UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

DALE C. GITTINGS,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	
	§	Case No. 08 cv 4972
TREDEGAR CORPORATION,	§	
TREDEGAR FILM PRODUCTS – LAKE	§	Judge Milton I. Shadur
ZURICH, LLC, and TREDEGAR	§	
CORPORATION EMPLOYEE BENEFIT	§	Magistrate Judge Schenkier
PLAN,	§	
	§	
Defendants.	§	
	§	
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DEFENDANT'S MOTION FOR JUDGMENT ON THE ADMINISTRATIVE RECORD

Defendant, Tredegar Corporation Employee Benefit Plan (the "Plan"), by and through its counsel, moves for judgment on the administrative record pursuant to Fed. R. Civ. Proc. 52. In support of this Motion, Defendant states as follows:

- 1. This Court has jurisdiction over the parties and over the subject matter of this dispute pursuant to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, et seq. ("ERISA").
- 2. The parties and the Court have agreed to the briefing and submission of Plaintiff's claim for LTD pursuant to Rule 52 of the Federal Rules of Civil Procedure so that the Court may weigh the evidence and enter findings of fact and conclusions of law. *See, Diaz v. Prudential Ins. Co. of Am.*, 2007 U.S. App. LEXIS 20067 (7th Cir. Aug. 23, 2007); *Hess v. Hartford Life &Accident Ins. Co.*, 274 F.3d 456, 461 (7th Cir. 2001) (in an ERISA case, the applicable standard of review was the one found in Rule 52(a), where the parties stipulated to the facts that made up

the administrative record, and "the procedure the parties followed ... [was] more akin to a bench

trial than to a summary judgment ruling.").

3. The parties have agreed to the admissibility of the administrative record which

was filed on February 1, 2010. [Docket #52].

4. Plaintiff's Amended Complaint alleged that the denial of long term disability

benefits was arbitrary and capricious while also claiming that Plaintiff was always able to

perform his job functions with or without a reasonable accommodation from his employer.

5. The undisputed administrative record evidence shows that the Plan is entitled to

judgment in its favor.

6. In support of this Motion, Defendant submits its Memorandum in Support of its

Motion for Judgment on the Administrative Record, which is hereby incorporated in this Motion

as if stated fully herein.

WHEREFORE, Defendant, Tredegar Corporation Employee Benefit Plan, respectfully

requests that this Court GRANT its Motion for Judgment on the Administrative Record, and

award Defendant its costs and attorney's fees incurred in defending this lawsuit, and such other

relief as the Court deems proper.

Respectfully submitted,

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

/s/ Eric P. Mathisen

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of February, 2010, a true and correct copy of the following instrument was sent via electronic means and to the following counsel of record, and no other means of service is required:

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