

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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NATIONAL INDEMNITY COMPANY and  
Certain Underwriters at LLOYD'S OF  
LONDON who subscribed to policy numbers  
D064L0074 and D064Y00423, as subrogees  
of and on behalf of UNITED STATES  
FIDELITY AND GUARANTEE CO., and as  
subrogee of, and on behalf of UNITED  
STATES SPORTS SPECIALTY  
ASSOCIATION,

Plaintiffs,

vs.

NELSON, CHIPMAN & BURT, and  
CLIFFORD PAYNE,

Defendants.

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MEMORANDUM DECISION AND  
ORDER DENYING MOTION IN  
LIMINE TO DISMISS THE  
ASSIGNED AND SUBROGATED  
CLAIMS OF USSSA

Case No. 2:07-CV-996 TS

This matter is before the Court on Defendants' Motion in Limine to Dismiss the Assigned and Subrogated Claims of USSSA.<sup>1</sup> Defendants assert that any claims brought on behalf of United States Sports Specialty Association fail as a matter of law. Because the Court finds a motion in limine to be an improper vehicle for dismissal of USSSA's claims, the Court will deny Defendants' Motion.

The use of motions in limine to summarily dismiss a portion of a claim has been condemned, and trial courts are cautioned not to allow motions in limine to be used as unwritten and unnoticed motions for summary judgment or motions to

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<sup>1</sup>Docket No. 303.

dismiss. Nor should the motion be used to perform the function of a directed verdict. Motions in limine are not to be used as a sweeping means of testing issues of law. And deficiencies in pleadings or evidence are not appropriately resolved by a motion in limine. Clearly, a motion in limine cannot properly be used as a vehicle to circumvent the requirements of rules of procedure.<sup>2</sup>


Further, to the extent Defendants' Motion could be construed as a motion for judgment on the pleadings under Federal Rule Civil Procedure 12(c), the Court finds that Plaintiffs' Motion is untimely and would delay trial.

It is therefore

ORDERED that Defendants' Motion in Limine to Dismiss the Assigned and Subrogated Claims of USSSA (Docket No. 303) is DENIED.

DATED February 5, 2013.

BY THE COURT:

  
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TED STEWART  
United States District Judge

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<sup>2</sup>75 Am. Jur. 2d *Trial* § 99 (1991).