

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION

ROBERT and SONJA SCHMID, husband and
wife; and SONROB HOSTS, LLC, an Arkansas
Corporation d/b/a LOOKOUT LODGE

PLAINTIFFS

v.

Case No. 3:11-CV-03094

LAFAYETTE INSURANCE COMPANY, A
Louisiana Corporation; CATLIN INSURANCE
COMPANY d/b/a UNITED FIRE GROUP

DEFENDANTS

ORDER

Currently before the Court are Defendant Lafayette Insurance Company's ("Lafayette") Motion for Summary Judgment and Declaratory Judgment (Doc. 9) and Brief in Support (Doc. 10); Plaintiffs' Response in Opposition, along with supporting documentation (Docs. 16-22); and Lafayette's Reply (Doc. 24). In reviewing the parties' submissions on the issue of summary judgment, the Court concludes that there exists a genuine issue of material fact as to whether Plaintiffs complied with the provisions of the insurance policy at issue, requiring Plaintiffs to "do [their] best to maintain heat in the building or structure" in order to recover damages caused by or resulting from freezing water. (Doc. 10, p. 6). Because this fact issue remains in contention, either summary judgment or a declaratory judgment on the merits is inappropriate. Therefore, Defendant Lafayette's Motion for Summary Judgment and Declaratory Judgment (Doc. 9) is **DENIED**, and this case will proceed to jury trial commencing Tuesday, September 11, 2012.

Plaintiff's counsel stipulated in the telephonic pre-trial conference for this matter, held on August 27, 2012, that Defendant Catlin Insurance Company was not served with a copy of the Complaint and never entered an appearance in this case. Accordingly, the Court hereby **DISMISSES** Defendant Catlin Insurance Company, pursuant to Fed. R. Civ. P. 41(b), due to

Plaintiffs' failure to prosecute.

IT IS SO ORDERED this 28th day of August, 2012.

/s/ P. K. Holmes, III

P.K. HOLMES, III
CHIEF U.S. DISTRICT JUDGE