

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA WORKERS COMPENSATION COMMISSION

APPELLATE CASE NO. 2013-001564

RECEIVED

DEC 04 2013

SC Court of Appeals

WILLIAM E MILLER, JR. APPELLANT,

v.

OWEN STEEL COMPANY INC. EMPLOYER AND
GREAT AMERICAN INSURANCE GROUP C/O
STRATEGIC COMP SERVICES, CARRIER, DEFENDANTS..... RESPONDENTS.

RETURN TO RESPONDENTS' SECOND MOTION TO DISMISS
REQUEST FOR SANCTIONS/FEEES

Respondent has filed a motion to dismiss. Such motion is apparently based, on this occasion, on the Respondent's allegation that Appellant failed to serve his Initial Brief on Respondent. Appellant provides this Return and the following attached exhibits in response to this Motion.

Exh. 1: cover of clocked brief and clocked proof of service.

Exh. 2: affidavit of J. Charles Ormond, Jr. Esq.

Exh. 3: e-mail from Respondent's attorneys (Nov. 12, 2013)

Exh. 4: Affidavit Angie Thompson

Exh. 5: Affidavit Katie Gatch

Appellant in fact did serve his Initial Brief on the Respondents on September 26, 2013 with the copy of the proof/certificate of service. (Exh. 1: Filed copy/caption and proof) Such filing and service was prior to the November 12th Court Order denying an earlier motion to dismiss by Respondents based on Appellant's error¹ in failing to file the proof of service proving that service was made on the Commission, with the Court of Appeals. Appellant, through his attorney did in fact serve the Commission but failed to file that proof of service with the Appeals Court.

Upon receiving the Order from the Court of Appeals on November 12, 2013, Appellant's attorney received an e-mail from Respondents' new attorney stating that Respondent would go ahead and begin preparation of the Respondents' initial brief. (Exh. 2 Aff. Ormond), (Exh. 3 e-mail) In prior correspondence and/or phone conversations, it was clear to Appellant's attorney that the Respondents' attorneys had the initial brief in their possession. Further, it would be difficult and unnecessary to begin preparation of a responsive brief as the attorney so stated she would begin without the Appellant's brief in hand. On the 27th of November, a paralegal from Respondent's law firm (Laura Hawkinson) called the Appellant's attorney's office (attorney was out of the office) and asked when the Initial Brief had been filed. The file was then reviewed and a clocked copy of the filed brief with proof of service was hand delivered to Respondent's firm (MG&C) with another proof of service for that additional service. (Exh. 1)(Exh. 5 Aff. K. Gatch) The runner also remembers that she served a package two months prior on the firm for the same attorney. (Id) Prior to this, no attorney or staff member had ever suggested that they had

¹Appellant's attorney did find the unfiled original proof and admitted that the proof of service had mistakenly not been filed.

somehow not received the initial brief. In fact it was appeared clear that the attorneys did have the brief and were preparing the responsive brief.² (Exh. 2 Aff. Ormond)

On December 3, Appellant was served with the Respondent's second motion to dismiss. The Initial Brief of Appellant was filed with the Court on September 26, 2013 and was also served on Respondent's attorneys that same day. (Exh. 4 Aff. A. Thompson) The Respondents apparently had noticed other firm attorneys³ on this appeal and a search of the file does not find any such notices of appearance or a withdrawal of the initial attorney, Lockhart. Prior to this, Appellant's attorneys understood that both Jason Lockhart, Esq. and Helen Hiser, Esq. were the attorneys assigned to the file.

Lawyers and firms can and do make errors and inadvertent missteps do occur. This is true of any attorney or any firm, not just the Appellant's attorney or firm. However, after the initial error in failing to file the proof of service on the Court for the Notice of Appeal, which was in fact served on the Commission, Appellant's attorney paid extra attention to these issues. The affidavit enclosed states in clear and unequivocal terms that the Appellant's Initial Brief was in fact served on Respondent Law Firm. (Exh. 2) The Respondents at least appeared to have the brief and indicated such in e-mail and other communications. No attorney or staff member from Respondents' firm asked for another copy of the Brief if such brief was misplaced or lost. Instead, the Respondents simply filed a motion to dismiss instead of a request for more time if

²If the Respondents' attorneys had misplaced the brief or it had gotten to another attorney, Appellant's attorney would have been happy to provide another copy (as it actually did upon the call from the paralegal) and would have consented to an extension to prepare its brief.

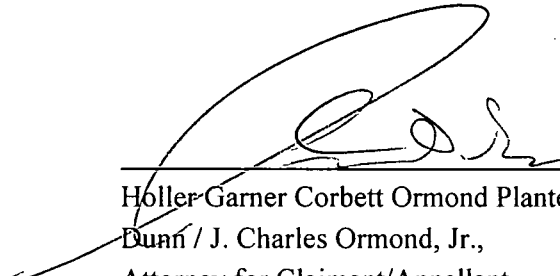
³The Respondents have noticed another attorney today and the notice of appearance was stapled to the end of correspondence and was almost missed by Appellant's attorneys.

needed. Because of the prior error, Respondents may be taking this approach in hopes that the Court will assume where there is one error the burden will be on the Appellant. Respondents now have been served with the Initial Brief twice by hand delivery and once by mail.

In this case, Appellants did not err and did file and serve the Respondents with Appellant's Initial Brief on September 26, 2013. Respondents' attorneys in fact state that they were beginning to prepare their brief which would have been unnecessary and not advisable if they did not have Appellant's Brief. The Respondents' motion is without merit and the filing of a motion to dismiss without even one prior communication with the adverse party's attorney on an issue such as this wastes valuable judicial resources as issues like this are generally and could have been rectified easily between the attorneys regardless of any error of fault on either side.

WHEREFORE: The Appellant would respectfully request that the Court deny the Respondent's Second Motion to Dismiss. This Motion, in light of the facts above, is without merit and Appellant would request sanctions and/or the payment of Attorneys fees required to respond to this Motion to Dismiss.

December 4, 2013



Holler Garner Corbett Ormond Plante &
Dunn / J. Charles Ormond, Jr.,
Attorney for Claimant/Appellant
1777 Bull Street
Columbia, SC 29201
(803) 765-2968 933-9000

EXHIBIT 1: COVER OF CLOCKED BRIEF AND CLOCKED PROOF OF SERVICE:

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA WORKERS COMPENSATION COMMISSION

APPELLATE CASE NO. 2013-001564

WILLIAM E MILLER, JR. APPELLANT,

v.

OWEN STEEL COMPANY INC. EMPLOYER AND
GREAT AMERICAN INSURANCE GROUP C/O
STRATEGIC COMP SERVICES, CARRIER, DEFENDANTS...

APPELLANT'S INITIAL BRIEF

FILED
SEP 26 2013
SC COURT OF APPEALS

September 26, 2013

Holler Garner Corbett Ormond Plante &
Dunn / J. Charles Ormond, Jr.,
Attorney for Claimant/Appellant
1777 Bull Street
Columbia, SC 29201
(803) 765-2968 933-9000

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA WORKERS COMPENSATION COMMISSION

APPELLATE CASE NO. 2013-001564

SEP 26 2013

SC COURT OF APPEALS

WILLIAM E MILLER, JR. APPELLANT,

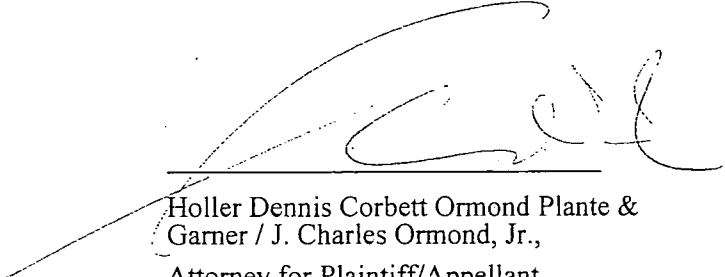
v.

OWEN STEEL COMPANY INC. EMPLOYER AND
GREAT AMERICAN INSURANCE GROUP C/O
STRATEGIC COMP SERVICES, CARRIER, DEFENDANTS..... RESPONDENTS.

PROOF OF SERVICE

I certify that I have served a copy of the APPELLANT'S INITIAL BRIEF on Respondents (Great American Insurance Group c/o Strategic Comp. Services, by depositing same in the United States Mail, postage prepaid, on September 26, 2013, its/their attorney/s of record, Jason Lockhart, Esq. McAngus Goudelock & Courie, LLC, P.O. Box 12519, Columbia, SC 29211

September 26, 2013


Holler Dennis Corbett Ormond Plante &
Garner / J. Charles Ormond, Jr.,
Attorney for Plaintiff/Appellant
1777 Bull Street
Columbia, SC 29201
(803) 765-2968 933-9000

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA WORKERS COMPENSATION COMMISSION

APPELLATE CASE NO. 2013-001564

WILLIAM E MILLER, JR. APPELLANT,

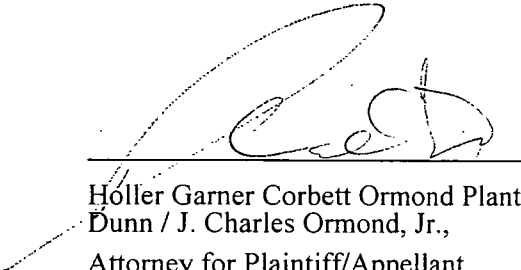
v.

OWEN STEEL COMPANY INC. EMPLOYER AND
GREAT AMERICAN INSURANCE GROUP C/O
STRATEGIC COMP SERVICES, CARRIER, DEFENDANTS..... RESPONDENTS.

PROOF OF SERVICE

I certify that I have served a copy of the APPELLANT'S INITIAL BRIEF and Prior Service of Same on Respondents (Great American Insurance Group c/o Strategic Comp. Services, by HAND DELIVERY, on December 2, 2013, its/their attorney/s of record, Helen Hiser, Esq., Weston Adams, III, McAngus Goudelock & Courie., LLC, P.O. Box 12519, Columbia, SC 29211.

December 2, 2013



Holler Garner Corbett Ormond Plante &
Dunn / J. Charles Ormond, Jr.,
Attorney for Plaintiff/Appellant
1777 Bull Street
Columbia, SC 29201
(803) 765-2968 933-9000

EXHIBIT 2: AFFIDAVIT OF J. CHARLES ORMOND, JR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA WORKERS COMPENSATION COMMISSION

WCC # 12 13162

WILLIAM E MILLER, JR. APPELLANT,

v.

OWEN STEEL COMPANY INC. RESPONDENT

Affidavit of J. Charles Ormond, Jr.

I, J. Charles Ormond, Jr. of Holler Garner Corbett Ormond Plante & Dunn, state as follows to the best of my independent knowledge and under oath:

- 1) I am the Attorney of Record for the Appellant in this matter. I prepared the Initial Brief in this matter and filed it with the Court of Appeals as well as the Proof of Service of such to the Opposing attorneys. This was done on September 26, 2013. My records indicate that this was not only mailed to the Respondents but also Hand delivered.
- 2) I have checked with our firm receptionist who mails all important documents and she indicated, and signed an affidavit, that it was mailed on that same day.
- 3) I did inadvertently leave out of a prior filing (the Notice of Appeal) the proof of service demonstrating that the Notice of Appeal was served on the Workers Compensation Commission. It was served but the proof of service was not filed. This resulted in a

dismissal and reinstatement. The Respondent then filed a motion to dismiss on this issue. Such was denied on the 12th of November.

- 4) I am certainly able to make errors and have done so over the years. However, after this initial error in this case, resulting in a motion to dismiss from the Respondent over this error, something I have never had to oppose, I made sure every filing was in fact served. My file indicates that Mr. Lockhart and Ms. Hiser were attorneys of record and I did not have information otherwise until early October, after the initial brief was filed.

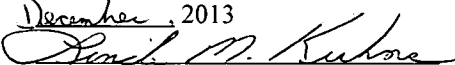
- 5) In correspondence about other issues in October, it was clear to me that Ms. Hiser must have had knowledge of the initial brief. The statements were that the motion filed would stay their requirement to file the opposing brief for Respondents. When the Order came, I received an e-mail from Ms. Hiser indicating that they would start on their brief. Further, I served them - as requested by the Court - with the filed proof related to the notice of appeal. During this time there was only the statement that they would immediately start on their brief and no mention as to "where is Appellant's brief" or when is it coming. Further, one would not need to work on the Respondents' brief unless they had the initial Appellant's brief. There was no indication in my mind that they did not have our brief and I feel strongly that they did at least have it at that time.

- 6) I am confident and state under oath that the brief was both filed and served on the respondents on September 26, 2013. The day prior to Thanksgiving, a paralegal from Respondent's firm called and left a message, asking about the brief. When I returned on Monday the 2nd of December, I was given this message and I reviewed the file yet again and for good measure served the clocked copies of the Brief and Service Proof by hand delivery. I have never gotten a letter, phone call, e-mail or anything from a Respondent attorney or paralegal that they did not have our brief or had lost or misplaced the brief or no longer had the brief. I would have worked to make sure they had another copy immediately, as I actually did, and I have done this many times in my years in practice and also have had others do this for me.

J. Charles Ormond, Jr.

Sworn before me this 4th day of

December, 2013


Notary Public for
State of South Carolina

Commission expires: 12/14/20

December 4, 2013


EXHIBIT 3: E-MAIL FROM RESPONDENTS' ATTORNEYS (NOVEMBER 12)

Subj: **FW: William E. Miller v. Owen Steel Company**
Date: 11/12/2013 1:22:13 P.M. Eastern Standard Time
From: helen.hiser@mgclaw.com
To: cormond@aol.com
CC: wadams@mgclaw.com, JLockhart@mgclaw.com

Hey Charles,

We just received the Court's order, and will begin preparing our Initial Brief. In the meantime, would you mind forwarding to us a copy of your notice of appeal to the Commission as the Court has instructed? We still do not have a copy of that.

Many thanks,
Helen

Bio	Vcard	Location
 <p>Helen Hiser Attorney</p> <p>Main: 843-576-2900 Direct: 843-576-2930 Fax: 843-534-0605</p> <p>736 Julianne Dodds Blvd. Suite 200 Mt. Pleasant, SC 29464 helen.hiser@mgclaw.com</p>		


 Please consider the environment
before printing this email.

EXHIBIT 4: AFFIDAVIT ANGIE THOMPSON

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA WORKERS COMPENSATION COMMISSION

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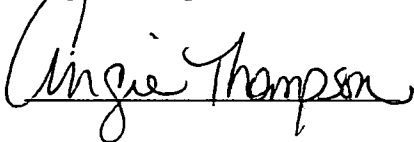
RESPONDENT

Affidavit of Angie Thompson

I, Angie Thompson, of Holler Garner Corbett Ormond Plante & Dunn, state as follows to the best of my independent knowledge and under oath:

- 1) I am the receptionist in the firm above. I mail most documents and all documents which are legal documents including filed documents for attorneys of the firm.
- 2) I am certain that the Appellant's Brief in this matter was mailed on the 26th of September to the McAngus Firm as set forth on the proof of service. The Brief was filed with the Court on the same day and this is why I remember it.
- 3) I can not state for sure but I believe that the Brief was also hand delivered by our runner on that day. I can not state this under oath, however.

Angie Thompson



Sworn before me this 4 day of
December 2013

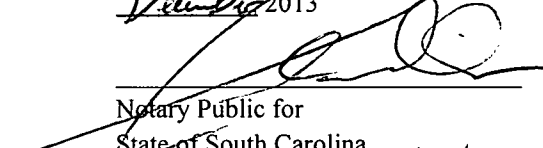

Notary Public for
State of South Carolina
Commission expires: 12/20/17

EXHIBIT 5: AFFIDAVIT KATIE GATCH

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA WORKERS COMPENSATION COMMISSION

WCC # 12 13162

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SC Court of Appeals

APPELLANT,

WILLIAM E MILLER, JR.

v.

OWEN STEEL COMPANY INC.

RESPONDENT

Affidavit of Katie Gatch

I, Katie Gatch, of Holler Garner Corbett Ormond Plante & Dunn, state as follows to the best of my independent knowledge and under oath:

- 1) I am the runner for the firm above. This is a part time job and I have had it since last summer. I delivered on Monday - December 2 - a package to the McAngus Firm in the Meridian Building for Mr. Ormond. Approximately two months prior to that, I delivered a package to the same firm (late September to the best of my ability to recall) for Mr. Ormond.

Katie Gatch

Katie Gatch

Sworn before me this 4th day of
December 2013
Angela B. Thompson
 Notary Public for
 State of South Carolina
 Commission expires: 11/5/2013

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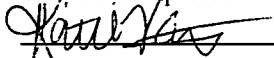
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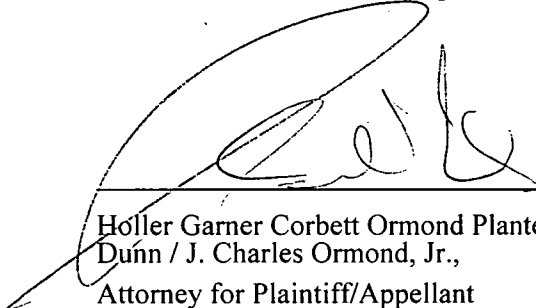
PROOF OF SERVICE

I certify that I have served a copy of the APPELLANT'S RETURN TO RESPONDENTS' SECOND MOTION TO DISMISS on Respondents (Great American Insurance Group c/o Strategic Comp. Services, by **HAND DELIVERY**, on December 4, 2013, its/their attorney/s of record, Helen Hiser, Esq., Weston Adams, III, Jason Lockhart McAngus Goudelock & Courie,. LLC, P.O. Box 12519, Columbia, SC 29211. Meridian Building, Columbia, SC. 29201.

December 4, 2013

Service completed:


Katie Gatch


Holler Garner Corbett Ormond Plante &
Duinn / J. Charles Ormond, Jr.,
Attorney for Plaintiff/Appellant
1777 Bull Street
Columbia, SC 29201
(803) 765-2968 933-9000