

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

Civil Action No. 10-cv-01738-RPM

TERRENCE BALLOWE,

Plaintiff,

v.

DEPOSITORS INSURANCE COMPANY,

Defendant.

ORDER DISMISSING SECOND CLAIM FOR RELIEF AND FOR ADMINISTRATIVE
CLOSURE

This civil action was filed in the District Court, City and County of Denver, Colorado, and removed to this court under diversity jurisdiction. The plaintiff alleges a breach of contract by Depositors Insurance Company's failure to pay for a fire loss under the insurance policy issued to the plaintiff. The second claim for relief is bad faith breach of insurance contract. The case has been stayed since September 30, 2010, because of a pending criminal proceeding on charges of arson. The plaintiff, Terrence Ballowe, was convicted of first and third degree arson and the stay order was vacated on November 12, 2013. The defendant filed a motion for summary judgment on January 8, 2014, [41]. The basis for that motion is that the subject insurance policy includes an Intentional Loss Exclusion which is applicable because of the conviction for arson. The plaintiff responded to that motion, contending that under Colorado law there is no final judgment because the sentencing hearing has not been held and the plaintiff may appeal his conviction. In its reply, the defendant concedes that point of law but asserts that the second claim for relief should be dismissed because clearly the insurance

company had a reasonable basis for denying the claim based on the exclusion. The Court agrees with that contention and, accordingly, it is

ORDERED that the defendant's motion for summary judgment is granted as to the second claim for relief which is dismissed and it is

FURTHER ORDERED that because there is not yet a final judgment in the criminal case, this civil action is administratively closed under D.C.Colo.LCivR 21.2.

Dated: April 4th, 2014

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior District Judge