IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

SHARON MONDRY,

Plaintiff, MEMORANDUM AND ORDER

v. 06-C-320-S

AMERICAN FAMILY MUTUAL INSURANCE COMPANY, CONNECTICUT GENERAL LIFE INSURANCE COMPANY and AMERIPREFERRED PPO PLAN,

Defendants.

Plaintiff Sharon Mondry commenced this action against defendants American Family Mutual Insurance Company, Connecticut General Life Insurance Company, and AmeriPreferred PPO Plan alleging violations of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 *et seq*. Additionally, plaintiff alleges defendants American Family Mutual Insurance Company and Connecticut General Life Insurance Company made false statements relating to health care matters in violation of 18 U.S.C. § 1035, engaged in mail fraud in violation of 18 U.S.C. § 1341, engaged in wire fraud in violation of 18 U.S.C. § 1343, and engaged in prohibited racketeering activities in violation of 18 U.S.C. § 1962(c). Jurisdiction is based on 28 U.S.C. § 1331.

The matter is presently before the Court on defendant Connecticut General Life Insurance Company's motion to dismiss plaintiff's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). Also presently before the Court are: (1) defendant

American Family Mutual Insurance Company's motion to dismiss counts three through six of plaintiff's complaint pursuant to Rule 12(b)(6); and (2) defendants American Family Mutual Insurance Company and AmeriPreferred PPO Plan's motion for a more definite statement pursuant to Rule 12(e) concerning counts one and two of plaintiff's complaint. The following facts relevant to defendants' motions are undisputed for the purpose of deciding the present motions.

FACTS

Plaintiff Sharon Mondry is a citizen of the State of Wisconsin residing in Glendale, Wisconsin. Additionally, plaintiff was employed by defendant American Family Mutual Insurance Company (hereinafter American Family) and participated in its self-insured group health insurance plan.

Defendant American Family is an unincorporated company with its principal place of business in the State of Wisconsin. Additionally, defendant American Family serves as both Plan Sponsor and Plan Administrator of defendant AmeriPreferred PPO Plan in which plan plaintiff participated during her period of employment.

Defendant Connecticut General Life Insurance Company (hereinafter CGLIC) is an affiliate of CIGNA Corporation and CIGNA HealthCare Group with its principal place of business in the State of Connecticut. Additionally, defendant CGLIC serves as defendant AmeriPreferred PPO Plan's Claims Administrator.

On January 21, 2003 plaintiff's son Zevee Mondry began speech therapy with Communication Development Center. Plaintiff contacted defendant American Family concerning coverage for such services under the applicable group health insurance plan. However, on June 13, 2003 defendant CIGNA notified plaintiff by letter of its decision to deny coverage for such services. Plaintiff appealed the denial of her claim on June 30, 2003. However, on July 23, 2003 defendant CIGNA notified plaintiff by letter of its decision to uphold its initial denial.

On October 2, 2003 plaintiff terminated her employment with defendant American Family. Plaintiff alleges she declined COBRA continuation of defendant AmeriPreferred PPO Plan because defendant CIGNA represented that specific provisions of said Plan excluded coverage of her son's speech therapy services. However, even after plaintiff's employment with defendant American Family terminated she continued to pursue administrative remedies from defendant CIGNA. Accordingly, on April 18, 2005 defendant CIGNA notified plaintiff's attorney by letter of its decision to authorize reimbursement for speech therapy services provided to plaintiff's son Zevee Mondry. On March 2, 2006 plaintiff received reimbursement in the amount of $3,056.11. However, plaintiff alleges she is entitled to an additional $303.89 in reimbursement under the terms of the governing plan.

Accordingly, plaintiff commenced this action on June 14, 2006. Her prayer for relief includes requests for: (1) any and all medical expenses she incurred during the period in which she would have remained a plan participant through the purchase of continuation coverage but for defendant CGLIC's breach of fiduciary duty, (2) restitution for interest accrued on the amount paid by plaintiff for medical services at issue; and (3) reimbursement of benefits in the amount of $303.89.

MEMORANDUM

A. Standard of Review

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) challenges the sufficiency of the complaint for failure to state a claim upon which relief can be granted. Gen. Elec. Capital Corp. v. Lease Resolution Corp., 128 F.3d 1074, 1080 (7th Cir. 1997)(*citing* Fed. R. Civ. P. 12(b)(6)). Dismissal is appropriate only if it appears beyond doubt that plaintiff cannot prove any set of facts in support of her claim which would entitle her to relief. Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957)(citations omitted).

When deciding a motion to dismiss for failure to state a claim courts are generally restricted to an analysis of the complaint. *See* Hill v. Trustees of Ind. Univ., 537 F.2d 248, 251 (7th Cir. 1976)(*citing* Grand Opera Co. v. Twentieth Century-Fox Film Corp., 235 F.2d 303 (7th Cir. 1956)). Additionally, courts are not

required to accept assertions of law or unwarranted factual inferences contained within the complaint when deciding such motions. Stachowski v. Town of Cicero, 425 F.3d 1075, 1078 (7th Cir. 2005)(*citing* N. Trust Co. v. Peters, 69 F.3d 123, 129 (7th Cir. 1995)). However, courts will accept all well-pleaded facts alleged in the complaint as true and draw all reasonable inferences in favor of plaintiff. Jackson v. E.J. Brach Corp., 176 F.3d 971, 977-978 (7th Cir. 1999)(*quoting* Mallett v. Wis. Div. of Vocational Rehab., 130 F.3d 1245, 1248 (7th Cir. 1997)). With the applicable standard of review in place, the Court will address defendants' various motions to dismiss.

B. Defendant CGLIC's Motion to Dismiss Count One of Plaintiff's Complaint.

Defendant CGLIC asserts the duty to furnish documents under 29 U.S.C. § 1024(b)(4) applies only to a plan administrator as such term is defined under ERISA provisions. Additionally, defendant CGLIC asserts plaintiff's complaint explicitly states that defendant American Family serves as Plan Administrator while defendant CGLIC serves as Claims Administrator. Accordingly, defendant CGLIC argues it is not subject to penalties under 29 U.S.C. § 1132(c) for alleged violations of Section 1024(b)(4). As such, defendant CGLIC argues its motion to dismiss count one of plaintiff's complaint should be granted. Alternatively, defendant CGLIC argues its motion to dismiss count one of plaintiff's complaint should be granted because documents requested by

plaintiff were not subject to mandatory disclosure under Section 1024(b)(4).

Plaintiff asserts defendant CGLIC is subject to penalties under 29 U.S.C. § 1132(c) for violations of Section 1024(b)(4) because it is the "de facto" Plan Administrator in that it controls both the claims administration process and the flow of information to participants. Additionally, plaintiff asserts the documents she requested were subject to mandatory disclosure under Section 1024(b)(4) because they directly affected her meaningful access to claims procedures. Accordingly, plaintiff argues defendant CGLIC's motion to dismiss count one of her complaint should be denied.

Count one of plaintiff's complaint is governed by 29 U.S.C. § 1024(b)(4) which reads in relevant part as follows:

> The administrator shall, upon written request of any participant...furnish a copy of the latest updated summary, plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated....

Penalties for violations of Section 1024(b)(4) are imposed pursuant to 29 U.S.C. § 1132(c)(1)(B) which reads in relevant part as follows:

> Any administrator...(B) who fails or refuses to comply with a request for any information which such administrator is required by this subchapter to furnish to a participant...by mailing the material requested to the last known address of the requesting participant...within 30 days after such request may in the court's discretion be personally liable to such participant...in the amount of up to $100 a day from the date of such failure or refusal...

Accordingly, under the plain language of Section 1132(c)(1) penalties are available only from a plan administrator. Krawczyk v. Harnischfeger Corp., 869 F.Supp. 613, 630 (E.D.Wis. 1994)(*citing* VanderKlok v. Provident Life & Accident Ins. Co., Inc., 956 F.2d 610, 618 (6th Cir. 1992)). Additionally, case law confirms that any cause of action for violations of disclosure requirements is proper only against a plan administrator, the party responsible under the statute. Klosterman v. W. Gen. Mgmt., Inc., 32 F.3d 1119, 1122 (7th Cir. 1994)(citations omitted). ERISA defines a plan administrator as "the person specifically so designated by the terms of the instrument under which the plan is operated..." 29 U.S.C. § 1002(16)(A)(i). In this action, that "person" was defendant American Family not defendant CGLIC.

Plaintiff's complaint expressly provides that defendant American Family serves as Plan Administrator while defendant CGLIC serves as Claims Administrator. Accordingly, defendant CGLIC is not a proper party under Section 1024(b)(4).

Plaintiff argues that defendant CGLIC is a proper party under Section 1024(b)(4) because it is the "de facto" Plan Administrator in that it controls both the claims administration process and the flow of information to participants. However, the Seventh Circuit has not yet determined whether there can be (alongside the official plan administrator) a "de facto" plan administrator. It has suggested that equitable estoppel might sometimes justify treating

someone else as the plan administrator. *See* Rud v. Liberty Life Assur. Co. of Boston, 438 F.3d 772, 774 (7th Cir. 2006); Jones v. UOP, 16 F.3d 141, 144-145 (7th Cir. 1994). However, until there is a clear mandate from the Seventh Circuit on this issue the Court must follow the plain unambiguous language of both Section 1132(c)(1)(B) and Section 1024(b)(4) because "[i]t is a common rule of statutory construction that when the plain language of a statute is clear, courts need look no farther than those words in interpreting the statute." Cler v. Ill. Educ. Ass'n, 423 F.3d 726, 730 (7th Cir. 2005)(*quoting* Gildon v. Bowen, 384 F.3d 883, 886 (7th Cir. 2004)). Accordingly, because defendant CGLIC is not a proper party under Section 1024(b)(4) its motion to dismiss count one of plaintiff's complaint is granted.

C. Defendant CGLIC's Motion to Dismiss Count Two of Plaintiff's Complaint.

Defendant CGLIC asserts only equitable relief is available to a plan participant under 29 U.S.C. § 1132(a)(3) for causes of action brought under 29 U.S.C. § 1104(a)(1). Additionally, defendant CGLIC asserts plaintiff is not seeking equitable relief in this action. Rather, defendant CGLIC asserts plaintiff is seeking purely legal remedies. Accordingly, defendant CGLIC argues plaintiff's complaint fails to state a claim for breach of fiduciary duty under 29 U.S.C. § 1104(a)(1) and as such its motion to dismiss count two should be granted.

Plaintiff implicitly concedes that a cause of action brought under 29 U.S.C. § 1104(a)(1) must seek equitable rather than legal relief. However, plaintiff asserts her requests for relief are entirely equitable in nature. Accordingly, plaintiff argues her complaint states a claim under 29 U.S.C. § 1104(a)(1) for breach of fiduciary duty and as such defendant CGLIC's motion to dismiss count two should be denied.

Under ERISA, a fiduciary is an entity that has discretionary authority over assets of an ERISA plan. Rud, at 774 (citations omitted). Classification as an ERISA fiduciary serves an important function because ERISA mandates that a fiduciary "discharge [its] duties with respect to a plan solely in the interest of the participants and beneficiaries." 29 U.S.C. § 1104(a)(1). Defendant CGLIC does not dispute that it is a fiduciary as such term is defined under ERISA. Additionally, defendant CGLIC does not dispute that as a fiduciary it must comply with Section 1104(a)(1). Rather, defendant CGLIC argues plaintiff fails to state a claim for breach of fiduciary duty because her complaint seeks purely legal rather than equitable relief.

Under ERISA, when a fiduciary breaches its duty under 29 U.S.C. § 1104(a)(1) a plan participant may obtain individual "appropriate equitable relief" under 29 U.S.C. § 1132(a)(3). Kamler v. H/N Telecomm. Services, Inc., 305 F.3d 672, 681 (7th Cir. 2002)(*citing* Varity Corp. v. Howe, 516 U.S. 489, 508-515, 116 S.Ct.

1065, 134 L.Ed.2d 130 (1996)). However, equitable relief means something less than all relief. Great-West Life & Annuity Ins. Co. v. Knudson, 534 U.S. 204, 209, 122 S.Ct. 708, 712, 151 L.Ed.2d 635 (2002)(citation omitted). Accordingly, "[a]lmost invariably ... suits seeking ... to compel the defendant to pay a sum of money to the plaintiff are suits for money damages ... [a]nd money damages are, of course, the classic form of *legal* relief." Zielinski v. Pabst Brewing Co., Inc., 360 F.Supp.2d 908, 923 (E.D.Wis. 2005)(*quoting* Great-West, at 210, 122 S.Ct. at 713)(emphasis in original). Upon review of plaintiff's complaint it is clear that she seeks purely legal rather than equitable relief from defendant CGLIC in this action. Accordingly, defendant CGLIC's motion to dismiss count two is granted.

Plaintiff's prayer for relief concerning count two includes requests for: (1) any and all medical expenses she incurred during the period in which she would have remained a plan participant through the purchase of continuation coverage but for defendant CGLIC's breach of fiduciary duty, (2) restitution for interest accrued on the amount paid by plaintiff for medical services at issue; and (3) reimbursement of benefits in the amount of $303.89. For such relief to be equitable in nature plaintiff must for example seek to impose a constructive trust or an equitable lien on particular property within defendant CGLIC's possession. *See* Great-West, at 213, 122 S.Ct. at 714. However, that is not the

relief plaintiff seeks in this action. Rather, plaintiff seeks to compel defendant CGLIC to pay a sum of money which is the classic form of legal relief. Zielinski, at 923. Accordingly, defendant CGLIC's motion to dismiss count two of plaintiff's complaint is granted because plaintiff cannot obtain the relief she seeks under 29 U.S.C. § 1132(a)(3).

D. Defendants American Family and CGLIC's Motions to Dismiss Counts Three through Five of Plaintiff's Complaint.

Defendants American Family and CGLIC assert plaintiff cannot state a claim for making false statements relating to health care matters under 18 U.S.C. § 1035, for mail fraud under 18 U.S.C. § 1341, or for wire fraud under 18 U.S.C. § 1343 because said criminal statutes are not enforceable by private cause of action. Accordingly, said defendants argue their motions to dismiss counts three though five of plaintiff's complaint should be granted.

Plaintiff implicitly concedes that she cannot maintain a private cause of action for alleged violations of the above cited statutes. However, plaintiff asserts counts three through five of her complaint are not pled as independent claims in which she seeks judgment and relief. Rather, plaintiff asserts said counts are presented solely as predicate acts in violation of the Racketeer Influenced and Corrupt Organizations (RICO) Act, 18 U.S.C. § 1962, which is enforceable by private cause of action. Accordingly, plaintiff argues defendants' motions to dismiss counts three through five of her complaint should be denied.

Criminal statutes which express prohibitions rather than personal entitlements and specify a particular remedy other than civil litigation are "poor candidates for the imputation of private rights of action." Chapa v. Adams, 168 F.3d 1036, 1038 (7th Cir. 1999)(citations omitted). However, a criminal statute may provide an implied private right of action if Congress so intended in enacting the criminal statute. *See* Thompson v. Thompson, 484 U.S. 174, 179, 108 S.Ct. 513, 516, 98 L.Ed.2d 512 (1988)(citations omitted).

Courts which have examined the issue have determined that Congress did not intend to create a private right of action in enacting either the mail fraud or wire fraud statutes. *See e.g.* Wisdom v. First Midwest Bank, of Poplar Bluff, 167 F.3d 402, 408 (8th Cir. 1999)(mail and wire fraud); Ryan v. Ohio Edison Co., 611 F.2d 1170, 1178-1179 (6th Cir. 1979)(mail fraud); Bell v. Health-Mor, Inc., 549 F.2d 342, 346 (5th Cir. 1977)(same); Napper v. Anderson, Henley, Shields, Bradford & Pritchard, 500 F.2d 634, 636 (5th Cir. 1974), *cert. denied*, 423 U.S. 837, 96 S.Ct. 65, 46 L.Ed.2d 56 (1975)(wire fraud).

Likewise, courts have determined that no private right of action exists under 18 U.S.C. § 1035 for making false statements relating to health care matters. *See e.g.* Slovinec v. Ill. Dep't of Human Services, 2005 WL 442555, at *7 n.7 (N.D.Ill. Feb. 22,

2005); Progressive N. Ins. Co. v. Alivio Chiropractic Clinic, Inc., 2005 WL 2739304, at *4 (D.Minn. Oct. 24, 2005). Accordingly, because plaintiff has no private right of action under the criminal statutes enumerated in her complaint it appears beyond doubt that she cannot prove any set of facts in support of counts three through five which would entitle her to relief. Conley, at 45-46, 78 S.Ct. at 102 (citations omitted). As such, defendants American Family and CGLIC's motions to dismiss counts three through five of plaintiff's complaint is granted.

Plaintiff argues counts three through five of her complaint should not be dismissed because said counts are presented solely as predicate acts in violation of the Racketeer Influenced and Corrupt Organizations (RICO) Act, 18 U.S.C. § 1962, which is enforceable by private cause of action. However, were plaintiff's argument correct she would have simply incorporated the violations alleged in counts three through five into the factual allegations of count six which is her RICO cause of action. Instead, plaintiff chose to plead counts three through five as separate and independent causes of action for which no private right of action exists as a matter of law. Accordingly, counts three through five of plaintiff's complaint are dismissed.

E. Defendant American Family and CGLIC's Motions to Dismiss Count Six of Plaintiff's Complaint

Defendant American Family asserts plaintiff's complaint fails to allege facts from which a pattern of racketeering activity can

be inferred. Additionally, defendant American Family asserts plaintiff's alleged injuries were not proximately caused by any alleged predicate acts of wire or mail fraud both of which require detrimental reliance. Accordingly, defendant American Family argues count six of plaintiff's complaint fails to state a claim under RICO, 18 U.S.C. § 1962, and as such its motion to dismiss count six should be granted.

Defendant CGLIC asserts plaintiff's complaint fails to allege either a closed-ended or an open-ended pattern of racketeering activity. Additionally, defendant CGLIC asserts plaintiff's complaint fails to allege that she relied on any of its alleged misrepresentations or that any alleged predicate act caused her injuries. Further, defendant CGLIC asserts plaintiff's complaint fails to allege that it conducted the affairs of an enterprise. Accordingly, defendant CGLIC likewise argues count six of plaintiff's complaint fails to state a claim under RICO, 18 U.S.C. § 1962, and as such its motion to dismiss count six should be granted.

Plaintiff asserts her complaint alleges facts which support an inference of both closed-ended and open-ended continuity. Additionally, plaintiff asserts defendants' predicate acts of mail and wire fraud directly caused her economic injuries. Further, plaintiff asserts reliance is not a required element of either mail or wire fraud when said types of fraud are pled as RICO predicate

acts. Finally, plaintiff asserts her complaint expressly alleges that defendant AmeriPreferred PPO Plan constitutes the enterprise in this action. Accordingly, plaintiff argues count six of her complaint states a claim under RICO, 18 U.S.C. § 1962, and as such defendants American Family and CGLIC's motions to dismiss count six should be denied.

Plaintiff's RICO claim is governed by 18 U.S.C. § 1962(c) which reads as follows:

> It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

To state a claim under Section 1962(c) a RICO plaintiff must allege four elements: "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." Goren v. New Vision Intern., Inc., 156 F.3d 721, 727 (7th Cir. 1998)(citations and internal quotation marks omitted). It is not enough for a plaintiff to allege said elements in boilerplate fashion rather he or she must allege sufficient facts to support each element. Id.

The Court finds that plaintiff's complaint fails to adequately allege the enterprise element. Accordingly, defendants American Family and CGLIC's motions to dismiss count six are granted. Under RICO, an enterprise must be "an ongoing 'structure' of persons associated through time, joined in purpose, and organized in a

manner amenable to hierarchical or consensual decision-making." Richmond v. Nationwide Cassel L.P., 52 F.3d 640, 644 (7th Cir. 1995)(citation omitted). Additionally, while a RICO enterprise can be either formal or informal some type of organizational structure is required. Stachon v. United Consumers Club, Inc., 229 F.3d 673, 675 (7th Cir. 2000)(citations omitted). Further, to constitute a RICO enterprise there must be an "organization with a structure and goals separate from the predicate acts themselves." U.S. v. Masters, 924 F.2d 1362, 1367 (7th Cir. 1991).

Plaintiff alleges defendant AmeriPreferred PPO Plan constitutes the enterprise in this action. However, this assertion is without merit. Defendant AmeriPreferred PPO Plan is simply a document which belies the inference that there is some distinct structure of persons "organized in a manner amenable to hierarchical or consensual decision-making." Richmond, at 644 (citation omitted). Additionally, because said defendant is only a document it is difficult to conceive how it can possess either a structure or goals. Masters, at 1367. Finally, if there is some other enterprise operated by either defendant American Family or defendant CGLIC it is certainly not sufficiently identified in plaintiff's complaint. Accordingly, having failed to sufficiently allege the enterprise element of RICO, defendants American Family and CGLIC's motions to dismiss count six of plaintiff's complaint are granted.

F. Defendants American Family and AmeriPreferred PPO Plan's Motion for a More Definite Statement

Defendants American Family and AmeriPreferred PPO Plan assert plaintiff's complaint is so vague and ambiguous that they cannot reasonably be required to frame a responsive pleading. Accordingly, said defendants argue the Court should grant their motion for a more definite statement and order plaintiff to amend her complaint "so as to specify the documents and material facts [] she contends were withheld from her and the false information given to her."

Plaintiff asserts defendants American Family and AmeriPreferred PPO Plan have been fairly notified of the claims against them because they were provided with: (1) the specific statutory provisions involved, (2) specific reference to implicated allegations of fact; and (3) ample supporting documentary exhibits. Accordingly, plaintiff argues both defendant American Family and defendant AmeriPreferred PPO Plan can respond to each paragraph of her complaint. As such, plaintiff argues their motion for a more definite statement should be denied.

Defendants' motion for a more definite statement is governed by Federal Rule of Civil Procedure 12(e) which reads in relevant part as follows:

> If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading....

After reading plaintiff's complaint, the Court finds that it is not so vague or ambiguous that defendants cannot reasonably be required to frame an answer. Accordingly, defendants American Family and AmeriPreferred PPO Plan's motion for a more definite statement is denied. Defendants' chief attack concerning count one is that plaintiff fails to allege which documents defendant American Family allegedly failed to provide. Additionally, their chief attack concerning count two is that plaintiff fails to allege what material facts defendant American Family allegedly falsely represented to her.

However, plaintiff's complaint must simply place defendants on notice as to the nature of her claims. Leas v. Gen. Motors Corp., 278 F.Supp. 661, 662-663 (E.D.Wis. 1968)(citation omitted). Additionally, plaintiff is not required to "spell out in profuse detail the facts upon which [] recovery rests." Id. at 663. Plaintiff's complaint sufficiently advises both defendant American Family and defendant AmeriPreferred PPO Plan as to the nature of her claims.

Additionally, pleadings are not intended to supply the parties with information that is available to them through the "very broad, liberal discovery devices established by the Federal Rules." Id. Rather, the function of the complaint is simply to give a general indication of the type of litigation involved. Id. Plaintiff's complaint serves this function. Accordingly, under the above cited

principles the Court finds that plaintiff's complaint is sufficiently definite and adequate. As such, defendants American Family and AmeriPreferred PPO Plan's motion for a more definite statement is denied.

ORDER

IT IS ORDERED that defendant Connecticut General Life Insurance Company's motion to dismiss plaintiff's complaint is GRANTED as it relates to said defendant.

IT IS FURTHER ORDERED that defendant American Family Mutual Insurance Company's motion to dismiss counts three through six of plaintiff's complaint is GRANTED.

IT IS FURTHER ORDERED that defendants American Family Mutual Insurance Company and AmeriPreferred PPO Plan's motion for a more definite statement concerning counts one and two of plaintiff's complaint is DENIED.

Entered this day 26th of September, 2006.

BY THE COURT:
S/
_____
JOHN C. SHABAZ
District Judge