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

Civil Action No. 12-cv-00859-RPM

FORREST DARYL TEMPLETON,

Plaintiff,
v.

H. THOMAS FEHN,
ORLY DAVIDI,
GREGORY J. SHERWIN,
FIELDS, FEHN & SHERWIN, and
CATLIN SPECIALTY INSURANCE COMPANY,

Defendants.

ORDER ON PLAINTIFF'S MOTION TO AMEND COMPLAINT

On June 14, 2013, the plaintiff filed a motion to amend the complaint [Doc. 53] and attached the proposed amendment designated as "Plaintiff's Seventh and Eighth Claims for Relief." On July 3, 2013, defendant Catlin Specialty Insurance Company filed a response in opposition to the motion [Doc. 54] and the plaintiff filed his reply to that response on July 16, 2013, [Doc. 56]. Defendants H. Thomas Fehn, Orley Davidi, Gregory J. Sherwin and Fields, Fehn & Sherwin filed a notice of non-opposition to the plaintiff's motion to amend complaint on July 3, 2013 [Doc. 55].

Because of the choice of law provision in the insurance contract, requiring application of New York law, which does not recognize a tort claim of bad faith breach of insurance contract, the motion to amend to add the eighth claim for relief must be denied because it is based on Colorado law.

The seventh claim for relief is styled as a separate claim for exemplary damages under Colorado law. Exemplary damages may be awarded as an additional recovery on a claim of

tortious conduct but does not constitute a separate claim for relief. Accordingly, the allegations of fact in the proposed seventh claim for relief may be added in the complaint as supplemental allegations and not as a separate legal claim. It is now

ORDERED that the motion to amend to add the eighth claim for relief against Defendant Catlin Specialty Insurance Company is denied and it is

FURTHER ORDERED that the allegations contained in the proposed seventh claim for relief are accepted as supplemental allegations to the complaint and the defendants named therein shall have to and including August 15, 2013, within which to answer those additional allegations of fact.

Dated: July 25th, 2013

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior District Judge

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