

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

TERRY RUTAN,

Plaintiff,

v.

CIVIL ACTION NO. 5:15-cv-09264

STATE BOARD OF RISK AND
INSURANCE MANAGEMENT, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

On June 11, 2015, the Plaintiff, acting pro se, filed a *Complaint* (Document 1-1) in the Circuit Court of Raleigh County, West Virginia. The matter was removed to the United States District Court on July 2, 2015 (Document 1), and, on July 6, 2015, the *Motion to Dismiss on Behalf of Defendants the West Virginia Division of Corrections, Jim Rubenstein, William Vest, Gary Webb, Melinda Frazier, Mary Beth Toler, Irisca Leggett, Danny Aliff, Anthony Butler, and Christopher Petry Specifically Appearing, in Part* (Document 3) was filed.

By *Standing Order* (Document 2) entered on July 6, 2015, this matter was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. Subsequently, by *Order* (Document 9) entered on January 6, 2016, the case was referred to the

Honorable Omar J. Aboulhosn, United States Magistrate Judge, for submission of proposed findings of fact and recommendation for disposition.

On January 27, 2016, Magistrate Judge Aboulhosn submitted a *Proposed Findings and Recommendation* (Document 10) wherein it is recommended that this Court grant the motion to dismiss (Document 3), dismiss the Plaintiff's Complaint (Document 1-1), and remove this matter from the Court's docket. Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by February 16, 2016, and none were filed by either party.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and a party's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).


Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** as follows:

- 1) that the *Motion to Dismiss on Behalf of Defendants the West Virginia Division of Corrections, Jim Rubenstein, William Vest, Gary Webb, Melinda Frazier, Mary Beth Toler, Irisca Leggett, Danny Aliff, Anthony Butler, and Christopher Petry Specifically Appearing, in Part* (Document 3) be **GRANTED**;
- 2) that this action, as to the Defendant, the State Board of Risk and Insurance Management, be **DISMISSED without prejudice** due to the Plaintiff's failure to obtain service upon said Defendant within 120 days after filing of the *Complaint*, and the Plaintiff's failure, after notice, to demonstrate good cause why service of process was not made as required by Rule 4(m) of the *Federal Rules of Civil Procedure*;

- 3) that the Plaintiff's *Complaint* (Document 1-1) be **DISMISSED as to all parties;**
and
- 4) that this matter be **REMOVED** from the Court's docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Aboulhosn, counsel of record, and any unrepresented party.

ENTER: February 22, 2016


IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA