

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
DEC - 2 2015

S.C. Supreme Court

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

WCC File No. 1023143
Appellate Case No. 2015-001330

Opinion No. 5307 (S.C. Ct. App. filed April 1, 2015)

George Ferguson..... Petitioner.

v.

New Hampshire Insurance Company, Carrier for AMERCO/U-HAUL
International, Sean Unterkoefer d/b/a United Stand Moving,
Employer, and the S.C. Workers' Compensation
Uninsured Employers' Fund Respondents.

**REPLY TO PETITIONER'S RETURN
TO RESPONDENTS' MOTION TO STRIKE**

TO: THE HONORABLE JUSTICES OF THE SUPREME COURT:

Respondents respectfully request this Court to strike Arguments I and II of Petitioner's reply brief. The South Carolina Appellate Court Rules clearly provide the only arguments that may be presented to this Court are

those arguments which were made before the Court of Appeals. See Rule 242(d)(2), SCACR (providing only “those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court”).

In response to the Motion to Strike, Petitioner argues the Court should simply disregard any facts he may have alleged that do not appear in the record. (Return to Motion to Strike, p. 4). This is not the issue before the Court on the Motion to Strike, and the cases cited by Petitioner are not controlling here. Id. Petitioner is not merely referring to facts that are not in the record, but rather, he is presenting entirely new arguments at the final stage in this appeal. Petitioner had ample opportunity to raise O’Connor v. Uber Technologies, No. C-13-3826 EMC (N.D. Cal. filed March 11, 2015), and the facts stated within O’Connor about Uber drivers and Uber’s business model before the Court of Appeals in his Petition for Rehearing, but he chose not to do so. Petitioner had ample opportunity to argue he was a direct employee of eMove or that Unterkoefer was a subcontractor of eMove,¹ but

¹ It is disingenuous for Petitioner to allege he never argued he was a direct employee of eMove. (Return to Motion to Strike, p. 6). He cites O’Connor to apply to “traditional test of employment” and compares himself to an Uber driver. (Petitioner’s Reply Brief, p. 3). Petitioner now claims he was merely arguing

he never raised those arguments even before the O'Connor opinion was issued.

In addition, Petitioner uses the Reply brief to raise issues that were not argued in the Petition for Writ of Certiorari. See Bochette v. Bochette, 300 S.C. 109, 112, 386 S.E.2d 475, 477 (Ct. App. 1989) (“An appellant may not use either oral argument or the reply brief as a vehicle to argue issues not argued in the appellant's brief.”). Petitioner claims, “The arguments made in the Reply are simply Petitioner’s legitimate and proper reply to the statements made by Respondent in their Return.” (Return to Motion to Strike, p. 7). However, the Reply stands in stark contrast to the Petition for Writ of Certiorari and Respondents’ Return, both of which briefed the issues squarely presented to the Court of Appeals. Even if Petitioner argues this Court should adopt O'Connor for the “cogency of its reasoning,” he should have made that argument in his Petition for Rehearing or the Petition for Writ of Certiorari. Accordingly, Respondents respectfully request this Court to strike Arguments I and II in Petitioner’s Reply because those arguments are not properly before this Court.

Unterkoefler was an employee or subcontractor of eMove, which is another argument that was never presented to the Court of Appeals.

Respectfully submitted,

COLLINS & LACY, P.C.

By: 

CHRISTIAN STEGMAIER

cstegmaier@collinsandlacy.com

ASHLEY R. KIRKHAM

akirkham@collinsandlacy.com

1330 Lady Street, Suite 601

Post Office Box 12487

Columbia, South Carolina 29211

(803) 256-2660 (voice)

(803) 771-4484 (facsimile)

Attorneys for Respondents

AMERCO/U-HAUL International and

New Hampshire Insurance Company

Columbia, South Carolina

December 2, 2015

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

DEC - 2 2015

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

S.C. Supreme Court

WCC File No. 1023143
Appellate Case No. 2015-001330

Opinion No. 5307 (S.C. Ct. App. filed April 1, 2015)

George Ferguson..... Petitioner.

v.

New Hampshire Insurance Company, Carrier for AMERCO/U-HAUL
International, Sean Unterkoefer d/b/a United Stand Moving,
Employer, and the S.C. Workers' Compensation
Uninsured Employers' Fund Respondents.

PROOF OF SERVICE

Counsel for Respondents certifies that they have served Respondents' Reply to Petitioner's Return to Respondents' Motion to Strike by depositing a copy of it in the United States Mail, postage prepaid, on December 2, 2015, addressed to the following attorneys of record:

Stephen B. Samuels, Esquire
Samuels Law Firm, LLC
1320 Richland Street
Columbia, SC 29201

Lisa C. Glover, Esquire
Uninsured Employers' Fund Division
State Accident Fund
Post Office Box 210039
Columbia, SC 29221-0039

Natasha M. Hanna, Esquire
4717 Jenn Drive, Suite 102
Myrtle Beach, SC 29577

Sean Unterkoefer
United Stand Moving
25 Wing Street
Lisbon Falls, Maine 04252

Respectfully submitted
COLLINS & LACY, P.C.

By: 
CHRISTIAN STEGMAIER (S.C. ID 68648)
cstegmaier@collinsandlacy.com
ASHLEY R. KIRKHAM (S.C. ID 80114)
akirkham@collinsandlacy.com
1330 Lady Street, Suite 601
Post Office Box 12487
Columbia, South Carolina 29211
(803) 256-2660 (voice)
(803) 771-4484 (facsimile)

ATTORNEYS FOR RESPONDENTS
AMERCO/U-HAUL International and New
Hampshire Insurance Company

Columbia, South Carolina