

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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JUN 01 2015

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

SC Court of Appeals

Appellate Panel  
Richland County  
WCC File No.: 1217409

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Appellate Case No.: 2014-002279

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Reginald Warner, .....Appellant,

v.

Gallman Personnel Services, Inc., .....Employer,

and

Zurich American Insurance Company c/o  
Gallagher Bassett Services, Inc., ..... Respondents.

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RESPONDENTS' REPLY TO APPELLANT'S RETURN TO  
RESPONDENTS' MOTION FOR COSTS

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Respondents', by and through their undersigned counsel, hereby files this Reply to Appellant's Return to Respondents' Motion for Taxing of Costs and Attorneys' Fees Against Appellant. For the reasons set forth below, this court should award costs to Respondents.

1. SCACR Rule 222(a) provides that "...costs shall be taxed against the appellant when the appeal is dismissed..."

2. Appellant's appeal was dismissed by this Court on April 23, 2015.
3. Appellant asserts that costs may only be awarded to a "prevailing party."
4. Appellant further asserts that costs may only be awarded if the Court reaches the merits of the case.
5. SCACR Rule 222 does not contain the words "prevailing party."
6. SCACR Rule 222 does not require the Court to "reach the merits of the case" in order to award costs.
7. SCACR Rule 222 only requires that "...costs shall be taxed against the appellant when the appeal is dismissed..."
8. Appellant cites Heath v. County of Aiken as support for his assertions.
9. Heath involved a determination of the application of S.C. Code Ann. § 15-77-300.
10. S.C. Code Ann. § 15-77-300 is a statute that provides for an allowance of attorneys' fees in *state initiated actions* to a *prevailing party*.
11. Unlike SCACR Rule 222, S.C. Code Ann § 15-77-300 does contain language about a "prevailing party."
12. However, this matter is not a state initiated action. Therefore, Heath and S.C. Code Ann. § 15-77-300 do not apply to the present case.
13. Appellant has not pointed to any case law which holds that a respondent cannot recover costs and fees when an appellant's improper appeal is dismissed<sup>1</sup>.
14. As shown by the prior accounting submitted with the Motion, Respondents *did* incur unnecessary costs and fees in responding to Appellant's improper appeal and those costs and fees should, therefore, be taxed against Appellant.


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<sup>1</sup> In fact, as noted throughout, Rule 222 states the exact opposite.

Wherefore, based on the decision of the court and the Appellate Court Rules, Respondent hereby moves for the taxing of attorneys' fees and costs in this matter.

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, LLC



June 1, 2015

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C. Barrett Burley  
Brett H. Bayne  
Post Office Box 12519, Capitol Station  
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Attorneys for Respondents

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PROOF OF SERVICE

I certify that I have served a copy of Respondents' Reply to Appellant's Return to Respondents' Motion for Costs by depositing a copy in the United States Mail, postage prepaid, on June 1, 2015, addressed to Counsel of Record: Stephen Benjamin Samuels.



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June 1, 2015

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**Reply To**

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**SC Court of Appeals**

**VIA HAND DELIVERY**

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

RE: Reginald Warner v. Gallman Personnel Services and Zurich American  
Insurance Company c/o Gallagher Bassett Services, Inc.  
Date of Accident: November 29, 2012  
WCC File No.: 1217409  
Our File No.: 2098.13012  
Claim No.: 001627-070257-WC-01

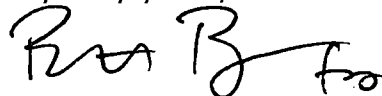
Dear Ms. Kitchings:

Please find enclosed the original and six (6) copies of Respondents' Reply to Appellant's Return to Respondents' Motion for Costs for your review in the above-referenced claim.

By copy of this letter to Claimant's attorney, Stephen B. Samuels, Esquire, we are forwarding a copy of the Respondents' Reply to Appellant's Return to Respondents' Motion for Costs to him by mail.

With kindest regards,

Very truly yours,



C. Barrett Burley

Enclosures

CBB/jmm

cc: Rachel Simmons, Gallagher Bassett Services, Inc. (via email)  
Stephen B. Samuels, Esquire, Samuels Law Firm  
Karen Smith, Gallman Personnel Services, Inc. (via email)