

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

THE TRAVELERS HOME AND,)	
MARINE INSURANCE COMPANY)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.
)	1:12cv307-MHT
)	(WO)
CHARLES E. JONES; et al.,)	
)	
Defendants.)	

ORDER

It is ORDERED as follows:

(1) Plaintiff Travelers Home and Marine Insurance Company should file a brief addressing, first, whether the company's remaining no-duty-to-indemnify claim brought against the defendants remaining in this case presents a "'case' or 'controversy,'" Auto-Owners Ins. Co. v. Toole, 947 F. Supp. 1557, 1565-66 (M.D. Ala. 1996) (Thompson, J.); see also Nationwide Ins. v. Zavalis, 52 F.3d 689, 693 (7th Cir. 1995) ("the duty to indemnify is not ripe for adjudication until the insured is in fact held liable in the underlying lawsuit"); and, second,

whether, because this lawsuit has been brought under the Declaratory Judgment Act and because the court has discretion under that statute to resolve a matter, the court should exercise its discretion to resolve the plaintiff's no-duty-to-indemnify claim even if the case presents a case or controversy, see Wilton v. Seven Falls Co., 515 U.S. 277, 288 (1995) (because there is "nothing automatic or obligatory about the assumption of 'jurisdiction' by a federal court to hear a declaratory judgment action," a district court is authorized in the sound exercise of its discretion to stay or dismiss an action seeking a declaratory judgment before trial) (citation omitted). The plaintiff should file its brief addressing these two concerns by May 6, 2013.

(2) The defendants are to file briefs by May 13, 2013.

DONE, this the 29th day of April, 2013.

 /s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE