

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

CHAD SIEDLIK, and MELISSA SIEDLIK,

Plaintiffs,

vs.

**STATE FARM FIRE AND CASUALTY
COMPANY,**

Defendant.

8:24CV27

ORDER

This matter comes before the Court on the Motion to Bifurcate and Stay Discovery of Bad Faith Claim ([Filing No. 15](#)) filed by Defendant, State Farm Fire and Casualty Company (“State Farm”). Plaintiffs, Chad and Melissa Siedlik, oppose the motion. ([Filing No. 18](#)). After review of the motion, and after careful consideration of the circumstances of this case, the Court will deny the motion to bifurcate, without prejudice to reassertion as to trial.

BACKGROUND

Plaintiffs allege the following facts in their Complaint. ([Filing No. 1](#)). Plaintiffs were the owners of a two-story single family residential property in Omaha, Nebraska. Plaintiffs purchased an all-risk, replacement cost value policy of insurance from State Farm under Policy Number 27BKK4956 (“the Policy”) issued with effective date of September 27, 2021 through September 27, 2022. On June 7, 2022, the insured residence suffered direct physical loss and/or damage resulting from a severe hailstorm. Plaintiffs timely reported the loss to State Farm, and State Farm assigned Claim Number 2735C680Q to the loss. On June 28, a State Farm representative inspected the home, and on July 5, State Farm issued payment in the amount of \$3,220.38, with no accompanying estimate. On July 19, State Farm completed its initial estimate of damage caused by the hail storm, totaling \$86,917.52 Replacement Cost Value and \$81,182.64 Actual Cash Value. State Farm’s initial estimate of damage provided for full replacement of the residence’s roof coverings. On July 20, State Farm issued payment to Plaintiffs in the amount of \$21,113.57. State Farm subsequently cancelled that payment.

On August 9, 2022, State Farm retained an engineer, Pro Net Group, Inc. (“Pro Net”), to investigate the cause and origin of damage to the residence. Plaintiffs allege Pro Net conducted an inadequate investigation of damage based on Pro Net’s elevated threshold of damage, and failed to properly consider industry-standard repair methodology. After Pro Net’s investigation, it drafted a report confirming hail damage to the residence caused by the hail storm, but understated the damage and required repairs to bring the residence back to pre-loss condition. Pro Net’s report included recommendations for only isolated repairs to the damaged roof coverings, and recommended no repairs to other components due to non-functional damage. On August 31, State Farm issued payment in the amount of \$8,686.79 with no accompanying estimate. On September 24, State Farm revised its estimate downward to include only spot repairs of the damaged roof coverings, and issued a payment to Plaintiffs totaling \$1,944.21.

On October 10, 2022, Plaintiffs’ contractor provided State Farm with photo documentation of an attempted repair based on Pro Net’s recommendations; information showing that Pro Net’s repair recommendations were insufficient to restore Plaintiffs’ residence to pre-loss condition; and an estimate for required repairs totaling \$141,696.48. State Farm did not update its estimate after receiving this information from Plaintiffs’ contractor. Plaintiffs became concerned that if they continued to rely on State Farm to investigate the damage, their residence would never be restored to its pre-loss condition, so on May 3, 2023, Plaintiffs retained a public insurance adjuster to assist them in the evaluation of the cost to reconstruct their home. State Farm refused to cooperate with Plaintiffs’ public insurance adjuster in reviewing the loss.

Plaintiffs subsequently retained a professional engineer to perform an assessment of the residence’s damage caused by the hail storm. Following an inspection, Plaintiffs’ professional engineer prepared a 44-page report documenting extensive damage; recommending full replacement of the shake roof system down to the decking along with repair or replacement of all other storm damaged building materials; identifying a number of issues with Pro Net’s inspection and findings; and noting the insufficiency of the estimate of repair prepared by State Farm.

On November 14, 2023, Plaintiffs provided State Farm with Plaintiffs’ engineering report and photographs, and requested availability to discuss the findings. Plaintiffs also requested that State Farm provide a copy of all communications, estimates, and reports received or sent to Pro Net, and requested that State Farm provide a copy of the inspection report and corresponding photographs taken during the underwriting of the Policy illustrating the condition of the residence

prior to the hail storm. On December 8, Plaintiffs made a second request to State Farm for his information, a third request on December 20, and a fourth request on December 28. On December 28, State Farm notified Plaintiffs that it would not produce any documentation requested by Plaintiffs.

On January 3, 2024, Plaintiffs made a fifth request to State Farm for the above information. State Farm responded that it “has concluded the investigation regarding the claim,” but had not responded to the findings in Plaintiffs’ engineering report. Plaintiffs requested confirmation from State Farm whether it shared the copy of Plaintiffs’ engineering report or discussed the report’s findings with State Farm’s engineer. On January 12, Plaintiffs made a sixth request to State Farm for the above information, and restated Plaintiffs’ concerns regarding Plaintiffs’ engineering report. On January 22, Plaintiffs made a seventh request to State Farm for the above information, and renewed Plaintiffs’ concerns regarding Plaintiffs’ engineering report. On January 22, State Farm notified Plaintiffs that no further information would be provided.

Plaintiffs allege that to date, State Farm has refused to release additional coverage for any of the unpaid storm damage identified by Plaintiffs’ engineer. Plaintiffs allege that State Farm “refuses to be open and honest in its dealings with Plaintiffs, including the concealment of relevant Claim file materials obtained from its consultants relating to the Claim and refusal to release a copy of the pre-insurance inspection report” showing the condition of the residence prior to the hail storm. Plaintiffs further allege State Farm refuses to consider additional information provided by Plaintiffs’ engineer, refuses to disclose copies of the investigation communications and reports relating to Pro Net’s investigation, and “unreasonably preferred the opinions of Pro Net over the countering opinions of Plaintiffs’ engineer.”

Plaintiffs filed their complaint against State Farm on January 23, 2024, asserting two claims: (1) a claim for breach of contract for failing to provide coverage for the full repair of hail damage to the residence caused by the storm, and (2) a claim for bad faith for recklessly/knowingly underestimating the claim; disregarding the factual information submitted by Plaintiffs demonstrating additional insurance coverage was due and owing under the Policy; stringing out the Claim and low-balling the actual cost to repair damage to the residence; failing to act promptly in responding to communications transmitted by or on behalf of Plaintiffs; failing to conduct a timely or objectively reasonable investigation; refusing to consider the conflicting opinions of Plaintiffs’ engineer and unreasonably preferring the flawed opinions of its own engineer; and

unnecessarily compelling Plaintiffs to file this lawsuit to recover benefits owed under the Policy. ([Filing No. 1](#)). State Farm denies that Plaintiffs are entitled to the requested relief, and affirmatively alleges Plaintiffs failed to mitigate their alleged damages, and that State Farm is entitled to a credit, set-off, or offset to the extent it made payments under the policy, among other defenses. ([Filing No. 6](#)).

On March 20, 2024, Plaintiffs sent State Farm discovery requests, including interrogatories, request for production of documents, and requests for admission. ([Filing No. 16-1](#)). In their discovery requests, Plaintiffs seeks documents and information regarding State Farms' investigation of Plaintiffs' Policy Claims, its internal evaluation of Plaintiffs' Policy Claims, internal communications relating to Plaintiffs' Policy Claims, its policies and guidelines for handling similar claims, State Farm's methods and criteria for setting its reserves, and information regarding employment bonuses and incentives for State Farm employees. Plaintiffs also sent State Farm a request to depose to certain claims handlers and Plaintiffs' retained damage experts. (Filing Nos. 16-2 to 16-4). State Farm contends much of Plaintiffs' interrogatories, requests for production, and requests for admissions, as well as the proposed depositions, seek testimony and documents which are only relevant to Plaintiffs' bad faith claim. ([Filing No. 16 at p. 2](#)). Therefore, on April 18, 2024, State Farm filed the instant motion to bifurcate Plaintiffs' breach of contract claim and bad faith claim and to stay discovery on the bad faith claim until Plaintiffs' breach of contact claim is resolved. ([Filing No. 15](#)).

