

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
MIDDLE DISTRICT OF ALABAMA, SOUTHERN DIVISION

CINCINNATI INSURANCE	)	
COMPANY,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION NO.
v.	)	1:15cv498-MHT
	)	(WO)
SUNSOUTH BANK,	)	
	)	
Defendant.	)	

OPINION AND ORDER

Plaintiff Cincinnati Insurance Company filed this lawsuit seeking a determination that it has no duty to defend certain lawsuits under an insurance policy issued to defendant SunSouth Bank covering 2012 to 2013. After SunSouth's deadline for demanding a jury trial on the complaint had passed, see Fed. R. Civ. P. 38(b)(1), SunSouth filed a counterclaim--with a jury demand--for breach of contract involving the same contract and a contract covering the following year. This case is before the court on Cincinnati's objection to the United States Magistrate Judge's order denying

Cincinnati's motion to strike SunSouth's jury demand. Also before the court is SunSouth's alternative motion for jury trial pursuant to Federal Rule of Civil Procedure 39(b), which is embedded in its response to the objections. Upon an independent and de novo review of the record, the court concludes that the objections should be overruled, and SunSouth's motion for jury trial under Rule 39(b) should be denied as moot.

The court notes that there has been no ruling as to--and it is unclear to this court at this time--which factual issues in the case are covered by SunSouth's jury demand and accordingly must be tried before a jury. See generally LaMarca v. Turner, 995 F.2d 1526, 1545 (11th Cir. 1993). If this case goes to trial, the court will take up this issue prior to trial on an appropriate pretrial motion.

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Accordingly, it is ORDERED that:

(1) The objection (doc. no. 45) is overruled.

(2) The alternative motion for trial by jury (doc. no. 46) is denied as moot.

It is further ORDERED that this case is referred back to the magistrate judge for further proceedings.

DONE, this the 9th day of May, 2016.

/s/ Myron H. Thompson  
UNITED STATES DISTRICT JUDGE