

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, SOUTHERN DIVISION

PROGRESSIVE SPECIALTY)	
INSURANCE COMPANY,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO.
v.)	1:10cv681-MHT
)	(WO)
LARRY DWAYNE MIMS; et al.,)	
)	
Defendants.)	

OPINION

Plaintiff Progressive Specialty Insurance Company filed this lawsuit against defendants Larry Dwayne Mims, Paula Denise Traylor, Dazia M. Fumbah, and Werner Enterprises, Inc., seeking a declaration as follows with regard to a state lawsuit: that Progressive has no duty to provide liability insurance coverage under the terms of a policy issued to Mims; and that Progressive has no duty to provide a defense to Mims or Traylor and no duty to indemnify them for any lawsuits arising out of the accident at issue. Jurisdiction is proper pursuant to 28 U.S.C. § 1332 (diversity). By order dated June 21, 2011,

this court entered a default judgment in favor of Progressive and against Werner Enterprises and set for submission the issue of damages. This cause is now before the court, therefore, on the issue of damages as to Werner Enterprises.

It is clear from Progressive's filing as to the issue of damages, however, that the company does not actually request damages; rather, Progressive seeks declaratory relief in accordance with the relief it requested in its complaint. Specifically, Progressive asks this court to enter an order, as to Werner Enterprises, that "there is no coverage under the Progressive Policy for Defendants Larry Dwayne Mims and Paula Denise Traylor"; that "Progressive does not have a duty to defend or indemnify Larry Dwayne Mims or Paula Denise Traylor for any lawsuits arising out of the accident at issue"; and that "Werner Enterprises, Inc. cannot recover from Plaintiff for any damages, including but not limited to subrogation interests, that it seeks or claims it has rights to under

the Progressive policy at issue." Pl. submission on damages at 1 (doc. no. 61). This court is of the opinion that it should grant the requested declaratory relief against Werner Enterprises.

A judgment will be entered in accordance with this opinion.

DONE, this the 11th day of July, 2011.

 /s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE