

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

Lee S. Alford, Circuit Court Judge

Case No. 02-CP-46-2369

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S.C. SUPREME COURT

Auto-Owners Insurance Company,Petitioner,

v.

Samuel W. Rhodes, Piedmont Promotions,
Inc. and Marion L. Eadon d/b/a C & B
Fabrications, C & B Fabrications, Inc. and
Low Country Signs, Inc.,Respondents.

REPLY TO PETITIONER'S RETURN TO MOTION FOR COSTS

Petitioner's sole basis for objecting to the Motion for Costs (hereinafter, "Motion") by Respondents Samuel W. Rhodes and Piedmont Promotions, Inc. (hereinafter, collectively, "Rhodes") is its argument the Motion lacks a separate memorandum citing applicable authorities.¹

As acknowledged by Petitioner, the Motion does cite to Rules 222 and 242(j), SCACR, which set forth the applicable standards for an award of costs. Moreover, the Motion is accompanied by an Itemized Statement of Costs that provides the Court and Petitioner with the information necessary to determine the amount of awardable costs.

¹ Petitioner apparently takes no issue with the *amount* of requested costs set forth in the Itemization inasmuch as it makes no argument in opposition to same.

While Rhodes could have filed a separate memorandum reciting the language of Rules 222 and 242(j), it would certainly be form over substance to suggest it is necessary to provide the Court with the contents of the rules rather than their cites as the Court is no doubt aware of the rules' parameters.² Similarly, the Court is intimately familiar with the fact that it ruled in favor of Rhodes with respect to all issues on which it definitively ruled, did not rule definitively in favor of Petitioner on any issue, and did not issue a dispositive ruling on one issue (whether Rhodes' damages constitute "property damages" as defined by the subject insurance policy), remanding it for resolution by the Circuit Court. As such, that remaining issue may never reach the point of final resolution at the appellate level.

The sole question for the Court to decide is whether its decision to remand one issue is sufficient to deny an award of costs to Rhodes, who prevailed on all pertinent issues at trial, every dispositive issue before the Court of Appeals, as well as every issue finally ruled upon by this Court and who is not precluded by this Court's ruling from prevailing on the remaining issue in the case.

To the extent the Court believes it is nevertheless necessary for Rhodes to file a separate memorandum with respect to the Motion, Rhodes respectfully requests that the Court consider the present Reply as such memorandum. If so, Rhodes certainly would not object if Petitioner would like to file a response to this Reply.

² Rhodes' counsel have found no reported cases addressing an award of costs under Rule 242(j), SCACR. They have located limited cases addressing an award of costs under Rule 222, SCACR; however, none of them contain holdings that appear pertinent to the present request for costs. As a result, Rhodes' counsel are unaware of any additional authorities which they could have included in a separate memorandum.

Respectfully submitted,

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November 12, 2013
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