

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**COLONY INSURANCE COMPANY,**

**Plaintiff,**

**v.**

**Case No. 8:09-cv-1469-T-30MAP**

**MONTECITO RENAISSANCE, INC.,  
et al.,**

**Defendants.**

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**ORDER**

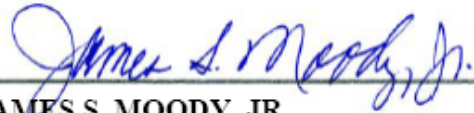
THIS CAUSE comes before the Court upon Plaintiff's Motion to Dismiss (Dkt.26), Defendants' Responses in opposition (Dkts. 28 and 31), and Plaintiff's Replies (Dkt. 35 and 41). Plaintiff Colony Insurance Company filed this action seeking a declaratory judgment that based on insurance contracts between the parties, it has no duty to defend or indemnify Defendants Montecito Renaissance, Inc., Montecito Renaissance, LLP, William S. Rogers, Jr., Melinda Pierson, Debbie Clark, Glenn Ebers, and Edward Clark in connection with a state court action brought by the Avalon at Clearwater Condominium Association.

Under Florida law, "the duty of an insurance carrier to defend a claim falling within its insurance contract depends solely on the allegations in the complaint filed against the insured." *Tropical Park v. United States Fid. & Guar. Co.*, 357 So. 2d 253, 256 (Fla. Dist. Ct. App. 3d Dist. 1978). Plaintiff's motion for summary judgment is based on the allegations contained in the second amended complaint in the underlying state court action. Since

Plaintiff's motion was filed in this Court, a third amended complaint has been filed in the underlying action, which adds new allegations not addressed by the parties in their pleadings in this federal action. The third amended complaint supercedes the earlier pleadings and may affect the Court's ruling on summary judgment. Therefore, the Court will deny Plaintiff's Motion for Summary Judgment without prejudice to allow Plaintiff to file a new motion addressing issues raised by the third amended complaint.

It is therefore ORDERED AND ADJUDGED that Plaintiff's Motion for Summary Final Judgment (Dkt. 26) is DENIED without prejudice.

**DONE** and **ORDERED** in Tampa, Florida on November 4, 2010.

  
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**JAMES S. MOODY, JR.**  
**UNITED STATES DISTRICT JUDGE**

**Copies furnished to:**  
Counsel/Parties of Record

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