IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

R. BRADLEY VAN LANINGHAM d/b/a)	
BRADLEY LAW GROUP and VAN)	
LANINGHAM AND ASSOCIATES,)	
PLLC d/b/a BRADLEY LAW GROUP,)	
Plaintiffs,)	
V.)	1:16-CV-948
ALLIED INSURANCE, a Nationwide)	
Insurance Company; AMCO INSURANCE)	
COMPANY; DESPOSITORS INSURANCE)	
COMPANY; and TRAVELERS CASUALTY)	
INSURANCE COMPANY OF AMERICA,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

LORETTA C. BIGGS, District Judge.

Plaintiffs, R. Bradley Van Laningham d/b/a Bradley Law Group and Van Laningham and Associates, PLLC d/b/a Bradley Law Group (collectively "BLG" or "Plaintiff"), initiated this action pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, et seq., seeking, among other relief, a declaration that Defendants, Allied Insurance, Amco Insurance, Depositors Insurance (collectively "Nationwide Defendants"), and Travelers Casualty Insurance ("Travelers"), have a duty to defend BLG against claims alleged against it in a lawsuit currently pending before this Court. (See ECF No. 1.) Before the Court are motions for summary judgment filed by Nationwide Defendants, (ECF No. 27), and Travelers, (ECF No. 29). These motions for summary judgment were filed on July 31, 2017. (ECF Nos. 27; 29.) Since the

filing of the instant motions, the underlying litigation animating this insurance coverage dispute has evolved, making the briefing on the motions for summary judgment currently before the Court stale at best.

Plaintiff's action seeks a declaration that the Defendants "owe a primary duty to defend and indemnify BLG against the claims made" against BLG in Garey v. Farrin, 1:16CV542, the underlying case pending before the Court. (See ECF No. 1 ¶ 1.) This action was filed on July 13, 2016. (ECF No. 1.) At that time, the controlling pleading in *Garey v. Farrin* was the original complaint filed by the Garey plaintiffs on May 27, 2016—now included in this case's docket as ECF No. 1-1. On August 22, 2016, the Garey plaintiffs amended their complaint. See 1:16CV542, ECF No. 32. In response to this amendment, on February 15, 2017, Travelers amended its answer "in order to attach [a] true and accurate cop[y]" of the first amended complaint in Garey, now included in this case's docket as ECF No. 21–1. (See ECF Nos. 19 at 1; 21; 21-1.) BLG, Nationwide Defendants, and Travelers then proceeded to brief the motions for summary judgment at issue here by comparing the first amended complaint in Garey with the insurance coverage provided by Defendants. On March 15, 2018, the Court stayed this action. (ECF No. 64.) That stay was lifted on January 8, 2020. See Garey v. James S. Farrin, No. 1:16CV542, 2020 WL 91869 (M.D.N.C. Jan. 8, 2020). While this action was stayed, on October 24, 2019, the Garey plaintiffs filed a second amended complaint which is now the operative complaint. See 1:16CV542, ECF No. 180.

To determine whether an insurance provider has a duty to defend its insured in an underlying lawsuit, "North Carolina courts apply the 'comparison test." *Hartford Cas. Ins. Co. v. Gelshenen*, 387 F. Supp. 3d 634, 638 (W.D.N.C. 2019) (quoting *Harleysville Mut. Ins. Co. v. Buzz*.

Off Insect Shield, L.L.C., 692 S.E.2d 605, 610 (N.C. 2010)). This requires reading the pleadings

"side-by-side with the policy to determine whether the events as alleged are covered or

excluded." Waste Mgmt. of Carolinas, Inc. v. Peerless Ins. Co., 340 S.E.2d 374, 378 (N.C. 1986).

Given the centrality of the second amended complaint to this dispute, the Court concludes

that ruling on Defendants' motions for summary judgment without hearing from the parties

on how the second amended complaint in Garey impacts this litigation would be futile.

For the reasons outlined, the Court enters the following:

ORDER

IT IS THEREFORE ORDERED that, provided Defendants wish to proceed on their

respective Motions for Summary Judgment, (ECF Nos. 27; 29), they shall file amended briefs

specifically addressing the second amended complaint in Garey within 21 days of entry of this

Order.

IT IS FURTHER ORDERED that should either Defendant file an amended brief for

summary judgment, any briefing in response or reply to said brief should follow all applicable

local and federal rules of civil procedure.

IT IS FURTHER ORDERED that if either Defendant fails to file an amended brief

within the prescribed time ordered by the Court, the summary judgment motion originally

filed by said Defendant, (ECF Nos. 27; 29), shall be denied as moot.

This, the 30th day of March 2020.

/s/Loretta C. Biggs

United States District Judge

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