

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas
Judge Robert Hood, Fifth Circuit

Case # 2020-CP-400-3810

Appellate # 2020-001708

RECORD ON APPEAL

BINDER 3 of 6

Penn America Insurance Company and Global Indemnity
Group, LLC, Plaintiffs/Counter Defendants,

v.

Morris Beach Hutson a/k/a M.B. Hutson, Defendant/Counter-Plaintiff,

AND

Morris Beach Hutson a/k/a M. B. Hutson, Third Party Plaintiff,

v.

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

of whom Morris Hutson is the Appellant,

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

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
	)	
Penn America Insurance Company and	)	C.A. No: 2020-CP-40-03810
Global Indemnity Group, LLC,	)	
	)	
Plaintiffs/Counter-Defendants,	)	
	)	
vs.	)	PENN AMERICA INS. CO.,
	)	GLOBAL INDEMNITY GROUP, LLC,
Morris Beach Hutson a/k/a M.B. Hutson,	)	CHRISTIAN STEGMAIER, ESQ. AND
	)	COLLINS & LACY P.C.'S
Defendant/Counter-Plaintiff.	)	AMENDED
	)	MOTION TO STRIKE DEFENDANT'S
	)	"NOTICE OF EXTRINSIC FRAUD" AND
Morris Beach Hutson a/k/a M.B. Hutson	)	"MEMORANDUM TO DEFENDANT'S
	)	AMENDED CROSS COMPLAINT" AND
Third-Party Plaintiff,	)	REQUEST FOR SANCTIONS
	)	AND
vs.	)	MEMORANDUM IN SUPPORT
	)	
Timothy J. Newton, Esq.; Murphy &	)	
Grantland, P.A.; Christian Stegmaier, Esq.;	)	
and Collins & Lacy P.C.,	)	
	)	
Third-Party Defendants.	)	
	)	

TO: MORRIS BEACH HUTSON A/K/A M.B. HUTSON, *PRO SE*
DEFENDANT/COUNTER-PLAINTIFF/THIRD-PARTY PLAINTIFF:

MOTION TO STRIKE

Plaintiff/Counter-Defendant Penn America Insurance Company ("PAIC"),
Plaintiff/Counter-Defendant Global Indemnity Group, Inc. ("Global"), Third-Party Defendant
Christian Stegmaier, Esq. ("Stegmaier"), and Third-Party Defendant Collins & Lacy P.C. ("Collins
& Lacy") (collectively "these Counter-Defendants and Third-Party Defendants"), move for an
Order striking Defendant/Counter-Plaintiff/Third-Party Plaintiff Morris Beach Hutson a/k/a M.B.

Hutson's ("Hutson") "Notice of Extrinsic Fraud" and "Memorandum to Defendant's Amended Cross Complaint," which were received on September 16, 2020,¹ and imposing Rule 11 sanctions.

The grounds for the instant Motion are that Hutson's filings are not in compliance with the South Carolina Rules of Civil Procedure regarding format and content, as discussed more fully in the following Memorandum.

MEMORANDUM IN SUPPORT OF MOTION TO STRIKE

FACTS/PROCEDURAL BACKGROUND²

Global is the parent company of PAIC, a member of Penn-America Group, which offers specialty property and casualty products designed for small businesses. PAIC issued commercial general liability (CGL) policy number PAC7045167 to "BWR, Inc. d/b/a Big Water Resort" as the named insured ("the Policy"). The Policy was in effect from October 16, 2013 through April 7, 2014. Hutson was the principal in BWR, Inc., a now defunct corporation.

Pursuant to the Policy, PAIC provided a defense and indemnity to Hutson in two lawsuits, known as the Class Action and the Defamation Action, in which claims were raised against him by TLC Holdings, LLC. Hutson purchased the certain land and the outstanding membership interests in The Big Water Resort, LLC from TLC Holdings in December 2010.

Hutson is convinced that he was defrauded in the original land deal. Following 2014 proceedings to evict Hutson from the property, the court found that any such claims against TLC Holdings were Released pursuant to a 2012 Settlement Agreement and Consent Order. Hutson

¹ At the time of this filing, neither of these documents are reflected as filed on the Richland County Public Index. However, we understand that limited on-site staffing during the COVID-19 pandemic has led to delays in processing mailed and hand-filed documents.

² A complete factual background is provided in Plaintiff's Complaint in this action. (See Compl., ¶¶9-97).

unsuccessfully pursued *pro se* counterclaims against TLC Holdings in the Class Action and the Defamation Action.

Hutson seems to think that if the insurance company had assisted in pursuit of his counterclaims, the outcome would have been different, and Hutson would have been entitled to millions of dollars in compensation from TLC Holdings. Thus, despite resolution of the claims against Hutson in both lawsuits without any personal liability to Hutson, Hutson initiated a lawsuit against PAIC, Global, and their coverage counsel, Timothy Newton and J.R. Murphy in December 2018. (See Hutson v. Penn America Ins. Co., et al., Case No. 2018-CP-40-06344 (Richland Cnty. Comm. Pleas) (“the Bad Faith Action”). Following a hearing, the lower court entered Orders granting the dispositive motions of the defendants and disposing of all of Hutson’s claims. Hutson appealed.

Procedural History

The instant action was initiated with the filing of a Complaint by PAIC and Global on August 10, 2020, seeking temporary and permanent injunctive relief due to Hutson’s history of frivolous and vexatious litigation and continued threats of future litigation. Specifically, PAIC and Global seek an Order prohibiting Hutson from initiating any *pro se* litigation before a state court in South Carolina, without first obtaining leave of Court, against Penn America Insurance Company, Global Indemnity Group, Inc., or any of their officers, agents, servants, employees, attorneys, affiliates, successors and assigns.

On August 17, 2020, Hutson responded with the filing of a “Cross Complaint” and “Motion for Temporary and Permanent Injunction,” which he amended on August 26, 2020. The operative filing asserts counterclaims against PAIC and Global and the filing of third-party claims against Timothy Newton, Murphy & Grantland, P.A., Christian Stegmaier, and Collins & Lacy, P.C.

On September 15, 2020, Third-Party Defendants Timothy Newton and Murphy & Grantland, P.A. filed a Motion to Dismiss, or in the alternative, Motion for Summary Judgment with respect to Hutson's third-party claims against them.

On September 16, 2020, these Counter-Defendants and Third-Party Defendants filed a Motion to Stay, or in the Alternative Strike, or in the Alternative Dismiss Hutson's Amended Counterclaims and Third-Party Claims and Motion for Temporary and Permanent Injunction.

Also, on September 16, 2020, Hutson served a "Notice of Extrinsic Fraud" and "Memorandum to Defendant's Amended Cross Complaint." These filings are the subject of the instant motion to strike.

On September 18, 2020, Hutson served a copy of what he titled "Defendant's Answers to Plaintiff's Fraudulent Complaint." This filing is addressed in a separate Motion to Strike filed contemporaneously herewith.

Applicable Law

Rule 7 of the South Carolina Rules of Civil Procedure provides for the specific pleadings permitted in a civil action and that an application to the court for an order be by written motion stating with particularity the grounds therefor and the relief or order sought. Rule 7(a)-(b)(1), SCRCP. "The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules." Rule 7(b)(2), SCRCP.

Rule 11 of the South Carolina Rules of Civil Procedure further provides that “[t]he written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.” Rule 11(a), SCRPC. With respect to violations of Rule 11, it further provides:

If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney’s fee.

Id.

Finally, Rule 12(f) of the South Carolina Rules of Civil Procedure provides for Motions to Strike pleadings, stating:

Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court’s own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

Rule 12(f), SCRPC.

“It is well settled that a motion to strike is addressed to the sound discretion of the trial court.” Totaro v. Turner, 273 S.C. 134, 135, 254 S.E.2d 800, 801 (1979).

LAW/ANALYSIS

Hutson’s “Notice of Extrinsic Fraud” is not a proper pleading or motion. The “Notice” states that “fraud is presently being perpetrated upon the Honorable Common Pleas and the Court of Appeals, its Judges, and on this Defendant by all the Plaintiffs/Third Party Defendants,” who he then lists. Because of the way in which the document was delivered, it is unclear whether

Hutson also attached a copy of an August 13, 2018 e-mail that Newton sent to him. This e-mail was presented to the lower court in the Bad Faith Action and was included in the designation for inclusion in the Record on Appeal in the appellate case. At the time Newton wrote that e-mail, he was not yet aware of the evidence that Hutson knew full well that the lifetime memberships related to the campground would not prevent him from developing at least some areas of property. Because Newton was merely coverage counsel for PAIC, he was under no obligation to further investigate but encouraged Hutson to do so. Thus, this e-mail does not evidence that any party to this action has knowledge of extrinsic fraud, has refused to expose extrinsic fraud, or is part of a conspiracy to cover-up and perpetuate extrinsic fraud.

Hutson's "Memorandum to Defendant's Amended Cross Complaint" is likewise not a proper pleading, motion, or memorandum in support of a motion. In Hutson's "Memorandum," he first cites a portion of Rule 3.3 of the Rules of Professional Conduct and portions of Newton's August 13, 2018 e-mail. Hutson then repeats his allegations that the PAIC, Global, Stegmaier, Collins & Lacy, Newton, and Murphy & Grantland all knew about TLC Holding's fraud, are illegally protecting one another, and failed to disclose the fraud to any court.

Hutson's "Memorandum" further cites to 77 paragraphs of a pleading filed by Laura Paton in the Defamation Action. What Hutson fails to disclose is that these paragraphs are actually part of the Pro Se Counterclaims in that action, which were signed only by Hutson and not by attorney Paton. (See **Exhibit A**, attached hereto, Answer to Amended Complaint and Pro Se Counterclaims Back (accompany exhibits not included), filed Dec. 16, 2016, Case No. 2015-CP-14-0615). On December 13, 2016, Hutson submitted a pro se filing in support of his counterclaims. (See **Exhibit B**, attached hereto, Response by Defendant, filed Dec. 20, 2016, Case No. 2015-CP-14-0615).

In granting summary judgment in favor of TLC Holdings, the trial court found that “Hutson has release Plaintiffs from liability for any actions, whether known or unknown, that they took (or failed to take) prior to December 11, 2013,” as was confirmed in two prior orders. (See **Exhibit C**, attached hereto, Judge Cothran’s Order Granting Summ. Jmt, entered Mar. 2, 2017, Case No. 2015-CP-14-0615, at p. 9). The Order goes on to describe that Hutson contended that the Settlement Agreement was unenforceable because of fraud but that he failed to allege or support such an allegation, focusing instead only upon fraud in the original transaction. (*Id.* at pp. 10-12). Additionally, Hutson’s defamation claim against TLC Holdings was raised via counterclaim in the Class Action and disposed of because the statements complained of were true. (*Id.* at p. 10, n.5). In sum, Hutson’s counterclaims against TLC Holdings were lost because of the doctrine of res judicata and because of the lack of evidence to support any additional allegation of fraud against them.

Nonetheless, Hutson’s “Memorandum” complains that these Counter-Defendants and Third-Party Defendants “refused” to expose fraud and improperly rely upon the rulings in the related cases. Hutson further hurls more accusations of obstruction of justice and defamation and contends he has lost millions of dollars.

In sum, Hutson’s “Notice” and “Memorandum” continue to make malicious allegations of criminal and professional misconduct are impertinent and scandalous. Moreover, neither filing is a proper pleading, motion, or memorandum under our Rules. Accordingly, the Court should strike Hutson’s “Notice of Extrinsic Fraud” and “Memorandum to Defendant’s Amended Cross Complaint” filed in this action.

The Counter-Defendants and Third-Party Defendants further request the imposition of sanctions, as Rule 11 provides that a signing party certifies that “to the best of his knowledge,

information and belief there is good ground to support” a paper he files with the Court. See Rule 11(a), SCRCP. “A court imposing sanctions under Rule 11 should, in its order, describe the conduct determined to constitute a violation of the Rule and explain the basis for the sanction imposed.” Ex parte Gregory, 378 S.C. 430, 438, 663 S.E.2d 46, 50 (2008) (citing Runyon, 322 S.C. at 19, 471 S.E.2d at 162). The primary purpose of Rule 11 is to deter future litigation abuse. Pee Dee Health Care, P.A. v. Estate of Thompson, 424 S.C. 520, 533, 818 S.E.2d 758, 765 (2018) (citing In re Kunstler, 914 F.2d 505, 522 (4th Cir. 1990)). However, there are additional purposes, including compensating the victims of the Rule 11 violation, punishing present litigation abuse, streamlining court dockets and facilitating court management. Id. As discussed *supra*, there is no good ground to support the accusations made by Hutson in the “Notice” or “Memorandum.” Accordingly, striking of the filings, imposition of monetary sanctions, and an award of attorney’s fees are just and proper.

CONCLUSION AND REQUEST FOR HEARING

Based on the foregoing, these Counter-Defendants and Third-Party Defendants respectfully request that this Court grant their Motion to Strike Defendant’s “Notice of Extrinsic Fraud” and “Memorandum to Defendant’s Amended Cross Complaint” and Request for Sanctions.

These Counter-Defendants and Third-Party Defendants respectfully request argument on their motion. These Counter-Defendants and Third-Party Defendants reserve the right to amend this motion prior to argument and disposition of the motion. Further, These Counter-Defendants and Third-Party Defendants reserve the right to supplement its argument by an additional written memorandum of law, affidavits, and other materials permitted under the South Carolina Rules.

Respectfully submitted,
COLLINS & LACY, P.C.

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ATTORNEYS FOR PLAINTIFFS PENN
AMERICA INS. CO. AND GLOBAL
INDEMNITY GROUP, LLC, AND FOR
THIRD-PARTY DEFENDANTS
CHRISTIAN STEGMAIER, ESQ. AND
COLLINS & LACY P.C.

**PENN AMERICA INS. CO., GLOBAL
INDEMNITY GROUP, LLC,
CHRISTIAN STEGMAIER, ESQ. AND
COLLINS & LACY P.C.'S AMENDED
MOTION TO STRIKE DEFENDANT'S
"NOTICE OF EXTRINSIC FRAUD"
AND "MEMORANDUM TO
DEFENDANT'S AMENDED CROSS
COMPLAINT" AND REQUEST FOR
SANCTIONS AND MEMORANDUM IN
SUPPORT THEREOF**

Columbia, South Carolina
September 30, 2020

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CLARENDON	)	CASE NO.: 2015-CP-14-0615
	)	
TLC HOLDINGS, LLC, RICHARD CLARK,	)	
AND JIMMY S. LOVELL,	)	
	)	
Plaintiffs,	)	ANSWER TO AMENDED COMPLAINT
	)	AND PRO SE COUNTER-CLAIMS
vs.	)	BACK
	)	(JURY TRIAL REQUESTED)
M.B. HUTSON A/K/A M.B HUDSON,	)	
	)	
Defendant	)	
	)	
vs.	)	
	)	
JOHN DOE CORPORATIONS	)	
	)	

COMES NOW, Defendant M.B. Hutson a/k/a M.B. Hudson, (hereinafter “Defendant”) by and through its undersigned attorneys, and hereby answers Plaintiffs TLC Holdings, LLC, Richard Clark, and Jimmy S. Lovell (hereinafter collectively “Plaintiffs TLC”)’s Complaint and Defendant M.B. Hutson a/k/a M.B. Hudson, pro se, files these counter-claims back. Any allegation not expressly admitted herein is denied.

1. Responding to Paragraphs 1 through 3 of the Plaintiffs’ Complaint, the allegations contained therein are, upon information and belief, admitted.

2. Responding to Paragraph 4 of Plaintiffs’, Defendant admits so much as alleges he is temporarily residing in Orangeburg County, South Carolina, however, still retains resident contacts in Tennessee.

3. Responding to Paragraph 5 of Plaintiffs’ Complaint, the allegations therein are denied as stated.

4. Responding to Paragraph 6 of Plaintiffs' Complaint, the allegations contains legal conclusions to which this Defendant is not required to admit or deny.

FACTUAL ALLEGATIONS

5. Responding to Paragraphs 7 and 8 of Plaintiffs' Complaint, those allegations are, upon information and belief, admitted.

6. Responding to Paragraph 9 of Plaintiffs' Complaint, Defendant admits so much as alleges that Defendant entered into a lease-purchase agreement and promissory note with certain of the Plaintiffs. As for the terms and dates of the lease-purchase agreement and promissory note, Defendant craves references to the documents themselves. Further responding, Defendant denies that the parties had a meeting of the minds as to the underlying agreement (s) and reserves the right to contest the validity of any agreement(s). To the extent Paragraph 9 alleges any wrongdoing on the part of the Defendant, those allegations are expressly denied.

7. Responding to Paragraph 10 of Plaintiffs' Complaint, Defendant admits so much as reiterates language in the lease-purchase agreement, to which Defendant craves reference. Further responding, Defendant denies that the parties had a meeting of the minds as to the underlying agreement (s) and reserves the right to contest the validity of any agreement(s). To the extent Paragraph 10 alleges any negligence or wrongdoing of the Defendant, those allegations are expressly denied.

8. Responding to Paragraph 11 of Plaintiffs', the allegations contained therein are, upon information and belief, admitted.

9. Responding to Paragraph 12, the allegations therein are, upon information and belief, denied as stated.

10. Responding to Paragraph 13, Defendant admits so much as alleges that subsequent to execution of the agreements referenced herein, he was engaged in the operation of the Big Water Resort Campground.

11. Responding to Paragraph 14 of Plaintiffs' Complaint, Defendant craves reference to the pleadings and documents filed in the referenced action. To the extent Paragraph 14 or the pleadings themselves express or allege any negligence or wrongdoing of the Defendant, those allegations are expressly denied.

12. Responding to Paragraph 15 of Plaintiffs' Complaint, Defendant craves reference to the terms of the pleadings and documents referenced therein. Further responding, Defendant denies any duty other than those imposed by law, statute, or binding contract. Further responding, Defendant denies any meeting of the mind as to the terms of the Settlement Agreement and reserves the right to contest such document. To the extent Paragraph 15 alleges any negligence or wrongdoing of the Defendant, those allegations are expressly denied.

13. Responding to Paragraphs 16 and 17, Defendant admits so much as alleges counsel for Clark, Lovell and TLC Holdings made communications regarding their position(s) as to the lease purchase agreement and pleadings. Further responding, to the extent that Paragraphs 16 or 17 express or imply any wrongdoing on the part of Defendant those allegations are denied as stated.

14. Responding to Paragraph 18 of Plaintiffs' Complaint, Defendant admits so much as alleges on or about December 18, 2013 postcards were sent, craves reference to the postcards, the terms of which speak for themselves, and denies any allegation inconsistent therewith. To the extent Paragraph 18 alleges or implies any wrongdoing on behalf of Defendant, those allegations are expressly denied.

15. Responding to Paragraph 19, Defendant admits so much as alleges he tried to avoid eviction from Big Water Resort Campground. To the extent Paragraph 19 alleges or implies any wrongdoing on behalf of Defendant, those allegations are expressly denied.

16. Responding to Paragraph 20, there is no exhibit attached and, therefore, Defendant is without sufficient information to respond to the allegations therein. To the extent Paragraph 20 alleges or implies any wrongdoing on behalf of Defendant, those allegations are denied.

17. Responding to Paragraph 21, admits so much as refers to pleadings filed with the Court, the contents and procedural posture of which speak for themselves. Further, there is no exhibit attached to these pleadings and, therefore, Defendant is without sufficient information to further respond to Paragraph 21. To the extent Paragraph 21 alleges or implies any wrongdoing on behalf of Defendant, those allegations are denied.

18. Responding to Paragraph 22, Defendant admits so much as references the Court's Order, the terms of which speak for themselves. Further responding, Defendant denies that the parties had a meeting of the minds as to the underlying agreement (s) and reserves the right to contest the validity of any agreement(s). Further responding, Defendant admits so much as he has vacated the property. To the extent Paragraph 22 alleges any wrongdoing on behalf of Defendant, those allegations are denied.

19. Responding to Paragraph 23 of Plaintiffs' Complaint, Defendant admits so much as references the pleadings referenced therein the terms of which speak for themselves. To the extent Paragraph 23 or the pleadings themselves allege any wrongdoing on behalf of Defendant, those allegations are expressly denied.

FOR A FIRST CAUSE OF ACTION
(Libel)

20. Paragraph 24 of Plaintiffs' Complaint is a reincorporation paragraph to which the Defendant is not required to respond other than to reiterate its defenses enumerated herein.

21. Responding to Paragraph 25, those allegations are denied

22. Responding to Paragraph 26, Defendant admits so much as alleges that in an effort to prepare a class action, he contacted potential class members and made other such preparations to engage in a suit which was ultimately filed by others in the Federal Court at 2:14-CV-01583-DCN.

23. Responding to Paragraph 27 of Plaintiffs' Complaint, those allegations are denied as stated.

24. Responding to Paragraph 28 of Plaintiffs' Complaint, those allegations are denied.

25. Responding to Paragraph 29 of Plaintiffs' Complaint, those allegations are denied as stated.

FOR A SECOND CAUSE OF ACTION
(Slander)

26. Paragraph 30 of Plaintiffs' Complaint is a reincorporation paragraph to which the Defendant is not required to respond other than to reiterate its defenses enumerated herein.

27. Responding to Paragraph 31, those allegations are denied as stated.

28. Responding to Paragraph 32, Defendant is without sufficient information to respond to the allegations contained in Paragraph 32 and, therefore, denies same. To the extent Paragraph 32 or the pleadings themselves allege any wrongdoing on behalf of Defendant, those allegations are expressly denied.

29. Responding to Paragraph 33, those allegations are denied as stated.

30. Responding to Paragraph 34, those allegations are denied.

31. Responding to Paragraph 35, those allegations are denied.

32. Defendant denies the “Wherefore” clause, including all subparts, constituting the remainder of the Complaint.

33. Each and every allegation not expressly admitted in this Answer is denied.

FURTHERING RESPONDING AS AN AFFIRMATIVE DEFENSE
(Privilege/Truth)

34. Plaintiffs’ defamation cause of action is barred as Defendant’s allegedly defamatory statement was absolutely or, in the alternative, qualifiedly privileged. Further, Defendant’s allegedly defamatory statement was true.

FURTHERING RESPONDING AS AN AFFIRMATIVE DEFENSE
(Statute of Limitations)

35. Plaintiffs may have failed to commence this action within the time required by the applicable statute of limitations, and the failure to timely commence this action constitutes a bar and complete defense to these claims.

FURTHERING RESPONDING AS AN AFFIRMATIVE DEFENSE
(Failure to State a Claim)

36. Plaintiffs' claims are barred by SCRCP 12(b)(6) because the Complaint fails to state facts sufficient to constitute a cause of action.

FURTHERING RESPONDING AS AN AFFIRMATIVE DEFENSE
(Lack of Standing)

37. Some or all of the Plaintiffs may lack standing to assert a cause of action against the Defendant and, therefore, such Plaintiffs and claims should be dismissed.

FURTHERING RESPONDING AS AN AFFIRMATIVE DEFENSE
(Good Faith)

38. Defendant acted reasonably and in good faith in its action with regard to the circumstances described in the Complaint and its interactions with the members and Plaintiffs.

FURTHERING RESPONDING AS AN AFFIRMATIVE DEFENSE
(Negligence, Unclean Hands, Waiver, Acquiescence and Estoppel)

39. Plaintiffs' claims are barred or reduced by Plaintiffs' own negligence, unclean hands, waiver, acquiescence, and/or estoppel.

FURTHERING RESPONDING AS AN AFFIRMATIVE DEFENSE
(Punitive Damages Unconstitutional)

40. That the Complaint, to the extent it seeks punitive or exemplary damages, violates the right of the Defendant for procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina, and therefore fails to state a cause of action upon which either exemplary or punitive damages can be awarded.

FURTHERING RESPONDING AS AN AFFIRMATIVE DEFENSE
(Unclean Hands)

41. That to the extent that the Plaintiffs were negligent, grossly negligent, willful, wanton and reckless, resulting in the damages allegedly sustained by the Plaintiffs, the Plaintiffs come to the Court with unclean hands and such inequitable conduct on the part of the Plaintiffs constitutes a bar and complete defense to any claim for equitable relief in the form of indemnity.

FURTHER RESPONDING AND AS AN AFFIRMATIVE DEFENSE
(Intervening Cause)

42. That whatever injury, damage, and/or loss alleged to have been suffered by the Plaintiffs were a proximate result of the intervening acts or superseding negligence of

individuals, parties, entities or organizations over whom Defendant had no control or responsibility, and for whose actions Defendants are not liable.

FURTHER RESPONDING AND AS AN AFFIRMATIVE DEFENSE
(Fraud, Duress, Unconscionability)

43. To the extent that Plaintiffs now attempt to bring claims against Defendant Hutson, those claims may be voided by fraud, duress, and / or unconscionability.

FURTHER RESPONDING AND AS AN AFFIRMATIVE DEFENSE
(Equitable Estoppel)

44. To the extent that Plaintiffs now attempt to bring claims against Defendant Hutson for their own actions, they are equitably estopped from proceeding against Defendant Hutson.

FURTHER RESPONDING AND AS AN AFFIRMATIVE DEFENSE
(Accord and Satisfaction)

45. Defendant Hutson may have entered into a Settlement Agreement as to claims regarding the subject property which may amount to accord and satisfaction as to Plaintiffs TLC's claims. Defendant Hutson reserves the right to contest the validity of any such document.

FURTHER RESPONDING AND AS AN AFFIRMATIVE DEFENSE
(Statute of Repose)

46. Plaintiffs' claims against Defendant Hutson are or may be barred in whole or in part by the applicable statute of repose.

FURTHER RESPONDING AND AS AN AFFIRMATIVE DEFENSE
(Fraud)

47. Plaintiffs' claims are barred by the affirmative defense of fraud.

FURTHER RESPONDING AND AS AN AFFIRMATIVE DEFENSE
(Fraud in the Inducement)

48. Plaintiffs' claims are barred by fraud in the inducement.

FURTHER RESPONDING AND AS AN AFFIRMATIVE DEFENSE
(12(b)(6))

49. Plaintiffs' claims are barred by SCRCP 12(b)(6) because the Complaint fails to state facts sufficient to constitute a cause of action.

FURTHER RESPONDING AS AN AFFIRMATIVE DEFENSE
(Reservation)

50. Defendant reserves any additional further defenses as may be revealed by additional information during the course of discovery and investigation, and as is consistent with Federal Rules of Civil Procedure, to the extent applicable to the action, and other applicable laws and regulations.

Wherefore, having fully responded to the Complaint, Defendant demands that the Plaintiffs' claims against it be dismissed and that the Court award it costs and fees incurred in defending this matter. Defendant demands a Jury Trial.

Respectfully submitted,

CARLOCK COPELAND & STAIR, LLP

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**FURTHER RESPONDING AND AS COUNTER-CLAIMS AGAINST
TLC HOLDINGS, LLC, RICHARD CLARK, JIMMY S. LOVELL, AND JOHN DOE
CORPORATIONS**

51. Defendant Hutson reasserts and realleges its Answers and Defenses as if restated herein verbatim.

52. That the Court has jurisdiction over the parties and subject matter hereto as the allegations in the present Complaint and the Counter-Claims arise out of transactions regarding land and businesses located in Clarendon County, South Carolina.

53. That on or about 2010, Defendant Hutson was introduced to TLC Holdings, LLC's owners Richard Clark and Steve Lovell (hereinafter collectively TLC parties) by real estate agent Susan Stroman for the purpose of purchasing the land at 5215 Dingle Pond Road, Summerton, SC (hereinafter "the property").

54. That Richard Clark, Steve Lovell, with James Thigpen, owned and operated TLC Holdings, LLC.

55. That Richard Clark and Steve Lovell, with James Thigpen, owned and operated BWR.

56. That Richard Clark and Steve Lovell controlled, owned and operated other corporate entities, hereinafter referred to as "John Doe Corporations", which were created to perform single purpose functions in order to effectuate the sole will of Messrs. Clark and Lovell.

57. That in or around December 2010, Defendant Hutson met with the TLC parties and advised the TLC parties that he sought to purchase the lake-front land at 5215 Dingle Pond Road, Summerton, SC, close the campground currently operating at the property, and develop water-front condominiums on the land.

58. That during the December 2010 meeting the TLC parties advised Defendant Hutson that the property was owned by TLC Holdings and the campground business was owned by Big Water Resort, LLC (“BWR”).

59. That during the December 2010 meeting the TLC parties advised Mr. Hutson that in order to purchase the land, he would be required to purchase BWR as well.

60. That during the December 2010 meeting the TLC parties advised Mr. Hutson that there was water and sewer adjacent to the property for development but failed to disclose the moratorium of approximately 5 years preventing development of the property.

61. That during the December 2010 meeting the TLC parties advised Mr. Hutson that BWR had no known debt.

62. That during or after the December 2010 meeting the TLC parties advised Mr. Hutson that BWR had an annual income of approximately \$200,000.00.

63. That during and after the December 2010 meeting, the TLC parties concealed BWR’s \$300,000 annual losses.

64. That during the December 2010 meeting the TLC parties advised Mr. Hutson that BWR had no accounting records.

65. That during the December 2010 meeting the TLC parties advised Mr. Hutson that the value of BWR was \$500,000 and the value of the land at 5215 Dingle Pond Road, Summerton, SC was \$6 million.

66. That TLC parties and Mr. Hutson negotiated for Mr. Hutson to lease the land with the option to purchase in 12 months for \$6 million or 24 months for \$7 million.

67. That during the December 2010 meeting the TLC parties and Mr. Hutson discussed the length of the Lease Purchase Agreement so that Mr. Hutson would have sufficient time to secure the necessary permits to develop the property.

68. That prior to executing the Lease Purchase Agreement and the Membership Interest Purchase Agreement (hereinafter collectively “the Agreements” attached as Exhibits A and B), Mr. Hutson searched the property title record; no liens or encumbrances were found.

69. That prior to purchase by Mr. Hutson, the TLC parties negotiated with Black River Electric for underground power.

70. That prior to purchase by Mr. Hutson, the TLC parties received, but refused to pay, for the cost of installation of the underground power.

71. That prior to purchase by Mr. Hutson, the TLC parties did not disclose the outstanding bill for installation of underground power encumbering the land and BWR.

72. That subsequent to the December 2010 meeting, the TLC parties and Mr. Hutson executed the Membership Interest Purchase Agreement for BWR and a Lease Purchase Agreement for the property at 5215 Dingle Pond Road, Summerton, SC (hereinafter collectively “the Agreements”).

73. That the Membership Interest Purchase Agreement includes a representation by the TLC parties, “(T)here are no actions, suits, or proceedings either at law or equity ... or to the knowledge of the Sellers threatened.”

74. That the Membership Interest Purchase Agreement includes a representation by the TLC parties that, “Seller represents, warrants and covenants to Purchaser as follows: “(the business is) In compliance with all laws regulations and orders applicable to its business.”

75. That the Membership Interest Purchase Agreement includes a representation by the TLC parties representing that they had “good and marketable title to all of its properties and assets.”

76. That the Lease Purchase Agreement includes representations by the TLC parties ensuring that they have good and marketable title to the land at 5215 Dingle Pond Road, Summerton, SC.

FOR A FIRST CAUSE OF ACTION

(Fraud or, in the Alternative, Negligent Misrepresentation – Failure to Disclose Encumbrances on the Property as to the TLC Parties)

77. That prior to execution of the Agreements, the TLC parties knew that there were approximately 700 “Retail Membership Agreements” encumbering the property.

78. That prior to the execution of the Agreements, the TLC parties knew or should have known that the Retail Membership Agreements are timeshares subject pursuant to South Carolina code and subject to the recording requirements of Sections 27-32-10 through 27-32-250 of the 1976 Code are designated as Article 1 of Chapter 32, Title 27, and entitled 'Vacation Time Sharing Plans'."

79. That the TLC parties knowingly and / or negligently failed to disclose and / or concealed information that the Retail Membership Agreements provided that each holder: 1) a right to use campground facilities, and services solely for members recreational and enjoyment, (emphasis supplied), 2) this right to use the facilities ranges from 5 years up to two life times.

80. That the TLC parties advised Mr. Hutson that the Retail Membership Agreements could be terminated / divested such that he could proceed with development of the property.

81. That the TLC parties knowingly and / or negligently failed to record the timeshares encumbering the property as required by statute and, therefore, hid from disclosure the encumbrances upon the property prior to Defendant Hutson's execution of the Agreements.

82. That the TLC parties had a statutory duty to record the encumbrances pursuant to Sections 27-32-10 through 27-32-250 of the 1976 Code are designated as Article 1 of Chapter 32, Title 27, and entitled 'Vacation Time Sharing Plans'."

83. That Mr. Hutson and his attorney performed title searches with the Clarendon County Register of Deeds prior to purchase and no encumbrances as to the time shares were found.

84. Plaintiffs merely entered into a Lease Purchase Agreement (which had defective title) for the sole purpose of inducing Defendant to precede and purchase the ongoing Big Water Resort for the following reasons:

- a) To obligate Defendant to a hidden 18 million dollar obligation that he had no prior knowledge of to benefit the Plaintiffs;
- b) To relieve the Plaintiffs' from a 70 year (two life times) obligation for the, sole use right, of the TLC owned property which was not disclosed to Defendant;
- c) To relieve the Plaintiffs from continuing to lose \$300,000 per year placing that burden onto the Defendant by misrepresentation; and
- d) To prevent the Plaintiffs from having to file bankruptcy.

85. That as a result of the TLC parties actively, intentionally, knowingly, willfully, wantonly, recklessly, and / or negligently failing to record the timeshares encumbering the property, they knowingly and / or negligently concealed such encumbrances which require disclosure by statute and induced Mr. Hutson to enter into the Agreements.

86. That in relying on the fraudulent representations and / or negligent misrepresentations, Mr. Hutson did materially change his position entering into the Agreements without knowledge of the timeshares believing, as was represented by the TLC parties, that the property was unencumbered.

87. That, as a result of such fraudulent and / or negligent misrepresentations, Mr. Hutson has been damaged, and continues to be damaged, and has suffered pecuniary loss as a direct and proximate result of his reliance on the TLC parties representations.

88. Therefore, as a direct and proximate result of the TLC parties' actions, Mr. Hutson is entitled to actual, direct, consequential, incidental, special, and punitive damages as aforesaid, all in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of same or any other waiver or other limitation are null, void, unenforceable, and subject to rescission as a matter of law.

FOR A SECOND CAUSE OF ACTION
(Fraud, or in the Alternative, Negligent Misrepresentation – Material Misrepresentation as to Financial Position as to the TLC Parties)

89. That prior to execution of the Agreements, the TLC parties advised Mr. Hutson that the value of BWR was \$500,000 and the value of the land at 5215 Dingle Pond Road, Summerton, SC was \$6 million.

90. That prior to execution of the Agreements, the TLC parties advised Mr. Hutson that BWR had an annual income of approximately \$200,000.00.

91. That prior to execution of the Agreements, the TLC parties did not advise Mr. Hutson that BWR was operating at a substantial loss upwards of \$300,000 per year, outstripping its income.

92. That prior to execution of the Agreements, the TLC parties advised Mr. Hutson that BWR had no accounting records.

93. That prior to execution of the Agreements, the TLC parties knew that the operating expenses of BWR exceeded its income.

94. That prior to execution of the Agreements by Mr. Hutson, the TLC parties negotiated with Black River Electric for underground power.

95. That prior to execution of the Agreements by Mr. Hutson, the TLC parties received, but refused to pay, for the cost of installation of the underground power.

96. That prior to execution of the Agreements by Mr. Hutson, the TLC parties did not disclose the outstanding bill for installation of underground power encumbering the land and BWR.

97. That Mr. Hutson had a right to rely, and did rely, on the various representations of the TLC parties' as to the condition of their business and its encumbrances, including, but not limited to, those representations expressly outlined in the Agreements signed by the TLC parties.

98. That the TLC parties actively, intentionally, willfully, wantonly, recklessly, and / or negligently misrepresented and / or concealed the financial condition, including, but not limited to, the operating costs and expenses of BWR, to induce Mr. Hutson to purchase BWR and enter into the Agreements.

99. That the TLC parties actively, intentionally, willfully, wantonly, recklessly, and / or negligently misrepresented and / or concealed the financial condition, including, but not limited to, the annual income of BWR and accounting records of BWR, to induce Mr. Hutson to purchase BWR and enter into the Agreements.

100. That the TLC parties actively, intentionally, willfully, wantonly, recklessly, and / or negligently misrepresented and / or concealed the financial condition, including, but not limited to, the debt owed to Black River Electric, to induce Mr. Hutson to purchase BWR and enter into the Agreements.

101. That as a result of the TLC parties' intentional, active, willful, wonton, and / or reckless and / or negligent misrepresentations and / or concealments, inducing Mr. Hutson to enter into the Agreements, he has suffered irreparable harm including, but not limited to, significant financial harm.

102. Therefore, as a direct and proximate result of the TLC parties' actions, Mr. Hutson is entitled to actual, direct, consequential, incidental, special, and punitive damages as aforesaid, all in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of same or any other waiver or other limitation are null, void, unenforceable, and subject to rescission as a matter of law.

FOR A THIRD CAUSE OF ACTION
(Defamation / Libel Per Se as to the TLC parties)

103. That on or about April 3, 2014, the TLC parties wrote to the members of the Big Water Resort Campground the letter at Exhibit C.

104. That in their correspondence, the TLC parties included untrue statements impugning Mr. Hutson's performance as one-time owner of Big Water Resort.

105. That the TLC parties' correspondence was made with actual and / or implied malice and intended to degrade and reduce the character and / or reputation of Mr. Hutson to others.

106. That as a direct and proximate result of the TLC parties' actions, including, but not limited to, the malicious publication of libelous materials to the members of the Big Water Resort, Mr. Hutson is entitled to actual, direct, consequential, incidental, special, and punitive damages as aforesaid, all in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of same or any other waiver or other limitation are null, void, unenforceable, and subject to rescission as a matter of law.

AS A FOURTH CAUSE OF ACTION AGAINST THE TLC PARTIES
(Breach of Contract Accompanied by a Fraudulent Act, or, in the alternative,
Breach of Contract)

107. That the TLC entities and Defendant Hutson entered into the Agreements as outlined above.

108. That the Agreements contained certain provisions as outlined above including, but not limited to:

- a) Warranties as to good and marketable title to all its properties and assets;
- b) Seller represents, warrants and covenants to Purchaser as follows: . . . further, there are no actions, suits, or proceedings, either at law or equity . . . or to the knowledge of Sellers, threatened;
- c) Seller represents, warrants and covenants to Purchaser as follows: (e.) In compliance with all laws, regulation and orders applicable to its business"

109. That in breach of the afore mentioned Agreements, the TLC entities:

- a) Did not have marketable title and, in fact, such title was encumbered by timeshares;
- b) That a substantial outstanding debt was owed Black Water Electric which could lead to litigation;
- c) That the TLC entities failed to record timeshares as required by statute; and
- d) Other such breaches as may be determined.

110. This constitutes a breach of the Agreements with Mr. Hutson and accompanying this breach was the fraudulent acts:

- a) Knowingly failing to disclose the outstanding debts of BWR, including, but not limited to, Black Water Electric;
- b) Advising Mr. Hutson that no financial records were kept as to BWR to conceal the losses / financial condition of the company;
- c) Failing to record encumbrances required by statute as outlined above;
- d) Advising Mr. Hutson that the Retail Memberships could be divested to allow for development of the lakefront land as discussed; and,
- e) Other such concealments / misrepresentations as may be discovered.

111. The TLC entities either knew or should have known of said defects, all of which proximately caused the damage hereinabove and hereinafter described and entitles Mr. Hutson to punitive damages.

AS A FIFTH CAUSE OF ACTION AGAINST THE TLC PARTIES
(Violation of the South Carolina Unfair Trade Practices Act S.C. Code § 39-5-10, et seq.)

112. The TLC parties and the John Doe Corporations' creation of BWR and the subsequent offering and sale of BWR and the lease-purchase of the property, along with other representations to the holders of the Retail Membership Agreements in BWR, potential purchasers of BWR pre-dating Mr. Hutson's purchase, and the public at large, constituted the conduct of trade and commerce within the meaning of S.C. Code Section 39-5-20(a).

113. The TLC parties and the John Doe Corporations, and each of them, through their acts and omissions including, but not limited to, the following particulars, conducted unfair and deceptive practices within the meaning of S.C. Code Section 39-5-140(a) and 27-31-430, S.C. Code of Laws as amended:

- a) in failing to disclose the Vacation Time Shares encumbering the property;

- b) In failing to record the memberships as required pursuant to Sections 27-32-10 through 27-32-250 of the 1976 Code are designated as Article 1 of Chapter 32, Title 27, and entitled 'Vacation Time Sharing Plans';
- c) In failing to pay and subsequently hiding the debt owed to Black River Electric;
- d) in failing to provide any additional consideration for subsequent attempts to modify their agreement;
- e) in failing to properly disclose the true conditions of the business and properties at issue in the Agreements and putting them into the stream of commerce;
- f) in making false representations as to the condition of the business and properties at issue in the Agreements and/or representations as to the condition of the business and properties at issue in the Agreements in reckless disregard as to the truth of the representations; and
- g) In failing to analyze and preserve reserves for maintenance and operation of the business and concealing same.

114. The conduct of The TLC parties in their ownership and management of TLC Holdings, BWR, and the John Doe Corporations, as described above, was knowing and willful, and the TLC parties knew or should have known that such conduct was a violation of S.C. Code Section 39-5-20 and 27-31-430.

115. Mr. Hutson is a person within the meaning of S.C. Code Section 39-5-140(a) and has suffered actual, direct, and proximate damages as a direct and proximate result of unfair and deceptive acts of the TLC parties, in an amount to be determined by the trier of fact.

116. The aforesaid acts of the TLC parties impact the public interest in that they constituted unfair and deceptive acts and have the potential for repetition and, in fact, occurred at the execution of the Agreements and may continue to occur as the TLC entities engage in other enterprises related to the Retail Memberships and BWR and, as such, are acts which can, have and will affect the public at large by repetition.

117. These unfair and deceptive acts are acts which will affect members of the public, beyond the parties to the above-described transactions, in the form of other consumers who may be injured by purchasing new memberships or other such timeshare that the TLC parties and the John Doe Corporations offer on the land which, upon information and belief, those entities, and / or the amalgamated John Doe Corporations own and operate whereby placing members of the public in danger of harm.

118. Mr. Hutson is entitled to be compensated pursuant to S.C. Code Section 39-5-140(a) for the above-described actual, incidental, consequential, and special damages, as well as costs, interest, and attorney's fees, and to recover three (3) times these damages by reason of the knowing and willful nature of the unfair and deceptive acts by Defendants and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

AS A SIXTH CAUSE OF ACTION

(Amalgamation, Alter Ego Liability and Piercing the Corporate Veil as to the TLC Parties and the John Doe Corporations)

119. The TLC parties, by and through various instrumentalities and alter-egos and other companies to be named at a later date were the original developers and / or operators of BWR.

120. That the TLC parties, with their John Doe Corporations, combined and joined together through various instrumentalities, alter egos, and amalgamated entities, to facilitate to process of developing BWR, encumbering BWR with various debts, and concealing such debts from Mr. Hutson.

121. The TLC parties created and controlled numerous and various entities (hereinafter the John Doe Corporations) to be expressly named at a later date, for the sole purpose of the activities solely relating to development and sale of memberships related to BWR.

122. The TLC parties and the John Doe Corporations created and controlled these sham entities for the sole purpose of enabling it to transact a portion of its business under an alternate corporate guise and to avoid claims such as those set forth herein. These entities, and each of them, were merely a facade for the operations of Messrs. Lovell and Clark to achieve their financial goals and to perpetrate the activities more particularly described herein.

123. The subservient entities in fact manifested no separate interest of their own and that there was an amalgamation of corporate interests, entities, and activities so as to blur the legal distinction between The TLC parties and the John Doe Corporations and the sham corporations, shareholders, officers, agents, partners, employees, assets, and each of them.

124. The TLC parties created entities which were created to perform single purpose functions in order to effectuate the sole will of the TLC parties to perpetuate the acts described herein. Despite the creation of these sham entities and despite the sham entities appearing in name only on some contracts, letters, deeds, and/or other documents, the TLC parties and the John Doe Corporations actively and directly in the activities herein, and in fact put BWR in the stream of commerce.

125. The TLC parties and the John Doe Corporations created and controlled numerous and various John Doe Corporations / corporate entities for the sole purpose of the planning, development, design, construction, management, purchase, sale of memberships, and other activities solely relating to BWR as described more particularly herein.

126. The sham entities established by the TLC parties and / or the John Doe Corporations were and are characterized by one or more of the following: (1) being undercapitalized; (2) failing to observe corporate formalities; (3) failing to pay dividends; (4) Insolvency; (5) Lack(ed) proper records; (6) siphoning of funds by its members and/or affiliates; and (7) was used as a mere facade for the operation of the dominant shareholders, members, associates, and affiliates.

127. Upon information and belief, each shared the same mailing / emailing address, the TLC parties and the John Doe Corporations directly received payment and disbursed payment for obligations relating to the sham entities, the sham entities had no shareholders and/or officers of their own, no separation of accounting and bookkeeping functions, and/or the TLC parties and the John Doe Corporations directly contracted for the sham entities in the name of the TLC parties and the John Doe Corporations.

128. The TLC parties and the John Doe Corporations directed and oversaw the fraudulent / negligent actions described herein.

129. There would exist a broad element of injustice and fundamental unfairness if the acts of the TLC parties, including Messrs. Lovell, Clark, and TLC Holdings, LLC, and the John Doe Corporations, and each of them individually, were not regarded as the acts of one another.

130. At the time BWR and the Lease-Purchase Agreement were offered and placed into the stream of commerce by the TLC parties and the John Doe Corporations, the faulty defects and deficiencies heretofore described were hidden and concealed through the acts and omissions of the TLC parties and the John Doe Corporations.

131. That the TLC parties and the John Doe Corporations, knew or should have known of the existence of the said defects and deficiencies, which were unknown by and / or concealed from Mr. Hutson.

132. These hidden defects, including, but not limited to, defective, un-marketable title and outstanding and oppressive debts, which unbeknownst to Mr. Hutson, rendered the business and the Lease-Purchase Agreement undevelopable and worthless.

133. The resulting actual, incidental, consequential and special damages, and continues to do so through the date of this filing.

134. Mr. Hutson suffered damages and injuries when the TLC parties and the John Doe Corporations put BWR and the properties described in the Lease-Purchase Agreement into the stream of commerce and continue to be damaged and injured through the date of this filing.

135. As a direct and proximate result thereof, the TLC parties and the John Doe Corporations are liable to the Plaintiffs for actual, incidental, consequential, special and punitive damages, all in an amount to be determined by the trier of fact, and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

WHEREFORE, Defendant / Cross-Claimant Hutson respectfully request that this Honorable Court:

- a) Dismiss any and all claims filed by the TLC entities.
- b) Enter judgment in favor of the Defendant / Counter-Claimant Hutson and against all Plaintiffs jointly and severally, in an amount to be determined for actual, incidental, consequential, special, and punitive damages.
- c) Find that the TLC parties and their John Doe Corporations have engaged in unfair trade practices and knowingly did so thereby entitling Defendant / Counter-Claimant Hutson to treble damages.

- d) Award attorneys' fees and costs to the Defendant / Counter-Claimant Hutson; and
- e) Award such other and further relief as the Court may deem just and proper.

Respectfully submitted,

By: s/ M. B. Huston, pro se

M.B. Hutson, Pro Se as to Counter-Claims
803.308.2714

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CLARENDON	)	CASE NO.: 2015-CP-14-0615
	)	
TLC HOLDINGS, LLC, RICHARD CLARK,	)	
AND JIMMY S. LOVELL,	)	
	)	
Plaintiffs,	)	
	)	CERTIFICATE OF SERVICE
vs.	)	
	)	
M.B. HUTSON A/K/A M.B HUDSON,	)	
	)	
Defendant.	)	
_____	)	

I hereby certify that I have this day served a copy of the within and foregoing ***Answer to Amended Complaint and Pro Se Counter-Clams Back*** upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

John S. Wilkerson, III
 Richard S. Dukes, Jr.
 Turner Padget Graham &
 Laney, PA
 Post Office Box 22129
 Charleston, SC 29413
Counsel for Plaintiff

R. Wayne Byrd
 Carlyle R. Cromer
 Turner Padget Graham &
 Laney P.A.
 Post Office Box 2116
 Myrtle Beach, SC 29578
Counsel for Plaintiff

This 14th day of December, 2016.

s/ Amanda Terrien
 Amanda Terrien
 Paralegal to R. Michael Ethridge and
 Laura Paris Paton

EXHIBIT B

STATE OF SOUTH CAROLINA.	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CLARENDON.	)	CIVIL ACTION NO. 2015-CP-14-0615
TLC HOLDINGS, LLC, RICHARD CLARK, AND)	JURY TRIAL DEMANDED	
	)	
PLAINTIFFS,	)	OBJECTION AND
	)	RESPONSE BY DEFENDANT ASKING
VS.	)	
	)	THAT PLAINTIFFS' MOTION BE DENIED
MB HUTSON A/K/A MB HUTSON.	)	
	)	REGARDING DEFENDANT'S
DEFENDANT.	)	COUNTERCLAIMS

COMES NOW MB HUTSON (DEFENDANT) who states the following:

1. Plaintiff's (who owned TLC Holdings, LLC) defrauded Defendant by fraudulently entering into a Lease Purchase Agreement in December 25, 2010, for 108 acres when in fact, Plaintiffs had stated in writing (Big Water Resort Minutes of the meeting, dated January 16, 2009) that they could not sell the property due to long term leases.
2. Plaintiffs deceived and tricked Defendant into buying the Big Water Resort (located on the 108 acres) of which they also owned and needed to rid themselves of same because said business was losing 300 thousand dollars annually and had done so for years.
3. Plaintiffs sold the Big Water Resort to defendant knowing full well that said business could not operate legally for Big Water Resort owned no property, nor did it hold a long term lease on any property.
4. Plaintiffs stated in the sales contract that Big Water Resort, LLC, "Company has good and marketable title to all of its property and assets." In truth, Big Water Resort did not own any property. Consequently, Big Water Resort, LLC had no way to honor some 720 family memberships for 70 years, nor did they have any contractual agreement between TLC Holdings and Big Water Resort for the use of the land which is provable by legal descriptions provided by TLC's Lease Purchase Agreement.
5. Plaintiffs were fully aware that Defendant could never honor the contracts due to defective title and hundreds of thousands of dollars in losses annually.
6. Plaintiffs' sole purpose was to coheres the Defendant into buying a business that:
 - had millions of dollars in undisclosed, long-term debt and obligations,
 - was not solvent, losing some approximate three hundred thousands dollars annually, and
 - did not secure with either the ownership or contractual right to use of any land for two lifetimes.

THEREFORE, Defendant Prays for the following:

1. A hearing be held on all matters
2. This case be set down for a Jury Trial
3. That by way of a Jury Trial Defendant be reimbursed and restitution be made in full for Defendant's millions of dollars lost and other expenses
4. That restitution be provided to Defendant for years of lost work, lost income, and money and time since Defendant is already a senior citizen
5. The Court or by Jury Trial set aside the fraudulent Settlement Agreement Defendant entered into for Plaintiffs cannot hide behind *res judicata* when fraud is involved. Defendant had no idea what he was executing regarding the Settlement Agreement since the fraud was so professionally hid at that time. Defendant only learned the truth in late 2015.

Submitted on this 13th day of December, 2016



MB Hutson Pro Se
803 308 2714
P.O. Box 2755
Orangeburg, South Carolina 29116

I have deposited a copy of this response in the United States mail to Turner Padgett
Cc: Laur Paton

EXHIBIT C

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2015-CP-14-0615

TLC Holdings, LLC, Richard Clark, and
Jimmy S. Lovell,

Plaintiffs,

vs.

M. B. Hutson a/k/a M. B. Hudson,

Defendant.

**ORDER GRANTING
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AS TO
DEFENDANT'S COUNTERCLAIMS**

BEULAH
CLERK OF COURT
CLARENDON COUNTY, SC
2017 MAR 2 PM 059

This matter is before the Court upon the motion of Plaintiffs TLC Holdings, LLC, Richard Clark, and Jimmy S. Lovell for summary judgment as to Defendant M. B. Hutson a/k/a M. B. Hudson's counterclaims. For the reasons set forth below, the Court grants Plaintiffs' motion.

BACKGROUND

This case arises from events related to the Big Water Resort campground ("Big Water"), which is located on the shores of Lake Marion in Clarendon County, South Carolina. Big Water provides campsites, cabins, pools, clubhouse, beach access, boat launch/storage, etc. Big Water began operation in 2003 and memberships were sold from 2003 until sales activities ended in 2010.

Prior to December 31, 2010, the three members of Big Water Resort, LLC,¹ were Richard Clark, Steve Lovell, and James Thigpen. Thigpen served as managing member until June 2008, at which time Steve Lovell became the managing member. In December 2010, Plaintiffs Clark and Lovell, along with Thigpen, sold their membership interests in Big Water Resort, LLC to

¹ Big Water Resort, LLC was the entity that operated the campground.

Defendant M. B. Hutson a/k/a M. B. Hudson, making Hutson the sole member of that LLC. The sales price was \$500,000, of which \$499,990 was payable under a promissory note ("Note") executed by Hutson in favor of Clark, Lovell, and Thigpen. (Ex. A to Plaintiffs' Memorandum in Support of their Motion for Summary Judgment.) At the same time, TLC Holdings, LLC, Clark, Lovell, and Thigpen entered into a lease-purchase agreement ("Lease-Purchase Agreement") with Hutson, under which TLC Holdings, Clark, Lovell, and Thigpen agreed to sell certain property to Hutson. (Ex. B to Plaintiffs' Memorandum.) This property included the land on which the Big Water Resort campground was located. Hutson also executed a pledge agreement in favor of Clark, Lovell, and Thigpen as security for the transaction. (Ex. C to Plaintiffs' Memorandum, Pledge Agreement.) Hutson ultimately defaulted on both the Note and the Lease-Purchase Agreement.

In December 2011, TLC Holdings, LLC instituted an action in Clarendon County Court of Common Pleas against Hutson for breach of contract, seeking damages and ejectment. (Ex. D to Plaintiffs' Memorandum, State Court Summons and Complaint.) Hutson answered and asserted several counterclaims against TLC Holdings and also filed a third-party complaint against Clark, Lovell, and Thigpen. (Ex. E to Plaintiffs' Memorandum, Hutson Answer and Third-Party Complaint.) On March 30, 2012, the parties to the Lease-Purchase Agreement (TLC Holdings, LLC, Clark, Lovell, Thigpen, and Hutson) entered into a Settlement Agreement. (Ex. F to Plaintiffs' Memorandum, Settlement Agreement.) The terms of the Settlement Agreement imposed many duties on Hutson, including the duty to make certain improvements to the campground property and the duty to make certain payments to Plaintiff TLC Holdings, LLC. The Settlement Agreement provided, in part, that a breach by Hutson would terminate the Lease-Purchase Agreement, would require Hutson to vacate the property, and would operate as a

release by Hutson of any and all claims he had against Plaintiffs, whether or not alleged in that lawsuit. *Id.* Hutson was represented by counsel in connection with the negotiation of the settlement agreement. The Settlement Agreement was approved by, and incorporated into, a consent order signed by the Honorable George C. James, Jr. in April 2012 (Ex. G to Plaintiffs' Memorandum, Consent Order).²

By December 31, 2012, Hutson had breached the Settlement Agreement in numerous respects. (Ex. H to Plaintiffs' Memorandum, Judge James' Order, p. 4.) Counsel for Clark, Lovell, and TLC Holdings notified Hutson in February 2013 that he was in default of the Lease-Purchase Agreement and Settlement Agreement. (Ex. I to Plaintiffs' Memorandum, Feb. 2013 Default Letter.) Hutson did not cure the defaults. (Ex. H to Plaintiffs' Memorandum, p. 5.)

TLC Holdings, LLC sent Hutson another default letter in December 2013, notifying him that he had failed to cure the defaults outlined in the February 2013 default letter and that they would proceed with filing an affidavit of default. (Ex. J to Plaintiffs' Memorandum, Dec. 2013 Default Letter.) TLC Holdings subsequently filed the affidavit of default, which was signed by Clark. (Ex. K to Plaintiffs' Memorandum, Affidavit of Default.) In response, Hutson filed a motion in Clarendon County Court of Common Pleas to set aside the affidavit of default and a motion for a temporary restraining order against TLC Holdings, LLC. (Ex. L to Plaintiffs' Memorandum, Motion to Set Aside Affidavit; Ex. M to Plaintiffs' Memorandum, Motion for TRO.) The court granted the temporary restraining order, which prevented TLC Holdings from pursuing further proceedings arising from its issuance of an affidavit of default.

² Because Clark, Lovell, and Thigpen were not made parties to that action due to Hutson's failure to serve them in that action, the Consent Order was between only TLC Holdings, LLC and Hutson. (Ex. G to Plaintiffs' Memorandum, p. 2.) Clark, Lovell, and Thigpen were parties to the Settlement Agreement, however.

A hearing on these motions was held on January 8, 2014 before Judge James. During or immediately prior to this hearing, which Hutson did not attend, Hutson filed a Chapter 11 bankruptcy petition, which automatically stayed the state court proceedings. (Ex. H to Plaintiffs' Memorandum, p. 6.) In February 2014, the Bankruptcy Court granted relief to TLC Holdings, LLC from the automatic stay so that Judge James could determine whether Hutson had any interest in the property that is the subject of the Lease-Purchase Agreement, as of the date of filing the bankruptcy petition. (Ex. H to Plaintiffs' Memorandum, p. 6.)

After a hearing on March 6, 2014, regarding these issues, Judge James issued an order on March 20, 2014, in which he declined to set aside the affidavit of default or issue a preliminary injunction and ruled that the March 2012 Settlement Agreement and April 2012 Consent Order should be enforced. (Ex. H to Plaintiffs' Memorandum, pp. 8-9.) Specifically, he ordered that the Lease-Purchase Agreement was terminated and that Hutson was required to vacate the property. (Ex. H to Plaintiffs' Memorandum, pp. 9-10.) Hutson vacated the property in late March 2014.

In the midst of TLC Holdings' efforts to evict Hutson from the property, he made numerous statements about Plaintiffs, which statements Plaintiffs allege are defamatory, including mailing a postcard to hundreds of current and former campground members asserting that they, along with him, were victims of a scam perpetrated by Plaintiffs. These allegedly defamatory statements led to the initiation of the instant case.

Following Hutson's allegedly defamatory statements, a group of campground members filed a putative class action in federal court against TLC Holdings, Richard Clark, Jimmy Lovell, and other parties,³ alleging a variety of claims.⁴ Those defendants then filed a third-party

³ William Reed, et al. v. Big Water Resort, LLC, et al. (D.S.C. 2:14-cv-01583).

complaint against Hutson, alleging a claim for equitable indemnity. In response, Hutson asserted a variety of counterclaims, including breach of contract, fraud, misrepresentation, negligence, and defamation. *See Ex. 1, Hutson Answer & Counterclaims, Reed Case.* TLC, Clark, Lovell, and the other third-party plaintiffs moved for summary judgment as to Hutson's counterclaims on the basis that they were barred by the doctrine of *res judicata*. Magistrate Judge Mary Gordon Baker agreed, finding that Hutson had released his claims against the third-party plaintiffs and that Hutson's claims were precluded by Judge James' Order. (Ex. N to Plaintiffs' Memorandum, Judge Baker's Report and Recommendation.) District Judge David C. Norton then issued an Order adopting Judge Baker's R&R and granting third-party plaintiffs' motion. (Ex. O to Plaintiffs' Memorandum, Judge Norton's Order.)

Returning focus to the instant case, Hutson, acting pro se, asserted counterclaims against Plaintiffs. These counterclaims consist of the following:

- Fraud / Negligent Misrepresentation
- Defamation / Libel Per Se
- Breach of Contract / Breach of Contract Accompanied by a Fraudulent Act
- Violation of the South Carolina Unfair Trade Practices Act
- Amalgamation / Alter Ego / Piercing the Corporate Veil

Plaintiffs then filed the motion at hand, asking this Court to grant their motion for summary judgment on these claims.

LEGAL STANDARD

A trial court may properly grant summary judgment when "the pleadings, depositions,

⁴ TLC Holdings, Clark, Lovell, and the other defendants in that matter ultimately defeated the plaintiffs' attempts to certify a class and also succeeded in getting certain causes of action dismissed. The parties then reached a settlement agreement, which was approved by the district court.

answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCPP. In determining whether any triable issues of fact exist, the Court must view the evidence and all reasonable inferences that may 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 (2000).

Once the party moving for summary judgment meets its initial burden of showing a lack of genuine issue of material fact, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Bravis v. Dunbar*, 316 S.C. 263, 265, 449 S.E.2d 495, 496 (Ct. App. 1994). Rather, the nonmoving party must set forth or point to specific facts showing that there is a genuine issue for trial. *Id.*

DISCUSSION

The doctrine of *res judicata* “bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties.” *S.C. Pub. Interest Found. v. Greenville County*, 401 S.C. 377, 385, 737 S.E.2d 502, 506 (Ct. App. 2012) (citation and internal quotation marks omitted). “Res judicata may be applied if (1) the identities of the parties are the same as in the prior litigation, (2) the subject matter is the same as in the prior litigation, and (3) there was a prior adjudication of the issue by a court of competent jurisdiction.” *Catawba Indian Nation v. South Carolina*, 407 S.C. 526, 538, 756 S.E.2d 900, 907 (2014). “Under the doctrine of *res judicata*, a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.” *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) (citation and internal quotation marks omitted).

As stated above, in December 2011, Plaintiff TLC Holdings, LLC instituted an action against Hutson in this Court for breach of the Lease–Purchase Agreement and ejectment. Hutson counterclaimed and filed a third-party complaint against Plaintiffs Clark and Lovell. Hutson alleged that Plaintiffs “knew that defects existed in regard to the premises,” including that a moratorium was imposed on the property for sewer installation and that there were large utility bills outstanding. Ex. E to Plaintiffs’ Memorandum, Hutson Answer and Third-Party Complaint, pp. 7, 13, 14.) Defendant Hutson further alleged that Plaintiffs “made misrepresentations . . . or otherwise concealed relevant and material statements of facts regarding the condition, usefulness, and ability to develop the property.” *Id.* at 12. The parties in that case ultimately entered into the Settlement Agreement, discussed *supra*, which includes the following provisions:

This Settlement Agreement shall be incorporated into a Consent Order (the “Consent Order”) entered in the above-referenced case (the “Litigation”). Although Richard U. Clark, Jimmy S. Lovell and James C. Thigpen are parties to this Settlement Agreement by virtue of being parties to the [Lease–Purchase] Agreement, and are named as Third Party Defendants in the Litigation, they have not been served with pleadings in the Litigation and shall not be deemed to have appeared in the Litigation by their execution of this Settlement Agreement. This Settlement Agreement shall be binding upon all of the undersigned parties even though Richard U. Clark, Jimmy S. Lovell and James C. Thigpen have not appeared in the Litigation and are not parties to the Consent Order.

....

Pursuant to the Consent Order, in the event that Hudson fails to comply with the terms of this Settlement Agreement, unless such failure is a direct and proximate result of TLC’s failure to perform an action expressly required of it in this Settlement Agreement, time being of the essence, then the Plaintiff is entitled to the following immediate relief, without further order of the court or notice to Defendant or his attorney: “(a) termination of the [Lease–Purchase] Agreement, (b) cancelation of the lis pendens filed by Hudson in this action, (c) immediate vacation of the Property by Hudson except for his personal residence, which shall be vacated within 15 days, enforceable by the Clarendon County sheriff; and (d) the provisions of Section 23 shall be effective.”

....

[Section 23.] As a material consideration of this Settlement Agreement, in the event of the termination of the [Lease-Purchase Agreement] pursuant to Section 4 above as a result of Hudson breach hereof, then automatically and without further action of the parties, as of the date of such termination (the "Termination Date"), Hudson shall be deemed to have released, forever discharged and promised never to sue TLC, Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen, and their respective agents, attorneys, insurance companies, parent companies, subsidiaries, affiliates, predecessors, successors, or assigns (together, the "TLC Parties"), from any and all injuries, personal or property, known or unknown, causes of action, demands, warranty claims, damages, suits at law or in equity, of whatsoever kind and nature, or because of any matter or thing done, omitted or suffered to be done, by the TLC Parties, prior to and including the Termination Date, on account of all injuries and damages, including attorneys' fees and litigation expenses, arising from the [Lease-Purchase Agreement] or the relationship between Hudson, on the one hand, and TLC, Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen, on the other hand, and any causes of action, known or unknown, relating to the [Lease-Purchase Agreement], including any and all claims alleged, or which could have been alleged, in the Litigation.

(Ex. F to Plaintiffs' Memorandum, Settlement Agreement) (emphasis added). Judge James issued his consent order in April 2012 approving the Settlement Agreement and incorporating it by reference. (Ex. G to Plaintiffs' Memorandum, Consent Order.) Subsequently, in early 2014, Judge James found that Hutson was in breach of the Settlement Agreement. Judge James issued his second order in March 2014, which found as follows:

Pursuant to the express terms of the Consent Order, effective upon the filing of the Affidavit of Default in this action on December 11, 2013, Plaintiff was entitled to have the following immediate relief, without further order of the Court or notice to Defendant or his counsel of record: (a) termination of the [Lease-Purchase Agreement], (b) cancellation of the Lis Pendens [filed by Defendant in this case], (c) immediate vacation of the Property by Defendant except for his personal residence thereon, which shall be vacated with fifteen (15) days; and (d) the provisions of Section 23 shall be effective. Consent Order at ¶2.

Therefore, the Lease Purchase Agreement was terminated, according to its terms as modified by the Settlement Agreement and Consent Order, as of December 11, 2013 (the "Termination Date"), and Hutson was required to vacate the property immediately, except only for his personal residence thereon, which he was required to vacate within fifteen (15) days (i.e., December 26, 2013).

....

[I]t is hereby:

....

FURTHER ORDERED, that the Settlement Agreement and Consent Order are to be enforced according to their terms.

....

FURTHER ORDERED, that pursuant to the Consent Order, Defendant is deemed to have granted the TLC Release to the TLC parties, as set forth more fully in Section 23 of the Settlement Agreement.

(Ex. H to Plaintiffs' Memorandum, Judge James' March 2014 Order.)

The terms of the Settlement Agreement are clear and unambiguous: Hutson has released Plaintiffs from liability for any actions, whether known or unknown, that they took (or failed to take) prior to December 11, 2013. This fact was confirmed in the two orders of Judge James.

Furthermore, in the federal class action case, Hutson filed counterclaims against Plaintiffs, in which he alleged the same wrongs as in the state court case. *See* Ex. 1. Upon the motion of Plaintiffs, Magistrate Judge Baker issued a Report and Recommendation in which she recommended that summary judgment be granted as to Hutson's counterclaims, as he had previously released all of his claims against Plaintiffs by way of the Settlement Agreement. (Ex. N to Plaintiffs' Memorandum, Judge Baker's Report and Recommendation.) District Judge Norton then issued an Order adopting Judge Baker's R&R and finding that the Settlement Agreement was binding on all parties, that Hutson had previously released his claims against Plaintiffs, and that Judge James' order was a final judgment on the merits. (Ex. O to Plaintiffs' Memorandum, Judge Norton's Order.)

Judge James' order is plainly a final judgment on the merits of the prior state court case. In the case at bar, Hutson's counterclaims against Plaintiffs, and all of the allegations in his

pleading, relate to conduct by Plaintiffs that allegedly occurred in or around December 2010 and were all part of the same transaction or occurrence that was litigated in the prior state court case.⁵ His claims here, in other words, either were or could have been brought by Hutson in the prior state court case, and they fall within the broad, express language in the Settlement Agreement. The prior state court case involved the same parties currently before the Court and the Settlement Agreement was expressly binding on all parties. As Judge James, Judge Baker, and Judge Norton have found, Hutson has released Plaintiffs from any claims he had against them during this time period. The principles of *res judicata*—identity parties, identity of claims, and a final adjudication—are all present here.

Indeed, Hutson does not dispute that the Settlement Agreement, incorporated into Judge James' order, encompasses his claims in the instant case. Nor does Hutson dispute that the elements of *res judicata* are satisfied here. Rather, he asserts that the Settlement Agreement is unenforceable because of fraud. Hutson, however, has failed to demonstrate or even allege any fraud that would bar the application of the Settlement Agreement. A review of the allegations in Hutson's pleading shows that he never alleges that Plaintiffs perpetrated any sort of fraud, or otherwise committed wrongful conduct, in relation to the parties' execution of the Settlement

⁵ The sole exception is his counterclaim for defamation. In this claim, Hutson complains of a letter that TLC Holdings sent to the campground members on April 3, 2014, shortly after evicting Hutson from the campground. The letter discussed the facts that Hutson filed for bankruptcy and had failed to pay rents and taxes that he owed. Hutson, however, alleged this same claim in the federal court action. In recommending that summary judgment be granted on this claim in favor of Plaintiffs, Magistrate Judge Baker found in her R&R this claim fails because none of the statements in the letter were false. See Ex. N to Plaintiffs' Memorandum, pp. 27-30. Similarly, Judge Norton found that summary judgment was proper for this claim because the undisputed evidence shows that all the statements in the letter were true. See Ex. O to Plaintiffs' Memorandum, p. 17, footnote 4. Thus, in addition to summary judgment being proper on this claim because the statements were not defamatory, summary judgment is proper because Judge Norton's Order is a final order on this claim that precludes it from being raised in this action. Hutson neither moved for a reconsideration of Judge Norton's Order nor appealed it.

Agreement. Rather, the only fraud he pleads is fraud in connection with the parties' transactions related to the sale of the campground in December 2010. In other words, the fraud that Hutson here complains of is fraud related to the *original transaction*, not the *release*.

Any claim of fraud that Hutson had in connection with the December 2010 transactions is unquestionably barred. Defendant had the opportunity to litigate those claims in the prior state court litigation, and that case culminated in the March 2012 Settlement Agreement in which Hutson agreed to release all such claims. Hutson also agreed for the release to be incorporated into Judge James' consent order. He cannot now re-litigate those issues.

With regard to his counterclaims in the case at hand, Hutson contends that he needs time to perform additional discovery in this case, including the opportunity to depose Plaintiffs on matters related to his counterclaims. However, in light of the clear, express, and broad terms of the Settlement Agreement and the orders of Judge James, Hutson's counterclaims here are barred. No additional discovery, including depositions of Plaintiffs, would change that fact. Hutson was represented by counsel in the prior state court case and had a full opportunity to conduct discovery in that matter; that same counsel represented him in connection with the execution of the Settlement Agreement; and he further had the opportunity to conduct full discovery, and in fact took the depositions of Plaintiffs with regard to these very same issues, in the federal court case.⁶ Throughout that entire process, he has identified no allegedly fraudulent conduct by Plaintiffs except that which he has alleged in connection with the December 2010 transactions, which claims he voluntarily released in the Settlement Agreement. Hutson has identified no instance of fraud in connection with the execution of the Settlement Agreement,

⁶ In that case, Hutson took the deposition of TLC Holdings, LLC on May 20, 2015; the deposition of Richard Clark on September 26, 2014; and the deposition of Jimmy S. Lovell on September 25, 2014. *See Ex. 2*. He also participated in written discovery in that case and received service of all documents Plaintiffs produced in that matter.

either in his pleading or in his arguments in this Court; indeed, he has not even alleged such fraud.⁷ At the hearing on Plaintiffs' summary judgment motion in this Court on January 5, 2017, when asked by the Court what fraud he was complaining of, Hutson complained only about fraud in connection with his purchase of the campground. Additional discovery by Hutson on his counterclaims would be fruitless, and he has failed to show why the binding, preclusive effect of *res judicata* principles does not bar his claims here.

In sum, the elements of *res judicata* are satisfied, and they operate to bar Defendant Hutson's counterclaims. 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. The Court finds that summary judgment is proper.

CONCLUSION

For the reasons discussed above, this Court GRANTS Plaintiffs' motion for summary judgment as to Defendant Hutson's counterclaims.

AND IT IS SO ORDERED.

By:


 The Honorable R. Ferrell Cothran, Jr.
 Presiding Judge, Third Judicial Circuit

March 2, 2017

Monroeville, S.C.

⁷ Even if Hutson had alleged such fraud, summary judgment would still be proper, as he has produced no evidence of such. See *House v. Aiken Cnty. Nat'l Bank*, 956 F. Supp. 1284, 1291-92 (D.S.C. 1996) (granting motion to dismiss (treated as motion for summary judgment) where "[t]he only issue before [the] Court is whether the release signed as a result of that previous settlement is invalid because of fraud, misrepresentation or like circumstances. Plaintiffs have failed to provide any evidence, other than their own conclusory allegations, that they were induced to enter into this release because of fraud or misrepresentation."); see also *Hopkins v. Fidelity Ins. Co.*, 240 S.C. 230, 125 S.E.2d 468 (1962).

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Penn America Insurance Company and
Global Indemnity Group, LLC,

Plaintiffs

vs.

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

Defendant

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

Defendant

vs.

Third Party Defendants:

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

IN THE COURT OF COMMON PLEAS

Civil Action No. 2020-CP- 4003810

2020 OCT -1 PM 12:11
JEANNETTE W. MCBRIDE
C.C.P. & G.S.
FILED
RICHLAND COUNTY

**DEFENDANT'S ADDENDUM
RESPONSE TO PLAINTIFFS'**

**MOTION TO STAY, OR STRIKE, OR
DISMISS DEFENDANT'S AMMENDED
COUNTERCLAIMS & 3rd PARTY
CLAIMS & MOTION FOR
TEMPORARY AND PERMANENT
INJUNCTION**

COMES NOW Defendant, Pro Se who states the following:

1. Since each and all Plaintiffs/Respondents/Third Party Defendants are:
 - a) individually and corporately lawyers and officers of the Court , and are
 - b) Individually and corporately refusing to report the on going extrinsic fraud upon the courts (carried over from Defendant Hutson's 'lost cases') and thereby are

- c) Individually and corporately preventing Hutson from having his case(s) heard, and are
- d) Individually and corporately thereby violating Defendant's civil rights, and are
- e) Individually and corporately thereby intentionally obstructing justice, and are
- f) Individually and corporately corrupting the Courts and Judges , and are
- g) Individually and corporately refusing to inform the Courts of the full and real truth as to why Defendant's cases were all lost,

Defendant/Appellant Hutson has no choice but to once again bring this Fraud upon the Court to the intention of this Common Pleas Court. Plaintiff/Respondents/Third Party Defendants filed a fraudulent case that adulterates the South Carolina Courts, as well as, thwarts Hutson's ability to have his cases heard.

2. Within his filings Defendant, Pro Se Hutson clearly defines and exposes the active extrinsic fraud carried out by all these Common Pleas Plaintiffs and Third Party Defendants / Appellate Respondents. Fraud in the courts must be arrested by the Courts and Judges. Should this Honorable Court fail to take actions to stop this fraud upon the court, Hutson, Defendant/Appellant has no choice but to seek help from the South Carolina Tribunal.

3. Plaintiff / Third Party Defendants and all Respondents and are not entitled to seek or ask for sanctions against Defendant/Appellant since filing fraudulent documents to the Courts including Common Pleas (#2020-cp-4003810) and making a mockery of the Court is against the law and damages this Defendant/Appellant Hutson even more. The Court has been officially put on notice and notified that these officers of the court are tricking the Honorable Judge(s) by presenting Defendant/Appellant Hutson's lost cases as substantiating truth in their behalf. However, Plaintiffs *know* why those cases were lost and are lying to the Honorable Court by stating (in writing) that the lost cases are due to Hutson's filing "frivolous vexations and threats

of future litigation" while Plaintiff, all Respondents and Third Party Defendants totally ignore some (40) professional rules and laws that are in place in South Carolina to prevent such attorney misconduct, of which Defendant/Appellant Hutson has clearly cited.

4. Respondent/Third Party Defendant Tim Newton has had approximately 200 conversations with Defendant/Appellant and has acknowledged on many occasions that he was fully aware of the fraud upon the Court but never mentioned that he was part of the extrinsic fraud. Appellant finally realized the disheartening fact that Penn America's attorney Newton was conspiring with TLC Holdings, LLC's attorneys, also. Furthermore, Newton was actively representing Plaintiff Penn America and Global Indemnity (PAGI) (who was Hutson's Insurance Carrier), and wrote the following e-mail to this Common Pleas Defendant/Appellant Hutson on August 13, 2018 at 10:49 a.m.:

Mr. Hutson,

I need to remind you that I don't represent you and I can't represent you because I represent Penn-America. To the extent there is a common interest, I note the following:

- 1. Renee Roark testified at trial in the defamation action that you contacted her in October 2010 looking for waterfront property to develop.*
- 2. Susan Stroman admitted at trial sending you an e-mail dated November 11, 2010 in which she indicated the campground could possibly be moved or the members bought out. However, she denied having said that on behalf of TLC.*
- 3. The alleged lease between Big Water Resort, LLC and TLC Holdings, LLC, if it existed, was never recorded, although it was for a term of more than a year.*
- 4. The membership agreements between the campground members and Big Water Resort, LLC were never recorded. Possibly they should have been, since they granted campground members a rights to use Big Water Resort, LLC's facilities for life plus the lifetime of a survivor. See S.C. Code s 27-33-30 (requiring "any . . . agreement for the use . . . of real estate" to be recorded.*
- 5. There is some case law indicating lifetime memberships are for the duration of the club member, and can only be terminated for cause. Paul Gabrillis, Inc. v. Dahl, 154 Or. App. 388, 961 P.2d 865 (Or. Ct. App. 1998); Martin v. Town & Country Dev., Inc., 230 Cal. App. 422, 41 Cal. Rptr. 47 (Cal. Ct. App. 1964).*

6. *The campground membership agreements I have seen do not specify what particular property is included in "BWR's present and future campground recreation facilities."*

7. *The Lease-Purchase Agreement pertains to all of TLC's property at the Big Water Resort site.*

8. *The Membership Interest Purchase Agreement in Big Water Resort, LLC does not specify what property is subject to the campground membership agreements.*

9. *The Settlement Agreement dated March 30, 2012 is between TLC Holdings, LLC (and its principals) and Hutson only. TLC is represented as the landlord, and Hutson is represented as the tenant. Big Water Resort, LLC and the campground members are not parties.*

10. *The Settlement Agreement, in par. 5, obligates Hutson to submit a Qualified Plat for a proposed subdivision "as shown on Exhibit 'A' attached hereto." There are provisions for an acreage release, and it appears the payments owed to TLC may be paid from the proceeds of the subdivision and sale of parcels of the property.*

11. *The copy of this Settlement Agreement that was made an exhibit at Hutson's bankruptcy deposition had two hand drawings immediately after the last page, which reads "Exhibit A." These drawings depict the approximate location of the proposed development as being on the campground parcel.*

12. *Despite the language in the Lease-Purchase Agreement and the Settlement Agreement that the subdivision and sale pertained to unimproved portions of the property, the letter that TLC's attorney Tom Harper submitted to the Clarendon County Planning Commission with TLC's approval depicts a development on the campground property.*

13. *The Consent Order filed April 13, 2012 incorporates the Settlement Agreement but does not otherwise mention Big Water Resort, LLC or the campground members. It reads as if it pertains to a mere landlord-tenant dispute.*

14. *Bonnie Youmans testified at trial (by way of her deposition) that she thought all of TLC's property was part of the Big Water Resort campground and she would have considered it a violation of the campground memberships to have developed condominiums on the campground property. This testimony was unopposed.*

15. *I can see how you could argue that the Consent Order is invalid because it attempts to adjudicate the rights of parties not before it. If you were ordered to develop property that was subject to lifetime use rights, that probably should have been brought to the court's attention. Furthermore, I can see how you could argue you did not realize you were being obligated to violate the rights of the campground members by developing since TLC never specified exactly which property was subject to the campground memberships.*

16. *It's hard to see why TLC and its lawyers should not have, in good faith, simply told you (and the court) that the Big Water Resort property was undevelopable because it was already obligated to double lifetime memberships as a private club. It appears that could easily have averted the entire fiasco. Since attorneys were involved, and it resulted in your inability to*

present your case in court, and possibly led to the sanctions order and judgment against you, there might possibly be extrinsic fraud on the court to support setting aside the Consent Order. See Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (2003).

However, that is something you would have to follow up with on your own. I can't undertake that. Possibly Frank could file a motion if Penn-America approves it, but he and I both have agreed to put everything on hold until the mediation.

I highly recommend that you get a lawyer involved, even if it's a pro bono lawyer. If you need the documents supporting the above, let me know.

Tim N.

Murphy & Grantland, P.A.
Tim J. Newton, Esquire
tnewton@murphygrantland.com
Post Office Box 6648
Columbia, South Carolina 29260
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803-454-1242 dd
803-782-4140 fax
www.murphygrantland.com

5. Defendant/Appellant looked up the word "should" which is cited in Paragraph (16) that Respondent and a Third Party Defendant (who is an educated, licensed, college graduated lawyer, and understands the definition of words) used. The Court will find in Newton's 16 paragraph emailed letter to Defend/Appellant/Hutson that Newton writes:

"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 double lifetime memberships as a private club"... "Since attorneys were involved, and it resulted in your inability to present your case in court" and possibly led to the sanctions order and judgment against you, there might possibly be extrinsic fraud on the Court to support setting aside the Consent Order. See Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E. 2d 605 (2003.)"

Defendant/Appellant reminds the Court that attorney Newton (who was employed by Plaintiff, PAGI) is stating, "due to extrinsic fraud upon the Court, Defendant could not present his case in

Court". Appellant could not present his case in Court was due to misrepresentations, intentionally concealed evidence that Defendant Hutson was not aware of which was being perpetrated by TLC Holdings, LLC's attorneys yet NOT being disclosed to the courts by Penn America/Global Indemnity thru their attorneys, which included Newton et. al.. The Plaintiffs in this case and Third Party Defendants and Respondents in Defendant's Appellant case on these same issues are continuing that same extrinsic fraud now in this Common Pleas suit which they filed against the same Hutson/Appellant of the Court of Appeals case on the same issues. They refuse to tell or inform any of the Courts that this Defendant was defrauded and the TLC Holdings, LLC's attorneys –and the attorneys bringing this suit and appearing in the Court of Appeals on the same issues, ALL intentionally refused to inform the Courts and Judges of that known fraud upon the courts. They should also cite some of the known fraud that prevents Defendant from winning his cases. Attorneys (Officers of the Court) are duty bound to do so. All lawyers, Respondents and Third Party Defendants still refuse to report or disclose the fraud upon the courts. Instead, they now turn Defendant/Appellant's lost cases into their 'defense' stating that Defendant is responsible for filing "frivolous and vexatious" suits against the poor innocent attorneys. This is also Fraud upon the Court for they know that each attorney is concealing the real truth to prevent Defendant/Appellant from having his case heard and believed before the courts and judges. This is illegal, Fraud upon the Courts and against Defendant. The Respondents and Third Party Defendants are robbing this Defendant/Appellant by preventing his case to be truly heard by the Courts. The Honorable Judges must stop their illegal actions as it is against the Court itself.

6. South Carolina Appellate Court, Rule 407:

"A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A

lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official actions, it is also a lawyer's duty to uphold legal process.” (page 7, par. 5)

7. South Carolina Appellate Court Rule 407:

"A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyer's should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest". (p. 8, par. 6)

8. Hutson is forced to ask the Common Pleas Judge: Which is more important? Rule 11? Rule 7 (b) 2 SCRPC? Rule 12 (f), 7-7 (a)-b1 SCRPC? or Over 40 rules to prevent dishonesty and fraud upon the Court? These Plaintiffs, Third Party Defendants and Appellate Court Respondents are all committing intentional fraud upon the court for the sole purpose of protecting themselves and their “fellow attorneys” from being held accountable for their Fraud upon the Court. They committed wrongful acts, broke the laws and rules of the Honorable Courts of the State of South Carolina, in defrauding the Courts and Judges. Plaintiffs and their Conspirators must be stopped. The filings by these lawyers are in violation of Rules established by the United States Court of Appeals for the Sixth Circuit. All these Plaintiff lawyers are adulterating their oath (Rule 402).

9. United States Court of Appeals for the Sixth Circuit has delineated five (5) elements of conduct that constitute extrinsic fraud upon the Court. Extrinsic Fraud upon the

courts is such a serious crime (legally) that there is no statute of limitations on Extrinsic Fraud upon the Courts – just as serious as the offense of murder which has no statute of limitations. Both acts are considered horrific against the laws of the land. Penn America, Global Indemnity, Timothy J. Newton, Esq. J.R. Murphy, Esq., Murphy & Grantland and Collins & Lacy are all directly guilty of committing Extrinsic Fraud Upon the Court. This is supported by their failure to adhere to some 40 rules and regulations. Overwhelming amounts of evidence has been submitted to this court by this Defendant/Appellant. Extrinsic Fraud Upon the Court is:

1. "On the part of an officer of the Court"
2. "That is directed to the judicial machinery itself,"
3. "That is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth;"
4. "That is a positive averment or is concealment when one is under a duty to disclose;"
5. "That deceives the Court."

10. Rule 3.3. Candor Towards the Tribunal: *"One who intentionally conceals critical evidence for the sole purpose of self preservation at the cost of disgracing, deceiving, plotting and defrauding the Honorable Court, is creating Extrinsic Fraud upon the court".* Their protecting 'fellow attorneys' as well as themselves meets this criteria.

11. Rule 402, Attorney Oath: *"I will employ for the purpose of maintaining the causes confided to me only such means as are consistent with trust and honor and the principles of professionalism, and will never seek to mislead an opposing party, the Judge or Jury by a false statement of fact or law".* Plaintiff, Respondents and Third Party Defendants are committing this fraud right in front of the Courts and Judges and the Honorable Judges are

trusting them because they are attorneys and because by statute they should be trustable. Once again, Hutson has officially notified this Court of Extrinsic Fraud upon the courts including this one, all Respondents and all Third Party Defendants are licensed, badged attorneys who are breaking the law in asking the Honorable Court to Strike or Sanction or Strike portions of Hutson/Defendant/Appellant's answers and simply overlook their corruption and disgracing of the Honorable Courts: via Extrinsic Fraud, these attorneys are attempting to:

- a) protect fellow attorneys, and*
- b) take justice from this Defendant/Appellant.*

They are simultaneously orchestrating a façade to get away with it -- without ANY consequences for themselves or their “fellow attorneys.” These attorneys know that lying and scheming to the Courts to tilt the scales of Justice to cover up their Fraud upon the Courts is illegal. These attorneys (duly sworn in Officers of the Court) should be jailed and their licenses removed for this type of conduct. There is no way that this Defendant/Appellant/victim can possibly get a fair trial under the existing circumstances.

Therefore, **Defendant Prays** the following:

1. INTERVENE IMMEDIATELY / NOT LATER, and CAREFULLY READ
DEFENDANT/APPELLANT/VICTIM'S PLEADINGS and END this FRAUD UPON THE
COURTS.
2. Deny every request that Plaintiff's (conspirators) have filed due to their deliberate fraud
upon the Honorable Courts.
3. Send Defendant/Appellant's case straight to a jury.
4. Prevent Plaintiff and his co-conspirators, all officers of the court, from filing any further
actions or pleadings against this Defendant/Appellant Hutson due to their intentional fraud upon

the court. Plaintiff's actions rob the Courts and Judges and this Defendant/Appellant of a fair and honest trial. Plaintiffs and their Co-conspirators were and are fully aware of the truth as to why Defendant/Appellant lost his cases: Losses were due to intentional fraud and co-conspiring "Extrinsic Fraud Upon the Courts" with fellow attorneys by deviously defrauding and tricking the Defendant/Appellant.

5. Notice the appropriate authorities regarding the illegal conduct by Officers of the Court.

6. **Stop this case until the Plaintiffs and their Co-Conspirators come clean and disclose the true facts so all will know (as now the Court/Judge and Defendant/Appellant do) that these attorneys are violating their oath, deceiving the court, and conspiring to protect fellow attorneys rather than their clients/insured.**

7. Swear in the lawyers and make an in depth inquiry, allowing Defendant to cross-examine the officers of the court/lawyers.

8. Notify the Plaintiff and their Conspirators that this court is above corruption and will not accept any more filings regarding this entire case from them until a full hearing on this has been completed and any and all appropriate Sanctions and reparations are paid..

9. Grant summary judgment to Defendant/Appellant/ victim against Plaintiff.

10. Defendant/Appellant asks that (as of todays date, September 30, 2020) that Plaintiff, all Third Party Defendants and Respondents in this case NOT file another paper to Defendant nor to the Court until this case is fully heard before a Judge and until this issue of extrinsic fraud be ruled on. Defendant/Appellant refuses to be dragged into a fraudulent lawsuit created by Plaintiffs and all of his conspiring associates who are officers of the Court. Defendant will no longer respond to any filings having the "Strick Understanding that until this case gets heard, Defendant /Appellant will no longer be a part of defending extrinsic fraud for this case cannot continue like this. Defendant is being forced into dancing with dishonest attorneys by way of

extrinsic fraud upon the Court and fraud upon the Court and Defendant/Appellant. Appellant is working to file all papers asking that each officer of the Court be sanctioned, disbarred, and publicly exposed for their intentional wrong doings. This extrinsic fraud issue is an emergency!

11. Send this Defendant/Appellants case to a jury.

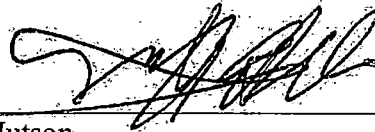
Dishonest, Deceiving Disgraceful lawyers who would sell out an insured to protect the illegal actions of 'fellow attorneys' need to be disbarred and prohibited from practicing law. They are a disgrace to our country, our court system, their profession, and their Law Firms.

NOTICE: Should this Court and Judge agree to honestly and forthrightly hear this case barring cheating, fraud and extrinsic fraud upon the court, that will be a strong signal all other attorneys and the public that corruption is NOT ALLOWED within the South Carolina Courts AND THAT FRAUD UPON THE COURTS IS NOT TOLERATED. Defendant has submitted ample evidence beyond any possible reasonable doubt of the fraud and dishonesty regarding these S.C. lawyers who carry badges as officers of the court. Defendant/Appellant will submit documents to every available agency who have ANY legal jurisdiction in the State of South Carolina. This "good ol' boy system" must be eliminated. Defendant/Appellant's actions are regrettable, but have been shown over the past few years found to be totally necessary.

Defendant/Appellant is being forced to contact many agencies within the State of South Carolina for help in the reporting of this outrageous Fraud upon the Court. Up until now, Defendant/Appellant has always believed in the court system of our land. That trust in justice is on the brink of extinction. REMEMBER: "The trial court has the inherent authority, within the

exercise of sound judicial discretion, to dismiss an action when a plaintiff has perpetrated a fraud on the court, or where a party refuses to comply with court orders". (*Kornblum v. Schneider*, 609So. 2d 138, 139 (Fla. 4th DCA 1992)).

Respectfully Submitted on this 30th day of September, 2020.



M.B. Hutson
P.O. Box 2755
Orangeburg, South Carolina 29116-2755
Telephone: (803) 308-2714
Hutson4444@gmail.com

SERVICE: Copies will be served to the court and to all parties according to the court's permission to email during this coronavirus period on September 30th, 2020, to:

Christian Stegmaier, Esq. at cstegmaier@collinsandlacy.com

for
Stegmaier, Penn-America and Global Indemnity Group LLC
Collins & Lacy P.C.
1330 Lady Street, Columbia, SC

and
Timothy Newton, Esq. at tnewton@murphygrantland.com

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Penn America Insurance Company and
Global Indemnity Group, LLC,

Plaintiffs

vs.

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

Defendant

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

Defendant

vs.

Third Party Defendants:

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

IN THE COURT OF COMMON PLEAS

Civil Action No. 2020-CP- 4003810

DEFENDANT'S RESPONSE TO

PLAINTIFFS /THIRD PARTY

DEFENDANTS'

Motion to Strike Defendant's

"Notice of Extrinsic Fraud,"

and

"Memorandum to Defendant's

Amended Cross Complaint,"

and

Plaintiffs' "Request for Sanctions and

Memorandum in Support,"

and

Plaintiffs' "Motion to Strike Portions of

Defendant's 'Answer' "

and

Request for Sanctions.

1. Comes now Appellant/Defendant with detailed and incremental steps to *once again* outline (with documental proofs), the illegal acts of Penn America Insurance Company and Global Indemnity Group through extrinsic fraud committed by and through their attorneys :

RICHLAND COUNTY
FILED
2020 OCT -1 PM 12:12
JEANNETTE M. MCGRIDE
C.C.P. & J.S.

Christian Stegmaier, Esq., of Collins & Lacy P.C., and T. J. Newton, Esq., and J. R. Murphy, Esq., both of Murphy & Grantland, P.A.

2. This extrinsic fraud upon the Courts has been waged against this Common Pleas case (# 2020-CP-4003810) and the details of this case is also, *and simultaneously* in the Appeals Court case (# 2019-001488) wherein this Common Pleas Defendant/Hutson is the Appellant. Defendant/Appellant is submitting this evidence solely due to the continued denial of all officers of the court named in both cases have intentionally conspired and committed extrinsic fraud upon the Common Pleas (Judge Nettles') court, proceeding and underlying cases, and now on the Appellant Court and its Judges and they are now in their newly filed Common Pleas (#2020-cp-4003810). THE APPEAL IS *STILL ACTIVE* in the APPELLATE COURT by Appellant against these same Respondents. Respondents are cloaking themselves with lies, corruption, and deception upon the courts and judges by way of extrinsic fraud in both of these cases, as they did in the underlying cases that initially brought on the Appeals Case. The attorneys' fraud has misled, and continues to mislead, all the courts and the Honorable Judges. These Plaintiffs (and Appellate Court Respondents) are all attorneys, Officers of the Court. Their corrupt actions have greatly damaged the Appellant. Now, with these actions, they are carrying their corruption over into the Common Pleas Court.

3. Attorneys Tim Newton, and JR Murphy, of Murphy & Grantland, P.A. and Christian Stegmaier, Esq., of Collins & Lacy, P.C. were, and are, totally aware of Attorney Laura Paton's cited 77 counts of fraud against TLC and their lawyers. Paton was hired by Plaintiff / Respondent's employer Penn America and Global Indemnity (PAGI). On PAGI's behalf, Paton thoroughly investigated and found seventy-seven (77) counts of fraud *committed against Hutson* by TLC Holdings, LLC and *their lawyers*. Paton's document was originally filed 3/29/2016 in #2015-CP-1400615.) The TLC Holdings, LLC's lawyers have become the "fellow attorneys" that

(Plaintiffs / Respondents) conspired with in the Courts in actions against Hutson (this Appellant/Defendant) directly causing Hutson's case losses. These Plaintiffs / Respondents *continue* to protect "their fellow attorneys" as they were referred to by Respondent T. J. Newton, Esq. in Defendant's/Appellate's "lost" cases prior to these present cases now before both the Appellate court and this Common Pleas Court. Newton's stated rationale was, "someone might go to jail." These attorney Respondents / Plaintiffs (all attorneys for Penn America and Global Insurance Companies (PAGI) under a contractual obligation to defend Appellant/Defendant Hutson, lied and conspired with the attorneys who brought the actions against Hutson under the cloak of fraud and joined together to maintain and create Extrinsic Fraud upon the court.

4. L. Paton, Esq. was hired by PAGI to represent Hutson/insured after TLC Holdings, LLC's attorneys fraudulently sued Hutson as a Third Party Defendant in the Federal Class Action Suit brought by contract holding Members of the Campground (with "rights to use" the land for one to two lifetimes). TLC Holdings, LLC's attorneys had 1) defrauded class action Plaintiffs by contract, and 2) denied 'voice' to those contract holders in a lower court proceeding. The Federal Class Action (2:14-CV-01583-DCN-MGB) awarded millions to those individual contract holders, ruling *against* the landowners TLC Holdings, LLC and their attorneys – *who were the same attorneys who were colluding with these Plaintiffs/Appellate Court Respondents*. The corruption in the Courts surrounding these attorneys is self-serving, unprofessional (by SCRCR Rules), and continues to illegally afflict this Appellant / Defendant.

Below is Laura Paton, Esq.'s accounting of seventy-seven (77) counts of fraud created by TLC Holdings' attorneys -- continued by way of conspiracy-- with all these Respondents:

- a. in Federal Court against Hutson (# 2:14-CV-01583-DCN-MGB);
- b. in State Court against Hutson; (# 2015-CP-14-615)
- c. in Common Pleas against Hutson; (# 2018-CP-400-6344),

- d. in the Appellate Court (#2019-001-488) --ACTIVE
- e. and now in this (#2020-CP-400-3810) --ACTIVE

5. Laura Patton, Esq. gave a clear, honest, detailed and concise assessment of the hidden fraud and wrote: (filed 3/29/2016 in Clarendon County #2015-CP-1400615):

42. That on or about 2010, Defendant Hutson was introduced to TLC Holdings, LLC's owners Richard Clark and Steve Lovell (hereinafter collectively TLC parties) by real estate agent Susan Stroman for the purpose of purchasing the land at 5215 Dingle Pond Road, Summerton, SC (hereinafter "the property").

43. That Richard Clark, Steve Lovell, with James Thigpen, owned and operated TLC Holdings, LLC.

44. That Richard Clark and Steve Lovell, with James Thigpen, owned and operated BWR.

45. That Richard Clark and Steve Lovell controlled, owned and operated other corporate entities, hereinafter referred to as "John Doe Corporations", which were created to perform single purpose functions in order to effectuate the sole will of Messrs. Clark and Lovell.

46. That in or around December 2010, Defendant Hutson met with the TLC parties and advised the TLC parties that he sought to purchase the lake-front land at 5215 Dingle Pond Road, Summerton, SC, close the campground currently operating at the property, and develop water-front condominiums on the land.

47. That during the December 2010 meeting the TLC parties advised Defendant Hutson that the property was owned by TLC Holdings and the campground business was owned by Big Water Resort, LLC ("BWR").

48. That during the December 2010 meeting the TLC parties advised Mr. Hutson that in order to purchase the land, he would be required to purchase BWR as well.

49. That during the December 2010 meeting the TLC parties advised Mr. Hutson that there was water and sewer adjacent to the property for development but failed to disclose the moratorium of approximately 5 years preventing development of the property.

50. That during the December 2010 meeting the TLC parties advised Mr. Hutson that BWR had no known debt.

51. That during or after the December 2010 meeting the TLC parties advised Mr. Hutson that BWR had an annual income of approximately \$200,000.00.

52. That during and after the December 2010 meeting, the TLC parties concealed BWR's \$300,000 annual losses.

53. That during the December 2010 meeting the TLC parties advised Mr. Hutson that BWR had no accounting records.

54. That during the December 2010 meeting the TLC parties advised Mr. Hutson that the value of BWR was \$500,000 and the value of the land at 5215 Dingle Pond Road, Summerton, SC was \$6 million.

55. That TLC parties and Mr. Hutson negotiated for Mr. Hutson to lease the land with the option to purchase in 12 months for \$6 million or 24 months for \$7 million.

56. *That during the December 2010 meeting the TLC parties and Mr. Hutson discussed the length of the Lease Purchase Agreement so that Mr. Hutson would have sufficient time to secure the necessary permits to develop the property.*

57. *That prior to executing the Lease Purchase Agreement and the Membership Interest Purchase Agreement (hereinafter collectively "the Agreements" attached as Exhibits A and B), Mr. Hutson searched the property title record; no liens or encumbrances were found.*

58. *That prior to purchase by Mr. Hutson, the TLC parties negotiated with Black River Electric for underground power.*

59. *That prior to purchase by Mr. Hutson, the TLC parties received, but refused to pay, for the cost of installation of the underground power.*

60. *That prior to purchase by Mr. Hutson, the TLC parties did not disclose the outstanding bill for installation of underground power encumbering the land and BWR.*

61. *That subsequent to the December 2010 meeting, the TLC parties and Mr. Hutson executed the Membership Interest Purchase Agreement for BWR and a Lease Purchase Agreement for the property at 5215 Dingle Pond Road, Summerton, SC (hereinafter collectively "the Agreements").*

62. *That the Membership Interest Purchase Agreement includes a representation by the TLC parties, "(T)here are no actions, suits, or proceedings either at law or equity ... or to the knowledge of the Sellers threatened."*

63. *That the Membership Interest Purchase Agreement includes a representation by the TLC parties that, "Seller represents, warrants and covenants to Purchaser as*

follows: "(the business is) In compliance with all laws regulations and orders applicable to its business."

64. That the Membership Interest Purchase Agreement includes a representation by the TLC parties representing that they had "good and marketable title to all of its properties and assets."

65. That the Lease Purchase Agreement includes representations by the TLC parties ensuring that they have good and marketable title to the land at 5215 Dingle Pond Road, Summerton, SC.

FOR A FIRST CAUSE OF ACTION

(Fraud or, in the Alternative, Negligent Misrepresentation – Failure to Disclose Encumbrances on the Property as to the TLC Parties)

66. That prior to execution of the Agreements, the TLC parties knew that there were approximately 700 "Retail Membership Agreements" encumbering the property.

67. That prior to the execution of the Agreements, the TLC parties knew or should have known that the Retail Membership Agreements are timeshares subject pursuant to South Carolina code and subject to the recording requirements of Sections 27-32-10 through 27-32-250 of the 1976 Code are designated as Article 1 of Chapter 32, Title 27, and entitled 'Vacation Time Sharing Plans'."

68. That the TLC parties knowingly and / or negligently failed to disclose and / or concealed information that the Retail Membership Agreements provided that each holder: 1) a right to use campground facilities, and services solely for members recreational and enjoyment, (emphasis supplied), 2) this right to use the facilities ranges from 5 years up to two life times.

69. *That the TLC parties advised Mr. Hutson that the Retail Membership Agreements could be terminated / divested such that he could proceed with development of the property.*

70. *That the TLC parties knowingly and / or negligently failed to record the timeshares encumbering the property as required by statute and, therefore, hid from disclosure the encumbrances upon the property prior to Defendant Hutson's execution of the Agreements.*

71. *That the TLC parties had a statutory duty to record the encumbrances pursuant to Sections 27-32-10 through 27-32-250 of the 1976 Code are designated as Article 1 of Chapter 32, Title 27, and entitled 'Vacation Time Sharing Plans'."*

72. *That Mr. Hutson and his attorney performed title searches with the Clarendon County Register of Deeds prior to purchase and no encumbrances as to the time shares were found.*

73. *That the TLC parties had a pecuniary interest in knowingly and / or negligently concealing the encumbrances on the property to induce Mr. Hutson to enter into the Agreements to secure a maximum profit to the TLC parties and to disgorge a failing business.*

74. *That as a result of the TLC parties actively, intentionally, knowingly, willfully, wantonly, recklessly, and / or negligently failing to record the timeshares encumbering the property, they knowingly and / or negligently concealed such encumbrances which require disclosure by statute and induced Mr. Hutson to enter into the Agreements.*

75. *That in relying on the fraudulent representations and / or negligent misrepresentations, Mr. Hutson did materially change his position entering into the*

Agreements without knowledge of the timeshares believing, as was represented by the TLC parties, that the property was unencumbered.

76. That, as a result of such fraudulent and / or negligent misrepresentations, Mr. Hutson has been damaged, and continues to be damaged, and has suffered pecuniary loss as a direct and proximate result of his reliance on the TLC parties representations.

77. Therefore, as a direct and proximate result of the TLC parties' actions, Mr. Hutson is entitled to actual, direct, consequential, incidental, special, and punitive damages as aforesaid, all in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of same or any other waiver or other limitation are null, void, unenforceable, and subject to rescission as a matter of law.

FOR A SECOND CAUSE OF ACTION

(Fraud, or in the Alternative, Negligent Misrepresentation – Material Misrepresentation as to Financial Position as to the TLC Parties)

78. That prior to execution of the Agreements, the TLC parties advised Mr. Hutson that the value of BWR was \$500,000 and the value of the land at 5215 Dingle Pond Road, Summerton, SC was \$6 million.

79. That prior to execution of the Agreements, the TLC parties advised Mr. Hutson that BWR had an annual income of approximately \$200,000.00.

80. That prior to execution of the Agreements, the TLC parties did not advise Mr. Hutson that BWR was operating at a substantial loss upwards of \$300,000 per year, outstripping its income.

81. That prior to execution of the Agreements, the TLC parties advised Mr. Hutson that BWR had no accounting records.

82. That prior to execution of the Agreements, the TLC parties knew that the operating expenses of BWR exceeded its income.

83. That prior to execution of the Agreements by Mr. Hutson, the TLC parties negotiated with Black River Electric for underground power.

84. That prior to execution of the Agreements by Mr. Hutson, the TLC parties received, but refused to pay, for the cost of installation of the underground power.

85. That prior to execution of the Agreements by Mr. Hutson, the TLC parties did not disclose the outstanding bill for installation of underground power encumbering the land and BWR.

86. That Mr. Hutson had a right to rely, and did rely, on the various representations of the TLC parties' as to the condition of their business and its encumbrances, including, but not limited to, those representations expressly outlined in the Agreements signed by the TLC parties.

87. That the TLC parties actively, intentionally, willfully, wantonly, recklessly, and / or negligently misrepresented and / or concealed the financial condition, including, but not limited to, the operating costs and expenses of BWR, to induce Mr. Hutson to purchase BWR and enter into the Agreements.

88. That the TLC parties actively, intentionally, willfully, wantonly, recklessly, and / or negligently misrepresented and / or concealed the financial condition, including, but not limited to, the annual income of BWR and accounting records of BWR, to induce Mr. Hutson to purchase BWR and enter into the Agreements.

89. That the TLC parties actively, intentionally, willfully, wantonly, recklessly, and / or negligently misrepresented and / or concealed the financial condition, including, but not limited to, the debt owed to Black River Electric, to induce Mr. Hutson to purchase BWR and enter into the Agreements.

90. That as a result of the TLC parties' intentional, active, willful, wonton, and / or reckless and / or negligent misrepresentations and / or concealments, inducing Mr. Hutson to enter into the Agreements, he has suffered irreparable harm including, but not limited to, significant financial harm.

91. Therefore, as a direct and proximate result of the TLC parties' actions, Mr. Hutson is entitled to actual, direct, consequential, incidental, special, and punitive damages as aforesaid, all in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of same or any other waiver or other limitation are null, void, unenforceable, and subject to rescission as a matter of law.

FOR A THIRD CAUSE OF ACTION

(Defamation / Libel Per Se as to the TLC parties)

92. That on or about April 3, 2014, the TLC parties wrote to the members of the Big Water Resort Campground the letter at Exhibit C.

93. That in their correspondence, the TLC parties included untrue statements impugning Mr. Hutson's performance as one-time owner of Big Water Resort.

94. That the TLC parties' correspondence was made with actual and / or implied malice and intended to degrade and reduce the character and / or reputation of Mr. Hutson to others.

95. *That as a direct and proximate result of the TLC parties' actions, including, but not limited to, the malicious publication of libelous materials to the members of the Big Water Resort, Mr. Hutson is entitled to actual, direct, consequential, incidental, special, and punitive damages as aforesaid, all in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of same or any other waiver or other limitation are null, void, unenforceable, and subject to rescission as a matter of law.*

AS A FOURTH CAUSE OF ACTION AGAINST THE TLC PARTIES

***(Breach of Contract Accompanied by a Fraudulent Act, or,
in the alternative, Breach of Contract)***

96. *That the TLC entities and Defendant Hutson entered into the Agreements as outlined above.*

97. *That the Agreements contained certain provisions as outlined above including, but not limited to:*

- a. Warranties as to good and marketable title to all its properties and assets;*
- b. Seller represents, warrants and covenants to Purchaser as follows: . . . further, there are no actions, suits, or proceedings, either at law or equity . . . or to the knowledge of Sellers, threatened;*
- c. Seller represents, warrants and covenants to Purchaser as follows: (e.) In compliance with all laws, regulation and orders applicable to its business”*

98. *That in breach of the afore mentioned Agreements, the TLC entities:*

- a. Did not have marketable title and, in fact, such title was encumbered by timeshares;*

b. That a substantial outstanding debt was owed Black Water Electric which could lead to litigation;

c. That the TLC entities failed to record timeshares as required by statute; and d. Other such breaches as may be determined.

99. This constitutes a breach of the Agreements with Mr. Hutson and accompanying this breach was the fraudulent acts:

a. Knowingly failing to disclose the outstanding debts of BWR, including, but not limited to, Black Water Electric;

b. Advising Mr. Hutson that no financial records were kept as to BWR to conceal the losses / financial condition of the company;

c. Failing to record encumbrances required by statute as outlined above;

d. Advising Mr. Hutson that the Retail Memberships could be divested to allow for development of the lakefront land as discussed; and,

e. Other such concealments / misrepresentations as may be discovered.

100. The TLC entities either knew or should have known of said defects, all of which proximately caused the damage herein above and hereinafter described and entitles Mr. Hutson to punitive damages.

AS A FIFTH CAUSE OF ACTION AGAINST THE TLC PARTIES

(Violation of the South Carolina Unfair Trade Practices Act

S.C. Code § 39-5-10, et seq.)

101. The TLC parties and the John Doe Corporations' creation of BWR and the subsequent offering and sale of BWR and the lease-purchase of the property, along with other representations to the holders of the Retail Membership Agreements in BWR, potential purchasers of BWR pre-dating Mr. Hutson's purchase, and the public at large, constituted the conduct of trade and commerce within the meaning of S.C. Code Section 39-5-20(a).

102. The TLC parties and the John Doe Corporations, and each of them, through their acts and omissions including, but not limited to, the following particulars, conducted unfair and deceptive practices within the meaning of S.C. Code Section 39-5-140(a) and 27-31-430, S.C. Code of Laws as amended:

- . a) in failing to disclose the Vacation Time Shares encumbering the property;*
- . b) In failing to record the memberships as required pursuant to*
- . c) In failing to pay and subsequently hiding the debt owed to Black River Electric;*
- . d) in failing to provide any additional consideration for subsequent attempts to modify their agreement;*
- . e) in failing to properly disclose the true conditions of the business and properties at issue in the Agreements and putting them into the stream of commerce;*
- . f) in making false representations as to the condition of the business and properties at issue in the Agreements and/or representations as to the condition of the business and properties at issue in the Agreements in reckless disregard as to the truth of the representations; and*

. g) *In failing to analyze and preserve reserves for maintenance and operation of the business and concealing same.*

103. The conduct of The TLC parties in their ownership and management of TLC Holdings, BWR, and the John Doe Corporations, as described above, was knowing and willful, and the TLC parties knew or should have known that such conduct was a violation of S.C. Code Section 39-5-20 and 27-31-430.

104. Mr. Hutson is a person within the meaning of S.C. Code Section 39-5-140(a) and has suffered actual, direct, and proximate damages as a direct and proximate result of unfair and deceptive acts of the TLC parties, in an amount to be determined by the trier of fact.

105. The aforesaid acts of the TLC parties impact the public interest in that they constituted unfair and deceptive acts and have the potential for repetition and, in fact, occurred at the execution of the Agreements and may continue to occur as the TLC entities engage in other enterprises related to the Retail Memberships and BWR and, as such, are acts which can, have and will affect the public at large by repetition.

106. These unfair and deceptive acts are acts which will affect members of the public, beyond the parties to the above-described transactions, in the form of other consumers who may be injured by purchasing new memberships or other such timeshare that the TLC parties and the John Doe Corporations offer on the land which, upon information and belief, those entities, and / or the amalgamated John Doe Corporations own and operate whereby placing members of the public in danger of harm.

107. Mr. Hutson is entitled to be compensated pursuant to S.C. Code Section 39-5-140(a) for the above-described actual, incidental, consequential, and special damages, as well as costs, interest, and attorney's fees, and to recover three (3)

times these damages by reason of the knowing and willful nature of the unfair and deceptive acts by Defendants and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

AS A SIXTH CAUSE OF ACTION

***(Amalgamation, Alter Ego Liability and Piercing the Corporate Veil
as to the TLC Parties and the John Doe Corporations)***

108. The TLC parties, by and through various instrumentalities and alter-egos and other companies to be named at a later date were the original developers and / or operators of BWR.

109. That the TLC parties, with their John Doe Corporations, combined and joined together through various instrumentalities, alter egos, and amalgamated entities, to facilitate to process of developing BWR, encumbering BWR with various debts, and concealing such debts from Mr. Hutson.

110. The TLC parties created and controlled numerous and various entities (hereinafter the John Doe Corporations) to be expressly named at a later date, for the sole purpose of the activities solely relating to development and sale of memberships related to BWR.

111. The TLC parties and the John Doe Corporations created and controlled these sham entities for the sole purpose of enabling it to transact a portion of its business under an alternate corporate guise and to avoid claims such as those set forth herein. These entities, and each of them, were merely a facade for the operations of Messrs. Lovell and Clark to achieve their financial goals and to perpetrate the activities more particularly described herein.

112. The subservient entities in fact manifested no separate interest of their own and that there was an amalgamation of corporate interests, entities, and activities so as to blur the legal distinction between The TLC parties and the John Doe Corporations and the sham corporations, shareholders, officers, agents, partners, employees, assets, and each of them.

113. The TLC parties created entities which were created to perform single purpose functions in order to effectuate the sole will of the TLC parties to perpetuate the acts described herein. Despite the creation of these sham entities and despite the sham entities appearing in name only on some contracts, letters, deeds, and/or other documents, the TLC parties and the John Doe Corporations actively and directly in the activities herein, and in fact put BWR in the stream of commerce.

114. The TLC parties and the John Doe Corporations created and controlled numerous and various John Doe Corporations / corporate entities for the sole purpose of the planning, development, design, construction, management, purchase, sale of memberships, and other activities solely relating to BWR as described more particularly herein.

115. The sham entities established by the TLC parties and / or the John Doe Corporations were and are characterized by one or more of the following: (1) being undercapitalized; (2) failing to observe corporate formalities; (3) failing to pay dividends; (4) Insolvency; (5) Lack(ed) proper records; (6) siphoning of funds by its members and/or affiliates; and (7) was used as a mere facade for the operation of the dominant shareholders, members, associates, and affiliates.

116. Upon information and belief, each shared the same mailing / emailing address, the TLC parties and the John Doe Corporations directly received payment and disbursed payment for obligations relating to the sham entities, the sham entities had no shareholders and/or officers of their own, no separation of accounting and bookkeeping functions, and/or the TLC parties and the John Doe Corporations

directly contracted for the sham entities in the name of the TLC parties and the John Doe Corporations.

117. The TLC parties and the John Doe Corporations directed and oversaw the fraudulent / negligent actions described herein.

118. There would exist a broad element of injustice and fundamental unfairness if the acts of the TLC parties, including Messrs. Lovell, Clark, and TLC Holdings, LLC, and the John Doe Corporations, and each of them individually, were not regarded as the acts of one another.

119. At the time BWR and the Lease-Purchase Agreement were offered and placed into the stream of commerce by the TLC parties and the John Doe Corporations, the faulty defects and deficiencies heretofore described were hidden and concealed through the acts and omissions of the TLC parties and the John Doe Corporations.

120. That the TLC parties and the John Doe Corporations, knew or should have known of the existence of the said defects and deficiencies, which were unknown by and / or concealed from Mr. Hutson.

121. These hidden defects, including, but not limited to, defective, un-marketable title and outstanding and oppressive debts, which unbeknownst to Mr. Hutson, rendered the business and the Lease-Purchase Agreement undevelopable and worthless.

122. The resulting actual, incidental, consequential and special damages, and continue to do so through the date of this filing.

123. Mr. Hutson suffered damages and injuries when the TLC parties and the John Doe Corporations put BWR and the properties described in the Lease-Purchase

Agreement into the stream of commerce and continue to be damaged and injured through the date of this filing.

124. As a direct and proximate result thereof, the TLC parties and the John Doe Corporations are liable to the Plaintiffs for actual, incidental, consequential, special and punitive damages, all in an amount to be determined by the trier of fact, and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

6. TLC Holdings, LLC's attorneys had prepared all contracts and papers to defraud Hutson who was purchasing property in the Santee area on which Big Water Resort Campground operated. Hutson was not aware of the fraud in the contracts (a complete Title Search by Williamson Research Services – thru attorney Ron Nester, Esq. revealed no title encumbrances), nor was Hutson aware of any “fraud upon the court” until many years later. TLC attorneys never breathed the fraud or the extrinsic fraud which now, in retrospect, this Defendant / Appellant realizes was on-going and catching all attorneys in its vice. The title cloud created the first long term “extrinsic fraud upon the courts” which prevented Hutson from having all his cases “heard”, and thereby caused Hutson to lose all hearings and rulings.

7. Also, Respondent / Third Party Defendant, Tim Newton, Esq., counsel for PAGI, authored a 16 paragraph letter to Defendant/Appellant clearly outlining the fraud and extrinsic fraud carried out by TLC Holdings, LLC and their attorneys, proving that Newton of Murphy & Grantland, P.A. *was fully aware of that extrinsic fraud.* By phone, Newton admitted to Defendant/Appellant that he was aware of the extrinsic fraud, but refused to report it as required by law.

8. IF *any* of the officers of the court had reported the extrinsic fraud upon the courts, Defendant/Appellant Hutson would NEVER have lost the court cases in which PAGI engaged lawyers to 'represent' Hutson. However, no officer of the court fulfilled his duty nor honored his/her oath to report Fraud to the Tribunal. Why? No attorney would report a fellow attorney for fraud upon the courts. The conspiracy merely grew.

9. On many occasions Defendant/Appellant has filed the fraud (upon the court) cited by Paton that was carried out by TLC Holdings, LLC and their attorneys against Hutson. Although known to all Respondent's/Third Party Defendants and Officers of the Court Defendant/Appellant restates a few:

- a) In 2010, Hutson contracted (Lease Purchase Agreement, hereinafter LPA) with Sellers (TLC Holdings, LLC) to purchase 108 acres of property for \$6M dollars.
- b) Hutson had a title search conducted that revealed: "good title."
- c) Hutson was required to purchase the Big Water Resort campground (Membership Interest Purchase Agreement, hereinafter MIPA) at the same time he signed the LPA for the development of private residences. (NOTE: Hutson did not want the campground, but TLC and their lawyers required that MIPA be executed simultaneously with the LPA.)
- d) TLC Holdings, LLC and their attorneys (who prepared all contracts) failed to disclose to the Buyer, Hutson , that the property could not be sold due to defective title as Paton cites in her 2016, "77 counts of fraud." Hutson's Title Search did not reflect any defective title. Paton cites this also in her 77 counts of fraud by TLC and their attorneys. All Respondent's and Third Party Defendants

were fully aware of these details since they had copies of all those documents including Paton's 77 cited counts of fraud by TLC and their attorneys.

10. Evidencing this, Respondent/Third Party Defendant, Tim Newton, Esq. cites in his 16 paragraph letter to Hutson in paragraph number (16):

"It's hard to see why TLC and its lawyers should not have, in good faith, simply told you (and the court) that the Big Water Resort property was undevelopable because it was already obligated to double lifetime memberships as a private club. It appears that could easily have averted the entire fiasco. Since attorneys were involved, and it resulted in your inability to present your case in court and possibly led to the sanctions order and judgment against you, there might possibly be extrinsic fraud on the court to support setting aside the Consent Order. See Chewning v. Ford Motor Co. 354 S.C. 72, 579 S.C. 72, 579 S.E. 2e 605 (2003)".

Newton is acknowledging that if attorneys were involved, they should have reported the fraud upon the court. Attorneys' failure to report the fraud to the Court/Tribunal resulted in Hutson not getting a fair trial... nor having his case fully heard! The simple fact is: when extrinsic fraud is present against a defendant, it is impossible for that defendant's case to be fully heard. That is the very reason that Hutson lost all of his cases: Intentional Extrinsic Fraud upon the Courts. Clearly, Penn America's attorneys were totally aware of the extrinsic fraud. Since no attorney reported the extrinsic fraud to the Court or Tribunal, as required, the fraud upon the courts is still corrupting the courts preventing judges from fully understanding the truth and preventing Defendant/Appellant from having his case(s) heard.

11. Respondents/ Third Party Defendants have seized the opportunity to claim Defendant/Appellant's lost cases as a 'defense' stating that Defendant/Appellant's failed cases

were caused by each case being frivolous or harassing in order to ask for an injunction and complaint against Defendant/Appellant in front of the now Common Pleas Court. The 'lost case' in Common Pleas whereby a \$3.5M judgment was awarded to Plaintiffs TLC Holdings, LLC and their attorneys who had structured the Extrinsic Fraud, would NEVER qualify in any perspective as 'frivolous'! It was fraudulently damaging! It is also not frivolous that the fraudulently acquired judgment is still on this Defendant/Appellant's record! These unscrupulous actions are fraudulent and supported by a long list of "Officers of the Court."

12. The trial court has the inherent authority, within the exercise of sound judicial discretion, to dismiss an action when a plaintiff (albeit attorneys) have perpetrated a fraud on the court, or where a party refuses to comply with court orders. (*Kornblum v. Schneider*, 609So. 2d 138, 139 (Fla. 4th DCA 1992).

13. **United States Court of Appeals for the Sixth Circuit** has delineated five (5) elements of conduct that constitute extrinsic fraud upon the Court;

1. "On the part of an officer of the Court"
2. "That is directed to the judicial machinery itself,"
3. "That is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth;"
4. "That is a positive averment or is concealment when one is under a duty to disclose;"
5. "That deceives the Court."

14. **Rule 3.3. Candor Towards the Tribunal:** "One who intentionally conceals critical evidence for the sole purpose of self preservation at the cost of disgracing, deceiving, plotting and defrauding the Honorable Court, is creating Extrinsic fraud upon the court".

15. **Rule 402, Attorney Oath:** "I will employ for the purpose of maintaining the causes confided to me only such means as are consistent with trust and honor and the principles of professionalism, and will never seek to mislead an opposing party, the Judge or Jury by a false statement of fact or law". Therefore, ANY attorney who misleads an opposing party, a Judge, or a Juror, by concealing critical evidence (especially existing or on-going fraud upon the court(s)) while *fully knowing* that the 'opposing side' does not understand or perhaps is not aware of such critical evidence) prevents the opposing side to properly and fully present their case and puts that or those attorneys in full, criminal violation of their 402 oath:

16. **Lawyer's Oath South Carolina Appellate Court Rule 402 (k).** "To opposing parties and their counsel, I pledge fairness, integrity and civility, not only in court, but also in all written and oral communications."

17. **Conspiracy (18 U.S. C. 371):** "A combination or agreement to accomplish an unlawful purpose, or to use illegal means in accomplishing a lawful purpose."

18. **Rule 8.3 (SCRPC) and cmt. 1.** "As a self-regulating profession, lawyers are expected to report serious misconduct by other lawyers to appropriate disciplinary authorities. The duty to report the misconduct of others extends even to misconduct by another lawyer in the same firm".

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

20. **SCRPC Rule 1.0(o):** A series of specific criminal activities that qualify as serious crimes is delineated to include interference with the administration of justice. Justice for this

Defendant/Appellant has been *totally removed* by these attorneys in covering up Extrinsic Fraud and fraud to protect fellow attorneys.

21. Officers of the court are absolutely required to report active extrinsic fraud upon the court without hesitation. No Respondent, nor Plaintiff/Third Party Defendant has *ever* reported the extrinsic fraud. ON THE CONTRARY, Respondents and Plaintiff/Third Party Defendants cite Defendant/Appellant's lost cases (which were actually lost due to the extrinsic fraud) and used those cases *against* Hutson in an attempt discredit Hutson and cover-up the attorneys' legal wrongdoings. The Plaintiffs/Respondent's main concern was personal financial gain and covering for fellow attorneys who created the original fraud upon the court even if it cost Penn America Insurance Company and Global Indemnity (PAGI), their direct client, multi-million dollar Settlement Fees *and* cost this Appellant years of life, bankruptcy, indigency, and huge judgments on his record. To date, those conspiring attorneys are effectively covering for each other. It is time for corruption to be exposed and addressed in South Carolina, in the S.C. courts, and on their rosters.

22. Once put on notice of the Extrinsic Fraud and attorney corruption, any court residing over any hearing, trial, or related case(s) MUST rule in favor of Appellate/Defendant Hutson. Otherwise, that court is condoning "legal corruption" and fraud upon the court and the judges merely join the list of corrupt attorneys and officers of the courts, *their* fellow attorneys. Defendant/Appellant Hutson is beyond frustrated to a point of considering suicide while officers of the court (Respondents and Plaintiffs/Third Party Defendants) continue to playing their deceitful corruption: the continuation of extrinsic fraud by all "officers of the court" to protect their fellow attorneys' manipulation of extrinsic fraud upon the Honorable Courts and Judges of the State of South Carolina. Justice and a rightful claim to recoup damages should exist for any

citizen who has had losses of funds, health, reputation, and mental acuity. The Respondents and Third Party Defendants are destroying the scales of justice. There is no justice in these attorneys' schemes---and the web is growing. Even President Richard Nixon was kicked out of office when he became aware of wrongdoings and concealed it. It is time for justice in South Carolina!

23. Defendant/Appellant really wonders if the court is looking for honesty from any of these officers of the court. Lawyers are trained to twist and misrepresent including lying about the truth – apparently, and especially, if their badges are at risk.

24. South Carolina rules and laws require officers of the court to be duty bound to report extrinsic fraud. Laura Paton, Tim Newton, Murphy & Grantland including Christian Stegmaier and Collins & Lacy all lawyers who were hired by Plaintiffs, also attorneys in the State of South Carolina, and all were totally aware of their responsibility to report fraud upon the court . They never should have conspired with TLC Holdings, LLC's attorneys. These attorneys' corruption has cost Appellant/Defendant Hutson unbearable damages and losses. Even more amazing is that these lawyers who through their intent to protect fellow attorneys from being held accountable for their crimes of entrapment and fraud are now using those lost cases for their own attempted "defense." They are claiming that Hutson's lost cases are proof and create a justifiable defense for that Appellant/Defendant to be discredited and 'thrown out' of the current cases whereby he is simply calling out to the "Honorable" Courts to right the wrongs that have been done and grant him justice, restore his respectability, and stop the criminal actions against him. The actions of the corrupt attorneys are worse than those of a serial rapist.

SUMMARIZING:

- a) TLC and their attorneys fully understood that they could not sell the 108 acres due to the lifetime memberships. Even though Hutson was paying thousands of dollars*

to TLC for the Lease Option to Purchase, TLC, it's owners and their attorneys knew full well that Hutson could never purchase the property.

- b) The sole purpose of TLC pretending to sell the 108 acres of land to Hutson on contract was to trap Hutson into becoming responsible for the hidden \$22M dollars regarding memberships. Paton cites this fraudulent point within her 77 counts of fraud perpetrated by TLC and their lawyers against Hutson.*
- c) After Hutson purchased the campground memberships, he later discovers that TLC who owed all of the 108 acres refused to give Hutson an contractual lease or right to use some of the property in order to honor the 740 pre-collected memberships which netted TLC approx. \$5.5M. Hutson soon learned that he had no legal right to the property in order to attempt to honor up to two lifetime usage-rights for the membership families. Paton cites this serious issue in her 77 counts of fraud.*
- d) TLC and their lawyers prepared a financial statement for Big Water Resorts citing a worth of \$1.7M when in fact Big Water Resort had nothing except an empty shell with no land to operate nor any money plus a hidden outstanding \$22M dollars worth of Debt. Worse than that, TLC could not provide good and marketable title leaving Hutson with no legal way of being able to purchase the 108 acres much less unable to run a campground on land cited for exclusive use by the 740 memberships. Paton cites the same in her 77 fraud counts.*
- e) Hutson had simply been used as a scapegoat and tool for TLC to slip out of their pre collected obligations including desperately transferring the \$22M outstanding hidden debt to Hutson knowing full well that Hutson had no possible way to continue the operations of the campground. Paton sites this in her 77 counts of fraud TLC and their attorneys carried out against Hutson. At no time did TLC*

attorneys ever disclose any of the pre planned plot and scheme to dump dooms day of Hutson. Hutson could not keep his end of the contract due to the fraud.

Consequently, TLC attorneys contracted Hutson's insurance company "Penn America and Global Indemnity" and achieved a \$3.5M judgment against Hutson, continuing to hide behind extrinsic fraud.

- f) All of these lost cases could have been prevented once Penn America and the Respondents and Third Party Defendants fully understood the extrinsic fraud perpetrated by TLC and their attorneys. Instead, Penn America and the Respondents, (including Third Party Defendants), decided to play along with TLC's attorneys and allow the extrinsic fraud to continue causing each Respondent (including all Third Party Defendants) to become Co-conspirators to the original extrinsic fraud while they fully understood their legal obligations as required by law to report such fraud upon the court which prevented Hutson from having his cases heard in court. Again, Hutson was severely damaged.*
- g) Big Water Resort was losing \$350,000.00 dollars each year and had done so for many years. Consequently, this created a hidden obligation to Hutson of approximately \$22M dollars to honor all membership agreements for 70 years. Paton cites this fraud within her 77 counts of fraud.*
- h) TLC and their attorneys intentionally failed to report and/or file 740 one and two lifetime memberships of exclusive use rights to use the 108 acres of which is required in South Carolina to protect any innocent third party buyer from holders of long term 'leases'. Paton cites this in her 77 counts of fraud.*

- i) *This quick outline does not take a rocket scientist to clearly see through this cover up, fraud, deception, lies and continued extrinsic fraud. Any Respondent or Third Party Defendant is lying each time any/each deny the concrete proof.*
- j) *TLC and their attorneys fully understood that they could not sell the 108 acres due to the lifetime memberships. Even though Hutson was paying thousands of dollars to TLC for the Lease Option to Purchase, TLC, it's owners and their attorneys knew full well that Hutson could never purchase the property.*
- k) *The sole purpose of TLC pretending to sell the 108 acres of land to Hutson on contract was to trap Hutson into becoming responsible for the hidden \$22M dollars regarding memberships. Paton cites this fraudulent point within her 77 counts of fraud perpetrated by TLC and their lawyers against Hutson.*
- l) *After Hutson purchased the campground memberships, he later discovers that TLC who owed all of the 108 acres refused to give Hutson an contractual lease or right to use some of the property in order to honor the 740 pre-collected memberships which netted TLC approx. \$5.5M. Hutson soon learned that he had no legal right to the property in order to attempt to honor up to two lifetime usage-rights for the membership families. Paton cites this serious issue in her 77 counts of fraud.*
- m) *TLC and their lawyers prepared a financial statement for Big Water Resorts citing a worth of \$1.7M when in fact Big Water Resort had nothing except an empty shell with no land to operate nor any money plus a hidden outstanding \$22M dollars worth of Debt. Worse than that, TLC could not provide good and marketable title leaving Hutson with no legal way of being able to purchase the 108 acres much less unable to run a campground on land cited for exclusive use by the 740 memberships. Paton cites the same in her 77 fraud counts.*

- n) *Hutson had simply been used as a scapegoat and tool for TLC to slip out of their pre collected obligations including desperately transferring the \$22M outstanding hidden debt to Hutson knowing full well that Hutson had no possible way to continue the operations of the campground. Paton sites this in her 77 counts of fraud TLC and their attorneys carried out against Hutson. At no time did TLC attorneys ever disclose any of the pre planned plot and scheme to dump dooms day of Hutson. Hutson could not keep his end of the contract due to the fraud. Consequently, TLC attorneys contracted Hutson's insurance company "Penn America and Global Indemnity" and achieved a \$3.5M judgment against Hutson, continuing to hide behind extrinsic fraud.*
- o) *All of these lost cases could have been prevented once Penn America and the Respondents and Third Party Defendants fully understood the extrinsic fraud perpetrated by TLC and their attorneys. Instead, Penn America and the Respondents, (including Third Party Defendants), decided to play along with TLC's attorneys and allow the extrinsic fraud to continue causing each Respondent (including all Third Party Defendants) to become Co-conspirators to the original extrinsic fraud while they fully understood their legal obligations as required by law to report such fraud upon the court which prevented Hutson from having his cases heard in court. Again, Hutson was severely damaged.*
- p) *Big Water Resort was losing \$350,000.00 dollars each year and had done so for many years. Consequently, this created a hidden obligation to Hutson of approximately \$22M dollars to honor all membership agreements for 70 years. Paton cites this fraud within her 77 counts of fraud.*

- q) *TLC and their attorneys intentionally failed to report and/or file 740 one and two lifetime memberships of exclusive use rights to use the 108 acres of which is required in South Carolina to protect any innocent third party buyer from holders of long term 'leases'. Paton cites this in her 77 counts of fraud.*
- r) *This quick outline does not take a rocket scientist to clearly see through this cover up, fraud, deception, lies and continued extrinsic fraud. Any Respondent or Third Party Defendant is lying each time any/each deny the concrete proof. TLC and their attorneys fully understood that they could not sell the 108 acres due to the lifetime memberships. Even though Hutson was paying thousands of dollars to TLC for the Lease Option to Purchase, TLC, it's owners and their attorneys knew full well that Hutson could never purchase the property.*
- s) *The sole purpose of TLC pretending to sell the 108 acres of land to Hutson on contract was to trap Hutson into becoming responsible for the hidden \$22M dollars regarding memberships. Paton cites this fraudulent point within her 77 counts of fraud perpetrated by TLC and their lawyers against Hutson.*
- t) *After Hutson purchased the campground memberships, he later discovers that TLC who owned all of the 108 acres refused to give Hutson an contractual lease or right to use some of the property in order to honor the 740 pre-collected memberships which netted TLC approx. \$5.5M. Hutson soon learned that he had no legal right to the property in order to attempt to honor up to two lifetime usage-rights for the membership families. Paton cites this serious issue in her 77 counts of fraud.*
- u) *TLC and their lawyers prepared a financial statement for Big Water Resorts citing a worth of \$1.7M when in fact Big Water Resort had nothing except an empty shell*

with no land to operate nor any money plus a hidden outstanding \$22M dollars worth of Debt. Worse than that, TLC could not provide good and marketable title leaving Hutson with no legal way of being able to purchase the 108 acres much less unable to run a campground on land cited for exclusive use by the 740 memberships. Paton cites the same in her 77 fraud counts.

- v) *Hutson had simply been used as a scapegoat and tool for TLC to slip out of their pre collected obligations including desperately transferring the \$22M outstanding hidden debt to Hutson knowing full well that Hutson had no possible way to continue the operations of the campground. Paton sites this in her 77 counts of fraud TLC and their attorneys carried out against Hutson. At no time did TLC attorneys ever disclose any of the pre planned plot and scheme to dump dooms day of Hutson. Hutson could not keep his end of the contract due to the fraud. Consequently, TLC attorneys contracted Hutson's insurance company "Penn America and Global Indemnity" and achieved a \$3.5M judgment against Hutson, continuing to hide behind extrinsic fraud.*
- w) *All of these lost cases could have been prevented once Penn America and the Respondents and Third Party Defendants fully understood the extrinsic fraud perpetrated by TLC and their attorneys. Instead, Penn America and the Respondents, (including Third Party Defendants), decided to play along with TLC's attorneys and allow the extrinsic fraud to continue causing each Respondent (including all Third Party Defendants) to become Co-conspirators to the original extrinsic fraud while they fully understood their legal obligations as required by law to report such fraud upon the court which prevented Hutson from having his cases heard in court. Again, Hutson was severely damaged.*

- x) *Big Water Resort was losing \$350,000.00 dollars each year and had done so for many years. Consequently, this created a hidden obligation to Hutson of approximately \$22M dollars to honor all membership agreements for 70 years. Paton cites this fraud within her 77 counts of fraud.*
- y) *TLC and their attorneys intentionally failed to report and/or file 740 one and two lifetime memberships of exclusive use rights to use the 108 acres of which is required in South Carolina to protect any innocent third party buyer from holders of long term 'leases'. Paton cites this in her 77 counts of fraud.*
- z) *This quick outline does not take a rocket scientist to clearly see through this cover up, fraud, deception, lies and continued extrinsic fraud. Any Respondent or Third Party Defendant is lying each time any/each deny the concrete proof.*

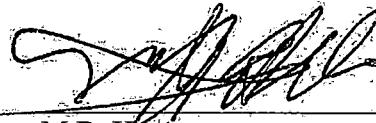
Defendant/Appellant prays that:

1. Defendant/Appellant (Pro Se) Hutson, who has for nearly a decade been severely damaged and victimized by these corrupt attorneys' conspiracy receive justice and, in all fairness, be duly awarded financial recovery, punitive damages, a reversal in the Appellate Court to proceed to a jury, and receive the overdue and full support of these Honorable Courts in word and in action for the actions of their officers, and
2. these Plaintiffs/Third Party Defendants / Respondents (all Officers of the Court) be brought to justice, receive stern, appropriate, professional sanctions and any and all other remedies to prevent them from being able to injure others by using their

licensure in the courts to intentionally conduct further corruption and/or fraud upon the court, and

3. that these Plaintiffs / Third Party Defendants/ Respondents be judged by their professional agencies for their intentional, unscrupulous, illegal and corporate engagement with other officers of the court for the purpose of defending and covering for the corruption of fellow attorneys rather than to: 1) execute justice and/or 2) honor their professional oath, and
4. severely sanction all involved lawyers/officers of the court for their intentionally failing to disclose fraud upon the court, and
5. send Defendant / Appellant's cases to a jury.

Respectfully Submitted on this 30th day of September, 2020.



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

SERVICE

DEFENDANT'S RESPONSE TO PLAINTIFFS /THIRD PARTY DEFENDANTS'

Motion to Strike Defendant's "Notice of Extrinsic Fraud," *and* "Memorandum to Defendant's Amended Cross Complaint," *and* Plaintiffs' "Request for Sanctions and Memorandum in Support," *and* Plaintiffs' "Motion to Strike Portions of Defendant's 'Answer' " *and* Request for Sanctions.,

and

due to temporary court restrictions and modified court operating procedures due to the Coronavirus as communicated to this Defendant, Pro Se, Hutson via Court Clerks, I, M. B. Hutson hereby send out to all parties via electronic copies (email) on Wednesday, September 30th, 2020 to:

- 1) the Richland County Clerk of Court, and
- 2) Plaintiffs/Third Party Defendants/Respondents, as listed:

Christian Stegmaier, Esq.
Collins & Lacy P.C.
Post Office Box 12487
Columbia, SC 29211
cstegmaier@collinsandlacy.com

Collins & Lacy P.C.
Post Office Box 12487
Columbia, SC 29211

Timothy J. Newton, Esq.
Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, SC 29260
tnewton@murphygrantland.com

Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, SC 29260

PAGI Insurance Co's.
c/o Collins & Lacy P.C.
Post Office Box 12487
Columbia, S.C. 29211
cstegmaier@collinsandlacy.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
	)	
Penn America Insurance Company and	)	C.A. No: 2020-CP-40-03810
Global Indemnity Group, LLC,	)	
	)	
Plaintiffs/Counter-Defendants,	)	
	)	
vs.	)	PENN AMERICA INS. CO.,
	)	GLOBAL INDEMNITY GROUP, LLC,
Morris Beach Hutson a/k/a M.B. Hutson,	)	CHRISTIAN STEGMAIER, ESQ. AND
	)	COLLINS & LACY P.C.'S
Defendant/Counter-Plaintiff.	)	RESPONSE TO AND MOTION TO
	)	STRIKE
	)	(1) DEFENDANT'S 9/24/2020 RESPONSE
Morris Beach Hutson a/k/a M.B. Hutson	)	TO THE MOTION TO
	)	STAY/STRIKE/DISMISS HUTSON'S
Third-Party Plaintiff,	)	AMENDED COUNTERCLAIMS AND
	)	THIRD-PARTY CLAIMS AND MOTION
vs.	)	FOR TEMPORARY AND PERMANENT
	)	INJUNCTION
Timothy J. Newton, Esq.; Murphy &	)	AND REQUEST FOR SANCTIONS;
Grantland, P.A.; Christian Stegmaier, Esq.;	)	(2) DEFENDANT'S 9/30/2020 RESPONSE
and Collins & Lacy P.C.,	)	TO MOTIONS; AND (3) DEFENDANT'S
	)	9/30/2020 ADDENDUM RESPONSE TO
Third-Party Defendants.	)	MOTIONS
	)	

TO: MORRIS BEACH HUTSON A/K/A M.B. HUTSON, *PRO SE*
 DEFENDANT/COUNTER-PLAINTIFF/THIRD-PARTY PLAINTIFF:

MOTION TO STRIKE

Plaintiff/Counter-Defendant Penn America Insurance Company ("PAIC"),
 Plaintiff/Counter-Defendant Global Indemnity Group, Inc. ("Global"), Third-Party Defendant
 Christian Stegmaier, Esq. ("Stegmaier"), and Third-Party Defendant Collins & Lacy P.C. ("Collins
 & Lacy") (collectively "these Counter-Defendants and Third-Party Defendants"), respond to and
 move for an Order striking the following filings of Defendant/Counter-Plaintiff/Third-Party
 Plaintiff Morris Beach Hutson a/k/a M.B. Hutson's ("Hutson"):

1. Defendant's Response to Penn America Insurance Company, Global Indemnity Group, LLC, Christian Stegmaier, Esq. and Collins and Lacy P.C.'s Motion to Stay, or in the alternative Strike, or in the alternative Dismiss, Huston's Amended Counterclaims and Third-Party Claims and Motion for Temporary and Permanent Injunction, dated September 24, 2020.
2. Defendant's Response to Plaintiffs/Third Party Defendants' Motion to Strike Defendant's "Notice of Extrinsic Fraud" and "Memorandum to Defendant's Amended Cross Complaint," and Plaintiffs' "Request for Sanctions and Memorandum in Support." And Plaintiff's "Motion to Strike Portions of Defendant's 'Answer'" and Request for Sanctions, dated September 30, 2020.
3. Defendant's Addendum Response to Plaintiffs' Motion to Stay, or Strike, or Dismiss Defendant's Amended [sic] Counterclaims & 3rd Party Claims & Motion for Temporary and Permanent Injunction, dated September 30, 2020.

These Counter-Defendants and Third-Party Defendants again request that sanctions be imposed against Hutson.

The grounds for the instant motion are that Hutson's filings are not in compliance with the South Carolina Rules of Civil Procedure regarding format and content. A factual and procedural history is set forth in the Amended Motion to Strike and Memorandum related to Huston's "Notice of Extrinsic Fraud" and "Memorandum to Defendant's Amended Cross Complaint," which was filed in this matter on September 29, 2020.

Rule 11 of the South Carolina Rules of Civil Procedure provides that "[t]he written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay." Rule 11(a), SCRCF. With respect to violations of Rule 11, it further provides for the imposition of sanctions, including an order to pay to the other party or parties the amount of the reasonable expenses and attorney's fees incurred because of the filing of the pleading, motion or other paper, including a reasonable. Id.

Additionally, Rule 12(f) of the South Carolina Rules of Civil Procedure provides for Motions to Strike pleadings, stating:

Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

Rule 12(f), SCRPC.

Here, Huston's Response to these Counter-Defendants and Third-Party Defendant's Motion to Stay, Strike, or Dismiss Hutson's Counterclaims and Third-Party Claims and Motion for Injunction, dated September 24, 2020, is replete with false statements and references to inapplicable law. Specifically, Hutson's Response makes the following allegations:

- a. Huston alleges that Christian Stegmaier and Collins & Lacy, P.C. are intentionally committing fraud upon the court by filing this action and are aware that TLC Holding's attorneys concealed known fraud the federal and state courts. Whatever fraud Hutson thinks was committed in 2010 contracts, in the 2012 settlement agreement, or in the 2014 ejectment proceedings, these Third-Party Defendants have seen no evidence of it and were not participants in it.
- b. Hutson alleges that he would not have lost his cases if Penn America would have permitted defense counsel representing him to disclose the extrinsic fraud upon the court. Again, there is no evidence that any extrinsic fraud upon the court was ever committed. **Moreover, the reason that Hutson lost his counterclaims against TLC Holdings was because both the state and federal court found that Hutson's claims related only to the original land deal and were waived in the Release and Consent Order entered in the prior breach of contract action.**

- c. Hutson claims that the only rationale presented to Judge Nettles in support of the motion for summary judgment in Hutson's Bad Faith Action were "all of the lost cases involving TLC Holdings, knowing those cases were lost due to extrinsic fraud." He further asserts that he was served with more than 1,500 pages of documents at the hearing and was unable to review them before the hearing went forward. First, the instant action is not an opportunity for Hutson to relitigate the claims he raised in the Bad Faith Action, which is currently pending on appeal. Second, the main defense to Hutson's Bad Faith claims was the Release he signed in the Coverage Action. Third, there is no evidence that Hutson's past claims were "lost due to extrinsic fraud." Fourth, Penn America served its Memorandum in Support of Summary of Judgment the day prior to the hearing via e-mail and provided another copy to Hutson in-person at the hearing. The Memorandum was twenty-four pages and accompanied by two exhibits, the 93-page Insurance Policy pursuant to which Hutson was provided a defense in the Class Action and Defamation lawsuits and the 14-page Affidavit of Thomas Harper including the exhibits attached thereto. Hutson made no request for a continuance to the trial court. Regardless, this not a relevant issue to the instant case.
- d. Hutson claims that former defense counsel for him, Laura Paton, was aware of, stipulated to, verified, and investigated 77 "counts" of fraud committed against Hutson. This is a misrepresentation of the seventy-seven paragraphs of the *pro se* counterclaims contained with the Answer filed by Paton.
- e. Hutson claims that Plaintiffs are using Hutson's past failed cases to "create a reason" to file a fraudulent petition for injunction. While Hutson's prior frivolous

filings are relevant to his classification as a vexatious litigant, it is his threats of continued litigation against these Counter-Defendants and Third-Party Defendants that has precipitated the instant litigation.

- f. Hutson further continues to reference a portion of the Immigration and Nationality Act that relates to fraud in the immigration process. This Act has no applicability to the instant litigation.

With respect to Defendant's Response to Plaintiffs/Third Party Defendants' Motion to Strike Defendant's "Notice of Extrinsic Fraud" and "Memorandum to Defendant's Amended Cross Complaint," and Plaintiffs' "Request for Sanctions and Memorandum in Support." And Plaintiff's "Motion to Strike Portions of Defendant's 'Answer'" and Request for Sanctions, dated September 30, 2020, Hutson makes the following allegations and threats:

- g. Hutson again accuses these Counter-Defendants and Third-Party Defendants of committing extrinsic fraud in the Bad Faith Action, the pending appeal from the Bad Faith Action, and in the instant litigation. There is no evidence to support these improper allegations.
- h. Hutson again claims that former defense counsel for him, Laura Paton, cited and detailed 77 "counts" of fraud committed against Hutson. This is a misrepresentation of the seventy-seven paragraphs of the *pro se* counterclaims contained with the Answer filed by Paton. Hutson further avers the alleged fraud has continued in the pending appeal of the Bad Faith Action and in the instant litigation. Hutson then discusses fraud in the underlying land contracts entered with TLC Holdings and claims that he was unaware of the cloud on the title of the property. This evidences that as much as Hutson claims that there was some

extrinsic fraud committed against the courts in 2012 and 2014, when it comes to details, it all relates back to the claims of fraud in the original land deal, which he raised and waived in the 2012 Release and Consent Order.

- i. Hutson claims that Newton's correspondence to him "clearly" outlined the fraud and extrinsic fraud carried out by TLC Holdings. Newton's e-mail to Hutson stated: "... there might possibly be extrinsic fraud on the court to support setting aside the Consent Order." However, as is clear from reading the entirety of the correspondence, at the time Newton wrote that e-mail, he was not yet aware of the evidence that Hutson knew full well that the lifetime memberships related to the campground would not prevent him from developing at least some areas of property. Nonetheless, Hutson continues to cite correspondence from Newton as if it is evidence and acknowledgment of fraud, triggering a duty to report the same.
- j. Hutson seems to rely upon the merit of the claims that TLC Holdings brought against him, which resulted in a jury verdict in TLC Holdings' favor and substantial award, to overcome the frivolity of his own counterclaims against TLC Holdings, which Hutson lost on summary judgment. This is similar to what is occurring here—the Plaintiffs assert a valid claim for injunctive relief and Hutson responds by asserting frivolous counterclaims, as well as frivolous third-party claims.
- k. Hutson makes unsubstantiated claims that these Counter-Defendants and Third-Party Defendants are driven by financial gain to engage in conspiracy and corruption. The only financial benefit that Plaintiffs seek from the instant lawsuit is a stop to the litigation costs associated with defending against Hutson's claims

and the inevitable appeals that will arise therefrom, creating a never-ending cycle of vexatious litigation.

- l. Hutson claims that he is frustrated and has contemplated suicide by what he considers to be a game of “deceitful corruption.” These parties are only interested in seeing finality to the claims asserted against them by Hutson. There is an appeal of the Bad Faith Action pending, but Hutson repeatedly threatens to initiate additional litigation against these Counter-Defendants and Third-Party Defendants because he believes that he has been cheated out of millions of dollars. However, there is no basis in fact or law to support Hutson’s belief.
- m. Hutson writes that the actions of the attorneys in this case are “worse than those of a serial rapist.” This allegation is impertinent or scandalous within the meaning of Rule 12, SCRCP.
- n. Hutson requests improper relief in his response, including an award of damages, reversal in the pending appeal, professional sanctions against counsel, and a jury trial.

With respect to Defendant’s Addendum Response to Plaintiffs’ Motion to Stay, or Strike, or Dismiss Defendant’s Ammended [sic] Counterclaims & 3rd Party Claims & Motion for Temporary and Permanent Injunction, dated September 30, 2020, Hutson makes the following allegations and threats:

- o. Hutson again accuses these Counter-Defendants and Third-Party Defendants of refusing to report extrinsic fraud and inform the “full and real truth as to why Defendant’s cases were all lost,” such that Hutson is being prevented from having his case heard. He further accuses them of violating his civil rights, intentionally

obstructing justice, and corrupting the Courts and Judges. There is no evidence to support these improper allegations.

- p. Hutson makes additional threats to seek help from “the South Carolina Tribunal” if this Court fails to stop the alleged fraud.
- q. Hutson alleges that the documents filed by these Counter-Defendants and Third-Party Defendants with this Court are fraudulent. There is no evidence to support this improper allegation.
- r. Hutson alleges that Tim Newton, Esquire stated that he was aware of the fraud upon the Court and that Hutson realized Newton was part of the extrinsic fraud and conspiring with TLC Holdings. There is no evidence to support this improper allegation.
- s. Huston continues to reference alleged fraud he perceives in the 2012 and/or 2014 proceedings. It seems as though Hutson wants these Counter-Defendants and Third-Party Defendants to take a position on fraud for which it has seen no evidence and was not a party. While Hutson wants to make this case about past and persistent fraud, this case is about preventing continued abuse of our civil justice system by Hutson, who blames these Counter-Defendants and Third-Party Defendants for the fact that his counterclaims against TLC Holdings were unsuccessful.
- t. Hutson alleges violations of the South Carolina Rules of Professional Conduct and some sort of protectionist ring of attorneys all seeking to protect one another. There is no evidence to support these improper allegations.
- u. Hutson requests this case be sent to a jury, in-court depositions, and various other relief. Injunctive relief is equitable in nature and is not subject to trial by jury. The

Rules of Civil Procedure govern the discovery process, the scope of which will be defined by whether this Court grants Plaintiff's temporary injunction and stays proceedings related to Huston's counterclaims and third-party claims.

In sum, the content of Hutson's three most recent filings are replete with the same baseless and false allegations as his other filings with this Court. Accordingly, they should be stricken and not considered by this Court.

CONCLUSION AND REQUEST FOR HEARING

Based on the foregoing, these Counter-Defendants and Third-Party Defendants respectfully request that this Court grant their Motion to Strike Defendant's filings dated September 24 and September 30, 2020. They further request that the Court sanction Hutson's misconduct.

These Counter-Defendants and Third-Party Defendants respectfully request argument on their motion. These Counter-Defendants and Third-Party Defendants reserve the right to amend this motion prior to argument and disposition of the motion. Further, These Counter-Defendants and Third-Party Defendants reserve the right to supplement its argument by an additional written memorandum of law, affidavits, and other materials permitted under the South Carolina Rules.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,
COLLINS & LACY, P.C.

By: s/Christian Stegmaier
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S.C. Bar No. 68648
cstegmaier@collinsandlacy.com
LAURA R. BAER
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(803) 256-2660 (main)
(803) 771-4484 (fax)

ATTORNEYS FOR PLAINTIFFS PENN
AMERICA INS. CO. AND GLOBAL
INDEMNITY GROUP, LLC, AND FOR
THIRD-PARTY DEFENDANTS
CHRISTIAN STEGMAIER, ESQ. AND
COLLINS & LACY P.C.

**PENN AMERICA INS. CO., GLOBAL
INDEMNITY GROUP, LLC,
CHRISTIAN STEGMAIER, ESQ. AND
COLLINS & LACY P.C.'S RESPONSE
TO AND MOTION TO STRIKE (1)
DEFENDANT'S 9/24/2020 RESPONSE
TO THE MOTION TO
STAY/STRIKE/DISMISS HUTSON'S
AMENDED COUNTERCLAIMS AND
THIRD-PARTY CLAIMS AND
MOTION FOR TEMPORARY AND
PERMANENT INJUNCTION AND
REQUEST FOR SANCTIONS; (2)
DEFENDANT'S 9/30/2020 RESPONSE
TO MOTIONS; AND (3) DEFENDANT'S
9/30/2020 ADDENDUM RESPONSE TO
MOTIONS**

Columbia, South Carolina
October 5, 2020

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

Plaintiff

vs.

MB Hutson/MB Hudson,

Defendant/Plaintiff

vs.

Penn America Insurance Company, Global
Indemnity Group, Inc.

3rd Party Defendants

IN THE COURT OF COMMON PLEAS

Civil Action # 2020 – CP- 400- 3810

**SUPPLEMENTAL TO DEFENDANT'S
RESPONSE TO PLAINTIFFS/THIRD PARTY
DEFENDANTS'**

**Motion to Strike Defendant's "Notice of
Extrinsic Fraud" and
"Memorandum to Defendant's Amended Cross
Complaint," and
Plaintiff's "Request for Sanctions and
Memorandum in Support" and
Plaintiffs' "Motion to Strike Portions of
Defendant's 'Answer' " and
Request for Sanctions.**

Comes now Defendant presenting critical information to this case:

1. Regarding the letter of legal advice written and emailed to Defendant Hutson on August 13, 2018, by Plaintiffs' lead legal counsel in South Carolina, Tim Newton, Esq. of Murphy & Grantland, P.A. (M&G). This was written August (2018) while M&G's Newton was actively representing his firm's clients, Plaintiffs, Penn America / Global Insurance / Torus-Starstone (hereinafter PAGI) previously submitted. Newton, Esq., counsel for PAGI, wrote a sixteen paragraph letter to this Defendant, PAGI's insured, acknowledging that he, Newton, of

2020 OCT -8 PM 1:49
JEANETTE W. MORRIS
C.C.P. & G.S.
FILED
RICHLAND COUNTY

M&G, as counsel for this Defendant's insurance carriers PAGI (Plaintiffs in this current/related case). Newton was aware of the Extrinsic Fraud upon the Courts carried out by TLC Holding's attorneys, (*then-* the Plaintiffs who were suing Hutson and his Insurance Carriers -- PAGI).

Newton writes:

" Since attorneys were involved, and it resulted in your inability to present your case in court, and possibly led to the sanctions order and judgment against you, there might possibly be extrinsic fraud on the court to support setting aside the Consent Order. See Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E. 2nd 605 (2003)..."

...This paragraph is an issue of material fact that only a Jury can rule on once all and complete evidence has been raised and presented. Defendant has demanded a Jury trial on all matters. Since the reasonableness of the actions of the Defendants in handling the claim are in dispute, that question is one for a Jury to decide." Hutson points out that the law states that the evidence must be viewed in the light most favorable to the insured (Hutson). (*Emphasis mine.*)

This evidence shows Newton, Esq. had researched *all* the case information including the supporting cases to substantiate his assessment of the existence of the Fraud Upon the Court by the attorneys for TLC Holdings, LLC. The material facts were at Newton's disposal.

Furthermore, Defendant Hutson swears under oath that Newton, stated (verbatim) that he was "aware of the Extrinsic Fraud." HOWEVER, Newton failed to execute his fiduciary DUTY to report his findings of Fraud upon the Court to the courts. Plaintiffs' out-of-state Legal Department (PAGI), worked through M&G's licensed South Carolina attorneys/ Officer(s) of the Court/ and was acting as "master/director" to M&G's attorneys/servants). This was substantiated by Newton's statement in the same document (bottom of page two--emphasis mine):

"Possibly Frank could file a motion," (referring to the Extrinsic Fraud) "IF PENN AMERICA APPROVES IT, but he and I have agreed to put everything on hold until the mediation."

This clearly illustrates the extreme care that these Plaintiff/Third Party Defendants, out of state insurance companies were going through to try to distance themselves at more than an arm's

length, from any responsibility for the on-going Fraud Upon The Court....but they were still calling the shots (as evidenced by Newton's letter). They are shrewd, but should not be allowed by the Honorable Courts of South Carolina to do that kind of business in this Honorable State, damaging S. C. citizens and offering them up as a sacrifice to the greed and conniving fraud of out of state millionaires. Plaintiffs, (more specifically the legal departments of PAGI, as well as the umbrella carrier for the contract, Torus/ Starstone,) --were directing their S. C. legal counsel (M&G) as 'Masters'. They were *all* cognizant of the extrinsic fraud facts through their professional relationship with M&G. Each attorney had a PROFESSIONAL DUTY to report -- by at least a Notice to the Courts-- that TLC Holdings, LLC's lawyers were committing on-going Extrinsic Fraud. Therefore, all present and past hearings/orders should have been moved to be set aside as they obstructed justice via Civil Rights Violations on Defendant Hutson, the policyholder. (This paragraph is an issue of material facts that, as stated by Newton in his August 13, 2018 email letter that "only a jury can rule on after hearing all the evidence." The Defendant has given many instances of "bad faith and conduct" by the Plaintiffs. Among those are alleged violations by attorneys of varying ethical code sections. While those may not be a separate cause of action (Defendant Hutson does not concede such to be the case. In fact, Defendant Hutson argues that those violations themselves are separate causes of actions,) they *do* support the argument that the actions constituting ethical violations do, in fact, constitute unreasonable actions on the part of the Plaintiffs and their attorneys in the handling of the claim.

A. There was a pending mediation in 2018 with TLC Holdings, LLC and their attorneys (who had committed the Fraud upon the Court) scheduled right after Newton's letter was written. Tim Newton, Esq., of (M&G) was in constant contact with this Defendant, Hutson, during the time directly preceding the scheduled mediation. Newton openly stated to Hutson that he wanted to pressure TLC Holdings, LLC, and

their attorneys (Turner, Padget, Graham & Laney) into a lower settlement amount in order to save money for his clients, PAGI and Torus/Starstone Companies, so sworn in Hutson's Affidavit. Newton clearly stated in 2018 that he believed that if this Defendant (Hutson) filed a complaint naming Extrinsic Fraud against TLC Holdings, LLC's attorneys at Turner Padget, Graham & Laney, P.A., that it could possibly encourage those attorneys to negotiate at mediation for far less money than the \$3.5M judgment. This was, in fact, Newton's motivation for providing the multi-point legal advice letter on August 13, 2018, to Defendant Hutson. Newton urged Hutson to file his complaint prior to the mediation scheduled for early September, 2018 and supplied Hutson with seven case law references that would legally support his letter and allegations that would stand up in Hutson's potential case which Newton was urging him to file. Defendant reminds the court that Newton was then actively representing plaintiff PAGI. As Newton was actively representing PAGI at that time, his guidance to Hutson to file for the aforementioned reasons entwined himself into the Fraud upon the Court. Christian Stegmaier, Esq., who now represents PAGI, is fully aware of the contents of Newton's letter. (This paragraph is an issue of material facts that only a Jury can rule on after hearing all detailed evidence.)

B. Defendant Hutson pleaded with Murphy & Grantland's Tim Newton, Esq., as well as attorneys at the insurance carriers' offices, to file a notice to the three (3) Federal Judges and four (4) S.C. State Judges that:

- i. Turner Padget Graham and Laney, P.A. (representing TLC Holdings, LLC) had and *were still* committing Extrinsic Fraud upon the Court, and

ii. to notice the judges that they were then carrying the fraud over onto Defendant Hutson's Insurance Companies (PAGI) as well as upon their insured, this Defendant, Hutson.

Hutson also points out the law that the evidence must be viewed in a light most favorable to the Defendant/the insured. Since the reasonableness of the actions of the Plaintiffs in handling the claim are in dispute, that question is one for a Jury to decide. Also, this paragraph is an issue of material facts that only a jury can rule on after hearing all the evidence.

C. Newton, Esq. advised Defendant Hutson that he (speaking for Murphy & Grantland, as the servant) and PAGI / Torus/Starstone) **would not serve a notice of the Extrinsic Fraud...** "because lawyers just don't do each other like that." This was a clear violation of South Carolina Rules of Professional Conduct, **(Rule 3.3-b) "Duty to Reveal Criminal or Fraudulent Conduct to the Tribunal"**, (Rule 12), "Scope of Representation", **(Rule 8.4-a) "Misconduct"**, **(Rule 4.1) "Truthfulness in statements to Others"**, **(Rule 8.4-d), "Dishonesty, Fraud, Deceit and Misrepresentation," (Rule 8.4-c) "Misconduct Legal Advice," (Rule 3.3-a-3) "Mandatory Duty to Report Serious Misconduct,"** which in this instance was being co-conspired by these Plaintiffs and their attorneys with TLC Holdings, LLC's attorneys. (This paragraph is an issue of material facts that only a Jury can rule on after hearing all evidence is presented.)

D. Nevertheless, these Plaintiffs and their attorney representatives, did **nothing** to report, or file notice, to *any* of the six (6) Federal and/or State Judges that Turner Padgett Graham & Laney, P.A. had, and were continuing to, commit Fraud upon the Court by withholding material facts for the purpose of intentionally damaging this Defendant into millions of dollars. This conspiracy continues into this current case, and

the related Appellate Case (#2019-001488--active) and even as this Defendant reports it to this Tribunal. This paragraph is an issue of material facts that only a Jury can rule on after hearing all the evidence. Probable cause exists and this case should be bound over to a Jury.

EXAMPLES OF THE EXTRINSIC FRAUD CONCEALMENTS INCLUDE:

- A. In failing to disclose the Vacation Time Shares encumbering the property;
In failing to record the memberships as required pursuant to Sections 27-32-10 through 27-32-250 of the 1976 Code are designated as Article 1 of Chapter 32, Title 27 and entitled "Vacation Time Sharing Plans"; In failing to pay and subsequently hiding the debt owed to Black River Electric;
- B. In failing to provide any additional consideration for subsequent attempts to modify their agreement;
- C. In failing to properly disclose the true conditions of the business and properties at issue in the Agreements and putting them into the stream of commerce;
- D. In making fake representations as to the condition of the business and properties at issue in the Agreements and / or representations as to the condition of the business and properties at issue in the Agreements in reckless disregard as to the truth of the representations;
- E. In failing to analyze and preserve reserves for maintenance and operation of the business and concealing same;
- F. Advising Mr. Hutson that the Retail Memberships could be divested to allow for development of the lakefront land as discussed;

G. In failing to advise Mr. Hutson that the land being purchased under the Lease Option Purchase could not be sold due to defective title;

H. In failing to advise Mr. Hutson that Big Water Resort had no land to operate its business on, preventing Hutson from honoring the memberships;

I. In failing to disclose to Mr. Hutson that Big Water Resort had a hidden 22M dollar obligation with no means to raise or pay that hidden obligation; and

J. Other such concealments/misrepresentations as may be discovered during discovery. (Numbers 1 through 12 are issues of material fact that only a Jury can rule on after hearing all evidence.)

2. All current Plaintiffs and their attorneys were acutely aware of these concealed facts and fully understood these facts *each time* TLC Holdings, LLC's attorneys appeared at hearings, presented evidence, filed motions, helped the Honorable Judges (both Federal and State) to prepare orders and even at the Jury trial where TLC Holdings, LLC's attorneys won the \$3.5M judgment against Defendant Hutson (which, this court must be aware of, and that it remains on Defendant's record to this day.) *Even so, no attorney ever disclosed to the Courts* the intentional concealments and misrepresentations from the Fraud upon the Courts, thereby intentionally allowing TLC Holdings, LLC the great legal advantage over Defendant Hutson preventing Defendant Hutson from being able to present his case, or be heard, which:

A. violated Hutson's civil rights, and

B. damaged Hutson with excruciating mental and exorbitant financial damages.

These are issues of material fact that only a Jury can rule on after hearing all evidence. Since the reasonableness of the actions of the Plaintiffs in handling these claims are in dispute, that

question is one for only a Jury to decide. Hutson also points to the law that the evidence must be viewed in the light most favorable to the victim/Defendant.

4. **Plaintiffs merely sat back and their only concern was simply getting the case closed, no matter what laws they ignored, disobeyed or violated, whether civil, criminal or the esteemed South Carolina Rules of Professional Conduct.** South Carolina Courts have also applied the reasonableness standard to an insurer's actions in making settlement decisions. Compare *Tyger River Pine Co., 170 S.E. At 346 with Am. Gas. Co. Of Reading Pa. V. Howard, 187 F. 2d 322 (4th Cir. (S.C.) 1951)*. And, **if the evidence raises a question of reasonableness, the question is one for the jury to decide.** (Emphasis supplied.) *Smith v. Md. Gas. Co., 742 F. 2d 167, 170 (4th Cir. 1984)*. Plaintiffs have intentionally, and grossly violated the rights of their insured, this Defendant. (This paragraph is an issue of material fact that only a jury can rule on after hearing all evidence from discovery.)

5. The August 13, 2018, sixteen paragraph e-mailed letter (submitted earlier) and prepared by Newton, Esq. of M&G fully supports Defendant Hutson, in every way. However, when Defendant Hutson, learned that all Plaintiffs had co-conspired by way of Extrinsic Fraud with Turner, Padgett, Graham and Laney, P.A., (attorneys for TLC Holdings, LLC) by settling the judgment ***without noticing all Courts of the underlying extrinsic fraud***, Defendant Hutson filed a lawsuit against all defendants/these Plaintiffs and their counselors, as none reported the Extrinsic Fraud. South Carolina courts have also applied the reasonableness standard to an insurer's actions in making settlement decisions. *Compare Tyger River Pine Co., 170 S.E. At 346 with Am. Gas. Co. Of Reading Pa. V. Howard, 187 F. Ed 322 (4th Cir. (S.C.) 1951.* (This paragraph is an issue of material fact that only a jury can rule on after hearing all evidence.)

6. Upon receiving Defendant Hutson's earlier complaint (#2018-CP-400-6344) in this case (which is now in the S. C. Appellate Court (#2019-001488), Tim Newton, Esq. filed a

twenty-two page memorandum, alleging that all negative court actions resulting from former Court rulings and were caused by this Defendant's lack of judicial expertise and ethics. In fact, all negative actions and results upon this Defendant Hutson were caused by these attorneys' concealments and their lack of required disclosures to the Courts and to the Honorable Judges: namely, the Fraud upon the Courts, via the direction and counsel of these Plaintiffs (PAGI). Now it is being turned totally against this Defendant in an attempt to cover PAGI and their attorneys' failure to disclose the Fraud Upon the Courts. This is merely an effort to cover their own failure to disclose the underlying Fraud upon the Court whereby they then became full party to it.

7. This attempt by Newton was merely an attempt to cover up the fact that the August 13, 2018, was a genuine legal advice letter from himself to Hutson to assist Hutson in moving forward with his planned lawsuit against TLC Holdings, LLC's attorneys to orchestrate a more moderate settlement figure. Newton's current memorandum contradicts everything that Newton personally typed, prepared and emailed to Plaintiff Hutson on August 13, 2019. His current Memorandum is merely an attempt to defend himself, and thereby the insurers, these Plaintiffs, and escape serious legal repercussions for counsels' failure to act uprightly before the S. C. Tribunal and Judges. This paragraph is an issue of material facts that only a jury can rule on after hearing all the evidence. This case has more than a scintilla of evidence, as there is a plethora of evidence including issues of material fact that must be bound over for jury trial.)

8. A few days after Defendant Hutson had filed his complaint (Case cited above in Richland County (#2018-CP-400-6344), Newton (for these Plaintiffs) telephoned Defendant Hutson and stated that filing it would be nothing less than "throwing me" (Newton) "under the bus," and especially referred to his three page letter of August 13, 2018. Newton added that it would ruin him: possibly causing him lawsuits and disbarment. In Newton's Memorandum which he filed with this court, he tries to create illusions of "*Hutson* lacking candor to the Court."

This paragraph is an issue of material fact that only a Jury can rule on after hearing all the evidence to determine the truth because “ *if the evidence raises a question of reasonableness, the question is one for the jury to decide*”. (Emphasis supplied) *Smith v. Md. Cas. Co.*, 742 F.2d 167, 170 (4th Cir. 1984).

9. Issues of facts from Newton's August 13, 2018, letter:

A. **Paragraph #3, Newton writes :** "The alleged lease between Big Water Resort, LLC and TLC Holdings, LLC, if it existed, was never recorded, although it was for a term of more than a year". This meant that Plaintiff Hutson purchased Big Water business thinking it had 108 acres to use for 70 years to honor the family members in when, in fact, it had no property to honor any memberships. There were 740 family memberships that Plaintiff Hutson had no way to honor and Newton was aware of that all along, yet said nothing until the August 13, 2018, legal advice letter to Hutson due to Newton of Murphy and Grantland, P.A.'s motive to pressure TLC Holdings, LLC and their attorneys to settle for less. Plaintiff Hutson swears under oath that Defendant PAIG and counsel / M&G's Tim Newton **acknowledged** to Plaintiff Hutson on more than three occasions of their knowledge of TLC's attorneys committing "Extrinsic Fraud Upon the Courts" / Judges which caused Hutson's case losses. Newton, nor JR Murphy, of M&G ever reported the Extrinsic Fraud to the Courts, nor did they defend Hutson against the Extrinsic Fraud. Newton stated to Plaintiff that "*Penn America would not agree to defend any part of the Extrinsic Fraud*". (This paragraph is an issue of material fact that only a Jury can rule on after hearing all evidence to determine truth and justice.). AN INSURED MAY ALSO RECOVER CONSEQUENTIAL BAD FAITH DAMAGES IF THE INSURED

CAN SHOW BAD FAITH OR UNREASONABLE ACTION BY THE INSURER IN ITS HANDLING OF THE CLAIM. (Emphasis supplied) *Ocean Winds*, 241 F. Supp. 2d at 576 (citing *Tadlock Painting Co.*, 473 S. E. 2d at 52), *Varnadore v. Nationwide Mut. Ins. Co.*, 345 S.E. 2d 711 (S.C. 1986.)

B. **Newton writes:** "Membership agreements between the campground members and Big Water Resort, LLC were *never recorded*. Possibly they should have been, since they granted campground members a rights to use Big Water Resort, LLC's facilities for life plus the lifetime of a survivor." That equates to a period of consecutive years that could easily be over one-half a century. *See S.C. Code 27-33-30* (requiring "any... agreement for the use ... of real estate" to be recorded. Newton was completely aware that since the memberships were not recorded, it made an impossible task for Defendant Hutson to legally comply with the Settlement Agreement/Consent Order. Newton also was aware that the lack of recordation had been done intentionally by TLC Holdings, LLC and their attorneys, who were acutely aware of the same, yet concealed this information from Hutson and from the Courts and Judges. This paragraph is an issue of material fact that only a Jury can rule on after hearing all evidence to allow for Justice.

C. **Newton writes** "The Settlement Agreement, in para. 5, obligates Hutson to submit a Qualified Plat for a proposed subdivision. The Settlement Agreement contained provisions for an acreage release, and it appears the payments owed to TLC may be paid from the proceeds of the subdivision and sale of parcels of the property". Newton and the TLC Holdings, LLC's attorneys were fully aware that no property could ever be developed due to the unrecorded

membership agreements and their extensive rights to use the land and its amenities. This legal situation doomed Hutson. Newton and Murphy of M&G, were *fully aware of this situation*. All Plaintiffs and Third Party Defendants were and are aware that Defendant Hutson was being defrauded via Extrinsic Fraud allowing a great advantage to TLC Holdings, LLC and their attorneys while leaving Defendant Hutson with a great disadvantage and with no way for a defense due to the well-sculpted Extrinsic Fraud concealments. These Plaintiffs and 3rd party Defendants all were aware of the extrinsic fraud and never reported it. All these Plaintiffs and 3rd Party Defendants were aware that Defendant Hutson was not aware of the legal issues. (This paragraph is an issue of material fact that only a Jury can rule on after hearing all evidence to determine truth and justice.)

D. **Newton writes:** "The Consent Order filed April 13, 2012, incorporates the Settlement Agreement but does not otherwise mention Big Water Resort, LLC or the campground members. It reads as if it pertains to a mere landlord - tenant dispute". Defendant Newton fully understood this legal factor and could have merely stepped in by filing a motion bringing the Courts and Judges up to date on the Extrinsic Fraud through intentional concealment of documents. **Notifying the Court of the Extrinsic Fraud on Newton's part would have reversed the *res judicata* slipped into the Settlement Agreement and Consent Order (penned by TLC Holdings, LLC's attorneys, which was formed to mask the Extrinsic Fraud.** (This Paragraph is an issue of material facts that only a Jury can rule on after hearing all evidence to determine truth and Justice.)

E. Newton writes, *"I can see how you could argue that the Consent Order is invalid because it attempts to adjudicate the rights of parties not before it. If you*

were ordered to develop property that was subject to lifetime use rights, that probably should have been brought to the court's attention. Furthermore, I can see how you could argue you did not realize you were being obligated to violate the rights of the campground members by developing since TLC Holdings, LLC never specified exactly which part(s) of the property was subject to the campground memberships". This is further evidence that the Defendants were fully aware that Plaintiff could never comply with the Consent Order or the Settlement Agreement due to Extrinsic Fraud upon the Court through the intentional concealment of documents and third party rights to use. YET, Newton and the other Third Party Defendants did nothing to notify the courts, the Tribunal, or the Federal and State Judges. Not even a single, simple motion was made, which would have caused the Court to throw out or dismiss all failed actions against Defendant Hutson. The res judicata would have been reversed due to the Extrinsic Fraud. (South Carolina Rules of Professional Conduct, Rule 3.3-b "Duty to Reveal Criminal or Fraudulent Conduct to the Tribunal; Rule 3.3 - a-3, page 406 " Duty to Report Serious Misconduct: Since the reasonableness of the actions of the Plaintiffs in handling the claim are in dispute, that question is one for the Jury to decide. Hutson, Defendant, also points to the law that the evidence must be viewed in the light most favorable to the Defendant, the insured.

F. No attorney did anything to report/expose the underlying Extrinsic Fraud. Therefore, no one defended Plaintiff Hutson against the Extrinsic Fraud devised by attorneys, even though the attorneys for the insurance company HAD THE KNOWLEDGE AND THE OBLIGATION TO DO SO according to the Ninth

Circuit Court and the South Carolina Supreme Court (Filed earlier). (This paragraph is an issue of material fact that only a Jury can rule on after hearing all evidence to gain full truth and Justice.)

G. **Newton further writes:** *"It's hard to see why TLC and its lawyers should not have, in good faith, simply told you (and the Court) that the Big Water Resort property was undevelopable because it was already obligated to double lifetime memberships as a private club. It appears that could easily have averted the entire fiasco. Since attorneys were involved, and it resulted in your inability to present your case in court, and possibly led to the sanctions order and judgment against you, there might possibly be extrinsic fraud on the court to support setting aside the Consent order. See Chewning v. Ford Motor Co. 354 s.c. 72, 579 S.E. 2d 605 (2003)".* Again, all Third Party Defendants and Plaintiffs were aware of this for they all had an obligation to investigate --and they did. This Plaintiff and Third Party Defendants simply would not help or report the extrinsic fraud through concealment of documents as is required by law. (This paragraph is an issue of material fact that only a jury can rule on after hearing all evidence to determine truth and Justice.)

H. I remind the Honorable Judge that M&G's Tim Newton, Esq. is the same Third Party Defendant who filed a twenty-two page memorandum portraying Defendant as a nobody. Third Party Defendants (servants to PAGI) are simply trying to hide their guilt and their clients' guilt (master) to prevent any form of punishment by way of money or lawsuits or additional lawsuits. The insurance companies (master) and Murphy & Grantland (servants) are guilty of failing to comply with State and Federal rules, consequently, this is why Newton described

the situation as being "thrown under the bus" and pleaded with Defendant by phone not to go forward with this complaint.

I. **Newton writes**, in his last sentence of the August 13, 2018 email of legal advice, representing PAGI, *"If you need the documents supporting the above, let me know"*. Defendant reminds this Honorable Court, AGAIN, that Third Party Defendant Newton had cited seven case laws in his emailed letter to Hutson supporting and urging Defendant Hutson to file against TLC Holdings, LLC in order to create leverage for the Mediation on behalf of PAGI with TLC Holdings, LLC. Newton also offered additional case law and even further assistance should Defendant Hutson need it. Newton expressed that he hoped Plaintiff Hutson would have already filed his extrinsic fraud case against TLC Holdings and their attorneys prior to the final mediation (from which Plaintiff Hutson was barred). Defendant Newton's entire Memorandum is false or "misstated" to protect the slick, seasoned attorneys and insurance carriers. (This paragraph is an issue of material fact that only a Jury can rule on after hearing all the evidence.)

10. Plaintiff Hutson is opposing the motion for summary judgment or dismissal due to Rule 56 (e) which states "made explicit that a party opposing a motion could not rest on the pleading but had to come forward by affidavit or otherwise with specific evidence showing that there was a genuine issue for trial". Plaintiff Hutson has far exceeded meeting that requirement and shows his affidavit as well as the Defendants own letters as written proof and evidence of genuine issues for trial.

11. Murphy & Grantland (servants) for PAGI (master) wrote two letters. The issue of facts from the second letter, three months later written on November 8, 2018, are as follows:

A. **Newton wrote** Hutson on November 8, 2018, in behalf of Penn America that reads (P. 3, par. 5): **"At no point has Penn-America or its counsel ever acknowledged the existence of fraud upon the court"**. Here, Newton is attempting to wriggle out of his written letter of August 13 providing the legal advice to Hutson by saying that he (the servant) nor Penn America (master) has never mentioned the words "fraud upon the court". These two letters contradict each other and prove that M&G (servants) and PAGI (master) intentionally misrepresented the truth and intentionally lied attempting to:

- 1) cover up their earlier acknowledgment of Extrinsic Fraud, and
- 2) mask their lack of executing their required duty to report the Extrinsic Fraud.

In the liability context, the two key policy provisions, the breach of which gives rise to both breach of contract and bad faith claims, are the provisions providing for a duty to indemnify by the insurer and the provision providing for a duty to defend the insured. (Emphasis supplied) *Sloan Constr. Co. V. Central Nat'l Ins. Co.*, 236 S. E. 2d 818 (1977); *Nationwide Mut. Ins. Co. V. Tate*, 438 S. E. 2d 266, 268 (S.C. Ct. App. (1993).

B. This is a direct violation of SCRPC:

"A lawyer's conduct should conform to the requirements of the law, both in professional service to the clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A Lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process."

PAIG, M&G and Tim Newton, Esq. violated this oath of being honest to the public and to the insured (Defendant Hutson), for they are licensed attorneys who holds a valid badge as officers of the Courts and represents themselves to the Courts and Judges as honest, law-abiding, trustworthy attorneys when, in fact, their actions make themselves dishonest liars. This certainly indicates that:

1) PAIG (masters) are liars, and

(2) all attorneys for the insurance company are liars as well.

THE HONORABLE COURT SHOULD RECOGNIZE THESE ATTORNEYS accordingly, including any defense they present.

12. Lawyers representing the insurance carriers have violated:

A. **Rule 8.4-e** "Misconduct legal advice: "It is professional misconduct for a lawyer to:...(e) engage in conduct that is prejudicial to the administration of justice;"

B. **Rule 3.3** "Duty to reveal criminal or fraudulent conduct to the Tribunal."

"A party may obtain relief from a judgment for fraud on the court...South

Carolina courts have distinguished between extrinsic fraud, for which

relief is available....Extrinsic fraud is collateral to the question examined

and prevents the party" (Hutson, Defendant, in this instance) "from

presenting his case...in Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.

2d 605 (2003). The court stated that the involvement of an attorney in

intentionally concealing documents amounts to extrinsic fraud: "intentional

concealment of documents by an attorney are actions which constitute extrinsic

fraud..." Id. at 82, 579 S.E. 2d at 610-611." Page 258-259, Rules of Professional

Conduct (2016) Wilcox and Crystal, SC Bar Association, Pub. ALTHOUGH the

initial extrinsic fraud on the court was perpetrated by TLC Holdings, LLC's

attorneys (2010- 2014), (with which Tim Newton, Esq. and J.R. Murphy, Esq. of

M&G were fullt aware, but they chose to negotiate a settlement with the

perpetrators of the Extrinsic Fraud) with their clients PAGI rather than fulfill their legal responsibilities of reporting that fraud upon the court to the Honorable S.C. Courts.

M&G discovered...BUT DID NOT REPORT THE EXTRINSIC FRAUD ALTHOUGH IT WAS their DUTY to do so. Their inaction caused great harm to this Defendant:

1. for which relief is available (SCRPC, p. 258), but
2. relief was not requested nor obtained due to counsel for PAGI *not requesting nor reporting it* to the Court/Tribunal, and
3. Counsel for PAGI left Defendant/Hutson, with a \$3.5M judgment on his record, causing damages from which he could not recoup nor be able to move forward in business from.

13. Newton's emailed letter on behalf of M&G. and all the insurance companies (PAGI, Torus/Starstone) is material evidence that ALL REPRESENTATIVES OF THE INSURANCE COMPANIES WERE FULLY AWARE of the Extrinsic Fraud, yet did not uphold their Professional Duty to report it to a Tribunal. THEIR LACK OF REPORTING THE EXTRINSIC FRAUD UPON THE COURT DENIED HUTSON FROM HAVING HIS DAY IN COURT, DENIED HUTSON a reversal of the *Consent Order, Settlement Agreement*, the *res judicata*, and the \$3.5M judgment, all of which the attorneys for TLC Holdings, LLC had orchestrated in a grand plot. Hutson, thereby, was unable to be heard, and to date has been made thereby unable to receive restitution and justice. By NOT disclosing the Extrinsic Fraud, M&G became co-conspirators with its authors: "*concealment of documents by an attorney are actions which constitute extrinsic fraud...where an attorney—an officer of the court...intentionally conceals documents, he or she effectively precludes (the victim)....(from) having his day in court.*" (page 259, SCRPC. 3.3).

14. The PAGI Defendants' violation of their obligation to investigate and their duty to defend *when they knew the difference, and they did*, was all caused by personal/corporate greed and a lack of respect for the law and for their insured. This should be sent to the news media for it is corruption that should not be allowed to continue and should be made public to warn others that Murphy & Grantland, Penn America, Global, Tim Newton, Esq., J.R. Murphy, Esq., and now Christian Stegmaier, Esq. will violate the law for their own personal interests. (This paragraph is an issue of material fact that only a Jury can rule on after hearing and seeing all evidence in order to make a fair ruling.) NOTE: An insured may also recover consequential bad faith damages if the insured can show bad faith or unreasonable action by the insurer in its handling of the claim. (Emphasis supplied) Ocean Winds, 241 F. Supp. 2d at 576 (citing Tadlock Painting Co., 473 S.E. 2d at 52); see also Mixson, 562 S.E. 2d at 662 (advancing a novel theory to deny a claim); Varnadore v. Nationwide Mut. Ins. Co., 345 S.E. 2d 711 (S.C. 1986.)

15. Defendant Hutson is not barred from filing this complaint for all of the Plaintiffs and Third Party Defendants have intentionally become liars and co-conspirators against the insured, Hutson, costing him millions of dollars and crippling his future.

16. THE HONORABLE COURTS SHOULD KNOW that there are thousands of lawyers and insurance companies every year who are disbarred or sanctioned by the State Regulators as well as by various Insurance Commissioners for breaking or violating rules and laws. In addition, there are hundreds of lawsuits filed every year for malpractice, breach of contract, cause of damages by the general public against lawyers and insurance carriers. Extrinsic Fraud Upon the Court is very serious. That fraud, in particular, destroys the public's trust in the Judicial System of our country. Having been brought to the attention of the Court, if the Court does nothing to rectify these violations, our Judicial System becomes a farce. Judges have the same responsibility to abide by the laws and ethical standards as lawyers do. As a war

veteran, this situation is utterly unacceptable to me, and MUST be rectified! Our courts MUST be honorable! (This paragraph has issues of material facts which require a Jury to examine all evidence and make a ruling.)

17. Defendant Hutson is entitled to actual, direct, consequential, incidental, special, and punitive damages in an amount to be determined by a Jury.

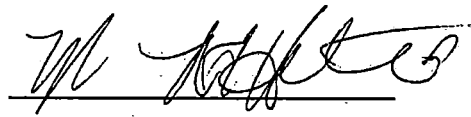
THEREFORE, Defendant Hutson prays for the following;

1. Allow this case to be forward to a Jury Trial. Jury Trial demanded.
2. Allow for a speedy trial.
3. Allow for enough time for Defendant / Pro Se to present his case in full.
4. Include all other prayers presented by Defendant.
5. Should the Honorable Judge have a conflict in presiding over this case, that he recuse himself since Plaintiff already has lost millions of dollars, years of his life and needs unadulterated Justice.
6. Deny request for Summary Judgment, Deny Plaintiff's Motion to Strike,
7. Approve Defendant's Amended Cross Complaint,
8. Deny Plaintiff's Request for Sanctions and Memorandum in Support,
9. Deny Plaintiff's Motion to Strike Portions of Defendant's Answer,
10. Due to the fact that Defendant is accurate and indigent, all caused by attorneys' intentional lack of disclosure, Deny Plaintiff's Motion Requesting Sanctions.
11. Dismiss Plaintiff's Motion for Injunction and Dismiss Plaintiff's Complaint in favor of Defendant due to the underlying Fraud upon the Court .

12. Rule in favor of Defendant, and allow Defendant's case to go to a jury trial as there exists a plethora of evidence that is undeniable.

This court and Judge has an obligation to provide justice and protect Defendant from unscrupulous lawyers.

Respectfully re-submitted this 8th day of October, 2020.

A handwritten signature in black ink, appearing to read 'M. B. Hutson', is written over a horizontal line.

M. B. Hutson
P.O. Box 2755
Orangeburg, South Carolina 29116-2755
(803) 308-2714

To: The Honorable Judge Hood

Date: Thurs., October 8, 2020

From: M. B. Hutson, Pro Se Defendant

Your Honor:

I am emailing this important, last paper to you since I just learned that I could electronically file but must physically sign the filing. I did file this with the court, but since the hearing is so close at hand (15th of October), I thought it would be best to forward this by email, to be sure that you get this prior to the hearing:

I have asked for a simultaneous hearing for both requests for Injunction (Plaintiffs' and Defendant's). Since the subject matter is the same in both, a simultaneous hearing is most equitable.

Kindly let me know if you can address them simultaneously. Otherwise, I would like to request that they be scheduled simultaneously at a later date, although I am extremely anxious to have this heard, and am asking for a jury trial.

Respectfully,



M B Hutson, Pro Se Defendant

RICHLAND COUNTY
FILED
2020 OCT -8 PM 1:49
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CIVIL ACTION NO: 2020-CP-40-03810

Penn America Insurance Company and Global
Indemnity Group, LLC,

Plaintiffs,

v.

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

Defendant.

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

Defendant / Third-party Plaintiff

v.

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

Third-party Defendants.

**THIRD-PARTY DEFENDANTS
TIMOTHY J. NEWTON AND
MURPHY & GRANTLAND, P.A.'S
RESPONSE IN SUPPORT OF
MOTION TO DISMISS,
OR, IN THE ALTERNATIVE,
MOTION FOR SUMMARY JUDGMENT**

Third-party Defendants, Timothy N. Newton and Murphy & Grantland, P.A. (hereinafter collectively "Newton") submit the following response to Plaintiff / Third-Party Claimant Morris Beach Hutson's "Supplemental to Defendant's Response," which was filed on or about October 8, 2020. Hutson's Supplemental Response highlights the reasons why his third-party claim should be dismissed and Plaintiff's requested relief granted.

Rule 12(b)(8), SCRPC. Hutson's Supplemental Response confirms that his third-party claims arise from an e-mail dated August 13, 2019 that was central to the prior action that is pending on appeal. (See Hutson "Cross-Complaint" filed Aug. 17, 2020, Exh. 3: "Newton E-mail.") Hutson's arguments are merely a rehash of numerous filings he has made in that action. M.B. Hutson / M.B. Hudson v. Penn America Ins. Co., Civ. Action No. 2018-CP-40-06344 (Richland County Comm Pl.) (the "Bad Faith Action"). Judge Nettles has already granted

Newton's motion for summary judgment as to these claims. (See Complaint, Exh. I: Order granting MSJ.) Therefore, Hutson's third-party claims in this action should be dismissed pursuant to Rule 12(b)(8), SCRCPP. Newton submits herewith the "twenty-two page memorandum" Hutson referenced (see Hutson Supplemental Memorandum, pp. 9, 14.) which underscores that the same issues were litigated in the Bad Faith action. (Exh. 10: Mem. in Supp. of Newton's Mot. to Dism filed May 30, 2019.) Newton also files herewith Newton's Reply Memorandum (Exh. 11) and Amended Response to Hutson's Supplemental Memorandum (Exh. 12) from the Bad Faith action. These Memoranda are incorporated herein because they are responsive to many of Hutson's allegations in this action.

Res Judicata. Hutson's has not provided any reason why his third-party claims should not be barred by *res judicata*. Newton and his firm are entitled to dismissal on this ground also.

Rule 12(b)(6). Although Hutson has arguably increased the intensity of his false and defamatory allegations, Hutson nevertheless fails to allege facts to support a claim. Hutson has asserted a legal conclusion that Penn-America and its current and former attorneys are committing "extrinsic fraud upon the court." However, he has not alleged any factual basis for such a claim. Hutson has not provided any support for his theory that merely because attorneys are officers of the court, they have a duty to report fraud perpetrated upon an opposing party by a third party in a prior case. Newton incorporates the arguments from the prior action (Exh. 10, 11, and 12), as well as the findings in Judge Nettles' Order, in support of this defense.

Hutson is a vexatious litigant. Courts have the inherent authority and the duty to protect themselves and other litigants from vexatious and harassing litigation. 1A C.J.S. Actions § 72 (June 2020 Update). Parties are not allowed to maintain vexatious, frivolous, and malicious claims. Id.

In his Supplemental Memorandum, Hutson continues his pattern of using court filings as a mechanism for publishing false and defamatory material. Hutson's Supplemental Memorandum is full of defamatory and scandalous allegations.

Hutson's allegation, repeated several times, that Newton instigated Hutson's claim of fraud upon the court against TLC, is materially false. As early as March 14, 2016, Hutson was filing motions in federal court claiming *res judicata* should not apply because extrinsic fraud was committed. (Exh. W from the Bad Faith Action, attached.) In response to a Tyger River demand in the defamation action, Hutson demanded that Penn-America refuse to pay a dime to TLC, calling them "crooks" who "stole from him." (Exh. 13: E-mail dated Aug. 31, 2017; Exh. 14: E-mail dated Sept. 22, 2017.) In that e-mail, Hutson stated his intent to "hire attorneys and expert witnesses to file for a set aside of the original Settlement Agreement due to fraud upon the Court and fraud against me." (Exh. 14; see Complaint, ¶ 14.) This was almost a year prior to the e-mail Hutson relies upon in his invective against Newton. (See Hutson "Cross-Complaint" filed Aug. 17, 2020, Exh. 3: Newton E-mail dated August 13, 2018.) Hutson again stated his intent to sue TLC to set aside the 2012 Settlement based upon fraud upon the court in an e-mail dated December 10, 2017. (Exh. 15: E-mail.) Hutson's Supplemental Memorandum contains many other assertions that are simply untrue and that are known by Hutson to be false.

Hutson's allegation that Newton's e-mail was legal advice was argued before Judge Nettles. (See Complaint, Exh. I: Nettles Order, p. 3.) It is therefore inappropriate for Hutson to raise it again in this proceeding.

Furthermore, this allegation is scandalous and defamatory because it casts the e-mail in a false light. Newton's e-mail was responsive to threats of litigation and repeated requests by Hutson

that Penn-America join him in his proposed lawsuit against TLC. (Exh. I: Nettles Order, p. 5.) The points raised in Newton's e-mail were, for the most part, raised in prior litigation.

Hutson alleged in his counterclaims in prior actions that TLC knew Hutson intended to develop waterfront property when they entered into the Land Deal. (Compare Newton E-mail, ¶¶ 1-2 with Exh 6: Counterclaim, ¶ 46. The fact that the lease and campground memberships (Hutson calls them "Retail Memberships") were not recorded was repeatedly raised in prior litigation. (Compare Newton E-mail, ¶¶ 3-5 with Exh. 6: Counterclaim, ¶¶ 64-77.)

The remainder of Newton's e-mail concerned two issues Hutson had recently raised regarding the 2012 Settlement Agreement and Consent Order. First, Hutson asserted that after the 2012 Settlement Agreement, TLC approved Hutson's plan to develop a subdivision on the campground property. Second, Hutson represented to Newton that TLC wrongfully withheld from him, and from the court, that all of the property in the Land Deal was subject to the campground membership, some of which granted use rights to the campground members for two lifetimes:

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

A. All of the property except the small gas station was fully used by the family members (*i.e.*, campground members)."

(Exh. 2: Mem. Opp. Emerg'y Mot., Exh. V, p. 93 of 99).

Newton's e-mail stated that Hutson's allegation that all of the property in the Land Deal was subject to the campground memberships could not be verified because nothing was in writing, but there was some corroborating evidence. (Newton E-mail, ¶¶ 6-8, 14.) TLC's approval of Hutson's plan to develop a subdivision on the campground site was verified. (Id., ¶¶ 11-12.) The Settlement Agreement gave Hutson rights and/or duties to take certain steps toward developing a subdivision on the property. (Newton E-mail, ¶ 10.) Newton expressed concern that the court may not have been informed that the Settlement Agreement affected the rights of the campground

members, who were not parties. (Newton E-mail, ¶¶ 9, 13, 15-16.) If not, perhaps Hutson had a claim for fraud upon the court. (Id., ¶¶ 15-16.)

Judge James' Order enforced a conditional release based upon Hutson's breach of the 2012 Settlement Agreement and Consent Order. (Complaint, Exh. A.) Judge James found Hutson's breach was at least partly due to Hutson's failure to obtain a "Qualified Plat" as part of the subdivision project. (Id., p. 9, ¶ 4.) As a result, Hutson was deemed to have released all claims against TLC. (Id., p. 10.) The release of Hutson's counterclaims arguably affected his ability to mount a "truth" defense in the Defamation Action. This, in turn, affected Penn-America due to its liability coverage for one of Hutson's companies.

Newton's e-mail provided Hutson with information known to Newton and Penn-America at the time so he would have the opportunity to protect his rights. Newton's e-mail expressly states that Newton could not represent him and that he should retain counsel should he decide to pursue his claim against TLC.

Newton denies Hutson's claim that he told Hutson he knew TLC committed fraud. But even if Newton told Hutson he thought TLC's conduct was fraudulent, it would not give rise to a cause of action. It would not be the first time an opposing attorney turned out to be wrong in predicting the outcome of a case during settlement discussions.

Moreover, Newton did not have all the facts at the time. Newton subsequently learned that Hutson lacked any factual basis for his statement that all property in the Land Deal was subject to the lifetime campground membership agreements. (Exh. 7: E-mail dated Nov. 11, 2010; Exh. 8: Excerpts from Stroman dep.)

Furthermore, the implications of TLC's approval of Hutson's proposed development upon the campground site are uncertain. Newton has repeatedly shown in the Bad Faith proceeding that

Hutson may be hoisting himself on his own petard in raising that issue. The campground memberships that Hutson attached to his Complaint in the Bad Faith action were issued by Big Water Resort, LLC. (Exh. 1.1-1.3, attached.) At the time he entered into the 2012 Settlement Agreement, Hutson was the principal in Big Water Resort, LLC.¹ (Penn-America Mot. to Strike Portions of Answer filed Sept. 28, 2020, Exh. A: Membership Interest Purchase Agreement.) Thus, if anyone bears responsibility for failure to inform the court that the 2012 Settlement Agreement and Consent Order affected the rights of the non-party campground members, that person may be Hutson.

Hutson's repeated assertion that Newton, Penn-America, and Stegmaier were responsible for Hutson losing all his prior cases is not only frivolous, it is nonsensical. To the extent fraud upon the court in the 2012 Consent Order should appropriately be raised, Hutson alleges nothing that prevents him from doing it himself. He is an experienced *pro se* litigant. Moreover, Hutson is the only party with standing to do so.

Hutson's misconduct is vexatious and harassing because he continually alleges legal conclusions that have no factual basis whatsoever. Fraud, ethics violations, and criminal misconduct are serious allegations that have severe ramifications for their targets. Many of Hutson's assertions are false and known by Hutson to be false. Hutson should not be permitted to continue using court filings (which are publicly accessible online) as a mechanism for defamation.

Incorporation by Reference. Newton and Murphy & Grantland, P.A. incorporate by reference Penn-America's arguments to the extent they are not inconsistent with the above.

¹ Big Water Resort, LLC is not insured by Penn-America. The named insured on the policy Penn-America issued is BWR, Inc., at company that only owned a bank account into which Hutson deposited funds generated from the campground business.

CONCLUSION

Third-Party Defendants Newton and Murphy & Grantland, P.A. are entitled to dismissal from this action based upon failure to state a claim, the existence of a prior pending action involving the same subject matter and the same parties, and *res judicata*.

Third-Party Defendants also reiterate their request that this Court award the costs of this action and appropriate sanctions against Hutson.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

s/John M. Grantland

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October 9, 2020
Columbia, SC

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.

**MEMORANDUM IN SUPPORT OF
 DEFENDANT TIMOTHY J. NEWTON'S
 MOTION TO DISMISS OR
 MOTION FOR SUMMARY JUDGMENT**

Defendant Timothy J. Newton submits the following Memorandum in support of his Motion to Dismiss or for Summary Judgment as to all claims brought by Plaintiff. For the reasons set forth herein, Newton respectfully requests that his Motion be granted.

FACTUAL BACKGROUND

This action is the latest in a series of legal actions involving Big Water Resort and M.B. Hutson. The background facts have been set forth in several judicial orders. See Report and Recommendation of Mag. J., Big Water Resort, LLC, et al. v. TLC Holdings, LLC, C/A: 2:14-1583-DCN-MGB, 2016 WL 7435620 at *1-*4 (D.S.C. Apr. 5, 2016) (hereinafter “R&R”), recommendation adopted, 2016 WL 2935891 at *1-*4 (D.S.C. May 20, 2016) (hereinafter “Norton Order”); Order Granting Pl’s. Mot. for Summ. J. as to Def’s. Countercls., TLC Holdings, LLC, et al. vs. M.B. Hutson a/k/a M.B. Hudson, Civ. Action No. 2015-CP-14-00615, pp. 1-5 (Clarendon Ct. Comm. Pl. filed Mar. 2, 2017) (hereinafter “Cochran Order”). Copies of the R&R, the Norton Order, and the Cothran Order are attached as Exhibits A, B, and C, respectively.

The following summary of the factual background provides the context surrounding Hutson’s allegations. These facts are readily ascertainable from filed pleadings and orders that are

part of the public record. Hutson is aware of all of this because he was a party to all of the litigation discussed below.

Hutson's purchase transaction with TLC

Plaintiff Hutson entered into a Lease Purchase Agreement with TLC Holdings, LLC and its principals (hereinafter collectively "TLC") in late 2010. Under the Lease Purchase Agreement, TLC agreed to sell the land upon which the Big Water Resort campground was located to Hutson. (See Hutson Exhibit 5.0);¹ Exh. C: Cothran Order, p. 2.) As part of that same transaction, Hutson became the sole shareholder in Big Water Resort, LLC, which operated the campground. (*Id.* at 1-2; see also Hutson Exh. 6.0.) Big Water Resort, LLC had previously sold memberships in the Big Water Resort campground to the campground members. (See Hutson Exh. 1.0.)

Hutson was represented by an attorney by the name of Andrew Tucker for purposes of his purchase of Big Water Resort. (Exh. A: R&R at p. *13 n.5.) None of the defendants in this action had any involvement in that transaction whatsoever.

The Ejectment Action: TLC suit to eject Hutson

In December 2011, TLC filed an ejectment action against Hutson alleging he defaulted on the terms of the Lease Purchase Agreement. (Exh. C: Cothran Order, p. 2; Exh. D: Compl., TLC Holdings, LLC vs. M.B. Hudson a/k/a M.B. Hutson, Case No. 2011-CP-14-00602 (Clarendon Ct. Comm. Pl.) (hereinafter "the Ejectment Action").) Hutson filed counterclaims against TLC in the Ejectment Action. (Exh. E: Answer and Countercl.) Nevertheless, Hutson agreed to settle the Ejectment Action, and the Settlement Agreement was adopted into a Consent Order. (See Hutson Exhs. 9.0 and 10.0; Exh. C: Cochran Order at pp. 2-3.)

¹ Hutson's Amended Complaint references a list of exhibits. The exhibit documents were filed on Jan. 3, 2019, but they appear to be attachments. The exhibits to the Amended Complaint are hereinafter referred to as "Hutson Exh."

Hutson was represented by Attorney Paul Weissenstein in the Ejectment Action. (See Hutson Exh. 10.0.) None of the defendants in this action had any involvement in the Ejectment Action. Hutson has filed an attorney malpractice action against Paul Weissenstein. (Exh. F: Amended Compl., Hutson v. Weissenstein, Case No. 2018-CP-43-1583 (Sumter Ct. Comm. Pleas).)

Hutson subsequently defaulted upon his obligations under the Settlement Agreement and Consent Order in the Ejectment Action. (Exh. C: Cothran Order, p. 3.) TLC sought to evict Hutson from the Big Water Resort property, and this matter was ultimately heard and ruled upon by Judge George C. James, Jr. (Id. at 3-4.) Judge James ruled that the Lease Purchase Agreement was terminated and ordered Hutson to vacate the property. (Id.; Exh. G: Order (hereinafter “James Order”).)

None of the defendants in this action were involved in the hearing before Judge James. Hutson was represented at the hearing by H. Freeman Belser. (Exh. G: James Order at p. 2.)

Hutson’s defamatory postcard

In the midst of TLC’s efforts to evict Hutson from the Big Water Resort property, Hutson made certain statements that TLC alleged were defamatory. (Exh. C: Cothran Order at p. 4.) Hutson allegedly sent the campground members a postcard asserting that both he and they were victims of a scam perpetrated by TLC (hereinafter “the Postcard”). (Id.)

The Class Action: the campground members sue TLC

After the Postcard was sent out, a group of Big Water Resort campground members brought a class action against TLC in federal court. (Id.) That action, captioned as Big Water Resort, LLC, et al. v. TLC Holdings, LLC, C/A: 2:14-1583-DCN-MGB, is hereinafter referred to as “the Class Action.” TLC asserted third-party claims for equitable indemnification against Hutson in the Class

Action. (Exh. C: Norton Order at *2.) Hutson filed counterclaims against TLC in the Class Action. (Id. at *2.)

The Defamation Action: TLC sues Hutson

TLC filed a separate action against Hutson in state court for defamation. (See Hutson Exh. 13.0.) That action, captioned as TLC Holdings, LLC, et al. v. M.B. Hutson a/k/a M.B. Hudson, Civ. Action No. 2015-CP-14-00615 (Clarendon Ct. Comm. Pleas), is hereinafter referred to as “the Defamation Action.” In the Defamation Action, TLC alleged that Hutson instigated the Class Action against TLC through the Postcard and certain statements Hutson made to the attorney who represented the campground members in the Class Action. (Hutson Exh. 13.0, ¶¶ 16-18.) Hutson also asserted counterclaims against TLC in the Defamation Action. (See Exh. H: Am. Answer and Countercls.)

The Coverage Action: Penn-America requests a declaratory judgment

Defendant Newton’s involvement in this ongoing litigation began in early 2016 when Penn-America retained Murphy & Grantland, P.A. as its coverage counsel after the claims against Hutson in the Class Action and the Defamation Action were tendered to Penn-America. Penn-America agreed to defend Hutson in both actions under reservation of rights. (See Hutson Exh. 11.0 at ¶ 71.) Penn-America declined to provide counsel for Hutson for purposes of prosecuting his counterclaims. Penn-America filed a declaratory judgment action (hereinafter “the Coverage Action”) seeking a judicial ruling as to its coverage for TLC’s claims asserted against Hutson in the Class Action and the Defamation Action. (See Compl., Exh. 11.0.)

Hutson’s threats of litigation against Penn-America

Hutson first began threatening lawsuits against Penn-America almost as soon as he learned of Penn-America’s involvement. Hutson and Penn-America entered into a Settlement Agreement and Release of Certain Claims on September 16, 2016. (Exh. I: Settlement Agreement.) In this

settlement, which was supported by consideration, Hutson agreed to release all claims relating to coverage and claim handling arising from the Class Action and the Defamation Action. (Id.) The Settlement Agreement protects not only Penn-America, but also its “agents.” (Id. at p. 2.) Hutson alleged in the Complaint in this action that Newton acted as Penn-America’s counsel, and that he had agency authority to act on behalf of Penn-America. (Am. Compl., ¶¶ 3.47.)

Hutson also stipulated to be bound by the result of the declaratory judgment action in exchange for a dismissal with prejudice from the Coverage Action. (Exh. J.: Order of Dismissal and Mot. to Dismiss.) Accordingly, Hutson was dismissed as a party from the Coverage Action on September 30, 2016. (Id.)

Nevertheless, Hutson continued to make threats of litigation against Penn-America. Hutson continued to demand that Penn-America pay for counsel to represent him for purposes of prosecuting his counterclaims against TLC in the Class Action and the Defamation Action.

By the time Penn-America retained Murphy & Grantland, P.A. as coverage counsel, the Class Action had already been in litigation for approximately two (2) years. For some period prior to February 2016, Hutson was represented in the Class Action by Matthew D. Hamrick in the Class Action. None of the defendants in this action had any involvement in either the Class Action or the Defamation Action until early 2016.

Magistrate Judge Baker’s R&R in the Class Action

On April 5, 2016, Magistrate Judge Mary Gordon Baker issued her Report and Recommendation in the Class Action. (Exh. A: R&R.) One of the issues Magistrate Judge Baker addressed in her Report and Recommendation was TLC’s motion for summary judgment as to Hutson’s counterclaims against TLC. Magistrate Judge Baker specifically found that the Settlement Agreement (see Hutson Exh. 9.0) could not be set aside due to fraud. (Exh. A: R&R at *12.) This ruling was predicated upon a finding that all of the alleged fraud related to the original

purchase transaction, not the release in the Settlement Agreement. (Id. at *14.) The Settlement Agreement (see Hutson Exh. 9.0 at ¶ 23) contained a conditional release providing that if Hutson defaulted on the terms of the Settlement Agreement, he would be deemed to have released TLC from any claims by Hutson against them for their conduct involving Big Water Resort prior to December 11, 2013. (Exh. A: R&R at *12.) Based upon Judge James' ruling that Hutson had breached the Settlement Agreement, Magistrate Judge Baker found that Hutson's counterclaims against TLC were barred by the release. (Id.)

Hutson alleged in his Amended Complaint in this action, as he has previously alleged on countless occasions, that he entered into the Lease Purchase Agreement with TLC with intent to develop and sell condominiums on the property, and that he was not aware of the long-term campground memberships on the property. (Compare Am. Compl. ¶¶ 9-12 with Exh. A: R&R at *3.) Importantly, Magistrate Judge Baker found that Hutson could not prove fraud because there was evidence that he knew about the campground memberships before he purchased Big Water Resort. (Exh. A: R&R at *13 n.5.) Magistrate Judge Baker cited to an e-mail from Hutson's realtor dated November 11, 2010 in which Hutson inquired about the effect of the campground membership agreements upon his ability to develop the property. (Id.) Thus, before Penn-America had completed its investigation of its liability coverage for TLC's claims against Hutson, a federal magistrate judge had already recommended dismissal of Hutson's counterclaims against TLC based upon a finding that Hutson could not prove fraud because he knew about the long-term campground memberships before he purchased the Big Water Resort property.

Judge Norton's Order adopting the R&R in the Class Action

Federal District Judge David C. Norton adopted the findings of the Report and Recommendation. (Exh. B: Norton Order at *9.) Judge Norton conducted his own review and found that all of the evidence of fraud Hutson submitted related to the original purchase

transaction, and that Hutson submitted no evidence of fraud in the inducement as to the Settlement Agreement. (*Id.* at *6-*7.) Consequently, Judge Norton ruled that Hutson's counterclaims against TLC in the Class Action were barred by *res judicata*. (*Id.* at *7-*8.)

Judge Cothran's Order in the Defamation Action

Despite this turn of events, Hutson continued to prosecute his counterclaims against TLC in the Defamation Action. On March 2, 2017, Judge Cothran issued an Order granting TLC's motion for summary judgment as to Hutson's counterclaims. (Exh. C: Cothran Order.) Judge Cothran ruled that Hutson's counterclaims, which were based upon the same allegations of fraud as those made in the Class Action, were barred by *res judicata* due to Judge James' Order, Magistrate Judge Baker's Report and Recommendation, and Judge Norton's Order. (Exh. C: Cothran Order at pp. 9-11.) Specifically, Judge Cothran found that Hutson's allegations of fraud only related to the original purchase transaction, not fraud inducing him to enter into the Settlement Agreement. (*Id.* at pp. 11-12.)

Judge Norton's Sanctions Order in the Class Action

Even this did not discourage Hutson from attempting to continue litigating his claims of fraud against TLC. On April 21, 2017, Hutson filed a motion to reconsider Judge Norton's order dismissing his counterclaims in the Class Action. (Exh. K: Order (hereinafter "Sanctions Order").) Judge Norton not only denied Hutson's motion for reconsideration, he also granted TLC's motion for sanctions against Hutson. (Exh. K: Order at p. 8.) Judge Norton specifically found that "Hutson appears to have continued his pattern of frivolous filings and conduct designed to harass or burden third-party plaintiffs, and there is no indication that he intends to cease." (*Id.* at 5.) 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.” (Id. at 6.)

Settlement of the Class Action

In early 2018, Penn-America settled TLC's claims against Hutson in the Class Action. This settlement protected Hutson from not only TLC's third-party claims against Hutson in the lawsuit, it also protected Hutson from the sanctions award against him. TLC's claims against Hutson were dismissed on April 11, 2018. (Exh. L: Stipulation of Dismissal.)

Resolution of the Defamation Action

While the settlement of TLC's claims against Hutson in the Class Action were being finalized, the Defamation Action was tried to a jury. The jury returned a verdict against Hutson in the amount of \$3,500,000. (Exh. M: Verdict Form.) Hutson's post-trial motions were denied by Order filed April 19, 2018. Defense counsel retained by Penn-America filed a Notice of Appeal on Hutson's behalf. (Exh. N: Notice of Appeal.) Nevertheless, TLC sought to execute on the judgment against Hutson during the pendency of the appeal. (Exh. O: Pl's. Mem. in Opp'n to Def's. Mot. for Stay of Execution of J.)

Penn-America attempted to obtain a supersedeas bond to stay execution while the appeal was pending. However, a bond could not be secured. As the letter Hutson filed recounts (Hutson Exh. 7.0, p. 3), Penn-America informed Hutson it would continue defending him against the execution proceedings while the appeal was pending. Hutson responded by threatening to sue Penn-America for bad faith. (See Hutson Exh. 7.0 at p. 2.) Hutson's allegations in this lawsuit relate to the attempts to resolve this dispute. This will be discussed in further detail below.

Penn-America paid its policy limit to settle the Defamation Action in late 2018. TLC accepted the settlement in satisfaction of the judgment against Hutson in the Defamation Action. (Exh. P: Satisfaction of Judgment.) Newton informed Hutson that TLC's claims against him were settled on December 4, 2018. The next day, Hutson filed this lawsuit.

Hutson's legal malpractice action against Weissenstein

Hutson also filed several other lawsuits around the same time. On September 4, 2018, Hutson filed a legal malpractice action against Paul Weissenstein, who represented Hutson with respect to the settlement of the Ejectment Action. (Exh. F: Amended Complaint; see also Hutson Exh. 9.0 and 10.0.) On February 25, 2019, Judge Kristi Curtis granted Weissenstein's motion for summary judgment. (Exh. Q: Order (hereinafter "Curtis Order").) Judge Curtis found that Hutson knew about the lifetime memberships before he purchased Big Water Resort. (Id. at p. 9.) Hutson has filed an appeal from this Order.

Hutson's legal malpractice action against Burn

On November 8, 2018, Hutson filed a legal malpractice action against Stephen "Chip" Burn, another attorney who represented Hutson in the Eviction Action. (Exh. R: Complaint, Hutson v. Burn, et al., Civ. Action No. 2018-CP-32-03879.) Hutson alleged in that lawsuit that Burn reviewed the documentation and advised Hutson that he did not have sufficient evidence to prevail in the counterclaim he had asserted in the Ejectment Action. (Id. at ¶¶ D. through H.) This lawsuit has been dismissed. (Exh. S: Order filed Apr. 10, 2019.)

Other lawsuits demonstrating Hutson's modus operandi

Hutson also recently filed a lawsuit alleging fraud in another real estate transaction. (Exh. T: Complaint, Hutson v. Atlantic Coast Props., et al., Civ. Action No. 2018-CP-40-06156.) Judge Robert E. Hood dismissed that action upon a finding that the suit was filed in breach of a release.

(Exh. U: Order.) This demonstrates a continuing pattern on the part of Hutson of breaching settlement agreements.

Hutson's claims in this action

Hutson alleged in his Amended Complaint that Penn-America employed Newton as its corporate counsel. However, exhibits Hutson attached to his pleading demonstrate that Newton is employed by Murphy & Grantland, P.A., the firm Penn-America retained to represent it in the Coverage Action against Hutson. (Hutson Exhs. 4.0, 7.0, 11.0, and 12.0.)

Hutson's allegations concern his claims against TLC relating to Big Water Resort. In fact, Hutson quoted from a draft of an Answer and Counterclaim that was filed in the Defamation Action. (Am. Compl., ¶¶ 7-22 and Exh. 3.0.) These allegations generally concern Hutson's claim that TLC concealed title defects when it sold Big Water Resort to Hutson. Specifically, Hutson claims he did not know about the lifetime memberships held by the campground members when he purchased Big Water Resort. (Am. Compl., ¶ 11.)

Hutson also alleged that he sought Newton's advice and that Newton knew TLC had committed "Extrinsic Fraud on the Courts." These are sham allegations.

Documents Hutson attached to his pleading establish the nature of the interaction. Hutson did not come to Newton as a potential client seeking legal advice. The communications Hutson refers to were part of ongoing settlement negotiations between Hutson, Penn-America, and TLC.

In a letter dated November 8, 2018, Newton recounted that Hutson stated that he had counsel to represent him in a lawsuit against Penn-America for failure to procure a supersedeas bond. (Hutson Exh. 7.0 at p. 2.) Hutson also indicated he had an attorney who was willing to assist him in his efforts to obtain an order setting aside the orders in the Eviction Action based upon fraud upon the court. (Id.) Hutson provided outlines of his claim and stated that he would

refrain from suing Penn-America if Penn-America would provide whatever evidence it had that might assist Hutson in his proposed lawsuit against TLC. (Id. at pp. 2-3.)

Hutson omitted his communications to Newton and Penn-America when he filed this lawsuit—communications which materially undercut his allegations in this action. Since Hutson’s communications to Newton and Penn-America are known to Hutson, he would not benefit from conducting discovery in this matter. Furthermore, because Hutson is alleging a fraud upon the court was committed, his lawsuit should not be permitted to proceed based upon an illusion Hutson has attempted to create by Hutson’s own lack of candor to the Court.

On August 11, 2018, Hutson sent Newton an e-mail with the subject line “Setting Aside the Judgment.” (Exh. V: Hutson e-mails.) The e-mail that Hutson attached to his pleading is responsive to this e-mail. (See Hutson Exh. 4.0.) Attached to Hutson’s e-mail was a nine-page outline. In paragraph 8 of his outline, Hutson set forth his position that the Settlement Agreement and Consent Order (see Hutson Exhs. 9.0 and 10.0) should be set aside based upon fraud upon the court. (Exh. V: Hutson e-mails.)

Hutson did not stop there. Between August 7 and 13, 2018, Hutson peppered Newton with phone calls and e-mails regarding his proposed action. Hutson showed up unsolicited at the law offices of Murphy & Grantland, P.A. under the guise of dropping off an exhibit and instead spent over an hour attempting to convince Newton that Penn-America should join in his proposed lawsuit against TLC.

On August 11, 2018, Hutson sent Newton another e-mail that explains his intentions. Hutson’s e-mail states: “We can checkmate the crooks and ride the [\$3,500,000 judgment] by getting the Fraudulent Judgment set aside.” (Exh. V: Hutson e-mails.) Hutson continued: “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.” (Id.)

Later that day, Hutson sent Newton yet another e-mail. In this e-mail, Hutson requested that a suit to set aside the judgment be filed and that TLC be served without any prior notice. (Exh. V: Hutson e-mails.)

The next day, Hutson sent Newton another outline of his proposed lawsuit. In paragraph H., Hutson again asserted that the lawyers who drafted the Settlement Agreement and Consent Order committed fraud upon the court. (Exh. V: Hutson e-mails.)

On August 13, 2018, at 5:27 a.m., Hutson e-mailed Newton asking about fraud upon the court. (Exh. V: Hutson e-mails.) Hutson e-mailed Newton again at 10:04 a.m. pleading for Penn-America to file an action to set aside the judgment. (Id.)

Newton's e-mail followed the above e-mails from Hutson. In Newton's e-mail, he explained that he did not represent Hutson. (Hutson Exh. 4.0.) The non-privileged information Newton provided was based upon the common interest in possibly getting TLC's judgment against Hutson set aside, and for the purpose of settling Hutson's claims against Penn-America relating to the supersedeas bond. (Id.)

Shortly thereafter, Hutson e-mailed Newton again. In this e-mail, Hutson asked whether filing an action to set aside the judgment would strengthen Penn-America's position. (Exh. V: Hutson e-mails.) Newton's responsive e-mail corroborates that the communications were in the context of attempts to settle TLC's claims against Hutson and Hutson's claims against Penn-America. (Exh. V: Hutson e-mails.)

On August 14, 2018, Hutson sent an e-mail to Newton as counsel for Penn-America and counsel for the excess carrier entitled "Notice." In this e-mail, Hutson claims he has been damaged by the failure to procure a supersedeas bond and threatens to file suit against them. (Exh. V: Hutson e-mails.)

The next day, Hutson again e-mailed Newton. He said: “Please let me know as soon as possible regarding the offer I made the other day to you.” This demonstrates that the communications were made in the context of settlement negotiations. Newton’s responsive e-mail indicated that Hutson’s offer was rejected. (Exh. V: Hutson e-mails.)

These communications, which Hutson withheld when he filed this lawsuit, corroborate the account provided in Newton’s letter that Hutson attached to his pleading. (Hutson Exh. 7.0.) The e-mail Hutson attached to his Complaint was part of ongoing settlement negotiations between Hutson and Penn-America. Some of Hutson’s own allegations are consistent with this understanding. (See Am. Compl., ¶ 34.) Hutson and Penn-America were adverse parties with respect to Hutson’s claims against Penn-America regarding the supersedeas bond. However, they had a common interest with respect to TLC’s claims against Hutson.

Many of Hutson’s allegations are demonstrably false. Hutson alleged that Newton and Penn-America were “cognizant that TLC Holdings, LLC’s attorneys has committed Extrinsic Fraud on the Courts.” (Am. Compl., ¶ 23.) In fact, courts have repeatedly rejected Hutson’s claims against TLC based upon fraud. (Exh. A: R&R at *13 n.5.; Exh. B: Norton Order at *9; Exh. C: Cothran Order at pp. 9-12; Exh. Q: Curtis Order.) Hutson has even been sanctioned by a federal court judge for continuing to assert the same claim without any supporting evidence. (Exh. K: Sanctions Order.)

Additionally, Hutson insinuated that Newton developed the theory of extrinsic fraud in response to Hutson’s request for legal advice. In fact, it was Hutson who proposed this course of action. (Exh. V: Hutson e-mails.) Furthermore, Hutson’s *pro se* court filings in the Class Action demonstrate that, as early as 2016, Hutson was well aware of what extrinsic fraud upon the court is and that it could be used to set aside a judgment. (Exh. W: Hutson Mem. filed March 14, 2016; Exh. X: Hutson Resp. filed Sept. 25, 2017; Exh. Y: Hutson Mem. filed June 30, 2017.)

Hutson continues to file litigation claiming he was defrauded in the Big Water Resort transaction in the face of an oft-filed e-mail demonstrating he was aware of the campground memberships before he purchased the campground. (Exh. Z: E-mail; see also Exh. A: R&R at *13 n.5; Exh. Q: Curtis Order at p. 2.) He has been sanctioned by a federal judge for repetitive frivolous court filings—sanctions that Penn-America paid as part of settlement that Newton negotiated. (Exh. K: Sanctions Order.) For the reasons that follow, Hutson’s claims against Newton should be dismissed with prejudice.

STANDARD FOR MOTION TO DISMISS
AND
REQUEST THAT THIS MOTION TO DISMISS BE TREATED
AS A MOTION FOR SUMMARY JUDGMENT

Generally, a motion to dismiss pursuant to Rule 12(b)(6), SCRCP is based solely upon the allegations in the Complaint. Exhibits attached to a pleading are incorporated into the pleading as a part thereof for all purposes. Rule 10(c), SCRCP. This Court may dismiss a suit when the defendant demonstrates that the plaintiff has failed to state facts sufficient to constitute a cause of action. Hambrick v. GMAC Mortg. Corp., 370 S.C. 118, 121, 634 S.E.2d 5, 7 (Ct. App. 2006). However, the Rules provide that a motion to dismiss may be converted into a motion for summary judgment when matters outside the pleadings are presented to the Court. Rule 12(c), SCRCP.

Rule 11(a), SCRCP deems a party filing a pleading to have certified that the allegations pled have good ground to support them to the best of the party’s knowledge. Violation of Rule 11 warrants striking of the pleading and imposition of sanctions. Id. Courts may strike sham allegations that are known to be false or lack good ground to support them. Halpern v. Barran, 272 A.2d 118 (Del. Ch. 1970), U.S. v. Maguire Indus., 99 F. Supp. 329, 330 (S.D.N.Y. 1951).

Materials outside the pleadings have been submitted in support of this motion. All of the documents Newton has submitted are either judicial rulings, documents filed in the Big Water Resort litigation of which Hutson is aware, or correspondence between Hutson and Penn-America (through Newton as its counsel) that Hutson has in his possession, and which Hutson has withheld in order to falsely portray material facts. These documents demonstrate that Hutson cannot set forth facts that would state a claim under the standard required by Rule 11 and 12, SCRC. Additionally, Hutson's lawsuit attempts, based upon Hutson's misrepresentation of material facts, to impose a legal duty that is completely unsupported by legal authority and that goes far beyond the scope of any duty imposed by the insurance contract. In order to avoid protracted discovery due to a frivolous claim, Newton hereby requests that this Court either dismiss this suit pursuant to Rule 12(b)(6) or consider matter outside the pleadings and treat this motion as a motion for summary judgment pursuant to Rule 56. See Johnson v. Dailey, 318 S.C. 318, 321, 457 S.E.2d 613, 615 (1995).

STANDARD FOR MOTION FOR SUMMARY JUDGMENT

"Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law." Faile v. S.C. Dep't of Juvenile Justice, 350 S.C. 315, 323-24, 566 S.E.2d 536, 540 (2002). "In determining whether a genuine question of fact exists, the court must view the evidence and all inferences which can be reasonably drawn from the evidence in the light most favorable to the nonmoving party." Id.

A party opposing summary judgment may not rest upon the mere allegations or denials of his pleadings. SSI Medical Services, Inc. v. Cox, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990). Rule 56(e) requires a party opposing summary judgment "to come forward with affidavits or other supporting documents demonstrating the existence of a genuine issue for trial." Doe v. Batson, 345 S.C. 316, 320-21, 548 S.E.2d 854, 856 (2001). Although only a scintilla of evidence is required,

a party must present some evidence to avoid summary judgment. Hoard v. Roper Hosp., Inc., 387 S.C. 539, 694 S.E.2d 1 (2010). Moreover, a party may not avoid summary judgment by asserting that a jury may disbelieve uncontradicted evidence. Id. at 549, 694 S.E.2d at 6.

ARGUMENT

Before proceeding with legal arguments, it is worthwhile to consider the equities of Hutson's claim. Hutson has repeatedly sued TLC, who Hutson alleges perpetrated the fraud against him, TLC—and lost. (Exh. G: James Order; Exh. A: R&R; Exh. B: Norton Order; Exh. C: Cothran Order.) Hutson has sued the lawyers who represented him in his litigation against TLC for malpractice—and lost. (Exh. Q: Curtis Order; Exh. S: Order.) Hutson has now resorted to suing his liability insurer—the one that defended him throughout the course of the Class Action and the Defamation Action and paid its limits to settle not only TLC's claims against him, but also the sanctions Hutson incurred as a result of his own misconduct—as well as its coverage counsel, Defendants Murphy and Newton.

Hutson claims that Penn-America and its coverage counsel knew Hutson had been defrauded and stood on the sidelines. In the first place, it is not the purpose of liability coverage to prosecute an insured's affirmative claims against third parties. Furthermore, Hutson's claims of fraud have been debunked repeatedly. Judge James ruled that Hutson breached the Settlement Agreement with TLC. (Exh. G: James Order.) Magistrate Judge Baker ruled that the automatic release in the Settlement Agreement was enforceable because Hutson could not prove fraud. (Exh. A: R&R at *11 to *15.) Judge Norton agreed with Magistrate Judge Baker and found that Hutson's claims against TLC were barred by *res judicata*. (Exh. B: Norton Order at pp. *6-*9.) Judge Cothran also found that Hutson could not prove fraud and that his claims against TLC were barred by *res judicata*. (Exh. C: Cothran Order.) Hutson has even been sanctioned by a federal judge for continuing to assert the same meritless claims against TLC. (Exh. K: Sanctions Order.)

Any credibility to Hutson's claim he was defrauded evaporates when one considers that Hutson knew about the campground memberships before he purchased Big Water Resort. (Exh. B: Norton Order at p. *7; Exh. A: R&R at *13 n.5; Exh. Q: Curtis Order at p. 2; Exh. Z: E-mail.) During the settlement discussions Hutson references, Hutson had represented to Newton that he had only recently learned that all of the Big Water Resort property was subject to the campground membership agreements. However, it appears that even if this were true, Hutson had a duty to investigate and ascertain which property could be developed and sold. Documents attached to Hutson's pleading demonstrate that Hutson assumed a duty to the campground members when he became principal of Big Water Resort, LLC. (See Hutson Exh. 1.1 through 1.3 and 6.0.) The Settlement Agreement empowered Hutson to subdivide and sell a portion of the property upon which the campground was located. (See Hutson Exh. 9.0, ¶ 5. and Exh. A.) This demonstrates that Hutson knowingly entered into a settlement with TLC—with court approval—that gave Hutson the ability to deprive the campground members of property in which they held lifetime memberships, and the only damage Hutson suffered as a result of TLC's alleged fraud was that he was prevented from breaching his fiduciary duty to the campground members. Even if TLC is guilty of committing fraud upon the court in entering into the Settlement Agreement, Hutson is just as guilty because he knew about the campground members' lifetime memberships in the property.

Turning to the legal issues, Hutson has not alleged facts that would support a cognizable claim against Newton. If his claim is construed as a claim for legal malpractice, Hutson has failed to provide an affidavit as required by law. If Hutson's claim is not a legal malpractice claim, Hutson lacks standing and his claim is barred by the litigation privilege. Therefore, Hutson's claims against Newton should be dismissed.

I. If Hutson's claim is for legal malpractice, he failed to attach an expert affidavit.

Section 15-36-100(B) of the South Carolina Code requires a party bringing a professional malpractice action to “file as part of the complaint 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.” This statute applies to claims against attorneys. S.C. Code Ann. § 15-36-100(G)(2). Hutson did not attach an expert affidavit to his Complaint in this action. Therefore, to the extent his claim is for professional malpractice, his claim must be dismissed. (See Exh. S: Order.)

II. Hutson lacks standing and his claims against Newton are barred by the litigation privilege.

Hutson seems to allege that Newton's knowledge of certain facts could impose a duty upon Newton to act on Hutson's behalf. However, Newton represented Penn-America, an adverse party in the Big Water Resort coverage action. (See Hutson Exhs. 4.0, 7.0, 11.0, and 12.0.) Therefore, Newton could not represent Hutson, and he informed Hutson of this fact in the e-mail upon which Hutson relies in this case. (Hutson Exh. 4.0.)

Hutson had—and, indeed, still has—every right to file legal action to set aside the Settlement Agreement and the Consent Order in the Ejectment action if he has a cognizable claim, and to retain an attorney to represent him in that endeavor if he can find one to do so. However, even if Newton were to file legal action seeking to set aside the Consent Order in the Ejectment Action, Newton would have to act on behalf of Penn-America, not Hutson.

South Carolina law generally limits attorney liability to parties with whom the attorney has an attorney-client relationship. RFT Mgmt. Co. v. Tinsley & Adams L.L.P., 399 S.C. 322, 331, 732 S.E.2d 166, 170 (2012). Courts in this state have recently adopted two exceptions to this rule. First, a third-party beneficiary of an existing will or estate planning document may bring a claim

against a lawyer whose drafting error defeats or diminishes the client's intent. Fabian v. Lindsay, 410 S.C. 475, 492, 765 S.E.2d 132, 141 (2014). Second, a liability insurer may sue the attorney it retained to defend an insured. Sentry Select Ins. Co. v. Maybank Law Firm, LLC, 826 S.E.2d 270 (2019). Neither of these exceptions apply.

Penn-America did not retain Murphy & Grantland, P.A. to defend Hutson. Penn-America initially retained Mike Ethridge and Laura Paton for this purpose. At Hutson's request, Ethridge and Paton withdrew as counsel and Penn-America subsequently retained Frank J. Gordon of the firm Millberg Gordon Stewart PLLC to defend Hutson. (See Exh. AA: Consent Order.) Hutson was not a third-party beneficiary to the attorney-client relationship between Penn-America and Murphy & Grantland, P.A. Instead, Murphy & Grantland, P.A. represented Penn-America as an adverse party in the Coverage Action. (See Hutson Exhs. 11.0 and 12.0.) Therefore, neither of the exceptions apply to establish Hutson's standing to sue Murphy and Newton.

Attorneys are generally not liable to a party opponent for conduct in the course of litigation. Ronald E. Mallen & James A. Roberts, The Liability of a Litigation Attorney to a Party Opponent, 14 Willamette L. J. 387 (1978). Statements made in the course of litigation are absolutely privileged. Oesterle v. Wallace, 272 Mich. App. 260, 264, 725 N.W.3d 470, 474 (Mich. Ct. App. 2006). Every state that has considered the issue has held that the absolute judicial privilege from suit applies to statements made by attorneys during settlement negotiations. Id. at 266, 725 N.W.2d at 475-76.

As set forth above in the factual background section, the e-mail Hutson attached to his Complaint in this action was a statement made in the course of litigation, and particularly, a statement made in the course of settlement negotiations. (See Exh. V: Hutson e-mails; Hutson Exh. 8.0.) Thus, Hutson's claims against Newton are barred by the judicial privilege and should be dismissed.

III. This lawsuit should be dismissed because Hutson cannot establish the existence of a legal duty.

Hutson alleges that a liability insurer had a duty to affirmatively file litigation seeking to set aside a ruling in a prior case merely because the result in the prior action might affect the result in the suit the insurer is defending. Counsel is unaware of any legal authority for this proposition.

In the first place, insurers generally do not have a duty to prosecute affirmative counterclaims on behalf of their insureds. Mt. Vernon Fire Ins. Co. v. Visionaid, Inc., 477 Mass. 343, 76 N.E.3d 204 (2017); Duke Univ. v. St. Paul Mercury Ins. Co., 95 N.C. App. 663, 680, 384 S.E.2d 36, 46; 1 A.D. Windt, Ins. Claims and Disputes: Representation of Insureds & Insurers § 4:41 (6th ed. Mar. 2018 update). South Carolina courts have never held that a liability insurer's duty to defend includes a duty to prosecute affirmative claims by the insured or to pay litigation costs for such a claim.

But even if this Court were to find that Penn-America owed a duty to prosecute Hutson's counterclaims against TLC in the Class Action and the Defamation Action, such a duty would not apply in this case. The duty Hutson alleges in this case involves filing legal action to set aside a judgment in a prior action in which Penn-America had no involvement. The Settlement Agreement and Consent Order were entered into in the Ejectment action. (See Hutson Exhs. 9.0 and 10.0.) Imposing a duty upon an insurer in this situation would vastly increase the amount of litigation before the courts because it would require insurers to not only defend claims against their insureds, but also to file separate actions seeking to set aside prior judicial orders that merely affect the case the insurer is defending based upon principles of *res judicata* or collateral estoppel.

Long before Penn-America became involved in the Big Water Resort litigation, Judge James had already ruled that Hutson was deemed to have released all claims against TLC by breaching the Consent Order. (Exh. G: James Order.) While Penn-America was still investigating

its coverage for TLC's claims against Hutson, Magistrate Judge Baker recommended that Hutson's counterclaims—which were based upon substantially similar allegations to those made in the Ejectment Action—should be dismissed based upon *res judicata*. (Exh. A: R&R.)

A ruling in favor of Hutson in this action would create a duty on the part of a liability insurer and its coverage counsel to set aside several prior judicial orders. Filing such an action could subject Penn-America and any attorney retained to prosecute such an action to sanctions for frivolous proceedings. Accordingly, Hutson cannot demonstrate the existence of a legal duty on the part of Penn-America or Newton, as its coverage counsel, to file legal action seeking to set aside the Settlement Agreement and the Consent Order in the Ejectment Action.

IV. Hutson has previously released Penn-America and its agent, Newton, from liability arising from the Big Water Resort litigation.

In addition, Hutson's claims against Newton are subject to a prior release from liability. Due to Hutson's litigious course of conduct in the Big Water Resort matter, Penn-America asked Hutson for a complete release when it settled his claim for loss of use benefits under the policy. (See Exh. I: Settlement Agreement.) The Settlement Agreement specifies the policy at issue. (See Hutson Exh. 11.0, ¶ 17.) It recites Hutson's potential liability in the Class Action and the Defamation Action. It references the pending Coverage Action. It further recites that Hutson had indicated he intended to file counterclaims in the Coverage Action for bad faith claim investigation and handling against Penn-America. (Exh. I: Settlement Agreement at p. 2.) The Settlement Agreement recites that Hutson and Penn-America sought to settle all claims that were raised or that could have been raised in the Coverage Action. (Id.) Hutson agreed, based upon the consideration paid, to release Penn-America from all claims relating to its coverage for the him in the Class Action and the Defamation Action. (Id. at p. 3.) Therefore, Hutson's claims against Penn-America in this action are barred by the release in the Settlement Agreement.

Not only did Hutson agree to resolve his claims against Penn-America in the Settlement Agreement, he also agreed to release any claims against Penn-America's agents. (Exh. I: Settlement Agreement at p. 2.) Hutson's claims against Newton are based upon Newton's agency relationship with Penn-America as Penn-America's coverage counsel. (Am. Compl., ¶¶ 3, 47.) Therefore, Hutson's claims against Newton are also barred by the release in the Settlement Agreement.

Hutson has demonstrated a proclivity for breaching settlement agreements. He breached the Settlement Agreement in the Ejectment Action. (Exh. G: James Order.) He breached that same Settlement Agreement each time he sued TLC. (Exh. C: Cothran Order.) He breached his agreement with Atlantic Coast Properties. (Exh. U: Order.) Hutson should not be allowed to breach his Settlement Agreement with Penn-America by continuing to prosecute this action.

CONCLUSION

For the reasons set forth above, Hutson's claims against Defendant Newton should be dismissed, and Newton should be dismissed as a party from this action. ²

Respectfully submitted,

s/Timothy J. Newton

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Columbia, South Carolina
May 30, 2019

² The Court docket indicates Hutson filed a "Memorandum to Defendants Response" on May 7, 2019. Newton has not yet received a copy of this filing. Newton reserves his right to supplement this Memorandum after he receives a copy of that filing.

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,

vs.

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

Defendants.

**REPLY MEMORANDUM IN SUPPORT OF
 DEFENDANT TIMOTHY J. NEWTON'S
 MOTION TO DISMISS OR
 MOTION FOR SUMMARY JUDGMENT**

Defendant Timothy J. Newton submits the following Reply Memorandum in support of his Motion to Dismiss or for Summary Judgment as to all claims brought by Plaintiff Hutson.¹

In his Memorandum filed May 7, 2019 (hereinafter "Memorandum"), Hutson makes numerous allegations. It would be nearly impossible to respond to them all. However, certain key facts undercut all of Hutson's claims.

First, Hutson alleges he was not properly served in the declaratory judgment action that Penn-America filed. This is a sham allegation. As a matter of public record, Hutson was served on July 22, 2016. (Exh. BB: Filed Aff. of Service.)

Second, Hutson continues to allege that Defendant Newton knew that extrinsic fraud upon the court was committed. In his Amended Complaint, Hutson points to certain factors he alleges rendered the Big Water Resort property undevelopable and worthless.

¹ The Court docket indicates that Plaintiff filed a "Memorandum to Defendants Response" on May 7, 2018. A filed copy of this document was never served on Defendant Newton. On June 10, 2019, Newton obtained from the Court an 11-page Memorandum. Plaintiff has e-mailed numerous additional documents, some of which purport to be additional exhibits to Plaintiff's Complaint. This Reply is responsive to the filed Memorandum. Newton reserves his right to respond separately to any new material Plaintiff may file.

In his Memorandum, Hutson lays out the conduct Newton allegedly knew was fraudulent. Hutson claims the Big Water Resort property had a title defect due to the campground membership agreements granting lifetime use rights in the property. (Memorandum, p. 4-5.) Hutson claims the Settlement Agreement and Consent Order he entered into in a prior case (Amended Complaint, Exh. 5.0 and 6.0) were fraudulent because the property was encumbered by the campground memberships. (Id. at p. 5.) Hutson claims that the “Sellers”, *i.e.*, TLC Holdings, LLC (hereinafter “TLC”), lacked a contractual agreement guaranteeing the use of the land to the campground members, concealed the fact that they were losing money on the project, failed to escrow money they realized from the purchasers of the campground memberships, and falsified financial statements. (Id.)

Hutson is collaterally estopped to argue that he was defrauded in his purchase of Big Water Resort. See Carolina Renewal, Inc. v. S.C. Dep’t of Transp., 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009) (explaining that collateral estoppel bars a party from relitigating an issue that was decided in a previous action). In a prior action, Magistrate Judge Baker determined that Hutson could not prove fraud that took place after December 11, 2013. (Exh. A: R&R at p. *14.) That ruling was adopted by Judge Norton. (Exh. B: Norton Order.)

These rulings were not based upon any conduct over which Penn-America or its counsel had control. Instead, they were based upon evidence that Hutson knew about the campground memberships before he purchased the Big Water Resort property. (Exh. B: Norton Order at p. *7; Exh. A: R&R at *13 n.5; Exh. Q: Curtis Order at p. 2; Exh. Z: E-mail.) Neither Penn-America nor its counsel had anything to do with Hutson’s purchase transaction with TLC—Penn-America’s policy did not even take effect until October 16, 2013—nearly three years after Hutson purchased the property. (Compare Amended Complaint, Exh. 11.0, ¶ 17 with Exh. 5.0.)

Hutson subsequently began claiming that he was defrauded because he did not know until after he entered into the Settlement Agreement with TLC that all of the Big Water Resort property was undevelopable because it was subject to the campground membership agreements, and that this information was withheld from him at that time. There is some corroboration for this claim in that Bonnie Youmans, who was the class representative for the campground members in their class action against TLC, testified in her deposition that she thought all of the Big Water Resort property was part of the campground. (Amended Complaint, Exh. 4, ¶ 14.)

However, this testimony, even if believed, does not prove fraud upon the court. Youmans' hearsay testimony cannot prove which property was subject to the campground membership agreements. It is a matter between TLC, Hutson, and the campground members.

Furthermore, Newton questioned Richard Clark on this subject during the Rule 30(b)(6) deposition of TLC Holdings, LLC in the declaratory judgment filed by Penn-America. Clark testified that some of the property conveyed in the Lease Purchase Agreement was not part of the Big Water Resort campground. (Exh. CC: Dep. excerpts.) Clark testified as follows:

- Q. Exhibits 6, 7, 8, 9, 10, 11, all of these parcels were part of the lease purchase agreement?
- A. That's correct.
- Q. How many of them were part of the campground property?
- A. Well, there are bits and pieces. But Exhibit 6 was part of the campground itself. The outlined area in Exhibit 7 was part of the campground. Part of the outlined area in Exhibit 8, not all was part of the campground area.
- Q. In other words, the convenience store was not, is that correct?
- A. Correct. Exhibit 9, this outlined area was part of the campground. Exhibit 10, you know, I don't know if I'd say that was part of the campground or not. The campground may have utilized that building, may not have. I'm not sure. For storage for equipment. I'm not totally sure of that one. And Exhibit 11 was not part of the campground.

(Exh. CC: Dep. excerpts, p. 40.)

Thus, the most that can be said is that there was an issue of disputed fact as to which of the parcels that Hutson acquired under the Lease Purchase Agreement were subject to the campground memberships. On the one hand, one of the campground members testified she thought all of the property was campground property. On the other, one of TLC's principals testified that all the property was not part of the campground.

Furthermore, counsel for TLC objected to this line of questioning during the deposition. (Exh. CC: Dep. excerpts, pp. 30.) The basis for the objection was that this line of questioning had nothing to do with the declaratory judgment and that this issue had been litigated in prior cases. (*Id.*) Attorney Newton was unable to pursue the issue further because the issue of which parcels of Big Water Resort property were part of the campground was not material to the issues in the Declaratory Judgment action to determine liability coverage.

Newton was not involved in any other case in the Big Water Resort litigation. Thus, Attorney Newton had no way of ascertaining the truth or falsity of Hutson's allegation that he was defrauded by TLC.

Hutson's remaining arguments relate to various alleged violations of the Rules of Professional Responsibility. None of the rules Hutson cited have any relevance to this case.

The key fact is that Newton has never represented either Hutson or TLC. Newton represented Penn-America in the declaratory judgment action involving Penn-America's coverage. (*See* Amended Complaint, Exhs. 4.0, 7.0, 11.0, and 12.0.) Newton had no involvement whatsoever in the dispute between Hutson and TLC over Big Water Resort. Hutson's allegation that Newton was retained by Penn-America to represent Hutson is simply false. (*See* Memorandum, pp. 1-2.)

Rule 1.7 of the South Carolina Rules of Professional Responsibility governs attorney-client relationships. Specifically, it prohibits lawyers from representing clients when there is a conflict

of interest. Because Newton did not represent Hutson, this Rule does not apply. The ABA Ethics Rule Hutson quoted is inapplicable for the same reason. (See Memorandum at p. 2.)

Rule 1.2 prohibits a lawyer from engaging or assisting a client in committing a crime or a fraud. Hutson does not allege that Newton represented TLC, who allegedly defrauded Hutson. Therefore, this rule does not apply to Newton in this case.

Rule 3.3 prohibits a lawyer from knowingly offering evidence the lawyer knows is false. Again, Hutson's allegation is not that Newton offered false evidence, but rather that TLC defrauded the court. Newton has never represented TLC. Therefore, this Rule does not apply to Newton in this case.

Rule 4.1 prohibits a lawyer from knowingly making a false statement to others. It also requires lawyers to disclose material facts when disclosure is necessary to prevent a client from committing a fraud. Newton did not represent TLC, who allegedly defrauded Hutson. Newton represented Penn-America, an adverse party to both TLC and Hutson. Nothing in this Rule imposes a duty on a lawyer who represents an adverse party to file an action to set aside the result of a prior action, regardless of whether there are allegations of fraud against that party.

Rule 8.4(e) prohibits lawyers from engaging in conduct that is prejudicial to the administration of justice. Newton did not represent either TLC or Hutson. This Rule does not require a lawyer representing a third party to intervene in a dispute merely because one of the parties claims they are being defrauded.

Finally, Hutson claims that Newton provided him with legal advice. Hutson's allegation that he was a victim of fraud upon the court put Newton in a difficult position. On the one hand, Newton represented an adverse party and could not represent Hutson's interests in vindicating the alleged fraud. On the other hand, Newton represented the liability insurer for one of Hutson's

companies.² Hutson repeatedly threatened to sue Penn-America based upon his claim that the fraud he alleged in his counterclaims against TLC was interrelated with the defense of TLC's claims against him. Since liability insurers have certain special duties to insureds, coupled with Hutson's continuing barrage of threats of litigation, Newton could not avoid addressing this issue with Hutson. Additionally, as discussed previously, a common interest existed in that if Hutson could prove the judgment against him was tainted with fraud, it could benefit Penn-America also.

Furthermore, Hutson alleged fraud upon the court. "Fraud upon the court is a serious allegation involving corruption of the judicial process itself." Chewning v. Ford Motor Co., 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003). Although Newton could not represent Hutson, and Penn-America lacked standing to assert his claims, the seriousness of the allegation warranted an investigation.

The e-mail Hutson attached to his pleading demonstrates that Newton did everything in his power to protect Hutson's ability to vindicate himself from the alleged fraud upon the court. (Amended Compl., Exh. 4.0.) Newton provided Hutson with all non-privileged evidence material to Hutson's claim. Since the issue involved voluminous documents and protracted litigation, Newton went so far as to summarize the key facts of which he was aware that might corroborate Hutson's position. He even cited cases that Hutson had brought to his attention. Newton encouraged Hutson to find an attorney who could file a claim, if that attorney thought it was meritorious. All Hutson had to do to protect himself was to take the e-mail to a prospective lawyer and find one that would take the case.

² Hutson has repeatedly claimed he was the insured under Penn-America's policy. In fact, Hutson's status as an insured was a disputed issue in the declaratory judgment action. (Amended Compl., ¶¶ 72-81.) Penn-America's policy was issued to "BWR, Inc.," an entity that did not even exist when Hutson purchased the Big Water Resort property in his own name.

However, Hutson admits he did not sue TLC. (Memorandum, p. 4.) He claims that, having failed to protect his own interests, he has a cognizable cause of action against Penn-America and its counsel for failing to prosecute his claim for him. Even if Hutson could not find a lawyer to represent him, Hutson has repeatedly demonstrated that he knows how to file lawsuits as a *pro se* litigant—as he did in this action.

What more could Newton have done? Over the course of multiple cases in the Big Water Resort litigation, there is no conclusive evidence that Hutson was defrauded. In fact, the results of several prior cases point in the opposite direction. Evidence developed in prior actions demonstrates that the factual basis for the alleged fraud is uncertain at best. There is no authority to support Hutson’s contention that counsel for a liability insurer has a duty to prosecute a doubtful and disputed claim on behalf of a putative insured—particularly when prosecuting that claim would require the setting aside of several prior judicial rulings. Newton could not represent Hutson because he represented Penn-America, an adverse party. Penn-America had no standing to prosecute Hutson’s claim.

The only one who can act to vindicate the alleged fraud against Hutson is Hutson. If Hutson believes he was defrauded, he has every right to sue the alleged perpetrators. However, Hutson has no cognizable claim that third parties must prosecute his claim. Accordingly, Hutson’s claims against Newton should be dismissed.

The documents Newton has submitted are not necessary for the dismissal of this action. They are provided to demonstrate that Hutson’s claim is not only procedurally defective, it is also devoid of merit. They demonstrate that this action is merely a rehash of issues that have been litigated in several prior actions. They also demonstrate that Hutson is now recycling these same allegations for use against a wider net of defendants.

In this action, Hutson has personally sued an adverse attorney who made every effort to ensure that his rights were safeguarded (Newton). Hutson has also personally sued a lawyer against whom he makes no allegations whatsoever (Murphy), and a liability carrier that defended him and paid its limit to indemnify him in the only two actions in which it was involved (Penn-America and its parent, Global Indemnity Group).

Many of Hutson's key allegations in this action are patently false, as can be demonstrated by the court record and documents produced in prior actions. But he nevertheless made them in this action in apparent attempt to force the case into discovery. Hutson has also made numerous other nonsensical allegations in what appears to be an attempt to rush past the standard for a motion to dismiss by sheer voluminosity.

Hutson has demonstrated a continuing pattern of abusing the judicial system for the purpose of harassment. One need only peruse Hutson's some forty-seven (47) court filings in the Class Action to satisfy oneself as to why Hutson was sanctioned and why this action should not be permitted to proceed. See Big Water Resort, LLC, et al. v. TLC Holdings, LLC, C/A: 2:14-cv-1583-DCN-MGB, Docket Entries No. 17, 59, 60, 112, 125, 138, 141, 148, 155, 159, 160, 161, 162, 168, 177, 186, 190, 191, 193, 198, 200, 202, 203, 208, 209, 213, 215, 216, 217, 220, 223, 224, 225, 228, 230, 233, 237, 252, 255, 260, 263, 264, 265, 272, 274, 298, and 305. These documents are available online through the website for the District of South Carolina.

Finally, in an effort to head off further frivolous filings by Hutson, Newton takes this opportunity to address two arguments Hutson has used in e-mails for the purpose of extorting a settlement.

First, Hutson likely intends to argue that a liability insurer's knowledge of extrinsic facts triggers a duty to act. See Illinois Tool Works, Inc. v. Travelers Cas. and Sur. Co., 2015 IL App (1st) 132350, 26 N.E.3d 421 (Ill. App. Ct. 2015); Burlington Ins. Co. v. CHWC, Inc., 559 Fed.

App'x 639 (9th Cir. 2014); Williford Roofing, Inc. v. Endurance American Specialty Ins. Co., No. 2:16-cv-01830-DCN, 2017 WL 479507 (D.S.C. signed Feb. 6, 2016). These cases are inapposite for two reasons. In the first place, they address an entirely different situation—a liability insurer's assessment of its duty to defend. Furthermore, Penn-America did not deny coverage to Hutson. Penn-America defended Hutson in both actions in which it was put on notice, and settled both claims, including the sanctions Hutson incurred due to his own misconduct. These cases do not stand for the proposition that a liability insurer and its coverage counsel must file legal actions to prosecute alleged fraud upon the court against a putative insured that was perpetrated in prior actions, as Hutson alleges.

Second, Hutson likely intends to argue that knowledge of facts adverse to a party's position triggers a duty to act. See Sullins v. State Bar, 15 Cal. 3d 609, 542 P.2d 631 (Cal. 1975); Ray v. Ray, 374 S.C. 79, 647 S.E.2d 237 (2007). These cases are not relevant because they address a lawyer's duty of candor toward the court. In Sullins, a lawyer was successful in a suit to disinherit a daughter from her mother's estate. When the lawyer notified the nephew that he would inherit the property, the nephew wrote back and said he wanted the daughter to have the property. The lawyer concealed this letter from the court in securing court approval of a 50 percent contingency fee agreement. 15 Cal. 3d at 613-17, 542 P.2d at 633-34. In Ray, a party litigant deliberately concealed \$130,000 until after the marital property had been divided. 374 S.C. at 82, 647 S.E.2d at 238.

These circumstances are not present in this case. Newton did not represent either Hutson or TLC. Moreover, the evidence Hutson refers to was not concealed. In fact, it was presented the court in several prior cases. The testimony of the class representative who said she thought all of the Big Water Resort property was subject to the campground memberships was read into the record at trial in the Defamation Action. (Amended Compl., Exh. 4.0, ¶ 14.) Furthermore, Newton

had no opportunity to raise the issue of possible fraud before the cases were decided. Newton had no involvement in the Ejectment Action, the Class Action, or the Defamation Action. Whatever fraud may have been committed was irrelevant to the Coverage Action in which Newton was involved, except to the extent it might undermine the judgment against Hutson. Finally, Newton did not conceal the evidence in his possession from Hutson. The e-mail Hutson filed demonstrates that Newton provided the information material to possible fraud to Hutson so he could protect his interests.

CONCLUSION

Hutson has failed to plead a cognizable cause of action in this action. Additionally, his allegations concern issues that have been previously litigated in several prior lawsuit and found to lack merit. For the reasons set forth above, 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

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Columbia, South Carolina
June 13, 2019

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.

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

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.)

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

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

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.)

- 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

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

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

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.

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.)

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

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

State Bar No. 71640

P.O. Box 6648

Columbia, South Carolina 29260

(803) 782-4100

Columbia, South Carolina

June 25, 2019

Tim J. Newton

From: Hutson <hutson4444@gmail.com>
Sent: Friday, September 22, 2017 11:20 AM
To: Tim J. Newton; Frank Gordon; Insurance Glenn Paul; Carlyle R. Cromer
Subject: REF: Settling with TLC Third Party Plaintiff

Dear Mr. Newton,

I understand that my insurance company has made a \$100,000.00 settlement offer to TLC.

I ask and demand that you and my insurance companies immediately redraw any such offer including \$1.00 dollar. Should my insurance company not withdraw, they will be damaging me for my immediate plans to hire attorneys and expert witnesses to file for a set aside of the original Settlement Agreement due to fraud upon the Court and fraud against me could and will be damaged.

TLC defrauded me and stole from me. I forbid you and my insurance companies to pay those fraudulent crooks a penny. I will hold both of my insurance companies liable should they settle with crooks who defrauded and cost me years of my senior life and hardship.

I remind both of my insurance companies that both law firms hired by my insurance companies have stated that they can beat TLC in Court. Please provide me a letter indicating that neither company will pay TLC a penny immediately. TLC has hid behind res judicata due to the fraudulent submittal of the Settlement Agreement that Judge George James was not aware of. We can defeat them in front of a jury with all of the evidence that we now have.

MB Hutson
803.308.2714

Total Control Panel[Login](#)

To: tnewton@murphygrantland.com [Remove](#) this sender from my allow list
From: hutson4444@gmail.com

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

Tim J. Newton

From: Hutson <hutson4444@gmail.com>
Sent: Sunday, December 10, 2017 7:51 AM
To: fgordon@mgsattorneys.com; Tim J. Newton; dfournier@global-indemnity.com
Subject: Must have jury trial

With the attorney who my insurance company has provided me, I will win both the State defamation case and the Federal suit filed by TLC Holdings, LLC. Due to obvious fraud for TLC cannot hide such fraud.

Immediately after winning, i am open to file the following:

1. Malicious Prosecution allowing up to \$300,000 thousand dollars for each wrongful suit against me due to intentional fraud
2. Have right to file to set aside the Settlement Agreement whereby fraud was applied to the Honorable Court and myself. One cannot execute an intentionally fraudulent Settlement Agreement while not understanding the fraud.
3. Have right to sue for Emotional and Financial stress based on intentional fraud and plotting on each case filed against me.

I am entitled to Jury Trials regarding both cases.

Settling with TLC will astronomically damage me should my insurance company settle to protect themselves at my expense. I would be damaged should this happen. I have lost 5 years of my senior life, monies and etc. due to TLC's suits requiring me to Counter sue even though I did not fully understand the severity of the intentional fraud until much later from date of being sued and my counters. I was plotted against and fully fraudulently taken advantage of by TLC Holdings and their owner members for their entire fraud was preplanned. TLC placed me in an impossible way to be successful and then sued me for not being successful.

Respectfully,

MB Hutson

803.308.2714

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From: hutson4444@gmail.com

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Exhibit W

RECEIVED CLERK'S OFFICE

2016 MAR 14 A 9:13

Case Number 2:14-cv-01583-DCN-MGB

Attention: The Honorable Judge Norton and The Honorable Judge Baker

**MEMORANDUM IN RESPONSE TO THIRD-PARTY PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT
AS TO THIRD-PARTY DEFENDANT'S COUNTERCLAIMS**

Third-Party Defendant, hereby submits this Memorandum in support of his response to the Third-Party Plaintiffs' Motion for Summary Judgment as to Third-Party Defendant's Counterclaims.

Facts

The Plaintiffs in this action are a group of owners of memberships and they represent prospective class of owners of memberships in Big Water Resort campground. The Defendants and Third-Party Plaintiffs are three individuals, Richard U. Clark, Steve Lovell, and James Thigpen, they are the owners of Big Water Resort, LLC. The memberships in question were for the exclusive use of a campground facility that is owned by TLC Holdings, LLC. Big Water Resort, LLC has no ownership interest in any real property located in Clarendon County, South Carolina. Big Water Resort, LLC had no lease on any property located in Clarendon County South Carolina. Despite these facts Big Water Resort sold some 1200 "memberships in a campground facility in which it held NO INTEREST. Defendants and Third-Party Plaintiffs have agreed to pay an amount of approximately \$1,500,000.00 to the members for not providing "exclusive use" of the campground in question (the Defendants allowed people not having membership to use the property which was a violation of the membership the Plaintiffs were sold).

Third-Party Defendant was operating under a set of facts during the transaction between him and the Defendants and Third-Party Plaintiff. This set of facts was not truthful due to no fault of the Third-Party Defendant. The Defendants and Third-Party Plaintiffs unknown to the had developed a fraudulent scheme to extract money and effort from an unsuspecting Purchaser to improve their property (TLC Holding, LLC's property) with no intent to effectuate a transfer of the property due to a lack of marketability of the property caused by the sale of "memberships." It was not until September 25, 2014 that Third-Party Defendant was provided exhibit 8 – the minutes of a meeting between the three members of Big Water Resort, LLC/TLC Holdings, LLC – that was presented at the deposition of Steve Lovell in this action. Since the Third-Party Defendant has slowly but surely uncovered the fraudulent scheme that was crafted, executed and completed by the three individual Defendants and Third-Party Plaintiffs and their attorneys.

This plan was to extract all the funds possible from Third-Party Defendant; have the Third-Party Defendant improve the property, obtain permits and water and sewer; and then if and when he approached the point of closing on the property to select a default under the contract (although

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there was not a valid contract between the parties due to fraud) to cut him out or worst case scenario to "repurchase" the property to protect the property and the scheme executed against the membership owners.

Defendants and Third-Party Plaintiffs never deny the claims of Third-Party Defendant they just claim he has not presented evidence of the claims or that the case has already been decided not on the merits, those have never been heard, but that he has waived those claims.

LEGAL STANDARD

The Fourth Circuit was entirely correct that there can be an exception to res judicata based upon fraud, deception, accident, or mistake. The United States Supreme Court has stated for at least ninety years that only "in the absence of fraud or collusion" does a judgment from a court with jurisdiction operate as res judicata. *Riehle v. Margolies*, 279 U.S. 218, 225 (1929). (emphasis supplied)

When a party challenges the preclusive effect of a previously obtained judgment based upon the winner's fraud, courts often begin by asking what kind of fraud the loser alleges. A common distinction courts draw is between extrinsic and intrinsic fraud. The Florida Supreme Court, for example, defines extrinsic fraud as: [T]he prevention of an unsuccessful party [from] presenting his case, by fraud or deception practiced by his adversary; keeping the opponent away from court; falsely promising a compromise; ignorance of the adversary about the existence of the suit or the acts of the plaintiff; fraudulent representation of a party without his consent and connivance in his defeat; and so on. *Parker v. Parker*, 950 So. 2d 388, 391 (Fla. 2007) (quoting *Fair v. Tampa Electric Co.*, 27 So. 2d 514, 515 (Fla. 1946)). Extrinsic fraud, as its name implies, is fraud outside the workings of the case, fraud that stereotypically prevents a party from fully putting on her case or being heard by the court. See *Long v. Shorebank Dev. Corp.*, 182 F.3d 548, 561 (7th Cir. 1999) (labeling allegation that the defense attorney told the plaintiff not to come to court as within the "classic definition" of extrinsic fraud); see also *Zelek v. Brosseau*, 136 A.2d 416, 421-22 (N.J. Super. 1957).

Intrinsic fraud, on the other hand, is "fraudulent conduct that arises within a proceeding and pertains to the issues in the case that have been tried or could have been tried." *Parker v. Parker*, 950 So. 2d 388, 391 (Fla. 2007) (quoting *Fair v. Tampa Electric Co.*, 27 So. 2d 514, 515 (Fla. 1946)). This classic definition of intrinsic fraud encompasses things like false or perjured testimony, *Falcon v. Faulkner*, 567 N.E.2d 686, 694 (Ill. App. Ct. 1991) false or misleading documents and affidavits, *DeClaire v. Yohanan*, 453 So. 2d 375, 380 (Fla. 1984), superseded on other grounds by FLA. R. CIV. P. 1.540(b), as recognized in *Lefler v. Lefler*, 776 So. 2d 319, 322 (Fla. Dist. Ct. App. 2001); *Puzio v. Puzio*, 155 A.2d 115, 121-23 (N.J. Super. 1959) (applying New York law). or any other misrepresentations that do not prevent a party from making its own case. See *Cummins, Inc. v. TAS Distrib. Co.*, 676 F. Supp. 2d 701, 716 (C.D. Ill. 2009) ("[The exception] does not apply if the other party was on notice that there could be a claim, as a party still has its own duty to make its own case. Only where there is no way that the party wishing to avoid res judicata could have realized that it had a claim will the . . . exception apply."). Of course the Defendants and Third-Party Plaintiffs have used both in this case.

To sanction the preclusion of the plaintiffs' claim via res judicata under facts such as these would be to sanction the defrauding of any litigant by an opponent fast enough and shifty

enough to get a state court order pertaining to the issues which the innocent litigant seeks to argue before a court. Surely res judicata was not created to protect such fraud upon the courts.

In fact South Carolina courts have held that res judicata will not be upheld where fraud is involved. In the case of *Arnold v. Arnold*, 285 S.C. 296, 328 S.E.2d 924 (1985) a domestic case where a husband discovered after the wife had been previously granted custody of the minor child. When the wife sought an absolute divorce the husband counterclaimed contesting the paternity of the minor child, because she had made oral and written misrepresentation both before the marriage and after the marriage. The marriage had lasted more than nine years He had been tested and it was determined that he was sterile. The trial court granted summary judgment for the wife citing res judicata and collateral estoppel. The South Carolina Supreme Court ruled the doctrines of res judicata and collateral estoppel do not bar collateral attack of a judgment based on fraud.

The leading case discussing the application of the doctrine of res judicata as it relates to an action to vitiate a decree obtained by fraud is *Sea Land Services, Inc. v. Gaudet*, 414 U.S. 573, 94 S. Ct. 806, 39 L.Ed. (2d) 9 (1974). There the United States Supreme Court defined the doctrine of res judicata as follows:

The rule provides that when a court of competent jurisdiction has entered a final judgment on the merits of a cause of action, the parties to the suit and their privies are thereafter bound not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. ... The judgment put an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatever, absent fraud or some other factor invalidating the judgment. (Emphasis supplied) 414 U.S. at 578-579, 94 S. Ct. at 811-12 (emphasis added); accord, *Wold v. Funderburg*, 250 S.C. 205, 157 S.E. (2d) 180 (1967); see also, *Lowe v. Clayton*, 264 S.C. 75, 212 S.E. (2d) 582 (1975).

The Defendant Third-Party Plaintiffs reference in their memorandum with regard to the settlement agreement/consent order makes the point that by the use of that method Third-Party Defendant was deterred in seeking a hearing on the facts and merits of the case. That is exactly the behavior that is disapproved of by the Courts when fraud is involved. They also point to the "waiver clause" in the settlement agreement/consent order. A waiver is a voluntary and intentional abandonment or relinquishment of a known right." *Janasik v. Fairway Oaks Villas Horizontal Property Regime*, 307 S.C. 339, 344, 415 S.E.2d 384, 387 (1992). The party claiming waiver bears the burden of establishing "that the party against whom waiver is asserted possessed, at the time, actual or constructive knowledge of his rights or of all material facts upon which those rights depended." *Heritage Federal Sav. and Loan Assoc. v. Eagle Lake and Golf Condominiums*, 318 S.C. 535, 545, 458 S.E.2d 561, 567 (Ct.App.1995) (citing *Janasik*, 307 S.C. at 344, 415 S.E.2d at 387-8). In a case of fraud which this is Third-Party Defendant was not in possession of all material facts at the time the waiver was signed and therefore the waiver was ineffective. Further no one can waive their right to sue for an intentional act or even for an act of gross negligence. The Third-Party Plaintiffs actions were intentional and not subject to waiver.

Third-Party Defendant has addressed Defendant and Third-Party Plaintiff other assertion that he has not produced any evidence to support the claims in his counterclaim reference to those documents is hereby made and is included herein by reference as if fully set forth.

A factual dispute can arise from what the implication of the facts are, for example in this case Defendant and Third-Party Plaintiff is operating on the premise that there was a valid contract and a breach of that contract by Third-Party-Defendant. The Third Party-Defendant is operating upon the true facts and that is that there never was a valid contract because there never was a meeting of the minds. Since there was not a valid contract the Third-Party Defendant could not possible be in breach of it. The use of the court system by the Defendants and Third-Party Plaintiffs is all a part of the scheme they hatched. It is all a part of their fraudulent scheme. The Third-Party Defendant was at the mercy of the Defendants and Third-Party Plaintiffs (and they showed him none) until he received a copy of the business meeting. The business meeting minutes from 2009 and the deposition testimony of the Defendants and Third Party Plaintiffs provide the evidence that supports Third-Party Defendant's conclusions of no valid contract and fraud on the part of Defendants and Third Party Plaintiffs. The discovered evidence demonstrates the fraudulent scheme hatched at the meeting, and the supply the underlying motive for the fraud, they were losing money and they were darn well tired of it especially since one of the members was not contributing his fair share to cover the loses. This is not something the Third-Party Defendant made it is from the computer of and mouths of the individual Defendants and Third Party Plaintiffs. Whether there was or was not a valid contract is a factual dispute. Whether or not these facts constitute fraud is also a question of fact. Of course since the evidence of the fraud comes from the Defendants and Third Party Plaintiffs' own computer and testimony and the lack of meeting of the minds is demonstrated in the contract drafted by the Defendants and Third Party Plaintiffs own attorneys acknowledging Third-Party Defendant's intent with respect to his sole reason for purchasing the property in question it is in reality a legal question that must be answered in favor of the Third-Party Defendant. The worst case scenario is that the matter must be submitted to a jury. Defendants and Third Party Plaintiffs are so far removed from being in a position to have Summary Judgment granted in their favor that it should be offensive to the court for them to even attempt to argue for that outcome.

The Honorable Court should deny Third-Party Plaintiffs motion for Summary Judgement against Third Party Defendant while through ing them out of the Courtroom and approve Third Party Defendant's motion for Summary Judgement against the dishonest Third Party Plaintiffs.

Submitted on this 10th day of March, 2016 and placed in the U.S. Mail the same day

Respectfully,



MB Hutson, Pro Se
803 308 2714

Cc: Wayne Byrd, John Wilkerson, Chip Emge, Tom Harper, Brady Thomas, MB Hutson

MB Hutson
2755 P.O. Box
Orangeburg S.C.
29116



1000



29402

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R2304M114153-13

FILED
MAR 16 2016
U.S. DISTRICT COURT
JUL

Attention To The Honorable
Judge Norton and Judge Baker
In the United States District Court
for the District of South Carolina
Charleston division
P.O. Box 835
zip 29402

CASE NO. 2:14, CV. 01583, DCN

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ITEM X-RAYED BY

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EXHIBIT
1.1-1.3

MEMBERSHIPS
(samples)

Big Water Resort, LLC
5215 Dingle Pond Rd.
Summerton, SC 29148

Retail Membership Term Agreement

By this agreement, Big Water Resort (BWR), A South Carolina, LLC, sells and the undersigned purchaser(s) ("Member") purchases a membership which gives the Member the right to use all present and future BWR facilities and services subject to membership terms provided herein.

NATURE OF MEMBERSHIP

1. Purpose. This membership grants a right to use BWR facilities and services solely for Member's recreation and enjoyment. This membership is neither sold nor purchased as a financial investment. Member acquires no legal or beneficial interest in BWR or its assets and no right or interest in property, contract rights or business of BWR. Member is not entitled to any share of income, gain or distribution of or by BWR. Nor does Member acquire any voting rights in BWR pertaining to its business or any right to participate in BWR's management.
2. Campsite Availability. BWR will use its best efforts to provide Member with a place to camp.
3. Use Privileges. Member may use all of BWR's present recreation facilities on a day use basis; and on an overnight camping and cabin basis. See current Reservation & Usage System Guidelines. 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 or cabins. To properly manage services, reservations are required for overnight camping & cabin stays.
4. Family and Guest Use privileges. Membership permits full recreational use by Member's unmarried dependant children under twenty-one (21) years of age, and may from time to time be extended to other family members and guests (s) at the discretion of BWR. Children under the age of 16 must be accompanied by an adult member. Children between the ages of 16-21 are limited to two (2) guests.
5. Other Use privileges. BWR will make available to Member the use of the reciprocal usage programs. These privileges are provided through BWR's licensing agreement. Eligibility for continued and/or renewed membership is subject to BWR's maintaining its licensing agreement. BWR agrees to use its best efforts to maintain its license agreements and affiliations with such reciprocal use programs as may be accepted by BWR and a majority of members. Member is required to pay all fees; and to use these subject to separate rules established by them and participating resorts. BWR may enter into other reciprocal use programs. There is no assurance this agreement or others will remain in effect.
6. Duration of the Membership. This membership is for 1 years, starting on 1/1/18 and ending on 12/31/18 (See Attachment A for details).
7. Transferability of the Membership. This membership may be transferred 0 times at the cost of \$500 a transfer and at a sales price determined by the current owner. In order for a membership to be transferred it must first be paid for in full to BWR and all dues must be current and the transferee is approved by BWR. When transferred only the remaining years left may be transferred. Example- If you have a 25 year membership and have used 5 years of it, then only the remaining 20 years may be transferred.
8. Ownership Limitations. Member may own only one active membership. This membership may not be assigned, rented, loaned or otherwise alienated, temporarily or permanently, in any manner other than as provided in Section 7 above. Violations of these prohibitions will constitute grounds for termination of membership.

ASSURANCE OF CONTINUED MEMBERSHIP QUALITY

9. Rules Supporting Member Satisfaction. Membership use privileges are subject to Member's observance of rules established by BWR to insure the enjoyment of all Members in their use of BWR facilities which rules are hereby incorporated as a part of this agreement. BWR may adopt, amend or repeal such rules provided that BWR deems necessary for the overall betterment of the Resort. The rules hereby incorporated are set forth in the membership Rules & Regulations.
10. BWR Management Commitment to Member. BWR will provide all management of BWR facilities. BWR, therefore, retains all management responsibility and authority to carry out this management role. This shall include but not be limited to: the administration of the membership rights provided through this agreement, the maintenance of BWR facilities in a manner that allows members the reasonable use and enjoyment of their membership; the payment of all property taxes, insurance, utilities and other ordinary and necessary expenses of BWR facility operations, BWR shall also continue to provide the Member's use of the campsites for Member's own recreation vehicle, the utility services provided to those campsites, the Members use of dump stations, recreation center buildings and swimming pools or swimming beaches and areas as may be provided.

CHARGES FOR MEMBERSHIP AND CONTRACTUAL STANDARDS

11. Initial Fee, Annual Dues and Assessments. The purchase price for this membership shall be the initiation fee, including finance charges if applicable, specified in paragraph 19 of this agreement. In consideration for paying dues, Member shall be entitled to use all facilities maintained for the benefit of BWR Members. At the signing of this agreement, member shall pay in advance 1/1 dues in the amount of \$500.00 and thereafter Members shall pay dues in advance, annually () or quarterly (), in the amount of \$500.00 beginning on 1/1/18. Unless otherwise authorized in writing by the BWR General Manager, the annual rate of dues can be increased each year by no more than the percentage increase in the national consumer price index for all urban consumers, as reported by the US Dept. of Labor, Bureau of Labor Statistics, for the calendar year one year prior to the year for which the increase is being made, along with a pro rata share of pass through charges mandated by governmental authorities. If any dues payment is not made in full within 20 days of its due date, the member agrees to pay BWR a delinquency charge in the amount of 5% per month of the delinquent payment or \$5.00 whichever is greater. The purchaser is also responsible for any tax that might be assessed on this membership by a civil taxing authority.

* JAC. RATES
6.324
8/0

12. Use Charges. The Member agrees to pay for the following items if and when they are used by the member; rental housing; recreation vehicle storage and incidental recreation equipment usages. Published lists of the current use charges are available upon request. These use charges may be changed at the sole discretion of BWR.
13. Rules For All Payments, Credit Reports. Member is obligated to make all payments described in this agreement as and when due, including payment of the purchase price, dues, the finance charge, if applicable, and any other charges to BWR or its assigns. No renewal, extension, or assignment by BWR of this membership agreement or any transfer of membership by Member shall release Member from any obligation of this agreement and the Member Rules, except as may be provided in writing by BWR to Member. Delinquent accounts will be reported to the appropriate credit service agency.
14. Default. Time is of the essence of this agreement and any of the following events will be "an event of default" by Member; a) Member's failure to make any payment under this agreement when due, including but not limited to the payment of initiation fees and dues or; b) any false representation made by Member in this agreement or in Member's credit application; c) a material breach by Member of any provision of this agreement or the member rules set forth in the Member Handbook.
15. Remedies. Should any "event of default" occur, BWR may immediately suspend Member's rights to use BWR resort facilities. In addition, upon the occurrence of any "event of default", BWR may, upon 30 days written notice to Member, a) declare the entire unpaid principle balance of the initiation fees, together with the finance charge and dues accrued to the date of default, immediately due and payable, with interest on the unpaid principle balance accruing from the date BWR declares the balance due at maximum contract rate allowed by law, until fully paid; and/or b) terminate this agreement and the membership. If BWR terminates this agreement and the membership because of Member's default, which BWR may but is not required to do, BWR shall have all remedies provided by law and BWR will keep all the money member has paid BWR up to the time of the default as liquidated damages and not as a penalty. Member agrees that this action as to liquidate damages is a reasonable endeavor to estimate a paid compensation for the losses which might result from Member's default. Member may not terminate this agreement or the membership if member defaults. The note holder may also be entitled any collection agency fees, late charges, interest or additional costs, fees or expenses which note holder may reasonably incur. If legal action is commenced to enforce or declare the meaning of any provision of this agreement, the prevailing party will be awarded its reasonable attorney's fees and costs, including fees and costs incurred in arbitration, trial and appellate courts, or any other adjudicatory forum.
16. BWR reserves the right to refuse membership to registered convicted felons.
17. Warranty Limitations. There are no warranties which extend beyond the description on the face hereof including, without limitation, implied warranties of merchantability of fitness for a particular purpose.

THE ABOVE MEMBERSHIP PURCHASE PRICE IS BASED ON BWR FACILITIES AS THEY PRESENTLY EXIST, AND IN NO WAY REFLECTS ADDITIONAL VALUE FOR ANY AMENITIES PLANNED IN THE FUTURE. BWR CANNOT GUARANTEE THE NATURE, QUALITY AND AVAILABILITY OF ANY INDIVIDUAL NON-BWR CAMPGROUNDS PARTICIPATING IN THE RECIPROCAL USE SYSTEMS.

18. Liability Limitations. BWR's liability for damages for breach of any warranty, or for any injury or damage to person or property shall not exceed the amounts Member has paid BWR under this agreement, except that this limitation of liability will not apply to personal injury to Member or Member's guests caused by BWR's negligence. Member agrees to indemnify BWR and hold BWR harmless against all claims, liability, loss and expense (including reasonable attorney's fees) incurred by reason of injury or damage to person or property, or both, of Member and Member's guests arising from such person's use of BWR facilities or surrounding area, except that this indemnity will not apply to personal injury caused by BWR's negligence. No action may be brought by either Member or BWR more than one year after the cause of action has occurred, except that an action for non-payment may be brought within the applicable statutes of limitation.
19. Effect of this Agreement. THIS AGREEMENT CONTAINS THE ENTIRE AGREEMENT BETWEEN BWR AND MEMBER AND IS A BINDING CONTRACT. Any provision of this agreement and such other provisions will remain in full force and effect. Venue is proper in any county in which this agreement is signed.

*ADDENDUM: Lifetime premium membership upon
ADDITIONAL \$1405 w/in 2 yrs. - fees increase
MAJOR CHECK BY FEDERAL GOVT OPI - CRT DADR
CAMPING TO (TOTAL LIFETIME JOINING FEE \$7900⁰⁰)
(ALL APPROVED BY MEMBER)

WHEREAS: The parties have executed this membership agreement on the date and year hereby written.

[Signature]
 Authorized Agent for Big Water Resort, LLC

5/31/08
 Date of Acceptance

[Signature] 5/31/08
 Membership Signature Date

[Signature] 5/31/08
 Membership Signature Date

*IF \$1405 ACT ADIA W/in 2 yrs from DATE SIGNED
 MEMBERSHIP REVERTS TO 10 YEAR MEMBERSHIP W/OPTION
 FE INCREASE # OF MEMBERSHIP YEARS THROUGH RECENTAL UPGRAD
 CO. INCREASE (\$1000 FOR 5 more years, \$1500 FOR 10 more years)

Big Water Resort, LLC
5215 Dingle Pond Rd.
Summerton, SC 29148

Retail Membership Term Agreement

By this agreement, Big Water Resort (BWR), A South Carolina, LLC, sells and the undersigned purchaser(s) ("Member") purchases a membership which gives the Member the right to use all present and future BWR facilities and services subject to membership terms provided herein.

NATURE OF MEMBERSHIP

1. Purpose. This membership grants a right to use BWR facilities and services solely for Member's recreation and enjoyment. This membership is neither sold nor purchased as a financial investment. Member acquires no legal or beneficial interest in BWR or its assets and no right or interest in property, contract rights or business of BWR. Member is not entitled to any share of income, gain or distribution of or by BWR. Nor does Member acquire any voting rights in BWR pertaining to its business or any right to participate in BWR's management.
2. Campsite Availability. BWR will use its best efforts to provide Member with a place to camp.
3. Use Privileges. Member may use all of BWR's present recreation facilities on a day use basis; and on an overnight camping and cabin basis. See current Reservation & Usage System Guidelines. 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 or cabins. To properly manage services, reservations are required for overnight camping & cabin stays.
4. Family and Guest Use privileges. Membership permits full recreational use by Member's unmarried dependant children under twenty-one (21) years of age, and may from time to time be extended to other family members and guests (s) at the discretion of BWR. Children under the age of 16 must be accompanied by an adult member. Children between the ages of 16-21 are limited to two (2) guests.
5. Other Use privileges. BWR will make available to Member the use of the reciprocal usage programs. These privileges are provided through BWR's licensing agreement. Eligibility for continued and/or renewed membership is subject to BWR's maintaining its licensing agreement. BWR agrees to use its best efforts to maintain its license agreements and affiliations with such reciprocal use programs as may be accepted by BWR and a majority of members. Member is required to pay all fees; and to use these subject to separate rules established by them and participating resorts. BWR may enter into other reciprocal use programs. There is no assurance this agreement or others will remain in effect.
6. Duration of the Membership. This membership is for 10 years, starting on 7-7-08 and ending on 7-6-18.
7. Transferability of the Membership. This membership may be transferred _____ times at the cost of \$500 a transfer and at a sales price determined by the current owner. In order for a membership to be transferred it must first be paid for in full to BWR and all dues must be current and the transferee is approved by BWR. When transferred only the remaining years left may be transferred. Example- If you have a 25 year membership and have used 5 years of it, then only the remaining 20 years may be transferred.
8. Ownership Limitations. Member may own only one active membership. This membership may not be assigned, rented, loaned or otherwise alienated, temporarily or permanently, in any manner other than as provided in Section 7 above. Violations of these prohibitions will constitute grounds for termination of membership.

ASSURANCE OF CONTINUED MEMBERSHIP QUALITY

9. Rules Supporting Member Satisfaction. Membership use privileges are subject to Member's observance of rules established by BWR to insure the enjoyment of all Members in their use of BWR facilities which rules are hereby incorporated as a part of this agreement. BWR may adopt, amend or repeal such rules provided that BWR deems necessary for the overall betterment of the Resort. The rules hereby incorporated are set forth in the membership Rules & Regulations.
10. BWR Management Commitment to Member. BWR will provide all management of BWR facilities. BWR, therefore, retains all management responsibility and authority to carry out this management role. This shall include but not be limited to: the administration of the membership rights provided through this agreement, the maintenance of BWR facilities in a manner that allows members the reasonable use and enjoyment of their membership; the payment of all property taxes, insurance, utilities and other ordinary and necessary expenses of BWR facility operations, BWR shall also continue to provide the Member's use of the campsites for Member's own recreation vehicle, the utility services provided to those campsites, the Members use of dump stations, recreation center buildings and swimming pools or swimming beaches and areas as may be provided.

CHARGES FOR MEMBERSHIP AND CONTRACTUAL STANDARDS

11. Initial Fee, Annual Dues and Assessments. The purchase price for this membership shall be the initiation fee, including finance charges if applicable, specified in paragraph 19 of this agreement. In consideration for paying dues, Member shall be entitled to use all facilities maintained for the benefit of BWR Members. At the signing of this agreement, member shall pay in advance _____ dues in the amount of _____ and thereafter Members shall pay dues in advance, annually ~~or~~ quarterly (), in the amount of \$700 beginning on 1-1-09. Unless otherwise authorized in writing by the BWR General Manager, the annual rate of dues can be increased each year by no more than the percentage increase in the national consumer price index for all urban consumers, as reported by the US Dept. of Labor, Bureau of Labor Statistics, for the calendar year one year prior to the year for which the increase is being made, along with a pro rata share of pass through charges mandated by governmental authorities. If any dues payment is not made in full within 20 days of its due date, the member agrees to pay BWR a delinquency charge in the amount of 5% per month of the delinquent payment or \$5.00 whichever is greater. The purchaser is also responsible for any tax that might be assessed on this membership by a civil taxing authority.

12. Use Charges. The Member agrees to pay for the following items if and when they are used by the member: rental housing; recreation vehicle storage and incidental recreation equipment usages. Published lists of the current use charges are available upon request. These use charges may be changed at the sole discretion of BWR.
13. Rules For All Payments, Credit Reports. Member is obligated to make all payments described in this agreement as and when due, including payment of the purchase price, dues, the finance charge, if applicable, and any other charges to BWR or its assigns. No renewal, extension, or assignment by BWR of this membership agreement or any transfer of membership by Member shall release Member from any obligation of this agreement and the Member Rules, except as may be provided in writing by BWR to Member. Delinquent accounts will be reported to the appropriate credit service agency.
14. Default. Time is of the essence of this agreement and any of the following events will be "an event of default" by Member: a) Member's failure to make any payment under this agreement when due, including but not limited to the payment of initiation fees and dues or; b) any false representation made by Member in this agreement or in Member's credit application; c) a material breach by Member of any provision of this agreement or the member rules set forth in the Member Handbook.
15. Remedies. Should any "event of default" occur, BWR may immediately suspend Member's rights to use BWR resort facilities. In addition, upon the occurrence of any "event of default", BWR may, upon 30 days written notice to Member, a) declare the entire unpaid principle balance of the initiation fees, together with the finance charge and dues accrued to the date of default, immediately due and payable, with interest on the unpaid principle balance accruing from the date BWR declares the balance due at maximum contract rate allowed by law, until fully paid; and/or b) terminate this agreement and the membership. If BWR terminates this agreement and the membership because of Member's default, which BWR may but is not required to do, BWR shall have all remedies provided by law and BWR will keep all the money member has paid BWR up to the time of the default as liquidated damages and not as a penalty. Member agrees that this action as to liquidate damages is a reasonable endeavor to estimate a paid compensation for the losses which might result from Member's default. Member may not terminate this agreement or the membership if member defaults. The note holder may also be entitled any collection agency fees, late charges, interest or additional costs, fees or expenses which note holder may reasonably incur. If legal action is commenced to enforce or declare the meaning of any provision of this agreement, the prevailing party will be awarded its reasonable attorney's fees and costs, including fees and costs incurred in arbitration, trial and appellate courts, or any other adjudicatory forum.
16. BWR reserves the right to refuse membership to registered convicted felons.
17. Warranty Limitations. There are no warranties which extend beyond the description on the face hereof including, without limitation, implied warranties of merchantability of fitness for a particular purpose.

THE ABOVE MEMBERSHIP PURCHASE PRICE IS BASED ON BWR FACILITIES AS THEY PRESENTLY EXIST, AND IN NO WAY REFLECTS ADDITIONAL VALUE FOR ANY AMENITIES PLANNED IN THE FUTURE. BWR CANNOT GUARANTEE THE NATURE, QUALITY AND AVAILABILITY OF ANY INDIVIDUAL NON-BWR CAMPGROUNDS PARTICIPATING IN THE RECIPROCAL USE SYSTEMS.

18. Liability Limitations. BWR's liability for damages for breach of any warranty, or for any injury or damage to person or property shall not exceed the amounts Member has paid BWR under this agreement, except that this limitation of liability will not apply to personal injury to Member or Member's guests caused by BWR's negligence. Member agrees to indemnify BWR and hold BWR harmless against all claims, liability, loss and expense (including reasonable attorney's fees) incurred by reason of injury or damage to person or property, or both, of Member and Member's guests arising from such person's use of BWR facilities or surrounding area, except that this indemnity will not apply to personal injury caused by BWR's negligence. No action may be brought by either Member or BWR more than one year after the cause of action has occurred, except that an action for non-payment may be brought within the applicable statutes of limitation.
19. Effect of this Agreement. THIS AGREEMENT CONTAINS THE ENTIRE AGREEMENT BETWEEN BWR AND MEMBER AND IS A BINDING CONTRACT. Any provision of this agreement and such other provisions will remain in full force and effect. Venue is proper in any county in which this agreement is signed.

ADDENDUM: 10 yr. membership non transferable - upgradeable during first 2 years at '08 prices - upgradeable after 2 years at the then current prices.

WHEREAS: The parties have executed this membership agreement on the date and year hereby written.

[Signature]
Authorized Agent for Big Water Resort, LLC

[Signature]
Membership Signature

7-7-08
Date

7-7-08
Date of Acceptance

[Signature]
Membership Signature

7/7/08
Date

Big Water Resort, LLC
5215 Dingle Pond Rd.
Summerton, SC 29148
Retail Membership Agreement

1044

By this agreement, Big Water Resort (BWR), A South Carolina, LLC, sells and the undersigned purchaser(s) ("Member") purchases a membership which gives the Member the right to use all present and future BWR campground facilities and services subject to membership terms provided herein.

NATURE OF MEMBERSHIP

1. Purpose. This membership grants a right to use campground facilities and services solely for Member's recreation and enjoyment. This membership is neither sold nor purchased as a financial investment. Member acquires no legal or beneficial interest in BWR or its assets and no right or interest in property, contract rights or business of BWR. Member is not entitled to any share of income, gain or distribution of or by BWR. Nor does Member acquire any voting rights in BWR pertaining to its business or any right to participate in BWR's management.
2. Campsite Availability. BWR will use its best efforts to provide Member with a place to camp.
3. Use Privileges. Member may use all of BWR's present and future campground recreation facilities on a day use basis, and on an overnight camping basis for up to seven (7) consecutive nights. There is a seven (7) day waiting period before Member can resume camping overnight camping following any overnight stay. According to the rules and regulations of Big Water Resort a member is also allowed two - fourteen (14) consecutive night visits as well as three - twenty one (21) consecutive night visits during our off peak season - non holiday. 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. To properly manage services, reservations are required for overnight camping. Cabin stay limit is two night to seven nights with a 14 day absence between each stay in the cabins.
4. Family and Guest Use privileges. Membership permits full recreational use by Member's unmarried dependant children under twenty-one (21) years of age, and may from time to time be extended to other family members and guests (s) at the discretion of BWR. Children under the age of 16 must be accompanied by an adult member. Children between the ages of 16-21 are limited to two (2) guests.
5. Other Use privileges. BWR will make available to Member the use of the reciprocal usage programs. These privileges are provided through BWR's licensing agreement. Eligibility for continued and/or renewed membership is subject to BWR's maintaining its licensing agreement. BWR agrees to use its best efforts to maintain its license agreements and affiliations with such reciprocal use programs as may be accepted by BWR and a majority of members. Member is required to pay all fees, and to use these subject to separate rules established by them and participating resorts. BWR may enter into other reciprocal use programs. There is no assurance this agreement or others will remain in effect.
6. Duration of the Membership. The membership is for _____ years, starting on 7/01/08 and ending on DISC OF BWR MEMBERS (CR).
7. Transferability of the Membership. This membership may be transferred _____ times at the cost of \$500 a transfer and at a sales price determined by the current owner. In order for a membership to be transferred it must first be paid for in full to BWR and all dues must be current and the transferee is approved by BWR. When transferred only the remaining years left may be transferred. Example- If you have a 25 year membership and have used 5 years of it, then only the remaining 20 years may be transferred.
8. Ownership Limitations. Member may own only one active membership. This membership may not be assigned, rented, loaned or otherwise alienated, temporarily or permanently, in any manner other than as provided in Section 7 above. Violations of these prohibitions will constitute grounds for termination of membership.

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ASSURANCE OF CONTINUED MEMBERSHIP QUALITY

9. Rules Supporting Member Satisfaction. Membership use privileges are subject to Member's observance of rules established by BWR to insure the enjoyment of all Members in their use of BWR campground facilities which rules are hereby incorporated as a part of this agreement. BWR may adopt, amend or repeal such rules provided that BWR deems necessary for the overall betterment of the Resort. The rules hereby incorporated are set forth in The Member Handbook. Member acknowledges he has received a copy of the Member Handbook.
10. BWR Management Commitment to Member. BWR will provide all management of BWR campground facilities. BWR, therefore, retains all management responsibility and authority to carry out this management role. This shall include but not be limited to: the administration of the membership rights provided through this agreement, the maintenance of BWR campground facilities in a manner that allows members the reasonable use and enjoyment of their membership; the payment of all property taxes, insurance, utilities and other ordinary and necessary expenses of BWR campground facility operations, BWR shall also continue to provide the Member's use of the campsites for Member's own recreation vehicle, the utility services provided to those campsites, the Members use of dump stations, recreation center buildings and swimming pools or swimming beaches and areas as may be provided.

CHARGES FOR MEMBERSHIP AND CONTRACTUAL STANDARDS

11. Initial Fee, Annual Dues and Assessments. The purchase price for this membership shall be the initiation fee, including finance charges if applicable, specified in paragraph 19 of this agreement. In consideration for paying dues, Member shall be entitled to use all facilities maintained for the benefit of BWR Members. At the signing of this agreement, member shall pay in advance 1/11 dues in the amount of 7,370.00 and thereafter Members shall pay dues in advance, annually () or quarterly (), in the amount of 7,370.00 beginning on 7/1/08. Unless otherwise authorized in writing by the BWR General Manager, the annual rate of dues can be increased each year by no more than the percentage increase in the national consumer price index for all urban consumers, as reported by the US Dept. of Labor, Bureau of Labor Statistics, for the calendar year one year prior to the year for which the increase is being made, along with a pro rata share of pass through charges mandated by governmental authorities. If any dues payment is not made in full within 20 days of its due date, the member agrees to pay BWR a delinquency charge in the amount of 5% per month of the delinquent payment or \$5.00 whichever is greater. The purchaser is also responsible for any tax that might be assessed on this membership by a civil taxing authority.

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12. Use Charges. The Member agrees to pay for the following items if and when they are used by the member; rental housing; recreation vehicle storage; usage of ~~campsites~~ ^(decide camping fee); and incidental recreation equipment usages. Published lists of the current use charges are available upon request. These use charges may be changed at the sole discretion of BWR.
13. Rules For All Payments, Credit Reports. Member is obligated to make all payments described in this agreement as and when due, including payment of the purchase price, dues, the finance charge, if applicable, and any other charges to BWR or its assigns. No renewal, extension, or assignment by BWR of this membership agreement or any transfer of membership by Member shall release Member from any obligation of this agreement and the Member Rules, except as may be provided in writing by BWR to Member. Delinquent accounts will be reported to the appropriate credit service agency.
14. Default. Time is of the essence of this agreement and any of the following events will be "an event of default" by Member; a) Member's failure to make any payment under this agreement when due, including but not limited to the payment of initiation fees and dues or; b) any false representation made by Member in this agreement or in Member's credit application; c) a material breach by Member of any provision of this agreement or the member rules set forth in the Member Handbook.
15. Remedies. Should any "event of default" occur, BWR may immediately suspend Member's rights to use BWR resort facilities. In addition, upon the occurrence of any "event of default", BWR may, upon 30 days written notice to Member, a) declare the entire unpaid principle balance of the initiation fees, together with the finance charge and dues accrued to the date of default, immediately due and payable, with interest on the unpaid principle balance accruing from the date BWR declares the balance due at maximum contract rate allowed by law, until fully paid; and/or b) terminate this agreement and the membership. If BWR terminates this agreement and the membership because of Member's default, which BWR may but is not required to do, BWR shall have all remedies provided by law and BWR will keep all the money member has paid BWR up to the time of the default as liquidated damages and not as a penalty. Member agrees that this action as to liquidate damages is a reasonable endeavor to estimate a paid compensation for the losses which might result from Member's default. Member may not terminate this agreement or the membership if member defaults. The note holder may also be entitled any collection agency fees, late charges, interest or additional costs, fees or expenses which note holder may reasonably incur. If legal action is commenced to enforce or declare the meaning of any provision of this agreement, the prevailing party will be awarded its reasonable attorney's fees and costs, including fees and costs incurred in arbitration, trial and appellate courts, or any other adjudicatory forum.
16. BWR reserves the right to refuse membership to registered convicted felons.
17. Warranty Limitations. There are no warranties which extend beyond the description on the face hereof including, without limitation, implied warranties of merchantability of fitness for a particular purpose.

THE ABOVE MEMBERSHIP PURCHASE PRICE IS BASED ON BWR CAMPGROUND FACILITIES AS THEY PRESENTLY EXIST, AND IN NO WAY REFLECTS ADDITIONAL VALUE FOR ANY AMENITIES PLANNED IN THE FUTURE. BWR CANNOT GUARANTEE THE NATURE, QUALITY AND AVAILABILITY OF ANY INDIVIDUAL NON-BWR CAMPGROUNDS PARTICIPATING IN THE RECIPROCAL USE SYSTEMS.

18. Liability Limitations. BWR's liability for damages for breach of any warranty, or for any injury or damage to person or property shall not exceed the amounts Member has paid BWR under this agreement, except that this limitation of liability will not apply to personal injury to Member of Member's guests caused by BWR's negligence. Member agrees to indemnify BWR and hold BWR harmless against all claims, liability, loss and expense (including reasonable attorney's fees) incurred by reason of injury or damage to person or property, or both, of Member and Member's guests arising from such person's use of BWR campground facilities or surrounding area, except that this indemnity will not apply to personal injury caused by BWR's negligence. No action may be brought by either Member or BWR more than one year after the cause of action has occurred, except that an action for non-payment may be brought within the applicable statutes of limitation.
19. Effect of this Agreement. THIS AGREEMENT CONTAINS THE ENTIRE AGREEMENT BETWEEN BWR AND MEMBER AND IS A BINDING CONTRACT. Any provision of this agreement and such other provisions will remain in full force and effect. Venue is proper in any county in which this agreement is signed.

ADDENDUM:

*1 Life Time Membership - option to add
2nd Life Time for additional \$2000 w/in 2 years has
w/ 1 Referral Termite BWR w/in 1 year - does apply
\$376 / PPI - GRANT AGREES AGAINST Future BWR Fees*

WHEREAS:

The parties have executed this membership agreement on the date and year hereby written

[Signature]
Membership Signature

[Signature]
Membership Signature

2-11-08
Date of Acceptance

[Signature]
Authorized Agent for Big Water Resort, LLC

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Penn America Insurance Company and
Global Indemnity Group, LLC,

Plaintiffs

vs.

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

Defendant

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

Defendant

vs.

Third Party Defendants:

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

IN THE COURT OF COMMON PLEAS

Civil Action No. 2020-CP- 4003810

ADDENDUM OF LAW

RICHLAND COUNTY
FILED
2020 OCT 13 AM 9:08
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Comes now the Defendant Hutson stating an Addendum of Law:

1. Responding to Judicial & Lawyer Misconduct (*American Bar*

***Association*) Rule 2:15:**

a) A judge having knowledge that another judge has committed a violation of this

Code that raises a substantial question regarding the judge's honesty,

trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.

b) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.

c) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.

d) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.

2. The five (5) Elements of Conduct that Constitute **Extrinsic Fraud** upon the

Court: (US Court of Appeals for the 6th Cir.) are as follows:

a) *"On the part of an Officer of the Court"*

b) *"That is directed to the judicial machinery itself,"*

c) *"That is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth;"*

d) *"That is a positive averment or is concealment when one is under a duty to disclose,"*

e) *"That deceives the Court."*

3. **FRAUD UPON THE COURT** has been defined as *H. Lightsey, J.*

Flanagan, S.C. Civil Procedure, 408 (2nd Ed. 1985) as "that species of fraud which ...

a) *is a fraud perpetrated by officers of the court*

- b) *so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication*
- c) *does, or attempts to, subvert the integrity of the Court itself,*
- d) *“induces a person not to present a case or*
- e) *deprives a person of the opportunity to be heard*

4. ‘Fraud upon the Court’ and ‘Extrinsic Fraud’ are essentially the same thing: BOTH

“Involve officers of the Court preventing the judicial machinery from working in its usual manner with its impartial task of adjudging cases that are presented for adjudication”/ “induces a person not to be able to present a case or deprives a person of the opportunity to be heard.” Evans v. Gunter, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (1988). quoting H. Lightsey, J. Flanagan, South Carolina Civil Procedure, 408 (2nd ed. 1985).

5. Plaintiff Penn America/Global Indemnity Insurance (PAGI) and their attorneys, lied blatantly when filing for an injunction against Defendant:

a) Newton, Esq. of Murphy & Grantland, P.A. states in his letter of August 13, 2018, par. (16) e-mailed to Defendant Hutson:

“Since attorneys were involved, and it resulted in your inability to present your case in court, and possibly led to the sanctions order and judgment against you, there might possibly be extrinsic fraud on the court to support setting aside the Consent Order”.

(emphasis mine.) (NOTE: The extrinsic fraud Newton refers to began in an underlying case by the same Plaintiffs.)

b. In Newton, Esq.'s *second* letter to Hutson dated November 8, 2018, he contradicts himself and states (page 3, par. 5):

"At no point has Penn-America or its counsel ever acknowledged the existence of fraud upon the court". This statement constitutes a blatant lie.

c. Both letters (cited above from Newton to Defendant Hutson) are attached in their entirety.

d. Rule 2.15: Responding to Judicial and Lawyer Misconduct:

(1) A judge having knowledge* that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.*

(2) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.

(3) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.

(4) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action."

6) A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should

use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

Representation by a Lawyer

7) (Rule 3 – SCCRPC). An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare Rule 3.1. **However, an assertion purporting to be on the lawyer's own knowledge**, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation.

8) misrepresentation: The obligation prescribed in Rule 1.2 (d) is not to counsel a client to commit or assist the client in committing a fraud *applies in litigation*.

9) Rule 3.3. "Candor Towards the Tribunal:" "One who intentionally conceals critical evidence for the sole purpose of self preservation at the cost of disgracing, deceiving, plotting and defrauding the Honorable Court, is creating Extrinsic fraud upon the court"

10) Rule 402, Attorney Oath: "I will employ for the purpose of maintaining the causes confided to me only such means as are consistent with trust and honor and the principles of professionalism, and will never seek to mislead an opposing party, the Judge or Jury by a false statement of fact or law".

11) Lawyer's Oath South Carolina Supreme Court Rule 402 (k). "To opposing parties and their counsel, I pledge fairness, integrity and civility, not only in court, but also in all written and oral communications."

12) **Conspiracy (18 U.S. C. 371):** A a combination or agreement to accomplish an unlawful purpose, or to use illegal means in accomplishing a lawful purpose.

13) **8.3 (b) and cmt. 1.** "As a self-regulating profession, lawyers are expected to report serious misconduct by other lawyers to appropriate disciplinary authorities. The duty to report the misconduct of others extends even to misconduct by another lawyer in the same firm".Supreme

14) "The trial court has the inherent authority, within the exercise of sound judicial discretion, to dismiss an action when a plaintiff has perpetrated a fraud on the court, or where a party refuses to comply with court orders". Kornblum v. Schneider, 609So. 2d 138, 139 (Fla. 4th DCA 1992)".

15) U.S. Code 1324c. Penalties for document fraud:
"Falsely make for purposes of this section, the term "falsely make" means to prepare or provide an application or document, with knowledge or in reckless disregard of the fact that the

application or document contains a false, fictitious, or fraudulent statement or material representation, or has no basis in law or fact, or otherwise fails to state a fact which is material to the purpose for which it was submitted"

16) Webster's Dictionary of Law

Obstruction of Justice: the crime or act of **willfully interfering with the process of justice and law** esp. By influencing, threatening, harming, or impeding a witness, potential witness, juror, or judicial or legal officer or by furnishing false information in or otherwise impeding an investigation or legal process.

17) **Extrinsic fraud often involves fraud on the court**, but may arise in other contexts. Extrinsic fraud does not mean merely lying or perjury, nor misrepresentations, nor intrinsic fraud, nor "to matters that could have been raised during the (divorce) proceeding." [3] It must involve "collateral ... circumstances" such as:

"bribery of a judge or juror,"

"fabrication of evidence by an attorney,"

"preventing another party's witness from appearing,"

"intentionally failing to join a necessary party," or

"misleading another party into thinking a continuance had been granted.

18) Beginning in the late 1980s, **attorneys have been required to report the misconduct of other lawyers, with failure to do so considered to be misconduct in itself and resulting in serious disciplinary measures.** A 1989 Illinois Supreme Court ruling, *In re*

Himmel, 125 Ill. 2d 531, 533 N.E.2d 790, found that attorneys have a duty to report other lawyers' misconduct even when a client has instructed them not to do so.

19) To establish an **abuse of process case** in South Carolina, a plaintiff must prove (1) ulterior purpose and (2) willful act in the use of process not proper in the regular conduct of the proceeding.

20) An Insured May Also Recover **Consequential Bad Faith Damages** If The Insured Can Show Bad Faith OR Unreasonable Action by The Insurer In Its Handling of The Claim. Ocean Winds, 241 F. Supp. 2d at 576 (Citing Tadlock Painting Co., 473 S.E. 2d at 52), Varnadore v. Nationwide Mut. Ins. Co., 345 S.E. 2d 711 (S.C. 1986)

21) **Obstruction of Justice:**

"the crime or act of willfully interfering with the process of justice and law esp. By influencing, threatening, harming, or impeding a witness, potential witness, juror, or judicial or legal officer or by furnishing false information in or otherwise impeding an investigation or legal process.

22). Due to this Pro-Se desperately trying to have his case heard and believed while up against polished, unethical Officers of the Court, who are trying to hide their Extrinsic Fraud upon the Courts. Defendant is asking for help from the various individuals, departments, and agencies as listed below:

Governor Henry McMaster, Columbia, S.C.

Attorney General Josh Stein, Columbia, S.C.

Common on Lawyer Conduct, Barbara Hinson, Columbia, S.C.

Commission on Judicial Conduct, Jody W. Gilgamesh, Columbia, S.C.

Office of Disciplinary Counsel, P.O. Box 12159, Columbia, S.C.

Commission on Lawyer Conduct, John S. Nichols, Columbia, S.C.

S.C. Supreme Court

Background facts are as follows:

- A. Defendant has put the court on notice of the repeated fraud upon the court and dishonesty by its Officers in S. C. in cases directly involving Defendant.
- B. Defendant presented written, clear evidence of dishonesty and lies to this Defendant by T. Newton, Esq., Officer of the Court while representing PAGI.
- C. Defendant has also provided the Court with evidence prepared and written by Plaintiff's and their attorneys to this Defendant which includes:
 - 1. Based on this clear statement of fact "your inability to present your case in court" proves that all cases lost were due to extrinsic fraud and fraud upon the court and against the Defendant. NO case was lost due to frivolous or harassing filings, as claimed by the Officers of the Court of which they know to be totaling untrue.
 - 2. Plaintiff's former lawyer so stated the above in writing (copy provided). All Plaintiff parties are fully informed, but are denying, lying, and further defrauding the Court through their prepared documents and so filed same certifying that all cases were lost due to frivolous and harassing filings when they knew that was not true.
 - 3. Defendant has presented Plaintiffs' (Penn America and Global Indemnity Ins. Companys') own attorneys perpetrating the fraud upon the court by presenting fraudulent evidence as a reason to acquire an injunction and complaint against Defendant.
 - 4. The foundation of Plaintiffs' application for an injunction is fraudulent and can't be allowed to stand based on what Penn America's attorney wrote on August 13, 2018:

Since attorneys were involved, and it resulted in your inability to present your case in court, and possibly led to the sanctions order and judgment against you, there might possibly be extrinsic fraud on the court to support setting aside the Consent Order. See Chewning v. Ford Motor Co., 354 S.C. 72

5. The America Bar Association Rule 2.15 requires the acting judge to report such dishonesty to the Tribunal.

6. Defendant brings to the attention of the Court that the dishonest Plaintiffs and their attorneys have created (by way of extrinsic fraud) the following:

(A) Document fraud

(B) Obstruction of Justice

(C) Extrinsic fraud upon the court and Honorable Judges.

(D) Defamation against the innocent Defendant.

(E) Under Rule 2:15, the court has an obligation to report and immediately throw out this case today: The Court is required to report this dishonesty (Rule 2:15 ABA).

(F) Defendant asks for a copy of the report in "E" above.

Therefore, Defendant **PRAYS** for the following IN ADDITION TO other prayers that Defendant has heretofore requested:

1. That this Honorable Court recognize, adjudicate and order the Plaintiff and Attorneys of the Plaintiff to never again file a complaint against this Defendant without full disclosure of Defendant's inability to have his cases heard due to Fraud upon the Court.
2. Allow Defendant's Cross Complaint to go forward directly to a jury.

3. Immediately dismiss Plaintiff's complaint due to active fraud, dishonesty and lies perpetrated by Plaintiff and Plaintiffs' attorneys to gain an advantage over defendant. No court is authorized to become a part of fraud through conspiracy nor fraud upon the court against any Defendant as it would violate Defendant's civil rights and deprive Defendant of justice.
4. Assure that this hearing is recorded by a court reporter so that an immediate transcript can be secured by this Defendant.

Respectfully submitted this 12th day of October, 2020.


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

SERVICE VERIFICATION: Copies have been emailed upon the new temporary permissions of the court for Pro Se email filing due to the Coronavirus on Mon., October 12, 2020, to:

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CIVIL ACTION NO: 2020-CP-40-03810

Penn America Insurance Company and Global
Indemnity Group, LLC,

Plaintiffs,

v.

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

Defendant.

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

Defendant / Third-party Plaintiff

v.

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

Third-party Defendants.

**THIRD-PARTY DEFENDANTS
TIMOTHY J. NEWTON AND
MURPHY & GRANTLAND, P.A.'S
RESPONSE TO
DEFENDANT / THIRD-PARTY
CLAIMANT
MORRIS BEACH HUTSON a/k/a
M.B. HUTSON'S
"ADDENDUM OF LAW"**

Third-party Defendants, Timothy N. Newton and Murphy & Grantland, P.A. (hereinafter collectively "Newton") submit the following response to Plaintiff / Third-Party Claimant Morris Beach Hutson's "Addendum," which was filed on October 13, 2020. Hutson's allegations were argued before Judge Nettles. However, the following is submitted in response to Hutson's allegation that Newton, Penn-America Insurance Company and Global Indemnity Group, LLC, and their counsel in this case, Christian Stegmaier (hereinafter collectively "Penn-America") are misrepresenting facts or law or otherwise engaging in fraud upon this Court or other unethical misconduct in this case.

I. Hutson's allegations are not new—they were argued to Judge Nettles.

During the hearing before Judge Nettles, Hutson argued that Newton's August 13, 2018 e-mail is contradicted by a letter Newton subsequently sent to Hutson. (Exh. 16: Tr. of Hearing, pp.

44-45, 61-62.) At the hearing, Newton responded by pointing out that his August 13, 2018 e-mail notified Hutson he *might* have a claim for fraud upon the court *if* he could prove that TLC concealed evidence that none of the Land Deal property was developable. (*Id.* at pp. 56-57.) The fact that Hutson is now citing rules concerning *judicial* misconduct reflects Hutson's recognition that Judge Nettles heard and previously ruled upon these same arguments. (Hutson Addendum, pp. 1-2.)

II. Hutson's allegations lack evidentiary support and/or are contradicted by evidence knowingly withheld by Hutson.

The record in cases involving Hutson quickly becomes voluminous because of Hutson's *modus operandi* of continually flinging out baseless allegations in reckless disregard for the facts. This is not merely Newton's opinion; it was among the findings upon which Judge Norton's sanctions order was based. (*See* Complaint, Exh. D: Norton Order, p. 6 ("Hutson routinely fails to provide factual or legal support for anything he files with the court.")). In the Court of Appeals, Hutson filed a series of motions seeking a *de novo* hearing before he served the record on appeal. (*See generally* Exh. 2: Newton Mem. Opposing Emergency Motion, and particularly p. 26 ("Hutson is merely attempting to circumvent the appellate process by making new allegations that he seeks to have heard in the absence of the evidence marshalled against him.")).

Consistently with that pattern, Hutson has again accused Newton of lying. (Addendum, pp. 3-4.) He represented that Newton's subsequent letter would be attached, yet he failed to attach it. (*Id.* at p. 4.) This was convenient for Hutson since the letter undermines his allegation.

III. Newton's e-mail and subsequent letter are not inconsistent, and neither proves knowledge of fraud.

Newton's November 8, 2018 letter was attached as an exhibit to Hutson's Complaint in the Bad Faith Action. (Exh. 7.0.) In his Addendum, Hutson quoted a single sentence from a full paragraph that is relevant to this issue in its entirety. The entire paragraph is quoted below:

At no point has Penn-America or its counsel ever acknowledged the existence of fraud upon the court. Penn-America recognizes only that you have recently begun alleging that fraud upon the court was committed, particularly in the Eviction action that TLC Holdings, LLC brought against you. We have also recognized that certain evidence that was presented at the trial of the Defamation action, when coupled with the court filings in the prior Eviction action, raised concerns that you have a right to investigate, and possibly pursue, should you proceed with an action against the TLC parties. However, we are not aware of any judicial order finding that fraud upon the court was committed. Furthermore, we are not aware of any act of extrinsic fraud that was committed in the trial of the Defamation action. At most, you have alleged that certain arguments and evidentiary rulings in the Defamation action were made possible by the outcome of the Eviction action, in which you assert that extrinsic fraud was committed.

(Exh. 7.0 at p. 3.) The paragraph reflects that Newton knew of Hutson's allegations of fraud upon the court committed by TLC. It also reflects that Newton was aware of certain evidence that might support Hutson's claim. It does not represent that Newton knew of provable fraud.

Newton's August 13, 2018 e-mail does not prove knowledge of fraud upon the court. (The entire e-mail chain was made an exhibit by both Hutson and Newton in the Bad Faith Action. A copy of the e-mail is included at pp. 25-27 of Newton's exhibit. See Exh. V, p. EXH_V_000025.) The final two paragraphs, which Hutson has quoted repeatedly as evidence of knowledge of fraud, are riddled with qualifying language:

15. **I can see how you could argue** that the Consent Order is invalid because it attempts to adjudicate the rights of parties not before it. **If** you were ordered to develop property that was subject to lifetime use rights, that **probably** should have been brought to the court's attention. Furthermore, **I can see how you could argue** you did not realize you were being obligated to violate the rights of the campground members by developing since TLC never specified exactly which property was subject to the campground memberships.
16. **It's hard to see why** TLC and its lawyers should not have, in good faith, simply told you (and the court) that the Big Water Resort property was undevelopable because it was already obligated to double lifetime memberships as a private club. It **appears** that could easily have averted the entire fiasco. Since attorneys were involved, and it resulted in your inability to present your case in court, and **possibly** led to the sanctions order and judgment against you, there **might possibly** be extrinsic fraud on the court to support setting aside the Consent Order. See Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (2003).

(Exh. V, p. EXH_V_000026 (emphasis added).)

The e-mail does not prove knowledge of extrinsic fraud committed by TLC or anyone else. It merely recognizes Hutson's potential argument that TLC committed extrinsic fraud.

As Newton's letter recounts, Hutson told Newton that Hutson had an attorney looking into a lawsuit against Penn-America, and also a lawsuit against TLC to set aside the 2012 Settlement. (Exh. 7.0 at p. 2 (final paragraph).) Hutson gave Newton a copy of an expert affidavit that he intended to use (and did use) in a malpractice action he later filed against the attorney who represented him in negotiating the 2012 Settlement, Paul Weissenstein. (Exh. 16: Tr. at p. 55, ll. 15-25.) Hutson provided miscellaneous materials with the affidavit. (Exh. 17: Aff. of W. Mark Hardee with attachments.) Exhibit E is a copy of what appears to be a plat depicting Hutson's proposed development on the campground property. (Exh. 17: Hardee Aff. at p. Hardee_059.) Hutson also stated that his proposed suit against TLC would not be barred by the statute of limitations because a case holds that there is no statute of limitations for extrinsic fraud.

Newton's e-mail was responsive to Hutson's threats of litigation and settlement proposal. Newton attempted to verify the information Hutson provided. Penn-America ultimately declined to join with Hutson or fund his proposed suit against TLC. However, Newton provided Hutson with the evidence generated in the investigation so Hutson and/or his attorney could review and decide whether to pursue the proposed suit against TLC. (Exh. 7.0 at p. 3, third full paragraph.) The case Hutson brought up was included in the e-mail since it was generated in the investigation and material to Hutson's potential vindication of his rights.

The subsequently-confirmed fact that the 2012 Settlement allowed or required Hutson to build condominiums on the campground property does not, in and of itself, prove extrinsic fraud. The terms of the 2012 Settlement Agreement are the product of settlement negotiations, which are confidential. Neither Newton nor Penn-America have any way of knowing how this came about.

Was TLC or Hutson responsible for it, or both? Was this brought to the court's attention before it was incorporated into the Consent Order? Was there an agreement reached with the campground members? Perhaps there was an agreement to move the campground.

The only party to this case with personal knowledge of the 2012 Settlement is Hutson himself. It is senseless for Hutson, who was personally involved in the 2012 Settlement, to argue that Newton and Penn-America, whose knowledge is hearsay at best, somehow have greater knowledge of his 2012 settlement with TLC.

Hutson has no grounds for suggesting that Newton fabricated evidence. (See Addendum, p. 7.) The use of the word "since" in one sentence of Newton's e-mail does not prove knowledge of fraud. That phrase, "Since attorneys were involved, and it resulted in your inability to present your case in court," relates to two facts in the public record. First, TLC was represented by counsel in the 2012 Settlement: Tom Harper. Second, the conditional release in the 2012 Settlement Agreement and Consent Order prevented Hutson from prosecuting his counterclaims against TLC in subsequent lawsuits. (See Penn-Am. Mot. for Inj., Exh. A, B, C, and E (judicial orders).)

The elements Hutson admits he must prove in a cause of action for fraud upon the court require him to demonstrate that Newton intentionally, willfully, or recklessly deceived the court. (Hutson Addendum, p. 2.) Newton has provided voluminous documents in this case and in the Bad Faith Action before Judge Nettles. Newton has provided subsequently-discovered evidence that Hutson could not have been deceived by TLC because he knew all of the property was not undevelopable. (Exh. 8: Stroman depo.) In the Bad Faith Action, Newton produced the complete transcript which shows that Hutson personally cross-examined Stroman. (Exh. 11: Newton Reply Mem., pp. 2-4.)

Newton could not have committed fraud upon the court in the 2012 Ejectment Action because he had nothing to do with that action. Newton could not have raised fraud upon the court at the time of the e-mail because he did not (and has never) represented Hutson, and the case was pending on appeal at the time. None of the authorities Hutson cited impose a duty upon Newton to report the alleged fraud to a court. Nor is Newton aware of any undisclosed information.

It was in Penn-America's interest at the time of Newton's e-mail to provide potential of fraud to Hutson because of Hutson's threatened litigation against Penn-America and the possibility of negotiating a lower settlement with TLC. With all his theatrics, Hutson has not demonstrated any reason why Newton would have withheld known evidence of fraud. Hutson cites attorneys' duty of candor toward the court—Newton's e-mail was motivated by this very concern. Hutson was *pro se*, and Newton was concerned that the evidence, *i.e.*, that the proposed development was on the campground property and/or that TLC may have withheld its knowledge that the entire property was undevelopable, may have been overlooked in the prior proceedings. Newton acted to avoid a possible miscarriage of justice.

Newton's e-mail and subsequent letter do not prove Newton lied to Hutson or the Court. The e-mail reflects Newton's concern at the time that Hutson might have newly-discovered evidence that TLC defrauded him. Even if Hutson believed from the e-mail that Newton knew TLC defrauded him, Newton clarified in the letter that he was only aware of Hutson's allegation, not proof of fraud.

III. Newton's alleged knowledge of fraud perpetrated by TLC does not constitute fraud.

Furthermore, Hutson suffers no prejudice from Newton's alleged nondisclosure. Hutson has long known that there is no statute of limitations for claims to set a judgment based upon fraud upon the court. Chewning v. Ford Motor Co., 354 S.C. 72, 80, 579 S.E.2d 605, 609-10 (2003).

Hutson could file suit against TLC today if he wanted to. Should he do so, he could subpoena witnesses to prove the alleged fraud. It is pointless for him to maintain claims for fraud against innocent third parties who nothing whatsoever to do with the transaction in which Hutson claims he was defrauded.

IV. Hutson has not been prevented from presenting his case.

Newton and Penn-America have not argued that Hutson's prior cases were lost due to "frivolous and harassing filings." (See Addendum, p. 9.) The obstacle Hutson faces is readily apparent—he released his claims against TLC through the 2012 Settlement Agreement and Consent Order and his subsequent breach thereof. (Complaint, Exh. A: James Order.) Newton and Penn-America have protested that Hutson's claims *against them* are frivolous and harassing because there is nothing they can do about the release.

As discussed above, Hutson retains his right to sue TLC to set aside his release based upon fraud upon the court, should he so choose. He is not only directing his vitriol at innocent third parties, he is wasting his time and the resources of this Court.

V. Hutson has exhibited intent to slander, harass, and extort.

Hutson's course of conduct is inconsistent with the actions of an aggrieved litigant who is anxious to vindicate his rights. After Hutson received Newton's e-mail, he threatened litigation against TLC. (See Exh. 18: E-mails dated Aug. 27-28, 2018.) Hutson circulated a proposed Complaint against TLC. (See Exh. 19: draft Complaint.) However, he was rebuffed by counsel for TLC, who threatened to sue him again for defamation and seek sanctions. (Exh. 20: E-mail chain dated Oct. 22, 2018.)

Hutson then abandoned his suit against TLC and decided to use Newton's e-mail to blackmail Penn-America instead. He demanded \$500,000 from Penn-America on November 1,

2018. (Exh. 21: E-mail.) Hutson threatened suit against Penn-America again on November 6, 2018. (Exh. 22: E-mail.) The letter Hutson referenced in his Addendum was responsive to these demands. (Exh. 7.0, p. 1.) Hutson filed the Bad Faith Action against TLC the day after he was notified that Penn-America settled the \$3,500,000 judgment awarded against Hutson in the Defamation Action. (See Penn-Am. Mot. for Inj. filed Aug. 10, 2020, p. 9.)

Hutson's claims against Penn-America are fraught with dishonesty. One of the canards Hutson has used repeatedly, both in this action and in the Bad Faith Action, is that Newton told him that Newton did not "report" the alleged fraud because "us lawyers don't do each other like that; somebody might go to jail." (Hutson Suppl. Resp. filed Oct. 8, 2020, p. 5; Exh. 22: E-mail; Exh. 16: Tr., p. 38; Penn-Am Exh. S.) This "quote" is nonsense concocted in Hutson's scheming mind, and it has been used repeatedly for purposes of slander, harassment, and extortion.

In the first place, no such duty exists. Hutson's conception of a general duty to report fraud appears to be his misunderstanding of the law.

Moreover, Hutson proposed Complaint against TLC names several lawyers personally as defendants. (Exh. 19: draft Complaint.) Hutson demanded that Penn-America join him in "prosecuting" TLC's lawyers. Hutson made this one of the bases for his \$500,000 demand against Penn-America. Both of Hutson's demands were misdirected.

Newton explained to Hutson that Penn-America has no interest or standing to bring civil or criminal litigation against TLC's lawyers. Penn-America's common interest with Hutson extended only to the extent Hutson might succeed in setting aside his release, which in turn could reduce the value of TLC's claim at the upcoming mediation. In attempting to explain the difference between civil litigation and criminal charges, Newton said something like, "criminal charges are for sending people to jail, whereas civil litigation is usually about money." Months

earlier, Hutson asked that a mediation be rescheduled because he was having difficult finding an expert to testify against Weissenstein, and he wanted to get it filed before the mediation. During that conversation, Newton remarked that lawyers who testify against lawyers become unpopular with their peers. Hutson twisted these two completely unrelated phrases and put into Newton's mouth something he never even contemplated, much less said.

Hutson's court filings in this action and the Bad Faith Action are replete with misrepresentations regarding his settlement discussions with Newton. Hutson could have resolved these by asking for clarification, but he has never done so. He has instead used false and fabricated evidence in support of his frivolous claims.

CONCLUSION

Hutson has no grounds for recklessly accusing Newton and Penn-America of perpetrating fraud upon this Court and claiming their actions prevent him from vindicating his rights. Hutson has presented false and defamatory information to this Court and refused to retract it when under a duty to do so. Newton requests that this Court grant Penn-America's motion and order Hutson to refrain from continuing his course of misconduct.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

s/John M. Grantland

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October 14, 2020
Columbia, SC

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 :

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ORANGEBURG, SOUTH CAROLINA 29116

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ATTORNEY FOR DEFENDANT, PENN AMERICA AND GLOBAL
INDEMNITY.

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EXHIBITS:

(NONE MARKED)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 JUDGE NETTLES:

2 Madam Court Reporter, this is M. B. Hutson versus Penn
3 America Insurance Company.

4 I'll be glad to hear from the moving party.

5 MR. MURPHY:

6 Good morning, Your Honor. J. R. Murphy here as a party
7 Pro Se.

8 JUDGE NETTLES:

9 All right.

10 MR. MURPHY:

11 And my partner, Tim Newton, is sitting behind the rail.
12 Mr. Stegmaier represents my former client in this
13 matter, Penn America, and I believe Globe Indemnity,
14 the insurers that were involved.

15 And, Your Honor, we've been sued by Mr. Hutson on a
16 very frivolous, meritless basis that somehow all of the
17 Defendants, although he never says I did anything, but
18 I had no dealings with him, but he says we failed to
19 prosecute claims against other parties on his behalf.
20 Such claims having been prosecuted in the past by him
21 and summarily dismissed on multiple times, including
22 sanctions against him from Judge Norton. And so to
23 give you a proper context of the present lawsuit as you
24 review his pleadings, I, with the Court's permission,
25 would like to give a little bit of background. It is

1 pretty well set forth in the original brief that Tim
2 Newton filed and that I join in. But it begins with
3 the fact that Mr. Hutson bought some property down in
4 Clarendon County in 2010. He bought it from an entity
5 known as TLC. And, subsequently, they got into a
6 disagreement, Mr. Hutson defaulted on that agreement,
7 and they filed a lawsuit against him. And that matter
8 was resolved in 2012 through a settlement agreement.
9 Mr. Hutson subsequently defaulted on that settlement
10 agreement and he -- it was enforced in an order from
11 Judge James when he was sitting as a trial judge back
12 in April of 2013.

13 After that, there's an incident where Mr. Hutson sends
14 some postcards that TLC believes defames them. So, two
15 actions are brought back against Mr. Hutson; one, a
16 third party action by TLC in a federal court class
17 action that was originally filed against the -- some of
18 the membership owners against TLC. TLC, in 2015, also
19 sues Mr. Hutson for the defamation that occurred in
20 postcards that he sent. In both of those actions, the
21 third party federal action and the defamation state
22 court action, Mr. Hutson filed counter-claims against
23 TLC. And Penn America, who was my former client,
24 brought my firm into the matters in 2016 to evaluate
25 coverage for the defamation claims against Mr. Hutson,

1 not to prosecute his counter-claims. Those counter-
2 claims were dismissed. The federal Report and
3 Recommendation from Magistrate Judge Mary Gordon Baker,
4 those findings were adopted by Judge Norton, and Mr.
5 Hutson, in 2017, was ultimately sanctioned by Judge
6 Norton for his conduct in prosecuting those, and Judge
7 Norton said, Hutson appears to have continued his
8 pattern of frivolous filings and conduct designed to
9 harass or burden third party plaintiffs, which was TLC
10 in that case, and there is no indication that he
11 intends to cease. Here we are in 2019. Judge Norton
12 further found that Hutson has established a pattern of
13 making misrepresentations to the Court, of making
14 unsupported allegations of unethical and criminal
15 conduct by the third party plaintiffs and of using the
16 judicial process as a mechanism of harassment. His
17 meritless filings have wasted untold hours of the
18 Court's time. And the same can be said for everything
19 he's done against me and Mr. Newton in this case. I'll
20 let Mr. Stegmaier answer for my former client. But
21 that is the same pattern that we are dealing with now.
22 In fact, even this week I got probably the 20th email
23 from him about trying to sit down and basically pay him
24 some money, which we have steadfastly refused to even
25 engage in a conversation.

1 When we were hired as coverage counsel, Your Honor, the
2 only involvement I had really was to sign off on the
3 pleadings and that's evident in the complaint that you
4 have in front of you. That was filed in September of
5 2016. In the context of that, Penn America entered
6 into a policy settlement with Mr. Hutson. They paid
7 some of the sanctions against him that Judge Norton had
8 issued, they paid some payment and received a full
9 release, including their agents, to which I would say
10 Mr. Newton and I qualify as under the protection of
11 that release. However, the claims, the defamation
12 case, went to trial after Judge Cothran dismissed all
13 of Mr. Hutson's counter-claims on March 2nd of 2017.
14 It went to trial about a year ago and the TLC entity
15 received a 3.5 million dollar judgment against Mr.
16 Hutson for defamation. Subsequent to that, while the
17 federal declaratory action was still pending, Penn
18 America entered into a settlement where they paid their
19 policy limits of one million dollars, even though they
20 had very viable coverage arguments, obtained protection
21 for Mr. Hutson, who'd been defended throughout that
22 process, and after he was advised that he'd been fully
23 protected and settled from a massive judgment against
24 him, he turns around and sues the insurance company,
25 myself and Mr. Newton the next day. And that's what

1 we're here on. That's the history of what we're here
2 on.

3 If I can understand his amended complaint, which in my
4 opinion does not set forth any recognized cause of
5 action of any kind against anybody, it's just a
6 rambling, and it incorporates his same arguments that
7 he wanted to, or did, assert against TLC in prior
8 actions that had been dismissed by orders from Judge
9 James, Judge Curtis, Judge Cothran, Judge Mary Gordon
10 Baker and Judge Norton, with sanctions. It's the same
11 stuff. Now saying that either Mr. Stegmaier's client
12 or myself or Mr. Newton knew about his frivolous,
13 meritless claims and should have done something on his
14 behalf. That's what I understand. First of all, I
15 don't understand how that's actionable, because he's
16 welcome to do it on his own, but I think maybe he has
17 learned better that if he goes back after them one more
18 time, maybe he will. If he wants to set aside a prior
19 order or prior settlement agreement like the one you
20 just had before you, he has that option. What is clear
21 is that neither Mr. Newton nor I have any duty to do
22 that for our adversary, our client's adversary.
23 Justice Toal, in writing the decision in the Argo case
24 in 2010, said, an attorney is immune from liability to
25 third persons arising from the performance of his

1 professional activities as an attorney on behalf of and
2 with the knowledge of his client. That's all Mr.
3 Newton ever did; I really didn't even do that; I didn't
4 do any activities. But to the extent I did, that's all
5 either one of us ever did. And further, an attorney
6 owes no duty to a non client unless he breaches some
7 independent duty to a third person, none alleged, none
8 exist, but whether a duty exists is a matter of law for
9 the Court to decide. Reading that second amended --
10 the amended complaint, there's no duty even alleged,
11 let alone one that the Court would even have to rule on
12 that doesn't exist, but no duty that I'm aware of
13 exists. Or if the attorney acts in his own personal
14 interest outside the scope of his representation of the
15 client. One of the reasons so many documents were
16 submitted to the Court was simply to show that, in
17 addition to the history, that there is no activity,
18 other than conversations in the context of a pending
19 declaratory judgment action and the settlement of the
20 related or underlying cases in connection with that.
21 That means that any statements or actions are fully
22 privileged by a judicial immunity privilege, if there
23 was even a duty in the first place. So, we have a non
24 client trying to sue his opponent's lawyers for not
25 taking his interests; he -- it's a quote in one of his

1 briefs that we didn't protect his interests. And if
2 lawyers are going to be exposed to liability for
3 failing to protect their opponents -- their clients'
4 opponent's interests, the rules requiring that lawyer
5 to zealously represent their own client are going to
6 have to be erased. How can I represent Penn America in
7 a coverage case and then represent Mr. Hutson's
8 interests? That's a legal impossibility, an ethical
9 impossibility. But fortunately, our Supreme Court has
10 already recognized it's not an actionable possibility.
11 And if Mr. Hutson wants to claim someone else should
12 have done something in his behalf, he's going to have
13 to sue somebody else, not the lawyer that represented
14 an adverse party to him in a federal court declaratory
15 judgment action. He has no standing to assert any
16 claim against Mr. Newton or myself. Moreover, any such
17 claim is released from the settlement agreement, which
18 I know Mr. Stegmaier will address in a little more
19 detail.

20 And lastly, Your Honor, reading the amended complaint,
21 there's not even an allegation against me, so even if
22 all these other reasons weren't there, at least as
23 pertains to me, there's no factual allegation of any
24 conduct, statement, anything, no cause of action. So,
25 I think when reading the amended complaint, it doesn't

1 set forth any recognized cause of action against any
2 party, but given the background and the nature of it,
3 and if the Court wants to consider this a motion for
4 summary judgment and it pertains to the release which
5 is outside and some of the other grounds that are
6 asserted, all of these are judicial filings, all of
7 these the Court can take notice of judicially through
8 public record, I don't believe that there's anything
9 improper about that, and this action should be
10 dismissed. And quite frankly, Your Honor, sanctions
11 are appropriate in this case. They're appropriate
12 because of the long storied history; it's a
13 regurgitation of the same thing and it's such a blatant
14 disregard, both factually and legally, for any
15 recognized claim. It's so far out of left field, so
16 far out of bounds, it's not even a close call where
17 someone didn't have a claim but may have had some
18 colorable idea. Mr. Hutson knows fully well he has no
19 claim; this is done for harassment to try to extort
20 money from me or my client or my partner and he should
21 be sanctioned for an amount appropriate for all the
22 time expended.

23 JUDGE NETTLES:

24 What were the sanctions in Judge Norton's order?

25 MR. MURPHY:

1 \$14,900. It was based on the time the attorneys spent
2 responding to the multiple filings after rulings had
3 been made.

4 JUDGE NETTLES:

5 Do you have a specific request or --

6 MR. MURPHY:

7 Mine would be no less than \$10,000. I looked at our
8 billings this morning and I believe, after we finished
9 up with all our preparation and this hearing today,
10 that we'll have at least that much time just from
11 February, when we were sued, and I didn't even keep
12 track of everything because Mr. Hutson has a way of
13 wanting to get you on the phone or get you into emails
14 and I just delete and do not engage in that, but I
15 would say probably at least \$10,000. If the Court is
16 inclined to so sanction, I will be happy to submit an
17 itemized statement for the amount to -- for the Court's
18 consideration.

19 JUDGE NETTLES:

20 Yes, sir?

21 MR. STEGMAIER:

22 Good morning again, sir. Christian Stegmaier of
23 Collins and Lacy. We represent the co-defendants in
24 this case, Penn America Insurance Company and its
25 parent, Global Indemnity Group. I do have a matter

1 that we transmitted to chambers yesterday and it was
2 filed; may I approach, sir?

3 JUDGE NETTLES:

4 Yes.

5 MR. STEGMAIER:

6 This is a hard copy of what was filed and let me -- let
7 me share with you procedurally what the story is right
8 now. Mr. Newton and Mr. Murphy had filed their Motion
9 to Dismiss or the alternative a Motion for Summary
10 Judgment and then made their filing with a memorandum
11 back in late May. We had the opportunity to review
12 that and it occurred to us that at this point and time,
13 from the genesis of this case, we always knew that we
14 were unified in our position, but we filed a separate
15 Motion for Summary Judgment earlier this month and
16 under the 10 day rule our position is that that motion
17 is ripe, and so it would be our request that the Court
18 consider Penn America and Global Indemnity's separate
19 Motion for Summary Judgment based on the fact that --
20 that Mr. Newton and any other Murphy and Grantland
21 lawyer, they did nothing wrong, and that's been fully
22 explicated by Mr. Murphy and their presentation today,
23 and it has been articulated within their filings. And
24 by extension, as the carrier in the equation, Penn
25 America did nothing wrong. Additionally, we would just

1 cite to the principles of res judicata and collateral
2 estoppel. Mr. Murphy was very adroit in his
3 presentation in referring to, I think, three -- three
4 or four documents that are very much operative in this
5 case; one is the 2013 order by Judge James that relates
6 to the ejectment proceedings and the enforcement of the
7 same. In Judge James' order, he references the fact
8 that this extrinsic fraud upon the Court argument,
9 which is the basis of all these counter-claims and all
10 of these actions, that this alleged extrinsic fraud
11 upon the Court that you might have seen in the filings,
12 that dates back to the original transaction with TLC;
13 it has nothing to do with the 2013 settlement as it
14 pertains to TLC and Mr. Hutson. And again, it goes
15 back to the original transaction. And so Judge James,
16 says, you know, in that case, any sort of extrinsic
17 fraud upon the Court in any action that would exist
18 should have been prosecuted at that point and time.
19 And, of course, that ultimate -- all of this ultimately
20 resulted in the settlement. The other documents that
21 are -- the other filings and orders that are operative
22 in this case that this Court should really look to is
23 the Magistrate's Report and Recommendation and then
24 ultimately Judge Norton's adoption of the same in his
25 separate order, which included the sanctions. Again,

1111

1 the federal court recognized in that -- in the class
2 action that this extrinsic fraud upon the Court
3 argument, this continued pursuit by Mr. Hutson through
4 all these venues, through all these jurisdictions,
5 through all these actions, again, dates back to this
6 original transaction, specifically as it relates to
7 these memberships at this campground and it has been --
8 it has already been made clear, it has already been
9 demonstrated in the record on repeated occasion, that
10 Mr. Hutson was cognizant of these memberships and
11 whatever extrinsic fraud upon the Court that existed,
12 he was cognizant of it way back when. And as Mr.
13 Murphy has argued, to just to continue to relitigate
14 this issue through new and different actions is just
15 wrong and Judge Norton saw that, he identified that,
16 and he put a stop to it, at least on the federal side,
17 and it's our position that the state court in this case
18 should do the same as it relates to dismissing this
19 action in its entirety and then considering the matter
20 of sanctions, too, as well.

21 We have supplied to the Court our separate bases for
22 summary judgment in this case; there are eight bases.
23 I don't know if the Court wants me to articulate some
24 of them; we certainly --

25 JUDGE NETTLES:

1 You can very briefly.

2 MR. STEGMAIER:

3 Yes, sir. So, the Plaintiff's claims are barred
4 pursuant to the settlement and release agreement that
5 was executed with the declaratory judgment action on
6 September 16, 2016. And Mr. Murphy alluded to this as
7 being important and, of course, this is another
8 operative document in this case for consideration with
9 the sum of \$9,500, Mr. Hutson agreed to release and
10 forever dismiss as it relates to known and unknown,
11 present versus future actions, that he might possess
12 against Penn America, Global Indemnity, and their
13 agents, which would include coverage counsel, and so
14 that document executed by Mr. Hutson in 2016, as it
15 related to this declaratory judgment action, operates
16 as a waiver, operates as a mechanism to forever
17 preclude any sort of action like this one against Penn
18 America or its agents, in this case, Mr. Murphy and Mr.
19 Newton.

20 The second basis would be the Plaintiff's claim for
21 breach of contract must fail because there is no
22 evidence that Penn America failed to comply with its
23 contractual duty to defend Plaintiff in both the
24 underlying actions. It defended him in the class
25 action, it defended him in the defamation action, and

1 as Mr. Murphy stated, they indemnified Mr. Hutson, you
2 know, for the defamation verdict as well as the
3 sanctions and settling the class action case.

4 The third basis is that the Plaintiff's claim for bad
5 faith must fail because there is no evidence that Penn
6 America failed to act reasonably. There -- this
7 failure to oppose the extrinsic fraud upon the Court
8 argument, this was settled by virtue of the 2012
9 settlement agreement and consent order as explicated by
10 Judge James.

11 The fourth basis is that the Plaintiff's claim for
12 fraud must fail because there is no evidence that a,
13 Penn America or its agents made any material or false
14 representations to Hutson, that b, that Hutson relied
15 on such representations, and c, that Hutson was
16 consequently or proximately injured. As we related in
17 this argument, as well as the briefing, he was
18 completely -- he was completely indemnified as it
19 relates to the class action and the defamation claim.
20 This claim for misrepresentation, and I'll reiterate
21 what Mr. Murphy said, the standard is the standard, so
22 if you file an action, whether you're Pro Se or you're
23 a lawyer, you've got to articulate a colorable cause of
24 action. We join with Mr. Murphy and Mr. Newton when we
25 say this pleading filed by Mr. Hutson is devoid of

1 colorable causes of action, but nevertheless, if they
2 can be, in fact, articulated, we oppose the same, as I
3 previously argued, as I'll continue to argue.

4 The fifth basis is that Plaintiff's claim for
5 misrepresentation must fail because there is no
6 evidence that a, Penn America or its agents made any
7 false representation to Hutson, b, that Penn America or
8 its agents failed to exercise due care, far from it, c,
9 that Hutson relied on such representation, or that d,
10 Hutson proximately suffered pecuniary loss. That's
11 analogous to the fraud claim as we just argued.

12 The sixth basis, and I've got eight bases, sir, the
13 sixth basis is the Plaintiff's claim for negligence
14 must fail because there is no evidence that Penn
15 America breached any duty to its insured or caused any
16 harm to it's insured. Again, we would go back to these
17 orders when Mr. Hutson says you should have prosecuted
18 or you should have initiated these counter-claims;
19 number one, he was represented by separate counsel, but
20 b, as Judge James stated, you didn't have a colorable
21 cause of action to begin with.

22 The seventh basis is that the Plaintiff's claim for
23 tortious interference with the attorney/client
24 relationship must fail because there is no evidence
25 that Penn America acted wrongfully, that there was any

1 breach of the attorney/client relationship, it's non-
2 existent as it related to Murphy and Grantland, or that
3 Plaintiff's attorney was unjustified in his control and
4 settlement of the underlying litigation. Certainly
5 Penn America, as the carrier, had the -- had the right
6 to settle and control the underlying litigation as it
7 related to the claims directly made against Mr. Hutson,
8 and it did and it indemnified him.

9 And lastly, sir, this Plaintiff's claim for legal
10 malpractice that has been articulated, at least in
11 part, must fail because a, Plaintiff failed to
12 accompany his pleading with a statutorily required
13 affidavit required regarding malpractice, that b, the
14 -- that b, Penn America is not vicariously liable for
15 the malpractice of counsel, it pertains to Defendant's
16 insured or its coverage counsel, and we state that just
17 as a principle; of course, we fully -- we fully believe
18 and fully adopt that there hasn't been any malpractice
19 committed as it relates to the other co-defendants in
20 this case, and that even if -- c, even if there's
21 vicarious liability applied to coverage counsel,
22 Plaintiff lacked the necessary attorney/client
23 relationship with coverage counsel to sustain a claim
24 of legal malpractice. Again, they're adversaries;
25 Murphy and Grantland owed no duty that would fall under

1 the ambit of legal malpractice to Mr. Hutson.

2 So, for the reasons articulated by Mr. Murphy as it
3 related to the separate Motion and has been articulated
4 in our Motion and argument here today, and we prayed
5 reference to the pleadings, we respectfully request
6 this Court, number one, to grant the Motion that has
7 been made by Mr. Murphy and Mr. Grantland -- I'm sorry,
8 Mr. Murphy and Mr. Newton, and then the Court consider
9 and rule upon and grant our separate Motion for Summary
10 Judgment in favor of Penn America and Global Indemnity,
11 sir. Thank you, sir.

12 MR. NEWTON:

13 Your Honor, may I? I also -- I'm Mr. Newton and I'm
14 also Pro Se. I just wanted to say two things if you
15 don't mind. Number one, Mr. Hutson sued TLC twice
16 after settling with them and fully releasing them; he
17 got sanctioned for it. Now Mr. Hutson has settled with
18 and fully released Penn America and its counsel; turned
19 right around and sued us.

20 Number two, in this -- in his amended complaint, Mr.
21 Hutson makes a materially false allegation to this
22 Court, representation to this Court, that he has
23 already brought in prior cases and had dismissed,
24 paragraph 11, TLC parties knowingly, negligently failed
25 to disclose the retail membership agreements that had

1 the right to use two lifetimes. Not only was that
2 brought -- that's cut and pasted from paragraph 79 of
3 his answer and counter-claims that was brought in the
4 defamation action, that has already been dismissed, but
5 that's materially false. At trial, the realtor for
6 TLC, his own realtor, testified he knew about this,
7 there was all these emails; he knew about lifetime
8 memberships when he purchased that property in 2010.
9 It's not even disputable because Judge Mary Gordon
10 Baker found that in her Report and Recommendation and
11 Judge Norton adopted it. Yet he turns around, not only
12 did he allege that falsely in his counter-claim in the
13 defamation action, he cut and pasted that same
14 allegation and turned it around against us saying that
15 we should have sued TLC on his behalf.

16 Thank you, Your Honor.

17 JUDGE NETTLES:

18 Mr. Hutson, I'll be glad to hear everything that you
19 have to say. Yes, sir.

20 MR. HUTSON:

21 I appreciate that. I'm M B Hutson; I'm Pro Se and I
22 am, in fact, the victim, and I appreciate you giving me
23 the opportunity.

24 What they've done, Judge, is they've painted a real
25 nasty looking picture; sounds like I'm a really bad

1 person. But all that they have presented to you, I
2 intend to use that as my evidence to show they're wrong
3 in the fact that they are trying to wiggle out of
4 legalities and responsibility. I'd like to read one
5 thing into the records and that is scintilla of
6 evidence, which I'm going to have far more than a
7 scintilla, a scintilla of evidence rule is a common law
8 principle that a motion for a judgment or for a
9 directed verdict cannot be granted when there exists
10 even the slightest amount or relevant evidence.
11 Evidence must be reasonably believable. This case is
12 full of evidence and issues of fact; this case must be
13 sent to a jury for trial. Now, with that being said,
14 may I approach the bench? I'd like to --

15 JUDGE NETTLES:

16 You may.

17 MR. HUTSON:

18 -- provide this to you.

19 This is what I call my read sheet and I'm trying to
20 make this thing as brief as possible. And, Your Honor,
21 I have one question for the Court, and that is, I have
22 filed a -- as mentioned, I have filed a complaint, it
23 was an amended complaint, and I also filed a memorandum
24 and I filed a supplement to the memorandum, and since
25 I'm Pro Se, I'd like to ask if you'll -- if you'd

1 forgive me, has the Court seen these documents and have
2 you read those documents?

3 JUDGE NETTLES:

4 I have seen them; I have not studied them and I intend
5 to do that before I rule.

6 MR. HUTSON:

7 I appreciate that.

8 Now, and for that reason alone, I need to go slow with
9 you and turn this thing around for what it really is.
10 So, with that being said, what I've done, I have marked
11 up -- Penn America, Timothy Newton, Murphy, and Murphy
12 and Grantland Company, were called in in 2016 because I
13 had been sued. Now, with that being said, I'd like to
14 stop just a minute and touch, just for a moment, on
15 what happened to me when I bought the property because
16 I'm not here to make the case on that at all. Number
17 one, just at the beginning of 2011, I had seeked out
18 waterfront property to develop some cabins on. Realtor
19 called me and a little of what they're saying is true,
20 but the property was beautiful, it consisted of 108
21 acres, all right. I agreed to pay 6 million --

22 JUDGE NETTLES:

23 This is on Santee?

24 MR. HUTSON:

25 Sir? Yes, sir.

1 JUDGE NETTLES:

2 Santee. Which lake?

3 MR. HUTSON:

4 It's on the Marion Lake. Good question.

5 So, I agreed -- and, Your Honor, really look at this
6 thing the way it really happened; I agreed to buy on
7 contract the 108 acres for 6 million dollars. Well, I
8 found it a little strange because they only wanted, the
9 sellers, TLC, and their lawyers, they only wanted a \$10
10 deposit; that raised some flags for me. Okay, so we
11 moved towards getting a contract prepared. And during
12 that time, they say to me, now look, we're going to
13 give you an option to buy the 108 acres, Judge, but
14 we're going to require you to close, not only buy, but
15 close, right now, simultaneously with your execution of
16 the option to buy. Well, I said, I don't really want a
17 campground; I don't know anything about campgrounds. I
18 want to develop. Well, they convinced me that the
19 campground -- if I was going to do camping, and there
20 were -- there were a lot of the members that wanted and
21 wished to buy cabins, and I -- I was told that the
22 memberships were almost like a renewable thing at the
23 end of each year. So, I had an attorney look to into
24 that and in addition to that, the attorney said, well,
25 the membership looks okay; I think you could co-exist

1 with them, but you might better have the title checked
2 on the property. So, I hired Ron Nestor in Santee, you
3 may know him, and he did a complete, thorough title
4 search. He comes back and he says, it looks fine to
5 me, called me M B. So, I go ahead and proceed. I
6 signed the contracts. All right, now, immediately
7 after signing the contracts, their -- and I'm going to
8 read for it to go into the record, some of the
9 concealments, but there were a whole bunch of
10 concealments. This thing was a pre-plotted thing; they
11 were looking for a scape goat to buy this business.
12 So, what it was, they knew they had defective property,
13 title on the property, because of the memberships.
14 Because in the memberships it read that the members had
15 sole use of the property for two lifetimes; Judge,
16 that's about 70 years to 80 years. All right,
17 attorneys that looked at that, said well, unless
18 they've recorded something in the courthouse to that
19 effect, I think that you're going to be okay. I ran
20 title; paid Ron Nestor to do the title. So, I closed
21 Big Water Resort and I immediately moved in and took
22 over. Me not realizing -- and then I had a right to go
23 ahead and get my approvals for my subdivision and I had
24 to go through the Clarendon County Planning Board to
25 get that done; that took about a year. Now, just a few

1 of the things that wasn't mentioned was this; one, Big
2 Water Resort business, Judge, was losing about \$300,000
3 a year, and I'm going to show you in a few minutes an
4 affidavit, not only an affidavit, but a testimony by
5 way of deposition that one of the owners, they are
6 admitting that that's a fact and they're happy that I'm
7 taking the loss. Well, originally what I said, I don't
8 want the business; I -- I don't know anything about it;
9 what's the business doing; give me some books. They
10 don't have any books. All right, well, is the business
11 losing money? I want to develop, I don't want -- they
12 said, well, let's just say it's not making a profit.
13 So, I thought, you know, at best, maybe I'd be in the
14 Big Water thing for a year and I'd proceed with my
15 development because I could have made about 5 million
16 dollars on it and there's a lot of demand for
17 waterfront property, that Marion Lake is beautiful and
18 -- so anyhow -- but -- so I didn't -- I didn't
19 recognize -- and by the way, they gave me a -- an
20 appraisal on the business of 1 million 7 hundred
21 thousand dollars and so I looked at that, and they sold
22 it to me for \$10 down for \$500,000. Well, again, that
23 looked suspicious to me, you know, and they was so
24 anxious to make this thing work. I mean, from the time
25 I met them, the sellers, until the time we got a

1 contract, Judge, wasn't but about 15 days. And I was
2 in Tennessee at the time when all this was going on,
3 but I was coming back and forth. So, let me just name
4 a couple things and then I'm going to list -- by a
5 lawyer, who Penn America and Newton and Murphy hired to
6 represent me when Turner Padgett sued me -- this is
7 what the plot was. Okay, they didn't tell me, but they
8 knew they couldn't sell me that 108 acres, but they
9 never planned to sell me that. The reason is simple,
10 because they were trying to give away the property and
11 the business, but they couldn't find anybody that
12 wanted it because the business had to honor, for 70 to
13 80 years, memberships, and since it was losing \$300,000
14 a year, and had for years and years and years, Judge,
15 the hidden liability was 22 million dollars that I
16 signed up for. Okay, so I run down -- I look at my
17 contract. Again, I dig through that thing, and what it
18 read on my option to buy, it says that I had the right
19 if I don't like the terms of the title or if I'm
20 unhappy about anything, guess what, I have a right just
21 to walk away from it, but they didn't say anything
22 about taking back Big Water Resort and that was the
23 whole plot right there. So what they did, they were
24 going to take back -- soon as I signed to buy the
25 business and I took on that hidden 22 million dollar

1 obligation, nobody told me that, not even my lawyers,
2 they didn't know it. So, I'm now obligated for 22
3 million dollars and I'm beginning to paint a whole
4 different picture than these two gentlemen right here
5 are painting, but it gets far more interesting, Judge.
6 This is like something that a movie should be made out
7 of; this is not -- okay, so Turner Padgett is TLC's
8 attorneys; Turner Padgett prepared all the contracts.
9 Turner Padgett was aware that there was extrinsic
10 fraud; they helped plot it. And so Turner Padgett
11 prepared, Your Honor, the --

12 JUDGE NETTLES:

13 Mr. Hutson, --

14 MR. HUTSON:

15 Yes, sir.

16 JUDGE NETTLES:

17 -- one of the things -- you know, all of this really
18 kind of goes to the merits of the initial cause of
19 action and there was a settlement agreement, September
20 16, 2016, I believe, if my dates are correct; why
21 doesn't that resolve the matter? It really --

22 MR. HUTSON:

23 Your Honor --

24 JUDGE NETTLES:

25 The complaint that you have is --

1 MR. HUTSON:

2 -- you've just got -- I asked for an hour in my letter
3 and you've just got to let me go through this.

4 JUDGE NETTLES:

5 I know, but what I was just asking you that question is
6 because in my mind I was wanting to see --

7 MR. HUTSON:

8 Oh, I understand.

9 JUDGE NETTLES:

10 -- what you had to say about that. I'm going to let
11 you -- let you --

12 MR. HUTSON:

13 Please ask the question again. I might have
14 misunderstood.

15 JUDGE NETTLES:

16 It sounds to me like all of the -- you know, you've
17 given me a background of your dealings concerning this
18 piece of property and it seems as though your
19 complaints are against the people who sold it to you,
20 in general, and -- but all of this was resolved in a
21 settlement agreement September 16, 2016; why does that
22 not resolve the matter?

23 MR. HUTSON:

24 Judge, because extrinsic fraud supersedes any
25 settlement agreement, especially if it's fraudulent.

1 An extrinsic fraud -- and, if you will, if you'll turn
2 over to my simple little -- read the page there on page
3 D, I'm going to read to you what, for the record,
4 definition of extrinsic fraud. The United States Court
5 of Appeals of the 6th Circuit has delineated five
6 elements of conduct that constitute extrinsic fraud
7 upon the Court. One is, you have to be an officer of
8 the Court; you got to have a badge. It means you've
9 got to be a lawyer. Two, that it is directed to the
10 judicial machinery, and this extrinsic fraud was done
11 to that very -- for that very purpose. Number three,
12 that it is intentionally false, willful, blind to the
13 truth, or is reckless disregard for the truth, or that
14 it is positive averment. Four is concealment when one
15 is of the duty to disclose. And five, that deceives
16 the Court. Now, I'm going to just jump for a second;
17 back when this settlement agreement took place, I was
18 not aware, nor my lawyer, Paul Weissenstein, we were
19 not aware that there was any extrinsic fraud; we didn't
20 even know about all of these hidden factors. I learned
21 it right after I signed the settlement agreement. But,
22 Judge, in the settlement agreement, who Turner Padgett
23 prepared, this is just before these gentlemen entered
24 into the picture, the Court and the unsuspecting Judge
25 George James, he didn't realize that there was fraud;

1 he just signed the order. It was taken to him and said
2 everybody is happy with it, it was signed. But that
3 order -- the Court orders me to develop that property,
4 108 acres, that's got defective title. Now, that's an
5 impossibility for me to do; that is a legal
6 impossibility for me to do. I'm --

7 JUDGE NETTLES:

8 Just one more; just for clarification, what are you
9 saying Mr. Murphy did wrong?

10 MR. HUTSON:

11 Oh, I'm -- I'm going -- you're jumping off of my
12 subjects, but I will go right to that.

13 JUDGE NETTLES:

14 All right.

15 MR. HUTSON:

16 I'm going to prove to you right now that they have
17 misrepresented, flat out lied, and they have failed --
18 they have breached their agreement to represent me and
19 I'll show you how. Now, please remember -- all right,
20 I'm going to change the subject; I'm off of Big Water
21 Resort, okay, and that.

22 JUDGE NETTLES:

23 Now, do they represent -- did they ever represent you?

24 MR. HUTSON:

25 They represented in my defense. What happened, Turner

1 Padgett filed a lawsuit against me and Turner Padgett
2 contacted my insurance; I didn't even know I had
3 insurance that would cover that, to be honest with you.
4 But they knew it all along; they planned to go after
5 the insurance company and they did with a vengeance.
6 But anyhow, let's go back and let's see if we can prove
7 for a moment about -- proving the extrinsic fraud.

8 MR. MURPHY:

9 Your Honor, that's just a flat out falsehood and I'm
10 not going to stand here and listen to that.

11 MR. HUTSON:

12 Judge, --

13 MR. MURPHY:

14 You can look at the judicial pleading --

15 MR. HUTSON:

16 -- I didn't interrupt him.

17 JUDGE NETTLES:

18 Hang on just a moment.

19 MR. MURPHY:

20 You asked a question and he didn't answer it because he
21 can't answer it. And the truth is, we were on a
22 pleading directly adverse to him; never hired to be his
23 lawyer, never engaged him as his lawyer, had no
24 attorney/client relationship with him; he needs to
25 admit it, because it's true.

1 MR. HUTSON:

2 He's helping my case right now.

3 JUDGE NETTLES:

4 Okay.

5 MR. HUTSON:

6 I'm getting to it.

7 JUDGE NETTLES:

8 All right, Mr. Murphy, we -- I'm -- he's entitled to
9 speak and I'm going to hear from him and I'll give you
10 an opportunity to speak --

11 MR. MURPHY:

12 Thank you, Your Honor.

13 JUDGE NETTLES:

14 -- at his conclusion.

15 MR. HUTSON:

16 Thank you, Your Honor.

17 All right, so Penn America hires Laura Paton, Laura
18 Paton is a lawyer in Charleston, to represent me in the
19 defense. Penn America and Tim Newton, Murphy,
20 coordinates that. As a matter of fact, my contact
21 person was really Timothy Newton; that's who -- every
22 time I talked with Penn America, the lady there,
23 Doreen, referred me to Tim Newton. So, these are just
24 a few -- now, Judge, if you're talking about -- if
25 you're talking about extortion, these lawyers know what

1 the definition of that is; these lawyers -- these are
2 seasoned trial lawyers; they have plenty of knowledge
3 over the fact that you just can't walk into a court and
4 misrepresent by concealing enough evidence that ruins
5 the Defendant, where the Defendant never has an
6 opportunity to present his case. That's a violation of
7 the civil rights, not to mention he can't win the case.
8 But nevertheless, if you'll allow me, I'd like to read
9 some of what their lawyer, who they hired to represent
10 me, wrote in one of the motions in the pleadings. She
11 says that these are things that were failed. I was
12 advising me -- advising Mr. Hutson that no financial
13 records were kept as to Big Water Resort to conceal the
14 losses, the financial condition of the company, one.
15 Two, failing to record encumbrances required by statute
16 as outlined above. Three, advising Mr. Hutson that the
17 retail membership could be divested to allow
18 devolvment in the lakefront land as discussed. Four,
19 in failing to disclose the vacation timeshares
20 encumbering the property. Five, failing to recognize -
21 - I'm sorry, failing to record the memberships as
22 required by Section 27-32-10, which is a South Carolina
23 law. Judge, if you've got a contract that's longer
24 than 12 months, it has to be recorded, according to
25 South Carolina law, the same as if it were a warranty

1 deed. In this case, these were 70-year contracts as
2 designs Article 1, Chapter Title -- I won't even finish
3 that. Failing to pay and substantially hide the debt
4 owed to Black River Electrical; they hid the fact that
5 they owed about \$150,000 to Black River Electric, and
6 in fact, gave me a contract that stated that -- they
7 note here the company was clean. In failing to provide
8 an additional consideration for the subsequent attempts
9 to modify the agreement, after I began to make noises
10 over it. Failing to properly disclose the true
11 condition of the business and the properties at issue
12 in the agreement and putting them into the stream of
13 commerce. And making false misrepresentations as to
14 the condition of Big Water -- I'm sorry, conditions of
15 the business and the properties at issue in the
16 agreements and/or representations as to the definition
17 of the business and properties as issued in the
18 agreements in reckless disregard as to the truth and
19 the representation. And I won't read anymore of those.
20 This is what -- this is what -- this is my position on
21 those; I've read you the definition of what it takes
22 for something to be extrinsic. Now, South Carolina law
23 requires anybody, including yourself, Your Honor, if
24 you've got five lawyers in a firm and one lawyer is
25 committing extrinsic fraud, he is required that -- the

1 lawyer that's not a part of the extrinsic fraud, to
2 report that to the court. Now, in this particular
3 case, I'm going to go from here and I'm going to show
4 you that Tim Newton, sitting right here, and this
5 gentleman right here, they knew about the extrinsic
6 fraud, but they wouldn't report it. So, I'm going to
7 read his letter; he made a letter, Tim, and he sent it
8 to me. It was a letter of legal advice and the
9 purposes for the letter -- let me just start reading
10 this long -- and you can better appreciate it, Your
11 Honor. Tim starts off -- he wrote this on the --
12 August 13, 2018. Dear Mr. Hutson, I need to remind you
13 -- I need to remind you that I don't represent you and
14 I can't represent you because I represent Penn America.
15 That's right there, Penn America. To the extent there
16 is a common interest, I note the following. Now,
17 Judge, you've got to ask yourself, what is the common
18 interest. He doesn't represent me, he stated that; he
19 represents Penn America, so what common interests does
20 he have with M B Hutson. I'm the insured by Penn
21 America. Newton has not represented me. Let me go
22 further. We're going to change the color of this messy
23 painting that they've been doing. All right, so now he
24 lists 16 items; I'm not going to read them all, but I'm
25 going to read the ones that's really important. Now,

1 Judge, he's giving me legal advice and you'll -- you
2 will see this shortly. This -- Penn America, their
3 counsel, is giving me legal advice and the reason that
4 they're giving me legal advice, and I'm jumping ahead
5 of myself just a tiny bit, is because they had just had
6 the jury trial. Now, the facts of the matter is, Tim
7 Newton admitted to me, has written out, extrinsic
8 fraud; he knew about the extrinsic fraud. He knew he
9 had a legal obligation to report Turner Padgett, yet he
10 walks right in that courtroom over in Manning before a
11 jury trial knowing full well that all he would've had
12 to done was to have filed a Motion with the court
13 putting the court on notice, Your Honor, that there was
14 extrinsic fraud going on. If they had done that, what
15 would've happened? You think Turner Padgett would have
16 got up there and said, oh, by the way, Judge, before we
17 start this jury trial, we want to -- we want to let you
18 know that TLC, they really -- they never could sell
19 that property to Mr. Hutson. He paid hundreds of
20 thousands of dollars for the right to buy it, but they
21 couldn't sell it to him because there was defective
22 title and we hid that. Oh, yeah, and Judge, we knew
23 that Big Water Resort didn't have any profit it
24 operated on and we knew that TLC didn't have a
25 contractual agreement with Big Water Resort to use

1 their property. We knew that Big Water Resort was
2 nothing but an empty shell, broke. We knew that it had
3 a 22 million dollar hidden obligation. We didn't dare
4 -- we didn't dare talk and mention and disclose this to
5 the Judge because if we had, he'd have thrown us out of
6 court. So, my point is this; Tim Newton -- let me just
7 read his letter. His letter he wrote to me, this is
8 after -- this is after the 3.5 million dollar judgment,
9 Your Honor, against me, which never should've happened.
10 I'll just go a step further. I'm going to tell you why
11 it shouldn't have happened. If they had reported the
12 extrinsic fraud, that would've given me victory because
13 everything would have been reversed and I could have
14 taken that and ran with it. But I wish to remind this
15 Court that not, and listen good, not one case was ever
16 won by these lawyers and Penn America's attorneys while
17 they represented me because of the extrinsic fraud and
18 I couldn't win one as Pro Se because of the extrinsic
19 fraud, so they knew about this extrinsic fraud. Now,
20 Newton told me the reason -- I asked him, why won't you
21 report extrinsic fraud? He says to me, and I've given
22 you an affidavit to that effect, and I swear to God
23 that I'm telling you the truth, he says -- I'm verbatim
24 this -- quoting it, us lawyers don't do each other like
25 that; somebody might go to jail. I said, yeah, but my

1 gosh, these lawyers are killing us, they're killing
2 y'all. If you don't do that, you go in there for a
3 jury trial, you're going to lose it. You're going to
4 wind up paying millions of dollars that I'm going to be
5 responsible for in the event that the insurance company
6 doesn't pay it. And besides, even if they pay it,
7 Judge, I'm still listed over there, not only the fact
8 that I have a 3.5 million dollar judgment against me,
9 but all these other cases that I've lost because in
10 2016, these lawyers right here, they hired lawyers to
11 represent me and Penn America, they hired lawyers.
12 They couldn't win a thing because of extrinsic fraud,
13 yet they wouldn't report it because they wanted to
14 protect their Turner Padgett friends. And I might add,
15 Laura Paton had an office under the same roof with
16 Turner Padgett in Charleston and Newton told me
17 himself, and you can ask him -- I'll take a lie
18 detector -- he told me himself, we -- I can't do that;
19 I'm not going to get involved in that. But I'm losing
20 everything, Newton, if you don't do this. So, listen
21 to what he types, his letter, and I'm jumping way
22 through it; way down here in paragraph 15, there's not
23 -- I'm going to read only two paragraphs; now, he makes
24 it sound like he's not sure, okay. He says, I can see
25 -- now, there's a reason why he's writing me this

1 letter, Judge. I can see how you could argue that the
2 consent order, that's back when George James, okay, so
3 now how does he know -- how does he know about the
4 consent order? I can tell you; because he had all the
5 files and he knew that the consent order was fraudulent
6 because of the concealment and because of extrinsic
7 fraud. Timothy Newton knew that; so did this gentleman
8 sitting right here; they knew that. And probably that
9 gentleman right over there -- no, he wasn't hired at
10 the time. But Penn America knew it because I sent them
11 letters, I'd plead for them to get rid of the extrinsic
12 fraud. All they would've had to done was simply write
13 a -- write a letter to the Judge. The law requires --
14 the South Carolina law requires that. Okay, this is
15 what he reads. I can see how you could argue that the
16 consent order, that's what he's talking about now, the
17 consent order from the settlement agreement, is invalid
18 because it attempts to adjudicate the rights of parties
19 not before it. He's talking about the members. See,
20 what happened, they -- Turner Padgett brought --
21 brought this stuff here for George James to sign and
22 even though Newton knew that the members had a right to
23 be there and have a say, they hid that; they kept the
24 members out of it. All right, now listen to this; he
25 writes, and I've underlined it, if you were -- he's

1 pretending like he doesn't know -- if you were ordered
2 to develop the property -- he's got a copy of the
3 order; he knows that I was ordered. Now, why is he
4 saying if I was ordered? Judge, he's trying to -- he's
5 trying to do the -- the waltz to dance around and I'm
6 going to prove to you on another sheet -- well, a
7 sentence that he wrote to me that he denies -- let me
8 finish reading the letter. If you were ordered to
9 develop property that was subject to lifetime use
10 rights, that probably, listen to this now, that
11 probably, no if there, that probably should have been
12 brought to the Court's attention. See, that's notice
13 on the extrinsic fraud; that's what he's talking about.
14 Okay, let's go a little further.

15 JUDGE NETTLES:

16 All right, Mr. Hutson, one of the things -- I want you
17 to take just a moment, --

18 MR. HUTSON:

19 Yes, sir.

20 JUDGE NETTLES:

21 -- sort of gather your thoughts and -- you know, we
22 scheduled an hour for this --

23 MR. HUTSON:

24 Yes, sir.

25 JUDGE NETTLES:

1 -- and, you know, you've spoke for a considerable
2 amount of time and I'm going -- we've got 15 more
3 minutes; what I want you to do is take just a moment,
4 sort of gather your thoughts about what your position
5 is and I want you to complete that within the next 15
6 minutes. And I am going -- at the conclusion of this
7 hearing -- this is a very important matter, it's an
8 important case --

9 MR. HUTSON:

10 It's a 6 million dollar case, Judge.

11 JUDGE NETTLES:

12 No question it's important and what I'm going to do is
13 I'm going to take a considerable amount of time to
14 review all these documents and review your complaint
15 and I'm going to do all that and I'm going to study the
16 matter and I'm going to allow all of these parties to
17 submit proposed orders and you; all the parties are
18 going to submit proposed orders and I'm going to take
19 all of that into consideration. I'm going to review
20 all of your affidavits, your pleadings, and take
21 everything into consideration, so if you want to, you
22 can just take this moment, sort of encapsulate what
23 else you want to say in the next 15 minutes and I'll be
24 glad to hear from you.

25 MR. HUTSON:

1 Let's try to make it about --

2 JUDGE NETTLES:

3 Mr. Hutson, does that sound fair?

4 MR. HUTSON:

5 Well, you're -- Your Honor, you're in charge of this
6 hearing. I would like at least 25 minutes; this is so
7 important. This is material facts; this is evidence;
8 this is what makes this go to a jury rather than being
9 thrown out.

10 JUDGE NETTLES:

11 Right. Well, let's go.

12 MR. HUTSON:

13 All right, sir.

14 Okay, so if you're ordered to develop property that was
15 subject to a lifetime use, that probably should have
16 been brought to the court's attention. Further, I see
17 how you could argue you did not realize you were being
18 obligated to violate the rights of the campground
19 members by developing -- this is a whole different
20 story now; he's painting a whole different picture than
21 what they just got through painting of me; he's taking
22 up for me. Wonder why? It's because before I filed a
23 lawsuit against them -- and then the most critical
24 sentence is this one, paragraph, it's hard to see why
25 TLC and its lawyers should not have in good faith

1 simply told you and the Court that Big Water Resort
2 property was undevelopable because it was already
3 obligated to two double lifetime memberships of the
4 private club. It appears that this could easily have
5 averted this entire fiasco. Since, listen now, since
6 attorneys were involved and it resulted in your
7 inability to present your case in court and possibly
8 led to the sanctions, of which they were just talking
9 negative about the sanctions, and judgment against you,
10 there might possibly be extrinsic fraud on the court
11 supporting setting aside of the consent orders. He's
12 talking about the settlement agreement, the consent
13 order with George James, and he's probably talking
14 possibly even the 3.5. Then he gives me more case law;
15 see Chewning versus Ford. And if you read that, it
16 plainly reads a lawyer has got an obligation to report
17 extrinsic fraud and nobody -- Judge, this -- this --
18 now, listen to this; I want to read you another little
19 sentence. Three months later after writing me that
20 letter, here's what he does; he sends me a letter, it's
21 dated November 8th, and it has just got a bunch of, I
22 call it, mumbo jumbo, in it, and right out of nowhere,
23 Judge, on page 2, paragraph 5, here's -- all of a
24 sudden it appears; this is what Newton is writing; at
25 no point has Penn America or its counsel ever

1 acknowledged the existence of fraud upon the Court.
2 That's a direct lie; I just got through reading you
3 what -- what Newton -- just read what he wrote. That's
4 a flat out lie. Then he says, Penn America recognizes
5 only that you have recently -- that's a lie, Judge,
6 because I've got letters that go back -- he says I've
7 just recently -- Penn America recognizes only that you
8 have recently began alleging that fraud upon the Court
9 was committed. All right, I'm going to stop right
10 there with that and I'd like to bring something else to
11 your attention. Newton was talking about a common
12 interest; well, we know he wasn't talking about the
13 fact that he knew that he represented me, because he
14 didn't, because he states that. The common interest,
15 Judge, was they were coming up with about a month for a
16 mediation, court ordered mediation, and Newton wanted
17 that figure, 3.5, because he's representing his
18 clients, reduced down to about \$150,000, and if you
19 look right here on page -- if you'll just read my
20 notes, there's plenty of things, it even shows where
21 they made an offer, Judge, for \$150,000 instead of the
22 3.5. So, what I'm telling you falls together. Now,
23 let me read another piece of untruth that Tim Newton
24 wrote; that's this gentleman's partner, that's -- all
25 right, he wrote this on March 5, 2018. It says this,

1 now listen to it; Penn America gave you the opportunity
2 to prove your case at trial. Now, Judge, how could I
3 have possibly proved my case at trial when, number one,
4 their lawyers was representing me, number two, there
5 was extrinsic fraud so it was impossible to win the
6 case, but that's what he says. So, because of that,
7 they're going to go ahead and do a settlement. Now, my
8 point is simply this; the settlement -- by them
9 settling, and they were aware of extrinsic fraud, that
10 made them co-conspirators to the extrinsic fraud and if
11 I need more time to write something back to you to
12 finish this, but they are co-conspirators to something
13 that is a criminal offense and they were a part of it.

14 JUDGE NETTLES:

15 I think you've made it real clear about what your
16 position is, particularly with regard to extrinsic
17 fraud. I'm going to give the Defendants an opportunity
18 to address any of those comments, if they would like,
19 but Mr. Hutson, I had mentioned to you earlier, what
20 I'm going to do is I'm going to ask that you submit to
21 me a proposed order and in that you can set out your
22 theories as to -- to support your position and what you
23 think the court order ought to be.

24 MR. HUTSON:

25 And I will do that, Your Honor, but again, please

1 understand that everything that I just read to you is
2 from these Defendants --

3 JUDGE NETTLES:

4 Right.

5 MR. HUTSON:

6 -- and there's a whole bunch of lies in it.

7 JUDGE NETTLES:

8 Okay.

9 MR. HUTSON:

10 Why are they lying?

11 JUDGE NETTLES:

12 All right, and just put all of that -- I -- and I
13 promise you that I'm going to take --

14 MR. HUTSON:

15 This is --

16 JUDGE NETTLES:

17 -- a considerable amount of time to read all of your --
18 all of your affidavits and pleadings and I'm going to
19 take into consideration your arguments; does that sound
20 fair?

21 MR. HUTSON:

22 Yes, sir. I didn't complete but about one-third of my
23 pure evidence, but I'll -- I'll do as you ask.

24 JUDGE NETTLES:

25 All right.

1 And would y'all like to say anything else?

2 MR. MURPHY:

3 Just briefly, and Tim may want to address that. Your
4 Honor, I think the settlement agreement that is
5 reflected in Judge James' order is separate from the
6 settlement agreement directly between Penn America and
7 Mr. Hutson, and I know you had the September 16th of
8 '16, that's the Penn America policy values, and the
9 earlier settlement agreement was from 2012 and Judge --

10 JUDGE NETTLES:

11 2012.

12 MR. MURPHY:

13 That's right. Judge James entered the order in 2012
14 and in light of what Mr. Hutson said that he was aware
15 of all of these facts that he spent an hour going
16 through before he even signed the agreement that was
17 then subject to the action that resulted in Judge
18 James' consent order, I don't see how a seven year --

19 MR. HUTSON:

20 I never said that.

21 JUDGE NETTLES:

22 This is his time to talk. I wouldn't let him interrupt
23 you --

24 MR. HUTSON:

25 Yes, sir.

1 JUDGE NETTLES:

2 -- and you don't interrupt him.

3 MR. MURPHY:

4 And I'll be happy to get a transcript, but he said he
5 knew about the issue before he closed and his attorneys
6 in those -- Mr. Weissenstein was sued; Mr. Weissenstein
7 got summary judgment from Judge Curtis recently, so
8 he'll sue anybody and everybody, even if their -- only
9 thing they did was their name was on a pleading; you
10 noticed he didn't have any phone calls, letters, emails
11 from me because I never talked to him and I never will.
12 And also, I would simply say that extrinsic fraud is a
13 legal doctrine to set aside a judgment. I've used it
14 one time before myself. It is not a private cause of
15 action, so if the -- if the claim is a failure to
16 report, that's not a private cause of action, an
17 ethical complaint against another attorney, which I
18 strongly, vehemently, disagree that John Wilkerson did
19 anything unethical in representing the parties that
20 sued him, so, he had every opportunity to assert all of
21 that, not once, but twice, because he asserted these
22 same claims in both the federal court class action,
23 they were dismissed with sanctions, he asserted them in
24 the state court defamation claim and they were
25 dismissed as well in that. But the fact that he knew

1 about all of this back in 2012, what's obvious from the
2 emails that were read to you is that Mr. Newton didn't
3 know everything, we know everything now, and we know
4 that when he was trying to cry on Tim's shoulder and
5 act like, you know, I'm the victim here, which was, I
6 think, the first thing he said, he's not the victim at
7 all; he's the perpetrator of all of this against
8 multiple parties, the least of which -- and last but
9 not least is myself and Mr. Newton. So I think the
10 Court needs to be aware of all of that and he had
11 defense counsel to collaterally attack the judgment or
12 to raise that as a defense in the cases, the two cases,
13 that TLC brought against him, that's clear that was the
14 attorneys who represented him at that time. I think
15 Ms. Paton refused to assert it because it had already
16 been ruled on and it was deemed frivolous and Mr.
17 Hutson did it Pro Se anyway and got sanctioned for it.
18 And so to say that somehow Mr. Newton or I had a duty
19 to do that after the fact years later, there's no duty
20 recognized at all in the law for us. I understand -- I
21 think that's what he's claiming is that if we became
22 aware of something he knew seven years ago, we should
23 have done something in his behalf and the law doesn't
24 require us to do anything on his behalf or allow him to
25 rely on anything we said or did to him.

1 JUDGE NETTLES:

2 And I'm going to ask that you --

3 MR. HUTSON:

4 Your Honor, may I respond --

5 JUDGE NETTLES:

6 -- I'm going to ask --

7 MR. HUTSON:

8 -- for one minute?

9 JUDGE NETTLES:

10 Just one second.

11 I'm going to ask that you prepare an order setting
12 forth your position and what the relief you would
13 request.

14 MR. MURPHY:

15 Yes, sir.

16 MR. STEGMAIER:

17 Briefly, sir.

18 Of course, as our public entities have recognized on
19 multitudes of occasions, argument here is not evidence.
20 Mr. -- Mr. Murphy did touch on the fact that there are
21 two separate and distinct agreements; the 2016 release,
22 as it relates to Penn America and Mr. Hutson, it can't
23 be aside in this case because there's no allegation
24 that is was procured by fraud and the 2016 release is
25 between Mr. Hutson and Penn America and its affiliates

1 and agents, which in this case would include Mr. Murphy
2 and Mr. Newton. But with regard to the 2014 order of
3 Judge James, it all goes back to him, and as we
4 referenced on page 11 of our briefing to this Court,
5 Judge James found, as a matter of law, that the
6 allegations of misstatements or omissions that the
7 underlying property transaction would go to Mr. Hutson
8 when he entered into the 2012 settlement agreement
9 between him and TLC Holdings, and so thus he refused to
10 set aside the 2012 consent order and settlement between
11 those parties that released Hutson's claims against
12 TLC.

13 With regard to what Mr. Hutson had read into the
14 record, these allegations found in the counter-claim in
15 the defamation action in Clarendon County, Mrs. Paton
16 was the defense counsel in that case, she answered for
17 him, but did not file the counter-claim, that was Pro
18 Se, that was all Mr. Hutson and his crafting, and Judge
19 Cothran ultimately granted summary judgment as to those
20 counter-claims, the same counter-claims that we're
21 talking about today, that articulated all this
22 extrinsic -- this extrinsic fraud upon the Court, Judge
23 Cothran found that it was not a colorable claim and
24 dismissed that action. And what's notable about that
25 is by virtue of the fact that he had made that

1 dismissal, Mr. Hutson talks about going in the trial in
2 Clarendon County, well those matters had already been
3 disposed of by the Court, so there wasn't -- there
4 wasn't any argument to be made at that point and time
5 in the first time he claimed it.

6 What -- sir, with regard -- would we be able to prepare
7 a proposed order or should we work in tandem with Mr.
8 Murphy?

9 JUDGE NETTLES:

10 Well, I think your interests are -- coincide. What
11 would be your preference in that regard, Mr. Murphy?

12 MR. MURPHY:

13 Since he filed a separate Motion, I think we could do
14 separate orders, but we'll both file proposed orders.
15 We could do one order and separate the section, but I
16 think it's easier just to do two orders, if that's okay
17 with you?

18 JUDGE NETTLES:

19 I think two orders would be better; that's what I
20 originally envisioned.

21 Yes, sir, would you like to say anything else?

22 MR. NEWTON:

23 Yes, Your Honor. Tim Newton. During this time, I was
24 representing Penn America with regard to the
25 declaratory judgment. J.R. was the -- the -- one of

1 the cases was originally referred to, but really it was
2 me; J.R. had nothing to do with it, other than signing
3 off on the pleadings. I just want to point out -- I
4 mean, just recall that the defenses of, number one,
5 there's no duty here for us to go prosecute TLC for Mr.
6 Hutson. And also, there's no standing because at the
7 time we were representing Penn America, we couldn't --
8 we can't assert his claims for him, okay, which is what
9 he was asking us to do. But also, I want to point out
10 that there's litigation privilege and settlement
11 negotiation privilege and all this that he's talking
12 about occurred in the context of attempting to
13 negotiate. Mr. Hutson, throughout the course of the
14 two and a half years I was involved in the case,
15 continually threatened litigation against Penn America,
16 even after he had already released them. So what I was
17 trying to do was make sure that we didn't give him any
18 reason to, you know, to say that we breached anything,
19 okay. So, we never represented Mr. Hutson, but he's
20 talking -- he asked what the common interests was.
21 Well, what he didn't tell you was he came to me and he
22 said I just got this new evidence that all of the
23 property, there were seven or eight parcels over there,
24 all of it was subject to these campground membership
25 agreements and they didn't tell me that in the

1 settlement agreement. Now, if you look at those
2 orders, Judge Baker, Judge Cothran, Judge Norton, all
3 of them said all of the fraud Hutson alleges has to do
4 with his original purchase, so there's no fraud that
5 the settlement agreement was procured by fraud, okay.
6 But now Hutson is saying, I've got this information
7 that all of the -- the whole shooting match was subject
8 to the campground member -- there's -- these are
9 lifetime memberships so how can you build on property
10 that's subject to these memberships, okay. At that
11 time, Mr. Hutson said that he was going to sue Paul
12 Weissenstein, he has sued him, and he handed me this
13 affidavit, he came to our office, handed me this
14 affidavit, Mark Hardy, that he was going -- he told me
15 he was going to use against Paul Weissenstein and he
16 said, look, I've got, you know, this claim, I was
17 defrauded and what are y'all going to do about it. He
18 was threatening to sue us because we couldn't get an
19 appeal bond while his appeal was pending on the
20 defamation judgment, and he said, look, don't you --
21 you know, you've seen that there's fraud. If I'm going
22 -- what I'm going to do, I'm going to file this action
23 to set aside the judgment based on fraud in this court,
24 this new evidence, I've got this affidavit, I'm going
25 to sue the lawyer at the time, so why don't you, Penn

1 America, join in with me on this. Okay, that's -- and
2 I went ahead and just put the emails in there because
3 he withheld that, all right. So, he then -- what he
4 did was, he tried -- he was trying to set us up because
5 he knew at the time -- he'd already deposed Susan
6 Stroman in 2015 before we were involved, he knew that
7 all the property wasn't under those settlement -- those
8 membership agreements. He also knew that TLC had moved
9 for summary judgment in the class action and that that
10 Motion got granted, but I didn't have any way of
11 knowing that; we didn't get involved until 2016. So,
12 anyway, after he peppered me with all these emails, and
13 they're in there, they're Exhibit B to my filing, I
14 finally sent him this email and what I was trying to do
15 -- I mean, I wanted to make sure that he had whatever
16 information -- this is all non-privileged information,
17 it's all stuff that was hashed out repeatedly in prior
18 cases. If you want to go sue TLC, go sue them. I
19 said, I don't represent you. I said, to the extent
20 there's a common interest, because if he could get
21 something set aside and maybe that would undermine the
22 three and a half million dollar judgment, hey, maybe --
23 maybe it would help us and I -- if you look at
24 paragraphs 1 through 9, this is all -- it basically
25 says it doesn't tell you, there's no way of knowing,

1 and I don't know, I -- you know, what -- what property
2 over there was subject to these campground membership
3 agreements. So, I finally said in paragraph 15, which
4 he read, I can see how you could argue this consent
5 order isn't valid. Then I said if, that's an important
6 word, if you were ordered to develop property that was
7 subject to lifetime membership rights, maybe that
8 should have been brought to the Court's attention.
9 Okay, so I'm saying, it's conditional. If you can
10 present me with evidence, or present the Court with
11 evidence, that there was a misrepresentation in that
12 settlement agreement, then, you know, maybe you could
13 get it set aside. I mean, he argued with a -- against
14 another lawyer, Chip Burn, that it was so obvious that
15 even a layman should have been able to see that if
16 you've got lifetime membership rights on this property
17 you can't develop it and sell it. So, what I was just
18 trying to do was make sure that I wasn't hiding
19 anything from him. It's not -- had nothing to do with
20 our coverage action having to do with him getting sued
21 for defamation, it just had to do with him wanting to
22 try to get this order set aside, and -- so I gave him
23 whatever we had and said, hey, go have at it,
24 essentially; go get yourself a lawyer. Then in this
25 letter, and by the way, this letter that he filed

1 that's attached to his affidavit and those things
2 become part of the pleading, I set it all out; I
3 explained to him, look, you had threatened to sue us
4 because we couldn't get this appeal bond and you told
5 us for a while not to sue, then you turn around -- not
6 to settle, then you turn around and say you want us to
7 settle. But anyway, he started to read, he said --
8 anyway, one thing that I just wanted to point out is he
9 admitted that he didn't know about alleged fraud until
10 recently; so this is in 2018 he comes to me and he
11 claims he has this new evidence that, you know,
12 something -- there was something -- some impropriety in
13 the settlement agreement in a case we weren't involved
14 in that was six years prior and he wants to go set it
15 aside. I told him eventually, you know, after I kind
16 of looked at it to see if there was any possibility it
17 would help Penn America, I said no, we're not going to
18 do that, okay. So, then we settled the case. We could
19 not find any extrinsic fraud. He's never yet presented
20 any evidence that all the campground property was
21 subject to the membership. I deposed TLC and I asked
22 them that question and they said no. He knows, he
23 deposed the realtor at the time; she said no. TLC
24 represented and got summary judgment; no. So, he --
25 there was seven or eight parcels. He could have

1 developed some and then kept the campground on the
2 rest, but he told me -- he misrepresented the facts to
3 me and when -- you know, I'm kind of, you know -- to be
4 honest, it kind of made me mad. If, in fact, he was
5 ordered to do something that he could not have done and
6 they misrepresented to the Judge, well, okay, then why
7 -- you know, he has the right, he still has the right
8 today, to go do that, but instead he's trying to turn
9 that around on me. But there's nothing in that email,
10 it's his Exhibit 4.0, 4.1 through 3, I guess, there's
11 nothing in there that admit -- where I say admit, I
12 know there was fraud; I'm just saying that based on
13 what you're telling me that all of this campground
14 property -- I mean, all the property he bought was
15 campground property subject to lifetime memberships,
16 then if that wasn't brought to the Court's attention at
17 the time, then maybe -- maybe there was a problem; go
18 hire a lawyer and have at it. So, I'm not saying that
19 really because I think that it -- it's necessary for
20 any legal defense we have; I'm only saying that really
21 because he's calling me a liar and I -- you know, a lot
22 of this stuff he said is not true. Of course, we're
23 not here to, you know, hash that out, but I did not
24 tell him at any time that the whole thing was
25 fraudulent. When we were in the course of settlement

1 negotiations and there was a common interest in trying
2 to -- you know, if he could get that set aside and they
3 would help us in our settlement with the coverage
4 action of that defamation judgment, hey, you know, that
5 would be potentially beneficial for both of us. He can
6 hire a lawyer and go do it. So, I'm just -- just
7 wanted to see if there was anything else. He filed
8 Exhibit 31 to one of his -- his filing, I think it was
9 his affidavit, and you can see that he made the same
10 demands of TLC, but he didn't sue them; instead --
11 these are the people that he claims defrauded him;
12 instead, he turns around and sues us claiming that we
13 knew, and he tries to use my letter responding to his
14 false representation, as -- as somehow, you know, the
15 reason why he has a right to sue us. So, again, I --
16 you know, all of this has been ruled upon. The only
17 possible thing he could say is that -- if he could come
18 up with evidence that he was fraudulently induced to
19 come into -- to enter into this settlement agreement,
20 I've never seen anything, and that's in my briefing,
21 you know. He already -- he had information that it was
22 false anyway, but for him to then call -- the thing is,
23 is just that he -- he has made materially false
24 representations that he did not know about these
25 membership agreements in every single case; he's doing

1 it again in this case. And then he's turning around
2 and calling me a liar. So that's all. Thank you, Your
3 Honor.

4 JUDGE NETTLES:

5 All right, I'm going to ask each of you to forward to
6 me a proposed order. And Mr. Hutson, it might be
7 easier if you were to submit an original -- well, I
8 don't know whether you have email; would it be better
9 for you to email it to me or mail me your proposed --

10 MR. HUTSON:

11 I can email it. I don't have your email. Maybe I do
12 have it. Maybe -- I'm not sure.

13 JUDGE NETTLES:

14 Are you talking about my email?

15 MR. HUTSON:

16 Yes, sir.

17 JUDGE NETTLES:

18 Oh, yes, I'll give that to you; it's

19 mnettlesj@sccourts.org.

20 MR. HUTSON:

21 Your Honor, may I have one minute to respond to the
22 three of them?

23 JUDGE NETTLES:

24 All right, you've got one minute.

25 MR. HUTSON:

1 All right, sir.

2 He says that I'm not telling the truth. He writes the
3 letter, then he turns around and writes another letter
4 three months later saying that he never talked about
5 fraud upon the Court, when he himself wrote the letter,
6 both letters; that's a flat out lie. He -- I don't
7 care how he tries to deny that, that's a flat out lie,
8 one. Two, why would they -- why would they try to
9 trick me into going over and facing a jury trial when
10 they know up front that there's extrinsic fraud going
11 on? They can't win it and they didn't win it.

12 JUDGE NETTLES:

13 I understand your position. Thank you very much.

14 MR. MURPHY:

15 Your Honor, do you want us to send -- not file the
16 proposed orders, but just send them directly to you and
17 share them with Mr. Hutson? I wasn't clear; earlier
18 you said --

19 JUDGE NETTLES:

20 I think probably the better thing to do would be just
21 to email me your proposed order --

22 MR. MURPHY:

23 Yes, sir.

24 JUDGE NETTLES:

25 -- and whichever one -- I'm probably going to look at

1 those and make reference to those and I might use some
2 of them in their entirety and might modify some of
3 them, so --

4 MR. MURPHY:

5 Yes, sir.

6 JUDGE NETTLES:

7 -- I'll do that. All you have to do is just send me
8 what your proposed order will be --

9 MR. MURPHY:

10 Yes, sir,

11 JUDGE NETTLES:

12 -- and then it will be -- I will do what's necessary to
13 download an e-file.

14 MR. MURPHY:

15 Thank you, Your Honor.

16 JUDGE NETTLES:

17 Thank you.

18 (This hearing concluded at 11:14 a.m.)
19
20
21
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25

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

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

AFFIDAVIT OF MARK W. HARDEE

Qualifications

- a. I graduated from the University of South Carolina School of Law in 1986 and began working as an Assistant Public Defender in Richland County.

Approxmently November 1988, I went to work as an Associate with the law firm of Lewis Babcock Plescones and Hawkins (later Lewis, Babcock and Hawkins).

Within several years I became a partner. My practice at Lewis Babcock and Hawkins concentrated on Business Litigation, Legal Malpractice and Attorney and Judicial Ethical matters. During that time I handled many legal malpractice matters and represented lawyers and Judges in disciplinary actions. I also acted as special prosecutor on an Office of Disciplinary Counsel matter. I left the firm in 2003 to start my own practice, the Hardee Law Firm, and continued to concentrate on business litigation, legal malpractice and legal ethics matters.

- b. I have spoken at several CLE's on ethics matters, and I have been retained as an expert witnesses in matters regarding legal ethics, and the standard of care for practicing attorneys.

- c. I was admitted to the South Carolina Bar in 1986, US District Court 1988, I was admitted to the US Court of Appeals for the Fourth Circuit in 1995, US Court of Appeals for the Fifth Circuit in 2000, US Court of Appeals for the Tenth Circuit

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

- d. I have appeared in court in several jurisdictions throughout the United States.

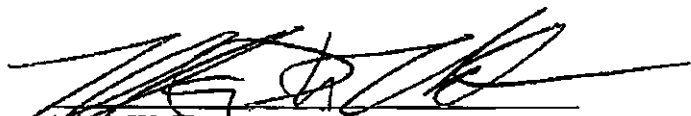
Based on my background, practicing and studying law as it relates to legal ethics as it pertains to both legal malpractice issues, as well as disciplinary issues, and the fact that I have also represented small local businesses in South Carolina for over 25 years.

- e. I am qualified to issue an opinion as to whether or not attorney Paul Weissenstein committed malpractice in his representation of M. B. Hutson in the TLC Holding Inc. litigation involving Big Water Resort.
- f. I have reviewed numerous documents including pleadings and court orders and I have extensively interviewed M. B. Hutson.

Opinion

- g. It is my opinion that M. B. Hutson retained Paul Weissenstein to represent him in litigation involving TLC Holdings LLC and Big Water Resort.
- h. M. B. Hutson intended to purchase and develop property on lake Marion through a lease purchase agreement which also included an on going business.
- i. Unknown to Mr. Hutson was that a title defect existed on the property due to hundreds of 70 year right to sole use agreements which had been sold by TLC Holdings LLC and Big Water Resort.
- j. Mr. Hutson was unaware that these agreements constituted a title defect on the property which would keep him from developing the property as planned.

- k. The project was doomed from the start due to the title defects and other misrepresentations made by TLC Holding LLC.
- l. When TLC Holdings LLC brought an eviction action against M. B. Hutson, he retained Paul Weissenstein to defend him and prosecute valuable counterclaims against TLC Holdings LLC.
- m. Mr. Weissenstein advised Mr. Hutson that he had no defenses to the eviction or knew of no facts supporting his counter claims. This was even though there was ample evidence that TLC Holdings LLC had made numerous misrepresentations and concealed relevant and material statements of fact regarding the usefulness and ability to develop the property.
- n. Mr. Hutson was not properly advised of the application and effect of the release Mr. Hutson was offered to end the litigation. Therefore, he settled the case and signed the release.
- o. Mr. Weissenstein fell below the standard of care expected of attorneys in similar situations at the time, by failing to advise Mr. Hutson that the existence and effect of the long term leases would prevent him from ever developing the property as he intended, and that his default of the settlement agreement was inevitable, and that he would forever be barred from prosecuting and using as a defense the fraud perpetrated on him by TLC Holding LLC.
- p. It is my opinion to a reasonable degree of certainty that Paul Weissenstein committed malpractice in his advice to, and representation of, M. B. Hutson in the above described matter.


Mark W. Hardee

SWORN TO before me

this 3 day of August, 2018


NOTARY PUBLIC FOR SC

My Commission Expires: 3-11-21

J. MICHAEL TAYLOR

Oct. 25, 2011

ATTORNEYS RETAINER AGREEMENT

MB Hudson (hereafter referred to as "client") does hereby employ and retain the WEISSENSTEIN LAW FIRM, LLC hereafter referred to as "Weissenstein," to represent client's interest in connection with a litigation case involving a breach of contract regarding real estate. These services are limited to representation in the above matter(s), and it is expressly understood that Weissenstein shall not be responsible for pursuing any additional matters, including appeal, beyond those stated above unless jointly agreed upon in writing.

For compensation, the Client agrees to pay to Law Firm for legal services rendered, costs and attorney's fee as follows:

Senior Partner	\$290.00 per hour
Paralegal	\$ 85.00 per hour

It is understood and agreed that this fee is for services rendered through any trial court proceedings and that an additional fee, and separate fee agreement, will be required for any appellate or supplemental proceedings which may arise from this matter(s).

I further authorize Weissenstein to retain any experts or assistants that he deems needed to fully represent my interests, including paralegals, investigators, court reporters, medical or forensic experts or others and I agree to be responsible for the costs thereof.

During the progress of the case, I agree to pay all costs advanced by Weissenstein or incurred by him in connection with the handling of my case. At the time of the execution of this agreement, I have paid a deposit to Weissenstein of Five Hundred and 00/100 (\$500.00) Dollars as an advance deposit for costs and expenses incurred by him in the handling of my case. I agree to maintain a trust account balance on deposit with Weissenstein's office of at least Five Hundred and 00/100 (\$500.00) Dollars. I may be provided with monthly statements reflecting account activity, funds held in trust and funds applied to costs incurred. Upon receipt of monthly statements, I will promptly forward funds necessary to maintain the agree-upon trust account balance for costs and expenses. Any unpaid balances shall be subject to a finance charge as shown on the monthly statement. At the conclusion of representation, the funds held in trust will be applied to outstanding costs and expenses due to Weissenstein Law Firm, LLC and the balance shall be refunded to me within thirty (30) days after the final billing has been fully paid.

MBH, Oct 25, 2011
Initial / Date

Client also agrees to pay and be responsible for all out-of-pocket expenses such as filing fees, subpoena fees, process servers, depositions or transcripts, photocopies, postage, fax charges, courier/deliver, long distance telephone charges and accounting charges paid to third parties. These charges will be detailed on the monthly statement. Weissenstein reserves the right to require advance payment of any costs to be incurred on client's behalf.

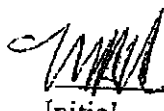
Client agrees to provide full cooperation and assistance in the handling of client's case, and failure to do so will be grounds for termination of this agreement. Mr. Weissenstein has the right to terminate representation in the above matter pursuant to Rule 1/16 of the Rules of Professional Conduct as set forth in SC Appellate Court Rule 407 should grounds for termination exist or arise. Weissenstein shall have the right to withdraw from the case if payments required by this agreement are not timely made, if client has misrepresented or failed to disclose material facts, or has failed to follow the professional advice of the law firm in connection with the matter(s) in which representation is provided. Should client fail to obtain successor counsel within a reasonable time, client understands that Weissenstein will apply to the applicable court for an order relieving it as counsel.

Client understands that Weissenstein's representation does not include rendering tax advice of any kind and that client must seek tax advice from another professional, such as an accountant or other financial advisor.

Client understands that no guarantees have been made by the firm or any agent thereof regarding the outcome of the matter(s) being handled.

If in the event of a default in the payments due hereunder to Weissenstein Law Firm, LLC, and it becomes necessary to collect same through an attorney or by legal proceedings, client agrees to pay all costs of collection, including reasonable attorney fees or the value thereof or 35% of the total payment due, whichever is greater, and statutory interest accruing thereon, including pre-judgment interest. Client agrees that any legal action for collection under this agreement shall be brought in the venue of Sumter County. Mr. Weissenstein / Weissenstein Law Firm, LLC will assert a charging lien against client's file for unpaid expenses and earned attorney fees in accordance with the applicable law.

After the conclusion of the case, at the client's request, Weissenstein will return to client any documents or items client has provided in connection with the handling of client's case, including photographs, documents, and other materials. Weissenstein will keep the relevant portions of client's file for a period of at least three (3) years after the case has concluded, but that after that time, Weissenstein reserves the right to appropriately dispose of the file in accordance with the document retention policies of that office.

 1 Oct 25, 2011
Initial / Date

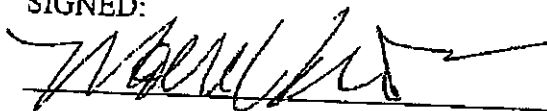
It is specifically understood and agreed that any modifications to this agreement must be set forth in writing and signed by the parties. Failure to enforce any provision of this contract shall not result in a waiver of rights arising from this agreement. This contract shall be governed in accordance with the laws of the State of South Carolina.

Signatures on next page

MMR Oct 25, 2011
Initial / Date

CLIENT HAS FULLY READ AND FULLY UNDERSTANDS THE ABOVE CONTRACT,
AND HAS FULLY DISCUSSED THE TERMS AND CONDITIONS THEREOF AND DOES
HEREBY SET HAND AND SEAL THIS ____ DAY OF OCTOBER, 2011.

SIGNED:



423 834 4828
Cell phone / pager

SSN: _____

Office mailing address _____

City, State, Zip _____

Office telephone, including back line _____

Office facsimile _____

Home address _____

City, State, Zip _____

Home telephone _____

E-mail address _____

Please designate which address ____ home or ____ office to which you want client
correspondence and billing matters sent.

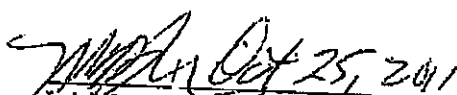
To assist law firm in minimizing client's postage and other delivery charges: Client is
willing to accept client correspondence (which may include confidential information) via e-mail
in PDF rather than by U.S. Mail. Client understands this would require a PDF reader such as
Adobe Reader, which can be downloaded for free from the Adobe website (www.adobe.com).

Yes ____ No ____

Confirmation of Two Thousand Nine Hundred Fifty and 00/100 (\$2,950.00) Dollars deposit
received and Agreement Accepted by:

October ____, 2011

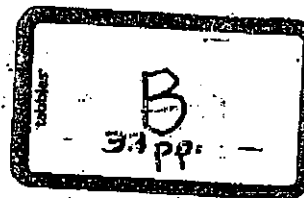
A. Paul Weissenstein, Jr.


Initial / Date

2020/10/14 04:16 PM 1010001810

SILVER LOVELL

1010001810



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:



**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

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

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

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.

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

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

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

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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 least 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

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

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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, and

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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.

**SECTION 19
SUBORDINATION 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.

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.

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**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

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.

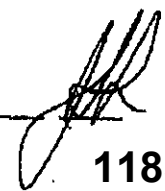
28.2. Except for Hazardous Substances or other toxic materials or medical waste brought, kept, or used in the Premises in commercial quantities similar to those quantities usually kept on similar premises by others in the same business, profession, or medical specialty, and which are used and kept in 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

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 Conservation and Recovery Act, the Federal Insecticide, Fungicide, Rodenticide Act, the Safe Drinking Water Act, and the Occupational Safety and



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

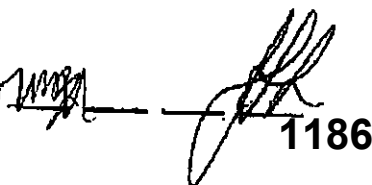
If any provision of this Agreement or its application to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of that provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not 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

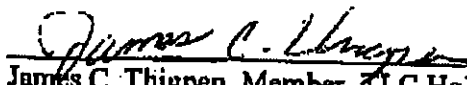
This Agreement contains the entire agreement between the parties and cannot be amended unless the amendment is in writing and executed by the party against whom the enforcement of the amendment is sought.

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[Signatures on Next Page]

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

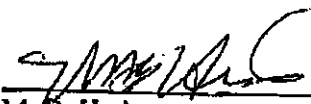
SELLER:
TLC Holdings, LLC


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

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

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

PURCHASER:

M. B. Hudson
M. B. Hudson

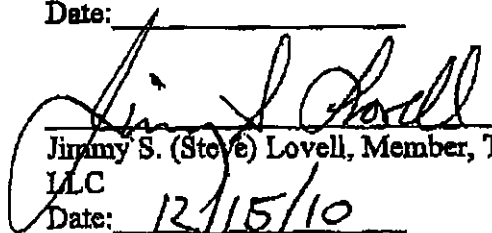
Date: 12/15/2010

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

EXHIBIT A _ A legal description of the TLC real property



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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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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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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 10'53" 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.



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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

Santee Cooper

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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

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MEMBERSHIP INTEREST PURCHASE AGREEMENT

THIS MEMBERSHIP INTEREST PURCHASE AGREEMENT (the "Agreement") is made and entered into as of the ____ day of December 2010, by and among M. B. HUDSON (referred to herein as "Purchaser"), RICHARD U. CLARK, JIMMY S. LOVELL and JAMES C. THIGPEN (referred to herein collectively "Seller") and THE BIG WATER RESORT, LLC, a South Carolina limited liability company (referred to herein as "Company").

WITNESSETH:

WHEREAS, Seller is all the members of the Company with said membership interest subject to the terms and conditions of that certain Operating Agreement of The Big Water Resort, LLC dated December 1, 2002 and its Amendment dated June 3, 2008 ("Operating Agreement"). All capitalized terms not defined herein shall have those meanings set forth in the Operating Agreement; and

WHEREAS, Seller desires to sell all of their Membership Interest in the Company, which equals One Hundred Percent (100%) of the outstanding membership interests (referred to as the "Interest") to Purchaser, and Purchaser desires to purchase said Interest, being bound to the terms and conditions of the Operating Agreement.

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant, consent and agree as follows:

1. **Sale and Purchase.** Subject to the terms and conditions hereinafter set forth, Seller hereby sells, transfers, assigns and conveys the Interest to Purchaser, and Purchaser, in reliance on the representations made by Seller herein, accepts the sale, transfer, assignment and conveyance of the Interest from Seller in consideration for the

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- (ii) A Certificate of Good Standing from the State of South Carolina;
 - (iii) A list of all debts and obligations of the Company and principal balance(s) of said debts and obligations as of the date of Closing, each of which are to be assumed by Purchaser at Closing, except only those loans made by Messrs. Clark and Lovell to the Company, which shall be repaid from the Purchase Price.
 - (iv) A list of all assets of the Company, including all cash on hand, all of which shall be assigned to Purchaser at Closing except for receivables/client reserve fund from Universal Guardian Acceptance (which Purchaser agrees shall remain the property of Seller, and any payments received by Purchaser after Closing shall promptly be remitted to Seller);
 - (v) A commitment letter to finance the balance of the Purchase Price at six percent (6%) per annum for up to five (5) years based upon a 240 month amortization schedule, with principal and interest payable monthly, upon Purchaser's closing on the purchase of the membership interests in TLC, LLC, a South Carolina limited liability company; and
- (b) At the closing the Buyer and Seller shall deliver to the Seller:
- (i) Ten and 00/100 Dollars (\$10.00) in Cash;
 - (ii) A Promissory Note in the amount of \$499,990.00 payable to Seller for the balance of the Purchase Price which shall be due and payable upon the Closing (as defined in the Lease Purchase Agreement of even date among Seller, Purchaser and TLC Holdings, LLC; and

(02008370.2)3

(iii) An assignment, hypothecation and pledge agreement of the Interest as collateral for the Promissory Note.

5. **Representations and Warranties by Seller.** Seller represents, warrants and covenants to Purchaser as follows:

(a) **Capitalization and Interest.** The Interest represents 100% of Seller's capital and equity interest in the Company. There are no options, warrants or other rights to subscribe for or purchase any interest in the Company or securities convertible into or exchangeable for, or which otherwise confer on any holder any right to acquire, any interest in the Company, nor are the Company or Seller committed to issue any such option, warrant or other right.

(b) **Title.** Seller is the sole legal and equitable owner of the Interest, and Seller's absolute title thereto is not the subject of any claim or challenge threatened or asserted by any third party. Company has good and marketable title to all of its properties and assets. Further, there are no actions, suits or proceedings, either at law or in equity, or before any commission or administrative authority, or any kind now pending in any manner involving Company, or any of its property, or to the knowledge of Sellers, threatened.

(c) **No Liens or Restrictions.** The Interests are not subject to any security interest, lien, restriction on transfer, "buy-sell" agreement, voting agreement, redemption agreement, option, or other agreements.

(02000370.2)4

(d) **Consents.** No consents, authorizations or approvals of governmental authorities are necessary in order for Seller to perform its obligations pursuant to this Agreement.

(c) **Organization and Operation of Company.** The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of South Carolina, has full corporate power to own its own property and carry on its business as and where it is now being conducted, in compliance with all laws, regulation and orders applicable to its business. The Operating Agreement of Company is in full force and effect and no amendments, modifications, changes or deletions have been made thereto. Further, Company does not control, directly or indirectly, any other corporation, association or business organization. *

(f) **Taxes.** Company has filed with the appropriate governmental agencies all tax returns required to be filed by it prior to the date of this Agreement, and it has paid taxes due by it as reflected on said returns.

6. **Covenants of Seller.** Prior to or pending the closing, the Seller covenants that:

(a) Seller will cause Company to maintain itself at all times as a corporation duly organized, validly existing and in good standing under the laws of the State of South Carolina and to operate in a good and diligent manner and not engage in

{02008370.2}5

any transaction or make any commitment or expenditure other than in the ordinary course of business, except such transactions, commitments and expenditures as shall be required or contemplated by this Agreement or which shall be presented to and approved by Purchaser (such approval not to be unreasonably withheld).

(b) Seller will cause Company to maintain in full force and effect all policies of insurance.

(c) Seller will cause Company to cooperate fully with Purchaser, his counsel, accountants and other representatives in connection with the closing and the consummation of the transaction herein contemplated, and make available to Purchaser, his counsel, accountants and other representatives all pertinent information with respect to the condition, business property, assets and liabilities of Company and afford Purchaser, his counsel, accountants or other representatives access during normal business hours to all the physical properties of the Company.

7. Miscellaneous.

(a) Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, supersedes all prior understandings, commitments and agreements and may be amended only by a writing signed on behalf of each party. There are no agreements, promises, warranties, representations, inducements, covenants or undertakings other than those expressly set forth in this Agreement.

(b) Notices. Any notices or consents required or permitted by this Agreement shall be in writing and shall be deemed delivered if delivered in person or

(02008370.2)6.

if sent by certified mail, postage prepaid, return receipt requested, as following, unless such address is changed by written notice hereunder:

(i) If the Seller:

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

(ii) If to Purchaser:

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

(iii) If to Company:

THE BIG WATER RESORT, LLC
P.O. Box 1257
7860 Wash Davis Road
Summerton, South Carolina 29148

(c) **Assignment.** This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns, but neither this Agreement nor any of the rights, interest or obligations hereunder shall be assigned by either of the parties hereto without

(02008370.2)7

the prior written consent of the other party, nor is this Agreement intended to confer upon any other person except the parties any rights or remedies hereunder.

(d) **Governing Law.** This Agreement shall be construed as to both validity and performance and enforced in accordance with and governed by the laws of the State of South Carolina.

(e) **Captions.** The section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement.

(f) **Further Action.** The parties shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

(g) **Expenses, Etc.** Except as otherwise provided in this Agreement, whether or not the transactions contemplated by this Agreement are consummated, Seller and Purchaser shall pay their own expenses and the fees and expenses of their counsel, financial advisors, accountants and other experts.

(h) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of such counterparts shall together constitute one and

{02008370.2}8

the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories. This Agreement may be executed and delivered by facsimile or other means of electronic communication; any original signatures that are initially delivered by electronic communication shall be physically delivered with reasonable promptness thereafter.

[Signatures on Next Page]

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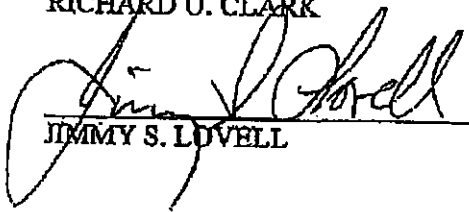
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IN WITNESS WHEREOF, the parties have set their hands hereto on the date first above written.

SELLER:

RICHARD U. CLARK



JIMMY S. LOVELL

JAMES C. THIGPEN

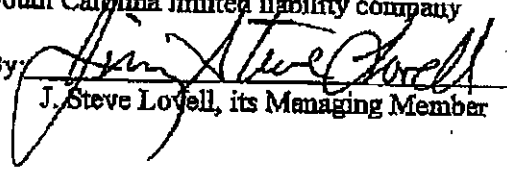
PURCHASER:



M. B. HUDSON

COMPANY:

THE BIG WATER RESORT, LLC, a
South Carolina limited liability company

By: 

J. Steve Lovell, its Managing Member

(02008370.2)10

IN WITNESS WHEREOF, the parties have set their hands hereto on the date first above written.

SELLER:

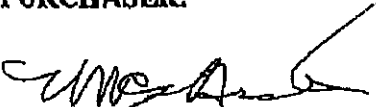
RICHARD U. CLARK

JIMMY S. LOVELL



JAMES C. THIGPEN

PURCHASER:



M. B. HUDSON

COMPANY:

THE BIG WATER RESORT, LLC, a
South Carolina limited liability company

By: _____
J. Steve Lovell, its Managing Member

{0200R370.2} 10

1205

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IN WITNESS WHEREOF, the parties have set their hands hereto on the date first above written.

SELLER:


RICHARD U. CLARK

JIMMY S. LOVELL

JAMES C. THIGPEN

PURCHASER:


M. B. HUDSON

COMPANY:

THE BIG WATER RESORT, LLC, a
South Carolina limited liability company

By: _____
J. Steve Lovell, its Managing Member

C 127

MEMBERSHIP INTEREST PURCHASE AGREEMENT

THIS MEMBERSHIP INTEREST PURCHASE AGREEMENT (the "Agreement") is made and entered into as of the ____ day of December 2010, by and among M. B. HUDSON (referred to herein as "Purchaser"), RICHARD U. CLARK, JIMMY S. LOVELL and JAMES C. THIGPEN (referred to herein collectively "Seller") and THE BIG WATER RESORT, LLC, a South Carolina limited liability company (referred to herein as "Company").

WITNESSETH:

WHEREAS, Seller is all the members of the Company with said membership interest subject to the terms and conditions of that certain Operating Agreement of The Big Water Resort, LLC dated December 1, 2002 and its Amendment dated June 3, 2008 ("Operating Agreement"). All capitalized terms not defined herein shall have those meanings set forth in the Operating Agreement; and

WHEREAS, Seller desires to sell all of their Membership Interest in the Company, which equals One Hundred Percent (100%) of the outstanding membership interests (referred to as the "Interest") to Purchaser, and Purchaser desires to purchase said Interest, being bound to the terms and conditions of the Operating Agreement.

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant, consent and agree as follows:

1. **Sale and Purchase.** Subject to the terms and conditions hereinafter set forth, Seller hereby sells, transfers, assigns and conveys the Interest to Purchaser, and Purchaser, in reliance on the representations made by Seller herein, accepts the sale, transfer, assignment and conveyance of the Interest from Seller in consideration for the

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payment of the purchase Price (as defined below), subject to the terms and conditions set forth herein.

2. **Purchase Price.** The purchase price payable by Purchaser for the Interest is Five Hundred Thousand and 00/100 Dollars (\$500,000.00) ("Purchase Price") which shall be paid as follows at Closing:

(a) Ten and 00/100 Dollars (\$10.00) shall be paid by Purchaser to Seller;

(b) Purchaser shall execute a Promissory Note made payable to Seller for the balance of the Purchase Price, in form acceptable to Seller, which shall be due and payable upon the closing of the purchase of the membership interests in TLC Holdings, LLC, a South Carolina limited liability company also owned by Seller; and

(c) Purchaser shall assign, hypothecate and pledge the Interest to Seller as collateral for the Promissory Note, in form acceptable to Seller.

3. **Closing.** The closing of the sale and purchase shall take place on December 30, 2010 at the Law Office of Andrew F. Tucker, 385 2nd Avenue, Suite 1, Dayton, Tennessee or at such place as the parties may mutually agree.

4. **Actions at the Closing.**

(a) At the closing the Seller shall deliver to the Buyer the following:

(i) Membership Interest certificates for One Hundred percent (100%) of the Interest to be sold by Seller in the Company;

(02008370.2)2

- (ii) A Certificate of Good Standing from the State of South Carolina;
 - (iii) A list of all debts and obligations of the Company and principal balance(s) of said debts and obligations as of the date of Closing, each of which are to be assumed by Purchaser at Closing, except only those loans made by Messrs. Clark and Lovell to the Company, which shall be repaid from the Purchase Price.
 - (iv) A list of all assets of the Company, including all cash on hand, all of which shall be assigned to Purchaser at Closing except for receivables/client reserve fund from Universal Guardian Acceptance (which Purchaser agrees shall remain the property of Seller, and any payments received by Purchaser after Closing shall promptly be remitted to Seller);
 - (v) A commitment letter to finance the balance of the Purchase Price at six percent (6%) per annum for up to five (5) years based upon a 240 month amortization schedule, with principal and interest payable monthly, upon Purchaser's closing on the purchase of the membership interests in TLC, LLC, a South Carolina limited liability company; and
- (b) At the closing the Buyer and Seller shall deliver to the Seller:
- (i) Ten and 00/100 Dollars (\$10.00) in Cash;
 - (ii) A Promissory Note in the amount of \$499,990.00 payable to Seller for the balance of the Purchase Price which shall be due and payable upon the Closing (as defined in the Lease Purchase Agreement of even date among Seller, Purchaser and TLC Holdings, LLC; and

(02008370.2)3

(iii) An assignment, hypothecation and pledge agreement of the Interest as collateral for the Promissory Note.

5. **Representations and Warranties by Seller.** Seller represents, warrants and covenants to Purchaser as follows:

(a) **Capitalization and Interest.** The Interest represents 100% of Seller's capital and equity interest in the Company. There are no options, warrants or other rights to subscribe for or purchase any interest in the Company or securities convertible into or exchangeable for, or which otherwise confer on any holder any right to acquire, any interest in the Company, nor are the Company or Seller committed to issue any such option, warrant or other right.

(b) **Title.** Seller is the sole legal and equitable owner of the Interest, and Seller's absolute title thereto is not the subject of any claim or challenge threatened or asserted by any third party. Company has good and marketable title to all of its properties and assets. Further, there are no actions, suits or proceedings, either at law or in equity, or before any commission or administrative authority, or any kind now pending in any manner involving Company, or any of its property, or to the knowledge of Sellers, threatened.

(c) **No Liens or Restrictions.** The Interests are not subject to any security interest, lien, restriction on transfer, "buy-sell" agreement, voting agreement, redemption agreement, option, or other agreements.

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(d) **Consents.** No consents, authorizations or approvals of governmental authorities are necessary in order for Seller to perform its obligations pursuant to this Agreement.

(e) **Organization and Operation of Company.** The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of South Carolina, has full corporate power to own its own property and carry on its business as and where it is now being conducted, in compliance with all laws, regulation and orders applicable to its business. The Operating Agreement of Company is in full force and effect and no amendments, modifications, changes or deletions have been made thereto. Further, Company does not control, directly or indirectly, any other corporation, association or business organization. *

(f) **Taxes.** Company has filed with the appropriate governmental agencies all tax returns required to be filed by it prior to the date of this Agreement, and it has paid taxes due by it as reflected on said returns.

6. **Covenants of Seller.** Prior to or pending the closing, the Seller covenants that:

(a) Seller will cause Company to maintain itself at all times as a corporation duly organized, validly existing and in good standing under the laws of the State of South Carolina and to operate in a good and diligent manner and not engage in

{02008370.2}5

any transaction or make any commitment or expenditure other than in the ordinary course of business, except such transactions, commitments and expenditures as shall be required or contemplated by this Agreement or which shall be presented to and approved by Purchaser (such approval not to be unreasonably withheld).

(b) Seller will cause Company to maintain in full force and effect all policies of insurance.

(c) Seller will cause Company to cooperate fully with Purchaser, his counsel, accountants and other representatives in connection with the closing and the consummation of the transaction herein contemplated, and make available to Purchaser, his counsel, accountants and other representatives all pertinent information with respect to the condition, business property, assets and liabilities of Company and afford Purchaser, his counsel, accountants or other representatives access during normal business hours to all the physical properties of the Company.

7. Miscellaneous.

(a) Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, supersedes all prior understandings, commitments and agreements and may be amended only by a writing signed on behalf of each party. There are no agreements, promises, warranties, representations, inducements, covenants or undertakings other than those expressly set forth in this Agreement.

(b) Notices. Any notices or consents required or permitted by this Agreement shall be in writing and shall be deemed delivered if delivered in person or

(07008370.2)6.

if sent by certified mail, postage prepaid, return receipt requested, as following, unless such address is changed by written notice hereunder:

(i) If the Seller:

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

(ii) If to Purchaser:

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

(iii) If to Company:

THE BIG WATER RESORT, LLC
P.O. Box 1257
7860 Wash Davis Road
Summerton, South Carolina 29148

(c) **Assignment.** This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns, but neither this Agreement nor any of the rights, interest or obligations hereunder shall be assigned by either of the parties hereto without

(02008370.2)7

the prior written consent of the other party, nor is this Agreement intended to confer upon any other person except the parties any rights or remedies hereunder.

(d) **Governing Law.** This Agreement shall be construed as to both validity and performance and enforced in accordance with and governed by the laws of the State of South Carolina.

(e) **Captions.** The section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement.

(f) **Further Action.** The parties shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

(g) **Expenses, Etc.** Except as otherwise provided in this Agreement, whether or not the transactions contemplated by this Agreement are consummated, Seller and Purchaser shall pay their own expenses and the fees and expenses of their counsel, financial advisors, accountants and other experts.

(h) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of such counterparts shall together constitute one and

{02008370.2}8

the same instrument. This Agreement shall become binding when one or more counterparts herof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories. This Agreement may be executed and delivered by facsimile or other means of electronic communication; any original signatures that are initially delivered by electronic communication shall be physically delivered with reasonable promptness thereafter.

[Signatures on Next Page]

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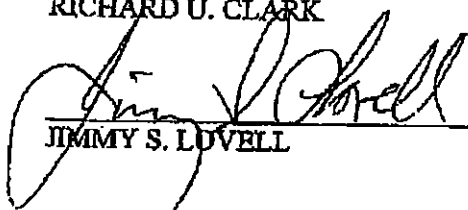
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IN WITNESS WHEREOF, the parties have set their hands hereto on the date first above written.

SELLER:

RICHARD U. CLARK



JIMMY S. LOVELL

JAMES C. THIGPEN

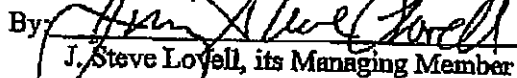
PURCHASER:



M. B. HUDSON

COMPANY:

THE BIG WATER RESORT, LLC, a
South Carolina limited liability company

By 

J. Steve Lovell, its Managing Member

(02008370.2) 10

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IN WITNESS WHEREOF, the parties have set their hands hereto on the date first above written.

SELLER:

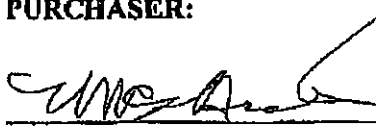
RICHARD U. CLARK

JIMMY S. LOVELL



JAMES C. THIOPEN

PURCHASER:



M. B. HUDSON

COMPANY:

THE BIG WATER RESORT, LLC, a
South Carolina limited liability company

By: _____
J. Steve Lovell, its Managing Member

(0200R370.2) 10

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IN WITNESS WHEREOF, the parties have set their hands hereto on the date first above written.

SELLER:


RICHARD U. CLARK

JIMMY S. LOVELL

JAMES C. THIGPEN

PURCHASER:


M. B. HUDSON

COMPANY:

THE BIG WATER RESORT, LLC, a
South Carolina limited liability company

By: _____
J. Steve Lovell, its Managing Member

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1218

Big Water Resort, LLC
5215 Dingle Pond Rd.
Summerton, SC 29148
Retail Membership Agreement

#1049

D

By this agreement, Big Water Resort (BWR), A South Carolina, LLC, sells and the undersigned purchaser(s) ("Member") purchases a membership which gives the Member the right to use all present and future BWR campground facilities and services subject to membership terms provided herein.

NATURE OF MEMBERSHIP

1. Purpose. This membership grants a right to use campground facilities and services solely for Member's recreation and enjoyment. This membership is neither sold nor purchased as a financial investment. Member acquires no legal or beneficial interest in BWR or its assets and no right or interest in property, contract rights or business of BWR. Member is not entitled to any share of income, gain or distribution of or by BWR. Nor does Member acquire any voting rights in BWR pertaining to its business or any right to participate in BWR's management.
2. Campsite Availability. BWR will use its best efforts to provide Member with a place to camp.
3. Use Privileges. Member may use all of BWR's present and future campground recreation facilities on a day use basis; and on an overnight camping basis for up to seven (7) consecutive nights. There is a seven (7) day waiting period before Member can resume camping overnight camping following any overnight stay. According to the rules and regulations of Big Water Resort a member is also allowed two - fourteen (14) consecutive night visits as well as three - twenty one (21) consecutive night visits during our off peak season - non holiday. 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. To properly manage services, reservations are required for overnight camping. Cabin stay limit is two night to seven nights with a 14 day absence between each stay in the cabins.
4. Family and Guest Use privileges. Membership permits full recreational use by Member's unmarried dependant children under twenty-one (21) years of age, and may from time to time be extended to other family members and guests (s) at the discretion of BWR. Children under the age of 16 must be accompanied by an adult member. Children between the ages of 16-21 are limited to two (2) guests.
5. Other Use privileges. BWR will make available to Member the use of the reciprocal usage programs. These privileges are provided through BWR's licensing agreement. Eligibility for continued and/or renewed membership is subject to BWR's maintaining its licensing agreement. BWR agrees to use its best efforts to maintain its license agreements and affiliations with such reciprocal use programs as may be accepted by BWR and a majority of members. Member is required to pay all fees; and to use these subject to separate rules established by them and participating resorts. BWR may enter into other reciprocal use programs. There is no assurance this agreement or others will remain in effect.
6. Duration of the Membership. The membership is for _____ years, starting on 2/03/06 and ending on Denise of Park Members (OK)
7. Transferability of the Membership. This membership may be transferred _____ times at the cost of \$500 a transfer and at a sales price determined by the current owner. In order for a membership to be transferred it must first be paid for in full to BWR and all dues must be current and the transferee is approved by BWR. When transferred only the remaining years left may be transferred. Example- If you have a 25 year membership and have used 5 years of it, then only the remaining 20 years may be transferred.
8. Ownership Limitations. Member may own only one active membership. This membership may not be assigned, rented, loaned or otherwise alienated, temporarily or permanently, in any manner other than as provided in Section 7 above. Violations of these prohibitions will constitute grounds for termination of membership.
9. Rules Supporting Member Satisfaction. Membership use privileges are subject to Member's observance of rules established by BWR to insure the enjoyment of all Members in their use of BWR campground facilities which rules are hereby incorporated as a part of this agreement. BWR may adopt, amend or repeal such rules provided that BWR deems necessary for the overall betterment of the Resort. The rules hereby incorporated are set forth in The Member Handbook. Member acknowledges he has received a copy of the Member Handbook.
10. BWR Management Commitment to Member. BWR will provide all management of BWR campground facilities. BWR, therefore, retains all management responsibility and authority to carry out this management role. This shall include but not be limited to: the administration of the membership rights provided through this agreement, the maintenance of BWR campground facilities in a manner that allows members the reasonable use and enjoyment of their membership; the payment of all property taxes, insurance, utilities and other ordinary and necessary expenses of BWR campground facility operations, BWR shall also continue to provide the Member's use of the campsites for Member's own recreation vehicle, the utility services provided to those campsites, the Members use of dump stations, recreation center buildings and swimming pools or swimming beaches and areas as may be provided.

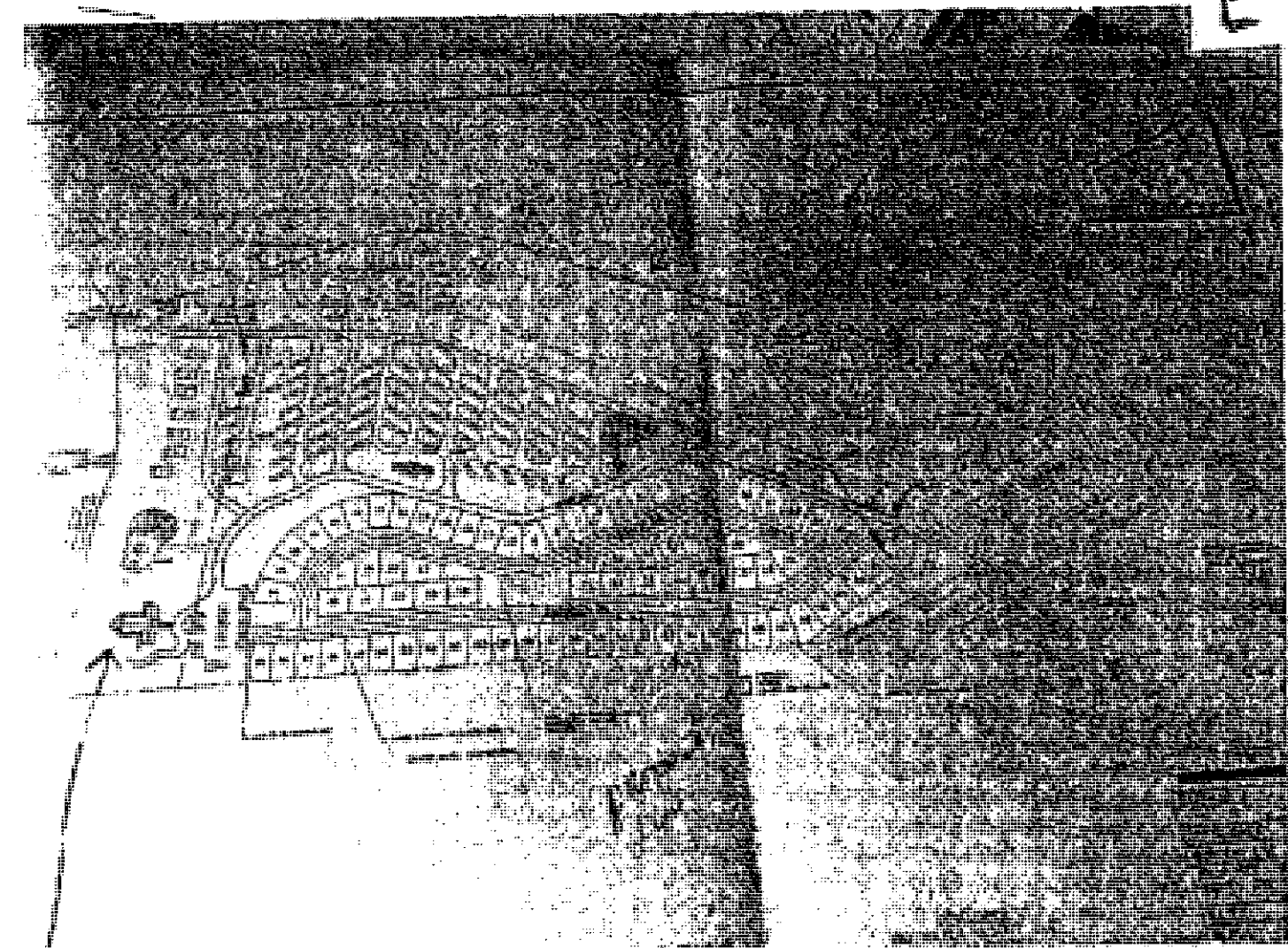
CHARGES FOR MEMBERSHIP AND CONTRACTUAL STANDARDS

11. Initial Fee, Annual Dues and Assessments. The purchase price for this membership shall be the initiation fee, including finance charges if applicable, specified in paragraph 19 of this agreement. In consideration for paying dues, Member shall be entitled to use all facilities maintained for the benefit of BWR Members. At the signing

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IF HAVE
248
LIFETIME



Club
House

yellow indicates first Phase development
inside the campground including
the club house

Judge Norton's Order

argues that the Release and Settlement Agreement should be set aside for public policy reasons. Id. at 21–30.

Although Hutson contends that the alleged fraud was ongoing, he does not point to any alleged fraudulent conduct that took place after December 11, 2013.² There is no dispute that Hutson knew about the “life time” membership agreements when he purchased BWR. See Third-Party Def.’s Obj. 20; see also Third-Party Pls.’ Reply, Ex. 3 (email from Hutson’s real estate agent expressing his concerns about the effect of the life time membership agreements).³ The Release clearly releases all claims against third-party plaintiffs that arose on or prior to December 11, 2013, the date on which third-party plaintiffs filed the Affidavit of Default.

Further, all of Hutson’s claims of fraud relate to the original transaction and not the procurement of the Release. Hutson was represented by an attorney in the underlying state court action and was therefore presumably advised of the application and effect of

² Section 23 of the Settlement Agreement provides that in the event of Hutson’s default, as of the date of the termination of the lease-purchase agreement, “Hutson shall be deemed to have released, forever discharged, and promised never to sue” third-party plaintiffs. Third-Party Pls.’ Mot. Ex. 6, at 7. Judge James’s order provided that, effective upon the filing of the Affidavit of Default on December 11, 2013, third-party plaintiffs remained entitled to the relief set forth in the Settlement Agreement. See Judge James’s Order, Third-Party Pls.’ Mot. Ex. 8, at 9; see also Consent Order, Ex. 7, at 2–3. The order also states that Hutson is deemed to have granted the Release as set forth in the Settlement Agreement. Id. at 10. Therefore, the court uses the date of the filing of the Affidavit of Default as the date of termination to trigger the Release provision.

³ The R&R extensively outlines Hutson’s allegations as set forth in his many filings with this court. See R&R 22–25. The R&R also provides the lengthy basis of Hutson’s knowledge of the underlying allegations of fraud prior to signing the Release, as set forth in his own filings and representations made to the court during various hearings. Id. The court has reviewed the magistrate judge’s representations of the allegations and Hutson’s respective knowledge thereof and finds no error. Because the R&R provides a comprehensive outline of Hutson’s allegations and his knowledge of the alleged fraud, the court does not find it necessary to regurgitate that information in this order and will refer the parties to the R&R for further discussion thereof.

Judge Norton's order

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Command
Paul

the Release. See House v. Aiken Cty. Nat. Bank, 956 F. Supp. 1284, 1291 (D.S.C.) (“[T]hey have failed to produce an affidavit or statement from the attorney who represented them in the former litigation, any documents to show they were not fully informed or advised as to the content of the settlement of that previous litigation, or any other evidence sufficient to raise a genuine factual dispute as to this issue. Plaintiff’s conclusory allegations, without more, are insufficient to provide evidence of fraud or to defeat a properly supported motion for summary judgment.”). Hutson has failed to provide any evidence whatsoever of fraud in the procurement of the Release. Therefore, there is no basis to set aside the Release. See House, 956 F. Supp. at 1292 (“Plaintiffs have failed to provide any evidence, other than their own conclusory allegations, that they were induced to enter into this release because of fraud or misrepresentation.”).

Hutson also makes various public policy arguments for his assertion that the Release should be set aside, including that public policy disfavors releases procured by fraudulent conduct, there was a disparity in bargaining power, and there was no meeting of the minds between the parties. Third-Party Def.’s Obj. 21–28. Again, all of Hutson’s allegations of fraud relate to the original transaction and not the procurement of the Release. Further, as stated above, Hutson was represented by counsel in the state court action. The Settlement Agreement and Release were reviewed by an impartial judge and incorporated into his order. There is absolutely no indication that Hutson held an unfair bargaining position. Further, although Hutson continues to argue that he did not have sufficient knowledge to form a binding contract, all of the evidence on the record points to the contrary. Hutson made the same allegations of third-party plaintiffs’ fraudulent misrepresentations in the state court action that were thereafter released by the Settlement

Judge Norton's Order

F -3

Agreement. See Third-Party Pls.' Mot. Ex. 8 at 2. Therefore, Hutson's public policy arguments also fail.

Thus, the court grants third-party plaintiffs' motion for summary judgment as to Hutson's claims for breach of contract, breach of contract accompanied by fraud, fraud and fraud in the inducement, negligent misrepresentation, constructive fraud, breach of the covenant of good faith and fair dealing, and negligence, recklessness, willfulness, and wantonness.⁴

B. Third-Party Defendant's Motion for Summary Judgment

Hutson seeks summary judgment as to third-party plaintiffs' equitable indemnity claim. ECF No. 228. The magistrate judge recommends that the court deny Hutson's motion for summary judgment because the third-party plaintiffs' alleged failure to record the membership agreements did not cause the damage of which plaintiffs complain.

R&R 30-35. Hutson objects to the magistrate judge's recommendation, arguing that the magistrate judge defines plaintiffs' damages too narrowly.⁵ Third-Party Def.'s Obj. 7.

⁴ The magistrate judge did not find that the Settlement Agreement and Release applied to Hutson's defamation claim because his allegations of defamation occurred after December 11, 2013. R&R 27. However, the R&R recommends that the court grant third-party plaintiffs' motion for summary judgment as to Hutson's defamation claim because "the undisputed evidence reveals that the statements of which Hutson complains were, in fact, true" R&R 30. In his objections, Hutson states that he "would not object to a dismissal without prejudice on the defamation claim as he will pursue it in state court." Third-Party Def.'s Obj. 30. After reviewing the R&R *de novo*, the court agrees with the magistrate judge that third-party plaintiffs are entitled to summary judgment as to Hutson's defamation claim because the alleged defamatory statements are true. Therefore, the court also grants third-party plaintiffs' motion for summary judgment as to Hutson's defamation claim.

⁵ Hutson has an attorney who represents him only on the equitable indemnification claim. His attorney submitted objections on his behalf that relate only to the magistrate judge's recommendation as to the equitable indemnity claim. However, Hutson's objections to the magistrate judge's other recommendations were filed pro se.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)
)
TLC Holdings, LLC,)
)
Plaintiff(s),)
)
Vs.)
)
M. B. Hudson aka M. B. Hutson,)
)
)
)
Defendant.)
)

IN THE MAGISTRATES COURT

THIRD JUDICIAL CIRCUIT
CASE NUMBER: 2011-CV-1410101341

ANSWER TO APPLICATION FOR EJECTMENT
AND
COUNTERCLAIMS

(Jury Trial Demanded)

The Defendant, M. B. Hudson aka M. B. Hutson, does hereby answer the Application for Ejectment of the Plaintiff herein as follows:

FOR A FIRST DEFENSE

1. Each allegation of the Application is denied unless specifically admitted or explained.
2. The Defendant admits that the property that is the subject of the Application for Ejectment is correctly described in the Application.
3. As to the allegation that a landlord / tenant relationship existed between the Plaintiff and Defendant, the Defendant denies that allegation and would respectfully show the Court that the Defendant is in fact a Purchaser under the Lease Purchase Agreement, which was prepared by the Sellers, attached as Exhibit A to the Application for Ejectment and incorporated herein by reference. Throughout that document, Defendant is referred to only as a Purchaser, and not as a Lessee or tenant.
4. While the Defendant has not paid all of the rent payments that have become due, the Defendant denies that grounds for ejectment exist, and thus the relief sought by the Plaintiff should be denied.

FOR A SECOND DEFENSE

5. Each matter set forth above is re-alleged as fully as if set forth herein.
6. The Plaintiff has requested the ejectment of the Defendant from the premises that is the subject of a lease purchase agreement.
7. For the Court to grant the Plaintiff the relief sought would cause the Plaintiff to receive an unjust enrichment.
8. Thus the relief sought by the Plaintiff should be denied.

FOR A THIRD DEFENSE

9. Each matter set forth above is re-alleged as fully as if set forth herein.
10. The Plaintiff has requested the ejectment of the Defendant from the premises that is the subject of a lease purchase agreement.
11. For the Court to grant the Plaintiff the relief sought would cause the Defendant irreparable harm.
12. Thus the relief sought by the Plaintiff should be denied.

FOR A FOURTH DEFENSE

13. Each matter set forth above is re-alleged as fully as if set forth herein.
14. The Plaintiff has requested the ejectment of the Defendant from the premises that is the subject of a lease purchase agreement.
15. This Court has concurrent jurisdiction over the subject matter of this action with the Court of Common Pleas. Because the damages that would be suffered by either party to this action exceed the jurisdiction limits of the Court, and because the Defendant is alleging counterclaims against the Plaintiff, the damages to which exceed those jurisdictional limits, and because the Defendant has filed a Written Undertaking, the Defendant is informed and believes

a. Rental payments paid to the Plaintiff by the Defendant in the amount of about Sixty Thousand and 00/100 (\$60,000.00) Dollars,

b. Additional development costs incurred to date, including hiring attorneys, architects and engineers in the amount of about Thirty Eight Thousand and 00/100 (\$38,000.00) Dollars, plus insurance premiums, employee salaries, and other payments.

c. Almost a year of Purchaser's own time spent on the project during which time Purchaser was unable to attempt to earn funds on any other project or from any other source.

d. In addition, Hudson should be entitled to recover punitive damages from the Seller.

36. The total of these items exceed the jurisdictional limits of the Magistrate's Court, and the case should be dismissed.

FOR A TENTH DEFENSE AND COUNTERCLAIM

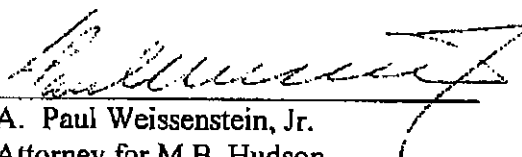
37. Each matter set forth above is realleged as fully as if set forth herein.

38. The property that is the subject of this action is commonly known as the Big Water Resort. It is a resort property with about six hundred (600) members who are members of the general public, and who bring guests to the property. The development and use of the property affects the public interest. Hudson has been damaged by the acts or practices of the Seller, and those acts or practices have affected the public interest in that the conduct by the Seller is capable of repetition.

39. Hudson and the Seller entered into a Lease Purchase Agreement and Hudson relied on representations made by the Seller regarding the condition of the property at the time the agreement was negotiated and prior to and subsequent to its execution. Seller made misrepresentations to the Purchaser or otherwise concealed relevant and material statements of

facts regarding the condition, usefulness, and ability to develop the property. The concealment of those facts constitute unfair or deceptive acts or practices in the conduct of trade or commerce. Hudson has suffered damages as set forth above, and is entitled to recover for those damages as well as recover treble damages and attorney's fees, all of which exceed the jurisdictional limits of the Magistrate's Court, and the case should be dismissed.

WHEREFORE having answered the Application for Ejectment in this matter, Hudson prays that the Court deny jurisdiction and dismiss the case, on the grounds set forth above including the grounds that the title to the property is in question, that the Defendant has filed a Written Undertaking, and that counterclaims by the Defendant in the original ejection action could result in damages in excess of the jurisdictional limits of the Magistrate's Court, and that the Defendant is entitled to judgment against the Plaintiff for the amounts set forth herein, and that the Defendant is entitled to 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
November 9, 2011

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.

SETTLEMENT AGREEMENT

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

4/13/12

Plaintiff, TLC Holdings, LLC, ("Plaintiff", "TLC" or "Landlord"), by and through its undersigned attorneys, and Defendant, M.B. Hudson a/k/a M.B. Hutson ("Defendant", "Hudson", or "Tenant"), by and through his undersigned attorney, hereby agree to a settlement of the above-captioned litigation on the following terms, effective as of March 30, 2012:

1. Reference is made to that certain Lease Purchase Agreement (the "Lease" or the "Agreement") dated December 15, 2010, by and among Landlord, Tenant, Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen for property located in Clarendon County, South Carolina commonly known as the Big Water Resort (the "Premises" or the "Property"). Capitalized terms used in this Settlement Agreement without definition have the meaning given such terms in the Lease.

2. This Settlement Agreement shall be incorporated into a Consent Order (the "Consent Order") entered in the above-referenced case (the "Litigation"). Although Richard U. Clark, Jimmy S. Lovell and James C. Thigpen are parties to this Settlement Agreement by virtue of being parties to the Agreement, and are named as Third Party Defendants in the Litigation, they have not been served with pleadings in the Litigation and shall not be deemed to have appeared in the Litigation by their execution of this Settlement Agreement. This Settlement Agreement shall be binding upon all of the

4/11/12 hes Juck v. C. due ~~all~~ ^{fraudulent} judgment set aside
undersigned parties even though Richard U. Clark, Jimmy S. Lovell and James C. Thigpen have not appeared in the Litigation and are not parties to the Consent Order.

3. Plaintiff and Defendant hereby agree that the arrearage due by Tenant under the Lease totals \$199,969.19 as of March 31, 2012 (the "Arrearage"). The parties acknowledge the Arrearage includes late fees but not interest or Plaintiff's legal fees, which Plaintiff agrees not to include in the Arrearage.

4. Pursuant to the Consent Order, in the event that Mr. Hudson fails to comply with the terms of this Settlement Agreement, unless such failure is a direct and proximate result of TLC's failure to perform an action expressly required of it in this Settlement Agreement, time being of the essence, then the Plaintiff is entitled to the following immediate relief, without further order of the court or notice to Defendant or his attorney: (a) termination of the Agreement, (b) cancelation of the lis pendens filed by Hudson in this action, (c) immediate vacation of the Property by Mr. Hudson except for his personal residence, which shall be vacated within 15 days, enforceable by the Clarendon County sheriff; and (d) the provisions of Section 23 shall be effective. Prior to any such default by Hudson hereunder, the parties acknowledge that the Lease remains in full force and effect in accordance with its terms, as modified by this Settlement Agreement, and during the Primary Term (as may be extended as provided herein), Hudson shall have full possession of the Property in accordance with, and subject to, the terms of the Lease as modified by this Settlement Agreement.

5. Upon entry of the Consent Order, and the preparation of a proposed subdivision plat by Hudson of a portion of the Premises substantially as shown on Exhibit "A" attached hereto, Hudson shall present the proposed subdivision plat to TLC for approval, which shall not be unreasonably withheld. Within five (5) business days after receipt of the proposed Qualified Plat (as defined herein), TLC shall either approve the same or provide Hudson with specific comments thereto. A "Qualified Plat" is a proposed subdivision plat of a portion of the Premises substantially as shown on Exhibit "A" attached hereto, which is prepared by a registered South Carolina land surveyor, and which meets the minimum standards for the practice of land surveying under South Carolina law. The Approval Deadline (as defined below) shall be extended day-for-day for each day beyond such five (5) business day period until TLC provides Hudson with the foregoing approval or comments. Within five (5) business days following receipt of TLC's comments to a Qualified Plat, Hudson shall cause his surveyor to revise the Qualified Plat to address TLC's comments, and resubmit the revised Qualified Plat. If the revised Qualified Plat incorporates TLC's comments, then the Approval Deadline shall be extended day-for-day for each day after the revised Qualified Plat is presented to TLC until TLC either approves the same or provides additional comments thereto to Hudson, which shall be incorporated into the proposed subdivision plat; provided, however, that in no event shall the extension of the Approval Deadline pursuant to this sentence exceed thirty (30) days for any reason. Upon TLC's approval of a proposed subdivision plat, TLC would provide a letter to the Clarendon County Planning Commission, Attn: David Epperson, requesting that the Clarendon County Planning Commission approve the subdivision of the Premises into not less than two (2) adjacent and unimproved acres of the Property, and the further subdivision of such acres into

Handwritten: Draft approved for submission

ELECTRONICALLY FILED 2020 Oct 14 4:16 PM RICHMOND - COMMONWEALTHS - CASE#2020CP4003810

Handwritten: [Signature]

smaller individual lots, all of which must be contiguous. In addition, by April 3, 2012, TLC's attorney shall write the Clarendon County Planning Commission, Attn: David Epperson, and advise it that, while TLC is reserving its rights under this Settlement Agreement to approve any draft subdivision plat prior to its formal submission to the Planning Commission for consideration and approval - and advising the Planning Commission that no such subdivision plat should be considered by the Planning Commission unless accompanied by a letter from TLC or its counsel approving such proposed plat - TLC requests that Mr. Hudson and his professionals be permitted to consult with Clarendon County officials in conjunction with the preparation of a proposed subdivision for consideration by TLC (and, if approved by TLC, formal submission to the Planning Commission for consideration). Hudson may present alternative proposed subdivision plats to TLC for consideration. Mr. Hudson will pay for the survey(s) and all other expenses necessary to obtain all Approvals (as herein defined). Mr. Hudson will have until July 31, 2012 (as may be extended as provided herein, the "Approval Deadline") to obtain the Approvals (as defined herein). Mr. Hudson will have the right to extend the Approval Deadline for two (2) periods of thirty (30) days each (each, an "Approval Extension") if, prior to the then-applicable Approval Deadline, Mr. Hudson delivers to TLC written notice of his exercise of an Approval Extension, together with payment, by wire transfer, of \$8,000, none of which will be applied to the Purchase Price, but one one-half of which will be applied to the Arrearage, with the remainder not applicable to either the Purchase Price or the Arrearage but instead in consideration of the extension of the Approval Deadline.

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6. Once the Clarendon County Planning Commission and any other governmental agency that is required to approve the development of the subdivision of the Property, including appraisals, and bonding of water and sewer installation, grants its approval of the subdivision plat in full and complete so that same can be recorded (the "Approvals"), then Mr. Hudson will have fifteen (15) days to close (the "Closing Deadline") upon his purchase of not less than two (2) acres of the Property pursuant to the approved subdivision plat (such closing being referred to herein as the "Initial Closing", with the portion of the Property being purchased by Hudson at the Initial Closing being referred to herein as the "Initial Closing Property").

Handwritten: Closing DATE 15 days

7. The Purchase Price for the Initial Closing Property, which must be paid in cash, shall be \$145,000.00 per acre, which will be applied to the Purchase Price under the Agreement.

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8. THE PARTIES ACKNOWLEDGE THAT THIS SETTLEMENT AGREEMENT IS NOT CONTINGENT UPON HUDSON'S RECEIPT OF THE APPROVALS.

Handwritten: not contingent upon approvals

9. At or before the Initial Closing, Mr. Hudson will provide to TLC a written statement from the realtor (Susan Stroman) that she is cancelling her commission contract with TLC and that, in lieu thereof, she will be paid by Mr. Hudson for her commissions for the sale(s) of portions of the Property pursuant to the Agreement as modified by this Settlement Agreement, both with respect to interim sales of acreage, such as the Initial Closing, and the ultimate purchase of the entire Property (the "Stroman Evidence"). In

Handwritten: SUSAN STROMAN

other words, whatever commission Susan Stroman or her company would be entitled to under the Agreement shall be owing by Mr. Hudson, not TLC, and the Purchase Price to TLC is net of any such commissions (and the Purchase Price owing by Hudson shall be in addition to the commission owing to Stroman or her company). Absent the Stroman Evidence prior to the Initial Closing, TLC shall not be obligated to close, and Mr. Hudson shall be in default of this Settlement Agreement.

10. At the Initial Closing, in addition to the \$145,000 per acre release price which will apply to the Purchase Price, Mr. Hudson will pay to TLC, in cash, the following (together, the "Additional Initial Closing Payments"): (a) the sum of \$140,000.00, to be applied by TLC towards the Arrearage, unless the Initial Closing Property exceeds eight (8) acres, in which case the Arrearage shall be paid in full at the Initial Closing; and (b) the Arreared Additional Rent (as defined herein). The Additional Initial Closing Payments will not be applied to the Purchase Price, and are a material component of this Settlement Agreement, without which TLC shall not be obligated to close upon the sale of such acreage to Mr. Hudson, who would then be in default. However it is anticipated that the Additional Initial Closing Payments will be paid at the Initial Closing, and not prior thereto.

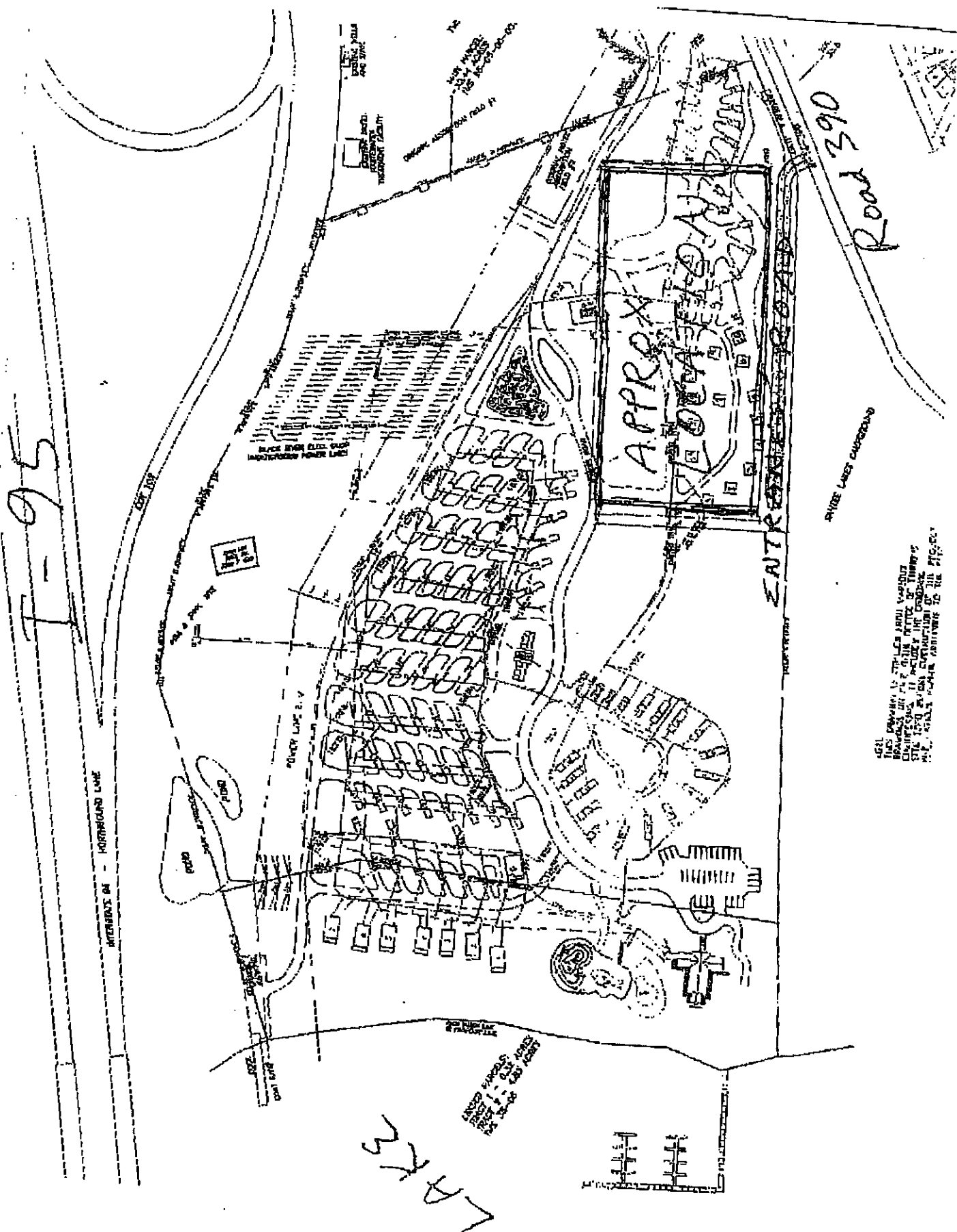
11. If prior to the Closing Deadline, Hudson has any unexercised Approval Extensions (i.e., if he obtained the Approvals prior to having to exercise both of the Approval Extensions), then he shall be permitted to exercise any remaining Approval Extension(s) to extend the Closing Deadline.

12. In addition to the two Approval Extensions described above, Mr. Hudson will have a third (3rd) thirty (30) day extension right, which may be used either to extend the Approval Deadline a third time, or to extend the Closing Deadline (the "Third Extension") if, prior to the then-applicable Approval Deadline (if Hudson elects to use the Third Extension to extend the Approval Deadline a third time), or prior to the Closing Deadline (if Hudson elects to use the Third Extension to extend the Closing Deadline), Mr. Hudson delivers to TLC written notice of his exercise of the Third Extension, together with payment, by wire transfer, of \$8,000, none of which will be applied to the Purchase Price or the Arrearage, and is solely an extension fee. For avoidance of doubt: one-half of the Approval Extension fees are applicable to the Arrearage, but none of the Third Extension fee is applicable to the Arrearage.

13. Beginning April 1, 2012, Hudson shall pay to TLC the Rent for the Premises of \$8,000 per month, in advance on or before the first day of each month during the Term, without notice, demand, deduction, or offset. Payment shall be made to TLC by wire transfer only, pursuant to wire instructions provided by TLC to Hudson. Notwithstanding the foregoing, the April, 2012 payment may be received by TLC not later than 5:00 p.m. on April 3, 2012. Rent for all future months shall be payable on or before the first of such month, even if the first day of a calendar month occurs on a weekend or day the banks are closed.

14. Beginning April 1, 2012, in addition to the monthly base rent of \$8,000, Mr. Hudson will also begin to accrue the obligation to pay, each month, the "Estimated

*Effect
relax demand
on me
being able
to close
why would
they want to
delay the
closing
I am
committed
to rent*



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.

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.

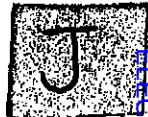
FILED IN THE OFFICE
4/13/12
Clerk of Court
CLARENDON COUNTY, SC

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

Page of Application to Clarendon County
Planning Board



10. Explain in detail what it is you are requesting permission to do. Attach supporting documentation and/or data if necessary or applicable.

Develop a 'single family' subdivision at Big Water resorts

Signature of Applicant: _____

[Handwritten Signature]

Sworn to and subscribed before me this 12 day of April Year 2012

[Handwritten Signature]
Notary Public My Commission Expires Aug 31, 2017

PERFORMANCE ZONE CERTIFICATE

Clarendon County Planning Commission Hearing Date: _____

Upon the basis of the above application, the statements in which are made a part thereof, The Clarendon County Planning Commission approves the proposed use, in so far as all other applicable requirements of the Clarendon County Unified Development Code, Ordinance 2011-05, are adhered to.

Chairman, Clarendon County Planning Commission

This certificate shall expire 365 days from the Planning Commission Hearing Date unless a Use or Building Permit has been issued for the approved use. This certificate neither implies nor authorizes the commencement of construction without the issuance of a Building Permit.

Application Denied*

Reason for Denial:

Chairman, Clarendon County Planning Commission

*Applicant may not reapply for the same use with 365 days of the above Planning Commission Hearing Date.

***Revised September 2011

Page 2 of 2

1234

Hardee_073

Clark depo. No
3-18-15 lease

Page 77

1 say.

2 A. I can wait. Whatever you want me to do.

3 Q. Okay. Let's go back to this long-term
4 contractual obligations that Big Water Resort has
5 with these campground members for in some cases two
6 lifetimes. Okay?7 Can you tell me today what the current ages
8 of the members of the LLC, that are now the powers
9 of attorney for the LLC, what your ages are, Mr.
10 Lovell's and Mr. Thigpen's?

11 MR. WILKERSON: Object to the form.

12 A. I can tell you mine.

13 Q. That's fair.

14 A. It's 69.

15 Q. Okay. And Mr. Lovell, and I don't need an
16 exact date or time, roughly how old is he? Is he
17 in his 60s too?

18 A. I'm looking at him now. 67.

19 Q. Okay. Fair enough. And Mr. Thigpen?

20 A. I'm guessing 65.

21 Q. Okay. So you're all in your 60s?

22 A. Yes.

23 Q. And some closer to 70 than others; is that
24 fair?

25 A. I'm close.

1 Q. Okay. What is the long-term plan for
2 meeting any operational shortfalls for Big Water
3 Resort, LLC, in the event of any of your deaths?

4 MR. WILKERSON: Object to the form.

5 A. I suppose that will be the responsibility of
6 my heirs.

7 Q. Is there any --

8 A. And Mr. Lovell's heirs, and Mr. Thigpen's
9 heirs.10 Q. Is there any contract, guarantee, any legal
11 document in place whatsoever between Big Water
12 Resort, LLC, and yourself, Mr. Thigpen and Mr.
13 Lovell requiring your estates to fulfill those
14 contractual obligations?

15 A. No.

16 Q. Did Big Water Resort, LLC, ever communicate
17 with any third parties, consultants, anyone else to
18 evaluate these long-term contractual liabilities,
19 or to put in place provisions to ensure that they
20 could be fulfilled?

21 A. No.

22 Q. Change directions again. Let's talk about
23 the real property that the campground is situated
24 on. Would you agree on behalf of the LLC that
25 access to the campground property would be integral1 for the LLC to be able to fulfill its contractual
2 obligations?

3 A. That's correct.

4 Q. What legal right today does Big Water
5 Resort, LLC, have to access the real property?

6 A. Are you talking about Big Water Resort, LLC?

7 Q. Yes.

8 A. Or the members of the Big Water Resort, LLC?

9 Q. I'm talking about the LLC that has the
10 contractual obligations to the campground members.11 A. It has the right as a third-party
12 beneficiary to the lease that TLC Holdings, LLC,
13 has with Sandy Shores, LLC.14 Q. Was there ever a written lease agreement
15 between TLC Holdings, LLC, and Big Water Resort,
16 LLC, from 2003 to 2010?

17 A. Yes.

18 Q. Where is that lease?

19 A. I don't know.

20 Q. What efforts have been made to locate the
21 lease?

22 MR. WILKERSON: That's L.

23 A. We contacted the following individuals.

24 Q. Okay.

25 A. John Usry, he was CPA handling the books,

1 and asked him did he have a copy of the lease and
2 he said no. But he said that if he had been given
3 that lease prior to 2004 he wouldn't have it
4 because his office burned in late 2003.

5 Q. Okay.

6 A. Kathy Clark who did the books -- or not the
7 books, but the tax accountant for TLC Holdings,
8 LLC, does not have a copy.9 Lisa Baxley, who was the office manager, she
10 does not have a copy. She says she remembers the
11 lease and she used the lease to book those payments
12 on the Big Water Resort, the ones you say that
13 never were booked, she used those to book those
14 payments. And she says it would have been filed,
15 that lease would have been filed in the filing
16 offices of Big Water Resort, LLC, along with the
17 other files.18 There was a search conducted in the personal
19 files of myself, Mr. Thigpen, Mr. Lovell. We
20 didn't find the files in any of those files -- we
21 didn't find the lease in any of those files.22 And we searched -- you've got to understand
23 Mr. Hutson had stewardship of this lease from
24 December 30th, 2010, until sometime late March when
25 he said he took those files to you. So he had

1235

Seller's ages

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 is 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



Reply all | ▾ Delete Junk | ▾ ...

Fwd: Hutson vs. Weissenstein. Me requesting help from Paul



Hutson <hutson4444@gmail.com>

Today, 12:29 PM

ods06535cpc ▾

Reply all | ▾

Inbox

This item will expire in 30 days. To keep this item longer, apply a different label.

Label: 30 days Delete CPC mailbox (1 month) Expires: 9/19/2018 12:29 PM

Begin forwarded message:

From: Hutson <hutson4444@gmail.com>

Date: August 7, 2018 at 6:19:09 AM EDT

To: OFFICE MAX OB <ODS06535CPC@officedepot.com>

Subject: Fwd: Hutson vs. Weissenstein. Me requesting help from Paul

Begin forwarded message:

From: Hutson <hutson4444@gmail.com>

Date: August 7, 2018 at 6:18:01 AM EDT

To: Steve Kropski <steve.kropski@earhartoverstreet.com>

Cc: steve@earhartoverstreet.com

Subject: Re: Hutson vs. Weissenstein. Me requesting help from Paul

On Feb 10, 2017, at 2:13 PM, Steve Kropski
<steve.kropski@earhartoverstreet.com> wrote:

Good afternoon Mr. Hutson,

1237

Reply all | Delete | Junk | ...

I do not have an offer to present at this time. I have relayed your request to our folks, and will present an offer to you if I am authorized to do so.

Steven R. Kropski

Attorney

Direct 843 972 9404

PO Box 22528, Charleston, SC 29413

-----Original Message-----

From: hutson4444@gmail.com [mailto:hutson4444@gmail.com]

Sent: Friday, February 10, 2017 8:52 AM

To: steve@earhartoverstreet.com

Subject: Hutson vs. Weissenstein

Good morning Steve. I wish to remind you that I have stressed the importance of Paul Weissenstein (my attorney who I paid) come to my aid since he was honest enough to admit that he had simply over looked the real situation and what he had caused.

Paul was honest enough to apologize for his conduct. Your intentional

continuous blocking my ability to have conversation with my prior attorney

1238

M₃

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 Reply all |   Delete Junk |  ...

I again ask and stress the need to resolve this situation immediately
for

the future of Paul is merely going to become far more complex if you
don't

resolve this. Please call me to work out something now.

Respectfully,

Hutson

803.308.2714

1239

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

2
14

ELECTRONICALLY FILED - 2020 Oct 14 4:16 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

WILLIAM REED, ET AL.,

PLAINTIFFS

VS.

BIG WATER RESORT, LLC, ET AL.,

DEFENDANTS

C/A NO.: 2:14-1583-DCN-WWD

TLC HOLDINGS, LLC, ET AL.,

THIRD-PARTY PLAINTIFFS,

VS.

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

THIRD-PARTY DEFENDANT

**MOTION TO HAVE THIRD PARTY
DEFENDANT'S DEPOSITION TAKEN
IN FEBRUARY 2014 OR SOONER
SUPPRESSED**

COMES NOW THIRD PARTY DEFENDANT WHO STATES THE FOLLOWING: On or about February, 2014 the Third Party Defendants took my deposition regarding the matters that are the subject of this law ^{suit} suite. At the time my deposition was taken I was not aware of the serious breach of ethics and fraud to which Third Party Defendant had been subjected. My answers to questions at that deposition were based upon a limited and inaccurate set of facts. This was due to the non-disclosure and false disclosure of third-party defendant and their attorneys. Since obtaining discovery in this case my responses to most if not all of the questions Third Party Defendant was asked would be changed by my now fuller and more accurate understanding of the situation. Fairness requires that the previous deposition be stricken from the record. The prejudice that Third Party Defendant would experience should the use of the deposition be

1240

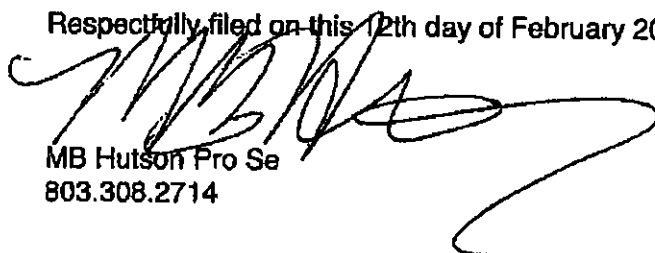
allowed would far outweigh any probative value to a fair understanding of the facts and circumstances of this case. There have been many filings demonstrating the newly discovered evidence that has greatly impacted my awareness of the activities that were hidden from me that limited my ability to defend this case. In the interest of justice and fair play my prior deposition must not be a part of this case going forward.

An earlier version of the same type of Motion was filed months ago by Third Party Defendant but Defendant did not have all evidence as has been submitted by depositions and production of documents recently proving fraud, deception, conspiracy and wrongful actions taken by TLC, Richard Clark, James Lovell, James Thigpen and their attorneys. The earlier motion was ruled by a short term third Honorable Judge being neither the Honorable Judge Norton nor the Honorable Judge Baker and denied this motion based on "having to do with another case" therefore was denied. TLC and it's owners and attorneys fully understood the fraud involved in that 2014 deposition.

Turner Padgett and TLC plan to use and have used this fraudulent 2014 deposition taken from another case to use against Third Party Defendant which is and has been unfair as they well know. Third Party Defendant would like to remind the Honorable Court that 99 percent of all evidence and proof comes from Richard Clark, James Lovell and Jim Thigpen's depositions and or documentation prepared by TLC or their attorneys and is solid proof.

THEREFORE, Third Party Defendant prays to the Honorable Court that the entire 2014 deposition taken in late January or February be permanently suppressed and not useable for any reason.

Respectfully filed on this 12th day of February 2016



MB Hutson Pro Se
803.308.2714

1241



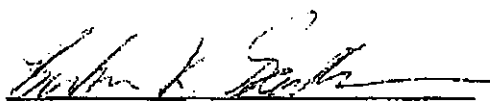
STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS

AFFIDAVIT OF BONHAM K. GARDNER

1. My name is Bonham K. Gardner. I am a licensed real estate agent and a certified residential appraisal. A copy of my resume is attached to this Affidavit.
2. I was hired by M.B. Hutson to determine whether he has added value to the Big Water Resort development.
3. I considered the following information in developing my opinions:
 - a. Interview of Mr. Hutson.
 - b. Review of public records.
 - c. Telephone interviews with county officials and former members of the Big Water Resort development.
 - d. Review of letters from government offices.
 - e. Review of the engineering plans for the development.
 - f. Site visit and inspection.
4. My opinions are also based on my knowledge, experience, and training.
5. In my professional opinion, Mr. Hutson has added significant value to the Big Water Resort development. Specifically,
 - a. He was able to lift the water and sewer moratorium that had been in place on the system that services this development. The development value of the Big Water Resort is non-existence without it. However, with the water and sewer moratorium lifted, the development value is substantial.
 - b. He was able to bring a viable restaurant to the development.
 - c. He was able to change the membership structure for the development, which provides a revenue stream that was not in existence before his arrival.
6. I have prepared a written report dated February 27, 2014. It is attached to this Affidavit and I am incorporating everything stated therein into this Affidavit.
7. I am a member of the Clarendon County Planning Commission Board of Appeals. I have served in that capacity for approximately ten years.

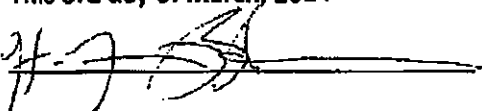
8. Based on my education, training, and experience, combined with my knowledge of the local residential market, the Big Water Resort development is a viable project that would be a successful venture once the necessary approvals are in place.



Bonham K. Gardner

SWORN TO AND SUBSCRIBED BEFORE ME

This 3rd day of March, 2014



Notary Public for South Carolina

My Commission Expires: 7/10/22

BONHAM K. GARDNER

P.O. Box 303
Manning, SC 29102
Phone (803) 435 8679

February 27, 2014

Mr. Mr. M.B. Hudson
Big Water Resort, LLC
5215 Dingle Pond Rd.
Summerton, South Carolina 29149

Re: Real Estate Consultation of proposed & existing development.

Dear Mr. Hudson:

At your request, have prepared a report for you explaining the existing development and proposed developments for the purpose determining the economic impact and equitable interest of said property. I am a SC Certified Residential Appraiser and SC Licensed Real Estate Agent. This is not an appraisal and I am not representing myself as an appraiser. I am representing this report as a Real Estate Professional with knowledge of the subjects market with respect to residential development.

I was engaged by Mr. M.B. Hudson to examine all aspects pertinent to this developments new creation of economic growth and market development since Mr. Hudson took control in December of 2010. I was asked to do this to assist Mr. Hudson and his Legal Council to determine if an Equitable Interest exist for the property with Mr. Hudson as the owner which is the subject of this report. I have been informed that my findings are to be used as evidence for a legal proceeding set for March of 2014.

The opinion of my findings have been developed by reviewing a purchase agreement for the membership of Big Water Resort, LLC. I inspected a development in Summerton, SC 29148, known as Big Water Resort. I reviewed the current tax assessments and recorded records available via Clarendon County public records pertaining to TLC Holdings, LLC and Big Water Resort, LLC. I have reviewed engineered plans of proposed development of the existing Big Water Resort. I have talked with local planning and municipal councils to get an understanding of the what is involved to reach a final approval of said development. I have researched data of surrounding properties and talked with colleagues with knowledge of similar developments. Results of my findings are as follows;

Upon reviewing all of the documentation that was provided to me and the additional data I gathered via public records. I have reached to conclusion that in order for Mr. Hudson to have an Equitable Interest in this property, in my opinion there would have to be several elements to take place after the execution of the contract. Mr. Hudson needs to show evidence that fee simple estate can be obtained unencumbered. 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.

Based on the documents that I have reviewed one key factor to the approval of the proposed development was that water and sewer must be available to this property. Although water and sewer runs adjacent the property it is not available to property owners due to a moratorium that is in place by the Town of Summerton. As a direct result of Mr. Hudson's efforts the moratorium has been lifted for Big Water Resort, subject to 4 items that will have to be done to get final approval from Clarendon County for the subdivision of the planed development. It is my opinion that the fact that water and sewer is available to this development creates stability to the project and has increased the marketability of Big Water Resort, as well given the project another source of significant income to be derived as a result the sale of these proposed lots and cabins. How can one value the equity this aspect of the approval process creates? The project would not move to any further with out water and sewer being available, therefore the project would not exist.

Hypothetically, to determine the value of this development based on the proposed plans you would have to set an existing land value. For this Hypothetical example take the land values of the current assessments of the two parcels to be included in the proposed development. Clarendon County 2013 assessment records indicate \$29,000 per acre as if vacant. Now take the number proposed lots that will be part of the planed development, based on Clarendon County tax assessors 2013 assessed values of similar sized lots on similar areas of Lake Marion, assessed values range from \$20,000 per lot to \$54,000 per lot. So put a conservative assessment of \$30,000 per lot for the proposed development. Then 90 to 100 lots would have an assessed range of \$2,700,000 to \$3,000,000. So then take 15.5 acres are to be used with Phase I of the Big Water Resort project. Just Phase I of the planed development has increased the assessed value of the project to \$160,000 to \$190,000 per acre. Now subtract the cost of completing the project so that these lots and cabins can be marketed. Based on current estimates of construction of similar projects, \$1,000,000 to 1,500,000 would be needed to bring Phase I to completion. Now an assessed value of \$75,000 to 120,000 per acre as a completed project. So subtract the original assessed value of \$29,000 per acre from a completed projects assessed values of \$75,000 to 120,000 per acre. A hypothetical Equitable Interest could be \$46,000 to \$90,000 per acre. 15.5 acres proposed Phase I would create an Equitable Interest of \$700,000 to \$1,400,000 based on Clarendon County Assessment Values and if the project is brought to completion. I have not made any value conclusions, the values used in this hypothetical scenario are base upon current Clarendon County Assessment values of the current property and assessments of similar lots with respect to size and location.

Upon execution of the purchase agreement the building located waterfront of the property, know as a community center or club house and was available for the resorts members and guest was getting little or no use. Mr. Hudson was able to get the required approvals to convert this building to a functional restaurant. This building is now leased to a Chef/Owner for \$3,000 per month and the lease agreement is performance based. There restaurant is open on Thursday thru Saturday 5:00pm to 10:00pm. It receives 300 to 500 customers per week. I feel the conversion of the restaurant has created additional income for the resort that did not exist when the purchase agreement was executed. To say what amount of Equitable Interest has been created due to the conversion of the building is inconclusive due to the fact that the restaurant has not been open long enough to give creditable income data. However it is my opinion that the restaurant has created value that did not exist previously.

Big Water Resort when established was advertised as a RV/Waterfront resort. Memberships to the resort were sold to individuals for a set fee. Each membership was had a lifetime value to the purchaser and could be transferred. The members were allowed to use the facilities for the life time of the member. Each member was required an annual maintenance fee. This fee was intended to maintain the property. If the members did not pay the annual fee then the membership canceled. At one point it is documented that 700 memberships were sold. The resort was only open to members. Therefore the only income derived was from members dues because the project could not handle additional members. It is my understanding that Mr. Hudson 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. Hudson 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. Hudson and data from past members.

In conclusion it's my opinion that an Equitable Interest does exist for Mr. Hudson based on the findings mentioned above. I give these opinions based on my professional experience as a Licensed Real Estate service provider serving Clarendon County and Lake Marion for the past 18 years. I also recommend that if Mr. Hudson would like a more accurate indication of the true value of the properties mentioned in this report, that he have a appraisal completed of the entire Resort "As Is" and a second appraisal completed subject to completion of proposed development. I have created a file and I have all of the data used to develop my opinions and findings in this file. I'm more that happy to produce these documents upon request.

I certify that I have no interest, present nor contemplated, in this property and that neither the employment to prepare the analysis, nor the compensation is contingent upon the findings of this report. I also certify that the opinions based on the properties that are subject of this report to be uncontaminated, or have any adverse effect, due to hazardous conditions unobserved by the physical inspection of the property.

Respectfully Submitted,


Bonham K. Gardner

2012 12

March ~~31~~ CR # 1066 \$8000

March 19 CR # 1123 \$4000

Feb. 8 CR # 1062 \$2000

17 CR # 1063 \$3000

2 CR # 1061 \$2200

24 CR # 1064 \$2600

Jan. 6 CR # 1035 \$4500

13 CR 1038 \$1600

~~14~~ # 277530 \$1300

18 # 277531 \$1300

March 23 # 1123 3,000

Record
 Check on Miami
 Chambers & TLC
 Holdings from
 Fictum - Father
 Texas - Purchase
 Agreement.

Copies of Wire Transfers Showing Recipient /

4/2 # 000853 \$8,000
 5/15 # 000728 \$5,000
 5/31 # 000821 \$8,000
 7/2 # 000016 \$8,000
 8/1 # 000162 \$8,000
 9/4 # 000193 \$8,000
 10/3 # 000387 \$8,000
 11/8 # 000547 \$8,000
 12/18 000429 \$4,000

1/7 000190 \$4,000
 1/29 000290 \$8,000
 3/26 000755 \$8,000
 4/30 000429 \$8,000
 6/4 000224 \$8,000
 7/8 000136 \$5,000
 7/17 000056 \$3,000
 8/8 000308 \$8,000
 9/17 000190 \$4,000



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Current Folder: Sent

Message List
Message as New

Delete Edit



Forward Forward as Attachment



Reply Reply All

Subject: RE: Big Water Resort

From: pwlaw@ftc-i.net

Date: Sat, March 31, 2012 5:57 pm

To: THarper@wcsr.com

Priority: Normal

Options: View Full Header | View Printable Version | Download this as a file | View Message details
| View as HTML*13 days before Settlement
agreement signed*

Dear Tom,

Mr. Hudson has signed the agreement and same is attached hereto. Please provide us a copy signed by your clients as soon as possible.

I have also attached a proposed letter to be signed by Mr. Hudson per the agreement. I will provide it once I have received the signed agreement from your clients.

Please provide the wiring instructions so that we can send the initial \$8000 payment.

I look forward to receiving the proposed consent order from you soon which I understand will be signed by me and Mr. Hudson as well as by you and your clients.



I trust that this resolves the court hearing scheduled for Wednesday, and I am taking it off my calendar.

Thank you for all of your hard work, especially over the past few days, in preparing the drafts and the final settlement agreement.

I believe that you and I have negotiated a fair and equitable agreement for both our clients that hopefully will make both of them a lot of money over the next two years.



I hope that you have a good rest of the weekend.

Yours very
truly,

A. Paul Weissenstein, Jr.
APWjr/lle

1249

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CLARENDON	)	Civil Action No. 2015-CP-14-0615

TLC Holdings, LLC, Richard Clark, and
Jimmy S. Lovell,

Plaintiffs,

vs.

M. B. Hutson a/k/a M. B. Hudson,

Defendant.

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AS TO
DEFENDANT'S COUNTERCLAIMS**

Plaintiffs TLC Holdings, LLC, Richard Clark, and Jimmy S. Lovell (collectively, "Plaintiffs"), hereby submit this Memorandum in support of their Motion for Summary Judgment as to Defendant's Counterclaims, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

FACTS

This case arises from events related to the Big Water Resort campground ("Big Water"), which is located on the shores of Lake Marion in Clarendon County, South Carolina. Big Water provides campsites, cabins, pools, clubhouse, beach access, boat launch/storage, etc. Big Water began operation in 2003 and memberships were sold from 2003 until sales activities ended in 2010.

Prior to December 31, 2010, the three members of Big Water Resort, LLC,¹ were Richard Clark, Steve Lovell, and James Thigpen. Thigpen served as managing member until June 2008, at which time Steve Lovell became the managing member. In December 2010, Plaintiffs Clark and Lovell, along with Thigpen, sold their membership interests in Big Water Resort, LLC to

¹ Big Water Resort, LLC was the entity that operated the campground.

Grant Third Party Defendant permission to subpoena Paul Weissenstein with a date since he holds a wealth of information supporting the new evidence, as justice could not be served without his full testimony.

Set aside the State Court Judgment for the reasons outlined herein.

Invalidate the Settlement Agreement and subsequent actions on the grounds of fraud.

Rule in favor of Third Party Defendant's Summary Judgment and allow this counterclaim to be heard by a jury as soon as possible.

Grant special consideration to Pro Se, Third Party Defendant, who has been masterfully defrauded and robbed of both time and assets by the shrewdness of Third Party Plaintiffs, as he has no where else to turn for justice.

Respectfully submitted this _____ day of April, 2017

MB Hutson, Pro Se
803 308 2714

cc: John Wilkerson, Atty., Turner Padgett

Frank Gordon, Atty.



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

WILLIAM REED, et al,
PLAINTIFFS
VS.
BIG WATER RESORT, LLC, et al,)
DEFENDANTS

TLC HOLDINGS, LLC, et al,
THIRD-PARTY PLAINTIFFS,
VS.
M.B. HUTSON, A/K/A M.B. HUDSON
THIRD-PARTY DEFENDANT

No.: 2:14-cv-01583-DCN

The Honorable Judge Norton

MEMORANDUM TO SUPPORT
MOTION BASED ON NEW EVIDENCE

RULE 60 b,c,d

DEFENDANT'S MOTION FOR RECONSIDERATION

Third Party Defendant, M B Hutson, Pro Se, respectfully moves this court under Rule 60 b, c, and d of the Federal Rules to alter or amend its judgment entered on May 20, 2016. In support of this motion, Hutson, Pro Se, relies on the accompanying Memorandum and Affidavit. As explained in the accompanying Memorandum, the SC State Court's decision was based on a clear error of fact in that newly discovered evidence (in 2015) which, even with reasonable diligence, could not have been discovered in time to move for a new trial in state court under Rule 59(b/c) which would have resulted in a different defense and outcome at the SC (2012) case that dealt with the Settlement Agreement and subsequent Consent Order by the Honorable Judge George James. For this reason, Defendant Hutson respectfully requests that this motion be granted, and

Prays to the Honorable Court and the Honorable Judge Norton the following:

Allow this motion to be heard in open Court.

Grant Third Party Defendant permission to subpoena Paul Weissenstein with a date since he holds a wealth of information supporting the new evidence, as justice could not be served without his full testimony.

Set aside the State Court Judgment for the reasons outlined herein.

Invalidate the Settlement Agreement and subsequent actions on the grounds of fraud.

Rule in favor of Third Party Defendant's Summary Judgment and allow this counterclaim to be heard by a jury as soon as possible.

Grant special consideration to Pro Se, Third Party Defendant, who has been masterfully defrauded and robbed of both time and assets by the shrewdness of Third Party Plaintiffs, as he has no where else to turn for justice.

Respectfully submitted this _____ day of April, 2017

MB Hutson, Pro Se
803 308 2714

cc: John Wilkerson, Atty., Turner Padgett

Frank Gordon, Atty.

1 Q Was there any sort of due diligence process
2 done by anyone?
3 A We were told by our real estate agent that
4 Mr. Hudson had been working with another agent out
5 there who I know. I should say I know of. And that
6 that agent had had him checked out and he was for
7 real. Richard and I met with Mr. Hudson. He came
8 across as very, very knowledgeable. Very
9 knowledgeable not only about the property but about
10 real estate development and financing and so on. And
11 we were motivated in large part because I told you
12 we were losing 200, \$250,000 a year, plus I
13 personally am involved with numerous businesses that
14 I just don't have time to handle. And we were, we
15 were very willing to work with good terms in order to
16 have someone else take control and manage the
17 property and suffer those losses or turn it around
18 and make those profits.
19 Q I didn't ask you this earlier, Mr. Lovell.
20 Where do you currently reside?
21 A I have a home in Chicago. Well, Burr Ridge,
22 Illinois, and I have a condo in Florida. I split my
23 time.
24 Q Do you consider yourself a citizen of any
25 one of those states?

Page 114

1 A Florida.
2 Q Florida. All right.
3 A I have a home in Williamsburg, Virginia, to,
4 in case you're in the market.
5 MR. PADGET: I believe that's all I've
6 got for you, Mr. Lovell. Thank you for your
7 time today.
8 THE WITNESS: You bet.
9 EXAMINATION BY MR. WOODWARD:
10 Q One more question. Did I hear you correctly
11 that you and Mr. Clark offered one bank or the other
12 a million dollars to be done with this?
13 A We did.
14 Q At one point?
15 A We did.
16 Q Tell me about that.
17 A This was after the discovery of this debt
18 that we didn't know we had, and we got our attorneys
19 involved.
20 Q These guys here?
21 A These guys here. And it was somewhere
22 around, I don't know, August or September of 2008.
23 Is that when this began?
24 Q They can't answer you.
25 A Well, I'm sorry.

1 Q Do the best you can.
2 A I think it was around I think it was August
3 or so of 2008. Mr. Glasner, I think, had gotten
4 involved on the bank's end. And it could have been
5 maybe somewhere -- it was in the last part of 2008.
6 I can't remember if it was before or after the actual
7 foreclosure action was filed, but I think it was
8 before. So it would have put it in that time frame,
9 September or so. And we offered -- the bank came
10 back and said, look, we got this \$200,000 note
11 satisfied, so we recognize that you don't really owe
12 that.
13 Q Who is talking here now?
14 A Glasner. And this is hearsay. You can get
15 these guys to confirm it.
16 Q We have to put Tom on the stand.
17 A It wasn't really Tom. We told Morris to see
18 if they'll take the million dollars that we
19 authorized originally, and he said no.
20 Q Who said no?
21 A Glasner.
22 Q And this was in the latter half of 2008?
23 A This was at the very beginning of all this
24 foreclosure activity. It was, I think, prior to the
25 filing.

Page 116

1 Q Prior to the actual foreclosure being --
2 A Prior to the actual foreclosure filing if my
3 memory is right.
4 Q Any writings communicating this offer or was
5 it all telephonic or do you know?
6 A You would have to ask Morris. Our
7 instructions to Morris were verbal.
8 Q To offer a million?
9 A Right.
10 MR. WOODWARD: Thank you.
11 MR. HARPER: I'm done.
12 (The deposition concluded at 2:32 p.m.)

29 (Pages 113 to 116)

Southeastern Transcript, Inc. (843) 762-2442

Electronically signed by Lynda Bousquet (001-369-759-3178)

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Hardee_092

ELECTRONICALLY FILED - 2020 Oct 14 4:16 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Tim J. Newton

From: Hutson <hutson4444@gmail.com>
Sent: Monday, August 27, 2018 7:04 PM
To: John Wilkerson; Tim J. Newton; fgordon@mgsattorneys.com; Hutson 4072 C
Subject: Notice of Filing to Set Aside Judgements in Common Pleas Court

August 27, 2018

Dear Mr. Wilkerson;

I have decided to file to set aside the existing Settlement Agreement and Consent Order dated and executed on April 3, 2012.

Grounds for setting the Judgements aside will be outlined in my complaint which shall be filed in about 10 days. It is based on Fraud upon the Court.

Once filed, I will need to amend the same and will do so on or before 30 days from date of filing. That amendment will be with the assistant of an attorney.

I plan to have you serve as attorney for TLC Holdings, LLC. Should you have an objection to accepting service, please let me know.

Respectfully,

MB Hutson Pro Se

803 308 2714

Total Control Panel

To: tnewton@murphygrantland.com [Remove](#) this sender from my allow list
From: hutson4444@gmail.com

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Tim J. Newton

From: Hutson <hutson4444@gmail.com>
Sent: Tuesday, August 28, 2018 1:20 PM
To: Thomas L. Harper, Jr.; John Wilkerson; Wayne Byrd; Tim J. Newton; fgordon@mgsattorneys.com; Hutson 4072 C
Subject: NOTICE to Harper.pdf, Turner Padget
Attachments: NOTICE to Harper.pdf; ATT00001.txt

Total Control Panel

[Login](#)

To: tnewton@murphygrantland.com [Remove](#) this sender from my allow list
From: hutson4444@gmail.com

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

August 28, 2018

Dear Thomas Harper;

I am preparing a complaint to set aside the 2012 Settlement Agreement and Consent Order. I am fully aware that my statute is still active.

These items are some of the requirements necessary to set aside a judgement:

The United States Court of Appeals for the Sixth Circuit has set forth five elements of fraud upon the court which consist of conduct:

“1. On the part of an officer of the court; 2. That is directed to the ‘judicial machinery’ itself; 3. That is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth; 4. That is a positive averment or is concealment when one is under a duty to disclose; 5. That deceives the court.”

—Demjanjuk v. Petrovsky, 10 F.3d 338, 348 (6th Cir. 1993).

I acknowledge that I was aware of the long-term, annually renewable memberships. However, I was not aware at the time of the Lease Purchase Agreement (2010) nor the Settlement Agreement and Consent Order (2012) (both of which you penned and co-prosecuted with Wayne Byrd, then CEO of Turner Padgett Graham & Laney P.A. (ref. #2) and that those memberships created clouds to the title of the land which prohibited development of any of the one hundred eight acres. I was purposely misled due to your statements in writing the following:

- a. The Lease Purchase Agreement which you composed on behalf of your client(s), TLC Holdings, LLC, which clearly stated that the Buyer planned to develop private family dwellings on the campground land, and
- b. your written correspondence to the Clarendon County Planning Commission (April 3, 2012) requesting that they view and accept my proposal for the development of a subdivision consisting of approximately 50 percent of the actual campground as shown by a plat.

Additionally, you failed to notice the Big Water Resort’s family membership owners of TLC Holdings, LLC’s intention to sell the property for development and offer them their legal right to attend court and present their claims for the use of the TLC Holdings, LLC’s property on which Big Water Resort operated and issued them individual family contracts for a right to use that property for one to two lifetimes.

As a duly licensed attorney and officer of the court (ref. #1):

- 1. You were aware that the land was contractually obligated to member families for approximately seventy (70) years of “sole” use for their recreation and enjoyment.
- 2. You were aware that the “marketable title” for development purposes became clouded due to the contractual memberships.

3. You were aware and used the Court (by NOT disclosing to the Judge (ref. # 5) that the Consent Order required me, the Buyer, to perform (develop property) which was NOT POSSIBLE due to the defect on the title created by those long term contracts. (Ref. #3)

FURTHERMORE, I have an expert Witness' affidavit stating that the property had defective title for the purpose of development which you and your TLC clients purposely did not disclose thereby creating fraud upon the Court at the time of the Settlement Agreement and Consent Order (which we have already covered as being your work on behalf of the Seller, TLC Holdings, LLC) (ref # 4). This extrinsic fraud was not recognized by me nor my attorney of record at the time, Paul Weissenstein.

Above, there are five (5) items that constitutes Fraud upon the Court. You, TLC and Turner Padgett are all guilty. You and Turner Padgett are officers of the Court (ref. #1). You withheld disclosures that should have been brought to the Court's attention on behalf of the Seller of real property (ref. #4). You wrote the Lease Purchase Agreement and Settlement Agreement and even the Judge's Consent Order of 2012. (Ref. #2). Were it not for your intentional concealment of the facts, the Honorable Judge would NOT have executed an order to perform impossible tasks (ref. #5)

I recommend you notice your insurance company.

Respectfully,

MB Hutson
803-308-2714

cc: The Supreme Court of SC Office of Disciplinary Counsel
John Wilkerson, CEO, Turner Padgett Graham & Laney P.A.
Wayne Byrd, Turner Padgett Graham & Laney P.A.

Tim J. Newton

From: Hutson <hutson4444@gmail.com>
Sent: Monday, October 29, 2018 10:22 PM
To: John Wilkerson; Tim J. Newton; Thomas L. Harper, Jr.; Hutson 4072 C
Subject: Fraud upon the Court 2018.pdf
Attachments: Fraud upon the Court 2018.pdf; ATT00001.txt

Total Control Panel

[Login](#)

To: tnewton@murphygrantland.com [Remove](#) this sender from my allow list
From: hutson4444@gmail.com

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

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

MB Hutson/MB Hudson,
Plaintiff

vs.

Turner Padget Graham & Laney P.A., John
Wilkerson, Wayne Byrd, Carlyle Cromer,
William Johnson and
Womble Carlyle Sandridge & Rice, Thomas
Harper, Charles Summerall, IV and
William Johnson ,
Defendants

IN THE COURT OF COMMON PLEAS

Civil Action No _____

MOTION TO SET ASIDE TWO JUDGEMENTS:

1. **CASE # 2011 – CP – 14 - 00602**JUDGEMENT, TLC Holdings, LLC,
Plaintiff and MB Hutson, Defendant, &2. **CASE # 2015 – CP – 14 - 00615**JUDGEMENT, TLC Holdings, LLC,
Plaintiff and MB Hutson, Defendant,,

AND

**COMPLAINT FOR EXTRINSIC
FRAUD ON THE COURT** (Hereby filed
by MB Hutson against Defendants, on
left).**I. Motion for Relief from Judgment CASE # 2011 – CP – 14 - 00602
Pursuant to South Carolina Rules of Civil Procedure 60(b-4)**

Pursuant to SC Rules of Civil Procedure 60(b-4), Petitioner MB Hutson moves the Court for its Order granting him relief from Court's Judgment (Consent Order) based upon a Settlement Agreement. In particular, the Court ordered that Movant perform certain actions under a contract that was the basis of the consent order and settlement agreement that at the time the order was entered into were legally impossible for the Movant to perform.

This motion is supported by the record herein, and by the memorandum of pro se Movant, immediately following.

**II. Motion for Relief from Judgment CASE # 2015 – CP – 14 - 00615 pursuant to
this independent action as referenced as follows in Rule 60 of the South Carolina
Rules of Civil Procedure Rule 60(b-4):**

"This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for **fraud upon the court.**"

This motion and independent action is supported by the record herein, and by the memorandum of Pro Se Movant, immediately following.

III. DEFINITION OF EXTRINSIC FRAUD UPON THE COURT

The United States Court of Appeals for the Sixth Circuit has delineated five elements of conduct that constitute extrinsic fraud upon the court:

1. "On the part of an officer of the court;"
2. "That is directed to the 'judicial machinery' itself;"
3. "That is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth;"
4. "That is a positive averment or is concealment when one is under a duty to disclose;" and
5. "That deceives the court." ¹

IV. VENUE

WHEREAS MB Hutson/Hudson, hereby referred to as Plaintiff, resides in Orangeburg, South Carolina and Defendants, hereby referred to as Defendants:

- A. Turner Padget Graham & Laney P.A. (firm), John Wilkerson, Wayne Byrd, Carlyle Cromer, William Johnson, and William Johnson of Manning, SC, and
- B. Womble, Carlyle Cromer & Rice (firm), Thomas Harper, Charles Summerall IV,
- C. TLC Holdings, LLC, Steve Lovell and Richard Clark.

Defendant Firms and Attorneys listed under "A" and "B" (above) have real estate and businesses within South Carolina. These Officers of the Court have offices in Charleston, Manning, Myrtle Beach or nearby areas thereof, in eastern South Carolina.

¹ —Demjanjuk v. Petrovsky, 10 F.3d 338, 348 (6th Cir. 1993).

Richard Clark and Steve Lovell, owners of TLC Holdings, LLC, who live outside of South Carolina, conduct business within the State of South Carolina but are not Officers of the Court/attorneys. Hereinafter referred to as Seller.

V. HISTORY

A. Background information directly leading to this case:

1. One hundred eight acres, located on the north side of Lake Marion in South Carolina, was purchased in the early 2000's and developed into a campground with approximately six cabins on a beach strip, and over one hundred campsites with water and electrical connections by Defendants, TLC Holdings, LLC.
2. Slightly over twelve hundred (1,200+) family memberships with annual dues requirements were sold to families as Retail Membership Agreements. These "right to use" memberships, at varying prices, were for various number of years up to one and two "lifetimes". (Exhibits # 1.1 – 1.3).
3. Around 2007-2008, memberships decreased due to forfeiture and non-payment of dues, leaving the owners in a crisis. The business was "losing \$200,000 - \$250,000 a year plus".²
4. Owners called a meeting for January 16, 2009. All three members were present³ at the campground in Summerton, SC. The January 16, 2009, meeting minutes⁴ detailed the owners' deep dilemma, deliberations and decisions:
 - a. "Serious negative cash flows...Capital Calls on the members,"⁵
 - b. "Company could not generate cash to continue the operations"⁶
 - c. "Complete shutdown of operations...Immediate shutdown, Cons: Backlash from those who owned memberships..."⁷
 - d. Sell "Big Water LLC/Lease TLC assets to Buyer. Eliminate responsibility of operations quickly...Reduce expenses...Receive lease income..."⁸

² Lovell (owner/ Managing Member) deposition of 2/16/2011, p. 113, line 12. Exhibit # 3.0

³ Members Meeting Minutes, Exhibit #2.1, par. 1.

⁴ Members Meeting Minutes, Exhibit # 2.1 - 2.3

⁵ Ibid, Exhibit #2.1, par. 2, ll.5-6.

⁶ Ibid, par. 3, ll.2-3.

⁷ Ibid, Item 1.a. ll.4 & 6.

⁸ Ibid, Exhibit #2.2, item 3, ll. 1,3,4,5.

- e. “Explore selling to local or state government”⁹ “Explore tax benefits if assets were given away”¹⁰
 - f. “Action should be taken immediately to exercise option 3 maintaining a buy-back option should a buyer be found.”¹¹
- B.** Buyer/Plaintiff contacted a realtor in the fall of 2010 and visited the campground property on Thanksgiving Day, 2010. In December of 2010, Plaintiff met with Sellers and expressed his interest to purchase and develop that property on Lake Marion. Defendant/Seller agreed and shortly thereafter produced (via their attorney Thomas Harper of Womble, Carlyle, Sandridge & Rice of Charleston, SC) the Lease Purchase Agreement¹² for the land. The Seller/Defendant also required Buyer/Plaintiff to simultaneously purchase and close on the campground business that operated thereon known as Big Water Resort (Membership Interest Purchase Agreement¹³).
- C.** Unknown to Plaintiff was that a title defect existed on the property due to hundreds of 70 year¹⁴ “right to use” Retail Membership Agreements¹⁵, which had been sold by Seller/TLC Holdings, LLC, Richard Clark and Steve Lowell, and Big Water Resort. This was the very property Plaintiff was buying. Defendants were aware that the property had defective title and was undevelopable, yet maintained their silence and withheld this information, from the Buyer/Plaintiff, and even in the courts, failing to provide full disclosure when they were under a Duty to Disclose¹⁶.
- D.** Plaintiff was, therefore, unaware that the seven hundred forty Retail Membership Agreements constituted a title defect on the entire property that would keep him from

⁹ Ibid, Exhibit #2.3, item 5.

¹⁰ Ibid, item 6.

¹¹ Ibid, Par.1, ll.3-4.

¹² Lease Purchase Agreement, Exhibit 3.0

¹³ Membership Interest Purchase Agreement, Exhibit 4.0

¹⁴ “The membership is for ___ years, starting on 2/09/08 and ending on the demise of both members,” (with option:) “Lifetime membership open to add 2nd lifetime for additional \$2,000.00...” --Retail Membership Agreement, Item #6 “Duration” and Item #7 “Transferability” (page one) and ADDENDUM on page two.

¹⁵ “...membership which gives the Member the right to use all present and future BWR campground facilities...right to use campground facilities and services solely for Member’s recreation and enjoyment...”-- Retail Membership Agreement, Introduction through Purpose line one. Exhibit 1.1-1.3

¹⁶

developing the property as planned and outlined in the Lease Purchase Agreement¹⁷ which the Defendants, attorneys for the Seller, composed for the purpose of defrauding the Plaintiff/Buyer and later, the Court. Defendants' misrepresentations leading Plaintiff/Buyer to believe areas of development were possible was supported by the following:

1. published maps¹⁸ (full color) that named various large areas for "Future Development" in the undeveloped areas of the campground, and
 2. by a sketch map in the Settlement Agreement (Exhibit 6.0, page 9) whereon Sellers/Defendants show Seller approved areas for the proposed housing development which overlaid existing campsites.
- E. Due to intentional misrepresentations (as outlined in "D" above), concealments and non-disclosures made by the Defendants, attorneys for the Sellers, the development project was doomed from the start and grossly misled the Plaintiff. Those non-disclosures to the Court and Plaintiff set up Defendant's tactical advantage to coax the Plaintiff, Buyer, into a default on the land contract ***that would place Plaintiff/Buyer, into a defenseless default and wrongful eviction.

VI: COUNTS OF FRAUD UPON THE COURT

The United States Court of Appeals for the Sixth Circuit has delineated five elements of conduct¹⁹ that constitute Extrinsic Fraud Upon the Court:

A. "On the part of an officer of the court;"

Defendants are duly sworn Officers of the Court and full time attorneys, which were employed by TLC Holdings, LLC, or their attorneys to construct and/or to defend fraudulent contracts in SC State Court proceedings for their client/Seller, and Plaintiff /Buyer. Contracts were a scheme to offer an option to purchase and develop 108 acres for \$6M dollars providing that Buyer/Plaintiff, would buy and close on the Big Water Resort (campground business) simultaneously. Both contracts were fraudulent in nature and deliberately structured to cause

¹⁷ "...parties acknowledge that purchaser intends to develop and construct...residential dwelling structures...shall pay thirty-five percent 35% of the gross profits....to the Seller..." Lease Purchase Agreement, Page 3, P2, ll. 1-5.

¹⁸ Published maps (full color), Exhibit "11.0"

¹⁹ Demjanjuk v. Petrovsky, 10 F.3d 338, 348 (6th Cir. 1993).

damage to Buyer/Plaintiff without Plaintiff's knowledge and grossly benefit the Seller. Those contracts framed the Plaintiff into: assuming a non-disclosed \$20M liability to provide camping facilities for over 70+ years to 740 owners of Retail Membership Agreements by the Officers of the Court who were representing TLC Holdings, LLC and its owners.

B. "That is directed to the 'judicial machinery' itself;"

1. Once litigation started in 2011, the Defendants/attorneys structured fraudulent contracts failing to disclose to the Honorable Judge and Court their concealment of the material facts that ALL the land in the contract had defective title that could not be corrected due to the multiplied hundreds of Retail Membership Agreements for the use of ALL that land for multiplied decades. This concealment of critical material facts, as follows:

- (a.) placed the Defendants/Sellers in a great *advantage* legally, and
- (b.) placed the Plaintiff/Buyer in a *disadvantageous* position.

Therefore, Plaintiff/Buyer was NOT heard or properly equipped to present a defense in Court. All Defendant's contracts, including the Settlement Agreement and Consent Order were drafted by Thomas Harper of Womble Carlyle Sandridge & Rice, Defendants²⁰, was executed by the Honorable Judge without that Judge ever realizing nor being told about those critical material facts being harbored and hidden by the Defendant/Attorneys. The Honorable Judge was unaware that he and his court had been victims of Fraud upon the Court by the Defendants. The Plaintiff was ordered to develop property, *all of which* was subject to lifetime use rights, which should have been brought to the Court's Attention, but was concealed by the Officers of the Court. The Defendants/Attorneys placed Extrinsic Fraud upon the Court *intentionally*.

2. Plaintiff did not know about the fraud and neither did his attorney, also an Officer of the Court. The Defendants' finessing of the original Lease Purchase Agreement²¹ and Membership Interest Purchase Agreement²², without disclosing that the Retail Membership Agreements²³, encumbered ALL of the land for Retail Membership Agreement holders was too sophisticated for almost all persons to recognize. When paired with the Settlement Agreement²⁴ and Consent

²⁰ Richard Clark deposition on 3-18-2015, p.87, lines 9-13.

²¹ Lease Purchase Agreement-Exhibit 5.0

²² Membership Interest Purchase Agreement-Exhibit 4.0

²³ Retail Membership Agreements-Exhibits 1.1-1.3

²⁴ Settlement Agreement – Exhibit 6.0

Order²⁵, the concealment of the material fact that ALL the land was non-developable due to a clouded title was simply not decipherable by persons other than the Sellers and their attorneys. When the Judge, also unaware, signed the Consent Order, the deception then became hidden under *Res Judicata*. The Extrinsic Fraud Upon the Court is now obvious and clear.

C. “That is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth;”

1. All attorney/defendants acted deliberately to defraud while they fully understood the false representations, and were willfully blind to the truth in their attempts to adjudicate the rights of those parties not before the Court (namely the owners of the Retail Membership Agreements with decades of “rights to use” the property contracted by the Lease Purchase Agreement to Plaintiff to be developed and sold to individual families for residences). Furthermore, the Defendants acted recklessly with total disregard for that truth by intentionally concealing those real material facts thereby committing Extrinsic Fraud upon the Court. Their deliberate actions were for self-gain and to create a broad advantage for Defendant’s clients while simultaneously creating a great disadvantage to Plaintiff by concealing those material facts:

- a. Retail Membership Agreements clouded the title making development and subdivision of lots impossible legally, and
- b. Retail Membership Agreements clouding of the title made the Lease Purchase Agreement and the Settlement Agreement BOTH null, void and fraudulent, and
- c. Defendants actions blocked the representation of the families holding valid “right to use” agreements (Retail Membership Agreements).

2. The Defendant lawyers’ actions were intentional and Extrinsically Fraudulent upon the Court, willfully blind to the truth, and were in reckless disregard for the truth for their own personal financial gain and to tilt the judicial scales completely in favor of their clients/Sellers.

3. Marketable title means the property can be conveyed without the reasonable probability of litigation by third parties. If and when third parties have special property interests that would

²⁵ Consent Order – Exhibit 7.0

enable them to sue for the enforcement and preservation of their use of the property, that clouds the title. In fact, the Retail Membership Agreement owners *did* sue in Federal Court with a class action suit a few years later to enforce their right to use all the property, and won²⁶.

D. “That is a positive averment or is concealment when one is under a duty to disclose;”

1. Defendants/attorneys/Officers of the Court have a Duty to Disclose material facts. Also, Sellers of real property have a Duty to Disclose. However, the Defendants withheld and deliberately concealed the material facts using the judicial machinery of the court to trap and destroy the Plaintiff from being heard. The Court Order, which required actions prohibited by the title cloud due to hundreds of Retail Membership Agreements also created *res judicata* for the perpetrators, Defendants, to hide their fraud behind. Full disclosure could have easily averted this entire fiasco and gross damages to the Buyer/Plaintiff. The attorneys Wayne Byrd, John Wilkerson, Carlyle Cromer, Thomas Harper, and other attorney Defendants representing TLC Holdings, LLC, (Richard Clark, Steven Lovell) intentionally plotted this fraud upon the State Court and the Federal Court, State and Federal Judges and a SC State Jury. These provable actions to defraud and place Extrinsic Fraud upon the Court have consequences from various agencies including the Courts themselves, and should include the voiding of the State Court’s two fraudulent Judgments, as well as rule for the Plaintiff for the enormous damages.
2. The Affidavit of Mark Hardee, Expert Witness reads, “...there was ample evidence that TLC Holdings, LLC had made numerous misrepresentations and concealed relevant and material statements of fact regarding the usefulness and ability to develop the property”²⁷.
3. These negligent actions perpetrated by the Defendant/Officers of the Court/attorneys for TLC Holdings, LLC along with their self-serving financial motives caused the Defendant/Attorneys to turn away their eyes from their Duty to Disclose facts to the Courts and spawned the negligence of their professional ethics resulting in their placing Extrinsic

²⁶ Federal Court Class Action Lawsuit: 2:14-CV-01583-DCN-WWD

²⁷ Affidavit of Mark Hardee, Attorney at Law –Exhibit # 8.0

Fraud Upon the Courts. These actions served themselves as they gained hundreds of thousands of dollars paid to them by their client(s).

E. “That deceives the court.”²⁸

1. Defendants/attorneys plotted to gain full advantage by *intentionally deceiving the Court*, via withholding material facts from the Honorable Court, as follows:

- a) Intentionally concealing material facts that prevented the SC Court and Judge to demand to hear from those owners of the Retail Membership Agreements that held rights to use the land for multiple decades, and
- b) Intentionally making contractual demands for development that could NEVER be met and ordering a wrongful eviction thereby (due to those hundreds of Retail Membership Agreements which granted those agreement holders use of *all the property*²⁹), and whose rights were confirmed in a 2014 Class Action Federal Lawsuit.

COUNT ONE: Waltzing the Judge into signing a Consent Order that supported the fraudulent Settlement Agreement.

COUNT TWO: Swaying the jury into awarding a \$3.5M judgment while blinding them to the underlying facts, which they had fraudulently masked with the *res judicata* in COUNT ONE, above.

COUNT THREE: Using the fraudulent Consent Order from COUNT ONE to wrongfully evict the Plaintiff with no recourse.

COUNT FOUR: Relying on the fraudulent *res judicata* that the Defendants created in SC State Court and to seek further sanctions on Plaintiff, Defendants sued Buyer/Plaintiff in Federal Court intentionally to access Plaintiff’s insurance coverage monies, making him a Third Party Defendant in the Class Action Federal Court. As Defendants planned, their fraud remained hidden behind that SC Court *res judicata*, thereby Defendant/attorneys nullified Plaintiff’s efforts to be heard and his damages to be met.

²⁸ —Demjanjuk v. Petrovsky, 10 F.3d 338, 348 (6th Cir. 1993).

²⁹ Class Action Lawsuit: 2:14-CV-01583-DCN-WWD

VII. SUMMARY

A. Plaintiff was ordered under the Lease Purchase Agreement and the Settlement Agreement to develop property, ALL OF WHICH was discovered to be subject to lifetime use rights³⁰, which should have been brought to the attention of the SC Court and Buyer/Plaintiff, but was intentionally concealed by the Officers of the Court placing Extrinsic Fraud upon the Court. It is the Plaintiff's position that the Consent Order is therefore invalid because it attempts to adjudicate the rights of parties not before the Court, namely the Retail Membership Agreement owners.

B. The Plaintiff, nor the Plaintiff's attorney, realized that the Plaintiff was being obligated to violate the rights of the Big Water Resort campground members (owners of the Retail Membership Agreements) by developing since TLC never specified exactly which property was subject to the Campground Memberships, nor were those long term leases/agreements recorded at the courthouse in Clarendon County as required by SC Law³¹.

C. It's hard to imagine why TLC Holdings, LLC and it's lawyers should not have advised the Court and Judge that the Big Water Resort Property was undevelopable because it was already obligated to double lifetime memberships as a private club prior to Plaintiff's arrival in December 2010. TLC's attorneys were fully aware that neither Plaintiff's attorney nor Plaintiff recognized that undisclosed issue making it impossible to ever develop anything that was to be sold to the public.

D. That full disclosure could have easily averted the entire fiasco which caused much financial, mental stress, years of trying to defend Plaintiff and his reputation. Wayne Byrd, John Wilkerson, Carlyle Cromer and Thomas Harper for TLC Holdings, LLC, (included Richard Clark, Steven Lovell) intentionally plotted this Extrinsic Fraud upon the State Court

³⁰ 2:14-CV-01583-DCN-WWD (Federal Court Case)

³¹ SC Law Section 27-33-30: "Recordation of Leases" In order to give notice to third persons, any lease OR AGREEMENT(emphasis mine) for the use or occupancy of real estate shall be recorded in the same manner as a deed of real estate. Title 27, Ch. 33.
<http://www.scstatehouse.gov/code/t27c033.php>

and the Federal Court including Federal and State Judges and a State Jury. These provable actions to defraud and place Extrinsic Fraud upon the Court have consequences from various agencies including the Courts themselves as well as Plaintiff for the enormous damages to the Plaintiff.

E. Since Officers of the Courts (TLC Holdings' attorneys) created the Extrinsic Fraud upon the Court that resulted in Plaintiff's inability to present a defense including incurring possible sanctions, orders, evictions and judgments against himself, Extrinsic Fraud on the Court should apply to support the immediate setting aside of the Settlement Agreement and Consent Order. See *Chewning v. Ford Motor Co. m*, 354 s.c. 72, 579 s.e. 2d 605 (2003).

F. Marketable title means the property can be conveyed without the reasonable probability of litigation by third parties. It clouds the title if third parties have special property interests that would enable them to sue for the enforcement and preservation of their use of the property. In fact, the campground members *did sue* to enforce their right to use the property, substantiating that, in fact, the Defendants/Sellers *DID NOT have marketable title* as purported by the Attorney Thomas Harper/author of the Lease Purchase Agreement and Membership Interest Purchase Agreement: "Company has good and marketable title to all of its properties and assets"³² and "Purchaser, in reliance on the representations made by Seller herein, accepts the sale,..."³³,

G. Extrinsic Fraud Upon the Court is against all the integrity that the S.C. Bar stands for. These *multiple* violations clearly defy and diminish the integrity of Officers of the Court and degrade the Honorable Court and Honorable Judges. These are gross offenses that cause the SC Court and Judges to be vulnerable and at the same time distrusting of the Officers in their Courts, the attorneys, who in many cases make much more money if they win, regardless of the methods.

³² page 4, 5-(b), ll.3-4. Exhibit 4.0

³³ Page 1, #1, line 3. Exhibit 4.0

THEREFORE, Based on FOUR COUNTS of Extrinsic Fraud Upon the Court committed by the defendants/officers of the Court/attorneys, and that

- A. there is NO STATUTE of limitations when a party seeks to grant relief from a judgment on the grounds of extrinsic fraud upon the court. Rule 60(b-3&4) SCRCF; as the extrinsic fraud by the attorneys made the judgment void, and
- B. because extrinsic fraud “induces a person not to present a case or deprives a person of the opportunity to be heard, as was in the case in Federal Court where Plaintiff was sued as third party Defendant. Relief is granted for extrinsic fraud...because the fraud prevented a party from fully exhibiting and trying his case...there has never been a real contest before the court on the subject matter of the action³⁴

THEREFORE, in order to secure equitable relief on the basis of fraud, the fraud, being extrinsic³⁵ Plaintiff asks the Court to set aside two (2) Judgments:

- 1) Case Number 2011- CP-14-00602, and
- 2) Case Number 2015-CP-14-00615.

**COMPLAINT AGAINST SAME DEFENDANTS (mentioned again below)
FOR DAMAGES TO THE PLAINTIFF, MB HUTSON
RESULTING FROM THEIR EXTRINSIC FRAUD UPON THE COURT**

v.

**TURNER PADGET GRAHAM & LANEY P.A., JOHN WILKERSON, WAYNE BYRD,
CARLYLE CROMER, WILLIAM JOHNSON**

AND

**WOMBLE CARLYLE SANDRIDGE & RICE, THOMAS HARPER, CHARLES
SUMMERALL, IV, and WILLIAM JOHNSON**

WHEREAS, MB HUTSON, Plaintiff, has alleged and charged the Defendants, indicated above, with committing Extrinsic Fraud Upon The Court. Their actions have inflicted the Plaintiff with

³⁴ Hilton Head Ctr v. South Carolina Pub. Serv. Comm’n, supra 294 S.C. 9,11, 362 S.E.2d 176,177 (1987).

³⁵ Bryan v. Bryan 220 S.C. 164, 66 S.E. 2d 609 (1951).

gross damages, including, but not limited to, serious and irreversible health and financial damages. Therefore, Plaintiff asks for an award from the Honorable Court and Jury for his suffering over seven (7) years of not less than **\$300,000,000.00 (Three Hundred Million Dollars)**.

THEREFORE, Plaintiff prays for the following:

1. The Honorable Court set-aside the two Fraudulent Judgments (2011-CP-14-00602 and 2015-CP-14-00615) based upon Extrinsic Fraud upon The Court and Rule 60-b-4.
2. The Honorable Court allows the over-all case for damages to be presented to a Jury where providence by Jury can deliberate a decision for Plaintiff.
3. Plaintiff asks for a speedy trial.
4. Plaintiff asks for full restitution and punitive damages and such other relief that the court deems appropriate.
5. Plaintiff may amend said Motion and Complaint within 30 days from date of filing.
6. Plaintiff asks for an immediate "stay" preventing any or all Defendants from executing any type of legal proceedings or harassments directly or indirectly against Plaintiff regarding the two fraudulent judgments requested to be set aside.

Respectfully Submitted on this ___th day of _____, 2018

MB Hutson

P.O. Box 2755
Orangeburg, South Carolina 29116
803 308 2714

cc: Tim Newton, Counsel for Penn America Insurance and Torus Insurance Company

A copy has been placed in the US Postal Service on the _____, to:

Tim J. Newton

From: H Hutson <hutson4444@gmail.com>
Sent: Monday, October 22, 2018 3:46 PM
To: Tim J. Newton
Subject: Fwd: John Wilkerson,

----- Forwarded message -----

From: H Hutson <hutson4444@gmail.com>
Date: Mon, Oct 22, 2018 at 3:44 PM
Subject: John Wilkerson,
To: Wilkerson, John S. <JWilkerson@turnerpadget.com>, Hutson 4072 C <hutson4444@gmail.com>

Thank you for your email.

What I have stated is true and I plan to file the complaint to prove it. My purpose is to set aside the Settlement Agreement and Consent Order (filed against me on 4/13/2012) based on fraud upon the Court.)

My statute is good based on Ray v. Ray, and other rulings such as Chewning v. Ford Motor Co. citation 354, S.C. Should the plaintiff's attorney/attorneys withhold, conceal, or intentionally fail to properly disclose to the Court certain material facts that placed the defendant's ability to be heard or defendant's inability to present his case in full (due to the actions of the plaintiff's attorney/s) extrinsic fraud permits a plaintiff to set aside a fraudulent judgement with no statute limitations.

Your firm knew all facts and strategized a plot using the judicial machinery of the Court to gain a tactical advantage over me in 2012. Therefore, your firm and Womble, Carlyle, Sandridge & Rice prevented my ability to present a compelling defense prior to the 4/13/2012 Order. I am convinced that both firms, working in concert, committed fraud upon the Court.

Your recent win in Manning and judgement of \$3.5M against me was the result of your successful fraud upon the Court in 2012. Therefore, your recent win of the \$3.5M judgement is contaminated and fraudulent due to your intentional concealment from 2012. That is taking dirty money, which officers of the Court should not do. There is no statute on extrinsic fraud upon the Court.

I am gathering information with plans to move forward. In the past, I did not understand what had been done to me. The plots, misrepresentation, intentional concealment of material facts with no full disclosure went right over my head. I have suffered greatly.

I read a recent case where an attorney withheld and concealed information allowing himself to get judgement monies from the defendant. Based on his actions of extrinsic fraud upon the Court, he was punished in many different ways including a dismissal of his acquired \$2M judgement.

I plan to have you and others served soon even though I am very aware that you will fight. I am taking other precautions to see that I get a fair trial and get respected as Pro Se. Fraud upon the Court is frowned upon by many watch dogs. I have made no threats but merely truthful and forthright statements. No one is above the law and my actions are about setting aside the Settlement Agreement and Consent order based on Fraud upon the Court. That's my constitutional right.

Res judicata does not prevent my application to set aside the 4/13/12 Judgement. While attempting to set aside a Judgement, I am required to discuss the officers of the Court who created the Fraud upon the Court and their methods and conduct. I am sure that you understand that.

Remember, you can not continue to use *res judicata* as your defense regarding a new and different style of case. Should you feel strong enough to go before the Honorable Judge Norton, I am willing to meet you there or through motions. In addition, I plan to provide Judge Norton a copy of my complaint.

Respectfully,

MB Hutson

On Mon, Oct 22, 2018 at 11:46 AM Wilkerson, John S. <JWilkerson@turnerpadget.com> wrote:

Mr. Hutson,

We have heretofore declined to respond to your threats as to do so may have been construed as giving them some semblance of legitimacy. You have now expanded the audience to which you are spreading your defamatory nonsense and your threats are becoming more specific and provocative. We find the need to remind you and to inform your broader audience that the same allegations that are the bases of your renewed threats were specifically considered and unequivocally rejected by US District Judge David Norton in the attached order granting sanctions against you. We also call your attention to Rule 60(b) of the South Carolina Rules of Civil Procedure. Any filing will be met with an appropriate response seeking all available remedies and sanctions.

John

John S. Wilkerson
Attorney
PO Box 22129 | Charleston, SC 29413
40 Calhoun Street, Suite 200 | Charleston, SC 29401
DD 843-576-2801 | Cell 843-860-4568
jwilkerson@turnerpadget.com
[Bio](#) | [vCard](#) | [Location](#)



From: Hutson [mailto:hutson4444@gmail.com]

Sent: Monday, October 22, 2018 9:41 AM

To: betty.temple@wbd-us.com; Thomas L. Harper, Jr.; Cromer, Carlyle R.; Wilkerson, John S.; Byrd, R. Wayne; tnewton@murphygrantland.com; dfournier@global-indemnity.com; Hutson 4072 C

Subject: Warning

MB Hutson
803 308 2714 Warning

By accepting a dollar from my insurance company based on the Fraudulent method that you obtained the judgement from start to finish, the law firms and attorneys will be merely accepting additional moneys through fraudulent methods, Had the fraud been discovered back in 2012 or sooner, you would never gotten where you are today. This entire fraudulent saga was plotted and carried out to defraud me (MB Hutson) and my insurance companies.

Your conniving to take \$3.5M from my insurance company is fraudulently obtained through a Judgement which masked theft by fraud.

Justice will ultimately prevail. I will serve a copy of a complaint to each Honorable Judge, and Trustee whom you defrauded. They are part of the Court System, and as are you. As officers of the court, you plotted against every one of them via concealment. Your actions are intentional, premeditated and illegal, consequently, Fraud upon the Court.

As lawyers, had you revealed to the Honorable Judge and Jury in Manning, S.C. what fraud was involved and how the agreement and order was requiring the development of land within a time frame that was legally impossible due to unrecorded long term contractual agreements for the exclusive "right to use" creating defective title, we would not be here today.

Therefore, you fraudulently prosecuted me using the machinery of the Court.

Had the Honorable Judge and Jury been told the full circumstances, you would have been thrown out of the Court house and the Jury would have been dismissed in 2012.

As material facts were not disclosed by the attorneys, their licenses to practice law may now be in jeopardy. In other cases, which I will outline in the complaint, attorneys have carried out similar fraudulent actions, and found themselves in a severe legal bind. What you have done is criminal.

Therefore, I am giving you prior notice, that on these grounds you should act expediently and dismiss the \$3.5M judgement.

Respectfully,

MB Hutson

803 308 2714

--
803-308-2714

Total Control Panel

[Login](#)

To: tnewton@murphygrantland.com [Remove](#) this sender from my allow list
From: hutson4444@gmail.com

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

Tim J. Newton

From: Hutson <hutson4444@gmail.com>
Sent: Thursday, November 01, 2018 12:00 PM
To: Tim J. Newton; dfournier@global-indemnity.com; Hutson 4072 C
Subject: Demand for Claim
Attachments: Blank 12.pdf; ATT00001.txt

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To: tnewton@murphygrantland.com [Remove](#) this sender from my allow list
From: hutson4444@gmail.com

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November 1, 2018

REF: TLC Holdings LLC vs. MB Hutson

Dear Penn America;

Under and within your policy it does state that you have a right to settle an outstanding claim without the consent of the insured. You had stated through your attorney that their might not be coverage for the \$3.5M. If there is not good coverage, then Penn America should not be a part to mediation. Since there is coverage, I am hereby filing a claim as outlined below.

However, it does not read that the insurance companies have a right to settle a claim when both companies have been put on notice that extrinsic fraud exist against the Courts, carriers, and myself as your customer and client. More important is the fact that Penn America is grossly aware of the same.

Settling by paying this fraudulent judgement is wrongful and reflects disloyalty to the insured while injuring your insured. I plan to file a claim against Penn America and the umbrella company for it seems the carriers are far more concerned in getting an outstanding off their books than justice.

What you are doing is simply throwing the fraudulent rabbit in the brier bush by settling this claim. It appears that this is a matter also for the Insurance Commission to closely examine.

Prior to my filing a complaint, please accept this letter as my claim and demand for \$500,000.00 dollars based on your actions and violations. I would expect a response **very shortly as to my claim**. If you are willing to pay for a judgement acquired through fraud, then please don't think twice about accepting my real and honest claim demand for my claim is reasonable and just.

Respectfully,

MB Hutson

803 308 2714

Tim J. Newton

From: Hutson <hutson4444@gmail.com>
Sent: Tuesday, November 06, 2018 2:49 PM
To: dfournier@global-indemnity.com; Tim J. Newton; Insurance Glenn Paul; Hutson 4072 C
Subject: Hutson vs. Penn America, 3 John Does
Attachments: Blank 13.pdf; ATT00001.txt

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To: tnewton@murphygrantland.com [Remove](#) this sender from my allow list
From: hutson4444@gmail.com

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November 6, 2018

Global Indemnity Group, Inc/Penn America
Policy number PAC 7045167
Attention: Doreen Fournier

Dear Ms. Fournier:

I am so disappointed with your companies and staff. I am preparing a lawsuit against your companies to be filed as soon as possible. Some of the allegations or counts are as follows:

1. Your attorneys mediated with the Plaintiff's attorneys to settle a \$3.5M judgement when they were *fully aware* that the judgement was wrongful due to Extrinsic Fraud upon the Court committed deliberately by Plaintiff's lawyers against your insured (2011 through 2018), yet you nor your representatives/counselors took any action to defend nor prosecute the Plaintiff's (TLC Holdings, LLC's) lawyers in order to protect Penn America and your client "the insured." This lack of action shows no real concern for yourself nor for your client, "the insured."
2. Your company was negligent by failing to take the necessary action against TLC's attorney's placing such extrinsic fraud upon the Court and against your insured client for it was known by Penn America's own council of which I sent his own letter to you. Penn America's attorney has an obligation to keep their client informed.

Tim Newton, Attorney for Penn America, was aware of the Plaintiff's "Extrinsic Fraud Upon the Court" to the extent that he wrote and emailed the same to me/ your insured on August 13, 2018:

"It's hard to see why TLC and its lawyers should not have, in good faith, simply told you (and the court) that the Big Water Resort property was undevelopable because it was already obligated to double lifetime memberships as a private club. It appears that could easily have averted the entire fiasco. Since attorneys were involved, and it resulted in your inability to present your case in court, and possibly led to the sanctions order and judgment against you, there might possibly be extrinsic fraud on the court to support setting aside

the Consent Order. See Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E. 2d 605 (2003)”.

3. Penn America's counsel was totally aware of this situation and both law firms which Penn America hired were aware of the same. The firm in Charleston had a conflict of interest due to the fact that their main office was under the same roof as Plaintiff's attorneys. Penn America's attorneys, Laura Paton and Chip Emge, in Charleston, SC, would not take a case involving legal malpractice, nor attempt to prosecute that fraud because, as they stated, they did not handle any malpractice cases, thus making myself and your company exposed.

The second lawyer you hired, Frank Gordon, would not be a part of prosecuting Plaintiff's lawyers for Extrinsic Fraud upon the Court. Your own counsel, Tim Newton, stated in a conversation with me by phone while discussing the Extrinsic Fraud, "I could not be a part of prosecuting lawyers causing them to perhaps be put in jail."

4. Penn America had an obligation to defend and prosecute the Extrinsic Fraud since their client's defense team, whom Penn America hired, could never win due to the Extrinsic Fraud. Penn America and their counsel were completely aware of this crime, yet failed to protect itself and its client, myself.

When civil or criminal conduct is responsible for generating the \$3.5M judgement via Extrinsic Fraud against Penn America and the insured, and Penn America was knowledgeable and aware of the "extrinsic fraud" as shown by Penn America's own counsel in writing, then your policy of not providing two-way counsel for yourself and the insured constitutes *negligence* as Penn America *did know* and was *fully aware* of the Extrinsic Fraud. *Negligence* is deemed to be the proximate cause of an injury when, without such negligence, the injury would not have occurred or could have been avoided.

Why bother to defend the insured if Penn America and it's counsel were aware that the insured has no chance to win due to extrinsic fraud? Penn America intentionally closed their eyes to the facts.

Still, you continue through mediation to pay Plaintiffs for their criminal behavior with no regard for your insured. Does Penn America not have any integrity, nor a concern about liability?

I hold Penn America responsible. I was never advised that defeat was acceptable and eminent. Why did Penn America employ attorneys to represent the insured with full knowledge that the insured would be defeated due to the Extrinsic Fraud upon the SC State and the Federal Courts?

5. By Penn America's lack of concern and intentionally turning their eyes in another direction, plainly places the blame for my loses, suffering, pain and punitive damages. It's like your counsel, Tim Newton, stated "It appears that could easily have averted the entire fiasco." Newton was speaking about Plaintiff's attorneys' conduct of not having disclosed the material facts that led to the Extrinsic Fraud . Penn America had an obligation, in fact, a duty, to act because they knew the facts. This is dereliction of duty by Penn America and it's staff.

Please show me in your policy manual where Penn America is refrained from prosecuting Extrinsic Fraud Upon the Court?

6. Penn America's failing to provide a bond to protect me, the insured.
7. Penn America's failing to prosecute the appeal when "extrinsic fraud" was the method of accomplishing all Plaintiffs' wins including the \$3.5M judgement.
8. Penn America and its counsel have committed wrongful conduct towards it's customer and insured. Your staff and company could have and should have intercepted and disabled legally the Extrinsic Fraud Upon the Court since your own counsel was fully aware.
9. I have additional claims and actions that I plan to take in my complaint.

I am working and preparing a complaint to right the wrong your company and employees have committed upon me. In addition, I strongly suggest that you discontinue your effort in settling any fraudulent judgement or claim. Do the right thing for a change. Don't take quick, irresponsible actions just to clear your books.

I look forward in taking this entire issue before a jury. I believe that a jury will award much greater than the claim that I am demanding for an out of court settlement.

Please be reminded that I have not misrepresented *any* facts.

Respectfully,

MB Hutson

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

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

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.

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.

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

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[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.

4/13/12

Frank

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

described in the Lease and commonly known as the Big Water Resort (the "Premises" or the "Property"). Plaintiff has filed this ejectment action against Defendant with respect to the Agreement. Defendant has also recorded a Lis Pendens in this action against the Premises and the Plaintiff and Third Party Defendants (the "Lis Pendens"). In his Answer and Counterclaim and Affirmative Defense and Motion to Dismiss and Third Party Complaint filed in this action, Hudson has asserted counterclaims against Plaintiff, as well as other claims against the Third Party Defendants. However, the Third Party Defendants have not been served with pleadings filed in this action, and none of the Third Party Defendants have made an appearance in this action.

It appears that the parties have agreed to a settlement of the pending motions, and all other matters at issue with respect to the Agreement, or which could have been asserted in this litigation, on those terms set forth in that certain Settlement Agreement dated as of March 30, 2012, a copy of which is attached hereto as **Exhibit "A"** and its terms incorporated herein by this reference (the "Settlement Agreement").

ORDER

NOW, THEREFORE, upon Motion of the Plaintiff, and with the consent of the Defendant, as the only parties having appeared in this action, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. The Settlement Agreement is hereby approved by this Court and incorporated into this Consent Order by this reference;
2. In the event that Hudson fails to comply with the terms of the Settlement Agreement, unless such failure is a direct and proximate result of TLC's failure to perform an action expressly required of it in the Settlement Agreement, time being of the

ELECTRONICALLY FILED: 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED: 2019 Oct 14 4:10 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4003810

TC Memo: consideration, not meeting of the minds. TC could not sell to Hudson yet this agreement states that then will sell when this comes due to depend on title. Not stated back 2003

essence, then the Plaintiff is entitled to file an Affidavit of Default in this action, without notice to Defendant or his counsel of record, and, effectively immediately upon the filing of such Affidavit of Default, Plaintiff is hereby awarded the following immediate relief, without the need for further Order of this Court:

- a) The Agreement shall be deemed automatically terminated and of no further force or effect;
- b) The Lis Pendens shall be deemed automatically cancelled, terminated of record, and of no further force or effect;
- c) Mr. Hudson shall be required immediately to vacate the Property, except only with respect to his personal residence located thereon, as to which he shall be obligated to vacate the same within fifteen (15) days following receipt of a copy of the Affidavit of Default, or the posting of a copy of the Affidavit of Default upon such residence, whichever first occurs (the "Vacation Deadline").

3. In the event that Hudson fails to vacate the Premises by the Vacation Deadline, then the Sheriff of Clarendon County is hereby directed to immediately evict Hudson therefrom, remove any personal property then and there remaining on the Premises, and put the Landlord in peaceful possession of the Premises. Landlord is hereby authorized to change the locks of the Premises effective 11:59 p.m. on the Vacation Deadline.

4. Prior to any such default by Hudson under the Settlement Agreement and the Lease as modified by the Settlement Agreement, the Lease remains in full force and effect in accordance with its terms, as modified by this Settlement Agreement, and during

LEASE PURCHASE 1 DAY FOR EACH DAY STILL IN EFFECT

Lease to Option

WCSR 7205819v1

the Primary Term (as defined in the Lease, and as may be extended as provided in the Settlement Agreement), Hudson shall have full possession of the Property in accordance with, and subject to, the terms of the Lease as modified by the Settlement Agreement.

SO ORDERED.

Judge

Manning, South Carolina
April 3, 2012

[Signatures Continue on Following Page]

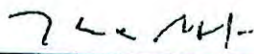
(Liens still on
property
Bank & 60 yr. leases
Oct 2012

STATE OF SOUTH CAROLINA, COUNTY OF CLARENDON
IN THE COURT OF COMMON PLEAS
CASE NO. 11-CP-14-602
TLC HOLDINGS, LLC, VS. M.B. HUDSON A/K/A M.B. HUTSON

CONSENT ORDER

WE MOVE:

WOMBLE, CARLYLE, SANDRIDGE
& RICE, LLP



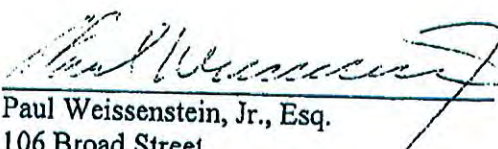
Thomas L. Harper, Jr., Esq.
5 Exchange Street
Post Office Box 999
Charleston, SC 29402
(843) 722-3400

*Attorneys for Plaintiff
TLC Holdings, LLC*

Charleston, South Carolina
April 3, 2012

WE CONSENT:

WEISSENSTEIN LAW FIRM, LLC



Paul Weissenstein, Jr., Esq.
106 Broad Street
Post Office Box 2446
Sumter, SC 29151
(803) 418-5700

*Attorneys for Defendant and Third Party
Plaintiff M.B. Hudson a/k/a M.B. Hutson*

Sumter, South Carolina
April 3, 2012

[Signatures Continue on Following Page]

STATE OF SOUTH CAROLINA, COUNTY OF CLARENDON
IN THE COURT OF COMMON PLEAS
CASE NO. 11-CP-14-602
TLC HOLDINGS, LLC, VS. M.B. HUDSON A/K/A M.B. HUTSON

CONSENT ORDER

WE AGREE:

TLC HOLDINGS, LLC


Richard U. Clark, its Member

April 3, 2012

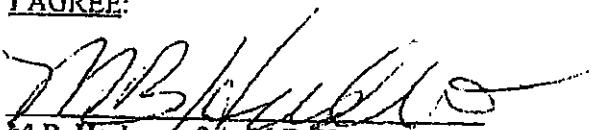
Plaintiff and Third Party Defendant

[Signatures Continue on Following Page]

STATE OF SOUTH CAROLINA, COUNTY OF CLARENDON
IN THE COURT OF COMMON PLEAS
CASE NO. 11-CP-14-602
TLC HOLDINGS, LLC, VS. M.B. HUDSON A/K/A M.B. HUTSON

CONSENT ORDER

I AGREE:



M.B. Hudson a/k/a M.B. Hutson

April 3, 2012

Defendant and Third Party Plaintiff

EXHIBIT "A"

(Copy of Settlement Agreement)

SEE ATTACHED

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

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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.

From: hutson4444@gmail.com
Date: October 2, 2015 at 10:35:45 AM EDT
To: OFFICE MAX OB <QDS06535CPC@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 is 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

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.

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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.

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

stander 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

PL-00014

1303

EXH_V_000018

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.

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To: newton@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.

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.

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.

Tim J. Newton

From: Mr. H <hmr226621@gmail.com>
Sent: Monday, August 13, 2018 5:27 AM
To: Tim J. Newton
Subject: Question

Good morning, wondering if you have checked to see what is considered fraud upon the court and what the court is subject to do if evidence proves the fraud. Is the defendant fined besides having his judgement reversed?

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Tim J. Newton

From: Mr. H <hmr226621@gmail.com>
Sent: Monday, August 13, 2018 10:04 AM
To: Tim J. Newton; Hutson 4072 C
Subject: Another affidavit

August 13, 2018

Good morning Tim. In the next week I will have my second affidavit regarding my second malpractice attorney who ran title on the TLC Holdings property for me. Likewise, the statute runs out the same time as Paul Weissenstein. I have been told that the value of the malpractice is about the same as Paul's. Will need to file very soon likewise.

Please let me know what you are thinking and how you plan to protect my money. Lord I need it. Also, let me know the name and phone number of Torus Insurance and who the contract for I must give both Penn America and Torus Insurance notice.

Seems the only solution is getting a complaint prepared and file to set aside the State judgement regarding the Settlement Agreement.

I am willing to help in anyway I possibly can. We need Frank Gordon and quick. I will be more than happy to meet with you. Scared to death and desperate as you can appreciate.

Hutson

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Tim J. Newton

From: Tim J. Newton
Sent: Monday, August 13, 2018 10:50 AM
To: 'Mr. H'
Subject: RE: Setting aside the Judgement

Mr. Hutson,

I need to remind you that I don't represent you and I can't represent you because I represent Penn-America. To the extent there is a common interest, I note the following:

1. Renee Roark testified at trial in the defamation action that you contacted her in October 2010 looking for waterfront property to develop.
2. Susan Stroman admitted at trial sending you an e-mail dated November 11, 2010 in which she indicated the campground could possibly be moved or the members bought out. However, she denied having said that on behalf of TLC.
3. The alleged lease between Big Water Resort, LLC and TLC Holdings, LLC, if it existed, was never recorded, although it was for a term of more than a year.
4. The membership agreements between the campground members and Big Water Resort, LLC were never recorded. Possibly they should have been, since they granted campground members a rights to use Big Water Resort, LLC's facilities for life plus the lifetime of a survivor. See S.C. Code s 27-33-30 (requiring "any . . . agreement for the use . . . of real estate" to be recorded).
5. There is some case law indicating lifetime memberships are for the duration of the club member, and can only be terminated for cause. Paul Gabrillis, Inc. v. Dahl, 154 Or. App. 388, 961 P.2d 865 (Or. Ct. App. 1998); Martin v. Town & Country Dev., Inc., 230 Cal. App. 422, 41 Cal. Rptr. 47 (Cal. Ct. App. 1964).
6. The campground membership agreements I have seen do not specify what particular property is included in "BWR's present and future campground recreation facilities."
7. The Lease-Purchase Agreement pertains to all of TLC's property at the Big Water Resort site.
8. The Membership Interest Purchase Agreement in Big Water Resort, LLC does not specify what property is subject to the campground membership agreements.
9. The Settlement Agreement dated March 30, 2012 is between TLC Holdings, LLC (and its principals) and Hutson only. TLC is represented as the landlord, and Hutson is represented as the tenant. Big Water Resort, LLC and the campground members are not parties.
10. The Settlement Agreement, in para. 5, obligates Hutson to submit a Qualified Plat for a proposed subdivision "as shown on Exhibit 'A' attached hereto." There are provisions for an acreage release, and it appears the payments owed to TLC may be paid from the proceeds of the subdivision and sale of parcels of the property.
11. The copy of this Settlement Agreement that was made an exhibit at Hutson's bankruptcy deposition had two hand drawings immediately after the last page, which reads "Exhibit A." These drawings depict the approximate location of the proposed development as being on the campground parcel.
12. Despite the language in the Lease-Purchase Agreement and the Settlement Agreement that the subdivision and sale pertained to unimproved portions of the property, the letter that TLC's attorney Tom Harper submitted to the Clarendon County Planning Commission with TLC's approval depicts a development on the campground property.

13. The Consent Order filed April 13, 2012 incorporates the Settlement Agreement but does not otherwise mention Big Water Resort, LLC or the campground members. It reads as if it pertains to a mere landlord-tenant dispute.
14. Bonnie Youmans testified at trial (by way of her deposition) that she thought all of TLC's property was part of the Big Water Resort campground and she would have considered it a violation of the campground memberships to have developed condominiums on the campground property. This testimony was unopposed.
15. I can see how you could argue that the Consent Order is invalid because it attempts to adjudicate the rights of parties not before it. If you were ordered to develop property that was subject to lifetime use rights, that probably should have been brought to the court's attention. Furthermore, I can see how you could argue you did not realize you were being obligated to violate the rights of the campground members by developing since TLC never specified exactly which property was subject to the campground memberships.
16. It's hard to see why TLC and its lawyers should not have, in good faith, simply told you (and the court) that the Big Water Resort property was undevelopable because it was already obligated to double lifetime memberships as a private club. It appears that could easily have averted the entire fiasco. Since attorneys were involved, and it resulted in your inability to present your case in court, and possibly led to the sanctions order and judgment against you, there might possibly be extrinsic fraud on the court to support setting aside the Consent Order. See Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (2003).

However, that is something you would have to follow up with on your own. I can't undertake that. Possibly Frank could file a motion if Penn-America approves it, but he and I both have agreed to put everything on hold until the mediation.

I highly recommend that you get a lawyer involved, even if it's a pro bono lawyer. If you need the documents supporting the above, let me know.

Tim N.


Murphy & Grantland, P.A.
 Tim J. Newton, Esquire
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 803-454-1242 dd
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From: Mr. H <hmr226621@gmail.com>
Sent: Saturday, August 11, 2018 9:04 PM
To: Tim J. Newton <tnewton@murphygrantland.com>
Subject: Setting aside the Judgement

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ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2020 Oct 14 4:16 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

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Tim J. Newton

From: Mr. H <hmr226621@gmail.com>
Sent: Monday, August 13, 2018 12:50 PM
To: Tim J. Newton; hmr226621@gmail.com
Subject: Questions

August 13, 2018. To Tim Newton

1. Is it true that filing the suit or motion to set aside the State Judgement based on fraud would strengthen your position now, prior to the mediation?
2. Why wait since your agreement relates to TLC not coming after me prior to the mediation? If you wait, Penn America and Torus will be liable for me losing approx. One million dollars or double. Wondering why you can't see that.
3. The mere fact of not waiting until the mediation and the filing of the complaint to set aside the State Judgement should neutralize TLC. Why expose me to this extreme amount of monies that I am certain I will lose?

Hutson

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Tim J. Newton

From: Tim J. Newton
Sent: Monday, August 13, 2018 1:23 PM
To: 'Mr. H'
Subject: RE: Questions

Mr. Hutson,

The agreement was to "put everything on hold" until the mediation. Under that agreement, not only TLC's execution on the judgment, but also Penn-America's DJ and the appeal of the judgment, have all been put on hold.

It might benefit Penn-America and your defense if you are able to get the Consent Order set aside, if that somehow undermines the judgment in the defamation action. But we can't renege on the agreement to wait until after we mediate. By the way, that agreement was made for your benefit—so we could hopefully resolve everything before TLC starts trying to come after you personally. We didn't know about the statute of limitations issue on your separate claim against Weissenstein.

Until the mediation, there is no argument that you are somehow damaged. Again, the appeal bond does nothing to negate the judgment. Even if an appeal bond is posted, you still have a judgment against you, and that is only satisfied by payment of the judgment or a settlement. The appeal bond is to protect TLC, not you.

If TLC attempts to assert a claim against your possible settlement with Weissenstein prior to the mediation, we will look into what might need to be done. They might have a time limit and need an extension or something. If they start to pursue it, we will remind them of the agreement and demand that they stand down. If they won't then we will look into what we might need to do in response.

I don't know what else to say. An agreement is binding, so we are kind of stuck with it for now. But again, we are talking about your claims against other parties. It doesn't have anything to do with Penn-America, at least not directly.

Tim N.


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From: Mr. H <hmr226621@gmail.com>
Sent: Monday, August 13, 2018 12:50 PM

To: Tim J. Newton <tnewton@murphygrantland.com>; hmr226621@gmail.com
Subject: Questions

August 13, 2018. To Tim Newton

1. Is it true that filing the suit or motion to set aside the State Judgement based on fraud would strengthen your position now, prior to the mediation?
2. Why wait since your agreement relates to TLC not coming after me prior to the mediation? If you wait, Penn America and Torus will be liable for me losing approx. One million dollars or double. Wondering why you can't see that.
3. The mere fact of not waiting until the mediation and the filing of the complaint to set aside the State Judgement should neutralize TLC. Why expose me to this extreme amount of monies that I am certain I will lose?

Hutson

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ELECTRONICALLY FILED - 2020 Oct 14 4:16 PM - RICHLAND - COMMON PLEAS - CASE#2020CP4003810

Tim J. Newton

From: Mr. H <hmr226621@gmail.com>
Sent: Tuesday, August 14, 2018 9:26 AM
To: Tim J. Newton; Kim M Jackson. Torus
Cc: hmr226621@gmail.com
Subject: NOTICE: Lack of protecting client by not posting bond nor settling case

Confirmation of receipt is requested.

NOTICE

August 14, 2018

Re: Outstanding \$3.5M Judgement Against MB Hutson

Dear Mr. Tim Newton and Mr. Kim Jackson:

Approximately seven months ago a jury trial resulted in a \$3.5M judgement against myself in which your companies provided an attorney, Frank Gordon to defend me.

Since that judgement, neither Penn America, nor Torus, have provided a bond to satisfy that judgement, which is required. Consequently, I have been prevented from moving forward financially with my life. Therefore, I have been and am continuing to be substantially damaged financially.

Unless a solution is provided within the next three to five days, I will be left with no other alternative but to file formal complaints. At this point, time is of the essence.

Regrettably,
MB Hutson
803.308.2714

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Tim J. Newton

From: Tim J. Newton
Sent: Wednesday, August 15, 2018 2:37 PM
To: 'Mr. H'
Subject: RE: Hutson vs: Insurance companies

The answer is no, although they are continuing to review the situation.


Murphy & Grantland, P.A.
Tim J. Newton, Esquire
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From: Mr. H <hmr226621@gmail.com>
Sent: Wednesday, August 15, 2018 2:33 PM
To: Tim J. Newton <tnewton@murphygrantland.com>
Subject: Hutson vs: Insurance companies

August 15, 2018

Tim, you know my situation. Please let me know as soon as possible regarding the offer I made the other day to you. If it's a no, I can gain time working on paper work with some folks.

Thank you in advance,

Hutson

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EXHIBIT
7.0

November 8, 2018

PERSONAL AND CONFIDENTIAL SETTLEMENT NEGOTIATIONS
VIA U.S. MAIL AND E-MAIL

Morris B. Hutson
1545 Bilmore St.
Orangeburg, SC 29115

Re: TLC Holdings, LLC, et al., v. Hutson
Civil Action No.: 2015-CP-14-00615
Claim No.: 15004802
Insured: BWR, Inc. d/b/a Big Water Resort
Our File No.: 1565-0050

Dear Mr. Hutson:

This letter follows your correspondence dated November 1 and 6, 2018, in which you demanded \$500,000 from Penn-America. From your correspondence, it appears your claim is based upon Penn-America's decision to proceed with participating in the scheduled mediation on November 2, 2018. Your correspondence also appears to argue that Penn-America has a duty to provide you with counsel to represent you in prosecuting certain claims you have alleged against TLC Holdings, LLC, its principals, and its lawyers.

As you may recall, in August 2018 you served notice to Penn-America that you would sue Penn-America if it did not immediately settle the above-referenced case (hereinafter "the Defamation action"), even though the mediation at that time was scheduled for September 12, 2018. As you know, the mediation had to be postponed due to a hurricane and was rescheduled for November 2, 2018. Your recent correspondence, sent the day before the mediation, makes the diametrically opposite claim that if Penn-America participates in the mediation, you will sue Penn-America.

The scheduled mediation was agreed upon by all parties and approved by the court in the declaratory judgment action addressing Penn-America's coverage (Penn-America Ins. Co. v. Big Water Resort, LLC, Civ. Action No. 2:16-cv-01943-DCN). Extensions were also obtained in the pending appeal of the judgment in the Defamation action in order to provide the opportunity for the parties to mediate.

Penn-America cannot unilaterally pull out of a scheduled mediation. In addition to the fact that only months ago, you were threatening to sue Penn-America for not settling the case, there are other interests that Penn-America must consider. The TLC parties are now judgment creditors, and in that capacity have a vested, direct claim on the policy. Lee v. Gulf Ins. Co., 248 S.C. 296, 298, 149 S.E.2d 639, 641 (1966) ("The law is well settled in this jurisdiction that an injured party who brings suit against a liability carrier in order to collect on a judgment previously acquired against an insured is possessed of all rights of the insured . . ."). Penn-America cannot ignore the TLC parties' claim

simply because you believe the claim should not be paid. In addition, the excess carrier, Starstone f/k/a Torus, has formally notified Penn-America that if Penn-America fails to settle the above-referenced case, Starstone may bring legal action against Penn-America.

Courts in South Carolina have held that liability insurers have a duty to settle cases if there is a reasonable opportunity for doing so. In most situations, insureds demand that their liability insurers settle cases to extinguish the legal claims against them. It is a relatively rare situation for a putative insured to demand that his or her liability carrier refuse to settle a case, especially after the injured claimants have obtained a judgment. Nevertheless, courts have held that in this situation, insurers may settle the claim over the insured's objections, even if the effect of the settlement is to extinguish a counterclaim for malicious prosecution. Hurvitz v. St. Paul Fire & Marine Ins. Co., 189 Cal. App. 4th 918, 930-31 (Cal. Ct. App. 2003); Caplan v. Fellheimer Eichen Braverman & Kaskey, 68 F.3d 828 (3rd Cir. 1995). The Hurvitz court reasoned as follows:

The decision to settle rather than continue litigation invariably involves a conflict between the desire to vindicate oneself and the desire to minimize the costs of litigation and avoid the risk of loss. . . . A party purchasing a liability insurance policy . . . agrees to accept the insurer's view concerning the point at which the benefits of settlement exceed the risk of continuing litigation. . . . The covenant of good faith and fair dealing requires the insurer to minimize the possibility of an award that exceeds the policy limits—it does not require the insurer to fight a legal action until the bitter end when the costs of defense exceed the benefit to be achieved.

109 Cal. App. 4th at 930-31.

The policy that Penn-America issued to your former company, BWR, Inc., provides that Penn-America "may, at our discretion, investigate any 'occurrence' and settle any claim or 'suit' that may result." (Policy, Form CG 00 01 04 13, ¶ I.A.1.a.) The policy also requires you to assist and cooperate with Penn-America in investigating and settling any claim or suit. (*Id.* at ¶ IV.2.c.(3).) We are not aware of any provision in the insurance contract that gives you veto power over a settlement, particularly when acceding to your demand would embroil Penn-America in litigation with other parties as explained above.

As we understand it, your argument is that Penn-America has a duty to refuse to settle when it knows of extrinsic fraud affecting the judgment at issue. This argument is undermined by the fact that only a few months ago, you were threatening to sue Penn-America for not immediately settling the case. You admit that you did not know of any alleged fraud upon the court until recently.

At that time, you stated that you had counsel to represent you in a lawsuit against Penn-America for failure to procure a supersedeas bond to stop the TLC parties from executing on their judgment in the Defamation action while the appeal is pending. You also represented that you had an attorney who was willing to work with you in your efforts to obtain an order setting aside the order in TLC's eviction action against you (TLC Holdings, LLC v. Hutson, Civ. Action No. 2011-CP-14-00602, hereinafter "the Eviction action") based upon alleged fraud upon the court. You indicated that you believed the setting aside of that order would have the effect of not only allowing you to prosecute your counterclaims against the TLC parties, which have repeatedly been held to be barred by *res judicata*, but it might also somehow undermine the judgment in the Defamation action. You provided

a couple of outlines of your theory along with statutes and case law and asked whether any evidence produced at the trial of the Defamation action affected your proposed action against the TLC parties. You also indicated that if we provided whatever evidence was material to your proposed suit against the TLC parties, you would refrain from bringing action against Penn-America based upon failure to furnish a supersedeas bond while the appeal is pending.

At that time, we explained to you that Penn-America diligently sought to procure an appeal bond, but found that such a bond could not be obtained under the circumstances. Since an appeal bond could not be obtained, Penn-America agreed to mediate this case in exchange for a stay of execution until after the case could be mediated. The TLC parties subsequently agreed to postpone execution proceedings against you until after the resolution of the appeal, thus mooted the need for an appeal bond.

Penn-America has previously declined your demands for counsel to represent you in your affirmative claims against the TLC parties. We crave reference to our previous correspondence to you dated August 1, 2016 and incorporate the terms of that letter herein. Nothing in the policy requires a liability insurer to retain counsel or to pay litigation costs for claims the putative insured seeks to assert against other parties.

Nevertheless, in a good faith effort to resolve the claims you were asserting against Penn-America and to avoid any prejudice to whatever claims you may seek to assert against the TLC parties, you were provided with evidence that was presented at trial that may have bearing on your proposed claim against the TLC. We have repeatedly emphasized the neither Penn-America nor its counsel represents you. You were encouraged to investigate the matter further through your own counsel.

At no point has Penn-America or its counsel ever acknowledged the existence of fraud upon the court. Penn-America recognizes only that you have recently begun alleging that fraud upon the court was committed, particularly in the Eviction action that TLC Holdings, LLC brought against you. We have also recognized that certain evidence that was presented at the trial of the Defamation action, when coupled with the court filings in the prior Eviction action, raised concerns that you have a right to investigate, and possibly pursue, should you proceed with an action against the TLC parties. However, we are not aware of any judicial order finding that fraud upon the court was committed. Furthermore, ~~we are not aware of any act of extrinsic fraud that was committed in the trial of the~~ Defamation action. At most, you have alleged that certain arguments and evidentiary rulings in the Defamation action were made possible by the outcome of the Eviction action, in which you assert that extrinsic fraud was committed.

A court order is considered a final judgment even if an appeal is pending. Stoneledge at Lake Keowee Owners Ass'n, Inc. v. Cincinnati Ins. Co., 301 F. Supp. 3d 620, 627 (D.S.C. 2018). The judgment the TLC parties obtained in the Defamation action against you is a final judgment until such time as a court overturns it for some reason. At this point, we are not aware that legal action to set aside the Eviction action has yet been filed. Even if you prevail in that endeavor, you would still have to then take that order and move to set aside the judgment in the Defamation action.

The decision whether or not to pursue claims against TLC is up to you. Should you succeed in overturning the order(s) in the Eviction action, perhaps you could prove damages. However, we fail to see how that has any bearing on the Defamation action against you. It is true that you might possibly

be able to argue that result of the Defamation action was wrongly decided if the order(s) in the Eviction actions are eventually overturned. However, your counterclaims in the Defamation action have already been dismissed. Settlement with TLC would only resolve TLC's claims against you. You have not presented evidence of any harm you would suffer from the settlement of TLC's claims against you in the Defamation action other than the loss of your ability to achieve a complete vindication in your ongoing disputes with the TLC parties. This is precisely the type of injuries courts have held insufficient to outweigh a liability insurer's right and duty to settle, as explained above.

You also insinuated that Penn-America has a duty to prosecute your claims against the lawyers representing the TLC parties. There is absolutely no authority supporting any such duty. You have a right to pursue whatever legal recourse you have against any party you believe has wronged you. However, Penn-America has no standing to pursue such action.

You indicated that "you had no chance to win" due to the alleged extrinsic fraud. Again, this is merely your opinion. There is no evidence that anyone other than you has ever said this. You have repeatedly expressed your belief that the TLC parties' claims against you would be more defensible if counsel were provided to prosecute your counterclaims against the TLC parties. However, before the TLC parties brought their claims against you, a court order had already been entered in the Eviction proceeding that squarely held that you have released all claims against the TLC parties. It would have been futile to have attempted to prosecute claims against the TLC parties—in fact, you have been sanctioned for repeatedly attempting that very thing.

You recently hit upon the idea of attempting to have the order deeming you to have released the TLC parties set aside due to extrinsic fraud upon the court. If you believe that such fraud was committed, you have every right to pursue such a claim. However, that requires legal action that is far beyond the scope of any duty required by the policy. The question is not where in the policy Penn-America is restrained from taking such action, but rather where in the policy such a duty is imposed upon Penn-America.

Accordingly, Penn-America respectfully declines your settlement demand. After careful investigation, we find no legal or factual basis for it.

Furthermore, we warn you that your actions in interfering with our attempts to settle the claims against you are in breach of your duty to cooperate under the insurance contract. Breach of your duty to cooperate may result in your forfeiting any coverage available to you under the policy.

As you know, Penn America has filed a declaratory judgment action regarding whether it owes a duty to defend and/or indemnify you for the claims asserted in the Defamation action. As we have previously indicated, Penn-America agreed to defend you under a full reservation of rights and with the understanding that any indemnity settlements or payments will be applicable only for "personal injury" to which this insurance applies. Any uncovered damages, or any verdict or award in excess of your applicable policy limits for this loss will be your responsibility. Penn-America disputes your status as an insured under the policy. Penn-America continues to reserve its right to deny coverage should the court find that coverage does not exist.

Penn America specifically reserves all of its rights and remedies under the policy, and under the statutes, and common law, including the right to withdraw its defense. No action taken by Penn America

in this matter, including the assignment of defense counsel, should be construed as a waiver by or estoppel of these rights and remedies or any of the terms, conditions, exclusions, or limitations of the policy.

This decision was made based upon the information that Penn America currently possesses. If you believe that there is information that bears on this analysis that Penn America does not have, please provide that information as soon as possible and Penn America will give it all due consideration. We urge you to advise your staff not to discuss this matter with anyone other than a representative of Penn America and assigned defense counsel.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tim Newton', written over a horizontal line.

Timothy J. Newton

TjN/

October 12, 2020

VIA E-FILING

Jeannette McBride,
Richland County Clerk of Court
Richland County Judicial Center
1701 Main Street, Room 205
Columbia, SC 29202

Re: MB Hutson/MB Hudson v. Penn America Insurance Company, Global Indemnity Group, Inc., Timothy N. Newton, Esquire, JR Murphy, Esquire, John Doe #1 and John Doe #2
Civil Action No.: 2020-CP-40-03810
Our File No.: 1565-0050

Dear Ms. McBride:

Attached is a copy of Exhibit 15 to Third Party Defendants Timothy J. Newton and Murphy & Grantland, P.A.'s Response in Support of Motion to Dismiss, or in the Alternative, Motion for Summary Judgment which was inadvertently omitted upon e-filing with the Court on Friday, October 9, 2020 in the above matter. Please accept this exhibit as part of Third- Party Defendants' submission to the Court in support of its Motion to Dismiss.

Sincerely yours,

s/Timothy J. Newton

Timothy J. Newton

TJN/smh

Attachment
cc: Counsel of Record
MB Hutson (*Pro se*)

Tim J. Newton

From: Hutson <hutson4444@gmail.com>
Sent: Sunday, December 10, 2017 7:51 AM
To: fgordon@mgsattorneys.com; Tim J. Newton; dfournier@global-indemnity.com
Subject: Must have jury trial

With the attorney who my insurance company has provided me, I will win both the State defamation case and the Federal suit filed by TLC Holdings, LLC. Due to obvious fraud for TLC cannot hide such fraud.

Immediately after winning, i am open to file the following:

1. Malicious Prosecution allowing up to \$300,000 thousand dollars for each wrongful suit against me due to intentional fraud
2. Have right to file to set aside the Settlement Agreement whereby fraud was applied to the Honorable Court and myself. One cannot execute an intentionally fraudulent Settlement Agreement while not understanding the fraud.
3. Have right to sue for Emotional and Financial stress based on intentional fraud and plotting on each case filed against me.

I am entitled to Jury Trials regarding both cases.

Settling with TLC will astronomically damage me should my insurance company settle to protect themselves at my expense. I would be damaged should this happen. I have lost 5 years of my senior life, monies and etc. due to TLC's suits requiring me to Counter sue even though I did not fully understand the severity of the intentional fraud until much later from date of being sued and my counters. I was plotted against and fully fraudulently taken advantage of by TLC Holdings and their owner members for their entire fraud was preplanned. TLC placed me in an impossible way to be successful and then sued me for not being successful.

Respectfully,

MB Hutson

803.308.2714

Total Control Panel

[Login](#)

To: tnewton@murphygrantland.com [Remove](#) this sender from my allow list
From: hutson4444@gmail.com

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

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Penn America Insurance Company and
Global Indemnity Group, LLC,

Plaintiffs

vs.

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

Defendant

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

Defendant

vs.

Third Party Defendants:

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

IN THE COURT OF COMMON PLEAS

Civil Action No. 2020-CP- 4003810

2020 OCT 20 AM 8:30
FILED
RICHLAND COUNTY
JEANETTE W. NEBRIDGE
C.C.P. & G.S.
RESPONSE to 3rd PARTY
DEFENDANT
“RESPONSE TO
HUTSON’S
‘ADDENDUM OF LAW’ ”

1. Comes now the Defendant Hutson responding to Plaintiffs’ Third Party Defendants Timothy J. Newton and Murphy & Grantland P.A.’s Response to Hutson’s “Addendum of Law.”

2. Defendant Hutson reports Extrinsic Fraud upon the court by multiple Officers of the Court against the following Judges:

3. The Hon. Judge Robert Hood - (#2020 - CP- 400-3810), by:
 - **Christian Stegmaier, Esq., & Laura R. Baer, Esq.** both of *Collins and Lacy, P.C.* as counsel for “Penn America Ins. Co. & Global Indemnity Group” (hereinafter PAGI).
 - **Timothy J. Newton, Esq.** of *Murphy & Grantland, P.A.*, formerly council for PAGI).
-

NOTE: *The Respondents in The Appeals Court (cases #’d 2019-00-1488 and 2019- 000 – 873) have filed fraudulent papers and have lied to the Appeals Court and used and still are using intentional extrinsic fraud and fraud upon the Appeals Court as this is written.*

4. The Hon. Judge Nettles - (# 2018 – CP – 400 - 6344), by:
 - **Christian Stegmaier, Esq.** of *Collins and Lacy P.C.*, for PAGI.
 - **John Robert Murphy, Esq.** and **Timothy J. Newton, Esq.** both of *Murphy & Grantland, P.A.*, for PAGI.
5. The Hon. Judge George M. McFaddin, Jr. – (2015 – CP – 14 – 0615), by:
 - **Frank J. Gordon, Esq. (SC #71769)** of *Millberg Gordon Stewart PLLC*, 1101 Haynes St., Ste. 104, Raleigh, NC 27604. (919-836-0090) (for PAGI)
 - **James B. Richardson, Jr. (SC #4718)** 1229 Lincoln St., Columbia, SC 29201 (803-799 -9412).
 - **John S. Wilkerson, III, Esq. (SC #6105)** of *Turner Padgett Graham & Laney, P.A.*, P. O. Box 22129, Charleston, SC 29413 (843-576-2801).
 - **Wayne R. Byrd, Esq. (SC#1068; Fed # 1642)** of *Turner Padgett Graham & Laney, PA*, POB 2116, Myrtle Beach, SC 29578.
wbyrd@turnerpadget.com
 - **Timothy J. Newton, Esq.** of *Murphy & Grantland, P.A.*, as council for PAGI).

6. The Hon. Judge John E. Waits (Bankruptcy Court) (C/A No. 14-00165-jw) Charleston, SC, by:

- **Charles Pelot Summerall, IV, Esq.** (Fed # 4385) of *Womble Carlyle Sandridge & Rice LLP*, csummerall@wcsr.com, (843) 722-3400, and
- **Thomas L. Harper, Jr., Esq.**, then of *Womble, Carlyle, Sandridge and Rice LLP*, and now with *Womble Bond Dickinson*, both of Charleston, SC., represented TLC Holdings, LLC. (Richard U. Clark and Jimmy S. Lovell), both living out-of-state: Clark at 3124 Great Wood Way, Knoxville, TN and Lovell in Florida.

7. The Hon. Judges D. C. Norton and M. G. Baker – (2:14-V-01583-DCN-MGB) Charleston, SC (Hutson was sued as Third Party Defendant by TLC Holdings, LLC). Attorneys for Defendants/Third-Party Plaintiffs are:

- **Wayne R. Byrd, Esq.** (SC#1068; Fed # 1642) of *Turner Padgett Graham & Laney, PA*, POB 2116, Myrtle Beach, SC 29578. wbyrd@turnerpadgett.com
- **Carlyle Cromer, Esq.** (Fed. # 11851) of *Turner Padgett Graham & Laney, PA*, POB 2116, Myrtle Beach, SC 29578. ccromer@turnerpadgett.com
- **John S. Wilkerson, III, Esq.** (SC#6105; Fed # 4657) of *Turner Padgett Graham & Laney, PA*, POB 22129, Charleston, SC 29413, jwilkerson@turnerpadgett.com
- **Richard S. Dukes, Jr. Esq.** (Fed # 7340) of *Turner Padgett Graham & Laney, PA*, POB 22129, Charleston, SC 29413, rdukes@turnerpadgett.com

8. The Hon. Judge George James - (# 2011 – CP – 14 - 602.) by:

- **Thomas L. Harper, Jr., Esq.** then of *Womble, Carlyle, Sandridge and Rice LLP* and now with *Womble, Bond, Dickinson* both of Charleston, SC. Representing TLC Holdings, LLC. (Richard U. Clark and Jimmy S. Lovell), then both living out-of-state at 3124 Great Wood Way, Knoxville, TN and FL, respectively.

- **Wayne R. Byrd, Esq.** (SC#1068; Fed # 1642) of Turner Padgett Graham & Laney, PA, POB 2116, Myrtle Beach, SC 29578. wbyrd@turnerpadgett.com and one other associate lawyer from Turner Padgett Graham & Laney.

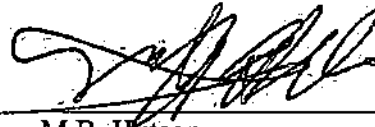
9. Defendant reminds the Honorable Judge Hood that these lawyers/officers of the Court have lied directly to more than seven Honorable Judges. Furthermore, they prepared documents and either electronically filed them or sent them in the U.S. mail. They generated multiple fraudulent papers and intentionally failed to disclose the fraud within them, when they had a duty to report said fraud upon the Courts... yet refused to do so. This Defendant estimates that there are a combined, intentional, hundreds of fraudulent actions taken against the Honorable Courts and Judges in this state over the period of time these S.C. lawyers were colluding with TLC Holdings, et.al. Their fraudulent actions included their filing for an injunction against Defendant Hutson. To that, they lied about "harassing and frivolous letters." Respondents/Third Party Defendants have demonstrated a need for an injunction against them. Defendant is confident he can provide and prove to any investigator that Third Party Defendants have committed felonies, deceptions to the court, lies and have intentionally defrauded the Honorable Judges repeatedly.

Defendant prays that the court will:

1. Oversee the investigation and reporting of all fraud and professional violations/ actions by these Officers of the Court (listed above) relative to this party (Hutson) and the reporting thereof to the S. C. Attorney General's office.

2. Throw out Plaintiffs' request for a fraudulent injunction as Newton confessed to being a part of the extrinsic fraud and Plaintiff's attorney, Stegmaier, was caught in several lies in front of the Honorable Judge at the hearing.
3. Send Defendant's case to a jury as soon as possible.
4. Approve Defendant Hutson's request for an injunction against the Plaintiff/Third Party Defendants/ Respondents.

Respectfully Submitted on this 19th day of October, 2020.



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

VERIFICATION OF SERVICE: Copies have been emailed in lieu of being placed in the USPS, per clerk's approval due to special temporary accommodations of the court during the coronavirus pandemic, on Monday, October 19, 2020, to:

Christian Stegmaier, Esq.
Collins & Lacy P.C.
Post Office Box 12487
Columbia, SC 29211
cstegmaier@collinsandlacy.com

Timothy J. Newton, Esq.
Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, SC 29260
tnewton@murphygrantland.com

Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, SC 29260
jgrantland@murphygrantland.com

PAGI Insurance Co's.
c/o Collins & Lacy P.C.
Post Office Box 12487
Columbia, S.C. 29211
cstegmaier@collinsandlacy.com

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Penn America Insurance Company and
Global Indemnity Group, LLC,

Plaintiffs

vs.

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

Defendant

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

Defendant

vs.

Third Party Defendants:

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

IN THE COURT OF COMMON PLEAS

Civil Action No. 2020-CP- 4003810

DEFENDANTS ANSWERS TO

PLAINTIFFS'

FRAUDULENT COMPLAINT

Second copy due to 'lost' in mail.

FILED
2020 OCT 20 AM 10:29
AT THE CLERK'S OFFICE
RICHLAND COUNTY, S.C.

COMES NOW Defendant who states the following:

1. On Sunday, the 6th day of September, Defendant placed in the U.S. Mail (blue mail boxes) copies to all parties and the court, "Defendants Answers to Plaintiffs ... Complaint" in the case cited above.

2. Today, September 17, 2020, Defendant checked the records only to discover that Plaintiff had filed an additional paper yesterday stating that Defendant had failed to file an answer to Plaintiff's complaint.

3. Not understanding why the court is not showing the mailed in Reply to the Complaint, Defendant has immediately rushed back over to Office Depot and got a second set of copies and is arranging to have that second set of "Defendant's Answer to Plaintiff's Complaint" hand served to the Court and Plaintiff in the morning. Please note that Plaintiff, Pro Se, has secured copies to verify to the court that the first set was sent to the printer services (3 pp. of verification attached thereto) in a gracious timely period. Defendant normally is very prompt and responsible for filing in a timely manner, never having had this problem before in his legal filings.

4. Also enclosed is a photograph of a mailing, also from Orangeburg, that, instead of being delivered, was returned to the sender eight MONTHS later...less than a year ago.

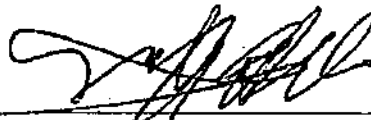
5. As a courtesy to the court and the Plaintiff, I am submitting a second copy, not knowing when the first set will show up, nor exactly when. I trust that the court will honor this second set as timely. Defendant pledges to notify the court immediately when the original set that was mailed in a timely manner, is received, and trust that the court will do likewise, should those papers not be returned to him, but reach their intended location.

6. A notice will be filed at the Post Office on their next day of business for the missing documents.

Defendant prays that the court will:

1. Defendant Hutson asks that the court will rule favorably in his behalf and receive the enclosed duplicate of Defendants Answers to Plaintiffs Fraudulent Complaint with photographs of verification that the work was originally completed on a timely basis, as being "filed timely" due to circumstances beyond his control.

Respectfully Submitted on this 17th day of September, 2020.



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

Copies will be served on September 18th, 2020, to:

Christian Stegmaier, Esq.
For Penn-America and Global Indemnity Group LLC
Collins & Lacy P.C.
1330 Lady Street
Columbia, SC

Please Note:

From: ATHENA BORER <BORER.ATHENA@richlandcountysc.gov>
Date: Thursday, September 17, 2020
Subject: Good morning to Miss bright eyes, I have a question;
To: "Mr. H" <hmr226621@gmail.com>

Good morning Mr. Hutson,

I am so sorry about this. I had to move some cases around so this got moved to the week of October 12. I am not sure what day of the week as of yet. The court will also be resuming normal day to day court operations, so this will be an in person hearing.

I will let you know as soon as possible as to which day this will take place. Again, I am sorry for the confusion.

Athena

Athena M Borer

Common Pleas Motion Coordinator

Richland County Clerk of Court

1701 Main Street

Columbia, SC 29201

Borer.Athena@richlandcountysc.gov

P 803-576-3372 F 803-576-1785

From: Mr. H <hmr226621@gmail.com>

Sent: Wednesday, September 16, 2020 5:04 PM

To: ATHENA BORER <BORER.ATHENA@richlandcountysc.gov>

Subject: Re: Good morning to Miss bright eyes, I have a question;

Athena, I have not heard anything about my injunction hearing or the cross complaint hearing. What happen? I mentioned to Penn America's attorney about you setting up a 22 day for the hearing and now he thinks that I lied to him. Are we still on for the 22 of this month????? Hutson

On Thursday, September 3, 2020, ATHENA BORER
<BORER.ATHENA@richlandcountysc.gov> wrote:

Mr. Hutson,

Judge Jocelyn Newman will be presiding over Motions for that week.

Let me know if you have any other questions. I am happy to help.

Athena

SERVICE VERIFICATION

(# 2020-CP-4003810)

Resubmittal of
Defendant's Answer to Plaintiff's Complaint

has been served.

✓ To Penn America Insurance Company and Global Indemnity Insurance Company at
The Law Office of Collias and Lacy P.C to Christian Stegmaler, Esq., attorney of record.

1330 Lady Street, 6th Floor, Columbia, SC

Phone: (803) 256 2660

Received by:

M. Shure

Time

9:30

Kindly Print: _____

On Friday, September 18, 2020.

Server: _____

(sign)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Penn America Insurance Company and
Global Indemnity Group, LLC,

Plaintiffs

vs.

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

Defendant

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

Defendant

vs.

Third Party Defendants:

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

IN THE COURT OF COMMON PLEAS

Civil Action No. 2020-CP- 4003810

Questions and Requests

for

Judge Hood

RICHLAND COUNTY
FILED
2020 OCT 26 PM 4:29
JEANETTE M. McBRIDE
C.C.P. & C.S.

To the Honorable Judge Hood:

I needed a little bit of clarification on your ruling:

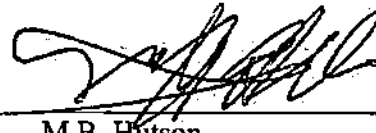
1. Penn America sued me by way of a complaint. Is the Court ruling that I cannot answer or defend myself in that case?
2. Does any part of your Order preclude my prosecution of my Appellant Action which is on-going?

3. Does your ruling preclude any Federal Action that might be possibly taken by me regarding my civil rights and damages?

And also, I respectfully request that:

4. all orders *prepared by other parties for your Honor's signature* be emailed to me to review five (5) days prior to those orders being sent to you for your signature, and
5. I am granted a right to respond and voice any concerns and/or objections, thus being allowed to be heard, relative to any such order that is prepared by other parties for the judge, which may have fraud, deception or misrepresentation therein.

Respectfully Submitted on this 26th day of October, 2020.



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

Service Verification: Copies have been emailed to all parties on Tuesday, October 26th, 2020:

Christian Stegmaier, Esq.
Collins & Lacy P.C.
Post Office Box 12487
Columbia, S.C. 29211
cstegmaier@collinsandlacy.com

Timothy J. Newton, Esq.
Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, S.C. 29260
tnewton@murphygrantland.com

Collins & Lacy P.C.
Post Office Box 12487
Columbia, S.C. 29211

Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, S.C. 29260

PAGI Insurance Co's.
c/o Collins & Lacy P.C.
Post Office Box 12487
Columbia, S.C. 29211

RECEIVED

Jan 04 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Common Pleas

Judge John Hood, Fifth Circuit Judge

Case No. 2020-CP-400-3810

Morris Hutson

Appellant/Defendant,

v.

Penn America Insurance
Company & Global Indemnity
Group, LLC

Respondents/Plaintiffs

2021 JAN -4 PM 12:01
RECEIVED
CLERK OF COURT

NOTICE OF APPEAL

Morris Hutson hereby appeals the Orders/Judgments in the aforementioned case from the Honorable Judge Hood dated December 9, 2020.

Those orders include:

1. Order Granting Third-Party Defendants Timothy J. Newton and Murphy & Grantland, P.A.'s Motion to Dismiss, or, in the Alternative, Motion for Summary Judgment ,
2. Order Granting Plaintiffs Penn America Insurance Company, Global Indemnity Group, LLC, Christian Stegmaier, Esq., and Collins & Lacy P.C.'s Motions to Strike),
3. Order Denying Third-Party Plaintiff's Motion for Temporary Injunction.

January 4, 2021

s/ Morris Hutson
Morris B Hutson, Pro Se
Post Office Box 2755
Orangeburg, South Carolina 29116-2755
(803) 803-2714
Defendant / Appellant

cc: Counsel of Record:

Christian Stegmaier, Esq.
Collins & Lacy
PO Box 12487
1330 Lady St., 6th Floor
Columbia, SC 29201
(803) 929-1400
cstegmaier@collinsandlacy.com

Laura Baer, Esq.
Collins & Lacy
PO Box 12487
1330 Lady St., 6th Floor
Columbia, SC 29201
(803) 929-1400
lbaer@collinsandlacy.com

JR Murphy, Esq.
Murphy Grantland
Post Office Box 6648
Columbia, SC 29260-6648
jrmurphy@murphygrantland.com

Timothy J Newton, Esq.
Murphy Grantland
Post Office Box 6648
Columbia, SC 29260-6648
tnewton@murphygrantland.com

M B Hutson

Post Office Box 2755
Orangeburg, SC 29116

(803) 308 - 2714
hutson4444@gmail.com

January 20, 2021

Commission on Lawyer Conduct
1220 Senate Street
Suite 309
Columbia, South Carolina 29201

RICHLAND COUNTY
FILED
2021 JAN 21 PM 1:00
JEANETTE M. McBRIDE
S.C.P. & S.S.

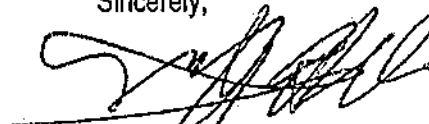
Dear Commission,

I am filing this complaint / notice of complaint against the following attorneys and law firms for conducting fraud, misrepresentation, extrinsic fraud in the Common Pleas and Appellate Courts of South Carolina. Parties have lied in open court directly to a state judge (Honorable Judge Robert Hood), and committed fraud, conspiracy, theft by deception, and obstruction of justice.

Their actions have caused me, as Defendant/Appellant the loss of years of life and millions of dollars. Forthcoming are: 1) related attachments to prove their gross abuse which I have suffered via lawyer conduct, 2) these attorneys' twenty-five (25) violations of the South Carolina Rules of Professional Conduct (2016 Edition.)

Additional paperwork will be presented on or before the 27th day of January, 2021. Copies of this letter are simultaneously being sent electronically to: 1) Attorneys T. J. Newton, J.R. Murphy, and John Grantland of Murphy Grantland, P.A.; 2) Attorneys Christian Stegmaier, Laura Baer, Joel W. Collins, Jr., and Stanford E. Lacy, of Collins & Lacy, P.C.; 3) The Honorable Robert Hood; 4) jkiehl@global-indemnity.com; and 5) the S.C. Appellate and Richland Co. Common Pleas Courts.

Sincerely,



MB Hutson
P.O. Box 2755
Orangeburg, South Carolina 29116

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Penn America Insurance Company and
Global Indemnity Group, LLC,

Plaintiffs

vs.

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

Defendant

IN THE COURT OF COMMON PLEAS

Civil Action No. 2020-CP- 4003810

AMMENDED

MOTION

FOR EMERGENCY HEARING

FILED
JAN 28 PM 12:12
JANET L. W. McGRADY
S.C.P. & C.S.

Comes now Defendant who has discovered that the original transcription tape, held by the Court Reporter (DeeAnne Varnadoe), was loaned by her to “parties” prior to her preparing the October 15, 2020, transcript. While in the hands of those “parties,” such transcription tape was intentionally, illegally and substantially altered.

Those alterations were exclusively in favor of this case’s Plaintiffs and Plaintiffs attorneys. Defendant estimates, to his belief, that changes in the tape were at least 35 percent. They consisted mostly of the multiple pages (added after adjournment) which were added by unknown parties to the end of the tape... in addition to other changes within the tape. At the hearing, the last person to speak other than the judge was Timothy Newton, who said, verbatim to the best of my knowledge, “ Your honor, anything pertaining to Extrinsic Fraud, allow that to fall upon myself.” Newton then used his right hand and touched his chest. The Honorable Judge Hood responded, “ I understand.” Those words were deleted from the tape. All changes to the tape were strongly in favor of Plaintiffs and Plaintiff’s attorneys, thereby indicating the

1342

probable identity of the parties who violated the tape. It is clear that the State Court Reporter (intentionally) lost chain of custody to the transcription tape prior to her preparing the transcript. She must be questioned about that issue.

Attached to this Motion for Emergency Hearing are emails between Defendant and the State Court Reporter, as Exhibit "A".

The Court MUST determine WHO had a possible interest in the transcription tape other than a person or persons who had a direct interest in modifying that tape in their favor. Who, which attorneys, wanted to change what the tape 'said' was spoken in open court? Who added many paragraphs that were not stated on October 15, 2020, into the court tape (as "record") with the intent of those additions to be determined as apparently spoken by Timothy Newton, Esq.?

The Honorable Hood's Courtroom has become contaminated with fraud. Hood was the sitting judge on October 15, 2020. He was the captain of that ship. Hutson reminds the Honorable Judge Hood that he was provided (by Hutson) with actual proof that Christian Stegmaier, Esq. lied in that same hearing directly to the Honorable Judge Hood. Hood had declared in open court on October 15, 2020, to place any lawyer in jail who lied to him. Stegmaier did, and action remains to be taken. Evidence sent to Hood thereof is hereby attached, as EXH. "C".

THEREFORE, Defendant vigorously requests the following:

1. The Honorable John Hood set an immediate hearing regarding this serious matter before the Court as soon as possible due to the nature of these crimes.

2. The Honorable Judge John Hood summons DeeAnne Varnadoe, Timothy Newton, Esq., Christian Stegmaier, Esq., (who represents Penn America and Global Indemnity through Collins and Lacy along with Laura Baer, Esq.), John Grantland, Esq., MB Hutson, and also Laura Baer, Esq., of Lacy & Collins –who is believed to have also been witnessed in that courtroom on October 15, 2020, and is also counsel for Penn America and Global Indemnity.

3. The Honorable John Hood SWEAR IN all individuals prior to starting the hearing, especially the attorneys.

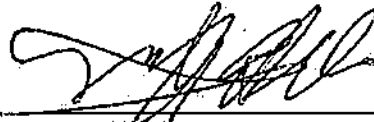
4. Should the Court Reporter, under oath, state that she provided the transcription tape to any of:

- the summoned individuals listed above, or
- employees, associates, family members or couriers thereof, or
- any other third party who acted on behalf of the summoned individuals,

that the Honorable Judge Hood take appropriate actions including, but not limited to:

- Striking all orders that were handed down at the October 15, 2020 hearings;
- Requiring the guilty to surrender their law licenses immediately;
- Remanding the case to a jury.

Respectfully Submitted on this 26th day of January, 2021.



M.B. Hutson
P.O. Box 2755
Orangeburg, South Carolina 29116-2755
Telephone: (803) 308-2714
Hutson4444@gmail.com

ATTACHMENTS ON FOLLOWING PAGES:

- “A” – Emails between Transcriptionist Varnadoe and Hutson. (pages 5-14)
- “B” – Filing including emails with Athena B. verifying Hutson’s claims that Stegmaier was duly informed re: judge contrary to CS’s claims in court. (pages 15-18); Proof of Service (p. 19)
- “C” – Hutson’s Letter to Judge Hood (page 20-21).

PROOF OF SERVICE (page 22)



Mr. H <hmr226621@gmail.com>

EXH.
"A"

Need a transcript

23 messages

Mr. H <hmr226621@gmail.com>

To: "Varnadoe, DeeAnne" <DVarnadoe@sccourts.org>

DeeAnne, please tell me what the extra cost would be to get an expedited transcript for case number 2020cp4003810 hearing was held on October 15, 2020 at 9:30 in Columbia S.C. Penn America Insurance Company,

Global Indemnity Group, Inc., Plaintiff vs. MB Hutson/Hudson/Morris Hutson.
Judge John Hood.

Also, what would the regular price be. I need this as soon as I can get it. Thanks

I will send you the money upfront.

Respectfully,

MB Hutson

--

Hutsen
803-308-2714

Varnadoe, DeeAnne <DVarnadoe@sccourts.org>

To: "Mr. H" <hmr226621@gmail.com>

Good afternoon, Mr. Hutson:

The cost for the expedited 7-day completion of the Transcript of Record would be \$409.50; the cost of the standard 60-day completion would be \$331.50.

Payment is required before transcription and can be sent to the address below should you decide to order.

Kindest regards to you,

DeeAnne Varnadoe
South Carolina Judicial Branch

Fifth Judicial Circuit, At-Large
336 White Birch Circle
Columbia, SC 29223
dvarnadoe@sccourts.org<mailto:dvarnadoe@sccourts.org>

From: Mr. H <hmr226621@gmail.com>
Sent: Monday, January 4, 2021 12:56:04 PM
To: Varnadoe, DeeAnne
Subject: Need a transcript

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

[Quoted text hidden]

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

Mr. H <hmr226621@gmail.com>  
To: "Varnadoe, DeeAnne" <DVarnadoe@sccourts.org>  
That will be fine for the 409.50. Do I need to apply using your form and what address shall I mail the check?  
[Quoted text hidden]

--  
Hutsen  
803-308-2714

Varnadoe, DeeAnne <DVarnadoe@sccourts.org>  
To: "Mr. H" <hmr226621@gmail.com>  
No, you do not need to fill out the form. This is enough information for me to find the records.

The address to send payment is right below my name.

DeeAnne Varnadoe  
South Carolina Judicial Branch  
Fifth Judicial Circuit, At-Large  
336 White Birch Circle  
Columbia, SC 29223  
dvarnadoe@sccourts.org<mailto:dvarnadoe@sccourts.org>



---

From: Mr. H <hmr226621@gmail.com>  
Sent: Monday, January 4, 2021 1:12:54 PM  
To: Varnadoe, DeeAnne  
Subject: Re: Need a transcript

\*\*\* EXTERNAL EMAIL: This email originated from outside the organization.  
Please exercise caution before clicking any links or opening attachments. \*\*\*

That will be fine for the 409.50. Do I need to apply using your form and what address shall I mail the check?

On Mon, Jan 4, 2021 at 1:03 PM Varnadoe, DeeAnne  
<DVarnadoe@sccourts.org<mailto:DVarnadoe@sccourts.org>> wrote:  
Good afternoon, Mr. Hutson:

The cost for the expedited 7-day completion of the Transcript of Record would be \$409.50; the cost of the standard 60-day completion would be \$331.50.

Payment is required before transcription and can be sent to the address below should you decide to order.

Kindest regards to you,

DeeAnne Varnadoe  
South Carolina Judicial Branch  
Fifth Judicial Circuit, At-Large  
336 White Birch Circle  
Columbia, SC 29223  
dvarnadoe@sccourts.org<mailto:dvarnadoe@sccourts.org>  
<mailto:dvarnadoe@sccourts.org<mailto:dvarnadoe@sccourts.org>>

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From: Mr. H <hmr226621@gmail.com<mailto:hmr226621@gmail.com>>  
[Quoted text hidden] Mon, Jan 4, 2021 at 1:21 PM

Varnadoe, DeeAnne <DVarnadoe@sccourts.org>  
To: "Mr. H" <hmr226621@gmail.com>  
Good morning, Mr. Hutson:

I'm following up with you *in re* your request for the Transcript of Record. Payment

of \$409.50 for the expedited completion has not been received, so please let me know your wishes going forward.

Hope you are safe and well.

Kindest regards,

DeeAnne Varnadoe  
South Carolina Judicial Branch  
Fifth Judicial Circuit, At-Large  
336 White Birch Circle  
Columbia, SC 29223  
dvarnadoe@sccourts.org

**From:** Mr. H <hmr226621@gmail.com>  
**Sent:** Monday, January 4, 2021 1:12 PM  
**To:** Varnadoe, DeeAnne <DVarnadoe@sccourts.org>  
**Subject:** Re: Need a transcript

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Payment is required before transcription and can be sent to the address below should you decide to order.

Kindest regards to you,  
[Quoted text hidden]

--  
Hutsen  
803-308-2714

Mr. H <hmr226621@gmail.com>  
To: "Varnadoe, DeeAnne" <DVarnadoe@sccourts.org>  
Thanks for touching base with me. Are you located in Columbia so

I could drop the money by? It would be much faster. If not I will drop the money in the mail Monday morning of this coming week. I will mail it to 3336 White Birch Circle, Columbia S.C. 29223

[Quoted text hidden]

--

Hutsen<br>803-308-2714

**Varnadoe, DeeAnne** <DVarnadoe@sccourts.org>

To: "Mr. H" <hmr226621@gmail.com>

Mailing would be fine, Mr. Hutson; however, the address is 336 White Birch Circle, not 3336.

I'll confirm receipt of payment and then begin transcription. The completed Transcript will be emailed to this email address that I have for you to print.

Get Outlook for iOS

From: Mr. H <hmr226621@gmail.com>

Sent: Friday, January 22, 2021 12:12:15 PM

[Quoted text hidden]

[Quoted text hidden]

**Mr. H** <hmr226621@gmail.com>

To: "Varnadoe, DeeAnne" <DVarnadoe@sccourts.org>

DeeAnne, can you think of any way I can get the transcript rather than putting it in the mail for that will waste 4 to 5 days. I am in critical need of the transcript.

[Quoted text hidden]

--

Hutsen<br>803-308-2714

**Mr. H** <hmr226621@gmail.com>

To: "Varnadoe, DeeAnne" <DVarnadoe@sccourts.org>

I could deliver the money order check to your office today or tomorrow if that would help.

[Quoted text hidden]

--

Hutsen<br>803-308-2714

**Mr. H** <hmr226621@gmail.com>

To: "Varnadoe, DeeAnne" <DVarnadoe@sccourts.org>

I meant to say money order

[Quoted text hidden]

--

Hutsen<br>803-308-2714

**Varnadoe, DeeAnne** <DVarnadoe@sccourts.org>

To: "Mr. H" <hmr226621@gmail.com>

Mr. Hutson:

Most of us are working remotely from home with virtual hearings/courtroom, so delivering to the courthouse would cause further delay. You are welcome to place the money order in our home mailbox (336 White Birch Circle) or under the front doormat if you would prefer that to mailing. Once payment is received, the Transcript will be prepared and sent to this e-mail address. We no longer print and mail Transcripts due to COVID restrictions.

DeeAnne Varnadoe  
South Carolina Judicial Branch  
Fifth Judicial Circuit, At-Large  
336 White Birch Circle  
Columbia, SC 29223  
dvarnadoe@sccourts.org

From: Mr. H <hmr226621@gmail.com>  
Sent: Friday, January 22, 2021 4:20 PM  
[Quoted text hidden]

[Quoted text hidden]

Mr. H <hmr226621@gmail.com>  
To: "Varnadoe, DeeAnne" <DVarnadoe@sccourts.org>  
I will place the money order under the door matt tomorrow. Please get it to me as soon as possible. Thank you.  
[Quoted text hidden]

--  
Hutsen<br>803-308-2714

Varnadoe, DeeAnne <DVarnadoe@sccourts.org>  
To: "Mr. H" <hmr226621@gmail.com>  
That will be fine, Mr. Hutson. I'll confirm with you once it's received.

Have a good evening, sir.

DeeAnne Varnadoe  
South Carolina Judicial Branch  
Fifth Judicial Circuit, At-Large  
336 White Birch Circle  
Columbia, SC 29223  
dvarnadoe@sccourts.org

**From:** Mr. H <hmr226621@gmail.com>

**Sent:** Friday, January 22, 2021 4:33 PM

[Quoted text hidden]

[Quoted text hidden]

**Mr. H** <hmr226621@gmail.com>

To: "Varnadoe, DeeAnne" <DVarnadoe@sccourts.org>

I have made out the money order to you and will have it placed under the floor matt before 12:00 Saturday, that's tomorrow. Please let me know when you have it and perhaps give me an email where I can send that to the Appellant Court. Thanks you.

[Quoted text hidden]

--

Hutsen<br>803-308-2714

**Mr. H** <hmr226621@gmail.com>

To: "Varnadoe, DeeAnne" <DVarnadoe@sccourts.org>

DeeAnn, I've just placed the check in an envelope under the mat pretty place here time is 20 minutes after 10 on Saturday morning. Appreciate you getting that as soon as possible

[Quoted text hidden]

**Varnadoe, DeeAnne** <DVarnadoe@sccourts.org>

To: "Mr. H" <hmr226621@gmail.com>

I have the money order, Mr. Hutson. The Transcript will be ready by Monday, possibly Sunday, and I will email it to you at this email address.

Thank you. Enjoy your weekend.

DeeAnne Varnadoe

South Carolina Judicial Branch

Fifth Judicial Circuit, At-Large

336 White Birch Circle

Columbia, SC 29223

dvarnadoe@sccourts.org

**From:** Mr. H <hmr226621@gmail.com>

**Sent:** Saturday, January 23, 2021 10:21 AM

[Quoted text hidden]

[Quoted text hidden]

**Mr. H** <hmr226621@gmail.com>

To: "Varnadoe, DeeAnne" <DVarnadoe@sccourts.org>

Good morning, just wondering about when I could expect today the transcript. Thank you so much for your efforts

[Quoted text hidden]

**Varnadoe, DeeAnne** <DVarnadoe@sccourts.org>

To: "Mr. H" <hmr226621@gmail.com>

Good morning, Mr. Hutson:

You should have a separate email now with the Transcript attached.

DeeAnne Varnadoe

South Carolina Judicial Branch

Fifth Judicial Circuit, At-Large

336 White Birch Circle

Columbia, SC 29223

dvarnadoe@sccourts.org

**From:** Mr. H <hmr226621@gmail.com>

**Sent:** Monday, January 25, 2021 8:48 AM

[Quoted text hidden]

[Quoted text hidden]

**Mr. H** <hmr226621@gmail.com>

To: "Varnadoe, DeeAnne" <DVarnadoe@sccourts.org>

Thank you for sending the transcript. I have a question. On page 47 sentence 24 it reads if I read it and you're telling me the truth and I'm going to have them in here and they know that. Why does it not show what the judge said and that is I will put them in jail why doesn't that appear like he stated?

[Quoted text hidden]

**Varnadoe, DeeAnne** <DVarnadoe@sccourts.org>

To: "Mr. H" <hmr226621@gmail.com>

Mr. Hutson:

I've reviewed the audio portion of what you cited. The Transcript is correct

and verbatim of what the Court stated.

Line 24, Page 47, "If I read it and you're telling the truth, then I'm going to have them in here and they know that.", is correct.

DeeAnne Varnadoe  
South Carolina Judicial Branch  
Fifth Judicial Circuit, At-Large  
336 White Birch Circle  
Columbia, SC 29223  
dvarnadoe@sccourts.org

From: Mr. H <hmr226621@gmail.com>  
Sent: Monday, January 25, 2021 11:48 AM  
[Quoted text hidden]

[Quoted text hidden]

Mr. H <hmr226621@gmail.com>  
To: "Varnadoe, DeeAnne" <DVarnadoe@sccourts.org>

DeeAnne, who had access to your tape prior to you getting it? Please email me first thing this morning. I am positive that the transcript has been drastically altered. Who were you speaking of when you used the words "if they lied to me". I made notes during the hearing and the last person who spoke who was Tim Newton, he ask the judge "to allow any thing regarding extrinsic fraud allow that to fall upon himself and he touched his chest." The Judge simply replied, "I understand" at that time Hood closed the hearing. What I've just told you is true. Now it reads that Newton talked on and on for pages. This is not true. Who had control over the tapes? Newton did I am almost certain. Please call me 803 308 2714. Someone had access to the original tape, I think you know. I ask you to please call me! Thanks. This is criminal. Please help me to understand first thing this morning. I again state that I don't believe you did this on purpose. I am confident that you know who!!!!!!!!!!!!!! Please call me.  
[Quoted text hidden]

--

Hutsen<br>803-308-2714

Mr. H <hmr226621@gmail.com>  
Draft To: "Varnadoe, DeeAnne" <DVarnadoe@sccourts.org>  
DeeAnne, I again ask that you email me as to who had that tape and who lied to you about this transcript. The transcript has been vividly tampered with and we must get to the bottom of this immediately. Please email me the persons who you believe lied to you as you have stated. I don't want to get you involved in this action. If you are innocent, do what's right by sending me an email.



Respectfully,

MB Hutson

[Quoted text hidden]

**EXH.  
"B"**

STATE OF SOUTH CAROLINA  
PLEAS

IN THE COURT OF COMMON

COUNTY OF RICHLAND

Civil Action No. 2020-CP- 4003810

Penn America Insurance Company and  
Global Indemnity Group, LLC,

Plaintiffs

vs.

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

Defendant

---

**DEFENDANTS ANSWERS TO**

**PLAINTIFFS'**

**FRAUDULENT COMPLAINT**

**Second copy due to 'lost' in mail.**

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

Defendant

vs.

Third Party Defendants:

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

---

COMES NOW Defendant who states the following:

1. On Sunday, the 6th day of September, Defendant placed in the U.S. Mail (blue mail boxes) copies to all parties and the court, "Defendants Answers to Plaintiffs ...Complaint" in the case cited above.

2. Today, September 17, 2020, Defendant checked the records only to discover that Plaintiff had filed an additional paper yesterday stating that Defendant had failed to file an answer to Plaintiff's complaint.

3. Not understanding why the court is not showing the mailed in Reply to the Complaint, Defendant has immediately rushed back over to Office Depot and got a second set of copies and is arranging to have that second set of "Defendant's Answer to Plaintiff's Complaint" hand served to the Court and Plaintiff in the morning. Please note that Plaintiff, Pro Se, has secured copies to verify to the court that the first set was sent to the printer services (3 pp. of verification attached thereto) in a gracious timely period. Defendant normally is very prompt and responsible for filing in a timely manner, never having had this problem before in his legal filings.

4. Also enclosed is a photograph of a mailing, also from Orangeburg, that, instead of being delivered, was returned to the sender eight MONTHS later...less than a year ago.

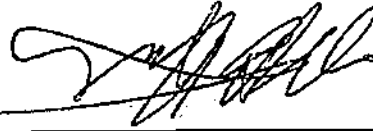
5. As a courtesy to the court and the Plaintiff, I am submitting a second copy, not knowing when the first set will show up, nor exactly when. I trust that the court will honor this second set as timely. Defendant pledges to notify the court immediately when the original set that was mailed in a timely manner, is received, and trust that the court will do likewise, should those papers not be returned to him, but reach their intended location.

6. A notice will be filed at the Post Office on their next day of business for the missing documents.

**Defendant prays that the court will:**

1. Defendant Hutson asks that the court will rule favorably in his behalf and receive the enclosed duplicate of Defendants Answers to Plaintiffs Fraudulent Complaint with photographs of verification that the work was originally completed on a timely basis, as being "filed timely" due to circumstances beyond his control.

Respectfully submitted with the following attachments on this 17th day of September, 2020.



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

Copies will be served on September 18th, 2020, to:

Christian Stegmaier, Esq.  
For Penn-America and Global Indemnity Group LLC  
Collins & Lacy P.C.  
1330 Lady Street  
Columbia, SC

*Please Note:*

From: ATHENA BORER <BORER.ATHENA@richlandcountysc.gov>  
Date: Thursday, September 17, 2020  
Subject: Good morning to Miss bright eyes, I have a question;  
To: "Mr. H" <hmr226621@gmail.com>

Good morning Mr. Hutson,

I am so sorry about this. I had to move some cases around so this got moved to the week of October 12. I am not sure what day of the week as of yet. The court will also be resuming normal day to day court operations, so this will be an in person hearing.

I will let you know as soon as possible as to which day this will take place. Again, I am sorry for the confusion.

Athena

Athena M Borer

Common Pleas Motion Coordinator

Richland County Clerk of Court

1701 Main Street

Columbia, SC 29201

Borer.Athena@richlandcountysc.gov

P 803-576-3372 F 803-576-1785

**From:** Mr. H <[hmr226621@gmail.com](mailto:hmr226621@gmail.com)>  
**Sent:** Wednesday, September 16, 2020 5:04 PM  
**To:** ATHENA BORER <[BORER.ATHENA@richlandcountysc.gov](mailto:BORER.ATHENA@richlandcountysc.gov)>  
**Subject:** Re: Good morning to Miss bright eyes, I have a question;

Athena, I have not heard anything about my injunction hearing or the cross complaint hearing. What happen? I mentioned to Penn America's attorney about you setting up a 22 day for the hearing and now he thinks that I lied to him. Are we still on for the 22 of this month???? Hutson

On Thursday, September 3, 2020, ATHENA BORER <[BORER.ATHENA@richlandcountysc.gov](mailto:BORER.ATHENA@richlandcountysc.gov)> wrote:

Mr. Hutson,

Judge Jocelyn Newman will be presiding over Motions for that week.

Let me know if you have any other questions. I am happy to help.

Athena

POS: (next page)

SERVICE VERIFICATION

(# 2020-CP-4003810)

Resubmittal of  
Defendant's Answer to Plaintiff's Complaint

has been served:

☒ To Penn America Insurance Company and Global Indemnity Insurance Company at  
The Law Office of Collins and Lacy P.C to Christian Stegmaier, Esq., attorney of record.

1330 Lady Street, 6<sup>th</sup> Floor, Columbia, SC

Phone: (803) 256 2660

Received by: M. Shue Time 9:30

Kindly Print: \_\_\_\_\_

On Friday, September 18, 2020.

Server: [Signature] (sign)

EXH.  
"C"

----- Forwarded message -----

From: Mr. H <hmr226621@gmail.com>

Date: Thursday, November 12, 2020

Subject:

To: Rhoddic@sccourts.org, Christian Penn Amer <cstegmaier@collinsandlacy.com>, "Tim J. Newton" <tnewton@murphygrantland.com>

To: The Honorable Judge Hood:

Re: Penn America/Global Indemnity vs. Morris Hutson (Case Number 2020-cp-400-3810.

Recently, I, Defendant, asked for clarification regarding the hearing on October 15, 2020, at approximately 9:00 in the morning (Case # cited above). You may recall that those present were Christian Stegmaier as attorney representing the Plaintiff, John Grantland and Timothy Newton were present as third party Defendants and formerly lawyers who had represented Plaintiff against Hutson, who was that day representing himself as Pro SE.

Additional clarification/facts regarding that hearing.

1. Your Honor ruled I was not to file anything until a decision from the Appellant Court ( even though we were in the Common Pleas Court ) had been issued, of which I believe I will be sent to a jury trial.
2. Your Honor stated twice in open court that he would put either side in jail should he find that they were lying and looked over to the lawyers reminding them "they know I will". Then, Christian Stegmaier stood before Your Honor and stated that I had drummed up a lie stating that I had contacted him indicating that the Common Pleas Court Clerk had set down the hearing on a certain date and that a judge had been assigned to hear the case. (NOTE: Prior to that hearing, I had collected the emails between the Clerk and myself and served Stegmaier with those copies at his office for verification. His receptionist signed as receiving that service and that service verification was filed with the court.) I took that action in response to Stegmaier, who, by email, stated that he had checked and that I was misrepresenting that information to him. After the hearing, I copied the entire email to your office showing that, in fact, Stegmaier had been fully informed prior to the hearing and was fabricating facts to Your Honor for the purpose of trying to make me out to be a liar, which was not truthful and only his attempt to discredit me. You may recall that I objected, cited the name of the Common Pleas Court Clerk (partially -- which you recognized and completed), and stated that I had served Stegmaier the entire communications and he was fully aware of the truth. This is extrinsic fraud: when a lawyer, such as Stegmaier did, fabricates lies against a defendant to intentionally thwart Justice. In addition, this is also perjury and deception against the Honorable Court and the Honorable Judge Hood. I remind Your Honor that we are talking about officers of the court who are sworn in by the Supreme Court.
3. The entire proceedings for application of injunction against me ( defendant ) were fraudulent, being full of extrinsic fraud. I simply ask for clarification: How can a sworn attorney (under Rule 407) intentionally lie to Your Honor, after you had openly warned the lawyers that they better not lie to you or face jail? To my knowledge, Stegmaier has faced no jail, nor consequence. How can this happen?

Am I allowed to file for reconsideration?  
Am I allowed to appeal for Clarification?  
Where is justice?

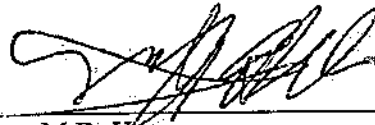
What am I to do in this situation?  
Go to the Tribunal?



--  
Hutson<br>803-308-2714

The fifty dollar (\$50.00) MONEY ORDER for this Emergency Motion will be placed in  
the US mail POSTAGE PAID to the Court on Thursday, January 28, 2021.

Respectfully Submitted on this 26th day of January, 2021.



---

M.B. Hutson  
P.O. Box 2755  
Orangeburg, South Carolina 29116-2755  
Telephone: (803) 308-2714  
[Hutson4444@gmail.com](mailto:Hutson4444@gmail.com)