

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

OWNERS INSURANCE COMPANY,)
a stock insurance company)
incorporated and organized)
under the laws of the)
State of Ohio,)
)
Plaintiff,)
)
v.)
)
H.W. WADE & COMPANY, INC.,)
an Alabama corporation;)
CHARLES M. FREEMAN, III,)
an individual; and CYNTHIA)
FREEMAN, an individual,)
)
Defendants.)

CIVIL ACTION NO.
2:08cv343-MHT
(WO)

OPINION AND ORDER

Based on the on-the-record representations made on
January 29, 2009, it is ORDERED that the Freeman
defendants' motion to dismiss (doc. 11) is granted with
respect to the issue of indemnification and is denied in
all other respects.

The state court has not yet determined whether and to
what extent defendant H.W. Wade & Company, Inc. is liable
to the Freemans defendants. Moreover, the state court

has not decided many of the crucial factual issues that will be relevant to the inquiry of indemnification. This court's examination of indemnification would therefore be premature. See Canal Insurance v. Cook, 564 F.Supp.2d 1322, 1325 (M.D. Ala. 2008) (Thompson, J.) (citing cases); Hartford Casualty Insurance v. Merchants & Farmers Bank, 928 So.2d 1006, 1013 (Ala. 2005) ("Whether there is a duty to indemnify under the policy will depend on the facts adduced at the trial," and "thus, we do not reach ... the issue whether [the insurance company] has a duty to indemnify..."). As a result, the court will address only whether plaintiff Owners Insurance Company has a duty to defend Wade.

DONE, this the 30th day of January, 2009.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE