

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

AMERISURE INSURANCE COMPANY, INC.

Plaintiff,

V.

CV-08-BE-1437-S

**ZURICH also known as
ASSURANCE COMPANY OF
AMERICA, et al.,**

Defendants.

**MEMORANDUM OPINION AND ORDER GRANTING
MOTION TO DISMISS BY ASSURANCE COMPANY OF AMERICA**


This matter comes before the court on the Motion to Dismiss (doc. 15) filed by Assurance Company of America, which has been fully briefed by both parties. For the reasons stated below, the court finds that the Motion to Dismiss is due to be GRANTED and Assurance Company of America is due to be DISMISSED without prejudice.

In reviewing a motion to dismiss, the court must review the complaint in the light most favorable to the plaintiff. *Brower v. County of Inyo*, 489 U.S. 593, 598 (1989). Having done so in this case, the court finds that the complaint fails to assert facts or even allegations of a justiciable controversy between Plaintiff Amerisure and Assurance. Plaintiff's response to the motion to dismiss asserts matters not contained in the complaint that this court cannot consider when addressing a motion to dismiss. *See Zlotnick v. Premier Sales Group, Inc.*, 480 F.3d 1281, 1286 n.5 (11th Cir. 2007); *Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1368 (11th Cir. 1997). The court, therefore, does not determine whether allegations extraneous to the

Complaint itself would satisfy the actual controversy requirements.

Therefore, the court hereby ORDERS that the motion to Dismiss is GRANTED and Assurance Company of America is hereby DISMISSED without prejudice.

DONE and ORDERED this 10th day of November 2008.


KARON OWEN BOWDRE
UNITED STATES DISTRICT JUDGE