

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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JUN 22 2015  
SC Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

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Case No.: 2009-CP-42-00781

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Ray and Mary Long .....Appellants.  
v.  
Tuck and Howell, Inc.....Respondent.

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RESPONDENT TUCK AND HOWELL, INC.'S RETURN TO APPELLANTS'  
MOTION REQUESTS PERMISSION TO SERVE AND FILE THE RECORD  
ON APPEAL OUTSIDE OF THE TIMELINE SET BY RULE 210 OF SCACR

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Respondent Tuck and Howell, Inc., opposes the Appellants' Motion Requesting Permission to Serve and File the Record on Appeal Outside of the Timeline set by Rule 210 of SCACR. As discussed below, the motion should be denied because the Appellants have had ample opportunity to prepare and prosecute their appeal in this case but have failed to do so despite the passage of a year and a half and are seeking an indefinite extension of time without providing any evidentiary support for the request. Further, it is the position of Respondent that the Appellants have failed to designate any proper evidence or materials to be included in the record on appeal. Rather, they seek to include materials not

considered or ruled on by the trial court or jury. Accordingly, the inclusion of such materials in the record would be improper.

On October 22, 2013, the Appellants served Respondent with a Notice of Appeal from the Judgment of the Honorable J. Derham Cole dated September 18, 2013. The Appellants did not timely order the transcript within ten (10) days after the date of service of the Notice of Appeal as required by SCACR 207(a)(1). It is unclear if, or whether, Appellants have actually ordered the transcript.

The Initial Brief of Appellants and their Designation of Matter to be Included in the Record on Appeal was not served on Respondent until November 26, 2014, over a year after they filed their Notice of Appeal. The Initial Brief of Respondent was timely served on Appellants on March 18, 2015. Thereafter, the Appellants did not file a reply brief by March 28, 2015, nor did they designate any additional materials to be included in the record on appeal, as allowed by Appellate Court Rule 209(a). As a result, the Appellants were required to serve Respondent with the Record on Appeal by April 28, 2015. Appellate Court Rule 210(a) states: "Within thirty (30) days after service of the last brief, the appellant shall serve a copy of the Record on Appeal on each party who has served a brief." The Appellants have failed to serve the Record on Appeal. Although they allege that they are unable to serve it because of "bad health," they give no explanation as to the medical conditions or infirmities prohibiting them from preparing and serving the Record on Appeal. Further, they have not indicated when they anticipate or expect they will be able to serve Appellant with the Record on

Appeal. Accordingly, the Appellants appear to be requesting an indefinite extension of time.

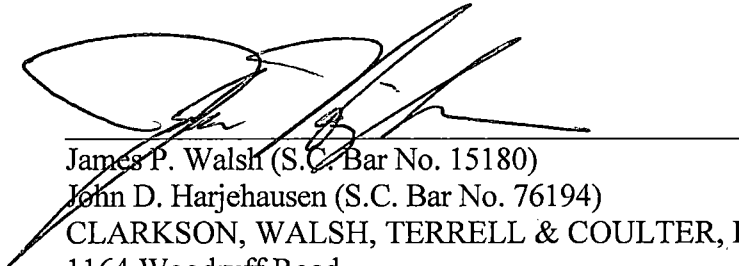
Prior to the filing of Appellants' Motion Requesting Permission to Serve and File the Record on Appeal Outside of the Timeline set by Rule 210 of SCACR, the Respondent moved the court to strike the entirety of Appellant's Designation of Designation of Matter to be Included in the Record on Appeal. As discussed in that motion, the Appellants have not designated any portion of the transcript pertaining to the rulings of the trial court, testimony of the witnesses at trial, evidence proffered, or exhibits admitted at the trial with their initial brief and they did not file or serve a reply brief of supplemental designation of matters to be included in the record on appeal. Accordingly, it is the position of Respondent that even if Appellants are afforded additional time to serve the Record on Appeal, no matters have been properly designated for inclusion into the Record on Appeal.

There is an old legal maxim which states: "Justice delayed is justice denied." The Appellants first filed their Complaint in this matter in October of 2007. It is now nearly eight years later, and over a year and a half since the jury rendered a verdict in this case. Because the Appellants are essentially seeking an indefinite extension of time to serve the Record on Appeal, without providing any evidentiary support for the request and, because no matters have been properly designated for inclusion in the Record on Appeal, Respondent respectfully requests that the court deny the Appellants' Motion Requesting Permission to

Serve and File the Record on Appeal Outside of the Timeline set by Rule 210 of  
SCACR

Dated this 18th day of June, 2015.

CLARKSON, WALSH, TERRELL & COULTER, P.A.

A handwritten signature in black ink, appearing to be "James P. Walsh", is written over a horizontal line. The signature is stylized and somewhat cursive.

James P. Walsh (S.C. Bar No. 15180)

John D. Harjehausen (S.C. Bar No. 76194)

CLARKSON, WALSH, TERRELL & COULTER, P.A.

1164 Woodruff Road

Post Office Box 6728

Greenville, South Carolina 29606

Phone: (864) 232-4400

Fax: (864) 235-4399

ATTORNEYS FOR RESPONDENT

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No.: 2009-CP-42-00781  
Appellate Case No.: 2013-002439

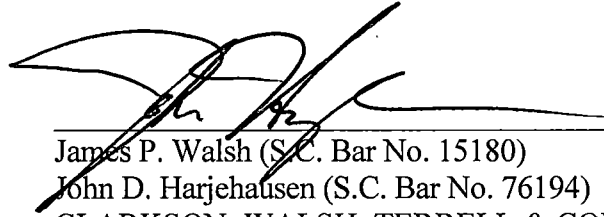
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PROOF OF SERVICE

I certify that I have served the Respondent Tuck and Howell, Inc.'s Return to Appellants' Motion Requesting Permission to Serve and File the Record on Appeal Outside of the Timeline set by Rule 210 of SCACR and Proof of Service, by mailing a copy, postage prepaid, to appellants Ray and Mary Long, at 131 Taylor Road, Greer, South Carolina, 29651, on June 18, 2015.

CLARKSON, WALSH, TERRELL & COULTER, P.A.

A handwritten signature in black ink, appearing to read 'James P. Walsh', is written over a horizontal line. The signature is stylized and cursive.

James P. Walsh (S.C. Bar No. 15180)

John D. Harjehausen (S.C. Bar No. 76194)

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Greenville, South Carolina 29606

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Fax: (864) 235-4399

ATTORNEYS FOR RESPONDENT

# CLARKSON, WALSH, TERRELL & COULTER, P.A.

ATTORNEYS AT LAW

June 18, 2015

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SC Court of Appeals

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

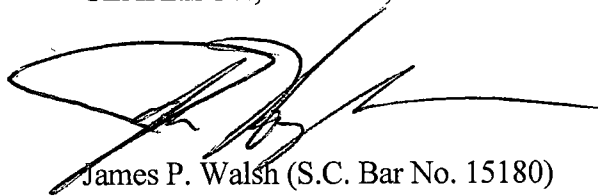
Re: Ray and Mary Long, Appellants v. Tuck and Howell, Inc., Respondent  
Case No. 2009-CP-42-00781

Dear Ms. Kitchings:

Enclosed for filing are an original and six (6) copies of the Respondent Tuck and Howell, Inc.'s Return to Appellants' Motion Requesting Permission to Serve and File the Record on Appeal Outside of the Timeline set by Rule 210 of SCACR and Proof of Service. Thank you for your kind consideration and assistance. Please feel free to call if you should have any questions regarding this matter.

Yours very truly,

CLARKSON, WALSH, TERRELL & COULTER, P.A.



James P. Walsh (S.C. Bar No. 15180)

John D. Harjehausen (S.C. Bar No. 76194)

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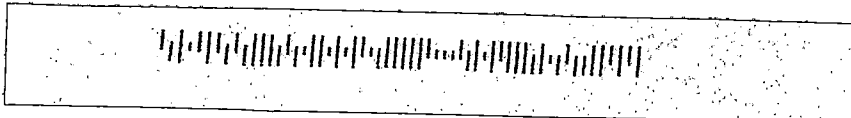
Fax: (864) 235-4399

ATTORNEYS FOR RESPONDENT

JPW/jdh

Enclosure(s)

cc: Ray and Mary Long



U.S. POSTAGE >> PITNEY BOWERS  
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**CLARKSON, WALSH, TERRELL & COULTER, P.A.**  
— ATTORNEYS AT LAW —  
POST OFFICE BOX 6728 • GREENVILLE, SC 29606

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The Honorable Jenny Abbott Kitchings  
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