

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

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| KONINEDOU FONTA WALKER | § | PLAINTIFF |
| v. | § | CIVIL NO.: 1:12cv301-HSO-RHW |
| FFVA MUTUAL INSURANCE COMPANY, JAMES B. DONAGHEY, INC., STATE FARM INSURANCE COMPANY, QBE INSURANCE COMPANY, AND BRADLEY SANDERS | § | DEFENDANTS |

ORDER ADOPTING PROPOSED FINDINGS OF FACT AND
RECOMMENDATION, DENYING DEFENDANT QBE INSURANCE COMPANY'S
MOTION TO DISMISS, AND DENYING PLAINTIFF'S
MOTION FOR DECLARATORY JUDGMENT

BEFORE THE COURT is the Proposed Findings of Fact and Recommendation of United States Magistrate Judge Robert H. Walker [76] entered on December 23, 2013. Also before the Court is Defendant QBE Insurance Company's ("QBE") Motion to Dismiss [49] arguing Plaintiff Koninedou Fonta Walker ("Plaintiff") has failed to state a claim for relief against QBE, and Plaintiff's Motion for Declaratory Judgment against QBE [56] seeking a judgment that the injuries Plaintiff alleges he suffered in a traffic accident are covered by a QBE insurance policy issued to Plaintiff's employer ("the Policy").

The Magistrate Judge concluded QBE's Motion to Dismiss should be denied because Plaintiff's allegations that he made a claim for pain and suffering against QBE and that QBE has yet to award funds from the Policy are sufficient to state a direct cause of action for declaratory relief against QBE. Proposed Findings of Fact

and Recommendation 2-3 [76]. The Magistrate Judge also concluded Plaintiff's Motion for Declaratory Judgment should be denied on the basis that the record regarding coverage issues must be further developed. *Id.* at 3.

To date, no objection to the Proposed Findings of Fact and Recommendation has been filed by either QBE or Plaintiff. Where no party has objected to a magistrate judge's proposed findings of fact and recommendation, a court need not conduct a de novo review of the proposed findings of fact and recommendation. *See* 28 U.S.C. § 636(b)(1) ("[A] judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). In such cases, the Court need only review the proposed findings of fact and recommendation and determine whether it is either clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). Having conducted the required review, the Court finds that the Magistrate Judge's Proposed Findings of Fact and Recommendation thoroughly considered all issues and is neither clearly erroneous nor contrary to law. The Court, being fully advised in the premises, finds that the Magistrate Judge properly recommended that QBE's Motion to Dismiss and Plaintiff's Motion for Declaratory Judgment should both be denied. The Proposed Findings of Fact and Recommendation should be adopted as the opinion of this Court.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Proposed Findings of Fact and Recommendation [76] of Magistrate Judge Robert H. Walker entered on December 23, 2013, is adopted as the finding of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that QBE's Motion to Dismiss [49] filed on September 12, 2013, is **DENIED**.

IT IS, FURTHER, ORDERED AND ADJUDGED that Plaintiff's Motion for Declaratory Judgment [56] filed on October 4, 2013, is **DENIED**.

SO ORDERED AND ADJUDGED, this the 4th day of February, 2014.

s/ Halil Suleyman Ozerden
HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE