

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

AMERICAN NATIONAL PROPERTY AND
CASUALTY COMPANY,

Plaintiff,

v. // CIVIL ACTION NO. 1:14CV155
(Judge Keeley)

TARA CLENDENEN, JAMES CLENDENEN,
MARY A. NEESE Administratrix and
Personal Representative of the Estate
of Skylar Neese, Deceased, DAVID
NEESE, and MARY A. NEESE, individually,

Defendants.

and

ERIE INSURANCE PROPERTY &
CASUALTY COMPANY,

Plaintiff,

v. // CIVIL ACTION NO. 1:14CV172
(Judge Keeley)

MARY A. NEESE, Individually and as
Administratrix of the Estate of Skylar
Neese, DAVID NEESE, SHELIA EDDY,
RACHEL SHOAF, TARA CLENDENEN, and
PATRICIA SHOAF,

Defendants.

ORDER GRANTING MOTIONS TO CONSOLIDATE CASES

On November 18, 2014, Tara and James Clendenen ("the Clendenens"), defendants in Case No. 1:14CV155, filed a motion to

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consolidate cases (Dkt. No. 20). Tara Clendenen and co-defendant Sheila Eddy also filed the same motion in Case No. 1:14CV172 (Dkt. No. 7). The plaintiff in Case No. 1:14CV172, Erie Insurance Property & Casualty Company ("Erie"), does not oppose the motion (Dkt. No. 21), while the plaintiff in Case No. 1:14CV155, has not filed a timely response.¹ For the following reasons, the Court **GRANTS** the motions.

In 1:14CV155, plaintiff American National Property and Casualty Company ("American National") filed a complaint seeking the Court's declaration that it has no duty to defend or indemnify the Clendenens with respect to an underlying state action. In 1:14CV172, Erie filed a complaint seeking the Court's declaration that it has no duty to defend or indemnify Tara Clendenen and co-defendant Patricia Shoaf ("Shoaf") with respect to the same underlying state action. Erie does not oppose Clendenen's motion

¹ The Clendenens filed the motion to consolidate in 1:14CV155 on November 18, 2014 (Dkt. No. 20). On November 25, 2014, the parties stipulated that American National would have additional time to respond to the two pending motions to dismiss (Dkt. Nos. 17 and 18). That stipulation, however, did not extend to the motion to consolidate. Therefore, American National's deadline for responding to the motion to consolidate was December 2, 2014.

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to consolidate, and American National again did not respond to the motion.

"District courts have broad discretion under Fed. R. Civ. P. 42(a) to consolidate cases pending in the same district." A/S J. Ludwig Mowinckles Rederi v. Tidewater Const. Co., 559 F.2d 928, 933 (4th Cir. 1977). The standard set forth in Fed. R. Civ. P. 42(a) is whether the actions involve "a common question of law or fact." Here, both cases present the same issue of whether American National and Erie owe their insureds the duty to defend and indemnify. Furthermore, the cases depend on the same underlying set of facts stemming from the death of a young woman named Skylar Neese. Although defendants Patricia Shoaf, Shelia Eddy, and Rachel Shoaf are not parties to Case No. 1:14CV155, the issues in both cases are purely legal and can be resolved on motions and pleadings. Therefore, consolidation is appropriate.

For these reasons, the Court **GRANTS** the motions (Dkt. No. 20 in 1:14CV155 and Dkt. No. 7 in 1:14CV172) and **ORDERS** that these cases be, and they are, consolidated, and **DIRECTS** the Clerk to docket case 1:14CV155 as the lead case. The Court further **DIRECTS** the Clerk to docket the First Order filed in Case No. 1:14CV155

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(Dkt. No. 11) in Case No. 1:14CV172, as it now applies to both cases.

It is so **ORDERED**.

The Court directs the Clerk to transmit copies of this Order to counsel of record.

DATED: December 3, 2014.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE