

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

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 “Plaintiff’s Motion to Reopen Discovery to Conduct a Discovery Deposition of Allstate Witness Rand Smith” [Doc. No. 182] filed September 24, 2013. “Defendant’s Response to Plaintiff’s Motion to Reopen Discovery to Conduct a Discovery Deposition of Allstate Witness Rand Smith (Doc. No. 182)” was filed on October 7, 2013. [Doc. No. 187.]

Forty-two days preceding trial, in a case which was filed over two years ago and for which discovery has been closed for over a year, Plaintiff moves to take the last minute deposition of one of Defendant’s employees, a supervisory adjuster named Rand Smith. As grounds, Plaintiff states that because he took the depositions of two other of Defendant’s adjusters, Stephanie Littleton and Lori Kidwell, he determined that the deposition of Rand Smith, “who supervised Stephanie Littleton and Lori Kidwell” (Mot. ¶ 10), was unnecessary. (Mot. ¶ 11.) Now, because

both Ms. Kidwell and Ms. Littleton¹ have been listed on Allstate's Witness List as "may call" witnesses and Rand Smith has been listed as a "will call" witness, Plaintiff is justified in taking a last minute deposition of Mr. Smith.

Rand Smith was the second name listed in Allstate's initial disclosures as a person "likely to have discoverable information that the disclosing party may use to support its claims or defenses." (Resp., Ex. A. at 1.) Rand Smith appeared on Allstate's first Final Pretrial Order [Doc. No. 63 filed December 3, 2012] and the Amended Final Pretrial Order [Doc. No. 109, filed April 23, 2013] as a **will call** witness. Twice Mr. Smith appeared as a **may call** witness [Doc. No. 132 filed May 23, 2013 and Doc. No. 149 filed June 3, 2013] and most recently has made his third appearance as a **will call** witness on Allstate's Trial Witness List [Doc. No. 180 filed Sept. 16, 2013]. No witness list has ever been propounded by Allstate in this case that did not include Rand Smith. Testimony was elicited by Plaintiff from both Ms. Littleton and Ms. Kidwell during their depositions indicating that Rand Smith was a Special Investigative Unit adjuster with specialized knowledge about the case and that he oversaw the case file. (Resp. at 3-4.) Nonetheless, the Plaintiff determined not to take the deposition of Rand Smith until this twelfth hour request.

This court finds that there is no justification to re-open discovery for the purpose of taking Mr. Smith's deposition at this late date and to do so would be prejudicial to the Defendant whose counsel would be interrupted in their trial preparation and strategy by this untimely request.

¹ Both are out of state witnesses.

Therefore, it is **ORDERED**

“Plaintiff’s Motion to Reopen Discovery to Conduct a Discovery Deposition of Allstate
Witness Rand Smith” [Doc. No. 182] is **DENIED**.

Dated this 8th day of October, 2013.

BY THE COURT:



Kathleen M. Tafoya
United States Magistrate Judge