

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

CLIFFORD TIERCE,

Plaintiff,

AMERICAN INTERSTATE INSURANCE
COMPANY, a foreign corporation,

Intervenor Plaintiff

vs.

THE U.S. BAIRD CORPORATION, a/k/a
THE BAIRD MACHINERY
CORPORATION, a/k/a BAIRD
INDUSTRIES, LLC, a foreign corporation
or limited liability company,

Defendant.

Case No.15-CV-358-CVE-FHM

OPINION AND ORDER

Defendant U.S. Baird Corporation's Motion to Compel, [Dkt. 25], is before the undersigned United States Magistrate Judge for decision. The matter is fully briefed and a hearing was held on December 16, 2015, at which time American Interstate Insurance Company, Intervenor Plaintiff, was instructed to submit the claim file documentation notes identified as item 1 on American Interstate Insurance Company's privilege log, [Dkt. 25-4], for an *in camera* review. The documents have been submitted and the court has reviewed them.

Plaintiff was employed by Action Springs Company and was operating a Four Slide machine manufactured by Defendant when he sustained an injury resulting in the amputation of his left arm. American Interstate Insurance Company (AI) provided Workers Compensation Insurance to Plaintiff's employer. AI has paid out Workers Compensation benefits to Plaintiff in excess of \$300,000. AI seeks subrogation against Defendant to

recover what it paid to Plaintiff under its coverage of Action Springs Company. AI has provided, or will provide, Defendant the photographs taken of the machinery at issue, witness interviews, Plaintiff's deposition, and the medical records and medical bills it collected, as well as its audit of the medical bills.

Defendant seeks an order compelling AI to produce what have been identified as Claim File Documentation Notes related to Plaintiff's Workers Compensation claim which includes factual information and evaluations by AI. AI has agreed to produce all factual information, but objects to producing its analysis. Defendant has not shown that AI's evaluation or analysis is relevant to the claims or defenses in this case. As a result, AI is not required to produce the Claims File Documentation Notes. However, based on the *in camera* review of the Claim File Documentation Notes, the court has identified a portion of one entry that contains a purely factual summary of information about the accident compiled soon after the accident and should therefore be produced. AI is required to produce the portion of the entry dated 4/21/201 by LSHEILDS on page one of the *in camera* submission, beginning with the words "The work injury took place on 4/20/2011" and ending on page 2 with the words "Claimant was fully skilled on this machine and his main job."

SO ORDERED this 7th day of January, 2016.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE