about, buying the members out individually?
A Each member had paid a large sum of money. I would say anywhere from 4,000 to 8,000-dollars for their membership, and at this time the economy was pretty well beginning to tank in our area and it was a possibility that some of the members would have taken their money back and relinquish their membership.
Q Okay. And that would get rid of some of the double lifetime or single lifetime membership contracts that were ---
A Yeah, that was my suggestion.
Q Yes, ma'am. The next sentence, we're on to the second page there now, ma'am. "Yearly fees are due in January. If we were" — that's the campground members fees. They have to pay annual fees, two or three hundred dollars probably back then in each

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

year in January, right?
A Yes, sir.
Q That's on top of the 8,400-dollars they've already paid, right?
A Yes, sir.
Q And that they had to pay that every January, right?
A Yes, sir.
Q And there was a penalty if you didn't pay it on time, right?
A I don't recall.
Q Okay. Well, your letter here, your email says, "The yearly fees are due in January. If we were to go to contract by then, perhaps these owners" — that's Mr. Clark, Lovell, Thigpen, and TLC, right?
A Yes, sir.
Q "Perhaps they would mail out a letter to all members January 1 stating that if their fees are not paid by January 31 their membership is voided." That's what that sentence says, right?
A Yes, sir.
Q That would get rid of some lifetime and double lifetime camper contracts on this property; wouldn't it?
A Possibly.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Q They don't pay in 30 days 300-dollars they lose their whole 8,400-dollar investment, or however much money they invested ——
A Yes, sir.
Q ——'cause their membership is voided?
A Yes, sir.
Q The next sentence says, "I feel certain that would eliminate some of them." That's what you wrote?
A Yes, sir.
Q You felt certain that sending them a letter on January 1 telling them, if you don't pay three hundred bucks by January 31, some of them wouldn't do it and that would get rid of some lifetime, double lifetime membership contracts, right?
A Yes, sir.
Q And then on the average you lose ten percent per year. That's because folks just quit paying 'cause they don't want come there anymore for whatever reason, right?
A Yes, sir.
Q And again, you're trying to address this concern Ms. Roark has said, how do you suppose we get around these lifetime membership contracts, right?
A Yes, sir.

Q Well, one of the ways that you're telling her that she ought to think about and share with her client Mr. Hutson, some people are gonna drop out anyway, right?
A Yes, sir.
Q The next sentence says, Members can also be given a credit to upgrade to something else." What might that be, condo or ---
A Condominium.
Q ---a week or two at a condo that's gonna take the place of the RV site?
A Yes, sir.
Q Okay. And there are a lot positives to the members. January is the time to do whatever is to be done, that is, to send them the letter saying pay your dues or your contract is terminated, right?
A Yes, sir.
Q And you say, "I think the owners," -- again, that's your clients, TLC, Clark, Lovell, Thigpen, right?
A Yes, sir.
Q I think the owners will be flexible with the amount of money paid for members; that is, they'd be flexible with the amount of money they might need to spend out of their pocket to buy back some of these

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

camper contracts. That's what you're talking about there, right?
A No, sir, I didn't read it that way.
Q Well, you wrote it so tell us what it means.
A To the best of my recollection, ——
Q Yes, ma'am.
A ——the Big Water, LLC, consisted of the members; and when LLC transferred over, that was members, not real estate.
Q Right.
A And that the amount paid for the members, Big Water, LLC, could be flexible; in other words, they could be negotiable on what they receive for the membership, the LLC.
Q Okay. All with a purpose towards thinking towards buying them out and somebody got to pay for it one way or another, right?
A Yes, sir.
Q And the next sentence says, "Remember, there is an accounts receivable." What is an accounts receivable? What does that mean?
A That means money that is still owed to Big Water, LLC, from memberships that were sold on credit.
Q Okay. So there's money that's supposed to come in that you're waiting on?

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

A Right.
Q That's called accounts receivable?
A Yes, sir.
Q You say, "Remember, there is an accounts receivable for over two hundred thousand dollars on the books for financed members." In other words, you're reminding Ms. Roark there's still some money that has to be paid by these campers who bought their memberships over time, who financed their memberships, and perhaps that could just be forgiven and they would quit." That would get rid of some other camper contracts, right?
A I don't recall how ——
Q Okay. The next paragraph, "With some creative thinking we can figure out the membership situation, the member situation, but we cannot ignore the members. Due to the economy, most of them would love to have their money back, or at least some of it. There is always a few that will be difficult." And you wrote that in November of 2010 before Mr. Hutson purchased this property, right?
A Mr. Hutson never purchased this property.
Q Before he signed the contract to purchase it. You wrote that, correct?
A Yes, sir.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Q "There's always a few campground members that would be difficult," right?
A Sure.
Q Wouldn't be able to buy them all out?
A Right.
Q Some of them might even file a class action one day, you never know.
A (There was no response.)
Q Right?
A Yes, sir.
Q And Ms. Roark in her response to your email said, "Thanks for these suggestions. I have forwarded them to Mr. Hutson," right?
A Yes, sir.
Q Thank you, Ms. Stroman.

MR. GORDON: Thank you, Your Honor.

THE COURT: Yes, sir.

REDIRECT EXAMINATION

BY MR. BYRD:

Q Ms. Stroman, these ideas or thoughts that Mr. Gordon just asked you about, those were your ideas, correct?
A Correct.
Q They had not been suggested to you by Mr. Clark or Mr. Lovell, had they?

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

A No, sir.
Q So that was your creativity ——
A Yes, sir.
Q ——and suggesting; is that right?
A Yes, sir.
Q I have no further questions. Thank you, Ma'am.
MR. GORDON: Nothing further, Your Honor.
THE COURT: You may get down, ma'am, thank you.
All right, gentlemen, we've been at this, and ladies, approximately two hours, perhaps even longer for them, so let's break now until about roughly 20 minutes until 12. Please do not deliberate, think about, talk about this case.
(WHEREUPON, the jury was removed from the courtroom at 11:26 a.m. and a break was taken.)
(WHEREUPON, the jury was returned to the courtroom at approximately 11:43 a.m., and the following proceedings commenced in open court.)
THE COURT: Mr. Wilkerson.
MR. BYRD: If Your Honor please.
THE COURT: Yes, sir.
MR. BYRD: The plaintiff would call

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

State of South Carolina)
)
County of Clarendon)

In The Court of Common Pleas
Third Judicial Circuit
2015-CP-14-0615

TLC Holdings, LLC; Richard Clark; Jimmy S. Lovell,

Plaintiffs,

vs.

M.B. Hutson, a/k/a M.B. Hudson,

Defendant.

Transcript of Record

January 26, 2018
Manning, South Carolina

B E F O R E:

The Honorable George M. McFaddin, Jr., Judge, and a jury

A P P E A R A N C E S:

R. Wayne Bryd, Esquire
William Johnson, Esquire
John S. Wilkerson, III, Esquire
Attorneys for the Plaintiffs

Francis J. Gordon, Esquire
Andrew B. Spradlin, Esquire
Attorneys for the Defendant

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

Witness/Description	Page No.
Jury Charge	3
Verdict	29
Certificate Page.	31

E X H I B I T S

No.	Description	Ev.
C-1	Jury Question	27

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

in, the jurors?

(THE JURY ENTERS AT 1:53 P.M.)

CLERK OF COURT: Madame Forelady, have you reached a verdict?

FOREPERSON: Yes, ma'am.

THE COURT: A unanimous verdict?

FOREPERSON: Yes, ma'am.

(A PAUSE.)

THE COURT: Madame Clerk would you please publish this verdict?

VERDICT

CLERK OF COURT: On case number 2005-CP-15-1615, TLC Holdings, LLC; Richard Clark; Jimmy S. Lovell as plaintiff vs. M.B. Hutson, a/k/a M.B. Hudson, defendant. As to the claims of any or all plaintiffs, we, the jury, unanimously find for the plaintiffs, and the verdict in the amount of 3.5 million actual damages. Signed Latisha R. Canty, foreperson, dated January 26, 2018.

THE COURT: All right. Thank you, ma'am.

Anything from the attorneys?

MR. WILKERSON: Nothing for plaintiff, Your Honor.

MR. GORDON: Not right at this moment, Your Honor.

THE COURT: Okay.

MR. GORDON: Before the jury is discharged.

THE COURT: I understand. I understand. Okay.

ELECTRONICALLY FILED - 2019 Jun 25 8:44 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Susan Stroman <thestromanteam@gmail.com>

Request regarding Big Water

2 messages

Renee Roark <reneeroark@hotmail.com> Wed, Nov 10, 2010 at 9:26 PM
To: Susan Stroman Jill James <thestromanteam@gmail.com>, Kim Matthews <kimmatthews192@msn.com>

Susan and Kim,

I received any email from my client requesting the following information. I STRESS to BOTH of you to NOT discuss anything regarding the possibility of this transaction or any details we discuss regarding this transaction with anyone other than the owners/parties involved. As you will see from my buyers email, this is extremely important for this transaction to take place. Let's work diligently together to put this deal together for ALL parties involved! I really appreciate your help, willingness, and cooperation in this process. I am sure this deal will not be easy and will require A LOT of time and effort but I am confident we can make it happen!

1. Get a survey plat, normally they are about 18 inches by 24 inches. Hopefully, it will show by scale all buildings and docks including any pools and all camping spaces. Would like to see every improvement located and showed on this survey plat.

2. Make arrangements to have full access to all buildings and have that access approved prior to my arrival. I do not wish to be known nor introduced to anyone during my visit, if a contract is to submitted, one of my attorneys will provide the special stipulations and you may provide the balance on your standard real estate forms. Do not discuss with anyone about anything regarding this project other than the persons you need to ask questions to and do not give out any information.

3. Find out who is the most knowledgeable person is regarding any and all improvements that have been made to this property. Merely state that you have an individual or company interested and you need certain information as soon as possible.

4. Find out how many lifetime memberships there are and how long before all yearly memberships expire.

Do not discuss any pros and cons with anyone until I say different. Get this information as soon as you can, once obtained I will come there. No need for me to come there without the plat and information. I do not wish to meet anyone other than yourself and please discuss with no one of my arrival. No One. Do not discuss nor give out any information regarding the buyer or what the buyer has in mind. I will video and take pictures while there or send an engineer to do so. Let me know how you are progressing. **Please remember, strategy is everything and gossip/leaks information is a killer. I spend my time for money reasons.**

OK..above is copy & pasted from my buyers email! As you see, he means business so please lets honor his wishes and keep everything confidential! Let me know what I can do to help get this information together asap!

Thanks again!
Renee Roark, Realtor
Multi-Million Dollar Producer
Re/Max by the Lake
Manning, South Carolina

803-460-4373 -cell

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Print Close

Big Water life time membership info.

From: **Renee Roark** (reneeroark@hotmail.com)
Sent: Thu 11/11/10 10:52 AM
To: Claudia (claudia@coffeychandlerkent.com)
1 attachment
Big Water membership.pdf (920.9 KB)

Mr. Coffey,

Attached is Susan's lifetime membership info. regarding Big Water camp ground. My buyer is concerned about the "life time" members and the impact they can have on the future development of the property. In other words, in your opinion, what is the easiest, legal way to terminate the lifetime memberships of Big Water? Will these memberships have an impact on obtaining clear title for the property?

Would it be better for you to call him and talk to him OR draft an email to him? PLease let me know your thoughts. I can also give him your number if you would rather him call you.

Thanks,

Renee Roark, Realtor ®
Multi-Million Dollar Producer
Re/Max by the Lake
Manning, South Carolina

803-460-4373-cell
803-433-7355 ext.104 -office
803-236-0871-home

www.reneeroark.lakemarionproperty.com
reneeroark@hotmail.com

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Steve Lovell

From: Susan Stroman [thestromanteam@gmail.com]
Sent: Monday, December 06, 2010 5:32 PM
To: Steve Lovell; Richard Clark
Subject: Fwd: Big Water Resort
Attachments: 20101206155547419.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Richard and Steve,
Please notice this offer has not been past Coffey's desk at all. He is not aware of the offer.
After reviewing this, I found several typo's in paragraph 15.3 &15.4 The word "Seller" should be "Buyer" in all sentences.
I also don't see where he is giving any money upfront on the members (except for $10.00)
Let's talk around 1-2pm if possible. I should get a revised copy tomorrow am. I look forward to hearing your thoughts on this one! Good Evening, Susan

---------- Forwarded message ----------
From: **Andrew Tucker** <tucker@aftlegal.com>
Date: Mon, Dec 6, 2010 at 3:54 PM
Subject: Big Water Resort
To: thestromanteam@gmail.com

an,

Attached, please find the Lease Purchase Agreement for M. B. Hudson for the Big Water Resort in Summerton, SC. Please have executed by the Seller and return to me at your earliest convenience.

With kindest regards,

Andrew Tucker
Law Office of Andrew F. Tucker
385 2nd Avenue, Suite 1
Dayton, Tennessee 37321
(423) 570-0506
(423) 428-9014 fax

--
Susan Stroman
Broker Associate
·505-2674 CELL
·-854-0104 OFFICE
803-854-0015 FAX

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RE: Questions!

From: **Renee Roark** (reneeroark@hotmail.com)
Sent: Thu 11/11/10 11:19 AM
To: Susan Stroman (thestromanteam@gmail.com)

Thanks for the suggestions. I have forwarded them to Mr. Hudson. I also emailed him Billy Coffey's number and suggested that he discuss the legalities of it with him. I will let you know about the engineer drawings.
Did you get my email from last night? Is there anything I can do to help find the information?

Thanks again,

Renee Roark, Realtor ☺
Multi-Million Dollar Producer
Re/Max by the Lake
Manning, South Carolina

803-460-4373-cell
803-433-7355 ext.104 -office
803-236-0871-home

www.reneeroark.lakemarionproperty.com
reneeroark@hotmail.com

Date: Thu, 11 Nov 2010 11:08:57 -0500
Subject: Re: Questions!
From: thestromanteam@gmail.com
To: reneeroark@hotmail.com

The engineered drawings are all in the administration building, we can look at them, but we can not remove them. I will have to get the office manager to get them out when we need them. the Drawings are large and one on each system. They are down to one copy. I have the manual for the water sytem in my possession.
Memberships will transfer with the LLC. There may be a possiblity of moving the membership campground across the road (keeping one address for all the resort) or buying the members out

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individually. The yearly fees are due in Jan., If we were to go to contract by then, perhaps these owners would mail out a letter to all members Jan 1 stating that if their fees are not paid by Jan 31, their membership is voided. I feel certain that would illiminate some of them. On the average, you loose 10% per yr. Members could also be given a credit to upgrade to something else. There are a lot of positives to the members. January is the time to do whatever is to be done. I think the owners will be flexible with the amount of money paid for members. Remember there is an accounts receiveable for over 200K on the books for financed members.
With some creative thinking, we can figure out the member situation, but we cannot ignore the members. Due to the enconomy, most of them would love to have their money back, or at least some of it. There is always a few that will be difficult.
Thanks, Susan

On Thu, Nov 11, 2010 at 9:55 AM, Renee Roark <reneeroark@hotmail.com> wrote:

> Susan,
>
> What happens with the lifetime membership once the property is transferred to another owner/entity? Do you think the lifetime memberships will be a red flag for title work? The life time memberships seem to be an issue with my buyer. How do you suppose we get around it to make this work?
> Can you also call Jim Thigpen or ask one of the partners if they have a map showing where all the improvements (wells, tanks, water/sewer lines parking pads, etc) are on the property? There HAS to be some engineering drawings somewhere with this information. I will be happy to call the engineer that drew it all out if you will get me the name & number>
>
> Thanks,
>
> *Renee Roark, Realtor* ☺
> *Multi-Million Dollar Producer*
> *Re/Max by the Lake*
> *Manning, South Carolina*
>
> *803-460-4373-cell*
> *803-433-7355 ext.104 -office*
> *803-236-0871-home*
>
> *www.reneeroark.lakemarionproperty.com*
> *reneeroark@hotmail.com*

--

Susan Stroman
Broker Associate
803-505-2674 CELL
803-854-0104 OFFICE
803-854-0015 FAX

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RE: Big Water Concept

From: **Renee Roark** (reneeroark@hotmail.com)
Sent: Tue 11/23/10 10:04 AM
To: timmonsengr@ftc-i.net

Mr. Timmons,

The email did go to my junk folder! I have forwarded your email to Mr. Hudson for his review. Thank you for your help.

Talk to you soon!

Renee Roark, Realtor
Multi-Million Dollar Producer
Re/Max by the Lake
Manning, South Carolina

803-460-4373-cell
803-433-7355 ext.104 -office
803-236-0871-home

www.reneeroark.lakemarionproperty.com
reneeroark@hotmail.com

From: TimmonsEngr@ftc-i.net
To: ReneeRoark@hotmail.com
Subject: Big Water Concept
Date: Mon, 22 Nov 2010 18:09:44 -0500

Renee,

Please send me a return email to verify that you got this.

The layout shown is very preliminary and to show about how many units could fit while keeping some RV sites and the cabins.

The number of units is subject to utilizing offsite water and sewer as we have discussed and also to getting all the regulatory approvals from County, DHEC, etc.

Let me know if you have any questions.

Thanks,

Billy

Timmons Engineering
P.O. Box 927
16-C N. Brooks St.
Manning, SC
Phone: 803-435-4243
Fax: 803-435-2647

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More questions!

From: **Renee Roark** (reneeroark@hotmail.com)
Sent: Mon 11/29/10 10:07 AM
To: Susan Stroman (thestromanteam@gmail.com)

Good Morning Susan,

Please email me the following information regarding Big Water!

1. Square footage of all the buildings on the Big Water property.
2. Name of appraiser that did the last appraisal on Big Water. Is it possible for Mr. Hudson to see the last appraisal that was done?
3. Name of a MAI (commercial) appraiser in our area, if you know one.
4. Name of person/company that did the sewer system for Big Water.

Mr. Coffey has sent Mr. Hudson the first draft of the contract. We are making progress, hopefully we continue forward!

Thanks,

Renee Roark, Realtor ☺
Multi-Million Dollar Producer
Re/Max by the Lake
Manning, South Carolina

803-460-4373-cell
803-433-7355 ext.104 -office
803-236-0871-home

www.reneeroark.lakemarionproperty.com
reneeroark@hotmail.com

Date: Fri, 19 Nov 2010 11:21:13 -0500
Subject: Fwd: Convienent Store Lease

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From: thestromanteam@gmail.com
To: reneeroark@hotmail.com

---------- Forwarded message ----------
From: **Fax Server** <chas.fax@agentowned.com>
Date: Fri, Nov 19, 2010 at 9:41 AM
Subject: Incoming Fax Message
To: "thestromanteam@gmail.com" <thestromanteam@gmail.com>

This message was received via FAXCOM, a product from Biscom Inc. http://www.biscom.com/

-------Fax Reception Report-------

Received Time: 11/19/2010 09:39
Result: OK
Description: All pages received OK
Result Code: 0000
Pages Received: 3
Remote TSI: 8038540015
Connect Time: 1 minutes, 33 seconds
Routing ID: 6695
Fax Line: 2
Fax Server: Enterprise1

The fax is included as a PDF image attachment

--
Susan Stroman
Broker Associate
803-505-2674 CELL
803-854-0104 OFFICE
803-854-0015 FAX

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Steve Lovell

From: Susan Stroman [thestromanteam@gmail.com]
Sent: Tuesday, December 07, 2010 11:12 AM
To: Steve Lovell; Richard Clark
Subject: Fwd: Big Water Resort
Attachments: 20101207090806360.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

---------- Forwarded message ----------
From: **Andrew Tucker** <tucker@aftlegal.com>
Date: Tue, Dec 7, 2010 at 9:09 AM
Subject: Re: Big Water Resort
To: thestromanteam@gmail.com

Susan,

Attached, please find the revised Lease Purchase Agreement to be signed by the Sellers. Please feel free to contact me if there are any questions.

With kindest regards,

Andrew Tucker
Law Office of Andrew F. Tucker
385 2nd Avenue, Suite 1
Dayton, Tennessee 37321
(423) 570-0506
(423) 428-9014 fax

--
Susan Stroman
Broker Associate
803-505-2674 CELL
803-854-0104 OFFICE
803-854-0015 FAX

Attachment to Exhibit 46 omitted
(draft of Lease Purchase Agreement)

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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	CIVIL ACTION NO: 2018-CP-40-06344

MB Hutson/MB Hudson,

Plaintiff,

v.

Penn America Insurance Company, Global Indemnity Group, Inc., Timothy J. Newton, Esquire, JR Murphy, Esquire, John Doe #1 and John Doe #2,

Defendants.

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

The undersigned party, J.R. Murphy, pro se, submits this Memorandum in Support of his Motion to Dismiss. In doing so, he incorporates all of the arguments, exhibits, and materials submitted in connection with the Memorandum in Support of the Motion to Dismiss, to Reply Memorandum, Response to Plaintiff's Supplemental Memorandum, and Amended Response to Plaintiff's Supplemental Memorandum filed by Timothy J. Newton, Pro Se. In addition, Murphy sets forth the following:

1. The Amended Complaint does not allege any conduct by Murphy causing damage to Plaintiff

In addition to the grounds set forth in the previously filed Memorandum of Timothy J. Newton and incorporated herein by reference, Murphy would show that the Amended Complaint setting forth causes of action for breach of contract, fraud and misrepresentation, does not contain any factual allegation involving Murphy other than the fact he served as counsel for Penn America Insurance Company in a prior declaratory judgment action between Penn America, Plaintiff, and others. These allegations therefore are insufficient to establish any cause of action against Murphy.

In addition, with respect to fraud or misrepresentation, there are no allegations involving any conversations, written, oral or otherwise, between Plaintiff and Murphy, and no such

communications or conversations ever existed. Therefore, the Amended Complaint should be dismissed as to Murphy with prejudice and with appropriate sanctions pursuant to Rule 11.

2. The Amended Complaint does not allege any recognized legal duty involving Murphy

It is undisputed that Murphy and Newton represented an adverse party in a declaratory proceeding involving Plaintiff. As such, South Carolina would not recognize any duty flowing from Murphy or Newton to Plaintiff, whether based upon negligence, fraud, bad faith, professional malpractice or otherwise. Moreover, any communication between adversaries cannot be the basis for a subsequent action based upon negligence, misrepresentation or fraud. An attorney is obligated to represent his own client zealously and therefore, must be protected from any duty to also "represent", "advise", "assist" or otherwise "direct" or provide "guidance" to an adverse party. If such actions are allowed, an attorney's professional duties to his own client will be compromised, if not eliminated, for fear that representing his own client could expose him to an action from an adversarial party for not also looking out for their interest. This has never been and cannot be the law of South Carolina. Therefore, the Amended Complaint should be dismissed with prejudice and with appropriate sanctions under Rule 11.

Respectfully submitted,

s/J.R. Murphy
J.R. Murphy, Esquire (SC Bar #7941)
PO Box 6648
Columbia, South Carolina 29260
(803) 782-4100

Columbia, South Carolina
June 25, 2019

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
MB Hutson/MB Hudson,	)	Civil Action No. 2018-CP-40-06344
	)	
Plaintiff,	)	
	)	
vs.	)	**DEFENDANTS PENN AMERICA INSURANCE COMPANY AND GLOBAL INDEMNITY GROUP, INC.'S MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT**
	)	
Penn America Insurance Company, Global Indemnity Group, Inc., Timothy J. Newton, Esquire, J.R. Murphy, Esq., John Doe #1, and John Doe #2,	)	
	)	
Defendants.	)	

TO: MB HUTSON A/K/A MB HUDSON, *PRO SE* PLAINTIFF:

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Penn America Insurance Company and Global Indemnity Group, Inc. (collectively "PAIC"), by and through its undersigned counsel, filed its motion for summary judgment on June 14, 2019. PAIC submits the following memorandum of law in support of its motion. Specifically, PAIC requests an order granting summary judgment in its favor because: (a) Plaintiff executed a valid Release in favor of Penn-America and its affiliates, which precludes the instant claims; and (b) there exists no genuine issues of material fact and PAIC is entitled to judgment as a matter of law as to all causes of action articulated in Plaintiff's Amended Complaint.

PROCEDURAL BACKGROUND

Plaintiff Hutson filed the original Complaint in this action on December 5, 2018, and filed his Amended Complaint on December 28, 2018. PAIC filed its timely Answer on February 14, 2019. Co-Defendants, J.R. Murphy and Tim Newton, both *pro se*, filed a joint Motion to Dismiss on February 12, 2019. Hutson filed a document entitled "Memorandum to Defendant's Response" on May 7, 2019. Newton filed a memorandum in support of the Motion to Dismiss, or in the

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

alternative, Motion for Summary Judgment, filed on May 30, 2019, and reply memorandum on June 13, 2019. A hearing on Murphy's dispositive motion is set for June 26, 2019.

Stated succinctly, Hutson raises claims in contract and tort against his former insurer and their coverage counsel related to the defense rendered to him in two prior lawsuits—a federal class action case in which Hutson was sued under a third party claim for equitable indemnity and a related state defamation action—as well as a declaratory judgment action regarding PAIC's coverage obligations in those two lawsuits. Construing his Complaint liberally, Hutson asserts, or attempts to assert, causes of action against PAIC for breach of contract, bad faith, fraud, misrepresentation, negligence, tortious interference with attorney-client relationship, and legal malpractice. Hutson seeks $4.5 million in damages.

FACTS

Defendants PAIC adopt and incorporate by reference the factual background provided in the Memorandum in Support of Timothy Newton's Motion to Dismiss, or in the alternative for Summary Judgment, which was filed with this Court on May 30, 2019. In order to avoid another voluminous filing in this case, PAIC will make reference to many of the exhibits that accompanied Hutson's Amended Compliant and Newton's memorandum and will attach anew only those exhibits which have not previously been filed with the Court.

STANDARD OF REVIEW

A court will grant a moving party's motion for summary judgment when there exists no genuine issue of material fact, and that party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the court views both the evidence and all reasonable inferences able to be drawn from the evidence in the light most favorable to the non-moving party. Simmons v. Tuomey Regional Medical Center, 341 S.C. 32, 533 S.E.2d 312

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(2000). Nonetheless, the court, "cannot ignore facts unfavorable to [the non-moving] party and [it] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts." Bloom v. Ravoira, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000). Accordingly, the court must search the proof to ascertain whether it discloses a real issue, rather than a formal, perfunctory or shadowy one. Saluda Motor Lines v. Crouch, 300 S.C. 43, 46, 386 S.E. 2d 290, 292 (Ct. App. 1989).

The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial. Bray v. Marathon Corp., 347 S.C. 189, 553 S.E.2d 477 (Ct. App. 2001). With respect to an issue on which the non-moving party has the burden of proof, the moving party may point out to the trial court that there is an absence of evidence to support the non-moving party's case. Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). The non-moving party must then "do more than simply show that there is some metaphysical doubt as to the materials facts" but "must come forward with specific facts showing that there is a genuine issue for trial." Id. "Indeed, Rule 56(e) specifically prohibits the nonmoving party from resting upon the mere allegations or denials of its pleadings." Baughman, 306 S.C. at 115, 410 S.E.2d at 545. "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Moore v. Barony House Restaurant, LLC, 382 S.C. 35, 40, 674 S.E.2d 500, 503 (Ct. App. 2009).

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LAW/ANALYSIS

I. Plaintiff's claims are barred pursuant to the Settlement and Release Agreement he executed on September 16, 2016, releasing any present or future claims against Penn-America.

On September 16, 2016, Hutson executed a Settlement Agreement and Release in the declaratory judgment action, whereby he released Penn-America, its agents, and its affiliates, from liability for exactly the kinds of claims he raises in the instant action. **(See Newton Ex. I, Settlement Agreement and Release).** The Release explicitly provides:

> Hutson, for and in consideration of the sum of Nine Thousand Five Hundred and 00/100 ($9,500.00) Dollars, receipt of which is hereby acknowledged, does hereby release and forever discharge Penn-America, its agents, servants, employees, affiliates, successors and assigns, and any and all other persons, firms or corporations from any and all actions, causes of action, demands and/or claims of any nature whatsoever which the undersigned may have against Penn-America relating to:
>
> a. Penn-America's coverage for the Underlying Lawsuits; and
>
> b. Penn-America's coverage for the Property Loss claim;
>
> together with any claims relating to Penn-America's investigation and/or claim handling, including any causes of action for breach of contract, bad faith, improper claims practices, or any other cause of action which could be asserted, arising from the above-reference matters (hereinafter "Released Claims"). The consideration expressed herein constitutes payment in full to Hutson for all policy proceeds, damages, losses and/or injuries to persons or property or both, whether known or unknown, developed or undeveloped, which have resulted or may result from the incident aforesaid, whether the claims could have been asserted against Penn-America by way of counterclaim in the Declaratory Judgment Action or by separate lawsuit.

(Id. at Bates PAIC-024). Global Indemnity Group, Inc. is the parent company of Penn-America Insurance Company, and is thus encompassed within the Release's specification that it applies to Penn-America's "affiliates" and "any and all other persons, firms or corporations."

"Litigants are free to devise a settlement agreement in any manner that does not contravene public policy or the law." Ecclesiastes Prod. Ministries v. Outparcel Assocs., 374 S.C. 483, 493,

649 S.E.2d 494, 499 (Ct. App.2007). Here, there is no policy or law prohibiting Hutson's agreement, for due consideration, not to sue its insurer. General contract principles apply to the construction of a settlement agreement because a settlement agreement is a contract. Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 672 S.E.2d 799 (Ct.App. 2009). When an agreement is plain and unambiguous, the court does not have the authority to modify its terms. Patricia Grand Hotel, LLC v. MacGuire Enters., 372 S.C. 634, 643 S.E.2d 692 (Ct.App.2007). The court must enforce an unambiguous contract according to its terms, regardless of the contract's wisdom or folly, or the parties' failure to guard their rights carefully. Ellis v. Taylor, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994); Jordan v. Security Group, Inc., 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993).

Hutson has a history of entering into settlement agreements, even with the advice of counsel, to gain what he wants in the moment, and then ignoring the terms of those agreements when personally advantageous in the future. Here, the plain language of the Release, which specifically references its applicability to claims for "breach of contract, bad faith, [and] improper claims practices," necessitates dismissal of all of Hutson's claims against PAIC.

II. Plaintiff's claim for breach of contract must fail because there is no evidence that PAIC failed to comply with its contractual duty to defend Plaintiff in both underlying actions.

Assuming *arguendo* that this claim is not barred by the Release referenced *supra*, Hutson's claim for breach of contract must fail as a matter of law. To establish a claim for breach of contract, a plaintiff must establish (1) the existence of a contract, (2) its breach, and (3) the damages caused by such breach. Branche Builders, Inc. v. Coggins, 686 S.E.2d 200, 202 (S.C. Ct. App. 2009). Section 1.a of the applicable commercial general liability policy between Penn-America and BWR, Inc. provides:

> We [the insurer] will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this

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> insurance applies. We will have the right and duty to defense the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result.

(Ex. A, attached hereto, at Bates PAIC-024).

Hutson cannot present any evidence that this provision was either breached or that he has suffered any damages from an alleged breach. PAIC did defend him, under a reservation of rights, in both the federal case involving a third-party claim for equitable indemnity and in the state court defamation case. See Twin City Fire Ins. Co. v. Ben Arnold-Sunbelt Beverage Co. of S.C., 433 F.3d 365, 372-73 (4th Cir. 2005) (finding insured "adhered to settled principles under South Carolina law regarding their right and duty to defend by providing counsel … to represent the defendants for all claims filed against them, despite the reservation of rights"); Allstate Ins. Co. v. Wilson, 259 S.C. 586, 193 S.E.2d 527, 530 (1972) (holding that insurance company, operating under a reservation of rights, "had the right and the duty to control the defense until such time as it was determined that it had no liability insurance coverage"). Both the federal third party claim and defamation case were ultimately settled without any personal liability to Hutson. **(See Newton Ex. L, Federal Court Stipulation of Dismissal); (Newton Ex. P, State Court Satisfaction of Judgment).**

Hutson's contention that PAIC owed a duty to prosecute his affirmative counter-claims, which he pursued *pro se* and lost, is without merit. **(See Newton Ex. B, Judge Norton's Order, May 20, 2016); (Newton Ex. C, Judge Cothran's Order, Mar. 2, 2017).** While the South Carolina courts have not specifically ruled on whether an insurer's duty to defend includes an obligation to prosecute an insured's affirmative counter-claims, other jurisdictions have found no such obligation arises under the ordinary insurance contract. See, e.g., Mount Vernon Fire Ins. Co. v. Visionaid, Inc., 76 N.E.3d 204, 209-10 (Mass. 2017) (in absence of explicit provision, the

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plain language of the duty to defend in an insurance contract "requires an insurer to work to defeat a claim brought against the insured, but not to prosecute an affirmative claim against the plaintiff in the underlying suit, no matter how advantageous that claim would be to the insured."); Morgan, Lewis & Bockius LLP v. Hanover Ins. Co., 929 F.Supp. 764, 771 (D.N.J. 1996) ("Nowhere in the policy is there any mention that [the insurer] would pay for affirmative prosecution of a civil action by [the insured]. The court finds the policy language to be clear and unambiguous"); Shoshone First Bank v. Pacific Employers Ins. Co., 2 P.3d 510, 516 (Wyo. 2000) ("We accept the general premise that '[a]n insurer, being obligated to defend claims "against" the insured, is not required to bear the cost of prosecuting a counterclaim on behalf of the insured;' " "if an insurance policy fails to specify coverage for prosecuting counterclaims, the policy language will not be 'tortured' to create an ambiguity"); Aldous v. Darwin Nat'l Assur. Co., 851 F.3d 473, 483 (5th Cir. 2017) (under Texas law, duty to defend entire lawsuit does not give rise to duty to prosecute helpful or inextricably intertwined claims).

Even those jurisdictions which more broadly interpret the insured's duty do so only under narrow circumstances. See Great West Cas. Co. v. Marathon Oil Co., 315 F.Supp.2d 879, 882 (N.D. Ill. 2003) (duty to defend requires insurer to bring affirmative counterclaims that would reduce insured's liability on underlying claim, including claims and actions for contribution and indemnification); Safeguard Scientifics, Inc. v. Liberty Mut. Ins. Co., 766 F.Supp. 324, 333-334 (E.D. Pa. 1991) (duty to defend requires insurer to bring any counterclaim that is factually "inextricably intertwined" with underlying claim).

Our Supreme Court has held that "[a]n insurance policy is a contract between the insured and the insurance company, and the terms of the policy are to be construed according to contract law." Auto Owners Ins. Co. v. Rollison, 378 S.C. 600, 663 S.E.2d 484, 487 (2008). "The cardinal

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." Beaufort Cty. Sch. Dist. v. United Nat'l Ins. Co., 392 S.C. 506, 709 S.E.2d 85, 90 (S.C.Ct.App.2011) (citing Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 579 S.E.2d 132, 134 (2003)). "If the contract's language is clear and unambiguous, the language alone, understood in its plain, ordinary, and popular sense, determines the contract's force and effect." Id. (citing Schulmeyer, 579 S.E.2d at 134). "However, an insurance contract which is 'in any respect ambiguous or capable of two meanings must be construed in favor of the insured.'" Id. (quoting Reynolds v. Wabash Life Ins. Co., 251 S.C. 165, 161 S.E.2d 168, 169 (1968)).

The Massachusetts Supreme Court recently applied these same principles to this issue in Mount Vernon Fire Ins. Co. v. Visionaid, Inc., 76 N.E.3d 204, 208-10 (Mass. 2017). Because "defend" was not contractual defined, the court construed it "using its 'usual and accepted meaning.'" 76 N.E.3d at 208. The court found the plain meaning of "defend" clear, meaning "to work to defeat a claim that could create liability against the individual being defended." Id. at 208-09. The Mount Vernon court further noted that "[w]here the language of an insurance policy is clear and unambiguous, we rely on that plain meaning, and do not consider policy arguments in interpreting the plain language." Id. at 209. The insured suggested that "defend" should mean "anything a reasonable defense attorney would do to reduce the liability of the insured." Id. at 210. The court wrote: "Imposing such requirements where none was included explicitly is far beyond interpreting the language of the contract." Id. Here too, the insurance policy does not include any explicit duty to pursue an insured's counter-claims; consequently, no such duty exists.

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

To the extent that Hutson goes even further to suggest that PAIC had a duty to re-open the 2011 case and attempt to set aside the 2012 Consent Order and Settlement Agreement entered therein, there is simply no authority for such a contention.

In sum, PAIC adhered to its duty to defend, which did not include prosecuting Hutson's counter-claims and which did not include pursuing a separate course of litigation to set aside a 2012 Settlement Agreement and Consent Order.

III. Plaintiff's claim for bad faith must fail because there is no evidence that PAIC failed to act reasonably.

Assuming *arguendo* that this claim is not barred by the Release referenced *supra*, Hutson's claim for bad faith must fail as a matter of law. The South Carolina courts recognize an insured's ability to sue its insurer both in contract and for bad faith in tort. Tadlock Painting Co. v. Maryland Cas. Co., 322 S.C. 498, 502-03, 473 S.E.2d 52, 54 (1996). There is an implied "duty of good faith and fair dealing in the performance of *all* obligations undertaken by the insurer for the insured." Id. at 501, 473 S.E.2d at 53-54 (emphasis in original). Our Supreme Court specifically recognizes the existence of a cause of action for breach of the implied covenant of good faith and fair dealing by an insured against his or her insurer for consequential damages allegedly suffered because of the insurer's bad faith handling of third party claims. Id. at 504, 473 S.E.2d at 55. Breach of an express contractual provision is not a prerequisite to bringing a bad faith action. Id.

"[T]he covenant of good faith and fair dealing extends not just to the payment of a legitimate claim, but also to the manner in which it is processed." Mixson, Inc. v. American Loyalty Ins. Co., 562 S.E.2d at 662. Under South Carolina law, an insurer acts in bad faith when there is no reasonable basis to support the insurer's decision. Cock–N–Bull Steak House, Inc. v. Generali Ins. Co., 321 S.C. 1, 466 S.E.2d 727 (1996). "If there is a reasonable ground for

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

contesting a claim, there is no bad faith." Crossley v. State Farm Mut. Auto. Ins. Co., 307 S.C. 354, 360, 415 S.E.2d 393, 397 (1992).

"South Carolina courts have found that where a policy provides an insurer with the right and duty to defend, the insurer has 'the right and the duty to control the defense until such time as it is determined that it has no liability insurance coverage.'" Founders Ins. Co. v. Richard Ruth's Bar & Grill LLC, 2016 WL 3219538, at *9 (D.S.C. June 8, 2016) (quoting Allstate Ins. Co. v. Wilson, 193 S.E.2d 527, 530 (S.C. 1972)). "If courts allowed insureds to create a genuine issue of material fact on a bad faith processing claim by engaging in a 'nit-picky' analysis of each action the insurance adjustor took or did not take in handling claims, every bad faith action would survive a motion for summary judgment." Id. There must still be an evaluation of the reasonableness of the insurer's conduct...." Id.

Here, Hutson complains that PAIC acted in bad faith in its handling of the federal action third-party claims and in the state court defamation action. Specifically, Hutson appears to aver that PAIC acted unreasonably in failing to "expose extrinsic fraud on the courts" and in failing to represent him in his counter-claims against TLC and its members. There is no proof that any extrinsic fraud on the courts was committed in the procurement of the 2012 Settlement Agreement or Consent Order, which included a release of Hutson's claims of fraud and misrepresentation against TLC and its members.

In the 2014 Order entered by Judge (now Justice) George James, he found that Hutson, through counsel, asserted various defenses, counterclaims, and third party complaints against TLC Holdings, LLC and its members in the 2012 proceedings. Those claims asserted that various misrepresentations and material omissions were made with respect to the Subject Property and that TLC/its members interfered with the Property's development and operation. **(Newton Ex. G,**

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Judge James' Order, Mar. 21, 2014, at p.2 ¶2). Judge James found that all of those claims were settled by virtue of the 2012 Settlement Agreement and Consent Order. **(Id. at p.3 ¶3); (see also Hutson Ex. 9.0 and 10.0).** Further, section 23 of the Settlement Agreement contained an automatic release, as of the date of termination of the Lease Purchase Agreement, whereby Defendant was deemed to have released, forever discharged and promised never to sue TLC, the Third Party Defendants, and parties related thereto from all claims, known or unknown, and arising at law or in equity, relating to the Lease Purchase Agreement or the relationship between the parties. **(Id. at p.4 ¶6).** Hutson – again through counsel – argued to Judge James that TLC "made 'verbal assurances' to Hutson that were incorrect, or that [TLC] failed to make 'important disclosures' to him." Judge James noted that these were the same allegations made in Hutson's 2012 Answer and Counterclaims. Further, "Hutson admitted in his [Rule] 2004 Examination that these all arose prior to the Settlement Agreement." Thus, Judge James found that, even if true, the alleged misstatements or omissions were known to Hutson when he entered into the 2012 settlement. **(Id. at p.8 ¶5); (see also Ex. B, attached hereto, Affidavit of Thomas L. Harper, Jr. with accompanying exhibits, including excerpts of Hutson's Rule 2004 Examination).** Ultimately, Judge James enforced the Settlement Agreement and Consent Order, including the termination of the Lease Purchase Agreement, thus triggering the Release provision against TLC and its members. **(Id. at p.9 ¶¶10-11).**

In the federal litigation, Hutson asserted counter-claims against TLC and its members for breach of contract, breach of contract accompanied by fraud, fraud and fraud in the inducement, negligent misrepresentation, constructive fraud, breach of covenant of good faith and fair dealing, and negligence, recklessness, willfulness, and wantonness, and defamation. In their motion for summary judgment, TLC and its members argued that these claims were all barred by res judicata

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

and the Release settling the state court action. Hutson averred that an exception to the res judicata doctrine applied because the Release was procured by fraud. In granting summary judgment against Hutson on the counter-claims, Judge Norton cited both the 2012 Consent Order and Judge James' 2014 Order. Judge Norton found Hutson's claim that he did not have knowledge to pursue a fraud claim against TLC and its members until after the entry of the Settlement Agreement to be belied by the record. He found there to be no dispute that Hutson knew about the lifetime membership agreements when he purchased BWR and that the remainder of Hutson's allegations of fraud related to the original transaction rather than to the procurement of the Release. As a result, Judge Norton found no basis to set aside the Release. **(Newton Ex. B, Judge Norton's Order, May 20, 2016); (Newton Ex. A, Judge Baker's Report & Recommendation, April 5, 2016).**

Hutson asserted similar counter-claims against TLC and its members in the state defamation action, including fraud, negligent misrepresentation, defamation, libel per se, breach of contract, breach of contract accompanied by a fraudulent act, violation of SCUPTA, amalgamation/alter ego/piercing the corporate veil. In granting TLC's motion for summary judgment on Hutson's counter-claims, Judge Cothran noted the prior state and federal court orders in the case. Hutson again asserted that the Release provisions were unenforceable due to fraud. Just like the federal court, Judge Cothran found that Hutson "failed to demonstrate or even allege any fraud that would bar the application of the Settlement Agreement." Rather, the fraud complained of related to the original transaction, not the Release. Thus, like the federal court, Judge Cothran found Hutson's claims barred by res judicata. He wrote: "Hutson's counterclaims either were or could have been raised in the prior state court litigation, and he released all such

claims by virtue of the Settlement Agreement." **(Newton Ex. C, Judge Cothran's Order, Mar. 2, 2017).**

In sum, Hutson has had multiple opportunities to bring his claims against TLC and its members and has challenged the Release based upon fraud. However, he has not presented the courts with any evidence to support his claims. Notably, Hutson was represented by an attorney, H. Freeman Belser, in the 2014 proceedings before Judge James. His bald and speculative averment that the outcome of his counter-claims would have been different had PAIC provided legal representation to prosecute them is insufficient to survive this motion for summary judgment. See Robinson v. Estate of Harris, 388 S.C. 630, 641, 698 S.E.2d 222, 228 (2010) ("If a judgment procured by extrinsic fraud could have been avoided if the challenging party exercised due diligence, a court generally will not grant relief from the judgment."(emphasis added)); id. ("The doctrine of laches is applicable in determining whether an action is time-barred even if extrinsic fraud is established.").

Moreover, this is not a case where the insurer refused to defend; rather, PAIC defended the case under a reservation of rights. Hutson, despite his lack of personal liability under the settlements that were entered, would have PAIC pursue the equitable indemnification case to trial in federal court and continue its post-trial appeal of the state court defamation action. In essence, Huston claims that PAIC overpaid in the settlement. However, PAIC had a duty to settle the claims if settlement was "the reasonable thing to do." Doe v. S.C. Med. Malpractice Liab. Joint Underwriting Ass'n, 347 S.C. 642, 649, 557 S.E.2d 670, 674 (2001). Here, there was no contractual requirement for the insured's consent to settle. Rather, the policy provides: "We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result." **(Ex. A, attached hereto, BWR, Inc. Insurance Policy *redacted*).**

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Many other jurisdictions have held that where an insurance contract provides that the insurer may, as it deems appropriate, settle any claim or action brought against its insured, a cause of action alleging breach of the insurer's good faith will not lie where the insurer has settled such a claim within the monetary limits of the policy. See, e.g., Marginian v. Allstate Ins. Co., 481 N.E.2d 600 (Ohio 1985); Casualty Ins. Co. v. Town & Country Pre–School Nursery, Inc., 498 N.E.2d 1177 (Ill. App. Ct. 1986); Feliberty v. Damon, 129 A.D.2d 207 ((N.Y. App. Div. 1987); Shuster v. South Broward District Physicians' Professional Liability Insurance Trust, 570 So.2d 1362, 1366 (Fla. 4th DCA 1990). While Hutson may disagree with the business decision PAIC made to settle the cases against him, it was made after the disposition of Huston's counter-claims on summary judgment and within the policy limits. Thus, there is no evidence that the settlements were entered in bad faith.

To the extent that Hutson alleges that the declaratory judgment action regarding coverage was brought in bad faith, Hutson has failed to articulate how or why that filing was unreasonable. PAIC, through its counsel, requested declarations that Hutson was not an insured with respect to the personal misconduct alleged against him in the federal class action or in the state defamation action, that the coverage provided for in the insurance policy did not extend to the types of claims asserted in those actions, and that PAIC had no duty to defend or indemnify Hutson in either action. **(Hutson Ex. 11.0, Declaratory Judgment Complaint).** The arguments in the declaratory judgment action were based upon the plain language of the policy and were not made in bad faith. Moreover, PAIC ultimately resolved the underlying cases by settlement and dismissed the declaratory judgment action and satisfied the judgments.

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

IV. Plaintiff's claim for fraud must fail because there is no evidence (a) that PAIC or its agents made any material or false representation to Hutson, (b) that Hutson relied on such representation, or (c) that Hutson was consequently and proximately injured.

Assuming *arguendo* that this claim is not barred by the Release referenced *supra*, Hutson's claim for fraud must fail as a matter of law. To the extent that Hutson means to assert a claim for fraud, in order to prevail the plaintiff must prove: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. Ardis v. Cox, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct.App.1993). "A complaint is fatally defective if it fails to allege all nine elements of fraud." Id.

Hutson's claims of fraud center on Newton's e-mail to him regarding the possible argument of the existence of extrinsic fraud on the court. Hutson contends that Newton wanted Hutson to file an action to set aside the 2012 Settlement Agreement and Consent Order, as it would have benefited and provided leverage in PAIC's defense of the other cases. Hutson never claims that anything written in the letter to him by Newton was false; rather, he later argues that the contents of the e-mail were all true in paragraphs 37-49 of his Amended Complaint. Further, in paragraph 35 of his Amended Complaint, Hutson admits that he never filed any such action to set aside the Agreement and Order. Thus, regardless of its truth or falsity, Hutson failed to allege any reliance upon the representation. Lastly, and perhaps most importantly, Hutson has not been injured. The claims against Hutson, and the federal sanctions awarded against him, were settled without any personal liability to Hutson. **(See Newton Ex. L, Federal Court Stipulation of Dismissal); (Newton Ex. P, State Court Satisfaction of Judgment).**

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

V. Plaintiff's claim for misrepresentation must fail because there is no evidence (a) that PAIC or its agents made any false representation to Hutson, (b) that PAIC or its agents failed to exercise due care; (c) that Hutson relied on such representation, or (d) that Hutson proximately suffered a pecuniary loss.

Assuming *arguendo* that this claim is not barred by the Release referenced *supra*, Hutson's claim for misrepresentation must fail as a matter of law. To the extent that Hutson means to assert a claim for negligent misrepresentation, in order to prevail the plaintiff must prove (1) the defendant made a false representation to the plaintiff, (2) the defendant had a pecuniary interest in making the statement, (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff, (4) the defendant breached that duty by failing to exercise due care, (5) the plaintiff justifiably relied on the representation, and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance on the representation. Brown v. Stewart, 348 S.C. 33, 42, 557 S.E.2d 676, 680–81 (Ct. App. 2001). Thus, a key difference between fraud and negligent misrepresentation is that fraud requires the conveyance of a known falsity, while negligent misrepresentation is predicated upon transmission of a negligently made false statement. Id.

Like his claims of fraud, Hutson's claims of misrepresentation center on Newton's e-mail to him regarding the possible argument of the existence of extrinsic fraud on the court. Hutson contends that Newton wanted Hutson to file an action to set aside the 2012 Settlement Agreement and Consent Order, as it would have benefited and provided leverage in PAIC's defense of the other cases. Hutson never claims that anything written in the letter to him by Newton was false; rather, he later argues that the contents of the e-mail were all true in paragraphs 37-49 of his Amended Complaint. Further, in paragraph 35 of his Amended Complaint, Hutson admits that he never filed any such action to set aside the Agreement and Order. Thus, regardless of its truth or falsity, Hutson failed to allege any reliance upon the representation. Lastly, and perhaps most importantly, Hutson has not suffered any pecuniary loss. The claims against Hutson, and the

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

federal sanctions awarded against him, were settled without any personal liability to Hutson. **(See Newton Ex. L, Federal Court Stipulation of Dismissal); (Newton Ex. P, State Court Satisfaction of Judgment).**

VI. Plaintiff's claim for negligence must fail because there is no evidence that PAIC breached any duty to its insured or caused any harm to its insured.

Assuming *arguendo* that this claim is not barred by the Release referenced *supra*, Hutson's claim for negligence must fail as a matter of law. To establish a cause of action for negligence a plaintiff must show the concurrence of three essential elements: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by negligent act or omission; and (3) damage proximately resulting from the breach of duty. Trotter v. State Farm Mut. Auto. Ins. Co., 297 S.C. 465, 474, 377 S.E.2d 343, 348 (Ct. App. 1988). The absence of any one of these elements renders the cause of action insufficient. Id. An insurer can be found negligent in its handling of a claim or suit even in absence of fraud or bad faith. See Tyger River Pine Co. v. Maryland Cas. Co., 170 S.C. 286, 170 S.E. 346, 348 (1933).

As discussed more fully *supra*, Hutson believes that PAIC should have gone above and beyond its contractual duty to defend by either providing representation for his counter-claims against TLC or by instituting a separate action to set aside the 2012 Consent Order and Settlement Agreement. PAIC's failure to exceed its duty to Hutson is not evidence of its failure to meet its duty to Hutson. Hutson cannot establish that there was any duty for PAIC to act in the manner he suggests was required, much less that there was a breach of the actual duty owed to him. Moreover, Huston's claims of damages are baseless and speculative. Thus, Huston's claim for negligence against PAIC must fail as a matter of law.

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

VII. Plaintiff's claim for tortious interference with the attorney-client relationship must fail because there is no evidence that PAIC acted wrongfully, that there was any breach of the attorney-client relationship, or that PAIC was unjustified in its control and settlement of the underlying litigation.

Assuming *arguendo* that this claim is not barred by the Release referenced *supra*, Hutson's claim for tortious interference must fail as a matter of law. South Carolina recognizes a cause of action for wrongful interference with an attorney-client relationship. DeBerry v. McCain, 275 S.C. 569, 574, 274 S.E.2d 293, 296 (1981) (citing Keels v. Powell, 207 S.C. 97, 34 S.E.2d 482 (1945)). [I]nterference by a third party with contractual relationships, without justification, is a violation of a primary legal right. Keels, 207 S.C. at 100, 34 S.E.2d at 484. It is "an actionable injury to cause another to violate his contract with a third person, without a legal justification, or, as otherwise stated, where the breach is induced or caused maliciously, 'malice' having the meaning in this connection of the intentional doing of a wrongful act without justification or excuse." Id. at 101, 34 S.E.2d at 484. "[T]he interference must have been willful and injustified." Id. The Keels Court cited 7 C.J.S., Attorney and Client, § 53, p. 836, which provides: "Third persons unlawfully interfering with the relationship of an attorney and his client… are liable to the attorney for the damages caused thereby." Id. The DeBerry Court clarified the elements of interference with contractual relations, which include: "(1) the contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) damages resulting therefrom." 275 S.C. at 574, 274 S.E.2d at 296.

South Carolina has not specifically recognized the applicability of a tortious interference cause action in the context of an insurer's purported interference with an insured's relationship with the retained defense counsel. However, South Carolina recognizes that "[w]hen an insurer hires an attorney to represent its insured, an attorney-client relationship arises between the attorney and the insured—his client." Sentry Select Ins. Co. v. Maybank Law Firm, LLC, 426 S.C. 154,

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

157, 826 S.E.2d 270, 271 (2019). "Pursuant to that relationship, the attorney owes the client—not the insurer—a fiduciary duty." Id. "However, an insurance company that hires an attorney to represent its insured is in a unique position in relation to the resulting attorney-client relationship." Id. at 157, 826 S.E.2d at 272.

An insurer's contractual "right to control the litigation carries with it certain duties, including the duty not to prejudice the insured's rights by failing to request special interrogatories or a special verdict in order to clarify coverage of damages." Harleysville Grp. Ins. v. Heritage Communities, Inc., 420 S.C. 321, 341, 803 S.E.2d 288, 299 (2017) (internal quotations omitted); Id. ("[B]y virtue of its duty to defend, an insurer gains the advantage of exclusive control over the litigation…."). Moreover, "a liability insurer owes its insured a duty to settle a personal injury claim covered by the policy, if settlement is the reasonable thing to do." Doe v. S.C. Med. Malpractice Liab. Joint Underwriting Ass'n, 347 S.C. 642, 649, 557 S.E.2d 670, 674 (2001). The duty of good faith requires the insurer to act reasonably in protecting the insured from liability in excess of the policy limits. Tyger River Pine Co. v. Maryland Cas. Co., 170 S.C. 286, 170 S.E. 346, 348 (1933). Thus, PAIC's control over the litigation was justified by the terms of the insurance policy providing its duty to defend.

PAIC's actions in determining the scope of the representation, i.e. that it would defend the cases against Hutson under reservation but would not prosecute his counterclaims, and decision to settle the claims, do not constitute tortious interference with Hutson's attorney-client relationship with retained counsel Frank Gordon. As discussed *supra*, Huston pursued his counterclaims and lost. Further, the settlement agreements were not entered until after the disposition of the counterclaims in the federal case and until after the disposition of the counterclaims and loss at trial in the state defamation case. While PAIC was defending the defamation case on appeal, there

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

was a prior $3.5 million judgment, far in excess of PAIC's $1 million in coverage, prompting them to engage in an additional mediation. PAIC and the excess coverage carrier, Torus, made a reasonable decision to settle the claims, allegedly against Hutson's wishes, though he vacillated on that point. Regardless, there is no evidence that PAIC acted without justification or with malice. To rule otherwise, and allow an insurer to pursue such a claim against its insured anytime that it gives instructions to retained counsel in contravention to the instructions of the insured, would strip the insurer of its right to exclusively control the litigation. Moreover, Hutson cannot prove any damages from any alleged interference, as the claims against Huston were resolved without any personal liability to him. Hutson's allegations otherwise are baseless and speculative.

VIII. Plaintiff's claim for legal malpractice must fail because (a) Plaintiff failed to accompany his pleadings with the statutorily required affidavit regarding malpractice; (b) PAIC is not vicariously liable for any malpractice of counsel it retains to defend its insured or of coverage counsel; and (c) even if vicarious liability applied to coverage counsel, Plaintiff lacked the necessary attorney-client relationship with coverage counsel to sustain a claim of legal malpractice.

Assuming *arguendo* that this claim is not barred by the Release referenced *supra*, Hutson's claim for legal malpractice must fail as a matter of law. In order to prevail in a cause of action for legal malpractice, a plaintiff must prove: (1) the existence of an attorney-client relationship; (2) a breach of duty by the attorney; (3) damage to the client; and (4) proximate cause of the client's damages by the breach. Rydde v. Morris, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). "In South Carolina, attorneys are required to render services with the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of the profession." Holy Loch Distribs., Inc. v. Hitchcock, 340 S.C. 20, 26, 531 S.E.2d 282, 285 (2000).

As an initial matter, section 15-36-100(B) of the South Carolina Code requires that a Complaint for legal malpractice by accompanied by the contemporaneous filing of an affidavit of an expert witness, which must specify at least one negligent act or omission claimed to exist and

the factual basis for each claim based on the available evidence at the time of the filing of the affidavit. See S.C. Code Ann. § 15-36-100(G)(2) (providing that this section applies to attorneys at law). Hutson's failure to include or timely supplement his pleading with such an affidavit is fatal to any legal malpractice claims he attempts to assert.

If Hutson's claim survives despite the lack of expert affidavit, PAIC is not vicariously liable for any malpractice of counsel it retains to defend its insured or of coverage counsel. While South Carolina courts have not directly ruled on these issues, the New York case of Feliberty v. Damon, 129 A.D.2d 207, 210-11 (N.Y. App. Div. 1987), discusses the differing views of an insurance carrier's vicarious liability for the negligence of its insured's defense counsel. In adopting the rationale that vicarious liability does not fall on the carrier, which is required to retain independent trial counsel to conduct litigation on behalf of its insured, the Feliberty court found that a carrier must rely on counsel to conduct the litigation. 129 A.D.2d at 211. The court ruled that "[i]f the acts are performed solely by the attorney (in his capacity as an attorney) and are directly related to the representation of the insured in litigation, the attorney's negligence will not be imputed to the insurance carrier." Id. To the extent vicarious liability would apply, Hutson cannot show that retained counsel Frank Gordon's representation breached any duty that he had to Hutson or damaged Hutson in any way.

To the extent that Hutson asserts a legal malpractice action against coverage counsel, Tim Newton, or other attorneys at Murphy & Grantland, PAIC is not vicariously liable for the actions of its retained coverage counsel. An attorney's client is generally not liable for the professional negligence, if any, of its' retained counsel. See Williams v. Burns, 463 F. Supp. 1278, 1285 (D. Colo. 1979) ("Clients are not insurers of actions taken by attorneys, despite the fact that such actions are taken on the clients behalf. An attorney's combination of education, experience and

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

code of ethics effectively places the responsibility on him or her for any tortious or unethical conduct. The attorney's license and independent status likewise create duties owed by the attorney not only to the client but also to the public and to the courts.").

Moreover, Hutson cannot sustain a cause of action against Tim Newton or J.R. Murphy because he cannot prove the first element necessary for legal malpractice – the existence of an attorney-client relationship. See Fabian v. Lindsay, 410 S.C. 475, 483, 765 S.E.2d 132, 136 (2014) ("Privity for legal malpractice has traditionally been established by the existence of an attorney-client relationship."); Am. Fed. Bank, FSB v. No. One Main Joint Venture, 321 S.C. 169, 174, 467 S.E.2d 439, 442 (1996) ("Before a claim for malpractice may be asserted, there must exist an attorney-client relationship."); see also LeCates v. Barker, 242 F.3d 389, *3 (10th Cir. 2000) (finding Utah law does not recognize a cause of action for legal malpractice against opposing counsel because of the lack of attorney-client relationship). Tim Newton and the attorneys at Murphy & Grantland represented PAIC, not Hutson. Newton reminded Hutson of that fact in his August 13, 2018 e-mail to Hutson, writing: "I need to remind you that I don't represent you and I can't represent you because I represent Penn-America." **(Newton's Ex. V, Correspondence between Newton and Hutson).** With no contractual relationship to support a legal malpractice action against the attorneys individually, Huston cannot support such an action against PAIC under the doctrine of vicarious liability either.

Accordingly, Hutson cannot sustain a legal malpractice action against PAIC based upon the conduct of the attorney retained to defend him or the attorneys retained to defend PAIC.

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

CONCLUSION

Based on the foregoing, Defendants PAIC respectfully request summary judgment be entered in their favor as to all of Plaintiff MB Hutson/MB Hudson's claims.

Respectfully submitted,

COLLINS & LACY, P.C.

By: s/Christian Stemaier
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ATTORNEYS FOR DEFENDANTS PENN AMERICA INSURANCE COMPANY AND GLOBAL INDEMNITY GROUP, INC.

DEFENDANTS PENN AMERICA INSURANCE COMPANY AND GLOBAL INDEMNITY GROUP, INC.'S MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT

June 25, 2019
Columbia, South Carolina

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

CERTIFICATE OF SERVICE
(2018-CP-40-06344)

The undersigned employee of Collins & Lacy, P.C., hereby certifies that (s)he has served the following named individual(s) with a copy of the pleading(s) indicated below via electronic mail and/or by mailing a copy of same to them in the United States mail and/or by electronically filing via the Court's electronic filing system, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

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Pro Se Co-Defendant

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jrmurphy@murphygrantland.com
Pro Se Co-Defendant

PLEADING: DEFENDANTS PENN AMERICA INSURANCE COMPANY AND GLOBAL INDEMNITY GROUP, INC.'S MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT

COLLINS & LACY. PC

s/Christian Stegmaier
CHRISTIAN STEGMAIER
S.C. Bar Number: 68648

Columbia, South Carolina
June 25, 2019

EXHIBIT A

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COMMERCIAL LINES COMMON POLICY DECLARATIONS

INSURANCE IS PROVIDED BY THE COMPANY DESIGNATED BY AN "X": Stock Company

[X] PENN-AMERICA INSURANCE COMPANY

[ ] PENN-STAR INSURANCE COMPANY

[ ] PENN-PATRIOT INSURANCE COMPANY

Bala Cynwyd, Pennsylvania 19004

State Control Number

Renewal of Number

POLICY NUMBER: PAC7045167

APPROVED
By mhoweerton at 3:53 pm, 11/20/13

1. NAMED INSURED: BWR, INC

DBA: Big Water Resort

MAILING ADDRESS: 6215 Dingle Pond Road

Summerton SC 29148

2. POLICY PERIOD: From 10/16/2013 To 10/16/2014 at 12:01 A.M.
Standard Time at your mailing address shown above.

3. FORM OF BUSINESS: CORPORATION OTHER DESC:

4. BUSINESS DESCRIPTION: 164 - DVUA LEAVITT CAMPGROUNDS

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

5. THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.

		PREMIUM
Commercial General Liability Coverage Part	$	
Commercial Property Coverage Part	$	
Commercial Crime Coverage Part	$	
Commercial Inland Marine Coverage Part	$	
Professional Liability Coverage Part	$	
Liquor Liability Coverage Part	$	
Commercial Umbrella Coverage Part	$	
Owners Contractors Protective Coverage Part	$	
TRIA	$	
6. TOTAL PREMIUM PAYABLE AT INCEPTION	$	
Inspection Fee	$	
Surplus Lines Tax	$	
	$	
	$	
	$	
	$	
Other:	$	
TOTAL	$	

THIS COMPANY HAS BEEN APPROVED BY THE DIRECTOR OR HIS DESIGNEE OF THE SOUTH CAROLINA DEPARTMENT OF INSURANCE TO WRITE BUSINESS IN THIS STATE AS AN ELIGIBLE SURPLUS LINES INSURER, BUT IT IS NOT AFFORDED GUARANTY FUND PROTECTION.

NO FLAT CANCELLATION

25% Minimum Earned Premium

7. FORM(S) AND ENDORSEMENT(S) MADE A PART OF THIS POLICY AT THE TIME OF ISSUE:*

AS PER FORM COMSCHD(10/00) ATTACHED

*Omits applicable Forms and Endorsements if shown in specific Coverage Part/Coverage Form Declarations.

THESE DECLARATIONS TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE PART DECLARATIONS, COVERAGE PART COVERAGE FORM(S) AND FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

Agency Code: 02503
HULL, West Virginia
Hurricane, WV

By George F. Ellis, II
Authorized Representative

MH/ks 11/20/13

1165

S1100(04-07) INSURED

PAIC-001

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COMMERCIAL LINES COMMON POLICY DECLARATIONS
SCHEDULE OF FORMS AND ENDORSEMENTS

POLICY NUMBER:	NAMED INSURED
PAC7045167	BWR, INC Big Water Resort

Form/Endorsement No./Edition Date	Form/Endorsement No./Edition Date
	ADDITIONAL FORMS ATTACHED
	S3007

Forms Applicable - PAC COVERAGE

IL0017[11-98]	COMMON POLICY CONDITIONS
NAA169[12-10]	CLAIMS REPORTING PROCEDURES
S1003[08-91]	MINIMUM EARNED PREMIUM

Forms Applicable GL COVERAGE

S2000[06-01]	GL SUBDEC
S2001[11-97]-1	SUPPLEMENTAL GL DEC 1
IL0021[07-02]	NUCLEAR ENERGY LIAB EXCL
CG2147[12-07]	EMPLOYMENT RELATED PRAC EXCL
CG2155[09-99]	TOTAL POLLUTION EXCLUSION
CG2167[12-04]	FUNGI OR BACTERIA EXCLUSION
CG2196[03-05]	SILICA OR SILICA-RELATED DUST EXCL
S2002[08-02]	COMBINED PROVISIONS END'T
S2005[06-05]	ASSAULT OR BATTERY EXCLUSION
S2016[06-03]	SWIMMING POOL ENDORSEMENT
S2026[05-96]	LIQUOR LIAB. EXCL. END'T
S2033[02-94]	LEAD CONTAMINATION EXCLUSION
S2041[06-03]	LIMITATION/DESIGN. CLASS. OPS.
S2045[11-97]	NON-OWNED & HIRED AUTO LIAB.
S2092[06-04]	MOLESTATION OR ABUSE EXCLUSION
S2116[07-05]	RECREATIONAL VEHICLE SPOTTING ENDT.
CG0001[04-13]	CGL COVERAGE FORM
CG2011[04-13]	AI - MANAGERS/LESSORS OF PREMISES
CG2426[04-13]	AMENDMENT OF INSURED CONTRACT DEF

Forms Applicable PROP COVERAGE

S3000[08-2009]	COMM'L PROP. COVG. PART DEC.
CP0090[07-88]	COMM'L PROPERTY CONDITIONS
IL0415[04-98]	PROTECTIVE SAFEGUARDS
IL0935[07-02]	EXCL. CERTAIN COMPUTER RELATED
CP0010[06-07]	BUILDING AND PERS PROP COV FORM
CP1030[06-07]	CAUSE OF LOSS - SPECIAL FORM

Forms Applicable IM COVERAGE

S5000[11-97]	COMM'L INLAND MARINE COVG PART
S5003[07-96]	COMM'L INLAND MARINE CONDITION
IL0935[07-02]	EXCL. CERTAIN COMPUTER RELATED
IM0003[10-94]	CONTRACTORS EQUIP. FLOATER

Forms Applicable SOUTH CAROLINA

EAA230[12-09]	SERVICE OF SUIT
S1020[08-06]	NC SURPLUS LINES STAMP
S1055[04-09]	SC NOTICE TO POLICYHOLDERS
EAA100[01-12]	IN WITNESS CLAUSE
CG2173[01-08]	EXCL OF CERTIFIED ACTS OF TERRORISM
IL0953[01-08]	EXCL OF CERTIFIED ACTS OF TERRORISM

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COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
   a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
   b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

D. Inspections And Surveys

1. We have the right to:
   a. Make inspections and surveys at any time;
   b. Give you reports on the conditions we find; and
   c. Recommend changes.
2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
   a. Are safe or healthful; or
   b. Comply with laws, regulations, codes or standards.
3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

F Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

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GLOBAL INDEMNITY
GROUP, INC.

Penn-America Insurance Company
Penn-Star Insurance Company
Penn-Patriot Insurance Company

United National Insurance Company
Diamond State Insurance Company
United National Specialty Insurance Company
United National Casualty Insurance Company

CLAIMS REPORTING PROCEDURES

The Member Companies of Global Indemnity Group, Inc. strive to provide quality claims service. In the event of a claim or potential claim, please submit information about the claim immediately to us. Claims can be submitted via company web site, e-mail, facsimile, phone or mail.

Information for submitting:

▪ Web Address	http:/ / www.penn-america.com Click on Claims
▪ Email address	Claims@global-indemnity.com
▪ Fax number	610-660-8885
▪ Phone numbers	800-788-4780 or 610-660-8877
▪ Mailing address	Global Indemnity Group, Inc. / Claims P.O. Box 532 Willow Grove, PA 19090

For Emergency Services after normal business hours (7:30am-5:00pm EST), please call 800-621-5410.

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MINIMUM EARNED PREMIUM CANCELLATIONS AND AUDITS

It is hereby understood and agreed that in the event of cancellation of coverage by the insured, the minimum earned premium under this policy shall be [redacted] of the policy premium.

It is further understood the minimum earned premium of this policy shall be [redacted] of the policy premium if the policy is in effect for the full term and the audit shows a lower exposure than estimated.

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

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Stock Company

COMMERCIAL GENERAL LIABILITY COVERAGE PART

DECLARATIONS

POLICY NUMBER: PAC7045167

1. **NAMED INSURED:** BWR, INC
   Big Water Resort

2. **LIMITS OF INSURANCE - INSURANCE APPLIES ONLY FOR COVERAGE FOR WHICH A LIMIT OF INSURANCE IS SHOWN.**

General Aggregate Limit (Other than Products/Completed Operations)	$2,000,000
Products/Completed Operations Aggregate Limit	$2,000,000
Each Occurrence Limit	$1,000,000
Personal & Advertising Injury Limit	$1,000,000
Damage to Premises Rented to You Limit	$ 100,000 any one premises
Medical Expense Limit	$ 5,000 any one person

3. **LOCATIONS** of all premises you Own, Rent, or Occupy

	Address	City	State	Zip
No. 1	6215 Dingle Pond Road	Summerton	SC	29148

4. CLASS **	PREMIUM BASIS Code / Exposure	RATES Prod/CO	RATES All Other	ADVANCE PREMIUM Prod/CO	ADVANCE PREMIUM All Other
** If Classifications are Numbered, the coverage applies to the corresponding Location No.					
No. 0001 10331	s) Sales [redacted]	INCLUDED	2	INCLUDED	[redacted]
Campgrounds Including Cabin Rentals. Products-completed operations are subject to the General Aggregate Limit.					
No. 0001 46925	e) Each [redacted]	INCLUDED	250	INCLUDED	[redacted]
Swimming Pools - NOC. Products-completed operations are subject to the General Aggregate Limit.					
No. 0001 45523	e) Each [redacted]	INCLUDED	75	INCLUDED	[redacted]
Ponds, Rivers, Creeks, Lakes or Reservoirs - existence hazard only. Products-completed operations are subject to the General Aggregate Limit.					
No. 0001 10107	e) Each [redacted]	INCLUDED	FLAT	INCLUDED	[redacted]
Boat Yards or Marinas Including Docks and Ramps - public					
No. 0001 46871	e) Each [redacted]	INCLUDED	50	INCLUDED	[redacted]
Parks or Playgrounds + Sports Courts. Products-completed operations are subject to the General Aggregate Limit.					

** If Classifications are Numbered, the coverage applies to the corresponding Location No.

TOTAL: $ [redacted]

(s) gross sales - per $1000 (c) total cost - per $1000 (m) admissions - per 1000 (e) each
(p) payroll - per $1000 (a) area - per 1000 sq. ft. (u) units (o) other

5. **Policy may be AUDITABLE** (t) see classification notes in company or ISO Commercial Lines Manual

Rate Mod Factor 1.00 1

6. **SPECIFIC GENERAL LIABILITY FORMS/ENDORSEMENTS**

AS PER FORM COMSCHD(10/00) ATTACHED

This page alone does not provide coverage and must be attached to a Commercial Lines Common Policy Declarations Common Policy Conditions, Coverage Part Coverage Form(s) and any other applicable forms and endorsements.

S2000 (06/01) **INSURED**

PAIC-006

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Stock Company

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SUPPLEMENTAL DECLARATIONS

Supplemental Page 1

POLICY NUMBER: PAC7045167

NAMED INSURED:

BWR, INC
Big Water Resort

	CLASS **	PREMIUM BASIS Code / Amt Factor	RATES Prod/CO	RATES All Other	ADVANCE PREMIUM Prod/CO	ADVANCE PREMIUM All Other
No.	14731	s) Sales [redacted]	INCLUDED	2	INCLUDED	[redacted]
	Laundries and Dry Cleaners - self-service. Products-completed operations are subject to the General Aggregate Limit.					
No.	44069	t) FLAT [redacted]	INCLUDED	FLAT	INCLUDED	[redacted]
	Golf Courses - miniature. Products-completed operations are subject to the General Aggregate Limit.					
No.						[redacted]
	Hired/Non-Owned Auto					
No.						[redacted]
	Additional Insured					
No.						
No.						
No.						

** If Classifications are Numbered, the coverage applies to the corresponding Location No.

Total Premium This Page: $ [redacted]

Accumulative Total: $

** If Classifications are Numbered, the coverage applies to the corresponding Location No.

(a)	area - per 1000 sq. ft.	(u)	units	(p)	payroll - per $1000
(m)	admissions - per 1000	(s)	gross sales - per $1000	(c)	total cost - per $1000
(e)	each	(o)	other	(t)	see classification notes in company or ISO commercial lines manual

This page alone does not provide coverage and must be attached to a Commercial Lines Common Policy Declarations Page, Common Policy Conditions, Coverage Part Coverage Form(s) and any other applicable forms and endorsements.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT

(Broad Form)

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
FARM COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
PROFESSIONAL LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY

1. The insurance does not apply:

   A. Under any Liability Coverage, to "bodily injury" or "property damage":

      (1) With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Under writers, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

      (2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which **(a)** any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or **(b)** the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

   B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.

   C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:

      (1) The "nuclear material" **(a)** is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or **(b)** has been discharged or dispersed therefrom;

      (2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an "insured"; or

      (3) The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion **(3)** applies only to "property damage" to such "nuclear facility" and any property thereat.

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

2. As used in this endorsement:

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "Special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material **(a)** containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and **(b)** resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

(a) Any "nuclear reactor";

(b) Any equipment or device designed or used for **(1)** separating the isotopes of uranium or plutonium, **(2)** processing or utilizing "spent fuel", or **(3)** handling, processing or packaging "waste";

(c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

(d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Property damage" includes all forms of radioactive contamination of property.

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYMENT-RELATED PRACTICES EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph **2., Exclusions** of Section **I - Coverage A - Bodily Injury And Property Damage Liability:**

This insurance does not apply to:

"Bodily injury" to:

(1) A person arising out of any:

(a) Refusal to employ that person;

(b) Termination of that person's employment; or

(c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or

(2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraphs **(a)**, **(b)**, or **(c)** above is directed.

This exclusion applies:

(1) Whether the injury-causing event described in Paragraphs **(a)**, **(b)** or **(c)** above occura before employment, during employment or after employment of that person;

(2) Whether the insured may be liable as an employer or in any other capacity; and

(3) To any obligation to shara damages with or repay someone else who must pay damages because of the injury.

B. The following exclusion is added to Paragraph **2., Exclusions** of Section **I - Coverage B - Personal And Advertising Injury Liability:**

This insurance does not apply to:

"Personal and advertising injury" to:

(1) A person arising out of any:

(a) Refusal to employ that person;

(b) Termination of that person's employment; or

(c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or

(2) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs **(a)**, **(b)**, or **(c)** above is directed.

This exclusion applies:

(1) Whether the injury-causing event described in Paragraphs **(a)**, **(b)** or **(c)** above occurs before employment, during employment or after employment of that person;

(2) Whether the insured may be liable as an employer or in any other capacity; and

(3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

INSURED

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CG 21 55 09 99

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TOTAL POLLUTION EXCLUSION WITH A HOSTILE FIRE EXCEPTION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion **f.** under Paragraph **2., Exclusions of Section I -Coverage A -Bodily Injury And Property Damage Liability** is replaced by the following:

This insurance does not apply to:

f. Pollution

(1) "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

This exclusion does not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire" unless that "hostile fire" occurred or originated:

(a) At any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste; or

(b) At any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations to test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to, or assess the effects of, "pollutants".

(2) Any loss, cost or expense arising out of any:

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants"

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INSURED

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FUNGI OR BACTERIA EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph **2. Exclusions** of **Section I - Coverage A - Bodily Injury And Property Damage Liability:**

2. Exclusions

This insurance does not apply to:

Fungi Or Bacteria

a. "Bodily injury" or "property damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.

b. Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.

B. The following exclusion is added to Paragraph **2. Exclusions** of **Section I - Coverage B - Personal And Advertising Injury Liability:**

2. Exclusions

This insurance does not apply to:

Fungi Or Bacteria

a. "Personal and advertising injury" which would not have taken place, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury.

b. Any loss, cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

C. The following definition is added to the **Definitions** Section:

"Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.

ISO Properties, Inc., 2003
INSURED

PAIC-012

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SILICA OR SILICA - RELATED DUST EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph **2., Exclusions** of **Section I -Coverage A -Bodily Injury And Property Damage Liability:**

2. Exclusions

This insurance does not apply to:

Silica Or Silica-Related Dust

a. "Bodily injury" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, or ingestion of, "silica" or "silica-related dust".

b. "Property damage" arising, in whole or in part, out of the actual, alleged, threatened or suspected contact with, exposure to, existence of, or presence of, "silica" or "silica-related dust".

c. Any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, "silica" or "silica-related dust", by any insured or by any other person or entity.

B. The following exclusion is added to Paragraph **2., Exclusions** of **Section I - Coverage B - Personal And Advertising Injury Liability:**

2. Exclusions

This insurance does not apply to:

Silica Or Silica-Related Dust

a. "Personal and advertising injury" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, "silica" or "silica-related dust".

b. Any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, "silica" or "silica-related dust", by any insured or by any other person or entity.

C. The following definitions are added to the **Definitions** Section:

1. "Silica" means silicon dioxide (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds.

2. "Silica-related dust" means a mixture or combination of silica and other dust or particles.

INSURED

1177

PAIC-013

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COMBINED PROVISIONS ENDORSEMENT

This endorsement modifies insurance provided under the following:

Commercial General Liability Coverage Part • Commercial Professional Liability Coverage Part
Liquor Liability Coverage Form

In consideration of the premium charged it is agreed that the following special provisions apply to this policy.

PUNITIVE DAMAGES EXCLUSION

It is part of the conditions of this policy that the Company shall not be liable for any damages awarded against an insured as punitive or exemplary damages.

ASBESTOS EXCLUSION

In consideration of the premium charged, it is hereby understood and agreed that this policy will not provide coverage, meaning indemnification or defense costs arising out of:

(A) Asbestos or any asbestos related bodily injury or property damage; or
(B) Any alleged act, error, omission or duty involving asbestos, its use, exposure, presence, existence, detection, removal, elimination, transportation, disposal or avoidance; or
(C) The use, exposure, presence, existence, detection, removal, elimination or avoidance of asbestos in any environment, building or structure.

EARTH MOVEMENT EXCLUSION

In consideration of the premium charged, it is understood and agreed that this policy specifically excludes and does not extend to or provide coverage or indemnity for any claim of liability for bodily injury or property damage caused by, resulting from, attributable or contributed to, or aggravated by the subsidence or movement of land as a result of earthquake, landslide, mudflow, earth sinking or shifting, resulting from, aggravated by or contributed to by operations of the named insured or any subcontractor of the named insured.

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ASSAULT OR BATTERY
GENERAL LIABILITY EXCLUSION

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM
COMMERCIAL LIABILITY UMBRELLA

In consideration of the premium charge, it is understood and agreed that this insurance does not apply to liability for damages because of "bodily injury", "property damage", "personal and advertising injury", medical expense arising out of an "assault", "battery", or "physical altercation" that occurs in, on, near or away from an insured's premises:

1) Whether or not caused by, at the instigation of, or with the direct or indirect involvement of an insured, an insured's employees, patrons or other persons in, on, near or away from an insured's premises, or

2) Whether or not caused by or arising out of an insured's failure to properly supervise or keep an insured's premises in a safe condition, or

3) Whether or not caused by or arising out of any insured's act or omission in connection with the prevention, suppression, failure to warn of the "assault", "battery" or "physical altercation", including but not limited to, negligent hiring, training and/or supervision.

4) Whether or not caused by or arising out of negligent, reckless, or wanton conduct by an insured, an insured's employees, patrons or other persons.

DEFINITIONS:

For purposes of this endorsement:

"Assault" means any attempt or threat to inflict injury to another including any conduct that would reasonably place another in apprehension of such injury.

"Battery" means the intentional or reckless physical contact with or any use of force against a person without his or her consent that entails some injury or offensive touching whether or not the actual injury inflicted is intended or expected. The use of force includes but is not limited to the use of a weapon.

"Physical altercation" means a dispute between individuals in which one or more persons sustain bodily injury arising out of the dispute.

All other terms, conditions and definitions of the Policy otherwise apply.

SWIMMING POOL ADDITIONAL CONDITIONS ENDORSEMENT

This endorsement modifies insurance provided under the following:

Commercial General Liability Coverage Part
Commercial Professional Liability Coverage Part
Commercial Umbrella Liability Coverage Part

In consideration of the premium charged, this Policy does not provide coverage, meaning indemnification or defense costs, arising out of:

"Bodily Injury", "Property Damage", or any other damages because of liability, or alleged liability, resulting from any occurrence if, at the time of the occurrence, the following conditions are not met by the insured:

1. The swimming pool must be fenced and the fence gate must be locked when the pool is not open;
2. Depth markings will be posted and visible from both inside and outside the pool;
3. "Swim At Your Own Risk" and "No Trespassing" signs must be posted and visible.

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LIQUOR LIABILITY EXCLUSION ENDORSEMENT

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. **LIQUOR LIABILITY EXCLUSION**

Section I, Coverage A, Part 2, Exclusion C is deleted and replaced with the following:

c. "Bodily injury" or "property damage" for which any insured may be held liable by reason of:

(1) Causing or contributing to the intoxication of any person;

(2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or,

(3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

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LEAD CONTAMINATION EXCLUSION

This endorsement modifies coverage found under the following coverage part:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY
COVERAGE B - PERSONAL AND ADVERTISING INJURY LIABILITY
COVERAGE C - MEDICAL PAYMENTS
COMMERCIAL PROFESSIONAL LIABILITY COVERAGE PART

In consideration of the premium charged it is hereby understood and agreed that this policy will not provide coverage, meaning indemnification or defense costs, arising out of:

"Bodily Injury", "Property Damage", Personal Injury, Advertising Injury, Medical Payments or any other damages because of liability, alleged liability, or occurrence resulting from, caused by, arising out of or in any way connected with:

The existence of lead, the removal of lead, the testing for lead, or exposure to lead in any form which is or has at any time been present in, on, or near: the insured's premises; or, at any location at which the insured is working or has worked in connection with such existence, removal or testing:

1) Whether or not caused by, at the instigation of, or with the direct or indirect involvement of the insured, the insured's employees or other persons on the insured's premises or work site; or,

2) Whether or not caused by or arising out of the insured's failure to properly supervise or keep the work site in a safe condition.

LIMITATION OF COVERAGE TO DESIGNATED CLASSIFICATIONS OF OPERATIONS

This endorsement modifies coverage found under the following coverage parts:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

COMMERCIAL LIABILITY UMBRELLA COVERAGE PART

This insurance applies only to "bodily injury," "property damage," "personal injury," "advertising injury" and medical expenses arising out of only those operations designated, listed and described in the Declarations, under **4. CLASSIFICATION**.

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NON-OWNED AND HIRED AUTO LIABILITY

This endorsement modifies insurance provided under the following:
Commercial General Liability Coverage Part

SCHEDULE

Insurance is provided only with respect to the coverage for which a specific premium charge is shown:

Coverage	Additional Premium
Non-Owned Auto Liability	$ [redacted]
Hired Auto Liability	$

A. NON-OWNED AUTO LIABILITY

The insurance provided under COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I - Coverages) applies to "bodily injury" or "property damage" arising out of the use of a "non-owned auto" by any person other than you in the course of your business.

B. HIRED AUTO LIABILITY

The insurance provided under COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I - Coverages) applies to "bodily injury" or "property damage" arising out of the maintenance or use of a "hired auto" by you or your "employees" in the course of your business.

C. With respect to the insurance provided by this endorsement:

1. Subparagraphs b., c., e., g., h., j., k., l., m. and n. of paragraph 2., Exclusions of COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I - Coverages) do not apply.

2. The following exclusions are added to paragraph 2., Exclusions of COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I - Coverages):

   This insurance does not apply to:

   a. "Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:
      (1) That the insured would have in the absence of the contract or agreement; or
      (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement.

   b. "Bodily injury" to:
      (1) An "employee" of the insured arising out of and in the course of:
         (a) Employment by the insured; or
         (b) Performing duties related to the conduct of the insured's business; or
      (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of paragraph (1) above.

      This exclusion applies:
      (1) Whether the insured may be liable as an employer or in any other capacity; and
      (2) To any obligation to share damages with or repay someone else who must pay the damages because of the injury.

      This exclusion does not apply to:
      (1) Liability assumed by the insured under an "insured contract"; or
      (2) "Bodily injury" to domestic "employees" not entitled to workers compensation benefits.

   c. "Property damage" to:
      (1) Property owned or being transported by, or rented or loaned to the insured; or
      (2) Property in the care, custody or control of the insured.

PAIC-020

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D. For the purposes of this endorsement only, WHO IS AN INSURED (Section II) is replaced by the following:
Each of the following is an insured under this insurance to the extent set forth below:

1. You.
2. Any other person using a "hired auto" with your permission.
3. With respect to a "non-owned auto", any partner or "executive officer" of yours, but only while such "non-owned auto" is being used in your business.
4. Any other person or organization, but only with respect to their liability because of acts or omissions of an insured under paragraphs 1., 2. or 3. above.

None of the following is an insured:

1. Any person engaged in the business of his or her employer with respect to "bodily injury" to any co-employee of such person injured in the course of employment;
2. Any partner or "executive officer" with respect to any "auto" owned by such partner or officer or a member of his or her household;
3. Any person while employed in or otherwise engaged in performing duties related to the conduct of an "auto business", other than an "auto business" you operate;
4. The owner or lessee (of whom you are a sublessee) of a "hired auto" or the owner of a "non-owned auto" or any agent or "employee" of any such owner or lessee;
5. Any person or organization with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

E. For the purposes of this endorsement only, the definition of "insured contract" in the DEFINITIONS Section is amended by the addition of the following:

6. "Insured contract" means:
g. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay for "property damage" to any "auto" rented or leased by you or any of your "employees".

F For the purposes of this endorsement only, the following definitions are added to the DEFINITIONS Section:

1. "Auto business" means the business or occupation of selling, repairing, servicing, storing or parking "autos".
2. "Hired auto" means any "auto" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent or borrow from any of your "employees", your partners or your "executive officers", or members of their households.
3. "Non-owned auto" means any "auto" you do not own, lease, hire, rent or borrow which is used in connection with your business. This includes "autos" owned by your "employees", your partners or your "executive officers", or members of their households, but only while used in your business or your personal affairs.

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

MOLESTATION OR ABUSE EXCLUSION

This endorsement modifies insurance provided under the following:

Commercial General Liability Coverage Part
Coverage A - Bodily Injury and Property Damage Liability
Coverage B - Personal and Advertising Injury Liability
Professional Liability Coverage Part

This insurance does not apply to any claim or any suit brought against any insured; or any damages alleged or claimed because of "bodily injury", "property damage", "personal and advertising injury", or "professional services" arising out of, or resulting from:

1. The threatened or actual molestation or abuse of any person by:

   a. any Insured;
   b. any "executive officer", director or trustee or any Insured
   c. any "employee" of any Insured, or
   d. any "volunteer worker" for any Insured, or
   e. any other person for whom any insured may be legally liable

Molestation or abuse includes, but is not limited to, harmful physical contact of an abusive nature, sexual action, or emotional injury resulting from harmful physical contact or sexual action. Sexual action includes, but is not limited to, interaction with a person which is objectively considered sexually oriented or motivated including physical touching; nudity; exposure to written, audio, video, or electronic material with sexual content; exposure to sexual language or behavior; requests for sexual activity; any behavior with sexual connotation or purpose whether performed for sexual gratification, discrimination, intimidation, coercion or other reason.

2. The negligent employment; investigation; supervision; reporting to the proper authorities, or failure to so report; or retention of a person for whom any Insured is or ever was legally responsible and whose conduct would be excluded by paragraph 1, above.

The Company shall have no duty to defend any suit against the Insured seeking damages which would be excluded under paragraphs 1. and 2. above..

All other terms and conditions remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

RECREATIONAL VEHICLE SPOTTING ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

In consideration of the premium charged, it is hereby agreed that Section I - Coverages, Coverage A, 2. Exclusions is amended as follows:

1) Exclusion j. Damage to Property is amended to include the following paragraph:

   Paragraph (4) of this exclusion does not apply to RECREATIONAL VEHICLE units or RECREATIONAL VEHICLE trailers belonging to guests of the insured while they are being moved and/or placed by the insured on, or next to, premises you own or rent.

2) Coverage under this endorsement is limited to "property damage" to RECREATIONAL VEHICLE units or RECREATIONAL VEHICLE trailers owned by guests arising directly out of the movement and/or placement of such units or trailers by the insured.

3) A deductible of $500 will apply to each covered claim for "property damage" to a RECREATIONAL VEHICLE unit or RECREATIONAL VEHICLE trailer.

All other policy terms, exclusions and conditions remain the same.

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section **II** – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **V** – Definitions.

SECTION I – COVERAGES

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance; and

(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

b. This insurance applies to "bodily injury" and "property damage" only if:

(1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(2) The "bodily injury" or "property damage" occurs during the policy period; and

(3) Prior to the policy period, no insured listed under Paragraph **1.** of Section **II** - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph **1.** of Section **II** - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph **1.** of Section **II** - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

(1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

(2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or

(3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

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2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

(1) That the insured would have in the absence of the contract or agreement; or

(2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:

(a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and

(b) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

(1) Causing or contributing to the intoxication of any person;

(2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or

(3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

(a) The supervision, hiring, employment, training or monitoring of others by that insured; or

(b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage", involved that which is described in Paragraph **(1)**, **(2)** or **(3)** above.

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

(1) An "employee" of the insured arising out of and in the course of:

(a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business; or

(2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph **(1)** above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

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f. Pollution

(1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:

(i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

(ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

(i) Any insured; or

(ii) Any person or organization for whom you may be legally responsible; or

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

(i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;

(ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".

(e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

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(2) Any loss, cost or expense arising out of any:

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

(1) A watercraft while ashore on premises you own or rent;

(2) A watercraft you do not own that is:

(a) Less than 26 feet long; and

(b) Not being used to carry persons or property for a charge;

(3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;

(4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

(5) "Bodily injury" or "property damage" arising out of:

(a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or

(b) The operation of any of the machinery or equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment".

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

(1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

(2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Damage To Property

"Property damage" to:

(1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

(2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

(3) Property loaned to you;

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(4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

(1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or

(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

(1) "Your product";

(2) "Your work"; or

(3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

However, this exclusion does not apply to liability for damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

q. Recording And Distribution Of Material Or Information In Violation Of Law

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

(1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;

(2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;

(3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or

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(4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

Exclusions **c.** through **n.** do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section **III** - Limits Of Insurance.

COVERAGE B -- PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance; and

(2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C.**

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B.**

b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

g. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement"

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i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

(1) Advertising, broadcasting, publishing or telecasting;

(2) Designing or determining content of web sites for others; or

(3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **14.a., b.** and **c.** of "personal and advertising injury" under the Definitions section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-related

Any loss, cost or expense arising out of any:

(1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

o. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

p. Recording And Distribution Of Material Or Information In Violation Of Law

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

(1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;

(2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;

(3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or

(4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

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COVERAGE C – MEDICAL PAYMENTS

1. Insuring Agreement

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

(1) On premises you own or rent;

(2) On ways next to premises you own or rent; or

(3) Because of your operations;

provided that:

(a) The accident takes place in the "coverage territory" and during the policy period;

(b) The expenses are incurred and reported to us within one year of the date of the accident; and

(c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

(1) First aid administered at the time of an accident;

(2) Necessary medical, surgical, X-ray and dental services, including prosthetic devices; and

(3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage **A.**

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

a. All expenses we incur.

b. Up to $250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to $250 a day because of time off from work.

e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.

f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.

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g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";

b. This insurance applies to such liability assumed by the insured;

c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";

d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;

e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and

f. The indemnitee:

(1) Agrees in writing to:

(a) Cooperate with us in the investigation, settlement or defense of the "suit";

(b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";

(c) Notify any other insurer whose coverage is available to the indemnitee; and

(d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) Provides us with written authorization to:

(a) Obtain records and other information related to the "suit"; and

(b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph **2.b.(2)** of Section **I** - Coverage **A** - Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph **f.** above, are no longer met.

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.

b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.

c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

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2. Each of the following is also an insured:

   a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

      (1) "Bodily injury" or "personal and advertising injury":

         (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

         (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;

         (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (1)(a) or (b) above; or

         (d) Arising out of his or her providing or failing to provide professional health care services.

      (2) "Property damage" to property:

         (a) Owned, occupied or used by;

         (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;

      you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

   b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

   c. Any person or organization having proper temporary custody of your property if you die, but only:

      (1) With respect to liability arising out of the maintenance or use of that property; and

      (2) Until your legal representative has been appointed.

   d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

   a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

   b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

   c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

   a. Insureds;

   b. Claims made or "suits" brought; or

   c. Persons or organizations making claims or bringing "suits".

2. The General Aggregate Limit is the most we will pay for the sum of:

   a. Medical expenses under Coverage C;

   b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and

   c. Damages under Coverage B.

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1197

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3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".

4. Subject to Paragraph **2.** above, the Personal And Advertising Injury Limit is the most we will pay under Coverage **B** for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.

5. Subject to Paragraph **2.** or **3.** above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:

   a. Damages under Coverage **A**; and

   b. Medical expenses under Coverage **C**

   because of all "bodily injury" and "property damage" arising out of any one "occurrence".

6. Subject to Paragraph **5.** above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.

7. Subject to Paragraph **5.** above, the Medical Expense Limit is the most we will pay under Coverage **C** for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

   (1) How, when and where the "occurrence" or offense took place;

   (2) The names and addresses of any injured persons and witnesses; and

   (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. If a claim is made or "suit" is brought against any insured, you must:

   (1) Immediately record the specifics of the claim or "suit" and the date received; and

   (2) Notify us as soon as practicable.

   You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

   (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

   (2) Authorize us to obtain records and other information;

   (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

   (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

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4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph **c.** below.

b. Excess Insurance

(1) This insurance is excess over:

(a) Any of the other insurance, whether primary, excess, contingent or on any other basis:

(i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or

(iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **I** - Coverage **A** - Bodily Injury And Property Damage Liability.

(b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured.

(2) When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

(3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(b) The total of all deductible and self-insured amounts under all that other insurance.

(4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

a. The statements in the Declarations are accurate and complete;

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b. Those statements are based upon representations you made to us; and

c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

a. As if each Named Insured were the only Named Insured; and

b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

   a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and

   b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. "Auto" means:

   a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or

   b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

   However, "auto" does not include "mobile equipment".

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

4. "Coverage territory" means:

   a. The United States of America (including its territories and possessions), Puerto Rico and Canada;

   b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph a. above; or

   c. All other parts of the world if the injury or damage arises out of:

      (1) Goods or products made or sold by you in the territory described in Paragraph a. above;

      (2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business; or

      (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication;

   provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in Paragraph a. above or in a settlement we agree to.

5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.

7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

   a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

   b. You have failed to fulfill the terms of a contract or agreement;

   if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

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9. "Insured contract" means:

a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";

b. A sidetrack agreement;

c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;

d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

e. An elevator maintenance agreement;

f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **f.** does not include that part of any contract or agreement:

(1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;

(2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

(a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

(3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in **(2)** above and supervisory, inspection, architectural or engineering activities.

10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

11. "Loading or unloading" means the handling of property:

a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";

b. While it is in or on an aircraft, watercraft or "auto"; or

c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;

b. Vehicles maintained for use solely on or next to premises you own or rent;

c. Vehicles that travel on crawler treads;

d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:

(1) Power cranes, shovels, loaders, diggers or drills; or

(2) Road construction or resurfacing equipment such as graders, scrapers or rollers;

e. Vehicles not described in Paragraph **a.**, **b.**, **c.** or **d.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

(1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or

(2) Cherry pickers and similar devices used to raise or lower workers;

f. Vehicles not described in Paragraph **a.**, **b.**, **c.** or **d.** above maintained primarily for purposes other than the transportation of persons or cargo.

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However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

(1) Equipment designed primarily for:

(a) Snow removal;

(b) Road maintenance, but not construction or resurfacing; or

(c) Street cleaning;

(2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

(3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

a. False arrest, detention or imprisonment;

b. Malicious prosecution;

c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;

d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

e. Oral or written publication, in any manner, of material that violates a person's right of privacy;

f. The use of another's advertising idea in your "advertisement"; or

g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

16. "Products-completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

(1) Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

(a) When all of the work called for in your contract has been completed.

(b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.

(c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

b. Does not include "bodily injury" or "property damage" arising out of:

(1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;

(2) The existence of tools, uninstalled equipment or abandoned or unused materials; or

(3) Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

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As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or

b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

21. "Your product":

a. Means:

(1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

(a) You;

(b) Others trading under your name; or

(c) A person or organization whose business or assets you have acquired; and

(2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

(2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

22. "Your work":

a. Means:

(1) Work or operations performed by you or on your behalf; and

(2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and

(2) The providing of or failure to provide warnings or instructions.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – MANAGERS OR LESSORS OF PREMISES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designation Of Premises (Part Leased To You): 6215 Dingle Pond Road Summerton, SC 29148
Name Of Person(s) Or Organization(s) (Additional Insured): TLC Holdings 4124 Great Wood Way Knoxville, TN 37922
Additional Premium: $ [redacted]
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person(s) or organization(s) shown in the Schedule.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF INSURED CONTRACT DEFINITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The definition of "insured contract" in the **Definitions** section is replaced by the following:

"Insured contract" means:

a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";

b. A sidetrack agreement;

c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;

d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

e. An elevator maintenance agreement;

f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. However, such part of a contract or agreement shall only be considered an "insured contract" to the extent your assumption of the tort liability is permitted by law. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **f.** does not include that part of any contract or agreement:

(1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;

(2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

(a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

(3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in **(2)** above and supervisory, inspection, architectural or engineering activities.

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COMMERCIAL PROPERTY COVERAGE PART

DECLARATIONS

Stock Company

POLICY NUMBER: PAC7045167

NAMED INSURED: BWR, INC

Big Water Resort

Prem. # \ Bldg.#	Location	Coverage	Limit of Insurance	Covered Causes of Loss	Valuation	Coins %	Rates	Premium Min Prem Indication
001 /001	6215 Dingle Pond Road	Blanket Building	1,953,000	Special	RC	90	0.4	[redacted]
	Summerton SC 29148		# of Stories					
	Construction Various	Prot. Class B	Occupancy Campground		Yr. Built		Class Code	000844
001 /001	6215 Dingle Pond Road	Blanket BPP	110,000	Special	RC	80	0.4	[redacted]
	Summerton SC 29148		# of Stories					
	Construction Various	Prot. Class B	Occupancy Campground		Yr. Built		Class Code	000844
001 /001	6215 Dingle Pond Road	Property Extension S3007						[redacted]
	Summerton SC 29148		# of Stories					
	Construction	Prot. Class	Occupancy		Yr. Built		Class Code	
/			# of Stories					
	Construction	Prot. Class	Occupancy		Yr. Built		Class Code	
/			# of Stories					
	Construction	Prot. Class	Occupancy		Yr. Built		Class Code	
/			# of Stories					
	Construction	Prot. Class	Occupancy		Yr. Built		Class Code	

TOTAL $ [redacted]

VALUATION: If no valuation is indicated, an ACV will apply.
ACV = Actual Cash Value / AGREED = Agreed Value / RC = Replacement Cost

MORTGAGE HOLDERS:

PREM # \ BLDG #	MORTGAGE HOLDER NAME	MORTGAGEE ADDRESS	MORTGAGEE CITY	STATE	ZIPCODE

DEDUCTIBLE: [redacted]

FORMS APPLICABLE: See Schedule of Forms and Endorsements Attached.

This page alone does not provide coverage and must be attached to a Commercial Lines Common Policy Declarations Common Policy Conditions, Coverage Part Coverage Form(s) and any other applicable forms and endorsements.

1206

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COMMERCIAL PROPERTY CONDITIONS

This Coverage Part is subject to the following conditions, the Common Policy Conditions and applicable Loss Conditions and Additional Conditions in Commercial Property Coverage Forms.

A. CONCEALMENT, MISREPRESENTATION OR FRAUD

This Coverage Part is void in any case of fraud by you as it relates to this Coverage Part at any time. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning:

1. This Coverage Part;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this Coverage Part.

B. CONTROL OF PROPERTY

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Part at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition does not exist.

C. INSURANCE UNDER TWO OR MORE COVERAGES

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

D. LEGAL ACTION AGAINST US

No one may bring a legal action against us under this Coverage Part unless:

1. There has been full compliance with all of the terms of this Coverage Part; and
2. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.

E. LIBERALIZATION

If we adopt any revision that would broaden the coverage under this Coverage Part without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Part.

F. NO BENEFIT TO BAILEE

No person or organization, other than you, having custody of Covered Property will benefit from this insurance.

G. OTHER INSURANCE

1. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits Of Insurance of all insurance covering on the same basis.
2. If there is other insurance covering the same loss or damage, other than that described in 1. above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.

H. POLICY PERIOD, COVERAGE TERRITORY

Under this Coverage Part:

1. We cover loss or damage commencing:
   a. During the policy period shown in the Declarations; and
   b. Within the coverage territory.
2. The coverage territory is:
   a. The United States of America (including its territories and possessions);
   b. Puerto Rico; and
   c. Canada.

I. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

1. Prior to a loss to your Covered Property or Covered Income.
2. After a loss to your Covered Property or Covered Income only if, at time of loss, that party is one of the following:
   a. Someone insured by this insurance;
   b. A business firm:
      (1) Owned or controlled by you; or
      (2) That owns or controls you; or
   c. Your tenant.

This will not restrict your insurance.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PROTECTIVE SAFEGUARDS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART
FARM COVERAGE PART

SCHEDULE*

Prem. No.	Bldg. No.	Protective Safeguards Symbols Applicable
1	All	P-9

Describe any "P-9": Functioning smoke detectors must be in all habitational units and common hallways, and must be tested every six months.

*Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

A. The following is added to the:

Commercial Property Conditions

General Conditions in the Farm Property - Other Farm Provisions Form - Additional Coverages, Conditions, Definitions

General Conditions in the Mobile Agricultural Machinery and Equipment Coverage Form

General Conditions in the Livestock Coverage Form

PROTECTIVE SAFEGUARDS

1. As a condition of this insurance, you are required to maintain the protective devices or services listed in the Schedule above.
2. The protective safeguards to which this endorsement applies are identified by the following symbols:

"P-1" Automatic Sprinkler System, including related supervisory services.

Automatic Sprinkler System means:

a. Any automatic fire protective or extinguishing system, including connected:
   (1) Sprinklers and discharge nozzles;
   (2) Ducts, pipes, valves and fittings;
   (3) Tanks, their component parts and supports; and
   (4) Pumps and private fire protection mains.

b. When supplied from an automatic fire protective system:
   (1) Non-automatic fire protective systems; and
   (2) Hydrants, standpipes and outlets.

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"P-2" Automatic Fire Alarm, protecting the entire building, that is:

a. Connected to a central station; or

b. Reporting to a public or private fire alarm station.

"P-3" Security Service, with a recording system or watch clock, making hourly rounds covering the entire building, when the premises are not in actual operation.

"P-4" Service Contract with a privately owned fire department providing fire protection service to the described premises.

"P-9" The protective system described in the Schedule.

B. The following is added to the EXCLUSIONS section of:

CAUSES OF LOSS - BASIC FORM

CAUSES OF LOSS - BROAD FORM

CAUSES OF LOSS - SPECIAL FORM

MORTGAGE HOLDERS ERRORS AND OMISSIONS COVERAGE FORM

STANDARD PROPERTY POLICY

CAUSES OF LOSS FORM - FARM PROPERTY

MOBILE AGRICULTURAL MACHINERY AND EQUIPMENT COVERAGE FORM

LIVESTOCK COVERAGE FORM

We will not pay for loss or damage caused by or resulting from fire if, prior to the fire, you:

1. Knew of any suspension or impairment in any protective safeguard listed in the Schedule above and failed to notify us of that fact; or
2. Failed to maintain any protective safeguard listed in the Schedule above, and over which you had control, in complete working order.

If part of an Automatic Sprinkler System is shut off due to breakage, leakage, freezing conditions or opening of sprinkler heads, notification to us will not be necessary if you can restore full protection within 48 hours.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF CERTAIN COMPUTER-RELATED LOSSES

This endorsement modifies insurance provided under the following:

COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
CRIME AND FIDELITY COVERAGE PART
STANDARD PROPERTY POLICY

A. We will not pay for loss ("loss") or damage caused directly or indirectly by the following. Such loss ("loss") or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss ("loss") or damage.

1. The failure, malfunction or inadequacy of:

   a. Any of the following, whether belonging to any insured or to others:

      (1) Computer hardware, including microprocessors;

      (2) Computer application software;

      (3) Computer operating systems and related software;

      (4) Computer networks;

      (5) Microprocessors (computer chips) not part of any computer system; or

      (6) Any other computerized or electronic equipment or components; or

   b. Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in Paragraph **A.1.a.** of this endorsement;

   due to the inability to correctly recognize, process, distinguish, interpret or accept one or more dates or times. An example is the inability of computer software to recognize the year 2000.

2. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph **A.1.** of this endorsement.

B. If an excluded Cause of Loss as described in Paragraph **A.** of this endorsement results:

1. In a Covered Cause of Loss under the Crime and Fidelity Coverage Part, the Commercial Inland Marine Coverage Part or the Standard Property Policy; or

2. Under the Commercial Property Coverage Part:

   a. In a "Specified Cause of Loss", or in elevator collision resulting from mechanical breakdown, under the Causes of Loss - Special Form; or

   b. In a Covered Cause of Loss under the Causes Of Loss - Basic Form or the Causes Of Loss - Broad Form;

   we will pay only for the loss ("loss") or damage caused by such "Specified Cause of Loss", elevator collision, or Covered Cause of Loss.

C. We will not pay for repair, replacement or modification of any items in Paragraphs **A.1.a.** and **A.1.b.** of this endorsement to correct any deficiencies or change any features.

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BUILDING AND PERSONAL PROPERTY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section H., Definitions.

A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

1. Covered Property

Covered Property, as used in this Coverage Part, means the type of property described in this section, **A.1.**, and limited in **A.2.**, Property Not Covered, if a Limit of Insurance is shown in the Declarations for that type of property.

a. Building, meaning the building or structure described in the Declarations, including:

(1) Completed additions;

(2) Fixtures, including outdoor fixtures;

(3) Permanently installed:

(a) Machinery and

(b) Equipment;

(4) Personal property owned by you that is used to maintain or service the building or structure or its premises, including:

(a) Fire-extinguishing equipment;

(b) Outdoor furniture;

(c) Floor coverings; and

(d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;

(5) If not covered by other insurance:

(a) Additions under construction, alterations and repairs to the building or structure;

(b) Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the building or structure.

b. **Your Business Personal Property** located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises, consisting of the following unless otherwise specified in the Declarations or on the Your Business Personal Property – Separation Of Coverage form:

(1) Furniture and fixtures;

(2) Machinery and equipment;

(3) "Stock";

(4) All other personal property owned by you and used in your business;

(5) Labor, materials or services furnished or arranged by you on personal property of others;

(6) Your use interest as tenant in improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:

(a) Made a part of the building or structure you occupy but do not own; and

(b) You acquired or made at your expense but cannot legally remove;

(7) Leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under Personal Property Of Others.

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c. **Personal Property Of Others** that is:

(1) In your care, custody or control; and

(2) Located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

However, our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

2. **Property Not Covered**

Covered Property does not include:

a. Accounts, bills, currency, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities;

b. Animals, unless owned by others and boarded by you, or if owned by you, only as "stock" while inside of buildings;

c. Automobiles held for sale;

d. Bridges, roadways, walks, patios or other paved surfaces;

e. Contraband, or property in the course of illegal transportation or trade;

f. The cost of excavations, grading, backfilling or filling;

g. Foundations of buildings, structures, machinery or boilers if their foundations are below:

(1) The lowest basement floor; or

(2) The surface of the ground, if there is no basement;

h. Land (including land on which the property is located), water, growing crops or lawns;

i. Personal property while airborne or waterborne;

j. Bulkheads, pilings, piers, wharves or docks;

k. Property that is covered under another coverage form of this or any other policy in which it is more specifically described, except for the excess of the amount due (whether you can collect on it or not) from that other insurance;

l. Retaining walls that are not part of a building;

m. Underground pipes, flues or drains;

n. Electronic data, except as provided under the Additional Coverage, Electronic Data. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data. This paragraph, **n.**, does not apply to your "stock" of prepackaged software;

o. The cost to replace or restore the information on valuable papers and records, including those which exist as electronic data. Valuable papers and records include but are not limited to proprietary information, books of account, deeds, manuscripts, abstracts, drawings and card index systems. Refer to the Coverage Extension for Valuable Papers And Records (Other Than Electronic Data) for limited coverage for valuable papers and records other than those which exist as electronic data;

p. Vehicles or self-propelled machines (including aircraft or watercraft) that:

(1) Are licensed for use on public roads; or

(2) Are operated principally away from the described premises.

This paragraph does not apply to:

(a) Vehicles or self-propelled machines or autos you manufacture, process or warehouse;

(b) Vehicles or self-propelled machines, other than autos, you hold for sale;

(c) Rowboats or canoes out of water at the described premises; or

(d) Trailers, but only to the extent provided for in the Coverage Extension for Non-owned Detached Trailers;

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q. The following property while outside of buildings:

(1) Grain, hay, straw or other crops;

(2) Fences, radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, trees, shrubs or plants (other than "stock" of trees, shrubs or plants), all except as provided in the Coverage Extensions.

3. **Covered Causes Of Loss**

See applicable Causes Of Loss Form as shown in the Declarations.

4. **Additional Coverages**

a. **Debris Removal**

(1) Subject to Paragraphs **(3)** and **(4)**, we will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.

(2) Debris Removal does not apply to costs to:

(a) Extract "pollutants" from land or water; or

(b) Remove, restore or replace polluted land or water.

(3) Subject to the exceptions in Paragraph **(4)**, the following provisions apply:

(a) The most we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.

(b) Subject to **(a)** above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

(4) We will pay up to an additional $10,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:

(a) The total of the actual debris removal expense plus the amount we pay for direct physical loss or damage exceeds the Limit of Insurance on the Covered Property that has sustained loss or damage.

(b) The actual debris removal expense exceeds 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

Therefore, if **(4)(a)** and/or **(4)(b)** apply, our total payment for direct physical loss or damage and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained loss or damage, plus $10,000.

(5) **Examples**

The following examples assume that there is no Coinsurance penalty.

EXAMPLE #1

Limit of Insurance:	$ 90,000
Amount of Deductible:	$ 500
Amount of Loss:	$ 50,000
Amount of Loss Payable:	$ 49,500
	($50,000 - $500)
Debris Removal Expense:	$ 10,000
Debris Removal Expense Payable:	$ 10,000
($10,000 is 20% of $50,000)	

The debris removal expense is less than 25% of the sum of the loss payable plus the deductible. The sum of the loss payable and the debris removal expense ($49,500 + $10,000 = $59,500) is less than the Limit of Insurance. Therefore the full amount of debris removal expense is payable in accordance with the terms of Paragraph **(3)**.

EXAMPLE #2

Limit of Insurance:	$ 90,000
Amount of Deductible:	$ 500
Amount of Loss:	$ 80,000
Amount of Loss Payable:	$ 79,500
	($80,000 -$500)
Debris Removal Expense:	$ 30,000
Debris Removal Expense Payable	
Basic Amount:	$ 10,500
Additional Amount:	$ 10,000

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The basic amount payable for debris removal expense under the terms of Paragraph (3) is calculated as follows: $80,000 ($79,500 + $500) x .25 = $20,000; capped at $10,500. The cap applies because the sum of the loss payable ($79,500) and the basic amount payable for debris removal expense ($10,500) cannot exceed the Limit of Insurance ($90,000).

The additional amount payable for debris removal expense is provided in accordance with the terms of Paragraph (4), because the debris removal expense ($30,000) exceeds 25% of the loss payable plus the deductible ($30,000 is 37.5% of $80,000), and because the sum of the loss payable and debris removal expense ($79,500 + $30,000 = $109,500) would exceed the Limit of Insurance ($90,000). The additional amount of covered debris removal expense is $10,000, the maximum payable under Paragraph (4). Thus the total payable for debris removal expense in this example is $20,500; $9,500 of the debris removal expense is not covered.

b. Preservation Of Property

If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for any direct physical loss or damage to that property:

(1) While it is being moved or while temporarily stored at another location; and

(2) Only if the loss or damage occurs within 30 days after the property is first moved.

c. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to $1,000, unless a higher limit is shown in the Declarations, for your liability for fire department service charges:

(1) Assumed by contract or agreement prior to loss; or

(2) Required by local ordinance.

No Deductible applies to this Additional Coverage.

d. Pollutant Clean-up And Removal

We will pay your expense to extract "pollutants" from land or water at the described premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause of Loss occurs.

This Additional Coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants". But we will pay for testing which is performed in the course of extracting the "pollutants" from the land or water.

The most we will pay under this Additional Coverage for each described premises is $10,000 for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate 12-month period of this policy.

e. Increased Cost Of Construction

(1) This Additional Coverage applies only to buildings to which the Replacement Cost Optional Coverage applies.

(2) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with enforcement of an ordinance or law in the course of repair, rebuilding or replacement of damaged parts of that property, subject to the limitations stated in **e.(3)** through **e.(9)** of this Additional Coverage.

(3) The ordinance or law referred to in **e.(2)** of this Additional Coverage is an ordinance or law that regulates the construction or repair of buildings or establishes zoning or land use requirements at the described premises, and is in force at the time of loss.

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(4) Under this Additional Coverage, we will not pay any costs due to an ordinance or law that:

(a) You were required to comply with before the loss, even when the building was undamaged; and

(b) You failed to comply with.

(5) Under this Additional Coverage, we will not pay for:

(a) The enforcement of any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or

(b) Any costs associated with the enforcement of an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.

(6) The most we will pay under this Additional Coverage, for each described building insured under this Coverage Form, is $10,000 or 5% of the Limit of Insurance applicable to that building, whichever is less. If a damaged building is covered under a blanket Limit of Insurance which applies to more than one building or item of property, then the most we will pay under this Additional Coverage, for that damaged building, is the lesser of: $10,000 or 5% times the value of the damaged building as of the time of loss times the applicable Coinsurance percentage.

The amount payable under this Additional Coverage is additional insurance.

(7) With respect to this Additional Coverage:

(a) We will not pay for the Increased Cost of Construction:

(i) Until the property is actually repaired or replaced, at the same or another premises; and

(ii) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.

(b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of e.(6) of this Additional Coverage, is the increased cost of construction at the same premises.

(c) If the ordinance or law requires relocation to another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of e.(6) of this Additional Coverage, is the increased cost of construction at the new premises.

(8) This Additional Coverage is not subject to the terms of the Ordinance Or Law Exclusion, to the extent that such Exclusion would conflict with the provisions of this Additional Coverage.

(9) The costs addressed in the Loss Payment and Valuation Conditions, and the Replacement Cost Optional Coverage, in this Coverage Form, do not include the increased cost attributable to enforcement of an ordinance or law. The amount payable under this Additional Coverage, as stated in e.(6) of this Additional Coverage, is not subject to such limitation.

f. Electronic Data

(1) Under this Additional Coverage, electronic data has the meaning described under Property Not Covered, Electronic Data.

(2) Subject to the provisions of this Additional Coverage, we will pay for the cost to replace or restore electronic data which has been destroyed or corrupted by a Covered Cause of Loss. To the extent that electronic data is not replaced or restored, the loss will be valued at the cost of replacement of the media on which the electronic data was stored,
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(3) The Covered Causes of Loss applicable to Your Business Personal Property apply to this Additional Coverage, Electronic Data, subject to the following:

(a) If the Causes Of Loss - Special Form applies, coverage under this Additional Coverage, Electronic Data, is limited to the "specified causes of loss" as defined in that form, and Collapse as set forth in that form.

(b) If the Causes Of Loss - Broad Form applies, coverage under this Additional Coverage, Electronic Data, includes Collapse as set forth in that form.

(c) If the Causes Of Loss Form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage, Electronic Data.

(d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for loss or damage caused by or resulting from manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, modify, maintain, repair or replace that system.

(4) The most we will pay under this Additional Coverage, Electronic Data, is $2,500 for all loss or damage sustained in any one policy year, regardless of the number of occurrences of loss or damage or the number of premises, locations or computer systems involved. If loss payment on the first occurrence does not exhaust this amount, then the balance is available for subsequent loss or damage sustained in but not after that policy year. With respect to an occurrence which begins in one policy year and continues or results in additional loss or damage in a subsequent policy year(s), all loss or damage is deemed to be sustained in the policy year in which the occurrence began.

5. **Coverage Extensions**

Except as otherwise provided, the following Extensions apply to property located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

If a Coinsurance percentage of 80% or more, or a Value Reporting period symbol, is shown in the Declarations, you may extend the insurance provided by this Coverage Part as follows:

a. Newly Acquired Or Constructed Property

(1) Buildings

If this policy covers Building, you may extend that insurance to apply to:

(a) Your new buildings while being built on the described premises; and

(b) Buildings you acquire at locations, other than the described premises, intended for:

(i) Similar use as the building described in the Declarations; or

(ii) Use as a warehouse.

The most we will pay for loss or damage under this Extension is $250,000 at each building.

(2) Your Business Personal Property

(a) If this policy covers Your Business Personal Property, you may extend that insurance to apply to:

(i) Business personal property, including such property that you newly acquire, at any location you acquire other than at fairs, trade shows or exhibitions;

(ii) Business personal property, including such property that you newly acquire, located at your newly constructed or acquired buildings at the location described in the Declarations; or

(iii) Business personal property that you newly acquire, located at the described premises.

The most we will pay for loss or damage under this Extension is $100,000 at each building.

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(b) This Extension does not apply to:

(i) Personal property of others that is temporarily in your possession in the course of installing or performing work on such property; or

(ii) Personal property of others that is temporarily in your possession in the course of your manufacturing or wholesaling activities.

(3) Period Of Coverage

With respect to insurance on or at each newly acquired or constructed property, coverage will end when any of the following first occurs:

(a) This policy expires;

(b) 30 days expire after you acquire the property or begin construction of that part of the building that would qualify as covered property; or

(c) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property or begin construction of that part of the building that would qualify as covered property.

b. Personal Effects And Property Of Others

You may extend the insurance that applies to Your Business Personal Property to apply to:

(1) Personal effects owned by you, your officers, your partners or members, your managers or your employees. This Extension does not apply to loss or damage by theft.

(2) Personal property of others in your care, custody or control.

The most we will pay for loss or damage under this Extension is $2,500 at each described premises. Our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

c. Valuable Papers And Records (Other Than Electronic Data)

(1) You may extend the insurance that applies to Your Business Personal Property to apply to the cost to replace or restore the lost information on valuable papers and records for which duplicates do not exist. But this Extension does not apply to valuable papers and records which exist as electronic data. Electronic data has the meaning described under Property Not Covered, Electronic Data.

(2) If the Causes Of Loss - Special Form applies, coverage under this Extension is limited to the "specified causes of loss" as defined in that form, and Collapse as set forth in that form.

(3) If the Causes Of Loss - Broad Form applies, coverage under this Extension includes Collapse as set forth in that form.

(4) Under this Extension, the most we will pay to replace or restore the lost information is $2,500 at each described premises, unless a higher limit is shown in the Declarations. Such amount is additional insurance. We will also pay for the cost of blank material for reproducing the records (whether or not duplicates exist), and (when there is a duplicate) for the cost of labor to transcribe or copy the records. The costs of blank material and labor are subject to the applicable Limit of Insurance on Your Business Personal Property and therefore coverage of such costs is not additional insurance.

d. Property Off-premises

(1) You may extend the insurance provided by this Coverage Form to apply to your Covered Property while it is away from the described premises, if it is:

(a) Temporarily at a location you do not own, lease or operate;

(b) In storage at a location you lease, provided the lease was executed after the beginning of the current policy term; or

(c) At any fair, trade show or exhibition.

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(2) This Extension does not apply to property:

(a) In or on a vehicle; or

(b) In the care, custody or control of your salespersons, unless the property is in such care, custody or control at a fair, trade show or exhibition.

(3) The most we will pay for loss or damage under this Extension is $10,000.

e. **Outdoor Property**

You may extend the insurance provided by this Coverage Form to apply to your outdoor fences, radio and television antennas (including satellite dishes), trees, shrubs and plants (other than "stock" of trees, shrubs or plants), including debris removal expense, caused by or resulting from any of the following causes of loss if they are Covered Causes of Loss:

(1) Fire;

(2) Lightning;

(3) Explosion;

(4) Riot or Civil Commotion; or

(5) Aircraft.

The most we will pay for loss or damage under this Extension is $1,000, but not more than $250 for any one tree, shrub or plant. These limits apply to any one occurrence, regardless of the types or number of items lost or damaged in that occurrence.

f. **Non-owned Detached Trailers**

(1) You may extend the insurance that applies to Your Business Personal Property to apply to loss or damage to trailers that you do not own, provided that:

(a) The trailer is used in your business;

(b) The trailer is in your care, custody or control at the premises described in the Declarations; and

(c) You have a contractual responsibility to pay for loss or damage to the trailer.

(2) We will not pay for any loss or damage that occurs:

(a) While the trailer is attached to any motor vehicle or motorized conveyance, whether or not the motor vehicle or motorized conveyance is in motion;

(b) During hitching or unhitching operations, or when a trailer becomes accidentally unhitched from a motor vehicle or motorized conveyance.

(3) The most we will pay for loss or damage under this Extension is $5,000, unless a higher limit is shown in the Declarations.

(4) This insurance is excess over the amount due (whether you can collect on it or not) from any other insurance covering such property.

Each of these Extensions is additional insurance unless otherwise indicated. The Additional Condition, Coinsurance, does not apply to these Extensions.

B. **Exclusions And Limitations**

See applicable Causes Of Loss Form as shown in the Declarations.

C. **Limits Of Insurance**

The most we will pay for loss or damage in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

The most we will pay for loss or damage to outdoor signs, whether or not the sign is attached to a building, is $2,500 per sign in any one occurrence.

The amounts of insurance stated in the following Additional Coverages apply in accordance with the terms of such coverages and are separate from the Limit(s) of Insurance shown in the Declarations for any other coverage:

1. Fire Department Service Charge;
2. Pollutant Clean-up And Removal;
3. Increased Cost Of Construction; and
4. Electronic Data.

Payments under the Preservation Of Property Additional Coverage will not increase the applicable Limit of Insurance.

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D. Deductible

In any one occurrence of loss or damage (hereinafter referred to as loss), we will first reduce the amount of loss if required by the Coinsurance Condition or the Agreed Value Optional Coverage. If the adjusted amount of loss is less than or equal to the Deductible, we will not pay for that loss. If the adjusted amount of loss exceeds the Deductible, we will then subtract the Deductible from the adjusted amount of loss, and will pay the resulting amount or the Limit of Insurance, whichever is less.

When the occurrence involves loss to more than one item of Covered Property and separate Limits of Insurance apply, the losses will not be combined in determining application of the Deductible. But the Deductible will be applied only once per occurrence.

EXAMPLE #1

(This example assumes there is no Coinsurance penalty.)

Deductible:	$250
Limit of Insurance - Building #1:	$60,000
Limit of Insurance - Building #2:	$80,000
Loss to Building #1:	$60,100
Loss to Building #2:	$90,000

The amount of loss to Building #1 ($60,100) is less than the sum ($60,250) of the Limit of Insurance applicable to Building #1 plus the Deductible.

The Deductible will be subtracted from the amount of loss in calculating the loss payable for Building #1:

$60,100	
- 250	
$59,850	Loss Payable - Building #1

The Deductible applies once per occurrence and therefore is not subtracted in determining the amount of loss payable for Building #2. Loss payable for Building #2 is the Limit of Insurance of $80,000.

Total amount of loss payable:

$59,850 + $80,000 = $139,850

EXAMPLE #2

(This example, too, assumes there is no Coinsurance penalty.)

The Deductible and Limits of Insurance are the same as those in Example #1.

Loss to Building #1: (Exceeds Limit of Insurance plus Deductible)	$70,000
Loss to Building #2: (Exceeds Limit of Insurance plus Deductible)	$90,000
Loss Payable - Building #1: (Limit of Insurance)	$60,000
Loss Payable - Building #2: (Limit of Insurance)	$80,000
Total amount of loss payable:	$140,000

E. Loss Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

1. Abandonment

There can be no abandonment of any property to us.

2. Appraisal

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each

arty will:

a. Pay its chosen appraiser; and

b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

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3. **Duties In The Event Of Loss Or Damage**

a. You must see that the following are done in the event of loss or damage to Covered Property:

(1) Notify the police if a law may have been broken.

(2) Give us prompt notice of the loss or damage. Include a description of the property involved.

(3) As soon as possible, give us a description of how, when and where the loss or damage occurred.

(4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.

(5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.

(6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

(7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.

(8) Cooperate with us in the investigation or settlement of the claim.

b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

4. **Loss Payment**

a. In the event of loss or damage covered by this Coverage Form, at our option, we will either:

(1) Pay the value of lost or damaged property;

(2) Pay the cost of repairing or replacing the lost or damaged property, subject to b. below;

(3) Take all or any part of the property at an agreed or appraised value; or

(4) Repair, rebuild or replace the property with other property of like kind and quality, subject to b. below.

We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this Coverage Form or any applicable provision which amends or supersedes the Valuation Condition.

b. The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

c. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.

d. We will not pay you more than your financial interest in the Covered Property.

e. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.

f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.

g. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part and:

(1) We have reached agreement with you on the amount of loss; or

(2) An appraisal award has been made.

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h. A party wall is a wall that separates and is common to adjoining buildings that are owned by different parties. In settling covered losses involving a party wall, we will pay a proportion of the loss to the party wall based on your interest in the wall in proportion to the interest of the owner of the adjoining building. However, if you elect to repair or replace your building and the owner of the adjoining building elects not to repair or replace that building, we will pay you the full value of the loss to the party wall, subject to all applicable policy provisions including Limits of Insurance, the Valuation and Coinsurance Conditions and all other provisions of this Loss Payment Condition. Our payment under the provisions of this paragraph does not alter any right of subrogation we may have against any entity, including the owner or insurer of the adjoining building, and does not alter the terms of the Transfer Of Rights Of Recovery Against Others To Us Condition in this policy.

5. **Recovered Property**

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

6. **Vacancy**

a. **Description Of Terms**

(1) As used in this Vacancy Condition, the term building and the term vacant have the meanings set forth in (1)(a) and (1)(b) below:

(a) When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.

(b) When this policy is issued to the owner or general lessee of a building, building means the entire building. Such building is vacant unless at least 31% of its total square footage is:

(i) Rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations; and/or

(ii) Used by the building owner to conduct customary operations.

(2) Buildings under construction or renovation are not considered vacant.

b. **Vacancy Provisions**

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage occurs:

(1) We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:

(a) Vandalism;

(b) Sprinkler leakage, unless you have protected the system against freezing;

(c) Building glass breakage;

(d) Water damage;

(e) Theft; or

(f) Attempted theft.

(2) With respect to Covered Causes of Loss other than those listed in b.(1)(a) through b.(1)(f) above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.

7. **Valuation**

We will determine the value of Covered Property in the event of loss or damage as follows:

a. At actual cash value as of the time of loss or damage, except as provided in b., c., d. and e. below.

b. If the Limit of Insurance for Building satisfies the Additional Condition, Coinsurance, and the cost to repair or replace the damaged building property is $2,500 or less, we will pay the cost of building repairs or replacement.

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The cost of building repairs or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

However, the following property will be valued at the actual cash value even when attached to the building:

(1) Awnings or floor coverings;

(2) Appliances for refrigerating, ventilating, cooking, dishwashing or laundering; or

(3) Outdoor equipment or furniture.

c. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.

d. Glass at the cost of replacement with safety-glazing material if required by law.

e. Tenants' Improvements and Betterments at:

(1) Actual cash value of the lost or damaged property if you make repairs promptly.

(2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:

(a) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and

(b) Divide the amount determined in (a) above by the number of days from the installation of improvements to the expiration of the lease.

If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.

(3) Nothing if others pay for repairs or replacement.

F. Additional Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

1. Coinsurance

If a Coinsurance percentage is shown in the Declarations, the following condition applies.

a. We will not pay the full amount of any loss if the value of Covered Property at the time of loss times the Coinsurance percentage shown for it in the Declarations is greater than the Limit of Insurance for the property.

Instead, we will determine the most we will pay using the following steps:

(1) Multiply the value of Covered Property at the time of loss by the Coinsurance percentage;

(2) Divide the Limit of Insurance of the property by the figure determined in Step (1);

(3) Multiply the total amount of loss, before the application of any deductible, by the figure determined in Step (2); and

(4) Subtract the deductible from the figure determined in Step (3).

We will pay the amount determined in Step (4) or the limit of insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

EXAMPLE #1 (UNDERINSURANCE)

When:	The value of the property is	$250,000
	The Coinsurance percentage for it is:	80%
	The Limit of Insurance for it is:	$100,000
	The Deductible is:	$250
	The amont of loss is:	$40,000

Step (1): $250,000 x 80% = $200,000
(the minimum amount of insurace to meet your Coinsurance requirements)

Step (2): $100,000 / $200,000 = .50
Step (3): $40,000 x .50 = $20,000
Step (4): $20,000 - $250 = $19,750

We will pay no more than $19,750. The remaining $20,250 is not covered.

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EXAMPLE #2 (ADEQUATE INSURANCE)

When:		
	The value of the property is:	$250,000
	The Coinsuranc percentage for it is:	80%
	The Limit of Insurance for it is:	$200,000
	The Deductible is:	$250
	The amount of loss is:	$40,000

The minimum amount of insurance to meet your Coinsurance requirement is $200,000 ($250,000 x 80%). Therefore, the Limit of Insurance in this example is adequate and no penalty applies. We will pay no more than $39,750 ($40,000 amount of loss minus the deductible of $250).

b. If one Limit of Insurance applies to two or more separate items, this condition will apply to the total of all property to which the limit applies.

EXAMPLE #3

When:		
	The value of the property is:	
	Building at Location #1:	$75,000
	Building at Location #2:	$100,000
	Personal Property at Location 2:	$75,000
		$250,000
	The Coinsurance percentage for it is:	90%
	The Limit of Insurance for Buildings and Personal Property at Locations #1 and #2 is:	$ 180,000
	The Deductible is:	$ 1,000
	the amount of loss is:	
	Building at Location #2:	$ 30,000
	Personal Property at Building #2:	$ 20,000
		$ 50,000

Step **(1)**: $250,000 x 90% = $225,000
(the minimum amount of Insurance to meet your Coinsurance requirements and to avoid the penalty shown below)
Step **(2)**: $180,000 / $225,000 = .80
Step **(3)**: $50,000 x .80 = $40,000
Step **(4)**: $40,00 - $1,000 = $39,000
We will pay no more than $39,000. The remaining $11,000 is not covered.

2. Mortgageholders

a. The term mortgageholder includes trustee.

b. We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.

c. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.

d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgageholder will still have the right to receive loss payment if the mortgageholder:

(1) Pays any premium due under this Coverage Part at our request if you have failed to do so;

(2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and

(3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

All of the terms of this Coverage Part will then apply directly to the mortgageholder.

e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:

(1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and

(2) The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

f. If we cancel this policy, we will give written notice to the mortgageholder at least:

(1) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or

(2) 30 days before the effective date of cancellation if we cancel for any other reason.

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g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

G. Optional Coverages

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item.

1. Agreed Value

a. The Additional Condition, Coinsurance, does not apply to Covered Property to which this Optional Coverage applies. We will pay no more for loss of or damage to that property than the proportion that the Limit of Insurance under this Coverage Part for the property bears to the Agreed Value shown for it in the Declarations.

b. If the expiration date for this Optional Coverage shown in the Declarations is not extended, the Additional Condition, Coinsurance, is reinstated and this Optional Coverage expires.

c. The terms of this Optional Coverage apply only to loss or damage that occurs:

(1) On or after the effective date of this Optional Coverage; and

(2) Before the Agreed Value expiration date shown in the Declarations or the policy expiration date, whichever occurs first.

2. Inflation Guard

a. The Limit of Insurance for property to which this Optional Coverage applied will automatically increase by the annual percentage shown in the Declarations.

b. The amount of increase will be:

(1) The Limit of Insurance that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Limit of Insurance, times

(2) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 8% is .08), times

(3) The number of days since the beginning of the current policy year or the effective date of the most recent policy change amending the Limit of Insurance, divided by 365.

EXAMPLE

If:	The applicable Limit of Insurance is	$ 100,000
	The annual percentage increase is:	8%
	The number of days since the beginning of the policy year (or last policy change) is:	146
	The amount of increase is: $100,000 x .08 x 146 / 365 =	$ 3,200

3. Replacement Cost

a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Valuation Loss Condition of this Coverage Form.

b. This Optional Coverage does not apply to:

(1) Personal property of others;

(2) Contents of a residence;

(3) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac; or

(4) "Stock", unless the Including "Stock" option is shown in the Declarations.

Under the terms of this Replacement Cost Optional Coverage, tenants' improvements and betterments are not considered to be the personal property of others.

c. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.

d. We will not pay on a replacement cost basis for any loss or damage:

(1) Until the lost or damaged property is actually repaired or replaced; and

(2) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.

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With respect to tenants' improvements and betterments, the following also apply:

(3) If the conditions in **d.(1)** and **d.(2)** above are not met, the value of tenants' improvements and betterments will be determined as a proportion of your original cost, as set forth in the Valuation Loss Condition of this Coverage Form; and

(4) We will not pay for loss or damage to tenants' improvements and betterments if others pay for repairs or replacement.

e. We will not pay more for loss or damage on a replacement cost basis than the least of **(1)**, **(2)** or **(3)**, subject to **f.** below:

(1) The Limit of Insurance applicable to the lost or damaged property;

(2) The cost to replace the lost or damaged property with other property:

(a) Of comparable material and quality; and

(b) Used for the same purpose; or

(3) The amount actually spent that is necessary to repair or replace the lost or damaged property.

If a building is rebuilt at a new premises, the cost described in **e.(2)** above is limited to the cost which would have been incurred if the building had been rebuilt at the original premises.

f. The cost of repair or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

4. Extension Of Replacement Cost To Personal Property Of Others

a. If the Replacement Cost Optional Coverage is shown as applicable in the Declarations, then this Extension may also be shown as applicable. If the Declarations show this Extension as applicable, then Paragraph **3.b.(1)** of the Replacement Cost Optional Coverage is deleted and all other provisions of the Replacement Cost Optional Coverage apply to replacement cost on personal property of others.

b. With respect to replacement cost on the personal property of others, the following limitation applies:

If an item(s) of personal property of others is subject to a written contract which governs your liability for loss or damage to that item(s), then valuation of that item(s) will be based on the amount for which you are liable under such contract, but not to exceed the lesser of the replacement cost of the property or the applicable Limit of Insurance.

H. Definitions

1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.

2. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

3. "Stock" means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.

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CAUSES OF LOSS – SPECIAL FORM

Words and phrases that appear in quotation marks have special meaning. Refer to Section **G.**, Definitions.

A. Covered Causes Of Loss

When Special is shown in the Declarations, Covered Causes of Loss means Risks Of Direct Physical Loss unless the loss is:

1. Excluded in Section **B.**, Exclusions; or
2. Limited in Section **C.**, Limitations;

that follow.

B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

a. Ordinance Or Law

The enforcement of any ordinance or law:

(1) Regulating the construction, use or repair of any property; or

(2) Requiring the tearing down of any property, including the cost of removing its debris.

This exclusion, Ordinance Or Law, applies whether the loss results from:

(a) An ordinance or law that is enforced even if the property has not been damaged; or

(b) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property, or removal of its debris, following a physical loss to that property.

b. Earth Movement

(1) Earthquake, including any earth sinking, rising or shifting related to such event;

(2) Landslide, including any earth sinking, rising or shifting related to such event;

(3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;

(4) Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

But if Earth Movement, as described in **b.(1)** through **(4)** above, results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.

(5) Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in fire, building glass breakage or Volcanic Action, we will pay for the loss or damage caused by that fire, building glass breakage or Volcanic Action.

Volcanic Action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

(a) Airborne volcanic blast or airborne shock waves;

(b) Ash, dust or particulate matter; or

(c) Lava flow.

All volcanic eruptions that occur within any 168-hour period will constitute a single occurrence.

Volcanic Action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the described property.

c. Governmental Action

Seizure or destruction of property by order of governmental authority.

But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this Coverage Part.

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INSURED

PAIC-062

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d. Nuclear Hazard

Nuclear reaction or radiation, or radioactive contamination, however caused.

But if nuclear reaction or radiation, or radioactive contamination, results in fire, we will pay for the loss or damage caused by that fire.

e. Utility Services

The failure of power, communication, water or other utility service supplied to the described premises, however caused, if the failure:

(1) Originates away from the described premises; or

(2) Originates at the described premises, but only if such failure involves equipment used to supply the utility service to the described premises from a source away from the described premises.

Failure of any utility service includes lack of sufficient capacity and reduction in supply.

Loss or damage caused by a surge of power is also excluded, if the surge would not have occurred but for an event causing a failure of power.

But if the failure or surge of power, or the failure of communication, water or other utility service, results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

Communication services include but are not limited to service relating to Internet access or access to any electronic, cellular or satellite network.

f. War And Military Action

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

g. Water

(1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;

(2) Mudslide or mudflow;

(3) Water that backs up or overflows from a sewer, drain or sump; or

(4) Water under the ground surface pressing on, or flowing or seeping through:

(a) Foundations, walls, floors or paved surfaces;

(b) Basements, whether paved or not; or

(c) Doors, windows or other openings.

But if Water, as described in **g.(1)** through **g.(4)** above, results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage.

h. "Fungus", Wet Rot, Dry Rot And Bacteria

Presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria.

But if "fungus", wet or dry rot or bacteria results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion does not apply:

1. When "fungus", wet or dry rot or bacteria results from fire or lightning; or
2. To the extent that coverage is provided in the Additional Coverage - Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria with respect to loss or damage by a cause of loss other than fire or lightning.

Exclusions **B.1.a.** through **B.1.h.** apply whether or not the loss event results in widespread damage or affects a substantial area.

2. We will not pay for loss or damage caused by or resulting from any of the following:

a. Artificially generated electrical, magnetic or electromagnetic energy that damages, disturbs, disrupts or otherwise interferes with any:

(1) Electrical or electronic wire, device, appliance, system or network; or

(2) Device, appliance, system or network utilizing cellular or satellite technology.

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For the purpose of this exclusion, electrical, magnetic or electromagnetic energy includes but is not limited to:

(a) Electrical current, including arcing;

(b) Electrical charge produced or conducted by a magnetic or electromagnetic field;

(c) Pulse of electromagnetic energy; or

(d) Electromagnetic waves or microwaves.

But if fire results, we will pay for the loss or damage caused by that fire.

b. Delay, loss of use or loss of market.

c. Smoke, vapor or gas from agricultural smudging or industrial operations.

d. (1) Wear and tear;

(2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;

(3) Smog;

(4) Settling, cracking, shrinking or expansion;

(5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.

(6) Mechanical breakdown, including rupture or bursting caused by centrifugal force. But if mechanical breakdown results in elevator collision, we will pay for the loss or damage caused by that elevator collision.

(7) The following causes of loss to personal property:

(a) Dampness or dryness of atmosphere;

(b) Changes in or extremes of temperature; or

(c) Marring or scratching.

But if an excluded cause of loss that is listed in **2.d.(1)** through **(7)** results in a "specified cause of loss" or building glass breakage, we will pay for the loss or damage caused by that "specified cause of loss" or building glass breakage.

e. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.

f. Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.

g. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:

(1) You do your best to maintain heat in the building or structure; or

(2) You drain the equipment and shut off the supply if the heat is not maintained.

h. Dishonest or criminal act by you, any of your partners, members, officers, managers, employees (including leased employees), directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose:

(1) Acting alone or in collusion with others; or

(2) Whether or not occurring during the hours of employment.

This exclusion does not apply to acts of destruction by your employees (including leased employees); but theft by employees (including leased employees) is not covered.

i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.

j. Rain, snow, ice or sleet to personal property in the open.

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k. Collapse, including any of the following conditions of property or any part of the property:

(1) An abrupt falling down or caving in;

(2) Loss of structural integrity, including separation of parts of the property or property in danger of falling down or caving in; or

(3) Any cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion as such condition relates to (1) or (2) above.

But if collapse results in a Covered Cause of Loss at the described premises, we will pay for the loss or damage caused by that Covered Cause of Loss.

This exclusion, k., does not apply:

(a) To the extent that coverage is provided under the Additional Coverage - Collapse; or

(b) To collapse caused by one or more of the following:

(i) The "specified causes of loss";

(ii) Breakage of building glass;

(iii) Weight of rain that collects on a roof; or

(iv) Weight of people or personal property.

l. Discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release or escape of "pollutants" results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion, l., does not apply to damage to glass caused by chemicals applied to the glass.

m. Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.

3. We will not pay for loss or damage caused by or resulting from any of the following, 3.a. through 3.c. But if an excluded cause of loss that is listed in 3.a. through 3.c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph 1. above to produce the loss or damage.

b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

c. Faulty, inadequate or defective:

(1) Planning, zoning, development, surveying, siting;

(2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;

(3) Materials used in repair, construction, renovation or remodeling; or

(4) Maintenance;

of part or all of any property on or off the described premises.

4. **Special Exclusions**

The following provisions apply only to the specified Coverage Forms.

a. **Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form, Or Extra Expense Coverage Form**

We will not pay for:

(1) Any loss caused by or resulting from:

(a) Damage or destruction of "finished stock"; or

(b) The time required to reproduce "finished stock".

This exclusion does not apply to Extra Expense.

(2) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.

(3) Any increase of loss caused by or resulting from:

(a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or

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(b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your Business Income during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage and the Extended Period Of Indemnity Optional Coverage or any variation of these.

(4) Any Extra Expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration".

(5) Any other consequential loss.

b. Leasehold Interest Coverage Form

(1) Paragraph **B.1.a.**, Ordinance Or Law, does not apply to insurance under this Coverage Form.

(2) We will not pay for any loss caused by:

(a) Your cancelling the lease;

(b) The suspension, lapse or cancellation of any license; or

(c) Any other consequential loss.

c. Legal Liability Coverage Form

(1) The following exclusions do not apply to insurance under this Coverage Form:

(a) Paragraph **B.1.a.**, Ordinance Or Law;

(b) Paragraph **B.1.c.**, Governmental Action;

(c) Paragraph **B.1.d.**, Nuclear Hazard;

(d) Paragraph **B.1.e.**, Utility Services; and

(e) Paragraph **B.1.f.**, War And Military Action.

(2) The following additional exclusions apply to insurance under this Coverage Form:

(a) **Contractual Liability**

We will not defend any claim or "suit", or pay damages that you are legally liable to pay, solely by reason of your assumption of liability in a contract or agreement. But this exclusion does not apply to a written lease agreement in which you have assumed liability for building damage resulting from an actual or attempted burglary or robbery, provided that:

(i) Your assumption of liability was executed prior to the accident; and

(ii) The building is Covered Property under this Coverage Form.

(b) **Nuclear Hazard**

We will not defend any claim or "suit", or pay any damages, loss, expense or obligation, resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

5. Additional Exclusion

The following provisions apply only to the specified property.

LOSS OR DAMAGE TO PRODUCTS

We will not pay for loss or damage to any merchandise, goods or other product caused by or resulting from error or omission by any person or entity (including those having possession under an arrangement where work or a portion of the work is outsourced) in any stage of the development, production or use of the product, including planning, testing, processing, packaging, installation, maintenance or repair. This exclusion applies to any effect that compromises the form, substance or quality of the product. But if such error or omission results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

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C. Limitations

The following limitations apply to all policy forms and endorsements, unless otherwise stated.

1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.

   a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.

   b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.

   c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:

      (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or

      (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.

   d. Building materials and supplies not attached as part of the building or structure, caused by or resulting from theft.

      However, this limitation does not apply to:

      (1) Building materials and supplies held for sale by you, unless they are insured under the Builders Risk Coverage Form; or

      (2) Business Income Coverage or Extra Expense Coverage.

   e. Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.

   f. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.

2. We will not pay for loss of or damage to the following types of property unless caused by the "specified causes of loss" or building glass breakage:

   a. Animals, and then only if they are killed or their destruction is made necessary.

   b. Fragile articles such as statuary, marbles, chinaware and porcelains, if broken. This restriction does not apply to:

      (1) Glass; or

      (2) Containers of property held for sale.

   c. Builders' machinery, tools and equipment owned by you or entrusted to you, provided such property is Covered Property.

      However, this limitation does not apply:

      (1) If the property is located on or within 100 feet of the described premises, unless the premises is insured under the Builders Risk Coverage Form; or

      (2) To Business Income Coverage or to Extra Expense Coverage.

3. The special limit shown for each category, **a.** through **d.**, is the total limit for loss of or damage to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence. The special limits are:

   a. $2,500 for furs, fur garments and garments trimmed with fur.

   b. $2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth $100 or less per item.

   c. $2,500 for patterns, dies, molds and forms.

   d. $250 for stamps, tickets, including lottery tickets held for sale, and letters of credit.

   These special limits are part of, not in addition to, the Limit of Insurance applicable to the Covered Property.

   This limitation, **C.3.**, does not apply to Business Income Coverage or to Extra Expense Coverage.

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4. We will not pay the cost to repair any defect to a system or appliance from which water, other liquid, powder or molten material escapes. But we will pay the cost to repair or replace damaged parts of fire-extinguishing equipment if the damage:
   a. Results in discharge of any substance from an automatic fire protection system; or
   b. Is directly caused by freezing.

   However, this limitation does not apply to Business Income Coverage or to Extra Expense Coverage.

D. Additional Coverage – Collapse

The coverage provided under this Additional Coverage - Collapse applies only to an abrupt collapse as described and limited in **D.1.** through **D.7.**

1. For the purpose of this Additional Coverage - Collapse, abrupt collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose.
2. We will pay for direct physical loss or damage to Covered Property, caused by abrupt collapse of a building or any part of a building that is insured under this Coverage Form or that contains Covered Property insured under this Coverage Form, if such collapse is caused by one or more of the following:
   a. Building decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
   b. Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
   c. Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs during the course of the construction, remodeling or renovation.
   d. Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs after the construction, remodeling or renovation is complete, but only if the collapse is caused in part by:
      (1) A cause of loss listed in **2.a.** or **2.b.**;
      (2) One or more of the "specified causes of loss";
      (3) Breakage of building glass;
      (4) Weight of people or personal property; or
      (5) Weight of rain that collects on a roof.
3. This **Additional Coverage –Collapse** does not apply to:
   a. A building or any part of a building that is in danger of falling down or caving in;
   b. A part of a building that is standing, even if it has separated from another part of the building; or
   c. A building that is standing or any part of a building that is standing, even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.
4. With respect to the following property:
   a. Outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers;
   b. Awnings, gutters and downspouts;
   c. Yard fixtures;
   d. Outdoor swimming pools;
   e. Fences;
   f. Piers, wharves and docks;
   g. Beach or diving platforms or appurtenances;
   h. Retaining walls; and
   i. Walks, roadways and other paved surfaces;

   if an abrupt collapse is caused by a cause of loss listed in **2.a.** through **2.d.**, we will pay for loss or damage to that property only if:
      (1) Such loss or damage is a direct result of the abrupt collapse of a building insured under this Coverage Form; and
      (2) The property is Covered Property under this Coverage Form.
5. If personal property abruptly falls down or caves in and such collapse is **not** the result of abrupt collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:
   a. The collapse of personal property was caused by a cause of loss listed in **2.a.** through **2.d.**;
   b. The personal property which collapses is inside a building; and
   c. The property which collapses is not of a kind listed in **4.**, regardless of whether that kind of property is considered to be personal property or real property.

   The coverage stated in this Paragraph **5.** does not apply to personal property if marring and/or scratching is the only damage to that personal property caused by the collapse.

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6. This Additional Coverage - Collapse does not apply to personal property that has not abruptly fallen down or caved in, even if the personal property shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

7. This Additional Coverage - Collapse will not increase the Limits of Insurance provided in this Coverage Part.

8. The term Covered Cause of Loss includes the Additional Coverage - Collapse as described and limited in **D.1.** through **D.7.**

E. Additional Coverage – Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria

1. The coverage described in **E.2.** and **E.6.** only applies when the "fungus", wet or dry rot or bacteria is the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.

   a. A "specified cause of loss" other than fire or lightning; or

   b. Flood, if the Flood Coverage Endorsement applies to the affected premises.

2. We will pay for loss or damage by "fungus", wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:

   a. Direct physical loss or damage to Covered Property caused by "fungus", wet or dry rot or bacteria, including the cost of removal of the "fungus", wet or dry rot or bacteria;

   b. The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungus", wet or dry rot or bacteria; and

   c. The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungus", wet or dry rot or bacteria are present.

3. The coverage described under **E.2.** of this Limited Coverage is limited to $15,000. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences of "specified causes of loss" (other than fire or lightning) and Flood which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in "fungus", wet or dry rot or bacteria, we will not pay more than a total of $15,000 even if the "fungus", wet or dry rot or bacteria continues to be present or active, or recurs, in a later policy period.

4. The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungus", wet or dry rot or bacteria, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property.

   If there is covered loss or damage to Covered Property, not caused by "fungus", wet or dry rot or bacteria, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that "fungus", wet or dry rot or bacteria causes an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

5. The terms of this Limited Coverage do not increase or reduce the coverage provided under Paragraph **F.2.** (Water Damage, Other Liquids, Powder Or Molten Material Damage) of this Causes Of Loss Form or under the Additional Coverage – Collapse.

6. The following, **6.a.** or **6.b.,** applies only if Business Income and/or Extra Expense Coverage applies to the described premises and only if the "suspension" of "operations" satisfies all terms and conditions of the applicable Business Income and/or Extra Expense Coverage Form.

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a. If the loss which resulted in "fungus", wet or dry rot or bacteria does not in itself necessitate a "suspension" of "operations", but such "suspension" is necessary due to loss or damage to property caused by "fungus", wet or dry rot or bacteria, then our payment under Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.

b. If a covered "suspension" of "operations" was caused by loss or damage other than "fungus", wet or dry rot or bacteria but remediation of "fungus", wet or dry rot or bacteria prolongs the "period of restoration", we will pay for loss and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days. The days need not be consecutive.

F. Additional Coverage Extensions

1. Property In Transit

This Extension applies only to your personal property to which this form applies.

a. You may extend the insurance provided by this Coverage Part to apply to your personal property (other than property in the care, custody or control of your salespersons) in transit more than 100 feet from the described premises. Property must be in or on a motor vehicle you own, lease or operate while between points in the coverage territory.

b. Loss or damage must be caused by or result from one of the following causes of loss:

(1) Fire, lightning, explosion, windstorm or hail, riot or civil commotion, or vandalism.

(2) Vehicle collision, upset or overturn. Collision means accidental contact of your vehicle with another vehicle or object. It does not mean your vehicle's contact with the roadbed.

(3) Theft of an entire bale, case or package by forced entry into a securely locked body or compartment of the vehicle. There must be visible marks of the forced entry.

c. The most we will pay for loss or damage under this Extension is $5,000.

This Coverage Extension is additional insurance. The Additional Condition, Coinsurance, does not apply to this Extension.

2. Water Damage, Other Liquids, Powder Or Molten Material Damage

If loss or damage caused by or resulting from covered water or other liquid, powder or molten material damage loss occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes. This Coverage Extension does not increase the Limit of Insurance.

3. Glass

a. We will pay for expenses incurred to put up temporary plates or board up openings if repair or replacement of damaged glass is delayed.

b. We will pay for expenses incurred to remove or replace obstructions when repairing or replacing glass that is part of a building. This does not include removing or replacing window displays.

This Coverage Extension, **F.3.**, does not increase the Limit of Insurance.

G. Definitions

1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.

2. "Specified causes of loss" means the following: fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire-extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.

a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:

(1) The cost of filling sinkholes; or

(2) Sinking or collapse of land into man-made underground cavities.

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b. Falling objects does not include loss or damage to:

(1) Personal property in the open; or

(2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.

c. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of a plumbing, heating, air conditioning or other system or appliance (other than a sump system including its related equipment and parts), that is located on the described premises and contains water or steam.

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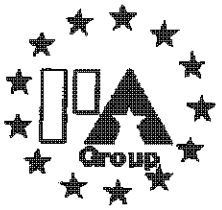

Stock Company

COMMERCIAL INLAND MARINE DECLARATIONS

POLICY NUMBER: PAC7045167

1. **NAMED INSURED:**
BWR, INC
Big Water Resort

2. **TYPE OF COVERAGE:** Contractors Equipment

3. **LIMIT OF INSURANCE:** $367,000

4. **LOCATION:**

Address Line 1	Address Line 2	City	State	Zip
6215 Dingle Pond Road		Summerton	SC	29148

5. **DEDUCTIBLE:** [redacted]

6. **PREMIUM**

Amount	Min Prem	Description
[redacted]		

7 **LOSS PAYEE:**

8. **FORMS APPLICABLE TO COMMERCIAL INLAND MARINE COVERAGE PART**
As per form COMSCHD(10/00) attached.

Rate Mod Factor	
1.00	1

THESE DECLARATIONS TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE PART DECLARATIONS, COVERAGE PART COVERAGE FORM(S) AND FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

S5000 (11/97) INSURED

1236

PAIC-072

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COMMERCIAL INLAND MARINE CONDITIONS

GENERAL EXCLUSIONS

We do not cover loss resulting directly or indirectly from:

1. War, including undeclared war, civil war, insurrection, rebellion, revolution, warlike act by a military force or military personnel, destruction or seizure or use for a military purpose, and including any consequence of any of these. Discharge of a nuclear weapon shall be deemed a warlike act even if accidental.

2. Nuclear Hazard meaning any nuclear reaction, radiation or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these.
   a) Loss caused by the nuclear hazard shall not be considered loss caused by fire, explosion, or smoke, whether these perils are specifically named in or otherwise included within the Perils Insured Against and Limitations.
   b) This policy does not apply to loss caused directly or indirectly by nuclear hazard, except that direct loss by fire resulting from the nuclear hazard is covered.

LOSS CONDITIONS

A. ABANDONMENT

There can be no abandonment of any property to us.

B. APPRAISAL

If we and you disagree on the value of the property or the amount of "loss," either may make written demand for an appraisal of the "loss." In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of "loss." If they fail to agree, they will submit their difference to the umpire. A decision agreed to by any two will be binding. Each party will:

1. Pay its chosen appraiser, and
2. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

C. DUTIES IN THE EVENT OF LOSS

You must see that the following are done in the event of "loss" to Covered Property:

1. Notify the police if a law may have been broken.
2. Give us prompt notice of the "loss." Include a description of the property involved.
3. As soon as possible, give us a description of how, when and where the "loss" occurred.
4. Take all reasonable steps to protect the Covered Property from further damage. If feasible, set the damaged property aside and in the best possible order for examination. Also keep a record of your expenses, for consideration in the settlement of the claim.
5. Make no statement that will assume any obligation or admit any liability, for any "loss" for which we may be liable, without our consent.
6. Permit us to inspect the property and records proving "loss."
7. If requested, permit us to question you under oath, at such times as may be reasonably required, about any matter relating to this insurance or your claim, including your books and records. In such event, your answers must be signed.
8. Send us a signed, sworn statement of "loss" containing the information we request to settle the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
9. Promptly send us any legal papers or notices received concerning the "loss."
10. Cooperate with us in the investigation or settlement of the claim.

D. INSURANCE UNDER TWO OR MORE COVERAGES

If two or more of this Coverage Part's coverages apply to the same "loss," we will not pay more than the actual amount of the "loss."

E. LOSS PAYMENT

We will pay or make good any "loss" covered under this Coverage Part within 30 days after:

1. We reach agreement with you;
2. The entry of final judgment; or
3. The filing of an appraisal award.

We will not be liable for any part of a "loss" that has been paid or made good by others.

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F. OTHER INSURANCE

If you have other insurance covering the same "loss" as the insurance under this Coverage part, we will pay only the excess over what you should have received from the other insurance. We will pay the excess whether you can collect on the other insurance or not.

G. PAIR, SETS OF PARTS

1. Pair or Set. In case of "loss" to any part of a pair or set we may:
   a. Repair or replace any part to restore the pair or set to its value before the "loss"; or
   b. Pay the difference between the value of the pair or set before and after the "loss."
2. Parts. In case of "loss" to any part of Covered Property consisting of several parts when complete, we sill pay only for the value of the lost or damaged part.

H. PRIVILEGE TO ADJUST WITH OWNER

In the event of "loss" involving property of others in your care, custody or control, we have the right to:

1. Settle the "loss" with the owners of the property. A receipt for payment from the owners of that property will satisfy any claim of yours.
2. Provide a defense for legal proceedings brought against you. If provided, the expense of this defense will be at our cost and will not reduce the applicable Limit of Insurance under this insurance.

I. RECOVERIES

Any recovery or salvage on a "loss" will accrue entirely to our benefit until the sum paid by us has been made up.

J. REINSTATEMENT OF LIMIT AFTER LOSS

The Limit of Insurance will not be reduced by the payment of any claim, except for total loss of a scheduled item, in which event we will refund the unearned premium on that item.

K. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

If any person or organization to or for whom we make payment under this Insurance has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "loss" to impair them.

If any act or agreement of yours before or after loss impairs your right to recover from others, we will not cover the loss, nor will we cover any loss which you settle or compromise without our written consent.

GENERAL CONDITIONS

A. CONCEALMENT, MISREPRESENTATION OR FRAUD

This Coverage Part is void in any case of fraud, intentional concealment or misrepresentation of a material fact, by you or any other insured, at any time, concerning:

1. This Coverage Part;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this Coverage Part.

B. LEGAL ACTION AGAINST US

No one may bring a legal action against us under this Coverage Part unless:

1. There has been full compliance with all the terms of this Coverage Part; and
2. The action is brought within 2 years after you first have knowledge of the "loss."

C. NO BENEFIT TO BAILEE

No person or organization, other than you, having custody of Covered Property, will benefit from this insurance.

D. POLICY PERIOD

We cover "loss" commencing during the policy period shown in the Declarations.

E. VALUATION

The value of property will be the least of the following amounts:

1. The actual cash value of that property;
2. The cost of reasonably restoring that property to its condition immediately before "loss"; or
3. The cost of replacing that property with substantially identical property.

In the event of "loss" the value of property will be determined as of the time of "loss."

F. LIBERALIZATION

If we adopt any revision which would broaden the coverage under this Coverage Part without additional premium within 60 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Part.

G. SUBSTITUTION OF TERMS

In any Inland Marine Coverage Forms attached, wherever the word "policy" appears in the Insuring Agreement, Exclusions, Conditions or Definitions, the term "Coverage Part' is substituted.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF CERTAIN COMPUTER-RELATED LOSSES

This endorsement modifies insurance provided under the following:

COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
CRIME AND FIDELITY COVERAGE PART
STANDARD PROPERTY POLICY

A. We will not pay for loss ("loss") or damage caused directly or indirectly by the following. Such loss ("loss") or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss ("loss") or damage.

1. The failure, malfunction or inadequacy of:
   a. Any of the following, whether belonging to any insured or to others:
      (1) Computer hardware, including microprocessors;
      (2) Computer application software;
      (3) Computer operating systems and related software;
      (4) Computer networks;
      (5) Microprocessors (computer chips) not part of any computer system; or
      (6) Any other computerized or electronic equipment or components; or
   b. Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in Paragraph **A.1.a.** of this endorsement;

   due to the inability to correctly recognize, process, distinguish, interpret or accept one or more dates or times. An example is the inability of computer software to recognize the year 2000.
2. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph **A.1.** of this endorsement.

B. If an excluded Cause of Loss as described in Paragraph **A.** of this endorsement results:

1. In a Covered Cause of Loss under the Crime and Fidelity Coverage Part, the Commercial Inland Marine Coverage Part or the Standard Property Policy; or
2. Under the Commercial Property Coverage Part:
   a. In a "Specified Cause of Loss", or in elevator collision resulting from mechanical breakdown, under the Causes of Loss - Special Form; or
   b. In a Covered Cause of Loss under the Causes Of Loss - Basic Form or the Causes Of Loss - Broad Form;

we will pay only for the loss ("loss") or damage caused by such "Specified Cause of Loss", elevator collision, or Covered Cause of Loss.

C. We will not pay for repair, replacement or modification of any items in Paragraphs **A.1.a.** and **A.1.b.** of this endorsement to correct any deficiencies or change any features.

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INSURED

CONTRACTORS EQUIPMENT FLOATER

1) **POLICY NUMBER** PAC7045167

2) **NAMED INSURED** BWR, INC
Big Water Resort

3) **SCHEDULE OF OWNED EQUIPMENT**

Item No.	Trade Name and Description of Equipment	Mfrs. Number	Model Year	Amount of Insurance	Type "X" if Replacement Cost
1	Tractor			$3,000	
2	Lawn Mower			$7,000	
3	Lawn Mower			$7,000	
4	Boat Dock			$350,000	

4) **EQUIPMENT LEASED OR RENTED FROM OTHERS** $ n/a

5) **LIMIT OF INSURANCE** $ $367,000

6) **DEDUCTIBLE** . __ _____ % $ [redacted]

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Various provisions in this form restrict coverage. Read the entire form carefully to determine rights, duties and what is covered and what is not covered.

1. **PROPERTY INSURED**
   This form covers contractors equipment owned by, or leased to you, set forth above while in your care, custody and control, within the geographical limits outlined in item 8. of this form.

   The company shall not be liable for more than the amount shown above on any one item of equipment leased or rented from others.

2. **LIMIT OF LIABILITY**
   Our limit of liability shall not exceed the amount shown above in any one loss, casualty or disaster, including salvage charges or other expenses or all combined.

3. **DEDUCTIBLE**
   If a deductible amount is stated above, we will deduct that amount from each adjusted loss or the applicable limit, whichever is less. If a deductible percentage is stated above, we will deduct that percentage of the amount of insurance applying to the damaged item from each adjusted loss or the applicable limits, whichever is less. When two or more items are damaged in the same occurrence, the highest deductible shall apply.

4. **COINSURANCE**
   We will not be liable for a greater proportion of any loss to your property shown above than the amount insured bears to the actual cash value of the property destroyed or damaged at the time of loss. Each item of the schedule is deemed to be separately insured.

5. **PERILS INSURED**
   This form insures against risks of direct physical loss of, or damage to the property insured, except as provided elsewhere in this policy.

6. **PROPERTY NOT INSURED**
   This form does not cover:
   (a) Automobiles, motor trucks, tractors, trailers, motorcycles, or similar conveyances principally designed for highway use, aircraft or watercraft;
   (b) Plans, blueprints, designs or specifications;
   (c) Property while underground, underwater, airborne or waterborne unless specifically endorsed and charged for;
   (d) Property which has become a part of any structure;
   (e) Any stock usual to your business;
   (f) Equipment leased or rented to others.

7. **EXCLUSIONS**
   This form does not cover loss, damage or expense caused by, resulting from, contributed to or aggravated by any of the following. Such loss, damage or expense is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss or damage.
   (a) Weight of a load exceeding the lifting or supporting capacities of any machine as shown in the manufacturer's load charts;
   (b) To any crane boom, or extension thereof, unless caused by fire, lightning, hail, windstorm, riot, riot attending a strike, civil commotion, aircraft, collision from other vehicles, landslides, or upset of the unit of which it is a part (except as excluded in paragraph 6c.);
   (c) To electrical apparatus caused by electricity other than lightning unless fire ensues and then only for loss or damage by such ensuing fire;

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(d) Any repair, adjusting, servicing, remodeling, or maintenance process unless fire or explosion ensues, and then only for the loss caused by such ensuing fire or explosion;

(e) Any loss resulting from mechanical or electrical breakdown or failure, to exclude the cost and expense of repairing any defective part;

(f) Dishonest acts by you, anyone else with an interest in the property, your or their employees or authorized representative or anyone entrusted with the property, whether or not acting alone or in collusion with other persons or occurring during the hours of employment, but this exclusion does not apply to a carrier for hire;

(g) Loss resulting from the failure of you to use reasonable means to save and preserve the property at the time and after any loss;

(h) Gradual deterioration, wear and tear, faulty design, obsolescence, rust, inherent vice, delay, loss of market or loss of use;

(i) Property that is missing, but there is no physical evidence to show what happened to it, such as shortage disclosed on taking inventory;

8. **GEOGRAPHICAL LIMITS**
This form insures only while the property is at location within, or is in transit between, the continental United States, (Alaska and Hawaii while on land), the District of Columbia, and Canada, but subject always to the limitations, conditions, exclusions and exceptions stated herein.

OTHER CONDITIONS

9. **VALUATION**
If "replacement cost" is indicated by a check or an "X" next to an item of equipment in the schedule, "Actual cash value" does not apply. Any losses will then be adjusted on a "replacement cost" basis, thereby eliminating any deduction for depreciation.

10. **DEPRECIATION WAIVER**
No deduction for depreciation will be applied if claim does not exceed 10% of the value of the item damaged.

11. **OTHER INSURANCE**
If you have other insurance covering the same property as the insurance under this form, we will pay only the excess over what you should have received from the other insurance. We will pay the excess whether you can collect the other insurance or not.

12. **NEWLY ACQUIRED PROPERTY**
If, during the term of this policy, you acquire other similar property, the provisions of this form will apply for the actual cash value of that property, but not exceeding 25% of the schedule or $50,000, whichever is less. However, you must report this additional property to us within 30 days from the date you acquire it, and pay pro-rata additional premium from that date of acquisition.

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SERVICE OF SUIT CLAUSE

This endorsement modifies insurance provided under the following:

ALL COVERAGE PARTS IN THIS POLICY

We appoint the highest State official in charge of insurance affairs (Commissioner of Insurance, Director of Insurance, Insurance Commissioner, Executive Secretary, Superintendent of Insurance, or such other official title as designated by the State) of the State of and his successor or successors in office as his and their duly authorized deputies, as our true and lawful attorney in and for the aforesaid State, upon whom all lawful process may be served in any action, suit or proceeding instituted in the said State by or on behalf of any insured or beneficiary against us, arising out of this insurance policy, provided a copy of any process, suit complaint or summons is sent by certified or registered mail to Linda C. Hohn, Esquire, PENN-AMERICA Insurance Company, Three Bala Plaza East, Suite 300, Bala Cynwyd, PA 19004.

Linda C. Hohn, Esquire

Three Bala Plaza East
Suite 300
Bala Cynwyd, PA 19004

THE INSURANCE COMPANY WITH WHICH THIS COVERAGE HAS BEEN PLACED IS NOT LICENSED BY THE STATE OF NORTH CAROLINA AND IS NOT SUBJECT TO ITS SUPERVISION. IN THE EVENT OF THE INSOLVENCY OF THE INSURANCE COMPANY, LOSSES UNDER THIS POLICY WILL NOT BE PAID BY ANY STATE INSURANCE GUARANTY FUND.

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

SOUTH CAROLINA-INFORMATION ON WINDSTORM LOSS MITIGATION FEATURES AND AVAILABLE PREMIUM DISCOUNTS ADVISORY NOTICE TO POLICYHOLDERS

This Notice provides information on the availability and range of premium discounts for properties on which fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm have been installed or implemented. The discounts apply only to the portion of the premium attributable to wind coverage. Listed below is general information about available discounts. The estimates below are general in nature and the actual amount of the discount(s), if any, may vary depending on specific features and conditions of the insured property. Please contact your producer or insurer for more specific information.

Description Of Mitigation Measure	Estimated Premium Discount Percent Or Range
Roof Covering and Roof Covering Attachment ▪ South Carolina Building Code (SCBC) Equivalent: Roof coverings and attachments in compliance with the SCBC.	0-7%
Roof Deck and Roof Deck Attachment ▪ Plywood/Oriented Strand Board with nails 2 1/2-inches long spaced at 6 inches from the edge of the plywood and 12 inches in the field on 24-inch truss spacing; ▪ Plywood/Oriented Strand Board with nails 2 1/2-inches long spaced at 6 inches from the edge of the plywood and 6 inches in the field on 24-inch truss spacing; ▪ Dimensional Lumber and Tongue and Groove Decks composed of 3/4-inch thick boards with nominal widths of 4 inches or more; or ▪ Reinforced Concrete Roof Deck.	0-7%
Roof-To-Wall Connection (Roof Anchorage) ▪ Clips: Pieces of metal that are nailed into the side of the rafter/truss and into the side of the top plate or wall stud. The metal does not wrap around the top of the rafter/truss, and the clip is only located on one side of the connection; ▪ Hurricane Ties - Single Wraps: A single strap that is attached to the side and/or bottom of the top plate and is nailed to the rafter/truss; or ▪ Hurricane Ties - Double Wraps: Straps that are wrapped on both sides, are attached to the side and/or bottom of the top plate, and are nailed to rafter/truss.	0-5%
Door Strength ▪ Reinforced Single - Width Doors.	0-3%
Opening Protection ▪ Tempered, Heat-Strengthened or Laminated Glass or Insulating Glass Units with no Engineered Shutters; or ▪ Hurricane Engineered Shutters: All openings protected to meet the requirements of the SCBC.	0-13%
Roof Shape ▪ Hip: Roof has sloping ends and sloping sides down to the roof eaves line; or ▪ Gable: Roof has vertical walls that extend all the way to the top of the inverted V. Gable roof must be braced to qualify for a discount.	0-13%
Secondary Water Resistance ▪ Self-adhering modified bitumen tape to the plywood joints of the roof; or Foamed polyurethane structural adhesive from inside the attic to cover the joints between all plywood sheets of the roof.	0-3%

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In Witness Clause

In Witness Whereof, we have caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by our authorized representative.

Secretary

Executive Vice President

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF CERTIFIED ACTS OF TERRORISM

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY

A. The following exclusion is added:

This insurance does not apply to:

TERRORISM

"Any injury or damage" arising, directly or indirectly, out of a "certified act of terrorism".

B. The following definitions are added:

1. For the purposes of this endorsement, "any injury or damage" means any injury or damage covered under any Coverage Part to which this endorsement is applicable, and includes but is not limited to "bodily injury", "property damage", "personal and advertising injury", "injury" or "environmental damage" as may be defined in any applicable Coverage Part.

2. "Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

   a. The act resulted in insured losses in excess of $5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and

   b. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

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POLICY NUMBER PAC7045167

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EXCLUSION OF CERTIFIED ACTS OF TERRORISM

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
CRIME AND FIDELITY COVERAGE PART
EQUIPMENT BREAKDOWN COVERAGE PART
FARM COVERAGE PART
STANDARD PROPERTY POLICY

SCHEDULE

The Exception Covering Certain Fire Losses (Paragraph **C**) applies to property located in the following state(s), if covered under the indicated Coverage Form, Coverage Part or Policy:

State(s)	Coverage Form, Coverage Part Or Policy

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. The following definition is added with respect to the provisions of this endorsement:

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

1. The act resulted in insured losses in excess of $5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

B. The following exclusion is added:

CERTIFIED ACT OF TERRORISM EXCLUSION

We will not pay for loss or damage caused directly or indirectly by a "certified act of terrorism". Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

C. Exception Covering Certain Fire Losses

The following exception to the exclusion in Paragraph **B.** applies only if indicated and as indicated in the Schedule of this endorsement.

If a "certified act of terrorism" results in fire, we will pay for the loss or damage caused by that fire. Such coverage for fire applies only to direct loss or damage by fire to Covered Property. Therefore, for example, the coverage does not apply to insurance provided under Business Income and/or Extra Expense coverage forms or endorsements which apply to those forms, or to the Legal Liability Coverage Form or the Leasehold Interest Coverage Form.

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If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed $100 billion in a Program Year (January 1 through December 31) and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds $100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

D. Application Of Other Exclusions

The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss which would otherwise be excluded under this Coverage Part or Policy, such as losses excluded by the Nuclear Hazard Exclusion or the War And Military Action Exclusion.

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LIMITED PROPERTY EXTENSIONS FORM

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CAUSES OF LOSS SPECIAL FORM

Certain words or terms underlined in this endorsement have special meaning and are defined either in the policy or in this endorsement.

SCHEDULE

Premises Number:

The location of insurance shown in the above Schedule is the only location of insurance applicable to the building described in the above Schedule.

THE BUILDING AND PERSONAL PROPERTY COVERAGE FORM IS AMENDED AS FOLLOWS:

1. In Section A, Coverage, Subsection 5, Coverage Extensions, Paragraph b, Personal Effects and Property of Others, the amount $2,500 is deleted and replaced by the amount $10,000.

2. In Section A, Coverage, Subsection 5, Coverage Extensions, Paragraph c, Valuable Papers and Records Cost of Research, the amount $2,500 is deleted and replaced by the amount $25,000.

3. In Section A, Coverage, Subsection 5, Coverage Extensions, Paragraph d, Property OffPremises, the amount $10,000 is deleted and replaced by the amount $25,000.

4. In Section A, Coverage, Subsection 5, Coverage Extensions, Paragraph e, Outdoor Property, with respect to coverage for signs only, the amount $1,000 is deleted and replaced by the amount $10,000 (including signs attached to insured building); and is amended by adding the following causes of loss in addition to the five causes of loss already provided in that form:

   Windstorm; hail; smoke; aircraft or vehicles; vandalism; breakage of glass; falling objects; weight of snow, ice or sleet; water damage; or collapse resulting from use of defective materials or methods in construction, remodeling or renovation if the collapse occurs during the course of construction, remodeling or renovation.

5. In Section A, Coverage, Subsection 5, Coverage Extensions, the following paragraph is added:

   f. Accounts Receivable

   You may extend the insurance provided by this Coverage Form to apply to loss or damage to accounts receivable at the described premises, including the following:

   (1) All sums due you from customers, provided you are unable to effect collection as a direct result of loss of or damage to records of accounts receivable;

   (2) Interest charges on any loan to offset impaired collections pending repayment of such sums made uncollectible by such loss or damage:

(3) Collection expense in excess of normal collection expense and made necessary because of the loss or damage; and

(4) Other expenses that you incur in reestablishing records of accounts receivable following the loss or damage.

If it is necessary to move the accounts receivable from the described premises to preserve them from loss or damage by a covered cause of loss, then we will pay for any direct physical loss or damage to the accounts receivable while the accounts receivable are being moved or while temporarily stored at another location, but only if the loss or damage occurs within 10 days after the accounts receivable are moved.

We will not pay for loss or damage caused by or resulting from:

(1) Bookkeeping, accounting or billing errors or omissions; or

(2) Unauthorized instructions to transfer property to any person or place.

The most we will pay for loss or damage under this Extension is $25,000.

Determination of Receivables:

(1) When there is proof that a covered loss has occurred but you cannot accurately establish the amount of accounts receivable outstanding as of the date of the loss, the amount shall be based on your latest statement of monthly receivables and shall be computed as follows:

(a) Determine the amount of all outstanding accounts receivable at the end of the same fiscal month in the year immediately preceding the year in which the loss occurs;

(b) Calculate the percentage of increase or decrease in your gross sales of goods and services for the 12 fiscal months immediately preceding the month in which the loss occurred against the 12 fiscal months prior to the above period;

(c) The amount determined under (a) above, increased or decreased by the percentage calculated in (b) above, shall be the agreed total amount of accounts receivable as of the last day of the fiscal month in which the loss occurs;

(d) The monthly amount of accounts receivable thus established shall be further adjusted in accordance with the normal fluctuations in the amount of accounts receivable within the fiscal month involved.

(2) We will deduct an amount to allow for probable bad debts which you would normally have been unable to collect from the amount of accounts receivable established as destroyed or lost.

6. In Section A, Coverage, Subsection 5, Coverage Extensions, the following paragraph is added:

g. Employee Dishonesty

You may extend the insurance provided by this Coverage Form to apply to loss of money, securities and other property which the insured shall sustain resulting from one or more fraudulent or dishonest acts committed by an employee, acting alone or in collusion with others. This extension provides employee dishonesty coverage only and we will not pay for:

(1) Loss resulting from acts committed by you or your partners resulting from a dishonest or criminal act committed by you or any or your partners whether acting alone or in collusion with other persons.

(2) Loss resulting from an employee of yours or predecessor in interest of yours, for whom similar prior insurance has been canceled and not reinstated since the last such cancellation, loss resulting from inventory shortages or that part of any loss, the proof of which as to its existence or amount is dependent upon:

(a) an inventory computation; or

(b) a profit and loss computation.

The most we will pay for loss or damage under this Extension is $5,000.

PATC-087

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

7. In Section A, Coverage, Subsection 5, Coverage Extensions, the following paragraph is added:

h. Theft, Disappearance & Destruction

You may extend the insurance provided by this Coverage Form to apply to the disappearance, destruction or theft of money and securities while inside the described premises, inside a banking premises or outside your described premises while in the care and custody of a messenger. We will not pay for:

(1) Loss resulting from accounting or arithmetical errors or omissions;

(2) Loss resulting from the giving or surrendering of money or securities in any exchange or purchase; or

(3) Loss of money and securities after they have been transferred or surrendered to a person or place outside your premises or a banking premises.

(4) Loss of money contained in any money-operated device unless the amount of money deposited in it is recorded by a continuous recording instrument in the device.

Money and securities will be valued as follows

(1) Money at its face value;

(2) Securities at their actual cash value at the close of business the day the loss was discovered.

The most we will pay for loss or damage under this Extension is $5,000.

8. In Section A, Coverage, Subsection 5, Coverage Extensions, the following paragraph is added:

(l) Media

You may extend the insurance provided by this Coverage Form to apply to your costs to research, replace or restore the lost information on lost or damaged media for which duplicates do not exist if the loss or damage is caused by a covered cause of loss at the described premises. The most we will pay for loss or damage under this Extension is $25,000.

9. In Section A, Coverage, Subsection 5, Coverage Extensions, the following paragraph is added:

(j) Fine Arts

You may extend the insurance provided by this Coverage Form to apply to loss or damage to your fine arts caused by a covered cause of loss at the described premises. We will value your fine arts at their market value at the time of loss. The most we will pay for loss or damage under this Extension is $25,000.

THE CAUSES OF LOSS SPECIAL FORM IS AMENDED AS FOLLOWS:

1. In Section C, Limitations, Paragraph 2, the following limitation is deleted:

We will not pay more than $500 in any one occurrence for loss of or damage to glass that is part of a building or structure, regardless of the number of panes, plates or similar units of glass. Subject to this $500 aggregate, we will not pay more than $100 for any one pane, plate, multiple plate insulating unit, radiant or solar heating panel, jalousie, louver or shutter.

However, this limitation does not apply to:

a. Loss or damage by the specified causes of loss, except vandalism; or
b. Business Income coverage or Extra Expense coverage.

Coverage for glass will be provided as an extension of the Business Personal Property Coverage Form provided that the insured has a contractual responsibility to insure the glass at the time of loss.

2. Section E, Additional Coverage Extensions, Subsection 1, Property in Transit is amended by adding the following:

(b) (4) A covered cause of loss.

(5) Collision, derailment or overturn of transporting conveyance.

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

(6) Flood or earthquake.

(7) Voluntary parting with your property entrusted to a common carrier.

(8) Any fraudulent, dishonest or criminal act done by a common carrier to whom the property is entrusted, unless instigated by you or your employee.

Property in transit includes property while in the custody of:

(1) Any railroad (including while on ferries or in cars or transfers or lighters);

(2) Public truckmen, private truckmen or land transportation companies;

(3) You or anyone else while in or on vehicles you own, lease or hire;

(4) Any air transportation company;

(5) Any water transportation company while on inland waters of the continental United States, the Great Lakes or the St. Lawrence Seaway; or

(6) Any other person authorized by you to have the care and custody of your property outside your premises (including your salespeople).

This Extension does not apply to the following:

(1) Shipments by mail;

(2) Property covered under import or export Ocean Cargo policies;

(3) Intercoastal water shipments via the Panama Canal; or

(4) Coastwise water shipments to Alaska.

In that same subsection, paragraph c is deleted and replaced by:

C. The most we will pay for loss or damage under this Extension is $5,000.

3. Section E, Additional Coverage Extensions, Subsection 2, Water Damage, Other Liquids, Powder or Molten Material Damage is amended by adding the following:

We will pay for loss or damages to covered property and a described premises caused by water from a nonexisting body of water that backs up from a sewer or drain.

The most we will pay for loss or damage under this extension is $25,000.

For purposes of this Property Extensions Form, the following conditions are added:

(1) Consolidation Merger: If through consolidation or merger with, or purchase of assets of some other entity:

(a) Any additional persons become employees; or

(b) You acquire the use and control of any additional premises;

any insurance afforded for employees or premises also applies to those additional employees and premises, but only if you:

(a) Give us written notice within 30 days thereafter; and

(b) Pay us an additional premium.

(2) Discovery Period for Loss: We will pay only for covered loss discovered no later than one year from the end of the policy period.

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

(3) Joint Insured

(a) If more than one insured is named in the DECLARATIONS, the first named insured will act for itself and for every other insured for all purposes of this insurance. If the first named insured ceases to be covered, then the next named insured will become the first named insured.

(b) If any insured or partner or officer of that insured has knowledge of any information relevant to this insurance, that knowledge is considered knowledge of every insured.

(c) An employee of any insured is considered to be an employee of every insured.

(d) If this insurance or any of its coverages is canceled or terminated as to any insured, loss sustained by that insured is covered only if discovered no later than one year from the date of that cancellation or termination

(e) We will not pay more for loss sustained by more than one insured than the amount we would pay if all the loss had been sustained by one insured.

(4) Legal Action Against Us: You may not bring any legal action against us involving loss:

(a) Unless you have complied with all the terms of this insurance;

(b) Until 90 days after you have filed proof of loss with us; and

(c) Unless brought within 2 years from the date you discover the loss, except this 2 year period is extended by the number of days between the date we receive the proof of loss and the date we send a denial of loss in whole or part.

(5) Loss Covered Under More Than One Coverage of This Insurance: If two or more coverages of this insurance apply to the same loss, we will pay the lesser of:

(a) The actual amount of loss; or

(b) The sum of the limits of insurance applicable to those coverages.

(6) Loss Sustained During Prior Insurance

(a) If you, or any predecessor in interest, sustained loss during the period of any prior insurance that you or the predecessor in interest could have recovered under that insurance except that the time within which to discover loss had expired, we will pay for it under this insurance, provided:

(1) This insurance became effective at the time of cancellation or termination of the prior insurance; and

(2) The loss would have been covered by this insurance had it been in effect when the acts or events causing the loss were committed or occurred.

(b) The insurance under this Condition is part of, not in addition to, the Limits of Insurance applying to this insurance and is limited to the lesser of the amount recoverable under:

(1) This insurance as of its effective date; or

(2) The prior insurance had it remained in effect.

(7) Loss Covered Under This Insurance and Prior Insurance Issued by Us or Any Affiliate: If any loss is covered:

(a) Partly by this insurance: and

(b) Partly by any prior canceled or terminated insurance that we or any affiliate had issued to you or any predecessor in interest;

the most we will pay is the larger of the amount recoverable under this insurance or the prior insurance.

(8) NonCumulation of Limit of Insurance: Regardless of the number of years this insurance remains in force or the number of premiums paid, no Limit of Insurance cumulates from year to year or period to period.

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

(9) Other Insurance: This insurance does not apply to loss recoverable or recovered under other insurance or indemnity. However, if the limit of the other insurance or indemnity is insufficient to cover the entire amount of the loss, this insurance will apply to that part of the loss, other than that falling within any deductible amount, not recoverable or recovered under the other insurance or indemnity. However, this insurance will not apply to the amount of loss that is more than the applicable Limit of Insurance shown in the DECLARATIONS.

(10) Ownership of Property; Interest Covered: The property covered under this insurance is limited to property:

(a) That you own or hold; or

(b) For which you are legally liable.

(11) Policy Period

(a) The Policy Period is shown in the DECLARATIONS.

(b) Subject to the Loss Sustained During Prior Insurance condition, we will pay only for loss that you sustain through acts committed or events occurring during the Policy Period.

(12) Records: You must keep records of all Covered Property so we can verify the amount of any loss.

(13) Recoveries

(a) Any recoveries, less the cost of obtaining them, made after settlement of loss covered by this insurance will be distributed as follows:

(1) To you, until you are reimbursed for any loss that you sustain that exceeds the Limit of Insurance and the Deductible Amount, if any;

(2) Then to us, until we are reimbursed for the settlement made;

(3) Then to you, until you are reimbursed for that part of the loss equal to the Deductible Amount, if any.

(b) Recoveries do not include any recovery:

(1) From insurance, suretyship, reinsurance, security or indemnity taken for our benefit; or

(2) Of original securities after duplicates of them have been issued.

(14) Territory: This insurance covers only acts committed or events occurring within the United States of America, U.S. Virgin Islands, Puerto Rico, Canal Zone or Canada.

(15) Transfer of Your Rights of Recovery Against Others to Us: You must transfer to us all your rights of recovery against any person or organization for any loss you sustained and for which we have paid or settled. You must also do everything necessary to secure those rights and do nothing after loss to impair them.

(16) Valuation Settlement

(a) Subject to the applicable Limit of Insurance provision we will pay for:

(1) Loss of money but only up to and including its face value. We may, at our option, pay for loss of money issued by any country other than the United States of America:

(a) At face value in the money issued by the country; or

(b) In the United States of America dollar equivalent determined by the rate of exchange on the day the loss was discovered.

(2) Loss of securities but only up to and including their value at the close of business on the day the loss was discovered. We may, at our option:

(a) Pay the value of such securities or replace them in kind, in which event you must assign to us all your rights, title and interest in and to those securities.

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

(b) Pay the cost of any Lost Securities Bond required in connection with issuing duplicates of the securities. However, we will be liable only for the payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of the:

(i) Value of the securities at the close of business on the day the loss was discovered; or

(ii) Limit of Insurance.

(3) Loss of, or loss from damage to, property other than money and securities or loss from damage to the premises for not more than the:

(a) Actual cash value of the property on the day the loss was discovered;

(b) Cost of repairing the property or premises; or

(c) Cost of replacing the property with property of like kind and quality.

We may, at our option, pay the actual cash value of the property or repair or replace it.

If we cannot agree with you upon the actual cash value or the cost of repair or replacement, the value or cost will be determined by arbitration.

(b) We may, at our option pay for loss of, or loss from damage to, property other than money:

(1) In the money of the country in which the loss occurred; or

(2) In the United States of America dollar equivalent of the money of the country in which the loss occurred determined by the rate of exchange on the day the loss was discovered.

(c) Any property that we pay for or replace becomes our property.

For purposes of this Property Extensions Form, the following definitions are added:

1. Banking Premises means the interior of that portion of any building occupied by a banking institution or similar safe depository.

2. Employee means:

(a) Any natural person:

(1) While in your service (and for 30 days after termination of service);

(2) Who you compensate directly by salary, wages or commissions; and

(3) Whom you have the right to direct and control while performing services for you; or

(b) Any natural person employed by an employment contractor while that person is subject to your direction and control and performing services for you excluding, however, any such person while having care and custody of property outside the premises.

But employee does not mean any:

(1) Agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character; or

(2) Director or trustee except while performing acts coming within the scope of the usual duties of an employee.

3. Employee Dishonesty in Subsection 5, Paragraph g. means only dishonest acts committed by an employee, whether identified or not, acting alone or in collusion with other persons, except you or a partner, with the manifest intent to:

(a) Cause you to sustain loss; and also

(b) Obtain financial benefit (other than employee benefits earned in the normal course of employment, including: Salaries, commissions, fees, bonuses, promotions, awards, profit sharing or pensions) for:

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

(1) The employee; or

(2) Any person or organization intended by the employee to receive that benefit.

4. Fine Arts means objects of art.

5. Loss means accidental loss or damage.

6. Messenger means you, and any of your partners or any employee while having care and custody of the property outside your premises

7. Money means:

(1) Currency, coins and bank notes in current use and having a face value; and

(2) Travelers checks, register checks and money orders held for sale to the public;

8. Property Other Than Money and Securities means any tangible property other than money and securities that has intrinsic value but does not include any property in any Crime Coverage Form as Property Not Covered.

9. Securities means negotiable and nonnegotiable instruments or contracts representing either money or other property and includes:

(a) Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and

(b) Evidences of debt issued in connection with credit or charge cards, which cards are not issued by you;

but does not include money.

10. Theft means any act of stealing except by an employee, director, officer, trustee or representative.

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

EXHIBIT B

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CLARENDON)	CASE NO.: 11-CP-14-602
TLC Holdings, LLC,	
Plaintiff,	**AFFIDAVIT OF THOMAS L. HARPER, JR.**
vs.	
M.B. Hudson a/k/a M.B. Hutson,	
Defendant.	
M. B. Hudson a/k/a M. B. Hutson,	
Defendant and Third Party Plaintiff,	
v.	
Richard U. Clark, Jimmy S. Lovell and James C. Thigpen,	
Third Party Defendants.	

COMES NOW, Thomas L. Harper, Jr., who, being duly sworn, deposes and says as follows:

1. I am an attorney for Plaintiff, TLC Holdings, LLC ("Plaintiff", "TLC" or the "Company"), and have personal knowledge of the matters contained in this affidavit.

2. Attached hereto as a composite **Exhibit A** is are true and correct excerpts from the transcript of the Rule 2004 examination of the Morris B. Hutson (the "Defendant"), which examination was taken, under oath, in the Defendant's bankruptcy case pending in the United States Bankruptcy Court for the District of South Carolina, Case Number 14-00165-jw.

3. Attached hereto as a composite **Exhibit B** is a true, correct and complete copy of two letters written to Defendant by Marie Rose, the director of the Clarendon County Planning

Commission. In his Rule 2004 examination, the Defendant acknowledged having received these letters from the Clarendon County Planning Commission.

FURTHER AFFIANT SAYETH NOT.

Thomas L. Harper, Jr.

SWORN to before me this 3rd day of March, 2014.

Notary Public for South Carolina
My Commission Expires: 6-18-19

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

EXHIBIT A
(Excerpts from Hutson 2004 Examination)

See attached.

up in 30 minutes. I went over there and picked it up, and then I gave it to Tom.

(Exhibit No. 33 marked for identification.)

A Now, this is a survey, but not a plat.

BY MR. BYRD:

Q Did you just read the definition of a qualified plat in the settlement agreement?

A Yes, sir, we did.

Q And what it says is surveyed by a land surveyor, certified land surveyor. Correct?

A It did.

Q And Mathis & Muldrow provided that to you on January 14, 2014?

A Yes, sir.

Q Before January 14, 2014, you had never, ever provided a qualified plat, had you?

A No, sir. We saw no need to.

Q Good deal.

A It was in here (indicating), and that would provide it.

Q Let's talk about the restaurant lease. We know who the lessor is. Correct?

A It's on the bottom of the lease.

Q Who is the lessor?

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

problem for me, a real problem, because they don't comply with what they have written in the rule book. It's horribly frustrating.

Q Mr. Hutson, you talked a bit on Friday and then again today about pending litigation involving the property being an impediment to your getting your approvals. Is that right?

A Such as what?

Q You said that you went with your engineer and maybe your lawyer, too, I can't remember, but I know your engineer to a planning commission meeting and they said that there was litigation pending and they wouldn't consider your --

A That's right.

Q Did that happen before we settled the case with that settlement agreement that was filed in early April, or after?

A No, it was before.

Q In fact, in the settlement agreement there's a provision that says that TLC will write a letter to Clarendon County --

A Right, but not in the first agreement. But my point of that whole thing was, because of that requirement that they have that they enforced, even though it's not in their bylaws, it delayed me

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

I would say six to eight months at least. And yet I'm overpaying TLC $10,000 a month. Then I find out about the moratorium on the sewer.

Q Let me stop you right there, Mr. Hutson, and ask you this very clearly. Are you saying that you found out about the sewer moratorium after April 1, 2012, when the settlement agreement was signed?

A No.

Q It was before, wasn't it?

A Before, that's correct.

Q Black Water Utility Electric Co-op overcharge, that was before the settlement agreement was filed, wasn't it?

A That's correct.

Q The Roger Edwards litigation was before the settlement agreement. Right?

A I don't know much about that. But I had heard that there were liens on the property.

Q The bank litigation was before the settlement in April of 2012, wasn't it?

A That's correct. But again, those were reasons why I couldn't close sooner on some of the property where I could take out -- And there is a way where you could take out like five acres.

Q But that's why we settled the case in

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

April of 2012, isn't it, Mr. Hutson?

A I felt like that I shouldn't have never signed what I did sign, because really it wasn't my fault. I couldn't get my approvals. I was working my butt off to get the approvals. You know that. I had many conversations with you about where I was with the approvals. I spent weeks and weeks and weeks with engineers and architects. And then the green space became a great issue over there with Clarendon County. It was crazy.

(Exhibit No. 37 marked for identification.)

BY MR. HARPER:

Q Mr. Hutson, I'm going to hand you Exhibit No. 37. Do you think you've ever seen this letter before?

A Yes.

Q This is a letter I wrote to David Epperson with the Planning Commission on April 3 --

A '12, right.

Q -- 2012, just four days after the date of our settlement agreement. Right?

A Yes.

Q Four days after the settlement agreement I faxed a letter to David Epperson, and in that

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

wouldn't be in the fix that I'm in right now.

Even if we reached an agreement where I could go ahead and get my approvals, I was thinking how could something be drawn to keep Jim Thigpen from going to the county and causing problems. I don't know. But I know that he has a problem with TLC, and he's got a problem with me. He never wanted me to develop that property. He never wanted me to buy it. And Richard Clark has admitted to me that Thigpen never wanted me to buy the property.

Q Mr. Hutson, if you exercise the three 30-day extension rights from July 31, I'll tell you that that does not go out past November 15th. There is some cushion in there. I'm just doing that so that nobody has to sit here and do math.

Did you have the approvals by November 15, 2012? I'm not asking you what your excuse is, but did you have them?

A No.

Q You don't have them now, so you didn't have them by November 30th?

A No. I got kicked out and had to start over. Start over is a lot quicker than starting from scratch.

Q Mr. Hutson, we've gone through my letter

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

you have failed to meet the contingency requirements of the sketch plan approval," and then it skips a second, "and failed to meet the deadline for application acceptance for the November 19, 2013 Clarendon County Planning Commission meeting, your performance zone certificate has expired and your sketch plan extension will expire on November 4th."

A See, it hadn't even expired.

Q Right. It was expiring in about two weeks.

A Right. But you've got to wonder why would they jump so fast to get this thing out. It's just another Thigpen issue. They are kicking me out because my time is going to expire when the time hadn't even expired.

Q Mr. Hutson, let's go back to the settlement agreement if we could, please. I'm going to ask you to read -- I would ask you to read the entirety of paragraph No. 8 that's on page 3.

A "The parties acknowledge that this settlement agreement is not contingent upon Hudson's receipt of the approvals."

Q Mr. Hutson, the June and October 2013 letters that we just went through all relate to deficiencies in your package that arose after

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

December 31, 2013. Right?

To ask it another way, our June letter says you've asked for an extension on sketch plan approval and you can have it if you do these things. Well, that's obviously in 2013. Right?

A Right.

Q And then she writes you in October and says you didn't do these things --

A I don't use Paul Weissenstein anymore because of that one sentence.

Q That sentence says that TLC is not responsible for whether Clarendon County approves your thing or not?

A TLC knew I couldn't close without getting the approvals. They knew it was impossible. You drew this.

Q And you signed it?

A Yeah, I was stupid enough to sign it.

But, still again, if I had been able to get my approvals and if TLC had had better -- if they made proper disclosures to me, they could have speeded me up a lot. They intentionally did not. And everybody wants to overlook that stuff.

Q What's TLC got to do with your green space, Mr. Hutson? Nothing.

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

EXHIBIT B
(Planning Commission Letters to Hutson)

See attached.

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Clarendon County
Planning Commission
411 Sunset Drive, Manning, SC 29102
Telephone: (803) 435-8672 / Fax: (803) 435-2208

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

June 25, 2013

M. B. Hudson
Big Water Campground
5215 Dingle Pond Road
Summerton, South Carolina 29148

RE: Big Water Subdivision Sketch Plan

Dear Mr. Hudson:

This letter is in response to your request for an extension of the sketch plan approval for the above referenced subdivision. During the June 18, 2013 Planning Commission meeting, the Commission granted an extension of the sketch plan approval through November 4, 2013 contingent upon the original following requirements:

1. A minimum 30% of the existing trees, evenly distributed and proportionate throughout the proposed development, and all live oaks twelve inches (12") or larger in diameter must be saved. To meet this requirement, you must submit an existing tree survey and a proposed greenspace/landscape plan incorporating the saved trees and the proposed new greenspace/landscaping. This must be submitted with the preliminary plans/plat submission.
2. In compliance with the Clarendon County Comprehensive Plan, the development must be supported by public water and sewer from a public utility service.
3. The public water system must be able to support a fire suppression system as required by the Clarendon County Fire Department.

As previously instructed, please refer to the Clarendon County Unified Development Code for all of the specific requirements to submit preliminary plans and plats. In addition, the revised Big Water Campground site plan must be submitted with the preliminary plans and plat. Incomplete application packages and/or plans and plats that do not meet the contingency requirements will not be accepted. Sketch plan approval will expire on November 4, 2013 unless a complete application package for preliminary plans/plat approval has been submitted. Per Article VI, Section 61.03 of the Unified Development Code, no further extensions shall be granted.

Thank you for your cooperation. If I can be of any further assistance, please do not hesitate to call me.

Sincerely,

Maria M Rose

Maria M. Rose
Planning Director

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Clarendon County
Planning Commission
411 Sunset Drive, Manning, SC 29102
Telephone: (803) 435-8672 / Fax: (803) 435-2208

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

October 22, 2013

M. B. Hudson
Big Water Campground
5215 Dingle Pond Road
Summerton, South Carolina 29148

RE: Incomplete Preliminary/Site Plans/Plat Submittal for Big Water Development

Dear Mr. Hudson:

This letter is in response to your submittal of preliminary plans and plats for the Big Water Subdivision development and revised site plan for Big Water Campground. After review of the package submitted, I find the application package incomplete and unacceptable for Planning Commission review. I have enclosed your check number 1088 in the amount of $740.00, as payment cannot be received for an incomplete submittal.

Deficiencies include the omission of the greenspace/landscaping survey and plans, the revised site plan for the remaining campground, and other items highlighted and specified for submittal in the enclosed two letters mailed to you on September 5, 2012 and June 25, 2013, there are numerous other items required on the preliminary plans/plat checklist that were not included in the submittal package. There were no DHEC application packages or DHEC permits to construct for water, sewer or grading and stormwater management, etc.

Due to the fact the submittal was not complete the staff did not review the engineered plans for accuracy or compliance to the requirements of the Clarendon County Unified Development Code. This letter is not meant to state or cover all deficiencies in the preliminary/site plans/plat submittal for the Big Water development.

'ecause you have failed to meet the contingency requirements of the sketch plan approval for the g Water Subdivision and failed to meet the deadline for application acceptance for the vember 19, 2013 Clarendon County Planning Commission meeting, your Performance Zone

Certificate has expired and your sketch plan extension will expire on November 4, 2013. If you continue to have interest in further development of the Big Water property, it will be necessary to begin the process from the beginning with the Performance Zone Certification application and process.

Thank you for your interest in development in Clarendon County.

Sincerely,

Maria M. Rose
Planning Director

Enclosures: Letter Dated September 5, 2012
Letter Dated June 25, 2013
Big Park Management Inc. Check #1088

Copy to: TLC Holdings, LLC

ELECTRONICALLY FILED - 2019 Jun 25 2:23 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2019 Jun 14 10:00 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
MB Hutson/MB Hudson, Plaintiff, vs. Penn America Insurance Company, Global Indemnity Group, Inc., Timothy J. Newton, Esquire, J.R. Murphy, Esq., John Doe #1, and John Doe #2, Defendants.	)	Civil Action No. 2018-CP-40-06344 **DEFENDANTS PENN AMERICA INSURANCE COMPANY AND GLOBAL INDEMNITY GROUP, INC.'S MOTION FOR SUMMARY JUDGMENT**

TO: MB HUTSON A/K/A MB HUDSON, *PRO SE* PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that Defendants Penn America Insurance Company and Global Indemnity Group, Inc. (collectively "PAIC"), by and through its undersigned counsel, will move before the presiding Judge of the Fifth Judicial Circuit in the Richland County Court of Common Pleas, on the tenth (10th) day after service hereof or at such other time and place as shall be convenient to the Court and counsel, for an Order granting summary judgment, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, in favor of PAIC in the above-captioned matter.

PAIC maintains that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Hunt v. Happy Valley Ltd. P'ship, 315 S.C. 428, 430, 434 S.E.2d 285, 286 (Ct. App. 1993).

Plaintiff raises claims in contract and tort against his former insurer and their coverage counsel related to the defense rendered to him in two prior lawsuits—a federal class action case in which Plaintiff was sued under a third party claim for equitable indemnity and a related state defamation action—as well as a declaratory judgment action regarding PAIC's coverage

obligations in those two lawsuits. PAIC denies all allegations of wrongdoing, including breach of contract, bad faith, negligence, fraud, misrepresentation, interference with the attorney-client relationship, or vicarious liability for legal malpractice.

Stated simply, Plaintiff is unable to adequately satisfy the elements of any of his claims. Accordingly, Plaintiff's claims fail as a matter of law. Moreover, Plaintiff executed a valid Release in favor of Penn-America, precluding Plaintiff from pursuing the instant claims.

This Motion is based upon the pleadings in the action, the Affidavits attached hereto or which may be served prior to the hearing, upon the memoranda in support of this motion and attachments thereto, upon Rule 56, SCRCP, and upon such additional law and argument as shall be appropriate.

PAIC respectfully requests argument on its motion. PAIC reserves the right to amend this motion prior to argument and disposition of the motion. Further, PAIC reserves the right to supplement its argument by a written memorandum of law, affidavits, and other materials permitted under Rule 56, SCRCP.

[SIGNATURE ON FOLLOWING PAGE]

ELECTRONICALLY FILED - 2019 Jun 14 10:00 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Respectfully submitted,

COLLINS & LACY, P.C.

By: *s/Christian Stegmaier*

CHRISTIAN STEGMAIER
S.C. Bar Number: 68648
cstegmaier@collinsandlacy.com
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ATTORNEYS FOR DEFENDANTS PENN AMERICA INSURANCE COMPANY AND GLOBAL INDEMNITY GROUP, INC.

DEFENDANTS PENN AMERICA INSURANCE COMPANY AND GLOBAL INDEMNITY GROUP, INC.'S MOTION FOR SUMMARY JUDGMENT

June 14, 2019
Columbia, South Carolina

ELECTRONICALLY FILED - 2019 Jun 14 10:00 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	C.A. NO. 2018-CP-40-06344

MB HUTSON,	)
	)
PLAINTIFF,	)
	)
VERSUS	)
	)
PENN AMERICA INSURANCE COMPANY, ET AL,	)
	)
DEFENDANTS.	)

****

MOTION HEARING TRANSCRIPT

****

A MOTION HEARING IN THE ABOVE ENTITLED CASE WAS HELD ON THE 26TH DAY OF JUNE, 2019, COMMENCING AT THE HOUR OF 9:51 A.M. BEFORE THE HONORABLE JUDGE MICHAEL G. NETTLES AT THE RICHLAND COUNTY COURTHOUSE IN COLUMBIA, SOUTH CAROLINA.

REPORTED BY: KAREN E HOLLEY CVR-M
OFFICIAL STATE COURT REPORTER

APPEARANCES:

M. B. HUTSON
POST OFFICE BOX 2755
ORANGEBURG, SOUTH CAROLINA 29116

PRO SE PLAINTIFF,

JOHN ROBERT MURPHY, ESQUIRE
TIMOTHY J NEWTON, ESQUIRE
MURPHY AND GRANTLAND, P.A.
POST OFFICE BOX 6648
COLUMBIA, SOUTH CAROLINA 29260

PRO SE DEFENDANTS,

CHRISTIAN STEGMAIER, ESQUIRE
1330 LADY STREET, #601
COLUMBIA, SOUTH CAROLINA 29201

ATTORNEY FOR DEFENDANT PENN AMERICA AND GLOBAL INDEMNITY

INDEX

CERTIFICATE OF REPORTER. 64

EXHIBITS:

(NONE MARKED)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

JUDGE NETTLES:

Madam Court Reporter, this is M. B. Hutson versus Penn America Insurance Company

I'll be glad to hear from the moving party

MR. MURPHY

Good morning, Your Honor J R. Murphy here as a party Pro Se

JUDGE NETTLES

All right.

MR. MURPHY:

And my partner, Tim Newton, is sitting behind the rail. Mr Stegmaier represents my former client in this matter, Penn America, and I believe Globe Indemnity, the insurers that were involved.

And, Your Honor, we've been sued by Mr Hutson on a very frivolous, meritless basis that somehow all of the Defendants, although he never says I did anything, but I had no dealings with him, but he says we failed to prosecute claims against other parties on his behalf Such claims having been prosecuted in the past by him and summarily dismissed on multiple times, including sanctions against him from Judge Norton. And so to give you a proper context of the present lawsuit as you review his pleadings, I, with the Court's permission, would like to give a little bit of background. It is

pretty well set forth in the original brief that Tim Newton filed and that I join in. But it begins with the fact that Mr. Hutson bought some property down in Clarendon County in 2010 He bought it from an entity known as TLC And, subsequently, they got into a disagreement, Mr. Hutson defaulted on that agreement, and they filed a lawsuit against him. And that matter was resolved in 2012 through a settlement agreement. Mr Hutson subsequently defaulted on that settlement agreement and he -- it was enforced in an order from Judge James when he was sitting as a trial judge back in April of 2013

After that, there's an incident where Mr Hutson sends some postcards that TLC believes defames them. So, two actions are brought back against Mr Hutson; one, a third party action by TLC in a federal court class action that was originally filed against the -- some of the membership owners against TLC. TLC, in 2015, also sues Mr Hutson for the defamation that occurred in postcards that he sent In both of those actions, the third party federal action and the defamation state court action, Mr. Hutson filed counter-claims against TLC. And Penn America, who was my former client, brought my firm into the matters in 2016 to evaluate coverage for the defamation claims against Mr. Hutson,

not to prosecute his counter-claims Those counter-claims were dismissed. The federal Report and Recommendation from Magistrate Judge Mary Gordon Baker, those findings were adopted by Judge Norton, and Mr. Hutson, in 2017 was ultimately sanctioned by Judge Norton for his conduct in prosecuting those, and Judge Norton said, Hutson appears to have continued his pattern of frivolous filings and conduct designed to harass or burden third party plaintiffs, which was TLC in that case, and there is no indication that he intends to cease. Here we are in 2019. Judge Norton further found that Hutson has established a pattern of making misrepresentations to the Court, of making unsupported allegations of unethical and criminal conduct by the 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 And the same can be said for everything he's done against me and Mr. Newton in this case. I'll let Mr. Stegmaier answer for my former client. But that is the same pattern that we are dealing with now. In fact, even this week I got probably the 20th email from him about trying to sit down and basically pay him some money, which we have steadfastly refused to even engage in a conversation

When we were hired as coverage counsel, Your Honor, the only involvement I had really was to sign off on the pleadings and that's evident in the complaint that you have in front of you That was filed in September of 2016. In the context of that, Penn America entered into a policy settlement with Mr. Hutson They paid some of the sanctions against him that Judge Norton had issued, they paid some payment and received a full release, including their agents, to which I would say Mr. Newton and I quality as under the protection of that release However, the claims, the defamation case, went to trial after Judge Cothran dismissed all of Mr Hutson's counter-claims on March 2nd of 2017 It went to trial about a year ago and the TLC entity received a 3 5 million dollar judgment against Mr. Hutson for defamation. Subsequent to that, while the federal declaratory action was still pending, Penn America entered into a settlement where they paid their policy limits of one million dollars, even though they had very viable coverage arguments, obtained protection for Mr. Hutson, who'd been defended throughout that process, and after he was advised that he'd been fully protected and settled from a massive judgment against him, he turns around and sues the insurance company, myself and Mr Newton the next day. And that's what

we're here on That's the history of what we're here on

If I can understand his amended complaint, which in my opinion does not set forth any recognized cause of action of any kind against anybody, it's just a rambling, and it incorporates his same arguments that he wanted to, or did, assert against TLC in prior actions that had been dismissed by orders from Judge James, Judge Curtis, Judge Cothran, Judge Mary Gordon Baker and Judge Norton, with sanctions It's the same stuff Now saying that either Mr Stegmaier's client or myself or Mr Newton knew about his frivolous, meritless claims and should have done something on his behalf That's what I understand. First of all, I don't understand how that's actionable, because he's welcome to do it on his own, but I think maybe he has learned better that if he goes back after them one more time, maybe he will If he wants to set aside a prior order or prior settlement agreement like the one you just had before you, he has that option What is clear is that neither Mr Newton nor I have any duty to do that for our adversary, our client's adversary Justice Toal, in writing the decision in the Argo case in 2010, said, an attorney is immune from liability to third persons arising from the performance of his

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Feb 22 2021
SC Court of Appeals

professional activities as an attorney on behalf of and with the knowledge of his client. That's all Mr Newton ever did; I really didn't even do that; I didn't do any activities But to the extent I did, that's all either one of us ever did. And further, an attorney owes no duty to a non client unless he breaches some independent duty to a third person, none alleged, none exist, but whether a duty exists is a matter of law for the Court to decide. Reading that second amended -- the amended complaint, there's no duty even alleged, let alone one that the Court would even have to rule on that doesn't exist, but no duty that I'm aware of exists Or if the attorney acts in his own personal interest outside the scope of his representation of the client. One of the reasons so many documents were submitted to the Court was simply to show that, in addition to the history, that there is no activity, other than conversations in the context of a pending declaratory judgment action and the settlement of the related or underlying cases in connection with that. That means that any statements or actions are fully privileged by a judicial immunity privilege, if there was even a duty in the first place So, we have a non client trying to sue his opponent's lawyers for not taking his interests; he it's a quote in one of his

briefs that we didn't protect his interests And if lawyers are going to be exposed to liability for failing to protect their opponents their clients' opponent's interests, the rules requiring that lawyer to zealously represent their own client are going to have to be erased. How can I represent Penn America in a coverage case and then represent Mr Hutson's interests? That's a legal impossibility, an ethical impossibility. But fortunately, our Supreme Court has already recognized it's not an actionable possibility. And if Mr. Hutson wants to claim someone else should have done something in his behalf he's going to have to sue somebody else, not the lawyer that represented an adverse party to him in a federal court declaratory judgment action. He has no standing to assert any claim against Mr. Newton or myself Moreover, any such claim is released from the settlement agreement, which I know Mr. Stegmaier will address in a little more detail

And lastly, Your Honor, reading the amended complaint, there's not even an allegation against me, so even if all these other reasons weren't there, at least as pertains to me, there's no factual allegation of any conduct, statement, anything, no cause of action. So, I think when reading the amended complaint, it doesn't

set forth any recognized cause of action against any party, but given the background and the nature of it, and if the Court wants to consider this a motion for summary judgment and it pertains to the release which is outside and some of the other grounds that are asserted, all of these are judicial filings, all of these the Court can take notice of judicially through public record, I don't believe that there's anything improper about that, and this action should be dismissed. And quite frankly, Your Honor, sanctions are appropriate in this case. They're appropriate because of the long storied history; it's a regurgitation of the same thing and it's such a blatant disregard, both factually and legally, for any recognized claim. It's so far out of left field, so far out of bounds, it's not even a close call where someone didn't have a claim but may have had some colorable idea. Mr. Hutson knows fully well he has no claim; this is done for harassment to try to extort money from me or my client or my partner and he should be sanctioned for an amount appropriate for all the time expended.

JUDGE NETTLES

What were the sanctions in Judge Norton's order?

MR. MURPHY:

$14,900 It was based on the time the attorneys spent responding to the multiple filings after rulings had been made.

JUDGE NETTLES:

Do you have a specific request or --

MR. MURPHY

Mine would be no less than $10,000 I looked at our billings this morning and I believe, after we finished up with all our preparation and this hearing today, that we'll have at least that much time just from February, when we were sued, and I didn't even keep track of everything because Mr. Hutson has a way of wanting to get you on the phone or get you into emails and I just delete and do not engage in that, but I would say probably at least $10,000 If the Court is inclined to so sanction, I will be happy to submit an itemized statement for the amount to for the Court's consideration

JUDGE NETTLES:

Yes, sir?

MR. STEGMAIER:

Good morning again, sir Christian Stegmaier of Collins and Lacy. We represent the co-defendants in this case, Penn America Insurance Company and its parent, Global Indemnity Group. I do have a matter

that we transmitted to chambers yesterday and it was filed; may I approach, sir?

JUDGE NETTLES:

Yes.

MR. STEGMAIER:

This is a hard copy of what was filed and let me let me share with you procedurally what the story is right now. Mr Newton and Mr Murphy had filed their Motion to Dismiss or the alternative a Motion for Summary Judgment and then made their filing with a memorandum back in late May. We had the opportunity to review that and it occurred to us that at this point and time, from the genesis of this case, we always knew that we were unified in our position, but we filed a separate Motion for Summary Judgment earlier this month and under the 10 day rule our position is that that motion is ripe, and so it would be our request that the Court consider Penn America and Global Indemnity's separate Motion for Summary Judgment based on the fact that -- that Mr Newton and any other Murphy and Grantland lawyer, they did nothing wrong, and that's been fully explicated by Mr. Murphy and their presentation today, and it has been articulated within their filings And by extension, as the carrier in the equation, Penn America did nothing wrong Additionally, we would just

cite to the principles of res judicata and collateral estoppel. Mr Murphy was very adroit in his presentation in referring to, I think, three -- three or four documents that are very much operative in this case; one is the 2013 order by Judge James that relates to the ejectment proceedings and the enforcement of the same. In Judge James' order, he references the fact that this extrinsic fraud upon the Court argument, which is the basis of all these counter-claims and all of these actions, that this alleged extrinsic fraud upon the Court that you might have seen in the filings, that dates back to the original transaction with TLC; it has nothing to do with the 2013 settlement as it pertains to TLC and Mr. Hutson. And again, it goes back to the original transaction. And so Judge James, says, you know, in that case, any sort of extrinsic fraud upon the Court in any action that would exist should have been prosecuted at that point and time. And, of course, that ultimate -- all of this ultimately resulted in the settlement The other documents that are the other filings and orders that are operative in this case that this Court should really look to is the Magistrate's Report and Recommendation and then ultimately Judge Norton's adoption of the same in his separate order, which included the sanctions Again,

the federal court recognized in that -- in the class action that this extrinsic fraud upon the Court argument, this continued pursuit by Mr. Hutson through all these venues, through all these jurisdictions, through all these actions, again, dates back to this original transaction, specifically as it relates to these memberships at this campground and it has been -- it has already been made clear, it has already been demonstrated in the record on repeated occasion, that Mr. Hutson was cognizant of these memberships and whatever extrinsic fraud upon the Court that existed, he was cognizant of it way back when. And as Mr Murphy has argued, to just to continue to relitigate this issue through new and different actions is just wrong and Judge Norton saw that, he identified that, and he put a stop to it, at least on the federal side, and it's our position that the state court in this case should do the same as it relates to dismissing this action in its entirety and then considering the matter of sanctions, too, as well

We have supplied to the Court our separate bases for summary judgment in this case; there are eight bases I don't know if the Court wants me to articulate some of them; we certainly

JUDGE NETTLES

You can very briefly

MR. STEGMAIER:

Yes, sir. So, the Plaintiff's claims are barred pursuant to the settlement and release agreement that was executed with the declaratory judgment action on September 16, 2016 And Mr Murphy alluded to this as being important and, of course, this is another operative document in this case for consideration with the sum of $9,500, Mr Hutson agreed to release and forever dismiss as it relates to known and unknown, present versus future actions, that he might possess against Penn America, Global Indemnity, and their agents, which would include coverage counsel, and so that document executed by Mr. Hutson in 2016, as it related to this declaratory judgment action, operates as a waiver, operates as a mechanism to forever preclude any sort of action like this one against Penn America or its agents, in this case, Mr. Murphy and Mr. Newton

The second basis would be the Plaintiff's claim for breach of contract must fail because there is no evidence that Penn America failed to comply with its contractual duty to defend Plaintiff in both the underlying actions. It defended him in the class action, it defended him in the defamation action, and

as Mr Murphy stated, they indemnified Mr Hutson, you know, for the defamation verdict as well as the sanctions and settling the class action case.

The third basis is that the Plaintiff's claim for bad faith must fail because there is no evidence that Penn America failed to act reasonably There -- this failure to oppose the extrinsic fraud upon the Court argument, this was settled by virtue of the 2012 settlement agreement and consent order as explicated by Judge James

The fourth basis is that the Plaintiff's claim for fraud must fail because there is no evidence that a, Penn America or its agents made any material or false representations to Hutson, that b, that Hutson relied on such representations, and c, that Hutson was consequently or proximately injured. As we related in this argument, as well as the briefing, he was completely -- he was completely indemnified as it relates to the class action and the defamation claim. This claim for misrepresentation, and I'll reiterate what Mr. Murphy said, the standard is the standard, so if you file an action, whether you're Pro Se or you're a lawyer, you've got to articulate a colorable cause of action. We join with Mr. Murphy and Mr. Newton when we say this pleading filed by Mr. Hutson is devoid of

colorable causes of action, but nevertheless, if they can be, in fact, articulated, we oppose the same, as I previously argued, as I'll continue to argue

The fifth basis is that Plaintiff's claim for misrepresentation must fail because there is no evidence that a, Penn America or its agents made any false representation to Hutson, b, that Penn America or its agents failed to exercise due care, far from it, c, that Hutson relied on such representation, or that d, Hutson proximately suffered pecuniary loss That's analogous to the fraud claim as we just argued.

The sixth basis, and I've got eight bases, sir, the sixth basis is the Plaintiff's claim for negligence must fail because there is no evidence that Penn America breached any duty to its insured or caused any harm to it's insured. Again, we would go back to these orders when Mr Hutson says you should have prosecuted or you should have initiated these counter-claims; number one, he was represented by separate counsel, but b, as Judge James stated, you didn't have a colorable cause of action to begin with.

The seventh basis is that the Plaintiff's claim for tortious interference with the attorney/client relationship must fail because there is no evidence that Penn America acted wrongfully, that there was any

breach of the attorney/client relationship, it's non-existent as it related to Murphy and Grantland, or that Plaintiff's attorney was unjustified in his control and settlement of the underlying litigation Certainly Penn America, as the carrier, had the -- had the right to settle and control the underlying litigation as it related to the claims directly made against Mr Hutson, and it did and it indemnified him.

And lastly, sir, this Plaintiff's claim for legal malpractice that has been articulated, at least in part, must fail because a, Plaintiff failed to accompany his pleading with a statutorily required affidavit required regarding malpractice, that b, the

that b, Penn America is not vicariously liable for the malpractice of counsel, it pertains to Defendant's insured or its coverage counsel, and we state that just as a principle; of course, we fully -- we fully believe and fully adopt that there hasn't been any malpractice committed as it relates to the other co-defendants in this case, and that even if c, even if there's vicarious liability applied to coverage counsel, Plaintiff lacked the necessary attorney/client relationship with coverage counsel to sustain a claim of legal malpractice. Again, they're adversaries; Murphy and Grantland owed no duty that would fall under

the ambit of legal malpractice to Mr Hutson.

So, for the reasons articulated by Mr. Murphy as it related to the separate Motion and has been articulated in our Motion and argument here today, and we prayed reference to the pleadings, we respectfully request this Court, number one, to grant the Motion that has been made by Mr Murphy and Mr Grantland -- I'm sorry, Mr. Murphy and Mr Newton, and then the Court consider and rule upon and grant our separate Motion for Summary Judgment in favor of Penn America and Global Indemnity, sir. Thank you, sir

MR. NEWTON:

Your Honor, may I? I also I'm Mr. Newton and I'm also Pro Se I just wanted to say two things if you don't mind. Number one, Mr Hutson sued TLC twice after settling with them and fully releasing them; he got sanctioned for it. Now Mr. Hutson has settled with and fully released Penn America and its counsel; turned right around and sued us.

Number two, in this -- in his amended complaint, Mr. Hutson makes a materially false allegation to this Court, representation to this Court, that he has already brought in prior cases and had dismissed, paragraph 11, TLC parties knowingly, negligently failed to disclose the retail membership agreements that had

the right to use two lifetimes. Not only was that brought that's cut and pasted from paragraph 79 of his answer and counter-claims that was brought in the defamation action, that has already been dismissed, but that's materially false At trial, the realtor for TLC, his own realtor, testified he knew about this, there was all these emails; he knew about lifetime memberships when he purchased that property in 2010 It's not even disputable because Judge Mary Gordon Baker found that in her Report and Recommendation and Judge Norton adopted it Yet he turns around, not only did he allege that falsely in his counter-claim in the defamation action, he cut and pasted that same allegation and turned it around against us saying that we should have sued TLC on his behalf

Thank you, Your Honor

JUDGE NETTLES

Mr Hutson, I'll be glad to hear everything that you have to say. Yes, sir.

MR. HUTSON

I appreciate that I'm M B Hutson; I'm Pro Se and I am, in fact, the victim, and I appreciate you giving me the opportunity.

What they've done, Judge, is they've painted a real nasty looking picture; sounds like I'm a really bad

person. But all that they have presented to you, I intend to use that as my evidence to show they're wrong in the fact that they are trying to wiggle out of legalities and responsibility. I'd like to read one thing into the records and that is scintilla of evidence, which I'm going to have far more than a scintilla, a scintilla of evidence rule is a common law principle that a motion for a judgment or for a directed verdict cannot be granted when there exists even the slightest amount or relevant evidence Evidence must be reasonably believable This case is full of evidence and issues of fact; this case must be sent to a jury for trial Now, with that being said, may I approach the bench? I'd like to --

JUDGE NETTLES

You may.

MR. HUTSON:

provide this to you.

This is what I call my read sheet and I'm trying to make this thing as brief as possible. And, Your Honor, I have one question for the Court, and that is, I have filed a -- as mentioned, I have filed a complaint, it was an amended complaint, and I also filed a memorandum and I filed a supplement to the memorandum, and since I'm Pro Se, I'd like to ask if you'll -- if you'd

forgive me, has the Court seen these documents and have you read those documents?

JUDGE NETTLES

I have seen them; I have not studied them and I intend to do that before I rule

MR. HUTSON:

I appreciate that.

Now, and for that reason alone, I need to go slow with you and turn this thing around for what it really is So, with that being said, what I've done, I have marked up Penn America, Timothy Newton, Murphy, and Murphy and Grantland Company, were called in in 2016 because I had been sued. Now, with that being said, I'd like to stop just a minute and touch, just for a moment, on what happened to me when I bought the property because I'm not here to make the case on that at all. Number one, just at the beginning of 2011, I had seeked out waterfront property to develop some cabins on Realtor called me and a little of what they're saying is true, but the property was beautiful, it consisted of 108 acres, all right I agreed to pay 6 million

JUDGE NETTLES

This is on Santee?

MR. HUTSON:

Sir? Yes, sir

JUDGE NETTLES

Santee Which lake?

MR. HUTSON:

It's on the Marion Lake Good question

So, I agreed -- and, Your Honor, really look at this thing the way it really happened; I agreed to buy on contract the 108 acres for 6 million dollars Well, I found it a little strange because they only wanted, the sellers, TLC, and their lawyers, they only wanted a $10 deposit; that raised some flags for me Okay, so we moved towards getting a contract prepared. And during that time, they say to me, now look, we're going to give you an option to buy the 108 acres, Judge, but we're going to require you to close, not only buy, but close, right now, simultaneously with your execution of the option to buy. Well, I said, I don't really want a campground; I don't know anything about campgrounds I want to develop. Well, they convinced me that the campground if I was going to do camping, and there were -- there were a lot of the members that wanted and wished to buy cabins, and I -- I was told that the memberships were almost like a renewable thing at the end of each year So, I had an attorney look to into that and in addition to that, the attorney said, well, the membership looks okay; I think you could co-exist

with them, but you might better have the title checked on the property So, I hired Ron Nestor in Santee, you may know him, and he did a complete, thorough title search. He comes back and he says, it looks fine to me, called me M B. So, I go ahead and proceed. I signed the contracts All right, now, immediately after signing the contracts, their -- and I'm going to read for it to go into the record, some of the concealments, but there were a whole bunch of concealments This thing was a pre-plotted thing; they were looking for a scape goat to buy this business So, what it was, they knew they had defective property, title on the property, because of the memberships Because in the memberships it read that the members had sole use of the property for two lifetimes; Judge, that's about 70 years to 80 years All right, attorneys that looked at that, said well, unless they've recorded something in the courthouse to that effect, I think that you're going to be okay. I ran title; paid Ron Nestor to do the title. So, I closed Big Water Resort and I immediately moved in and took over Me not realizing -- and then I had a right to go ahead and get my approvals for my subdivision and I had to go through the Clarendon County Planning Board to get that done; that took about a year Now, just a few

of the things that wasn't mentioned was this; one, Big Water Resort business, Judge, was losing about $300,000 a year, and I'm going to show you in a few minutes an affidavit, not only an affidavit, but a testimony by way of deposition that one of the owners, they are admitting that that's a fact and they're happy that I'm taking the loss Well, originally what I said, I don't want the business; I I don't know anything about it; what's the business doing; give me some books They don't have any books All right, well, is the business losing money? I want to develop, I don't want -- they said, well, let's just say it's not making a profit. So, I thought, you know, at best, maybe I'd be in the Big Water thing for a year and I'd proceed with my development because I could have made about 5 million dollars on it and there's a lot of demand for waterfront property, that Marion Lake is beautiful and -- so anyhow but so I didn't I didn't recognize and by the way, they gave me a an appraisal on the business of 1 million 7 hundred thousand dollars and so I looked at that, and they sold it to me for $10 down for $500,000 Well, again, that looked suspicious to me, you know, and they was so anxious to make this thing work. I mean, from the time I met them, the sellers, until the time we got a

contract, Judge, wasn't but about 15 days And I was in Tennessee at the time when all this was going on, but I was coming back and forth. So, let me just name a couple things and then I'm going to list -- by a lawyer, who Penn America and Newton and Murphy hired to represent me when Turner Padgett sued me -- this is what the plot was Okay, they didn't tell me, but they knew they couldn't sell me that 108 acres, but they never planned to sell me that The reason is simple, because they were trying to give away the property and the business, but they couldn't find anybody that wanted it because the business had to honor, for 70 to 80 years, memberships, and since it was losing $300,000 a year, and had for years and years and years, Judge, the hidden liability was 22 million dollars that I signed up for Okay, so I run down I look at my contract Again, I dig through that thing, and what it read on my option to buy, it says that I had the right if I don't like the terms of the title or if I'm unhappy about anything, guess what, I have a right just to walk away from it, but they didn't say anything about taking back Big Water Resort and that was the whole plot right there. So what they did, they were going to take back soon as I signed to buy the business and I took on that hidden 22 million dollar

obligation, nobody told me that, not even my lawyers, they didn't know it. So, I'm now obligated for 22 million dollars and I'm beginning to paint a whole different picture than these two gentlemen right here are painting, but it gets far more interesting, Judge This is like something that a movie should be made out of; this is not -- okay, so Turner Padgett is TLC's attorneys; Turner Padgett prepared all the contracts Turner Padgett was aware that there was extrinsic fraud; they helped plot it. And so Turner Padgett prepared, Your Honor, the --

JUDGE NETTLES:

Mr Hutson,

MR. HUTSON:

Yes, sir.

