UNITED STATES DISTRICT COURT EASTERN DISTRICT OF KENTUCKY PIKEVILLE

CIVIL ACTION NO. 87-39

STEPHEN MICHAEL COCHRAN, ET AL.,

PLAINTIFFS,

VS:

REPORT AND RECOMMENDATION

ALLSTATE INDEMNITY COMPANY, ET AL.,

DEFENDANTS.

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Currently pending is the motion of the defendants for an order dismissing that portion of the plaintiff's complaint which seek punitive damages. There has been no response filed thereto by the plaintiff.

Examination of the record reveals that the punitive damages are sought for the defendant insurer's alleged bad faith failure to settle under the terms of an insurance policy. As noted by the plaintiff, this issue was foreclosed under state law in Federal Kemper Insurance v. Hornback, 711 S.W.2d 844 (Ky. 1986).

IT IS THEREFORE RECOMMENDED that the defendants' motion to dismiss be granted and that the portion of the complaint relating to punitive damages be stricken.

Particularized objections to this Report and Recommendation must be filed within ten days of same or further appeal is waived. Thomas v. Arn, 728 F.2d 813 (6th Cir. 1984), aff'd 474 U.S. _______, 38 Cr. L. 3031 (December 4, 1985); Wright v. Holbrook, 794 F.2d 1154, 1154-55 (6th Cir. 1986). A party may file a response to another party's objections within ten days after being served with

a copy thereof. Rule 72(B), Fed. R. Civ. P.

This the _____ day of May, 1987.

JOSEPH M. HOOD UNITED STATES MAGISTRATE