

ORIGINAL

David E. Comstock
LAW OFFICES OF COMSTOCK & BUSH
199 N. Capitol Blvd., Suite 500
P.O. Box 2774
Boise, Idaho 83701-2774
(208)344-7700
ISB No.: 2455

U.S. COURTS

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REC'D _____ FILED _____
CAMERON S. BURKE
CLERK IDAHO

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

CHRIS J. DENNISON)

Plaintiff,)

v.)

CONTINENTAL CASUALTY COMPANY)
an Illinois corporation; CNA GROUP)
LIFE ASSURANCE COMPANY, a)
wholly owned subsidiary of Continental)
Casualty Company, RURAL)
TELEPHONE COMPANY, and Idaho)
corporation)

Defendants.)

Case No.: CV02-0507-S-LMB

PLAINTIFF'S MOTION TO COMPEL

COMES NOW, Plaintiff Chris J. Dennison, by and through his attorneys of record, and pursuant to Rules 26 and 37 of the Federal Rules of Civil Procedure, hereby moves this Court for an order compelling Defendants to allow Plaintiff's counsel to take the deposition testimony of Defendants' agent Lisa Scrogam, R. N. This Motion is based upon the grounds set forth below and in *Plaintiff's Memorandum in Support of Objection to Defendant CNA's Motion in Limine / Motion for Protective Order*; and, the

PLAINTIFF'S MOTION TO COMPEL- 1

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Affidavit of David E. Comstock, filed in support hereto.

I. BACKGROUND

On September 25, 2003, Defendant CNA filed its *Motion in Limine* and its *Motion for Protective Order* requesting discovery be limited in this matter to the administrative record. Plaintiff objected and filed his own *Motion to Compel* seeking the discovery depositions of Defendants' agents Doris Gloss, R.N., Brian Barnum, Tabitha Kirke, Nancy Deskins. These individuals were previously identified by Defendant CNA as responsible for the review and denial of Plaintiff's claim for benefits. In contemplating his *Motion to Compel*, Plaintiff relied upon Defendant CNA's representation that these individuals were the only agents of Defendant CNA responsible for the review and denial of Plaintiff's claim for benefits. Plaintiff's *Motion to Compel* was granted and Plaintiff thereafter deposed these individuals, including Brian Barnham. Mr. Barnham testified that Lisa Scrogam was the nurse case manager assigned to Plaintiff's claim. See, deposition of Brian Barnham, p. 14, ll. 7-8 attached as *Exhibit A* to the Affidavit of David E. Comstock. In addition, Mr. Barnham testified that any medical issues involved in Plaintiff's claim were reviewed by the nurse case manager and that Mr. Barnham's decision to deny Plaintiff's claim was, in part, based upon his review of the claim with Ms. Scrogam. See, Barnham deposition at p. 7, l. 4 - p. 8, l. 8; p.13, ll. 9-12; and, p. 20, ll. 11-14.

II. CONCLUSION

Based on Defendant CNA's failure to identify Lisa Scrogam, the nurse case manager who reviewed Plaintiff's claim, as an individual responsible for the review and denial of Plaintiff's claim for benefits, and consistent with the Court's initial ruling to allow

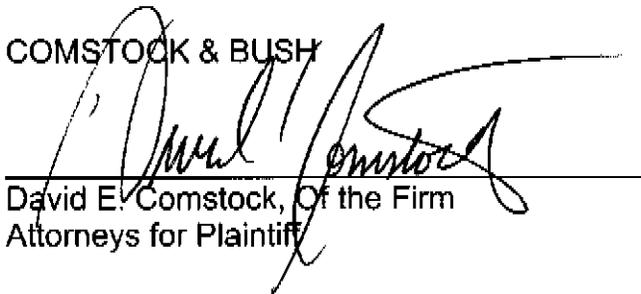
Plaintiff to depose such individuals, Plaintiff respectfully moves this Court for an order compelling Defendant CNA to produce Ms. Scroggum for the purpose of a discovery deposition to be taken by Plaintiff's counsel.

Oral argument is requested.

DATED This 11th day of August, 2004.

COMSTOCK & BUSH

By:


David E. Comstock, Of the Firm
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

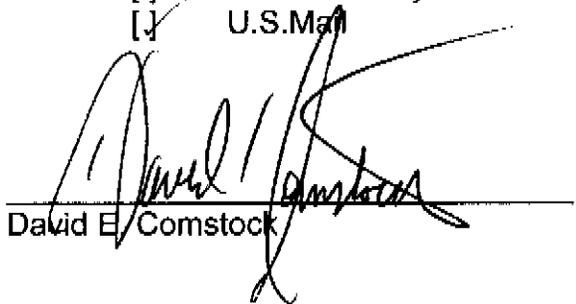
I hereby certify that on this 11th day of August, 2004, I served a true and correct copy of the above and foregoing instrument, by method indicated below, upon:

Robert A. Anderson
ANDERSON JULIAN & HULL
250 S. 5th Street, Suite 700
PO Box 7426
Boise ID 83707-7426
Attorneys for Defendant Rural

Facsimile (208) 344-5510
 Hand Delivery
 U.S. Mail

Donald F. Carey
Robert D. Williams
QUANE SMITH
2325 W. Broadway, Suite B
Idaho Falls, ID 83402-2948
Attorneys for Defendants CNA & Continental

Facsimile (208) 529-0005
 Hand Delivery
 U.S. Mail


David E. Comstock