

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

SHELBY COUNTY
HEALTH CARE CORPORATION

PLAINTIFF

V.

CAUSE NO. 3:13-CV-00245-SA-SAA

GENESIS FURNITURE
INDUSTRIES, INC.

DEFENDANT

ORDER DISMISSING CASE

The only matter remaining in this cause is a third-party claim by Genesis Furniture Industries against Assurecare Risk Management, Inc. In regard to this claim, Genesis requested and the clerk entered a default against Assurecare in September 2014 pursuant to Federal Rule of Civil Procedure 55(a). No further action has been taken on Genesis' third-party claim. On August 4, 2015, the Court entered an order giving Genesis fourteen days to show cause as to why its claim against Assurecare should not be dismissed pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute. Genesis did not file a show cause response and has in fact notified the Court that it has no intent to further prosecute this action.

As the Fifth Circuit has explained, the decision to dismiss a suit for failure to prosecute pursuant to Rule 41(b) falls within the Court's discretion. *Beard v. Experian Information Solutions, Inc.*, 214 F. App'x 459, 461-62 (5th Cir. 2007) (citing *Connolly v. Papachristid Shipping Ltd.*, 504 F.2d 917, 920 (5th Cir. 1974)). Though Rule 41(b) "is phrased in terms of dismissal on the motion of the defendant, it is clear that the power is inherent in the court and may be exercised sua sponte[.]" *Id.* (citing *Lopez v. Aransas Cnty. Indep. Sch. Dist.*, 570 F.2d 541, 544 (5th Cir. 1978)). Given Genesis' failure to respond and its expressed intent not to proceed on its claim against Assurecare, the Court exercises its authority and dismisses with

prejudice Genesis' third-party claim against Assurecare. No further claims are pending before the Court. CASE CLOSED.

SO ORDERED, this the 24th day of August, 2015.

/s/ Sharion Aycok
UNITED STATES DISTRICT JUDGE