

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

HARM VAN WIJK,  
  
Plaintiff,  
  
v.  
  
WESTERN NATIONAL ASSURANCE  
COMPANY,  
  
Defendant.

CASE NO. C11-116 MJP  
  
ORDER DENYING DEFENDANT’S  
MOTION TO BIFURCATE AND  
STAY DISCOVERY

This comes before the Court on Defendant’s motion to bifurcate and stay discovery (Dkt. No. 9.) Having reviewed the motion, the response (Dkt. No. 10), the reply (Dkt. No. 13) and all related filings, the Court DENIES Defendant’s motion to bifurcate and stay discovery.

**Background**

Plaintiff Harm Van Wijk (“Van Wijk”) is suing Defendant Western National Assurance Company (“Western National”) for (1) breach of their “Underinsured Motorist” (UIM) contract and (2) extra-contractual claims. Defendant seeks to bifurcate so that the breach of contract claim is heard separately from the extra-contractual claims. Defendant argues bifurcation is

1 appropriate because the extra-contractual claims are premature and a UIM claim is unique. (Id.)  
2 Defendant also seeks to stay discovery on the extra-contractual claim because discoverable  
3 materials for the extra-contractual claim are privileged with respect to the breach of contract  
4 claim.

### 5 **Analysis**

6 In deciding a motion for bifurcation pursuant to Federal Rule of Civil Procedure 42(b),  
7 the Court considers factors such as convenience, prejudice, judicial economy and whether the  
8 issues are clearly separable. See Schwarzer, Tashima & Wagstaffe, Fed. Civ. Proc. Before Trial  
9 16:160.4 (1999); Hirst v. Gertzen, 676 F.2d 1252, 1261 (9th Cir.1982). Bifurcation is  
10 inappropriate where the issues are so intertwined that separating them would “tend to create  
11 confusion and uncertainty.” See Miller v. Fairchild Indus., Inc., 885 F.2d 498, 511 (9th Cir.1989)  
12 (citation and quotation marks omitted).

13 Here, Defendant argues a judgment on the breach of contract claim could resolve or  
14 render moot Plaintiffs’ extra-contractual claims. Specifically, the extra-contractual claims will  
15 not exist if Plaintiff’s damages on the contract claim are found to be less than the amount  
16 Defendant has already offered to pay. (Id.) In addition, Defendant contends prejudice will result  
17 if extra-contractual claims are litigated with the contract claim because the insured’s liability  
18 coverage will be revealed in the contract claim. (Id. at Pg. 5-6) Under Rule 411 of the Federal  
19 Rules of Evidence, the fact that the defendant carries liability insurance is normally inadmissible.  
20 (Id. at Pg. 6)

21 The Court does not find Defendant’s arguments warrant bifurcation. It would be  
22 prejudicial to the Plaintiffs and time-consuming for the Court if two separate trials were required  
23 on intertwined factual issues. To the extent the breach of contract claim must be separated from  
24

1 Plaintiff's bad faith claims, the Court has the ability to sequence the issues in a single trial. In a  
2 sequenced trial, the parties would first present to a jury the breach of contract claim and then, if  
3 necessary, the bad faith claims.

4 For the same reasons, the Court finds a stay of discovery inappropriate. While  
5 Defendants believe they will be forced to reveal information protected by the work product  
6 privilege, the Court has the ability to consider any disputes with respect to discovery as they  
7 arise.

8  
9 **Conclusion**

10 The Court DENIES Defendant's motion to bifurcate and DENIES Defendant's motion to  
11 stay discovery. Having reviewed the parties' Joint Status Report, the Court sets June 12, 2012 as  
12 the trial date. The clerk is ordered to provide copies of this order to all counsel.

13 Dated this 10th day of May, 2011.

14  
15  
16 

17 Marsha J. Pechman  
18 United States District Judge  
19  
20  
21  
22  
23  
24