

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

LAURA RAAB; and ANDRE RAAB,

Plaintiffs,

v.

Case No. 6:17-cv-1049-Orl-37TBS

UNITED HEALTHCARE INSURANCE
COMPANY,

Defendant.

ORDER

In this insurance action, Defendant moves to dismiss a single claim of Plaintiffs' Complaint, a claim of statutory bad faith ("**Count II**"). (Doc. 12 ("**MTD**").) As grounds, Defendant asserts that Count II is preempted by the Employee Retirement Income Security Act of 1974 ("**ERISA**"). (*Id.* at 3.) On referral, U.S. Magistrate Judge Thomas B. Smith recommends that the Court grant Defendant's MTD. (Doc. 42 ("**R&R**").)

In his R&R, Magistrate Judge Smith concludes, per the Court's August 25 Order (Doc. 40), that the group health insurance policy at issue is governed by ERISA. (*Id.* at 3.) Because ERISA preempts state law claims for statutory bad faith, 29 U.S.C. § 1144(a), Plaintiffs' claim cannot continue. (*Id.*) Hence, Defendant's MTD should be granted. (*Id.*)

The parties did not object to the R&R, and the time for doing so has now passed. As such, the Court has examined the R&R only for clear error. *See Wiand v. Wells Fargo Bank, N.A.*, No. 8:12-cv-557-T-27EAJ, 2016 WL 355490, at *1 (M.D. Fla. Jan. 28, 2016); *see also Marcort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006). Finding no clear error, the

Court concludes that the R&R is due to be adopted in its entirety.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. U.S. Magistrate Judge Thomas B. Smith's Report and Recommendation (Doc. 42) is **ADOPTED, CONFIRMED**, and made a part of this Order.
2. Defendant's Motion to Dismiss Count II of Plaintiff's Complaint (Doc. 12) is **GRANTED**.
3. Plaintiffs' remaining breach of contract claim is **CONVERTED** to an ERISA claim, and the case will proceed as set forth in the ERISA Case Management and Scheduling Order (Doc. 27.)

DONE AND ORDERED in Chambers in Orlando, Florida, on September 18, 2017.




ROY B. DALTON JR.
United States District Judge

Copies to:
Counsel of Record