

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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MAY 23 2016

APPEAL FROM  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

**SC SUPREME COURT**

APPELLATE PANEL  
The Honorable Susan S. Barden, The Honorable Aisha Taylor,  
and The Honorable R. Michael Campbell, II

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Opinion No. 2016-UP-127  
Appellate Case No. 2014-002611

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James B. Neff . . . . . Employee/Appellant

v.

Lear's Welding & Fabrication, Inc.,  
Employer and Bridgefield Casualty  
Insurance Company c/o Summit  
Holdings, Inc., . . . . . Carrier/Respondents

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PETITION FOR A WRIT OF CERTIORARI

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## CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on April 22, 2016.

### QUESTIONS PRESENTED

1. Did the Court of Appeals err in finding that substantial evidence supported the findings of the Commission in regard to the issue of whether independent intervening causes broke the chain of causation between Appellant's compensable injury and his current conditions of left clavicle and neurological conditions and thus further ruling that substantial evidence supported the Commission's findings that Appellant was no longer entitled to benefits under the Workers' Compensation Act.

### STATEMENT OF THE CASE

This is an admitted claim resulting from a work related welding explosion accident which occurred on April 12, 2012. Claimant suffered an explosion injury with multiple trauma including a closed head injury, probable cervical fracture, multiple rib fractures, left clavicle fracture, elbow fracture and left ulnar styloid fracture (See Dr. Lehman's report dated April 21, 2012 - APA #1).

The Hearing Commissioner ruled in pertinent part that Employee/appellant was entitled to additional medical care under the Workers' Compensation Act for his work related injury. The

decision of the Hearing Commissioner was reversed by the Appellate Panel.

The Court of Appeals issued its unpublished opinion on March 2, 2016 and denied Employee/Appellant's Petition for Rehearing on April 22, 2016.

Employee/Appellant timely filed a Petition for Rehearing which was denied by Order dated April 22, 2016.

Petitioner seeks a Writ of Certiorari to review that decision.

#### ARGUMENT 1

THE COURT OF APPEALS ERRED IN FINDING THAT SUBSTANTIAL EVIDENCE SUPPORTED THE FINDINGS OF THE COMMISSION IN REGARD TO THE ISSUE OF WHETHER INDEPENDENT INTERVENING CAUSES BROKE THE CHAIN OF CAUSATION BETWEEN APPELLANT'S COMPENSABLE INJURY AND HIS CURRENT CONDITIONS OF LEFT CLAVICLE AND NEUROLOGICAL STATUS AND THUS FURTHER RULING THAT SUBSTANTIAL EVIDENCE SUPPORTED THE COMMISSION'S FINDINGS THAT APPELLANT WAS NO LONGER ENTITLED TO BENEFITS UNDER THE WORKERS' COMPENSATION ACT.

The testimony and evidence in this case present a series of uncontrovertible facts and unassailable findings and incredible irony.

In the present case, the Appellate Panel of the South Carolina Workers' Compensation Commission as affirmed by the Court of Appeals found "the Claimant's admitted non-compliance

with the medical instructions of Dr. Lehman is the direct intervening cause of the plate breaking and his current left clavicle condition." The alleged non-compliance finding is based completely on Claimant's nonsensical volunteering of information in the context of an off the cuff statement to the treating doctor's assistant that he had been out deer hunting. The Appellate Panel completely focused on this minuscule statement as proof of an intervening cause sufficient to break the chain of causation in derogation of the overwhelming evidence of the case.

The one time brief conversation of Claimant with a physician's assistant constitutes an infinitesimal excerpt of the evidence which hardly amounts to a scintilla much less substantial evidence when pitted against the uncontroverted and uncontrovertible facts of the case.

The Hearing Commissioner who ruled in Claimant's favor conducted a thorough analysis of all the potential factors in regard to Claimant's alleged non-compliance. The Appellate Panel completely misconstrued and cherry picked the evidence and testimony utilized by the Hearing Commissioner in arriving at his decision.

The foundational fact in this case as correctly determined by the Hearing Commissioner was that Claimant suffered a horrific explosion accident which resulted in a broken left clavicle among other injuries.

The ultimate irony herein is that neither Dr. Lehman nor any other medical provider would have been aware of Claimant's deer hunting activities if he had not voluntarily mentioned them to the physician's assistant. It is incomprehensible that Claimant would sabotage his workers' compensation claim by volunteering such information if indeed he had engaged in any activity which would have been sufficient from a physical exertion standpoint to deter his recovery. Further there is simply no evidence that Claimant suffered any trauma in regard to this self-asserted deer hunting activity; thus the Appellate Panel made an evidentiary leap based entirely on unfounded surmise and conjecture.

The evidence of potential causes of the failure of the plate non-union is summarized and synopsised as follows:

Side A

1. Claimant's incomprehensible nonspecific assertion to a physician's assistant of "deer hunting activity."

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Side B

1. A violent work related welding tank explosion on April 12, 2012.

2. The bone was widely separated suggesting there was some scar tissue and muscle interposition in the bone end, there was a gap basically in the bone which had to be made up using bone graft, not the ideal material to use to get rapid fracture healing (Dr. Lehman's Depo. P35 L 9-25).

3. An inability to get

the native bones to abut  
(Dr. Lehman's Depo. P36  
L1-13).

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4. The delay and  
questionable quality of  
the bone stimulation  
device (Dr. Lehman's  
Depo. P 23 L12-15, P40  
L4-21, P41 L14-15, P43  
L7-11).

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5. The use of titanium  
plate being more prone to  
failure as opposed to a  
stainless steel plate  
(Dr. Lehman's Depo. P23  
L21-25 P24 L1, P 39 L12-  
22).

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6. No detail in regard  
to actual deer hunting  
activity (Dr. Lehman's  
Depo. P37 L14-20, P39  
L10-11).

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7. Deference to the  
specialist Dr. Schiffern  
(Dr. Lehman's Depo. P46  
L22-25 P47 L1-9).

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8. Dr. Schiffern's  
opinion to a reasonable  
degree of medical  
certainty that any  
alleged non-compliance  
was not the cause of the  
non-union (Dr.  
Schiffern's Depo. P16 L  
4-13 & Dr. Schiffern's  
Affidavit).

#### CONCLUSION

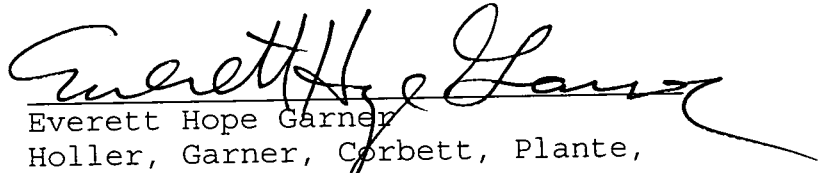
The integrity of the Workers' Compensation system is at

stake under the circumstances of this case. The Workers' Compensation Act was formulated to insulate workers from the effects of work related injuries without regard to culpability. In this case, the work related accident predicated everything that came thereafter. Jimmy Neff was the innocent victim of a devastating work related accident and stands under the present status of this case to be a victim of the system which was designed to remediate the ramifications of such an accident.

The Court should be less concerned with an illusory "intervening" cause which is based on speculation with no evidence whatsoever of a proximate relationship to the status of the injury. The Court should be more concerned with the underlying cause of the injuries which is uncontroverted and the true picture of the circumstances leading to the present status of the case. This is especially true when considered within the context of the multiplicity of other potential factors which were present in this case and likely to be contributing causes to the situation. These factors when considered in the context of the record as a whole lead inextricably to the conclusion that the decision of the Appellate Panel is not supported by substantial evidence under the entirety of the circumstances of this case. Jimmy Neff and all workers who suffer work related injuries should not be foreclosed from receiving the treatments they need and the concomitant benefits they deserve based on flimsy

assertions of faux intervening causes when those treatments and benefits are needed only because of work related injuries and their sequelae.

Respectfully submitted,



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May 23, 2016

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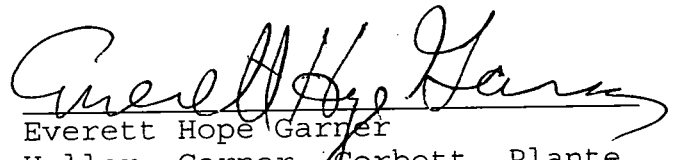
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PROOF OF SERVICE

I certify that I have served the Petition for Writ of  
Certiorari and the Appendix on Lear's Welding & Fabrication,  
Inc., and Bridgefield Casualty Insurance Company by depositing a  
copy of it in the United States mail, postage prepaid, on May 23,  
2016, addressed to their attorney of record, Nicholas L. Haigler,  
Esquire, Sowell, Gray, Stepp, Laffitte, P.O. Box 11449, Columbia,  
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May 23, 2016

  
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