

ARGUMENT
DOCKET

14-1168

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

ERIN ELIZABETH GILMORE,
ERIKA LOIS GILMORE and
RON R. GILMORE,

Plaintiffs,

v.

// Civil Action No. 14-C-215-1
Judge John Lewis Marks, Jr.

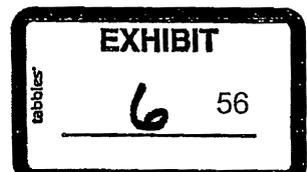
ENERGY CORPORATION OF AMERICA,
a West Virginia corporation,
JOHN D. SOLLON, JR.,
STATE AUTO PROPERTY AND CASUALTY
INSURANCE COMPANY, d/b/a
STATE AUTO INSURANCE COMPANIES, and
LAURA HOLMES

Defendants.

**PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
DENYING DEFENDANTS ENERGY CORPORATION OF AMERICA AND JOHN
D. SOLLON, JR.'S MOTION TO SEVER AND DISMISS FOR IMPROPER VENUE
AND
DENYING STATE AUTO INSURANCE COMPANIES' MOTION TO
BIFURCATE AND STAY**

On September 8, 2014, the Court held a hearing on Defendants Energy Corporation of America and John D. Sollon, Jr.'s (collectively "ECA") "Motion to Sever Defendants Energy Corporation of America and John D. Sollon, Jr. and Motion to Dismiss for Improper Venue" and Defendant State Auto Property and Casualty Insurance Company's ("State Auto"), "Motion to Bifurcate and Stay." At that time, the Court having reviewed the pleadings of the Parties and entertained the argument of counsel, made the following findings of fact and conclusions of law.

1) This case was filed in the Circuit Court of Harrison County on May 1, 2014 emanating from a rear-end automobile collision which occurred on May 17, 2012, just



across the West Virginia State line in Pennsylvania on Interstate 79, when a work truck, being driven by Defendant Sollon and owned by Defendant ECA, rear ended the Plaintiff's vehicle; Plaintiffs also joined State Auto in the Complaint for allegedly failing to pay first party insurance benefits due Plaintiffs;

2) Defendant ECA filed a Motion to Sever the vehicle tort case from the first party bad faith case against Defendant State Auto based upon ECA's argument that the two causes of action were unrelated and should not be joined in the same civil action; ECA then seeks to dismiss the case against them in Harrison County as Defendant Sollon is a resident of Monongalia County and ECA is a domestic corporation with Offices in Charleston, West Virginia, with its principle place of business in Denver, Colorado;¹

3) When Plaintiffs re-filed their Complaint they alleged causes of action against Defendant State Auto based upon State Auto's violation of the Insurance Unfair Trade Practices Act and common law bad faith as State Auto sold Plaintiffs' their automobile insurance policy in effect at the time of the vehicle collision;

4) State Auto has moved to bifurcate the first-party bad faith claim from the automobile tort claim and to stay all proceedings against it including discovery, until the automobile tort claim is resolved; Plaintiffs assert that venue is proper and that the causes of action against State Auto are valid, providing a venue giving Defendant, as State Auto is a foreign corporation doing business in every County of this State, including Harrison County, which has been admitted by State Auto;

5) None of the Defendants have asserted that the causes of action alleged by

¹ This case had been previously filed in Harrison County against ECA and Sollon alone and it was dismissed for improper venue without prejudice to re-file; that Order was entered on July 31, 2013 by Judge Thomas A. Bedell.

Plaintiffs against State Auto are without merit, or a sham in an attempt to gain venue in a forum where it had been previously denied; Plaintiffs provided representations and Exhibits in its Response to the Motions demonstrating communications with the insurance carrier for ECA, National Union Fire Insurance Company ("National Union") and attempts to resolve the matter to no avail; Plaintiffs also provided representations and Exhibits in its Response to the Motions demonstrating contact with State Auto requesting information and seeking payment of their insurance benefits under their insurance policy with State Auto again to no avail;

6) Plaintiffs assert that these communications were ignored, and in preparation for this hearing Plaintiffs subpoenaed a designated witness from National Union and State Auto to appear to testify with regard to such communications and lack of substantive responses, and both insurance carriers moved to quash such Subpoenas; at the hearing regarding the Motions to Quash, counsel for both National Union and State Auto represented to the Court that for purposes of the hearing to sever, dismiss and bifurcate, they would not contest the assertions made by Plaintiffs in their Response nor were they asserting that Plaintiffs did not state valid causes of action against State Auto or that such cause of action was asserted in bad faith as a sham to gain venue;²

7) Accordingly, the Court **FINDS** that Plaintiffs asserted in good faith, causes of action against Defendant State Auto based on the facts known to Plaintiffs at the time this second Complaint was filed in Harrison County Circuit Court;

8) The law in West Virginia has been clear for decades that venue is controlled by West Virginia Code §56-1-1; in this instance, it is guided by §56-1-1(a)(2) as Defendant

² The Court will enter separate orders regarding the Motions to Quash by National Union and State Auto reflecting those proceedings.

