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**Feb 14 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM ANDERSON COUNTY

Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

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Case No. 2020-CP-04-00008

Appellate Case No. 2021-000834

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Wanda Human, as Personal Representative of the Estate of Evelyn Marie Wood.....Respondent,

v.

AnMed Health .....Appellant.

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**MOTION FOR *IN CAMERA* REVIEW OF DOCUMENT  
WITHOUT PRODUCTION TO RESPONDENT**

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ROE CASSIDY COATES & PRICE, PA

s/ Fred W. "Trey" Suggs, III  
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## **INTRODUCTION**

This matter is an appeal from the Circuit Court's Order granting the Plaintiff/Respondent's Motion to Compel an occurrence/incident report which is protected from discovery under S.C. Code Ann. §44-7-392. The Appellant and Respondent have fully briefed their respective positions. Prior to submitting the Record on Appeal, the Appellant respectfully moves this Court for an order permitting it to review the subject occurrence/incident report *in camera* without requiring production to the Respondent.

## **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

Wanda Human, as Personal Representative of the Estate of Evelyn Marie Wood (hereinafter "Human"), initiated this action by filing a Summons and Complaint in the 10<sup>th</sup> Judicial Circuit on January 2, 2020. Human's Complaint includes causes of action for Wrongful Death and Survival Action, and essentially sounds in negligence. On February 6, 2020, the Defendant/Appellant, AnMed Health (hereinafter "AnMed"), filed an Answer in which it denied liability and asserted affirmative defenses. AnMed amended its Answer to assert additional affirmative defenses, including comparative negligence and intervening negligence, on June 24, 2021.

The parties exchanged written discovery. AnMed produced a privilege log on April 22, 2020 in which it identified as privileged/protected "AnMed Health Risk Management Worksheet Confidential Information Midas report/Chrissy Shortridge statement" (hereinafter "Risk Management Worksheet"). The privileges asserted included peer review and work product.

On March 29, 2021, Human filed a Notice of Motion and Motion to Compel AnMed Health's Discovery Responses, in which she asserted that the Risk Management Worksheet

was not a protected or privileged document. Appellant filed Defendant's Memorandum in Opposition to the Plaintiff's Motion to Compel on June 11, 2021. Appellant argued in its memorandum that the Risk Management Worksheet was an incident or occurrence report, and thus, was protected pursuant to S.C. Code Ann. §44-7-392(A)(1)(h). The Honorable R. Lawton McIntosh presided over a hearing on the Plaintiff's Motion to Compel on June 23, 2021. During the hearing, Judge McIntosh ruled from the bench that he was granting the Motion to Compel. The Court entered a Form 4 order consistent with the verbal ruling on June 23, 2021, directing counsel for the Respondent to prepare a formal order. The Court entered the formal order drafted by counsel for the Respondent on July 12, 2021. This Appeal followed.

### **ARGUMENT**

As indicated above, the primary issue of this appeal is whether an occurrence/incident report is protected from discovery under S.C. Code Ann. §44-7-392. In order to make that determination, the Appellant submits that the Court should have the benefit of reviewing the document itself, and that such review should be performed *in camera*. Producing the document without the protections of *in camera* review may defeat the purpose of this appeal, as it would allow the Respondent access to the document that the Appellant seeks to protect. As S.C. Code Ann. §44-7-394 provides that the court "shall review the documents under seal to determine if any of the documents are subject to discovery," the Appellant respectfully moves this Court to perform an *in camera* review of the subject occurrence/incident report without production to the Respondent.

### **CONCLUSION**

S.C. Code Ann. §44-7-394 allows for the *in camera* review of documents which are the

subject of motions to compel regarding privileges asserted pursuant to S.C. Code Ann. §44-7-392. Accordingly, the occurrence/incident report should be produced for *in camera* review.

Respectfully submitted,

**ROE CASSIDY COATES & PRICE, P.A.**

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PROOF OF SERVICE

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I certify that I have served the Appellant's Motion for *In Camera* Review of Document Without Production to Respondent on Wanda Human, as Person Representative of the Estate of Evelyn Marie Wood, by mail on February 14, 2022, to their attorney of record at 32 Ann Street, Charleston, South Carolina 29403 and by electronic mail at CLD@akimlawfirm.com.

**ROE CASSIDY COATES & PRICE, P.A.**

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