

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM THE DORCHESTER COUNTY

The Honorable Perry M. Buckner, Circuit Court Judge

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Case N. 2012-CP-18-1647

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Diane S. Goodstein.....Respondent,

v.

Seal-O-Flex, Inc. and Latitude Construction Services, LLC....Defendants,

Of Whom Seal-O-Flex, Inc. is the.....Appellant.

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RESPONDENT'S MEMORANDUM IN OPPOSITION TO APPELLANT'S  
MOTION TO AMEND DESIGNATION OF MATTER  
TO BE INCLUDED IN THE RECORD ON APPEAL

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The Respondent objects to the removal of many of the pages of the transcript that the Appellant is seeking to exclude. The reason is that Appellant is seeking to remove most of the representations of fact made by counsel on behalf of Appellant that are critical to this Court's determination and were no doubt central to Judge Buckner finding as he did. In removing these pages the Appellant is removing representations making this case much more difficult to determine. Respondent did not include the transcript in her designations for the Record on Appeal simply because it was included by the Appellant. Absolutely the Respondent wants, needs and will cite to the transcript in her Final Brief (without any substantive changes to the brief).

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**SC Court of Appeals**

The transcript is very short. Excluding the formalities of announcing the case and the kind greetings to both counsel and directions for submitting proposed orders by Judge Buckner, it is only 18 pages, no doubt much shorter than most submitted to this Court.

However, Respondent is aware that brevity begs the question. Because of the facts that Counsel for appellant disclosed to the court, the transcript is critical. The core issue is whether Judge Buckner abused his discretion in determining that service by certified mail, restricted delivery, was good service. An example of what the Appellant is now seeking to exclude is found on page 7 of the transcript. There she tells the Court that the person who received the mailing and represented to the United States Postal Service that she was an agent authorized to accept mail for Mr. Kaufman (the registered agent) was employed to do just that--receive and open and distribute the mail to the person to whom it was addressed. (lines 14-27).

On Page 9 at lines 14-25 Counsel for Appellant concedes that this employee did precisely that in the instant case; received the Summons and Complaint, signed for it on its restricted delivery form and promptly gave the pleading to the Agent for Service of process and perhaps also a Vice President of the company. These are critical representations that Appellant now attempts to exclude.

On pages 10 and 11 there is an important colloquy between Counsel for Appellant and the Court regarding the issue of apparent authority and again on page 11 at lines 18-22 Counsel for a second time concedes that the Appellant was promptly given the Summons and Complaint by the person whose job it was to receive and sign for mail, and deliver it to the addressee. It is these representations made to Judge Buckner that the Appellant now seeks to exclude. The Respondent will cite these pages.

On page 13 of the transcript Counsel concedes that the employee had accepted and signed for certified mail earlier in the case and agrees she had apparent authority to receive certified mail; Appellant's argument apparently is she failed to have authority to accept certified mail restricted delivery. These representations made to Judge Buckner are important.

Page 14 of the transcript is important because Judge Buckner is summarizing the representations made to him by Counsel for the Appellant and this page is clearly important and will be cited by Respondent in her final brief.

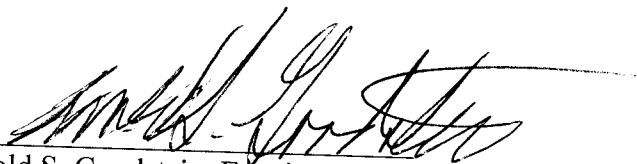
Page 15 is only argument by Counsel for Appellant and Respondent has no objection to this page being excluded.

Pages 16 and 20 are necessary because Counsel for Respondent is representing concessions made by prior Counsel to which current Counsel fails to object. On page 21 she also fails to object to the representation that Appellant represents publicly that the person receiving the mail is referred to as "Customer Service" and not as someone who "answers the phone" as stated by Appellant's counsel.( page 7 of the transcript).

Page 21 should be included because it clarifies for the Court that notice of the damages hearing was by personal service on Defendant (which it also chose to ignore).

Respondent does not object to the exclusion of pages 23-25.

In Summary for the reasons stated above, the Respondent objects to the exclusion of pages 7, 9, 10, 11, 12, 13, 14, 16, and 18 of the transcript and requests this Court deny Appellant's motion excluding these pages.. It would be Respondent's intention to cite to these pages in her Final Brief. Respondent would certify that these pages contain no matter which is irrelevant to this appeal.



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March 5, 2015

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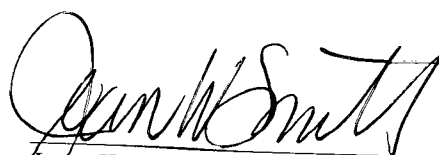
Seal-O-Flex, Inc. and Latitude Construction Services, LLC....Defendants,

Of Whom Seal-O-Flex, Inc. is the.....Appellant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 5, 2015 she served a copy of the foregoing Respondent's **Memorandum in Opposition to Appellant's Motion to Amend Designation of Matter to be Included in the Appeal** by depositing the same in the U.S. Mail, First Class postage, prepaid, and addressed to the following:

Suzanne C. Ulmer, Esquire  
Kernodle Root + Coleman  
Post Office Box 13897  
Charleston, South Carolina 29422-3897  
ATTORNEY FOR APPELLANT

  
Joan W. Smith

March 5, 2015

GOODSTEIN LAW FIRM, LLC

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Agoodstein@Goodsteinfirm.com

March 5, 2015

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

Re: *Diane Goodstein vs Seal-O-Flex INC. and Latitude Construction Services, LLC*  
Appellate Case No.: 2014-001918

Dear Ms. Kitchings:

In regard to Appellate Case No.: 2014-001918, I am enclosing an original and one (1) copy of a Memorandum in Opposition to Appellant's Motion to Amend Designation of Matter to be included in the Record on Appeal. Also enclosed is a copy of the Certificate of Service on Appellant.

Kindly return a clocked copy of the Memorandum to me in the self-addressed, stamped envelope that is enclosed.

Thank you for your consideration in this matter, and with kindest regards, I remain

Very truly yours,



Arnold S. Goodstein

ASG/jws

Enclosure  
cc: Suzanne C. Ulmer, Esquire

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**SC Court of Appeals**

