

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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MARK McCRAW,

Plaintiff,

v.

LINDA S. MENSCH, LINDA MENSCH, P.C.  
and ILLINOIS STATE BAR ASSOCIATION  
MUTUAL INSURANCE COMPANY,

Defendants.

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ILLINOIS STATE BAR ASSOCIATION  
MUTUAL INSURANCE COMPANY,

Cross-Plaintiff,

v.

MARK McCRAW, LINDA S. MENSCH,  
LINDA MENSCH, P.C., KURT NEUMANN,  
SAMUESL LLANAS and KESHAW, INC.

Cross-Defendants.

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Plaintiff Mark McCraw commenced this legal malpractice against his former attorney, Linda S. Mensch and her insurer Illinois State Bar Association Mutual Insurance Company. On September 13, 2006 the Court granted leave to defendant Illinois State Bar Association Mutual Insurance Company to file an amended answer and counter complaint for a declaration of its insurance coverage obligations. The Court scheduled an expedited summary judgment motion deadline

MEMORANDUM AND ORDER  
06-C-86-S

and briefing schedule on the coverage issue. Briefing is presently underway and the matter will become ripe for resolution on or about October 27. Trial is scheduled for December 6, 2006.

The Mensch defendants now move the Court to bifurcate resolution of the coverage and liability issues pursuant to Rule 42(b), Fed. R. Civ. P., staying trial of the liability case pending resolution of the coverage claim. Plaintiff takes no position on the motion, except to request that trial on the merits commence within 30 days of the coverage decision. Because the Court finds that separation of the issues for trial is not necessary to avoid prejudice and would not be conducive to expedition or economy, defendants' motion to bifurcate is denied.

The Mensch defendants offer two arguments in favor of bifurcation. First, that the same coverage motion is being advanced in a related action in state court. It is unclear how bifurcation would in any way alleviate this concern. It seems very likely that the coverage issue will be resolved in this action prior to resolution in the state court proceeding (regardless of bifurcation) and that this resolution will apply in both cases since all parties from both cases have been joined in this action. Under these circumstances it would seem that defendant insurer would be barred from rearguing the issue by issue preclusion. In fact, defendant insurer takes the position in its brief in support of a determination of non-coverage, that the decision will apply in

both cases. Even if for some reason this Court's determination was not binding in the state proceeding, bifurcation would not address the concern.

In their second argument, defendants note that plaintiff might not want to pursue the action against the Mensch defendants if it is determined that insurance coverage is unavailable. This seems highly speculative in light of plaintiff's failure to join in the motion and his expression of concern that the matter be tried within thirty days of resolution of the coverage issue. Because the motion for summary judgement on the coverage issue will become ripe by about October 27, and trial is scheduled for December 6, it appears that the present schedule is probably in accord with plaintiff's position.

ORDER

IT IS ORDERED that the motion of defendants Linda S. Mensch and Linda S. Mensch, P.C. to bifurcate the trial of coverage and liability issues is DENIED.

Entered this 16th day of October, 2006.

BY THE COURT:

S/

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JOHN C. SHABAZ  
District Judge