

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

**DONNA M. ZOMERFELD and  
CHRISTOPHER ZOMERFELD,**

**Plaintiffs**

**v.**

**GARDEN DRIVE-IN and  
NATIONWIDE INSURANCE,**

**Defendants**

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**CIVIL ACTION NO. 3:22-236**

**(JUDGE MANNION)**

**ORDER**

Pending before the court is the report of Magistrate Judge William I. Arbuckle which recommends that the plaintiffs' complaint be dismissed without prejudice. After plaintiffs failed to take advantage of the opportunity to cure deficiencies noted in their complaint (Doc. 8), Judge Arbuckle issued the instant report which finds that the plaintiffs have failed to plead how this court has federal subject matter jurisdiction over their negligence claim, the plaintiffs have failed to meet the requirements of Fed.R.Civ.P. 8 with respect to their claims against Nationwide, and the plaintiffs' claims are likely barred by the applicable statute of limitations for negligence. (Doc. 9). The plaintiffs have failed to file objections to Judge Arbuckle's report.

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. Fed. R. Civ. P. 72(b), advisory committee notes; *see also Univac Dental Co. v. Dentsply Intern., Inc.*, 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. '636(b)(1); Local Rule 72.31.

Upon review of each of the bases for Judge Arbuckle's recommendation, the court finds no clear error of record. Moreover, the court agrees with the sound reasoning which led Judge Arbuckle to his conclusions. The plaintiffs were given the opportunity to cure the deficiencies in their complaint and failed to do so (Doc. 8), and they have made no other filings in this matter. As such, the court will adopt Judge Arbuckle's report and recommendation in its entirety as the decision of the court.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

- (1) The report and recommendation of Judge Arbuckle (Doc. 9) is **ADOPTED IN ITS ENTIRETY AS THE DECISION OF THE COURT.**
- (2) The plaintiffs' complaint (Doc. 1) is **DISMISSED WITHOUT PREJUDICE.**
- (3) The Clerk of Court is directed to **CLOSE THIS CASE.**

*s/ Malachy E. Mannion*  
**MALACHY E. MANNION**  
United States District Judge

**DATE: September 29, 2022**

22-236-01