

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



MSP RECOVERY CLAIMS, SERIES
LLC, a Delaware limited liability
company, SERIES 16-08-483, a
designated series of MSP Recovery
Claims, Series LLC,

19-CV-524 (JLS) (JJM)

Plaintiffs,

v.

MERCHANTS MUTUAL INSURANCE
CORPORATION, a Delaware
corporation, MERCHANTS NATIONAL
INSURANCE COMPANY, a New
Hampshire corporation, MERCHANTS
PREFERRED INSURANCE
COMPANY, a Delaware corporation

Defendants.

DECISION AND ORDER

Plaintiffs assert claims against Defendants pursuant to the Medicare Secondary Payer Act, 42 U.S.C. § 1395y, seeking reimbursement of medical expenses paid by a Medicare Advantage Organization. *See* Dkt. 66. Before the Court are the outstanding aspects of Defendants' [77] motion to dismiss. On May 2, 2024, this Court denied the [77] motion to the extent it challenges standing under Rule 12(b)(1), but reserved decision as to arguments under Rule 12(b)(6). *See* Dkt. 116. The parties then submitted supplemental briefing on the Rule 12(b)(6) issues. *See* Dkt. 129, 130, 135.

On January 8, 2026, Judge McCarthy issued a Report and Recommendation ("R&R") recommending that Defendants' "motion to dismiss for failure to state a cause of action [77] be granted, with leave for MSP to amend its complaint only with respect

to its allegations concerning liability settlements.” See Dkt. 137 at 24. No party filed objections, and the time to do so has expired.

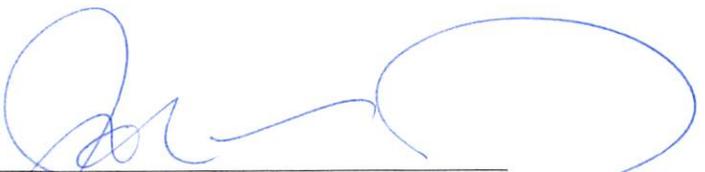
A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). It must conduct a *de novo* review of those portions of a magistrate judge’s recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

This Court has carefully reviewed the R&R and the relevant record. Based on that review, and in the absence of any objections, the Court accepts and adopts Judge McCarthy’s recommendation.

For the reasons above and in the R&R, Defendants’ [77] motion to dismiss is granted with leave to amend as discussed in the R&R. The deadline for any amended complaint shall be set by Judge McCarthy. The case is referred back to Judge McCarthy for further proceedings consistent with the referral order at Dkt. 50.

SO ORDERED.

Dated: January 23, 2026
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE