UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

ARTHUR A MIGIROV, *et al.*,	)	
	)	
Plaintiff,	)	
v.	)	Civil Action No. 3:26-cv-386-CHB-LLK
	)	
AMERICAN STRATEGIC INSURANCE CORP,	)	
	)	
Defendants.	)	
	)	

*** *** *** *** ***

PLAINTIFFS' OBJECTION TO
DEFENDANT ASIC's MOTION TO BIFURCATE AND STAY DISCOVERY

Plaintiff Arthur A. Migirov and Raisa Migirova, (the "Migirovs"), object to Defendant American Strategic Insurance Corp., ("ASIC")'s Motion to Bifurcate and Stay Discovery. Plaintiffs do not oppose bifurcation of the bad faith claims from the coverage claims for purposes of trial. Plaintiffs oppose only the request to stay discovery on the bad faith claims and that request should be denied.

INTRODUCTION

The parties agree on almost everything ASIC's motion asks for. They have already agreed to bifurcate the coverage and bad faith claims for trial. The single remaining dispute is narrow, whether discovery on the bad faith claims should be stayed until the coverage claims are resolved. It should not.

Bifurcating claims for trial does not require sequencing discovery, and the decision to do one does not decide the other. Just months ago, this District confronted the same question on facts materially identical to these. The parties agreed to bifurcate bad faith from coverage for trial associated with

a first-party homeowners' wind-damage claims, with. This District reached the same conclusion, twice. In *McKinley v. Allstate Insurance Co.* and its companion case *Domingo v. Allstate Vehicle & Property Insurance Co.*, the Court granted trial bifurcation but denied the insurer's request to stay bad faith discovery, holding that the coverage and bad faith claims were "inextricably intertwined" and that staying discovery would breed inefficiency rather than economy. The Court should follow that reasoning here.

ASIC's motion depends on treating this as a case about policy interpretation, where the coverage question can be answered without ever examining how ASIC handled the claim. It is not. ASIC does not dispute that a windstorm struck Plaintiffs' home or that the Policy insured against that peril. The dispute is over the scope and cost of the covered repairs. Proving that dispute will require the very claim-handling and valuation evidence ASIC seeks to wall off. Because the coverage and bad faith claims turn on the same facts, the same witnesses, and the same time frame, staying bad faith discovery would only guarantee duplicative depositions, satellite disputes over where the discovery line falls, and delay.

STATEMENT OF THE FACTS

The facts are not in dispute. The Migirovs obtained a homeowners' policy, (the policy"), from ASIC with effective period between July 4, 2024 through July 4, 2025. On September 27, 2024, a windstorm damaged the Migirov's home. Three days later, the Migirovs filed a claim against their homeowner's policy with ASIC. The windstorm damaged the roof and other structures. Water entered the home and damaged their personal property. ASIC does not dispute coverage. Only the scope and cost of repairs are in dispute.

On September 26, 2025, the Migirovs filed suit in Jefferson Circuit Court asserting claims for breach of contract, statutory bad faith under the Kentucky Unfair Claims Settlement Practices

Act, common-law bad faith, violation of the Kentucky Consumer Protection Act, and violation of 806 KAR 12:095. ASIC requested and the Migirovs provided a demand. On May 26, 2026, ASIC removed the action to this Court.

In their August 4, 2026, discovery planning meeting call with the Court, the parties agreed to bifurcate the coverage and bad faith issues for trial. The Migirovs opposed ASIC's request to stay bad faith discovery.

LEGAL STANDARD

Trial bifurcation and a stay of discovery are governed by different standards and decided separately. As this District recently explained, "although bifurcation of the trial does not necessarily require bifurcation of discovery", the decision to stay [] discovery is within the discretion of the trial court." *McKinley v. Allstate Ins*. Co., No. 3:26-CV-276, 2026 WL 1232288 (W.D. Ky. May 5, 2026).

Under Rule 42(b), "the moving party bears the burden of showing that bifurcation of a bad faith claim would: (1) serve the interest of convenience, (2) avoid undue prejudice, or (3) would expedite and economize the judicial proceedings." *Id.* at 3. Because piecemeal litigation "is not to be the usual course, the party seeking bifurcation has the burden of showing that concerns such as judicial economy and prejudice weigh in favor of granting the motion." *Id*.

Whether to bifurcate discovery in an insurance case is a case-by-case determination that turns on the degree of factual overlap between the coverage and bad faith claims. *Nationwide Mut. Ins. Co.v. Keiler*, No.5:19-cv-00097-JRW-HBB (W.D. Ky. July 8, 2020). "[C]ourts have consistently bifurcated cases where resolution of a single claim would be dispositive of the entire case. *Id*. at 2. Where the claims share the same factual basis, a stay serves no such purpose.

ARGUMENT

I. The parties' agreement to bifurcate for trial does not warrant a stay of bad faith discovery, because the two questions are independent.

ASIC's motion treats the bifurcation as though it resolves the discovery question. It does not. This District has squarely held as such and that a court may "bifurcate the claims, yet not hold discovery in abeyance." *McKinley, supra* at 7. Trial bifurcation avoids juror confusion by keeping distinct issues before the jury in sequence. It says nothing about whether the parties may develop the facts of both claims at the same time during discovery. *Domingo v. Allstate Vehicle & Prop. Ins. Co.,* No. 3:26-CV-275 (W.D. Ky. May 5, 2026).

ASIC bears the burden of justifying a stay, and it has not carried it. McKinley, at 3. A stay is warranted only where the claims "may be dismissed based on legal determinations that could have been altered by any further discovery." Id. at 7

That is not this case here. Plaintiffs' coverage claim will not be resolved as a matter of law on the policy language alone. It turns on disputed facts about the scope and cost of the covered loss, and the competing estimates the parties have already exchanged. Discovery into those facts is precisely what will drive the coverage determination, so there is no threshold legal question that a stay would allow the Court to reach first.

II. The coverage and bad faith claims are inextricably intertwined, so that a stay would create inefficiency, not economy.

ASIC's central premise, that the coverage and bad faith claims can be cleanly sequenced, fails on these facts. When first-party coverage and bad faith claims arise from the same claim-handling and turn on the same proof, courts in this District have refused to separate their discovery. As *Tharpe v. Illinois National Insurance Co.,* explained, first-party actions differ from third-party suits because the insurer is the sole defendant and "all of the claims … arise from the handling of"

the claim, the relevance and prejudice concerns that justify separation in other contexts "take on different contours." *Tharpe v. Illinois Nat. Ins. Co.,* 199 F.R.D. 213, 214 (W.D. Ky. 2001). Further, the insurer's evidence that it "acted with a reasonable basis" for denying payment "would offer this same proof in order to defeat" the insured's underlying claim. *Id.* at 215. The court denied both bifurcation and a stay of discovery. *Id.*

The two most recent decisions in this District applied that reasoning to facts that mirror this case. In *McKinley* and *Domingo,* first-party homeowners' wind-damage claims in which the parties had agreed to bifurcate bad faith from coverage for trial, the Court granted trial bifurcation but denied the requested stay of bad faith discovery. *Domingo v. Allstate Vehicle & Prop. Ins. Co*., No. 3:26-cv-275-RGJ-RSE (W.D. Ky. May 5, 2026); *McKinley v. Allstate Ins. Co*., No. 3:26-cv-276-RGJ-CHL (W.D. Ky. May 5, 2026). The Court reasoned that the breach-of-contract and bad faith claims were "inextricably intertwined," so that any bifurcation of discovery would inevitably lead to more litigation about where the line between permissible discovery and deferred discovery would be drawn and would create inefficiencies such as "multiple depositions of the same witnesses." *McKinley*, supra at 7. A stay, the Court held, would not "lend itself to convenience and economy," because discovery on the two claims overlap and involve "the same parties, actions, inactions, and timeframes. *Id*. At 7. The Court added that "it would not make sense to bifurcate discovery where the Court … contemplates bifurcation of the claims within the same trial." *Id.*; *see also Domingo, supra* at 7.

The same is true here. ASIC concedes the claims "may involve common facts" and that there is "some overlap" in "the investigative data upon which ASIC based its ultimate coverage decisions." Def.'s Mot. Bifurcate & Stay Disc. at 6. That concession is dispositive of the discovery question on these facts. Because the reasonableness of ASIC's coverage decision and the

correctness of that decision both depend on the same investigation of the same loss, the same adjusters, correspondence, inspections, and estimates will be at issue in both phases. Id. at 2. Staying bad faith discovery would not eliminate that discovery. Rather, it would only require the parties to take it twice, deposing the same witnesses about the same claim on two separate tracks. That is the inefficiency *McKinley* and *Domingo* rejected.

III. ASIC's authorities are distinguishable because each turned on a threshold policy-interpretation question that could be resolved without examining the insurer's claim handling.

ASIC's authorities do not support a stay here, because each rested on a feature absent from this case: a coverage question answerable on the policy language alone, without reaching the insurer's conduct.

Dippin' Dots, LLC v. Travelers Property Casualty Co. of America is ASIC's lead authority, but it stayed discovery only because the coverage claim there "turn[ed] on the success of" a policy-interpretation dispute and a stay would avoid premature battles over the insurer's "investigatory files." *Dippin' Dots, LLC v. Travelers Prop. Cas. Co. of Am.*, 322 F.R.D. 271, 275 (W.D. Ky. 2017). *Dippin' Dots* did not hold that factual overlap compels a stay. To the contrary, it recognized that "some facts may require the same proof in a coverage claim as they would in a bad faith claim." *Id*. Here, unlike in *Dippin' Dots*, the coverage claim does not turn on policy interpretation but on the disputed amount owed for a concededly covered loss, the same claim-handling proof that bears on bad faith.

Nationwide Mutual Insurance Co. v. Keiler is distinguishable for the same reason. The court there stayed bad faith discovery because the threshold coverage question, whether the claimed injuries were "caused by the accident," and the insurer's conduct became relevant only if

coverage was first established. *Keiler, supra* at 3. Here, by contrast, ASIC's handling and valuation of the loss is not a downstream issue. It is the coverage dispute.

Crouch v. Erie Insurance Co. likewise granted a stay only after the court credited the insurer's showing that "the evidence required for the bad faith claims are separate and distinct" from the coverage proof. *Crouch v. Erie Ins. Co*., No. 5:25-CV-296-KKC, (E.D. Ky. Nov. 12, 2025). That showing is missing here, where ASIC itself concedes overlapping investigative facts, but never established the uncommon facts. This dispute entirely involves common facts regarding the bad faith and coverage claims.

Finally, *Live Nation*, on which ASIC also relies, involved a coverage question decided on "the nature of the covered event and the language of the policy," again, a policy-interpretation dispute divorced from the insurer's claim handling. *Live Nation Worldwide, Inc. v. Secura Insurance,* 298 F. Supp. 3d 1032 (W.D. Ky. 2018), This case presents no such threshold question.

The dividing line running through all of these decisions is whether the coverage claim can be resolved without examining the insurer's investigation. Where it can, courts have stayed bad faith discovery. Where the coverage dispute is itself about the amount owed on a covered loss, courts have found the claims inextricably intertwined and refused to sequence discovery. *Lake Vill. at Landis Lake Council of Co-Owners, Inc.v. Erie Ins. Co*., No. 3:24-cv-704-BJB-LLK, 2025 WL 818287 (W.D. Ky. Mar. 14, 2025). This case falls on the inextricably intertwined side of that line.

IV. A stay would prejudice Plaintiffs, while ASIC's asserted burdens are premature and manageable.

The prejudice ASIC invokes is speculative. The prejudice a stay would inflict on Plaintiffs is concrete. Staying bad faith discovery would delay resolution of the entire case, force duplicative depositions, and postpone Plaintiffs' access to evidence about a claim-handling process that is already nearly two years old, increasing the risk of faded memories and stale records.

ASIC's contrary concerns do not justify a stay. Its worry about producing "privileged communications" and "expanded claim-file materials" is a discovery-objection argument, not a bifurcation argument. Def.'s Mot. Bifurcate & Stay Disc. At 5. Privilege and work-product disputes are resolved through ordinary discovery tools such as objections, privilege logs, and, if necessary, targeted motion practice, not through a blanket stay that halts all bad faith discovery before any specific dispute has arisen. Even the authority ASIC cites recognizes that a court can manage overlapping discovery without a stay. *Dippin' Dots* observed that staying bad faith discovery "does not preclude" the insured from taking discovery relevant to the insurer's methodology and factual determinations. (Dippin' Dots, LLC,322 F.R.D. at 275-76. The manageable prospect of some privilege disputes cannot outweigh the certain inefficiency of litigating this single claim in two separate discovery tracks.

CONCLUSION

The parties agree to try the bad faith and coverage claims separately. That agreement does not resolve nor does it warrant a stay of bad faith discovery. Because the coverage and bad faith claims arise from the same loss, the same claim file, and the same witnesses, staying bad faith discovery would multiply proceedings rather than streamline them, exactly as this District held in *McKinley* and *Domingo*. *McKinley*, *supra*; *Domingo, supra*. Plaintiffs respectfully request that the Court deny ASIC's motion to the extent it seeks a stay of discovery on the bad faith claims and permit discovery to proceed on all claims.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 15, 2026, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to all parties of record.

/s/ Juliana N. Madaki
Juliana N. Madaki