

IN THE STATE OF SOUTH CAROLINA )  
COUNTY OF ANDERSON )

IN THE COURT OF COMMON PLEAS  
FOR THE 10TH JUDICIAL CIRCUIT  
CASE NO: 2020-CP-04-00008

WANDA HUMAN, as Personal  
Representative of the ESTATE OF  
EVELYN MARIE WOOD,  
  
Plaintiff,

v.

ANMED HEALTH,  
  
Defendant.

**ORDER GRANTING PLAINTIFF’S  
MOTION TO COMPEL PRODUCTION  
OF WITNESS STATEMENT**

**RECEIVED**

**Aug 04 2021**

**SC Court of Appeals**

This matter came before the Court on June 23, 2021 on Plaintiff’s Motion to Compel Defendant AnMed Health’s (“AnMed”) full responses to discovery requests. At issue is a statement by a witness who “observed the immediate aftermath of the accident” according to Defendant (Statement of Chrissy Shortridge, RN). Defendant disclosed the existence of the statement, but withheld it from production based on a claim of privilege under S.C. Code Ann. § 44-7-392 and the work product doctrine, thus giving rise to Plaintiff’s Motion to Compel.

Present for Plaintiff was Vanisa T. Siler of the Anastopoulo Law Firm. Present for Defendant was Fred “Trey” Suggs, III, of Roe, Cassidy, Coates, & Price. For the reasons set forth below, this Court finds that the Statement of Chrissy Shortridge, RN is not privileged under S.C. Code Ann. § 44-7-392(h) or the Work Product Doctrine, and hereby orders Defendant to produce said statement within 14 days of the entry of this Order.

S.C. Code Ann. § 44-7-392(h) protects “incident or occurrence reports and related investigations.” It does not protect witness statements. This is clear by comparing the language of subsection 392(h) (“reports and related investigations”) with the language of subsection 392(g) immediately preceding it (“reports or *statements*”) (emphasis added). The contrasting choice of language shows that the drafters were aware of the difference between “reports” and “statements”,

and consciously chose to include the former but not the latter in subsection 392(h). *See, Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) (“The canon of construction “*expressio unius est exclusio alterius*” or “*inclusio unius est exclusio alterius*” holds that “to express or include one thing implies the exclusion of another, or of the alternative.”); *S. Mut. Church Ins. Co. v. S.C. Windstorm & Hail Underwriting Ass'n*, 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991) (“Clearly, words in a statute must be construed in context. According to the doctrine of *noscitur a sociis*, the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute.”) (internal citations omitted).

The Work Product Doctrine protects documents “prepared *because* of the prospect of litigation when the preparer faces an actual claim or a potential claim following an actual event or series of events that reasonably could result in litigation.” *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Murray Sheet Metal Co.*, 967 F.2d 980, 984 (4th Cir. 1992) (emphasis in original). Accordingly, it does not protect “materials prepared in the ordinary course of business or pursuant to regulatory requirements or for other non-litigation purposes.” *Id.* “[T]he party claiming the protection bears the burden of demonstrating the applicability of the work product doctrine.” *Solis v. Food Emps. Lab. Rels. Ass'n*, 644 F.3d 221, 232 (4th Cir. 2011).

Here, Defendant has failed to meet its burden. First, section 44-7-392(h) does not protect witness statements. Second, Defendant did not come forward with any evidence showing that the statement of Ms. Shortridge taken immediately after the incident was anything other than a statement taken in the ordinary course of business and/or pursuant to regulatory requirements. Indeed, “members of society tend to document transactions and occurrences to avoid the foibles of memory and to perpetuate evidence for the resolution of future disputes. And because litigation is an ever-present possibility in American life, it is more often the case than not that events are

documented with the general possibility of litigation in mind. Yet, the mere fact that litigation does eventually ensue does not, by itself, cloak materials with work product immunity.” *Nat’l Union*, 967 F.2d at 984 (internal quotations and alterations omitted).

Because S.C. Code Ann. § 44-7-392(h) does not protect witness statements and Defendant failed to meet its burden of showing that the statement of Ms. Shortridge was prepared *because* of the prospect of litigation, and not simply prior to litigation, this Court must and hereby does hold that the statement of Ms. Shortridge is not protected by section 44-7-392(h) or the Work Product Doctrine and must be produced.

WHEREFORE, this Court hereby GRANTS Plaintiff’s Motion to Compel and orders Defendant to produce Ms. Shortridge’s statement in its entirety without redaction or alteration within 14 days of the date of entry of this Order.

IT IS SO ORDERED!

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The Honorable R. Lawton McIntosh  
Presiding Judge  
Tenth Judicial Circuit  
Anderson County

\_\_\_\_\_, 2021

\_\_\_\_\_, South Carolina



Anderson Common Pleas

**Case Caption:** Wanda Human, Personal Representative , plaintiff, et al VS Anmed Health

**Case Number:** 2020CP0400008

**Type:** Order/Discovery and Disclosure of Evidence

S/R. LAWTON McINTOSH

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