

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF INDIANA
 HAMMOND DIVISION AT LAFAYETTE

THE MEDICAL ASSURANCE)	
COMPANY, INC.)	
)	
Plaintiff,)	
)	
v.)	CAUSE NO. 4:06-CV-117 JD
)	
MARK S. WEINBERGER, M.D., <i>et al.</i>)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

Now before the Court is the Motion for Voluntary Dismissal [DE 607] filed by Stephen W. Robertson, Commissioner of Insurance and Administrator of the Indiana Patient’s Compensation Fund (the “Fund”). The Fund seeks to dismiss its counterclaim [DE 313] with prejudice against nineteen individuals it identifies as Verhoeve Defendants. The motion indicates that the Verhoeve Defendants do not object to the motion, and no other party has responded within the time allotted.

The Court notes, however, that Anthony Perry, one of those nineteen individuals, was never actually named as a counter-defendant with regard to the Fund’s counterclaim. The Fund brought its counterclaim only against the Verhoeve Defendants, “[a]s defined in Paragraph 8 of Medical Assurance’s Second Amended Complaint (Dkt. 53).” [DE 313 n.1]. Mr. Perry was not named in that paragraph of Medical Assurance’s Second Amended Complaint, but was rather included among the “Remaining Claimants,” identified in paragraph 10 of that complaint, against whom the Fund did not assert its counterclaim. [DE 53 ¶ 10].

The motion is therefore DENIED as to Anthony Perry because the Fund has not plead against Mr. Perry the counterclaim it seeks to dismiss. However, the Court GRANTS the motion

as to the remaining eighteen individuals identified in docket entry 607, and the Fund's counterclaim against those individuals is DISMISSED WITH PREJUDICE pursuant to Federal Rule of Civil Procedure 41(a)(2).

SO ORDERED.

ENTERED: January 13, 2014

 /s/ JON E. DEGUILIO
Judge
United States District Court