

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

WAUSAU BENEFITS, INC.,

Plaintiff,

v.

MARK A. BALDINO,

Defendant.

ORDER

05-C-0007-C

Defendant Mark A. Baldino has moved to dismiss the complaint against him and to vacate the preliminary injunction entered against him on January 31, 2005. The motion will be denied. Plaintiff's motion to dismiss cannot be granted because factual matters remain in dispute that cannot be resolved on a motion to dismiss.

It is true that plaintiff has only a limited chance of recovering anything from defendant. To do so, it must either identify funds in defendant's possession that constitute a payment from the persons who caused his October 9, 2003 accident or proceeds from his uninsured motorist policy or identify assets that can clearly be traced to settlement funds or insurance proceeds. However, plaintiff is entitled to an opportunity to conduct discovery to determine whether such funds or assets purchased with the funds exist. In the pretrial

order, the magistrate judge set October 14, 2005 as the deadline for filing dispositive motions. This will give plaintiff adequate time to conduct the discovery it needs to learn whether defendant has in his possession any property or tangible assets that could be the subject of recovery by plaintiff.

ORDER

IT IS ORDERED that defendant Mark A. Baldino's motion to dismiss the complaint and to vacate the January 31, 2005 preliminary injunction is DENIED.

Entered this 29th day of April, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge