

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.

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**ORDER**

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THIS MATTER is before the Court on a review of Defendant Hartford Casualty Insurance Company's Rule 12(b)(6) Motion to Dismiss Counts III and IV of Plaintiff Bituminous Casualty Corporation's Second Amended Complaint filed January 16, 2014, and its Amended Motion for Summary Judgment on Plaintiff Bituminous Casualty Corporation's Second Amended Complaint filed February 28, 2014. I note that both motions seek to dismiss Counts III and IV of the Second Amended Complaint on the same basis—that the withdrawal with prejudice of Hartford's release defense means that the predicate for Counts III and IV no longer exists.<sup>1</sup>

I find that the issues raised in the motions regarding Counts III and IV are redundant, and that the issues should be decided in connection with the summary judgment motion. Accordingly, I find that the motion to dismiss should be denied,

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<sup>1</sup> Defendant's earlier filed motion for summary judgment (ECF No. 115), which is incorporated into the amended summary judgment motion, also sought judgment as to these claims on the same basis.

subject to my consideration of the issues raised therein in connection with the summary judgment motion. It is therefore

ORDERED that Defendant Hartford Casualty Insurance Company's Rule 12(b)(6) Motion to Dismiss Counts III and IV of Plaintiff Bituminous Casualty Corporation's Second Amended Complaint filed January 16, 2014 (ECF No. 147) is **DENIED** as set forth herein.

Dated: July 2, 2014

BY THE COURT:

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