

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION
Judicial Conference Decision and Order

W.C.C. File No.: 1009259
Appellate Case No.: 2012-212278

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SC Court of Appeals

Jeffrey L. McFadden..... Claimant, Appellant,

v.

City of Lake City and South Carolina Municipal Insurance Trust,..... Respondents.

MOTION FOR COSTS ON APPEAL PURSUANT TO RULE 222, SCACR

Pursuant to Rule 222 of the South Carolina Appellate Court Rules, Respondent City of Lake City and South Carolina Municipal Insurance Trust hereby moves to recover its costs and attorneys fees on appeal. Rule 222(a) provides that "[w]hen an appeal is affirmed or reversed in part or is vacated, costs shall be allowed only as ordered by the appellate court." Rule 222(a), SCACR.

This case came to the Court of Appeals via an appeal as to two issues, both brought by the Claimant/Appellant. The first issue appealed was whether the South Carolina Workers' Compensation Commission erred in declining to impose sanctions against the Respondents. The second issue appealed was the Commission's imposition of sanctions against the Appellant for a frivolous appeal. This issue arose out of the Single Commissioner's failure to award sanctions to the Appellant, a decision which was appealed to the Full Commission. The

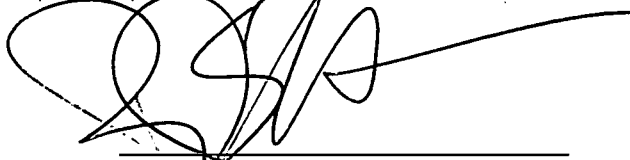
Full Commission declined to award sanctions against Respondents (the first appellate issue before this Court) but did sanction the attorney for the Appellant for a frivolous appeal (the second appellate issue).

Following briefing of the merits of the first issue on appeal, the Respondents moved to dismiss the appeal on the ground that it was not a final order and therefore was not immediately appealable. As to the second issue on appeal, the Respondents stated they had no position on the Appellant's sanctions, as they were awarded *sua sponte* by the Commission and were to be paid to the Commission.

On August 7, 2013, the Court of Appeals dismissed the appeal of the Appellant as to the Respondents regarding the failure of the Workers Compensation Commission to impose sanctions against Respondents. The reason for the dismissal by this Court was the same as was argued for by the Respondents—that the appealed Order was interlocutory and therefore not directly appealable. The Court of Appeals issued the remittitur on August 23, 2013.

Accordingly, pursuant to Rule 222, Respondents hereby requests an Order requiring Appellant to pay them the allowable costs on appeal of \$1,159.77. Attached to this Motion as **Exhibit A** is a sworn, itemized statement of the recoverable costs incurred by Respondents. This request is appropriate because the Respondents won the issue on appeal as to them and would not have otherwise had to file briefs to this Court or otherwise respond had the Claimant not appealed the denial of sanctions against Respondents. As noted the second issue on appeal that was reversed did not involve the Respondents and the Respondents took no

position on. In fact, Respondents' brief regarding the second issue on appeal, which was reversed, was comprised of one paragraph that contained three sentences.¹



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Attorneys for Respondents

August 30, 2013

¹ It was not an appeal against the Respondents but rather against the Workers' Compensation Commission directly.

FORM 17
ITEMIZED STATEMENT OF COSTS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

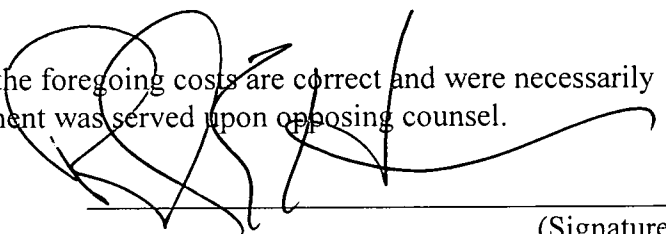
Jeffrey L. McFadden)	
)	
Claimant/Appellant,)	Appellate Case No. 2012-212278
)	W.C.C. File No. 1009259
v.)	
)	
City of Lake City and South Carolina)	
Municipal Insurance Trust,)	
)	
Respondents.)	

The Appellate Court is requested to tax the following costs against Claimant/Appellant, Jeffrey L. McFadden:

COSTS TAXABLE UNDER RULE 222, SCACR	NO. OF PAGES	RATE	REQUESTED	ALLOWED (For Court Use Only)
Cost of Printing or Copying Final Brief	20	@ \$.20	\$ 4.00	
	48	@ \$.07	\$ 3.36	
	24	@ \$1.00	\$ 24.00	
	361	@ \$.07	\$ 25.27	
	24	@ \$2.50	<u>\$ 60.00</u>	
			\$116.63	
Cost of Printing or Copying Final Reply Brief				
Cost of Printing or Copying Record on Appeal				
Filing Fee Paid Under Rule 203(d), SCACR				
Cost of Court Reporter's				

Transcript				
Attorney's Fee Provided By Rule 222(b), SCACR			\$1,000.00	
Other (specify and explain): Postage for mailing Briefs			\$ 11.25	
COSTS TAXABLE UNDER RULE 242(j), SCACR				
Cost of Printing or Copying Brief				
Cost of Printing or Copying Reply Brief				
Cost of Printing or Copying Appendix				
Filing fee paid under Rule 242(c), SCACR				
Attorney's fee provided by Rule 242(j)(2), SCACR				
Other (specify and explain):				
		TOTAL	\$1,127.88	

I, Robert E. Horner, do swear or affirm that the foregoing costs are correct and were necessarily incurred in this action. A copy of this statement was served upon opposing counsel.



(Signature)

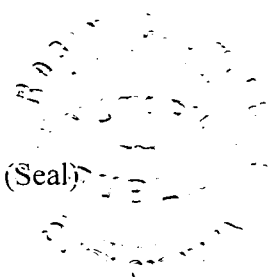
Attorney for Respondents

Subscribed and sworn to before me this 3rd day of September, 2013.

Robin C. Jones

Notary Public for SC

My Commission Expires: 9.25.2019



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Full Commission Appellate Panel Review
Case No.: 2012-212278

W.C.C. File No. 1009259

Jeffery L. McFadden, Employee,Appellant,

v.

City of Lake City and South Carolina Municipal Insurance Trust,.....Respondents.

PROOF OF SERVICE

I certify that I have served the Motion for Costs on Appeal Pursuant to Rule 222, SCACR and Form 17, Itemized Statement of Costs, by depositing a copy in the United States Mail, postage prepaid, on September 3, 2013, addressed to Appellant's attorney of record, Stephen J. Wukela, Esquire, Wukela Law Firm, Post Office Box 13057, Florence SC 29504.



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September 3, 2013