

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

JAMES W. ATKINS, *et al.*,

Plaintiffs,

v.

Case No. 5:14-cv-593-Oc-32PRL

NEAL S. SMALBACH, EVEREST
INDEMNITY INSURANCE
COMPANY, a Delaware Corporation,
and MICK AND ASSOCIATES, PC,
LLO, a Nebraska professional limited
liability company,

Defendants.

ORDER

This case is before the Court on Plaintiffs' Motion to Remand (Doc. 6) and the associated filings (Doc. 9; Doc. 10; Doc. 15). On February 6, 2015, the assigned United States Magistrate Judge issued a Report and Recommendation (Doc. 16) recommending that the motion be denied and that Counts I and II of Plaintiff's Second Amended Complaint be severed and remanded to state court. Plaintiffs objected to the Report and Recommendation (Doc. 20) and Defendant Mick and Associates responded (Doc. 24).¹ Plaintiffs filed a Third Amended Complaint (Doc. 22), which provides more detailed allegations against Mick and Associates but does not change the analysis on

¹ Defendant Neal Smalbach filed an objection to the removal in state court. (Doc. 23).

the remand motion.² Upon de novo review of the file, and for the reasons stated in the Report and Recommendation (Doc. No. 16), it is hereby

ORDERED:

1. The Report and Recommendation of the Magistrate Judge (Doc. 16) is **ADOPTED** as the opinion of the Court.

2. Plaintiffs' Motion to Remand (Doc. 6) is **GRANTED in part** and **DENIED in part**.

3. The claims against Defendant Neal Smalbach, Counts I and II, are severed and **REMANDED** to the Fifth Judicial Circuit in and for Marion County, Florida. The Clerk should therefore terminate Smalbach as a party to this case. However, this case should remain open as to the remaining parties.

4. No later than **April 3, 2015**, Plaintiffs must file a Fourth Amended Complaint addressed only to Defendant Mick and Associates. No later than **April 24, 2015**, Mick and Associates must respond to the Fourth Amended Complaint.

5. Mick and Associates' motion for extension of time to respond to Plaintiffs' Third Amended Complaint (Doc. 25) is therefore **MOOT**.

6. The parties have until **April 13, 2015** to file a Case Management Report.

² The Court need not decide whether Plaintiffs had authority to file the Third Amended Complaint without Court approval because the determination of that issue would not change the result.

DONE AND ORDERED in Jacksonville, Florida the 13th day of March, 2015.


TIMOTHY J. CORRIGAN
United States District Judge

w.

Copies to:

Honorable Philip R. Lammens
United States Magistrate Judge

Counsel of record