July 28, 2009

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Letter Decision and Order

Richard L. Travis
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RE: HF No. 141, 2006/07 – Timothy Andrews v. Ridco, Inc. and Twin City Fire Insurance, Hartford Accident and Indemnity Company and Intracorp.

Dear Mr. Koehn and Mr. Travis:

Submissions:

This letter addresses the following submissions by the parties:

March 6, 2009	Claimant's Motion for Summary Judgment on Issues Relating to Claims for Payment of Medical Charges of Patrick Clinch, D.C., and High Plains Physical Therapy;
	Claimant's Brief in Support of Claimant's Motion for Summary Judgment on Issues Relating to Claims for Payment of Medical Charges of Patrick Clinch, D.C., and High Plains Physical Therapy;
	Statement of Undisputed Material Facts:
April 3, 2009	Claimant's Motion to compel and Brief in Support of Claimants Motion to Compel Discovery Responses of Employer and Insurer and Claimant's Petition and Brief in support of Petition fro Declaratory Ruling as to Discovery Requests to Insurer:.
May16 2009	Employer and Insurer's Response to Claimants Motion to Compel;
May 15, 2009	Employer's and Insurer's Response to Claimant's Statement of Undisputed Material Facts;

	Affidavit of Richard L. Travis;
	[Employer's and Insurer's} Brief in Opposition to Claimant's Motion for Partial Summary Judgment;
May 21, 2009	Claimants Brief in Reply to Employer's and Insurer's Response to Claimant's Motion to Compel;
June 3, 2009	Claimant's Reply Brief Re: Motion for Summary Judgment on Issues Relating to Claims for Payment of Medical Charges of Patrick Clinch, D.C., and High Plains Physical Therapy;
	Claimant's Reply to Defendants' Response to Claimant's Statement of Undisputed Facts; and
	Affidavit of Mark A. Koehn.

Facts:

This letter addresses the following submissions by the parties and related facts:

1. Timothy Andrew (Andrews or Claimant) was injured on Friday, March 4, 2005. Claimant alleges that the injury was work related. At the time of this injury, Andrews was employed by Ridco, Inc. (Ridco or Employer) who was insured by Twin City Fire Insurance Company, Hartford Accident and Indemnity Company (Hartford or Insurer).

2. On March 7, 2005, Andrews presented himself at the Medical Arts Clinic, where he was seen by Jeanie M. Lembke, M.D. Andrew complained of pain in his neck, right shoulder and wrist.

3. Dr. Lembke referred Andrews to Clark C. Duchene, M.D., of Black Hills Orthopedic & Spine, who saw Andrews on March 21, 2005.

4. On March 21, 2005, Dr. Duchene prescribed physical therapy for Andrews to instruct Claimant on a home exercise program and informed Andrews that he could continue to see a chiropractor if he found such treatment to be beneficial.

5. Dr. Duchene did not schedule a follow-up appointment with Andrews. However, Duchene agreed to see Claimant on an "as needed basis".

6. Andrews saw chiropractor, Patrick Clinch, D.C., later that same day, March 21, 2009, and continued to treat with him in connection with his March 4, 2005 injury.

7. The case manager, Intracorp, assigned Kathylyn Ballard (Ballard), to Andrews' claim on April 6, 2005. On that same day Intracorp's case manager spoke with Ridco's employer representative, Brian Olson.

8. On April 6, 2005, Intracorp's records indicate that Ballard attempted to contact Andrews' chiropractic care provider, Patrick Clinch, D.C.; and on the following day, Ballard noted in a summary of a telephone conversation with Andrews that "Care is being provided by Dr. Clinch".

9. On April 6, Ballard also requested by letter that Dr. Clinch provide her with medical records "from the date of injury, 03/10/05 to present."

10. On April 6, 2009, a managed care representative (presumably, Ballard) spoke with Andrews over the phone and noted following that call: "Care is being [p]rovided by Dr. Clinch".

11. Dr. Clinch ordered that Andrews be seen by High Plains Physical Therapy on April 25 and 27, 2005.

12. Ballard's 05/09/05 Progress Report noted that on May 1, 2005, she "[r]eviewed letter from Dr. Clinch which indicated that IW has been treating with him since 3/21 and that the entire file is to[o] large to fax so they will be mailing file to [telephonic case management]"; the 05/09/05 report also notes that "IW is still treating with Dr. Clinch DC."

13. On May 2, 2005, Andrews was released to a return to work by Dr. Clinch but was limited to light work with no use of his hands for repetitive grasping, manipulation, or "Pushing & Pulling."

14. On May 2, 2005, an Intracorp case manager sent a letter to Dale Anderson, M.D., seeking to schedule an appointment for a "second opinion with option to treat".

15. When Andrews was informed that an appointment had been set with Dr. Dale Anderson, Andrews informed Ballard that he had a personal conflict with Anderson.

16. In light of Andrews' personal conflict with Dr. Dale Anderson, Ballard contacted the Hartford adjustor on the file, Nicole Heglin:

> 5/12/05
> PC [Phone Call] to adjustor discussed IW refusing to see Dr. Anderson [Telephonic Case Management] will contact Black [H]ills Ortho for appt and request visit notes from 3/21/05.

17. On May 12, 2005, Ballard contacted Black Hills Orthopedic & Spine, scheduling Andrews to be seen by Dr. Duchene on May 19, 2005.

18. On May 13, 2005, the on site case manager, Klara Parks reviewed medical records from Andrews' March 21, 2005, appointment with Dr. Duchene and after discussing the matter with Ballard, recommended canceling the appointment with Dr. Duchene in favor of an appointment with a physiatrist.

19. On May 16, 2005, Intracorp received permission from Heglin to cancel the appointment with Dr. Duchene and schedule an appointment with a physiatrist; later that day, an appointment was made for Andrews to be seen on May 27, 2005, with Brett Lawlor, M.D., of the Rehab Doctors.

20. On May 20, 2005, Ballard received a telephone call from Bonnie Ackerman of the South Dakota Department of Labor, who had presumably been contacted by Andrews and sought help in determining the status of his case. Intracorp records indicate the following:

> 5/20/2005
> PC from DOL---Bonnie A. discussed that IW was initially treated at Medical Art Clinic w[h]ere he was referred to BHOS center and was seen Dr. Duch[ene] IW as instructed to attend 1-2 session of therapy and to be instructed on home program---IW did attend therapy appt and the[n] went to chiro---IW states that Dr[.] Duch[e]ne said that this was ok but Dr. Duch[e]nes visit notes from [3/21/05] do not reflect referral to chiro---Also Dr. Duch[e]ne does not indicate[ ] that IW is to be off work---so adjustor has D/C'd TTD wages. TCM has been instructed to forward notes if IW gets referral from Dr. Duch[e]ne[.]

21. Dr. Duchene provided a letter dated June 2, 2005. The letter from Dr. Duchene states the following:

> Mr. Andrews has seen me for right shoulder pain and scapular dyskinesis. I originally saw him on March 21, 2005. At that point I informed him that he could continue chiropractic care if that was beneficial. He has attempted to do that and apparently there has been some trouble in getting this approved. I did inform him on March 21, 2005, that he could continue to see a chiropractor if he found that beneficial.

22. After an examination by Dr. Lawlor, he ordered additional studies for June 22, 2005, and a follow-up for June 24, 2005. Dr. Lawlor also noted that "[i]n the interim, we will have him remain off work and will reevaluate after his studies."

23. On June 9, 2005, Parks documented a voice mail message from Andrews' significant other, Brenda. Parks noted:

6/9/2005
Detailed voice message left by Brenda, Mr. And[rews'] significant other, stating they want denial letters for the Medical Arts visit and for Dr. Clinch's visits. They state[ ] they are very concerned regarding reinstatement of TPD payments and payment for Dr. Clinch's visits.

24. Parks' contacted the Hartford adjustor, Nicole Heglin. Parks records noted:

6/10/2005
Very detailed message left for Ms. Heglin to phone CM regarding case progress, Mr. Andrews request for denial letters for Dr. Lembke visit, High Plains PT visit, chiropractic visits, and TPD payments. Request return call.

25. On June 13, 2005, Parks received and reviewed Dr. Duchene's June 2, 2005, letter:

6/13/2005
Received and reviewed letter from Dr. Clark Duchene dated 6/2/05. This letter clearly states that Dr. Duchene informed Mr. Andrews that he could continue chiropractic treatment if he felt it was beneficial.

26. On June 14, 2005, Parks documented that the information contained in Duchene's June 2, 2005, letter had been faxed to Nicole Heglin.

27. On June 15, 2005, having received a copy of Dr. Duchene's letter, the Department of Labor's (DOL) Bonnie Ackerman sent a letter to Heglin of the Hartford asking "will you be accepting responsibility for chiropractic services provided by Dr. Patrick Clinch," and gave the Hartford ten (10) days to respond. Hartford did not respond to Ackerman's letter.

28. Following a set of EMG's administered at Dr. Lawler's office on June 22, 2005, Dr. Lawlor modified Andrews' work restrictions to allow 'include a maximum lift of 10 pounds. He needs to change position from sitting to standing and walking every 30 minutes as necessary and limit cervical flexion and overhead activity to an occasional basis."

29. On June 24, 2005, Andrews was seen in follow-up by Dr. Lawlor, whose note regarding this visit indicates that he "spent a considerable amount of time with Mr. Andrews outlining, again, the diagnosis and treatment options, including oral medication, physical therapy, chiropractic treatment, and surgery."

30 Dr. Lawlor also, noted that the physical therapist providing the treatments he ordered on June 22, 2005, should "coordinate tx [treatments] w/ Dr. Clinch."

31. The last work restriction issued by Dr. Clinch, dated July 1, 2005, allowed light work but specifically recommended no repetitive use of his hands whatsoever.

32. Andrews did not report to work for a job sorting boxes because he concluded that Dr. Clinch's work restrictions precluded him from sorting boxes.

33. Andrews was terminated by his employer on or about July 5, 2005, for refusing to report to work for a job sorting boxes.

34. On July 27, 2005, Lawlor noted that Andrews was suffering from a neck herniation and myofascial pain.

35. Dr. Clinch's medical treatment invoices for those treatments between March 21 and April 6, 2005, total $613.83.

36. Dr. Clinch's medical treatment invoices for the treatments provided to Andrews between April 6 and June 8, 2005, totaling $751.11.

Motion for Summary Judgment

Andrews filed a Motion for Summary Judgment on Issues Relating to Claims for Payment of Medical Charges of Patrick Clinch, D.C., and High Plains Physical Therapy, ARSD 47:03:01:08 governs the Department of Labor's authority to grant summary judgment:. That regulation states

> ARSD 47:03:01:08. A claimant or an employer or its insurer may, anytime after expiration of 30 days from the filing of a petition, move with supporting affidavits for a summary judgment. The division shall grant the summary judgment immediately if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

The party seeking summary judgment bears the burden of demonstrating the lack of any genuine issue of material fact, and all reasonable inferences from the facts are viewed in the light most favorable to the non-moving party. *Railsback v. Mid-Century Ins. Co.*2005 SD 64, ¶6, 680 N.W.2d 652, 654.

In this case, Ridco and Hartford's opposition to Andrew's motion is grounded in three arguments. First, Dr. Duchene did not refer Claimant for chiropractic treatment with Dr. Clinch and such treatment was not reasonable or necessary. Second, Intracorp is not an agent of Hartford and had no authority to authorize or approve any of Claimant's treatments. Third, the treatment provided by High Plains Physical Therapy was not proscribed by an authorized treating physician.

