

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

<b>LOUIS G. COTE,</b>	)	
	)	
<b>Plaintiff</b>	)	
	)	
<b>v.</b>	)	<b>Civil No. 97-0166-B</b>
	)	
<b>JAMES RIVER CORPORATION</b>	)	
<b>OF VIRGINIA, et al.,</b>	)	
	)	
<b>Defendant</b>	)	

**MEMORANDUM OF DECISION<sup>1</sup>**

The plaintiff, Louis G. Cote, brings this action against the defendant, James River Corporation of Virginia, under the Employee Retirement Income Security Act of 1974 (ERISA). 29 U.S.C. §1001 et seq. The plaintiff seeks from this Court an order overturning a denial of the plaintiff’s claim for disability retirement benefits under the James River Paper Company Old Town Pension Plan [”the Plan”]. Before this Court is the Defendant’s Motion for Summary Judgment, the Plaintiff’s Response and the Defendant’s Reply. For the reasons set forth below the Court DENIES Defendant’s Motion for Summary Judgment as to Cote’s claim for benefits under the Plan, and GRANTS Defendant’s Motion for Summary Judgment to the extent Cote asserts that James River breached their fiduciary duty by refusing to provide him benefits.

***Summary Judgment***

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any show that there is no

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<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 73(b), the parties have consented to allow the United States Magistrate Judge to conduct any and all proceedings in this matter.

genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). "A material fact is one which has the 'potential to affect the outcome of the suit under applicable law.'" *FDIC v. Anchor Properties*, 13 F.3d 27, 30 (1st Cir. 1994) (quoting *Nereida-Gonzalez v. Tirado-Delgado*, 990 F.2d 701, 703 (1st Cir. 1993)). The Court views the record on summary judgment in the light most favorable to the nonmovant. *Levy v. FDIC*, 7 F.3d 1054, 1056 (1st Cir. 1993).

However, summary judgment is appropriate "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Once the moving party has presented evidence of the absence of a genuine issue, the nonmoving party must respond by "placing at least one material fact in dispute." *Anchor Properties*, 13 F.3d at 30 (citing *Darr v. Muratore*, 8 F.3d 854, 859 (1st Cir. 1993)).

### ***Background***

The Old Town paper mill in Old Town, Maine employed Louis Cote from June 16, 1972 to March 22, 1987. Throughout his employment at the paper mill Cote worked in many different positions that required significant physical activity. In 1984, Cote developed carpal tunnel syndrome from repetitive work he conducted at the plant. Cote took off a brief time and returned to work. In November 1986 Cote injured his lower back but continued to work at the plant until March 22, 1987. Cote left work because of physical problems to his back and wrists. In 1991, doctors performed surgery on Cote's wrists and lower back.

Cote belongs to a pension plan established and managed by the defendant. The Plan gives the Defendant the responsibility to interpret the Plan and resolve ambiguities, omissions

and inconsistencies under the Plan. The Plan provides that any decision by the Defendant is final and binding.

The Plan provides for a disability retirement benefit if an employee has at least fifteen years service under the Plan and becomes permanently disabled while employed by the Defendant. An employee becomes permanently disabled if the employee is "permanently unable to perform his regular duties or any other duties of a comparable nature available to him within the Company or any Affiliated Company in light of his previous experience and training." *Affidavit of Cindy Harris (Harris Aff.)*, §5.4 #200050-51. The Plan also requires the participant to have a continued disability for five consecutive months and that a physician, designated by the Plan Administrator, opine that the disability will be permanent or continuous.

In the Summer of 1994 Cote applied for a lump sum disability benefit under the Plan. Included in Cote's application for the disability payment was the medical opinion of Dr. Rodney A. Rozario dated April 13, 1994. Dr. Rozario, Cote's personal physician, filled out a form that asked him a series of questions about Cote. To the question is the plaintiff "presently totally disabled" from performing his own job Rozario checked the "yes" box. However when asked if the plaintiff's disability is permanent or temporary Rozario checked the "temporary" box. On August 16, 1994 Defendant denied Cote's request for benefits because Rozario opined that Cote's disability was temporary and therefore did not fall within the Plan's definition of "totally and permanently disabled".

On November 22, 1994 Cote submitted additional medical information and asked for reconsideration of his claim. His claim for disability benefits was again denied on December 20, 1994. The committee based its decision on Cote's failure to address Dr. Rozario's previous

medical opinion. The committee also noted that the new medical information Cote provided regarding his disability predated Dr. Rozario's medical opinion.

Cote made one more request for reconsideration in June 1995. Cote included in his request a letter by Dr. Rozario that stated, "In terms of his getting back to his previous ability of work, namely to perform as a fire fighter, mill worker or a boiler operator, he is disabled in this regard. However, he is not totally disabled in performing other activities, and I understand that at the current time he is indeed driving a bus." *Id.* #000087. Don Smith, the manager of Defendant's retirement programs, responded to Rozario's letter asking for clarification on whether Cote is permanently disabled to perform his previous duties. Defendant also arranged for Doctor Mainen to conduct an Independent Medical Exam (IME) on Cote.

Dr. Rozario's responded to Smith's letter by writing:

This disability is indeed permanent in so far as he does not appear to be able to return to his previous employment. There has been no change in his condition from April 1994, when the form which was addressed was signified as temporary. This designation was based on the lack of understanding that his disability at this point is pertaining to his ability to return to his original work.

He informs me at this point in time that he is unable to return to his original work and consequentially, I would have to state that he is totally disabled for his own specific job...

*Id.*, #000089.

On September 19, 1995, Dr. Mainen conducted an IME on Cote. Mainen concluded that Cote's back condition precluded him from working at the mill but opined that Cote's back condition was based in part on scarring that resulted from Cote's back operations in 1991. Mainen concluded that since the operations occurred five years after Cote stopped working at James River he could not associate Cote's back problems with Cote's employment at James

River. Mainen also added that Cote experienced physical problems, including upper extremity paresthesia, associated with clinical depression. Cote was diagnosed as clinically depressed after he left James River.

Citing Dr. Rozario's opinion that Cote's disability was temporary and Mainen's opinion that Cote's disability did not occur while Cote was actively employed by the company pursuant to the Plan, Defendant denied Cote's request for reconsideration in a letter dated November 20, 1995.

### *Discussion*

#### *A. Cote's direct claim for benefits under §502(a)(1)(B)*

The plaintiff brings his claim under ERISA alleging Defendant wrongly refused to provide him disability retirement benefits under the Plan. The central issue in the case is whether Defendant arbitrarily and capriciously decided that Cote was not eligible for retirement disability benefits under the Plan. See *Firestone v. Burch*, 489 U.S. 101 (1989). To determine whether Defendant's decision was "arbitrary and capricious" that Court looks at whether the decision was reasonable. *Whipp v. Seafarers Vacation Plan*, 832 F.2d 853 (2d Cir. 1987); *Schwartz v. Newsweek, Inc.* 827 F.2d 879 (2d Cir. 1987).

Defendant primarily based its decision to refuse Cote request for disability benefits on the medical opinions of Doctor Rozario and Doctor Mainen. Dr. Rozario, Cote's personal physician, filled out a form that asked Rozario a series of questions about Cote. When asked whether the plaintiff is "presently totally disabled" from performing his own job Rozario checked the "yes" box. However when asked if the plaintiff's disability is permanent or temporary Rozario checked the "temporary" box. On August 16, 1994 the committee denied Cote's request for

benefits because Rozario opined that Cote's disability was temporary and therefore did not fall within the Plan's definition of "disabled".

Rozario later sent a letter to Cote's lawyer dated June 14, 1995, and to Donald Smith, head of Defendant's retirement programs, dated July 31, 1995. In those letters Rozario attempts to clarify Cote's medical condition. In the letter to Smith, Rozario wrote that Cote's disability, "is indeed permanent in so far that he does not appear to be able to return to his previous employment." *Harris Aff.* at #000005. Rozario also wrote that his previous designation that Cote's disability was "temporary" was "based on the lack of understanding that his disability at this point is pertaining to his ability to return to his original work." *Id.* Based on the statements in Rozario's letter, Cote's condition appears to fit within the plain meaning in the Plan that for an employee to be "totally and permanently disabled" he must be "permanently unable to fully perform his regular duties or any other duties of a comparable nature available to him. . . ." *Id.*, §5.4 #200050-51. Viewing the record in a light most favorable to the plaintiff, the Court is satisfied that a genuine issue of material fact exists over whether Defendant unreasonably interpreted Rozario's letters which lead to the denial of Cote's disability request.

The Court also questions Defendant's selective reliance on Doctor Mainen's medical opinion. Defendant sent Cote to Mainen so that Mainen could conduct an IME pursuant to the Plan and determine if Cote was "totally and permanently disabled". When Mainen determined that Cote was permanently disabled under the Plan, Defendant ignored that opinion. If Defendant accepts Mainen's medical opinion that Cote sustained the disability injuries after being employed at the paper mill, the Court fails to see why Defendant does not rely on Mainen's opinion that Cote is permanently disabled under the Plan. The Court is satisfied that a genuine

issue of material fact exists as to whether Defendant's arbitrarily and capriciously decided to deny Cote disability benefits under the Plan based on Doctor Mainen's medical opinion.

***B. Cote's claim for breach of fiduciary duty under §502(a)(2)***

In Cote's Complaint he asserts that Defendant breached their fiduciary duty by refusing to award him disability benefits. Under §502(a)(2), civil actions can be brought by beneficiaries or participants of the Plan for a breach of fiduciary duty. However individuals cannot seek relief under this subsection. *Massachusetts Mutual Life Ins. Co. v. Russell*, 473 U.S. 134, 144 (1985). Since Cote is suing in an individual capacity, he is unable to obtain relief under this subsection. Accordingly, the Court GRANTS Defendant's Motion for Summary Judgment with respect to Cote's claim under §502(a)(2).

***Conclusion***

For the reasons delineated above, the Court DENIES Defendant's Motion for Summary Judgment on Cote's direct claim for benefits and GRANTS Defendant's Motion for Summary Judgment on Cote's claim that James River breached their fiduciary duty.

***SO ORDERED.***

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Eugene W. Beaulieu  
U.S. Magistrate Judge

Dated on April 23, 1998.