UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

ARTHUR A. MIGIROV, et al., PLAINTIFFS, v. AMERICAN STRATEGIC INSURANCE CORP, DEFENDANT.	CIVIL ACTION NO. 3:26-CV-386-CHB-LLK

ASIC'S MOTION TO BIFURCATE AND STAY DISCOVERY

Pursuant to the Court's August 14, 2026 Order (Doc. 8), the defendant, American Strategic Insurance Corp. ("ASIC"), moves to bifurcate the plaintiffs' bad faith claims from their coverage claims and to stay discovery on the bad faith claims.

I. INTRODUCTION

This case involves a dispute over insurance coverage arising out of a loss to the plaintiffs' home that occurred on September 27, 2024. The plaintiffs have asserted claims for violation of Kentucky law[1] (*Notice of Removal, Exhibit A - Plaintiffs' Complaint and Demand for Jury Trial*, Doc. 1-1 at page 9), breach of contract (Doc. 1-1 at 10), violation of the Kentucky Unfair Claims Settlement Practices Act – i.e., statutory bad faith (Doc. 1-1 at 10–11.), common-law bad faith (Doc. 1-1 at 11), and violation of the Kentucky Consumer Protection Act. (Doc. 1-1 at 11–12.) The parties have agreed to bifurcate the bad faith claims from the underlying claims, but dispute whether bad faith discovery should be stayed pending the resolution of the underlying claims. Allowing discovery to go forward on all claims simultaneously would be unfairly prejudicial,

[1] 806 KAR 12:095.

judicially inefficient, and would only serve to inhibit or delay the parties' ability to resolve the primary dispute over insurance coverage.

II. FACTUAL AND PROCEDURAL BACKGROUND

ASIC issued a policy of insurance for the covered losses to the plaintiffs' home, with Policy No. KYA6754 and a policy period extending from 07/04/2024 to 07/04/2025 (the "Policy"). (Doc. 1-1 at 17.) The plaintiffs allege that on September 27, 2024, a windstorm caused damage to their home. (Doc. 1-1 at 8.) The plaintiffs filed a claim with ASIC on September 30, 2024. (*Id.*)

Arthur Migirov reported that the windstorm caused damage to his roof and other structures, and that water had entered his home as a result and caused damage to personal property. (Doc. 7 at 1–2.) The parties exchanged correspondence regarding the scope and cost of repairs and conducted independent inspections that resulted in competing estimates. (Doc. 7 at 2.)

On September 26, 2025, the plaintiffs filed a lawsuit against ASIC in Jefferson Circuit Court. ASIC removed the suit to federal court on May 26, 2026, following the receipt of a post-suit demand of $375,000. (Doc. 1 at 1; Doc. 7 at 2.)

On August 4, 2026, the parties filed their joint Planning Meeting and Proposed Discovery Plan for the Court. (Doc. 7.) In that joint report, the parties agreed to bifurcate the coverage and bad faith issues for trial. (Doc. 7 at 2.) The plaintiffs opposed only the stay of bad faith discovery. (*Id.*)

III. LEGAL STANDARD

Fed. R. Civ. P. 42(b) authorizes the Court "to order a separate trial for one or more separate issues, [or] claims," "[f]or convenience, to avoid prejudice, or to expedite and economize" the proceedings. Bifurcation falls within the sound discretion of the trial court.

Saxion v. Titan-C-Manufacturing, Inc., 86 F.3d 553, 556 (6th Cir. 1996); *Gettings v. Building Laborers Local 310 Fringe Benefits Fund*, 349 F.3d 300, 304 (6th Cir. 2003). The moving party must demonstrate "that a bifurcation and stay of discovery on the bad faith claim would: 1) serve the interest of convenience, 2) avoid undue prejudice, or 3) expedite and economize the judicial proceedings." *Dippin' Dots, LLC v. Travelers Property Casualty Company of America*, 322 F.R.D. 271, 274 (W.D. Ky. 2017) (citing *Wilson v. Morgan*, 477 F.3d 326, 339 (6th Cir. 2007)). The Sixth Circuit has affirmed bifurcation where the merits of a bad faith claim depend on resolution of the underlying contract claim. *Smith v. Allstate Ins. Co.*, 403 F.3d 401, 407 (6th Cir. 2005). A stay is appropriate where the moving party shows that discovery would cause a clearly defined and serious injury or needless expense. *See Foster v. American Fire and Cas. Co.*, 2014 WL 7499427 at *4 (E.D. Ky. Jan. 8, 2014).