State Auto is a proper "venue giving" Defendant in this County, and once joined in the action, State Auto is a venue giving Defendant for all Defendants in the case. Kenamond v. Warmuth, 366 S.E.2d 738 (W.Va. 1998) and Kidwell v. Westinghouse Elec. Co., 358 S.E.2d 420 (W.Va. 1987; this Court has previously ruled that a foreign corporation doing business in this County gives venue in this County under the Kidwell case, and that once there is a venue giving defendant in a case, venue is proper with regard to all other defendants under the Kenamond holding;³ nothing before this Court would cause this Court to vary from such prior decisions authorized under controlling West Virginia Supreme Court case law;⁴

9) However, ECA seeks severance based on improper joinder under Rule 20 of the West Virginia Rules of Civil Procedure, and if this Court does grant severance to the ECA Defendants, ECA then asserts that venue is improper and the case should be dismissed against it; without deciding the issue whether severance would result in lack of venue, the Court believes that the same result could be accomplished through bifurcation, if justified, thus leaving all causes of actions and Parties in one forum, which is what State Auto seeks; however, the Court must first address whether joinder was proper in this instance;

10) Rule 20 is to be applied liberally to permit joinder of all parties in one action if there is any relationship to those claims arising out of the same "transaction, occurrence, or series of occurrences and if any question of law or fact common to all defendants will

³ West Virginia has been a "venue-giving" defendant jurisdiction "for more than one hundred years"; Morris v Crown Equip. infra, at 301.

⁴ Although Plaintiffs' choice of forum is not determinative, there is a presumption that Plaintiffs' choice of forum should be given substantial weight outweighed by other significant factors. Abbott v. Owens Corning Fiberglass Corp., 444 S.E.2d 285 (W.Va. 1994).

arise in the action.”; “the goal of ...permissive joinder is the promotion of judicial economy by preventing both the duplication of effort and the uncertainty embodied in piecemeal litigation.” Morris v. Crown Equipment Corp., 633 S.E.2d 292 (W.Va. 2006), Cert. denied, 127 S.Ct. 833 (2006); ECA has provided no West Virginia authority to the contrary;

11) The Court **FINDS** that the allegations against the ECA Defendants and State Auto arise out of the same “transaction, occurrence or series of occurrences” as the rear-end collision, and the injuries resulting therefrom, both bodily injury and property damage, triggered the causes of action against both the ECA Defendants and State Auto; they are inextricably intertwined and Rule 20 is satisfied as it promotes judicial economy so that this case will not be pursued in two different forums where the potential for inconsistent rulings or duplication of the same evidence in both forums may very well be necessary, especially as to damages; by having both causes of action in one forum, the Court can manage the proceedings more efficiently with the ultimate goal of resolving the claims by settlement or trial;

12) The Court also **FINDS** that bifurcation is unnecessary at this time as the presumption is that one trial will be sufficient to resolve all of Plaintiffs’ claims and the defenses of the Defendants and State Auto has provided this Court with no reason that a single trial will create prejudice for State Auto or the ECA Defendants; a unitary trial is preferred over bifurcation if there is no substantial prejudice to any party. Light v. Allstate, 506 S.E.2d 64 (W.Va. 1998) and State ex rel Allstate v. Bedell, 506 S.E.2d 74 (W.Va. 1998).

Accordingly, the Court **DENIES** the ECA Defendants’ Motion to Sever and to Dismiss for Lack of Venue and also **DENIES** Defendant State Auto’s Motion for Bifurcation

and Stay of these proceedings.

The objection and exceptions of the Parties to the adverse rulings of the Court made herein are noted for the record.

The Clerk is directed to send a certified copy of this Order to the below identified counsel of record:

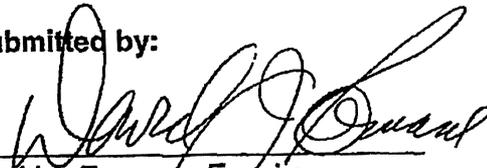
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ENTER: September 30, 2014

John Lewis Marks, Jr.
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