Ridco and Hartford's first argument, that Dr. Duchene did not refer Andrews to Dr. Clinch, stems from the language found in SDCL 62-4-43. That statute states in part:

SDCL 62-4-43. The employee may make the initial selection of the employee's medical practitioner or surgeon from among all licensed medical practitioners or surgeons in the state. The employee shall, prior to treatment, notify the employer of the choice of medical practitioner or surgeon or as soon as reasonably possible after treatment has been provided. The medical practitioner or surgeon selected may arrange for any consultation, referral, or extraordinary or other specialized medical services as the nature of the injury shall require. The employer is not responsible for medical services furnished or ordered by any medical practitioner or surgeon or other person selected by the employee in disregard of this section. … If the employee desires to change the employee's choice of medical practitioner or surgeon, the employee shall obtain approval in writing from the employer. An employee may seek a second opinion without the employer's approval at the employee's expense.

[emphasis added].

Workers' compensation statutes are to be "'liberally construed in favor of injured employees.'" Orth v. Stoener & Permann Construction, Inc., 2006 SD 99, ¶43, 724 NW2d 586; Vaughn v. John Morrell & Co., 2000 SD 31, ¶33, 606 NW2d 919, 925 (quoting Welch v. Automotive Co., 528 NW2d 406, 409 (SD 1995)).

During Dr. Duchene's March 21, 2005 examination of Andrews, Duchene informed the Claimant that he could continue to see a chiropractor if he found such treatment to be beneficial. Again in a letter dated June 2, 2005, Dr. Duchene stated twice that he informed Andrews on March 21, 2005, that he could see a chiropractor. This emphasis in Duchene's letter indicates that Duchene intended to authorize Dr. Clinch to provide a specialized medical service as the nature of Andrews injury required. When a physician refers a patient to a chiropractor, authorization may be the only arrangements that the physician can make. While Duchene's authorization may not have contained the formality of the referrals with which the Insurer was familiar, Duchene's actions do fall within the scope of the SDCL 62-4-43 when the statute is construed liberally in favor of the injured party.

Ridco and Hartford also argue that the chiropractic treatments that Dr. Clinch provided were not reasonable or necessary. However, the evidence presented indicates the contrary. Dr. Duchene apparently believed that chiropractic treatments were reasonable when he informed Andrews that he could seek chiropractic care. Likewise, Dr. Lawlor listed chiropractic treatments as a medical option in this case. In addition, the physical theory prescribed by Dr. Clinch was not inconsistent with that ordered by both Duchene and Lawlor.

On the other hand, Employer and Insurer have furnished not evidence that the chiropractic treatments were not reasonable or necessary. While the evidence in summary judgments must be viewed most favorably to the nonmoving party, the "nonmoving party… must present specific facts showing that a genuine, material issue

for trial exists." Saathoff v. Kuhlman, 2009 SD 17, ¶11; Pellegrino v. Loen, 2007 SD 129, ¶13, 743 NW2d 140, 143. In this case, Employer and Insurer failed to do so.

Dr. Duchene authorized Dr. Clinch's treatments. Consequently, the question posed by Employer and Insurer's second argument, whether Intracorp is an agent of Hartford capable of authorizing chiropractic treatments, need not be considered.

Employer and Insurer's third argument, that the treatment provided by High Plains Physical Therapy was not proscribed by an authorized treating physician, also fails in light of the above determination. Clinch was authorized to treat Andrews. Consequently, the physical therapy proscribed by him is also authorized.

Motion to Compel:

Claimant has filed a Motion to Compel Discovery Responses. Discovery in South Dakota workers' compensation cases is governed by SDCL 1-16-9.2. That statute states: specifically governs discovery and provides:

> SDCL 1-16-19.2. Each agency and the officers thereof charged with the duty to administer the laws and rules of the agency shall have power to cause the deposition of witnesses residing within or without the state or absent therefrom to be taken or other discovery procedure to be conducted upon notice to the interested person, if any, in like manner that depositions or witnesses are taken or other discovery procedure is to be conducted in civil actions pending in circuit court in any matter concerning contested cases.

SDCL 15-6-26(a) provides the available discovery methods. That statute states:

> SDCL 15-6-26(a). Parties may obtain discovery by one or more of the following methods:
>
> > Depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise under § 15-6-26(c), the frequency of use of these methods is not limited.
>
> SDCL 15-6-26(b) governs the scope of discovery, and provides:
>
> (1) In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of

persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Insurance agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) Trial preparation: materials. Subject to the provisions of subdivision (4) of this section, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (1) of this section and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including such other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of subdivision 15-6-37(a)(4) apply to award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial preparation: experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(ii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (4)(C) of this section, concerning fees and expenses as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in § 15-6-35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (4)(A)(ii) and (4)(B) of this section; and (ii) with respect to discovery obtained under subdivision (4)(A)(ii) of this section the court may require, and with respect to discovery obtained under subdivision (4)(B) of this section the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(5) Claims of Privilege or Protection of Trial Preparation Materials. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

The South Dakota Supreme Court has stated:

> Discovery rules are designed "to compel the production of evidence and to promote, rather than stifle, the truth finding process." Magbuhat v. Kovarik, 382 N.W.2d 43, 45 (S.D.1986) (citing Chittenden & Eastman Co. v. Smith, 286 N.W.2d 314, 316 (S.D.1979)). The purpose of workers' compensation is to

provide for employees who have lost their ability to earn because of an employment-related accident, casualty, or disease. Rawls v. Coleman-Frizzell, Inc., *2002 SD 130, ¶ 19, 653 N.W.2d 247, 252* (citing *Sopko v. C & R Transfer*.

Dudley v. Huizenga, 2003 SD 84, ¶ 11, 667 NW2d 644. 648.

Claimant has requested the production of various documents and the answer to interrogatories to which Employer and Insurer has objected or Claimant believes the response was insufficient. Those items will be addressed in turn.

Request for Production No, 4:

Please provide the entire claims file pertaining to Timothy Andrews' workers' compensation claims stemming from his work related injury(variously identified in Ridco, Inc.'s first report of injury documents as 03-04-05, 03-07-05, and03-10-05.

Response:

Insurer objects to the forgoing Request for Production on the grounds that it is overbroad, burdensome, seeks information that is privileged as attorney work product, seeks to invade the attorney/client privilege, seeks information prepared in anticipation of litigation, irrelevant to any issue currently pending before the Department of Labor, and is not reasonably calculated to lead to the discovery of admissible evidence.

Decision:

Claimant's request for the production of the claims file is granted. Insurer shall prepare a chronological index of Claimant's claim file. The index shall briefly describe and identify each item therein, the date of each item, whether Insurer objects to the discovery of the item, and if so, the specific objection to each item with accompanying notations if needed. A copy of the index and the items to which Insurer does not object shall be provided to Claimant. A copy of the index and those item to which the Insurer objects shall be provided to the Department of Labor for an in camera review of those documents and later determination..

Interrogatory No. 1:

This interrogatory follows up on your response to Claimant's First Requests for Admission to Twin City Fire Insurance Company. In your response to Request No, 13 of those First Requests for admission, you denied that "Insurer failed to respond to any of Claimant's requests for review and reversals of Insurer's various denials of treatment, benefits, and medical invoice payments, which requests are dated August 18, 2005, September 6, 2005, and October 7, 2005.

Please identify below each and every response to the request set forth by Claimant in the above referred letters (i.e., Claimant's letters of 8-18-05, 09-06-05, and 10-07-05,

copies of which re attached to Claimant's First Request s for Admission to Twin City Fire Insurance Company as exhibit 5).

