

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-694-WYD-NYW

RICHARD EVERHART,

Plaintiff,

v.

AMERICAN FAMILY MUTUAL INSURANCE COMPANY,

Defendant.

MINUTE ORDER

Entered by Magistrate Judge Nina Y. Wang

This matter comes before the Court on Plaintiff Richard Everhart's ("Plaintiff" or "Mr. Everhart") Unopposed Motion to Amend Scheduling Order and Notice of Dismissal of Second Claim for Relief (Bad Faith) ("Unopposed Motion to Amend") [#85, filed April 16, 2015]. In the Unopposed Motion to Amend, Plaintiff seeks to amend the Scheduling Order to eliminate the cause of action for bad faith and the request for relief of bad faith damages. [*Id.* at ¶¶ 3-4].

The Complaint is the operative pleading in this case. [#1]. In it, Mr. Everhart asserts to claims for relief: (1) American Family "unreasonably delayed and denied payment of claims for covered losses in violation of C.R.S. §10-3-1115 and §10-3-1116" [*id.* at ¶ 33] and (2) American Family "acted in bad faith breach of insurance contract." [*Id.* at ¶ 37]. In order to amend the claims he asserts, Plaintiff should amend not the Scheduling Order, but seek leave to amend the Complaint under the applicable Federal Rules of Civil Procedure.

Therefore, IT IS ORDERED that:

- (1) Plaintiff's Unopposed Motion to Amend [#85] is **DENIED**; and
- (2) To facilitate his dismissal of the Second Claim for Relief, Plaintiff should file a Motion for Leave to Amend that the court will consider once filed.

DATED: April 20, 2015