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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ARK LAW GROUP, et al.,  
  
Plaintiffs,  
  
v.  
  
ARCH INSURANCE COMPANY,  
  
Defendant.

CASE NO. C22-0504JLR  
  
ORDER

**I. INTRODUCTION**

Before the court is Defendant Arch Insurance Company’s (“Arch”) motion to bifurcate and stay discovery of Plaintiffs Ark Law Group (“Ark”) and Nadia Kourehdar’s (collectively, “Plaintiffs”) extra-contractual claims. (Mot. (Dkt. # 15); Reply (Dkt. # 19).) Plaintiffs oppose the motion. (Resp. (Dkt. # 17).) The court has considered the

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1 submissions of the parties, the relevant portions of the record, and the applicable law.

2 Being fully advised,<sup>1</sup> the court DENIES Arch’s motion.

## 3 II. BACKGROUND

4 This case involves a malpractice insurance coverage dispute between Plaintiffs<sup>2</sup>  
5 and Arch. (*See generally* Compl. (Dkt. # 1-2).) On February 21, 2018, Arch issued Ark  
6 a “Lawyers Professional Liability Policy” (the “Policy”), Policy Number  
7 11LPL12622301. (*See* 7/7/22 Ries Decl. (Dkt. # 16) ¶ 2, Ex. 1 (“Policy”).) The Policy  
8 contains a coverage section and insuring agreement related to “Legal Services,” with a  
9 limit of liability totaling \$1,000,000 per claim and a deductible totaling \$15,000 per  
10 claim. (Policy at Ark\_CF\_000814.) The “Legal Services” section of the Policy provides  
11 coverage for a “Claim . . . based on an alleged negligent act, error or omission in the  
12 Insured’s rendering or failing to render Legal Services for others.”<sup>3</sup> (*Id.* at  
13 Ark\_CF\_000819.)

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16 <sup>1</sup> Neither party has properly requested oral argument (*see* Mot. at 1; Resp. at 1), and the  
17 court has determined that oral argument would not be helpful to its disposition of the motion, *see*  
Local Rules W.D. Wash. LCR 7(b)(4).

18 <sup>2</sup> While Ark has since dissolved, at all times relevant to this case, Ms. Kourehdar appears  
19 to have been Ark’s managing attorney and only member/owner. (*See* SC Resp. (Dkt. # 7) at 4-6;  
4/21/22 Ries Decl. (Dkt. # 8) ¶¶ 10-15, Exs. 8-13.)

20 <sup>3</sup> The Policy also contains a “Disciplinary Proceedings” section, which states, in relevant  
21 part, that Arch “will reimburse the Insured for defense costs incurred by the Insured to defend  
22 Disciplinary Proceedings.” (*See* Policy at Ark\_CF\_000820; *see also id.* at Ark\_CF\_000814  
(providing a sub-limit of liability totaling \$25,000 for each Disciplinary Proceeding).) The  
Policy defines Disciplinary Proceedings as “a grievance or allegation involving an act or  
omission made against an Insured to any professional entity charged with the responsibility to  
oversee lawyer disciplinary matters.” (*Id.* at Ark\_CF\_000831.)

1 In the summer of 2018, Plaintiffs fired one of their employees, Nathan Clark.  
2 Following his termination, Mr. Clark filed both a bar complaint against Ms. Kourehdar  
3 with the Washington State Bar Association (the “Bar Complaint”) and a lawsuit against  
4 Plaintiffs in King County Superior Court (the “Clark Complaint”). (*See* Compl.  
5 ¶¶ 5.3-5.4.) The Bar Complaint alleged, among other things, that Ms. Kourehdar  
6 negligently handled Ark’s clients. (*Id.*; *see* 4/21/22 Ries Decl., Ex. 13 (Stipulation to  
7 Reprimand filed by the Disciplinary Board of the Washington State Bar Association).)  
8 And while the Clark Complaint sought damages for discrimination, retaliation, wrongful  
9 termination, and emotional distress arising out of discrimination, the fact section of the  
10 Clark Complaint also included allegations regarding Plaintiffs’ negligent handling of  
11 Ark’s clients. (Compl. ¶¶ 5.3-5.4; *see* 7/7/22 Ries Decl. ¶ 4, Ex. 3 (“Clark Complaint”)  
12 (filed July 18, 2018).)

13 On August 8, 2018, Plaintiffs forwarded the Clark Complaint and Bar Complaint  
14 to Arch and requested coverage for the claims under the Policy. (*See* 7/7/22 Ries Decl.  
15 ¶ 3, Ex. 2 (August 8, 2018 email); Compl. ¶¶ 5.5-5.6.) The next day, a representative of  
16 Arch allegedly called Plaintiffs and informed them that Arch “would provide coverage  
17 for defense of the Bar [C]omplaint” but “denied coverage as to the [Clark Complaint] and  
18 would not provide Plaintiff[s] with a defense.” (Compl. ¶ 5.8; *see also id.* at (stating that,  
19 despite having already called to deny coverage for the Clark Complaint, Arch sent  
20 Plaintiffs a letter on August 10, 2018, formally confirming receipt of Plaintiffs’ claim and  
21 informing them that Arch would investigate the claims).) On August 15, 2018, Arch sent  
22 Plaintiffs a letter reaffirming its denial of coverage as to the Clark Complaint. (*See id.*

1 ¶ 5.11; 7/7/22 Ries Decl. ¶ 5, Ex. 4 (August 15, 2018 letter).) In the letter, Arch stated  
2 that the Clark Complaint did “not allege any ‘negligent act, error, or omission in the  
3 Insured’s rendering or failing to render Legal Services, for others,’” but rather, Mr.  
4 Clark’s allegations arose “out of Ark’s alleged wrongful termination of [Mr.] Clark” as  
5 one of Ark’s legal assistants. (7/7/22 Ries Decl., Ex. 4 at Ark\_CF\_000056 (emphasis  
6 omitted) (quoting Policy at Ark\_CF\_000814).) In sum, Arch took the position that the  
7 allegations and requested damages in the Clark Complaint were for wrongful termination  
8 and not legal malpractice such that coverage was not available under the “Legal  
9 Services” coverage section of the Policy. (*Id.*)

10 As a result of Arch’s refusal to defend or indemnify Plaintiffs, Ms. Kourehdar  
11 alleges that she had to close Ark in order to defend herself and Ark against Mr. Clark’s  
12 lawsuit. (*See* Compl. ¶ 5.13.) “After litigating for over a year, she was finally able to  
13 reach a settlement agreement with Mr. Clark in July 2019.” (*Id.*) Plaintiffs subsequently  
14 obtained counsel to represent them for “claims arising out of a June 5, 2018 professional  
15 liability covered loss.” (Gebril Decl. (Dkt. # 18) ¶ 7, Ex. 6 (November 16, 2021 letter);  
16 *compare* Compl. ¶¶ 5.15-5.17 (alleging that Plaintiffs’ counsel sent numerous  
17 Policy/claim-related document requests to Arch, which it did not timely respond to), *with*  
18 7/22/22 Ries Decl. (Dkt. # 20) ¶¶ 3-4, Ex. 2 (alleging that Arch did timely respond to  
19 Plaintiffs’ request for documents, but its response was inadvertently sent to Plaintiffs’  
20 counsel at an incorrect email address, and that Arch later corrected the email address and  
21 resent the documents).)

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1 In February 2022, Plaintiffs filed a complaint against Arch with the Washington  
2 State Office of the Insurance Commissioner for violations of the Insurance Fair Conduct  
3 Act (“IFCA”), RCW 48.30.015. (*See* Compl. ¶ 5.18; Gebril Decl. ¶ 8, Ex. 7 (“IFCA  
4 Complaint”).) Arch responded by maintaining its original denial of coverage as to the  
5 Clark Complaint. (*See* Compl. ¶¶ 5.19-5.20; Gebril Decl. ¶ 9, Ex. 8 (“Arch IFCA Resp.  
6 Letter”) at 1-2.) Plaintiffs then filed this lawsuit against Arch in King County Superior  
7 Court on March 11, 2022, asserting claims for: (1) breach of contract; (2) violations of  
8 the Washington Consumer Protection Act (“WCPA”), RCW 19.86 et seq.; (3) bad faith;  
9 and (4) violations of the IFCA.<sup>4</sup> (*See* Compl. at 5-8.) Arch removed the case to this  
10 court on April 15, 2022. (*See* NOR (Dkt. # 1).)

11 Arch now asks the court to bifurcate Plaintiffs’ contractual claim from their  
12 extra-contractual claims—i.e., their bad faith, CPA, and IFCA claims. (Mot. at 1-2.)  
13 Arch further seeks to stay discovery on the extra-contractual claims until the court  
14 decides “whether Plaintiffs are entitled to coverage [for the Clark Complaint] under the  
15 terms and conditions” of the Policy. (*Id.*) Arch argues that bifurcation and a stay of  
16 discovery would preserve the parties’ resources and promote judicial economy because  
17 “if, in connection with Plaintiffs’ breach of contract claim, the [c]ourt determines that  
18 there is no coverage available for the Clark Complaint under the Policy, then there is no

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21 <sup>4</sup> Arch’s handling of the Bar Complaint does not form the basis of this action because  
22 Arch did provide a defense to that complaint, up to the Policy limits. (*See* Arch IFCA Resp.  
Letter at 2; *see generally* Compl.)

1 basis for Plaintiffs’ extra-contractual causes of action, and they are moot.” (*See generally*  
2 *id.* at 8-9.)

3 Plaintiffs argue that this “is simply a misstatement of the law and allegations in  
4 this case.” (Resp. at 5 (citing Mot. at 8).) Plaintiffs contend that bifurcation is not  
5 justified because: (1) Plaintiffs’ breach of contract claim is not dispositive of their  
6 extra-contractual claims and thus bifurcation would result in two trials regardless of  
7 whether Plaintiffs succeed on their breach of contract claim; and (2) “there is substantial  
8 overlap between Plaintiffs’ [extra-contractual] claims and the breach of contract claim  
9 making bifurcation inefficient and a waste of resources.” (*See id.* at 5-8; *see also id.* at 10  
10 (stating that Arch failed to allege that it would be prejudiced by trying all of Plaintiffs’  
11 claims together).) For the same reasons, Plaintiffs argue that a stay of discovery as to  
12 their extra-contractual claims would be inefficient and “would merely allow Arch to  
13 delay the ultimate resolution of this case while substantially prejudicing Ms. Kourehdar’s  
14 ability to hold her former insurer accountable for its bad faith denial of her defense.”  
15 (*See id.* at 9.)

16 In its reply, Arch concedes that “Plaintiffs’ extra-contractual claims could remain  
17 viable even in the absence of insurance coverage,” but argues that bifurcation and a stay  
18 of discovery is still warranted to economize the case; preserve the resources of the parties  
19 and the court; and to prevent prejudice to Arch and avoid jury confusion. (*See Reply at*  
20 4-6 (arguing, for the first time, that “the jury will be confused, as well as unduly and  
21 unfairly influenced, to Arch’s detriment, if it hears testimony and allegations from

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1 Plaintiffs regarding both claims at the same time”); *see also id.* at 6-7 (discussing the  
2 interests of judicial economy and preservation of resources).)

### 3 III. ANALYSIS

4 Motions to bifurcate are granted or denied in the sound discretion of the trial court.  
5 *Hangarter v. Provident Life & Acc. Ins. Co.*, 373 F.3d 998, 1021 (9th Cir. 2004). A  
6 district court’s authority to bifurcate comes from Federal Rule of Civil Procedure 42(b),  
7 which states:

8 For convenience, to avoid prejudice, or to expedite and economize, the court  
9 may order a separate trial of one or more separate issues, claims, crossclaims,  
10 counterclaims, or third-party claims. When ordering a separate trial, the  
11 court must preserve any federal right to a jury trial.

12 Fed. R. Civ. P. 42(b). In deciding a motion to bifurcate, courts consider factors such as  
13 convenience, prejudice, judicial economy and whether the issues are clearly separable.

14 *Bowoto v. Chevron Corp.*, No. C 99-02506 SI, 2008 WL 2074401, at \*1 (N.D. Cal. May  
15 15, 2008). The party seeking bifurcation “has the burden of proving that bifurcation is  
16 justified given the facts in [the] case.” *Spectra-Physics Lasers, Inc. v. Uniphase Corp.*,  
17 144 F.R.D. 99, 102 (N.D. Cal. 1992).

18 Bifurcation is the exception rather than the rule. *Hangarter*, 373 F.3d at 1021. If  
19 a single issue could be dispositive of the case or is likely to lead the parties to negotiate a  
20 settlement, and resolution of it might make it unnecessary to try the other issues in the  
21 litigation, separate trial of that issue may be desirable to save the time of the court and  
22 reduce the expenses of the parties. *See Allstate Ins. Co. v. Breeden*, 410 F. App’x 6, 9  
(9th Cir. 2010); *Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 962 (9th Cir. 2001); *see also*

1 | *Hirst v. Gertzen*, 676 F.2d 1252, 1261 (9th Cir. 1982) (noting that bifurcation may be  
2 | appropriate where the evidence necessary to prove one claim poses a significant threat of  
3 | confusing or prejudicing the jury as it considers other claims). However, “[w]here an  
4 | overlap of factual issues exists between the claims, courts are reluctant to bifurcate the  
5 | proceedings.” *Dees v. Allstate*, No. C12-04823JLR, 2012 WL 3877708, at \*1 (W.D.  
6 | Wash. 2012) (citing *McLaughlin v. State Farm Mut. Auto. Ins. Co.*, 30 F.3d 861, 871 (7th  
7 | Cir. 1994)). Indeed, if the preliminary and separate trial of an issue would involve  
8 | extensive proof and substantially the same facts or witnesses as the other issues in the  
9 | cases, or if any economy in time and expense is wholly speculative, the motion should be  
10 | denied. *See Datel Holdings LTD. v. Microsoft Corp.*, No. C-09-05535 EDL, 2010 WL  
11 | 3910344, at \*2-5 (N.D. Cal. Oct. 4, 2010); *Dees*, 2012 WL 3877708, at \*1. The Ninth  
12 | Circuit has stated that a district court’s decision declining to bifurcate comports with  
13 | “normal trial procedure.” *Hangarter*, 373 F.3d at 1021.

14 |       “Numerous courts have recognized substantial overlap between the issues of  
15 | coverage and bad faith, such that bifurcation of the issues would be inappropriate.” *Dees*,  
16 | 2012 WL 3877708, at \*2. In addition, this court regularly hears insurance cases that  
17 | involve both breach of contract claims and extra-contractual claims regarding the  
18 | insurer’s failure to follow insurance regulations or act in good faith. *See, e.g., id.*, at \*1-2  
19 | (denying motion to bifurcate and stay discovery in a case involving underinsured motorist  
20 | claims and extra-contractual claims); *Bates v. State Farm Mut. Auto. Ins. Co.*, No.  
21 | C14-1557JLR, 2015 WL 11777838, at \*1 (W.D. Wash. May 18, 2015) (same); *Campbell*  
22 | *v. Metro. Prop. & Cas. Ins. Co.*, No. C09-1611RAJ, 2010 WL 11684459, at \*3 (W.D.



1 Wash. July 19, 2010) (same); *see also, e.g., Allstate Indem. Co. v. Lindquist*, No. C20-  
2 1508JLR, 2022 WL 2357007 (W.D. Wash. June 30, 2022); *United States Fid. & Guar.*  
3 *Co. v. Ulbricht*, No. C20-0369JLR, 2022 WL 110457 (W.D. Wash. Jan. 12, 2022).

4 Nothing in the complaint or the motion to bifurcate compels the court to treat this case  
5 any differently.

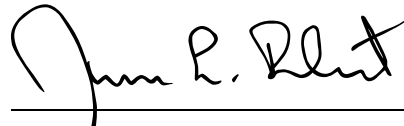
6 As Plaintiffs correctly argue, the issue of coverage under the Policy is not  
7 necessarily dispositive of Plaintiffs’ extra-contractual claims. (*See, e.g., Resp.* at 5-8  
8 (discussing relevant case law)); *Smith v. State Farm Mut. Auto. Ins. Co.*, No.  
9 C12-1505JCC, 2013 WL 1499265, at \*10 (W.D. Wash. Apr. 11, 2013) (“Washington  
10 courts have repeatedly permitted bad faith actions to proceed absent a successful contract  
11 claim.” (collecting cases)); *Campbell*, 2010 WL 11684459, at \*2 (stating that “[i]nsurers  
12 can act in bad faith even where they properly deny coverage or compensation to their  
13 insureds” and “violations of many of Washington’s insurance regulations are bad faith  
14 regardless of claim denial”); *Navigators Ins. Co. v. Nat’l Union Fire Ins. Co. of*  
15 *Pittsburgh, Pa.*, No. C12-0013MJP, 2013 WL 2155707, at \*1 (W.D. Wash. May 16,  
16 2013) (“[E]ven if National Union defeats the claim for contribution/coverage, the  
17 extracontractual issues relating to the investigation and handling of the insured’s claim  
18 for indemnity still exist.”). Thus, even if Arch’s motion was granted, the court would be  
19 faced with two trials, not one. For that reason, and because of the significant factual  
20 overlap between Plaintiffs’ contractual and extra-contractual claims, bifurcation is not  
21 likely to make the resolution of this matter more economical or more expedient. *See,*  
22 *e.g., Dees*, 2012 WL 3877708, at \*1-2. Additionally, bifurcation is decidedly less

1 convenient for the parties and the court. Finally, the court finds that bifurcation is not  
2 necessary to avoid jury confusion and prejudice to Arch, and indeed that Plaintiffs are  
3 likely to suffer prejudice if the court were to bifurcate this case. *See, e.g., Campbell,*  
4 2010 WL 11684459, at \*3. For all of these reasons, the court concludes that Arch has not  
5 met its burden to demonstrate that bifurcation and a stay of discovery is more appropriate  
6 than “normal trial procedure,” *Hangarter*, 373 F.3d at 1021, and declines to bifurcate trial  
7 or discovery in this matter.

#### 8 IV. CONCLUSION

9 For the foregoing reasons, the court DENIES Arch’s motion to bifurcate and stay  
10 discovery of Plaintiffs’ extra-contractual claims (Dkt. # 15).

11 Dated this 25th day of July, 2022.

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14 JAMES L. ROBART  
15 United States District Judge  
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