ANALYSIS

Under Rule 42(b) of the Federal Rules of Civil Procedure, the court may order a separate trial of one or more separate issues or claims “[f]or convenience, to avoid prejudice, or to expedite and economize[.]” [Fed. R. Civ. P. 42\(b\)](#). Other factors the court may consider include: whether the issues sought to be tried separately are significantly different; whether the issues are triable by jury or the court; whether discovery has been directed to a single trial of all issues; whether the evidence required for each issue is substantially different; whether one party would gain some unfair advantage from separate trials; whether a single trial of all issues would create the potential for jury bias or confusion; and whether bifurcation would enhance or reduce the possibility of a pretrial settlement. [Ameritas Life Ins. Corp. v. Fed. Ins. Co., No. 4:16CV3006, 2017 WL 432693, at *2 \(D. Neb. Jan. 31, 2017\)](#) (citations omitted). Nevertheless, “even if bifurcation might

somehow promote judicial economy, courts should not order separate trials when bifurcation would result in unnecessary delay, additional expense, or some other form of prejudice. Essentially, . . . courts must balance the equities in ruling on a motion to bifurcate.” *Id.* (quoting *Laitram Corp. v. Hewlett-Packard Co.*, 791 F. Supp. 113, 115 (E.D. La. 1992)). The trial court has broad discretion in determining when to separate proceedings. The burden is on the party seeking bifurcation to demonstrate it will be prejudiced if the claims are not separate. See *Athey v. Farmers Ins. Exchange*, 234 F.3d 357, 362 (8th Cir. 2000). Fed. R. Civ. P. 42(b). Bifurcation of breach of contract/bad faith claims is not a rule, and the analysis must be performed on a case-by-case basis. See *Kermeen v. State Farm Ins. Co.*, No. 8:14CV416, 2015 WL 4727646 at *3 (D. Neb. Aug. 10, 2015).

Plaintiffs’ claims for breach of contract and bad faith arise under Nebraska law. Under Nebraska law, an insured is not necessarily required to prevail on a breach of contract claim in order to prevail on its bad faith claim. See *LeRette v. Am. Med. Sec., Inc.*, 705 N.W.2d 41, 48 (Neb. 2005). However, since the tort of bad faith requires a plaintiff to show the insurer had “no reasonable basis for denying the benefits of the insurance policy,” there are limited circumstances under which the fact-finder could determine an insurer paid all the amounts due under the insurance policy (i.e., determine there was no breach of contract) while simultaneously finding the insurer had no reasonable basis for denying the benefits of the insurance policy. See *Welfl v. Northland Ins. Co.*, 192 F.3d 1169, 1173 (8th Cir. 1999) (“Because there is no evidence that [the insurer] denied [the plaintiff] any benefit due under the insurance contract, the district court did not err in granting [judgment as a matter of law] on the bad faith tort claim.”); see also *Smith v. Lozier Corp.*, 140 F.3d 765, 767 (8th Cir. 1998) (concluding that if a party acts “in accord with the specific terms of the contract, there can have been no violation of Nebraska’s implied covenant of good faith and fair dealing”). As such, as State Farm points out, this court “routinely” bifurcates cases where a bad faith claim is dependent upon the breach of contract claim under Nebraska law. State Farm specifically cites to the reasoning of Magistrate Judge Zwart in *Kermeen*, upon which other judges in this district, including the undersigned, have largely followed as a matter of course. See, e.g., *Ameritas Life Ins. Corp. v. Fed. Ins. Co.*, No. 4:16-cv-3006, 2017 WL 432693 (D. Neb. Jan. 31, 2017); *Panchal Enters. v. State Farm Fire & Cas. Co.*, No. 8:20-CV-295, 2021 WL 1909897, at *1 (D. Neb. May 12, 2021); *Gaines v. State Farm Fire & Cas. Co.*, No. 8:20CV385, 2021 WL 3856113, at *2 (D. Neb. Aug. 27, 2021); *Know How, LLC v. Federated Mut. Ins. Co.*,

8:21-cv-130, 2021 WL 5086299 (D. Neb. Nov. 2, 2021); *Dowling v. State Farm Mut. Auto. Ins. Co.*, No. 8:22CV326, 2023 WL 6050203, at *3 (D. Neb. May 30, 2023).

But, bifurcation should be the *exception* not the rule, and must be decided on a case-by-case basis. *Woodward v. Auto-Owners Ins. Co.*, No. 4:23-CV-3224, 2024 WL 1929294, at *3 (D. Neb. May 2, 2024) (citing *Fair Isaac Corp. v. Fed. Ins. Co.*, 650 F. Supp. 3d 731, 735 (D. Minn. 2023)). And, the party seeking to bifurcate carries a heavy burden. See *Fair Isaac Corp. v. Fed. Ins. Co.*, 650 F. Supp. 3d 731, 735 (D. Minn. 2023). The undersigned magistrate judge finds it is time to reevaluate the growing trend in this district to bifurcate breach of contract and bad faith claims at the discovery stage as a matter of course. After review, on the facts of this case, the Court is not convinced that State Farm has met its burden to show that the factors of convenience, avoiding prejudice, or judicial economy require bifurcation of Plaintiffs' claims at this time.

State Farm argues bifurcation of Plaintiffs' breach of contract and bad faith claims is appropriate because evidence relevant to Plaintiffs' bad faith claim—such as information about State Farm's claims-handling practices, claim investigation, internal evaluation of Plaintiffs' Policy Claims, or other “motive” evidence—has no bearing on Plaintiffs' contract coverage claim, and thus “there is a substantial risk the jury would nonetheless improperly consider that “bad faith” evidence in determining whether State Farm breached the insurance contract.” ([Filing No. 16 at p. 3](#)). However, Plaintiffs persuasively assert that their claims overlap and are not entirely legally or factually distinct. Plaintiffs also point out that some information or documentation relevant to their breach of contract claim may also be relevant to their bad faith claim, including information in the underwriting file showing the condition of their residence's exterior prior to the hailstorm, and prior inspections or reports. ([Filing No. 18 at p. 8](#)). Given the similarity between the causes of action, an evidentiary overlap exists such that bifurcation is not clearly warranted at this time.

Additionally, the majority of State Farm's arguments address prejudice if both of Plaintiffs' claims were *tried* together. See [Filing No. 16 at pp. 7-8](#). But, State Farm has offered little to demonstrate why bifurcation of the case is necessary now at the discovery stage. State Farm contends that providing the discovery requested by Plaintiffs “would also prejudice State Farm in defending against Plaintiffs' contract claim due to the nature of information contained therein.” ([Filing No. 16 at p. 3](#)). State Farm claims, “If that discovery were provided to Plaintiffs absent bifurcation, it would be highly prejudicial to State Farm in developing its litigation strategy.” *Id.* (citing *Colbert v. Acuity*, 2008 U.S. Dist. LEXIS 140960, at *6-7 (D. S.D. Mar. 8, 2008)). State

Farm is overstating the extent to which it would be required to disclose privileged discovery because “As courts have repeatedly recognized, it is the insurer’s ‘ordinary business’ to investigate claims, whether or not that investigation is likely to result in litigation.” *St. Paul Reinsurance Co., Ltd. v. Com. Fin. Corp.*, 197 F.R.D. 620, 636 (N.D. Iowa 2000) (citing *Piatkowski v. Abdon Callais Offshore, L.L.C.*, No. CIV.A.99-3759, 2000 WL 1145825, at *2 (E.D. La. Aug. 11, 2000)) (“[C]ourts have routinely recognized that the investigation and evaluation of claims is part of the regular, ordinary, and principal business of insurance companies”). True, permitting the parties to engage in discovery on both of Plaintiffs’ claims may lead to discovery disputes, including navigating State Farm’s claims of privilege, but that is no different than any civil litigation. Additionally, denying bifurcation now would avoid discovery disputes over whether the discovery sought pertains only to the contract claim, particularly where, as stated above, Plaintiffs have shown there is at least some overlap in the evidence. State Farm has not demonstrated that the burdens associated with discovery regarding Plaintiffs’ two claims are unduly prejudicial or particularly burdensome, or at least not any more burdensome and prejudicial than an ordinary civil lawsuit.

Bifurcation of discovery is also not warranted as this is not a particularly complex or unwieldy case. There are two plaintiffs bringing one claim for breach of contract and one claim for bad faith arising under an insurance policy with State Farm from one instance of loss from a hailstorm causing damage to their residence. Although State Farm asserts bifurcation of discovery would promote judicial economy, the Court finds that permitting the parties to engage in discovery as to both of Plaintiffs’ claims would instead promote judicial economy because there is no risk of duplicative litigation and discovery. Although this district’s prior orders granting bifurcation point out that if a plaintiff does not prevail on a breach of contract claim, then the plaintiff cannot prevail on a bad faith claim, those orders do not fully appreciate the consequences if a plaintiff *does* prevail on the breach of contract claim: the parties would have to conduct a second round of discovery (thereby taking up the potential discovery disputes previously deferred), a second round of depositions involving many of the same individuals already deposed, a second round of dispositive motion practice, and then another trial, again involving many of the same witnesses. In essence, a finding that judicial economy is served by bifurcation at this early stage operates from an assumption that a plaintiff’s breach of contract claim will fail. Potentially forcing the plaintiffs to factually develop their case twice is unnecessarily burdensome, and if anything, bifurcating and

staying discovery on the plaintiffs' bad faith claim would increase the risk of protracted litigation and increase costs for both sides. These are risks previously recognized by this Court. See *Thornton v. State Farm Ins. Companies*, No. 8:13CV117, 2013 WL 6904995, at *2 (D. Neb. Nov. 13, 2013) (Gossett, M.J.), *objections overruled*, No. 8:13CV117, 2013 WL 6905275 (D. Neb. Dec. 31, 2013) (“[T]he Court does not believe that staying all discovery and proceedings related to the bad faith claim would promote expeditious progression and resolution of this case. The issue of whether trial should be bifurcated can be considered by the Court at a later date, when the Court can better assess, based on discovery and anticipated evidence, whether trying the claims together would unduly prejudice Defendant or lead to jury confusion.”); *Norfolk Transmission & Muffler Service, Inc. v. Owners Insurance Company*, 8:16CV489 (D. Neb. May 27, 2017) (Bazis, M.J.) (“The evidence before the Court suggests that staying proceedings related to the bad faith claim would not promote expeditious progression or resolution of this case. To the contrary, the record indicates that such an approach would unduly prolong and complicate this litigation. It appears that the outcome of each of the causes of action hinges upon Defendant’s evaluation and investigation of the amount owed under the policy. It seems that many of the same witnesses and documents will be used to prove each claim. In fact, Plaintiff anticipates calling the same witnesses to testify on both issues at trial.”); *accord Ford v. Vanliner Ins. Co.*, No. 8:20-cv-00108-RFR-SMB (D. Neb. Jan. 13, 2021) (Bazis, M.J.) (denying motion to bifurcate and stay discovery in an insurance contract dispute arising in connection with property damage from a storm).

The Court also finds that denying bifurcation of discovery would promote settlement of Plaintiffs’ claims. The parties will have all the information needed to evaluate the strength of their positions as to both claims when engaging in settlement discussions. Indeed, bifurcation at this stage may instead become an impediment to settlement. If, for example, discovery reveals a good possibility State Farm did breach its obligations under the insurance policy, then plaintiffs will have no discovery to evaluate their position as to their bad faith claim. See, e.g., *Dowling v. State Farm Mut. Auto. Ins. Co.*, No. 8:22CV326, at Filing No. 82 (noting the parties’ disagreement about unbifurcation as an issue in their settlement discussions).

If bifurcation of discovery is not granted, the Court will be capable of handling dispositive motions filed regarding Plaintiffs’ claims, at which point the Court can determine whether Plaintiffs’ breach of contract claim survives. If the Court determines there are triable issues of fact

as to Plaintiffs' breach of contract claim, the Court could address State Farm's primary concerns of prejudice by entertaining a motion to bifurcate the claims for trial.

Therefore, after review of the record and in consideration of the factors set forth above, the Court finds that State Farm has not met its burden to show the factors of convenience, avoiding prejudice, or judicial economy require bifurcation of Plaintiffs' claims at this time. If and when this matter is ready to be set for trial, the Court may entertain a motion to bifurcate the claims for trial. Accordingly,

IT IS ORDERED:

1. Defendant's Motion to Bifurcate and Stay Discovery of Bad Faith Claim ([Filing No. 15](#)) is denied.
2. The parties shall meet and confer to discuss outstanding discovery in light of the Court's order denying bifurcation. The parties shall request a telephone conference with the undersigned magistrate judge in the event such issues cannot be resolved.

Dated this 21st day of June, 2024.

BY THE COURT:

s/Michael D. Nelson
United States Magistrate Judge