Answer:

Objection. This interrogatory seeks information that is irrelevant to any issue currently pending before the Department of Labor, and is not reasonably calculated to lead to the discovery of admissible evidence.

Decision;

Claimant's request for response is granted. The denials outlined above and grounds for those denials are relevant in this case. The information requested in this interrogatory shall be provided to the Claimant.

Request for Production No. 1:

Please provide a copy of each document you contend constitutes either a letter of denial or documentation of denial regarding each and every workers' compensation benefit requested by or belonging to Timothy Andrews for the date of injury (03-04-05) to the present date.

Response:

See Exhibit 1. [Note: The Hartford Exhibit 1 consists of a single (04/11/06 fax cover sheet from Nicole Heglin (Hartford)to Brett Lawlor, M.D., informing Dr. Lawlor that the Hartford would not authorize any further medical treatment of Timothy Andrews (by Dr. Lawlor) after the scheduled 12/04/06 appointment. –MAK]

Decision:

Claimant request for additional documents is denied. Employer and Insurer appear to have complied with the request and are under a continuing obligation to provide any newly discovered documents. ARSD 47:03:01:05.01.

Interrogatory No. 3:

In your response to Request 19 of the Claimant's Second Requests for Admission to Twin City Fire Insurance Company/Hartford Accident & Indemnity Company you had, as of the date of that discovery request, made no response to Claimant's request for SDCL 62-4-5 Vocational Rehabilitation benefits, and you based that denial on a reference to Answer of Employer and Insurer to Claimant's Petition fro Hearing.

Please identify the location in your Answer where you respond to Claimant's Vocational Rehabilitation Benefits request.

Answer:

See the Answer, paragraph 2.

Decision:

Claimants request for the Department to order an admission is denied. Employer and Insurer have responded to both the admission and the interrogatory.

Request for Production No. 15:

A complete copy of the insurance agreement between Employer and Insurer(s) in effect at the time of Claimant's injuries to which this proceeding relates, along with any and all amendments, supporting documents and side agreements relating to such insurance agreement(s) specifically including documentation pf Employer's deductible liability.

Response:

Objection. This Request for Production seeks information that is irrelevant to any issue currently pending before the Department of Labor and is not reasonably calculated to lead to the discovery of admissible evidence.

Decision:

Claimant' request for production of the insurance agreement is granted. See, SDCL 15-6-26(b)(2). Employer and Insurer shall provide Claimant with a copy of the insurance agreement and related documents.

Request for Declaratory Rulings

Claimant filed a Petition for Declaratory Ruling in this case. ARSD 47:01:01:04 provides that the Secretary of Labor set a date for hearing at which the facts related to the issues can be ascertained when a Petition for Declaratory Ruling is filed.

A Petition for Hearing and Answer have already been filed in this case. The issues raised in Claimant's Petition for Declaratory Ruling can be adequately addressed through the hearing and prehearing motion process already initiated. Therefore, Claimant's Petition for Declaratory Ruling is denied.

Order

In accordance with the above analysis, Claimant's Motion for Summary Judgment on Issues Relating to Claims for Payment of Medical Charges of Patrick Clinch, D.C., and High Plains Physical Therapy is granted. Claimant has shown that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Insurer shall pay for the medical services provided by Dr. Clinch's and

High Plains Physical Therapy since Dr. Duchene's March 21, 2005, authorization for Claimant's work-related injuries. Insurer shall also pay Claimant interest on these medical expenses.

Claimants Motion to Compel Discovery Responses of Employer and Insurer is granted in part and denied in part. Employer/Insurer shall provide the response to Interrogatory 1 and produce as directed the documents requested in Requests for Production 4 and 15 within 30 days of this order.

Claimant's Petition for Declaratory Ruling is denied. This letter shall constitute the Department's Order in this matter

Sincerely,

____
Donald W. Hageman
Administrative Law Judge