

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

FILED
2018 APR 26 PM 2:03
CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

SOARING EAGLE LODGE MASTER ASSOCIATION, INC.,
a West Virginia non-profit Corporation; and
SOARING EAGLE LODGE ASSOCIATION, INC.,
a West Virginia non-profit Corporation,
Plaintiff,

vs.)

Civil Action No. 15-C-2202
Presiding Judge: Tabit
Resolution Judge: Matish

SOARING EAGLE DEVELOPMENT COMPANY, LLC,
a West Virginia Limited Liability Company;
GBBN ARCHITECTS, INC.,
an Ohio Corporation; and
BRANCH & ASSOCIATES, INC.,
a Virginia Corporation,
Defendants

and

BRANCH & ASSOCIATES, INC.,
a Virginia Corporation
Third Party Plaintiffs

vs.)

APPLIED MECHANICAL SYSTEMS, INC.,
a West Virginia Corporation;
EASTCOAST SIDING, INC.,
a Maryland Corporation;
RICHARDSON AND MARCH CARPENTRY, LLC,
A West Virginia Limited Liability Company;
TRI-STATE ROOFING & SHEET METAL COMPANY OF WEST VIRGINIA,
a West Virginia Corporation; and
Third Party Defendants

and

SOARING EAGLE DEVELOPMENT COMPANY, LLC,
a West Virginia Limited Liability Company;
Third Party Plaintiff

vs.)

TRI-STATE ROOFING & SHEET METAL COMPANY OF
WEST VIRGINIA, a/k/a, TRI-STATE ROOFING & SHEET
METAL CO.,
a West Virginia Corporation;
APPLIED MECHANICAL SYSTEMS, INC.,

**an Ohio Corporation;
RICHARDSON AND MARCH CARPENTRY, LLC,
a West Virginia Limited Liability Company;
RICHARDSON CARPENTRY, LLC,
a West Virginia Limited Company; and
EASTCOAST SIDING, INC.,
a Maryland Corporation,
THE TRAVELERS INDEMNITY COMPANY OF
AMERICA, a Connecticut corporation; and TRAVELERS
PROPERTY AND CASUALTY COMPANY OF AMERICA,
*Third Party Defendants,***

vs.)

**O.C. CLUSS LUMBER COMPANY,
a Pennsylvania Corporation,
*Third Party Defendant,***

and

**BRANCH & ASSOCIATES, INC.,
a Virginia Corporation
*Third Party Plaintiff,***

vs.)

**O.C. CLUSS LUMBER COMPANY,
a Pennsylvania Corporation; GAF
MATERIALS CORPORATION, a New
Jersey corporation; QUALITY STONE
VENEER, INC.; MODERN LIGHTING
PROTECTION, INC.; JAMES HARDIE
BUILDING PRODUCTS, INC.; and FIBERON,
LLC, a North Carolina Limited Liability Company,
*Third Party Defendant,***

and

**RICHARDSON AND MARCH CARPENTRY, LLC,
A West Virginia Limited Liability Company;
*Third Party Plaintiff,***

vs.)

**JAMES HARDIE BUILDING PRODUCTS, INC.
*Third Party Defendant.***

and

**O.C. CLUSS LUMBER COMPANY,
a Pennsylvania Corporation,
*Fourth Party Plaintiff,***

vs.)

GAF MATERIALS CORPORATION,
a New Jersey Corporation; and
FIBERON, LLC,
a North Carolina Limited Liability Company,
Fourth Party Defendants,
and

FIBERON, LLC,
a North Carolina Limited Liability Company,
Fourth Party Plaintiff,

vs.)

JAMES HARDIE BUILDING PRODUCTS, INC.
Fourth Party Defendant.

**ORDER GRANTING THE TRAVELERS INDEMNITY COMPANY OF AMERICA AND
TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA'S
MOTION TO BIFURCATE AND STAY**

Third-Party Defendants, The Travelers Indemnity Company of America and Travelers Property Casualty Company of America (collectively hereafter, "Travelers,") have requested that this Court bifurcate and stay the third-party complaint against Travelers.

The underlying case, filed by Soaring Eagle Lodge Master Association, Inc. and Soaring Eagle Lodge Association, Inc., alleges damage related to the design, construction, and sale of residential units and common areas in the Soaring Eagle Lodge in Pocahontas County, West Virginia. It names as defendants Soaring Eagle Development Company, LLC ("SEDC"), GBBN Architects, Inc., and Branch & Associates, Inc. ("Branch"). Subsequently, SEDC and Branch filed a third-party complaint against various subcontractors and vendors involved in the construction of the Soaring Eagle Lodge.

On or about November 20, 2017, SEDC filed the instant amended third-party complaint against Travelers (the "Amended Third-Party Complaint"). In essence, the Amended Third-

Party Complaint alleges that SEDC is an additional insured under the policy of insurance Travelers issued to Branch, and that Travelers wrongfully denied a defense, indemnity, and primary coverage to SEDC in the underlying case. The Amended Third-Party Complaint brings claims for breach of express and implied contract, declaratory judgment, and violations of the West Virginia Unfair Trade Practices Act. SEDC also served Travelers with multiple interrogatories and requests for production of documents attached to the Amended Third-Party Complaint.

Travelers argues that they and their named insured, Branch, will suffer irreparable harm if this motion to bifurcate and stay is not granted.

This harm manifests itself in several ways: (1) premature discovery would permit the Plaintiffs in the underlying case documentation and discovery they are not otherwise entitled to; (2) all the Parties will have to expend significant time and costs conducting discovery, which may likely be unnecessary; and (3) once discovery has been conducted, it cannot be undone. Moreover, SEDC's discovery requests would compromise the business relationship between Travelers and Branch by inappropriately allowing all the parties and their insurers to see into the underwriting and issuing of policies by Travelers to Branch.

This Court has the discretion to both bifurcate claims and stay discovery under Rule 42(c) of the West Virginia Rules of Civil Procedure.

The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by Article III, Section 13 of the West Virginia Constitution or as given by a statute of this State.

Here, there are multiple parties and the underlying case involves multiple issues of alleged construction defect and damages. The introduction of a first party bad faith insurance dispute

would be immensely confusing to a jury and would improperly expose a jury to proof of insurance when weighing the construction damages. After hearing oral argument on the motion, the Court further determines that there would be no meaningful prejudice weighed upon any party if discovery on the Third-Party action against Travelers is stayed. For these reasons, the Court finds that bifurcation and stay will avoid undue prejudice and promote judicial economy.

THEREFORE, the Court hereby GRANTS The Travelers Indemnity Company of America and Travelers Property Casualty Company of America's Motion to Bifurcate and Stay. It is ORDERED that the declaratory judgment count (Count III) of the Amended Third-Party Complaint and the breach of contract (Counts I and II) and statutory bad faith counts (Count IV) are BIFURCATED. It is further ORDERED that discovery related to the statutory bad faith and breach of contract claims is STAYED pending resolution of the declaratory judgment action. Notwithstanding the order bifurcating and staying the above claims, it is further ORDERED that defendant Travelers participate in good faith at the upcoming mediation and that a representative with full settlement authority appear in person at the mediation. The Clerk of the Circuit Court of Kanawha County, West Virginia, is directed to forward an attested copy of this Order to the Business Court Division Central Office at the Berkeley County Judicial Center, 380 W. South Street, Suite 2100, Martinsburg, West Virginia, 25401; the Resolution Judge, the Honorable James Matish at the Harrison County Courthouse, 301 West Main Street Clarksburg, WV 26301-2967; all counsel of record; and any *pro se* parties.

ENTER this 26th day of April, 2018.

Joanna I. Tabit
 HONORABLE JOANNA I. TABIT

4/26/18
 Date: _____
 Certified copies sent to:
 counsel of record
 parties
 other (please indicate) _____
 By: Bus Ct Judge Matish
 certified/1st class mail
 fax
 hand delivery
 interdepartmental
 Other dispositions accomplished:
PLAVAS/26/18
 Deputy Circuit Clerk

STATE OF WEST VIRGINIA
 COUNTY OF KANAWHA, SS
 I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY FROM THE RECORDS OF SAID COURT, GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 26th DAY OF APRIL, 2018.
Cathy S. Gatson
 CLERK
 CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA