

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

JOHN RAGSDALE,	)	CASE NO. 5:96CV2722
	)	
PLAINTIFF,	)	JUDGE BELL
	)	
v.	)	
	)	
UNUM LIFE INSURANCE COMPANY	)	
OF AMERICA,	)	
	)	
DEFENDANT.	)	
	)	

**PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT  
AND MEMORANDUM OF LAW IN SUPPORT**

COMES NOW Plaintiff, John Ragsdale by and through undersigned counsel and respectfully requests this Honorable Court to enter Partial Judgment on the following issues as a matter of law:

1. The appropriate standard of review in the above styled action is the de novo standard based upon the lack of discretion conferred to the defendant in the Plan documents.
2. Based on the complete medical information in defendant's possession at the time of denial, the only reasonable determination that could have been made is that of total disability from any occupation.

**INTRODUCTION AND FACTS**

Plaintiff, John Ragsdale, was the Senior Vice President and Creative Director for an advertising agency. His duties involved an extensive amount of reading and writing

on a computer, viewing and editing films and video tapes, traveling, and supervision of employees. Through his employer, Meldrum & Fewsmith, Inc., Mr. Ragsdale was enrolled as a member of a group insurance plan which was provided and maintained by the Defendant, UNUM. The purpose of the plan was to provide income disability benefits to Mr. Ragsdale in the event that he should become totally disabled from his occupation as a senior vice president and creative director for an advertising agency.

Mr. Ragsdale was born with congenital Nystagmus which has left him legally blind. Despite his visual handicap, Mr. Ragsdale became quite successful and rose to the ranks of the advertising agency where he eventually enjoyed the position of senior vice president and creative director. He was able to overcome his blindness through the use of special visual machines which allow him to read. However, these machines require a great deal of physical exertion to operate.

On March 8, 1990, Mr. Ragsdale was involved in a serious car accident while traveling for his job. In addition, he was involved in two other accidents while on the sets of different jobs. The resulting injuries from these accidents left him with a laminectomy and a fusion of the cervical vertebrae at C5-6. Although he was in an excruciating amount of pain, Mr. Ragsdale was able to function through the use of strong narcotic pain killers. Mr. Ragsdale is a recovering alcoholic and had been so diagnosed since the mid 1980's. As a result of Mr. Ragsdale's prior bout with alcoholism, Mr. Ragsdale became addicted to narcotics and again began to consume alcohol while trying to live with the pain. Mr. Ragsdale was left with a choice of enduring the pain without any sort of pain medication thus preventing him from working

at his prior occupation or subject himself to the possibility of recurrent addictive behavior while attempting to perform his job as Senior Vice President and Creative Director of Meldrum & Fewsmith, Inc., a large advertising agency.

In January 1994, Mr. Ragsdale's addiction disease caused him to be checked into a hospital. Although he has relapsed before, Mr. Ragsdale is now clean and sober. However, he is no longer able to take the narcotic pain medication which allowed him to function with the excruciating pain. The combination of Mr. Ragsdale's handicap, injuries, and disease have left him totally disabled from his former occupation. (Dr. Loftus' letter of March 5, 1996 attached as Exhibit A). Because he was unable to work, Mr. Ragsdale applied for disability benefits through the Social Security Administration. The Social Security Administration determined that Mr. Ragsdale was disabled based on the combination of his back injuries and his blindness. (Social Security Award attached as Exhibit B). The fact that Mr. Ragsdale also had an additional disease of addiction was not even necessary for his disability determination by the Social Security Administration.

Mr. Ragsdale also applied for the income benefits which were promised under the terms of the plan with UNUM. Recognizing that Mr. Ragsdale was totally disabled, UNUM paid full benefits for two years. However, in an attempt to limit their payments under the plan, UNUM arbitrarily and capriciously decided that Mr. Ragsdale's physical disability was actually caused by his concurrent depression, thereby allowing his disability to be classified as a mental/nervous condition. The mental/nervous provision of the plan allowed UNUM to cease benefits after two years, but a physical disability

would be covered until age sixty-five. Before his benefits ceased, Mr. Ragsdale attempted to have his status changed to a physical disability. Mr. Ragsdale submitted records from numerous doctors who all agreed that Mr. Ragsdale could no longer work in his former occupation due to his physical problems. However, based on their in-house doctor's "review" of the claim file, UNUM came to the conclusion that Mr. Ragsdale could return to work in his former occupation. UNUM had never physically examined Mr. Ragsdale, yet they were able to determine that all of Mr. Ragsdale's treating physicians were wrong and their doctor was right. Mr. Ragsdale appealed the denial, but UNUM once again denied his claim. (9/23/96 letter attached as Exhibit C).

#### **SUMMARY JUDGMENT STANDARD**

Summary judgment is proper in any case where there is no genuine issue of material fact. Fed.R.Civ.P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 324, 106 S.Ct. 2548, 2552 (1986). 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 (11th 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 (6th Cir. 1986).

A genuine issue of material fact exists when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby Inc., 477 U.S. 242, 248, 91 L.Ed. 2d 202, 106 S.Ct. 2505 (1986). "The mere existence of a scintilla of evidence in support of the [nonmoving party's] position will be insufficient; there must be evidence on which the jury could reasonably find for the

[nonmoving party].” Anderson, 477 U.S. at 252. “If a review of the evidence presented reveals that the non-movant has failed to produce evidence sufficient to support a jury verdict in his favor, then summary judgment should be granted.” United of Omaha Life Ins. Co., 894 F.2d at 1558.

### **BASIC ERISA STANDARD OF REVIEW**

The basis of Plaintiff’s claim in this case is a denial of disability benefits pursuant to a group disability insurance plan, governed by ERISA, 29 U.S.C. § 1001et seq. The denial of benefits under an ERISA plan is evaluated under varying standards of review, depending upon the factual circumstances of the case. It is a technical area of the law with its own separate body of federal common law and specific language of the plan or underwriting documents will determine which of these standards apply. There are three different standards which may apply:

1. De novo;
2. Arbitrary and capricious; or
3. Heightened arbitrary and capricious.

“In Firestone Tire & Rubber Comp. v. Bruch, 489 U.S. 101, 103 L.Ed. 2d 80, 109 S.Ct. 948 (1989), the Supreme Court held that plan administrators’ interpretations of plan terms are subject to de novo review unless a plan gives the administrator discretionary authority to interpret the plan terms.” Rowan v. UNUM Life Insurance Company of America, 119 F.3d 433, (6th Cir. 1997). “Where the administrator or fiduciary has a clear grant of discretionary authority an arbitrary and capricious

standard of review applies.” Tiemeyer v. Community Mutual Insurance Comp., 8 F.3d 1094, 1098 (6th Cir. 1993)(citations omitted). Additionally, factual determinations of ERISA plan administrators are also subject to a de novo review. Rowan at \_\_\_\_.

The Sixth Circuit further clarified the standard for review in Miller v. Metropolitan Life Insurance Comp., 925 F.2d 979, 984 (6th Cir. 1991), by stating that when an insurance company pays benefits out of the insurance company’s own assets rather than the assets of a trust, “its fiduciary role is in perpetual conflict with its profit-making role as a business, and the conflict of interest is substantial.” In this situation, because of the inherent conflict of interest, the conflict must be weighed as a factor and is reviewed under a heightened arbitrary and capricious standard shaped by the circumstances of the conflict. Id at 984. Furthermore, when reviewing a denial of benefits, the court may only consider the evidence available to the administrator at the time the final decision was made. Id at 986.

The heightened arbitrary and capricious standard is actually a misnomer. The conflict of interest analysis shifts the burden to the defendant to show the Court why its action **were not arbitrary and capricious.** If an accountant or actuarial study was performed showing the financial interest the defendant had in determining this claim, whether by increased premiums or in a decision to litigate claims in a true adversarial manner, the defendant’s denial would receive less and less deference. Any cost benefit analysis which boils a claimant such as Mr. Ragsdale down to a raw number flies in the face of the role of a fiduciary and ignores UNUM’s legal obligations to the Plaintiff.

## APPLICABLE STANDARD OF REVIEW

The operative language is simply whether the Plan has qualified discretion to the Plan Administrator whether or not to pay a claim. For example, if a Plan essentially says, “if a plan participant provides proof of disability, then we will pay benefits,” no discretion is conferred and the standard of review is *de novo*. If the Plan states, “if a plan participant provides sufficient proof of disability to the plan administrator,” the Plan has some discretionary authority. This means that the decisions of the Plan are treated with deference and therefore the Plan participant must show that any denial of benefits was arbitrary and capricious instead of just plain incorrect.

Mr. Ragsdale’s Plan states: “When the Company receives proof that an insured is disabled due to sickness or injury and requires the regular attendance of a physician, the Company will pay the insured a monthly benefit after the end of the elimination period.” The language of UNUM’s Plan in this case has consistently been found not to confer discretion<sup>1</sup>.

The Sixth Circuit joined almost every circuit in the country in evaluating Plan language in an effort to apply the appropriate legal standard:

“The Sixth Circuit addressed this issue in *Perez v. Aetna Life Insurance Co.*, 96 F 3d 813, 1996 WL 534191 (6<sup>th</sup> Cir. September 23, 1996). The *Perez* court interpreted plan language similar to that at issue here and found that the insurance company was not granted discretionary authority. In addressing this narrow issue, the *Perez* court reasoned, [s]imply because [the company] has the ability to require written proof before continuing disability benefits does not mean that [the company] has the discretionary authority to decide whether that proof is sufficient within the

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<sup>1</sup> *Williamson v. UNUM*, 943 F.Supp 1226 (USDC Cent Dist Cal 1996); *Hamner v. UNUM*, 1997 U.S> Dist Lexis 6580 (USPC North Dist. Cal May 7, 1997); *Accola v. UNUM*, Case No. 96-1123R (U.S.D.C. W. Dist. Washington May 22, 1997).

meaning of the Plan. Second, simply because [the company] may require satisfactory proof does not give the insurance company discretionary authority, either. The quoted Plan provision does not specify to whom the proof should be satisfactory. “

*Williamson*, 943 F.Supp. at 1228-9 (citing *Perez v. Aetna*).

Furthermore, should any ambiguity exist, UNUM loses as the tie goes to the Plan participant.

“Unlike Snow and the cases cited therein, the Policy at issue here does not specify that the proof must be satisfactory. Much less that the proof must be satisfactory to UNUM. UNUM contends that sufficiency of the proof is implied. However, as reasoned in *Perez*, the policy language is inherently ambiguous because it may create an objective standard, i.e. proof satisfactory to a reasonable person. See *Perez*, 96 F.3d 813, 1996 WL 534191 at \*13. The Court need not determine precisely the standard created, but merely that the language does not clearly give UNUM discretion.”

*Williamson*, 983 F. Supp. at 1229.

The effect of this Court correctly applying the de novo standard is that the question of whether John Ragsdale is disabled within the meaning of his Plan must be addressed anew. UNUM has argued in this case that even if de novo is the appropriate standard, the net effect is that the Court is locked into the documents in UNUM's possession at the time of its denial. This is incorrect and defies logic. John Ragsdale currently has a claim for all past due benefits. Some are prior to UNUM denial, but most are after! This Court must determine among other things whether John Ragsdale was entitled to benefits in January of 1995. UNUM has no information in its possession on this point. How can a Plaintiff be legally able to sue for something

and present no evidence? Without the arbitrary and capricious heightened deferential standard, the sole issue in the case is whether Mr. Ragsdale is disabled. The deferential procedures put in place under ERISA to promote ease of use to smooth administrative process, no longer apply.

UNUM decided that Mr. Ragsdale had a mental and nervous condition which limited his benefits to 24 months. This Court must determine whether this was correct, not simply reasonable. To aid the Court, the Plaintiff may offer the short testimony of an addictionologist who will address the facts of this case such as the effect of narcotic pain medication prescribed for spinal surgery to a recovering alcoholic, clean and sober for years prior to the surgery. Can UNUM hide behind inapplicable roadblocks designed for employee plans, not commercial insurers, with deferential appeals processes absent from the present Plan? Furthermore, to allow UNUM to shield against that goes to the ultimate issue of disability, promotes shoddy investigation by never asking the question that may injure your ultimate defense!

Is John Ragsdale disabled? We know he is, the Federal Government knows he is, (without any mention by way of the Social Security Administration of a disabling “mental” condition), his doctors know he is and now UNUM wants this Honorable Court to guess whether he is with a quarter of the information because they fear he is disabled as well. Plaintiff respectfully requests this Honorable Court not to allow UNUM’s wrong decision by limiting the Court’s inquiry to a half-hearted, shoddy investigation that inures to the financial benefit of UNUM and disregards the rights and needs of the Plan participant, the supposed reason for ERISA in the first place.

### **UNUM'S IMPROPER DENIAL OF MR. RAGSDALE'S CLAIM**

In this case, UNUM's policy language in this type of plan has been found **not to confer discretion**, thus the standard of review is de novo. (A copy of *Accola v. UNUM*, Case No. 96 - 1123R (U.S.D.C. W. Dist Washington May 22, 1997) is attached as Exhibit \_\_\_) Mr. Ragsdale has been found to be disabled by the Social Security criteria and all of his treating physicians agree that he is totally unemployable. UNUM, with no objective medical evidence of their own and ignoring Mr. Ragsdale's treating physicians as well as the Social Security Administration, have determined that Mr. Ragsdale is not disabled based on a cursory review of his medical records. There is simply no medical basis for a doctor to look at several reports from different doctors, in different fields of specialties, which all agree that someone is disabled and, without examining the patient, determine that each of the specialists is wrong. The decision to terminate Mr. Ragsdale's benefits was not only wrong, but unreasonable based on the medical evidence available to UNUM at the time of their decision to deny his claim.

A similar set of events occurred in *Mongeluzo v. Baxter*, 46 F.3d 938 (9th Cir. 1995). In that case, as in this case, the plan administrator terminated the Plaintiff's benefits after two years claiming that his disability was a mental disorder. Mongeluzo suffered from a disability with mixed physical and emotional symptoms. The vast majority of the symptoms were physical, but Mongeluzo became depressed over the lack of medical diagnosis and treatment. Id at 942. The Court ruled that the term "mental disorder" was ambiguous because: "First, the Plan does not specify whether a

disability is to be classified as 'mental' by looking to the cause of the disability or to its symptoms. . . . Second, the Plan does not make clear whether a disability qualified as a 'mental disorder' when it results from a combination of physical and mental factors." Id at 942 - 3 (citations omitted). The same is true in this case. The "mental illness limitation" in Mr. Ragsdale's Plan is ambiguous.

The Mongeluzo Court went on to say that "[b]ecause of the rule that ambiguities are to be resolved in favor of the insured, if either a cause or a symptom of the disease were physical and caused the disability in whole or in part, then benefits are payable. Id at 943 (citations omitted). The Court ruled that there remained a genuine issue of material fact as to whether or not Mongeluzo was disabled. However, in the present case, the facts are clear that a cause or symptom of Mr. Ragsdale's disease is physical and caused the disability in whole or in part.

Plaintiff also believes that UNUM has a financial interest in denying claims. UNUM has continuously ignored Mr. Ragsdale's physical problems and classified his disability as a mental/nervous disorder. UNUM knew that Mr. Ragsdale would not be able to work again, so they paid him under a provision which allowed them to cease benefits after two years. Although UNUM had evidence of Mr. Ragsdale's physical problems in addition to the mental problems, they conveniently ignored any evidence which would require payment past two years.

### **CONCLUSION**

Mr. Ragsdale was very successful in the advertising field even though he was born blind. If this were his only problem, he would still be working. Unfortunately, Mr.

Ragsdale has multiple problems, each of which could be disabling on its own. The combination of these problems has left Mr. Ragsdale unable to work in his former occupation. UNUM knows that Mr. Ragsdale is totally disabled, but they prefer to categorize his disability as a mental/nervous problem so they will not have to pay him any more benefits than they already have. In doing so, UNUM has breached its fiduciary obligations to Mr. Ragsdale in that the fiduciary's obligations run to each plan participant, not to a defendant attempting to save a few dollars.

Mr. Ragsdale is totally disabled due to several **physical** problems. The Federal government, by way of the Social Security Administration, has determined that Mr. Ragsdale is disabled due to physical problems after thoroughly examining him. His treating physicians have determined that Mr. Ragsdale is disabled due to physical problems after thoroughly examining him. UNUM is alone in its determination that Mr. Ragsdale is not disabled due to physical problems, yet they have never physically examined him. UNUM is simply attempting to extort Mr. Ragsdale into a less than equitable settlement and exert the financial pressure of nonpayment which will effectuate its goals of saving money.

WHEREFORE, Plaintiff respectfully requests this honorable Court to enter an Order granting his Motion for Partial Summary Judgment on the following issues as a matter of law:

1. The appropriate standard of review in the above styled action is the de novo standard based upon the lack of discretion conferred to the defendant in the Plan documents.

2. Based on the complete medical information in defendant's possession at the time of denial, the only reasonable determination that could have been made is that of total disability from any occupation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this \_\_\_\_ day of January, 1998, to: Brett K. Bacon, Esquire, Thompson Hine & Flory LLP, 3900 Key Center, 127 Public Square, Cleveland, Ohio 44114-1216.

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