

16-0361

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IN THE CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

MARK HUNTER AND JENNIFER HUNTER

Plaintiffs,

v.

Civil Action No.: 15-C-116

WESTFIELD INSURANCE COMPANY;
CAROL WRISTON; AND CHAD STEAR

Defendants.

2016 MAR 24 AM 11:02
PUTNAM CO. CIRCUIT COURT
RONNIE W. MATTHEWS
FILE

ORDER DENYING MOTION TO BIFURCATE AND STAY

This matter came on for a hearing on February 18, 2016 pursuant to the Motion to Bifurcate and Stay filed by Westfield Insurance Company ("Westfield). Plaintiffs were represented by James R. Fox. Luci Wellborn appeared as counsel for the underinsured motorist claim, and Brent Kesner appeared as counsel for Westfield and Carol Wriston.

This case involves a claim for underinsured motorist benefits under the automobile policy issued to plaintiffs by Westfield. Plaintiffs have also asserted a bad faith claim against Westfield relating to its adjustment of the underinsured motorist (UIM) claim. Westfield argues that it will be unduly prejudiced unless the causes of action are bifurcated and discovery is stayed in the bad faith action. According to Westfield, it has a right to defend the UIM claim in the name of the negligent driver, and mentioning insurance would impair its defense of the UIM claim.

Bifurcation is controlled by Rule 42(c) of the West Virginia Rules of Civil Procedure. Bifurcation is only permitted where it is necessary in furtherance of convenience and economy or to avoid prejudice. The perception of prejudice and concern over mentioning insurance is generally not present in first party UIM and bad faith claims where the causes of action are against the insurance company and the existence of insurance is present throughout the litigation. Light v. Allstate Insurance Company 203 W.Va. 27, 506 SE2d 64 (1998).

The Court is not convinced under the circumstances that Westfield has an absolute right to defend the UIM claim in the name of the negligent driver who settled and paid his liability insurance limits prior to plaintiffs filing a lawsuit. Westfield consented to that settlement and waived its right of subrogation against the negligent driver. The purpose of West Virginia Code §33-6-31(d) is to provide notice of the settlement in order to prevent having judgment taken against Westfield without an opportunity to defend the lawsuit. Consenting to the settlement and waiving subrogation may constitute a waiver of the right to defend in the name of the negligent driver. Postlethwait v. Boston Old Colony Ins. Co., 189 W.Va. 532, 432 S.E.2d 802 (1993). Beane v. Horace Man Insurance Company 2007 WL 1009916 (S.D. W.Va. 2007); Sanders v. State Farm 2007 WL 2740657 (S.D. W.Va. 2007); and Tuxton v. Motorists Mutual Insurance Company 2008 WL 5377835.

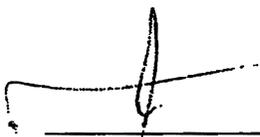
Westfield has not demonstrated that it will be unduly prejudiced or that bifurcation will promote economy and convenience. The Court finds that the Motion to Bifurcate is premature at this time. Accordingly, the Court **ORDERS** that the Motion to Bifurcate the trial of these causes of action is **DENIED**; however, Westfield may renew its Motion at the conclusion of discovery.

The standard for staying discovery is set forth in Light v. Allstate Insurance Company 203 W.Va. 27, 506 SE2d 64 (1998). The Court has carefully considered these factors and finds that they support proceeding with discovery in all aspects of the case. There are only two parties in interest – plaintiffs and Westfield. The case is not complex. The UIM claim involves injuries from a car wreck, and the bad faith claim is related to the adjustment of the UIM claim. Plaintiffs would be unfairly prejudiced by staying discovery which would cause unnecessary delay, and unnecessarily increase the costs and time involved in litigating the claims. It would also increase the burden on the Court. Westfield will not be prejudiced from participating in discovery, as the real party in both the UIM claim and the bad faith claim is the same. There is no danger that materials and information learned through discovery could unfairly prejudice a third party tortfeasor, as there is not one in this case. Finally, judicial economy weighs against staying discovery.

Accordingly, the Court **ORDERS** that the Motion to Stay Discovery is **DENIED**. The parties shall proceed with discovery concerning all issues in this case.

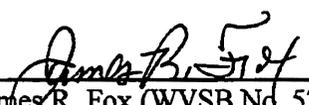
The objections and exceptions of Westfield are hereby noted and preserved.

Enter this 23rd day of March 2016.



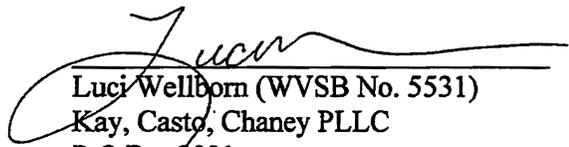
Judge Joseph Reeder

Prepared by:

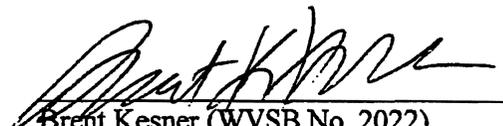


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