

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1997 MTWCC 22

WCC No. 9702-7698

STEVE CHURCH

Petitioner

vs.

TRAVELERS INDEMNITY COMPANY OF ILLINOIS

Respondent/Insurer for

FOOD SERVICES OF AMERICA

Employer.

ORDER ON *IN CAMERA* INSPECTION

Summary: Following petitioner's motion to compel discovery, hearing examiner reviewed documents produced in camera relating to respondent insurer's claim of attorney-client privilege and work product protection.

Held: Applying the standards regarding attorney-client privilege and work product articulated in earlier WCC decisions (*Adels v. Cigna Ins. Co.*, WCC No. 9307-6831; *Blount v. Conagera, Inc.*, WCC No. 9304-6769; *Yaeger v. Montana Schools Group Ins. Co.*, WCC 9308-6872; *Wetzel v. Ash Grove Cement*, WCC No. 9108-6216), hearing examiner ordered production of several categories of documents, but held the following documents protected by work product doctrine: insurer's reserve information and rationale, notes regarding general settlement and discussion with the employer, mediation, estimated liability sheet, and letters setting out internal discussion about settlement. Attorney-client privilege and work product held to protect claims adjuster's notes regarding discussion with another claims adjuster and employer regarding liability in case.

Topics:

Discovery: Claims File. Applying the standards regarding attorney-client privilege and work product articulated in earlier WCC decisions (*Adels v. Cigna Ins. Co.*, WCC No. 9307-6831; *Blount v. Conagera, Inc.*, WCC No. 9304-6769; *Yaeger v. Montana Schools Group Ins. Co.*, WCC 9308-6872; *Wetzel v. Ash Grove Cement*, WCC No. 9108-6216), hearing examiner ordered production of several categories of

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Discovery: In Camera Inspection. Applying the standards regarding attorney-client privilege and work product articulated in earlier WCC decisions (*Adels v. Cigna Ins. Co.*, WCC No. 9307-6831; *Blount v. Conagera, Inc.*, WCC No. 9304-6769; *Yaeger v. Montana Schools Group Ins. Co.*, WCC 9308-6872; *Wetzel v. Ash Grove Cement*, WCC No. 9108-6216), hearing examiner ordered production of several categories of documents, but held the following documents protected by work product doctrine: insurer's reserve information and rationale, notes regarding general settlement and discussion with the employer, mediation, estimated liability sheet, and letters setting out internal discussion about settlement. Attorney-client privilege and work product held to protect claims adjuster's notes regarding discussion with another claims adjuster and employer regarding liability in case.

Discovery: Privileges: Attorney client. Applying the standards regarding attorney-client privilege and work product articulated in earlier WCC decisions (*Adels v. Cigna Ins. Co.*, WCC No. 9307-6831; *Blount v. Conagera, Inc.*, WCC No. 9304-6769; *Yaeger v. Montana Schools Group Ins. Co.*, WCC 9308-6872; *Wetzel v. Ash Grove Cement*, WCC No. 9108-6216), hearing examiner ordered production of several categories of documents, but held the following documents protected by work product doctrine: insurer's reserve information and rationale, notes regarding general settlement and discussion with the employer, mediation, estimated liability sheet, and letters setting out internal discussion about settlement. Attorney-client privilege and work product held to protect claims adjuster's notes regarding discussion with another claims adjuster and employer regarding liability in case.

Discovery: Privileges: Work product. Applying the standards regarding attorney-client privilege and work product articulated in earlier WCC decisions (*Adels v. Cigna Ins. Co.*, WCC No. 9307-6831; *Blount v. Conagera, Inc.*, WCC No. 9304-6769; *Yaeger v. Montana Schools Group Ins. Co.*, WCC 9308-6872; *Wetzel v. Ash Grove Cement*, WCC No. 9108-6216), hearing examiner ordered production of several categories of documents, but held the following documents protected by work product doctrine: insurer's reserve information and rationale, notes regarding general settlement and discussion with the employer, mediation, estimated liability sheet, and letters setting out internal discussion about settlement. Attorney-client privilege and work product held to protect claims adjuster's notes regarding discussion with another claims adjuster and employer regarding liability in case.

On March 31, 1997, petitioner's motion to compel discovery was filed. Respondent has responded and submitted for an *in camera* review the documents listed in the chart below.

In prior discovery orders, the Court has discussed the protection afforded by the attorney/client privilege and work-product doctrine. *Blount v. Conagara, Inc.*, WCC No. 9304-6769, *Adels v. Cigna Ins. Co.*, WCC No. 9307-6831, *Yaeger v. Montana Schools Group Ins.*, WCC No. 9308-6872, *Wetzel v. Ash Grove Cement*, WCC No. 9108-6216. The review herein has been conducted pursuant to the guidelines laid down in those decisions and the disposition for each document is reflected in the following chart.

Document No.	Date	Description	Disposition
000014	07/12/95	Note regarding description of employer and job	Produce document
000015	07/12/95	Note regarding description of employer and job	No objection to any entry on page - Produce document
000023	12/11/95	Correspondence between Diane Nelson and another claims adjuster	Produce document
000024	12/11/95	Correspondence between Diane Nelson and another claim's adjuster	No objection to any entry on page - Produce document
000026	02/13/96	Note regarding respondent and its insurer's reserves	Redact information regarding reserve rationale, work product - Produce redacted document
000027	02/21/96	General reserve rationale of file	Redact information concerning General Reserve Rationale - Produce redacted document
000033	06/21/96	Note regarding general settlement authorization	Produce document
000039	07/23/96 & 07/26/96	Estimate rationale note from claim's adjuster to Diane Nelson and notes regarding general settlement and discussions with employer	Work product - Production denied

000042, 000044 & 000045			These documents were not produced for review
000046	10/23/96 & 12/07/96	Mediation information and notes regarding authority to make payment from supervising claim's adjuster	Redact mediation information -Produce redacted document
000048	02/05/97	Notes regarding deadlines and strategies regarding case of claim's adjuster, Diane Nelson	Produce document
000049	02/07/97	Claim's adjuster notes regarding discussion with another claim's adjuster and employer	Attorney Client/Work Product - Production denied
000050 - 000056			Documents not produced for review
000077	05/17/95	Statistic sheet containing information regarding internal operations of the employer and Travelers Insurance Company	Redact insurance policy numbers, bank codes, and states covered - Produce redacted document
000079	05/12/95	Statistic sheet containing information regarding internal operations of the employer and Travelers Insurance Company	Redact insurance policy numbers, bank codes, and states covered - Produce redacted document
000082	Unknown	Food Services of America Workers' Compensation Account forms	Redact insurance policy numbers, bank codes, and states covered - Produce redacted document
000087	01/23/96	Letter from Diane Nelson, Travelers, to Kevin Malley, Food Services of America	Produce document
000088	02/16/96	Letter from Diane Nelson, Travelers, to Kevin Malley, Food Services of America	Produce document
000092	05/15/96	Letter from Diane Nelson, Travelers, to Kevin Malley, Food Services of America	Produce document
000093	07/07/95	Letter regarding reserve/advisory report from Diane	Work product - Production denied

		Nelson,Travelers, to Joe Lhamon, Risk Manager, Food Services of America	
000094	07/06/95	Estimated liability sheet and reserve report of Travelers Insurance Company and Food Services of America	Work product - Production denied
000095	02/23/96	Letter regarding reserve/advisory report from Diane Nelson, Travelers, to Tim Holland, Food Services of America	Work product - Production denied
000096	02/21/96	Estimated liability sheet and reserve report of Travelers Insurance Company and Food Services of America	Work product - Production denied
000104	06/24/96	Letter from Diane Nelson, Travelers, regarding authorization for settlement to Tim Holland, Vice President of Operations, Food Services of America	Work product - Production denied
000216	02/13/96	Letter from Diane Nelson, Travelers, to Kevin Malley, Food Services of America	Produce document
000217	02/14/96	Letter from Kevin Malley, Director of Operations, Food Services of America, to Diane Nelson, Travelers Insurance	Produce document

ACCORDINGLY, IT IS HEREBY ORDERED that:

Respondent must produce numbers 000014, 000015, 000023, 000024, 000026 (with information regarding reserve rationale redacted), 000027 (with General Reserve Rationale redacted), 000033, 000046 (with mediation information redacted), 000048, 000077, 000079 (with insurance policy numbers, bank codes and states covered redacted), 000082 (with insurance policy numbers, bank codes and states covered redacted), 000087, 000088, 000092, 000216 and 000217.

This Order is signed by the Hearing Examiner at the direction of the Judge of the Workers' Compensation Court.

DATED in Helena, Montana, this 24th day of April, 1997.

(SEAL)

/s/ Clarice V. Beck
CLARICE V. BECK
Hearing Examiner

c: Mr. James G. Edmiston
Mr. Dylan E. Jackson
Submitted: April 10, 1997