

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Beaufort County
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Appellate Case No. 2013-002578
Trial Court Case No. 2012-CP-07-1352

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SC Court of Appeals

Bruce R. Hoffman,

Appellant,

v.

Seneca Specialty Insurance Company; CRC Insurance
Company; CRC Insurance Services, Inc. d/b/a Southern Cross
Underwriters of Sumter; Aydlette Services of Lowcountry,
Inc.; and Capstone ISG, Inc.,

Defendants,

Of whom Seneca Specialty Insurance Company is the

Respondent.

**RESPONDENT'S REPLY TO APPELLANT'S RETURN
TO RESPONDENT'S MOTION FOR COSTS**

YOUNG CLEMENT RIVERS, LLP

Stephen L. Brown (SC Bar No. 66468)

Edward D. Buckley Jr. (SC Bar No. 994)

Russell G. Hines (SC Bar No. 72100)

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Attorneys for Respondent

Seneca Specialty Insurance Company

Seneca replies to Mr. Hoffman's return to its motion for costs as follows.

1. Seneca timely moved for—and did not waive its right to recover—costs on appeal under Rule 222, SCACR.

According to Mr. Hoffman, “a party waives the right to recover appellate costs and attorney fees under Rule 222 if it fails to file an itemized statement of such costs and fees *prior to* the Court’s issuance of the remittitur.” (Return p. 1 (emphasis in original).) He supports this via citation to Muller v. Myrtle Beach Golf and Yacht Club, 313 S.C. 412, 438 S.E.2d 248 (1993).¹

True, Muller contains the following language:

Rule 222, SCACR provides an automatic attorney’s fee award of \$750 for the prevailing party on appeal, which is “taxed in the appellate court.” *Winters waived his right to this award since he failed to file an itemized statement of costs with the court prior to the issuance of the remittitur.* Rule 222(c) & (f), SCACR.

313 S.C. at 416, 438 S.E.2d at 250 (emphasis added). But notice how Muller cites subsections (c) and (f) of Rule 222 in support of the italicized proposition—and, also, remember that Muller was decided in 1993.

¹ Mr. Hoffman also cites Austin v. Stokes-Craven Holding Corp., 406 S.C. 187, 750 S.E.2d 78 (2013), which itself cites Muller; however, Austin did not cite Muller for the proposition that Mr. Hoffman advances; rather, the Austin Court merely included Muller, among a string of citations, “wherein our appellate courts have found that a decision under [Rule 222] does not preempt an award of attorney’s fees to which one is *otherwise entitled . . .*” 406 S.C. at 200, 750 S.E.2d at 84-85 (emphasis in original).

This is the *presently applicable language* of subsections (c) and (f):

(c) Costs for Printing Irrelevant Matter. A party who has unjustifiably designated irrelevant matter to be included in the Record on Appeal shall not be entitled to tax the cost of printing this matter in the Record on Appeal. Further, a party not otherwise entitled to costs under this Rule shall be entitled to collect the cost the party incurred for printing irrelevant matter which another party unjustifiably designated to be included in the Record on Appeal.

(f) Applicability. This Rule does not apply to criminal cases or post-conviction relief cases.

(bold print in original). It provides no support whatsoever for the notion of waiver that the Muller Court addressed in reference to the *then applicable* version of Rule 222—and it provides no support for the notion that Mr. Hoffman argues today.

The *presently applicable language* of Rule 222, specifically that in subsection (d), expressly instructs (in pertinent part),

A party desiring costs to be taxed shall, *within fifteen (15) days of the issuance of the remittitur*, serve and file a motion requesting that costs be assessed under this Rule. The motion shall comply with Rule 240. If costs are being sought under (b) above, the motion shall be accompanied by a sworn, itemized statement of costs incurred in the form prescribed in the Appendix to these rules. . . .

(emphasis added); *see also* Jean Hoefler Toal et al., Appellate Practice in South Carolina 396 (2016) (“Within fifteen days of the issuance of the remittitur, the party desiring costs be taxed must serve and file a motion requesting that costs be

assessed under Rule 222, SCACR. Rule 222(d), SCACR.”). The instant motion for costs, served and filed November 3, 2016, the fifteenth (15) day following issuance of the remittitur on October 19, 2016, is timely under Rule 222(d), and Seneca has not waived the right to recover the award of costs it now seeks.


2. **That “there was no oral argument in this appeal”² is immaterial; even though there was no oral argument, the matter was, of course, fully briefed.**
3. **Mr. Hoffman’s charge that Seneca “designated irrelevant matter”³—which, in point of fact, is false—is wholly lacking in factual adornment and legal analysis—as is his claim about the supposed excessiveness of the instant motion for costs.**
4. **Rule 222(b) plainly allows recovery of “the cost of printing the Record on Appeal” and “the costs of printing the party’s final brief(s);” given the number of copies of these submissions that the Rules require to be printed for filing and service, it would be absurd if, as Mr. Hoffman argues, copying costs are not recoverable.**
5. **As for the postage charged by the court reporter, Seneca believes that it is fairly included in the “cost of the court reporter’s transcript” that is recoverable under Rule 222(b).**

<SIGNED ON THE FOLLOWING PAGE>

² (Return p. 1.)

³ (Return p. 1.)

Respectfully submitted,
YOUNG CLEMENT RIVERS, LLP

By: 

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***Attorneys for Respondent
Seneca Specialty Insurance Company***

Charleston, South Carolina

Dated: 11/19/16

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Inc.; and Capstone ISG, Inc.,

Defendants,

Of whom Seneca Specialty Insurance Company is the

Respondent.

PROOF OF SERVICE

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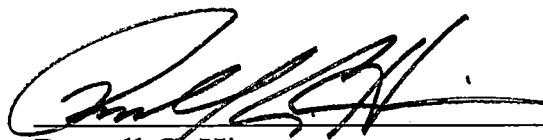
Attorneys for Respondent

Seneca Specialty Insurance Company

I, Russell G. Hines, of Young Clement Rivers, LLP, counsel for Respondent above named, do hereby certify that I have served **RESPONDENT'S REPLY TO APPELLANT'S RETURN TO RESPONDENT'S MOTION FOR COSTS** on all other parties to this appeal by depositing a copy of the same in the United States Mail, postage prepaid, on November 17, 2016, addressed as follows to said parties or their counsel of record:

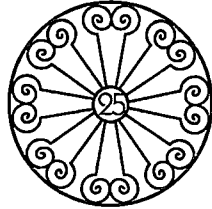
Bruce R. Hoffman, Esquire
Law Office of Bruce R. Hoffman, LLC
574 Sea Island Parkway
Saint Helena Island, SC 29920
Appellant/Attorney for Appellant

Respectfully submitted,
YOUNG CLEMENT RIVERS, LLP

By: 
Russell G. Hines (SC Bar No. 72100)
Attorneys for Respondent
Seneca Specialty Insurance Company

Charleston, South Carolina

Dated: 11/17/16



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November 17, 2016

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Bruce R. Hoffman v. Seneca Specialty Insurance Company; CRC Insurance Services, Inc. d/b/a Southern Cross Underwriters of Sumter; Aydlette Services of Lowcountry, Inc.; and Capstone ISG, Inc.
Appellate Case No.: 2013-002578
Case No.: 2012-CP-07-01352
Claim No.: 12BBN034
Date of Loss: 2/3/2012
YCR File: 7811-20120293

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SC Court of Appeals

Dear Ms. Kitchings:

Enclosed for filing please find the original and seven (7) copies of **Respondent's Reply to Appellant's Return to Respondent's Motion for Costs** along with the original and one (1) copy of the **Proof of Service** for the same.

Please return a stamped copy of the motion and the proof of service in the envelope provided.

Of course, if you have any questions or concerns, just let me know.

With best wishes and kindest regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP

Kathleen B. Barnes
Secretary

Enclosures

cc: Bruce R. Hoffman, Esquire

FIRST-CLASS MAIL

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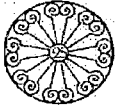
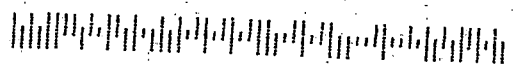
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