

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Case No. 1:13-cv-00560-REB-MEH

ACE AMERICAN INSURANCE COMPANY,

Plaintiff,

v.

DISH NETWORK, LLC,

Defendant.

**ORDER OVERRULING OBJECTIONS TO AND ADOPTING
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Blackburn, J.

The matters before me are (1) the **Joint Motion To Bifurcate Pursuant to FRCP 42(b) [#69]**¹ filed January 29, 2015; (2) the **Recommendation of United States Magistrate Judge [#75]** filed February 6, 2015; (3) the **Recommendation of United States Magistrate Judge [#81]** filed February 23, 2015; and (4) the **Stipulated Motion To Continue Pretrial Conference Scheduled for September 18, 2015 [#134]** filed September 8, 2015.

No objections to the recommendations were filed. Therefore, I review them only for plain error. **See *Morales-Fernandez v. Immigration & Naturalization Service***, 418 F.3d 1116, 1122 (10th Cir. 2005). Finding no error, much less plain error, in the recommendations, I find and conclude that recommendations should be approved and

¹ “[#69]” is an example of the convention I use to identify the docket number assigned to a specific paper by the court’s case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

adopted. I deny the joint motion to bifurcate and adopt, as an alternative, the schedule recommended by the magistrate judge. I grant the motion to continue the pretrial conference and, thus, continue both the combined Final Pretrial Conference and Trial Preparation Conference and the trial currently set in this case.

This is a declaratory judgment action by the plaintiff, Ace American Insurance Company, seeking a determination that it has no duty to defend and, concomitantly, no duty to indemnify the defendant insured, Dish Network, LLC, in an underlying lawsuit. The underlying lawsuit is pending in the United States District Court for the District of Illinois. Currently, under a reservation of rights, Ace is paying some, but not all, of requested defense costs in the underlying case.

In the motion to bifurcate [#69], the parties seek to litigate separately via separate trials the duty to defend and the duty to indemnify. The magistrate judge recommends that this motion be denied because the efficiencies which might be gained through bifurcation are substantially outweighed by the inherent inefficiencies. I concur.

As noted in the second recommendation [#81], after the first recommendation [#75] was filed, the parties requested separate discovery deadlines and separate briefing schedules related to the duty to defend and the duty to indemnify. The magistrate judge concluded that this approach has some benefits and the parties have been following the schedule recommended by the magistrate judge. Adherence to that schedule, however, requires that the trial and combined Final Pretrial Conference and Trial Preparation Conference be continued.

The underlying lawsuit is set for trial beginning January 5, 2016. Resolution of the underlying lawsuit will inform the duty to indemnify in this case. For this reason and

others, the schedule recommended by the magistrate judge in his recommendation [#81] is appropriate, although further adjustment of the schedule of briefing concerning the duty to indemnify may be appropriate as the underlying lawsuit develops.

THEREFORE, IT IS ORDERED as follows:

1. That the **Recommendation of United States Magistrate Judge** [#75] filed February 6, 2015, is approved and adopted as an order of this court;

2. That the **Joint Motion To Bifurcate Pursuant to FRCP 42(b)** [#69] filed January 29, 2015, is denied;

3. That the **Recommendation of United States Magistrate Judge** [#81] filed February 23, 2015, is approved and adopted as an order of this court;

4. That the **Stipulated Motion To Continue Pretrial Conference Scheduled for September 18, 2015** [#134] filed September 8, 2015, is granted;

5. That the combined Trial Preparation Conference and Final Pretrial Conference set September 18, 2015, at 10:30 a.m. (MDT), is vacated and continued without date pending further order;

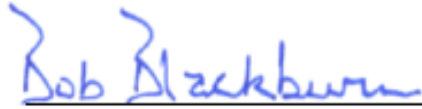
6. That the trial set to begin October 2, 2015, at 8:30 a.m.(MDT), is vacated and continued without date pending further order;

7. That counsel shall contact the court's administrative assistant **at (303) 335-2350 on September 17, 2015, at 9:30 a.m.** (MDT), to reschedule the combined Final Pretrial Conference and Trial Preparation Conference and the trial; provided, further, that counsel for the plaintiff shall arrange the conference call necessary to facilitate the telephonic (non-appearance) setting conference; and

8. That the **Trial Preparation Conference Order** [#60] entered July 14, 2014, is amended and supplemented accordingly.

Dated September 9, 2015, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge