

June 26, 2008

LETTER ORDER

Raymond Matthews
760 D&R Avenue
Box Elder, SD 57719

sent certified:

Charles A. Larson
Boyce, Greenfield, Pashby, & Welk, L.L.P.
PO Box 5015
Sioux Falls, SD 57117-5015

RE: HF No. 68, 2007/08 – Raymond L. Matthews v. National American University and Travelers Insurance

Dear Mr. Matthews and Mr. Larson:

The Department is in receipt of Employer/Insurer's Motion to Compel Answers to Discovery Requests, Claimant's Response to Employer/Insurer's Motion to Compel Discovery, and Employer/Insurer's Reply to Claimant's Response to Employer and Insurer's Motion to Compel Discovery. Based upon these submissions, Employer/Insurer's Motion is hereby granted.

Employer/Insurer moves the Department pursuant to SDCL 15-6-37(a)(2) for an order compelling Claimant to answer Employer/Insurer's Interrogatories and Request for Production of Documents. Employer/Insurer also seeks its costs and attorney fees incurred in obtaining the discovery order.

This matter is governed by SDCL Title 62, The South Dakota Workers' Compensation Law, and SDCL Chapter 1-26, Administrative Procedures. SDCL 1-16-19.2 specifically governs discovery and provides:

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:

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.

The frequency or extent of use of the discovery methods set forth in § 15-6-26(a) shall be limited by the court if it determines that:

- (A)(i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;
- (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or
- (iii) discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the party's resources, and the importance of the issues at stake in the litigation.

The court may act upon its own initiative after reasonable notice or pursuant to a motion under § 15-6-26(c).

- (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.

Employer/Insurer served Claimant with Interrogatories. Claimant responded to the Interrogatories. Employer/Insurer has made a Motion to Compel Discovery, arguing that Claimant's answers are insufficient. Each Interrogatory in question will be addressed separately.

SDCL 15-6-33 governs Interrogatories to Parties and provides, in part:

SDCL 15-6-33(a):

Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private

corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for the objection and shall answer to the extent the interrogatory is not objectionable. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections, if any, within thirty days after the service of the interrogatories, except that a defendant may serve answers or objections within forty-five days after service of the summons and complaint upon that defendant. A shorter or longer time may be directed by the court or, in the absence of such order, agreed to in writing by the parties. All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown. The party submitting the interrogatories may move for an order under § 15-6-37(a) with respect to any objection to or other failure to answer an interrogatory. A party answering interrogatories must set out the interrogatory immediately preceding the answer thereto.

SDCL 15-6-37(a) provides:

A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

- (1) Appropriate court. An application for an order to a party may be made to the court in which the action is pending. An application for an order to a person who is not a party shall be made to the court in the circuit where the discovery is being, or is to be, taken.
- (2) Motion. If a deponent fails to answer a question propounded or submitted under § 15-6-30 or 15-6-31, or a corporation or other entity fails to make a designation under subdivision 15-6-30(b)(6) or § 15-6-31(a), or a party fails to answer an interrogatory submitted under § 15-6-33, or if a party in response to a request for inspection submitted under § 15-6-34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the

information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

- (3) Evasive or incomplete disclosure, answer, or response. For purposes of this subdivision an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer, or respond.
- (4) Expenses and sanctions.
 - (A) If the motion is granted or if the requested discovery is provided after the motion was filed, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorneys' fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response or objection was substantially justified or that other circumstances make an award of expenses unjust.
 - (B) If the motion is denied, the court may enter any protective order authorized under § 15-6-26(c) and shall, after affording an opportunity to be heard, require the moving party or the attorney filing the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorneys' fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.
 - (C) If the motion is granted in part and denied in part, the court may enter any protective order authorized under § 15-6-26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

Interrogatory 3

State whether you have ever been convicted or pleaded guilty to a crime. If so, state the crime involved, the date of conviction or pleading, and the punishment received.

ANSWER: I am not providing this under my 5th Amendment Rights.

The Fifth Amendment to the United States Constitution provides in full:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Interrogatory 3 seeks relevant information. The Fifth Amendment provides that no person shall be compelled "in any criminal case" to be a witness against himself. This workers' compensation matter is not a criminal case. Claimant has placed his behavior at issue, alleging a change in his personality. Therefore, Claimant is directed to provide a full and complete answer to Interrogatory 3.

Interrogatory 4

State whether you have ever been treated, examined, evaluated, or consulted with a medical practitioner in relation to any body part alleged to be injured in your Petition for Benefits previous to the date of injury alleged in your Petition for Benefits. If so, state the following in regard to each such instance:

- a. The date or dates of treatment;
- b. The nature of the condition and how it occurred or developed;
- c. The name and business address of all medical providers providing treatment, evaluation, examination, or advice in relation to such condition;
- d. Any limitations or restrictions identified by any medical provider in relation to such conditions;
- e. Whether a worker's compensation claim was filed in regard to each such condition. If so, state the name of the employer with whom the claim was filed and whether benefits were paid in regard to the claim;
- f. Whether a claim or lawsuit of any nature was made or filed in regard to each such condition and, if so, the outcome of the claim; and
- g. Whether any impairment or disability rating was assigned in regard to each condition, and, if so, the amount of benefits paid based upon the same.

ANSWER: Objected to as this is intentionally overburdensome and the Attorney(s) already have all of this information.

Interrogatory 4 is not “intentionally overburdensome.” Privacy laws prevent attorneys from gaining all of the required information to answer Claimant’s allegations of injury. Claimant is directed to provide a full and complete answer to Interrogatory 4.

Interrogatory 5

State in detail the facts and circumstances upon which you rely to establish that the injuries alleged in the Petition for Benefits are causally related to your employment. Produce all medical documentation upon which you rely to support your claim.

ANSWER: Objected to as this is intentionally overburdensome and the Attorney(s) already have all of this information.

Interrogatory 5 is not “intentionally overburdensome.” The general rule is that a claimant has the burden of proving all facts essential to sustain an award of compensation. Day v. John Morrell & Co., 490 N.W.2d 720 (S.D. 1992); Phillips v. John Morrell & Co., 484 N.W.2d 527, 530 (S.D. 1992); King v. Johnson Bros. Constr. Co., 155 N.W.2d 183, 185 (S.D. 1967). The claimant must prove the essential facts by a preponderance of the evidence. Caldwell v. John Morrell & Co., 489 N.W.2d 353, 358 (S.D. 1992). Privacy laws prevent attorneys from gaining all of the required information to answer Claimant’s allegations of injury. Claimant is directed to provide a full and complete answer to Interrogatory 5.

Interrogatory 6

State the name of each medical practitioner who has provided treatment, evaluation, examination, or advice in connection with the injury or injuries alleged in your Petition for Benefits. Identify the clinic name and address for each medical practitioner identified and produce all medical records documenting such treatment.

ANSWER: Objected to as this is intentionally overburdensome and the Attorney(s) already have all of this information.

Interrogatory 6 is not “intentionally overburdensome.” Privacy laws prevent attorneys from gaining all of the required information to answer Claimant’s allegations of injury. Claimant is directed to provide a full and complete answer to Interrogatory 6.

Interrogatory 7

Identify in chronological order all jobs, employment, trades, vocations, or businesses you have engaged in, temporary and permanent, full-time and part-

time, before and after the date of injury alleged in your Petition for Benefits. In regard to each, state the following:

- a. The name and address of each employer;
- b. The job title or position held and the duties and responsibilities associated therewith;
- c. The dates you held such job, position, or employment;
- d. The wages or salary received per hour or week, including non-cash compensation, and any bonuses or other periodic payments received or promised;
- e. Whether you quit or were fired and the reason for the same; and
- f. The name and address of your immediate supervisor.

ANSWER: Objected to as this is intentionally overburdensome and the Attorney(s) already have all of this information.

Interrogatory 7 is not intentionally overburdensome. The analysis that must be completed in assessing a disability claim must encompass a work history of the injured worker. Claimant is directed to provide a full and complete answer to Interrogatory 7.

Interrogatory 8

State whether you have sustained any injury or been in any accident of any kind or nature (including but not limited to worker's compensation claims) prior to the date of injury alleged in your Petition for Benefits. As to each such accident or injury, state in detail the facts and circumstances surrounding the same; the date of the occurrence, and the treatment rendered as a result thereof. Produce all medical records documenting such treatment.

ANSWER: Objected to as this is intentionally overburdensome and the Attorney(s) already have all of this information. The Attorney(s) already have my medical history.

Interrogatory 8 is not "intentionally overburdensome." Privacy laws prevent attorneys from gaining all of the required information to answer Claimant's allegations of injury. Claimant is directed to provide a full and complete answer to Interrogatory 8.

Interrogatory 9

State whether you have sustained any injury or been in any accident of any kind or nature (including but not limited to worker's compensation claims) subsequent

to the date of injury alleged in your Petition for Benefits. As to each such accident or injury, state in detail the facts and circumstances surrounding the same; the date of the occurrence, and the treatment rendered as a result thereof. Produce all medical records documenting such treatment.

ANSWER: Objected to as this is intentionally overburdensome and the Attorney(s) already have all of this information. The Attorney(s) already have my medical history.

Interrogatory 9 is not "intentionally overburdensome." Privacy laws prevent attorneys from gaining all of the required information to answer Claimant's allegations of injury. Claimant is directed to provide a full and complete answer to Interrogatory 9.

Interrogatory 10

State whether you have ever made a claim for any other injury or for automobile, property, health, accident, disability, or worker's compensation insurance benefits against any person, firm, entity, corporation, or government agency. If so, state the date each such claim was made and identify the person or entity against whom it was made and the manner in which it was resolved. Produce all documents relating to such claim(s).

ANSWER: Objected to as this is intentionally overburdensome and the Attorney(s) already have all of this information. The Attorney(s) already have my medical history.

Interrogatory 10 is not "intentionally overburdensome." Privacy laws prevent attorneys from gaining all of the required information to answer Claimant's allegations of injury. Claimant is directed to provide a full and complete answer to Interrogatory 10.

Interrogatory 11

Describe in detail the activities and circumstances surrounding the injury alleged in your Petition for Benefits, including the date, time, and place of the same.

ANSWER: Objected to as this is intentionally overburdensome and the Attorney(s) already have all of this information. The Attorney(s) already have my medical history.

Interrogatory 11 is not "intentionally overburdensome." Privacy laws prevent attorneys from gaining all of the required information to answer Claimant's allegations of injury. Claimant is directed to provide a full and complete answer to Interrogatory 11.

Interrogatory 12

State with specificity all injuries or disabilities you allege have resulted from the injury alleged in your Petition for Benefits.

ANSWER: Objected to as this is intentionally overburdensome and the Attorney(s) already have all of this information. The Attorney(s) already have my medical history.

Interrogatory 12 is not "intentionally overburdensome." Privacy laws prevent attorneys from gaining all of the required information to answer Claimant's allegations of injury. Claimant is directed to provide a full and complete answer to Interrogatory 12.

Interrogatory 13

Are you subject to any restrictions or limitations in regard to your activities or ability to work? If so, state the following:

- a. State with specificity the restrictions or limitations;
- b. State whether the restrictions or limitations were assigned by a medical practitioner and, if so, identify the medical practitioner who assigned the same and the date the restrictions were assigned;
- c. State whether you have any restrictions or limitations in addition to those identified above. If so, describe in detail all facts and circumstances upon which you rely in alleging the same; and
- d. Attach any records or documents on which you rely to establish the restrictions or limitations identified in this interrogatory.

ANSWER: Objected to as this is intentionally overburdensome and the Attorney(s) already have all of this information. The Attorney(s) already have my medical history.

Interrogatory 13 is not "intentionally overburdensome." Privacy laws prevent attorneys from gaining all of the required information to answer Claimant's allegations of injury. Claimant is directed to provide a full and complete answer to Interrogatory 13.

Interrogatory 14

State whether a functional capacities assessment or evaluation has been completed by you at any time since the date of injury alleged in your Petition for Benefits. If so, state the following in regard to each assessment or evaluation:

- a. The date of the evaluation or assessment;

- b. Where the evaluation or assessment was undertaken;
- c. Whether the evaluation or assessment was valid; and
- d. Attach a copy of any report generated as a result of the evaluation or assessments indicated above.

ANSWER: Objected to as this is intentionally overburdensome and the Attorney(s) already have all of this information. The Attorney(s) already have my medical history.

Interrogatory 14 is not “intentionally overburdensome.” Privacy laws prevent attorneys from gaining all of the required information to answer Claimant’s allegations of injury. Claimant is directed to provide a full and complete answer to Interrogatory 14.

Interrogatory 15

Are you currently suffering any symptoms, complaints, or pain as a result of the injury alleged in your Petition for Benefits? If so, state in detail the nature of the symptoms, complaints, or pain and their effect on your ability to function. If not, indicate the date you last experienced symptoms, complaints, or pain.

ANSWER: Objected to as this is intentionally overburdensome and the Attorney(s) already have all of this information. The Attorney(s) already have my medical history.

