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

JOHN M. WARTELLA, :

Plaintiff

:

v. : 3:15-CV-0614

(JUDGE MARIANI)

THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA

:

Defendant

<u>ORDER</u>

AND NOW, THIS DAY OF APRIL, 2017, upon *de novo* review of Magistrate Judge Carlson's Report & Recommendation ("R&R") (Doc. 16), Plaintiff's Objections thereto (Doc. 17), and all other relevant documents, IT IS HEREBY ORDERED THAT:

- 1. The R&R (Doc. 16) is **ADOPTED** only to the extent that the Magistrate Judge recommends dismissing Counts I, II, and III of the Complaint. To the further extent that the R&R recommends that Counts I, II, and III be dismissed as time-barred, and therefore with prejudice, it is not adopted. Therefore Counts I, II, and III are dismissed without prejudice and for the reasons set forth in the memorandum opinion accompanying this Order.
- 2. Plaintiff's Objections (Doc. 17) are **SUSTAINED** only to the extent that they are consistent with this Court's accompanying memorandum opinion.

- 3. Guardian's Motion to Dismiss Counts I, II, and III of the Complaint (Doc. 4) is **GRANTED**.
- 4. Within **14 days** of the date of this Order, Plaintiff shall file an amended complaint which shall specifically address the statute of limitations issues raised in the accompanying memorandum opinion.

Robert D. Marlani

United States District Judge