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

Greetings:

This letter will address Meyer's Motion to Consolidate Actions. All responsive briefs have been considered. Aaron Hansen (Hansen) was the driver of a pickup truck involved in a motor vehicle accident on February 21, 2019. Eric Meyer (Meyer) was a passenger in the vehicle. State Auto Insurance Companies (Insurer) filed a Petition for Hearing alleging that Hansen was not in the course and scope of his employment at the time of the accident.

Meyer and Hansen (jointly Claimants) have moved the Department of Labor & Regulation (Department) to consolidate hearing files numbered 52, 2019/20 and 53, 2019/20. The Claimants believe judicial economy is best served by consolidation of the two cases because both matters arise out of the same set of facts and involve the same parties and witnesses. The Claimants argue that both cases involve Insurer State Auto Insurance Companies and the injuries sustained by both Claimants in the February 21, 2019 motor vehicle collision. The Claimants further assert there are common questions and facts of law regarding the injuries, and there will be overlap in witnesses and legal issues in both cases. The Claimants argue consolidation would prevent the possibility of inconsistent discovery between the two cases.

Insurer argues that consolidation is not appropriate in this matter. Insurer alleges that there has been intent to influence Hansen's testimony. Insurer states that when its counsel attended the deposition of Hansen, Meyer was sitting next to him. The deposition did not proceed, because Claimant's attorney would not instruct Meyer to sequester himself from the deposition. Insurer believes this was an attempt to influence Hansen's testimony. Insurer further argues that the discovery process is further along in Hansen's case than in Meyer's case.

Insurer asserts that following an unimpeded deposition, Hansen's case would be ready for hearing. Meyer's case is not ready for hearing and additional discovery may be needed. Both Meyer's and Hansen's petitions arise out of the same set of facts and involve the same parties and witnesses. Resolving these matters together may be judicially economical. However, Insurer has raised the issue of alleged improper influence over testimony, and such influence would result in prejudice against Insurer. SDCL 15-6-42(b) offers separate proceedings as a means to avoid prejudice. SDCL 15-6-42(b) provides in pertinent part, "[t]he court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy may order a separate trial of any claim..." Furthermore, as these matters are at different stages of discovery, consolidation may result in unnecessary delays to the resolution of Meyer's claim. To avoid additional accusations of improper influence and to avoid delaying Meyer's hearing, the Department is persuaded that consolidation is not appropriate in this case.

Order:

In accordance with the conclusions above, Claimant's Motion to Consolidate Actions is DENIED

This letter shall constitute the Department's order in this matter.

SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION

Michelle M. Faw