

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

GINA YOUNG,
Administratrix of the Estate of RICHARD YOUNG JR.,

Plaintiff,

v.

CIVIL ACTION NO. 2:12-cv-01324

APOGEE COAL COMPANY LLC, et al.,

Defendants.

MEMORANDUM OPINION & ORDER

Previously, the court bifurcated Counts One through Four from Counts Five and Six of the Amended Complaint [ECF No. 56] filed by the plaintiff, Gina Young, and stayed further proceedings in connection with Count One through Four pending resolution of Counts Five and Six (i.e., the declaratory judgment actions). Mem. Op. & Order, Jan. 5, 2015, at 1 [ECF No. 61] (“Order”). Since the Order was entered, the plaintiff filed her Second Amended Complaint [ECF No. 86] against New Hampshire Insurance Company and National Union Fire Insurance Company of Pittsburgh, Pa. In the Second Amended Complaint, the plaintiff refashioned the issues raised in the declaratory judgment actions.¹

¹ Compare Am. Compl. ¶¶ 43–48 (Counts Five & Six), with Second Am. Compl. ¶¶ 43–73 (Counts Five & Six).

Counts One through Four remain bifurcated from Counts Five and Six for the reasons explained in the Order. However, upon further consideration and in light of the refashioning of the declaratory judgment actions, the court lifts the stay on proceedings in connection with Counts One through Four. The court also stays further proceedings in connection with Counts Five and Six pending resolution of Counts One through Four. Resolution of Counts One through Four could be dispositive of the entire case. Clearly, if the plaintiff does not succeed on Counts One through Four, she is not entitled to a damages award and the court does not need to decide how the insurance policies operate upon an award of damages, which is much different than deciding whether coverage exists.

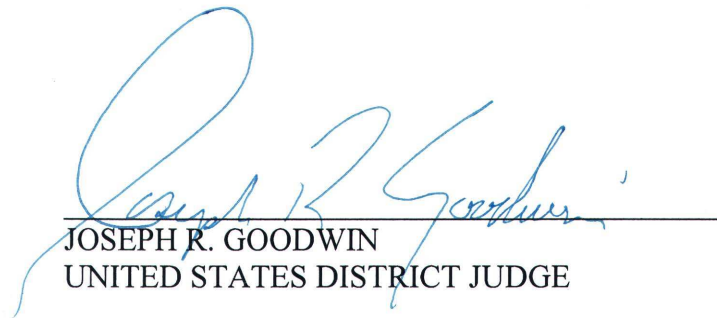
Because the court stays the proceedings in connection with Counts Five and Six, the motions associated with those counts—the defendants’ Motion to Dismiss [ECF No. 89] and the plaintiff’s Motion for Summary Judgment on Count Five [ECF No. 87] and Motion for Summary Judgment on Count Six [ECF No. 91]—are **DENIED**. The parties may refile these motions when the stay is lifted.

For the reasons explained in this Memorandum Opinion & Order, the court **REAFFIRMS** its decision to bifurcate Counts One through Four from Counts Five and Six; **LIFTS THE STAY** on further proceedings in connection with Counts One

through Four; and **STAYS** further proceedings in connection with Counts Five and Six pending resolution of Counts One through Four.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: October 21, 2015



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE