

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Kathleen M. Tafoya

Civil Action No. 09-cv-02720-MSK-KMT

MAVERICK COIL TUBING SERVICES, LLC,

Plaintiff,

v.

ST. PAUL FIRE AND MARINE COMPANY,

Defendant.

ORDER

This matter is before the court on Plaintiff's "Unopposed Motion for Leave to File Second Amended Complaint" (Doc. No. 13, filed January 6, 2010).

Pursuant to Fed. R. Civ. P. 15(a), "The court should freely give leave (to amend the pleadings) when justice so requires." *See also York v. Cherry Creek Sch. Dist. No. 5*, 232 F.R.D. 648, 649 (D. Colo. 2005); *Aspen Orthopaedics & Sports Medicine, LLC v. Aspen Valley Hosp. Dist.*, 353 F.3d 832, 842 (10th Cir.2003). The Supreme Court has explained the circumstances under which denial of leave to amend is appropriate.

If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason-such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.-the leave sought should, as the rules require, be "freely given." Of course, the grant

or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules.

Foman v. Davis, 371 U.S. 178, 182 (1962). *See also Triplett v. LeFlore County, Okl.*, 712 F.2d 444, 446 (10th Cir.1983).

Plaintiff seeks to amend the Complaint to remove a single reference to exemplary damages in the “Prayer for Relief” section of its First Amended Complaint. Defendants do not oppose the motion. There has been no showing of, and the court does not find, undue delay, bad faith or dilatory motive, undue prejudice, or futility.

Therefore, it is

ORDERED that Plaintiff’s “Unopposed Motion for Leave to File Second Amended Complaint” (Doc. No. 13) is GRANTED. Plaintiff is directed to file its Second Amended Complaint no later than January 8, 2010.

Dated this 7th day of January, 2010.

BY THE COURT:



Kathleen M. Tafoya
United States Magistrate Judge