THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE APPELLATE PANEL
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Opinion No. 5458
(SC Ct. App. heard June 9, 2016;
filed December 7, 2016)

William Lee Turner, Employee, ...Petitioner,

v.

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

PETITION FOR 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 February 21, 2017.

QUESTIONS PRESENTED

I. Did the SC Court of Appeals err as a matter of law by refusing to apply the unexplained injury presumption, first established in Owens v. Ocean Forest, Inc., 196 S.C. 97, 12 S.E.2d 839 (1941), on the basis that the Claimant did not die from his injuries and by holding that the presumption does not apply and that this Court has not and would not apply the presumption where the injured worker does not die from his injuries?

II. Did the SC Court of Appeals err as a matter of law, in violation of the fundamental construction principles established and applied by this Court since the inception of the Workers' Compensation Act, by applying the North Carolina concept of an, "inequity of information" which North Carolina applies to the evidence in an unexplained injury claim but does not apply to an unexplained death claim; and which North Carolina uses to deny benefits to the injured worker who lives versus granting benefits to the family of the worker who dies?

III. Did the SC Court of Appeals err as a matter of law by refusing to apply the decisions of this Court in Barnes v. Charter One Realty, 411 S.C. 391, 768 S.E.2d, 651 (2015), and in Nicholson v. SC Dept. of Social Services, 411 S.C. 381, 769 S.E.2d 1 (2015), and relying instead on the dissenting and concurring opinions in those cases and on the SC Court of Appeals decision in Crosby v. Wal-Mart Stores, Inc., 330 S.C. 489, 499 S.E.2d, 253 (SC App. 1998), stating, "this court (Court of Appeals) determined the Claimant's fall was not an unexplained fall? We stated 'there was no evidence offered in the case at hand as to what **caused** [the claimant] to fall'." In this holding, the SC Court of Appeals is in fact applying the North Carolina definition of "injury by accident" instead of this Court's definition established in and applied since 1939.

IV. Did the SC Court of Appeals err as a matter of law by improperly applying the substantial evidence standard to the undisputed evidence as applied by this Court in its decisions in explained injury cases? There is simply no evidence on the date of Mr. Turner's fall injury, circumstantial or otherwise, that it was, "brought on by a purely personal condition, unrelated to the employment, such as a heart attack or seizure" or "a condition peculiar to the employee". Barnes v. Charter One Realty, supra.

V. Did the SC Court of Appeals err as a matter of law in issuing its decision that is in derogation of and is contrary to the decisions and precedents established by this Court, the SC Supreme Court, and specifically the decisions of this Court in Barnes v. Charter One Realty, supra; Nicholson v. SC Dept. of Social Services, supra; Owens v. Ocean Forest, Inc., supra; and Fowler v. Abbott Motor Company, 236 S.C. 226, 113 S.E.2d 737 (1960) wherein as an intermediary Appellate Court and under the SC Constitution, Article V, §9, the SC Court of Appeals is bound by and must apply the decisions of the SC Supreme Court?

STATEMENT OF THE CASE

This case arises out of a workers' compensation claim and a SCWCC Form 50 Request for Hearing filed November 25, 2013 alleging he had sustained injury by accident on April 19, 2012. (R., pp. 38-39). A SCWCC Form 51, denying the claim was filed December 5, 2013. (R., p. 40). A hearing was set for February 4, 2014 (R., p. 425). The Claimant submitted the Claimant's Pre-Hearing Brief including Administrative Procedures Act submissions and exhibits, (R., pp. 41-81) and the Defendants timely filed their Pre-Hearing Brief with their Administrative Procedures Act submissions and exhibits. (R., pp. 82-125).