Interrogatory 15 is not “intentionally overburdensome.” Privacy laws prevent attorneys from gaining all of the required information to answer Claimant’s allegations of injury. Claimant is directed to provide a full and complete answer to Interrogatory 15.

Interrogatory 18

Are you making a claim for temporary total or temporary partial disability benefits as it relates to the injury alleged in your Petition for Benefits? If so, state the following in regard to each:

- a. The exact dates you allege temporary benefits are due;
- b. The total dollar amount of temporary benefits you allege are due; and
- c. Describe all facts and circumstances on which you rely in making a claim for temporary total disability benefits. If you rely upon any records or documents to support your claim, attach a copy of the same.

ANSWER: I don't know which "Petition for Benefits you are referring to. [sic]

Claimant's Petition for Hearing was filed with the Department of Labor on October 15, 2007. The Department of Labor assigned HF No. 68, 2007/08 to Claimant's Petition for Hearing requesting workers' compensation benefits. Employer/Insurer referenced HF No. 68, 2007/08 on its Interrogatories. Claimant is directed to provide a full and complete answer to Interrogatory 18 referencing his Petition for Hearing designated as HF No. 68, 2007/08.

Interrogatory 19

Are you making a claim for permanent partial disability benefits based upon impairment as it relates to the injury alleged in your Petition for Benefits? If so, state the percentage of impairment you allege is due and describe in detail the facts and circumstances upon which you rely to support your claim.

ANSWER: Making a claim to whom?

Claimant's Petition for Hearing, referenced as HF No. 68, 2007/08, specifically names National American University and Travelers Insurance as parties. Claimant is directed to provide a full and complete answer to Interrogatory 19 referencing his claims against National American University and Traveler Insurance.

Interrogatory 20

Identify all medical practitioners known to you who have assigned an impairment rating in relation to your alleged injury. For each impairment rating assigned, indicate each body part rated and the percentage amount of the rating. Attach any reports generated in regard to impairment.

ANSWER: Objected to as this is intentionally overburdensome and the Attorney(s) already have all of this information. The Attorney(s) already have my medical history.

Interrogatory 20 is not "intentionally overburdensome." Privacy laws prevent attorneys from gaining all of the required information to answer Claimant's allegations of injury. Claimant is directed to provide a full and complete answer to Interrogatory 20.

Interrogatory 24

State whether you have had any income or received any money whatsoever since the injury alleged in your Petition for Benefits. If so, state the name and address of the person or entity from whom such income or money was received, the amount of money or income received to date, the dates of each such receipt and why each such payment was made to you. Produce all documents evidencing such payment(s).

ANSWER: Objected to as this is intentionally overburdensome and the Attorney(s) already have all of this information.

Interrogatory 24 is not “intentionally overburdensome.” Claimant has not demonstrated that Employer/Insurer “already have all of this information.” Claimant is directed to provide a full and complete answer to Interrogatory 24.

Interrogatory 25

Identify all education facilities you have attended and state the following in regard to each:

- a. The dates of attendance;
- b. The name and address of the educational facility;
- c. The degree, certificate, or license awarded upon completion of the program; and
- d. For any post high school study, the area of concentration.

ANSWER: Objected to as this is intentionally overburdensome and the Attorney(s) already have all of this information. The Attorney(s) already have my educational history.

Interrogatory 25 is not “intentionally overburdensome.” Claimant has not demonstrated that Employer/Insurer “already have all of this information.” Claimant is directed to provide a full and complete answer to Interrogatory 25.

Interrogatory 26

Have you received any on-the-job training? If so, state the following in regard to each training experience:

- a. The nature of the on-the-job training you received;
- b. The business name and location of the training;
- c. The person who conducted the training; and
- d. The dates you participated in on-the-job training.

ANSWER: Objected to as this is intentionally overburdensome and the Attorney(s) already have all of this information. The Attorney(s) already have my work history.

Interrogatory 26 is not “intentionally overburdensome.” Claimant has not demonstrated that Employer/Insurer “already have all of this information.” Claimant is directed to provide a full and complete answer to Interrogatory 26.

Interrogatory 29

State whether you or anyone acting on your behalf has discussed your claim for benefits with any representative of the South Dakota Department of Labor. If so, state the name and address of the person discussing this matter, the name of the representative of the Department of Labor with whom this matter was discussed, the date of the discussion and the manner of discussion (i.e. telephone conversation(s), correspondence). If the discussions were written, identify any documents relating to such discussions. If the discussions were oral, state the name and address of each person participating and the substance of what was said by each person participating.

ANSWER: Objected to as this is intentionally overburdensome and the Attorney(s) already have all of this information. The Attorney(s) already have my legal history.

Interrogatory 29 is not “intentionally overburdensome.” Claimant has not demonstrated that Employer/Insurer “already have all of this information.” Claimant is directed to provide a full and complete answer to Interrogatory 29.

Interrogatory 30

State whether you have kept any journal, diary or similar written record since the injury alleged in your Petition for Benefits and, if so, identify the same as defined in these Interrogatories and Request for Production.

ANSWER: I don't believe this is required by the Court until the time of the prehearing conference.

Interrogatory 30 is within the scope of discovery as defined by SDCL 15-6-26(b). Claimant is directed to provide a full and complete answer to Interrogatory 30.

Interrogatory 32

Identify each expert witness you expect to call to testify at hearing and state the following in regard to each:

- a. The name, title, business name, and address of each expert;
- b. The qualifications and experience of each expert;

- c. The subject matter on which each expert is expected to testify;
- d. The substance of the facts and opinions about which each expert is expected to testify;
- e. A summary of the grounds for each expert's opinions; and
- f. Identify each exhibit intended to be produced in connection with each expert's testimony and attach a copy of the same.

ANSWER: Objected to as this is intentionally overburdensome and the Attorney(s) already have all of this information. The Attorney(s) already have my experts' history.

Interrogatory 32 is not intentionally overburdensome. Claimant is directed to provide a full and complete answer to Interrogatory 32 as required by SDCL 15-6-26(b).

Interrogatory 36

State which South Dakota motorcycle group you have become a "known associate" of and state the day you became such an "associate".

ANSWER: I will not furnish this as the question violates my 5th Amendment Rights.

The Fifth Amendment to the United States Constitution provides in full:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

This interrogatory seeks relevant information or information that appears reasonably calculated to lead to the discovery of admissible evidence. The Fifth Amendment provides that no person shall be compelled "in any criminal case" to be a witness against himself. This workers' compensation matter is not a criminal case. Claimant has placed his behavior at issue, alleging a change in his personality. Therefore, Claimant is directed to provide a full and complete answer to Interrogatory 36.

Interrogatory 37

Please list each arrest, restraining order, drug investigation, and fight that you were involved in before the injuries complained of in your Petition for Benefits. As to each instance please state:

- a. the date of such instance;
- b. what authorities were involved;
- c. what individuals were involved; and
- d. the outcome of the instance.

ANSWER: I will not furnish this as the question violates my 5th Amendment Rights.

The Fifth Amendment to the United States Constitution provides in full:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

This interrogatory seeks relevant information. The Fifth Amendment provides that no person shall be compelled "in any criminal case" to be a witness against himself. This workers' compensation matter is not a criminal case. Claimant has placed his behavior at issue, alleging a change in his personality. Therefore, Claimant is directed to provide a full and complete answer to Interrogatory 37.

Interrogatory 38

Please list each arrest, restraining order, drug investigation, and fight that you were involved in after the injuries complained of in your Petition for Benefits. As to each instance please state:

- e. the date of such instance;
- f. what authorities were involved;
- g. what individuals were involved; and

h. the outcome of the instance.

ANSWER: I will not furnish this as the question violates my 5th Amendment Rights.

The Fifth Amendment to the United States Constitution provides in full:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

This interrogatory seeks relevant information. The Fifth Amendment provides that no person shall be compelled "in any criminal case" to be a witness against himself. This workers' compensation matter is not a criminal case. Claimant has placed his behavior at issue, alleging a change in his personality. Therefore, Claimant is directed to provide a full and complete answer to Interrogatory 38.

Interrogatory 39

Produce all documents relating to, discussing or referencing the incidents listed in interrogatory Nos. 37 and 38 above.

ANSWER: I will not furnish this as the question violates my 5th Amendment Rights.

The Fifth Amendment to the United States Constitution provides in full:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

This interrogatory seeks relevant information. The Fifth Amendment provides that no person shall be compelled "in any criminal case" to be a witness against himself. This workers' compensation matter is not a criminal case. Claimant has placed his behavior at issue, alleging a change in his personality. Therefore, Claimant is directed to provide a full and complete answer to Interrogatory 39.

Employer/Insurer's request for attorney fees is denied at this time.

This letter shall constitute the Department's Order.

Sincerely,

Heather E. Covey
Administrative Law Judge