

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

OWNERS INSURANCE COMPANY,)
)
 Plaintiff,)
)
 v.)
)
 THE REMODELING DEPOT, INC.,)
 KENNETH WAYNE HOSTI, JOANN)
 LYON, and MICHAEL E. LINDSEY,)
)
 Defendants.)
)
 _____)

CASE NO. CV417-021

O R D E R

Before the Court is Plaintiff Owners Insurance Company's Notice of Filing and Resolution of the Underlying Lawsuit. (Doc. 68.) Plaintiff represents that a Consent Judgment has been entered in favor of Defendants Joann Lyon and Michael E. Lindsay ("Defendant Homeowners") against Defendant The Remodeling Depot, Inc. and Kenneth Wayne Hosti ("Defendant Remodelers") in the underlying lawsuit. (Id. at 1.) Because this resolution ripens Plaintiff's request for a declaratory judgment regarding its duty to indemnify Defendant Remodelers and moots any request for a declaratory judgment regarding its duty to defend, Plaintiff requests that this Court issue a supplemental briefing schedule on the remaining issue of its duty to indemnify. (Id. at 2.)

After careful consideration, Plaintiff's request is **GRANTED**. "The duty to indemnify is determined by the facts as they are established in the underlying action." Nat'l Tr. Ins. Co. v. Finishing Dynamics, LLC, No. 1:18-CV-0351-AT, 2018 WL 8949791, at *5 (N.D. Ga. Sept. 18, 2018) (citing ALEA London Ltd. v. Woodcock, 286 Ga. App. 572, 580 649 S.E.2d 740, 746 (Ga. Ct. App. 2007)). Because the underlying lawsuit has concluded, this Court must know what Defendant Remodelers have been found liable for in determining whether Plaintiff must indemnify Defendant Remodelers. The Court notes that the consent judgment entered is less than the amount of damages prayed for the in the complaint. (Compare Doc. 1, Attach. 2 at 6 with Doc. 68, Attach. 1 at 2.) Moreover, the Court notes that a large portion of the parties' cross-motions for summary judgment concern Plaintiff's duty to defend which is, by Plaintiff's own representation, now moot. The Court believes the best course of action is for the parties to prepare new, concise motions for summary judgment on the now ripe issue of Plaintiff's duty to indemnify.

Accordingly, Plaintiff's Motion for Summary Judgment (Doc. 34) and Defendant Remodelers' Motion for Summary Judgment (Doc. 43) are **DISMISSED WITHOUT PREJUDICE** with specific direction to refile. Plaintiff and Defendant Remodelers are **DIRECTED** to each refile their respective Motions for Summary Judgment within **thirty (30) days** of the date of this Order on the issue of Plaintiff's

duty to indemnify Defendant Remodelers in light of the consent judgment. The parties are **FURTHER DIRECTED** to address the damages awarded and inform this Court of the factual basis for such an award.

SO ORDERED this 1ST day of ~~May~~ JUNE 2020.



WILLIAM T. MOORE, JR.
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA