



Addressing the reason why she believes the final decision of the Commissioner ought to be either reversed or remanded, the plaintiff's memorandum of points and authorities was filed on April 6, 2007. Therein, she contends that the administrative law judge ("ALJ") erred in failing to find that her significant disc disease met Listing 1.04(A) (20 C.F.R. Part 404, Subpart P, Appendix 1), in concluding that she retained the functional ability to perform light work activity, in failing to obtain the testimony of a medical witness in order to fulfill his duty to develop the record adequately, and in failing to apply the Medical-Vocational Guidelines ("Grids"), 20 C.F.R., Pt. 404, Subpt. P, App. 2, Rule 201.09.<sup>2</sup> No written request was made for oral argument.<sup>3</sup> On May 7, 2007, the Commissioner filed his Motion for Summary Judgment and supporting memorandum. The undersigned having now reviewed the administrative record, the following report and recommended disposition are submitted.

## **I. Standard of Review**

The court's review is limited to a determination as to whether there is substantial evidence to support the Commissioner's conclusion that the plaintiff failed to meet the conditions for entitlement to a period of disability insurance benefits ("DIB") pursuant to the Act. "Under the . . . Act, [a reviewing court] must uphold the factual findings of the [Commissioner], if they are supported by substantial evidence and were reached through application of the correct legal

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<sup>2</sup> "Grid" Rule 201.09 directs a finding of disability for an individual closely approaching advanced age, who has a limited education, can perform only sedentary work, and has an unskilled prior work record or no transferable skills.

<sup>3</sup> Paragraph 2 of the court's Standing Order No. 2005-2 direct that a plaintiff's request for oral argument in a Social Security case, must be made in writing at the time his or her brief is filed.

standard.” *Mastro v. Apfel*, 270 F.3<sup>d</sup> 171, 176 (4<sup>th</sup> Cir. 2001) (*quoting Craig v. Chater*, 76 F.3<sup>d</sup> 585, 589 (4<sup>th</sup> Cir. 1996)). This standard of review is more deferential than *de novo*. “It consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance.” *Mastro*, 270 F.3<sup>d</sup> at 176 (*quoting Laws v. Celebrezze*, 368 F.2<sup>d</sup> 640, 642). “In reviewing for substantial evidence, [the court should not] undertake to reweigh conflicting evidence, make credibility determinations, or substitute [its] judgment for that of the [Commissioner].” *Id.* (*quoting Craig v. Chater*, 76 F.3<sup>d</sup> at 589). The Commissioner’s conclusions of law are, however, not subject to the same deferential standard and are subject to plenary review. *See Island Creek Coal Company v. Compton*, 211 F.3<sup>d</sup> 203, 208 (4<sup>th</sup> Cir. 2000); 42 U.S.C. § 405(g).

## **II. Administrative History**

The record shows that the plaintiff protectively filed her application for DIB on or about March 12, 2004 claiming disability beginning May 8, 1993.<sup>4</sup> (R.16,108-111). After her application was denied, both initially and on reconsideration, an administrative hearing on her application was held on July 26, 2005 before an ALJ. (R.76-93,97-107). At the hearing, the plaintiff was present, testified and was represented by counsel. (R.25-75,94-96). Utilizing the agency’s standard five-step

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<sup>4</sup> Through her attorney, at the hearing the plaintiff amended her alleged disability onset date to May 23, 1998. (R.16,73).

inquiry,<sup>5</sup> the plaintiff's claim was subsequently denied by written administrative decision on December 9, 2005. (R.13-24).

At the first decisional step, the ALJ found that the plaintiff had no reported income after 1993 and had not engaged in substantial gainful activity since her amended onset date of May 23, 1998. (R.17,23).

At step-two the ALJ concluded that the medical evidence failed to establish the existence of a "severe" impairment prior to the expiration of the plaintiff's insured status on December 31, 1998. (R.23). As part of this consideration, the ALJ acknowledged that the plaintiff's medical records showed longstanding and well-documented diagnoses of gastrointestinal reflux disease (R.17) and lumbar disc disease with attendant radiculopathy (R.18-19). On the basis, however, of a single cryptic "non severe" entry in the "subject" block heading of a Report of Contact form, the

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<sup>5</sup> Determination of eligibility for social security benefits involves a five-step inquiry. *Mastro v. Apfel*, 270 F.3d 171, 177 (4<sup>th</sup> Cir. 2001). It begins with the question of whether the individual engaged in substantial gainful employment. 20 C.F.R. § 404.1520(b). If not, step-two of the inquiry requires a determination of whether, based upon the medical evidence, the individual has a severe impairment. 20 C.F.R. § 404.1520(c). If the claimed impairment is sufficiently severe, the third-step considers the question of whether the individual has an impairment that equals or exceeds in severity one or more of the impairments listed in Appendix I of the regulations. 20 C.F.R. § 404.1520(d). If so, the person is disabled; if not, step-four is a consideration of whether the person's impairment prevents him or her from returning to any past relevant work. 20 C.F.R. § 404.1520(e); 20 C.F.R. § 404.1545(a). If the impairment prevents a return to past relevant work, the final inquiry requires consideration of whether the impairment precludes the individual from performing other work. 20 C.F.R. § 404.1520(f).

ALJ concluded that neither condition was a “severe” impairment<sup>6</sup> within the meaning of the Act. (R.20,23,255).

Despite the dubiety of this step-two finding, it is not herein contested, most likely on the basis of the ALJ’s continued consideration of the claim pursuant to later steps in the decisional process.

At step-three, the ALJ concluded that the plaintiff had exhibited no condition which satisfied the requirement of a medical listing before the expiration of her insured status at the end of 1998. In his finding that the plaintiff’s lumbar disc disease neither met nor equaled Listing 1.04(A), the ALJ discounted the results of a 2005 independent medical examination and evaluation by Alex Ambroz, MD, and relied instead primarily on the absence of disabling functional limitations identified as part of the state agency physician reviews. (R.20-22).

After next assessing her activities and functional abilities through the expiration of her insured status, the ALJ found that the plaintiff retained the capacity to do light work<sup>7</sup> and that she

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<sup>6</sup> Quoting *Brady v. Heckler*, 724 F.2<sup>d</sup> 914, 920 (11<sup>th</sup> Cir. 1984), the Fourth Circuit held in *Evans v. Heckler*, 734 F.2<sup>d</sup> 1012, 1014 (4<sup>th</sup> Cir. 1984), that “an impairment can be considered as ‘not severe’ only if it is a *slight abnormality* which has such a *minimal effect* on the individual that it would not be expected to interfere with the individual’s ability to work, irrespective of age, education, or work experience.” *See also* 20 C.F.R. § 404.1520(c).

<sup>7</sup> Light work involves lifting items weighing up to 20 pounds at a time with frequent lifting or carrying of items weighing up to 10 pounds. If an individual can perform light work, he also can perform sedentary work. *See* 20 C.F.R. § 404.1567(b)

was, as of then, able “to do at least her past work as a labeler.”<sup>8</sup> (R.22-23,24).

After the ALJ’s issuance of his adverse decision, the plaintiff made a timely request for Appeals Council review. (R.11-12,9-10,283-294). The request was subsequently denied (R.5-8), and the ALJ’s unfavorable decision now stands as the Commissioner's final decision. *See* 20 C.F.R. § 404.981.

### **III. Facts**

The plaintiff was born in 1948 and was fifty years of age<sup>9</sup> at the time she was last insured. (R.31,36). She completed only the eighth grade in school, and her past relevant work included manufacturing jobs as a packer, line worker, and labeler. (R.36-40,65,67-70, 135,153). As performed, her jobs as a packer and as a line worker were unskilled and medium in exertional level, and her job as a labeler was unskilled and light. (R.67-71).

Her medical records document a long history significant lumbar disc disease and attendant low back pain with left lower extremity radiculopathy, as well as chronic recurrent gastrointestinal discomfort. A lumbar CT scan in 1990 at the University of Virginia Medical Center (“UVaMC”),

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<sup>8</sup> As normally performed in the national economy this job is sedentary in exertional level; however, as performed by the plaintiff this job was in fact light in exertional level. (R.67-71).

<sup>9</sup> At this age the plaintiff is classified as a “person closely approaching advanced age,” and pursuant to the agency’s regulations may be significantly limited in vocational adaptability if restricted to sedentary work and can no longer perform vocationally relevant past work. 20 C.F.R. § 1563(d); 20 C.F.R. Part 404, Subpart P, Appendix 2, Rule 200.00(g).

for example, disclosed a “severe” narrowing of the spinal canal and central herniated disc at L3/4, a similarly “severe” spinal stenosis and disc bulge at L4/5, and a “significant” disc herniation at L5/S1 with attendant nerve root involvement. (R.282; *see also e.g.*, R.198-199,226,233-234). In January 1995, her “severely depressed” left ankle jerk and sensory loss in the left foot similarly demonstrated significant nerve root impingement at left L5 and S1. (R.214-215).

Treatment records also show that the plaintiff experienced three significant episodes of acute low back and related lower extremity pain during 1995 and 1996. On each of these occasions she responded well to a treatment regime which included prescription pain medication and physical therapy. (R.198-199,210-212,214,247-251)

Gastrointestinal studies in 1992 and again in 1993 similarly documented the plaintiff’s “moderate” esophageal reflux disease. (R.239,188; *see also e.g.*, R.224-225). This recurrent condition also generally responded to pharmacological treatment. (E.g., R.189-191,202-204).

In addition to these chronic medical problems, the plaintiff’s medical records, including those of her primary care physician (Charles S. Miller, MD), show that the plaintiff also sought medical care for a number of transient medical problems, including sinus drainage, sinus congestion, enlarged thyroid, a 1987 head injury in an automobile accident, a toe injury and a left leg contusion in 1989, a 2002 knee and tibia injury in an automobile accident, right breast pain, cystitis, menstrual cramps, menstrual irregularity, a vaginal discharge, an allergic reaction, a burning sensation on urination, headaches, facial numbness, a sore throat with attendant swallowing difficulties, and a persistent low

grade fever . (R.202-204,217-236,252-254).

At the hearing, it was represented that the plaintiff's primary care physician had died in 1998 and that she had generally continued the same medication regime shown in a pharmacy report (R.180-187) covering the years 2000-2004. (R.32). Although it includes at least one prescription for a pain reliever, this listing primarily identifies the plaintiff's ongoing use of Prilosec for heart burn, Cozaar for high blood pressure, and an estrogen replacement drug. (R.180-187)

The plaintiff testified that she has experienced significant problems with her back since 1979. Over the years, she has was able to get some relief at times with the use of physical therapy and home exercises, bed rest and the use of a heating pad or an ice pack, intermittent epidural steroid injections, and medications. (R.45-47,51). By 1993, she stated that her back condition made it difficult to lift anything or to stand for any extended period of time; she was having difficulty sleeping, and she developed significant thyroid, back and gastrointestinal problems. (R.42,45-47,52,55). Although she achieved some temporary pain relief with treatment in the mid 1990s, the pain never left her, and over the years she has "lived in constant pain." (R.57).

The plaintiff's husband also testified about his wife's failure to achieve any significant long-term improvement in her condition since the early 1990s, her significant functional limitations, her need for regular assistance with routine household activities, and her frustration and tears due to the pain and physical limitations. (R.57-62).

Testifying as a vocational witness, Sandra Wells Brown, described the plaintiff's vocationally relevant past jobs as a packer and a line worker as unskilled and medium in exertional level. (R.65). As performed, she similarly described the plaintiff's past work as a labeler to be unskilled and light. (R.65,67-71). Posed as a hypothetical question, the vocational witness was asked whether any work existed in significant numbers in the national economy which could be performed by an individual with the plaintiff's vocational profile, with an ability to do only sedentary work, and with the requirement that the job permit a sit/stand option.<sup>10</sup> (R.65). Consistent with this question, Dr. Wells Brown testified that such an individual would be able to work as a labeler; but not as previously performed by the plaintiff at a light exertional level. (R.65-66,70-71). If such an individual also required the ability to leave the work station more frequently than regularly scheduled breaks and would likely miss work one or two days per month due to back problems, Dr. Wells Brown opined that such an individual would be able to do a number of jobs that exist in significant numbers in the national economy, and she cited work as a receptionist or as a sedentary unskilled assembler as two representative examples. (R.67).

