IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DAVID E. KATES,

Plaintiff,

No. 3:11-CV-391

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(JUDGE CAPUTO)

B. A. BLEDSOE, et al

Defendants.

(MAGISTRATE JUDGE SMYSER)

<u>ORDER</u>

NOW this _____ day of April, 2012, upon review of Magistrate Judge Smyser's

Report and Recommendation (Doc. 85) for plain error or manifest injustice, IT IS HEREBY

ORDERED that:

- (1) The Report and Recommendation (Doc. 85) is **ADOPTED.**
- (2) Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment (Doc. 46) is **DENIED**.
- (3) This case is **RECOMMITTED** to the Magistrate Judge.

A. Richard Caputo

United States District Judge