

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

CANOPIUS CAPITAL TWO LIMITED,
et al

PLAINTIFFS

VS.

CASE NO. 11-CV-4070

JEANNE ESTATES APARTMENTS, INC.,
et al

DEFENDANTS

ORDER

Before the Court are Plaintiffs' Motion for Summary Judgment (ECF No. 77) and Motion to Strike Defendants' Response to Summary Judgment (ECF No. 99). This is an action seeking a declaratory judgment as to the rights and obligations of the parties pursuant to an insurance policy issued by Plaintiffs. Plaintiffs seek a declaration from the Court regarding its contractual obligations to defend and indemnify Defendant-Insureds in cases before this Court and Arkansas state court: *Kolbek, et al. v. Twenty First Century Holiness Tabernacle Church, et al.*, No. 4:10-cv-04124; *Ondirsek, et al. v. Hoffman*, No. 4:08-cv-04113; and *Coie v. Alamo, et al.*, No. CV-2009-1854(V), Circuit Court of Sebastian County, Arkansas.

Since the filing of Plaintiffs' First Amended Complaint (ECF No. 49), Motion for Summary Judgment, and Motion to Strike, the configuration of the cases underlying this declaratory judgment action has changed dramatically. Many of the Defendant-Insureds who were parties in *Kolbek, et al. v. Twenty First Century Holiness Tabernacle Church, et al.*, No. 4:10-cv-04124 have had the claims against them settled and/or dismissed. The final dismissal of all claims in *Kolbek, et al. v. Twenty First Century Holiness Tabernacle Church, et al.*, No. 4:10-cv-04124 was affirmed by the

Eighth Circuit Court of Appeals on September 11, 2014. Thus, for many of the Defendant-Insureds in this action, there may be no claims against them in an underlying suit that would implicate Plaintiffs' insurance policies.

In light of these developments, the Court finds that updated motions for summary judgments are necessary. Accordingly, Plaintiffs' Motion for Summary Judgment (ECF No. 77) is hereby **DENIED WITHOUT PREJUDICE**. Plaintiffs' Motion to Strike (ECF No. 99) is hereby **DENIED AS MOOT**.

Any motions for summary judgment must be filed on or before October 14, 2014. The Court asks that the parties explicitly address the current disposition of each underlying cause of action referenced in the First Amended Complaint as well as any newly filed actions that may implicate Plaintiffs' insurance policies. The Court also requests that the parties fully discuss, with supporting law, whether a justiciable controversy still exists as to the insurance coverage of Defendant-Insureds whose claims in the underlying suit(s) have been settled and/or dismissed.¹

IT IS SO ORDERED, this 16th day of September, 2014.

/s/ Susan O. Hickey
Susan O. Hickey
United States District Judge

¹It is worth noting that similar declaratory judgment actions against some of the same Defendant-Insureds have been voluntarily dismissed in light of the settlement agreement reached in *Kolbek, et al. v. Twenty First Century Holiness Tabernacle Church, et al.*, No. 4:10-cv-04124. See *Cameron Mutual Insurance Company v. Steve Johnson, et al*, No. 4:11-cv-4051; *National Libaility & Fire Insurance Company v. Desiree Kolbek, et al*, No. 4:12-cv-4126.