Frank Gaweda, *et al.* v. Metropolitan Water Reclamation District of Greater Chicago
10CH 52264

RULING

This matter coming before the court on a corrected motion for partial summary judgment filed by plaintiffs, Frank Gaweda, Jerome McGovern, Tracy Taylor-Gagliardi, Peter Tzakis, Sadgio Fredianelli, Alan Holman, Beverly Sanders, John Cernick, Mickey Huttenhoff, Abbis Bhikhapurawala, Adela Martinez-Johnson, Joseph Cannici, Richard DeLong, Michael Schramm, Martyn Bernstein, Gary Whyte, Jeannine Rehr, James Hilliard, Robert Lau, Thomas Byerly, Ramam Vaitla, Delphus Levy, Mary O'Donnell, Sharon Fitzpatrick, Brenda Holmes, Elizabeth Collins, and Gregory Dudash (collectively, "plaintiffs") on count 1 of their amended verified class action complaint ("AC") against defendant Metropolitan Water Reclamation District of Greater Chicago ("defendant," "District" or "MWRD"); a cross-motion for summary judgment filed by defendant; the matters have been briefed; a hearing held; and the court, being advised in the premises, states as follows:

Defendant is an Illinois municipal corporation located in Cook County, Illinois. (See AC and Answer at ¶ 38). Plaintiffs are all defendant's employees not covered by any collective bargaining agreement with defendant and among the 1,256 budgeted "non-represented employees," 394 of whom were hired prior to January 1, 1994, and 756 of whom were hired subsequent to January 1, 1994. (See AC and Answer at ¶¶ 79-80).

Plaintiffs are seeking relief for claims based upon the terms of compensation for their employment that they contend were agreed to by defendant, including for Termination Pay and Sick Leave Incentive Pay. (See plaintiffs' memorandum in support of motion at 1-4). In support of their claims, plaintiffs refer to "various documents, such as defendant's Employee Handbooks, Compensation Plans, Work Rules, Resolutions, and General Service Directives." (See AC and Answer at ¶ 21, Statement of Material Facts In Support Of Plaintiffs' Motion ("plaintiffs' SOMF") at ¶¶ 1-9; plaintiffs' memorandum in support of motion at 1). Plaintiffs' submissions also refer to a 1968 resolution of defendant's Board of Trustees; 1969 Work Rules, Revised January 1, 1976; 1981 Work Rules; a December 19, 1985 resolution of defendant's Board of Trustees; an October 19, 1994 Directive, GS 94-07, issued to defendant's management of certain departments and the Employee Handbooks. (See e.g. AC at ¶¶ 103, 117 and exs. 1, 2 thereto; plaintiffs' SOMF at ¶¶ 1-9; plaintiffs' memorandum in support of motion at 1-6).

The parties have presented a joint submission of certain uncontested facts. For example, the named plaintiffs were hired by defendant between 1970 and 1999. (See Joint Statement of Uncontested Facts ("JS") at ¶ 3). Certain named plaintiffs hired prior to November 2, 1994 are referred to as the "Pre-1994 plaintiffs" and there are other named plaintiffs hired after November 2, 1994 who are referred to as the "Post-1994 plaintiffs." JS at ¶¶ 4-5.

In pursuing their motion for partial summary judgment, plaintiffs explain that the "sole issue presented in count 1 of the AC is whether the District's actions to retroactively eliminate Termination Pay and Sick Leave Incentive Pay constitute a breach of contract." (See plaintiffs' memorandum in support of motion at 7). Plaintiffs submit that defendant may not "retroactively eliminate vested rights to deferred compensation in the form of accrued termination pay and sick

leave for any employee, regardless of date of hire." Id at 12. Plaintiffs contend that "there is no question of fact or law that a contract for Termination Pay and Sick Leave Pay existed between Plaintiffs and the District;" and "there is no question of fact that the District is in breach of those agreements by revoking Plaintiffs' rights to accrued vested compensation earned during Plaintiffs' many years as District employees." Id. Therefore, according to plaintiffs, "summary judgment should be granted in favor of Plaintiffs and against the District on Count 1 . . . ." Id.

In response to plaintiffs' motion on count 1 of the AC, defendant submits that it subsequently changed its policy "relating to Termination Pay and Sick Leave Incentive Pay in June 2011." (See defendant's memorandum in opposition at 1). According to defendant, "Pursuant to the new policies, Plaintiffs' motion for summary judgment is without merit as the policies provided Plaintiffs with all termination pay and sick leave balances accumulated (and to be accumulated) through June 30, 2011." Id. at 1-2. Defendant adds that "As such, there was no retroactive elimination of these benefits and summary judgment must be entered in favor of the District on the 'sole issue' presented to the court on Plaintiffs' motion." Id at 2.

Defendant contends that its cross-motion for summary judgment is appropriate as a matter of law on all counts because the evidence demonstrates that there is no genuine issue of material fact. (See defendant's cross-motion at ¶ 2). Defendant claims that as to count 1 containing a claim for a breach of contract, summary judgment is appropriate "because there was no breach and no damages." Id. at ¶ 3. Defendant also contends that as to count 3 claiming a breach of contract, summary judgment is appropriate "because plaintiffs have no enforceable employment agreement" with defendant, and even assuming that plaintiffs do, defendant "properly modified the agreements by offering consideration." Id. at ¶ 4. Defendant further

contends that as to counts 2 and 4, the evidence does not support claims for promissory estoppel. According to defendant, it did not make an unambiguous promise to plaintiffs and plaintiffs' reliance on any such statements made by defendant was "unreasonable, unjustifiable and not expected or foreseeable" by defendant. Further, according to defendant, even if it made an unambiguous promise to plaintiffs, plaintiffs and defendant agreed to modify that promise by the offer of consideration. Id. at ¶ 5.

According to the submissions, it seems that in 1994, defendant issued its first Employee Handbook to its non-represented employees (the "1994 Handbook"). JS at ¶ 18. Prior to 1994, defendant apparently did not have a document entitled as an Employee Handbook. Id. The 1994 Handbook contains, in pertinent part, the following language:

> This Handbook is designed to give the Metropolitan Reclamation District of Greater Chicago employees general information about policies, procedures, and benefits at the District. This handbook does not constitute an offer of employment, nor is it a contract of employment or guarantee of continued employment or benefits. It does not create or define any legal rights of District employees, not impose any legal duty upon the District. The Board of Commissioners, the General Superintendent, and District management reserve the right to add, amend, change or eliminate the practices and policies referred to in this handbook. Id. at 19, and referring to "Disclaimer," p. i, and referring to the "1994 Handbook."

The 1994 Handbook includes a Termination Pay policy, originally instituted by the District in 1968 and modified in 1985, as defined by resolution, and a Sick Leave Incentive Pay benefit policy, including an Annual Sick Leave Incentive Pay Redemption and Accumulated Sick Leave Incentive Pay Redemption. JS at ¶ 20. The Handbook also includes references to certain relevant resolutions of the defendant. Id. at ¶ 21 and referring to p. ii of the 1994 Handbook.

Defendant re-issued its Employee Handbook in 2010 (the "2010 Handbook"). Id. at ¶ 23. The 2010 Handbook includes language considered to be a disclaimer that is "largely" identical to

that which is contained in the 1994 Handbook. Id. The 2010 Handbook also contains the statement: "Any conflict between the Employee Handbook and the original source document should be resolved by consulting the source document." Id. at ¶ 24.

On November 18, 2010, defendant's Board of Commissioners (the "Board") decided to eliminate Termination Pay for all non-represented employees effective January 1, 2011. Id. at ¶ 26. The Board also decided to modify the Sick Leave Incentive Pay benefits. Id. at ¶ 27. Accordingly, starting January 1, 2011, the Annual Sick Leave Incentive Pay Redemption would be eliminated and "the accrued sick leave balance at the time of separation" would be reduced from a maximum of 60 days' pay (120 days accrued) to a maximum of 15 days' pay (30 days accrued)." Id. The Board also decided to "reduce the number of sick leave days from 15 to 12 annually, starting January 1, 2011." Id. at ¶ 28. On December 2, 2010, defendant notified its employees that these changes would be effective January 1, 2011, and that each employee could either accept the changes or voluntarily resign by December 31, 2010 to receive all earned and accrued Termination Pay and Sick Leave Incentive Pay benefits. Id. at ¶ 29.

Plaintiffs filed their original complaint on December 15, 2010. Plaintiffs also presented an emergency motion for a temporary restraining order (the "TRO"), which this court granted in part and restrained defendant from retroactively eliminating accrued Termination Pay and Accrued Sick Leave Incentive Pay for certain named plaintiffs. Id. at ¶ 30. On December 28, 2011, this court granted plaintiffs leave to file their AC to add additional named plaintiffs and further granted plaintiffs' motion to expand the TRO to include additional named Pre-1994 plaintiffs.

On June 2, 2011, defendant's Board voted to adopt new policies regarding applicable Termination Pay and Sick Leave Incentive Pay benefits to non-represented employees effective June 30, 2011 (the "June 2nd Motion" or "June 2nd Action"). Id. at ¶ 32 and referring to the June 2nd Motion. For example, with respect to non-represented employees hired prior to November 2, 1994, they "shall receive, upon final separation from the service for reasons other than discharge, termination pay to a maximum of 30 days' pay at a rate the employee was receiving at the time of separation and subject to additional conditions set forth therein." Id. The June 2nd Motion further provides that "Employees will not be eligible for and will not be paid for any termination pay [. . .] for any years of service beyond June 30, 2011." Id.

As to those Pre-1994 plaintiffs and their Sick Leave Incentive Pay benefits, the June 2nd Action provides that "all changes made by the Board on November 18, 2010, including elimination of the annual sick leave incentive program payment, shall remain except Sick Leave will accrue at a rate of 15 days per year, rather than 12 days per year for the period from January 1, 2011 through June 30, 2011," but after "June 30, 2011, sick leave will accrue at a rate of 12 days per year." Id. at ¶ 33 and referring to the June 2nd Motion. The Sick Leave Incentive Policy adopted by defendant on June 2, 2011 also provided that an employee will receive a payment for 50 percent of his or her accumulated sick leave for either the amount of sick leave accumulated through December 31, 2010, or the amount of sick leave the employee has at the time of separation, whichever is lesser, but the accumulated sick leave eligible for payout shall not be greater than 120 days. Id. at ¶ 34.

The Pre-1994 plaintiffs had the choice of resigning "by June 30, 2011, and receiv[ing] all termination pay and sick pay accrued through that date under the policies existing prior to

November 18, 2010," if that employee chose not to accept the June 2nd action by the Board. Id. at 35. The June 2nd Motion also applies to non-represented employees who were hired between November 2, 1994 and December 31, 2010. Id. at ¶ 36.

The June 2nd Motion further provides that "All non-represented employees with a District start date prior to November 2, 1994, will receive two additional days of sick leave to their accumulated sick leave 'bank' as of June 30, 2011 if they choose not to resign by June 30, 2011." Id. at ¶ 35 and referring to the June 2nd Motion. The June 2nd Motion did not include an offer to the Post-1994 employees of two additional sick days to add to their accumulated sick leave "bank." Id. at ¶ 38.

Section 2-1005 of the Code of Civil Procedure, 735 ILCS 5/2-1005, provides for summary judgment when the pleadings, depositions, and admissions on file, together with any affidavits, show that there is no genuine issue as to any material fact such that the moving party is entitled to a judgment as a matter of law. Forsythe v. Clark USA, Inc., 224 Ill. 2d 274, 280 (2007); Outboard Marine Corp., v. Liberty Mutual Insurance Co., 154 Ill. 2d 90, 102 (1992). The party opposing summary judgment need not prove his case to defeat it, but must present some factual basis that would arguably entitle the party to judgment. William Blair v. FI Liquidation Corp., 358 Ill. App. 3d 324, 333-34 (1st Dist. 2005); Flint v. Court Appointed Special Advocates of Du Page County, Inc., 285 Ill. App. 3d 152, 162 (2nd Dist. 1996). When parties file cross-motions for summary judgment, the court is invited to decide the issue of summary judgment as a matter of law. William Blair & Co., 358 Ill. App. 3d at 333. However, the mere filing of cross-motions for summary judgment does not require that the court grant the requested relief to one of the parties where genuine issues of material fact exist precluding summary judgment in favor of

either party. Fogel v Enterprise Leasing Company of Chicago, 353 Ill. App. 3d 165 (1st Dist. 2004); State Farm Insurance Company v. American Service Insurance Company, 332 Ill. App. 3d 31 (1st Dist. 2002).

According to defendant, "[t]he crux of Plaintiffs' claims is that on November 18, 2010, the District retroactively eliminated vested and accrued Termination Pay and Sick Leave Incentive Pay benefits and unilaterally modified Plaintiffs' alleged employment contracts, which they claim provided (a) prospective accrual of Termination Pay; (b) prospective Termination Pay for all accrued Termination Pay at separation; (c) prospective accrual of 15 days of Sick Leave credit per year; (d) prospective annual redemption of Sick Leave Incentive Pay over 120 days on a three to one basis; and (e) full payment for all prospective accumulated Sick Leave Incentive Pay up to 120 days at separation on a two to one basis (hereinafter collectively referred to as the "Prospective Accrual Benefits")." (See defendant's amended memorandum in support at 1-2). Defendant argues that "when the District adopted a new policy on June 2, 2011, the District restored all retroactive benefits to the Pre-1994 and Post-1994 employees, and offered the consideration that Plaintiffs allege in Count III was never offered to modify the Prospective Accrual Benefits. . . ." Id. at 2; see also defendant's memorandum in opposition to plaintiffs' motion at 2.

According to defendant further, "[s]ummary judgment should be granted as to Count I and III because Plaintiffs' suit has in fact become moot, and thus this Court should refrain from deciding a case where the occurrence of events after a filing make it impossible for the court to render effectual relief, and entry of judgment would have only an advisory effect." (See defendant's amended memorandum in support at 2; see also defendant's memorandum in

opposition to plaintiffs' motion at 2-3). Defendant argues that plaintiffs cannot prove their case to prevail on count 1 of the AC. Defendant submits that "There is not a single Plaintiff that can come forward to provide evidence that their Termination Pay and Sick Leave Pay has been retroactively eliminated." (See defendant's memorandum in opposition to plaintiffs' motion at 3). Defendant adds that it is "beyond question that Plaintiffs Termination Pay and Sick Leave Pay has not been retroactively eliminated." Id. and referring to the JS at ¶¶ 31-37. Defendant submits that the June 2nd Motion provides that "all non-represented employees hired before January 1, 2011 with all termination pay and sick leave that they had accumulated through June 30, 2011 and makes changes to those policies prospective only." Id. at 4.

Defendant submits that "[s]ummary judgment should also be granted as to Count III because no enforceable employment agreement exists as a matter of law. But, even if it does, Plaintiffs would have this Court believe that the District never included disclaimers in any of its employee handbooks or manuals until 1994, when in fact, the District included disclaimers in its 1969 Work Rules, thus precluding the formation of an employment contract from that day forward." (See defendant's amended memorandum in support at 2). Defendant adds that "[p]laintiffs' promissory estoppel claims fail for the same reasons that they will not succeed on their breach of contract claims. Also, courts will not uphold a promissory estoppel claim where, as here, an employee's reliance on its employer's statements is unreasonable and unjustifiable." Id.

Defendant suggests that in reviewing its arguments, there are "two aspects to consider: the retroactive elimination of the benefits and the prospective elimination of the benefits." Id. at 3. Defendant argues that based on the "June 2 policies," there is no "retroactive elimination of

any benefits to any non-represented employees either pre- or post 1994." Id. According to defendant, "all claims by Plaintiffs that the District breached a contract or is liable on a promissory estoppel theory based on a retroactive elimination of benefits should be easily disposed of by summary judgment." Id. at 3. "The second issue" then, according to defendant, "is the prospective change of any benefits." Id. "The District's position on this point is that all pre-1994 employees were provided consideration for the prospective changes and thus the changes are valid and summary judgment is appropriate in this regard." Id. at 3-4. According to defendant, "[a]s to the post-1994 employees hired indisputably after a disclaimer was present in the Employee Handbook, continued employment is sufficient consideration." Id. at 4.

Defendant explains further that "[o]n June 2, 2011 the District adopted new policies, thereby modifying the policies adopted by the Board on November 18th." Id. and referring to JS at ¶ 33. It is submitted by defendant that based on the June 2nd Action, Pre-1994 and Post-1994 employees will still receive the Termination Pay that each accrued as of June 30, 2011, to a maximum of thirty days' pay upon separation. Id. Defendant adds that "the June 2nd decision allows Pre-1994 and Post-1994 employees to receive fifty (50%) of the sick leave accumulated as of December 31, 2010, or a maximum of sixty days' of Accumulated Sick Leave Incentive Pay Redemption at the time of separation." Id. and referring to JS at ¶ 34.

Plaintiffs contend that defendant's June 2nd Action "does not render plaintiffs' claims moot." (See plaintiffs' response/reply at 1, 3). According to plaintiffs, the June 2nd Motion "reverses, but only in part, certain aspects of the District's wholesale rescission of the Plaintiffs' accrued vested rights to Termination Pay and Sick Leave Incentive Pay. The June 2 Policy, however, did not reinstate all of the Plaintiffs' accrued and vested contract rights to Termination

Pay and Sick Leave Incentive Pay." Id. at 1-2. Plaintiffs challenge defendant's contention that the June 2nd Action renders moot plaintiffs' claims because there is no longer any elimination of retroactive benefits. Id. at 2. Plaintiffs maintain that the "District's June 2 Policy still eliminated certain vested benefits to which Plaintiffs were entitled, based on the policy prior to November 2010." Id. Rather than mooting plaintiffs' claims as defendant contends, the June 2nd Action, according to plaintiffs, is just a continuing breach of the contract terms, "established by Directive GS 94-07 and Board resolutions with respect to termination pay." Id. at 3.

Plaintiffs maintain that the disclaimer in the 1994 Handbook "was clearly ineffective as to the pre-1994 Plaintiffs for lack of any consideration," and they did not "assent" to a "modification because such modification was not supported by consideration," even though defendant refers "to two additional sick days provided for in the June 2 Policy." Id. at 9-10. Plaintiffs contend that the "post-1994 Plaintiffs' continued employment was not consideration for the relinquishment of their contractual rights." Id. at 11. According to plaintiffs, their promissory estoppel claims, in counts 2 and 4, cannot be disposed of by defendant's motion on the basis that "either because the June 2 Policy restored Plaintiffs' rights to their accrued and vested benefits as of December 31, 2010" or "because [plaintiffs] could not have reasonably relied on any of the statements made during the retirement benefit seminars or of those found in the District's Work Rules, directives and other policies once the handbook disclaimer was promulgated." Id. at 13.

Both sides have cited to certain authority in support of their positions, in addition to the caselaw referred to by the court herein. The cases contain propositions that are instructive in analyzing the issues presented by the cross-motions, but the holding in a decision is based upon

the particular facts presented in the specific case. The parties' dispute here arises from its own factual situation that has not been shown to be on "all fours" with any of parties' cited to caselaw.

Both sides have at least generally referred to the proposition that an employee handbook or other policy statement can create contractual rights if the traditional requirements for contract formation are present. (See Duldulao v. Saint Mary of Nazareth Hospital Center, 115 Ill. 2d 482, 490-91 (1987) and also setting forth the three conditions necessary to form a contract: first, the language of the policy statement must contain a promise clear enough that an employee would reasonably believe that an offer has been made; second, the statement must be disseminated to the employee in such a manner that the employee is aware of its contents and reasonably believes it to be an offer; and finally, the employee must accept the offer by commencing or continuing to work after learning of the policy statement). Under the facts in Duldulao, it was "apparent that the document entitled 'Employee Handbook' created an enforceable right to the particular disciplinary procedures described therein." Id. at 491 and also noting that the handbook did not contain a disclaimer to negate the promises made. After performing the analysis to find a contract existed, the Duldulao Court observed that a "more difficult question is whether or not defendant complied with the provisions of the handbook." Id. at 492. It was found that the employer's failure to provide plaintiff with the required process violated her contractual rights. Id. at 494.

In addition, the parties have discussed the applicability of the decision in the case, Kulins v. Microdot Company, Inc, 121 Ill. App. 3d 520 (1st Dist. 1984), in which the defendant's employees filed a class action lawsuit over their right to recover severance pay under the

employer's original severance pay policy, rather than under its modified policy which acted to decrease severance pay benefits. The Court initially pointed out that "severance pay has frequently been characterized as a form of deferred compensation," and the "right to secure the promised compensation is vested as much as the right to receive wages or any other form of compensation." Id. at 525-26. According to the First District, the "right to earn severance pay, a form of deferred compensation, arose and vested during the term of the 1967 policy, and consequently, survived the termination or modification of that policy." Id. at 527. The Court determined that the employees had a vested right under the original severance policy which precluded retroactive application of the modified policy.

In a case, Lawrence v. The Board of Education of the School District 189, 152 Ill. App. 3d 187 (5th Dist. 1987), that plaintiffs have directed this court to, a retired attendance officer sued the Board of Education alleging that it had wrongfully denied him payment of accumulated sick leave at the time of his retirement. The Fifth District affirmed the trial court's judgment in favor of the plaintiff attendance officer. The Court found that "In the case at bar, at the time of plaintiff's hiring in 1959, the defendant had in effect a policy concerning the right of attendance officers to accumulate and use sick-leave days . . . . The defendant board then eliminated that policy concerning severance pay for attendance officers." Id. at 198. In citing to Kulins, the Fifth District found that the retirement benefit sought by plaintiff "can be characterized as a form of deferred compensation in that plaintiff worked days when he was ill in order to accumulate sick-leave days as a retirement benefit." Id. at 198. The benefit from plaintiff's term of service was deemed to be "vested." Id. The Court additionally found, in again referring to Kulins, "that the doctrine of promissory estoppel offers further support to our conclusion that the "merit pay"

for accumulated sick-leave days, as a form of deferred compensation, is an accrued or vested right, incapable of retroactive modification." Id. at 201. "To allow defendant to retract its promise after years of reliance by plaintiff would run counter to the fundamental principles of equity and justice and raise a question as to defendant's compliance with the covenant of good faith implied in every contract." Id. at 201.

In another case, Ross v. May Company, 377 Ill. App. 3d 387 (1st Dist. 2001), that the plaintiffs rely upon, an employee sued his employer for breaching an employment contract when it terminated him without complying with the terms in the 1968 employee handbook. The defendant/employer did not persuade the First District that the revised handbook modified the employee's employment contract. The Court agreed with the employee that enhanced pension and other new benefits he received did not serve as consideration supporting the unilateral modification of his employment contract. Id. at 391. The Court further agreed with the employee that the new benefits "were offered to all eligible employees and there was never any bargained-for exchange between him and defendant in which he agreed to modify or terminate his contract rights in exchange for the benefits." Id. It is noted that "[N]o contract can be modified [or amended] in *exparte* fashion by one of the contracting parties without the knowledge and consent of the remaining party to the agreement." Id. and citing to Schwinder v. Austin Bank of Chicago, 348 Ill. App. 3d 461, 469 (1st Dist. 2004). The Court further noted that "In this case, there was no bargained-for exchange, and no promises were made where plaintiff agreed to relinquish his contractual rights in exchange for the new benefits." Id. at 392. It was determined that "No consideration flowed from defendant to plaintiff to compensate him for relinquishing the protections he enjoyed under the 1968 employee handbook. Under these

circumstances, the additional benefits defendant offered plaintiff and his co-employees did not constitute consideration for the unilateral modification of plaintiff's employment contract." Id. at 392. The employer did not "bargain with him or other pre-1987 employees who had contractual rights under the old employee handbooks, did not ask for or obtain their assent, and did not purport to provide any consideration other than their continued employment. However, our courts have determined that mere continued employment, standing alone, does not constitute consideration supporting the unilateral modification of an existing employment contract." Id. The Court affirmed the trial court's dismissal of the promissory estoppel claim. Id. at 394. According to the Court, the employee could not establish that he reasonably relied upon the statements in foregoing other possible employment opportunities, where every employee handbook issued to plaintiff since 1990 contained an explicit disclaimer informing employees that the only person who could alter their employment status was the senior vice president of human resources." Id.

In Condon v. American Telephone and Telegraph Company ("AT&T"), 210 Ill. App. 3d 701 (2nd Dist. 1991), an issue presented involved "whether an employer may alter policies contained in employment handbooks and manuals to prevent contractual rights in those policies from arising in its employees." Id. at 702. The Second District found that "In this case, the employer, defendant AT&T, altered an existing manual to disclaim any contractual obligation to its employees which may arise by virtue of the policies contained therein." Id. In citing to Duldulao, the Court found that the AT&T's "incentive plan did not create an implied contract" because the "requirement for contract formation under Duldulao was lacking." Id. at 707. The Court held that "plaintiff is bound by the disclaimers," and the "plaintiff continued to work after

the disclaimers were inserted and is therefore bound by them." Id. at 709. In the Condon case, it was found that AT&T did not breach an implied contract arising from its policies when it demoted plaintiff because "the disclaimers were valid and prevented any such contractual rights from arising." Id. at 702.

Plaintiffs also have referred to the case, Perman v. Archventures, Inc., 196 Ill. App. 3d 758 (1st Dist. 1990), in which an employee submitted a grievance regarding his discharge. The First District noted that in Duldulao, the handbook did not contain a disclaimer and that a contract claim arising from a discharge may be difficult to maintain when the employee handbook expressly provides that the employment relationship is at will. Id. at 765. The Court found, however, that the employer's manual of personnel policies and procedures created enforceable contractual rights despite its disclaimer. Id. The Appellate Court ruled that the plaintiff could not be terminated at will given the "unequivocal language" in the manual providing "for an established grievance procedure for an unfavorable decision affecting employment." Id. at 765-66 and referring to the specific language in the manual pertaining to discharges and "established grievance procedures."

At the court hearing, plaintiffs referenced the case, Doyle v. Holy Cross Hospital, 186 Ill. 2d 104 (1999), where plaintiff brought an action alleging breach of contract and promissory estoppel. After citing to Duldulao, the Court concluded that the "defendant's unilateral modification to the employee handbook lacked consideration and therefore is not binding on the plaintiffs." Id. at 111. It was noted that "Because the defendant was seeking to reduce the rights enjoyed by the plaintiffs under the employee handbook, it was the defendant, and not the plaintiffs, who would properly be required to provide consideration for the modification. But in

adding the disclaimer to the handbook the defendant provided nothing of value to the plaintiffs and did not in itself incur any disadvantage." Id. at 111. It was observed that "In fact, the opposite occurred: the plaintiffs suffered a detriment – the loss of rights previously granted to them by the handbook – while the defendant gained a corresponding benefit." Id. at 111. The Court agreed with the plaintiffs that, after an employer is contractually bound by the provisions of an employee handbook, unilateral modification of its terms by the employer to an employee's disadvantage fails for lack of consideration." Id. at 113. The Court did not appear to be persuaded by defendant's argument in noting that "Contrary to defendant's argument, we are unable to find the required consideration in the plaintiff's continuation of their employment with the defendant following the amendment of the employee handbook." Id. at 114. The Court observed that "it is well established in Illinois that modification of a contract requires consideration, just as the contract initially formed does." Id. at 115. In discussing Duldulao further, the Court also observed that "We believe that Duldulao's reference to continued work was intended to apply to cases in which an employer who did not previously have an employee handbook decides to promulgate one; in these circumstances, employees' continued work for the employer represents consideration for the handbook. Duldulao did not involve handbook modification, and therefore the court in that case was not speaking to the situation involved here." Id. at 115.

In Robinson v. Ada S. McKinley Community Services, Inc., 19 F. 3d 359 (7th Cir. 1994), the employer's letter sent to the plaintiff at the time she was hired and the language in the 1978 personnel policy manual were not ambiguous. Id. at 361. The employer's issuance of a disclaimer of any contractual obligation in a 1986 amendment to the manual did not modify the

original contract. Id. at 364. "A valid modification of the original employment contract between Robinson and McKinley did not occur simply because McKinley unilaterally issued the 1986 Manual containing a disclaimer." Id. It was noted that "Acceptance and consideration cannot be inferred from Robinson's continued work." Id. According to the Seventh Circuit, "By continuing to work, Robinson was merely performing his duties under the original contract." The Court commented that "According to McKinley's logic, the only way Robinson could preserve her rights under their original employment contract would be to quit working after McKinley unilaterally issued the disclaimer. That is ridiculous." Id.

In Dow v. Columbus-Cabrini Medical Center, 274 Ill. App. 3d 653 (1st Dist. 1995), the First District noted that at "issue is whether CCMC's employee handbook and related policy documents constitute an enforceable contract . . . and CCM agreed at trial that Dow was not entitled to sick-day benefits under the documents." Id. at 656. The Court found that the "record indicates an unambiguous offer was made by CCMC which Dow accepted . . . . The promise to pay accumulated sick-day pay is certain, and Dow's continued employment after the promise was made at least suggests implied or presumed acceptance." Id. Plaintiff was found to have properly retired and this "entitled" her to accumulated sick-day time as a retiree. Id. at 659-60.

In Daymon v. Hardin County General Hospital, 210 Ill. App. 3d 927 (5th Dist. 1991), the Fifth District found that the employee handbook contained no provision, express or implied, requiring just cause as a basis for dismissal. The Court, in citing to Duldulao, noted that an employee handbook or other policy statement creates enforceable contractual rights if traditional requirements for contractual formation are met. Id. at 319 and citing to Duldulao, 115 Ill. 2d at 490, but noting that the "handbook" in Duldulao did not contain a disclaimer. The question

involving the existence of a contract can be a matter of law for determination by the court. Id. at 932. The Fifth District determined that plaintiff did not plead that the terms of the alleged contract, as set forth in the handbook, were altered by a subsequent oral agreement to prohibit termination for other than just cause. Id. at 935. Simply stated, the Court found that the "language of the handbook does not contain a promise clear enough that an employee would reasonably believe an offer has been made not to discharge him or her except for just cause." Id. at 934-35 and also noting that the "first of the three requirements for contractual formation set forth in Duldulao is absent here."

This court has also been cited to an Appellate Court decision in Wisconsin, Champine v. Milwaukee County, 280 Wis.2d 603, 696 N.W.2d 245 (2005), that dealt with non-union county employees suing the County of Milwaukee arising from an ordinance passed by the County that reduced the payment of accrued sick leave at the time of retirement. The Court explained that an employee does not automatically have the right to be paid for accrued sick allowance, but an employer may provide a payout provision for part of the overall compensation. The Court further explained that where that occurs, "as in this case, such a benefit represents a form of deferred compensation that is earned as the work is performed." Id. at 615. The Court noted that the "benefit can be changed, but only as it related to work not yet performed." Id. The Court reasoned that once work is performed while a contract or unilateral promise is in effect, permitting retroactive revocation of that promise would be unjust and inequitable. Id. at 616 and stating that "Courts have rejected similar attempts by government entities to change the terms of compensation or benefits after the work has been performed." Id. at 616. However, it was also observed that the holding in the case "does not forever bind the County to pay out all sick

allowance that an employee will accrue in the future, and in that respect it is responsive to the concerns of the County that, in the absence of a collective bargaining agreement or employment contract, it should not be bound to continue providing a benefit it now regrets offering. The ability to obtain a payout for sick allowance accrued after March 14, 2002, may be modified prospectively by the County." Id. at 618.

This court has also been referred to a federal district court decision in Kentucky, Fletcher v. Branch Banking & Trust Corp., 2007 U.S. Dist. Lexis 70300 *11 (W.D. Ky. 2007), wherein former employees charged that the defendant/successor employer altered their employee benefit program in such a way to deprive them of benefits. The federal trial court noted that it had dismissed previously all the state statutory and breach of contract claims and the pending motion practice before the court only involved a claim by a single plaintiff for promissory estoppel. In that connection, the Court observed that since the employer "operated under a written benefits plan, . . . Kentucky courts have not precisely defined what evidence would be necessary to support a promissory estoppel claim in such circumstances." Id. at *2. The Court addressed the "seven categories of Defendant's statements or interactions which Plaintiff considers promises" and upon which his promissory estoppel claim was based. Id. at *8. In finding no evidence from which an inference could be drawn "that Defendant made a direct promise never to change the Program or to operate the Program in any way other than as outlined in the Employee Handbook," the federal trial court determined that plaintiff could not satisfy the first element of a promissory estoppel claim. Id. at *13. According to the Court, "a key legal question" in the case was "whether a claim of promissory estoppel can proceed where the written documents specifically allow BB&T to change the leave policy." Id. at *17. After referring to the clear,

acknowledged writing involved and the vague "promises" reflected in the evidence, the district court explained that to allow a promissory estoppel claim "to create contractual liability for Defendant" under the circumstances "would expand the doctrine well beyond the narrow confines Kentucky courts have allowed." Id., at *17.

After considering the applicable caselaw in the submissions and in this ruling in view of the evidentiary and stipulated record presented by the parties, this court finds that defendant cannot retroactively eliminate unilaterally plaintiffs' vested rights to deferred compensation in the form of plaintiffs' accrued and earned Termination Pay and Sick Leave Incentive Pay benefits that are set forth in count 1 and 2. (See e.g. Duldulao; Doyle; Ross; Lawrence; Kulins). Those accrued benefits that have been earned based upon plaintiffs' years of service cannot be retroactively eliminated unilaterally by defendant in its November 2010 action or in the June 2nd Motion. (See e.g. Doyle; Ross; Lawrence; Kulins). Plaintiffs have demonstrated that they have earned accrued Termination Pay and Sick Leave Incentive Pay benefits at the time the June 2nd Motion was issued. (See AC and Answer at ¶¶ 92-93 and at ¶¶100-101).

Count 1 of plaintiffs' AC is captioned as "Breach of Employment Agreement Declaratory Judgment." It seeks a declaration that defendant's November 18, 2010 decision to eliminate accrued Termination Pay for plaintiffs and eliminate all accrued Sick Leave Incentive Pay in excess of 15 days constitutes breaches of plaintiffs' employment agreements. (See AC, count 1 at prayer for relief). Plaintiffs also seek to enjoin defendant from retroactively eliminating accrued Termination Pay and accrued Sick Leave Incentive Pay up to a maximum of 60 days. Id. Defendant argues that the June 2nd Motion changed the policy with respect to Termination Pay and Sick Leave Incentive Pay that is referred to in the November 18, 2010 action taken by

defendant's Board. According to defendant, the June 2nd Motion does not eliminate retroactively those benefits to plaintiffs as they existed prior to November 18, 2010. (See e.g. defendant's memorandum in support at 4-5)

In pursing a declaratory judgment, a plaintiff must show: (1) a legal tangible interest; (2) a defendant having an opposing interest; and (3) an actual controversy between the parties concerning such interests. (See Beahringer v. Page, 204 Ill. 2d 363, 373 (2003); Jordan v. Knafel, 355 Ill. App. 3d 534, 544 (1st Dist. 2005); Kovilic v. City of Chicago, 351 Ill. App. 3d 139, 143 (1st Dist. 2004); see also 735 ILCS 5/2-701 *et seq.*); A declaratory judgment allows a trial court "to become involved in a controversy . . . after the dispute has arisen, but before steps are taken which give rise to claims for damages or relief. The parties to the dispute can then learn the consequences of their actions before acting." Howard v. Chicago Transit Authority, 402 Ill. App. 3d 455, 460 (1st Dist. 2010). "[T]he procedure should be used to afford security and relief against uncertainty with a view to avoiding litigation, not toward aiding it." Howard, 402 Ill. App. 3d at 460, citing to Lihosit v. State Farm Mutual Automobile Insurance Co., 264 Ill. App. 3d 576, 580 (1st Dist. 1993); see also Bank of Chicago-Garfield Ridge v. Park National Bank, 237 Ill. App. 3d 1085, 1096 (1st Dist. 1992). Although provisions of the Declaratory Judgment Act, 735 ILCS 5/2-701 *et seq.*, should be construed liberally, the Act does not create in itself substantive rights or duties, however, instead, merely affords an additional procedural method for the judicial determination of rights and duties. Because the remedy is basically procedural, an action for declaratory relief must state a legally sufficient claim based upon a particular substantive legal theory. Denkewalter v. Wolberg, 82 Ill. App. 3d 569, 571 (1st Dist. 1980); see also First National

Bank of Deerfield v. Lewis, 186 Ill. App. 3d 16, 19 (1st Dist. 1989); Mack v. Plaza Dewitt Limited Partnership, *et al.*, 137 Ill. App. 3d 343, 349 (1st Dist. 1985).

This court entertained and granted, in part, plaintiffs' motion for a temporary restraining order immediately after this lawsuit was filed. The order temporarily enjoined defendant from taking certain action that adversely affected specific benefits owed to certain plaintiffs. Subsequently, and while this case was pending, defendant passed the June 2nd Motion. Notwithstanding that action, plaintiffs have established the elements for declaratory relief. Defendant has not demonstrated that certain declaratory relief being sought in count 1 should be denied because of the June 2nd Motion.

An actual controversy exists if there is a legitimate dispute of an immediate and definite nature involving the parties' claimed rights, the resolution of which will aid in the determination of the matter or some part thereof. (See generally Greenberg v. United Airlines, 206 Ill. App. 3d 40, 48 (1st Dist. 1990)). The AC and the answer thereto present a ripe controversy. The condition of justiciability is satisfied where the mere existence of a challenge to the plaintiffs' legal interests casts doubt, insecurity and uncertainty upon the plaintiff's legal rights or status. Id. and citing to Stone v. Omnicom Cable Television of Illinois, Inc., 131 Ill App. 3d 210, 214 (1st Dist. 1985). Plaintiffs contend that the June 2nd Motion still infringes upon their vested rights to Termination Pay and Sick Leave Incentive Pay. (See e.g. plaintiffs' response/reply at 2-5). Plaintiffs also submit that defendant is not precluded from once again taking the action it did on November 18, 2010 to eliminate plaintiffs' earned and accrued deferred compensation benefits. Id.

A determination of the contractual rights of plaintiffs to the earned and accrued benefits that they describe in counts 1 and 2 still remains at least a part of the overall and actual controversy between the parties, even though defendant asserts that "Plaintiffs' retroactive benefits have been restored" by the June 2nd Motion and there can no longer be a claim for a "breach of contract" or any "damages." (See e.g. defendant's cross-motion at ¶ 3 and amended memorandum in support at 4-5). Plaintiffs are not seeking an award of damages in count 1 or 2, but rather a declaration of their rights to certain deferred compensation benefits. Although relying on the June 2nd Motion to support its challenge to count 1, defendant conveys an impression that it is not acknowledging any of the contractual rights that plaintiffs are asserting to their Termination Pay and Sick Leave Accrual or Incentive Pay as a result of defendant's November 18, 2010 action and June 2nd Motion. (See e.g. defendant's memorandum in opposition to plaintiffs' motion at 3-4 and indicating defendant's apparent view that there is no need "getting into any issues related to whether these policies created contractual rights and assuming for the sake of this argument that they do;" see also defendant's amended memorandum in support at 7 indicating that "Although the District has acted lawfully assuming there was a valid contract, the District does not concede that there was a valid contract").

Plaintiffs have demonstrated that there remains a "concrete dispute" requiring an "immediate and definitive determination" of the plaintiffs' rights to Termination Pay and Sick Leave Incentive Pay benefits that have accrued because they have been earned, the resolution of which will aid in the termination of at least some portion of the parties' actual and overall controversy. (See generally Illinois Gamefowl Breeders Ass'n v. Block, 75 Ill. 2d 443, 450 (1979); see also Stone at 14). Plaintiffs' concern over their rights to the earned and accrued

employment benefits they describe in count 1 or 2 based upon the underlying facts and issues raised in the pleadings is not moot or no longer ripe for the reasons defendant is advancing. The controversy over plaintiffs earned, accrued and vested rights regarding Termination Pay and Sick Leave Incentive Pay has not been entirely resolved in plaintiffs' favor as a result of the June 2nd Motion to obviate the need for a judicial determination. A declaration of plaintiffs' contractual rights to their earned and accrued Termination Pay and Sick Leave Incentive Pay benefits that defendant sought to eliminate by virtue of the November 18, 2010 action is warranted.

To the extent that plaintiffs are still seeking an injunction in count 1 or 2 against defendant, plaintiffs are confronted with additional elements to make a sufficient showing to warrant and support such relief. An injunction is considered an extraordinary remedy. Sadat v. American Motors Corp., 104 Ill. 2d 105, 115 (1984). A party seeking an injunction must demonstrate a clear and ascertainable right that needs protection, that he or she will suffer irreparable harm if the injunction is not granted and that there is no adequate remedy at law. Helping Others Maintain Environmental Standards v. A.J. Bos, 406 Ill. App. 3d 669, 688 (2nd Dist. 2010); Kopchar v. City of Chicago, 395 Ill. App. 3d 762, 771-72 (1st Dist. 2009). It has not been demonstrated that the injunctive relief sought is necessary or warranted under the allegations in count 1 or 2. An evidentiary showing has not been made to establish that a breach of contract has occurred that would cause irreparable harm if injunctive relief is not granted now, and even if such a breach has occurred, it has not been proven that plaintiffs would not have an adequate remedy at law, particularly since the claim involves earned and accrued payment benefits only. In considering the injunctive relief being requested in count 1 or 2, consideration has been given to defendant's assertion that "there is not a single Plaintiff that can come forward

to provide evidence that their Termination Pay and Sick Leave pay has been retroactively eliminated." (See e.g. defendant's memorandum in opposition to plaintiff's motion at 3). Plaintiffs also appear to acknowledge that the June 2nd Motion did "reverse" at least "in part, certain aspects of the Plaintiffs' accrued vested rights to Termination Pay and Sick Leave Incentive Pay." (See e.g. plaintiffs' response/reply in support at 1-2). There simply has been an insufficient showing for the injunctive relief being sought in count 1 or 2.

With respect to defendant's cross-motion and the Pre-1994 plaintiffs, defendant has not shown that the June 2nd Motion could modify or amend their contractual right to accrue prospectively Termination Pay and Sick Leave Incentive Pay in two forms, an Annual Sick Leave Incentive Pay and a Sick Leave Incentive Pay at the time of their separation, that are described in the AC. (See e.g. AC and answer at ¶¶ 102, 106). Plaintiffs have referred to defendant's Work Rules, Resolutions, the GS 94-07 Directive and other statements made by defendant that rebuts defendant's contention that there is no enforceable contract for the deferred compensation benefits between the defendant and the Pre-1994 plaintiffs that was adversely affected by the November 18, 2010 action and not entirely remedied by the June 2nd Motion. (See e.g. Duldulao; Doyle; Ross; Perman; Lawrence; Kulins).

Defendant has failed to establish that the Pre-1994 plaintiffs do not have an enforceable claim of right to accrue prospectively Termination Pay and Sick Leave Incentive Pay that are described in the AC, notwithstanding the June 2nd Motion. Defendant has not shown that it can amend or modify the existing employment arrangement with the Pre-1994 plaintiffs by rescinding unilaterally their right to accrue prospectively the deferred compensation benefits that are described in the AC, notwithstanding the June 2nd Motion. (See e.g. plaintiffs'

memorandum in support of motion at 10-12; see also Kulins at 527; see also Doyle; Ross; Perman; Lawrence). Defendant has also failed to make a convincing showing that it did not make an unambiguous promise or statement regarding Termination Pay and Sick Leave Incentive Pay to the Pre-1994 plaintiffs and that the Pre-1994 plaintiffs' reliance on any such promise or statement made by defendant was unreasonable, unjustified and not expected or foreseeable by defendant.

