

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL
CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

THOMAS J. RICE, M.D.,

CASE NO.: 98-16904 CA30

Plaintiff,

v.

PROVIDENT LIFE AND ACCIDENT
INSURANCE COMPANY,

Defendant.

**PLAINTIFF'S MOTION FOR PARTIAL SUMMARY
JUDGMENT TO DETERMINE THE GOVERNING LAW**

Plaintiff, Thomas J. Rice, M.D., by and through undersigned counsel, hereby files his Motion for Partial Summary Judgment to Determine the Governing Law against the Defendant, Provident Life and Accident Insurance Company (hereinafter "Provident"), as follows:

1. Dr. Rice sued Provident under the Florida Insurance Code alleging a breach of contract due to its wrongful termination of disability insurance proceeds.
2. Provident has claimed that Dr. Rice's state law claims are preempted by 29 U.S.C. § 1001, *et seq.* (ERISA).
3. Dr. Rice's policy is not governed by ERISA because:
 - a. an ERISA plan was never established or maintained by his employer;
 - b. a policy covering only partners is exempted from being governed by ERISA pursuant to 29 C.F.R. § 2510.3-3;

- c. Dr. Rice's policy is exempted from being governed by ERISA pursuant to the safe harbor provisions of 29 C.F.R. § 2510.3-1; and
- d. any ERISA plan was converted to an individual policy prior to his disability.

4. Summary judgment is proper in any case where there is no genuine issue of material fact. Fla.R.Civ.P., Rule 1.510.

5. Summary judgment should be granted in this case because there are no genuine issues of material fact that the governing law of this case is Florida State law; the pleadings and affidavits previously filed in conjunction with this Motion, Memorandum, and its attachments establish the non-existence of a genuine issue of material fact.

WHEREFORE, Plaintiff, Thomas J. Rice, M.D., respectfully requests this Court to grant this Motion and render an Order granting Partial Summary Judgment in his favor and against the Defendant, Provident Life and Accident Insurance Company, determining that the governing law of this case is Florida State law, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

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Coconut Grove, FL 33133
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BY: _____
KIRK W.B. WAGAR

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been served via facsimile and U.S. mail this ____ day to January, 2000 to: Roger Kobert, Esq., Shutts & Bowen LLP, 201 So. Biscayne Blvd., 1500 Miami Center, Miami, Florida 33131 (305) 381-9982.

Respectfully submitted,

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BY: _____
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and

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