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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

APPELLATE CASE NO.: 2012-212744

CIVIL ACTION NO.: 2011-CP-40-1998

Gilbert S. Bagnell and Bagnell and Eason, LLC,

Appellants,

v.

Jones G. Herring,

Respondent.

**RECEIVED**

JUL 11 2014

**PETITION FOR REHEARING**

**SC Court of Appeals**

Pursuant to SC Court of Appeals Rules 221 and 240, Jones G. Herring, Respondent herein petitions the court for a rehearing in this matter.

The court entered its Order for Remand on June 30, 2014.

MEMORANDUM IN SUPPORT

This case essentially involved a tort and fraud claim, arising out of documented attorney misconduct. Testimony and other evidence as to actual damages was presented. The finding of the trial court relative to actual damages was within the parameters of the evidence presented. Deference should have been given to the trier of fact as the value of

damages could not be determined by any fixed yardstick, Riley v. Ford Motor Co., 408 S.C. 1 (2014).

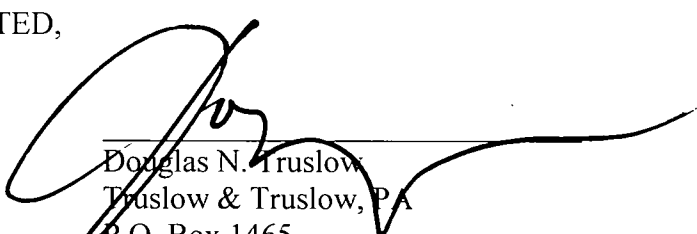
The cases relied upon by this court in its decision are to be distinguished. This is so in that, unlike Howard v. Holiday Inns, Inc., 271 S.C. 238, 246 SE2d 880 (1978), here there was a motion to ascertain damages and the trial court considered extensive evidence, with Defendant being given a full opportunity to question the amount of damages.

The second case relied upon is also distinguishable. Jackson v. Midlands Human Res. Ctr., 296 S.C. 526, 374 SE2d 505 (Ct. App. 1988) was a contract case in which a residential home sale fell through and actual damages were the difference between the contracted price and subsequent sale, rather than the full price of the contract.

Again, these two cases are distinguishable.

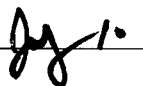
Respondent prays that the court set aside its decision and affirm the trial court.

RESPECTFULLY SUBMITTED,



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Truslow & Truslow, PA  
P.O. Box 1465  
Columbia, South Carolina 29202  
(803) 256-6276  
Attorney for Respondent Jones G. Herring

Columbia, South Carolina

, 2014

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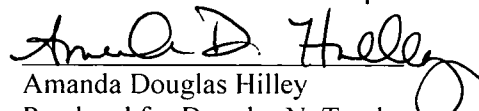
Jones G. Herring,

Respondent.

**PROOF OF SERVICE**

I certify that I have served the Respondent's **Petition for Rehearing** on Appellant Gilbert S. Bagnell by depositing a copy of same in the United States Mail, postage prepaid, on July 11, 2014, addressed to their attorney of record, Richard Gleissner, Esquire, 1237 Gadsden Street, Suite 200A, Columbia, SC 29201.

July 11, 2014

  
Amanda Douglas Hilley  
Paralegal for Douglas N. Truslow

# Truslow & Truslow

Attorneys At Law

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July 11, 2014

**RE: Jones G. Herring v. Gilbert Bagnell and Bagnell and Eason, LLC**  
**Civil Action # 2011-CP-40-1998**  
**Appellate Case # 2012-212744**


Via Hand Delivery  
The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Dear Ms. Kitchings:

Please find enclosed an original plus seven (7) copies of the Petition for Rehearing and Proof of Service of same in the above referenced case. Please file and return the clocked copy to the runner.

By copy of this letter, I am serving same upon opposing counsel.

Sincerely,



Amanda Douglas Hilley  
Paralegal for Douglas N. Truslow

cc: Richard Gleissner, Esquire  
Jones G. Herring

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**SC Court of Appeals**