

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

DALE WERNER,

Plaintiff,

v.

GROUP HEALTH PLAN, INC.,
a Coventry Health Care Plan, and
CASSENS INSURANCE AGENCY, INC.,

Defendant.

Case No. 09-cv-891-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiff Dale Werner’s Motion to Voluntarily Dismiss (Doc. 63). Specifically, Werner seeks to dismiss Count V of the second Amended Complaint (Doc. 50), which seeks attorneys’ fees and costs pursuant to Section 155 the Illinois Insurance Code, 215 ILL. COMP. STAT. ANN. 5/155 (West 2010). In essence, Werner concedes the merits of Defendant Group Health Plan, Inc.’s (“Group Health”) pending Motion to Dismiss (Doc. 55) pursuant to Federal Rule of Procedure 12(b)(6).

Typically, to voluntarily dispose of only *some* claims against a defendant, one should file an amended complaint rather than a motion for voluntary dismissal. 8 JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE § 41.21[2] (3d ed. 2009). However, in light of Group Health’s agreement with the relief requested, as best evidenced by its own dismissal motion,¹ this case proves to be the exception to the rule.

¹The Court has considered Group Health’s request for attorneys’ fees in the preparation and prosecution of its dismissal motion even though Group Health does not cite any authority for such a request. Ultimately, the Court does not find that the inclusion of Count V in the operative complaint represents conduct warranting imposition of an attorneys’ fees sanction.

Being fully advised of the premises, the Court **GRANTS** the instant motion (Doc. 63), whereby the Court **DISMISSES** Count V, seeking attorneys' fees and costs pursuant to Section 155 of the Illinois Insurance Code, **with prejudice**. Further, the Court **DENIES as moot** Group Health's Motion to Dismiss (Doc. 55). Finally, the Court **DIRECTS** the Clerk of Court to enter judgment accordingly at the close of this case.

IT IS SO ORDERED.

DATED: October 8, 2010

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE