NO. 94659-1

THE SUPREME COURT OF THE STATE OF WASHINGTON

NEIL R. BECK,

Petitioner,

v.

GLACIER NORTHWEST, INC.

and

THE DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON,

Respondents.

RESPONDENT'S RESPONSE TO PETITIONER'S PETITION FOR REVIEW TO THE SUPREME COURT OF WASHINGTON

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I. IDENTITY OF RESPONDENT

Glacier Northwest, Inc. asks this court to deny the Petition for Review of the Court of Appeals' unpublished opinion, *Beck v. Glacier Northwest Inc.*, No. 49246-6-II, 2017 Wash. App. LEXIS 1230 (Div. II May 23, 2017).

II. DECISION

On March 18, 2013, the Petitioner's claim was closed with no award for permanent partial disability. CP at 143. On May 10, 2013, the Department affirmed its claim closure. *Id.* at 145. On July 24, 2013, the Board granted the Petitioner's appeal. *Id.* at 151. The Board issued a Proposed Decision and Order ("PD&O") affirming the Department's claim closure and held the Petitioner to not be entitled to temporary total disability benefits, nor to be entitled to a pension due to total permanent disability. *Id.* at 127-39. On May 26, 2015, the three-member Board affirmed the PD&O and the Department Closing Order. *Id.* at 6-9. The Petitioner then appealed to the Superior Court of Cowlitz County.

The Superior Court of Cowlitz County permitted Jury Instruction No. 5 to be given to the Jury for the testimony of Dr. Guy Earle, who testified on behalf of Glacier Northwest. *See* Appendix A; *see also*, Petition at 6. Jury Instruction No. 5 was identical to WPI 155.13.01, with the sole exception of the comma after "disbelieve" that did not appear in Jury Instruction No. 5. *See* Appendix A and WPI 155.13.01.

On June 23, 2016, a Judgment and Order was entered with the Superior Court of Cowlitz County. Appendix B. The jury found that 1.) the Board was correct in determining that the Petitioner was not temporarily totally disabled from June 15, 2009 through April 13, 2011; 2.) the Board was correct in determining that the Petitioner was not temporarily totally disabled from December 4, 2012 through May 9, 2013; 3.) the Board was correct in determining that the Petitioner did not require further necessary and proper treatment for any condition proximately caused by his May 17, 2005 industrial injury; and 4.) the Board was correct in determining that the Petitioner was not totally and permanently disabled and therefore not entitled to a pension as of May 10, 2013. *See id.*

The Petitioner appealed the Superior Court decision to the Court of Appeals, Division II. The Petitioner contended that Jury Instruction No. 5 was given in error, and the Instruction was not harmless. On May 23, 2017, the Court of Appeals issued its decision, holding that "We assume without deciding that the instruction was erroneously given, but hold that any instructional error was harmless." *Beck v. Glacier Northwest Inc.*, No. 49246-6-II, 2017 Wash. App. LEXIS 1230, at *6 (Div. II May 23, 2017).

III. ISSUES PRESENTED FOR REVIEW

1. Under RAP 13.4(b), should the Supreme Court deny review when 1.) the Court of Appeals' decision comported with existing case law regarding the "attending physician

instruction," and 2.) the Petition for Review does not involve an issue of substantial public interest that should be determined by the Supreme Court?

2. Should the Supreme Court deny review, and the Court of Appeals' decision be allowed to stand, when 1.) Dr. Earle was an attending provider under WAC 296-20-01002 and related case law; 2.) Jury Instruction No. 5 was mandatory when the Petitioner failed to present any articulable reasons to justify refusal of the Instruction; 3.) even if Jury Instruction No. 5 were given in error, the Petitioner failed to demonstrate any prejudice resulting from the Instruction; and 4.) the decision of the Court of Appeals comported with existing law?

IV. COUNTER-STATEMENT OF THE CASE

The Respondent concurs with the relevant facts as provided by the Court of Appeals. *See Beck*, 2017 Wash. App. LEXIS 1230 at *1-6. The Respondent also concurs with the majority of the facts as described by the Petitioner. However, Petitioner's characterization of the surveillance video evidence, as well as its significance here, warrants further illumination.

On June 30, August 9, August 11, September 7, and September 8 of 2012, surveillance was conducted of the Petitioner under this claim. CP at 3, 346-348, 586-87, and 662-63; *see also*, CP at 728. The surveillance video shows the Petitioner hauling sheets of drywall (CP at 588, 664); lifting a bathroom vanity (CP at 589); loading heavy lumber on top of his van (CP at 588); kneeling, bending, and hammering whilst building a porch (CP at 589, 664); and operating a tractor and backhoe (CP at 664). In short, the surveillance video showed that the Petitioner was of normal

function, clearly operating at least at a "medium capacity." See CP at 663-65, 716. Throughout the surveillance video, the Petitioner demonstrated fluid movement, normal body mechanics, with no painful posturing or movements. CP at 587-88.

When confronted by the surveillance video, the Petitioner maintained that he was unable to work through May 10, 2013. CP at 421; *see also*, 413-418. Counsel for the Petitioner adamantly refused to allow his witness, Dr. Gritzka, to view and consider the surveillance video. *See* CP at 536-39. The surveillance video was shown to, and considered by, the jury.

V. ARGUMENT WHY REVIEW SHOULD BE DENIED

There are four reasons why the Petition for Review should be denied and the Court of Appeals' decision maintained. First, the Petitioner has failed to demonstrate any colorable basis for his Petition under RAP 13.4(b). Second, the Court of Appeals' legal analysis was sound and should not be disturbed. Third, Dr. Earle was the "attending physician" of the Petitioner, and Jury Instruction No. 5 was therefore properly given. Fourth, even if the Superior Court were deemed to have abused its discretion by providing Jury Instruction No. 5, the Petitioner's arguments in support of his ostensible "prejudice" are untenable.

A. The Petitioner Fails To Plead Any Issues That Warrant Review Under RAP 13.4(B)

The Petitioner attempts to argue that the Court of Appeals' decision is contrary to existing case law. *See* Petition at 2. First, the Petitioner attempts to argue that his case is analogous to *Boeing Co. v. Harker-Lott*, 93 Wn. App. 181, 968 P.2d 14 (Div. I 1998), and insinuates the Court of Appeals erred by not analogizing his case to *Harker-Lott*. *See* Petition at 9-10. However the Petitioner's case is nothing like *Harker-Lott*, and his argument therefore fails.

In *Harker-Lott*, the claimant argued, "the lower court's refusal to give the [attending physician] instruction deprived her of a fair trial. She argues that because she was required to be examined by so many doctors who ultimately testified on Boeing's behalf, the instruction was needed to 'level the playing field.'" *Harker-Lott*, 93 Wn. App. at 185. The Division I Court in *Harker-Lott* held, "Because the testimonies of the [four] attending physicians were in conflict...The trial court did not abuse its discretion when it refused to give the instruction." *Id.* at 188. Here, there was only one attending physician: Dr. Earle. As this Court has recently held,

> the instruction is an accurate statement of the law in workers' compensation cases and the general rule that the jury be instructed on the law...
> In *Harker-Lott*, the situation was somewhat unique and the jury could not give special consideration to multiple, conflicting attending physicians' testimony. Here, those circumstances do not exist.

Clark County v. McManus, 185 Wn.2d 466, 474, 372 P.3d 764 (2016). Emphasis added.

Next, the Petitioner attempts to invoke *McManus* for the proposition that the special consideration instruction "should be given to the opinion of an attending physician, unless specific reasons why the attending physician instruction are articulated." Petition at 10. The Petitioner's statement, even if properly worded to his apparent intent, is a brazen mischaracterization of what this Court held in *McManus*.

In *McManus*, the Court expressly "took review to determine if such an instruction is required in workers' compensation cases." *McManus*, 185 Wn.2d at 468. The Court of Appeals had rejected the claimant's argument that the trial court erred by refusing the attending physician instruction. *Id.* at 470. Before this Court, the County argued that the attending physician instruction was unnecessary, discretionary, and should not be mandatory. *Id.* at 472-73. This Court held:

> in cases such as this where one attending physician testifies, the special consideration instruction must be given. Here, the trial court did not identify why a special consideration instruction should not be given and we find no reason. Our decision in *Hamilton*—which relied on long-standing policy surrounding workers' compensation cases—controls."

Id. at 476.

The Petitioner's use of *McManus* is faulty for two reasons. First, Petitioner's assertion that the attending physician instruction "should be given" mischaracterizes the primary thrust of the *McManus* decision: "in cases such as this where one attending physician testifies, the special consideration instruction *must* be given." Emphasis added. Second, the Petitioner seizes on the language of *Hamilton* regarding "articulable reasons," while passing by the express holding of the *McManus* Court that created a clear rule that cuts against the Petitioner's arguments.

Here, there was only one attending physician that testified: Dr. Earle. According to the express language of *McManus*, the attending physician instruction was not only proper, but was mandatory. The only fact that could meaningfully distinguish *McManus* from the present case is the fact that Dr. Earle testified on behalf of Glacier Northwest, Inc., and not the Petitioner. There is no legal exception to the attending physician instruction rule based on the nature of the attending physician's ultimate opinions. The Petitioner's arguments and insinuations regarding *McManus* are therefore untenable. *See* Petition at 10-11.

Lastly, the Petitioner attempts to argue that the Court of Appeals erred in its use of *Blaney v. Int'l Ass'n of Machinists & Aerospace Workers*, 151 Wn.2d 203, 87 P.3d 757 (2004). *See* Petition at 11-12. The Court of Appeals cited *Blaney* for the same propositions argued by the Respondent in their Response brief submitted to Division II:

> If a jury instruction is deemed by the court to be erroneous, the court is then to determine whether that error was harmless. *Blaney v. Int'l Ass'n of Machinists & Aerospace Workers*, 151 Wn.2d 203, 211, 87 P.3d 757 (2004). An erroneous instruction is "harmless if it is not prejudicial to the substantial rights of the part[ies] . . .[] and in no way affected the final outcome of the case."

Response Br. at 17; *see also*, *Beck*, 2017 Wash. App. LEXIS 1230 at *6.

As far as the Respondent is able to discern, the Petitioner appears to be arguing that the Court of Appeals' reliance on *Blaney* "was misplaced" because "there was other evidence here to support the verdict in favor of Glacier Northwest." *See* Petition at 11-12. However, this ostensible argument is without merit and appears to make little sense. Neither the Respondent nor the Court of Appeals cited *Blaney* as factually analogous or to justify reaching any conclusion in this particular case. The Court of Appeals only cited *Blaney* for the rule statements therein regarding harmless error. It does not appear that the Petitioner is arguing that the Court of Appeals or the Respondent cited the wrong legal standard, so the Petitioner's criticism of the Court of Appeals' citation to *Blaney* is unclear. Whether or not the Respondent had "enough" evidence at trial is immaterial to the analysis regarding the appropriateness of the attending physician instruction in this case.

B. The Court Of Appeals' Legal Analysis Was Sound: Even If The Superior Court Had Erred By Giving Jury Instruction No. 5, No Prejudice Resulted To The Petitioner And The Judgment And Verdict Should Remain Undisturbed Or Affirmed

The Court of Appeals did not reach the question of whether Jury Instruction No. 5 was properly given for Dr. Earle's testimony, but instead held that "Because any potential error was harmless, we affirm" the Superior Court's ruling. *Beck*, 2017 Wash. App. LEXIS 1230 at *1. The Court of Appeals noted several bases upon which it found the assumed-but-not-decided error to be harmless.

The Court of Appeals noted that the Petitioner "contends that he was prejudiced by the special consideration instruction because Glacier Northwest referenced it in its closing argument as part of its strategy to distinguish Dr. Earle's testimony from Dr. Gritzka's testimony." *Beck*, 2017 Wash. App. LEXIS 1230 at *8. The Court of Appeals then notes, "the special consideration instruction clearly states, 'Such special consideration does not require you to give greater weight or credibility to, or to believe or disbelieve such testimony. It does require that you give any such testimony careful thought in your deliberations.'" *Id.* (citing CP at 819).

Further, the Court of Appeals found significant that,

> Glacier Northwest's case did not hinge on Dr. Earle's testimony. Rather it focused on the lack of evidence supporting Beck's position and the abundance of evidence against it. The evidence included surveillance footage showing Beck doing extensive home renovation work

> without any signs of pain, MRI (magnetic resonance imaging) results showing no disc protrusion, and the testimony of two additional doctors who testified in support of Glacier Northwest's position.

