

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HAL RUDDICK, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 09 C 7651
)	
SHERWIN MANOR NURSING CENTER,)	
LLC,)	
)	
Defendant.)	

MEMORANDUM ORDER

Sherwin Manor Nursing Center, LLC ("Sherwin Manor") has filed its Answer to the ERISA Complaint brought against it by the Trustees of two employee benefit funds ("Trustees"). This memorandum order is issued sua sponte to require the correction of one rule-violative aspect of that responsive pleading.

Both Answer ¶¶9 and 16 attempt to invoke the disclaimer provisions of Fed. R. Civ. P. ("Rule") 8(b)(5) as the predicate for obtaining a deemed denial of Trustees' corresponding allegations. But Sherwin Manor's counsel (an experienced member of a large multinational law firm) has inexplicably substituted a claimed inability "to admit the truth" of Trustees' allegations for the more demanding Rule-required inability "to form a belief about the truth" of those allegations--see App. ¶1 to State Farm Mut. Auto. Ins. Co. v. Riley, 199 F.R.D. 276, 278 (N.D. Ill. 2001).

Accordingly Sherwin Manor's disclaimers are stricken, with leave granted to cure the flaw identified here by an appropriate

amendment (not a full Amended Answer) to be filed on or before February 5, 2010, failing which Trustees' corresponding allegations will be deemed to have been admitted. No charge is to be made to Sherwin Manor by its counsel for the added work and expense incurred in correcting counsel's own errors. Sherwin Manor's counsel is ordered to apprise his client to that effect by letter, with a copy to be transmitted to this Court's chambers as an informational matter (not for filing).



Milton I. Shadur
Senior United States District Judge

Date: January 26, 2010