

Swift River . . . Co. v. Zurich Ins. CV-95-594-SD 07/10/96
UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Swift River Hafslund Company, et al

v.

Civil No. 95-594-SD

Zurich Insurance Company;
Philadelphia Gear Corporation

O R D E R

Currently before the court* is defendant Philadelphia Gear Corporation's (PGC) motion, pursuant to Rule 12(b)(6), Fed. R. Civ. P., to dismiss Counts VII and IX of the second amended complaint for failure to state a claim upon which relief can be granted (document 20). Count VII of the complaint alleges negligence; Count IX alleges a violation of the New Hampshire Consumer Protection Act, New Hampshire Revised Statutes Annotated 358-A, et seq. (1995). Plaintiffs oppose PGC's motion to dismiss with respect to Count IX only.

PGC attached copies of plaintiffs' answers to

*The court additionally has before it Zurich Insurance Company's (ZIC) motion to dismiss certain counts from plaintiffs' amended complaint (document 6) and ZIC's motion to dismiss certain counts from plaintiffs' second amended complaint (document 19). Insofar as plaintiffs' amended complaint has been superseded by their second amended complaint, ZIC's June 27, 1995, motion to dismiss (document 6) is herewith denied as moot.

interrogatories to its reply memorandum in support of its motion to dismiss Count IX and requests that the court either dismiss Count IX for failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6) or "enter summary judgment in favor of PGC on Count IX." See PGC's Reply Memorandum at 10. As matters outside the pleadings have been presented to the court (and as PGC has itself recharacterized its motion as one for summary judgment), the court herewith converts PGC's motion to dismiss (document 20) into a motion for partial summary judgment. See Rule 12(b), Fed. R. Civ. P. Plaintiffs may submit any additional materials relating to their objection to PGC's motion for partial summary judgment by 4:30 p.m. on Monday, July 29, 1996.

SO ORDERED.

Shane Devine, Senior Judge
United States District Court

July 10, 1996

cc: John S. Whitman, Esq.
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