

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2015-001336

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JAN 15 2016

SC Court of Appeals

Jose Juan Jimenez, Employee, Appellant

v.

Kohler Company, Self-Insured Employer,Respondent.

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

In his Return to the Motion to Strike, the Appellant begins his defense by stating that the Respondent did not contest the "accuracy of the Appellant's Statement of the Case." The Appellant further notes, correctly, that the Respondent, in moving to strike a portion of the brief and documents, stated two grounds for having the matter struck: "that they were in no way made a part of the Hearing before the Hearing Commissioner" and they are "irrelevant."

As an initial matter, it is true that the accuracy (or inaccuracy) of these portions of the Statement of the Case was not addressed by the Respondent. This is because the South Carolina Appellate Rules do not state that "all accurate matters may be included in the Record on Appeal." See Rule 209(b), SCACR (a party shall not include irrelevant matters). Rather, Respondent believed from the outset that these portions of the Statement of the Case and the Designations of

Matter were not relevant to the appeal and had always intended to move to strike them, thus negating any need to discuss them in its Initial Brief.

The Appellant's rebuttal to the first of the Respondent's arguments that the Designations and brief should be struck pursuant to Rule 210(c), SCACR, because they were not presented to the lower court or tribunal is to create what could only be described as a hypertechnical or trivial argument to justify their inclusion. The Court of Appeals, however, should not entertain such efforts to justify the inclusion of matters that are highly irrelevant matters and are only included in the record below only in the most technical of senses.

In order to justify these designations, the Appellant nitpicks the boilerplate language that is included in every Decision and Order of the Commission, wherein it is recited that the Commission's file shall be made a part of the record. While dissecting the Decision and Order's boilerplate recitals technically results in the objected-to Designations of Matter becoming part of the Commission's file, the language and the spirit of Rule 210(c) envision that the record should include only those matters which were "presented to the lower court or tribunal" as it relates to the issues on appeal. See Rule 210(c), SCACR (citing by reference to Rule 209 which requires only relevant material be designated and stating "[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal."). The Appellate Court Rules do not state that everything in the underlying court file is automatically presented to the underlying court or tribunal or that every item in the underlying court file is relevant to the issues on appeal.

The Respondent's Motion to Strike is based on the following argument: "***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."

(Respondent's Motion to Strike, p. 3) (emphasis added). As this Court is aware, under the Administrative Procedures Act, the parties designate those matters to be included in their briefs, with these documents being exchanged prior to the Hearing and submitted to the Hearing Commissioner. These Designations were not included in either parties' pre-hearing briefs. While the Commission's entire file could be considered in determining the issues before the Commission in the appropriate circumstances, even then, only those portions of the Commission's file that would be relevant to the issues before it would be considered.

Relevancy remains the cornerstone of evidence and its admissibility, even at the Court of Appeals. The need for evidence to be relevant is never more evident than in a case like this where the documents sought to be included in the Record on Appeal were not presented to the Commission by the Appellant as part of his prehearing brief and were not used (or even referenced) in the hearing to support his claims. Moreover, the Appellant made no request that the Hearing Commissioner or the Appellate Panel consider these documents that comprise Designation of Matter 11 or 13 in determining compensability of the claim. Accordingly, it would be improper for the Appellant to include them in the Record on Appeal to this Court when they were not presented to the Commission as evidence affecting the issues before it—compensability of the claim.

The Appellant's Return fails to establish the relevance of these items; rather, he states that he is required to designate No. 11 and No. 13 because they support part of his Statement of the Case. Of course, this argument is completely circular—i.e., the designations are needed because the Statement of the Case contains matters not relevant to the appeal and therefore the irrelevant Designations of Matter must be included because otherwise the Appellant has failed to cite the

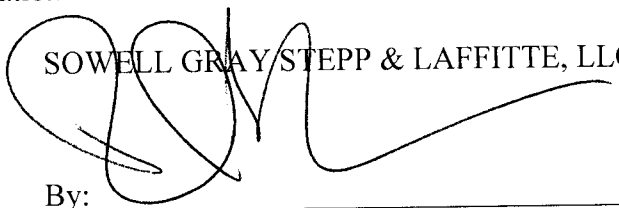
Record on Appeal, which is against the appellate court rules. Again, however, the Appellant's recitation of these facts in his Initial Brief is not relevant to the issues that were before the Hearing Commissioner or the Appellate Panel; this is why the remedy sought by the Respondent is two-fold—to strike the matter from the Statement of the Case from the Appellant's Final Brief and to exclude the matters from the Designation of Matter on Appeal.

The Appellant cannot show relevancy in any event. As noted in the Motion to Strike, “[a] party shall not include any matter in his Designation which is not relevant to the appeal.” Rule 209(b), SCACR. “Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 403, SCRE. Stated another way, relevant evidence is evidence that has a tendency to prove or disprove a fact at issue related to a claim or defense. Nothing about the Claimant's designated “Affidavits of Jose Jimenez, Danny R. Sellars, and Gabriel Villagran” (Designation of Matter No. 11) or his “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) tend to prove or disprove *any* matter of fact that is at issue on appeal before this Court, just as none of the documents had any tendency to prove or disprove any fact at issue before the Hearing Commissioner or the Appellate Panel.

The Appellant argues that these documents are necessary to “throw light upon the questions involved in the appeal.” (Appellant's Brief, p. 2). There is no merit to this assertion, as not once during the hearings before the Hearing Commissioner or the Appellate Panel did the Appellant raise any issue related to his “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.” The cases before the Commission involved the compensability of the claim. The issues raised by

the “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 discovery motions that were resolved prior to even a hearing on the Motion itself and definitely before a hearing on the merits, as noted in Exhibit 1 to the Respondent’s Motion to Strike. The fact that these issues were never once mentioned at the Commission level, and are not cited as support for any argument on appeal, demonstrates the irrelevancy of these Designations and citations in the Statement of the Case. Rather, the Claimant is merely including these documents in the hopes of portraying the Respondent negatively before this Court using matters that were not relevant to the case on appeal. The Court should not indulge the Appellant in his efforts at such obfuscation.

For these reasons, the Respondent respectfully submits that under Rule 209(b), Designations No. 11 and No. 13 must be stricken from the Designations of Matter on Appeal and that the Claimant’s Final Brief be revised to omit those statements discussing the matters set forth in Designation No. 11 and Designation No. 13.

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January 13, 2016

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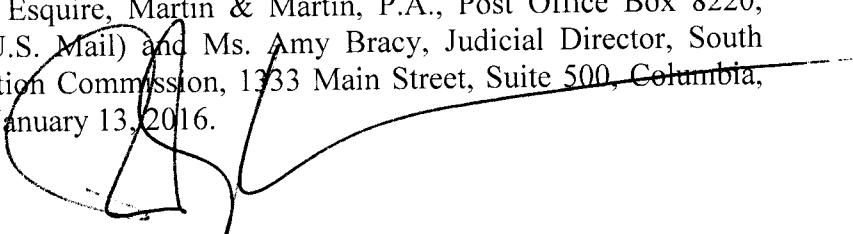
Jose Juan Jimenez, Employee, Appellant

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: The South Carolina Court of Appeals, 1220 Senate Street Columbia, South Carolina 29201, 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 U.S. Mail) on January 13, 2016.


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