IV. ARGUMENT

A. Bifurcation of Claims is Appropriate.

As an initial matter, the parties do not dispute that the bad faith claims should be bifurcated for trial. Instead, the sole dispute is over whether discovery on all claims should be allowed to proceed simultaneously or be sequenced.

In the Sixth Circuit, insurance bad faith claims are commonly bifurcated from underlying coverage claims, with discovery on bad faith also stayed. *See e.g., Smith v. Allstate Ins. Co.*, 403 F.3d 401, 407 (6th Cir. 2005); *Warren v. Federal Ins. Co.*, 358 Fed. App'x. 670, 676 (6th Cir. 2009); *Pogue v. Principal Life Insurance Company*, 979 F.3d 534, 537 (6th Cir. 2020). This approach follows the linear principle that, to succeed on a bad faith claim, the insured must first demonstrate that the defendant was obligated to pay under the terms of the policy. *State Auto Prop. & Cas. Ins. Co. v. Hargis*, 785 F.3d 189, 198 (6th Cir. 2015); *Wittmer v. Jones*, 864 S.W.2d 885, 890 (Ky. 1993). Because the parties do not dispute the appropriateness of

bifurcation here, ASIC requests the Court issue an order of bifurcation between the coverage claims and the claims asserting bad faith.

B. Staying Discovery is Also Warranted.

Federal courts applying Kentucky law routinely stay discovery of a bad faith claim until the underlying coverage claim is resolved. *See e.g., Sanders v. Motorists Mut. Ins. Co.,* 2008 WL 4534089 at *3 (E.D. Ky. Oct. 7, 2008) ("[I]t is logical to delay inquiry into or discovery of the bad faith issues until there is a reasonable certainty that discovery will be necessary."); *see also, Park Wood Villas Council of Co-Owners, Inc. v. Nationwide General Insurance Company*, 2020 WL 13824037 *2 (W.D. Ky. Nov. 9, 2020) (in granting the insuring defendant's motion to bifurcate and stay discovery, the court reiterated that staying discovery in these instances is the "prevailing practice in Kentucky state courts.") (quoting *Riddle v. Royal Indem. Co.*, 2007 WL 542389, at *1, n.1 (W.D. Ky. Feb. 16, 2007)). The Western District of Kentucky has repeatedly held that staying discovery on a bad faith claim until the breach of contract claim is resolved is appropriate. *See Dippin' Dots, LLC*, 322 F.R.D. at 275; *Al J. Schneider Co. v. Hartford Fire Ins. Co.*, 2021 WL 5702433 at *6 (W.D. Ky. Dec. 1, 2021).

The Sixth Circuit also regularly upholds trial court decisions to stay discovery under these circumstances. *See e.g., Smith v. Allstate Ins. Co.*, 403 F.3d 401, 407 (6th Cir. 2005) (holding that staying bad-faith discovery was not an abuse of discretion because the claims depended on the validity of the policy limitations, which the court reasonably resolved first); *Warren v. Federal Ins. Co.*, 358 Fed. App'x. 670, 676 (6th Cir. 2009) (reiterating that where the bad faith claim turns upon whether coverage was properly or improperly denied, it is reasonable for the district court to resolve the coverage question first). More recently, in *Pogue v. Principal Life Insurance Company*, the Sixth Circuit confirmed that courts have the ability to stay

discovery on bad faith claims when the merits of those claims hinge on the outcome of the contractual claims. 979 F.3d at 537.

1. Staying discovery encourages convenience and judicial efficiency.

Staying discovery on the bad faith claim promotes judicial economy by preventing both the parties and the Court from expending needless time on a contingent claim before the threshold coverage issues are resolved. *See Foster*, 2014 WL 7499427 at *4; *Brantley v. Safeco Ins. Co. of Am.*, 2011 WL 6012554 at *3 (W.D. Ky. Dec. 1, 2011).

Here, the plaintiffs' bad faith claim is dependent on ASIC's coverage of claimed damages. As a result, simultaneous bad faith discovery would require the parties to litigate a contingent claim that may never proceed. If ASIC prevails on coverage, invasive discovery into its claims-handling rationale will have been for naught. *See Dippin' Dots, LLC*, 322 F.R.D. at 274–75.

Further, bad faith litigation is likely to result in repeated motion practice over production of ASIC's expanded claim-file materials and privileged communications regarding coverage. *Id.* at 275–76. This becomes even more palpable in light of the fact that both parties have expressed an interest in early resolution. (Doc. 7 at 6.) Accordingly, ASIC requests the Court stay discovery to allow the parties to focus on resolution of the primary issues regarding coverage.

2. Simultaneous discovery would unfairly prejudice ASIC and result in unnecessary delay.

Bifurcation of the bad faith claims without staying bad faith discovery would unfairly prejudice ASIC by requiring it to respond to inquiries extending far beyond the information necessary to decide the underlying contractual claims. Although information relating to ASIC's claims handling practices, adjustment policies, and even compensation and performance data of its adjusters is arguably discoverable in a bad faith claim, none of that information is even

remotely relevant to the threshold issue of coverage. While there may be some overlap with respect to the investigative data upon which ASIC based its ultimate coverage decisions, that overlap is limited to the facts made available to ASIC. As *Dippin' Dots* instructs, some overlap is not cause for opening the door to the broad landscape of materials available in a suit alleging bad faith while that claim lies dormant. 322 F.R.D. at 274.

Further, issuance of a stay would not prejudice the plaintiffs. They will have the opportunity to litigate their bad faith claims if they succeed on *any* of their underlying claims. Staying discovery on the bad faith claims alone will not undercut the progress of discovery on the contractual claims, and would not preclude the plaintiffs from taking discovery relevant to coverage, which is a necessary element to a bad faith claim in any event. *See Wittmer*, 864 S.W.2d at 890.

3. Some overlap in the facts does not require concurrent discovery.

ASIC does not dispute the claims may involve common facts. As noted, however, some overlapping discovery is not enough to deny bifurcation where separate proceedings (and sequenced discovery) will promote judicial economy, reduce juror confusion, and avoid substantial prejudice. 322 F.R.D. at 274; *Nationwide Mutual Insurance Company v. Keiler*, 2020 WL 13544219, at *3–4 (W.D. Ky. July 8, 2020). Because the plaintiffs have already agreed to bifurcate the bad faith claims for purposes of trial, staying the bad faith discovery pending resolution of the contractual claims would aid in the achievement of each of these objectives.

Importantly, the bad faith and contractual claims are not so inextricably intertwined as to warrant concurrent discovery. In *Tharpe v. Illinois National Ins. Co.*, 199 F.R.D. 213, 215 (W.D. Ky. 2001), bifurcation was denied because the coverage and bad faith claims turned on the same narrow factual question: the reasonableness of a medical bill. But *Tharpe* represents an exception, not the rule. First-party bad faith claims are routinely separated from coverage issues

when resolution of the threshold coverage claim may dispose of the entire case. *See Massachusetts Mut. Life v. Watson*, 2013 WL 142431, at *2 (E.D. Ky. Jan. 11, 2013) (explaining that "the question of bifurcation centers on whether resolution of a single claim would be dispositive for the entire case.").

