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ORIGINAL  
UNITED STATES COURT  
DISTRICT OF IDAHO

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Attorneys for Defendants Continental  
Casualty Company and CNA Group  
Life Assurance Company

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

CHRIS J. DENNISON,

Plaintiff,

vs.

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

Defendants.

Case No. CIV-02-507-S-LMB

DEFENDANT CNA'S MEMO-  
RANDUM IN SUPPORT OF MO-  
TION FOR PROTECTIVE OR-  
DER

COMES NOW, Defendant Continental Casualty Company (CNA), by and through its  
counsel of record and hereby submits the following memorandum of law and points of  
authority in support of its Motion for Protective Order filed concurrently herewith.

## I. INTRODUCTION

On July 3, 2003, Plaintiff filed an "Amended Complaint for Damages Pursuant to ERISA." The complaint generally alleges that Plaintiff was improperly denied disability benefits under a group disability policy. On or about August 19, 2003, pursuant to this Court's instruction, Defendant CNA filed with the Court an Affidavit/Certification of the administrative record and applicable policy. On September 17, 2003, Defendant CNA received from Plaintiff's counsel a request to depose four individuals associated with CNA. These individuals are Doris Gloss, R.N., Brian Barnum, Tabitha Kirke and Nancy Deskins. Two of these witnesses reside in Maitland, Florida and two in Overland Park, Kansas. In addition, Defendant CNA believes that Plaintiff also wants to take the deposition of at least one employee of his former employer.

Defendant CNA files this motion for a protective order requesting the Court preclude the scheduling and taking of these depositions as they would not result in any admissible evidence and doing so would result in unnecessary burden and expense to Defendants in contradiction of the purpose and policy of ERISA.

## II. ARGUMENT

The policy applicable in this case provides the administrator with discretionary authority. As such, the Court's review at trial is limited to the administrative record. That record has already been certified and filed with the Court. Any additional discovery is not relevant and only results in undue expense and burden to the parties involved.

Fed .R. Civ .P. 26(b) defines the allowable scope and limit of discovery. Parties may obtain discovery regarding any matter that is relevant. Fed. R. Civ .P. 26(b)(1). However, discovery must be "reasonably calculated to lead to the discovery of admissible evidence." *Id.* The court may limit the scope of discovery if the burden or expense of the proposed discovery outweighs its likely benefit, taking into the account the importance of the proposed discovery in resolving the issues. Fed .R. Civ .P. 26(b)(2).

The admissibility of evidence in an ERISA trial and thus, the availability of discovery, is linked to Court's standard of review. In turn, the standard with which the Court must review a benefit eligibility decision depends upon how much discretion the plan grants an administrator to determine eligibility for benefits. *Firestone Tire & Rubber Co. vs. Bruch*, 489 U.S. 101, 115, 109 S.Ct. 949 (1989). When a plan fiduciary has discretionary authority, the proper standard of review of an ERISA claim for benefits is "arbitrary and capricious." *McKenzie vs. General Telephone*, 41 F3d 1310, 1314 (9<sup>th</sup> Cir. 1994). "Arbitrary and capricious" is synonymous with "abuse of discretion." *Id.*

When the standard of review of a decision to deny benefits is abuse of discretion, then the district court should only review the material that was before the administrator. *Taft vs. Equitable Life Assurance Society*, 9 F3d 1469, 1471 (9<sup>th</sup> Cir. 1994). Limiting the district's court's review at trial to the administrative record supports the policies for which ERISA was adopted by keeping costs and premiums down and minimizing diversion of benefit money to litigation expense. *Kearney vs. Standard Insurance Co.*, 175 F3d 1084, 1094 (9<sup>th</sup> Cir. 1999).

[T]he district court may try the case on the record that the administrator had before it. This is vastly less expensive to all

parties, accomplishes the policies enacted as part of the statute, and gives significance, which would otherwise largely evaporate, to the administrator's internal review procedure required by the statute.

*Kearney*, 175 F3d at 1095. Thus, evidence outside of the administrative record is not relevant and is therefore not discoverable.

The policy under which Plaintiff seeks a determination that he is eligible for benefits, is attached as Exhibit "B" to Defendant CNA's Affidavit/Certification. That policy unequivocally gives the administrator and other fiduciaries discretionary authority. On page six, which is the "Group Long Term Disability Certificate," it states that "[w]hen making a benefit determination under the policy, *We* have discretionary authority to determine *Your* eligibility for benefits and to interpret the terms and provisions of the policy." Again, on page 19, it is again stated that "the Administrator and other Plan fiduciaries have discretionary authority to interpret the terms of the Plan and to determine eligibility for and entitlement to benefits in accordance with the Plan."

Exhibit "A" to Defendant CNA's Affidavit/Certification are the documents reviewed in determining the eligibility of Plaintiff to receive benefits, and thus constitutes the administrative record. Because the plan reserves discretionary authority to the plan administrator and other fiduciaries, the Court is limited in its review to the record that is already before it. Because no other evidence is admissible, discovery beyond that in the administrative record is not reasonably calculated to lead to the discovery of admissible evidence, is not relevant and is therefore not allowed under Fed .R. Civ .P. 26(b).

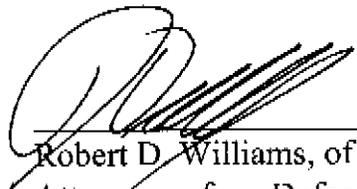
Because the proposed discovery is of no importance in resolving the issues before this Court, it should not be allowed. In addition, when this lack of importance is weighed against the burden and expense of completing this discovery, it is clear that the analysis weighs against allowing the discovery both under the principles set out in Fed. R. Civ. P. 26(b)(2) and the policies underlying ERISA. In this case, requiring multiple depositions in Florida and Kansas when the basis for the decision is already before the Court, is a clear waste of resources.

### III. CONCLUSION

Based upon the above, this Court should grant Defendant CNA's motion for protective order and not allow the anticipated depositions to be noticed and conducted by Plaintiff.

DATED this 25<sup>th</sup> day of September, 2003.

QUANE SMITH LLP

By: 

Robert D. Williams, of the Firm  
Attorneys for Defendants Continental  
Casualty Company and CNA Life Assur-  
ance Company

CERTIFICATE OF SERVICE

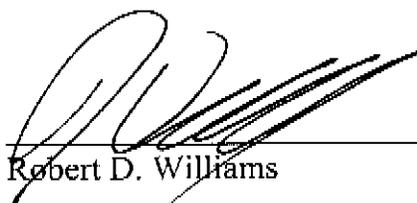
I HEREBY CERTIFY that on this 25<sup>th</sup> day of September, 2003, I served a true and correct copy of the foregoing DEFENDANT CNA'S MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER by:

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