

Majority Opinion >

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LUKE J. SULLIVAN, III, individually and on behalf of all others similarly situated, Plaintiff, v. ALLIED INTERSTATE, LLC, and JOHN DOES 1-25, Defendants.

Civil Action No. 16-203

December 9, 2016, Filed

For LUKE J. SULLIVAN, III, on behalf of himself and all others similarly situated, Plaintiff: Mark G. Moynihan, LEAD ATTORNEY, Moynihan Law, P.C., Pittsburgh, PA; Yitzchak Zelman, PRO HAC VICE, Marcus & Zelman, LLC, Ocean, NJ.

For ALLIED INTERSTATE, LLC, and, Defendant: Aleksandra V. Williams, Reed Smith, LLP, Pittsburgh, PA.

Mark R. Hornak, United States District Judge. Cynthia Reed Eddy, United States Magistrate Judge.

Mark R. Hornak

MEMORANDUM OPINION

Mark R. Hornak, United States District Judge

On February 24, 2016, the above captioned case was filed in this Court and was referred to a United States Magistrate Judge for pretrial proceedings in accordance with the Magistrate Judges Act, [28 U.S.C. § 636\(b\)\(1\)](#), and Rules 72.C and 72.D of the Local Rules of Court for Magistrate Judges. On March 22, 2016, Plaintiff filed an Amended Complaint. (ECF No. 2). On May 3, 2016, Defendant filed the pending Motion for Judgment on the Pleadings (ECF No. 4) and supporting brief (ECF No. 5), notwithstanding that it had not yet filed an Answer to the Amended Complaint. The motion has been fully briefed by the parties. (ECF Nos. 5, 7, 8, 11).

On October 18, 2016, Magistrate Judge Cynthia Reed Eddy issued a Report and Recommendation (ECF No. 16) in which she construed the pending motion as a Motion to Dismiss under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil procedure. Relevant here, the R&R recommended that Defendant's motion to dismiss for failure to state a claim be granted and that the Amended Complaint be dismissed with prejudice.¹

Plaintiff filed objections to the R&R on November 1, 2016 (ECF No. 18), to which Defendant filed a response in opposition on December 7, 2016, (ECF No. 19).

In resolving a party's objections, the Court conducts a *de novo* review of any part of the R&R that has been properly objected to. [Fed. R. Civ. P. 72\(b\)\(3\)](#) ; [28 U.S.C. § 636\(b\)\(1\)](#) . The Court may accept, reject, or modify the recommended disposition, as well as receive further evidence or return the matter to the magistrate judge with instructions. *Id.* Upon careful *de novo* review of the pleadings and documents in this case, together with the R&R, objections and response in opposition thereto, the Court concludes that the objections do not undermine the R&R's recommended disposition. Therefore, the Court will overrule Plaintiff's objections and adopt the R&R as the opinion of the Court.

An appropriate Order will issue.

/s/ Mark R. Hornak

Mark R. Hornak

United States District Judge

ORDER

AND NOW, this 9th day of December, 2016:

IT IS HEREBY ORDERED that Defendant's Motion for Judgment on the Pleadings, construed as a Motion to Dismiss pursuant to [Federal Rules of Civil Procedure 12\(b\)\(1\)](#) and [12\(b\)\(6\)](#) , (ECF No. 4) is **GRANTED** and the Amended Complaint (ECF No. 2) is **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that the Report and Recommendation (ECF No. 16) is adopted as the Opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's Objections (ECF No. 18) to the Report and Recommendation are **OVERRULED**.

IT IS FURTHER ORDERED[*2] that the Clerk of Court shall mark this **CASE CLOSED**.

/s/ Mark R. Hornak

Mark R. Hornak

United States District Judge

fn 1

The R&R also addressed Defendant's argument that the Amended Complaint fails to adequately allege a "concrete" injury for purposes of Article III standing, in light of the Supreme Court's recent decisions in *Spokeo, Inc. v. Robins*, __ [U.S.](#) __, [136 S. Ct. 1540](#) , [194 L. Ed. 2d 635](#) (May 16, 2016). The R&R rejected this argument, and no party has objected to this determination.

General Information

Judge(s)	MARK RAYMOND HORNAK
Related Docket(s)	2:16-cv-00203 (W.D. Pa.);
Topic(s)	Other
Parties	LUKE J. SULLIVAN, III, individually and on behalf of all others similarly situated, Plaintiff, v. ALLIED INTERSTATE, LLC, and JOHN DOES 1-25, Defendants.
Date Filed	2016-12-09 00:00:00
Court	United States District Court for the Western District of Pennsylvania