

**IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF NORTH CAROLINA  
BRYSON CITY DIVISION  
2:14 CV 34**

**GARY BARNETT,** )  
 )  
 **Plaintiff** )  
 )  
 **v** )  
 )  
 **STATE AUTO PROPERTY & CASUALTY** )  
 **INSURANCE COMPANY and U.S. BANK** )  
 **NATIONAL ASSOCIATION,** )  
 )  
 **Defendants.** )

**ORDER**

**THIS MATTER** has come before the undersigned pursuant to Defendant State Auto Property & Casualty Insurance Company’s Rule 26(f) Report and Proposed Discovery Plan (#16) and Defendant’s Amended Joint Rule 26(f) Report and Proposed Discovery Plan (#17). In the two reports, the Defendants request that the undersigned enter a Pretrial Order and Case Management Plan. For the reasons stated herein, the undersigned denies the request contained in certification (#16) and certification (#17).

LCvR 16.1(A) provides as follows:

**(A) Initial Attorney’s Conference.** As soon as is practicable, and in any event not later than fourteen (14) days from joinder of the issues (as defined in Section (D) below), the parties or their counsel shall confer as provided by Fed. R. Civ. P.26(f), and conduct an

“Initial Attorney’s Conference” (“IAC”). In addition, counsel shall also discuss at such conference consent to magistrate judge jurisdiction. See LCvR 73.1(C).

Joinder of issues is defined as provided in LCvR 16.1(D):

**(D) Joinder of the Issues.** For the limited purpose of these Local Rules, “joinder of the issues” occurs when the final answer to a complaint, third-party complaint, or cross claim or the final reply to counterclaim has been filed, or the time for doing so has expired. Rule 12 motions contained in an Answer, but not supported by a brief, act as placeholders and do not prevent joinder of the issues. Where Rule 12 motions are filed and briefed, issues will not join until such motions are resolved by the court, unless otherwise ordered by Court.

An examination of the file in this matter shows that there is pending before the undersigned a Motion to Dismiss (#3) pursuant to Rule 26(b)(6) wherein the Defendant State Auto Property & Casualty Insurance Company moves to dismiss the Plaintiff’s second cause of action. As a result of the pending Motion to Dismiss, pursuant to Rule 12 of the Federal Rules of Civil Procedure, and the fact that the motion has been filed and briefed, issues do not join until the motion is resolved by the Court. An examination of the file shows that the parties were directed by the Clerk to conduct an initial attorneys conference and the undersigned appreciates the fact that the parties have complied with the directives of the Court. However, due to the fact that issues have not at this time joined as provided by the Local Rules of Civil Procedure, the undersigned will decline to enter a scheduling order and will not do so until the issues have joined and at that

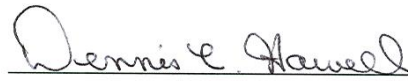
time the parties have filed a Certification of Initial Attorneys Conference after the resolution of the Motion to Dismiss.

The under has noted that in both discovery plans (#16) and (#17), the parties have stated “The parties will promptly submit the required Consent to Magistrate Jurisdiction form.” This indicates to the undersigned that the parties have consented to the jurisdiction of the magistrate judge. If the parties do submit the consent to the jurisdiction of magistrate judge, then the undersigned will enter an Order as soon as possible resolving the Motion to Dismiss of the Defendant State Auto Property & Casualty Insurance Company. If the parties do not file the consent to the jurisdiction of the magistrate judge, then the undersigned will be entering in due course a Memorandum and Recommendation to the District Court regarding the Motion to Dismiss of State Auto Property & Casualty Insurance Company.

### **ORDER**

**IT IS, THEREFORE, ORDERED** that the Court at this time declines to enter a Pretrial Order and Case Management Plan, pursuant to Defendant State Auto Property & Casualty Insurance Company’s Rule 26(f) Report and Proposed Discovery Plan (#16) and the Defendant’s Amended Joint Rule 26(f) Report and Proposed Discovery Plan (#17).

Signed: November 24, 2014



Dennis L. Howell  
United States Magistrate Judge

