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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION
The Honorable Aisha Taylor, Commissioner

Appellate Case No. 2024-000533
S.C. W.C.C. File No. 1112328

Samuel Rose, Claimant,

v.

JJS Trucking and Chris Thompson Services (Statutory Employer),

and

Bridgefield Casualty Insurance Co. (Carrier for Statutory Employer) and South Carolina Uninsured Employers' Fund, Carriers, Defendants,

of which Chris Thompson Services and Bridgefield Casualty Insurance are the Appellants

and South Carolina Uninsured Employers' Fund is the Respondent,

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Motion for Costs on Appeal

Pursuant to Rule 222 and 240, S.C.A.C.R., the Appellants, Chris Thompson Services and Bridgefield Casualty Insurance Company, respetfully request that their costs on appeal be taxed against the Respondent, the South Carolina Uninsured Employers' Fund (UEF). Pursuant to Opinion No. 2026-UP-135 filed on March 25, 2026, the Court of Appeals reversed the decision of the South Carolina Workers' Compensation Commission and ordered a transfer of liablity

from the Appellants to the Respondent in accordance with S.C. Code Ann. § 42-1-415(A), which mandates that the Appellants now "be relieved of any and all liabilty" for benefits paid in Samuel Rose's workers' compensation claim. An Itemized Statement of Costs is attached hereto, as required by the Appellate Court Rules.

Under Rule 222, S.C.A.C.R., the prevailing party is entitled to recover the filing fee, the cost of transcripts, the costs of printing final briefs and the Record on Appeal, a set attorney's fee, and "premiums paid for costs of superseadeas bonds or other bonds obtained *to preserve rights pending appeal.*" (empahsis added). Rule 222 further provides that "[t]he allowance of addidtional costs will generally not be allowed *except in the most extraordinary of circumstances*." (emphasis added). The Appellants respectfully contend that "the most extraordinary of circumstances" exist, due in part to the Court's 2015 Order in this case that conditioned the Appellants' very right to appeal on the expenditure of significant costs in the form of Rose's medical and compensation benefits under the Workers' Compesnation Act.

The Appellants first initiated proceedings to transfer liablity to the UEF on January 24, 2012 – more than 14 years ago. (R. pp.203-233). After the Commission summarily denied this Petition to Tranfer Liablity, the Appellants sought review by the Court of Appeals in 2013. In 2015, the Court ruled that because the Commission's order denying the transfer of liablity left "the merits of Rose's claim for permanent disability unresolved ... the order is not a final decision and not immediately appealable." Rose v. JJS Trucking, LLC, 411 S.C. 366, 368–69, 768 S.E.2d 412, 413–14. In refusing to address the merits of the Appellant's Petition to Transfer Liability at that time, the Court acknowledged that,

> "Appellants contend they 'are required under the [commission's] order to make ongoing payments to [Rose], in addition to adjusting the claim and providing medical benefits, all despite the fact that ... Appellants properly petitioned the commission to transfer continuing liability to the [Uninsured Employers' Fund].' Appellants further contend that reimbursement from the Fund after final judgment is not an adequate remedy ... We do not agree that dismissing this appeal deprives Appellants of an adequate remedy. Appellants make no specific argument as to how the commission's refusal to address transfer at this time affects Appellants in any way other than to delay the payment of money. Uninsured Employers' Fund appears to acknowledge that it would be required to reimburse Appellants if the commission later orders a transfer. Therefore, if the commission eventually determines the transfer was adequately documented and thus should have been ordered, Appellants will recover their payments through reimbursement. If the commission does not later order a transfer, Appellants have an adequate remedy in an appeal after the commission's final decision in the case. *Id.* (internal citations omitted).

In accordance with this decision of the Court of Appeals, the Appellants have now paid $346,451.24 to (or on behalf of) Rose, whose claim for permanent disability was resolved with the final payment of the statutory maximum payment of 500 weeks of compensation on

September 8, 2022. (R. pp.232-233). These $346,451.24 in mandatory costs[1] were specifically required of the Appellants by the Court of Appeals as a condition precedent to appellate review of the transfer of liability issue under S.C. Code Ann. § 42-1-416. After finally reviewing the merits of the Appellant's Petition in 2026, the Court of Appeals determined that the Appellants were entitled to transfer liability to the UEF under S.C. Coe Ann. § 42-1-415 as a matter of law.

Therefore, the Appellants respectfully contend that because their costs in excess of $346,451.24 were necessary, not only "*to preserve rights pending appeal,*" but were actually required before the Court would permit the Appellants to exercise the right to judicial review guaranteed by the South Carolina Constitution[2] – this rare situation exemplifies "*the most extraordinary of circumstances*" contemplated by Rule 222. Like the price of a supersedeas bond, the Appellants' costs on appeal were actually contemplated by both the Court and the UEF as early as 2015 (when the Court issued its first ruling), and neither the Court, nor the UEF, can be said "to operate without any sense of the magnitude of the costs at issue."[3] Indeed, the Court

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[1] In addition to the payment of $346,451.24, following the initial appeal in 2013, the Appellants have incurred more than a decade of administrative costs and more than 1,300 hours of attorney fees.

[2] The statutory right of appellate review is governed by S.C. Code Ann. § 42-17-60. However, Article I, Section 22, of the South Carolina Constitution further guarantees the right to judicial review of decision of an administrative agency.

[3] *See* City of San Antonio, Texas v. Hotels.com, L. P., 593 U.S. 330, 341–42, 141 S. Ct. 1628, 1636–37, 209 L. Ed. 2d 712 (2021) (affirming taxation of $2.2 million in costs on appeal). In *City of San Antonio*, the Supreme Court explained that "[m]ost appellate costs are readily estimable, rarely disputed, and frankly not large enough to engender contentious litigation in the great majority of cases ... supersedeas bond premiums are a bit of an outlier in that they can grow quite large. *See, e.g., The Exxon Valdez v. Exxon Mobil Corp.*, 568 F.3d 1077 (CA9 2009) (more than $60 million). But the underlying supersedeas bonds will often have been negotiated by the

confirmed (and the UEF acknowledged) that the UEF "would be required to reimburse Appellants" for their incurred costs if a transfer of liability was ultimately ordered. Moreover, the details of the Appellants' ongoing costs on appeal have been documented with Form 18 ("Periodic Report") filings required by the Workers' Compensation Commission every six months since the inception of the claim, so the UEF cannot claim to be unaware of the fact that these costs were actually incurred and in what amount.

Accordingly, the Appellants respectfully request that $350,365.23, as indicated on the attached Itemized Statement of Costs, be taxed against the Respondent, UEF, as necessary "costs on appeal" pursuant Rule 222, S.C.A.C.R., which allows for such additional costs given the extraordinary circumstances; in the interests of justice and judicial economy; and consistent with this honorable Court's 2015 promise of "an adequate remedy" for, and reimbursement of, the mandatory costs incurred by the Appellants as a prerequisite to judicial review.

Respectfully submitted,

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parties ... They will in any event have been approved by the district court ... and their premiums will have been paid by one of the parties to the appeal. There is no reason to think that litigants and courts will be forced to operate without any sense of the magnitude of the costs at issue."