

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

TED BERRY COMPANY, INC.,)	
)	
PLAINTIFF)	
)	
v.)	No. 2:13-cv-342-DBH
)	
EXCELSIOR INSURANCE)	
COMPANY,)	
)	
DEFENDANT)	

REPORT OF PRE-FILING CONFERENCE UNDER LOCAL RULE 56

A Local Rule 56 pre-filing conference was held on November 6, 2013.

The defendant Excelsior Insurance Company plans to file a motion for summary judgment on Counts I and II of the plaintiff's complaint (duty to defend) based upon the complaint in the underlying lawsuit against the plaintiff and the policy. At the conference, the parties agreed that Maine law applies. The plaintiff will cross-move for summary judgment on the duty to defend (Counts I and II) and will oppose the insurance company's motion on the additional basis that events that predate the filing of the underlying complaint are relevant to the duty to defend. It says that Mitchell v. Allstate Ins. Co., 36 A.3d 876 (Me. 2011) and Auto Europe, LLC v. Conn. Indem. Co., 321 F.3d 60 (1st Cir. 2003) make that argument possible. I have reviewed those cases and, at this time, I will not allow any discovery before ruling on the summary judgment motions, but the plaintiff certainly can continue to make its argument that evidence beyond the underlying complaint and the policy

language is relevant to the duty to defend and argue that it needs limited discovery accordingly before I rule on the defendant's motion.

The following deadlines were established by agreement:

By November 25, 2013, the defendant shall file its motion for summary judgment.

By December 12, 2013, the plaintiff shall file its opposition to the defendant's motion for summary judgment and its own cross-motion for summary judgment.

By December 23, 2013, the defendant shall file its reply and opposition to the plaintiff's motion for summary judgment.

By December 30, 2013, the plaintiff will file its reply.

SO ORDERED.

DATED THIS 6TH DAY OF NOVEMBER, 2013

/s/D. BROCK HORNBY

D. BROCK HORNBY

UNITED STATES DISTRICT JUDGE