

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION**

SPARTA INSURANCE COMPANY,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 1:13-CV-1692-VEH
)	
DANNY JOE POORE, et al,)	
)	
Defendants.)	

MEMORANDUM OPINION

On April 2, 2014, in the context of ruling on a motion to dismiss, the court noted that there appeared to no longer be a justiciable controversy regarding the plaintiff’s claims against defendant Andrew Hunter. (Doc. 27). It ordered the plaintiff to “**SHOW CAUSE** why its claim against this defendant should not . . . be dismissed.” (Doc. 27 at 2). The plaintiff now responds that it “does not dispute that there is no longer a justiciable controversy,” and “voluntarily dismisses its claims as to Andrew Hunter with prejudice.” (Doc. 28 at 2). The plaintiff further stated that it

voluntarily dismisses its claims as to its insured, Danny Joe Poore d/b/a Economy Pest Control WITHOUT prejudice. SPARTA respectfully requests that this dismissal be without prejudice, as coverage for Defendant Poore was not adjudicated in this matter and may be an issue

in potential, future litigation.

(Doc. 28 at 2).

Because these defendants have answered (docs. 15, 16), dismissal must be pursuant to Rule 41(a)(2), which provides, in pertinent part:

[A]n action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

Fed. R. Civ. P. 41(a)(2).

Hunter recently filed a motion to dismiss which this court denied without prejudice pending the plaintiff's response to the show case order. Hunter has not filed a counterclaim. Because the plaintiff seeks Hunter's dismissal with prejudice, the court concludes that such a dismissal is proper under these circumstances.

Danny Joe Poore d/b/a Economy Pest Control is appearing *pro se*, and has filed no counterclaim. Further no coverage issues concerning the policy in this case have been adjudicated here. The plaintiff seeks this defendant's dismissal without prejudice. Under these circumstances, the court determines that dismissal of this defendant without prejudice is proper.

The court will enter a separate order dismissing these defendants. As these are

the only remaining defendants, the case will also be closed.

DONE and **ORDERED** this 9th day of April, 2014.

A handwritten signature in black ink, appearing to read "V. Emerson Hopkins", written over a horizontal line.

VIRGINIA EMERSON HOPKINS

United States District Judge