

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

**TERRY BUTTON and OSSIE BUTTON,**

**Plaintiffs,**

**VS.**

**CHUBB LLOYDS INSURANCE  
COMPANY OF TEXAS,**

**Defendant.**

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

**Case No. 4:11CV536**

**MEMORANDUM ADOPTING REPORT AND  
RECOMMENDATIONS OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On December 19, 2012, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendant Chubb Lloyds Insurance Company of Texas’ Motion to Dismiss (Dkt. 50) be GRANTED as to Plaintiffs’ breach of express and implied warranty claims, Plaintiffs’ negligence and negligent misrepresentation claims, Plaintiffs’ fraud claims, Plaintiffs’ claims of misrepresentations and false statements under the DTPA and Texas Insurance Code (as set forth in ¶¶ 5.4(A), 5.4(C)(1), 5.4(C)(2), 5.4(C)(3)(1)(i), and 5.4(C)(4) of Plaintiffs’ complaint) and Plaintiffs’ affirmative claims of promissory and equitable estoppel and DENIED as to Plaintiffs’ breach of contract claims, Plaintiffs’ claims of breach of common law duty of good faith and fair dealing, Plaintiffs’ claims of unconscionable conduct, actions, and course of actions

under DTPA Section 17.50(a)(1)(B)(3) of the DTPA (as set forth in ¶5.4B of Plaintiffs' complaint), Plaintiffs' claims of unfair settlement practices, under Texas Insurance Code §§ 541.060(a)(2), 541.060(a)(2)(B), 541.060(a)(3), 541.060(a)(4)(A), and 541.060(a)(7) (as set forth in ¶¶5.4(C)(3)(1)(ii)(iii)(iv)(v)(vi) of their complaint), and Plaintiffs' allegations that Defendant violated Texas Insurance Code §§ 542, *et seq.* by failing to timely handle their claim (as set forth in ¶5.4(D)(1) of their complaint).

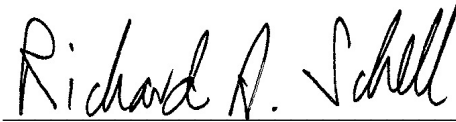
Having received the report of the United States Magistrate Judge, and no objections thereto having been timely filed, this court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report as the findings and conclusions of the court.

Therefore, Defendant Chubb Lloyds Insurance Company of Texas' Motion to Dismiss (Dkt. 50) is GRANTED as to Plaintiffs' breach of express and implied warranty claims, Plaintiffs' negligence and negligent misrepresentation claims, Plaintiffs' fraud claims, Plaintiffs' claims of misrepresentations and false statements under the DTPA and Texas Insurance Code (as set forth in ¶¶5.4(A), 5.4(C)(1), 5.4(C)(2), 5.4(C)(3)(1)(i), and 5.4(C)(4) of Plaintiffs' complaint) and Plaintiffs' affirmative claims of promissory and equitable estoppel and DENIED as to Plaintiffs' breach of contract claims, Plaintiffs' claims of breach of common law duty of good faith and fair dealing, Plaintiffs' claims of unconscionable conduct, actions, and course of actions under DTPA Section 17.50(a)(1)(B)(3) of the DTPA (as set forth in ¶5.4B of Plaintiffs' complaint), Plaintiffs' claims of unfair settlement practices, under Texas Insurance Code §§ 541.060(a)(2), 541.060(a)(2)(B),

541.060(a)(3), 541.060(a)(4)(A), and 541.060(a)(7) (as set forth in ¶¶5.4(C)(3)(1)(ii)(iii)(iv)(v)(vi) of their complaint), and Plaintiffs' allegations that Defendant violated Texas Insurance Code §§ 542, *et seq.* by failing to timely handle their claim (as set forth in ¶5.4(D)(1) of their complaint).

**IT IS SO ORDERED.**

**SIGNED this the 4th day of February, 2013.**



---

RICHARD A. SCHELL  
UNITED STATES DISTRICT JUDGE