

IN THE UNITED STATES DISTRICT  
FOR THE DISTRICT OF COLORADO  
Senior District Judge Richard P. Matsch

Civil Action No. 12-cv-01174-RPM

PUBLIC SERVICE COMPANY OF COLORADO  
d/b/a XCEL ENERGY, and  
XCEL ENERGY SERVICES INC.,

Plaintiffs,

v.

AXIS SURPLUS INSURANCE COMPANY,

Defendant.

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ORDER DENYING DEFENDANT'S PARTIAL MOTION TO DISMISS

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On July 9, 2012 defendant Axis Surplus Insurance Company filed a Partial Motion to Dismiss [9], seeking dismissal of the first, third and fourth claims for relief in the complaint pursuant to Fed.R.Civ.P. 12(b)(6). The motion has been fully briefed. It is apparent from the briefing that the defendant's contentions are based on legal arguments that depend upon unsettled Colorado law. Before this Court can resolve those issues the full factual context of the settlement of the underlying litigation must be considered. Accordingly, it is

ORDERED that the motion is denied and the case will proceed to a scheduling conference.

DATED: September 4<sup>th</sup>, 2012

BY THE COURT:

s/ Richard P. Matsch

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Richard P. Matsch, Senior District Judge