

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

| | | |
|---------------------|---|-----------------|
| GEORGE E. PITTINOS, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| vs. | : | CA 08-0662-KD-C |
| | : | |
| PROVIDENT LIFE AND | : | |
| ACCIDENT INSURANCE | : | |
| COMPANY, et al., | : | |
| | : | |
| Defendants. | : | |

ORDER

After due and proper consideration of all portions of this file deemed relevant to the issues raised, and there having been no objections filed, pages 1 through 22 of the recommendation of the Magistrate Judge made under 28 U.S.C. § 636(b)(1)(B) and dated January 21, 2009, are **ADOPTED** as the opinion of this Court.

Accordingly, the plaintiff's motion to remand is **DENIED**. This court has subject matter jurisdiction under 28 U.S.C. § 1331 over plaintiff's state law claims by virtue of the complete preemption doctrine. The motion to dismiss filed by defendants Provident Life and Accident Insurance Company and Unum Group (doc. 2) is **GRANTED** because plaintiff's state law claims are also defensively preempted. The court's dismissal of plaintiff's state law

claims is **without prejudice** and plaintiff is given leave to re-file any and all exhausted ERISA claims he may have against the remaining defendants.

DONE this 13th day of February, 2009.

Kristi K. DuBose
KRISTI K. DuBOSE
UNITED STATES DISTRICT JUDGE