

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
JONESBORO DIVISION

J. O. HOUSE  
and HEATH & HOUSE  
CONSTRUCTION CO., INC.,

Plaintiffs,

vs.

No. 3:09cv0095 SWW

CONSECO INSURANCE GROUP,

Defendant.

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ORDER

This action concerns the cancellation of an insurance policy issued by Conseco Insurance Group (“Conseco”) to Heath & House Construction, Inc., of which J.O. House is president (collectively “plaintiffs”). Concesco has filed a motion to dismiss, or in the alternative, motion for summary judgment [doc.#4]. This motion is denied as moot in light of plaintiffs’ subsequent amended complaint. The Court notes as well that this is a refiling of Case No. 3:06cv0067 SWW, which was voluntarily dismissed without prejudice on January 5, 2009, and that Conseco in that earlier case moved for summary judgment following full discovery on essentially the same grounds advanced in the current motion. The Court in that earlier case denied Conseco’s motion for summary judgment, concluding that there remained genuine issues of material fact for trial.

IT IS SO ORDERED this 10<sup>th</sup> day of August 2009.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE