

FILED  
BILLINGS DIV.

2011 OCT 19 PM 4 15

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF MONTANA**

PATRICK E. DUFFY, CLERK

BY \_\_\_\_\_  
DEPUTY CLERK

**BILLINGS DIVISION**

<b>TIMOTHY MCCOLLOUGH,</b>	)	
	)	<b>CV-09-95-BLG-RFC-CSO</b>
<b>Plaintiff,</b>	)	
<b>vs.</b>	)	
	)	<b>ORDER</b>
<b>MINNESOTA LAWYERS MUTUAL</b>	)	
<b>INSURANCE COMPANY and JOHN</b>	)	
<b>DOES I and II,</b>	)	
<b>Defendants.</b>	)	
_____	)	

On July 27, 2011 United States Magistrate Judge Carolyn Ostby entered Findings and Recommendation (F&R)(*Doc. 36*) with respect to Defendant Minnesota Lawyers Mutual Insurance Company’s (MLM) Motion for Judgment on the Pleadings (*Doc. 26*). Magistrate Judge Ostby recommends that MLM’s Motion be denied. Judge Ostby concluded that, at this stage in the litigation, Plaintiff’s claims were not barred by the Supremacy Clause of the United States Constitution. Upon service of a magistrate judge’s findings and recommendation, a party has 14 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, Defendant filed an objection on August 2, 2011 (*Doc. 39*). Plaintiff

responded to Defendant's objections on August 12, 2011 (Doc. 40). Defendant's objections require this Court to make a *de novo* determination of those portions of the Findings and Recommendations to which objection is made. 28 U.S.C. § 636(b)(1).

Defendant objects to the Findings and Recommendation based on the argument that the Supremacy Clause, specifically an insured's right to defend itself in federal court, preempts state insurance regulations. In declining to dismiss all claims with prejudice Judge Ostby points out that the "duty to settle" issue encompasses only a portion of Plaintiff's Complaint. Judge Ostby states, "[the insured's] purported refusal to consent to settlement in the underlying case may be relevant to the defenses raised by MLM, but it does not defeat McCollough's claims at this stage in the proceedings." Finally, Judge Ostby makes clear that her recommendation does not preclude a subsequent motion under Rule 56. After a thorough review, the Court finds Magistrate Judge Ostby's recommendation well reasoned.

For the reasons set forth above, **IT IS HEREBY ORDERED:**

(1) Magistrate Judge Ostby's Findings and Recommendations (*Doc. 36*) are adopted in its entirety.

(2) MLM's Motion for Judgment on the Pleadings (*Doc. 26*) is **DENIED**.

DATED this 19<sup>th</sup> Day of October, 2011.

  
Richard Cebull  
U.S. District Court Judge