

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

**ALLIED WORLD INSURANCE
COMPANY, a New Hampshire
Corporation**

PLAINTIFF

v.

Case No. 4:17-cv-00835-KGB

**CMM MECHANICAL, LLC, an Arkansas
Limited Liability Company; CARY
PARKS, an individual; SUSAN PARKS, an
individual; MICHAEL S. BROOKS, an
individual; THE ESTATE OF ROBERT A.
HALL, a probate estate in Pulaski County,
Arkansas, BRANDON J. LAR, an
individual, and FIRST SECURITY BANK**

DEFENDANTS

ORDER

Before the Court are a number of pending motions and a notice of settlement in the above-styled case (Dkt. Nos. 13; 94; 96; 98). On February 22, 2022, plaintiff Allied World Insurance Company (“Allied World”) and defendant Michael S. Brooks (“Mr. Brooks”) (collectively “the parties”) filed a notice of settlement in principle and motion to cancel trial scheduled for February 28, 2022 (“notice of settlement”) (Dkt. No. 98). The parties represented in that notice of settlement that they had “resolved all claims and defenses that would have been at issue during the jury trial scheduled to begin on February 28, 2022” (*Id.*, ¶ 1). Therefore, the Court removes this case from the February 28, 2022, trial calendar and instructs the parties to file a joint-status update regarding their settlement no later than 30 days after the entry of this Order. The Court denies as moot the pending motions *in limine* (Dkt. Nos. 94; 96).

The parties also indicate that their notice of dismissal “clears the way for the Court to enter default judgments against a number of defendants who failed to plead or otherwise defend Allied World’s claims.” (Dkt. No. 98, ¶ 1). For the following reasons, under the current circumstances,

the Court denies without prejudice Allied World's motion for entry of default judgment as to count V as to CMM Mechanical, LLC and Susan Parks (Dkt. No. 13). Allied World secured a Clerk's default only against defendants CMM Mechanical, LLC and defendant Susan Parks on February 1, 2018; it did so under its original complaint (Dkt. Nos. 1; 10; 11; 98, ¶ 2). However, when Allied World filed its first amended complaint on January 30, 2019, that action rendered moot Allied World's original complaint and rendered moot the Clerk's defaults entered as to that original complaint (Dkt. Nos. 1; 10; 11; 27). *See In re Atlas Van Lines, Inc.*, 209 F.3d 1064, 1067 (8th Cir. 2000) (noting that "[i]t is well-established that an amended complaint supercedes [sic] an original complaint and renders the original complaint without legal effect."); *Alfa Vision Ins. Corp. v. Lopez*, No. 5:17-cv-05201, 2019 WL 1150507, at *1–2 (W.D. Ark. Mar. 13, 2019) (explaining that though the Federal Rules of Civil Procedure do not require a plaintiff to serve original defendants with an amended complaint, filing an amended complaint moots a Clerk's default entered under the original complaint and outlining a procedure to follow under such circumstances); *see also CMS Wireless, LLC v. Fid. & Deposit Co. of Maryland*, No. 4:11-cv-00755-BRW, 2011 WL 13234132, at *1–2 (E.D. Ark. Dec. 9, 2011); *Greater St. Louis Constr. Laborers Welfare Fund v. A.G. Mack Contracting Co., Inc.*, No. 4L08-cv-1947 CAS, 2009 WL 2916841, at *1 n.1 (E.D. Mo. Sept. 4, 2009). For this reason, the Court cannot, at this time, entertain Allied World's motion for default judgment as to CCM Mechanical, LLC and defendant Susan Parks (Dkt. No. 13). The Court denies without prejudice the current pending motion for default judgment (Dkt. No. 13).

Allied World may submit new motions for a Clerk's default and then move for default judgment under its first amended complaint (Dkt. No. 27). *See Alfa Vision Ins.*, 2019 WL 1150507, at *1–2 (discussing factors to be considered and the procedure to be followed under similar

circumstances). At this time, the Court takes no position on the merits of such motions as to any of the remaining defendants. Further, the Court observes that CCM Mechanical, LLC and Susan Parks are not the only remaining defendants in this case. The Court directs Allied World to file a status report within 30 days of the entry of this Order informing the Court of the status of its claims against each of the remaining defendants.

It is so ordered this 25th day of February, 2022.

A handwritten signature in black ink, reading "Kristine G. Baker". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Kristine G. Baker
United States District Judge