

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
FT. LAUDERDALE DISTRICT OFFICE

John Gillis,
Employee/Claimant,

OJCC Case No. 02-035609IF

vs.

Accident date: 7/11/1985

Head Industries/Amerisure Insurance,
Employer/Carrier/Servicing Agent.

Judge: Iliana Forte

ORDER ON EMPLOYER/CARRIER'S MOTION FOR PROTECTIVE ORDER

THIS MATTER came before me, the undersigned Judge of Compensation Claims on the Employer/Carrier's Motion for Protective Order along with three Exhibits filed on April 13, 2017. The Claimant filed his response thereto on April 17, 2017 along with an Exhibit. E/C's counsel replied to Claimant's response on 4/18/2017.

The E/C seeks this motion in order to prevent Claimant's counsel from taking two depositions scheduled for 5/2/2017 of the E/C's prior adjuster, Laura Destasio, (who no longer works for the carrier) and Wade Kotar, the current adjuster for the E/C. The E/C asserts that there are no pending issues in this matter which has been extensively litigated in the past by Claimant's counsel, including Ms. Destasio's lengthy deposition taken by Claimant's counsel in October of 2014. The E/C asserts that the depositions are being conducted for an improper purpose mainly to harass, embarrass or annoy the E/C because the E/C has chosen not to enter into negotiations for a lump sum settlement – Claimant's counsel's ultimate goal.

Claimant's counsel asserts that the depositions are necessary because the Claimant needs to ascertain the carrier's position regarding significant entitlement needs that were first addressed in detail with opposing counsel in early 2015 which remain unaddressed. According to

Claimant's response the intended scope of the deposition relate to attendant care and, I quote, "at this deposition the prior and current adjusters will need to assist me in doing an accounting for each indemnity draft received for the past couple of years as these instruments are not properly notated in a bi-weekly format so as to properly inform the Claimant of the relevant time period the instruments are intended to cover, precluding an accurate accounting of time period coverages." Claimant's counsel also adds that other issues may surface depending on the file materials.

There currently are no petitions for benefits pending in this case involving either a claim for home attendant care or presumably late payment of indemnity benefits, penalties or interests.

This matter has been extensively litigated by Mr. Rebalko who has represented the Claimant for many years. In the latter part of October 2014, Mr. Rebalko spent two days deposing the former adjuster Ms. Destasio, at which time the only issue remaining were Mr. Rebalko's attorney's fees and costs. On 3/11/2015 the undersigned entered an Order approving the stipulated fee of \$95,581.00 and costs in the amount of \$4,419.00.

I agree with the E/C that Ms. Destasio, who is no longer employed by the Carrier, is precluded from testifying on behalf of Amerisure and could only testify as to her own personal knowledge as she would have no access to the E/C claims file.

I also agree with the E/C that Mr. Rebalko has not set forth any bona fide reasons to conduct these depositions. Mr. Rebalko has been representing the claimant since as far back as 2002. He has not set forth any credible assertion that the Claimant has been prescribed home attendant care by an authorized provider, which the E/C has failed to provide. Likewise, Mr. Rebalko's request for some assistance by the adjuster to conduct some form of forensic accounting to properly inform the Claimant of the relevant time period the instruments are

intended to cover, fails to establish what exactly if anything, would result by this accounting.

While Section 440.30, Fla. Stat. provides for the taking of depositions in worker's compensation proceedings, said depositions are subject to the same rules which govern the taking of depositions in civil actions at law in the circuit courts. Rule 1.280(c), Fla. R. Civ. P., provides that the court in which the action is pending may enter such orders as justice requires to protect a party or person from who discovery is sought from annoyance, oppression, embarrassment, or undue burden, including that the discovery not be had or be had only on specified terms and conditions and that the scope of discovery be limited to certain matters.

I find that the Claimant has failed to address any relevant matters that remain bona fide issues in this case - when there currently are no petitions for benefits pending resolution. I agree that this discovery is calculated to harass, embarrass or annoy the E/C and that justice requires that an order be entered protecting Ms. Destasio and Ms. Kotar from such annoyance, oppression and harassment.

ORDERED AND ADJUDGED that

The Employer/Carrier's Motion for Protective Order is hereby GRANTED .

DONE AND SERVED this 19th day of April, 2017, in Lauderdale Lakes, Broward County, Florida.



Iliana Forte
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
Ft. Lauderdale District Office
4500 North State Road 7, Building I, Suite 200
Lauderdale Lakes, Florida 33319
(954)714-3400
www.fljcc.org

COPIES FURNISHED:

Lee Anton Rebalko
(954) 234-5415 (cell)
P.O. BOX 758465
Coral Springs, FL 33075
blaster411@aol.com

William H. Rogner, Esquire
Hurley, Rogner, Miller, Cox, Waranch & Westcott, P.A.
1560 Orange Avenue, Suite 500
Winter Park, FL 32789
wrogner@hrmcw.com,jrodriguez@hrmcw.com