

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

KB HOME JACKSONVILLE, LLC,

Plaintiff,

v.

Case No. 3:17-cv-566-J-32PDB

WESTFIELD INSURANCE
COMPANY,

Defendant.

STIPULATED ORDER AND JUDGMENT

This case is before the Court on the Joint Motion for Entry of Stipulated Order and Judgment, (Doc. 19), of Plaintiff KB Home Jacksonville, LLC (“KB Home”) and Defendant Westfield Insurance Company (“Westfield”). Capitalized terms used but not otherwise defined in this Stipulated Order and Judgment shall have the respective meaning assigned to them in the Joint Motion for Entry of Stipulated Order and Judgment. Having considered the Parties’ Joint Motion, it is hereby:

ORDERED:

1. The Parties’ Joint Motion for Entry of Stipulated Order and Judgment (Doc. 19) is **GRANTED**;

2. Defendant Westfield owes a duty to defend KB Home under the Westfield Policies in the Underlying Actions;

3. KB Home is entitled to recover from Westfield KB Home's reasonable Post-Lawsuit Defense Costs;

4. KB Home is entitled to recover from Westfield reasonable attorneys' fees and costs in this action pursuant to Florida Statutes, Section 627.428;

5. On October 27, 2017, KB Home filed a Motion for Summary Judgment regarding Pre-Lawsuit Defense Costs;

6. The date for Westfield to respond to the Motion for Summary Judgment regarding Pre-Lawsuit Defense Costs shall be temporarily held in abeyance;

7. If the Florida Supreme Court in Altman Contractors, Inc. v. Crum & Forster Specialty Insurance Company, No. SC16-1420 (Fla. filed Aug. 4, 2016) ("Altman Contractors"), answers the Certified Question in the affirmative, Westfield's duty to defend shall include reasonable Pre-Lawsuit Defense Costs, while if the Florida Supreme Court in Altman Contractors answers the Certified Question in the negative, Westfield's duty to defend shall not include Pre-Lawsuit Defense Costs, and in either case KB Home's Motion for Summary Judgment regarding Pre-Lawsuit Defense Costs will be withdrawn;

8. If the Florida Supreme Court does not answer the Certified Question as framed, but rather rules in whole or in part on some other grounds, Westfield shall submit a response to the Motion for Summary Judgment regarding Pre-

Lawsuit Defense Costs as required under the terms of this Stipulated Order and Judgment;

9. This Stipulated Order and Judgment does not resolve any claims that are not expressly resolved herein or preclude KB Home from pursuing any other claims that have arisen since this action was filed;

10. The Case Management Scheduling Order (Doc. 14) is vacated;

11. The Clerk shall administratively close the case pending a decision from the Florida Supreme Court;

12. Not later than fourteen days after the Florida Supreme Court rules in Altman Contractors, or at any time prior, the parties shall file a motion with the Court seeking to reopen the case and providing a proposed schedule for resolving the amount of KB Home's damages, including reasonable Post-Lawsuit Defense Costs, reasonable Pre-Lawsuit Defense Costs (if applicable), and reasonable attorneys' fees and costs in this action; and

13. Not later than 21 days after reopening the case, Westfield shall, if necessary under the terms of this Stipulated Order and Judgment, file a response to KB Home's Motion for Summary Judgment (Doc. 20).

DONE AND ORDERED in Jacksonville, Florida this 7th day of
November, 2017.


TIMOTHY J. CORRIGAN
United States District Judge

jb

Copies:

Counsel of record