

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNIGARD INSURANCE COMPANY,

Plaintiff,

v.

METRO METALS NORTHWEST,  
INC., et al.,

Defendants.

CASE NO. C17-5743 RBL

ORDER GRANTING DISMISSAL OF  
COUNTERCLAIMS WITHOUT  
PREJUDICE.

[Dkt. #34]

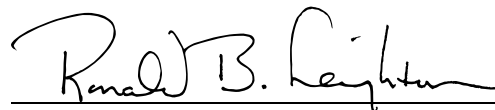
THIS MATTER is before the Court on defendants' Motion to Voluntarily Dismiss (without prejudice) their counterclaims under Fed. R. Civ. P. 41(c), and for entry of a final, appealable judgment under Rule 58(d). [Dkt. # 34]. Plaintiff Unigard does not oppose the motion, but it does seek dismissal *with* prejudice of any "bad faith" counterclaim based on conduct prior to the Court's October 11, 2018 Order [Dkt. # 33]. That Order determined that Unigard's policies did not provide coverage and that it therefore had no duty to defend or indemnify Defendants in the underlying action (*Port of Vancouver, USA v. Metro Metals and Pacific Coast Shredding*, cause No. 17-cv-5571RBL).

1 Defendants argue that all dismissals should be without prejudice because none of the  
2 counterclaims were litigated. The Court agrees, though the Court's prior Order will necessarily  
3 have some impact on the viability of any bad faith claim.

4 The Motion for Voluntarily Dismissal is **GRANTED** and all of Metro Metals' and  
5 Pacific Coast Shredding's counterclaims are **DISMISSED without prejudice**. The clerk shall  
6 enter a final judgment consistent with this Order (and with the Court's prior Order) under Rule  
7 58. Unigard may withdraw from the defense of the Defendants in the underlying action, effective  
8 October 11, 2018.

9 IT IS SO ORDERED.

10 Dated this 26<sup>th</sup> day of November, 2018.

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13 Ronald B. Leighton  
14 United States District Judge  
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