

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

OCCIDENTAL FIRE & CASUALTY
COMPANY OF NORTH CAROLINA,

Civil No. 11-2412 (JRT/JSM)

Plaintiff,

ORDER

v.

ADAM SOCZYNSKI, THOMAS HIPPI,
and HIPPI'S TRUCKING, INC.

Defendants.

Brian A. Wood and Ryan P. Myers, **LIND JENSEN SULLIVAN & PETERSON, PA**, 901 Marquette Avenue South, Suite 1300, Minneapolis, MN 55402, for plaintiff.

Thomas J. Laughlin, **LAUGHLIN LAW OFFICE**, 600 Inwood Avenue North, Suite 235, Oakdale, MN 55128; Nadezhda V. Wood, **NADIA WOOD, ATTORNEY AT LAW**, 500 Laurel Avenue, St. Paul, MN 55102, for defendant Adam Soczynski.

This is a declaratory judgment action brought by Plaintiff Occidental Fire & Casualty Company of North Carolina ("Occidental") against its insureds, Thomas Hipp and Hipp's Trucking, Inc. On March 10, 2009, Hipp was involved in a fatal trucking accident that killed Amy Soczynski. Adam Soczynski, Amy's widower, brought a personal injury action in Minnesota state court against Hipp and other defendants. The state action settled, and Hipp assigned all of its causes of action against Occidental to Soczynski.

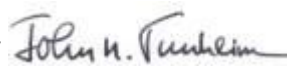
The Court previously granted Soczynski's motion for partial summary judgment, finding that the Occidental policy provided coverage in the amount of \$1 million for damages arising out of the accident. (Mem. Op. & Order, Jan. 8, 2013, Docket No. 29.) The matter is now before the Court on Occidental's motion to dismiss or in the alternative for summary judgment on Soczynski's bad faith claim. In response to Occidental's motion, Soczynski informed the Court that he was withdrawing his claim for bad faith. (Letter, May 23, 2013, Docket No. 35.) Once a motion for summary judgment has been filed, a claim may not be voluntarily dismissed without a court order, and then only "upon such terms and conditions as the court deems proper." *Hamm v. Rhone-Poulenc Rorer Pharms., Inc.*, 187 F.3d 941, 950 (8th Cir. 1999) (citing Fed. R. Civ. P. 41(a)(1)(i)). The Court concludes that dismissal with prejudice is appropriate here, and therefore will grant Occidental's motion and dismiss Soczynski's bad faith claim.

ORDER

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that Plaintiff's Motion to Dismiss or in the Alternative Motion for Summary Judgment [Docket No. 32] is **GRANTED** and Soczynski's bad faith claim is **DISMISSED with prejudice**.

LET JUDGMENT BE ENTERED ACCORDINGLY

DATED: July 3, 2013
at Minneapolis, Minnesota.

s/ 

JOHN R. TUNHEIM
United States District Judge