

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

WHITAKER CONSTRUCTION CO.,
INC.,

Plaintiff,

v.

THE CINCINNATI INSURANCE
COMPANY,

Defendant.

Case No. 1:22-cv-00336-BLW

**MEMORANDUM DECISION
AND ORDER**

INTRODUCTION

Before the Court is Plaintiff's, Unopposed Motion for Leave to File First Amended Complaint (Dkt. 23). For the reasons explained below, the Court will grant the motion.

BACKGROUND

On June 20, 2022, Plaintiff commenced this action in Idaho's Fourth District Court for Ada County. On August 8, 2022, Defendant removed the action to this Court. Defendant then filed a Motion to Dismiss or in the Alternative to Transfer Venue, which this Court denied on February 22, 2023.

Following the denial of Defendant's motion—and before a scheduling order

has been filed establishing a deadline to amend the pleadings—Plaintiff filed a motion seeking leave to amend its complaint. Plaintiff wishes to amend its complaint to assert a separate and alternative cause of action for declaratory judgment relating to coverage under the insurance policy at issue in this case. Defendant does not oppose the motion.

DISCUSSION

Motions to amend are analyzed under Federal Rule of Civil Procedure 15(a). Rule 15(a) is a liberal standard and leave to amend “shall be freely given when justice so requires.” *AmerisourceBergen Corp. v. Dialysist West, Inc.*, 465 F.3d 946 (9th Cir. 2006). When determining whether to grant leave to amend, the Court considers five factors: “(1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4) futility of amendment; and (5) whether plaintiff has previously amended his complaint.” *Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990).

Having considered these factors, the Court will grant leave to amend. Most significantly, Plaintiff seeks to amend its complaint before a deadline has even been set, and Defendant does not oppose the motion. Otherwise, there are no indications of bad faith, undue delay, or prejudice to the opposing party.

Accordingly,

ORDER

IT IS ORDERED that:

1. Plaintiff's Motion for Leave to File First Amended Complaint (Dkt. 23) is **GRANTED**.
2. Plaintiff is directed to formally file its First Amended Complaint within 7 days of this Order.



DATED: March 21, 2023

B. Lynn Winmill

B. Lynn Winmill

U.S. District Court Judge