

FILED
IN THE UNITED STATES DISTRICT COURT BILLINGS DIV.

FOR THE DISTRICT OF MONTANA 2011 JAN 19 AM 9 46

BUTTE DIVISION

PATRICK E. DEBARTOLO
BY _____
DEPUTY CLERK

LORELEI SOANES,)	
)	Cause No. CV-10-46-BU-RFC
Plaintiff,)	
)	
v.)	ORDER ADOPTING FINDINGS
)	AND RECOMMENDATION OF
CAROLINA CASUALTY)	U.S. MAGISTRATE JUDGE
INSURANCE COMPANY and)	
BIG SKY ADJUSTERS, INC.,)	
a Montana Corporation,)	
)	
Defendants.)	
_____)	

United States Magistrate Judge Richard Anderson has entered his Findings and Recommendation (*Doc. 24*) with respect to Plaintiff's Motion to Remand (*Doc. 9*).

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). Defendant Carolina Casualty Insurance Company (Defendant herein) filed timely objections and Plaintiff responded to said objections. Accordingly, the Court must 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). For the following reasons, Defendant's objections are overruled.

Defendant's first objection is that the Magistrate Judge incorrectly found that Plaintiff's Complaint properly and legally stated a cause of action against Defendant BSA for common law bad faith insurance practices. Any alleged technical failure of Plaintiff to separately plead the evidentiary burden of proof for bad faith does not mean Plaintiff did not state a viable cause of action. Further, Defendant cannot prove by clear and convincing evidence that Plaintiff has no possibility of stating a claim against Big Sky Adjusters, Inc.

Defendant's second objection is that the Court did not address Defendant's public policy argument. The Court is not required to address Defendant's public policy argument.

Defendant's final objection is that attorney fees and costs are not warranted in this case. Defendant was notified by Plaintiff's counsel on two occasions that removal was improper and Defendant was allowed the opportunity to withdraw their notice of removal. Defendant ignored Plaintiff's request and Plaintiff is entitled to reasonable fees and costs.

After a de novo review, the Court determines the Findings and Recommendation of Magistrate Judge Ostby are well grounded in law and fact and HEREBY ORDERS they be adopted in their entirety.

Accordingly, **IT IS HEREBY ORDERED** that Plaintiff's Motion to Remand (*Doc. 9*) is **GRANTED**. Plaintiff will be awarded her reasonable fees and costs under 28 U.S.C. § 1447(c). Magistrate Judge Anderson will retain temporary and limited jurisdiction for the sole purpose of determining the appropriate amount of fees and costs to be awarded to Plaintiff.

DATED this th 19 day of January, 2011


RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE