

<p>DISTRICT COURT ARAPAHOE COUNTY, STATE OF COLORADO Arapahoe County Justice Center 7325 South Potomac Street Centennial, Colorado 80112</p>	<p>FILED Document CO Arapahoe County District Court 18th JD Filing Date: Dec 12 2009 3:41 PM MST Filing ID: 28294039 Review Clerk: N/A</p> <p style="text-align: center;">Court Use Only</p>
<p>Plaintiff: STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL</p> <p>v.</p> <p>Defendants: COLORADO HUMANE SOCIETY & S.P.C.A., INC.; MARY C. WARREN, an individual; ROBERT WARREN, an individual; and STEPHENIE L. GARDNER, an individual</p> <p>Plaintiff: MARY C. WARREN, an individual; ROBERT WARREN, an individual; and STEPHENIE L. GARDNER, an individual</p> <p>v. Defendant: Philadelphia Indemnity Insurance Company</p>	<hr/> <p>Case No. 08CV2659 Division 404</p> <p>Case No. 2009CV1798 Division 404</p>
<p style="text-align: center;">ORDER RE: THIRD-PARTY DEFENDANT’S MOTION TO SEVER AND CONSOLIDATE, OR IN THE ALTERNATIVE, TO BIFURCATE DISCOVERY AND TRIAL OF THIRD-PARTY PLAINTIFF’S CLAIMS</p>	

THIS MATTER comes before the Court on Third-Party Defendant Philadelphia Indemnity Insurance Company’s (PIIC) Motion to Severe and Consolidate, or in the Alternative, to Bifurcate Discovery and Trial of Third-Party Plaintiff’s Claims. The Court being fully advised in the premises finds and orders as follows:

Pursuant to Colorado Rule of Civil Procedure 21, “any claim against a party may be severed and proceeded with separately.” Courts will consider whether the potential severance will “serve the ends of justice and further the prompt and efficient disposition of litigation.” *See Tab Express International, Inc. v. Aviation Simulation Tech., Inc.*, 215 F.R.D. 621, 623 (D. Kan. 2003). The Court will also consider the “convenience of the

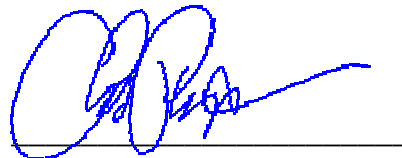
parties, avoiding prejudice, prompting expedition and economy, and the separability of law and logic.” *Id.* Alternatively, under C.R.C.P. 42(b), a court may order bifurcation into a separate trial of any separate issue or of any number of claims or counterclaims in the furtherance of convenience, to avoid prejudice, or when separate trials would be conducive to expedition or economy in the adjudicatory process. *Duhon v. Nelson*, 126 P.3d 262, 263 (Colo. App. 2005), *citing Gaede v. Dist. Court*, 676 P.2d 1186, 1188 (Colo. 1984).

PIIC seeks severance of the Custodian’s third-party claims against it in order to consolidate those claims with *Warren v. Philadelphia Indemnity Insurance*, currently pending before this Court as case number 2009CV1798. PIIC claims that such a severance and consolidation will increase judicial efficiency, avoid duplication, conserve parties’ resources, and not prejudice any party. Additionally, it could avoid potentially inconsistent rulings. The Custodian, in its Response, objects to this Court, as the supervising court for the custodianship estate, sending the fiduciary to another court to collect an asset. The Custodian asserts that its claim against PIIC is an asset of the custodianship estate and thus within the exclusive jurisdiction of this Court. However, *Warren v. Philadelphia Indemnity Insurance*, as stated above, is pending before this Court, thus the severance and consolidation would not entail “sending the fiduciary to another court.” Additionally, this Court agrees with PIIC’s assertion that the third-party claims involve claims which arose out of the same fact, same policies, and same or similar questions of law and fact as the *Warren* action. These claims are also significantly different from the State of Colorado’s claims against the Individual Defendants. Thus, severance and consolidation would increase judicial efficiency, avoid duplication, and conserve the parties’ resources in litigating the actions.

Therefore, for the reasons stated above, the Court grants PIIC’s Motion to Sever and Consolidate the Third-Party Plaintiff’s Claims. The claims are hereby severed from Case Number 2008CV2659 and consolidated into Case Number 2009CV1798.

SO ORDERED THIS 1st DAY OF DECEMBER 2009.

BY THE COURT:



Charles M. Pratt
District Court Judge