

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

THE GRAY INSURANCE COMPANY

VERSUS

CONCENTRA INTEGRATED  
SERVICES, INC.

CIVIL ACTION

NO. 09-399-BAJ-DLD

**RULING**

This matter is before the Court on the Report and Recommendation of the Magistrate Judge dated August 24, 2010 (doc. 27). The Court has carefully considered the petition, the law applicable to the action, the Report and Recommendation of the Magistrate Judge, the objection of defendant, Concentra Integrated Services, Inc., and the entire record of this matter.

Defendant objects, among other things, to the Magistrate Judge's conclusion that the motion should be treated as a Rule 56 motion for summary judgment. As noted in the Report and Recommendation, however, defendant set forth evidence outside of the pleadings in support of the motion (doc. 27, citing docs. 5 & 17). Thus, the motion was properly addressed as a motion for summary judgment pursuant to Rule 12 of the Federal Rules of Civil Procedure which provides, in pertinent part:

If, on a motion under Rule 12(b)(6) or 12(c) matters outside the pleadings are presented to and not excluded by the court, the motion *must* be treated as one for summary judgment under Rule 56.

Fed.R.Civ.P. 12(d) (emphasis added).

Having found that the Magistrate Judge properly treated defendant's motion to dismiss as a motion for summary judgment, the Court turns to the remainder of the objection and concludes that it merely restates legal argument that is appropriately addressed by the Report and Recommendation of the Magistrate Judge.

For the above reasons, the Court hereby approves the Report and Recommendation of the Magistrate Judge and, with the addition of the findings noted herein, adopts it as the Court's opinion. Accordingly, defendant's motion to dismiss, or alternatively, motion to stay (doc. 2) is hereby **DENIED** and the motion by defendant for oral argument on the objection (doc. 31) is **DENIED** as moot.

Baton Rouge, Louisiana, December 17, 2010.



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BRIAN A. JACKSON  
UNITED STATES DISTRICT JUDGE  
MIDDLE DISTRICT OF LOUISIANA