THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

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

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

Plaintiff/Counter-Defendants,

v.

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

Defendant/Counter-Plaintiff,

AND

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

Third-Party Plaintiff,

v.

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

Third-Party Defendants.

of whom Morris Hutson is the Appellant,

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

RESPONDENTS TIMOTHY J. NEWTON and MURPHY & GRANTLAND, P.A.'S FINAL BRIEF

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STATEMENT OF THE CASE

This is an appeal from three Orders by the Honorable Robert E. Hood. Two of the appealed orders relate to Third-Party Defendants / Respondents Timothy J. Newton and Murphy & Grantland, P.A. (hereinafter collectively "Newton"). [1] Appellant Morris Beach Hutson a/k/a M.B. Hutson (hereinafter "Hutson") appealed from Judge Hood's Order granting Newton's Motion to Dismiss, or, in the alternative, Motion for Summary Judgment. (R. p. 1339, ¶ 1.) Hutson also appealed from Judge Hood's Order denying Hutson's Motion for Temporary Injunction. (Id., ¶ 3.) This brief addresses those two Orders.

Plaintiffs / Respondents Penn America Insurance Company and Global Indemnity Group, Inc. (hereinafter collectively "Penn-America") filed this action seeking an injunction prohibiting Hutson, a vexatious litigant, from continue to threaten and file litigation against Penn-America and its attorneys and agents. The Complaint was filed on August 10, 2020. [2]

Hutson filed third-party claims against Newton and Murphy & Grantland, P.A., which employs Newton. Hutson also filed counterclaims and third-party claims against Penn-America's current counsel, Christian Stegmaier, and his firm, Collins & Lacy, P.C. These were originally filed on August 17, 2020 and amended on August 26, 2020. In his August 26, 2020 filing, Hutson requested injunctive relief, apparently seeking an order requiring Respondents to disclose their knowledge of certain fraudulent acts. (R. p. 322.)

[1] Newton and Murphy & Grantland, P.A. are not originally listed in the caption for the appeal, but they were subsequently added by Order filed September 21, 2021.

[2] Newton and Penn-America are hereinafter referred to collectively as "Respondents."

Newton filed his Motion to Dismiss, or in the alternative, Motion for Summary Judgment on September 15, 2020. (R. pp. 390-99.) In that motion, Newton argued that Hutson's third-party claims should be dismissed pursuant to Rule 12(b)(6) and (8), SCRCP, and the doctrine of *res judicata*. Newton contended that Hutson's third-party claims are the subject of another pending appeal, MB Hutson/MB Hudson v. Penn America Ins. Co., *et al.*, Appellate Case No. 2019-001488. (See R. pp. 400-43.) Additionally, Newton argued that Hutson's allegations are false, defamatory, and asserted for the sole purpose of harassment and extortion. (R. p. 393-99)

These motions were set for a hearing before Judge Hood along with several motions filed by Penn-America. By Orders filed December 9, 2020, Judge Hood granted Newton's dispositive motion and denied Hutson's motion for injunctive relief. [3] (R. pp. 4-16.)

Hutson filed his Notice of Appeal on January 4, 2021 and an amended Notice on January 7, 2021. However, Hutson continued to file documents in circuit court.

On January 20, 2021, Hutson filed a letter directed to the Commission on Lawyer Conduct accusing opposing counsel of lying in open court to Judge Hood. (R. p. 1341.) Hutson filed a Motion for Emergency Hearing alleging that the transcript of the hearing before Judge Hood was fraudulently altered. (R. p. 1342-45.) Penn-America filed a response on January 28, 2021 for all Respondents. (R. pp. 1362B-1375.) Hutson's reply was filed on February 1, 2021. (R. pp. 1376-93.) A hearing on the motion was scheduled.

Hutson filed a "Revisited" Motion for Emergency Hearing on February 9, 2021. (R. pp. 1394-96.) Newton filed a responsive memorandum and cross-Motion for Sanctions

[3] Hutson did not appeal Judge Hood's Order granting Penn-America's Motion for Temporary Injunction.

on February 12, 2021. (R. pp. 1397-99, 1401-18.) On that same day, Hutson filed a letter withdrawing his request for an emergency hearing, but reiterating his contention that the transcript was altered. Hutson accused Judge Hood of conspiring with Respondents in tampering with the transcript. (R. p. 1400.) The trial court filed a Form 4 Order cancelling the hearing on February 17, 2021. (R. pp. 35-38.)

STATEMENT OF THE FACTS

Respondents Newton and Murphy & Grantland, P.A. provide the following counter-statement of the facts of the case pursuant to Rule 208(b)(2), SCACR.

This action follows a long and tortured history of litigation involving a campground formerly known as Big Water Resort. The history of that litigation has been set forth in numerous prior court filings. The following facts are relevant to this action.

In December 2010, Hutson entered into two transactions (hereinafter collectively referred to as "the Land Deal") with a non-party to this action, TLC Holdings, LLC, and its principals (hereinafter collectively "TLC"). [4] The Land Deal involved two key components. First, Hutson agreed to lease and ultimately purchase several parcels of land on the shore of Lake Marion ("the Lease Purchase Agreement"). Second, Hutson acquired the campground business by purchasing all the shares of a non-party entity, Big Water Resort, LLC ("the Membership Interest Purchase Agreement"). (R. pp. 5, 203-04.)

Hutson gave TLC the fictional name "M.B. Hudson" when he entered into the Land Deal to prevent TLC from obtaining Hutson's background information. (R. pp. 466-67, 511, 514 at ¶ 3, 1170, 1517, 1518, 1787-91.) After TLC entered into the Land Deal, TLC

[4] The firms Womble Bond Dickinson and Turner Padget (beginning in early 2014) represented TLC. Respondents never represented TLC at any time; nor do Respondents have access to all TLC's documents, as Hutson falsely and self-servingly alleges.

averred it learned from public records that Hutson has "a history of arrests, criminal warrants, and public complaints related to his business practices." Hutson also "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 or Georgia for which the other parties had filed or posted complaints about his conduct." (R. pp. 511, 514 at ¶ 3, 515-16 at ¶¶ 12-15.)

Hutson entered into the Land Deal with full knowledge that Big Water Resort, LLC had issued its campground members lifetime use rights ("the Retail Membership Agreements"). (R. pp. 5, 111 n.5, 1072-77, 1836-40, 1906, 2075.) Hutson's Lease-Purchase Agreement with TLC allowed Hutson to develop and sell unimproved portions of the property. (R. p. 5.) The precise portions of the property that were considered "unimproved" is unclear from the documentary evidence. (R. p. 383, ¶¶ 7-14, 1153, line 23-p. 1154, line 3.) However, it appears that the campground, with its lifetime memberships, was situated on the lakefront portion of the Land Deal property. (R. p. 1854, line 24 to 1855, line 1.) Any unimproved portions of the property would not have been on the lakefront. (R. pp. 1840, line 23 to 1841, line 4; 1893, line 3 to 1894, line 8.)

Undeterred by his knowledge that the lakefront property in the Land Deal was subject to lifetime use rights, and his duty to protect those rights as principal in Big Water Resort, LLC, Hutson planned to develop lakefront condominiums on the Big Water Resort Property. (R. pp. 621 at ¶ 46, 849 at ¶ 57, 1072-77; 1120, lines 17-18; 1492-93 at ¶ 4, 1518.) Hutson's scheme to overcome these "obstacles" was to force the campground members out by (a) substantially reducing the number of employees at the campground, and (b) increasing costs and annual dues. (R. p. 1493 at ¶¶ 6-7.)

Within a few months after Hutson moved onto the Big Water Resort property, TLC filed to evict him. TLC initiated its action in magistrate court, then filed an Ejectment Action in circuit court on December 14, 2011. (R. pp. 5, 207, 772-76.) TLC alleged Hutson failed to make his lease payments. (R. pp. 207, 774 at ¶ 7.)

Hutson retained counsel (non-party A. Paul Weissenstein, Jr., Esq.) and filed counterclaims in the Ejectment Action. (R. pp. 5, 207-08, 575-92.) Hutson asserted various allegations against TLC of fraud relating to the lease-purchase transaction (*i.e.*, the Land Deal). See Reed v. Big Water Resort, LLC, Civ. Action No. 2:14-1583-DCN-MGB, 2016 WL 7435620, *9 to *14 (D.S.C. filed Apr. 22, 2014).

TLC and Hutson resolved their differences in a Settlement Agreement that was adopted into a Consent Order in the Ejectment Action. (R. pp. 207, 808-25, 831.) The Settlement Agreement contained several key provisions. First, it allowed Hutson to remain on the property and to continue attempting to develop certain portions of the Land Deal property. (R. pp. 809-10 at ¶ 5, 831 at ¶ 4.) Second, it provided that if Hutson breached the Settlement Agreement, he would be required to vacate the property. (R. pp. 809 at ¶ 4; 832 at ¶ 5.) Third, Hutson's breach would also automatically release TLC from any conduct relating to Big Water Resort. (R. pp. 813-14 at ¶ 23, 832 at ¶ 6.) Weissenstein represented Hutson for purposes of negotiating this settlement. (R. pp. 208, 235, 822.)

Hutson again failed to satisfy his obligations vis-à-vis the Land Deal. By Order filed March 21, 2014, Judge (now Justice) George C. James, Jr. ruled that Hutson breached the Settlement Agreement. (R. pp. 208, 837 at ¶ 9.) The Order provides that "pursuant to the Consent Order, [Hutson] is deemed to have granted the TLC Release to the TLC Parties, as set forth more fully in Section 23 of the Settlement Agreement." (R. p. 838.) Thus,

Hutson waived his right to sue TLC as of December 11, 2013, when TLC filed its Affidavit of Default. (R. p. 837.) This was over two years before Respondents had any knowledge of the Big Water Resort litigation. (R. pp. 6, 208, 1407-08, 1512.)

After being served with TLC's Affidavit of Default, Hutson sent a postcard to the campground members claiming that both he and they were victims of a scam perpetrated by TLC. (R. pp. 6, 208, 1696.) This led to two separate actions. The campground members sued TLC in federal court, and TLC asserted third-party claims against Hutson in that action (hereinafter "the Class Action"). (R. pp. 6, 208, 593-611, 1985 ¶ 23.) TLC filed a state-court action for defamation against Hutson (hereinafter "the Defamation Action") on December 7, 2015. [5] (R. pp. 210, 1981-89.) These are the cases in which Penn-America's involvement began. (R. pp. 206, 209-10, 1478-90.)

On October 16, 2013 (over a year after the 2012 Settlement and Consent Order were executed and filed), Penn-America issued a policy to an entity known as BWR, Inc. (R. p. 1475.) This entity did not own any of the Land Deal property; nor did it hold the campground memberships. Hutson entered into his transactions with TLC (the 2010 Land Deal and the 2012 Settlement Agreement) in his individual capacity. (R. pp. 759, 808, 818, 824, 829, 1170.) It appears that BWR, Inc. merely held a bank account through which Hutson funneled income from Big Water Resort and paid its operating expenses. (R. pp. 2243-46, 2257-58.) Penn-America's policy was cancelled effective April 7, 2014 after Hutson vacated the Big Water Resort property. (R. p. 1476.)

TLC's third-party claim against Hutson in the Class Action was filed on June 5, 2014, but neither TLC nor Hutson tendered it to Penn-America. Hutson retained Matthew

[5] TLC claimed over $37,000,000 in damages in the Defamation Action against Hutson.

D. Hamrick to represent him in that action. The federal court granted Hamrick's motion to withdraw as counsel on March 26, 2015. (R. p. 1512.) Hutson proceeded *pro se* in the Class Action until the end of 2015. During that time, TLC moved for sanctions due to Hutson's misconduct. Reed, 2016 WL 7435620 at pp. *4 to *8. The court denied TLC's motion in part because Penn-America had retained counsel to defend Hutson. Id. at *8.

Hutson's deposition was taken in the Class Action before Penn-America was notified of the claims against Hutson. (R. pp. 1408, 2099-2100.) Hutson's deposition testimony was used to impeach him on key issues in the subsequent trial in the Defamation Action. (R. pp. 1777-82.)

TLC (not Hutson) tendered Hutson's defense in the Defamation Action to Penn-America in late December 2015. (R. p. 1478.) Mike Ethridge and Laura Paton of the firm Carlock Copeland & Stair, LLP appeared for Hutson in both the Defamation Action and the Class Action pursuant to Penn-America's policy in early 2016. (See R. p. 102 at n.4.)

Penn-America also retained Newton as coverage counsel. Penn-America filed a declaratory judgment action (hereinafter "the Coverage Action") seeking a ruling as to its coverage for Hutson in the Class Action and the Defamation Action on June 14, 2016. (R. pp. 6, 211.)

Upon learning of Penn-America's declaratory judgment action, Hutson began threatening litigation against Penn-America. (R. p. 1151, lines 13-16.) These were resolved in a settlement agreement on September 16, 2016 in which Hutson released all claims against Penn-America and its counsel related to his claims for coverage under the policy. (R. pp. 6-7, 146-50, 212, 224-25.)

Nevertheless, Hutson continued threatening litigation against Penn-America. He repeatedly demanded that Penn-America provide counsel for his counterclaims against TLC in the Class Action and the Defamation Action. (R. p. 216.) These counterclaims related to transactions Hutson entered into in his individual capacity long before Penn-America's policy incepted. (See R. pp. 580-92, 600-610.) Moreover, they were barred by a release, as discussed above. (R. p. 838.) Penn-America respectfully declined to provide counsel for Hutson's counterclaims. (R. p. 8.)

Hutson continued to prosecute his counterclaims against TLC on a *pro se* basis. (R. p. 7.) The counterclaims in both the Class Action and the Defamation Action were dismissed based upon *res judicata*. (R. pp. 7, 96-112, 114-22, 133-44, 208-10, 220.) Both courts found that Hutson's counterclaims related only to alleged fraud in the original Land Deal—he had no evidence of fraud inducing him to enter into the 2012 Settlement Agreement. (R. p. 107 at *14, 142-43, 209-10.)

One of Hutson's counterclaims, an unfiled draft of the one filed in the Defamation action, is frequently quoted in Hutson's briefs and motions as evidence of a report prepared by defense counsel, Laura Paton, documenting 70+ "counts" of fraud (hereinafter "Draft Pleading"). (See, e.g., R. pp. 10, 155-59, 210, 309, 347-57; 2018, lines 15-18; 2021, lines 1-9.) A review of the filed Draft Pleading demonstrates that paragraphs 40 through 124 are mere allegations, and that the counterclaims are signed by only Hutson. (R. pp. 620-36.) These allegations were all heard and dismissed by Judge Cothran upon a finding that they all related to the original Land Deal. (R. p. 142-43.) A review of the counterclaim confirms the correctness of Judge Cothran's ruling. Six (not 77) causes of action were

asserted, only three (3) of which involve fraud, and none allege that TLC fraudulently induced Hutson to enter into the 2012 Settlement Agreement. (R. pp. 849-64.)

After Hutson's counterclaims were dismissed in the Class Action, Hutson continued to file *pro se* motions purporting to assert claims against TLC. Beginning in early 2016, Hutson argued that *res judicata* should not bar his counterclaims because extrinsic fraud was committed. (R. p, 1011, 1067.) Hutson demanded in 2017 that Penn-America refuse to respond to TLC's Tyger River demand because TLC were "crooks" who "stole from him." (R. pp, 1011, 1062, 2076-77.) Hutson declared his intent to hire attorneys and expert witnesses to set aside the 2012 Settlement Agreement based upon extrinsic fraud upon the court. (R. p. 1011, 1062.)

District Judge David C. Norton granted TLC's Motion for Sanctions against Hutson in the Class Action. (R. pp. 210-11, 124-31.) Judge Norton found that "Hutson appears to have continued his pattern of frivolous filings and conduct designed to harass or burden [TLC], and there is no indication that he intends to cease." (R. p. 128.) Judge Norton noted that Hutson "again makes reference to the alleged fraud by [TLC] in obtaining the settlement agreement and the order signed by Judge James in the prior state court litigation. Hutson has made these allegations throughout the course of this litigation. He has never, however, specified what the fraud is or submitted evidence of it." (Id.) Judge Norton concluded that:

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

(R. p. 129.)

Penn America settled TLC's claims against Hutson in the Class Action in early 2018. The settlement included resolution of TLC's sanctions award against Hutson at no cost to Hutson. (R. pp. 8, 211, 421, 1023.)

The Defamation action was tried in January 2018. [6] The jury returned a verdict for TLC and against Hutson in the amount of $3,500,000. (R. pp. 8, 211, 1904.)

In August 2018, while negotiations to settle the Defamation suit were ongoing, Hutson made certain representations to Newton to induce Penn America to provide counsel for Hutson's attempt to set aside the conditional release in the 2012 Settlement based upon fraud upon the court. (R. pp. 8, 546 at ¶ 9, 1011-12, 1287-1309, 2056-57.) Hutson pointed out that the 2012 Settlement contemplated a condominium development on the campground property. (R. pp. 8, 816, 1092, 1220, 1232, 2056-57.) He also stated that he had recently learned that TLC had withheld from him evidence that all of the property he purchased was subject to the lifetime campground membership agreements. (R. pp. 8, 221; 1151, line 22-p. 1152, line 10; 1307 at ¶ A.) Hutson provided an expert affidavit he intended to use in a forthcoming suit against Weissenstein (hereinafter "the Hardee Affidavit"), stated that Hardee's testimony supported his claim of fraud, and threatened

[6] Shortly before trial, Hutson posted defamatory material regarding TLC on the internet. (R. p. 2065, line 14-16.) TLC moved to amend its pleading to add a new claim for defamation. (Id.) Penn-America moved to intervene under prior law to request an allocation between damages associated with the postcard sent to the campground members and the new defamatory statement, which occurred after Penn-America's policy was cancelled. Penn-America's motion was heard before trial began. It was not ruled upon because Penn-America withdrew its motion to intervene after TLC withdrew its motion to amend. (R. pp. 461-62, 500-06.) The hearing had nothing to do with Hutson's allegations of extrinsic fraud, nor could Penn-America or its counsel have asserted Hutson's fraud claims during that hearing. (Id.; see also Newton Reply Mem. in Support of Mot. to Strike filed Apr. 1, 2021, pp. 4-6 and Exhs. C through H.)

litigation against Penn-America based upon Hardee's testimony. (R. pp. 8, 386-89, 1092; 1152, line 10-p. 1153, line 1; 1162-1255, 1405, 1414-15.)

Newton acknowledged Hutson's possible claim for fraud upon the court and provided corroborating evidence in an e-mail dated August 13, 2018 (hereinafter "Newton E-mail"). (R. pp. 8, 204-05, 216-17, 382-84; 1153, line 12-p. 1154, line 24; 1310-11.) However, Penn America declined to provide counsel for Hutson with respect to any affirmative claims Hutson might assert against TLC. (R. p. 8, 1317.)

After Hutson received Newton's E-mail, he threatened litigation against TLC. (R. pp. 1095, 1256-59.) Hutson circulated a proposed Complaint against TLC. (R. pp. 1095, 1260-73.) However, he was rebuffed by counsel for TLC, who threatened to sue him again for defamation and seek sanctions. (R. pp. 1095, 1274-77.)

Hutson then abandoned his suit against TLC and used Newton's E-mail to blackmail Penn-America instead. The day before mediation, Hutson demanded $500,000 from Penn-America. (R. pp. 1095-96, 1278-80.) TLC's claims against Hutson in the Defamation Action were mediated on November 2, 2018. The case did not settle at mediation. Hutson threatened suit against Penn-America again on November 6, 2018. (R. pp. 1096, 1281-85.)

Newton responded on behalf of Penn-America by letter dated November 8, 2018 (hereinafter "the Newton Letter"). [7] (R. pp. 1096, 1319-23.) Penn-America declined Hutson's settlement demand. (R. p. 1322.) The letter states that Penn-America and its counsel had never acknowledged the existence of fraud upon the court but did recognize that Hutson had provided certain evidence that could support such a claim. (R. p. 1321.)

[7] Hutson did not file a copy of the Newton Letter in this action.

Penn-America settled TLC's Defamation claims against Hutson in late November 2018. (R. p. 8, 211.) Penn-America entered into this settlement at Hutson's request. (R. pp. 547 at ¶¶ 16-17, 567, 571.)

Hutson subsequently sued Paul Weissenstein, the attorney who represented him for purposes of negotiating the 2012 Settlement. (R. p. 8.) On February 25, 2019, Judge Kristi F. Curtis granted Weissenstein's motion for summary judgment. (R. pp. 228-42.) Judge Curtis found that Hutson could not establish fraud because he knew about the lifetime campground memberships before he entered into the 2010 lease-purchase of the Big Water Resort property. (R. pp. 238-39.) Hutson's appeal from that Order is currently pending before this Court. Hutson v. Weissenstein, Appellate Case No. 2019-000873.

Hutson used the Newton E-mail as the basis for another lawsuit ("the Bad Faith Action") that he filed the day after he was notified of the settlement of TLC's $3,500,000 verdict against him in the Defamation Action. (R. p. 9.) Hutson alleged various causes of action against Newton and J.R. Murphy of Murphy & Grantland. These claims were all based upon a theory that Newton knew about fraud committed against Hutson by TLC in the Ejectment Action and failed to report it to a court. (R. pp. 152-73.) Hutson's claims were heard and on July 18, 2019, Judge Michael G. Nettles filed an Order granting summary judgment in favor of Murphy and Newton. (R. pp. 202-26, 1098-1161.) Hutson's appeal from that Order has been dismissed. Appellate Case No. 2019-001488 (hereinafter "BFAA"). (See R. pp. 400-43.)

After Hutson's initial briefs in the Bad Faith Action against Penn America were completed, Hutson filed an "Emergency Motion to Have Open Hearing Due to Respondents Committing Extrinsic Fraud on the South Carolina Court of Appeals and its

Judges." (R. pp. 52-53 at ¶ 84, 444-45.) Hutson claimed in numerous court filings and threatening e-mails that Murphy & Grantland and current counsel for Penn America are continuing to commit fraud upon the court by failing to report allegedly known fraud perpetrated against Hutson by TLC. (R. pp. 53-56.) The Court of Appeals denied Hutson's motion and other similar motions by Order filed July 28, 2020.

Penn America then filed this action seeking injunctive relief to restrain Hutson from continuing his pattern of vexatious litigation and threats of litigation against Penn America and its current and former counsel. (R. pp. 39-58.) Hutson responded by filing third-party claims against Newton. (R. pp. 307-34.) Hutson's various causes of action have precisely the same factual basis as the claims upon which Judge Nettles granted summary judgment. Hutson again alleged that Newton knew of extrinsic fraud upon the court and failed to report it. (R. pp. 309-10.) The evidentiary grounds for Hutson's claims in this action are the same Newton E-mail and Draft Pleading from the Defamation Action that he raised in the Bad Faith Action. [8] (R. pp. 308-09, 314-15, 347-58, 382-84.) Hutson even filed copies of his briefs and motions from the pending appeal of the Bad Faith Action as the basis for his third-party claims against Newton in this case. (R. pp. 10, 335-80.)

Newton moved to dismiss Hutson's third-party claims based upon Rule 12(b)(8) of the Rules of Civil Procedure and the doctrine of *res judicata*. Newton also requested dismissal based upon Hutson's vexatious litigation tactics. (R. pp. 390-99.)

At the hearing, Hutson made the same arguments that he previously raised to Judge Nettles in the Bad Faith Action. (R. p. 10.) Hutson relied upon his allegations in his Draft

[8] Hutson never filed a copy of the Draft Pleading in this action. His references to it relate back to exhibits from the Bad Faith Action.

Pleading against TLC in the Defamation Action. (R. pp. 1130, line 17-p. 1132, line 19; 2018, lines 15-18; 2020, lines 25-p. 2021, line 9; 2040, lines 21-25.) Hutson argued that Newton admitted he knew of fraud upon the court in the E-mail, but then contradicted himself in a letter responding to Hutson's $500,000 settlement demand to Penn America. (R. pp. 1134, lines 2-14; 1141, line 19-p. 1142, line 9; 1319-23, 2023, line 17-p. 2025, line 24.) Hutson contended the 2012 Settlement Agreement was fraudulent because it ordered him to develop property that was subject to the campground members' lifetime use rights. (R. pp. 1128, lines 2-6, 2036, lines 9-22.) He asserted that if Respondents had "reported" the alleged fraud, he would have won all his prior cases. (R. p. 1135, lines 11-14, 2044, lines 17-21.) Hutson stated that his motion for injunctive relief sought to "order [Respondents] to disclose like they are required to do by law that my cases were never heard in court because of extrinsic fraud." (R. pp. 1137, lines 12-14; 2045, lines 3-5.)

Respondents argued that Hutson's counterclaims and cross-claims asserted the same matters previously litigated in the Bad Faith Action. (R. pp. 2045, line 13 to 2046, line 5, 2048, line 6-11.) Hutson offered nothing to the contrary.

Judge Hood then gave Newton a chance to speak. He began by stating that the other attorneys who appeared for Respondents at the hearing, Christian Stegmaier and John Grantland, had nothing to do with Hutson's allegations of fraud because their involvement began after Hutson's litigation with TLC was concluded. (R. p. 2054, line 7-12.) [9]

[9] Hutson mischaracterized Newton's comments as an admission that Newton committed fraud in Hutson's appeal of the Bad Faith Action. (Hutson Resp. filed Dec. 29, 2020 (BFAA), p. 3, ¶ 5.) Newton predicted that the transcript would reflect that he merely argued that Stegmaier and Grantland had no involvement in the misconduct Hutson alleged. (Respd't's Mot. for Inj. Relief (BFAA) filed Jan. 13, 2021, p. 6.) The transcript substantiates Newton's account and contradicts Hutson's. (R. pp. 2054-62.) Hutson then filed an emergency motion for a hearing in the trial court accusing Newton of conspiring

Newton pointed out that the fraud Hutson alleges occurred prior to Penn-America's (and consequently Newton's) involvement. (R. p. 2054, line 22-p. 2055, line 12.) The courts in the Class Action and the Defamation Action ruled that Hutson's claims are barred by the release in the Settlement Agreement because they all alleged fraud in the original Land Deal. (R. p. 2055, line 12-p. 2056, line 10.) That issue was settled long before Penn-America was notified of the litigation.

Hutson did not provide any evidence of potential fraud inducing him to enter into the 2012 Settlement Agreement until several months after trial. (R. p. 2056, line 13-p. 2057, line 12.) In August 2018, Hutson produced the Hardee Affidavit for use against Weissenstein, and other evidence, that appeared to reflect that the 2012 Settlement Agreement may have permitted or required Hutson to build condominiums on property subject to the campground members' lifetime use rights without giving the campground members any opportunity to contest it. (R. p. 2056, line 20-p. 2057, line 12.) Newton thought this might possibly constitute new evidence to support a claim to set aside the 2012 Settlement Agreement. (R. p. 2058, line 21-25.) To avoid a miscarriage of justice, and in furtherance of Penn-America's common interest with Hutson in opposing TLC's claims, Newton alerted Hutson to this possibility and encouraged him to retain counsel if Hutson thought it was meritorious. (R. p. 2057, line 17-p. 2059, line 7.)

Newton's E-mail recognizes that TLC was represented by counsel ("since lawyers were involved") for purposes of the 2012 Settlement Agreement. (R. p. 2060, lines 1-9.) The E-mail also reflects that Hutson lost his ability to prosecute his counterclaims due to

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with the court reporter and Judge Hood to alter the transcript. He withdrew his request before the hearing. Nevertheless, Hutson continues to argue the transcript was altered in his brief. This is emblematic of Hutson's estranged relationship with truth and veracity.

the automatic release in that Settlement Agreement. (R. p. 2060, lines 12-16.) Assuming that Hutson could demonstrate that TLC and its counsel withheld from Hutson evidence that he could not develop condominiums on the Land Deal property without violating the campground members' lifetime use rights, potentially Hutson might have a meritorious claim to set aside the 2012 Settlement Agreement based upon extrinsic fraud. (R. pp. 1153-54.) However, the lack of documentation as to which property was developable precludes positive proof of fraud. (R. p. 1153, line 23-p. 1154, line 3.) Hutson's extrinsic fraud claim involves settlement negotiations in the Ejectment Action, to which none of the Respondents have any personal knowledge. (R. pp. 2059, lines 7-14; 2061, lines 18-19.)

Judge Hood granted Newton's motion and dismissed Newton and his firm as parties. (R. p. 12.) Judge Hood specifically found that they were not committing fraud upon the court in this action. (R. p. 10.)

Judge Hood denied Hutson's motion for injunctive relief. (R. pp. 14-16.) Judge Hood found that Hutson had failed to make a *prima facie* case that any fraud was committed by Respondents and that Hutson was unlikely to succeed on the merits. (R. pp. 14-15)

Hutson filed his Initial Brief on January 26, 2021. Hutson presented no evidence to support his claim other than to rely upon the same arguments he previously asserted in the Bad Faith Action. His only attempt to distinguish the Bad Faith Action was to point out that Penn-America filed the instant action. (Init. Br. at p. 7.) Hutson besmirched Respondents as liars and likened them to bank robbers. However, he provided no evidence of any purported false statements by Newton. (R. p. 1341.)

After filing his Initial Brief, Hutson requested an Emergency Hearing to challenge the accuracy of the transcript of the hearing before Judge Hood. (R. pp. 1342-62A, 2078-

98.) Because Hutson's allegations of fraud and judicial bias were not withdrawn and have been raised in this appeal, Newton's responsive materials are included in the Record.

STANDARD OF REVIEW

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. The trial 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(b); SCRCP; Brown v. Leverette, 291 S.C. 364, 366-67, 353 S.E.2d 697, 698-99 (1987).

The trial court in this case considered matters outside the pleadings. When evaluating a claim for extrinsic fraud, a court may convert a motion to dismiss and grant summary judgment upon a finding that only intrinsic fraud was alleged. Mr. G v. Mrs. G, 320 S.C. 305, 311, 465 S.E.2d 101, 104-05 (Ct. App. 1995).

An appellate court's review of an order granting a summary judgment motion is based upon the same standard that governs the trial court under Rule 56, SCRCP. Hoard v. Roper Hosp., Inc., 387 S.C. 539, 546, 694 S.E.2d 1, 4 (2010). "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.

Although only a scintilla of evidence is required, a party must present some evidence to avoid summary judgment. Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 330-31, 673 S.E.2d 801, 802-03 (2009); Moody v. McLellan, 295 S.C. 157, 163, 367 S.E.2d 449, 452-53 (Ct. App. 1988). A party may not avoid summary judgment by asserting that a jury may disbelieve uncontradicted evidence. Hoard, 387 S.C. at 549, 694 S.E.2d at 6.

This Court exercises *de novo* review of questions of law. Fesmire v. Digh, 385 S.C. 296, 302, 683 S.E.2d 803, 807 (Ct. App. 2009). An appellate court may find facts as to equitable issues by a preponderance of evidence. Id. at 303–04, 683 S.E.2d 803, 807-08.

ARGUMENT

Hutson's claims against Newton should be dismissed because they merely rehash what Hutson argued in the Bad Faith Action. The only possible exception is Hutson's contention that Newton is committing fraud upon the court in this action and/or the Bad Faith action. Whereas in the Bad Faith Action, Hutson arguably claimed only that Newton knew of fraud committed by TLC and failed to report it, Hutson contends in this action that Respondents are actively committing fraud upon the court. Hutson has not demonstrated that Respondents are or were committing fraud upon the court. All other issues have been raised in a prior action. Therefore, Judge Hood's Orders should be affirmed.

I. Hutson failed to produce any evidence that Newton is committing or has committed any fraud upon any court.

Before proceeding, it is worthwhile to look behind the labels to consider the substance of Hutson's claim. Hutson alleged in his "Ammended Cross-Complaint" that Respondents are committing "Extrinsic Fraud." (R. pp. 307-08.) In paragraph 3, Hutson

alleged that Respondents knew about the allegations in the Draft Pleading and intentionally failed to report it. (R. pp. 308-09.) In Count I, Hutson clarifies that the fraud alleged in the Draft Pleading was committed by a third party, TLC and its counsel. (R. p. 309.) Hutson alleged that had the "Extrinsic Fraud" been disclosed, he would have prevailed in his litigation with TLC. (R. pp. 309-10.) In support of his fraud claim, Hutson submitted only four pieces of evidence: (a) the Draft Pleading (R. pp. 347-57), (b) the Hardee Affidavit (R. pp. 385-89), (c) the Newton E-mail (R. pp. 381-84), and (d) the Newton Letter (R. pp. 1318-23).

Hutson alleged that Respondents conspired to prevent his case from being heard and to win at any cost. (R. pp. 314-15.) These allegations are belied by the fact that *Hutson prevailed* in his coverage dispute with Penn-America. The only prior case to which Hutson and Penn-America were both parties is the Coverage Action in which Penn-America disputed its liability coverage. Hutson obtained the full benefit of the policy. Penn-America alleged in the Complaint that it provided a defense to him in both the Defamation Action and the Class Action. (R. p. 47, ¶¶ 49-51.) Penn-America indemnified Hutson in both the Class Action and the Defamation Action without personal liability to Hutson, including paying sanctions Hutson incurred in his *pro se* capacity. (R. p. 46 at ¶¶ 36-38, p. 47 at ¶ 46.) Because Hutson never denied these allegations, they are deemed admitted. Motors Ins. Corp. v. State by and through Dep't of Hwys. And Pub. Transp., 313 S.C. 279, 281, 437 S.E.2d 555, 556-57 (Ct. App. 1993); Rule 8(d), SCRCP.

A. Hutson's factual allegations do not support a claim for fraud.

While Hutson uses the term "fraud," the facts he alleged do not support any such claim. Hutson has not alleged facts or cited case law to support a claim for common law

fraud. See Turner v. Milliman, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011) (listing the elements and requirements for a fraud claim). Generally, fraud is defined in the law as "an intentional perversion of the truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or her or to surrender a legal right." 37 C.J.S. Fraud § 1 (Feb. 2022 Update). Fraud cannot exist without a breach of legal or equitable duty." Id. Hutson does not allege that Respondents induced him to part with any property or right. Hutson's claim is that Respondents knew about fraud perpetrated against him by a third party, TLC, and failed to take action on his behalf. (R. pp. 309-10.) His claim is thus a means to an end, rather than an end in itself. Hutson's "fraud" claim seeks to pit Respondents against TLC. (Id.)

Essentially, Hutson contends that Respondents have or may have evidence material to his potential claim against TLC to set aside the release in the 2012 Settlement Agreement. Hutson entered into that settlement before Penn-America's policy was issued, and in another case, of which Respondents had no notice or involvement. (R. pp. 808-25, 829-38, 2054 line 22-p. 2056 line 10.) [10] Respondents could not have induced him to enter into that settlement.

Respondents' knowledge of allegations in the Draft Pleading cannot support a claim for fraud because they relate to the original Land Deal. (R. pp. 133-44, 620-36.) Any claim based upon the fraud in the Land Deal would be futile. Reed v. Big Water Resort, LLC, No. CV 2:14-1583-DCN-MGB, 2016 WL 7435620, at *14 (D.S.C. Apr. 5, 2016)

[10] Respondents have filed numerous documents from the prior cases in responding to Hutson's various allegations in the Bad Faith Action and in this action. For ease of reference, a chronological list of those documents is provided in the attached Appendix. These documents reflect that Hutson's claim that the adverse results of his claims against TLC were somehow attributable to Respondents is baseless and malicious.

("All of Hutson's claims pertaining to fraud relate to the ***original*** transaction, ***not the Release***. In other words, Hutson cannot set aside the Release because he has not made any showing that fraud induced him to enter into the Release."), report and recommendation adopted, No. 2:14-CV-01583-DCN, 2016 WL 2935891 (D.S.C. May 20, 2016). (See also R. pp. 142-43.) Hutson has released TLC with respect to allegations of fraud in the Land Deal; Respondents can do nothing to change that. (R. pp. 94, 2056, lines 3-10.) Based upon these rulings, Hutson must first assert a claim to set aside the release before he can proceed with any further litigation against TLC.

Hutson appears to contend that, merely because the Newton E-mail provided *some* evidence that might corroborate Hutson's claim that he was fraudulently induced to enter into the 2012 Settlement Agreement, Respondents must have more. He employs a strategy of threatening, harassing, and slandering Respondents in an attempt to wring from them either the key to unlocking his release of TLC or an extorted settlement offer.

The law does not countenance the badgering of witnesses in this manner. Merely characterizing a witness' refusal or inability to provide a litigant's desired testimony as "fraud upon the court" does not create a cognizable claim. This is especially true where, as here, any evidence Respondents could provide (assuming they had any, which is denied) would be hearsay. Hutson was a party to the Ejectment Action: Respondents were not. (R. p. 2059, lines 7-14.)

Hutson inquires why Newton would "write such an incriminating letter" if he did not know fraud was committed. (R. p. 2022, lines 1-3.) This issue was raised to Judge Nettles in the Bad Faith Action and ruled upon. (R. pp. 220-24.) Hutson had provided an

expert report and certain evidence that appeared, based upon the information available at the time, to support a potential claim to set aside the release. (R. p. 8.)

However, any appearance that TLC might have fraudulently induced Hutson in the Ejectment Action was undermined by subsequent events. Hutson never produced concrete evidence that all Land Deal property was subject to the campground memberships. (R. p. 1155, lines 18-21.) Two witnesses connected with TLC testified that all Land Deal property was *not* part of the campground. (R. p. 222-23, 396, 670-71 (pp. 32-33), 672 (p. 86, lines 7-24); 682 (p. 40, lines 5-20).) Moreover, Hutson, as principal in Big Water Resort, LLC, had the ultimate responsibility to protect the campground members' lifetime use rights. (R. pp. 204, 223, 1013-14, 1484 at ¶ 9, 1518, 1072-77.) These documents demonstrate that Hutson cannot establish that Respondents know that TLC defrauded him.

Hutson's factual allegations fail to establish fraud under any standard. There is no evidence of intent to deceive. Hutson fails to even identify a plausible motive. Judge Hood recognized that it could have benefitted Penn-America if Hutson had asserted his claim to set aside his release. (R. p. 2057, line 23-p. 2058, line 13.) Hutson cannot prove beguilement because he is more knowledgeable about the 2012 Settlement negotiations than any of Respondents. (R. pp. 2059, lines 7-14; 822-24.) He certainly cannot establish extrinsic fraud in this case.

B. Hutson failed to allege a factual basis for or prove extrinsic fraud.

Hutson specifically identified his claim as one for "extrinsic fraud." He frequently cites alleged Sixth Circuit precedent in support of his representation of the elements of extrinsic fraud. (Appellant's Init. Br., p. 5; R. p. 367 (citing no case).) Respectfully, Hutson's reliance on Sixth Circuit precedent is misplaced. The authoritative definition of

extrinsic fraud in this jurisdiction is that given by the Supreme Court of South Carolina.

The purpose of alleging extrinsic fraud is to assert a collateral attack upon a final judgment. Chewning v. Ford Motor Co., 354 S.C. 72, 79-80, 579 S.E.2d 605, 609 (2003) (recognizing that Rule 60(b), SCRCP allows relief from a judgment based upon, among other things, fraud). Extrinsic fraud invokes the equitable power of a court to re-open or set aside a prior judgment. Evans v. Gunter, 294 S.C. 525, 528, 366 S.E.2d 44, 46 (Ct. App. 1988).

Importantly, extrinsic fraud only applies as between the parties to the prior judgment. Evans, 294 S.C. at 529, 366 S.E.2d at 46 (defining extrinsic fraud as "some intentional act or conduct by which *the prevailing party* has prevented *the unsuccessful party* from having a fair submission of the controversy) (emphasis added); 49 C.J.S. Judgments § 403 (Feb. 2022 Update) ("Extrinsic fraud, for this purpose, is some act or conduct of *the prevailing party* that prevents a fair submission of the controversy, and includes lulling *the party* into a false sense of security or preventing him or her *from making a defense*.") (emphasis added).

Extrinsic fraud is inapplicable because Hutson is not seeking to re-open a judgment against him in favor of Respondents. The prior judgments Hutson seeks to re-open relate to a third party, TLC. Newton knows of no case law holding that mere failure to disclose to an adversary potential fraud committed against the adversary by a third-party in a prior case constitutes fraud upon the court. Hutson's claim is directed at the wrong target.

Extrinsic fraud in South Carolina is defined as "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard." Chewning, 354 S.C. at

81, 579 S.E.2d at 610. [11] Hutson alleges he lost his cases against TLC due to misconduct by Respondents. This claim is without merit.

Respondents have demonstrated as a matter of public record that Hutson's inability to pursue his counterclaims had nothing to do with Respondents—it is directly attributable to a release. (R. p. 94.) Respondents have not "induced" Hutson to somehow give up his right to present his case. Hutson presented his case against TLC on numerous occasions, but the courts ruled against him. Hutson's problem is TLC's *defense* that Hutson's claims are barred by a release. TLC's release was provided by Hutson himself; Respondents had no part in it. (R. pp. 807-25.)

Hutson's claim is misdirected. Assuming that Hutson can prove TLC knowingly withheld from Hutson that none of the property in the Land Deal could be developed, Hutson could potentially show that *TLC* induced him to forfeit his ability to present his case. Hutson would likely need to prove that TLC misrepresented facts that Hutson could not have otherwise known when negotiating the 2012 Settlement Agreement. See Ray v. Ray, 374 S.C. 79, 85-86, 647 S.E.2d 237, 240 (2007) (recognizing that fraudulent inducement by one party to obtain a waiver from the other party constitutes extrinsic fraud).

Newton and Murphy & Grantland have never represented either Hutson or TLC, and they had no involvement whatsoever in the Ejectment Action, in which the release was given. (R. pp. 206, 214.) Furthermore, Hutson's own evidence demonstrates that

[11] The Newton E-mail cites Chewning because it was used to verify Hutson's contention that Penn-America should join his suit because there is no statute of limitations for extrinsic fraud claims. See Chewning, 354 S.C. at 80, 579 S.E.2d at 609-10. (See Compl., Exh. I, pp. 15-16.) Hutson was provided the investigative documents in view of Penn-America's common interest with Hutson against TLC in the Defamation Action. (R. pp. 216-17.)

Respondents did not withhold evidence pertaining to Hutson's ability to present his case. Newton's E-mail informed Hutson of potential material evidence and encouraged him to retain counsel. (R. pp. 314-15, 382-84.)

Hutson apparently believes that Respondents had some duty to "report" Hutson's potential fraud claim to some court, and that this would somehow magically resurrect his claims against TLC (and reverse the results). Hutson fails to appreciate that he has never established jurisdiction with a court to which such a report could be made.

By the time Penn-America and Newton became involved in the ongoing Big Water Resort litigation, Hutson's claims against TLC were already "water under the bridge." The judgment in the Ejectment Action was final, and the case was closed. Any claim Hutson asserted in other cases, such as the Class Action and the Defamation Action, was doomed due to the binding effect of *res judicata*. (R. pp. 117-20.) Furthermore, no court has jurisdiction to entertain Hutson's claim of extrinsic fraud against TLC unless and until Hutson files an action to set aside a judgment. Hutson has never exercised that right.

South Carolina's standard is higher than the alleged Sixth Circuit standard, which can be satisfied by mere reckless disregard for the truth. A party seeking to prove extrinsic fraud must demonstrate intent to deceive. Chewning, 354 S.C. at 78, 579 S.E.2d at 608-09. Conscious intent to deceive or defraud the court is essential. Ray, 374 S.C. at 86, 647 S.E.2d at 241.

There is no evidence of intentional fraud committed by Respondents in this case. Hutson has alleged that evidence was concealed, but he has not identified anything that was concealed. Respondents could not have withheld anything from the court in the Ejectment Action proceeding because they were never parties to that case. (R. p. 830.)

Extrinsic fraud is distinguished from intrinsic fraud, which involves matters that could have been presented in the original action. Chewning, 354 S.C. at 81, 579 S.E.2d at 610. Relief from a judgment cannot be supported by a showing of mere intrinsic fraud. Id. at 80, 579 S.E.2d at 80. The "essential distinction . . . is the ability to discover the fraud." Ray, 374 S.C. at 84, 647 S.E.2d at 239. "Intrinsic fraud refers to fraud presented and considered in the judgment assailed, including perjury and forged documents presented at trial." Evans, 294 S.C. at 529, 366 S.E.2d at 46.

Knowledge of Hutson's Draft Pleading cannot support a claim for extrinsic fraud. By filing the counterclaim, Hutson raised the issue and presented it to the court in that action. (R. pp. 612-36, 132-44.) Therefore, knowledge of Hutson's allegations in the Draft Pleading could only serve to prove intrinsic fraud.

Newton's E-mail was disclosed to Hutson. (R. pp. 382-84.) Hutson has not cited anything, nor does Newton know of any authority, that would require more. Newton does not represent Hutson with regard to his claims against TLC, or for any other matter. The only party with standing to seek equitable relief to set aside the judgment is Hutson. Thus, disclosure to Hutson was sufficient.

Respondents are in a different position than TLC because they never had the opportunity to induce Hutson to enter into the 2012 Settlement Agreement by withholding evidence, whereas TLC did. Respondents were not even notified of TLC's claims against Hutson until long after Judge James' Order was issued. (R. pp. 1477-90.) Newton could not have prevented Hutson's case from being heard in the Ejectment Action because he had no involvement whatsoever in that action.

Newton's E-mail provided information to Hutson to avoid a potential miscarriage of justice. (R. p. 2057, line 5-p. 2059, line 14.) He acted to *prevent* fraud. Newton cannot have committed extrinsic fraud because Hutson retains the right to file an action against TLC seeking to set aside the 2012 Settlement; nothing Newton did prevents Hutson's case from being heard. (R. p. 1157, lines 9-13.)

Hutson has not alleged or produced factual evidence that would satisfy the elements of extrinsic fraud under South Carolina law. He has not even alleged an appropriate reason for asserting such a claim against Respondents. Despite all the name-calling, Hutson failed to demonstrate *any* misconduct by Respondents. Hutson's litigation merely seeks to harangue Respondents for their inability to provide evidence against TLC that Hutson demands of them. Dismissal was proper under Rules 12(b)(6) and 56, SCRCP.

II. Hutson's third-party claims against Newton were properly dismissed under Rule 12(b)(8), SCRCP.

Rule 12(b)(8) permits dismissal when another action is pending between the same parties for the same claim. Hutson confirmed that his claims against Newton in this action are a rehash of his claims in the Bad Faith Action by attaching and incorporating filings from the Bad Faith Action into his pleading. (R. pp. 307-89.) The evidence Hutson submitted in this action was previously submitted to Judge Nettles. Hutson's arguments at the hearing were the same as he made before Judge Nettles. (R. p. 2057, lines 13-16.)

During the hearing before Judge Nettles, Hutson argued that the Newton E-mail is contradicted by the subsequent Newton Letter to Hutson. (R. pp. 1140, line 14-p. 1142, line 9; 1159, lines 2-11.) At the hearing, Newton showed the lack of a contradiction because his E-mail merely 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. (R. p. 1154, lines 5-13.) Hutson made precisely the same argument before Judge Hood. (R. p. 2023, line 17-p. 2025, line 3.) Accordingly, Hutson's third-party claims were properly dismissed.

III. Hutson's third-party claims against Newton are barred by *res judicata*.

An Order granting summary judgment has preclusive effect unless and until it is reversed on appeal. RFT Mgmt. Co., LLC v. Gilbert, Civ. Action No. 8:10-02503-HFF, 2011 WL 13142633 at *4 (D.S.C. signed May 24, 2011); Dawson v. State Law Enforcement Div., Civ. Action No. 3:91-1403-17, 1992 WL 208967 at *3-*4 (D.S.C. Apr. 6, 1992); Northern Va. Law Sch. v. Jones, No. 88-1781, 883 F.2d 69 (4th Cir. 1989); Restatement (Second) of Judgments § 13 (Oct. 2021 Update). Courts do not allow a plaintiff to split claims. Plum Creek Dev. Co., Inc. v. City of Conway, 334 S.C. 30, 512 S.E.2d 106 (1999).

Because Hutson's third-party claims in this action are based upon the same facts and subject matter as the Bad Faith Action, this action is barred. Id. at 36, 512 S.E.2d at 109. Hutson cannot bring successive claims based upon the same alleged wrongful act. 1A C.J.S. Actions § 208 (Feb. 2022 Update). Hutson's third-party claims are barred by *res judicata*. Hutson has never presented *any* response to this argument.

IV. Hutson failed to state a claim.

None of Hutson's causes of action state a cognizable claim. They were properly dismissed under Rule 12(b)(6), SCRCP. Hambrick, 370 S.C. at 121, 634 S.E.2d at 7 (holding that dismissal is proper when the alleged facts fail to state a cause of action).

Count One of Hutson's "Ammended Cross-Complaint" (Fraud) is addressed above. In paragraph 7, Hutson claims he attached documents proving Newton and his firm were engaged in fraud. (R. pp. 310-11.) The attached documents are simply motions containing

allegations made by Hutson himself. (R. pp. 335-80.) The only evidence submitted is the Newton's E-mail, which evidences full disclosure and is the subject of another pending appeal. (R. pp. 381-84.)

Rule 402(h)(3), SCACR, which contains the Lawyer's Oath, does not require a lawyer to (a) seek to intervene, (b) on behalf of a non-client who is an opposing party, (c) to re-open a judgment, (d) to disclose to a tribunal before whom the lawyer never appeared, (e) an alleged but unproven fraud, (f) committed against the non-client by a third-party. Hutson has not alleged a violation of the Lawyer's Oath. The other authorities Hutson cited have already been addressed in the Bad Faith Action. (See R. pp. 218-19.) Hutson failed to state a claim for fraud.

Count Two alleges Document Fraud under a federal immigration statute, 8 U.S.C. § 1324c. Hutson has not alleged that Newton prepared false papers to allow Hutson (or anyone else) to emigrate into this country. This statute has no relevance whatsoever.

Count Three asserts "Defamation by Extrinsic Fraud." This purported cause of action is not recognized in South Carolina. Because it relies upon 8 U.S.C. § 1324c, an irrelevant statute, in support of an alleged duty, this claim should be rejected. Moreover, Hutson has not alleged any facts supporting any breach of any such duty.

Count Four does not allege any new facts. Hutson provides no reason why the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10, *et seq.*, should apply to this case. See Trustees of Grace Reformed Episcopal Church v. Charleston Ins. Co., 868 F. Supp. 128 (D.S.C. 1994) (recognizing that the Unfair Trade Practices Act does not apply to the business of insurance). This cause of action was properly dismissed.

V. Hutson abandoned the issues on appeal.

Hutson failed to contest Newton's defenses of *res judicata*, Rule 12(b)(6) and (8), SCRCP, and dismissal due to vexatious misconduct in his brief. "Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal." Rule 208(b)(1)(B), SCRCP; State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003). Exceptions to the trial court's ruling that are not specifically raised and argued are deemed abandoned. State v. Black, 319 S.C. 515, 518 n.2, 462 S.E.2d 311, 313 n.2 (Ct. App. 1995). The only issues Hutson raised against Newton in his Statement of Issues in his Amended Initial Brief is failure to report fraud. Thus, the only ground for appeal Hutson arguably preserved is alleged fraud upon the court.

Furthermore, Hutson's arguments regarding fraud are insufficient. "Broad general statements of issues made by an appellant may be disregarded" by the appellate court. Sullivan Co., Inc. v. New Swirl, Inc., 313 S.C. 34, 36, 437 S.E.2d 30, 31 (1993); Rule 208(b)(1)(B), SCACR. Conclusory statements made without supporting authority are deemed abandoned. Zinn v. CFI Sales & Marketing, Ltd., 415 S.C. 93, 109, 780 S.E.2d 619 (Ct. App. 2015). Hutson's Initial Brief is merely a conclusory statement of his opinions about this case. He cites to irrelevant authorities, represents as facts allegations that have been rejected in two judicial orders, and engages in name-calling. Accordingly, Hutson's arguments in this appeal should be deemed abandoned.

VI. Hutson's claims are frivolous and vexatious.

This action sought an order requiring Hutson to cease and desist from harassing and slandering Plaintiffs and its attorneys. 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 (Feb. 2022 Update). Litigants may not prolong frivolous litigation for

purposes of harassment and slander. Sassower v. Signorelli, 99 A.D. 2d 358, 358-59, 472 N.Y.S.2d 702 (N.Y. App. Div. 1984); Spremo v. Babchik, 155 Misc. 2d 796, 803, 589 N.Y.S. 2d 1019, 1024 (N.Y. Sup. Ct. 1992); Martin-Trigona v. Capital Cities/ABC, Inc., 145 Misc. 2d 405, 410, 546 N.Y.S.2d 910, 913 (N.Y. Sup. Ct. 1989); McAllister v. McAllister, 95 N.J. Super. 426, 430, 231 A.2d 394, 396 (N.J. Super. 1967).

As recounted in the Complaint, Hutson is a vexatious litigant who frequently disregards court orders. (R. pp. 99-102.) He has been sanctioned by a federal court for frivolous claims against TLC. (R. pp. 124-31.) Hutson has used the Bad Faith Action, and now this action, as a mechanism for repeatedly harassing Newton and Penn-America without cause. Hutson has also used these actions as a forum for publishing false and defamatory statements, hiding behind the judicial privilege, without any supporting evidence whatsoever. (See R. pp. 250-306.) Hutson's repetitious filing of false and slanderous claims requires time and expense in rebuttal.

Hutson has done nothing to assuage his vexatious misconduct. If anything, Hutson escalates the abusive language with each court filing. His initial brief merely repeats allegations made in numerous prior frivolous filings. Moreover, Hutson's filings in the trial court after this appeal was taken only speculate that the entire court system is biased against him. (R. p. 1400.) Accordingly, this action was properly dismissed and Judge Hood's granting of the temporary injunction was appropriate.

VII. Hutson's claims are barred by a Release.

Finally, even if all of the above could be established, Hutson's claims are subject to dismissal because they are barred by a release. (R. pp. 146-50.) Hutson's settlement

agreement with Penn-America releases his claims against not only Penn-America, but also Penn-America's agents. (R. p. 147 at ¶ 2, 224-25.)

A release is a contract by which a plaintiff relinquishes rights or claims against persons against whom those rights could have been enforced. Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC, 374 S.C. 483, 492, 649 S.E.2d 494, 498 (Ct. App. 2007). Rules of interpretation of contracts should be used to determine what the parties intended. Id. at 497, 649 S.E.2d at 501. "The court must enforce an unambiguous contract according to its terms, regardless of the contract's wisdom or folly, or the parties' failure to guard their rights carefully." Id. at 500, 649 S.E.2d at 503.

Hutson made no attempt either in briefing or at the hearing to contest the authenticity or enforceability of the release. Hutson failed to provide any reason why it should not apply to his claims in this case. The release bars any further claims against Penn-America relating to its coverage and claim handling with respect to the Class Action and the Defamation Action. (R. p. 148 at ¶ 2.) This was the subject matter of the Coverage Action, the only case in which Murphy and Newton was involved. Because Hutson admits Newton acted as Penn-America's agent, Hutson's claims against them in this action are barred by the release. (See R. p. 167 at ¶ 47.)

VIII. The denial of Hutson's motion for a temporary injunction should be affirmed.

The trial court properly denied Hutson's motion for a temporary injunction. The motion sought to require Respondents to report alleged Extrinsic Fraud. The trial court found Hutson failed to establish a *prima facie* case for a temporary injunction.

A preliminary injunction is a drastic remedy that is used only to preserve the *status quo* and to prevent irreparable harm to the party requesting it. Compton v. S.C. Dep't of

Corr., 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011). The party seeking a preliminary injunction just demonstrate (1) immediate, irreparable harm without the injunction; (2) likelihood of success on the merits; and (3) no adequate remedy at law. Id. Mandatory injunctions are especially disfavored because they seek to change the *status quo* rather than merely preserving it. Johnson v. Phillips, 315 S.C. 407, 417, 433 S.E.2d 895, 901 (Ct. App. 1993), rev'd in part on other grounds by Smith v. Phillips, 318 S.C. 453, 458 S.E.2d 427 (1995); Forest Land Co. v. Black, 216 S.C. 255, 266-67, 57 S.E.2d 420, 426 (1950).

As discussed above, Hutson has not demonstrated the existence of any reportable fraud. If anything, Hutson breached his duties to the campground members by deliberately purchasing property in which they had purchased lifetime memberships and attempting to develop it as a condominium. Hutson's motion was properly denied.

Incorporation by Reference. Newton and Murphy & Grantland, P.A. incorporate by reference (a) Newton and Murphy's arguments in their initial brief in the Bad Faith Action (R. pp. 400-43); and (b) Penn-America's arguments in this appeal, to the extent they are not inconsistent with the above.

CONCLUSION

Over a decade after Hutson's ill-fated Land Deal, he continues to accuse nearly everyone involved in his cases in any tangential way of fraud. He still has not produced any evidence of any such fraud.

On the other hand, Respondents have produced mountains of evidence—most of which they had to obtain from other parties—conclusively demonstrating the lack of any connection between Respondents and the allegedly fraudulent 2010 Land Deal and 2012 Settlement Agreement. These documents are not necessary because Respondents are

entitled to dismissal on multiple grounds. The evidence is provided to refute Hutson's claim that Respondents are engaging in misconduct while attempting to evade liability on technicalities. Hutson's fraud claims are frivolous because they lack *substance*. The records from prior cases show that Hutson's claims against TLC were lost because: (a) Hutson knew about the lifetime campground memberships when he entered into the Land Deal, and (c) Hutson released TLC via the 2012 Settlement Agreement by breaching it.

One wonders why Respondents have been put in this position. Hutson has first-hand knowledge of those transactions, whereas Respondents do not. Nevertheless, Hutson baselessly seeks to pin his lost cases on Respondents through incessant repetition of empty cries of "fraud! fraud!" While claiming systemic fraud, it is Hutson who seeks to poison the judicial process through use of the adage: "*If you repeat a lie loudly and long enough, people will believe you."*

Hutson has not demonstrated that Respondents have committed or are committing fraud under any standard. All of Hutson's remaining arguments were addressed in the Bad Faith Action. Hutson is a vexatious litigant who has failed to support his allegations of fraud with any supporting evidence or legal authority. He is in breach of release.

Accordingly, Respondents Newton and Murphy & Grantland, P.A. respectfully request that Judge Hood's rulings in their favor be affirmed.

Request for affirmation upon any ground in the Record. Respondents request that the Court affirm for any ground appearing in the Record pursuant to Rule 220(c), SCACR. I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000).

[Signature page follows]

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

s/ Timothy J. Newton

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March 1, 2022
Columbia, SC

APPENDIX – Chronological List of Documents		
Date	**Document**	**Record Cite**
July 10, 2005	Ripoff Report complaint	R. pp. 1705-06
Aug. 17, 2006	Hutson arrest mug shot	R. pp. 1553-55
2008	**Retail Membership Agreements** (*grants lifetime membership rights in campground*)	R. pp. 1072-77 Bad Faith Action appeal (BFAA) [12] ROA pp. 89-94.
Oct. 2008	Ripoff Report complaint	R. pp. 1712-13
Nov. 11, 2010	Roark e-mail to Bill Coffey regarding lifetime memberships	R. p. 111 n.5, 1906, 2075 BFAA ROA pp. 643-44
Nov. 11, 2010	Stroman e-mail regarding potential changes to the campground	R. pp. 1908-99
Dec. 15, 2010	**Lease Purchase Agreement** • *Andrew Tucker represents Hutson*	R. pp. 1170-95 BFAA ROA pp. 126-58
Dec. 15, 2010	**Membership Interest Purchase Agreement**	R. pp. 759-70, 1518-31 BFAA ROA pp. 159-71
Aug. 8, 2011	Andrew Tucker suit against Hutson for non-payment	R. p. 1552, 2198-2201
Dec. 14, 2011	Complaint (**Ejectment Action**) Substantially complete copy of entire Court file (Ejectment Action)	R. pp. 772-76 BFAA ROA App'x pp. 1679-85 BFAA ROA App'x pp. 1342-1697
Dec. 29, 2011	**Hutson Answer and Counterclaim** (Ejectment Action) • *A. Paul Weissenstein Jr. represents Hutson*	R. pp. 575-92 BFAA ROA pp. 415-34 App'x pp. 1658-78 Respondents' Reply Memo for Injunctive Relief (BFAA) filed Jan. 25, 2021, Exh. 1

[12] MB Hutson/MB Hudson v. Penn America Ins. Co., *et al.*, Appellate Case No. 2022-000056 (BFAA). The BFAA was pending at the time the initial briefs in this appeal were filed. The BFAA was subsequently dismissed for failure to provide a compliant record on appeal. BFAA Order filed Nov. 10, 2021. The references in this brief to the ROA in the BFAA cite the February 22, 2021 ROA, which was accepted but for non-compliance with the per-volume page limit. See BFAA Order filed July 15, 2021.

Feb. 16, 2012	TLC Motion for Order requiring Hutson to Pay Rent with attached Affidavit of Richard Clark expressing concerns regarding Hutson's background (Ejectment Action)	R. pp. 508-23 BFAA ROA App'x pp. 1575, 1578, 1616-18
Mar. 30, 2012	**Settlement Agreement** (Ejectment Action) • *signed by Hutson*	R. pp. 808-16, 1228-32 BFAA ROA pp. 180-88, 1559-70, 1537-49
Apr. 3, 2012	TLC letter to Clarendon County Planning Comm'n reserving TLC's right to approve development	BFAA ROA App'x pp. 1467-68
Apr. 13, 2012	**Consent Order** (Ejectment Action) • *signed by Weissenstein and Hutson*	R. pp. 818-25 BFAA ROA pp. 189-97, 1551-58, 1529-36
Apr. 13, 2012	TLC letter to Clarendon County Planning Comm'n preliminarily approving site plan	BFAA ROA App'x p. 1469
June 25, 2013	Clarendon County Planning Comm'n letter to Hutson (Ejectment Action)	BFAA ROA pp. 1270-71, 1438-39
Oct. 16, 2013	**Penn-America policy** issued to BWR, Inc.	R. p. 1475 BFAA ROA pp. 1164-1257
Oct. 22, 2013	Clarendon County Planning Comm'n letter to Hutson denying approval	BFAA ROA pp. 1272-73, App'x pp. 1440-41
Dec. 6, 2013	TLC Aff. of Default (Ejectment Action)	BFAA ROA App'x pp. 1517-19, 1525-27
Dec. 18, 2013	Hutson postcard to campground members	R. pp. 1696
Dec. 19, 2013	Hutson letter to TLC	R. pp. 1543-47
Dec. 27, 2013	Hutson Mot. to Set Aside Aff. of Default (Ejectment Action) • *Stephen "Chip" Burn represents Hutson*	BFAA ROA pp. 1485-88
Jan. 8, 2014	Hutson files Bankruptcy (Case No. 14-00165-jw) (filed *pro se*)	Public record (ECF)
Jan. 2014	Hutson gives "Class Action" memo to Bill Padgett, counsel for campground members	R. pp. 1693-95
Jan./Feb. 2014	Hutson Rule 2004 examination (Bankruptcy Action)	R. pp. 1928-69 BFAA ROA pp. 1261-68
Mar. 3, 2014	Aff. of Tom Harper (Ejectment Action)	BFAA ROA pp. 1259-60, 1427-28

Mar. 4, 2014	Aff. of M.B. Hutson (Ejectment Action) signed by Hutson	R. pp. 1492-95 BFAA ROA pp. 1383-86
Mar. 7, 2014	Consent Order relieving Burn as counsel for Hutson Notice of Appearance of H. Freeman Belser as counsel for Hutson	BFAA ROA pp. 1372-74
Mar. 21, 2014	**James Order** (Ejectment Action) • *Freeman Belser appeared for Hutson*	R. pp. 83-94, 827-38 Respondents' Reply Memo for Inj. Relief (BFAA) filed Jan. 25, 2021, Exh. 2 BFAA ROA pp. 455-67, 1346-57
Apr. 7, 2014	Penn-America policy cancelled for non-payment	R. p. 1476 Respondents' Reply Memo for Inj. Relief (BFAA) filed Jan. 25, 2021, Exh. 10
Apr. 22, 2014	Complaint (**Class Action**)	Public Record (ECF)
June 5, 2014	TLC Answer and Third-Party Complaint (Class Action)	R. pp. 1497-1510
Dec. 16, 2014	**Hutson Answer and Counterclaim** (Class Action) • *Matthew Hamrick represents Hutson*	R. pp. 593-611
Mar. 26, 2015	Order relieving Matthew D. Hamrick as counsel for Hutson (Class Action) Hutson is *pro se*	R. p. 1512
May 18, 2015	Hutson deposition (Class Action) • *Hutson appeared* pro se	R. pp. 2099-2426 Exhibits 1514-1703
May 20, 2015	Susan Stroman deposition (Class Action) • *Hutson appeared* pro se	R. p. 669-72 BFAA ROA pp. 984-1014
Nov. 9, 2015	Hutson demand letter to Weissenstein	R. pp. 1971-73
Dec. 7, 2015	Complaint (**Defamation Action**)	R. pp. 1481-88 BFAA ROA pp. 225-31
Dec. 15, 2015	Hutson admittedly learned all Land Deal property was subject to lifetime memberships	BFAA ROA pp. 975-80, 978-79
Dec. 17, 2015	**TLC Notice to Penn-America** (Defamation Action)	R. pp. 1478-90 Respondents' Reply Mem. for Inj. Relief (BFAA) filed Jan. 25, 2021, Exh. 9

Feb. 1, 2016	Order preliminarily approving TLC settlement with campground members (Class Action) (2016 WL 374816)	R. pp. 778-87
Feb. 1, 2016	Hutson Answer (Defamation Action) Mike Ethridge represents Hutson	Public Record (ECF) Case No. 2:16-00003-DCN, ECF No. 11
Feb. 18, 2016	Notice of Appearance of R. Michael Ethridge for Hutson (Class Action) for defense only	BFAA ROA pp. 981-83
Mar. 14, 2016	Hutson Memo Opp. TLC MSJ regarding extrinsic fraud (Class Action) filed *pro se*	R. pp. 1065-69 BFAA ROA pp. 620-24
Mar. 15, 2016	TLC Mem. Opposing Hutson MSJ (Class Action)	BFAA ROA pp. 1015-25
Mar. 29, 2016	Hutson Amended Answer and Counterclaim (Defamation Action) • *Laura Paris Paton represents Hutson for defense only* • *Hutson is* pro se *as to his counterclaims*	R. pp. 612-36
Apr. 5, 2016	**Baker Report & Recommendation** (Class Action) 2016 WL 7435620 • *Mike Ethridge and Laura Paton represented Hutson for defense only*	R. pp. 96-112, 471-87 BFAA ROA pp. 368-85 Newton Memo Opp Hutson Mot (BFAA) filed July 9, 2020, Exh. A Penn-Am Mot for Sanctions (BFAA) filed July 24, 2020, Exh. D
May 20, 2016	**Norton Order** dismissing Hutson counterclaims against TLC (Class Action) 2016 WL 2935891	R. pp. 114-22 BFAA ROA pp. 386-95 Penn-Am Mot for Sanctions (BFAA) filed July 24, 2020, Exh. E Respondents' Reply Mem. for Inj. Relief (BFAA) filed Jan. 25, 2021, Exh. 3
May 26, 2016	Final Order approving campground members' settlement with TLC (Class Action)	Public record 2016 WL 7438449
June 14, 2016	Complaint (**Coverage Action**) • *J.R. Murphy and Tim Newton represent Penn-America*	BFAA ROA pp. 198-216

July 27, 2016	Aff. of Service on Hutson (Coverage Action)	BFAA ROA pp. 660-62
Aug. 8, 2016	**Hutson Draft Pleading** (Defamation Action) (allegedly penned by Paton)	Partial quote R. pp. 348-57 BFAA ROA pp. 97-121
Aug. 19, 2016	Penn-America letter to Hutson denying coverage for prosecuting his counterclaims (Class Action and Defamation Action)	Newton Reply Mem. to Strike (BFAA) filed July 9, 2020, Exh. PP
Sept. 16, 2016	**Settlement Agreement between Hutson and Penn-America**, and its counsel (Coverage Action) • *Newton represents Penn-America* • *Hutson is* pro se	R. pp. 146-50, 550-54 BFAA ROA pp. 494-99 Newton Reply Mem. to Strike (BFAA) filed July 9, 2020, Exh. I Penn-Am Mot for Sanctions (BFAA) filed July 24, 2020, Exh. C
Nov. 29, 2016	Amended Complaint (Defamation Action)	R. pp. 1981-89
Dec. 16, 2016	Answer to Amended Complaint and Counterclaim (Defamation Action)	R. pp. 840-865, 889-914 BFAA ROA pp. 468-93
Dec. 18, 2016	Hutson Affidavit regarding fraud (Defamation Action) filed *pro se*	R. pp. 916-17
Dec. 30, 2016	Order dismissing Hutson (Coverage Action)	BFAA ROA pp. 500-05
Jan. 21, 2017	Hutson letter to Penn-America demanding that Carlock Copeland be fired and replaced (Class Action and Defamation Action)	BFAA ROA pp. 279-81
Feb. 23, 2017	Consent Order Substituting Counsel for Hutson (Defamation Action) • *Frank Gordon now represents Hutson*	BFAA ROA pp. 645-48

Mar. 2, 2017	**Cothran Order** dismissing Hutson counterclaims (Defamation Action)	R. pp. 133-44, 867-78, 919-30 BFAA ROA pp. 396-408 Newton Mem. Opp. Hutson Mot (BFAA) filed July 9, 2020, Exh. B Penn-Am Mot for Sanctions (BFAA) filed July 24, 2020, Exh. F Respondents' Reply Mem for Inj. Relief (BFAA) filed Jan. 25, 2021, Exh. 4
June 30, 2017	Hutson Memo regarding setting aside the 2012 Settlement Agreement based for fraud (Class Action) filed *pro se*	BFAA ROA pp. 633-42
Aug. 31, 2017	TLC Tyger River demand e-mail (Defamation Action)	R. pp. 2076-77
Sept. 22, 2017	Hutson e-mail to Penn-America regarding TLC Tyger River demand	R. p. 1062
Sept. 25, 2017	Hutson Memo regarding setting aside the 2012 Settlement Agreement based for fraud (Class Action) filed *pro se*	BFAA ROA pp. 625-32
Oct. 6, 2017	**Norton Sanctions Order** against Hutson, *pro se* (Class Action) 2017 WL 4480195	R. pp. 124-31 BFAA ROA pp. 506-14 Penn-Am Mot for Sanctions (BFAA) filed July 24, 2020, Exh. G Respondents' Reply Mem for Inj. Relief (BFAA) filed Jan. 25, 2021, Exh. 5
Nov. 14, 2017	Rule 30(b)(6) Deposition of TLC (Coverage Action)	R. pp. 673-82 BFAA ROA pp. 663-79
Dec. 10, 2017	Hutson e-mail to Penn-America regarding his plan to set aside the 2012 Settlement Agreement	R. p. 1063
Jan. 1, 2018	Hutson e-mail to Penn-America thanking Penn-America for paying sanctions	BFAA ROA pp. 282-83
Jan. 22, 2018	Penn-America Motion to Intervene regarding new defamatory statement claimed by TLC (Defamation Action)	R. pp. 500-06 Newton Mem. Opp. Hutson (BFAA) filed July 9, 2020, Exh. KK

Jan. 22 to 26, 2018	**Trial** (Defamation Action) Cover page and index • *Frank Gordon representing Hutson* Renee Roark testimony Susan Stroman testimony Trial exhibits M.B. Hutson testimony Bonnie Youmans testimony Verdict Verdict Form (Defamation Action)	 R. pp. 1810-16 BFAA ROA pp. 1030-1037 R. pp. 1817-76 R. pp. 1876-1901 R. pp. 1905-16 R. pp. 1715-1807 R. pp. 1918-26 R. pp. 1902-04 BFAA ROA pp. 1123-25 BFAA ROA pp. 518-20
Feb. 1, 2018	Torus (excess carrier) demand to Penn-America to settle Defamation Action	R. pp. 561-62 Newton Reply Mem. to Strike (BFAA) filed July 9, 2020), Exh. QQ
Feb. 5, 2018	Hutson Motion for JNOV (Defamation Action)	Respondents' Mot for Inj. Relief (BFAA) filed Jan. 13, 2021, Exh. A
Apr. 11, 2018	Stipulation of Dismissal disposing of TLC's third-party claims against Hutson (Class Action)	BFAA ROA pp. 515-17
May 18, 2018	Notice of Appeal (Defamation Action)	BFAA ROA pp. 521-23
May 18, 2018	Motion to stay execution (Defamation Action)	BFAA ROA pp. 524-27
Aug. 8, 2018	**Affidavit of Mark Hardee** (regarding Weissenstein claim) with materials from Hutson	R. pp. 386-89 R. pp. 1162-1255 Hutson Mot for Emerg'y Hearing (BFAA) filed July 6, 2020, Exh. 21 Hutson Motion for Additional Evidence (BFAA) filed Sept. 8, 2020

Aug. 10, 2018	Hutson correspondence to Newton requesting that Penn-America join Hutson in suit to set aside 2012 Settlement Agreement	R. pp. 1287-1317 excerpts - R. pp. 534-39 BFAA ROA pp. 929-960 Newton Mem. Opp. Hutson Mot. (BFAA) filed July 9, 2020, Exh. V
Aug. 13, 2018	**Newton E-mail** to Hutson regarding possible claim for extrinsic fraud as to 2012 Settlement Agreement	R. pp. 382-84, 1310-11 BFAA ROA pp. 953-954 Hutson Mot for Emerg'y Hearing (BFAA) filed July 6, 2020, Exh. 4 Hutson Mot for Additional Evidence (BFAA) filed Sept. 8, 2020 Hutson Mem. Opp. Mot to Strike (BFAA) filed Sept. 24, 2020
Aug. 15, 2018	Newton e-mail to Hutson indicating Penn-America rejected Hutson's proposal	R. p. 1317 BFAA ROA p. 960
Aug. 27, 2018	Hutson e-mails to Newton requesting cooperation regarding his proposed suit against TLC	BFAA ROA pp. 708-10
Aug. 27, 2018	Hutson e-mail to John Wilkerson regarding proposed suit to set aside 2012 Settlement Agreement and Wilkerson's response e-mail	R. p. 1256
Aug. 28, 2018	Hutson Notice of coming lawsuit to Tom Harper	R. pp. 1257-59 BFAA ROA pp. 719-21
Aug. 29, 2018	Hutson Notice of coming lawsuit to Turner Padgett	BFAA ROA pp. 715-18
Aug. 30, 2018	Hutson e-mail to Newton with proposed Complaint against TLC	BFAA ROA p. 711
Sept. 11, 2018	Hutson e-mail chain regarding upcoming mediation (Defamation Action)	BFAA ROA pp. 722-23
Oct. 3, 2018	Complaint (**Weissenstein Action**)	BFAA ROA pp. 434-54
Oct. 18, 2018	Hutson Resp. to MSJ (Weissenstein Action)	R. pp. 1975-79
Oct. 22, 2018	E-mail chain: Hutson demand to TLC and Wilkerson response	R. pp. 1274-77
Oct. 22 to 30, 2018	Hutson e-mails to Newton requesting additional information regarding his proposed suit against TLC	BFAA ROA pp. 256-75, 712-14

Oct. 23, 2018	Hutson "Notice to All Parties"	BFAA ROA pp. 284-87 Hutson Mot for Emerg'y Hearing (BFAA) filed July 6, 2020, Exh. 20
Oct. 29, 2018	Hutson circulates proposed Complaint for action to set aside 2012 Settlement Agreement	R. pp. 1260-73
Oct. 30, 2018	Hutson letter demanding Penn-America refuse to settle Defamation Action	BFAA ROA pp. 276-78
Oct. 31, 2018	Newton e-mail to Hutson asking how Hutson would be damaged if Penn-America settles the defamation Action	R. p. 564 Newton Reply Mem to Strike (BFAA) filed July 9, 2020, Exh. RR
Nov. 1, 2018	Hutson response e-mail to Newton alleging Penn-America conspired in extrinsic fraud	R. pp. 565-66 BFAA ROA pp. 288-90 Newton Reply Mem to Strike (BFAA) filed July 9, 2020, Exh. RR
Nov. 1, 2018	Hutson "Demand for Claim" to Penn-America demanding $500K	R. pp. 1278-80 BFAA ROA pp. 291-93
Nov. 2, 2018	Mediation of Defamation Action	BFAA ROA p. 173
Nov. 6, 2018	Hutson renewed demand to Penn-America	R. pp. 1281-85 BFAA ROA pp. 340-45
Nov. 8, 2018	**Newton Letter** on behalf of Penn-America responding to Hutson demand	R. pp. 1319-23 BFAA ROA pp. 172-77
Nov. 8, 2018	Penn-America MSJ (Coverage Action)	BFAA ROA pp. 217-24
Nov. 8, 2018	Complaint (Hutson v. **Burn Action**)	BFAA ROA pp. 547-57
Nov. 15, 2018	Hutson e-mail to Newton requesting that Penn-America settle the Defamation Action	R. p. 567 Newton Reply Mem to Strike (BFAA) filed July 9, 2020, Exh. RR
Nov. 19, 2018	Newton e-mail responding to Hutson question and confirming settlement of Defamation Action	BFAA ROA pp. 178-79
Nov. 26, 2018	Complaint (Hutson v. **Atlantic Coast Properties Action**)	BFAA ROA pp. 561-83

Nov. 30, 2018	Newton e-mail to Hutson indicating that both Hutson and Torus threatened suit against Penn-America Hutson e-mails demanding that Torus (excess carrier) settle the Defamation Action	R. pp. 568-70 Newton Mot to Strike (BFAA) filed June 15, 2020 R. p. 571 Newton Reply Mem to Strike (BFAA) filed July 9, 2020, Exh. RR
Dec. 6, 2018	Rubin Order dismissing Coverage Action	Public record (ECF No. 59)
Dec. 20, 2018	Filed **Satisfaction of Judgment** (Defamation Action)	BFAA ROA pp. 528-30
Dec. 28, 2018	Complaint (**Bad Faith Action**) Amended Complaint (Bad Faith Action)	R. pp. 152-73 BFAA ROA pp. 52-66 BFAA ROA pp. 67-85
Feb. 25, 2019	Order granting MSJ (Weissenstein Action)	R. p. 228-42 BFAA ROA pp. 531-46
Mar. 26, 2019	Hutson Emergency Motion (Burn Action) admitting when Hutson allegedly learned all Land Deal property was subject to lifetime memberships	BFAA ROA pp. 975-80
Apr. 10, 2019	Order dismissing case (Burn Action)	R. p. 244-45 BFAA ROA pp. 558-60
Apr. 11, 2019	Order granting MSJ (Atlantic Coast Properties Action)	R. pp. 247-49 BFAA ROA pp. 584-87
July 18, 2019	**Orders granting MSJs (Bad Faith Action)** Newton and Murphy Penn-America	BFAA ROA pp. 1-25, 26-51 R. pp. 202-26 R. pp. 175-200
Aug. 10, 2019	Complaint (**Injunction Action**)	R. p. 39-58

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

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

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

Plaintiff/Counter-Defendants,

v.

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

Defendant/Counter-Plaintiff,

AND

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

Third-Party Plaintiff,

v.

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

Third-Party Defendants.

of whom Morris Hutson is the Appellant,

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

CERTIFICATE

I, Timothy J. Newton, Esquire, attorney for Respondents Newton and Murphy & Grantland, P.A., certify that the Respondent's Final Brief complies with the South Carolina Supreme Court Order of August 25, 2021, and Rule 208 of the South Carolina Appellate Court Rules.

MURPHY & GRANTLAND, P.A.

s/ Timothy J. Newtwon

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March 1, 2022