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RE: HF No. 66, 2022/23 – Lynette Kay Stormo, Personal Representative of the Estate of Jason David Stormo vs Jimmy John's and Farm Bureau Property and Casualty Insurance.

Greetings:

The Department has reviewed Employer and Insurer's Motion for Leave to Amend Response to Petition. All responses have been considered. Employer and Insurer assert that this motion was made in good faith to include the defense of willful misconduct as soon as the factual basis was sufficiently developed. Claimant argues she will be prejudiced if the amendment is allowed. "[T]he most important consideration in determining whether a party should be allowed to amend a pleading is whether the nonmoving party will be prejudiced by the amendment." *Ries v. JM Custom Homes, LLC*, 2022 S.D. 52, ¶ 12, 980 N.W.2d 217, 222. "The inquiry should center on whether the nonmoving party has a fair opportunity to litigate the new issue and to offer additional evidence if the case will be tried on a different point." *Hamer v. Duffy*, 2026 S.D. 4, ¶ 13, 31 N.W.3d 680, 686.

No date for hearing has been set in this matter. Claimant will have time to address the issues raised in the proposed amendment. Therefore, the Claimant will not be prejudiced by the amendment. However, Employer and Insurer would be prejudiced if they were not allowed to amend their answer to offer a full defense of this claim. For these reasons, Employer and Insurer's Motion for Leave to Amend Response to Petition is GRANTED.

Claimant has requested that she be given the opportunity to conduct discovery on the defense of willful misconduct. Employer and Insurer have offered no objection to this request. The current scheduling order issued on June 8, 2026, is hereby STAYED. The parties are directed to provide the Department with new dates for an amended scheduling order to address the willful misconduct issue by October 16, 2026. If the parties feel a telephone call is necessary to discuss going forward with this matter, please contact the Department by email to schedule a meeting.

The parties shall consider this letter to be the Order of the Department.

Sincerely,



Michelle M. Faw
Administrative Law Judge