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IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

JAN 13 2016

SC Court of Appeals

Appellate Case No.: 2015-001336

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

v.

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

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

Respondent's Motion should be denied. Respondent argues that portions of the Appellant's Statement of the Case contained on pages 4 and 5 of the Appellant's Initial Brief should be stricken; and, the two documents in the Designation of Matter referenced on those pages should also be stricken.¹

Respondent does not dispute the accuracy of Appellant's Statement of the Case in its motion, but instead claim the documents "were in no way made a part of the Hearing before the Hearing Commissioner . . ." and are "irrelevant." (Respondent's Motion To Strike, p. 3-4).

The two documents referenced in the Designation of Matter that are the subject of Respondent's objection specifically relate to the facts recited on page 4 and 5 of

¹ Respondents incorrectly identify this portion of Appellant's Initial Brief as the Statement of Facts. The Statement of Facts does not begin until page 8.

Appellant's Initial Brief. These documents that are Designation of Matter 11 and 13, respectively, were duly filed with the Commission and included in the Commission File.

At the May 23, 2014 hearing, the Hearing Commissioner noted: "Without objections the Commission File becomes a part of the record with the exception of self-serving declarations and un-stipulated medical reports." (Hrg. Tr. Vol. I, pg. 6, lines 20-23). This statement was also recited in the Hearing Order of October 24, 2014 at page 3. As such, these documents are contained in the record and were referenced by the Hearing Commissioner.

Appellant provided an accurate and concise history of the proceedings in his Statement of the Case, in accordance with 208(b)(1)(C) SCACR. Respondent does not dispute the accuracy of the facts asserted in Appellant's Statement of the Case. The facts recited on pages 4 and 5 involve "proceedings of the . . . administrative tribunal that may have affected the appeal, or may throw light upon the questions involved in the appeal." *Id.* These facts are relevant to providing a complete and accurate history of the proceedings.

It would be improper for Appellant to allege facts in his Statement of the Case without designating the applicable documents in the Designation of Matter. As Respondent correctly notes "[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. (Respondent's Motion To Strike, p. 2).

Pages 4 and 5 of the Appellant's Initial Brief provide accurate and relevant facts related to the history of the proceedings. These facts are contained in the record and were

referenced by the Hearing Commissioner. These facts are properly included in the Appellant's Statement of the Case. Designation of Matter 11 and 13 are necessarily referred to in support of the facts contained on pages 4 and 5.

CONCLUSION

Based on the foregoing, Appellant respectfully requests the Respondent's Motion to Strike be denied.



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January 7, 2016
Greenville, South Carolina

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Appellate Case No.: 2015-001336

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

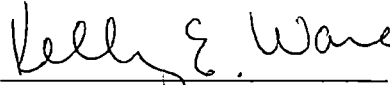
v.

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

PROOF OF SERVICE

I, Kelly E. Ware, Paralegal to Alton L. Martin, Jr. certify that I have served the **Appellant's Return to Respondent's Motion to Strike Appellant's Designation of Matter on Appeal AND to Strike Matters From Appellant's Final Brief** upon counsel for the Respondents by mailing a copy of the same in the United States mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below, addressed as follows:

Grady Beard, Esquire
Sowell Gray
PO Box 11449
Columbia, SC 29211



Kelly E. Ware

January 7, 2016
Greenville, South Carolina

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January 7, 2016

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

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JAN 13 2016
SC Court of Appeals

RE: José Juan Jiménez, Employee, Appellant v. Kohler Company, Self-Insured
Employer, Respondent
Appellate Case No.: 2015-001336

Dear Ms. Kitchings:

Enclosed for filing are the original and seven (7) copies of our Appellant's Return to Respondent's Motion to Strike Appellant's Designation of Matter on Appeal and to Strike Matters From Appellant's Final Brief in the above referenced matter. I have also enclosed our firm's check in the amount of \$25.00 for the filing fee.

Please have your staff clock in the Appellant's Return to Respondent's Motion to Strike Appellant's Designation of Matter on Appeal and to Strike Matters From Appellant's Final Brief and return the clocked copies to me in the enclosed self-addressed stamped envelope. Should you have questions or need any additional information, please do not hesitate to call me. Thank you for your assistance in this matter.

With kind regards, I am

Sincerely,

MARTIN & MARTIN, P.A.


Alton L. Martin, Jr.

ALMjr/kew

Enclosures

cc: Grady L. Beard, Esquire (w/enclosures)

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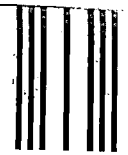
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