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IN THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

APPEAL FROM HORRY COUNTY  
Court Of Common Pleas

Larry B. Hyman, Circuit Court Judge

**RECEIVED**  
MAY 23 2019  
SC Court of Appeals

Case No.: 2015-CP-26-05633  
Appellate Case No.: 2018-001497

Bobby Foster, ..... Appellant,

vs.

Julian Neil Armstrong, ..... Respondent.

**MOTION TO REQUIRE THE APPELLANT TO PROPERLY INDEX THE RECORD  
ON APPEAL**

The Appellant will please take notice that the Respondent through his underinsured attorney hereby moves to require the Appellant to properly index the Record on Appeal. The basis of this motion is the Index does not match the contents of the Record on Appeal as follows:

1. The Affidavit of Publication dated January 20, 2016 is not found on page 59 of the Record on Appeal as indicated by the Index. What is found on page 59 is a duplicate of the Petition for Publication which is found on page 55 and page 59 of the Record on Appeal. The Affidavit of Publication appears in the Record on Appeal at least five times (pages 18, 71, 161, 167

- and 181) but its location is never correctly identified in the Index of the Record on Appeal. This document is pivotal to the Respondent's case;
2. The Order for Entry of Default and Referral for Hearing on Damages, March 8, 2016, is found on page 19 not on page 6;
  3. The Order Denying the Appellant's Motion for Reconsideration filed on October 31, 2017 does not appear on page 31 of the Record on Appeal as indicated by the Index. (The document on page 31 is the Order Denying Appellant's Motion for Reconsideration of Order Granting Summary Judgment dated April 9, 2018);
  4. The Order Denying Appellant's Motion for Reconsideration of Order Granting Summary Judgment dated April 9, 2018 is found on page 31 and on page 38;
  5. The Petition for Publication filed November 23, 2015 is found on page 55 not on page 54 as indicated in the Index;
  6. The Form 4 Order Denying the Appellant's Motion to Reconsider, March 2, 2016 is found on page 26. Nowhere in the Index does it indicate that this is a Form 4; and
  7. The Form 4 Order Granting Summary Judgment, filed April 24, 2017 is found on page 28. Nowhere in the Index does it indicate that this is a Form 4.
  8. The Index of the Record on Appeal does not list every document contained within the Record on Appeal. There are many documents contained in the Record on Appeal that are not indexed.

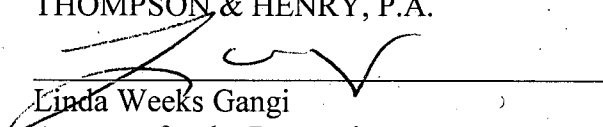
The undersigned is concerned that Justices are not going to be able to use the Index contained in the Record on Appeal to locate documents which they wish to refer to when deciding this case. Rule 210 of the Appellate Rules of Civil Procedure requires the documents be properly indexed in order for the Court and the parties to readily be able to locate documents.

The Respondent seeks that the Court require the Appellant to revise the Index of the Record on Appeal to include all documents contained in the Record on Appeal and the correct page number where each document appears in the Record on Appeal.

Conway, South Carolina

May 22, 2019

THOMPSON & HENRY, P.A.



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Attorney for the Respondent

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SC Bar No.: 2365

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**MEMORANDUM IN SUPPORT OF MOTION TO REQUIRE THE APPELLANT TO  
PROPERLY INDEX THE RECORD ON APPEAL**

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The Respondent through his underinsured attorney moved to require the Appellant to properly index the Record on Appeal. The basis of this motion is the Index does not match the contents of the Record on Appeal as follows:

1. The Affidavit of Publication dated January 20, 2016 is not found on page 59 of the Record on Appeal as indicated by the Index. What is found on page 59 is a duplicate of the Petition for Publication which is found on page 55 and page 59 of the Record on Appeal. The Affidavit of Publication appears in the Record on Appeal at least five times (pages 18, 71, 161, 167

and 181) but its location is never correctly identified in the Index of the Record on Appeal. This document is pivotal to the Respondent's case;

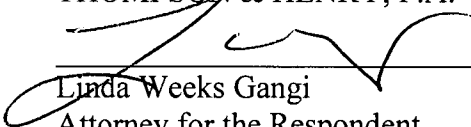
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The undersigned is concerned that Justices are not going to be able to use the Index contained in the Record on Appeal to locate documents which they wish to refer to when deciding this case. Rule 210 of the Appellate Rules of Civil Procedure requires the documents be properly indexed in order for the Court and the parties to readily be able to locate documents.

The Respondent seeks that the Court require the Appellant to revise the Index for the Record on Appeal to include all documents contained in the Record on Appeal and the correct page number where each document appears.

Conway, South Carolina  
May 22, 2019

THOMPSON & HENRY, P.A.



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SC Bar No.: 2365

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**CERTIFICATE OF SERVICE**

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I, Neicey Smith, certify that I have served the **Motion to Require the Appellant to Properly Index the Record on Appeal and Memorandum in Support thereof** on Bobby Foster by depositing a copy of it in the United States Mail, postage prepaid, as well as via email on May 22, 2019, addressed to his attorneys of record as follows:

teamjefferies@googlegroups.com  
lane@akimlawfirm.com  
Lane D. Jefferies, Esquire  
Anastopoulo Law Firm, LLC  
32 Ann Street  
Charleston, SC 29403  
Attorney for the Appellant



Neicey Smith

Legal Assistant to

Linda Weeks Gangi, Esquire

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May 22, 2019

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

RE: *Bobby Foster vs. Julian Neil Armstrong*  
Appellate Case No.: 2018-000706  
Civil Action No.: 2015-CP-26-5633  
Date of Loss: April 8, 2013  
Claim No.: 40-2K34-502  
SF Insured: Deloria G. Armstrong

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Dear Ms. Kitchings:

Please find enclosed herewith an original and six (6) copies of the Respondent's Motion to Require the Appellant to Properly Index the Record on Appeal and Memorandum in Support thereof, Certificate of Service and \$50.00 filing fee in the above matter. By copy of this letter, I am serving a copy of same on Appellant's counsel.

With kindest personal regards, I remain

Yours very truly,

THOMPSON & HENRY, P.A.

  
Linda Weeks Gangi

LWG/ns

Enclosures

cc: Lane D. Jefferies, Esquire  
Jennifer Patterson  
SF 5612.06

# FIRST CLASS MAIL

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POST OFFICE BOX 1740  
CONWAY, SOUTH CAROLINA 29528



U.S. POSTAGE  PITNEY BOWES

ZIP 29526 \$ 002.05<sup>0</sup>  
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0000361320 MAY 22 2019

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
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