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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 21 2016

SC Court of Appeals

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

v.

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

**APPELLANT'S MOTION TO STRIKE RESPONDENT'S DESIGNATION OF  
MATTER 3, THE DEPOSITION TRANSCRIPT OF MIKE TOLLESON**

This matter is on appeal from the Order of South Carolina Workers' Compensation Commission Appellate Panel denying the Appellant's claim for benefits due to the Claimant's alleged failure to establish he suffered compensable injuries by accident per 42-1-160. As part of the appeal, Respondent filed its Designation of Matter on Appeal. The Appellant now moves to strike a portion of the Respondent's Designation of Matter on Appeal as it is not contained in the Record.

The Appellant moves for an Order of this Court striking the Deposition of Mike Tolleson. Specifically, Appellant seeks an order striking Designation 3 in Respondent's Designation of Matter.<sup>1</sup>

<sup>1</sup> Item 3 identified in Respondent's Designation of Matter includes the Deposition Transcript of Mike Tollenson.

## LAW

Appeals are governed by the South Carolina Appellate Court Rules. With respect to the Record on Appeal, these Rules state that “(t)he Record on Appeal shall include all matter designated to be included by any party under Rules 209, “ but “ shall not...include matter which was not presented to the lower court or tribunal.” Rules 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). Finally, the Rules state that “[t]he Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)]....” Rule 209 (b) SCACR.

## ARGUMENT

Respondents Designation of Matter 3 should be stricken from the Designation of Matter because it was not included in the Record below. At the hearing, Appellant sought to cross-examine Mike Tolleson with his deposition transcript. Respondent objected and the Commissioner granted their objection. (Hrg. Tr. Vol. I, p. 15, 34) Appellant was not allowed to cross-examine the witness with his deposition transcript, and the transcript was never submitted into evidence or proffered by either party. Accordingly, they are not properly before the Court of Appeals.

CONCLUSION

For the reasons set forth herein, Appellant respectfully requests this Court enter an order striking Respondents Designation of Matter No. 3 from the Record on Appeal.



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Alton L. Martin, Jr., SC Bar No. 064076  
MARTIN & MARTIN, PA  
PO Box 8220  
Greenville, SC 29604  
(864) 271-1822 telephone  
(864) 271-1814 fax

January 19, 2016  
Greenville, South Carolina

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

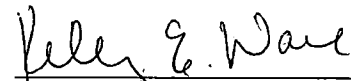
v.

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 Motion to Strike Respondent's Designation of Matter on Appeal** 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 19, 2016  
Greenville, South Carolina

**MARTIN Attorneys**  
**& MARTIN, P.A.**

Telephone (864) 271-1822

Facsimile (864) 271-1814

www.MartinsLawFirm.com

January 19, 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 21 2016

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

SC Court of Appeals

Dear Ms. Kitchings:

Enclosed for filing are the original and seven (7) copies of our **Appellant's Motion to Strike Respondent's Designation of Matter on Appeal and Proof of Service**, in the above referenced matter.

Please have your staff clock in the Appellant's Motion to Strike Respondent's Designation of Matter on Appeal and Proof of Service 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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Martin & Martin, PA  
PO Box 8220  
Greenville, SC 29604



The Honorable Jenny Abbott Kitchings  
Clerk Of The South Carolina Court Of App  
1015 Sumter St.  
Columbia SC 29201-3726

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