SOUTH DAKOTA DEPT. OF LABOR & REGULATION

LABOR & MANAGEMENT DIVISION
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December 6, 2023

VIA EMAIL

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DECISION ON EMPLOYEE'S MOTION TO COMPEL

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RE: HF No 12, 2021/22 – Neurolens, Inc. and Indemnity Ins. Co. of North America v. Marty Andrews

Greetings:

This letter decision addresses Employee's Motion to Compel. All responsive briefs have been considered.

Marty Andrews (Andrews) moves to compel discovery of the claim notes from November 4, 2020, to April 11, 2022, that Neurolens, Inc. (Employer) and Indemnity Ins. Co. of North America (Insurer) withheld from discovery as "confidential commercial information and trade secrets," except the documents pertaining to reserves.

Employer and Insurer assert that the wording "Confidential commercial information and trade secrets" only referred to the instances where the privilege asserted related to reserves and the claims notes have been otherwise produced.

Additionally, Employer and Insurer pray for attorney's fees pursuant to SDCL 15-6-37(a)(4).

Andrews responded that had Employer and Insurer's privilege log stated that the documents withheld were reserve information, this motion would not have been filed. He attempted to resolve this matter informally by email on July 6, 2023, in which he stated he was not asking for information regarding reserves. However, he did not receive a reply from Employer and Insurer. He emailed on August 4 and August 21, 2023, asking for a response. He emailed again on August 28, 2023. Employer and Insurer's attorney responded that she did not understand the issues he had with the privilege log.

From the submissions, the Department concludes that this motion was made because of miscommunication and misunderstanding. The only withheld information is regarding reserves which Andrews is not requesting and the materials subject to this motion have been produced. Therefore, the request is moot and the motion is denied.

Further, Employer and Insurer's request for attorney's fees is also denied. The authority of the Department of Labor & Regulation to sanction is provided by ARSD 47:03:01:05:02 which states, "[i]f any party fails to comply with the provisions of this chapter, the Division of Labor and Management may impose sanctions upon such party pursuant to SDCL 15-6-37(b). However, attorney fees may be imposed only for a violation of a discovery order." Employer and Insurer's request for fees is not pursuant to a violated discovery order and therefore, the Department does not have the authority to grant their prayer for attorney's fees.

The parties may consider this letter to be the order of the Department.

Sincerely,

Michelle M. Faw
Administrative Law Judge