

U.S. DISTRICT COURT

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U.S. DISTRICT COURT
IDAHO DISTRICT
CLERK, IDAHO

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;
and RURAL TELEPHONE COMPANY, an
Idaho corporation,

Defendants.

Case No. CV 02-507-S-LMB

ORDER

Currently pending before the Court is Plaintiff's Motion to Compel (Docket No. 65).

Having carefully reviewed the record, considered oral arguments, and otherwise being fully advised, the Court enters the following Order.

I.

BACKGROUND

Chris J. Dennison ("Plaintiff") was employed as a controller at Rural Telephone Company ("RTC"). In such capacity, Plaintiff was an eligible participant in RTC's Group Long-term Disability Insurance Plan ("Plan"). Plaintiff alleges that said Plan was underwritten by

Defendant Continental Casualty Company ("Continental"), and serviced by its wholly-owned subsidiary, Defendant CNA Group Life Assurance Company ("CNA").¹

According to the record, from April 1998 through April 1999, Plaintiff underwent five back surgeries to treat back and neck pain. In this action, Plaintiff claims that he is totally disabled as a result of failed back syndrome and other ongoing medical problems.

On February 7, 2002, Plaintiff filed a claim for disability benefits under the Plan. Attached to his claim was a report confirming his disability from his treating physician, Dr. Tyler Frizzel. On March 8, 2002, Plaintiff received notice that effective March 6, 2002, his employment with RTC had been terminated. Despite this notification, Plaintiff alleges that on March 12, 2002, RTC represented to CNA that he was still employed with RTC, and that RTC would make reasonable accommodations to facilitate his physical handicap.

On March 15, 2002, CNA notified Plaintiff that his claim for disability benefits was denied. From May 2, 2002 through June 10, 2002, Plaintiff appealed CNA's denial of disability benefits by both submitting additional medical documentation verifying his condition, and by informing CNA that RTC had provided CNA with incomplete and inaccurate information.

On June 24, 2002, CNA's Appeals Committee notified Plaintiff that his claim for disability benefits was again denied. Plaintiff then filed the instant action on October 30, 2002, alleging breach of contract by Continental and CNA, and breach of fiduciary duty by RTC and CNA.

¹RTC has admitted that it is the Plan administrator for the policy affecting Plaintiff. *Answer* (Docket No. 10). CNA admits that it is a wholly-owned subsidiary of Continental, but claims it is without sufficient information, and therefore denies that the Plan is underwritten by Continental and serviced by CNA. *Answer* (Docket No. 8).

II.

MOTION TO COMPEL (Docket No. 65)

On January 9, 2004, the Court entered an Order (Docket No. 51) directly pertaining to Plaintiff's pending Motion to Compel (Docket No. 65). In its Order, the Court noted that CNA's denial of Plaintiff's disability benefits was to be judicially reviewed only for an "abuse of discretion," and that under traditional ERISA guidelines, the "abuse of discretion" standard does not permit the Court to consider evidence outside the administrative record. *Order*, p. 4 (Docket No. 51). The Court recognized, however, that:

While the "abuse of discretion" standard, in its unaltered form, may not allow a court to consider evidence outside the administrative record when determining the merits of the instant action, the Court notes here that the "abuse of discretion" standard becomes less deferential when a benefit plan gives discretion to an administrator or fiduciary who is operating under a conflict of interest. *Regula v. Delta Family-Care Disability Survivorship Plan*, 266 F.3d 1130, 1144 (9th Cir. 2001).

Id.

Because the abuse of discretion standard is not appropriate where a conflict of interest exists, the Court permitted Plaintiff to engage in limited discovery to investigate its claim that CNA's alleged interaction with the plan administrator created a conflict of interest. *Id.* at 5-7 ("[w]hether or not a conflict of interest exists in this action will ultimately determine the appropriate standard of review to be used in deciding the merits of the instant action"). In light of that Order, and in specific response to Plaintiff's request, the Court allowed Plaintiff to depose Doris Gloss, Brian Barnum, Tabitha Kirke, Nancy Deskins, and Michael Richmond. *Id.* at 8.

On June 1, 2004, the parties entered into a stipulation to suspend all discovery deadlines, "until such time as a decision by the Court is made on whether testimony and/or evidence outside the Administrative Record will be allowed to be presented at the trial of this matter." *Stipulation*, pp. 1-2 (Docket No. 61). On June 8, 2004, and in harmony with the parties' stipulation, the Court entered an Order suspending discovery and disclosure deadlines. *Order* (Docket No. 62).

On August 11, 2004, Plaintiff filed his pending request to depose one additional witness: Lisa Scrogam. *Motion to Compel* (Docket No. 65). Plaintiff filed his motion after taking the deposition of Brian Barnham, who testified that Lisa Scrogam was the nurse case manager assigned to Plaintiff's claim, that any pertinent medical issues concerning Plaintiff's claim were reviewed by her, and that she would be the person to provide that information. *Comstock Affidavit*, Ex. A, pp. 7-8, 13-14, 32 (Docket No. 66). It is Plaintiff's position that taking the deposition of Lisa Scrogam may assist in determining the conflict of interest issue. The Court agrees, and grants Plaintiff's Motion to Compel to allow the deposition of Lisa Scrogam.

It appears that Lisa Scrogam was last employed by CNA on July 29, 2004. However, to facilitate Plaintiff's desire to contact Lisa Scrogam and take her deposition, CNA agreed to provide Plaintiff with Lisa Scrogam's last known address. Once Lisa Scrogam's deposition testimony is available, CNA may then request a renewal of its First Motion *in Limine* (Docket No. 35) as provided in the January 9, 2004 Order (Docket No. 51, p. 7).

III.

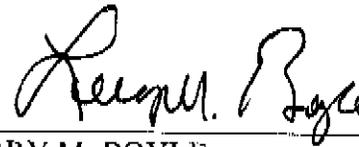
ORDER

Based on the foregoing, IT IS HEREBY ORDERED:

1. Plaintiff's Motion to Compel (Docket No. 65) is GRANTED.

2. In addition to the suspension of discovery and disclosure deadlines, the Court will suspend the deadline for all pretrial and dispositive motions. Further, the three (3) day Court trial set to commence in Boise, Idaho on February 28, 2005 is hereby vacated.

SO ORDERED this 25th day of October, 2004.



LARRY M. BOYLE
UNITED STATES DISTRICT COURT

United States District Court
for the
District of Idaho
October 26, 2004

* * CLERK'S CERTIFICATE OF MAILING * *

Re: 1:02-cv-00507

I certify that I caused a copy of the attached document to be mailed or faxed to the following named persons:

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Visiting Judges:
____ Judge David O. Carter
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____ Judge Thomas S. Zilly

Cameron S. Burke, Clerk

Date: 10-26-04

BY: Jill Angelo

(Deputy Clerk)