

HONORABLE RICHARD A. JONES

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

F.C. BLOXOM COMPANY,

Plaintiff,

v.

FIREMAN'S FUND INSURANCE
COMPANY,

Defendant.

CASE NO. C10-1603RAJ

ORDER

I. INTRODUCTION

This matter comes before the court on the motion of Defendant Fireman's Fund Insurance Company ("Fireman's Fund") for reconsideration of a prior order, along with motions in limine from Fireman's Fund and Plaintiff F.C. Bloxom Company ("Bloxom"). Dkt. ## 70, 85, 87. As stated below, the court DENIES the motion for reconsideration and GRANTS both motions in limine in part and DENIES them in part.

II. MOTION FOR RECONSIDERATION

Fireman's Fund's motion for reconsideration targets a single aspect of the court's April 19 order on several motions. Dkt. # 69. In that order, the court rejected as a matter of law Bloxom's theory that because Fireman's Fund did not timely communicate with Bloxom about its claim, Bloxom "lost [the] opportunity to prove coverage" for its claim. Pltf.'s Opp'n (Dkt. # 59) at 5. For reasons not apparent to the court, that was the *only* damage flowing from Fireman's Fund's alleged bad faith that Bloxom identified in its

1 opposition to the summary judgment motion that the court addressed in the April 19
2 order.

3 If the court had held Bloxom solely to the arguments it made in its opposition to
4 summary judgment, the court would have dismissed Bloxom’s bad faith claims (and its
5 other claims, to the extent they relied on a showing of bad faith) as a matter of law. But,
6 while the court does not believe it is appropriate to argue a litigant’s case for it, it also
7 does not believe it appropriate to ignore evidence in the record that supports a litigant’s
8 claim. In this case, all parties were aware that Bloxom had engaged Dennis Connolly to
9 provide expert analysis of Fireman’s Fund’s bad faith. The court’s prior order noted that
10 Mr. Connolly’s expenses were potentially recoverable as bad faith damages. The court
11 did not mention other possible aspects of Bloxom’s bad-faith-induced damages, as there
12 was no need to do so.

13 Now Fireman’s Fund contends that Bloxom did not disclose Mr. Connolly’s fees
14 as an element of damages during discovery, and that the court should not permit Bloxom
15 to do so now. It further contends that fees for experts retained for litigation purposes are
16 not bad faith damages as a matter of law. The court agrees that Bloxom failed to disclose
17 Mr. Connolly’s fees as an element of damages. Apparently, Bloxom agrees as well,
18 because its opposition to the motion for reconsideration makes no mention of Mr.
19 Connolly or his fees. The court accordingly rules that Bloxom has abandoned this issue,
20 and that it may not request damages based on Mr. Connolly’s fees. The court thus has no
21 need to decide whether Fireman’s Fund correctly asserts that an insured who hires an
22 expert for litigation purposes cannot claim the expert’s fees as bad-faith-induced
23 damages.

24 Although Bloxom did not mention Mr. Connolly, it used its opposition to the
25 reconsideration motion to point, for the first time, to a claim for bad-faith-induced
26 damage other than its ill-fated “lost opportunity to prove coverage” theory. It explains

1 that in its responses to Fireman’s Fund’s interrogatories, it stated that “damage to [its]
2 Shipment resulted from Fireman’s Fund’s delay in the handling of Bloxom’s claim.”
3 Clark Decl. (Dkt. # 54) at 8. Bloxom apparently intends to offer evidence and argument
4 at trial that it suffered a loss of or damage to its shipment as it awaited a response from
5 Fireman’s Fund about its claim. The court can only guess why Bloxom did not articulate
6 this claim *to the court* sooner, but its interrogatory response sufficed to disclose it to
7 Fireman’s Fund. That response was part of the record underlying Fireman’s Fund’s prior
8 summary judgment motion, and it suffices to support Bloxom’s assertion of bad-faith-
9 induced damages. The court therefore declines to reconsider its prior order.

10 Bloxom also argues that it suffered damage as a result of Fireman’s Fund’s
11 delayed coverage decision because the delay caused Bloxom to miss the one-year statute
12 of limitations in the insurance policy. As the court explained in its prior order, Bloxom
13 may be able to prove that Fireman’s Fund’s delay in communicating a coverage decision
14 (along with other factors) means that Fireman’s Fund is equitably estopped from relying
15 on the policy’s statute of limitations. If Bloxom fails to establish equitable estoppel, it
16 may not avoid that failure by claiming that Fireman’s Fund’s bad faith caused it to miss
17 the one-year deadline for filing suit. Equitable estoppel is the *only* route by which
18 Bloxom can avoid the policy’s statute of limitations.

19 Bloxom also used its opposition to the reconsideration motion to make several
20 arguments that it should have made long ago in a motion of its own. First, Bloxom
21 contends that Fireman’s Fund’s “true motivation” for seeking reconsideration was to
22 prevent Bloxom from seeking treble damages in accordance with the Insurance Fair
23 Conduct Act (“IFCA”). *See* RCW § 48.30.015(1) (giving cause of action for any “first
24 party claimant to a policy of insurance who is unreasonably denied a claim for
25 coverage”), § 48.30.015(2) (permitting court to enhance damage award in “an amount not
26 to exceed three times the actual damages”). Bloxom’s assertion is puzzling, because

1 there is no evidence that Fireman’s Fund is seeking reconsideration to prevent Bloxom
2 from invoking IFCA. Indeed, the court has already explained to Bloxom that its prior
3 order did not address whether Bloxom had a viable IFCA claim. Apr. 24 ord. (Dkt. # 81)
4 (addressing Bloxom’s motion for clarification). Bloxom believes that IFCA provides a
5 cause of action for damages as a result of improper denial of insurance coverage as well
6 as bad-faith-induced damages. The court takes no position on whether Bloxom is correct,
7 because Bloxom has never properly asserted this argument in a motion. The court simply
8 reiterates, as it has done once already, that the court has never considered whether
9 Bloxom has an IFCA claim based solely on Fireman’s Fund’s allegedly improper denial
10 of coverage.

11 Second, Bloxom argues for the first time that a jury, not the court, must decide
12 whether Bloxom has proven IFCA damages *and* whether to treble or otherwise enhance
13 those damages. Once again, because Bloxom has not made this IFCA argument in a
14 motion of its own, the court will not decide the issue. The court must, however, point out
15 that Bloxom is mistaken in its view that “it is now settled in this [D]istrict that questions
16 regarding IFCA damages present an issue for the jury to evaluate, not the court.” Pltf.’s
17 Opp’n (Dkt. # 89) at 5. To support that proposition, Bloxom cites a decision from the
18 Honorable Benjamin Settle, another of this District’s judges. The court suggests no view
19 on whether it would reach the same legal conclusion as Judge Settle. Instead, it notes that
20 neither Judge Settle’s legal determinations nor the determinations of any other judge in
21 this District are binding on the District’s other judges. The decisions of a district court do
22 not bind other district courts, even within the same district. *See, e.g., Hart v. Massanari*,
23 266 F.3d 1155, 1176 (9th Cir. 2001) (rejecting argument because it would imply that
24 “district court opinions should bind district courts, at least in the same district”); *United*
25 *States v. Cerceda*, 172 F.3d 806, 812 n.6 (11th Cir. 1999) (“The opinion of a district court
26 carries no precedential weight, even within the same district.”); *Threadgill v. Armstrong*

1 *World Indus., Inc.*, 928 F.2d 1366, 1371 & n.7 (3d Cir. 1991) (“[I]t is clear that there is
2 no such thing as ‘the law of the district.’”); *United States v. Articles of Drug Consisting*
3 *of 203 Paper Bags*, 818 F.2d 569, 572 (7th Cir. 1987) (“A single district court
4 decision . . . is not binding on the circuit, or even on other district judges in the same
5 district.”).

6 **III. MOTIONS IN LIMINE**

7 The parties have each filed a single motion in limine with several parts. The court
8 now rules on each part, beginning with Fireman’s Fund’s four-part motion.

9 **A. Fireman’s Fund’s Motion in Limine**

10 The court grants the first part of Fireman’s Fund’s motion, which seeks to exclude
11 testimony from Mr. Connolly, who wishes to offer expert testimony regarding Fireman’s
12 Fund’s bad faith. Mr. Connolly has substantial insurance-industry experience. It is plain,
13 however, from the declaration and expert report he previously submitted (Dkt. # 56), that
14 he intends to testify primarily to announce his view of what the law is. That is the court’s
15 role; it is not the province of any expert. Mr. Connolly also plans to testify as to his
16 expectations of Fireman’s Fund’s conduct in this case. The law, however, already sets
17 forth those expectations in detail. The court does not find that Mr. Connolly has anything
18 to add. The court finds that Mr. Connolly’s testimony would add little probative
19 evidence for the jury to consider, and presents a great danger of misleading the jury as to
20 whose view of the law they must follow.

21 The court partially denies the second part of Fireman’s Fund’s motion. Fireman’s
22 Fund asks the court to exclude evidence of damages that Bloxom did not previously
23 disclose in discovery. That motion might be appropriate if it were targeted at specific
24 evidence that Bloxom did not disclose in discovery, but now seeks to rely on at trial. For
25 example, Fireman’s Fund’s motion for reconsideration targeted Mr. Connolly’s fees as an
26 undisclosed element of damages. The court had no need to decide whether to exclude

1 that evidence, because Bloxom abandoned it. Fireman’s Fund’s motion, however, does
2 not target specific evidence. Instead, it takes an unduly restrictive view of what Bloxom
3 disclosed in discovery. Fireman’s Fund focuses on Bloxom’s response to an
4 interrogatory that requested disclosure of “each and every category of damages” that
5 Bloxom suffered. Bloxom responded by listing only its \$86,000 claim as an element of
6 damages. Bloxom could no doubt have done a better job categorizing and itemizing its
7 damage claims, but Fireman’s Fund has no basis to argue that Bloxom disclosed no other
8 damages. As the court has already noted, Bloxom disclosed in a different interrogatory
9 response that it suffered a loss of or damage to its shipment as a result of Fireman’s
10 Fund’s delay in communicating about the claim. Fireman’s Fund may object at trial to
11 specific evidence that Bloxom did not disclose in discovery, but the court will not
12 broadly preclude Bloxom from introducing “categories” of damage merely because
13 Bloxom did not disclose them in the way that Fireman’s Fund preferred.

14 The court grants the third part of Fireman’s Fund motion, which would bar
15 evidence or argument regarding the relative financial status of Fireman’s Fund and
16 Bloxom. Bloxom does not oppose this motion, but insists that it should be able to present
17 evidence of its own financial status. The court makes no ruling on whether such evidence
18 is admissible, because Fireman’s Fund’s motion only targets comparisons between the
19 financial statuses of the parties.

20 The court denies the fourth part of Fireman’s Fund’s motion. It seeks to exclude
21 what Fireman’s Fund deems to be cumulative evidence regarding its failure to
22 communicate with Bloxom. Fireman’s Fund reasons that because the court has already
23 ruled that its failure to communicate was in bad faith, it is unnecessary to present
24 evidence about that issue. The court disagrees. First, the court has only ruled that the
25 failure to communicate was in bad faith, a ruling that does not preclude a jury finding that
26 other aspects of Fireman’s Fund’s claims handling were in bad faith. Second, because

1 either the court or the jury may impose an enhanced damage award, all evidence about
2 Fireman's Fund's claims handling is potentially relevant.

3 **B. Bloxom's Motion in Limine**

4 The court now turns to Bloxom's motion, the first part of which seeks to exclude
5 expert or lay testimony regarding the possibility of extricating the nuts from Venezuela.
6 The court denies this request. There is no indication that Bloxom intends to offer any
7 testimony from the sort of expert witness who would be subject the advance reporting
8 requirements of Fed. R. Civ. P. 26(a)(2)(B). Instead, it appears that some witnesses with
9 factual knowledge of Bloxom's shipment of nuts and its fate in Venezuela may offer lay
10 opinion testimony about the possibility of having the nuts re-shipped. To the extent those
11 opinions are reasonably based on a witness's experience with Venezuelan shipping, the
12 court will not exclude them. Bloxom is free to object at trial to the extent that any
13 witness (and in particular the surveyor who attempted to access the nuts on Fireman's
14 Fund's behalf in 2009) offers testimony that strays beyond the boundaries of lay opinion
15 testimony. The court finds no reason, however, to categorically exclude such evidence.
16 Bloxom is mistaken, moreover, in its belief that the court has somehow already excluded
17 such evidence by denying Fireman's Fund's motion for a trial continuance.

18 The court denies the second part of Bloxom's motion, which would exclude
19 evidence that Bloxom did not directly notify Fireman's Fund of its claims. The court
20 notes Fireman's Fund's express assurance that it will not attempt to argue that Bloxom's
21 failure to notify it directly somehow prejudiced Fireman's Fund or gave it a reason to
22 deny coverage. Subject to that limitation, the court finds no reason to prohibit testimony
23 regarding Bloxom's failure to notify Fireman's Fund directly. Indeed, it will be
24 impossible to provide evidence about Fireman's Fund's claims handling without pointing
25 out that Bloxom did not (at least at first) communicate directly with Fireman's Fund.

1 The court largely denies the third part of Bloxom’s motion, which seeks to exclude
2 evidence or argument that Fireman’s Fund did not issue its policy to Bloxom or that
3 Bloxom is not its insured. Fireman’s Fund did not issue a policy to Bloxom, an
4 undisputed fact that the court sees no reason to keep from the jury. It is nonetheless
5 undisputed that Bloxom became Fireman’s Fund’s insured by virtue of the certificates of
6 insurance. The court finds no indication that Fireman’s Fund will attempt to argue
7 otherwise, but the court will not permit it to do so. The court believes that the jury must
8 hear evidence regarding the certificates of insurance and the “open cargo” policy that
9 Fireman’s Fund issued in order to understand the unusual four-party claims-handling
10 process in this case. If either party offers evidence or argument about this issue in a way
11 that appears likely to mislead the jury, the other party may object, and the court will
12 consider the objection as it arises.

13 The court denies the fourth part of Bloxom’s motion, which seeks to exclude
14 evidence that shows that Fireman’s Fund claims adjuster Lani Igama believed that
15 Roanoke would communicate with Bloxom about Fireman’s Fund’s claims handling in
16 the summer of 2009.¹ The court has already ruled that Fireman’s Fund bears ultimate
17 responsibility for its failure to ensure that Bloxom was told of Fireman’s Fund’s
18 decisions. Fireman’s Fund may not argue otherwise at trial. Nonetheless, whether Ms.
19 Igama had a reasonable belief that Roanoke would communicate with Bloxom is relevant
20 to the egregiousness (or lack thereof) of Fireman’s Fund’s bad faith. The egregiousness
21 of Bloxom’s bad faith may be relevant to any enhanced damage award.

22 The court denies the fifth part of Bloxom’s motion, which would exclude all
23 evidence that Bloxom made a claim with Maersk, the entity who shipped Bloxom’s nuts.
24 Fireman’s Fund assures the court that it will not introduce evidence about this issue to

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26 ¹ Fireman’s Fund concedes that it may not introduce evidence or argument that Roanoke was
27 Bloxom’s agent for claims handling purposes, in accordance with the court’s prior ruling that
28 Roanoke was not Bloxom’s agent as a matter of law.

1 support a defense that Bloxom failed to mitigate its damages. The court will hold
2 Fireman's Fund to this limitation. But, as Fireman's Fund points out, evidence of
3 Bloxom's claim with Maersk may show that its loss was not the permanent stranding of
4 its shipment, but delay-induced spoilage of the nuts. Evidence about the claim with
5 Maersk might also bear on when Bloxom believed it suffered a loss. That evidence is
6 relevant. The court will not exclude it.

7 **IV. CONCLUSION**

8 For the reasons stated above, the court DENIES Fireman's Fund's motion for
9 reconsideration (Dkt. # 70), and GRANTS in part and DENIES in part each of the
10 parties' motions in limine (Dkt. ## 85, 87).

11 DATED this 9th day of May, 2012.

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14 _____
15 The Honorable Richard A. Jones
16 United States District Court Judge
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