

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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APPEAL FROM THE APPELLATE PANEL OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

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Appellate Case No. 2016-001089  
Unpublished Opinion No. 2016-UP-127

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~~JUL 08 2016~~  
~~SC SUPREME COURT~~

James B. Neff . . . . . Petitioner

v.

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

~~RECEIVED~~  
~~JUL 08 2016~~  
~~SC SUPREME COURT~~

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PETITIONER'S AMENDED REPLY TO  
RESPONDENT'S RETURN

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## REPLY

The Respondent's Return to the Petitioner's Petition for Certiorari in this case constitutes only a restatement and reiteration of the flawed assertions which have been expounded by the Respondent during the entire appellate process in this case. The Respondent repeatedly and unjustifiably quotes excerpts from records and deposition testimony and other evidence and completely mischaracterizes the meaning of such evidence. The Respondent's ad infinitum recitation of such excerpts totally and completely ignores the prevailing fact in this case that there is not a scintilla of evidence that the vague and anecdotal reference to "deer hunting" had any intervening causative effect on Claimant's condition.

The foundational fact remains that the Petitioner Jimmy Neff suffered a devastating injury from a work related accident for which he was denied the opportunity under the Workers' Compensation System to medically address and ameliorate his injuries. If Jimmy Neff had not voluntarily mentioned to a physician's assistant that he had been "deer hunting," there would be absolutely no evidence of an external cause of the breakage of the plate which occurred in this case. In any event, this minuscule tidbit certainly does not rise to the level of substantial evidence especially considered in the proper context

of all the other potential causes enumerated in Petitioner's initial Petition and previous Briefs.

The Respondent conveniently refers to "Dr. Lehman's opinion as to the cause of the breakage of the plate." As stated in Petitioner's previous briefings, Dr. Lehman's opinions as to potential causes of the breakage of the plate were numerous, ie., (see Dr. Lehman's Depo. P23 L 8-25 - P24 L1; P35 L9-25; P36 L1-13; P39 L18 - P41 L15; P48; P54) ie., the use of a titanium plate being more prone to failures as opposed to a stainless steel plate, the delay and questionable quality of the bone stimulation device, the fact that the bone was widely separated and the inability to get the native bones to abut and that the gap was there from the outset and not affected by any non compliance. These factors when considered in conjunction with the fact that there was no detail in regard to deer hunting activity and thus no nexus between any "deer hunting" and the cause of Claimant's condition renders the Respondent's position fatally flawed. (See Dr. Lehman's Depo. P37 L14-P39 L11).

#### CONCLUSION

Appellate Court Rule 242(b) does not proscribe the Supreme Court's discretion to grant review in the present case. The Respondent seems to have employed the Appellate methodology of repeatedly and continually excerpting evidence out of context in

an effort to bombard the Court with an overwhelming number of such imprecise assertions. "If you repeat it often enough, it will be thought true" seems to be the mantra that Respondent has adopted.

In the present case and other similar cases, the Court can not abdicate the responsibility to carefully scrutinize the facts so as to abide by the underlying and controlling principles of workers' compensation as remediation for work related injuries regardless of culpability. In essence, the law can not require that a Claimant "live in a bubble" after suffering devastating work related injuries. The denial of relief to Petitioner here would have the effect of denying appropriate relief to injured workers in derogation of the bedrock principles of Workers' Compensation.

Respectfully submitted,



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