

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

CAREN HERSEY,

Plaintiff,

v.

Case No. 3:17-cv-804-J-32JBT

ALLSTATE FIRE AND CASUALTY
INSURANCE COMPANY,

Defendant.

ORDER

This case is before the Court on the Defendant Allstate Fire and Casualty Insurance Company's Motion to Dismiss Plaintiff's Complaint and Incorporated Memorandum of Law in Support Thereof (Doc. 3). On November 2, 2017, the assigned United States Magistrate Judge issued a Report and Recommendation (Doc. 14) recommending that Count I be dismissed without prejudice to be re-filed fourteen days after the issuance of this Order and that Count II be dismissed without prejudice. No party has filed an objection to the Report and Recommendation, and the time in which to do so has passed. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); M.D. Fla. R. 6.02(a). Upon de novo review of the file and for the reasons stated in the Report and Recommendation (Doc. 14), it is hereby

ORDERED:

1. The Report and Recommendation of the Magistrate Judge (Doc. 14) is **ADOPTED** as the opinion of the Court.

2. Defendant's motion to dismiss (Doc. 3) is **GRANTED** to the extent that:

a. Count I is **DISMISSED without prejudice** subject to refiling via an amended complaint.

b. Count II is **DISMISSED without prejudice** subject to refiling in a separate action if the bad faith claim ripens.¹

3. Not later than **January 8, 2018**, Plaintiff shall file an amended complaint in accordance with the Report and Recommendation.

DONE AND ORDERED in Jacksonville, Florida this 7th day of December, 2017.


TIMOTHY J. CORRIGAN
United States District Judge

jb
Copies to:

¹ In adopting the Report and Recommendation that dismissal without prejudice of the bad faith claim, as opposed to abatement, is appropriate here, the Court does not foreclose the possibility that abatement might be appropriate in different circumstances.

Honorable Joel B. Toomey
United States Magistrate Judge

Counsel of record