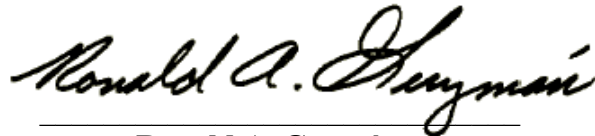


Ultimately, after some guidance by Cincinnati Insurance, it appears that the Marinos are contending that Cincinnati Insurance is engaged in improper claim splitting. Generally, “a party must bring in one action all legal theories arising out of the same transaction or series of transactions.” *Puget Bioventures, LLC v. Biomet Orthopedics LLC*, No. 3:17-CV-502 JD, 2018 WL 2933733, at *2 (N.D. Ind. June 11, 2018). “[C]laim splitting’ . . . is barred by the doctrine of res judicata.” *Carr v. Tillery*, 591 F.3d 909, 913–14 (7th Cir. 2010). From what the Court can discern, the Marinos have filed a counterclaim and/or a third-party action in the Underlying Lawsuit. In addition, there is mention of a “separate lawsuit filed by the Marinos.” (Pls.’ Resp., Dkt. # 47, at 3.) However, it does not appear that Cincinnati Insurance has filed any other pleadings or lawsuits; thus, claim splitting would not preclude the instant suit. In any event, the assertions regarding other pleadings and lawsuits are vague and, more importantly, not mentioned within the four corners of the SAC. Therefore, it is not proper for the Court to consider them in this procedural posture. Accordingly, the motion to dismiss the instant suit based on claim splitting is denied at this time.

Finally, to the extent the Marinos argue that the SAC should be dismissed because Cincinnati Insurance did not attach the relevant portions of the policies to the SAC and Cincinnati Insurance “ignore[s] the concepts of proximate cause and ensuing damages in insurance coverage claims,” these assertions also fail as incorrect and irrelevant, respectively.

For these reasons, the motion to dismiss [43] is denied.

Date: May 7, 2019



Ronald A. Guzmán
United States District Judge