

1 *Id.*, ¶10. A demand for policy limits was made. *Id.*, ¶11. On April 23, 2012, Geico was advised
2 by counsel for the Cortez’s that they would also make a claim for personal injuries against
3 Geico’s insured. *Id.*, ¶12.

4 On April 30, 2012, Geico offered to tender its entire \$30,000 policy limits to multiple
5 parties presenting claims. *Id.*, ¶14. Geico suggested a pro rata distribution with Carolyn Mann
6 receiving \$15,000, the Cortez’s receiving \$10,000, and Davis receiving \$5,000. *Id.*, ¶14.
7 Counsel for Carolyn Mann rejected the offer in correspondence dated May 22, 2012. *Id.*, ¶15.
8 Carolyn Mann individually and as special administrator of the estate of David Anthony Mann
9 filed a state court case June 17, 2013, alleging wrongful death as a result of the accident. *Id.*,
10 ¶16. Goldstein was appointed special administrator of the estate of Thomas Joseph Meyers July
11 15, 2013, to represent the estate. *Id.*, ¶17. Geico retained counsel to defend special administrator
12 Goldstein in the lawsuit filed by Mann. *Id.*, ¶18.

13 The lawsuit filed by Mann as the special administrator of the estate of David Anthony
14 Mann was tried by a jury and resulted in award of \$1.65 million. *Id.*, ¶19. Carolyn Mann made
15 a demand on Geico for the full amount of the judgment. *Id.*, ¶20. Geico seeks a declaratory
16 judgment that Goldstein as special administrator of the estate of Thomas Joseph Meyers has no
17 liability to Carolyn Mann in excess of Geico’s policy limits of \$15,000. *Id.*, ¶¶23 – 25.

18 In the current motion, Geico seeks to strike Defendant Goldstein’s¹ jury demand which
19 accompanied his answer to Plaintiff’s complaint. Geico argues that Rule 38(a) and the Seventh
20 Amendment do not create a right to jury trial in this declaratory relief action. The Seventh
21 Amendment is limited to “suits at common law,” as distinguished from proceedings in equity. In
22 *Granfianciera S.A.v. Nordberg*, 492 U.S. 33 (1989), the Supreme Court established a three-part
23 test to determine whether a party is entitled to a jury trial. The court first examines if the action
24 is of the type that would have been brought at law in 18th century England before the merger of
25 law and equity. Second, court examines the remedy sought and determines whether it is legal or
26 equitable in nature. If, on balance, these two factors indicate that a jury trial is required under

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28 ¹ The caption of the motion erroneously indicates Geico is seeking to strike “*Plaintiff’s* jury demand”.

1 the Seventh Amendment, the court decides whether Congress may assign and has assigned
2 resolution of the relevant claim to a non-Article III adjudicative body that does not use a jury as a
3 fact finder. In this case, Geico seeks declaratory relief in the form of a judicial determination of
4 its rights and obligations under an insurance contract. This is an “intangible” remedy sounding
5 in equity and is not triable before a jury. Geico is not seeking monetary recovery, or recovery of
6 any tangible assets. Goldstein did not file a counterclaim and does not otherwise assert any
7 damage claim in its answer. Goldstein’s failure to assert compulsory counterclaims under Fed.
8 R. Civ. P. 13(a) waived them. The court should therefore strike Defendant Goldstein’s demand
9 for jury trial.

10 Goldstein opposes the motion to strike on several grounds. In this case, Geico seeks a
11 judicial determination of the parties’ rights and duties under contract. Shortly after the collision,
12 Carolyn Mann, as the sole heir and mother of David Mann, made a demand on Geico for policy
13 limits. Geico rejected Ms. Mann’s demand and made a joint counteroffer to Ms. Mann and the
14 two occupants of the third vehicle who suffered minor injuries. Geico’s offer was contingent on
15 the parties working together to divvy up the policy. As a result, Ms. Mann rejected Geico’s
16 counteroffer and sued the estate of Geico’s insured, Thomas Joseph Meyers. Goldstein was the
17 special administrator of the estate. The case went to jury trial. A \$1.65 million verdict was
18 returned in favor of Ms. Mann against Goldstein as special administrator of the estate of Thomas
19 Joseph Meyers, and the verdict was reduced to judgment in the amount of \$1,728,716.86 on
20 September 19, 2014.

21 Goldstein acknowledges that a declaratory relief action sounds in equity. The action
22 seeks a judicial determination of the parties’ rights and duties under contract. However,
23 Goldstein argues that Geico’s complaint allegations make it plain that Geico seeks a judicial
24 declaration of its rights and duties and a declaration of its liability under the insurance contract,
25 and there is “no question of what Plaintiff Geico’s duties were *under the contract* of insurance”
26 (emphasis in original). It also seeks a judicial determination that Geico’s actions in attempting to
27 resolve Carolyn Mann’s claims within policy limits was not bad faith. Finally, Geico seeks a
28 judicial determination that Goldstein as the special administrator of the estate of Thomas Joseph

1 Meyers has no liability to Carolyn Mann in excess of Geico's policy limits pursuant to NRS
2 14.040(3).

3 Goldstein claims that these prayers for relief go far beyond seeking a judicial
4 determination of Geico's duties and obligations under the contract. Specifically, Geico is
5 seeking a judicial determination that Geico acted in good faith in its dealings with the estate of
6 its insured. Additionally, Geico asks for a judicial determination that Goldstein as special
7 administrator of the estate of Thomas Joseph Meyers is a nominal Defendant with no personal
8 risk of liability, and therefore, had no bad faith claim to assign. Geico asks the court to do far
9 more than decide its rights and obligations under the contract. The parties do not dispute Geico's
10 rights and duties under the contract. All parties agree that Geico had a duty to pay its policy
11 limits of \$15,000/person, \$30,000/collision as liability was reasonably clear and damages were
12 reasonably established. Goldstein has a right to file a demand for jury trial under both the
13 Seventh Amendment of the Constitution and Fed. R. Civ. P. 38 in cases sounding in law rather
14 than equity, and has done so. Geico may not deprive the Defendant of a jury trial by calling its
15 complaint a declaratory relief action when Geico is seeking legal determinations, rather than
16 equitable determinations, from the court.

17 Finally, Goldstein disputes that he waived compulsory counterclaims by failing to raise
18 them in the answer. Ms. Mann, as special administrator of the estate of her husband, is the
19 assignee of the bad faith claim and is not named in this action. She filed a separate lawsuit, Case
20 No. 2:15-cv-00485-JAD-CWH, which Geico has moved to dismiss arguing she was required to
21 file a compulsory counterclaim in this case instead. That motion is under submission to the
22 district judge. Ms. Mann could not file a counterclaim in this case because she is not a party.
23 Goldstein argues that Geico is trying to use its complaint "as a sword to deprive the assignee of
24 its insured's rights" to defeat Mann's claims. Geico seeks a declaration in this case that it did not
25 commit bad faith and wants to use the complaint in this case to prevent Ms. Mann from alleging
26 Geico did not commit bad faith in the Mann action.

27 Geico replies Goldstein's opposition mischaracterized the nature of the complaint by
28 asserting this case only concerns extra contractual liability or bad faith damages. The

1 preliminary issue is contractual in nature. The preliminary issue is whether Geico made a
2 settlement offer in accordance with Mann’s demand which Mann failed to accept, “which is
3 contractual in nature.” Additionally, Geico seeks two legal determinations: (1) whether a special
4 administrator may “hold liability in excess of policy limits” under NRS 14.040(3), and (2)
5 whether a special administrator, who is a nominal defendant with no risk of personal liability,
6 has a bad faith claim to assign. Geico argues Goldstein had potential claims for legal damages
7 arising out of the same transaction or occurrence at issue in Geico’s complaint, but did not file
8 compulsory counterclaims or request damages in his answer or amended answer. By failing to
9 assert a mandatory counterclaim in his answer, Goldstein has waived the right to raise
10 counterclaims, and the pleadings do not raise any issue that warrants a jury trial.

11 Carolyn Mann, as Goldstein’s assignee, filed a separate action against Geico in this court,
12 2:15-cv-00485 (The “Mann Litigation”). Goldstein and Mann were aware that this declaratory
13 relief action had been filed by Geico at the time Mann, as Goldstein’s assignee, filed the Mann
14 case against Geico for damages. If Goldstein simply opted to properly file a counterclaim in this
15 action, Geico would have had no issue with allowing a jury to consider those issues. However,
16 as there is no claim for legal damages in this case, there is no right to jury trial. It is possible that
17 both cases will be consolidated. However, unless the cases are consolidated, a jury trial is not
18 warranted and the jury demand should be stricken.

19 DISCUSSION

20 The Seventh Amendment to the United States Constitution provides:

21 In suits at common law, where the value and controversy shall exceed twenty
22 dollars, the right of trial by jury shall be preserved, and no fact tried by a jury
23 shall be otherwise re-examined in any Court of the United States, than according
to the rules of the common law.

24 A jury trial is “the normal and preferable mode of disposing of issues of fact in civil cases
25 at law as well as in criminal cases.” *Dimick v. Schiedt*, 293 U.S. 474, 485 (1935). Having a jury
26 act as a fact-finding body “is of such importance and occupies so firm a place in our history and
27 jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with
28 the utmost care.” *Id.*

1 Fed. R. Civ. P. 38(a) provides: “[t]he right of trial by jury as declared by the Seventh
2 Amendment to the Constitution—or as provided by a federal statute—is preserved to the parties
3 inviolate.” When a jury trial demand has been properly made, the case must be tried before a
4 jury “on all issues so demanded” unless the parties stipulate to a non-jury trial, Fed. R. Civ. P.
5 39(a)(1), or the court “finds that on some or all of those issues there is no federal right to a jury
6 trial” Rule 39(a)(2).

7 Geico concedes that a jury trial is required if this case is consolidated with the bad faith
8 claims brought by Carolyn Mann, as special administrator of the estate of her husband. In an
9 Order (Dkt. #26) entered August 18, 2015, Judge Dorsey denied Geico’s motion to dismiss and
10 stay, but granted its alternative request that the court consolidate the Mann action with this case.
11 The cases have now been consolidated for all purposes with this case designated as the lead case.
12 Accordingly,

13 **IT IS ORDERED** that Geico Indemnity Company’s Motion to Strike Plaintiff’s Jury
14 Demand (Dkt. #11) is **DENIED**.

15 DATED this 19th day of August, 2015.

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18 PEGGY A. ZEEN
19 UNITED STATES MAGISTRATE JUDGE
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