

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge Wiley Y. Daniel

Civil Action No. 12-cv-00043-WYD-KLM

BITUMINOUS CASUALTY CORPORATION, an Illinois corporation,

Plaintiff,

v.

HARTFORD CASUALTY INSURANCE COMPANY,

Defendant.

ORDER

THIS MATTER is before the Court on Defendant Hartford Casualty Insurance Company's ["Hartford"] Motion for Leave to File Its Motion [for] Summary Judgment on Plaintiff Bituminous Casualty Corporation's ["Bituminous"] Amended Complaint filed August 5, 2013. Hartford seeks leave to file a summary judgment motion since the Court converted its previously filed Motion to Dismiss Counts III, IV and IV of Bituminous' Amended Complaint to a summary judgment motion, and my Practice Standards limit a party to one summary judgment motion absent leave of court. Bituminous filed a response in opposition to Hartford's motion on August 23, 2013, and a reply was filed by Hartford on September 6, 2013.

Having reviewed the motion and the briefing related to same, I find that Hartford's motion for leave to file a motion for summary judgment should be granted. My Practice Standards are not generally meant to preclude a motion for summary judgment from being filed by a party when a previous motion to dismiss was converted to a summary

judgment motion due to extrinsic evidence. This is particularly true in this case since the motion to dismiss was only a partial motion to dismiss and the extrinsic evidence that caused the motion to be converted to a summary judgment motion was presented by Bituminous, not Hartford. (See Order of October 9, 2012, ECF No. 49.)

While Bituminous opposes Hartford's ability to file a summary judgment motion, I find no basis for that opposition. I further note that to the extent Bituminous opposes the timing and/or circumstances regarding Hartford's withdrawal of its Forty-First Defense and its impact on the summary judgment motion, these issues can be addressed in response to the summary judgment motion. I further decline to consider the merits of any summary judgment motion to be filed by Hartford at this time.

In conclusion, it is

ORDERED that Defendant Hartford Casualty Insurance Company's Motion for Leave to File Its Motion [for] Summary Judgment on Plaintiff Bituminous Casualty Corporation's Amended Complaint (ECF No. 100) is **GRANTED**. Hartford may file the motion for summary judgment attached to its motion for leave (ECF No. 100-1). Bituminous' response shall be filed within 21 days of the filing of the summary judgment motion. The reply shall be filed within 14 days of the date of service of the response.

Dated: September 9, 2013

BY THE COURT:

s/ Wiley Y. Daniel
Wiley Y. Daniel
Senior United States District Judge