At the hearing, Claimant submitted a legal Memorandum supporting his position that since his accident was unwitnessed and since due to his injuries he had no memory of the facts surrounding the accident, the Commission should apply the unexplained injury presumption. Depositions of Paul Barnette, David Bolden, James Speegle, and discovery depositions of Mr. Turner were made a part of the Record as Exhibits. The Commission file with the exception of self-serving declarations and unstipulated medicals was made a part of the Record as well. (R., p. 188). Subsequent to the hearing, a request for a proposed Order was issued (Request for Proposed Order from Commissioner) denying the claim and the Hearing Commissioner's decision was filed April 14, 2014 denying the claim for benefits

in its entirety. Among other Conclusions of law, in a case where it is undisputed that the actual accident was unwitnessed, the Hearing Commissioner made specific findings that the Owens v. Oceans Forrest Club Opinion establishing the unexplained injury presumption did not apply because the Claimant did not meet his burden of proof by failing to prove the "cause" of his injury because: co-worker, Mr. Barnette, stated that he could only, "speculate as to how the fall occurred"; that "there is no dispute that claimant injured his head in the fall, but the dispute is whether claimant fell from a standing position or from the steps of the cab"; and that, "if Barnette had seen Claimant on the steps of the cab just prior to alleged accident, then the result in this case might be vastly different . . .". (R., p. 12). A Form 30 request for review was filed requesting a review of all findings of fact, conclusions of law and the Order and Award including all rulings and decisions by the Hearing Commissioner along with eleven (11) other specific errors of fact and/or law made by the Hearing Commissioner in her Decision, specifically including the failure of the Hearing Commissioner to apply the unexplained injury presumption to this unwitnessed injury where the Claimant's injury admittedly arose out of and in the course of his employment. (R., pp. 131-135).

After filing Briefs, a Commission Panel hearing was held August 11, 2014 (R., pp. 136-152; pp. 164-174; pp. 258-278), and

on August 11th, on August 29, 2015 the Panel issued a request for proposed decision form with the only direction being "a Full Affirmation". (R., p. 430). The Panel Decision was filed October 10, 2014 containing additional findings of fact and conclusions of law (R., pp. 20-37). An appeal to the Court of Appeals was filed, argued and Opinion issued December 6, 2016; Rehearing was denied and this Petition follows.

STATEMENT OF FACTS

Mr. Turner worked for the employer for approximately six (6) years prior to the accident. He is a heavy equipment operator but while working for SAIIA he drove dump trucks exclusively. (R., p. 203, l. 18 - p. 204, l. 6; p. 207, ll. 9-13).

On Monday before the accident on Thursday, he did see a doctor for minor back problems but he was not having any problems with dizziness, his ability to walk, problems with feeling faint or being unsteady on his feet. There is no evidence in the Record from that doctor visit that he was reporting or was found to have any of those problems at that time. He had already been taking Ultram for his minor back pain which he was again prescribed and was sent home. On Tuesday, he was again seen due to, "vomiting one time" on Monday. (R., p. 114). On examination at that visit he was found to have no weakness, full active range of motion, normal ambulation, normal

neurological signs and no report of dizziness, feeling faint or weakness. (R., pp. 114-115). The doctor recorded patient had been advised by a pharmacist that vomiting could be a possible side effect of his back pain medications. (R., p. 115).

On Wednesday before the accident on Thursday the undisputed evidence in the Record reflects Mr. Turner worked, was having no problems and was absolutely fine. (R., p. 211, l. 16 - p. 212, l. 22; p. 205, ll. 5-19; p. 114).

As for Thursday, April 19, 2012, the day of the accident, at the hearing he testified that he had absolutely no memory of the day of or of the accident other than what he had been told and that after the accident he was in a coma for three (3) days and remembered nothing about that period of time. (R., p. 209, ll. 3-6). He did remember the Tuesday and Wednesday before the accident happened on Thursday and testified he was having no problems of dizziness, syncope, balance or weakness at that time. (R., p. 211, ll. 13-21). He further testified that there is absolutely no history of seizure or any other type of disorder in his family. (R., p. 209, ll. 16-22). He has never had high blood pressure, diabetes, or heart problems and/or any other health problems other than the back problems that he had had prior to the date of the accident. (R., p. 212, ll. 2-10).

The testimony and evidence concerning the events of the day of the fall came from Mr. Turner's fellow employees and friends,

Mr. Barnette and Mr. Bolden. Mr. Barnette testified he and Mr. Turner were real close; that they discussed personal matters; that he knew about Mr. Turner's past back problems; that he felt if Mr. Turner was having any problems he would have discussed those with him freely; that he never heard him complain of any type of dizziness or syncope prior to the date of the accident; and that Mr. Turner was a very energetic young man. (R., p. 435, l. 11 - p. 283, l. 1; p. 283, ll. 22-23). On the date of the accident, Mr. Turner was feeling real good; he was very energetic; he was cutting up while driving the truck, blowing the horn and giving thumbs up; and in Mr. Barnette's opinion Mr. Turner was, "hundred percent that day". (R., p. 284, l. 1-10).

Mr. Barnette testified he and Mr. Turner had pulled their trucks in to wash them and he had backed his on one side of Mr. Turner's. Mr. Turner's was on the wash rack and he had actually helped Mr. Turner wash about half of the truck when he suggested that Mr. Turner go and get their time sheets straight and get Mr. Barnette's lunch cooler and his bag while Mr. Barnette washed his truck. (R., p. 285, l. 21 - p. 286, l. 15). Mr. Turner pulled his truck over to the parking lot and stopped about 40, and no more than 60, feet away. Approximately 7-8 minutes, and no more than 10 minutes, later, Mr. David Bolden stepped out of the hut (different building from the Office) and walked over to Mr. Barnette and was talking to him on the side

of the truck away from where Mr. Turner was at that time and then as Mr. Barnette moved around to the back of the truck to wash off the tailgate he caught a glimpse and saw Mr. Turner on the ground on his back. (R., p. 286, l. 17 - p. 287, l. 8).

Mr. Barnette testified that after Mr. Turner had gone to the Office Trailer to get their time sheets straight and to get their two backpacks and after he was found on the ground, they found Mr. Barnette's 12 pack lunch sack and his backpack placed "neatly" on the seat of the truck. He testified that there was no question his backpack and his stuff had been, "placed" on the seat and had not been simply thrown in there nor was it lying on the, "floorboard". He testified that to be able to do that that it would require Mr. Turner or whoever was putting something like that on the seat in the truck to climb the first and second steps of the truck. The truck steps were approximately 18 inches and 36 inches off of the ground and Mr. Turner was 5'3" - 5'4" tall. Just prior to the accident, they had been washing Mr. Barnette's truck with soap and water. He also stated the steps on the truck were perforated steps which would catch a cleat of a boot or shoe and that he had caught his boot on the steps but had been able to correct and not fall. He himself had lost his balance on the steps of the truck. (R., p. 290, ll. 4-18; p. 291, l. 21 - p. 292, l. 13; p. 294, l. 2 - p. 295, l. 9).

After the accident he was the first to see Mr. Turner and when they ran over to Mr. Turner, he was laying on his back. He was trying to move but was not flailing or thrashing about and was basically laying with his arms straight out with his palms up. He had a small amount of blood on the back of his head and in his opinion, Mr. Turner had not been laying there more than 3-4 minutes before they saw and got to him. (R., p. 299, ll. 5-17; p. 301, ll. 15-20). He repeated his testimony that on the date of the accident Mr. Turner had no complaints of headache, no complaints of dizziness, no complaints of feeling ill, and no complaints of feeling unusual. (R., p. 295, ll. 15-25).

Very importantly, Mr. Barnette testified specifically that the door of the truck was still open when Mr. Turner was found lying on the ground; and in addition to the cooler and backpack being "neatly" arranged on the seat it would require climbing the steps to put those on the seat. (R., p. 305, ll. 2-13.)

Mr. David Bolden, the other employee who came to Mr. Turner's side, testified Mr. Turner was laying on his back just beside the truck and that his feet were nearer to the truck than his head was. He also stated he was lying flat on his back with his arms outstretched like he was holding his hands above his head. (R., p. 312, ll. 1-20). Mr. Bolden had worked for SAIIA for approximately 4 years and he considered himself to be a friend of Mr. Turner's. He had never known Mr. Turner to

complain of any problems with dizziness or passing out or seizures, nor taking any medicine or any of those type problems and that Mr. Turner was in good health as far as he knew the day of the accident from the way he was acting. (R., p. 318, l. 24 - p. 319, l. 16). Mr. Bolden actually observed Mr. Turner walking towards the truck after he had gone to the trailer and most importantly he specifically observed him putting the cooler while standing on the ground into the, "floor board" of the truck but he did not see him move the backpack and/or cooler from the floorboard of the truck to the seat of the truck where it was found "neatly" placed after the accident. While he was observing him and watching him place the cooler inside the truck, the door of the truck was open and the door of the truck was still open when they found him minutes later. (R., p. 320, l. 2 - p. 321, l. 13). There was no actual witness to the accident and Claimant has absolutely no memory of the day of the accident or days that followed it.

The undisputed evidence establishes Mr. Turner was last seen standing on the ground putting a cooler and back pack into the floor board of the truck wherein after the accident those were found placed "neatly" on the seat. The undisputed evidence is that one would have to climb the steps of the truck to place items on the seat. He was then found lying with his feet towards the truck and his head away from the truck with the door open

and lying on his back with the back of his head flat against the ground. (Emphasis added). The medical evidence establishes he sustained a subdural hematoma of the anterior lateral (front left) temporal lobe. The temporal lobe is in the middle and to the front of the brain; not the back of the head or brain on which Mr. Turner was found lying. The occipital lobe is the back of the brain.

ARGUMENTS

I. THE COURT OF APPEALS ERRED AS A MATTER OF LAW BY REFUSING TO APPLY THE UNEXPLAINED INJURY PRESUMPTION, FIRST ESTABLISHED IN OWENS v. OCEAN FOREST, INC., 296 S.C. 97, 12 S.E.2d 839 (1941) ON THE BASIS THAT THE CLAIMANT DID NOT DIE FROM HIS INJURIES AND BY HOLDING THAT THE PRESUMPTION DOES NOT APPLY AND THAT THIS COURT HAS NOT AND WOULD NOT APPLY THE PRESUMPTION WHERE THE INJURED WORKER DOES NOT DIE FROM HIS INJURIES.

In holding the unexplained death or injury presumption does not apply where the employee survives the injury but has no memory of the events leading up to the injury, the Court of Appeals did not apply the decisions of this Court; the principles established by several lines of cases of this Court differentiating the presumption in accidental versus natural condition type injuries; and the application of several fundamental principles applicable to review in workers' compensation claims under injury by accident as defined in South Carolina which is antithetical to North Carolina Law. If this decision is allowed to stand as is, not only will this result in a denial of benefits to Mr. Turner but it will be applied to deny benefits to many workers suffering very

common unwitnessed injuries such as police officers found injured alone in a lonely part of the police station or while responding to a potential crime; night shift nurse in the parking lot or a lonely part of the hospital; a teacher found after an evening parent conference, or a lonely hallway or auditorium stage during school; the one truck accident; electrician found on a concrete floor next to a ladder; or fireman alone at the back of a house or fire station; a night watchman; a third shift plant worker or a construction worker last found beside scaffolding or the base of stairs, etc., etc. Their only crime being they were doing their jobs alone and their accident resulted in even a brief period of memory loss resulting from even a minor head injury.

Since the unexplained injury presumption was first established and recognized by this Court in 1941 in Owens v. Ocean Forest, Inc., supra, this Court has always stated the presumption as, quoting from Owens:

> ". . . that one charged with the performance of a duty and **injured** while performing such duty, or found **injured** at a place where his duty may have required him to be, is **injured** 'in the course' and as a consequence of employment." (Emp. add.) Owens, supra, 12 S.E.2d 839 at 8.

This Court has never limited the presumption to only cases where the Claimant died from his injuries. It is not only speculation by the Court of Appeals to opine this Court would not extend or apply the presumption to cases where the Claimant was injured in the course of and as a "consequence" of employment but due to

his/her injuries had no memory of or could not testify (coma, brain damage?) as to what occurred, it is wrong. This Court has clearly and specifically ruled that it would apply the unexplained injury presumption to cases where the Claimant did not die from his injuries. Specifically, in Fowler v. Abbott Motor Company, 236 S.C. 226, 113 S.E.2d 737 (1960), Mr. Fowler did not die quoting this Court:

> "The automobile owned by Abbott Motor Company and driven by the Employee was in a collision with a tree ... the Respondent is now mentally and physically disabled and is a patient in a hospital in Columbia, South Carolina."

In Fowler, this Court clearly stated it would apply the presumption in an injury without death situation:

> "It is true that at the time the Claimant was injured, the direct evidence shows that he was driving an automobile owned by the Employer and furnished to the Employee as part of his contract of employment. Counsel for the Respondent asserts that the other evidence, which is circumstantial, is sufficient to justify the inference **and the presumption** that Claimant's injury arose out of and in the course of employment."

This Court in making that specific holding in Fowler, cited to the case of Owens v. Ocean Forest Club, Inc., supra, in regards to the presumption. However, this Court did not apply the presumption in Fowler **but** because that his injury did not arise out of the employment (i.e., a consequence of employment) but because the evidence did not establish his injury occurred during the course of his employment. This Court in reaching its decision again cited to the presumption and stated:

> "Again, **we cannot apply the presumption** asserted by the Respondent **for the reason that** he has failed to show that he was using the automobile of his employer **at a place and a time where his duty as an employee required him to be**. There is no evidence in the Record that the Respondent, at the time of his injury **was performing any duty** for his employer." (emp. Add.)

Also, in Fowler, this Court quoted its holding from another unexplained injury presumption case, Eargle v. South Carolina Electric & Gas, 205 S.C. 423, 32 S.E.2d 240, concerning the application of the presumption and the two prongs of the presumption, the one prong being, "arising out of" (i.e., a consequence of) the employment and the other being, "in the course of" the employment in determining that the injury to Mr. Fowler did not occur, "in the course of" his employment.

[The Petitioner would ask the Court to take notice that the Court of Appeals opinion actually infuses "cause" into the South Carolina definition of injury by accident.]

In Fowler after citing to the unexplained injury presumption as applied in Eargle, the Court recited the long accepted definition of, "arising out of" the employment. Quoting from Eargle, a case in which Mr. Eargle's death was unwitnessed on his way to work after being called in due to an emergency at the plant:

> "It **(the injury) arises 'out of the employment' when there is** apparent to the rational mind upon consideration of all the circumstances, **a causal connection between the conditions under which the work is required to be performed and the resulting injury**. Under this test, if the injury can be seen to have **followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment**, then it arises out of the employment." (Emp. add.)

Therefore, this Court has not only specifically stated it would apply, it has applied the unexplained death and injury presumption to a situation where the injury was unwitnessed, the injured worker lived but due to his injuries could not tell anyone what happened.

II. THE SC COURT OF APPEALS ERRED AS A MATTER OF LAW, IN VIOLATION OF THE FUNDAMENTAL CONSTRUCTION PRINCIPLES ESTABLISHED AND APPLIED BY THIS COURT SINCE THE INCEPTION OF THE WORKERS' COMPENSATION ACT, BY APPLYING THE NORTH CAROLINA CONCEPT OF AN, "INEQUITY OF INFORMATION" WHICH NORTH CAROLINA APPLIES TO THE EVIDENCE IN AN UNEXPLAINED INJURY CLAIM BUT DOES NOT APPLY TO AN UNEXPLAINED DEATH CLAIM; AND WHICH NORTH CAROLINA USES TO DENY BENEFITS TO THE INJURED WORKER WHO LIVES VERSUS GRANTING BENEFITS TO THE FAMILY OF THE WORKER WHO DIES.

The Court of Appeals erred as a matter of law by holding that this Court would recognize the "inequity of information" concept as applied by North Carolina. Also, the North Carolina concept is also totally illogical. There is no logical or legal difference between a dead worker, a brain-dead worker or a worker in a coma and their ability to testify nor as to their family versus the employer's knowledge of or ability to know what happened at work.

This Court and our Appellate Courts (Circuit Courts and Court of Appeals) have always been committed to a liberal construction of the Act in their decisions and in the application of its guiding principles in favor of benefits to the worker. As stated by this Court since the inception of the Act, our Courts are committed to this guiding principle to achieve its "beneficent purposes" with its "presumptions" and its interpretations aimed at

avoiding any "harsh or incongruous" results. (Emp. add.) Cokely v. Robert Lee, Inc., 197 S.C. 157, 14 S.E.2d 889 (1941); (Webster, "incongruous" - not harmonious; incompatible). In fact, this Court has always applied a liberal interpretation of the Act in favor of the injured worker and benefits in reference to the evidence presented in determining whether there is evidence to support the Award. For example see one of the most precedential decisions of this Court, the 1939 decision Layton v. Hammond-Brown-Jennings, 190 S.C. 425, 3 S.E.2d 492 (1939) (defining, "injury by accident"; and defining and finding sufficient evidence that the hernia appeared "suddenly" and "immediately" as required by the hernia statute). The concept of an "inequality of information" is totally contrary to those guiding principles and in fact it smacks in the face the entire body of our South Carolina workers' compensation jurisprudence.

III. THE SC COURT OF APPEALS ERRED AS A MATTER OF LAW BY REFUSING TO APPLY THE DECISIONS OF THIS COURT IN BARNES V. CHARTER ONE REALTY, 411 S.C. 391, 768 S.E.2D, 651 (2015), AND IN NICHOLSON V. SC DEPT. OF SOCIAL SERVICES, 411 S.C. 381, 769 S.E.2D 1 (2015), AND BY RELYING INSTEAD ON THE DISSENTING AND CONCURRING OPINIONS IN THOSE CASES AND ON THE SC COURT OF APPEALS OVERRULED DECISION IN CROSBY V. WAL-MART STORES, INC., 330 S.C. 489, 499 S.E.2D, 253 (SC APP. 1998), STATING, "THIS COURT (COURT OF APPEALS) DETERMINED THE CLAIMANT'S FALL WAS NOT AN UNEXPLAINED FALL. WE STATED 'THERE WAS NO EVIDENCE OFFERED IN THE CASE AT HAND AS TO WHAT **CAUSED** [THE CLAIMANT] TO FALL'." IN THIS HOLDING THE SC COURT OF APPEALS IS IN FACT APPLYING THE NORTH CAROLINA DEFINITION OF "INJURY BY ACCIDENT" INSTEAD OF THIS COURT'S DEFINITION SINCE 1939.

Under section III **Arising Out of Employment** holding Mr. Turner did not establish his injury arose out of the employment,

the Court of Appeals did not apply properly the holdings of this Court as to: what constitutes arising out of under the definition of injury by accident; and more specifically by not applying this Court's holdings in Barnes v. Charter One Realty, 411 S.C. 391, 768 S.E.2d 651 (2015) and Nicholson v. South Carolina Department of Social Services, 411 S.C. 381, 769 S.E.2d 1 (2015).

First the Court of Appeals in addressing the, "arising out of employment" prong of the definition of injury by accident holds, citing Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 88 S.E.2d 611 (1955) (a witnessed but "unexplained fall" situation), that the fall is not compensable unless the employment contributed to, "either the **cause** or the effect of the fall". Cause is not and has never been a part of the definition of injury by accident under our law. Beginning before, but specifically in 1939, this Court defined injury by accident in the case of Layton v. Hammonds-Brown-Jennings, Co., supra. In Layton (and very importantly as to the reliance on North Carolina Law by the Court of Appeals), the Court was faced with the two competing definitions of injury by accident and specifically chose not to follow and specifically rejected the definition adopted by North Carolina. Because this Court's decision in Layton has always and still serves as the basis for (and sets out) the definition of injury by accident in South Carolina, and which was applied in Barnes and Nicholson, this Court's decision in Layton as to the

two competing definitions and the one chosen by South Carolina is set out in pertinent part:

> "Even so, we have such respect for the North Carolina Court and its Chief Justice, author of the Slade opinion, that we consider the holding therein as highly persuasive and entitled to great weight, **but find that we are circumscribed by the Rule as stated by our own Court** in Goethe v. New York Life Insurance Company, 183 S.C. 199, 217, 190 S.E. 451, 458, as follows:
>
> The Rule clearly deductible from the overwhelming weight of authority is that, **when injury or death follows or results from a voluntary act of the insured, and the act is one which is not manifestly dangerous, but which is ordinarily done or performed without serious consequences to the doer, such result is caused by accidental means**.
>
> This is nowhere better stated than by Sandburn, J. in Western Commercial Travelers Association v. Smith, 85 F. 401, 405, 29 C.C.A. 223, 56 US App. 393, 40 L.R.A. 653, where he says:
>
> **'An effect which does not ordinarily follow and cannot be reasonably anticipated from the use of those means an effect which the actor did not intend to produce and *** cannot be charged with the design of producing, *** is produced by accidental means'** ... one of the purposes of the Workmen's Compensation Act is to protect and partially compensate employees who are injured while engaged in the regular course of their employment **irrespective of mishap independent of the injury itself**, and/or negligence on the part of either the employee or the actor."
> (Emp. add.). 3 S.E.2d 492, at 496.

Then in the case of Hiers v. Brunson Construction Company, 221 S.C. 212, 70 S.E.2d 211 (1952), **as restated ever since** and as restated in Stokes v. First National Bank, 306 S.C. 46, 410 S.E.2d 248 (1991), the "unexpected" result from the work activity constitutes injury by accident. Quoting in pertinent part from Stokes quoting Hiers:

> "No slip, fall or other fortuitous event or accident **in the cause of the injury is required; the unexpected result** or industrial injury itself is considered the compensable accident." (Emp. add.).

This is the exact same definition that is referred to and is cited as part of the actual holding, not the dissent, in Nicholson. Quoting this Court in pertinent part:

> "The circumstances of her employment required her to walk down the hallway to perform her responsibilities and in the course of those duties, she sustained an injury. We hold these facts, establish a causal connection between her employment and her injuries - **the law requires nothing more** because Nicholson's fall happened at work **and was not caused by a condition peculiar to her**, it was causally connected to her employment. Therefore, her injuries **arose out of her employment as a matter of law** and she is entitled to workers' compensation." (Emp. add.).

In fact, this is the same exact definition quoted by the Court of Appeals in Jennings v. Chamber Development Corp., 335 S.C. 249, 516 S.E.2d 453 (SC App. 1999) citing Stokes. Also in Jennings the Court of Appeals quoted the same definition of "arising out of" set out in Eargle v. South Carolina Electric & Gas, supra. The definition of "injury by accident" and "arising out of" have not changed since the inception of the Act. [The Court will find based on a research stream of precedents that both Eargle and Jennings and all decisions in-between trace to this Court's decision in Thompson v. J.A. Jones Constr. Co., 199 S.C. 304, 19 S.E.2d 276 (1942).]

An injured worker has never had to prove cause. He has only ever had to prove an "unexpected" result from the work activity (i.e., a consequence of the employment). Mr. Turner was at a time and place where his job required him to be and all of the circumstantial evidence is that he was involved in his work activities when he sustained injury and there is absolutely no evidence in the Record that that injury was caused, "by a condition peculiar to" him or by anything other than it was simply the "unexpected result" of the work activity and therefore causally connected to his employment as this Court stated and held in Barnes, Nicholson, and Owens and every case in-between.

IV. THE SC COURT OF APPEALS ERRED AS A MATTER OF LAW BY IMPROPERLY APPLYING THE SUBSTANTIAL EVIDENCE STANDARD TO THE UNDISPUTED EVIDENCE. THERE IS SIMPLY NO EVIDENCE ON THE DATE OF MR. TURNER'S FALL INJURY, CIRCUMSTANTIAL OR OTHERWISE, THAT IT WAS, "BROUGHT ON BY A PURELY PERSONAL CONDITION, UNRELATED TO THE EMPLOYMENT, SUCH AS A HEART ATTACK OR SEIZURE" OR "A CONDITION PECULIAR TO THE EMPLOYEE". BARNES V. CHARTER ONE REALTY, SUPRA.

There is no evidence that the injury was brought on by a purely personal condition unrelated to the employment as required by Barnes v. Carter One Realty, supra. The Court of Appeals at great length discusses all of the evidence prior to the date of the accident and relates none of the specific evidence that applied to the specific day of the accident; i.e., the time and place of the accident. All of the witnesses, including the Appellant's supervisor, testified that on the date of the accident, as defined in South Carolina, Layton, supra, he was in

top notch shape, there was absolutely nothing wrong with him and he was in the best shape they had seen. Quoting his supervisor, Mr. James Speegle:

> "Q: Did he seem to be okay the Thursday that he fell?
>
> A: **Oh absolutely.** Thursday he was -- he was like himself, better than he had been, than he had been all week. I mean he was just -- he was lively and from what I understand he was blowing his horn and having fun, cutting up, you know . . . no signs of -- not that I know of that anything was wrong with him prior to that. (Emp. add.) (Tr., p. 330, ll. 3-10).

See also testimony of Mr. Barnette and Mr. Bolden (R., p. 284, ll. 1-10; p. 299, ll. 5-17; and Appellant's "Statement of Facts", pp. 4-10.) There is absolutely **no** contrary evidence in that regard in the Record and/or that is cited in the Opinion that the Petitioner was suffering from any natural condition that could have resulted in his injury by accident as defined by this Court.

V. THE SC COURT OF APPEALS ERRED AS A MATTER OF LAW IN ISSUING ITS DECISION THAT IS IN DEROGATION OF AND IS CONTRARY TO THE DECISIONS AND PRECEDENTS ESTABLISHED BY THIS COURT, AND SPECIFICALLY THE DECISIONS OF THIS COURT IN BARNES V. CHARTER ONE REALTY, SUPRA; NICHOLSON V. SC DEPT. OF SOCIAL SERVICES, SUPRA; OWENS V. OCEAN FOREST, INC., SUPRA; AND FOWLER V. ABBOTT MOTOR COMPANY, 236 S.C. 226, 113 S.E.2D 737 (1960) WHEREIN AS AN INTERMEDIARY APPELLATE COURT AND UNDER THE SC CONSTITUTION, ARTICLE V, §9, THE SC COURT OF APPEALS IS BOUND BY AND MUST APPLY THE DECISIONS OF THE SC SUPREME COURT.

The SC Court of Appeals was created as an intermediary Appellate Court and is bound by and is required to comply with the decisions of this Supreme Court where it has spoken. This is probably no better stated than by Chief Judge Alex Sanders in

the case of Shea by Reynolds v. State Dept. of Mental Retardation, 279 S.C. 604, 310 S.E.2d 819 (SC App. 1983):

> "The South Carolina Court of Appeals was made a part of a unified judicial system to address a mounting plethora of appeals and thereby make the appellate process more efficient. The maintenance of a harmonious body of decisional law is essential to the efficient administration of justice. Therefore, if the judicial system is to operate efficiently, this Court must be bound by decisions of the Supreme Court. Where, as here, the law is unmistakably clear, this Court has no authority to change it. Accordingly, we must decline to directly overturn a doctrine of sovereign immunity . . ."

In American Fast Print, Ltd. v. Design Prints of Hickory, 288 S.C. 46, 339 S.E.2d 516 (SC App. 1986), and in many other cases, the Court of Appeals has continued to recognize that guiding principle. This Court has reiterated this principle in its decisions, "it is incumbent upon the Court of Appeals to apply this Court's precedents." State v. Phillips, 416 S.C. 184, 785 S.E.2d 448 (2016) and under the Constitution, SC Constitution, Art. V, §9, "the decisions of the Supreme Court shall bind the Court of Appeals as precedents."

This Court may want to grant certiorari in any given case and modify or change its previous rulings and decisions, but where this Court has spoken, the Court of Appeals has no authority to change the rulings of this Court.

This Court has specifically spoken and established the unexplained injury presumption in this State in Owens v. Ocean

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE APPELLATE PANEL
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Opinion No. 5458
(SC Ct. App. heard June 9, 2016;
filed December 7, 2016)

William Lee Turner, Employee,..... Petitioner,

v.

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

PROOF OF SERVICE

I certify that I have served the **PETITION WRIT OF CERTIORARI** and **APPENDIX** on the following persons by depositing a copy of it in the United States Mail, postage prepaid, on March 23, 2017, addressed as follows:

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

Helen F. Hiser, Attorney at Law
McAngus, Goudelock & Courie
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Mt. Pleasant, SC 29465

S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Dated: March 23, 2017

Preston F. McDaniel
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Proudly representing injured workers for over 25 years.

Preston F. McDaniel

Matthew Robertson

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March 23, 2017

HAND DELIVERED
The Honorable Daniel E. Shearouse
Clerk of Court
SC Supreme Court
1231 Gervais Street
Columbia, South Carolina 29211

RE: William Lee Turner v. SAIIA Construction and Old Republic General Ins. Corp.
SC Court of Appeals Case No. 2014-002416

Dear Mr. Shearouse:

Please find attached the original and seven (7) copies of my Petition for a Writ of Certiorari and the unbound original and three (3) copies of the Appendix for filing with the Court in regards to the above referenced matter, along with the required $100.00 filing fee. I would appreciate your returning the clocked-in copies to the courier.

By copy of this letter, I am serving the SC Court of Appeals and Counsel for Defense with a copy of same.

I hope this is sufficient for filing with the Court; however, if you require anything further, please do not hesitate to contact me.

Sincerely yours,

Preston F. McDaniel

PFM/kth
Enclosures

cc: Helen F. Hiser, Attorney
Jason W. Lockhart, Esquire
John K. Koon, Esquire
S.C. Court of Appeals