September 22, 2011

Brad J. Lee
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Letter Decision and Order

Catherine M. Sabers
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P.O. Box 8250
Rapid City, SD 57709-8250

RE: HF No. 64, 2010/11 – Lanny L. Roderick v. Irrigation Specialists, Inc. and Midwest Family Mutual

Dear Mr. Lee and Ms. Sabers:

Submissions:

This letter addresses the following submissions by the parties to the Department of Labor and Regulation:

July 15, 2011	Employer and Insurer's Motion for Summary Judgment;
	Employer and Insurer's Brief in Support of Motion for Summary Judgment;
	Affidavit of Catherine M. Sabers in Support of Employer and Insurer's Motion for Summary Judgment;
June 26, 2011	[Claimant's] Memorandum in Opposition to Employer and Insurer's Motion for Summary Judgment;
	Affidavit of Brad J. Lee; and
August 18, 2011	Employer and Insurer's Reply Brief In Support of Motion for Summary Judgment.

Facts:

The material facts of the case are as follows:

1. On May 25, 2006, Lanny L. Roderick (Claimant) suffered work-related injuries when the vehicle he was operating was "rear-ended" by another vehicle.

2. At the time of Claimant's accident, he was employed by Irrigation Specialists, Inc. (Employer) who was insured by Midwest Family Mutual (Insurer) for purposes of worker's compensation. Insurer also covered Employer with an uninsured motorist policy at that time.

3. Following the accident, Claimant settled a claim under Employer's underinsured motorist policy with Insurer.

4. Two relevant provisions of the parties; settlement agreement are stated as follows:

> Larry L. Roderick must expend $85,322.91 on accident-related medical expenses, or become entitled to an equivalent amount of accident-related disability benefits, (which categories of benefits can be combined to determine whether Lanny L. Roderick has satisfied the $85,322.91 credit) before Midwest Family Mutual Insurance Company has any responsibility to pay additional workers' compensation benefits.

and,

> Nothing in this Settlement Agreement and Release shall in any way restrict Lanny L. Roderick's right to seek additional workers' compensation benefits or to file a petition with the South Dakota Department of Labor subject to the credit described above and any other defenses recognized in South Dakota workers' compensation law.

5. To date, Claimant has not accumulated enough medical expenses or entitlement to enough disability benefits to exhaust the $85,322.91 credit created by the parties' settlement agreement.

6. Claimant initiated this action seeking entitlement of permanent total disability benefits under Employer's workers' compensation policy with Insurer.

7. Additional facts may be discussed in the analysis below.

Summary Judgment:

Employer and Insurer have filed a Motion for Summary Judgment. They contend that the settlement agreement that the parties entered into precludes Claimant from proceeding in this case until the $85,322.91 credit referenced therein is exhausted. ARSD 47:03:01:08 governs the Department of Labor and Regulation's authority to grant summary judgment in workers' compensation cases. That regulation provides:

> A claimant or an employer or its insurer may, any time 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.

ARSD 47:03:01:08. 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. "A trial court may grant summary judgment only when there are no genuine issues of material fact." Estate of Williams v. Vandeberg, 2000 SD 155, ¶ 7, 620 N.W.2d 187, 189, (citing, SDCL 15-6-56(c); Bego v. Gordon, 407 N.W.2d 801 (S.D. 1987)). "In resisting the motion, the non-moving party must present specific facts that show a genuine issue of fact does exist." Estate of Williams, 2000 SD 155 at ¶ 7, (citing, Ruane v. Murray, 380 NW2d 362 (S.D.1986)).

In this case, there are no genuine issues of material fact. In addition, the question of whether the settlement agreement bars Claimant from proceeding with this action until Claimant has used the remaining credit on accident related medical expenses can be answered as a matter of law.

Settlement Agreement:

Employer and Insurer base their argument on the settlement language which states that Claimant must expend the $85,322.91 credit "before Midwest Family Mutual Insurance Company has any responsibility to pay additional workers' compensation benefits. " The Department disagrees with Employer and Insurer's conclusion.

Typically, an employer and insurer acquire liability for an injury and the responsibility for paying for that injury at the same moment in time. However, in this case, the credit created by the settlement agreement separated the timing of these events. Employer and Insurer's argument confuses these two events. The agreement only bars Insurer's duty to making additional payments until the credit is exhausted. It does not bar Claimant from seeking entitlement to additional benefits.

Indeed, the agreement states, "Larry L. Roderick must expend $85,322.91 on accident-related medical expenses, or become entitled to an equivalent amount of accident-related disability benefits" before Employer and Insurer "has any responsible to pay additional workers' compensation benefits." This language condones, rather than bars, Claimant's attempt to show additional liability.

In addition, the settlement agreement states, "[n]othing in this Settlement Agreement and Release shall in any way restrict Lanny L. Roderick's right to seek additional workers' compensation benefits …subject to the credit described above. This language is unambiguous; Claimant's case can proceed as a matter of law. If he prevails, the unused portion of the credit must be exhausted before Insurer is required to pay additional sums.

Order:

In accordance with the discussion above, Employer and Insurer's Motion for Summary Judgment is denied. This letter shall constitute the Department's Order in this matter.

Sincerely,

/s/ Donald W. Hageman
Donald W. Hageman
Administrative Law Judge