

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 11-cv-02369-PAB-KMT

LARRY SIPES,

Plaintiff,

v.

ALLSTATE INDEMNITY COMPANY, an Illinois corporation,

Defendant.

ORDER

This matter is before the Court on the Motion to Dismiss Counterclaims [Docket No. 50] filed by defendant Allstate Indemnity Company (“Allstate”). In its motion, Allstate requests that the Court dismiss its counterclaim for equitable or conventional subrogation with prejudice pursuant to Fed. R. Civ. P. 41(a)(2) and (c). In his response, plaintiff Larry Sipes states that he does not object to Allstate’s request. Docket No. 52 at 2.

A party seeking to dismiss his claims after an answer has been filed, as is the case here, may do so only by Court order. Fed. R. Civ. P. 41(a)(2). “Absent ‘legal prejudice’ to the [plaintiff], the district court normally should grant such a dismissal.” *Ohlander v. Larson*, 114 F.3d 1531, 1537 (10th Cir. 1997). In the present case, the Court finds no reason to deny Allstate’s motion to dismiss its counterclaim. Allstate’s motion is unopposed and there has been no delay and no prejudice to plaintiff. *See id.*

Accordingly, it is

ORDERED that Defendant's Motion to Dismiss Counterclaims [Docket No. 50] is **GRANTED**. It is further

ORDERED that Allstate's counterclaim for equitable or conventional subrogation is dismissed with prejudice.

DATED May 23, 2013.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge