



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: YEAGER AIRPORT LITIGATION

CIVIL ACTION NO. 16-C-7000

THIS DOCUMENT APPLIES TO:

THEODORE CARTER and
REBECCA CARTER, husband
and wife,

Plaintiffs,

v.

Civil Action No. 15-C-1074 KAN

CENTRAL REGIONAL WEST
VIRGINIA AIRPORT AUTHORITY, et al.,

Defendants.

ORDER

Pending before the Court is *Plaintiffs' Motion Regarding Scope of Discovery and Bifurcation* (Transaction ID 60723289). The Presiding Judges have reviewed the motion, Defendant Nationwide Mutual Fire Insurance Company's ("Nationwide") *Response* (Transaction ID 60783544) and the Plaintiffs' *Reply* (Transaction ID 60811320). Having conferred with one another to insure uniformity of their decision, as contemplated by Rule 26.07(a) of the West Virginia Trial Court Rules, the Presiding Judges unanimously rule as follows.

Plaintiffs Theodore and Rebecca Carter ("Plaintiffs") request that they be allowed to have open-ended discovery pertinent to both the contractual/coverage claims and the extra-contractual/UTPA and common law bad faith claims, with the understanding the parties and the Court can separate admissibility of evidence relevant only to the contractual/coverage claims from the extra-contractual/UTPA and common law bad faith claims via motions in limine; and only bifurcate punitive damages until the extra-contractual part of the case. Mot. pp. 3-4 Plaintiffs move the Court to: 1) consider their request for open discovery from Nationwide; 2)

declare the Court's position regarding the scope of discovery for Plaintiffs' coverage and/or bad faith claims and bifurcation; and/or 3) determine whether the Court will allow time for Plaintiffs to conduct significant bad faith discovery, whether or not Plaintiffs prevail on the coverage issue, before the bad faith trial, if bad faith is bifurcated. Mot. p. 8.

Nationwide contends that discovery on Plaintiffs' extra-contractual and punitive damages claims should be bifurcated and stayed pending disposition of the coverage claims, and if trial on the coverage claims is necessary, it should be tried on an expedited basis with the claims pending against all remaining Defendants. Resp. p. 1 Nationwide asserts an expedited trial on coverage will promote efficiency and judicial economy because a trial on extra-contractual issues will likely be unnecessary if coverage is denied. *Id.* at p. 3 Nationwide also asserts it is more efficient to conduct an expedited coverage trial at the same time as the trial on the claims of the remaining Defendants because of the overlap of witnesses, and because it will allow for resolution of nearly all of the claims asserted. *Id.* at pp. 3-4

Plaintiffs' object to Nationwide's suggestion that the Court grant bifurcation of all claims against Nationwide except coverage and oppose trying the coverage claims against Nationwide with the tort claims against the Airport Authority, John Wellford and Corotoman, Inc. because it would be far more confusing and disjointed than a trial against Nationwide for both coverage bad faith claims. Reply at pp. 1-2

The Court entered a *Scheduling Order for Bifurcated Trial on Declaratory Judgment* (Transaction ID 60834714) on July 11, 2017. The scope of the parties' discovery at this juncture is confined to the factual issues related to the "earth movement" and "government acts" exclusions as set forth in the Court's Scheduling Order. Discovery or action on any other claim

by the Carters against Nationwide is STAYED and no discovery on any other claim will be permitted.

It is so ORDERED.

ENTER: July 12, 2017.

/s/ John A. Hutchison
Lead Presiding Judge
Yeager Airport Litigation