

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-CV-93-RPM

INGRID IVERSEN, individually and as personal
representative of the Estate of Terry Tyler,

Plaintiff,

v.

AGA SERVICE COMPANY,

Defendant.

**LETTER OF REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE TO
COMPEL PRODUCTION OF DOCUMENTS PURSUANT TO THE HAGUE
CONVENTION ON THE TAKING OF EVIDENCE ABROAD IN CIVIL OR
COMMERCIAL MATTERS**

The United States District Court for the District of Colorado, United States of America (the “Requesting Judicial Authority”) presents its compliments to the Central Authority and Judicial Authorities of the United Mexican States and respectfully requests judicial assistance in obtaining documentary evidence to be used in a civil proceeding pending before the Requesting Judicial Authority.

This Letter of Request is made pursuant to, and in conformity with, Chapters I and III of the *Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters*, concluded on March 18, 1970 (the “Hague Evidence Convention”). See www.hcch.net. The United States of America ratified the Hague Evidence Convention on August 8, 1972. The

United Mexican States ratified the Hague Evidence Convention on July 27, 1989. Accordingly, both the United States of America and the United Mexican States are Contracting States under the Hague Evidence Convention. Further, the Hague Evidence Convention is in force as between the United States of America and the United Mexican States.

The Requesting Judicial Authority requests assistance in compelling the production of documents from Dr. Arturo Javier Barrera Bortoni (“Dr. Barrera”) and Hospital de la Fe, both located in San Miguel de Allende, State of Guanajuato, United Mexican States. Dr. Barrera is a physician who practices medicine at Hospital de la Fe. As set forth in more detail below, this Letter of Request requests the production of medical and other records for the discrete period from December 30, 2012 through January 4, 2013 in relation to the treatment and death of Terry Neil Tyler (“Mr. Tyler”), a citizen of the United States of America. Mr. Tyler died on January 3, 2013 at the Hospital de la Fe under the care of Dr. Barrera. For reference, a copy of the Death Certificate of Terry Neil Tyler from the State of Guanajuato Civil Registry is attached to this Letter of Request.

The medical and other records sought from Dr. Barrera and Hospital de la Fe are reasonably identifiable and are directly relevant to the following lawsuit commenced and pending in the Requesting Judicial Authority: Iversen v. AGA Service Company, Case No. 14-CV-93-RPM (D. Colo.) (the “Colorado Lawsuit”). Neither Dr. Barrera nor Hospital de la Fe are parties to the Colorado Lawsuit. As set forth in more detail below, the Second Amended Complaint in the Colorado Lawsuit asserts that Defendant AGA Service Company is liable to Plaintiff Ingrid Iversen for the death of Plaintiff Ingrid Iversen’s husband, Mr. Tyler. The Second Amended Complaint also alleges claims for wrongful death, bad faith, bad faith breach

of contract, breach of contract and negligence all in relation to Mr. Tyler's death. Accordingly, the medical and other records are directly relevant to the medical condition, medical history, medical treatment, death and cause of death of Terry Neil Tyler and are required for trial of the Colorado Lawsuit.

In accordance with the Reservation of the United Mexican States under Article 4 of the Hague Evidence Convention, this Letter of Request is accompanied by a Certified Translation into the Spanish language. This Letter of Request complies with all Declarations and Reservations of the United Mexican States under the Hague Evidence Convention.

The balance of this Letter of Request, and the particulars, are set forth below in the form of the Model Letter of Request recommended by the Special Commission of the Hague Conference on Private International Law and available at www.hcch.net.

1. SENDER- REQUESTING JUDICIAL AUTHORITY

The Honorable Richard P. Matsch
Senior United States District Judge
United States District Court for the District of Colorado
Byron White United States Courthouse
1823 Stout Street
Denver, Colorado
United States of America
Telephone Number: (001) (303) 844-6118
E-Mail: _____

2. CENTRAL AUTHORITY OF THE REQUESTED STATE

Directorate-General of Legal Affairs
Ministry of Foreign Affairs of United Mexican States
Plaza Juárez No. 20
Planta Baja Edificio Tlatelolco
Colonia Centro
Delegación Cuauhtémoc
C.P. 06010
Distrito Federal
United Mexican States

3. PERSON TO WHOM THE EXECUTED REQUEST IS TO BE RETURNED

On behalf of the Requesting Judicial Authority, please return the executed request to:

United States of America Legal Counsel for Defendant AGA Service
Company

Tom McNamara
Davis Graham & Stubbs LLP
1550 17th Street, Suite 500
Denver, Colorado
United States of America
Telephone Number: (001) (303) 892-7349
E-Mail: tom.mcnamara@dgsllaw.com

and

Local Legal Representative of Defendant AGA Service Company

Lic. Guillermo Aldana Ugarte
Basham Ringe y Correa, S.C.
Prolongación Tecnológico No. 950-B
Piso 12-A
Col. San Pablo
76159 Querétaro
United Mexican States
Telephone Number: (52) (442) 103-2107
E-Mail: galdana@basham.com.mx

4. SPECIFICATION OF THE DATE BY WHICH THE REQUESTING AUTHORITY REQUIRES RECEIPT OF THE RESPONSE TO THE LETTER OF REQUEST

The Requesting Judicial Authority requires receipt of the Response to the Letter of Request as soon as practicable but no later than June 30, 2014. The reason for the urgency of the Letter of Request is to ensure prompt judicial resolution of the Colorado Lawsuit and avoid prejudice.

IN CONFORMITY WITH ARTICLE 3 OF THE HAGUE EVIDENCE CONVENTION, THE UNDERSIGNED REQUESTING JUDICIAL AUTHORITY HAS THE HONOR TO SUBMIT THE FOLLOWING REQUEST:

5.A. REQUESTING JUDICIAL AUTHORITY (Article 3, a)

The Honorable Richard P. Matsch
Senior United States District Judge
United States District Court for the District of Colorado
Byron White United States Courthouse
1823 Stout Street
Denver, Colorado
United States of America
Telephone Number: (001) (303) 844-6118
E-Mail: _____

5.B. TO THE COMPETENT AUTHORITY OF (Article 3, a)

Directorate-General of Legal Affairs
Ministry of Foreign Affairs of United Mexican States
Plaza Juárez No. 20
Planta Baja Edificio Tlatelolco
Colonia Centro
Delegación Cuauhtémoc
C.P. 06010
Distrito Federal
United Mexican States

5.C. NAME OF THE CASE AND ANY IDENTIFYING NUMBER

Iversen v. AGA Service Company, Case No. 14-CV-93-RPM (United States District Court, District of Colorado)

6.A. NAMES AND ADDRESSES OF PLAINTIFF AND PLAINTIFF'S REPRESENTATIVE

Plaintiff: Ingrid Iversen
14177 Highway 140
Hesperus, Colorado 81326
United States of America

Plaintiff's Representative: Christopher J. DeLara
Guebert Bruckner P.C.
P.O. Box 93880
Albuquerque, New Mexico
United States of America
Telephone Number: (001) (505) 823-2300
E-Mail: cdelara@guebertlaw.com

6.B. NAMES AND ADDRESSES OF DEFENDANT AND DEFENDANT'S REPRESENTATIVE

Defendant: AGA Serice Company
9950 Mayland Drive
Richmond, Virginia 23233
United States of America

Defendant's United States of America Representative: Tom McNamara
Davis Graham & Stubbs LLP
1550 17th Street, Suite 500
Denver, Colorado
United States of America
Telephone Number: (001) (303) 892-7349
E-Mail: tom.mcnamara@dgsllaw.com

and

Defendant's United Mexican States Representative: Lic. Guillermo Aldana Ugarte
Basham Ringe y Correa, S.C.
Prolongación Tecnológico No. 950-B

Piso 12-A
Col. San Pablo
76159 Querétaro
United Mexican States
Telephone Number: (52) (442) 103-2107
E-Mail: galdana@basham.com.mx

7.A. NATURE OF THE PROCEEDINGS (Article 3, c)

The Colorado Lawsuit is a civil action. The Second Amended Complaint in the Colorado Lawsuit asserts that Defendant AGA Service Company is liable to Plaintiff Ingrid Iversen for the death of Plaintiff Ingrid Iversen's husband, Terry Neil Tyler. The Second Amended Complaint alleges claims for wrongful death, bad faith, bad faith breach of contract, breach of contract and negligence all in relation to Mr. Tyler's death.

7.B. SUMMARY OF THE COMPLAINT

Plaintiff Ingrid Iversen filed a Second Amended Complaint against Defendant AGA Service Company on March 14, 2014.

The Second Amended Complaint alleges that Terry Neil Tyler and his wife, Plaintiff Ingrid Iversen, travelled to the United Mexican States ("Mexico") on December 29, 2012. Shortly after their arrival, Mr. Tyler became ill. According to the Second Amended Complaint, on or about December 31, 2012, Mr. Tyler was hospitalized at the Hospital de la Fe in San Miguel de Allende, State of Guanajuato, United Mexican States. During his stay at Hospital de la Fe, Mr. Tyler was under the care of Dr. Arturo Javier Barrera Bortoni. Mr. Tyler died at the Hospital de la Fe in Mexico on January 3, 2013.

The Second Amended Complaint asserts that Terry Neil Tyler and his wife, Plaintiff Ingrid Iversen, purchased an Individual Travel Insurance Policy from Defendant AGA Service Company prior to their trip to Mexico. Plaintiff Ingrid Iversen alleges that Defendant AGA

Service Company failed to timely transport Mr. Tyler back to the United States prior to his death in Mexico and in violation of the Individual Travel Insurance Policy.

Plaintiff Ingrid Iversen claims that Defendant AGA Service Company is liable for, and caused, Terry Neil Tyler's death. The Second Amended Complaint asserts the following claims against Defendant AGA Service Company: (1) wrongful death; (2) bad faith; (3) bad faith breach of contract; (4) breach of contract; and (5) negligence. The Second Amended Complaint also alleged a claim for outrageous conduct; however, the outrageous conduct claim has been dismissed.

7.C. SUMMARY OF DEFENSE

On March 27, 2014, Defendant AGA Service Company filed its Answer and Affirmative Defenses in the Colorado Lawsuit. The Answer and Affirmative Defenses generally denies many of the factual allegations asserted in the Second Amended Complaint and contends that Defendant AGA Service Company is not liable for, and did not cause, the death of Terry Neil Tyler in Mexico. Furthermore, Defendant AGA Service Company denies all of the claims asserted in the Second Amended Complaint. Defendant AGA Service Company asserts that it acted in good faith in attempting to transport Mr. Tyler to the United States of America but he died of pre-existing conditions before the international medical evacuation could be completed.

In addition to its denials of the facts and claims in the Second Amended Complaint, Defendant AGA Service Company asserted a series of Affirmative Defenses. These additional Affirmative Defenses include the following: (1) failure to state a claim upon which relief can be granted; (2) potential application of the law of the United Mexican States; (3) forum non-conveniens; (4) lack of standing; (5) good faith; (6) lack of privity of contract; (7) bar by

contract; (8) assumption of risk; (9) lack of causation of death; (10) intervening events and/or parties; (11) bar by economic loss doctrine; (12) inapplicability of insurance statutes; (13) bar by contributory and comparative negligence; (14) reduction of damages; (15) bar by recovery from collateral sources; (16) limitation on damage recovery; (17) bar by speculative nature of damages; and (18) bar against exemplary or punitive damages.

8.A. EVIDENCE TO BE OBTAINED OR OTHER JUDICIAL ACT TO BE PERFORMED (Article 3, d)

The Requesting Judicial Authority requests that Dr. Arturo Javier Barrera Bortoni and Hospital de la Fe be compelled to produce for inspection and copying the medical and other records specified in Section 10 of this Letter of Request.

8.B. PURPOSE OF THE EVIDENCE OR JUDICIAL ACT SOUGHT

The Requesting Judicial Authority requests that Dr. Arturo Javier Barrera Bortoni and Hospital de la Fe be compelled to produce for inspection and copying the medical and other records specified in Section 10 of this Letter of Request. The medical and other records are sought for the purposes of trial in the Colorado Lawsuit and are relevant to the medical condition, medical history, medical treatment, death and cause of death of Terry Neil Tyler.

9. IDENTITY AND ADDRESS OF THE CUSTODIANS OF DOCUMENTS (Article 3, e)

Dr. Arturo Javier Barrera Bortoni
Hospital de la Fe
Libramiento José Manuel Zavala
Zavala PPKBZON #12
Centro
San Miguel de Allende
Guanajuato, Mexico 37700
United Mexican States

Hospital de la Fe
Libramiento José Manuel Zavala
Zavala PPKBZON #12
Centro
San Miguel de Allende
Guanajuato, Mexico 37700
United Mexican States

10. DOCUMENTS TO BE PRODUCED, INSPECTED AND COPIED (Article 3, g)

The Requesting Judicial Authority requests that Dr. Arturo Javier Barrera Bortoni and Hospital de la Fe be compelled to produce the following documents for inspection and copying. Such documents relate to the medical condition, medical history, medical treatment, death and cause of death of Terry Neil Tyler. For reference, a copy of the Death Certificate for Terry Neil Tyler from the Guanajuato Civil Registry is attached to this Letter of Request.

