

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

SEP 10 2013

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

S.C. Supreme Court

J. Ernest Kinard, Jr., Circuit Court Judge

RECEIVED

Case No. 2007-CP-40-7251

SEP 11 2013

S.C. Supreme Court

Bennett & Bennett Construction, Inc.....Respondent,

v.

Auto-Owners Insurance Co., Inc.Appellant.

Appellate Case No. 2011-183007

**MOTION AND MEMORANDUM IN SUPPORT OF MOTION FOR COST
PURSUANT TO RULE 222, SCACR**

Appellant, Auto-Owners Insurance Company, (“Appellant”), hereby files this motion for costs pursuant to Rule 222, SCACR and in accordance with Rule 240, SCACR.

STATEMENT OF CASE

Respondent Bennett & Bennett Construction, Inc. (“Respondent”) commenced a civil action on October 31, 2007 seeking declaratory relief against Appellant Auto-Owners Insurance Company (“Appellant”). Appellant answered and denied Respondent was entitled to the requested relief. The civil action came before the Honorable J. Ernest Kinard, Jr., for a non-jury trial on October 18, 2010. The trial court declared there was

insurance coverage and issued an order filed on November 23, 2010 in favor of Respondent. Appellant moved to have the trial court reconsider its decision; and the trial court denied the motion by order filed on January 4, 2011. Appellant filed and served a Notice of Appeal on January 19, 2011.

The Supreme Court heard oral arguments for the appeal on October 30, 2012. The Supreme Court issued Opinion No. 27284 on July 17, 2013 reversing the decision of the trial court. Respondent filed and served a Petition for Rehearing on August 1, 2013. Appellant filed and served a Return to Respondent's Petition for Rehearing on August 12, 2013. Respondent filed and served a Reply on Petition for Rehearing on August 19, 2013. The Supreme Court issued an Order denying the Petition for Rehearing on September 6, 2013, and the Clerk of Court issued a Remittitur on September 6, 2013.

ARGUMENT

Rule 222(d), SCACR requires that a motion be filed within fifteen (15) days of the issuance of the Remittitur. The Remittitur was filed on September 6, 2013, so this motion is timely. Rule 222(a), SCACR states as follows:

***(a) To Whom Allowed.** Unless otherwise ordered by the appellate court or agreed by the parties, costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed. **When a judgment is reversed, costs shall be taxed against the respondent unless the court orders otherwise.** When an appeal is affirmed or reversed in part or is vacated, costs shall be allowed only as ordered by the appellate court.*

The Supreme Court reversed the judgment of the trial court. Accordingly, cost shall be taxed against Respondent unless the Supreme Court orders otherwise. Rule 222(b), SCACR states as follows:

***(b) Costs Allowed.** The party entitled to recover costs under this rule may, to the extent the party actually incurred these costs, recover the following:*

(1) the filing fee paid under Rule 203(d); (2) the cost of the court reporter's transcript; (3) premiums paid for costs of supersedeas bonds or other bonds obtained to preserve rights pending appeal; (4) the cost of printing the Record on Appeal under Rule 209; and 5) the cost of printing the party's final brief(s) under Rule 210. In addition, the party shall be entitled to recover an attorney's fee in an amount which shall be set by order of the Supreme Court.¹ The allowance of additional costs will generally not be allowed except in the most extraordinary of circumstances.

¹ By order dated July 24, 1997, the amount of attorney's fee was set at \$1,000.

Rule 222(b), SCACR states in part as follows:

(d) Motion for Costs.... If costs are being sought under (b) above, the motion shall be accompanied by a sworn, itemized statement of costs incurred in the form prescribed in the Appendix to these rules. Any return or reply to the motion shall be served and filed in the manner provided by Rule 240. The return may oppose the request for costs or seek a reduction of the amount of costs to be awarded. The remittitur shall not be stayed by the filing of a motion for costs.

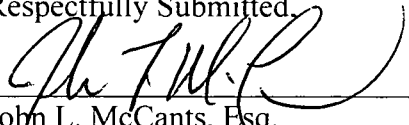
Appellant prays for the cost allowed by Rule 222(b), SCACR. Appellant seeks the following cost: 1) the cost of the court reporter's transcript -- \$386.25; 2) the cost of printing the Record on Appeal under Rule 209 -- \$474.26; 3) the cost of printing the party's final brief(s) under Rule 210 -- \$134.73; and 4) attorney's fee in the amount of \$1,000. A sworn, itemized statement of costs incurred in accordance with the form prescribed in the Appendix is attached hereto.

(Signature on Next Page)

**MOTION AND MEMORANDUM IN SUPPORT OF MOTION FOR COST PURSUANT TO RULE
222, SCACR**

Appellate Case No. 2011-183007

Respectfully Submitted,



John L. McCants, Esq.

Rogers Lewis Jackson Mann & Quinn, LLC

P.O. Box 11803 (29211)

1330 Lady Street, Suite 400

Columbia, SC 29201

Tele: 803- 978-2834

Fax: 803-252-3653

jmccants@rogerslewis.com

Attorney for Appellant

September 11, 2013

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2007-CP-40-7251

Bennett & Bennett Construction, Inc.....Respondent,

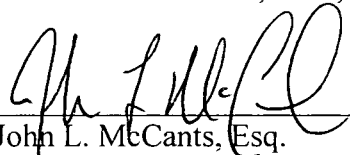
v.

Auto-Owners Insurance Co., Inc.Appellant.

CERTIFICATE OF SERVICE

I certify that I have served a copy of Appellant's Motion and Memorandum in Support of Motion for Costs and Sworn Itemized Statement of Cost by depositing a copy of same in the United States Mail, postage prepaid, on September 11, 2013, addressed to its attorney of record, Edwin Russell Jeter, Jeter and Williams, P.A., Post Office Box 7425, Columbia, South Carolina, 29202.

September 11, 2013



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Attorney for Appellant

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ITEMIZED STATEMENT OF COSTS

The Appellate Court is requested to tax the following costs against Respondent Bennett & Bennett Construction, Inc.

(Continued on Next Page)

COSTS TAXABLE UNDER RULE 222, SCACR	NO. OF PAGES	RATE	REQUESTED	ALLOWED (For Court Use Only)
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Cost of Printing or Copying Final Brief -- \$134.73 (See Ricoh invoice dated April 16, 2012).

Cost of Printing or Copying Final Reply Brief – (Included in invoice above)

Cost of Printing or Copying Record on Appeal -- \$474.26 (See IKON invoice dated March 30, 2012)

Filing Fee Paid Under Rule 203(d), SCACR – NA

Cost of Court Reporter’s Transcript -- \$386.25 (See invoice dated November 11, 2011)

Attorney’s Fee Provided By Rule 222(b), SCACR - \$1,000.00

Other (specify and explain): NA

I, John L. McCants, do swear or affirm that the foregoing costs are correct and were necessarily incurred in this action. A copy of this statement was (mailed to/served upon) opposing counsel.



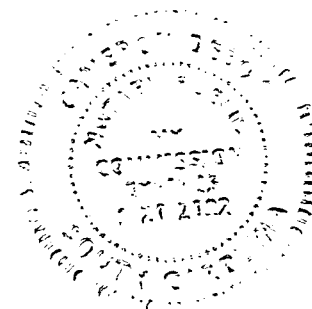
 Attorney for Appellant Auto-Owners Insurance Company

Subscribed and sworn to before me this 11th day of September, 20 13.

Notary Public for SOUTH CAROLINA.....

My Commission Expires: 1/20/2022

(Seal)





INVOICE

Ricoh USA, Inc. - Columbia, SC
 Phone: (803) 779-9778 Fax:
 Federal ID: 230334400

Invoice #	L0712040077
Invoice Date:	04/16/2012
Due Date:	05/16/2012
Terms:	Net 30 Days
Customer Code:	L07-ELLL
Natl ID:	53347

BILL TO:
ELLIS LAWHORNE & SIMS
 1501 MAIN STREET
 FIFTH FLOOR
 COLUMBIA, SC 29201

SHIP TO:
ELLIS LAWHORNE & SIMS
 1501 MAIN STREET
 FIFTH FLOOR
 COLUMBIA, SC 29201
 Attn: SUSAN BENNETT

Price using: STANDARD Price

Reference / Case # 118-58205	Reference 2	Reference 3	Account Manager MATT COLLINS		
Sales Order	Order Date	Ordered By	Quantity	Unit Price	Extension

SO-1204-0073	04/16/2012	SUSAN BENNETT - ELLIS LAWHORNE & SIMS			
565	B&W Copies A - Autofeed	656.00	0.0700		45.92
602	Binds - GBC	32.00	2.5000		80.00

<p align="center">Please Pay From This Invoice</p> <p>Customer's duly authorized signature below is an agreement that the above-described work, project or deliverable has been received and accepted by Customer and Customer hereby agrees that such work, project or deliverable is complete and satisfactory for all purposes. Customer assures payment of this invoice when due. Interest at the rate of the lesser of 1.5% per month or the maximum rate permitted by law, will be charged on invoices not paid timely. Customer agrees to pay reasonable legal fees incurred in connection of past due accounts.</p>	Taxable Sales:	125.92
	Sales Tax:	8.81
	Non-Taxable:	0.00
	Postage:	0.00
	Delivery:	0.00
	PAY THIS AMOUNT \$	134.73

THE PERSON SIGNING THIS INVOICE ON BEHALF OF CUSTOMER REPRESENTS THAT HE/SHE HAS THE AUTHORITY TO DO SO

Received/Accepted by: {Print} _____ {Signature} _____ Date: _____

Please pay from this copy. The party named on this bill is held responsible for payment.

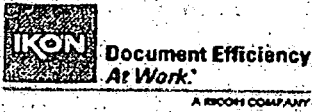
Payment From:
ELLIS LAWHORNE & SIMS
 1501 MAIN STREET
 FIFTH FLOOR
 COLUMBIA, SC 29201

Amount Enclosed
\$

Invoice: L0712040077
 Invoice Date: 04/16/2012
 Due Date: 05/16/2012
 Customer Code: L07-ELLL
 natl id: 53347

Please Remit To:
Ricoh USA, Inc.
 Legal Document Services Southeast District - L07
 P O Box 532545
 Atlanta, GA 30353-2545

PAY THIS AMOUNT \$ 134.73



INVOICE

IKON Office Solutions, Inc. - Columbia, SC
 Phone: (803) 779-9778 Fax:
 Federal ID: 230334400

Invoice #	L0712030204
Invoice Date:	03/30/2012
Due Date:	04/29/2012
Terms:	Net 30 Days
Customer Code:	L07-ELLL
Natl ID:	53347

BILL TO:
ELLIS LAWHORNE & SIMS
 1501 MAIN STREET
 FIFTH FLOOR
 COLUMBIA, SC 29201

SHIP TO:
ELLIS LAWHORNE & SIMS
 1501 MAIN STREET
 FIFTH FLOOR
 COLUMBIA, SC 29201
 Attn: SUSAN BENNETT

Price using: STANDARD Price

Reference / Case #	Reference 2	Reference 3	Account Manager
118-58205			MATT COLLINS
Sales Order	Order Date	Ordered By	Quantity
			Unit Price
			Extension

SO-1203-0175	03/30/2012	SUSAN BENNETT - ELLIS LAWHORNE & SIMS			
602	Binds - GBC		18:00	2:5000	45.00
565	B&W Copies A - Autofeed		5,689:00	0:0700	398:23

For copies of Record on Appeal

<p>Please Pay From This Invoice</p> <p>Customer's duly authorized signature below is an agreement that the above described work, project or deliverable has been received and accepted by Customer and Customer hereby agrees that such work, project or deliverable is complete and satisfactory for all purposes. Customer assures payment of this invoice when due. Interest at the rate of the lesser of 1.5% per month or the maximum rate permitted by law, will be charged on invoices not paid timely. Customer agrees to pay reasonable legal fees incurred in connection of past due accounts.</p>	Taxable Sales:	443.23
	Sales Tax:	31.03
	Non-Taxable:	0.00
	Postage:	0.00
	Delivery:	0.00
PAY THIS AMOUNT \$		474.26

THE PERSON SIGNING THIS INVOICE ON BEHALF OF CUSTOMER REPRESENTS THAT HE/SHE HAS THE AUTHORITY TO DO SO.

Received and Accepted by: _____ Date: _____

Please pay from this copy. The party named on this bill is held responsible for payment.

Payment From:
ELLIS LAWHORNE & SIMS
 1501 MAIN STREET
 FIFTH FLOOR
 COLUMBIA, SC 29201

Amount Enclosed
 \$

Invoice: L0712030204
 Invoice Date: 03/30/2012
 Due Date: 04/29/2012
 Customer Code: L07-ELLL
 Natl ID: 53347

Please Remit To:
 IKON Office Solutions, Inc.
 Legal Document Services Southeast District - L07
 P.O. Box 532545
 Atlanta, GA 30353-2545

PAY THIS AMOUNT \$ 474.26



State of South Carolina
The Circuit Court of the Fifth Judicial Circuit

Deborah M. McCurdy
Circuit Court Reporter

November 18, 2011

1403 Geiger Avenue
Columbia, SC 29201
803.771.4401
dmccurdy@sccourts.org

Registered Professional
Reporter

John L. McCants, ESQUIRE
ELLIS, LAWHORNE & SIMS, P.A.
1501 Main Street, 5th Floor
P.O. Box 2285
Columbia, South Carolina 29202

RE: TRANSCRIPT OF RECORD(Hearing)
BENNETT & BENNETT CONSTRUCTION, INC. V. AUTO-OWNERS
INSURANCE COMPANY, AMERICAN INTERNATIONAL COMPANY,
AND M & M CONSTRUCTION OF THE CAROLINAS, LLC
2008-CP-40-7251
OCTOBER 18, 2010
RICHLAND COUNTY COURT OF COMMON PLEAS
BEFORE THE HONORABLE J. ERNEST KINARD, JR.

1 Original of	117 Pages @ \$3.25	\$380.25
1 Word Index of	12 Pages @ \$.50	<u>6.00</u>

TOTAL **\$386.25**

I DO HEREBY CERTIFY

that the above bill is true and accurate.

Per John M. -

pay and bill
back to client.

SM

Deborah M. McCurdy, RPR
Deborah M. McCurdy, RPR
Circuit Court Reporter