

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

RONALD HARLESS, et al.,)	
Plaintiffs/Counterclaim Defendants)	
VS.)	Case No. 2:14-cv-01629-HGD
CINCINNATI INSURANCE COMPANY,)	
Defendant/Counterclaim Plaintiff)	

MEMORANDUM OPINION AND PARTIAL DISMISSAL ORDER

On November 5, 2015, Magistrate Judge Harwell Davis entered a report and recommendation concerning defendant/counterclaim plaintiff Cincinnati Insurance Company's motion for partial summary judgment. (Doc. 13) In his report, Judge Davis recommended that the Court grant the motion for partial summary judgment. (Doc. 13, p. 19). Judge Davis explained to the parties that they had fourteen days in which to file objections to the recommendation. (Doc. 13, pp. 19-20). Neither party has filed objections.

A district court "may accept, reject, or modify, in whole or part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). When a party objects to a report and recommendation, the district court must "make a de novo determination of those portions of the report or specified

proposed findings or recommendations to which objection is made." *Id.* The Court reviews for plain error the portions of the report or proposed factual findings to which no objection is made. *Garvey v. Vaughn*, 993 F.2d 776, 779 n.9 (11th Cir. 1993); *see also United States v. Slay*, 714 F.2d 1093, 1095 (11th Cir. 1983) (per curiam), *cert. denied*, 464 U.S. 1050 (1984) ("The failure to object to the magistrate's findings of fact prohibits an attack on appeal of the factual findings adopted by the district court except on grounds of plain error or manifest injustice.") (internal citation omitted); *Macort v. Prem, Inc.*, 208 Fed. Appx. 781, 784 (11th Cir. 2006).

The Court has reviewed the record and Judge Davis's November 5, 2015 report and recommendation. Applying the clearly erroneous standard, the Court **ADOPTS** the November 5, 2015 report and **ACCEPTS** Judge Davis's recommendation that the Court enter judgment as a matter of law on the plaintiffs' claims for bad faith (Count II) and negligent, reckless and/or wanton claims handling (Count III). The Court **DISMISSES WITH PREJUDICE** the plaintiffs' claims for bad faith (Count II) and negligent, reckless and/or wanton claims handling (Count III).

The plaintiffs' claim for breach of contract (Count I) and the defendant's counterclaim for declaratory judgment remain pending. The Court returns these

claims to Judge Davis for further proceedings consistent with this memorandum opinion.

DONE and **ORDERED** this March 21, 2016.

MADELINE HUGHES HAIKALA
UNITED STATES DISTRICT JUDGE