



LABOR & MANAGEMENT DIVISION
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November 10, 2021

J. G. Shultz
Woods, Fuller, Shultz & Smith, PC
P.O. Box 5027
Sioux Falls, SD 57117-5027

DECISION ON MOTION TO COMPEL

Seamus W. Culhane
Turbak Law Office, PC
26 S. Broadway, Suite 100
Watertown, SD 57201-3670

RE: HF No. 52, 2019/20 – State Auto Insurance Companies v. Eric Meyer; HF 53, 2019/20 – State Auto Insurance Companies v. Aaron Hansen

Dear Mr. Shultz and Mr. Culhane:

This letter addresses Eric Meyer (Meyer/Claimant) and Aaron Hansen's (Hansen/Claimant) Motion to Compel submitted to the Department of Labor & Regulation (Department) on August 31, 2021. All responses have been taken into consideration. Meyer and Hansen have indicated that they combined the current motion into a single submission for both files to save time and paper. However, the Department denied their Motion to Consolidate Actions on January 13, 2021. To avoid confusion, and additional delay, the Department will consider the current combined Motion. Going forward, the matters of Meyer and Hansen must be presented separately to the Department as they are separate files.

On and before February 21, 2019, Meyer and Hansen were employed by Meyer & Associates, Inc which was at all times relevant provided workers' compensation

insurance coverage by State Auto Insurance Company (Insurer). Meyer and Hansen were involved in an automobile accident which resulted in their injuries. Insurer paid for medical expenses and disability benefits associated with the injuries. On November 12, 2019, Insurer submitted the current Petition for Hearing alleging that the Claimants' injuries are not compensable work injuries under South Dakota Workers' Compensation law. The Petition further alleged that the Claimants were not in the course and scope of employment at the time of the accident, and Insurer is entitled to recover benefits it has paid or will pay in this matter.

Meyer and Hansen move to compel Insurer to provide answers to the following interrogatories and requests for production:

Interrogatory 1.) Identify all persons who have been involved in the decision(s) whether to pay Eric Meyer and Aaron Hansen workers' compensation claims and anyone involved in the determination of the amount of any benefits paid to date. For each person, state their name, address, employer's name and address, job title, and experience involving workers' compensation claims.

Interrogatory 2.) Identify all persons who have information regarding the compensability of workers' compensation benefits for Eric Meyer and Aaron Hansen.

Interrogatory 10.) What amount of money are you seeking in repayment from Eric Meyer through your action under SDCL Title 62?

Interrogatory 12.) What amount of money are you seeking in repayment from Aaron Hansen through your action under SDCL Title 62?

Request for Production 2.) Produce true and correct copies of any and all claims for payment or reimbursement by any entity involving Eric Meyer or Aaron Hansen.

Request for Production 3.) Produce true and correct copies of any and all evidence of payment to any entity involved in the care of Eric Meyer and Aaron Hansen.

Request for Production 4.) Produce true and correct copies of all home modification reports obtained regarding Eric Meyer's injury and workers' compensation claim.

Request for Production 6.) Produce true and correct copies of all correspondence between you and Paradigm, or anyone acting on Paradigm's behalf regarding either or both Eric Meyer and Aaron Hansen's workers' compensation claims.

Request for Production 7.) Produce true and correct copies of all agreements between you and Paradigm that involve Eric Meyer, Aaron Hansen, or the way, method, costs, and charges associated with Paradigm's involvement in either claimant's workers compensation claim.

Request for Production 9.) Produce true and correct copies of all correspondence between you and any health care provider for Eric Meyer or Aaron Hansen whether be directly through you or through a 3rd party claim handling or nursing service.

Request for Production 10.) Produce true and correct copies of all billings associated with the involvement of any third-party claim handling service or nursing service who have been involved in either or both Eric Meyer and Aaron Hansen Health Care or Worker's Compensation claim.

Insurer asserts that the materials the Hansen and Meyer seek are irrelevant to the current question of whether the Claimants were in the course and scope of employment at the time of their alleged injuries.

The South Dakota Supreme Court has held "[d]iscovery rules are designed 'to compel the production of evidence and to promote, rather than stifle, the truth finding process.'" *Dudley v. Huizenga*, 2003 SD 84, ¶11, 667 N.W.2d 644, 648 (citations omitted). SDCL 15-6-26(b)(1) provides,

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.

Therefore, discovery requests in this matter must be reasonably calculated to lead to the discovery of evidence that is relevant to whether Claimants' injuries were not in the course and scope of employment at the time of the accident and whether Insurer is entitled to recover benefits it has paid or will pay in this matter.

Interrogatories 1 and 2 are beyond the scope of the issues before the Department. The identification of the parties requested by Interrogatory 1 and 2 would not be able to assert whether the accident occurred during the course of Claimants' employment or whether Insurer is entitled to reimbursement. Nor would their identification lead to information relevant to the current issues. Claimants "must show with adequate specificity that the records are reasonably likely to contain relevant evidence or lead to the discovery of relevant and admissible evidence." *Ferguson v. Thaemart*, 2020 S.D. 69, ¶22, 952 N.W.2d 277 (S.D. 2020) (citations omitted.) Interrogatory 1 and 2 are not discoverable.

Regarding Interrogatories 10 and 12, Insurer provided subrogation logs for medical expenses which reflect the amounts Insurer is seeking in repayment. Therefore, Insurer has sufficiently answered Interrogatories 10 and 12.

Insurer objects to Requests for Production of Documents No. 2, as it is vague and ambiguous, and No. 3 because it is overly broad and burdensome. The Department agrees. Requests for Production No. 2 and No. 3 do not sufficiently meet the requirements of "reasonable particularity" as provided by SDCL 15-6-34(b).

Insurer further objects to Requests for Production of Documents Nos. 4, 6-7, and 9-10 asserting that the request “seeks to discover privileged information prepared in anticipation of litigation which is attorney work product and furthermore seeks to discover the mental impressions and opinions of counsel and is otherwise beyond the scope of SDCL § 15-6-26(b).” Ins. Resp. to Interrog. 11-13. These Requests for Production are not relevant to the issues before the Department and are therefore not discoverable. Home modification reports, third-party claim handling service, communications and/or agreements between Insurer and Paradigm, and correspondence with healthcare providers are not relevant to the matter of whether Claimant’s were within the scope of employment at the time of their accident. Nor are they relevant to whether Insurer is entitled to reimbursement. Requests for Production of Documents Nos. 4,6-7, and 9-10 are not discoverable.

It is hereby ORDERED that Claimants’ Motion to Compel is DENIED. Interrogatories 1, 2, 10 and 12, as well as, Requests for Production 2, 3, 4, 6-7, and 9-10 are not discoverable.

This letter shall constitute the order in this matter.

Sincerely,

A handwritten signature in blue ink that reads "Michelle Faw". The signature is written in a cursive, flowing style.

Michelle M. Faw
Administrative Law Judge