

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SECURITY INSURANCE COMPANY OF :
HARTFORD, :
Plaintiff, :
 :
-vs- : Civ. No. 3:01cv2198(PCD)
 :
TRUSTMARK INSURANCE COMPANY, :
Defendant. :

RULING ON MOTION TO DISMISS WITHOUT PREJUDICE PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

Defendant moves pursuant FED. R. CIV. P. 56(f) to dismiss plaintiff's motion for summary judgment, to file its opposition at the close of discovery or for other relief deemed just and proper. For the reasons set forth herein, the motion is **granted in part**.

I. BACKGROUND

Plaintiff moves for summary judgment on the count seeking a declaratory judgment that defendant improperly rescinded its agreement with plaintiff. Defendant responded with the present motion requesting that it be permitted to respond after the close of discovery on April 17, 2003.¹ The parties are presently "exchanging documents and answering interrogatories," *see* Def.'s Br. at 1, and defendant has not yet conducted a deposition.

II. DISCUSSION

Defendant argues that it requires further discovery to respond properly to the motion for summary judgment and that the motion is premature in light of the remaining time for discovery. Plaintiff

¹ On October 17, 2002, this Court approved in part the proposed deadlines of the parties extending the discovery deadline from July 8, 2002 to April 17, 2003. Such extension was attributable largely to the addition of third party defendant TIG Insurance Company on May 3, 2002.

responds that the count on which it seeks summary judgment is a purely legal question and that defendant should not be granted an extension as it has failed to identify facts it seeks to obtain through continued discovery.

A. Standard of Review

A party requesting further discovery pursuant to FED. R. CIV. P. 56(f) must file an affidavit detailing (1) particular facts sought and the manner in which they are to be obtained, (2) how those facts would establish a genuine issue of material fact, (3) efforts undertaken to obtain those facts and (4) why the efforts were unsuccessful. *Hudson River Sloop Clearwater, Inc. v. Dep't of Navy*, 891 F.2d 414, 422 (2d Cir. 1989). The movant must establish that the material sought is germane to the defense and is neither cumulative nor speculative. *Paddington Partners v. Bouchard*, 34 F.3d 1132, 1138 (2d Cir. 1994). A motion accompanied by a proper affidavit need not be granted if the request is premised on speculation of what may be discovered. *Id.*

B. Analysis

Defendant argues, quoting *Berger v. United States*, 87 F.3d 60, 65 (2d Cir. 1996), that it has not yet “had the opportunity to discover information that is essential to [its] position.” Such a position is untenable given the fact that the claim on which summary judgment is sought has been unchanged since the filing of the present complaint on November 27, 2001.² The original discovery deadline was May 29, 2002. At the time the third-party complaint was filed, discovery was to be completed by July 8,

² It is further noted that the earlier filed case of *Security Insurance Company of Hartford v. Trustmark Insurance Company* (3:00cv1247 (PCD)) involves the same agreement. Discovery in that case has closed and the case is ready for trial awaiting the resolution of the present case.

2002. It is not apparent how, fourteen months after the filing of the subject count, defendant can raise such an objection.

In any event, the affidavit submitted in support of defendant's motion fails to identify facts sought that are necessary to oppose plaintiff's motion, from whom such facts would be obtained, efforts undertaken to acquire those facts and why those efforts were unsuccessful. *See Hudson River Sloop Clearwater, Inc.*, 891 F.2d at 422. Instead, the affidavit provides only that defendant has not yet had the opportunity to "review documents produced by TIG and Security," to "take the depositions of TIG's and Security's agents and employees" or to depose "any Security representatives involved in the placement of the reinsurance contract at issue." Everett J. Cygal Aff. at 1. The affidavit further provides that its industry consultant was discharged from the hospital after major surgery and was not available during the time permitted for the filing of its opposition.

Defendant's conclusory motion in effect is tantamount to a request that plaintiff be precluded from filing its motion for summary judgment prior to the close of a lengthy period of discovery. No legitimate ground for such prohibition exists. The lack of specificity in the affidavit can be read as little more than defendant's hope that further discovery of a general nature might present a basis on which to oppose plaintiff's motion for summary judgment. *See Fennell v. First Step Designs, Ltd.*, 83 F.3d 526, 533-35 (1st Cir. 1996). Such ground is not an appropriate basis on which to deny plaintiff a ruling on its motion. If defendant has a substantive theory in mind on which to oppose the motion and has identified specific discovery that would further that theory that it has been unable to pursue prior to service of the motion, such information should be readily demonstrated in the affidavit. As the affidavit lacks such a showing, defendant will not be granted the extension sought.

However, in light of defendant's representation that it received 31,000 pages of documents from plaintiff shortly after the motion for summary judgment was served and its representation that its industry expert was unavailable during the period in which it had to draft an opposition, defendant will be granted an extension of time in which to file its opposition to plaintiff's motion.

III. CONCLUSION

Defendant's motion to dismiss (Doc. No. 108) is **granted in part**. Defendant shall file its opposition to plaintiff's motion for summary judgment by January 15, 2003.

SO ORDERED.

Dated at New Haven, Connecticut, January __, 2003.

Peter C. Dorsey
United States District Judge