"Applying the well-established principles of contract law, courts have held that modifications to terms and provisions of employee handbooks cannot apply to existing employees in the absence of consideration." (See e.g. Doyle at 113). Moreover, the continued work by the employee does not, by itself, constitute consideration for a disclaimer which is unilaterally added to a handbook, to an employment agreement or to a policy statement. (See e.g. Doyle at 115; see also Ross at 392 and indicating that no bargaining with plaintiff or other pre-1987 employees occurred in that case to provide the consideration to change existing rights to benefits; see also Robinson at 364 and also indicating that there was no bargained for exchange to support the employees' relinquishment of the protections they were entitled to under the prior manual).

Defendant has shown that the disclaimer language is unambiguous and prominently displayed in the 1994 Handbook. It has not been established that defendant issued and published to its employees similar disclaimer language prior to the existence of the 1994 Handbook. Pre-1994 plaintiffs hired prior to the issuance and publication of the 1994 Handbook have asserted a claim to an enforceable right to receive Termination Pay and Sick Leave Incentive Pay under the terms of the policy and practice existing when each such employee was hired. Notwithstanding

the June 2nd Motion, a convincing showing has not been made that the Pre-1994 plaintiffs received consideration for purposes of eliminating their claim to enforceable rights to accrue prospectively Termination Pay and Sick Leave Incentive Pay benefits. Any reference by defendant to the two additional sick days offered to Pre-1994 plaintiffs as consideration is not controlling on this record. It cannot be determined that the offer to those plaintiffs as a matter of law constitutes the necessary consideration that defendant is advocating in its motion. Simply continuing to work as an employee after defendant offered the two additional sick days, by itself, on this record is an insufficient basis to demonstrate that a Pre-1994 plaintiff accepted the offer as consideration.

With respect to defendant's cross-motion and the Post-1994 plaintiffs, defendant has made a sufficient showing that those plaintiffs who were hired after the issuance and publication of the 1994 Handbook are confronted with different factual circumstances than the Pre-1994 plaintiffs under the applicable law cited to. In view of the clear and prominently displayed disclaimer language in the 1994 Handbook, defendant has demonstrated that Post-1994 plaintiffs do not have an employment contract that cannot be amended or modified and that Post-1994 plaintiffs do not have a basis in the record for a reasonable expectation of a vested right to accrue prospectively Termination Pay and Sick Leave Incentive Pay after the June 2nd Motion. The disclaimer language of the 1994 Handbook is compelling and is applicable to the claim of a contractual right or a reasonable expectation of a right to accrue prospectively benefits that are described in the AC by Post-1994 plaintiffs. Those Post-1994 plaintiffs have not refuted the argument made by defendant that it could and did by its June 2nd Motion amend or modify Termination Pay and Sick Leave Incentive Pay to accrue prospectively without

breaching any contractual rights that the Post-1994 plaintiffs claim they hold in the AC. Those Post-1994 plaintiffs have not raised a genuine issue of material fact that the defendant is precluded from amending or modifying the prospective accrual of Termination Pay and Sick Leave Incentive Pay benefits pursuant to the June 2nd Motion. Defendant has established that there is no valid and enforceable agreement between it and the Post-1994 plaintiffs that could not be amended or modified by the June 2nd Motion without breaching such an agreement. There is also no indication that defendant agreed to an obligation to offer and provide consideration to those Post-1994 plaintiffs, in addition to offering them continued employment, upon issuing the June 2nd Motion addressing Termination Pay and Sick Leave Incentive Pay benefits.

Plaintiffs have referred to the language in the 1994 Handbook stating, in effect, that if there is any conflict between the Handbook and the original source document, the employee should consult the source document in an attempt to create a basis for a Post-1994 plaintiff to claim a vested contractual right to accrue prospectively benefits that are described in the AC. The Post-1994 plaintiffs have not made a convincing argument on this matter. The so-called source documents that plaintiffs have identified do not provide an evidentiary basis for a Post-1994 plaintiff to claim that he or she relied on specific conflicting language in a source document to assert a claim to a right to accrue prospectively Termination Pay and Sick Leave Incentive Pay that supercedes the disclaimer language in the 1994 Handbook. Defendant has established that with respect to the Post-1994 plaintiffs, the disclaimer language in the 1994 Handbook is not in conflict with any original source document that any Post-1994 plaintiff has identified and relied upon to assert a claim to an enforceable right to accrue prospectively

Termination Pay and Sick Leave Incentive Pay benefits that are described in the AC. It is noted that those plaintiffs were hired after the issuance and publication of the 1994 Handbook containing the disclaimer language. Defendant has demonstrated that in view of the "Disclaimer" in the Handbook, a Post-1994 plaintiff cannot show the existence of a definite promise or statement independent of the general language in the 1994 Handbook to support a promise or statement clear enough to support a claim that a Post-1994 plaintiff could reasonably believe that defendant made an offer regarding the prospective accrual of Termination Pay or Sick Leave Incentive Pay benefits to that employee that could not be amended or modified by the June 2nd Motion.

Plaintiffs have demonstrated that as of the June 2nd Motion, they earned and accrued Termination Pay and Sick Leave Incentive Pay benefits that are described in the AC. Plaintiffs have not raised a genuine issue of material fact that Post-1994 plaintiffs have an enforceable and a vested right to accrue prospectively Termination Pay and Sick Leave Incentive Pay benefits after the June 2nd Motion.

IT IS HEREBY ORDERED, based upon the foregoing, the cross-motions, the submissions and the parties' arguments, that:

Plaintiffs' motion for partial summary judgment is granted in part and it is declared that defendant could not retroactively eliminate earned and accrued Termination Pay and Sick Leave Incentive Pay benefits by its action taken on November 18, 2010 or by its June 2nd Motion. Plaintiffs' request for injunctive relief for the reasons stated in its motion is denied.

Defendant's cross-motion for summary judgment is granted in part as to Post-1994 plaintiffs only and in a limited respect. By its June 2nd Motion, defendant did not breach an enforceable employment agreement with any Post-1994 plaintiff or an unambiguous promise or statement made to any Post-1994 plaintiff regarding the claim of right to accrue prospectively Termination Pay and Sick Leave Incentive Pay that are described in the AC. Defendant's cross-motion is also granted in part to the extent that it has been shown that the injunctive relief requested should be denied as to count 1.

Dated: January 2012

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JAN 25 2012

Richard J. Billik, Jr., Judge

Judge Richard J. Billik, Jr.
Circuit Court-1585