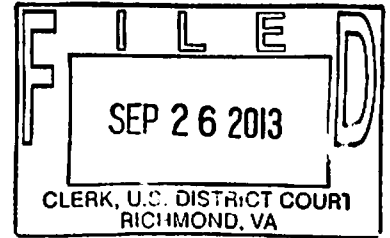


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



USAA CASUALTY INSURANCE
COMPANY, as Subrogee of
Burt H. and Mary Kathleen
Lowe,

Plaintiff,

v.

Civil Action No. 3:12cv868

PM TERMINALS, INC.,
et al.,

Defendants.

ORDER

By Order entered herein on February 6, 2013, the DEFENDANTS' MOTION TO DISMISS PURSUANT TO RULE 12(b)(6) (Docket No. 6) was referred to Magistrate Judge David J. Novak for report and recommendation. The REPORT AND RECOMMENDATION (Docket No. 21) was entered on May 20, 2013 and the plaintiff filed objections (Docket No. 22) on June 3, 2013. By Order entered June 7, 2013 (Docket No. 23) the matter was returned to Magistrate Judge Novak for further consideration.

Having reviewed the SECOND REPORT AND RECOMMENDATION of the Magistrate Judge (Docket No. 28) entered herein on August 6, 2013, the plaintiff's objections thereto (Docket No. 29), and the timely for filing a timely response to the objections and none having been filed, and having considered the record and the SECOND REPORT AND

RECOMMENDATION and finding no error therein, it is hereby ORDERED that:

(1) The plaintiff's objections (Docket No. 29) to the SECOND REPORT AND RECOMMENDATION are overruled;

(2) The SECOND REPORT AND RECOMMENDATION of the Magistrate Judge is ADOPTED on the basis of the reasoning of the SECOND REPORT AND RECOMMENDATION;

(3) The DEFENDANTS' MOTION TO DISMISS PURSUANT TO RULE 12(b)(6) (Docket No. 6) is granted; and

(4) This action is dismissed with prejudice.

The issues are adequately addressed by the briefs and oral argument would not materially aid the decisional process.

The Clerk is directed to send a copy of this Order to the plaintiff and to counsel of record.

It is so ORDERED.

/s/ REP
Robert E. Payne
Senior United States District Judge

Richmond, Virginia
Date: September 25, 2013