UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ATLANTIC MUTUAL INSURANCE CO.; a/s/o A.G. EDWARDS & SONS, INC. Plaintiff,	:	
v.	:	3:01CV197(AHN)
LIGHTOLIER, a division of GENLYLE THOMAS GROUP, LLC. Defendant,	:	
And	:	
SEACO INSURANCE COMPANY a/s/o CORNER HOUSE ASSOCIATES, LLP Plaintiff	:	
v.	:	
LIGHTOLIER, a division of GENLYLE Thomas Group, LLC, Defendant.	:	

RULING AND ORDER

Upon review and consideration of defendant Lightolier's ("Lightolier") motion to dismiss [doc. #47] and Atlantic Mutual Insurance Company's response ("Atlantic Mutual"), the court DENIES the motion because it presents matters outside of the pleadings.

Lightolier's motion seeks dismissal of this action on the grounds that Atlantic Mutual has failed to disclose an expert who can state with a reasonable degree of certainty that Lightolier's light fixture caused the fire which is the basis of this action. In

support of its motion, Lightolier relies upon the deposition transcripts of three of Atlantic Mutual's expert witnesses and an investigation report. The supporting documentation, however, is outside the pleadings filed in this case and therefore not appropriate for this court's consideration on a motion to dismiss. See Fed. R. Civ. P. 12(b).

A cause of action shall not be dismissed for failure to state a claim under Fed. R. Civ. P. 12(b)(6), "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). In considering a motion brought pursuant to Fed. R. Civ. P. 12(b), the Court must assume all of the allegations in the complaint are true. Id. Furthermore, where, as here, exhibits outside the pleadings have been presented, the motion is no longer properly a motion to dismiss. When matters outside the pleadings are presented on a motion to dismiss, the district court must either exclude the additional material and decide the motion on the complaint alone or convert the motion to one for summary judgment. See Fed. R. Civ. P. 12(b); cf. id. 12(c) (conversion of motion for judgment on pleadings to motion for summary judgment). If the court does not exclude matters outside the pleading and treats the motion as a summary judgment motion, "all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Fed. R. Civ. P. 12(b); see also Baptiste v. Sennet &

Krumholz, 788 F.2d 910, 911 (2d Cir. 1986) (before converting to motion for summary judgment, court must inform plaintiff of its intention to convert and give plaintiff opportunity to submit responsive evidence).

The court is unwilling to convert this motion to a summary judgment motion at this juncture because discovery has not yet been completed. Accordingly, the motion to dismiss [doc # 47] is DENIED.[1] The Court will refer the case to Magistrate Judge Fitzsimmons to resolve any discovery issues, including extending the deadline for designation of plaintiff's experts.

SO ORDERED this day of November, 2002 at Bridgeport, Connecticut.

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Alan H. Nevas
United States District Judge

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[1] For the same reasons, a motion to dismiss is an inappropriate vehicle for Lightolier's claim that it is entitled to attorneys fees for time spent deposing plaintiff's experts and therefore this claim will not be considered by the court on this motion.