

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APPEAL FROM SOUTH CAROLINA
WORKER'S COMPENSATION COMMISSION

SEP 25 2017

Supreme Court Opinion No. 27708
(Refiled June 28, 2017)

S.C. SUPREME COURT

HENTON T. CLEMMONS, JR., EMPLOYEE,.....PETITIONER,

v.

LOWE'S HOME CENTERS, INC.-HARBISON, EMPLOYER, AND
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.,
CARRIER,.....RESPONDENTS.

**RETURN IN OPPOSITION TO
MOTION FOR COSTS AND ATTORNEY'S FEES**

Pursuant to Rules 222, 240 and 242, SCACR, Respondents Lowe's Home Centers, Inc.-Harbison and Sedgwick Claims Management Services, Inc. hereby oppose Petitioner Henton T. Clemmons, Jr.'s Motion for the Taxing of Costs and Attorney's Fees against the Respondents ("Motion"). Petitioner bases his Motion on the September 5, 2017 Remittitur and the June 28, 2017 Order granting in part and denying in part Respondents' Petition for Rehearing. What Claimant fails to note is that Respondents' Petition for Rehearing was denied in part, but also was granted in part in the June 28, 2017 Rehearing Order. Furthermore, Petitioner's Amended Petition for Rehearing and Request for Oral Argument ("Amended Petition") of the June 28, 2017 Rehearing Order was denied in its entirety on September 5, 2017.

This Court exercises discretion in determining whether to award attorney's fees and costs, even where one party prevails entirely. *See*, Rule 222(a), SCACR (costs are awarded to the prevailing party “[u]nless otherwise ordered by the appellate court” and, where the judgment below is reversed only in part, costs “shall be allowed only as ordered by the appellate court”); Rule 242(j)(1), SCACR (costs are awarded to the prevailing party “[u]nless otherwise ordered by the Supreme Court” and, where the judgment below is reversed only in part, costs “shall be allowed only as ordered by the Supreme Court”); Austin v. Stokes-Craven Holding Corp., 406 S.C. 187, 199, 750 S.E.2d 78, 84 (2013) (“it is within this Court’s discretion whether to award fees and costs under Rule 222”). Here, Petitioner was not the prevailing party. In fact, his Amended Petition underscores the fact that he did not prevail entirely on appeal but, instead, his appeal was “affirmed or reversed in part.” As a result, this Court should exercise its discretion and deny Petitioner’s Motion for costs and fees. Rules 222 & 242, SCACR.

Respondents have incurred the same level of, if not more burdensome costs responding to Petitioner’s Petition and various motions. Consequently, and because Petitioner only partially prevailed on appeal, Respondents should not be forced to bear his costs and attorney’s fees.

As to Petitioner’s itemized costs, it is unclear why he had nine copies and then an additional 13 copies of the Appendix printed. Pursuant to Rule 242(e), he was required to file two copies of the Appendix with this Court along with his petition for certiorari review. With service on Respondents and a copy for himself, that should have been a total of four copies. Although once Petitioner’s Petition was accepted he was obligated to file an additional 13 copies with this Court, there was no reason for him to print nine

copies of the Appendix at the time he filed his petition for certiorari review. This charge should be no more than \$170.10. In the event this Court awards costs, the cost of printing the Appendix should be adjusted accordingly.

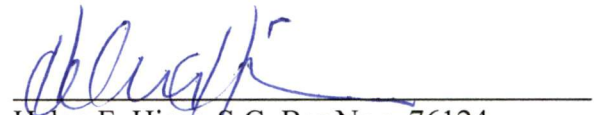
CONCLUSION

For all the reasons stated herein, this Court should deny Petitioner's Motion. To the extent this Court grants Petitioner's Motion, costs for printing the Appendix should be adjusted as set forth above.

September 22, 2017

Respectfully submitted,

MCANGUS, GOUDELOCK & COURIE, LLC



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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM SOUTH CAROLINA
WORKER'S COMPENSATION COMMISSION

Supreme Court Opinion No. 27708
(filed March 8, 2017)

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S.C. SUPREME COURT

HENTON T. CLEMMONS, JR., EMPLOYEE,.....PETITIONER,

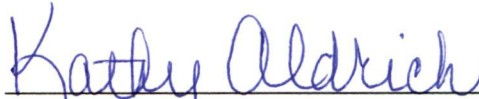
v.

LOWE'S HOME CENTERS, INC.-HARBISON, EMPLOYER, AND
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.,
CARRIER,.....RESPONDENTS.

PROOF OF SERVICE

I certify that I have served the Respondents' **Return in Opposition to Motion for Costs and Attorney's Fees** on Henton T. Clemmons, Jr. by depositing a copy of it in the United States Mail, postage prepaid, on September 22, 2017, addressed to his attorney of record:

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