

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

JOHN W. WASHINGTON, as)
next friend of Mae R.)
Washington,)
)
Plaintiff,)
)
v.)
)
BIO-MEDICAL APPLICATIONS)
OF ALABAMA, INC., a)
corporation,)
)
Defendant.)

CIVIL ACTION NO.
2:17cv855-MHT
(WO)

OPINION AND ORDER

Plaintiff filed this lawsuit asserting that defendant's employees negligently and wantonly failed to prevent plaintiff's mother from falling out of a wheelchair. After defendant filed its answer, plaintiff moved to strike from the answer all affirmative defenses alleging that the Alabama Medical Liability Act ("AMLA"), Ala. Code 1975 §§ 6-5-540 through 6-5-552, applies to this case. This lawsuit is now before the court on the recommendation of the United States Magistrate Judge that plaintiff's motion

to strike be denied. Also before the court are plaintiff's objections to the recommendation.

After an independent and de novo review of the record, the court concludes that plaintiff's objections should be overruled and the magistrate judge's recommendation adopted. As there is no Alabama state court decision directly on point, the court must make an educated guess as to what the Alabama courts--and particularly the Alabama Supreme Court--would decide if faced with this case. See *Nobs Chem., U.S.A., Inc. v. Koppers Co.*, 616 F.2d 212, 214 (5th Cir. 1980) ("Where no state court has decided the issue a federal court must 'make an educated guess as to how that state's supreme court would rule.'" (citations omitted).*) The court also notes that it is impressed with the limited factual reach of the holding of the magistrate judge's

* In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit Court of Appeals adopted as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

recommendation, and believes it is faithful to the intent of the AMLA as set forth in its preamble, Ala. Code 1975 § 6-5-540.

Accordingly, it is ORDERED as follows:

(1) Plaintiff's objections (doc. no. 34) are overruled.

(2) The recommendation of the United States Magistrate Judge (doc. no. 24) is adopted.

(3) The motion to strike (doc. no. 15) is denied.

This case is referred back to the magistrate judge for further proceedings.

DONE, this the 15th day of May, 2018.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE