

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
EL DORADO DIVISION

CODY RAWLS, et al.

PLAINTIFFS

V.

CASE NO. 09-CV-1037

UNION PACIFIC RAILROAD, et al.

DEFENDANTS

**ORDER**

Before the Court is the Report and Recommendation filed February 22, 2011, by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (ECF No. 104). Judge Bryant recommends that Defendants' Motion To Dismiss Certain Allegations of Plaintiffs' Complaint (ECF No. 56) be denied. Defendants have responded with timely objections. (ECF No. 109). After reviewing the record *de novo*, the Court adopts Magistrate Judge Bryant's Report and Recommendation as its own.

Defendants assert that the magistrate judge did not rule on the merits of their motion and ask the Court to refer the motion back to the magistrate judge for such a ruling. The magistrate judge stated in his report and recommendation that Defendants' motion could be denied as untimely. However, he further stated that "even assuming the Court were to consider the motion as timely filed, Defendants Motion to Dismiss would still fail." (Doc. 104). The magistrate judge then discussed the merits of Defendants' motion and found that Plaintiffs had set forth facts alleging a duty owed by Defendants to Plaintiffs and that a breach of duty occurred that proximately caused Plaintiffs' damages. The Court agrees with the magistrate judge's analysis regarding the merits of Defendants' motion and his recommendation regarding the disposition of the motion.

For reasons stated herein and above, as well as those contained in the Report and Recommendation (ECF No. 104), the Court overrules Defendants' objections and finds that Defendants' Motion to Dismiss Certain Allegations of Plaintiffs' Complaint (ECF No. 56) should be and hereby is **DENIED**.

**IT IS SO ORDERED**, this 5th day of August, 2011.

/s/ Harry F. Barnes  
Hon. Harry F. Barnes  
United States District Judge