Live Nation Worldwide, Inc. v. Secura Insurance, 298 F. Supp. 3d 1032 (W.D. Ky. 2018), is instructive. There, the coverage issue was decided on the nature of the covered event and the language of the policy — a separate question from the insurer's conduct in handling the claim. *Id.* at 1036. Here, as in *Live Nation*, the plaintiffs' contractual claims center around windstorm damage that occurred on September 27, 2024, and ASIC's denial of coverage under the policy as applied to the facts of the loss. (Doc. 1-1 at 7–12.) The same separation that drove the court's decision in *Live Nation* exists here since the reasonableness of ASIC's claim handling has no consequence on whether the Policy's coverages applied to the loss.

In addition, neither *McKinley v. Allstate Ins. Co.*, No. 3:26-cv-276-RGJ-CHL (W.D. Ky. May 4, 2026), ECF No. 13, nor *Domingo, et al. v. Allstate Ins. Co.*, No. 3:26-cv-275-RGJ-RSE (W.D. Ky. May 5, 2026), ECF No. 13, requires a different result. The plaintiffs in both *McKinley* and *Domingo* asserted allegations that their bad faith and breach of contract claims were factually intertwined. Both decisions noted that "[t]he evidence to be offered by Allstate to establish that it acted with a reasonable basis or upon a reasonable foundation in denying the claim will be the same proof it would offer to counter Plaintiffs' allegations that the insurance contract was breached by the failure to pay the claim." *McKinley, supra* at 5; *Domingo, supra* at 5. As a result, those courts held that the claims were "inextricably intertwined," because they involved "the same parties, actions, inactions, and timeframes . . ." *McKinley, supra* at 7; *Domingo, supra* at 7.

Here, the scope of discovery for the bad faith claim will be markedly broader than the discovery related to coverage. While the breach of contract, consumer protection violation claim, and violation of 806 KAR 12:095 arise from the terms of the insurance contract as applied to the underlying facts of the loss, the statutory and common-law bad faith claims asserted relate to *how* the claim was handled by the insurance carrier and its motives for its decisions. While the policy and investigatory file may be discoverable under the contractual claims, more expansive discovery, including relevant portions of the post-complaint file[2] along with materials outside the claim file[3] could be sought under the banner of bad faith discovery. Thus, not only are the contractual claims distinct from the bad faith claims, the discovery is also equally separate, regardless of any potentially overlapping facts. In short, the evidence that will either support or refute ASIC's coverage decisions will be separate and apart from the evidence necessary to prove it acted with bad faith in making those decisions. *Crouch v. Erie Insurance Company*, 2025 WL 3159311 at *3 (E.D. Ky. Nov. 12, 2025).

Because the parties have agreed to bifurcate the bad faith proceedings from the underlying contractual claims, allowing the plaintiffs to seek bad faith discovery would not serve to prove their case in establishing a breach of contract, violation of 806 KAR 12:095 claim, or consumer protection claim. Concurrent discovery would thus only confuse the issues, prejudice ASIC, and would likely stymie any possibility of early resolution.

V. CONCLUSION

A stay in bad faith discovery would promote judicial economy and prevent unnecessary discovery disputes over privileged and protected information that has no bearing on the threshold

[2] *See e.g., Woods v. Standard Fire Insurance Company*, 2020 WL 2420527 (E.D. Ky. May 12, 2020) (adopting *Minter v. Liberty Mut. Fire Ins. Co.*, 2012 WL 2430471 (W.D. Ky. June 26, 2012)).
[3] *See Foster v. American Fire and Casualty Company*, 2016 WL 8135350 (E.D. Ky. Apr. 1, 2016) (following *Grange Mut. Ins. Co. v. Trude*, 151 S.W.3d 803 (Ky. 2004), *as modified* (Dec. 1, 2004)).

issues of coverage. ASIC respectfully requests the Court enter an order bifurcating the bad faith claims from the remaining contractual claims and staying all bad faith discovery until the contractual claims have been fully resolved.

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CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing was electronically filed with the Court this 31st day of August, 2026, using the CM/ECF system, which will send notice to the below counsel of record:

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