

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

COPELAND COLE,

CASE NO.: H-99-2185

Plaintiff,

v.

CONTINENTAL CASUALTY COMPANY,

Defendant.

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**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff, Copeland Cole, by and through undersigned counsel and pursuant to Rule 56, Federal Rules of Civil Procedure, moves for the entry of an Order granting Summary Judgment in his favor and against Defendant, Continental Casualty Company (hereinafter "CCC"), and as grounds states:

1. Mr. Cole sued CCC for the wrongful denial of disability benefits pursuant to a group disability policy governed by the Employee Retirement Income Security Act, 29 U.S.C. § 1001, et seq. (ERISA).
2. The CCC plan contains no discretionary language, therefore the correct ERISA standard of review is *de novo*. Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 115, 109 S.Ct. 948, 103 L.Ed. 2d 80 (1989).
3. CCC's decision to deny benefits to Mr. Cole cannot be upheld under the *de novo* standard of review or under the most deferential arbitrary and capricious standard of review.

4. Summary Judgment is proper in any case where there is no genuine issue of material fact. Fed.R.Civ.P., Rule 56 (c). A Plaintiff moving for Summary Judgment may satisfy its burden by submitting Summary Judgment proof that establishes all elements of its cause of action as a matter of law. San Pedro v. U.S., 79 F.3d 1065, 1068 (11<sup>th</sup> Cir. 1996). Plaintiff must show that no reasonable trier of fact could find other than for Plaintiff. Calderone v. U.S., 799 F.2d 254, 259 (6<sup>th</sup> Cir. 1986).

5. Summary Judgment should be granted in this case because there are no genuine issues of material fact that CCC's denial of Mr. Cole's benefits was arbitrary and capricious and contrary to law: this Motion, Memorandum and its attachments establish there is no genuine issue of material fact.

WHEREFORE, Plaintiff, Copeland Cole, respectfully requests this Court to grant this Motion and render an Order granting Summary Judgment in his favor and against the Defendant, Continental Casualty Company, and for such other and further relief as this Court deems just and proper.

***Respectfully Submitted,***

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Co-Counsel

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed  
this \_\_\_\_ day of November, 1999 to: James J. McConn, Jr., Esq., Hays, McConn, Rice &  
Pickering, 400 Two Allen Center, 1200 Smith Street, Houston, Texas 77002.

*Respectfully Submitted,*

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