

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

FILED

2018 MAY 31 PM 3: 53

CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT
Ullm

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 BRANCH & ASSOCIATES, INC.'S
MOTION FOR PROTECTIVE ORDER**

This matter comes before the Court pursuant to Branch & Associates, Inc.'s Motion for Protective Order. (Hereafter "Branch"). In the instant case, Soaring Eagle Development Company, LLC, (hereafter "SEDC") filed a cross-claim against Branch for implied indemnity, contribution, and contractual indemnity. SEDC later filed third-party bad faith claims against insurers asserting that those companies must provide third-party indemnity to SEDC, and that Branch was contractually obligated to secure such coverage under its contract with SEDC.

On April 20, 2017, SEDC served a Notice of Rule 30(b)(7) Deposition seeking testimony from Branch's corporate representative on topics such as, the negotiations which led Branch to enter into its insurance contracts, Branch's understanding of its obligations under the contracts, Branch's communications with insurance carriers regarding defense, indemnity, and coverage of Branch or SEDC for claims asserted in this action, Branch's evaluation of SEDC's and its own rights under the contracts, and Branch's assets and financial ability to perform its contractual obligations to SEDC.

On April 26, 2018, this Court granted the Travelers Indemnity Company of America and Travelers Property Casualty Company of America's motion to bifurcate and stay, wherein the third-party bad faith claims were divided from the construction defect and damage claims and stayed so to not confuse the jury.

The parties exchanged good faith letters and met and conferred in an attempt to resolve the discovery issue amongst themselves, but were unsuccessful. Accordingly, Branch filed the instant motion and SEDC noticed the same for hearing. After full consideration of the memorandum and oral argument presented, the Court now finds it appropriate to grant the motion.

SEDC's arguments are well taken and the Court is sensitive to the fact that SEDC will need to pursue the discovery at issue to pursue its bad faith claims against insurance carriers and some of the contractual claims against Branch itself regarding the company's duty to indemnify. However, the law of the case, and continued opinion of this Court, is that these issues should be delayed until the resolution of the construction defect and damage claims so to not confuse the jury or expose the jury to proof of insurance when weighing the construction damages. This

protective order will not block the discovery pursued indefinitely, but rather delay it in accordance with this Court's April 26, 2018 Order.

THEREFORE, the Court hereby GRANTS Branch & Associates, Inc.'s Motion for Protective Order. 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 31st day of May, 2018.

Joanna I. Tabit
HONORABLE JOANNA I. TABIT
BUSINESS COURT DIVISION

Date: 6/1/18
Certified copies sent to:
 counsel of record
 parties
 other
(please indicate)
By: [Signature]
 certified/1st class mail
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Other directives accomplished:
[Signature]
Deputy Circuit Clerk

Judge Matish
Bus Ct

JH	JS	RS
MV	MH	EP
RT	MM	SG
NS	SG	MB
EH	JM	
WA	NS	
	RH	

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 1st
DAY OF June, 2018
Cathy S. Gatson CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA