

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

NORFOLK TRANSMISSION & MUFFLER
SERVICE, INC.,

Plaintiff,

vs.

OWNERS INSURANCE COMPANY,

Defendant.

8:16CV489

ORDER

This matter is before the Court on Defendant's Motion to Bifurcate and Stay Discovery on Plaintiff's Bad Faith Claim. ([Filing No. 24.](#)) For the reasons explained below, the motion will be denied.

BACKGROUND

Plaintiff instituted this action on October 28, 2016, alleging that Defendant failed to pay all funds owed under an insurance policy that Defendant issued to Plaintiff. ([Filing No. 1.](#)) Plaintiff's Amended Complaint alleges that Defendant failed to acknowledge the severity of property damage Plaintiff sustained in a hailstorm, and refused to pay the full amount necessary to properly remediate Plaintiff's loss. The Amended Complaint further alleges that Defendant conducted an incomplete, inadequate and/or outcome-oriented investigation into the loss. Plaintiff asserts two causes of action: breach of contract and bad faith. ([Filing No. 7.](#))

DISCUSSION

Defendant requests that the Court bifurcate the bad faith claim for a separate trial, arguing that bifurcation will expedite the proceedings, promote judicial economy and prevent unfair prejudice to Defendant. Defendant asserts that a separate trial on Plaintiff's bad faith claim is appropriate since Plaintiff cannot recover under a theory of bad faith absent proof that

Defendant breached the insurance contract. Defendant also seeks to stay discovery on the bad faith claim.

Under Rule 42(b) of the Federal Rules of Civil Procedure, a court may order a separate trial of one or more separate issues. [Fed. R. Civ. P. 42](#). “The party seeking severance has the burden of proving that separate trials will (1) promote convenience, (2) expedite the proceedings, or (3) avoid unfair prejudice to a party.” [Stoltenberg v. Unum Life Insurance Company of America](#), No. 8:04CV288, 2005 WL 6934456, *2 (D. Neb. Dec. 12, 2005). District courts have broad discretion to bifurcate issues for purposes of trial. See [Athey v. Farmers Insurance Exchange](#), 234 F.3d 357, 362 (8th Cir. 2000).

This Court has recognized that “[b]ifurcation may be appropriate in insurance litigation when the insured plaintiff has jointly pleaded tort allegations of bad faith with contract claims for coverage under the insurance policy,” particularly where “the evidence relevant to the bad faith trial could be prejudicial in the coverage litigation.” [Brooks v. Lincoln Nat’l Life Ins. Co., et al.](#), 8:05CV118, Filing No. 44 at pp. 3–4 (D. Neb. Oct. 26, 2005). “However, bifurcation is not always necessary or justified . . . and the determination must be made on [a] case-by-case basis.” [Id.](#) (internal citation omitted). For instance, where discovery on the claims “substantially overlaps, bifurcation may create a duplicative process which promotes inefficiency, inconvenience and the unnecessary expenditure of resources.” [Ameritas Life Insurance Corporation v. Federal Insurance Company](#), No. 4:16CV3003, 2017 WL 432693, *2 (D. Neb. Jan. 31, 2017) (internal quotation omitted).

Having reviewed the matter, the Court will deny Defendant’s motion. The evidence before the Court suggests that staying proceedings related to the bad faith claim would not promote expeditious progression or resolution of this case. To the contrary, the record indicates that such an approach would unduly prolong and complicate this litigation. It appears that the outcome of each of the causes of action hinges upon Defendant’s evaluation and investigation of the amount owed under the policy. It seems that many of the same witnesses and documents will be used to prove each claim. In fact, Plaintiff anticipates calling the same witnesses to testify on both issues at trial. The claims are so interrelated that it would be burdensome to try to

determine what particular evidence is solely relevant to the breach of contract claim. Moreover, the creation of two phases of discovery would lead to duplication of efforts and further delay. In short, the nature of the claims in this action are so intertwined that bifurcation would create a duplicative process, which would result in increased costs for the parties and the frustration of judicial economy.

Accordingly,

IT IS ORDERED that Defendant's Motion to Bifurcate and Stay Discovery on Plaintiff's Bad Faith Claim ([Filing No. 24](#)) is denied.

Dated this 25th day of May, 2017.

BY THE COURT:

s/ Susan M. Bazis
United States Magistrate Judge