

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
MIAMI DISTRICT OFFICE

Mirta Soto,)	
)	
Employee/Claimant,)	
)	
vs.)	OJCC Case No. 07-024965GCC
)	
U.S. Security Associates,)	Accident date: 6/28/2007
)	
Employer,)	
)	
and)	
)	
Gallagher Bassett Services, Inc.,)	
)	
Carrier/Servicing Agent.)	
_____)	

ORDER TO SHOW CAUSE AND STRIKING "MOTION TO COMPEL UPDATED CARRIER FILE BUT NOT LIMITED TO INDEMNITY/MEDICAL PAYOUT, UPDATED MEDICAL RECORDS, AND SURVEILLANCE"

(1) Claimant's counsel has filed a "Motion to Compel Updated Carrier File But Not Limited to Indemnity/Medical Payout, Updated Medical Records and Surveillance" dated December 30, 2009.

(2) Claimant's counsel has filed the exact same motion in the following other matters in this division:

<u>OJCC number</u>	<u>Claimant's Name</u>	<u>Date Motion filed</u>
06-034364GCC	Uribe, John	12/3/2009
06-008590GCC	Valencia, Francia	12/3/2009
04-006070GCC	Sanchez, Maria	12/24/2009
04-009518GCC	Serrano, Angel	12/28/2009
99-015672GCC	Shaw, Percell	12/28/2009
04-006106GCC	Sainz, Lourdes	12/29/2009
07-012042GCC	Suarez-Miralla, Michel O.	12/30/2009
06-026526GCC	Sut De La Roca, Pablo	12/30/2009
04-021392GCC	Soto, Susan	12/30/2009
03-002544GCC	Sturup, Wendell	12/30/2009
03-000878GCC	St. Victor, Jean	12/30/2009
02-010778GCC	Tavarez, Favio	12/30/2009
02-010664GCC	Thaureaux, Ibrahim	12/30/2009
04-015354GCC	Vazquez, Reyna	12/31/2009
04-009744GCC	Turcios, Vicente	12/31/2009
03-028872GCC	Valdes, Alberto	12/31/2009
02-011016GCC	Vasquez, Sara	12/31/2009
02-002530GCC	Valeriano, Mario R.	12/31/2009
06-024334GCC	Viera-Tejera, Juan	1/6/2010
03-032182GCC	Viamontes, Elsa	1/6/2010
02-032880GCC	Yero, Jeisy	1/6/2010
00-003126GCC	Villagra, Luis A.	1/6/2010
01-001494GCC	Espinosa, Jesus	1/6/2010
07-004913 GCC	Valdes, Roberto	12/3/2009
06-035545 GCC	Zequeira, Ricardo	12/3/2009

05-033263 GCC	Valdes, Jason	12/3/2009
03-031739 GCC	Zuluaga, Nicolas	12/3/2009
08-008505 GCC	Leal, Segundo Pablo	12/24/2009
05-017365 GCC	Santana, Elaine	12/24/2009
04-024943 GCC	Sanchez, Maria	12/24/2009
02-033913 GCC	Santiago, Angel	12/24/2009
01-015183 GCC	Santiago, Roberto	12/24/2009
02-047849 GCC	Serrano, Jorge	12/28/2009
06-035363 GCC	Salazar, Maria	12/29/2009
02-031239 GCC	Solozano, Reina	12/29/2009
08-029887 GCC	Santos Teletor, Genova	12/30/2009
07-003359 GCC	Tejerino, Ramon E.	12/30/2009
04-031477 GCC	Thomas, Rodney	12/30/2009
03-036929 GCC	Sprovero, Michael	12/30/2009
04-002383 GCC	Zamora, Laura	12/31/2009
03-017747 GCC	Torres, Amado	12/31/2009
02-014943 GCC	Torres, Luis	12/31/2009
06-027249 GCC	Victoria, Eduardo	1/6/2010
02-046459 GCC	Verdecia, Raul	1/6/2010
00-027351 GCC	Fuerte, Julian	1/6/2010

(3) In each case where said motion has been filed, claimant makes the same generic requests. The motion is never tailored to the specific facts and issues of the matter in which the form motion is filed. The pleading filed in this case is no different and suffers from this same defect.

(4) In each case, the motion filed is wholly premature. There is no basis to have filed the motion in the first place. There is no basis to file a Motion to Compel when there is no underlying Request for Production with which the E/C has not complied. In this case, as in each of the other matters involving claimant's form motions, there is no outstanding underlying Request for Production from which the E/C has failed to respond. In this case, as in each other matter, claimant's counsel has gone straight to filing a Motion to Compel. This is wholly inappropriate.

(5) Additionally, the motion at issue fails to comply with the most basic of procedural rules. Rule 60Q-6.115(2) reads:

(2) Except for motions to dismiss for lack of prosecution, prior to filing any motion, the movant shall personally confer with the opposing party or parties or, if represented, their attorneys of record to attempt to amicably resolve the subject matter of the motion. All motions shall include a statement that the movant has personally conferred or has used good-faith efforts to confer with all other parties or, if represented, their attorneys of record and shall state whether any party has an objection to the motion.

This rule expressly requires an attorney to have consulted with opposing counsel prior to the filing of a motion.

(6) In this case, as in all others, counsel has made no effort whatsoever to communicate with opposing counsel prior to filing a Motion to Compel. Instead, counsel attempts to circumvent the rule by pleading that the Motion itself represents an effort to resolve a conflict - a conflict that does not exist because no underlying production request remains pending. Undoubtedly, had counsel followed the rule, the error of proceeding to file a Motion to Compel without there being an underlying motion would have been brought to his attention.

(7) Each of the motion filed by claimant's counsel imposes upon the Judge of Compensation Claims (hereinafter: JCC). While review of ripe motions certainly warrants the investment of the JCC's time, it is cumbersome and a waste of limited resources for JCCs to have to review one unripe motion after another. The latter is precisely what has unfolded herein - all because counsel disregarded explicit requirements imposed by rule.

It is hereby Ordered:

(1) Claimant's Motion to Compel Updated Carrier File But Not Limited to Indemnity/Medical Payout, Updated Medical Records, and Surveillance is STRICKEN.

(2) Claimant's counsel has ten (10) days to show good cause via pleading filed with this division

as to why he should not be sanctioned for disregarding the explicit requirements mandated by Rule 60Q-6.115(2).

(3) Furthermore, claimant's counsel has ten (10) days to show good cause via pleading filed with this division as to why his Motion to Compel Updated Carrier File But Not Limited to Indemnity/Medical Payout, Updated Medical Records, and Surveillance should not be found to be a sham pleading.

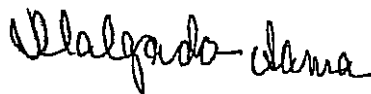
Done and entered in chambers in Miami, Miami-Dade County, Florida this 13th day of January, 2010



Gerardo Castiello
Judge of Compensation Claims

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to each of the parties listed below via E/mail this 13th day of January, 2010.



Assistant to the Judge of Compensation Claims

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