

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

WARREN BINGHAM AS EXECUTOR  
OF THE ESTATE OF MARION  
BINGHAM,

Plaintiff,

v.

SUPERVALU INC.,

Defendant.

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Civil Action No. 13-cv-11690-IT

ORDER

November 3, 2014

TALWANI, D.J.

Before the court is Plaintiff’s Motion to Reconsider Motion [#89]. Plaintiff seeks reconsideration of this court’s Order of October 29, 2014, striking Plaintiff’s cross-motion for summary judgment. Plaintiff requests further that to the extent the court does not reconsider its order, that this motion be treated as a motion for leave to file its cross-motion for summary judgment.

Plaintiff asserts that it believed that its motion was timely despite the court’s prior scheduling order, and that in any event, it could not meet the court’s August 29, 2014, deadline because it had not received all discovery materials it was entitled to until October 1, 2014. Plaintiff could have avoided this dilemma by: (1) seeking clarification of the court’s order prior to the August 29, 2014 deadline; or (2) moving to extend the dispositive motion deadline when discovery was not forthcoming.

Plaintiff does not dispute that to establish its claim, it must show both (1) that Defendant Supervalu, Inc. (“Supervalu”) was “engaged in the business of insurance,” and (2) that Supervalu

failed to timely settle a prior action between the Estate and Supervalu's former subsidiary, Shaw's Supermarkets, Inc. ("Shaw's"). Accordingly, Plaintiff can show no prejudice in having the court consider first whether Supervalu was "engaged in the business of insurance." If the court denies Supervalu's motion for summary judgment on this issue, the court will allow both parties to file further dispositive motions on a schedule set by the court.

Accordingly, Plaintiff's Motion to Reconsider Motion [#89] is hereby DENIED without prejudice to Plaintiff refileing its motion for summary judgment, on a schedule to be set by the court, in the event that the court does not grant Defendant's pending motion for summary judgment.

IT IS SO ORDERED.

Date: November 3, 2014

/s/ Indira Talwani  
United States District Judge