Id.

Thus, the Court of Appeals found any possible error arising from Jury Instruction No. 5 to be harmless because the instruction did not require or ask the jury "to adopt or give more weight to Dr. Earle's testimony," and because of the "abundance" of other testimony presented that cut against the Petitioner's position at trial. *See id.* at *8-9.

The Petitioner advances a number of arguments and rationalizations for why he believes Instruction No. 5 would have prejudiced him, even if it had been erroneously given. First, the Petitioner re-raises his concerns about the Employer mentioning the attending physician instruction during closing argument. *See Beck*, 2017 Wash. App. LEXIS 1230 at *5; *see also*, Petition at 7-9, 12. The Petitioner even tries to argue, "there is no question...the attending physician instruction is the reason that Dr. Earle's opinion should prevail" over Dr. Gritzka. Petition at 12.

There was considerable reason to discount the testimony and opinion provided by Dr. Gritzka, beyond distinguishing him as *not* an attending physician: nearly all of the evidence admitted *other than* Dr. Gritzka's testimony was inconsistent with Dr. Gritzka's testimony. Indeed, the Petitioner's counsel adamantly refused to allow his witness,

Dr. Gritzka, to view and consider the surveillance video before providing his testimony. *See* CP at 536-39. The Petitioner would not allow his sole witness to view video showing the Petitioner hauling sheets of drywall (CP at 588, 664); lifting a bathroom vanity (CP at 589); loading heavy lumber on top of his van (CP at 588); kneeling, bending, and hammering whilst building a porch (CP at 589, 664); operating a tractor and backhoe (CP at 664); and moving fluidly with no painful posturing or movements (CP at 587-88).

The Petitioner's argument that "there is no question...the attending physician instruction is the reason that Dr. Earle's opinion should prevail" is wholly without merit and reflects an unwillingness or inability to candidly address the other evidence presented at trial, and Dr. Grizka's fundamentally flawed testimony that was based on a *deliberately* incomplete and skewed understanding of relevant facts. Also, it is notable that the Petitioner refrains from arguing that the Employer misstated the standard during closing arguments. The Respondent's counsel did not mischaracterize the attending physician instruction during closing argument, and no prejudice, therefore, could have resulted therefrom.

Next, the Petitioner argues that "Mr. Beck had taken exception to the giving of instruction No. 5 on the basis that Dr. Earle was the only doctor that could be considered the attending physician," and that would benefit Glacier. Petition at 6. The Petitioner later states flat-out, that "he

should not be put on unequal footing by giving Dr. Earle the benefit of the attending physician instruction." *Id.* at 11. It appears the Petitioner is arguing that either both parties, or only claimants, should be entitled to the attending physician instruction to avoid "prejudice" to claimants. However, there is no existing law that all workers' compensation appeals, regardless of the facts, should be legally reduced to a coin toss. Nor is there any existing law that the attending physician instruction is only available when benefitting claimants. The Petitioner's argument fails to demonstrate prejudice, or any substantial right that was affected by the attending physician instruction being provided in this case.

Lastly, the Petitioner confoundingly argues, "the appellate court should not weigh the other evidence to rationalize giving the instruction." Petition at 11. Seemingly in contradiction, the Petitioner then states, "when considering an erroneous instruction, the court presumes prejudice subject to a comprehensive examination of the record. It becomes the duty of [the] appellate court to review the entire record and determine whether the error was harmless." *Id.* The "comprehensive examination" of the record will necessarily include "the other evidence" when *determining* whether the error was harmless.

Here, the Court of Appeals reviewed the briefing of the parties, and presumably engaged in a "comprehensive examination of the record." The Court of Appeals noted that the Employer's case hinged not upon the

attending physician instruction, but the fact that the Petitioner's case was unsupportable on the facts. The Court of Appeals was made aware that the Petitioner had actively kept his only witness from viewing the surveillance video, from being able to consider that evidence, and from being able comment on that evidence coherently. *See* Response Br. at 3. The Court of Appeals also took notice of the fact that Jury Instruction No. 5 expressly put the jury on notice that they were not required to give Dr. Earle's testimony more weight or credibility. *Beck*, 2017 Wash. App. LEXIS 1230 at *5, *8. "The jury is presumed to follow the court's instructions." *State v. Swan*, 114 Wn.2d 613, 662, 790 P.2d 610 (1990).

The Petitioner's claim that the Court of Appeals "rationalized" their holdings and improperly considered the evidence presented is without merit, and fails to demonstrate even an inkling of prejudice to any substantial right, or to have had an effect upon the outcome of the Superior Court trial.

C. Dr. Earle Was The "Attending Physician" During These Appeals; Therefore, Instruction No. 5 Was Appropriate

Dr. Earle was the Petitioner's attending physician under the definition provided by the Washington Administrative Code. The "attending physician instruction" is a mandatory jury instruction that has very narrow exceptions recognized at law, and none of which apply here.

WAC 296-20-01002 provides that, "For these rules, ["attending provider"] means a person licensed to independently practice one or more of the following professions: Medicine and surgery; osteopathic medicine and surgery; chiropractic...An attending provider actively treats an injured or ill worker."

It is uncontroverted that Dr. Earle was a licensed physician who had a doctor-patient relationship with the Petitioner until less than six months prior to the final claim closure. It is also uncontroverted that Dr. Earle "actively treated" the Petitioner and evaluated treatment options with him.

The Washington Courts have illuminated the reasoning behind the attending physician instruction. "[T]he court must give special consideration to the opinion of the attending physician...This is because an attending physician is not an expert hired to give a particular opinion consistent with one party's view of the case." *Intalco Aluminum Corp. v. Dep't of Labor & Indus.*, 66 Wn. App. 644, 654, 833 P.2d 390 (Div. I 1992). The attending physician instruction is also given because the attending physician "is better qualified to give an opinion as to the patient's disability than a doctor who has seen and examined the patient once." *Young v. Labor & Industries*, 81 Wn. App. 123, 128, 913 P.2d 402 (Div. III 1996).

The Petitioner's arguments against the attending physician instruction being properly given are conclusory, misleading, and unsupportable by law. The Petitioner begins by citing *McManus*, 186 Wn.2d at 476, for the proposition that attending physicians are entitled to special consideration "unless specific reasons why the attending physician instruction are articulated." Petition at 10. The Petitioner then asserts, "Mr. Beck is able to articulate specific reasons for why the attending physician instruction should not be given." *Id.*

First, the Petitioner states that he "was referred to Dr. Earle by the nurse case manager hired by the self insured [*sic*] employers [*sic*] claim administrator." *Id.* It must be presumed that the Petitioner is seeking to imply some kind of bias or conspiracy against him. However, the Petitioner conceded that he was unable to secure a treating physician on his own when he moved to Sequim, WA, so he chose to rely on his nurse case manager's recommendation of Dr. Earle. *See* Appellant Brief at 5.

Dr. Earle was not a physician that was thrust upon the Petitioner by Glacier. Glacier did not direct or encourage their claims administrator to direct or encourage the nurse case manager to choose a specific doctor to be assigned to the Petitioner. Mr. Beck was incapable of locating an attending physician after moving to Sequim, WA. Mr. Beck received a *recommendation* from the nurse case manager that he then *chose* to pursue when he established care with Dr. Earle.

The second "specific reason" advanced by the Petitioner for why the attending physician instruction should not have been given was "Dr. Earle only saw Mr. Beck three times" and "discharged Mr. Beck when a controversy arose over treatment." Petition at 10. Once again, the Petitioner attempts to paint a picture of the facts that is misleading.

Dr. Earle maintained a doctor-patient relationship with the Petitioner through October 4, 2012, less than six months before claim closure. *See* CP at 568. Dr. Earle terminated the doctor-patient relationship with the Petitioner after Mr. Beck became hostile and aggressive toward him. When questioned why he discharged the Petitioner as a patient, Dr. Earle testified that, "I think it was a break down in trust...I try to treat everybody courteously and respectfully and I don't like being the target of hostility. And I don't like people trying to intimidate me when they don't get their way." CP at 608.

The "controversy" was, in fact, hostile and abusive conduct by the Petitioner toward Dr. Earle for not endorsing a dubious laser treatment that had never been approved by the Department. Dr. Earle was not obliged to endure such conduct, and indeed, terminated the doctor-patient relationship for this very reason. The Petitioner's belligerent and abusive conduct, and Dr. Earle's refusal to tolerate it further, is not a valid justification for the Superior Court to have manufactured an exception to

the established law of providing the attending physician instruction when an attending physician testifies.

The third "specific reason" advanced by the Petitioner for why the attending physician instruction should not have been given was because Dr. Earle had previously disapproved the job analysis for truck driver, finding the Petitioner unable to perform this job, but "then approved the same job analysis two months later." Petition at 10. The Petitioner appears, again, to imply that Dr. Earle's approval of the job analysis was mendacious or in bad faith. Indeed, the Petitioner embellishes his disingenuous allusion with a pronouncement that Dr. Earle's approval of the job analysis "result[ed] in his time loss benefits being terminated and the claim closed." *Id.* However, a candid restatement of the relevant facts make it clear that the revocation of the Petitioner's time loss benefits and closure of his claim were no injustice, but necessary and proper.

The Petitioner insinuates that the reason Dr. Earle approved the job analysis for truck driver, two months after not approving it, is because Dr. Earle had some animosity or unprofessional motive. The Court of Appeals, however, properly noted: "After viewing surveillance footage showing Beck doing extensive home renovation work without any signs of pain, Dr. Earle concluded that Beck was capable of at least medium-level work." *Beck*, 2017 Wash. App. LEXIS 1230 at *4.

Dr. Earle approved the job analysis "two months later" because he viewed surveillance video of the Petitioner doing things that were apparently inconsistent with the representations that had been made to Dr. Earle prior. Dr. Earle changed his opinion and approved the job analysis because that is what the evidence demanded. The Petitioner's insinuations otherwise lack merit and candor. In no universe does Dr. Earle's approval of the job analysis amount to a colorable basis for the Superior Court to create an exception to the compulsory attending physician instruction given as Jury Instruction No. 5.

Lastly, in trying to argue that the Superior Court erred by giving the attending physician instruction for Dr. Earle's testimony, the Petitioner engages in a "David and Goliath" fallacy. The Petitioner leads off with the conclusory and wholly unsupportable proclamation that he was "an injured worker *unable to return to work because of his injury*, going up against a large national corporation." Petition at 11. Emphasis added. The Petitioner's hyperbole continued, "Mr. Beck had one medical expert...and he should not be put on unequal footing by giving Dr. Earle the benefits of the attending physician instruction." *Id.*

The Claimant is arguing that giving the attending physician instruction to the Jury for Dr. Earle's testimony was *legal error* because he was only able to pin down one physician that would support his pursuit of a pension, and because it is a national corporation that he seeks to fund

his unwarranted pension. Indeed, the Petitioner insists that he be given special treatment under established law, despite the fact that he is capable of extensive home renovations, "normal function and physical activity," "moving easily and smoothly without any apparent significant pain or obvious deficits of motion or strength." The Petitioner's argument is beyond the pale, and utterly lacks merit. As such, the Petitioner's litigation strategy and the nature of the Respondent's business structure do not amount to legal error for providing the attending physician instruction when an attending physician testified; regardless of whom his or her testimony favors.

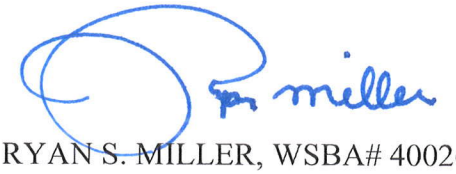
The Petitioner's arguments against the attending physician instruction appear to stem from his position that the attending physician instructions are mandatory if they benefit claimants, and are an abuse of the Superior Court's discretion if the testimony supports the Employer's defense. This position is manifestly unjust and unmoored from existing law.

VI. CONCLUSION

The Respondent respectfully requests the Court to deny the Petition for Review for the reasons stated above. The Department of Labor & Industries, the Board of Industrial Insurance Appeals, the Superior Court of Cowlitz County, and the Court of Appeals have all rejected the Petitioner's persistent demands for further benefits under this

claim. Jury Instruction No. 5 being properly given to the jury never prejudiced the Petitioner, and the Court of Appeals decision should therefore remain undisturbed.

RESPECTFULLY SUBMITTED this 18 day of July, 2017.



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INSTRUCTION NO. 5

You should give special consideration to testimony given by an attending physician. Such special consideration does not require you to give greater weight or credibility to, or to believe or disbelieve such testimony. It does require that you give any such testimony careful thought in your deliberations.

STATE OF WASHINGTON
COWLITZ COUNTY SUPERIOR COURT

NEIL R. BECK, Plaintiff, v. GLACIER NORTHWEST, INC., Defendant.	NO. 15-2-00691-7 JUDGMENT AND ORDER **Clerk's Action Required**

JUDGMENT SUMMARY (RCW 4.64.030)

1. Judgment Creditor:	Glacier Northwest, Inc.
2. Judgment Debtor:	Neil R. Beck
3. Principal Amount of Judgment:	$0
4. Interest to Date of Judgment:	$0
5. Statutory Attorney Fees:	$0
6. Costs:	$0
7. Other Recovery Amounts:	$0

8. Principal Judgment Amount shall bear interest at 0% per annum.

9. Attorney Fees, Costs and Other Recovery Amounts shall bear Interest at 12% per annum.

10. Attorney for Judgment Creditor:	Ryan Miller
11. Attorney for Judgment Debtor:	Steven Busick

This matter came on regularly for jury trial on May 3, 2016 before the Honorable Stephen M. Warning, a judge in the above-entitled Court. The Plaintiff was represented by Steven Busick; the Defendant was represented by Ryan Miller. A six-person jury was impaneled and sworn to try the cause, and evidence in the form of the Certified Appeal Board Record was read to the jury. Arguments of counsel were made, the Court instructed the jury, and the jury retired to consider its verdict. Thereafter, the jury returned as its verdict the following answers to the following questions:

THOMAS G. HALL & ASSOCIATES
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Appendix B

QUESTION NO. 1:

Was the Board of Industrial Insurance Appeals correct in determining that Mr. Beck was not temporarily totally disabled from June 15, 2009 through April 13, 2011?

ANSWER: YES

QUESTION NO. 2:

Was the Board of Industrial Insurance Appeals correct in determining that Mr. Beck was not temporarily totally disabled from December 4, 2012 through May 9, 2013?

ANSWER: YES

QUESTION NO. 3:

Was the Board of Industrial Insurance Appeals correct in determining that Mr. Beck did not require proper and necessary treatment as of May 10, 2013 for any condition proximately caused by his May 17, 2005 industrial injury?

ANSWER: YES

QUESTION NO. 4:

Was the Board of Industrial Insurance Appeals correct in determining that Mr. Beck was not permanently totally disabled as of May 10, 2013?

ANSWER: YES

JUDGMENT AND ORDER

No post-trial motions having been interposed, and the court being fully advised, NOW, THEREFORE,

THOMAS G. HALL & ASSOCIATES
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IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the May 26, 2015 Decision and Order is hereby AFFIRMED. The Department of Labor & Industries Order dated May 10, 2013 is hereby AFFIRMED.

DONE IN OPEN COURT this 23 day of June, 2016.

JUDGE STEPHEN M. WARNING

RYAN MILLER
WSBA # 40026
Attorney for Plainiff

STEVEN BUSICK
WSBA # 1643
Attorney for Defendant
(Approved To Form, Notice of Presentation Waived)

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NO. 94659-1

THE SUPREME COURT OF THE STATE OF WASHINGTON

NEIL R. BECK, Petitioner, v. GLACIER NORTHWEST, INC. and DEPARTMENT OF LABOR & INDUSTRIES, Respondents.	CERTIFICATE OF SERVICE

I certify under penalty of perjury that I filed with the Supreme Court of the State of Washington and caused to be served to the parties below on this day the documents referenced herein, in the manner indicated:

DOCUMENTS: Respondent's Response to Petitioner's Petition for Review to the Supreme Court of Washington; and Certificate of Service

ORIGINAL: *via electronic-filing, Appellate Portal, per Clerk's Office rules*

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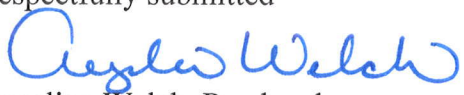
DATED this 18th day of July, 2017, at Seattle, Washington.

Respectfully submitted



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July 18, 2017 - 10:19 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	94659-1
Appellate Court Case Title:	Neil Beck v. Glacier Northwest, Inc.
Superior Court Case Number:	15-2-00691-7

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