- a. **All medical records (including both paper and electronic records) concerning the medical condition, medical history, medical treatment, death and cause of death of Terry Neil Tyler between the dates of December 30, 2012 and January 4, 2013. Such medical records include, among other things: notes; orders; observations; logs; test results; photographs; x-rays; scans; prescriptions; and all other medical information typically included in a patient's "medical file" or "medical chart."**
- b. **All documents (including both paper and electronic records) other than medical records related to Terry Neil Tyler's hospitalization at Hospital de la Fe between the dates of December 30, 2012 and January 4, 2013. Such additional documents include, among other things: correspondence; notes of conversations; facsimile transmissions; admission forms; insurance forms; medical release forms; invoices; payments; documents provided to the State of Guanajuato concerning Terry Neil Tyler's death; certifications concerning Terry Neil Tyler's death; and all other information typically included in a "hospital file" or "patient file."**

11. SPECIAL METHODS OR PROCEDURE TO BE FOLLOWED (Articles 3 and 9).

The Requesting Judicial Authority requests that counsel for the Parties identified in Section 6.A and 6.B be informed of the time and place for execution of this Letter of Request and be permitted to be present for inspection and copying the requested documents.

12. REQUEST FOR NOTIFICATION OF TIME AND PLACE FOR EXECUTION OF THE REQUEST AND IDENTITY AND ADDRESS OF ANY PERSON TO BE NOTIFIED (Article 7).

The Requesting Judicial Authority requests that counsel for the Parties identified in Section 6.A and 6.B be informed of the time and place for execution of this Letter of Request and be permitted to be present for inspection and copying the requested documents. For ease of reference, the names, addresses, telephone numbers, and e-mail addresses of counsel for the Parties already identified in Section 6.A and 6.B are set forth again below:

Plaintiff's Representative: Christopher J. DeLara
Guebert Bruckner P.C.
P.O. Box 93880
Albuquerque, New Mexico
United States of America
Telephone Number: (001) (505) 823-2300
E-Mail: cdelara@guebertlaw.com

Defendant's United States
of America Representative: Tom McNamara
Davis Graham & Stubbs LLP
1550 17th Street, Suite 500
Denver, Colorado
United States of America
Telephone Number: (001) (303) 892-7349
E-Mail: tom.mcnamara@dgsllaw.com

and

Defendant's United Mexican
States Representative:

Lic. Guillermo Aldana Ugarte
Basham Ringe y Correa, S.C.
Prolongación Tecnológico No. 950-B
Piso 12-A
Col. San Pablo
76159 Querétaro
United Mexican States
Telephone Number: (52) (442) 103-2107
E-Mail: galdana@basham.com.mx

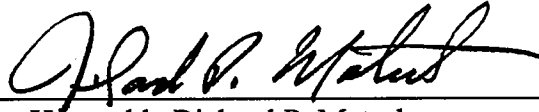
13. THE FEES AND COSTS INCURRED WHICH ARE REIMBURSABLE UNDER THE SECOND PARAGRAPH OF ARTICLE 14 OR UNDER ARTICLE 26 OF THE HAGUE EVIDENCE CONVENTION.

Any fees and costs incurred by the Central Authority and Judicial Authorities of the United Mexican States in fulfilling this Letter of Request and which are reimbursable under Articles 14 or 26 of the Hague Evidence Convention will be borne by Defendant AGA Service Company.

CONCLUSION

It is respectfully requested that this Letter of Request be given the highest consideration and enforced as soon as practicable. To the extent that any portion of the Request cannot be granted, it is respectfully requested that the remaining parts be granted. The Requesting Judicial Authority assures the Central Authority and the Judicial Authorities in the United Mexican States that it will reciprocate with similar assistance in like cases and extends to the Central Authority and Judicial Authorities in the United Mexican States the assurances of its highest consideration.

Date of Letter of Request: May 6th, 2014



The Honorable Richard P. Matsch
Senior United States District Judge
United States District Court for the District of
Colorado
Byron White United States Courthouse
1823 Stout Street
Denver, Colorado
United States of America
Telephone Number: (001) (303) 844-4627
E-Mail: _____



[Seal of United States District Court]



ESTADO DE GUANAJUATO
DIRECCION GENERAL DEL REGISTRO CIVIL
DEFUNCION

EN NOMBRE DEL ESTADO LIBRE Y SOBERANO DE GUANAJUATO, CERTIFICO SER CIERTO QUE EN EL LIBRO No. 1 DE DEFUNCIONES QUE EXISTE EN EL ARCHIVO DE LA OFICIALIA DEL REGISTRO CIVIL No. 01 ALLENDE DEL MUNICIPIO DE ALLENDE SE ENCUENTRA ASENTADA EL ACTA No. 00011 DE FECHA 4 DE ENERO DE 2013 DEL TENOR SIGUIENTE:

OFICIALIA	LIBRO	ACTA No.	CRIP	CURP
01	1	00011		

LUGAR DE REGISTRO: ALLENDE, ALLENDE, GUANAJUATO
 FECHA DE REGISTRO: 4 DE ENERO DE 2013

DATOS DEL FINADO

NOMBRE: TERRY NEIL TYLER
 SEXO: MASCULINO ESTADO CIVIL: CASADO(A) NACIONALIDAD: NORTEAMERICANA
 FECHA DE NACIMIENTO: 5 DE DICIEMBRE DE 1940 EDAD: 72 AÑOS(s) -- Mes(es) -- Día(s) -- Hr -- Min
 LUGAR DE NACIMIENTO: CALIFORNIA -- -- ESTADOS UNIDOS - ISLAS MENORES
 NOMBRE CONYUGE: ----- NACIONALIDAD: -----
 NOMBRE DEL PADRE: ----- NACIONALIDAD: -----
 NOMBRE DE LA MADRE: ----- NACIONALIDAD: -----

DATOS DEL FALLECIMIENTO

FECHA DE DEFUNCION: 3 DE ENERO DE 2013 HORA DE DEFUNCION: 14:00 CERTIFICADO #: 130248610
 LUGAR DE FALLECIMIENTO: HOSPITAL DE LA FE, SAN MIGUEL DE ALLENDE, ALLENDE, GUANAJUATO, MEXICO

CAUSAS DEL FALLECIMIENTO: DESTINO DEL CADAVER: CREMACION
 PARO RESPIRATORIO 15 MIN, INSUFICIENCIA RENAL AGUDA 72 HRS, HIPOVOLEMIA 48 HRS.

PANTEON: CREMATARIO JARDINES NUEVA VIDA, FRAY BERNARDO DE COSSIN, SIN, FRACC, INSURGENTES SAN MIGUEL DE ALLENDE, GTO, ALLENDE
 MEDICO QUE CERTIFICA: ARTURO J. BARRERA BORTONI CEDULA PROF.: 592555

DATOS DEL COMPARECIENTE

NOMBRE DECLARANTE: INGRID LYN IVERSEN EDAD: 60
 NACIONALIDAD: NORTEAMERICANA PARENTESCO: ESPOSO(A)

SE EXTIENDE LA PRESENTE CONFORME A LO DISPUESTO POR EL ARTICULO 58 DEL CODIGO CIVIL VIGENTE DEL ESTADO, ALLENDE GUANAJUATO, A 1 DE ABRIL DE 2014

NOMBRE Y FIRMA DEL
 OFICIAL DEL REGISTRO CIVIL

 LIC. MA. DE LOURDES BRAVO VILLANUEVA

SELLO DE LA OFICINA

 592896400-12396400
RCA12396400

Preco: \$118.00
 15/30107/280173/309518



SECRETARIA DE GOBIERNO

FOLIO: 008452

MEXICO

Apostille

(Convention de La Haye du 5 octobre 1961)



S.G./GTO.

Derechos \$ 106.00

No. de orden 1572



En México el presente documento ha sido firmado por LA CIUDADANA LICENCIADA MA. DE LOURDES BRAVO VILLANUEVA quien actúa en calidad de OFICIAL DEL REGISTRO CIVIL NUMERO 01 ALLENDE DEL MUNICIPIO DE ALLENDE, GTO.

y está revestido del sello correspondiente a OFICIALIA DEL REGISTRO CIVIL SAN MIGUEL DE ALLENDE, GTO.

Certificado en GUANAJUATO por LIC. JUANA HAYDEE ESCOBAR PORRAS JEFE DE DEPARTAMENTO ADSCRITO A LA DIRECCION GENERAL DE ASUNTOS JURIDICOS DE LA SECRETARIA DE GOBIERNO.

GUANAJUATO, GTO. el 4 de ABRIL de 2014

Handwritten signature over the word 'Firma'

Tipo de Documento ACTA DE DEFUNCIÓN

La presente epostilla solo certifica la firma y sello, no certifica el contenido del documento.

