

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Brecken Isben,

Plaintiff,

v.

Ethel G. Nelson,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2024-CP-10-04796

**ORDER
DENYING PROGRESSIVE SPECIALTY
COMPANY'S MOTION TO INTERVENE
AND MOTION FOR PROTECTIVE
ORDER; and
CONTINUING PLAINTIFF MOTION TO
COMPEL**

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SC Court of Appeals

On February 24, 2026, this matter came before the Court on Non-Party Progressive Specialty Insurance Company's Motion to Intervene and Motion for Protective Order and on Plaintiff Brecken Isben's Motion to Compel.¹ Present at the hearing via WebEx were Mary Linton (counsel for Plaintiff Brecken Isben), Samuel Carnwath III (counsel for Defendant Ethel Nelson), and Jay Thompson (counsel for Non-Party Progressive Specialty Insurance Company). After hearing from the parties and reviewing all available memoranda, the Court DENIES Non-Party Progressive Specialty Insurance Company's Motion to Intervene and Motion for Protective Order and CONTINUES Plaintiff's Motion to Compel.

SUMMARY OF THE CASE

This is a personal injury case arising from a collision that occurred on September 1, 2023; Plaintiff Brecken Isben alleges that Defendant Ethel Nelson's actions caused the collision.

On or around May 15, 2025, Plaintiff Isben served discovery requests on Defendant Nelson. Among other things, those discovery requests included Request for Production No. 31 addressed to Defendant Nelson, which called for "[c]omplete copies of any and all pre-litigation claim(s) and investigation files related to the incident that were created and/or maintained by your insurance companies and/or third-party administrators . . . pertaining to the incident until defense

¹ All findings of fact and conclusions of law indicated in this Order are made for the purpose of ruling on this motion only.

counsel was retained,” and included a limitation that it did not seek financial reserve amounts. Defendant Nelson objected to that request and did not provide a substantive response.

On September 25, 2025, Plaintiff filed a motion to compel discovery responses against Defendant Nelson, which is presently pending with this court.

On December 11, 2025, Non-Party Progressive Direct filed a motion to intervene and motion for protective order for the purpose of opposing Plaintiff’s Request for Production.

RULINGS AND ORDER OF THE COURT

The Court DENIES Non-Party Progressive Insurance Company’s Motion to Intervene and for Protective Order, and finds and orders the following:

I. Progressive’s Motion to Intervene is Inconsistent with Longstanding South Carolina Law.

The law in South Carolina is clear: the prelitigation claims file is discoverable and must be produced. Defendant’s Motion to Intervene, amounts to an improper attempt by would be party Progressive, to avoid discovery of a prelitigation claims file.

Rule 34, SCRCPP, requires the production not only of documents in a party’s possession, but within a party’s “custody or control.” Here, Progressive is playing a “shell-game” as to what Defendant Nelson has in her actual possession versus what Defendant’s agents have in their possession. Defendant’s counsel was hired by, is controlled and under direction of, and has been provided documents, all by Defendant’s insurance carrier. The South Carolina Supreme Court recently affirmed sanctions against a party attempting to play this game. *See Innovative Waste Management Inc., v. Crest Energy Partners, GP, LLC* 445 S.C. 19, 29, 911 S.E.2d 406, 411 (2025)

A tripartite and agency relationship exists among and between the Defendant, its insurance carriers, defense counsel, as well as any other third-parties acting as agents or on behalf of Defendant. They are one-in-the-same for purposes of discovery and responding to requests. Plaintiff is not required to guess and try to conduct discovery against the Defendant’s various agents to cobble together a complete set of documents. The Defendant cannot pick and choose which parts of the claims file are within their “custody and control” and also claim that the material is subject to the attorney-client, attorney work-product, or trial preparation privileges. Defendant’s duty to produce the requested information and documents within their actual and/or constructive possession, custody, or control is clear. Plaintiff is not required to indulge in or placate a false distinction between what Defendant “has” vs. what its agents “have”.

II. Progressive Motion for Protective Order

The materials sought by Plaintiff are discoverable. Plaintiff placed appropriate limitations on its request. Therefore, Progressive is not entitled to a Protective Order.

III. Plaintiff's Motion to Compel

Defendant provided Plaintiff with supplemental responses the day before this hearing, which did not afford sufficient time for Plaintiff to review the responses. Accordingly, the Court Continues Plaintiff's Motion to Compel Supplemental Responses to allow Plaintiff (and the Court if necessary) time to review responses for completeness.

CONCLUSION

For the reasons stated herein, Progressive's Motion to Intervene and Motion for Protective Order are DENIED and Plaintiff's Motion to Compel is CONTINUED to the next term of court.

AND IT IS SO ORDERED.

The Honorable Dale Van Slambrook
Presiding Judge

April 29, 2026
Charleston County, South Carolina



Charleston Common Pleas

Case Caption: Brecken Isben VS Ethel G Nelson

Case Number: 2024CP1004796

Type: Order/Other

And It Is So Ordered!

s/Dale E. Van Slambrook S.C. Circuit Court Judge
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