

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF INDIANA
 INDIANAPOLIS DIVISION

ANDRE J. KLEINRICHERT,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 1:10-cv-00013-JMS-TAB
)	
AMERICAN FAMILY INSURANCE GROUP)	
and AMERICAN STANDARD INSURANCE)	
COMPANY OF WISCONSIN,)	
)	
Defendants.)	
)	

ORDER ON PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT

This cause is before the Court on Plaintiff's motion for leave to amend the complaint to add a bad faith claim. [Docket No. 32.] Defendant raises two primary objections: the motion is untimely and is futile. These objections fail to carry the day.

Defendant is correct that the motion for leave is untimely. Plaintiff filed it on November 18, 2010, after the Case Management Plan's June 6, 2010, deadline for such amendments. Plaintiff explains this delay by noting that the need for the amendment was determined only after conducting discovery. Defendant counters that Plaintiff would have learned of the potential need to amend had he served discovery more diligently. While Defendant's argument has some merit, the fact remains that Federal Rule of Civil Procedure 15 provides, "The court should freely give leave when justice so requires." In fact, the rules even permit amendment of pleadings during trial and after judgment. Fed. R. Civ. P. 15(b)(1), (2). Thus, the June 6, 2010, CMP deadline for amending pleadings is not by itself a substantial bar to Plaintiff's

motion.

As for Defendant's futility argument, the Defendant simply has not convinced the Court at this stage that adding a bad faith claim would be futile. Plaintiff contends that the Defendant denied payment of the disputed claim for years, despite conducting virtually no investigation of the accident scene. [Docket No. 35 at 1.] These and similar allegations are sufficient to overcome Defendant's futility argument. Defendant may, of course, test these allegations more precisely by way of a dispositive motion.

Finally, Defendant simply has made no showing whatsoever that allowing the amendment would be prejudicial. As a result, Plaintiff's motion to amend [Docket No. 32] is granted. The proposed amended complaint attached to that motion is deemed filed as of the date of this order.

Dated: 12/14/2010

A handwritten signature in black ink, appearing to read "T. Baker", is written above a horizontal line.

Tim A. Baker
United States Magistrate Judge
Southern District of Indiana

Copies to:

Robert Scott O'Dell
O'DELL & ASSOCIATES PC
rodell@odell-lawfirm.com

George M. Plews
PLEWS SHADLEY RACHER & BRAUN
gplews@psrb.com

Jeffrey A. Townsend
PLEWS SHADLEY RACHER & BRAUN
jtownsend@psrb.com

Theresa M. Willard
PLEWS SHADLEY RACHER & BRAUN
twillard@psrb.com