

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

TRAVELERS CASUALTY AND)
SURETY COMPANY OF)
AMERICA,)

Plaintiff/Counterclaim)
Defendant,)

vs.)

7:14-cv-2286-JEO

BRYAN MARTIN,)

Defendant/)
Counterclaim Plaintiff/)
Third Party Plaintiff.)

vs.)

EDWARD HUBBARD, et al.)

Third Party Defendants.)

ORDER

On September 6, 2016, the magistrate judge filed his report and recommendation recommending the following:

- 1) that the Court clarify, *sua sponte*, that Bryan Martin’s wife, Shadi Martin, is a party and direct the Clerk to add her to the docket sheet as a “counterclaim plaintiff”;
- 2) that First American Title Insurance Company’s motion to strike or dismiss the claims asserted against it in the Martins’ Amended Counterclaim and Third Party Complaint be denied;

- 3) that the Martin's Rule 15(a) motion seeking authorization for the filing of their Amended Counterclaim and Third Party Complaint be granted;
- 4) that the Martins' motion under Rule 56(d) to defer summary judgment and allow discovery be denied;
- 5) that Travelers Casualty and Surety Company of America's motion for partial summary judgment on its claim for indemnity against Mr. Martin be granted.

(Doc. 62.) On September 20, 2016, Defendant, Bryan Martin, filed objections to the magistrate judge's report and recommendation. (Doc. 64.) The undersigned was then randomly drawn to review the report and recommendation.

Having carefully considered *de novo* the entire file in this action, including the report and recommendation and the objections thereto, the Court is of the opinion that the report and recommendation is due to be adopted and accepted in part and rejected in part. This Court does not agree with the magistrate judge that summary judgment is due to be granted in favor of Plaintiff, Travelers Casualty and Surety Company of America, on its claim for indemnity against Defendant, Bryan Martin, at this time. Additionally, because this Court finds that the Martins are entitled to conduct discovery, it does not agree with the magistrate judge that the Martins' Rule 56(d) motion is due to be denied. In all other respects, the report and recommendation is due to be adopted and accepted.

Accordingly, the Clerk is hereby **DIRECTED** to add Shadi Martin to the docket sheet as a “counterclaim plaintiff.” First American Title Insurance Company’s motion to strike or dismiss the claims asserted against it in the Martins’ Amended Counterclaim and Third Party Complaint (doc. 46) is hereby **DENIED**. The Martins’ Rule 15(a) motion seeking authorization for the filing of their Amended Counterclaim and Third Party Complaint (doc. 52) is hereby **GRANTED**. Travelers Casualty and Surety Company of America’s motion for partial summary judgment on its claim for indemnity against Mr. Martin (doc. 54) is hereby **DENIED**. The Martins’ motion under Rule 56(d) to defer summary judgment and allow discovery (doc. 57 at 13-19) is hereby **GRANTED**.

This action is to remain with the magistrate judge for further proceedings not inconsistent with this Order. The Court notes that this Order may require the magistrate judge to amend the Scheduling Order presently in effect (doc. 68) to allow for this additional discovery.

DONE AND ORDERED ON NOVEMBER 3, 2016.



L. SCOTT COOGLER
UNITED STATES DISTRICT JUDGE

160704