

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-01726-PAB-MJW

AURORA FRATERNAL ORDER OF THE EAGLES & AUXILIARY AURORA,

Plaintiff,

v.

THE PHOENIX INSURANCE COMPANY,

Defendant.

MINUTE ORDER

Entered by Judge Philip A. Brimmer

This matter is before the Court on the Stipulation for Dismissal With Prejudice [Docket No. 57]. The parties request that the Court enter an order dismissing this action with prejudice.

The stipulation invokes Federal Rule of Civil Procedure 41(a)(1)(A)(ii), which provides that the “plaintiff may dismiss an action *without a court order* by filing: . . . a stipulation of dismissal signed by all parties who have appeared.” (emphasis added). The stipulation was not signed “by all parties who have appeared” (Fed. R. Civ. P. 41(a)(1)(A)(ii); see *Anderson-Tully Co. v. Federal Ins. Co.*, 347 F. App’x 171, 176 (6th Cir. 2009) (under Fed. R. Civ. P. 41(a)(1)(A)(ii), “all parties who have appeared” includes both current and former parties)) and therefore does not, by itself, serve to dismiss this action. However, former defendant Travelers Property Casualty Company of America and defendant The Phoenix Insurance Company are represented by the same counsel and there is no reason to suspect that Travelers would object to the stipulation. As a result, the Court finds that dismissal is appropriate.

Furthermore, “[u]nless the notice or stipulation states otherwise, the dismissal is without prejudice.” Fed. R. Civ. P. 41(a)(1)(B) (emphasis added). Here, however, the parties have agreed to the dismissal of this action with prejudice. Therefore, the case was dismissed with prejudice as of the entry of the parties’ Stipulation for Dismissal With Prejudice. No order of dismissal is necessary.

DATED June 19, 2015.