#### **IV. Analysis**

##### **A. Plaintiff's Condition Failed to Meet or Medically Equal Listing 1.04A**

Relying primarily on the July 2005 medical assessment of Dr. Alex Ambroz (R.275-274),

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<sup>10</sup> The opportunity to change positions during the performance of work activity is typically described as the "sit/stand option" or sit/stand limitation." *See Gibson v. Heckler*, 762 F.2d 1516, 1518(11th Cir. 1985).

it is the plaintiff's main contention in this case that the medical record demonstrates her degenerative disc disease to be of listing-level severity by the time her insured status expired at the end of 1998. As the plaintiff in effect acknowledges, however, Dr. Ambroz's review of her medical records, the results of his clinical examination, and his conclusion that she "had been disabled since 1994" (R.273) standing alone fail to demonstrate a Listing 104A disability. Moreover, in her memorandum the plaintiff has not pointed to any objective medical evidence to show that she had an impairment that met or equaled Listing 1.04A.

Dr. Ambroz's opinion, not only fails to show all of the relevant listing's express criteria, but it was based in part on the physician's consideration of the plaintiff's "age [and] limited education" (R.273). As such, the "disability" opinion speaks to the ultimate issue, and the ALJ was not required to accept it. 20 C.F.R. § 404.1527(e)(1) (stating that a medical expert's opinion as to the ultimate conclusion of disability is not dispositive). In all cases, the determination of disability is reserved to the Commissioner. *Id.*

To be found to be disabled pursuant to a Listing,<sup>11</sup> in this case Listing 1.04A, the plaintiff is required to demonstrate a spinal disorder with resulting nerve root or spinal cord compromise

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<sup>11</sup> As the Supreme Court noted in *Sullivan v. Zebley*, 493 U.S. at 532-533;

The [Commissioner] explicitly has set the medical criteria defining the listed impairments at a higher level of severity than the statutory standard. The listings define impairments that would prevent an adult, regardless of his age, education, or work experience, from performing *any* gainful activity, not just "substantial gainful activity." See 20 C.F.R. § 416.925(a) (1989) (purpose of listings is to describe impairments "severe enough to prevent a person from doing any gainful activity"); SSR 83-19, at 90 (listings define "medical conditions which ordinarily prevent an individual from engaging in any gainful activity"). The reason for this difference between the listings' level of severity and the statutory standard is that, for adults, the listings were designed to operate as a presumption of disability that makes further inquiry unnecessary.

“characterized by” neuro-anatomic distribution of pain, limitation of spinal motion, motor loss with accompanying sensory or reflex loss and, “if there is involvement of the lower back, positive straight-leg raising test (sitting and supine). 20 C.F.R. pt. 404, subpt. P, appendix 1. In the present case, the medical record, including the results of Dr. Ambroz’s consultive examination, simply fails to document a back problem of such severity. By implication the plaintiff concedes as much by her contention that the testimony of a medical advisor was necessary to “explain” the severity of her condition and “determine” whether the listing was met.

In addition, the medical record simply fails to demonstrate that the plaintiff’s spinal impairment manifests all of Listing 1.04A’s exacting requirements prior to the expiration of her insured status. During the relevant time period, no treating source or other health care provider record demonstrates nerve root compression and each of the four characteristics required by the Listing. 20 C.F.R. pt. 404, subpt. P, appendix 1. *See Sullivan v. Zebley*, 493 U.S. 521, 530 (1990) (“For a claimant to show that his impairment matches a listing, it must meet *all* of the specified medical criteria. An impairment that manifests only some of those criteria, no matter how severely, does not qualify.”) (emphasis in original); *Cates v. Barnhart*, 118 Soc. Sec. Rep. Service 697, \*16 (SDInd, 2007) (“The applicant must satisfy *all* of the criteria in the Listing [1.04A] . . . to receive an award of disability . . . benefits . . . under step three.”) (quoting *Rice v. Barnhart*, 384 F.3d 363, 369 (7<sup>th</sup> Cir. 2004).

The failure to the plaintiff to satisfy all of the criteria of Listing 1.04A is also evident, as the ALJ noted in his decision (R.22), from the judgments of the state agency physicians concerning the

nature and severity of the plaintiff's condition (R.255-264).

**B. The Assistance of a Medical  
Advisor Was Not Necessary**

Arguing that her claim presented complex medical issues, the plaintiff also contends that the ALJ erred in failing to utilize the assistance of a medical advisor. Although an ALJ has “a duty to explore all relevant facts and inquire into the issues necessary for adequate development of the record,” he is not obligated to obtain additional information when the record is adequate to make a determination regarding a disability claim. *France v. Apfel*, 87 F. Supp. 2<sup>d</sup> 484, 489-490 (DMD, 2000). See *Cook v. Heckler*, 783 F.2<sup>d</sup> 1168, 1173, (4<sup>th</sup> Cir. 1985), *Walker v. Harris*, 642 F.2<sup>d</sup> 712, 714 (4<sup>th</sup> Cir. 1981); 20 U.S.C. § 404.1512 (e). In connection with this argument of the plaintiff, it also must be noted that the requirement that a medical advisor be consulted in all but the plainest of cases “is merely a variation on the most pervasive theme in administrative law – that substantial evidence support an agency's decisions.” See *Pleasant Valley Hosp., Inc. v. Shalala*, 32 F.3<sup>d</sup> 67, 70 (4<sup>th</sup> Cir. 1994).

In the present case, the record as outlined above fails to suggest any complex medical problem which was not readily understandable by the ALJ. See *Richardson v. Perales*. 402 U.S. 389, 408 (1972) (noting the use of medical advisors “primarily in complex cases for explanation of medical problems in terms understandable” to the ALJ). Similarly, there was no suggestion in the record of an ambiguous onset date. See *Bailey v. Chater*, 68 F.3d 75, 79 (4<sup>th</sup> Cir. 1995). Likewise, the record in the present case contains sufficient evidence to document any progression of the

plaintiff's condition during the relevant time period. *Id.*

Moreover, the language of the applicable agency regulations concerning an ALJ's use of medical advisors is permissive, not mandatory. "[ALJs] may . . . ask for and consider opinions from medical experts on the nature and severity of [an individual's] impairment(s) and whether . . . [the] impairment(s) equals the requirements of any [listed] impairment . . . .20 C.F.R. § 404.1527(f)(2)(iii).

### **C. "Grid" Rule 201.09 Was Not Applicable**

On appeal, the plaintiff also contends that she is disabled pursuant to the agency's Medical-Vocational Guidelines ("Grids") Rule 201.09. At the time her insured status expired, it is her contention that the combination of her age, education, previous work experience and functional limitations meet the medical and vocational requirements for a favorable disability finding without reference to any vocational testimony. *See* 20 C.F.R. §§ 404.1562 and 404.1569.

This argument, however, assumes a step-four finding that her impairments prevent her from doing any of her past relevant jobs or from doing any type of light exertional work. *See* 20 C.F.R. § 404.1520(f). Only then does the agency's sequential evaluation process direct consideration to the Grid's special medical and vocational profiles to show that the individual's condition either prevents or does not prevent the performance of other work in the national economy. 20 C.F.R. § 404.1520(g)(2); *Pass v. Chater*, 65 F.3<sup>d</sup> 1200, 1203 (4<sup>th</sup> Cir. 1995).

The burden of proof remains with the claimant through the fourth step; however, if she successfully reaches step five, then the burden shifts to the Commissioner to show other jobs exist in the national economy that she can perform. [*Hunter v. Sullivan*, 993 F.2<sup>d</sup> 31, 35 (4<sup>th</sup> Cir. 1992)]. The Commissioner may meet this burden by relying on the Medical-Vocational Guidelines (Grids) or by calling a vocational expert to testify. 20 C.F.R. § 404.1566.

*Aistrop v. Barnhart*, 36 Fed. Appx. 145, 146 (4<sup>th</sup> Cir. 2002)

In other words, where an individual is prevented by one or more significant medical impairments from performing his or her past relevant work and has characteristics to match the characteristics contained in one of the Grid rules, application of that rule is permitted to direct a determination of whether significant numbers of other jobs exist for the individual to perform or whether that person is disabled. *Hurt v. Sec. of Health & Human Svcs.*, 816 F.2<sup>d</sup> 1141, 1142-43 (6<sup>th</sup> Cir. 1987). In contrast, the case now before the court presents a different factual situation. She was found to have the functional capacity to perform a past vocationally relevant job, and she was determined to have a residual functional capacity for a range of light work.

**D. ALJ's Functional Capacity Assessment  
Is Supported by Substantial Evidence**

Lastly, the plaintiff argues the lack substantial evidence to support the ALJ's finding that she retained the functional ability to do light work. It is her contention that this finding is fully inconsistent with her treating physician's 1993 determination that she should stand for intervals no longer than twenty minutes and her longitudinal medical record showing recurrent periods of low back tenderness and muscle spasms along with one or more entries evidencing leg weakness and

sensory loss.

As previously noted herein, the court's function in cases such as this is limited. The question is whether substantial evidence exists in the record to support the residual functional capacity finding of the ALJ, and this court lacks the authority to substitute its judgment for that of the Commissioner. *Hays v. Sullivan*, 907 F.2<sup>d</sup> 1453, 1456 (4<sup>th</sup> Cir. 1990). It is the ALJ's responsibility to weigh the evidence, including the medical evidence, in order to resolve any conflicts which might appear therein. *Id.* at 1456. Although he may not reject medical evidence for no reason or for the wrong reason, he may assign little or no weight to a medical opinion, even the opinion of a treating source, based on the factors listed in 20 C.F.R. § 404.1527(d). *See King v. Califano*, 615 F.2<sup>d</sup> 018, 1020 (4<sup>th</sup> Cir. 1980).

In the case now before the court, the absence of any significant medical evidence during the relevant 1997-1998 time period strongly suggests the absence of any ongoing acute distress or disabling condition, and it equally suggests the absence of any significant functional limitations. (*See* R.257-264). Similarly, her activities of daily living, including her care for her brother during the 1990s, strongly suggest a retained functional ability to do work at a light exertional level. (R.161,166,246).

#### **E. Conclusion**

The ALJ analyzed all of the relevant evidence; he sufficiently explained his findings; he

articulated his rationale for crediting and discounting the evidence, and his decision is based on substantial evidence. In affirming the final decision of the Commissioner, it is not suggested that the plaintiff either is or was, during the relevant time period, totally free of pain and discomfort. The record, however, simply fails to document the existence of any condition which would reasonably be expected to result in her total disability within the meaning of the Act.

## **V. Proposed Findings of Fact**

As supplemented by the above summary and analysis and on the basis of a careful examination of the full administrative record, the undersigned submits the following formal findings, conclusions and recommendations:

1. The Commissioner's final decision considered adequately all of the evidence in this case;
2. The Commissioner's final decision is supported by substantial evidence;
3. The ALJ properly concluded that the plaintiff's back condition neither met nor medically equaled Listing 1.04A;
4. The plaintiff's argument that the ALJ failed to give proper consideration and weight to Dr. Ambroz's medical opinion and evaluation is without merit;
5. The ALJ was not required to obtain the testimony of a medical advisor;
6. The ALJ properly concluded that the plaintiff was not disabled by application of the "Grid" rules;
7. The ALJ properly considered the plaintiff's medical conditions and associated functional limitations;
8. The ALJ properly considered the plaintiff's pain complaints;
9. Substantial medical and activities evidence exists to support the ALJ's findings

concerning the symptoms and functional limitations;

10. Substantial evidence exists to support the ALJ's finding that through the decision date the plaintiff was not disabled within the meaning of the Act;
11. Substantial evidence exists to support the ALJ's finding that prior to the expiration of her insured status the plaintiff retained the residual function capacity to perform a range of light work activity;
12. The plaintiff has not met her burden of proving disability; and
13. The final decision of the Commissioner should be affirmed.

#### **VI. Recommended Disposition**

For the foregoing reasons, it is RECOMMENDED that an order be entered AFFIRMING the final decision of the Commissioner, GRANTING JUDGMENT to the defendant, DENYING plaintiff's motion for summary judgment, and DISMISSING this case from the docket of the court.

The clerk is directed to transmit the record in this case immediately to the presiding United States district judge and to transmit a copy of this Report and Recommendation to all counsel of record..

#### **VII. Notice to the Parties**

Both sides are reminded that, pursuant to Rule 72(b) of the Federal Rules of Civil Procedure, they are entitled to note objections, if any they may have, to this Report and Recommendation within ten (10) days hereof. **Any adjudication of fact or conclusion of law rendered herein by the**

**undersigned to which an objection is not specifically made within the period prescribed by law may become conclusive upon the parties.** Failure to file specific objections pursuant to 28 U.S.C. § 636(b)(1) as to factual recitals or findings as well as to the conclusions reached by the undersigned may be construed by any reviewing court as a waiver of such objections.

DATED: this 29<sup>th</sup> day of October 2007.

James G. Welsh  
United States Magistrate Judge