JUDGE NETTLES

one of the things -- you know, all of this really kind of goes to the merits of the initial cause of action and there was a settlement agreement, September 16, 2016, I believe, if my dates are correct; why doesn't that resolve the matter? It really --

MR. HUTSON:

Your Honor --

JUDGE NETTLES:

The complaint that you have is

MR. HUTSON:

-- you've just got I asked for an hour in my letter and you've just got to let me go through this

JUDGE NETTLES:

I know, but what I was just asking you that question is because in my mind I was wanting to see

MR. HUTSON:

Oh, I understand.

JUDGE NETTLES

-- what you had to say about that I'm going to let you let you

MR. HUTSON:

Please ask the question again I might have misunderstood.

JUDGE NETTLES

It sounds to me like all of the -- you know, you've given me a background of your dealings concerning this piece of property and it seems as though your complaints are against the people who sold it to you, in general, and but all of this was resolved in a settlement agreement September 16, 2016; why does that not resolve the matter?

MR. HUTSON

Judge, because extrinsic fraud supersedes any settlement agreement, especially if it's fraudulent.

An extrinsic fraud -- and, if you will, if you'll turn over to my simple little -- read the page there on page D, I'm going to read to you what, for the record, definition of extrinsic fraud. The United States Court of Appeals of the 6th Circuit has delineated five elements of conduct that constitute extrinsic fraud upon the Court One is, you have to be an officer of the Court; you got to have a badge It means you've got to be a lawyer. Two, that it is directed to the judicial machinery, and this extrinsic fraud was done to that very for that very purpose. Number three, that it is intentionally false, willful, blind to the truth, or is reckless disregard for the truth, or that it is positive averment. Four is concealment when one is of the duty to disclose And five, that deceives the Court. Now, I'm going to just jump for a second; back when this settlement agreement took place, I was not aware, nor my lawyer, Paul Weissenstein, we were not aware that there was any extrinsic fraud; we didn't even know about all of these hidden factors I learned it right after I signed the settlement agreement But, Judge, in the settlement agreement, who Turner Padgett prepared, this is just before these gentlemen entered into the picture, the Court and the unsuspecting Judge George James, he didn't realize that there was fraud;

he just signed the order. It was taken to him and said everybody is happy with it, it was signed. But that order -- the Court orders me to develop that property, 108 acres, that's got defective title Now, that's an impossibility for me to do; that is a legal impossibility for me to do I'm --

JUDGE NETTLES

Just one more; just for clarification, what are you saying Mr. Murphy did wrong?

MR. HUTSON:

Oh, I'm -- I'm going -- you're jumping off of my subjects, but I will go right to that.

JUDGE NETTLES:

All right.

MR. HUTSON:

I'm going to prove to you right now that they have misrepresented, flat out lied, and they have failed -- they have breached their agreement to represent me and I'll show you how. Now, please remember -- all right, I'm going to change the subject; I'm off of Big Water Resort, okay, and that.

JUDGE NETTLES:

Now, do they represent did they ever represent you?

MR. HUTSON:

They represented in my defense. What happened, Turner

Padgett filed a lawsuit against me and Turner Padgett contacted my insurance; I didn't even know I had insurance that would cover that, to be honest with you. But they knew it all along; they planned to go after the insurance company and they did with a vengeance. But anyhow, let's go back and let's see if we can prove for a moment about proving the extrinsic fraud.

MR. MURPHY

Your Honor, that's just a flat out falsehood and I'm not going to stand here and listen to that

MR. HUTSON:

Judge,

MR. MURPHY:

You can look at the judicial pleading --

MR. HUTSON:

-- I didn't interrupt him.

JUDGE NETTLES

Hang on just a moment.

MR. MURPHY:

You asked a question and he didn't answer it because he can't answer it And the truth is, we were on a pleading directly adverse to him; never hired to be his lawyer, never engaged him as his lawyer, had no attorney/client relationship with him; he needs to admit it, because it's true.

MR. HUTSON

He's helping my case right now.

JUDGE NETTLES:

Okay.

MR. HUTSON:

I'm getting to it.

JUDGE NETTLES:

All right, Mr. Murphy, we -- I'm -- he's entitled to speak and I'm going to hear from him and I'll give you an opportunity to speak --

MR. MURPHY:

Thank you, Your Honor.

JUDGE NETTLES:

-- at his conclusion.

MR. HUTSON:

Thank you, Your Honor.

All right, so Penn America hires Laura Paton, Laura Paton is a lawyer in Charleston, to represent me in the defense. Penn America and Tim Newton, Murphy, coordinates that. As a matter of fact, my contact person was really Timothy Newton; that's who every time I talked with Penn America, the lady there, Doreen, referred me to Tim Newton So, these are just a few -- now, Judge, if you're talking about if you're talking about extortion, these lawyers know what

the definition of that is; these lawyers these are seasoned trial lawyers; they have plenty of knowledge over the fact that you just can't walk into a court and misrepresent by concealing enough evidence that ruins the Defendant, where the Defendant never has an opportunity to present his case. That's a violation of the civil rights, not to mention he can't win the case But nevertheless, if you'll allow me, I'd like to read some of what their lawyer, who they hired to represent me, wrote in one of the motions in the pleadings She says that these are things that were failed. I was advising me -- advising Mr Hutson that no financial records were kept as to Big Water Resort to conceal the losses, the financial condition of the company, one. Two, failing to record encumbrances required by statute as outlined above Three, advising Mr Hutson that the retail membership could be divested to allow devolvement in the lakefront land as discussed. Four, in failing to disclose the vacation timeshares encumbering the property. Five, failing to recognize

I'm sorry, failing to record the memberships as required by Section 27-32-10, which is a South Carolina law. Judge, if you've got a contract that's longer than 12 months, it has to be recorded, according to South Carolina law, the same as if it were a warranty

deed. In this case, these were 70-year contracts as designs Article 1, Chapter Title -- I won't even finish that Failing to pay and substantially hide the debt owed to Black River Electrical; they hid the fact that they owed about $150,000 to Black River Electric, and in fact, gave me a contract that stated that they note here the company was clean. In failing to provide an additional consideration for the subsequent attempts to modify the agreement, after I began to make noises over it. Failing to properly disclose the true condition of the business and the properties at issue in the agreement and putting them into the stream of commerce And making false misrepresentations as to the condition of Big Water -- I'm sorry, conditions of the business and the properties at issue in the agreements and/or representations as to the definition of the business and properties as issued in the agreements in reckless disregard as to the truth and the representation And I won't read anymore of those. This is what -- this is what -- this is my position on those; I've read you the definition of what it takes for something to be extrinsic. Now, South Carolina law requires anybody, including yourself, Your Honor, if you've got five lawyers in a firm and one lawyer is committing extrinsic fraud, he is required that -- the

lawyer that's not a part of the extrinsic fraud, to report that to the court Now, in this particular case, I'm going to go from here and I'm going to show you that Tim Newton, sitting right here, and this gentleman right here, they knew about the extrinsic fraud, but they wouldn't report it. So, I'm going to read his letter; he made a letter, Tim, and he sent it to me It was a letter of legal advice and the purposes for the letter let me just start reading this long and you can better appreciate it, Your Honor Tim starts off -- he wrote this on the -- August 13, 2018 Dear Mr Hutson, I need to remind you I need to remind you that I don't represent you and I can't represent you because I represent Penn America That's right there, Penn America To the extent there is a common interest, I note the following Now, Judge, you've got to ask yourself, what is the common interest He doesn't represent me, he stated that; he represents Penn America, so what common interests does he have with M B Hutson. I'm the insured by Penn America. Newton has not represented me. Let me go further We're going to change the color of this messy painting that they've been doing. All right, so now he lists 16 items; I'm not going to read them all, but I'm going to read the ones that's really important Now,

Judge, he's giving me legal advice and you'll -- you will see this shortly. This -- Penn America, their counsel, is giving me legal advice and the reason that they're giving me legal advice, and I'm jumping ahead of myself just a tiny bit, is because they had just had the jury trial Now, the facts of the matter is, Tim Newton admitted to me, has written out, extrinsic fraud; he knew about the extrinsic fraud. He knew he had a legal obligation to report Turner Padgett, yet he walks right in that courtroom over in Manning before a jury trial knowing full well that all he would've had to done was to have filed a Motion with the court putting the court on notice, Your Honor, that there was extrinsic fraud going on. If they had done that, what would've happened? You think Turner Padgett would have got up there and said, oh, by the way, Judge, before we start this jury trial, we want to we want to let you know that TLC, they really -- they never could sell that property to Mr. Hutson. He paid hundreds of thousands of dollars for the right to buy it, but they couldn't sell it to him because there was defective title and we hid that. Oh, yeah, and Judge, we knew that Big Water Resort didn't have any profit it operated on and we knew that TLC didn't have a contractual agreement with Big Water Resort to use

their property. We knew that Big Water Resort was nothing but an empty shell, broke We knew that it had a 22 million dollar hidden obligation. We didn't dare -- we didn't dare talk and mention and disclose this to the Judge because if we had, he'd have thrown us out of court So, my point is this; Tim Newton -- let me just read his letter His letter he wrote to me, this is after this is after the 3.5 million dollar judgment, Your Honor, against me, which never should've happened. I'll just go a step further I'm going to tell you why it shouldn't have happened. If they had reported the extrinsic fraud, that would've given me victory because everything would have been reversed and I could have taken that and ran with it. But I wish to remind this Court that not, and listen good, not one case was ever won by these lawyers and Penn America's attorneys while they represented me because of the extrinsic fraud and I couldn't win one as Pro Se because of the extrinsic fraud, so they knew about this extrinsic fraud. Now, Newton told me the reason I asked him, why won't you report extrinsic fraud? He says to me, and I've given you an affidavit to that effect, and I swear to God that I'm telling you the truth, he says I'm verbatim this -- quoting it, us lawyers don't do each other like that; somebody might go to jail I said, yeah, but my

gosh, these lawyers are killing us, they're killing y'all If you don't do that, you go in there for a jury trial, you're going to lose it You're going to wind up paying millions of dollars that I'm going to be responsible for in the event that the insurance company doesn't pay it. And besides, even if they pay it, Judge, I'm still listed over there, not only the fact that I have a 3.5 million dollar judgment against me, but all these other cases that I've lost because in 2016, these lawyers right here, they hired lawyers to represent me and Penn America, they hired lawyers They couldn't win a thing because of extrinsic fraud, yet they wouldn't report it because they wanted to protect their Turner Padgett friends And I might add, Laura Paton had an office under the same roof with Turner Padgett in Charleston and Newton told me himself, and you can ask him -- I'll take a lie detector -- he told me himself, we I can't do that; I'm not going to get involved in that. But I'm losing everything, Newton, if you don't do this. So, listen to what he types, his letter, and I'm jumping way through it; way down here in paragraph 15, there's not -- I'm going to read only two paragraphs; now, he makes it sound like he's not sure, okay He says, I can see -- now, there's a reason why he's writing me this

letter, Judge. I can see how you could argue that the consent order, that's back when George James, okay, so now how does he know -- how does he know about the consent order? I can tell you; because he had all the files and he knew that the consent order was fraudulent because of the concealment and because of extrinsic fraud. Timothy Newton knew that; so did this gentleman sitting right here; they knew that And probably that gentleman right over there no, he wasn't hired at the time But Penn America knew it because I sent them letters, I'd plead for them to get rid of the extrinsic fraud. All they would've had to done was simply write a write a letter to the Judge. The law requires -- the South Carolina law requires that Okay, this is what he reads I can see how you could argue that the consent order, that's what he's talking about now, the consent order from the settlement agreement, is invalid because it attempts to adjudicate the rights of parties not before it He's talking about the members. See, what happened, they -- Turner Padgett brought -- brought this stuff here for George James to sign and even though Newton knew that the members had a right to be there and have a say, they hid that; they kept the members out of it All right, now listen to this; he writes, and I've underlined it, if you were he's

pretending like he doesn't know -- if you were ordered to develop the property -- he's got a copy of the order; he knows that I was ordered. Now, why is he saying if I was ordered? Judge, he's trying to he's trying to do the the waltz to dance around and I'm going to prove to you on another sheet -- well, a sentence that he wrote to me that he denies -- let me finish reading the letter. If you were ordered to develop property that was subject to lifetime use rights, that probably, listen to this now, that probably, no if there, that probably should have been brought to the Court's attention. See, that's notice on the extrinsic fraud; that's what he's talking about. Okay, let's go a little further

JUDGE NETTLES

All right, Mr Hutson, one of the things -- I want you to take just a moment, --

MR. HUTSON:

Yes, sir

JUDGE NETTLES:

-- sort of gather your thoughts and you know, we scheduled an hour for this

MR. HUTSON:

Yes, sir.

JUDGE NETTLES:

-- and, you know, you've spoke for a considerable amount of time and I'm going -- we've got 15 more minutes; what I want you to do is take just a moment, sort of gather your thoughts about what your position is and I want you to complete that within the next 15 minutes And I am going -- at the conclusion of this hearing -- this is a very important matter, it's an important case

MR. HUTSON

It's a 6 million dollar case, Judge

JUDGE NETTLES:

No question it's important and what I'm going to do is I'm going to take a considerable amount of time to review all these documents and review your complaint and I'm going to do all that and I'm going to study the matter and I'm going to allow all of these parties to submit proposed orders and you; all the parties are going to submit proposed orders and I'm going to take all of that into consideration. I'm going to review all of your affidavits, your pleadings, and take everything into consideration, so if you want to, you can just take this moment, sort of encapsulate what else you want to say in the next 15 minutes and I'll be glad to hear from you.

MR. HUTSON

Let's try to make it about

JUDGE NETTLES:

Mr. Hutson, does that sound fair?

MR. HUTSON

Well, you're -- Your Honor, you're in charge of this hearing I would like at least 25 minutes; this is so important. This is material facts; this is evidence; this is what makes this go to a jury rather than being thrown out

JUDGE NETTLES:

Right. Well, let's go.

MR. HUTSON:

All right, sir.

Okay, so if you're ordered to develop property that was subject to a lifetime use, that probably should have been brought to the court's attention. Further, I see how you could argue you did not realize you were being obligated to violate the rights of the campground members by developing -- this is a whole different story now; he's painting a whole different picture than what they just got through painting of me; he's taking up for me Wonder why? It's because before I filed a lawsuit against them -- and then the most critical sentence is this one, paragraph, it's hard to see why TLC and its lawyers should not have in good faith

simply told you and the Court that Big Water Resort property was undevelopable because it was already obligated to two double lifetime memberships of the private club. It appears that this could easily have averted this entire fiasco. Since, listen now, since attorneys were involved and it resulted in your inability to present your case in court and possibly led to the sanctions, of which they were just talking negative about the sanctions, and judgment against you, there might possibly be extrinsic fraud on the court supporting setting aside of the consent orders. He's talking about the settlement agreement, the consent order with George James, and he's probably talking possibly even the 3 5. Then he gives me more case law; see Chewning versus Ford. And if you read that, it plainly reads a lawyer has got an obligation to report extrinsic fraud and nobody Judge, this -- this -- now, listen to this; I want to read you another little sentence. Three months later after writing me that letter, here's what he does; he sends me a letter, it's dated November 8th, and it has just got a bunch of, I call it, mumbo jumbo, in it, and right out of nowhere, Judge, on page 2, paragraph 5, here's all of a sudden it appears; this is what Newton is writing; at no point has Penn America or its counsel ever

acknowledged the existence of fraud upon the Court That's a direct lie; I just got through reading you what -- what Newton -- just read what he wrote. That's a flat out lie Then he says, Penn America recognizes only that you have recently that's a lie, Judge, because I've got letters that go back -- he says I've just recently -- Penn America recognizes only that you have recently began alleging that fraud upon the Court was committed. All right, I'm going to stop right there with that and I'd like to bring something else to your attention. Newton was talking about a common interest; well, we know he wasn't talking about the fact that he knew that he represented me, because he didn't, because he states that. The common interest, Judge, was they were coming up with about a month for a mediation, court ordered mediation, and Newton wanted that figure, 3.5, because he's representing his clients, reduced down to about $150,000, and if you look right here on page -- if you'll just read my notes, there's plenty of things, it even shows where they made an offer, Judge, for $150,000 instead of the 3.5 So, what I'm telling you falls together. Now, let me read another piece of untruth that Tim Newton wrote; that's this gentleman's partner, that's all right, he wrote this on March 5, 2018 It says this,

now listen to it; Penn America gave you the opportunity to prove your case at trial Now, Judge, how could I have possibly proved my case at trial when, number one, their lawyers was representing me, number two, there was extrinsic fraud so it was impossible to win the case, but that's what he says So, because of that, they're going to go ahead and do a settlement. Now, my point is simply this; the settlement -- by them settling, and they were aware of extrinsic fraud, that made them co-conspirators to the extrinsic fraud and if I need more time to write something back to you to finish this, but they are co-conspirators to something that is a criminal offense and they were a part of it.

JUDGE NETTLES

I think you've made it real clear about what your position is, particularly with regard to extrinsic fraud. I'm going to give the Defendants an opportunity to address any of those comments, if they would like, but Mr Hutson, I had mentioned to you earlier, what I'm going to do is I'm going to ask that you submit to me a proposed order and in that you can set out your theories as to -- to support your position and what you think the court order ought to be.

MR. HUTSON:

And I will do that, Your Honor, but again, please

understand that everything that I just read to you is from these Defendants --

JUDGE NETTLES

Right

MR. HUTSON:

-- and there's a whole bunch of lies in it.

JUDGE NETTLES:

Okay

MR. HUTSON:

Why are they lying?

JUDGE NETTLES:

All right, and just put all of that -- I -- and I promise you that I'm going to take --

MR. HUTSON:

This is

JUDGE NETTLES

-- a considerable amount of time to read all of your -- all of your affidavits and pleadings and I'm going to take into consideration your arguments; does that sound fair?

MR. HUTSON

Yes, sir. I didn't complete but about one-third of my pure evidence, but I'll I'll do as you ask.

JUDGE NETTLES:

All right.

And would y'all like to say anything else?

MR. MURPHY:

Just briefly, and Tim may want to address that. Your Honor, I think the settlement agreement that is reflected in Judge James' order is separate from the settlement agreement directly between Penn America and Mr Hutson, and I know you had the September 16th of '16, that's the Penn America policy values, and the earlier settlement agreement was from 2012 and Judge --

JUDGE NETTLES

2012

MR. MURPHY:

That's right. Judge James entered the order in 2012 and in light of what Mr. Hutson said that he was aware of all of these facts that he spent an hour going through before he even signed the agreement that was then subject to the action that resulted in Judge James' consent order, I don't see how a seven year --

MR. HUTSON:

I never said that

JUDGE NETTLES:

This is his time to talk. I wouldn't let him interrupt you

MR. HUTSON:

Yes, sir

JUDGE NETTLES:

and you don't interrupt him.

MR. MURPHY

And I'll be happy to get a transcript, but he said he knew about the issue before he closed and his attorneys in those Mr Weissenstein was sued; Mr Weissenstein got summary judgment from Judge Curtis recently, so he'll sue anybody and everybody, even if their only thing they did was their name was on a pleading; you noticed he didn't have any phone calls, letters, emails from me because I never talked to him and I never will And also, I would simply say that extrinsic fraud is a legal doctrine to set aside a judgment. I've used it one time before myself It is not a private cause of action, so if the -- if the claim is a failure to report, that's not a private cause of action, an ethical complaint against another attorney, which I strongly, vehemently, disagree that John Wilkerson did anything unethical in representing the parties that sued him, so, he had every opportunity to assert all of that, not once, but twice, because he asserted these same claims in both the federal court class action, they were dismissed with sanctions, he asserted them in the state court defamation claim and they were dismissed as well in that. But the fact that he knew

about all of this back in 2012, what's obvious from the emails that were read to you is that Mr Newton didn't know everything, we know everything now, and we know that when he was trying to cry on Tim's shoulder and act like, you know, I'm the victim here, which was, I think, the first thing he said, he's not the victim at all; he's the perpetrator of all of this against multiple parties, the least of which and last but not least is myself and Mr. Newton So I think the Court needs to be aware of all of that and he had defense counsel to collaterally attack the judgment or to raise that as a defense in the cases, the two cases, that TLC brought against him, that's clear that was the attorneys who represented him at that time I think Ms Paton refused to assert it because it had already been ruled on and it was deemed frivolous and Mr Hutson did it Pro Se anyway and got sanctioned for it. And so to say that somehow Mr. Newton or I had a duty to do that after the fact years later, there's no duty recognized at all in the law for us I understand -- I think that's what he's claiming is that if we became aware of something he knew seven years ago, we should have done something in his behalf and the law doesn't require us to do anything on his behalf or allow him to rely on anything we said or did to him.

JUDGE NETTLES:

And I'm going to ask that you --

MR. HUTSON:

Your Honor, may I respond

JUDGE NETTLES

I'm going to ask --

MR. HUTSON:

-- for one minute?

JUDGE NETTLES:

Just one second.

I'm going to ask that you prepare an order setting forth your position and what the relief you would request

MR. MURPHY

Yes, sir.

MR. STEGMAIER:

Briefly, sir

Of course, as our public entities have recognized on multitudes of occasions, argument here is not evidence Mr -- Mr Murphy did touch on the fact that there are two separate and distinct agreements; the 2016 release, as it relates to Penn America and Mr. Hutson, it can't be aside in this case because there's no allegation that is was procured by fraud and the 2016 release is between Mr. Hutson and Penn America and its affiliates

and agents, which in this case would include Mr Murphy and Mr Newton. But with regard to the 2014 order of Judge James, it all goes back to him, and as we referenced on page 11 of our briefing to this Court, Judge James found, as a matter of law, that the allegations of misstatements or omissions that the underlying property transaction would go to Mr Hutson when he entered into the 2012 settlement agreement between him and TLC Holdings, and so thus he refused to set aside the 2012 consent order and settlement between those parties that released Hutson's claims against TLC.

With regard to what Mr. Hutson had read into the record, these allegations found in the counter-claim in the defamation action in Clarendon County, Mrs Paton was the defense counsel in that case, she answered for him, but did not file the counter-claim, that was Pro Se, that was all Mr. Hutson and his crafting, and Judge Cothran ultimately granted summary judgment as to those counter-claims, the same counter-claims that we're talking about today, that articulated all this extrinsic this extrinsic fraud upon the Court, Judge Cothran found that it was not a colorable claim and dismissed that action. And what's notable about that is by virtue of the fact that he had made that

dismissal, Mr. Hutson talks about going in the trial in Clarendon County, well those matters had already been disposed of by the Court, so there wasn't there wasn't any argument to be made at that point and time in the first time he claimed it

What sir, with regard -- would we be able to prepare a proposed order or should we work in tandem with Mr. Murphy?

JUDGE NETTLES

Well, I think your interests are -- coincide. What would be your preference in that regard, Mr Murphy?

MR. MURPHY:

Since he filed a separate Motion, I think we could do separate orders, but we'll both file proposed orders We could do one order and separate the section, but I think it's easier just to do two orders, if that's okay with you?

JUDGE NETTLES:

I think two orders would be better; that's what I originally envisioned.

Yes, sir, would you like to say anything else?

MR. NEWTON:

Yes, Your Honor Tim Newton. During this time, I was representing Penn America with regard to the declaratory judgment J.R. was the the one of

the cases was originally referred to, but really it was me; J R. had nothing to do with it, other than signing off on the pleadings I just want to point out I mean, just recall that the defenses of, number one, there's no duty here for us to go prosecute TLC for Mr. Hutson. And also, there's no standing because at the time we were representing Penn America, we couldn't we can't assert his claims for him, okay, which is what he was asking us to do But also, I want to point out that there's litigation privilege and settlement negotiation privilege and all this that he's talking about occurred in the context of attempting to negotiate. Mr Hutson, throughout the course of the two and a half years I was involved in the case, continually threatened litigation against Penn America, even after he had already released them. So what I was trying to do was make sure that we didn't give him any reason to, you know, to say that we breached anything, okay. So, we never represented Mr Hutson, but he's talking he asked what the common interests was Well, what he didn't tell you was he came to me and he said I just got this new evidence that all of the property, there were seven or eight parcels over there, all of it was subject to these campground membership agreements and they didn't tell me that in the

settlement agreement Now, if you look at those orders, Judge Baker, Judge Cothran, Judge Norton, all of them said all of the fraud Hutson alleges has to do with his original purchase, so there's no fraud that the settlement agreement was procured by fraud, okay. But now Hutson is saying, I've got this information that all of the -- the whole shooting match was subject to the campground member -- there's these are lifetime memberships so how can you build on property that's subject to these memberships, okay. At that time, Mr Hutson said that he was going to sue Paul Weissenstein, he has sued him, and he handed me this affidavit, he came to our office, handed me this affidavit, Mark Hardy, that he was going he told me he was going to use against Paul Weissenstein and he said, look, I've got, you know, this claim, I was defrauded and what are y'all going to do about it. He was threatening to sue us because we couldn't get an appeal bond while his appeal was pending on the defamation judgment, and he said, look, don't you -- you know, you've seen that there's fraud. If I'm going what I'm going to do, I'm going to file this action to set aside the judgment based on fraud in this court, this new evidence, I've got this affidavit, I'm going to sue the lawyer at the time, so why don't you, Penn

America, join in with me on this Okay, that's -- and I went ahead and just put the emails in there because he withheld that, all right. So, he then what he did was, he tried -- he was trying to set us up because he knew at the time he'd already deposed Susan Stroman in 2015 before we were involved, he knew that all the property wasn't under those settlement those membership agreements He also knew that TLC had moved for summary judgment in the class action and that that Motion got granted, but I didn't have any way of knowing that; we didn't get involved until 2016 So, anyway, after he peppered me with all these emails, and they're in there, they're Exhibit B to my filing, I finally sent him this email and what I was trying to do

I mean, I wanted to make sure that he had whatever information -- this is all non-privileged information, it's all stuff that was hashed out repeatedly in prior cases If you want to go sue TLC, go sue them. I said, I don't represent you. I said, to the extent there's a common interest, because if he could get something set aside and maybe that would undermine the three and a half million dollar judgment, hey, maybe -- maybe it would help us and I -- if you look at paragraphs 1 through 9, this is all -- it basically says it doesn't tell you, there's no way of knowing,

and I don't know, I -- you know, what -- what property over there was subject to these campground membership agreements So, I finally said in paragraph 15, which he read, I can see how you could argue this consent order isn't valid. Then I said if that's an important word, if you were ordered to develop property that was subject to lifetime membership rights, maybe that should have been brought to the Court's attention. Okay, so I'm saying, it's conditional. If you can present me with evidence, or present the Court with evidence, that there was a misrepresentation in that settlement agreement, then, you know, maybe you could get it set aside. I mean, he argued with a against another lawyer, Chip Burn, that it was so obvious that even a layman should have been able to see that if you've got lifetime membership rights on this property you can't develop it and sell it So, what I was just trying to do was make sure that I wasn't hiding anything from him. It's not had nothing to do with our coverage action having to do with him getting sued for defamation, it just had to do with him wanting to try to get this order set aside, and -- so I gave him whatever we had and said, hey, go have at it, essentially; go get yourself a lawyer Then in this letter, and by the way, this letter that he filed

that's attached to his affidavit and those things become part of the pleading, I set it all out; I explained to him, look, you had threatened to sue us because we couldn't get this appeal bond and you told us for a while not to sue, then you turn around -- not to settle, then you turn around and say you want us to settle But anyway, he started to read, he said -- anyway, one thing that I just wanted to point out is he admitted that he didn't know about alleged fraud until recently; so this is in 2018 he comes to me and he claims he has this new evidence that, you know, something -- there was something some impropriety in the settlement agreement in a case we weren't involved in that was six years prior and he wants to go set it aside. I told him eventually, you know, after I kind of looked at it to see if there was any possibility it would help Penn America, I said no, we're not going to do that, okay. So, then we settled the case. We could not find any extrinsic fraud. He's never yet presented any evidence that all the campground property was subject to the membership. I deposed TLC and I asked them that question and they said no He knows, he deposed the realtor at the time; she said no. TLC represented and got summary judgment; no. So, he -- there was seven or eight parcels. He could have

developed some and then kept the campground on the rest, but he told me -- he misrepresented the facts to me and when you know, I'm kind of, you know to be honest, it kind of made me mad. If, in fact, he was ordered to do something that he could not have done and they misrepresented to the Judge, well, okay, then why -- you know, he has the right, he still has the right today, to go do that, but instead he's trying to turn that around on me. But there's nothing in that email, it's his Exhibit 4 0, 4 1 through 3, I guess, there's nothing in there that admit -- where I say admit, I know there was fraud; I'm just saying that based on what you're telling me that all of this campground property I mean, all the property he bought was campground property subject to lifetime memberships, then if that wasn't brought to the Court's attention at the time, then maybe maybe there was a problem; go hire a lawyer and have at it So, I'm not saying that really because I think that it -- it's necessary for any legal defense we have; I'm only saying that really because he's calling me a liar and I you know, a lot of this stuff he said is not true. Of course, we're not here to, you know, hash that out, but I did not tell him at any time that the whole thing was fraudulent. When we were in the course of settlement

negotiations and there was a common interest in trying to -- you know, if he could get that set aside and they would help us in our settlement with the coverage action of that defamation judgment, hey, you know, that would be potentially beneficial for both of us. He can hire a lawyer and go do it So, I'm just just wanted to see if there was anything else He filed Exhibit 31 to one of his -- his filing, I think it was his affidavit, and you can see that he made the same demands of TLC, but he didn't sue them; instead -- these are the people that he claims defrauded him; instead, he turns around and sues us claiming that we knew, and he tries to use my letter responding to his false representation, as as somehow, you know, the reason why he has a right to sue us So, again, I you know, all of this has been ruled upon The only possible thing he could say is that if he could come up with evidence that he was fraudulently induced to come into -- to enter into this settlement agreement, I've never seen anything, and that's in my briefing, you know. He already he had information that it was false anyway, but for him to then call the thing is, is just that he he has made materially false representations that he did not know about these membership agreements in every single case; he's doing

it again in this case And then he's turning around and calling me a liar. So that's all Thank you, Your Honor.

JUDGE NETTLES

All right, I'm going to ask each of you to forward to me a proposed order. And Mr Hutson, it might be easier if you were to submit an original -- well, I don't know whether you have email; would it be better for you to email it to me or mail me your proposed --

MR. HUTSON:

I can email it. I don't have your email Maybe I do have it Maybe -- I'm not sure.

JUDGE NETTLES

Are you talking about my email?

MR. HUTSON:

Yes, sir

JUDGE NETTLES

Oh, yes, I'll give that to you; it's mnettlesj@sccourts.org.

MR. HUTSON:

Your Honor, may I have one minute to respond to the three of them?

JUDGE NETTLES

All right, you've got one minute.

MR. HUTSON:

All right, sir

He says that I'm not telling the truth. He writes the letter, then he turns around and writes another letter three months later saying that he never talked about fraud upon the Court, when he himself wrote the letter, both letters; that's a flat out lie. He -- I don't care how he tries to deny that, that's a flat out lie, one Two, why would they -- why would they try to trick me into going over and facing a jury trial when they know up front that there's extrinsic fraud going on? They can't win it and they didn't win it.

JUDGE NETTLES:

I understand your position Thank you very much.

MR. MURPHY:

Your Honor, do you want us to send -- not file the proposed orders, but just send them directly to you and share them with Mr. Hutson? I wasn't clear; earlier you said --

JUDGE NETTLES

I think probably the better thing to do would be just to email me your proposed order --

MR. MURPHY

Yes, sir.

JUDGE NETTLES

-- and whichever one -- I'm probably going to look at

those and make reference to those and I might use some of them in their entirety and might modify some of them, so

MR. MURPHY:

Yes, sir

JUDGE NETTLES

-- I'll do that All you have to do is just send me what your proposed order will be

MR. MURPHY:

Yes, sir,

JUDGE NETTLES

-- and then it will be I will do what's necessary to download an e-file.

MR. MURPHY

Thank you, Your Honor.

JUDGE NETTLES:

Thank you.

(This hearing concluded at 11 14 a.m.)

Certificate of Reporter

I, Karen E. Holley, a Notary Public in and for the state of South Carolina, do hereby certify that the foregoing 63 pages represents a true and accurate transcript of the hearing that was held in Richland County before the Honorable Judge Michael Nettles on the 26th day of June, 2019

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action

Karen E Holley

Karen E. Holley, CVR-M

Notary Public for S.C.

Commission expires 4/11/2027

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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.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Amended Record on Appeal contains all material proposed to be included by any of the parties and not any other material, nor any material believed to be immaterial to this Record on Appeal, to the best of my knowledge.

Submitted this 20th day of February, 2021, by:

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