

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**ALLSTATE INDEMNITY COMPANY,)
Plaintiff,)
v.) CIVIL ACTION 12-0324-WS-B
THOMAS PRICE, et al.,)
Defendants.)**

ORDER

The amended complaint contains two counts. The first is styled, “Arson/Misrepresentation,” and the second is styled, “Failure to Cooperate.” (Doc. 12). The defendants filed a motion to dismiss on the grounds of failure to comply with Rule 9(b). (Doc. 13). The Court granted the motion as to Count One and denied the motion as to Count Two. (Doc. 32). The Court ordered the plaintiff to file and serve “a second amended complaint that complies with Rule 9(b), failing which this action will proceed on Count Two only.” (*Id.* at 4).

The plaintiff filed a second amended complaint, but this iteration contains not two but five counts. (Doc. 36). The defendants have filed motions to strike the second amended complaint because, rather than simply adding the missing factual detail as to Count One, the plaintiff added several new claims. (Docs. 45, 46).¹

Because the plaintiff has previously amended as of right, it cannot amend again without leave of Court or written consent of the defendants. Fed. R. Civ. P. 15(a)(2). The plaintiff has not presented any written consent of the defendants, and the only leave the Court has granted is leave to amend Count One in order to comply with Rule 9(b). Because the plaintiff has neither sought nor received judicial permission to add new

¹ The plaintiff also added a new allegation to the failure-to-cooperate claim. (Doc. 36 at 13, ¶ 47).

claims or to amend the failure-to-cooperate claim, its second amended complaint constitutes an unauthorized amendment.

For the reasons set forth above, the motions to strike are **granted**. The second amended complaint is **stricken**. The plaintiff is **ordered** to file and serve, on or before **October 19, 2012**, a third amended complaint that alters the first amended complaint *only* by providing additional Rule 9(b) factual material concerning Count One of the first amended complaint. Permission to file a fourth amended complaint making any other additions, deletions or alterations must be sought by motion and obtained before filing.

DONE and ORDERED this 15th day of October, 2012.

s/ WILLIAM H. STEELE
CHIEF UNITED STATES DISTRICT JUDGE