

STATE OF SOUTH CAROLINA**COUNTY OF SUMTER**

Judy Haselden,

Plaintiff,

v.

Michael D. Smoak and Murray Sand Co., Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS**THIRD JUDICIAL CIRCUIT****C/A # 2019-CP-43-01021****ORDER****RECEIVED****Oct 04 2024****SC Court of Appeals**

This matter is before the Court on a motion to compel filed by Plaintiff, Judy Haselden, on November 5, 2019. The matter came before this Court on May 19, 2020, by means of a video-conference. Present at the hearing were Alexander S. Hogsette (representing the Plaintiff), and Sarah Rand-McDaniel (representing Defendants Michael Smoak and Murray Sand, Co., Inc.). Following the able arguments of counsel and a thorough review of relevant case law, this Court hereby grants the underlying motion to compel.

BACKGROUND

This case stems from a motor vehicle accident that occurred on February 9, 2017 in Sumter County, SC. During the accident, Plaintiff Judy Haselden's vehicle was impacted from behind by a truck driven by the Defendant, Michael Smoak. The truck involved in the accident was owned by Murray Sand Company, Inc. (hereinafter "Murray Sand"). Defendant Smoak was an employee of Murray Sand at the time of the accident and was operating the truck in the course and scope of his employment. Plaintiff has alleged injuries resulted from the accident and filed the present lawsuit against both defendants on May 21, 2019. Murray Sand answered the complaint on July 25, 2019, and Smoak answered approximately one month later on August 26, 2019. Both

defendants are represented by the law firm of Walker, Allen, Grice, Ammons, Foy & Klick, LLP. Following the filings of pleadings, the parties began the discovery process.

On November 5, 2019, Plaintiff filed the present motion to compel. On January 23, 2020, Defendants answered Plaintiff's initial round of discovery to Murray Sand. Subsequently, on February 3, 2020, Plaintiff's counsel wrote a letter to Defendant's counsel suggesting the discovery responses were deficient in four ways. The only deficiencies relevant to the present motion are #1 and #4. Number 1 requested "[a]ny and all incident reports completed by the Defendant Michael D. Smoak as a result of this accident." Number 4 requested the results of a post-accident drug test allegedly performed on Defendant Smoak in Columbia following the accident. The parties were unable to resolve the matter, and after filing respective memoranda supporting and opposing the motion, the matter came before this Court on May 19, 2020.

At the hearing, counsel for Plaintiff argued that deposition testimony of Defendant Smoak established that Smoak had filled out a post-accident incident report for Murray Sand and had received a post-accident drug test. Plaintiff further argued Defendant had failed to respond to a request for production related to the pre-litigation claim file of the relevant insurance company, The Travelers Indemnity Company of Connecticut ("Travelers").

Defendant argued Murray Sand had undertaken diligent efforts to locate records responsive to Plaintiff's requests but was not in possession of any post-accident report or post-accident drug test. Regarding the pre-litigation claim file, Defendant's counsel argued she had not been given sufficient notice under Rule 11, SCRCP, of the claimed deficiency in order to formally respond; however, she represented Smoak and Murray Sand, not Travelers, and she had no duty to produce materials from the third-party insurance company that were not in her possession.

LAW/ANALYSIS

It is axiomatic that an “affirmative duty [exists] to answer interrogatories and respond to requests to produce.” CFRE, LLC v. Greenville Cty. Assessor, 395 S.C. 67, 83, 716 S.E.2d 877, 885 (2011). As regards Plaintiff’s requests for any post-accident incident reports from Murray Sand and any post-accident drug testing, such documentation would certainly be relevant and not subject to any applicable privilege. Accordingly, the motion to compel as it relates to those materials is hereby granted. However, during the hearing, Defendant’s counsel represented as an officer of the Court that extensive efforts to locate these documents to date has been fruitless and responsive documents are not in her possession.

With respect to Plaintiff’s request for pre-litigation file materials, this Court first notes that Defendants’ counsel represents Defendants Smoak and Murray Sand, not Travelers. See Sentry Select Ins. Co. v. Maybank Law Firm, LLC, 826 S.E.2d 270, 273 (2019) (declining to recognize a “dual attorney-client relationship” between an insured and an insurer). Accordingly, to the extent Plaintiff wishes to obtain non-privileged pre-litigation claim file materials from Travelers, Plaintiff’s appropriate recourse is to subpoena them directly from the insurer rather than from Defendants or their counsel by way of written discovery. *Id.* (“[W]e emphasize the insurer may not intrude upon the privilege between the attorney it hires and the attorney’s client—the insured. We are confident the trial courts of this State are well-equipped to protect the attorney-client privilege according to law if any dispute over it arises.”).

IT IS THEREFORE ORDERED that Plaintiff's Motion to Compel is **GRANTED** and Plaintiff may seek any non-privileged and relevant materials mentioned above directly from Murray Sand, or through Travelers, by way of the subpoena process.

IT IS SO ORDERED.

THE HONORABLE GEORGE M. MCFADDIN JR.

This ____ day of ____, 2020.

_____, S.C.



Sumter Common Pleas

Case Caption: Judy Haselden VS Micheal D. Smoak , defendant, et al

Case Number: 2019CP4301021

Type: Order/Compel

So Ordered

S/George M. McFaddin, Jr., #2759