

RECEIVED BY CLERK
SUPREME COURT AUG 12 2010

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

20100156

JLY Transport Inc.)
)
 Appellant,)
)
 vs.)
)
 NORTH DAKOTA)
 WORKFORCE SAFETY & INSURANCE)
 FUND,)
)
 Appellee,)
)
 JOHN HOLMGREN,)
)
 Respondent.)

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

AUG 11 2010

STATE OF NORTH DAKOTA

APPEAL FROM THE ORDER ON ADMINISTRATIVE APPEAL & SPECIFICATION OF
ERROR DATED APRIL 20, 2010; ORDER FOR JUDGMENT AND JUDGMENT DATED
APRIL 22, 2010, CASS COUNTY DISTRICT COURT - EAST CENTRAL JUDICIAL
DISTRICT

THE HONORABLE WADE L WEBB, PRESIDING
CASS COUNTY CIVIL NO.: 09-09-C-03335
SUPREME COURT CIVIL NO.: 2010 0156

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

	PAGE
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES CITED.	ii
REPLY BRIEF	1
CERTIFICATE OF SERVICE.	3

TABLE OF AUTHORITIES CITED

	PAGE
STATUTES	
N.D.C.C., Section 65-04-17.	2
N.D.C.C., Section 65-04-19.1.	2

Appellant JLY Transport, Inc., offers this brief reply.

Appellee North Dakota Workforce Safety & Insurance has misstated the record in a couple of important respects: WSI stated that:

James Yantzer admitted on cross-examination that the failure of the truck to 'lock' was different than a problem with the air bag controlling the seat's ride. (App. 95) He also admitted that he did not direct Trucks of Bismarck, Inc. to inspect the air bag under the driver's seat (Id.) Thus, the inspection performed by Trucks of Bismarck, Inc. did not rule out a malfunction in the air ride seat as described by Holmgren.

Appellee Brief paragraph 21.

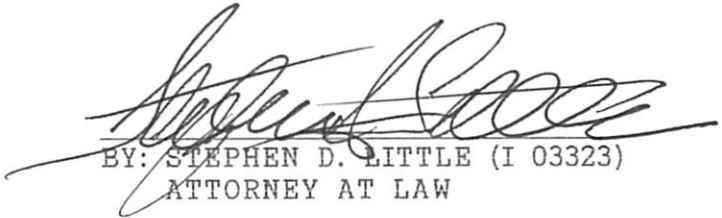
Mr. Yantzer actually testified that, pursuant to his instructions, Trucks of Bismarck, Inc., had checked "everything on the seat" and that, "I did not specifically tell them to check the air bag because the air bag is part of the seat and they checked all mechanisms of the seat" (App. p. 95). WSI also neglected to mention that Mr. Yantzer and two independent drivers had driven the truck used by Mr. Holmgren and had found nothing wrong with the seat (App. p. 31). Furthermore, none of the drivers who drove the truck after Mr. Holmgren had any complaints about the seat or airbag not working properly (App. p. 114).

WSI also stated that, "ALJ Thomas further found that Holmgren's back pain started within a few weeks of his beginning his employment with JLY, and he had not previously experienced similar low back symptoms" (WSI brief paragraph 18; citing App. 55 at Finding of Fact 2). Actually, the ALJ found that, "According to Holmgren, he had not previously experienced any back, joint, or muscle problems. The back pain started within a few weeks of this employment with J.L.Y." (emphasis added). (App. 55 at Finding of Fact 2, citing C.R. 19 (August 5, 2008, letter from John Holmgren to WSI)).

Finally, JLY Transport, Inc., does not challenge WSI's authority to settle disputed claims, merely its saddling JLY Transport, Inc., with the cost of that settlement. As pointed out in Appellant's main brief, there is no legal authority for WSI to use an employer's premium account for anything but a compensable injury. See: N.D. Cent. Code, Section 65-04-17 and 65-04-19.1.

Dated this 11th day of August, 2010.

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CERTIFICATE OF SERVICE

I, Stephen D. Little, certify that on the 11th day of August, 2010, a true and correct copy of the Appellant's Reply Brief and attached Certificate of Service were mailed to the following:

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