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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Rosemary Guadiana,
Plaintiff,
v.
State Farm Fire and Casualty Co.,
Defendants.

No. CV 07-326 TUC FRZ (GEE)

ORDER

Before the Court for consideration is Defendant’s Motion to Dismiss.

This matter was referred to the United States Magistrate Judge for all pretrial proceedings and report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) and LRCiv 72.1 and LRCiv 72.2, Rules of Practice of the United States District Court for the District of Arizona.

Magistrate Judge Glenda E. Edmonds issued her Report and Recommendation, filed January 15, 2008, recommending that the District Court, after its independent review of the record, enter an order denying Defendant’s Motion to Dismiss for failure to state a claim pursuant to Rule 12(b)(6), FED.R.CIV.P.

The Report and Recommendation sets forth the factual and procedural background and a thorough discussion on the claim for coverage and policy provisions at issue in this case under the proper standard of review of a Rule 12(b)(6) motion. Magistrate Judge Edmonds concluded, after reviewing all matters submitted and hearing oral argument, that Plaintiff Rosemary Guadiana’s home owner policy, issued by Defendant State Farm Fire and Casualty

1 Company, covers the costs of tearing out and replacing part of the structure where
2 polybutylene plumbing was replaced as alleged in the Complaint.

3 Defendant filed its objection to the Report and Recommendation and a reply to
4 Plaintiff's response thereto, arguing that Magistrate Judge Edmonds ignored the causation
5 requirement in the policy and the exclusions set forth and that her "failure to harmonize the
6 Policy's exclusions with the tear-out provision cause her to incorrectly create coverage where
7 none exists."

8 The Court, having made an independent review of the record herein, including
9 Defendant's Objection to Report and Recommendation Concerning Motion to Dismiss,
10 Plaintiff's Response to Defendant's Objection to Magistrate's Report and Recommendation
11 Concerning Motion to Dismiss and Defendant's Reply in Support of Defendant's Objection
12 to Report and Recommendation Concerning Motion to Dismiss, finds that Plaintiff's
13 Complaint does state a claim upon which relief may be granted under the Rule 12(b)(6)
14 standard of review and that the Report and Recommendation of Magistrate Judge Edmonds
15 shall be adopted as the findings of fact and conclusions of law of this Court.

16 Based on the foregoing,

17 IT IS ORDERED that Magistrate Judge Edmonds' Report and Recommendation is
18 hereby ACCEPTED and ADOPTED as the findings of fact and conclusions of law by this
19 Court;

20 IT IS FURTHER ORDERED that Defendant's Motion to Dismiss [Doc. #12] is
21 DENIED;

22 IT IS FURTHER ORDERED that this action is referred back to Magistrate Judge
23 Edmonds for all pretrial proceedings and report and recommendation in accordance with the
24 provisions of 28 U.S.C. § 636(b)(1) and LRCiv 72.1 and LRCiv 72.2.

25
26 DATED this 29th day of August, 2008.

27 
28 FRANK R. ZAPATA
United States District Judge