

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
DOCKET NO. 3:10-cv-00539**

<b>LEE CONSTRUCTION COMPANY</b>	)	
<b>OF THE CAROLINAS, INC.,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>ZURICH AMERICAN INS. COMPANY,</b>	)	
<b>ZURICH SERVICES CORPORATION,</b>	)	
<b>and JAMES A. SCOTT &amp; SON, INC.,</b>	)	
	)	
<b>Defendants.</b>	)	

**ORDER**

THIS MATTER is before the Court on Defendants’ Zurich Americans Insurance Company and Zurich Services Corporation (collectively, “Zurich”) Motion to Dismiss the sixth through thirteenth claims of the Complaint for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). (Doc. No. 24).

Plaintiff consents to dismiss its eighth and twelfth claims, (Doc. No. 31), and it is so accepted by the Court. Therefore, Zurich’s Motion to Dismiss is GRANTED IN PART.

Turning to the other issues in the Defendants’ Motion, the Court believes that the determination of the legal sufficiency of remaining Complaint should be deferred until the next dispositive stage of litigation. See Flue-Cured Tobacco Co-op. Stabilization Corp. v. U.S. EPA, 857 F. Supp. 1137, 1145 (M.D.N.C. 1994) (“This claim can be adjudicated more accurately after the parties have developed the factual record.”); Initial Scheduling Order, 3:07-MC-47 (Doc. No. 2) at 3(c)(2) (“[T]he Court may elect to defer ruling on issues raised in Rule 12 and similar motions until the close of discovery.”). Therefore, Defendants’s Motion to Dismiss is DENIED without prejudice with respect the sixth, seventh, ninth, tenth, eleventh and thirteenth claims against Zurich.

In sum, Defendant's Motion (Doc. No. 24) is GRANTED in part and DENIED without prejudice in part. The Court will revisit the merits of the Defendants' allegations at the conclusion of discovery on a Rule 56 motion for summary judgment.

IT IS SO ORDERED.

Signed: June 14, 2011

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen  
United States District Judge

