

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

DALE D. MOORE, and JEANIE
NELSON, husband and wife,

Plaintiffs,

vs.

ALLSTATE FIRE AND CASUALTY
INSURANCE COMPANY,

Defendant.

CV 15-71-M-DLC-JCL

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered his Findings and Recommendation on December 12, 2016, recommending denial of Defendant Allstate Fire and Casualty Insurance Company's ("Allstate") Motion for Summary Judgment. The parties failed to timely object to the Findings and Recommendation, and so waived their right to de novo review of the record. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Having reviewed the Findings and Recommendation, the Court finds no clear error in Judge Lynch's conclusion that Allstate's motion should be denied because Plaintiff Dale Moore does not need to exhaust the \$300,000 per person limit on the primary insurance policy before seeking coverage for underinsured motorist benefits under Allstate's policy as long as Allstate is able to claim an offset of Moore's damages in an amount equal to the applicable limit on the primary policy.

Accordingly, there being no clear error in Judge Lynch's Findings and Recommendation, IT IS ORDERED that:

(1) Judge Lynch's Findings and Recommendation (Doc.152) are ADOPTED IN FULL.

(2) Defendant Allstate's Motion for Summary Judgment Regarding Enforcement of Excess Clause (Doc. 110) is DENIED.

Dated this 3rd day of January, 2017.



Dana L. Christensen, Chief District Judge
United States District Court