

78208

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED

APPEAL FROM SOUTH CAROLINA  
Workers' Compensation Commission

DEC 18 2015

SC Court of Appeals

Appellate Case No.: 2015-001336

\_\_\_\_\_  
Jose Juan Jimenez, Employee, ..... Appellant

v.

\_\_\_\_\_  
Kohler Company, Self-Insured Employer, ..... Respondent.

**MOTION TO STRIKE APPELLANT'S DESIGNATION  
OF MATTER ON APPEAL AND TO STRIKE MATTERS  
FROM APPELLANT'S FINAL BRIEF**

\_\_\_\_\_  
This matter is on appeal from an Order of South Carolina Workers' Compensation Commission Appellate Panel denying the Appellant's claim for benefits due to the claimant's failure to establish his current medical conditions were causally related to two alleged work-place incidents. As part of the appeal, the Appellant filed his Designation of Matter on Appeal. The Defendant now moves to strike a portion of the claimant's Designation of the Matter on Appeal as being irrelevant to the issues before the South Carolina Court of Appeals.

The Respondent Kohler moves for an order of this Court striking two documents identified in the Appellant's Designation of Matter and an order requiring the Appellant to exclude from his Final Appellant's Brief those matters irrelevant to the appeal and upon which the claimant uses the improper designations as support (pages 4 and 5 of Appellant's Initial Brief), as these designations violate Rule 210 of South Carolina Appellate Court Rules. Specifically, Respondent

Kohler seeks an order striking Designation Eleven (11) and Designation Thirteen (13) in Appellant's Designation of Matter<sup>1</sup>.

## LAW

Appeals are governed by the South Carolina Appellate Court Rules. With respect to the Record on Appeal, these Rules states that "[t]he Record on Appeal shall include all matter designated to be included by any party under Rule 209," but "shall not . . . include matter which was not presented to the lower court or tribunal." Rule 210(c), SCACR. See also Norris v. Ferre, 315 S.C. 179, 183, 432 S.E.2d 491, 493 (Ct. App. 1993) (refusing to allow deposition testimony to be included in the Record on Appeal because it was not presented to the trial judge). Moreover, "[a] party shall not include any matter in his Designation which is not relevant to the appeal." Id.; Rule 209(b), SCACR. Finally, the Rules state that "[t]he brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [pursuant to Rule 210(c)] to support the salient facts alleged." Rule 208(b)(4), SCACR.

Our appellate courts have held that "the South Carolina Appellate Court rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State." Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992). "It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review." Id. "Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court." Rule 231(a), SCACR.

---

<sup>1</sup> Item eleven identified in Appellant's Designation of Matter includes Affidavits of Jose Jimenez, Danny R. Sellars, and Gabriel Villagran. Item thirteen is identified as "Motion to Exclude Evidence Hold Kohler in Contempt, and for the Commission to Issue an Order and Rule to Show Cause to Revoke Kohler's Self-Insured Status." See Appellant's Designation of Matter

Although Respondent Kohler is not seeking a dismissal of the appeal pursuant to Rule 231(a), the rule highlights the importance of the parties complying with the appellate court rules and the potential serious sanctions available to the Court for a violation of these Rules.

### ARGUMENT

Appellant's Designations of Matter Eleven and Thirteen should be stricken from the designation of matter because they are irrelevant to the issues on appeal and were not presented to the Hearing Commissioner or the Appellate Panel as part of the Hearing on the compensability of the Appellant's workers' compensation claims which form the basis of the Appellant's appeal before this Court. Accordingly, they are not properly before the Court of Appeals.

The Following documents are the subject of this Motion:

1. Affidavits of Jose Jimenez, Danny R. Sellars, and Gabriel Villagran (Designation of Matter No. 11)
2. Motion to Exclude Evidence, Hold Kohler in Contempt, and for the Commission to Issue an Order and Rule to Show Cause to Revoke Kohler's Self-Insured Status. (Designation of Matter No. 13)

The affidavits of Jose Jimenez, Danny R. Sellars, and Gabriel Villagran that form the basis of Designation of Matter No. 11 were affidavits that were used to support the Motion filed by the Appellant that forms the basis of Designation of Matter No. 13. Appellant's Motion to Exclude Evidence, Hold Kohler in Contempt, and for the Commission to Issue an Order and Rule to Show Cause to Revoke Kohler's Self-Insured Status were all related to discovery issues that were resolved no less than three months before the Hearing on the compensability of the Appellant's alleged-work related injuries. (See Exhibit 1, Correspondence confirming resolution of these issues). These discovery issues were not presented to the Hearing Commissioner on May 23, 2014, June 3, 2014, or June 4, 2014. They were in no way made a part of the Hearing before the Hearing

Commissioner or the Appellate Panel. Accordingly, they should be stricken from the Appellant's Designation.

Moreover, these Designations are irrelevant to the appeal. The issues in this appeal are whether the Commission correctly held that the claimant failed to establish that his current injuries to his low back and left leg were compensable injuries by accident arising out of and in the course of employment with Kohler. The Hearing in no way involved Kohler's self-insured status or previously-resolved discovery issues between Kohler and Appellant. Appellant's failure to follow the Appellate Rules by including irrelevant and inadmissible material in the record is an improper attempt to cast Respondent Kohler in a negative light before this Court on matters that are not before this Court. Because the documents enumerated in Appellant's Designation of Matter No. 11 and No. 13 were not a part of the record before the Commission and are irrelevant to the issues on appeal, they should be stricken from Appellant's Designation of Matter.

Additionally, the Appellant, in the Statement of Facts portion of Appellant's Initial Brief dedicated at least two pages of facts to these discovery/sanction related issues that formed the basis of his motion before the Commission, but are again in no way relevant to the issues on appeal—an appeal based entirely upon the issues of compensability. As noted above, these pretrial disputes were resolved between the Parties and the Commissioner, and are not the subject of any ruling by the Commission and certainly not the result of any appealed ruling of the Commission. Because the Appellant briefed these issues which are irrelevant and are not properly the subject of appeal, the Appellant should be required to remove all factual references to these issues (set forth on pages 4 and 5 of the Appellant's Initial Brief) before the Appellant files his Final Brief with this Court. Moreover, these references should be removed because, in the event the Court of Appeals grants

the Motion to Strike Designation of Matters No. 11 and No. 13, these factual references will not be supported by the Record on Appeal and would constitute a violation of Rule 208(b)(4), SCACR.

**CONCLUSION**

For the reasons set forth herein, Respondent Kohler respectfully requests this Court enter an order striking Appellant's Designations of Matter No. 11 and No. 13 from the Record on Appeal and to require Appellant to file Appellant's Final Brief without references to these irrelevant matters.

SOWELL GRAY STEPP & LAFFITTE, LLC

By 

Grady L. Beard  
Nicolas L. Haigler  
Robert E. Horner  
Sowell Gray Stepp & Laffitte, LLC  
1310 Gadsden Street  
Post Office Box 11449  
Columbia, South Carolina 29211  
(803) 929-1400

Attorneys for Respondent Kohler

Columbia, South Carolina

December 18, 2015

From: Al Martin (al@MartinsLawFirm.com)  
Sent: Fri 2/21/2014 10:35 AM  
Rcvd: Fri 2/21/2014 10:35 AM  
To: Beard, Grady L.; Beck, Scott (sbeck@wcc.sc.gov)  
CC: Bracy, Amy (abracy@wcc.sc.gov); Haigler, Nicolas L.  
Subject: RE: Jimenez v Kohler and Lugo v Kohler (6457/8005) and (6457/8006)

---

I agree with all of the points in Grady's email, except it was my understanding that Commissioner Beck retained jurisdiction of the Jimenez claims and agreed to schedule our Form 50 hearing on the merits before himself upon our request. That would be my preference as Commissioner Beck is already familiar with the Jimenez case. I would ask that our Form 50 be set for hearing before Commissioner Beck.

Thanks,

Al Martin

MARTIN & MARTIN, PA

1415 Augusta Street (29605)

Post Office Box 8220

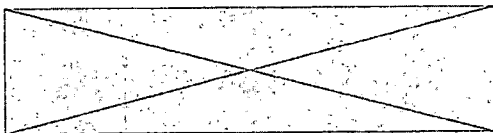
Greenville, South Carolina 29604

(864) 271-1822

Fax (864) 271-1814

[al@MartinsLawFirm.com](mailto:al@MartinsLawFirm.com)

Visit our website at [www.MartinsLawFirm.com](http://www.MartinsLawFirm.com)



**EXHIBIT 1**

---

CONFIDENTIAL & PRIVILEGED:

Unless otherwise indicated or obvious from the nature of the above communication, the information contained herein may be an attorney-client privileged and confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited.

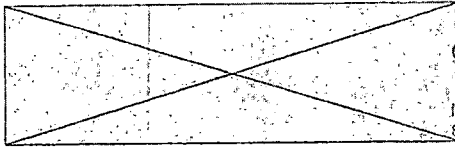
If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by return e-mail and destroy any copies, electronic, paper or otherwise, which you may have of this communication.

**From:** Beard, Grady L. [mailto:gbeard@sowellgray.com]  
**Sent:** Friday, February 21, 2014 10:17 AM  
**To:** 'Beck, Scott'  
**Cc:** 'Bracy, Amy'; Haigler, Nicolas L.; Al Martin  
**Subject:** RE: Jimenez v Kohler and Lugo v Kohler (6457/8005) and (6457/8006)

Good Morning Commissioner Beck:

We have been advised that the Lugo case was successfully settled and approved by your Honor. Therefore, pursuant to the agreed upon terms below, the pending Motions before you in Jimenez are to be withdrawn with prejudice, and these cases are to now be scheduled as to the merits of each claim. If you need a formal Consent Order stating that, please advise and we will be happy to draft same. We would appreciate you having these 2 files returned to Judicial to be scheduled before the appropriate Jurisdictional Commissioner for merits Hearings. By copy of this e-mail to Mr. Martin, I am confirming our agreement below and requesting he confirm that this is the appropriate procedural route for these 2 claims to now take.

Thanks-Grady



Grady L. Beard [v-card](#)

Member  
803 231.7824  
[www.sowellgray.com](http://www.sowellgray.com)



Supporting Group. Please print only.

**NOTICE:** This e-mail and any files transmitted with it are confidential and may contain information which is legally privileged or otherwise exempt from disclosure. They are intended solely for the use of the individual or entity to whom this e-mail is addressed. If you are not one of the named recipients or otherwise have reason to believe that you have received this message in error, please immediately notify the sender and delete this message immediately from your computer. Any other use, retention, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited.

**IRS DISCLAIMER:** As required by U.S. Treasury Regulations governing tax practice, you are hereby advised that any written tax advice contained herein was not written or intended to be used (and cannot be used) by any taxpayer for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code.

**From:** Beard, Grady L.  
**Sent:** Thursday, February 06, 2014 8:27 PM  
**To:** 'Beck, Scott'  
**Cc:** Bracy, Amy; Haigler, Nicolas L.; Hugh McAngus; Al Martin ([al@MartinsLawFirm.com](mailto:al@MartinsLawFirm.com)); [slacy@collinsandlacy.com](mailto:slacy@collinsandlacy.com); Fern Potter  
**Subject:** RE: Jimenez v Kohler and Lugo v Kohler (6457/8005)

Thank You Commissioner.

Have a Great Evening.

Grady



Grady L. Beard [v-card](#)

Member  
803 231.7824  
[www.sowellgray.com](http://www.sowellgray.com)



Supporting Group. Please print only.

**NOTICE:** This e-mail and any files transmitted with it are confidential and may contain information which is legally privileged or otherwise exempt from disclosure. They are intended solely for the use of the individual or entity to whom this e-mail is addressed. If you are not one of the named recipients or otherwise have reason to believe that you have received this message in error, please immediately notify the sender and delete this message immediately from your computer. Any other use, retention, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited.

**IRS DISCLAIMER:** As required by U.S. Treasury Regulations governing tax practice, you are hereby advised that any written tax advice contained herein was not written or intended to be used (and cannot be used) by any taxpayer for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code.

**From:** Beck, Scott [<mailto:sbeck@wcc.sc.gov>]  
**Sent:** Thursday, February 06, 2014 8:14 PM  
**To:** Beard, Grady L.  
**Cc:** Bracy, Amy; Beck, Scott; Haigler, Nicolas L.; Hugh McAngus; Al Martin ([al@MartinsLawFirm.com](mailto:al@MartinsLawFirm.com)); [slacy@collinsandlacy.com](mailto:slacy@collinsandlacy.com); Fern Potter  
**Subject:** Re: Jimenez v Kohler and Lugo v Kohler (6457/8005)

I'll hold in abeyance all obligations to allow the parties an opportunity to reach an agreement in both matters.

Sent from my iPhone

On Feb 6, 2014, at 4:28 PM, "Beard, Grady L." <[gbeard@sowellgray.com](mailto:gbeard@sowellgray.com)> wrote:

Commissioner Beck:

Please be advised that it appears the parties have settled the Lugo case pending completion of the settlement documents and approval by the SCWCC. Given this development, Mr. Martin and I have agreed today to request that you hold in abeyance the pending Motions before you in the Jimenez cases. If the Lugo case settlement is ultimately approved by the SCWCC, then Mr. Martin and I have agreed the pending Motions before you in Jimenez will be withdrawn with prejudice and then the Jimenez cases can proceed on the merits of each claim. Please advise if you will agree to hold in abeyance all further actions from the Scheduling Order we reached in hopes that this will ALL go away. As we all have items due to you on 2/7/14, time is of the essence with regards to this request.

Thanks-Grady

Grady L. Beard [v-card](#)

IN THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED

DEC 18 2015

SC Court of Appeals

APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

Appellate Case No.: 2015-001336

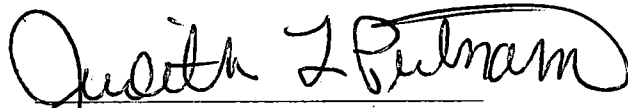
Jose Juan Jimenez, Employee, ..... Appellant

v.

Kohler Company, Self-Insured Employer, ..... Respondent.

PROOF OF SERVICE

I certify that I have served a copy of the Motion to Strike Appellant's Designation of Matter on Appeal and to Strike Matters from Appellant's Final Brief, on the following: Alton L. Martin, Jr., Esquire, Martin & Martin, P.A., Post Office Box 8220, Greenville, SC 29604 (via U.S. Mail) and Ms. Amy Bracy, Judicial Director, South Carolina Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, SC 29201 (via hand-delivery) on December 18, 2015.



Judith L. Putnam, Legal Assistant  
Sowell Gray Stepp & Laffitte, LLC  
1310 Gadsden Street  
Post Office Box 11449  
Columbia, South Carolina 29211  
(803) 929-1400  
Attorneys for Respondent

Columbia, South Carolina  
December 18, 2015

December 18, 2015

**VIA HAND DELIVERY**

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

**RECEIVED**  
DEC 18 2015  
SC Court of Appeals

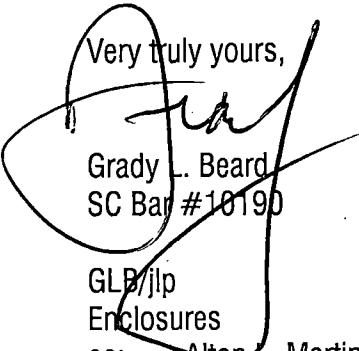
RE: Jose J. Jimenez, Employee/Appellant v. Kohler Company, Self-Insured Employer/Respondent  
WCC File No.: 1219561  
Appellate No.: 2015-001336  
Date of Accident: 03/13/12  
Claim No.: 186492343-001  
Our File No.: 6457/8006

Dear Ms. Kitchings:

Enclosed herewith are an original and eight (8) copies of a Motion to Strike Appellant's Designation of Matter on Appeal and to Strike Matters from Appellant's Final Brief, in the above-referenced matter. We would appreciate your filing the original and six (6) copies and returning the remaining clocked-in copies to us via our courier. We are enclosing our Firm's check for the \$25.00 filing fee.

By copy of this letter and aforementioned documents to opposing counsel and the South Carolina Workers' Compensation Commission, we are serving them with a copy of the Motion.

Very truly yours,

  
Grady L. Beard  
SC Bar #10190

GLB/jlp  
Enclosures

cc: Alton L. Martin, Jr., Esquire (w/enclosures)  
Ms. Amy Bracy, Judicial Director, SCWCC (via hand-delivery) (w/enclosures)  
Ms. Kim Stringer (via e-mail only) (w/enclosures)  
Mr. Mike Tolleson (via e-mail only) (w/enclosures)  
Mr. Dean Yagodinski (via e-mail only) (w/enclosures)  
Mr. Sid DeVaul (via e-mail only) (w/enclosures)  
Ms. Dawn Moore (via e-mail only) (w/enclosures)  
John Gerard Pawley, Esq (via e-mail only) (w/enclosures)  
[Broadspire.claims-NewOrleans@xerox.com](mailto:Broadspire.claims-NewOrleans@xerox.com) (w/enclosures)