

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

<b>Brandon Lassley,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>2:14-cv-1677 JWS</b>
	)	
<b>vs.</b>	)	<b>ORDER AND OPINION</b>
	)	
<b>Secura Supreme Ins. Co.,</b>	)	<b>[Re: Motion at docket 24]</b>
	)	
<b>Defendant.</b>	)	
	)	

**I. MOTION PRESENTED**

At docket 24 defendant Secura Supreme Insurance Company (“Secura”) moves pursuant to Federal Rule of Civil Procedure 42(b) for an order to bifurcate or stay proceedings on plaintiff’s claims for breach of contract and bad faith until the jury determines whether plaintiff is entitled to compensation under the underinsured motorist provision in the insurance policy issued by Secura. The response from plaintiff Brandon Lassley (“Lassley”) is at docket 28. Secura’s reply is at docket 30. Oral argument was heard on September 18, 2015.

**II. BACKGROUND**

Lassley alleges that he is a named insured in an automobile insurance policy

1 purchased by his parents from Secura (“Policy”).<sup>1</sup> The Policy includes underinsured  
2 motorist (“UIM”) coverage with a \$500,000 limit. The Policy was in effect at all times  
3 material to this action.

4  
5 On January 20, 2011 Lassley was riding in an automobile when the intoxicated  
6 driver lost control of the vehicle. Lassley was injured in the ensuing crash. Lassley  
7 settled with the driver for the \$100,000 liability limit in the driver’s American Family  
8 insurance policy. Lassley submitted a UIM claim to Secura in May 2012 and demanded  
9 policy limits. Secura evaluated Lassley’s claim and concluded that the driver was not  
10 underinsured, stating that Lassley was “fully compensated for his injuries with the  
11 \$100,000 obtained by the driver’s insurance carrier.”<sup>2</sup> The parties nevertheless  
12 exchanged settlement offers, but were unable to reach a settlement agreement. During  
13 the course of dealings between Lassley and Secura’s representatives, Secura asked  
14 and Lassley agreed to submit to an independent medical examination (“IME”). In  
15 January 2014 the IME physician concluded that the injury to Lassley’s left anterior  
16 cruciate ligament (“ACL”) likely resulted from the auto accident and that Lassley had  
17 residual knee problems.  
18

19  
20 The UIM policy states that if the parties are unable to agree on the amount of  
21 Lassley’s damages, they can agree to submit that issue to arbitration.<sup>3</sup> The contract is  
22

---

23 <sup>1</sup>Although Secura denies that Lassley is a named insured, Doc. 4 at 2 ¶ 8, it admits that  
he is insured by the policy. See *id.* at 6 ¶ 43.

24 <sup>2</sup>Doc. 28-1 at 6 (May 14, 2013 letter from Secura to Lassley). See also *id.* at 8 (July 25,  
25 2013 letter from Secura to Lassley) (“SECURA evaluated [Lassley’s] claim (which included  
26 fault, causation and damages) as one in which [Lassley] was fully compensated by the  
\$100,000 already received.”); *id.* at 10 (same).

27 <sup>3</sup>Doc. 24-1 at 3.

1 silent regarding what happens if the parties do not agree to arbitration, which is what  
2 happened here.<sup>4</sup> Believing he had no other option to vindicate his contractual rights,<sup>5</sup>  
3 Lassley brought the present action in July 2014 in which he alleges breach of the  
4 insurance contract and bad faith. Lassley seeks compensatory and punitive damages.  
5 The lawsuit was filed in an Arizona superior court. Secura removed the case based on  
6 diversity of citizenship jurisdiction.  
7

### 8 III. STANDARD OF REVIEW

9 Rule 42(b) governs Secura's motion for bifurcation. It states in pertinent part that  
10 the court may order a separate trial of one or more separate issues or claims "[f]or  
11 convenience, to avoid prejudice, or to expedite and economize."<sup>6</sup> This rule "confers  
12 broad discretion upon the district court to bifurcate a trial."<sup>7</sup> "The piecemeal trial of  
13 separate issues in a single lawsuit . . . is not to be the usual course," however, and will  
14 be ordered only where the party seeking separate trials meets his or her burden of  
15 proving that bifurcation is necessary.<sup>8</sup>  
16

### 17 IV. DISCUSSION

18 Secura's peculiar motion asks the court to bifurcate this action into two trials: (1)  
19  
20

---

21 <sup>4</sup>See Doc. 28-1 at 6 ("Given the significant issues in this case, SECURA will not agree to  
22 arbitrate this claim."); *id.* at 10 ("Given all the issues in this case, SECURA has declined to  
arbitrate this claim.").

23 <sup>5</sup>Doc. 28 at 2.

24 <sup>6</sup>Fed. R. Civ. P. 42(b).

25 <sup>7</sup>*Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1088 (9th Cir. 2002).

26 <sup>8</sup>9A Charles Alan Wright & Arthur R. Miller, *et al.*, Fed. Prac. & Proc. Civ. § 2388 (3d  
27 ed.).

1 a trial on a hypothetical “claim for UIM benefits” not found in Lassley’s complaint<sup>9</sup> and  
2 (2) a trial on the two claims Lassley actually pled (breach of contract and bad faith).<sup>10</sup>  
3 Secura argues that the two claims in Lassley’s complaint are not yet ripe for  
4 adjudication, but instead of seeking dismissal of those claims it asks the court to stay all  
5 litigation, including discovery, pending the jury’s resolution of a non-existent “claim for  
6 UIM benefits.”<sup>11</sup> Secura cites no cases where a court has granted such an  
7 extraordinary request, and put actual claims on hold in order for a jury to resolve a  
8 hypothetical one.  
9

10           What is more, even assuming (without deciding) that Secura is correct in  
11 asserting that Lassley must pursue a “UIM benefits” cause of action and not a breach of  
12 contract action, bifurcation would still serve no purpose. Secura argues that bifurcation  
13 will further Rule 42(b)’s goals of avoiding prejudice and expediting the litigation  
14 because, it argues, Lassley’s “bad faith claim will presumably go away” after the jury  
15 decides the amount of damages to which Lassley is entitled.<sup>12</sup> This is not so. Even if  
16 such a jury verdict would resolve Lassley’s claim for benefits, it would not resolve  
17 Lassley’s claim for bad faith insurance adjustment. This latter claim does not depend  
18 on the value of Lassley’s damages. Instead, it focuses on whether Secura violated its  
19 “obligation to immediately conduct an adequate investigation, act reasonably in  
20  
21

---

22  
23 <sup>9</sup>Secura appears to be arguing that Lassley must bring an action for declaratory relief  
24 seeking an order that determines the amount of damages he is legally entitled to recover from  
the driver.

25 <sup>10</sup>Doc. 30 at 2.

26 <sup>11</sup>Doc. 24 at 6-7.

27 <sup>12</sup>*Id.* at 5.

1 evaluating the claim, and act promptly in paying a legitimate claim.”<sup>13</sup> The jury would  
2 need to hear evidence relevant to this claim regardless of the amount it ultimately  
3 decides that Lassley can recover under the policy.  
4

5 **V. CONCLUSION**

6 Based on the preceding discussion, Secura’s motion at docket 24 is DENIED.

7 DATED this 25th day of September 2015.  
8

9 \_\_\_\_\_  
10 /s/

11 JOHN W. SEDWICK  
12 SENIOR UNITED STATES DISTRICT JUDGE  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

26 \_\_\_\_\_  
27 <sup>13</sup>*Zilisch v. State Farm Mut. Auto. Ins. Co.*, 995 P.2d 276, 280 (Ariz. 2000).  
28