

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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JAN 11 2017

SC Court of Appeals

APPEAL FROM SOUTH CAROLINA  
Workers' Compensation Commission  
Appellate Panel

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Appellate Case No. 2014-002416

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William Lee Turner, Employee, ..... Appellant,

v.

SAIIA Construction, Employer, and  
Old Republic General Insurance Corporation  
c/o Gallagher Bassett Services, Inc.,  
Carrier, ..... Respondents.

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REPLY TO RETURN IN OPPOSITION  
TO  
PETITION FOR REHEARING

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By way of Reply, briefly to the Return the Petitioner and  
Appellant, the injured worker, would submit:

1. That as to the Respondents' arguments made under #1:  
First as to the number of cases concerning the unwitnessed  
death or injury presumption, the Petitioner would submit that upon

review of many what are considered to be settled principles of law that the Court will find the same; i.e., there are very few cases challenging that settled principle of law. For example, the Court will find that the Supreme Court has revisited and restated the definition of injury by accident, not just applied it to the facts of a given case on appeal, approximately only once every decade. Where a principle of law is considered settled, it is not repeatedly appealed. Since it was originally stated in Owens, Owens v. Ocean Forest Club, Inc., 196 S.C. 97, 12 S.E.2d 839 (1941) and since then in reciting the definition in all of its Decisions, the Supreme Court has referred to the presumption as the unexplained, "injury or death" presumption, there is no reason to believe that the Court did not mean to include unwitnessed injuries without death under the presumption. It is also logical to assume that since the Court has always included, "injury" and death in reciting to the presumption that the Commission and the parties appearing before the Commission in contested cases have readily assumed that the presumption would be applied to an injury situation that did not result in death.

Second, in reference to the application of North Carolina law, a fundamental part of the presumption itself is the definition of injury by accident and the definition of injury by accident in North Carolina is diametrically opposed to the definition in South Carolina as is recognized by the Respondents in their Return. There is no difference between a person walking across the floor and not knowing what, "caused" the injury under

our definition versus where the Claimant does not know what caused the fall because of a lack of memory. Again, it is the unexpected result of the work accident not the cause as it is in North Carolina that results in compensable injury under South Carolina Law.

Third, the Petitioner will stand by his reading of the case of Fowler v. Abbott Motor Co., 236 S.C. 226, 113 S.E.2d 737 (1960). Clearly that case involved an unwitnessed injury that did not result in death and the Court is clear in the Decision as to the presumptions to which it is referring. That case was decided not on the "arising out of" prong of the definition of injury by accident but under the "in the course of" prong. Everybody concedes that Mr. Turner was in the course of his employment and he was performing duties as part of his normal daily work required routine at the time of the accident.

Fourth, and again, the Respondents in the Return are attempting and asking the Court to infuse "cause" into our definition of injury by accident.

Finally, while the Respondents argue otherwise there is a clear distinction in and there are two distinct lines of cases concerning the application of the unexplained injury or death presumption in reference to natural occurring conditions such as heart conditions versus traumatic injury type conditions and there is clearly a different standard. Also, in all of the idiopathic fall cases, and Crosby specifically, there was specific testimony or evidence that the injury was not work related.

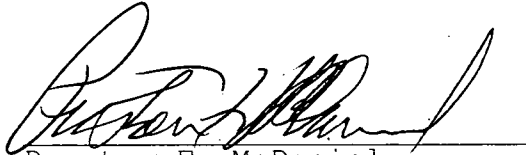
2. That as to Argument #3, the Supreme Court in Barnes and Nicholson did nothing more and nothing less than honor the time-honored definition of injury by accident in South Carolina. Unlike North Carolina, there is no requirement for an untoward, unlooked for event in the cause and as the Respondents admit, in South Carolina the unexpected result constitutes injury by accident. Mr. Turner was in the course of his employment duties at the time that the accident occurred (there is no evidence to the contrary); he sustained a traumatic type injury (medical evidence injuries came from the fall), and there is no evidence of any physical condition causing it. He met his burden of proof specifically under the Decisions of the Supreme Court in Nicholson and Barnes. The Supreme Court did not overrule Crosby and did not overrule Bagwell because they are still good law but the Supreme Court limited them under our definition of injury by accident to situations where there is evidence that the injured worker was in the course of his employment but there is evidence that it did not arise out of his employment duties such as Ms. Crosby, my leg "gave out".

Finally, while the Respondents argue there is substantial evidence to support a physical condition "cause" of the injury there is not only no substantial evidence, there is no evidence of anything of a physical nature causing Mr. Turner's problems on the date of the accident. It is ironic that the Respondents make this argument but yet point the Court to no evidence on the date of the accident.

CONCLUSION

For the foregoing reasons, the Petitioner would request rehearing and would specifically request the right to appear before the Court for further oral argument to address these nuances which were not brought up during the first oral argument in the least. During the first argument there was no questions asked about whether the Supreme Court would apply the presumption to an injury situation. In fairness to both parties, this case should be reargued and because of the sweeping nature and the sea change that results from the Court's Opinion, the Petitioner would request rehearing en banc.

Respectfully submitted by:



Preston F. McDaniel  
SC Bar No.: 3770  
MCDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, SC 29201

Attorney for the Petitioner/Appellant

January 9, 2017

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In the Court of Appeals

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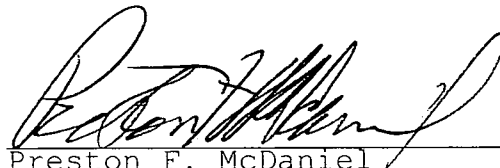
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I certify that I have served the **REPLY TO RETURN IN  
OPPOSITION TO PETITION FOR REHEARING** by depositing a copy of it in  
the United States Mail, postage prepaid, on January 9, 2017,  
addressed to:

Jason W. Lockhart, McAngus  
Goudelock & Courie  
Post Office Box 12519  
Columbia, SC 29211

Helen F. Hiser, Attorney,  
McAngus, Goudelock & Courie  
Post Office Box 650007  
Mt. Pleasant, SC 29465

Dated: January 9, 2017



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Preston F. McDaniel  
SC Bar #: 3770  
MCDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, SC 29201  
(803) 771-7211  
Attorney for Petitioner/Appellant

**McDANIEL LAW FIRM**  
ATTORNEYS AND COUNSELORS AT LAW  
1315 ELMWOOD AVENUE  
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers  
for over 30 years.

Preston F. McDaniel

Telephone (803) 771-7211

Matthew Robertson

Facsimile (803) 252-0709

January 9, 2017

Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

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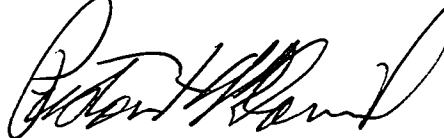
**RE: William Lee Turner v. SAIIA Construction and Old  
Republic General Insurance Corporation  
Appellate Case No. 2014-002416**

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of  
Petitioner's **REPLY TO RETURN IN OPPOSITION TO PETITION FOR  
REHEARING** in the above-referenced matter. Please file the  
original and return a clocked-in copy to me in the enclosed,  
self-addressed, stamped envelope.

By copy of this letter, I am serving Counsel of Record with a  
copy of same.

Sincerely yours,



Preston F. McDaniel

PFM/kth  
Enclosures

cc: Jason W. Lockhart, Esquire  
Helen F. Hiser, Attorney  
John Koon, Esquire