

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jul 13, 2017

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TREE TOP, INC., a Washington
corporation,

Plaintiff,

v.

STARR INDEMNITY AND
LIABILITY CO., a foreign insurance
corporation,

Defendant.

No. 1:15-CV-03155-SMJ

**ORDER HOLDING THE
PARTIES' CROSS-MOTIONS FOR
SUMMARY JUDGMENT IN
ABEYANCE AND SETTING
BRIEFING SCHEDULE**

On July 12, 2017, the Court heard oral argument on the parties' cross-motions for summary judgment. ECF No. 36. At this hearing, Plaintiff raised a new argument regarding Defendant's "fortuity" or "known-loss" defense. Plaintiff argues that if the Court applies the defense here, it would break new ground by extending the known-loss defense to a class of insurance policies to which the defense has not applied before. Since the parties have not briefed the issue, the Court **ORDERS** the parties to address: (1) whether applying the known-loss defense here would in fact extend it to a new category of insurance policies—claims based policies—to which Washington courts have not previously

1 applied the defense; and (2) whether this Court should certify this issue to the
2 Washington State Supreme Court.

3 The Court further **SETS** the following briefing schedule. Plaintiff, as the
4 party who raised the issue, shall file a brief **no longer than 10 pages** addressing
5 the two questions above **no later than August 3, 2017**. Defendant shall file a
6 response **no longer than 10 pages no later than August 24, 2017**. Plaintiff shall
7 then file a reply, if any, **no longer than 5 pages no later than September 7,**
8 **2017**.

9 Finally, the Court will hold the cross-motions for summary judgment, ECF
10 Nos. 22 and 25, in **ABEYANCE** until the issue discussed in this order is resolved.

11 Accordingly, **IT IS HEREBY ORDERED:**

- 12 **1.** Plaintiff shall file a brief **no longer than 10 pages** addressing the two
13 questions above **no later than August 3, 2017**
- 14 **2.** Defendant shall file a response **no longer than 10 pages no later**
15 **than August 24, 2017**.
- 16 **3.** Plaintiff shall then file a reply, if any, **no longer than 5 pages no**
17 **later than September 7, 2017**.
- 18 **4.** Defendant Starr Indemnity & Liability Company's Motion for
19 Summary Judgment, ECF No. 22, is held in **ABEYANCE** until
20 otherwise ordered by this Court.

