

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Action No. 13-cv-00507-REB-BNB

THE PHOENIX INSURANCE COMPANY,
THE TRAVELERS INDEMNITY COMPANY, and
THE TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA,

Plaintiffs,

v.

CANTEX, INC.,
CONCRETE MANAGEMENT CORP.,
LANDMARK AMERICAN INSURANCE COMPANY,
CONTINENTAL INSURANCE COMPANY, and
AMERISURE INSURANCE COMPANY,

Defendants,

and

CANTEX, INC.,

Third Party Plaintiff,

v.

SCOTTSDALE INSURANCE COMPANY, and
CONTINENTAL CASUALTY COMPANY,

Third Party Defendants.¹

**ORDER OVERRULING OBJECTIONS TO AND ADOPTING
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Blackburn, J.

¹ The court has highlighted in the caption those parties who still have claims remaining in this lawsuit, as expatiated by the **Joint Status Report Identifying Remaining Parties and Claims** [#262], filed July 28, 2015.

The matters before me are (1) the **Recommendation of United States Magistrate Judge** [#255],² filed July 13, 2015; and (2) **Third-Party Defendant Scottsdale Insurance Company's Objections to the Recommendation of the United States Magistrate Judge** [#261], filed July 27, 2015. I overrule the objections, adopt the recommendation (to the extent not already mooted by the parties' stipulation of dismissal of Cantex's bad faith claim),³ and dispose of the motion to dismiss the breach of contract claims as recommended by the magistrate judge.

As required by 28 U.S.C. § 636(b), I have reviewed *de novo* all portions of the recommendation to which objections have been filed, and have considered carefully the recommendation, objections, and applicable caselaw. The recommendation is detailed and well reasoned. The objections of third-party defendant, Scottsdale Insurance Company, are imponderous and without merit.

Thus, I find and conclude that the arguments advanced, authorities cited, and findings of fact, conclusions of law, and recommendation proposed by the magistrate judge should be approved and adopted.

THEREFORE, IT IS ORDERED as follows:

1. That the **Recommendation of United States Magistrate Judge** [#255], filed July 13, 2015, is approved and adopted as an order of this court, except to the extent

² "[#255]" is an example of the convention I use to identify the docket number assigned to a specific paper by the court's case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

³ After the motion to dismiss had been filed, but before the magistrate judge issued her recommendation, the parties filed their **Stipulation for Dismissal Without Prejudice of Cantex Inc.'s Bad Faith Claim Against Scottsdale Insurance Company** [#247], filed June 18, 2015. Thus, that portion of the magistrate judge's recommendation that consider this claim is moot.

the recommendation regarding Cantex's bad faith claims against Scottsdale is mooted by the parties' stipulation dismissing those claims (*see supra* note 3);

2. That the objections contained in **Third-Party Defendant Scottsdale Insurance Company's Objections to the Recommendation of the United States Magistrate Judge** [#261], filed July 27, 2015, are overruled;

3. That **Defendant Scottsdale Insurance Company's Motion To Dismiss** [#194], filed November 21, 2014, is granted in part, denied in part, and denied as moot in part, as follows:

a. That the motion is granted insofar as it seeks dismissal of Cantex's claim for breach of contract implicating policy number XLS0040128 (referenced in the recommendation as the "February 2007 Scottsdale Policy"), and that claim is dismissed without prejudice;

b. That the motion is denied insofar as it seeks dismissal of Cantex's claim for breach of contract implicating policy number XLS0045526 (referenced in the recommendation as the "November 2007 Scottsdale Policy"); and

c. That the motion is denied as moot insofar as it seeks dismissal of Cantex's bad faith claims against Scottsdale; and

4. That at the time judgment enters, judgment without prejudice shall enter on behalf of third-party defendant Scottsdale Insurance Company and against third-party plaintiff Cantex, Inc., on Cantex's claim for breach of contract implicating policy number XLS0040128.

Dated September 2, 2015, at Denver, Colorado.

BY THE COURT:

A handwritten signature in blue ink that reads "Bob Blackburn". The signature is written in a cursive, flowing style.

Robert E. Blackburn
United States District Judge