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FOCUS™ Terms Search Within Original Results (1 - 15) Source: [Legal > / . . . / > Federal Court Cases, Combined](#) Terms: "Isaacs" and "MetLife" and "fourth circuit" ([Edit Search](#) | [Suggest Terms for My Search](#)) Select for FOCUS™ or Delivery*281 Fed. Appx. 240, *; 2008 U.S. App. LEXIS 12584, ***JERRY **ISAACS**, Plaintiff - Appellant, versus METROPOLITAN LIFE INSURANCE COMPANY, Defendant - Appellee, and ROBERT BOSCH SHORT TERM DISABILITY PLAN, Defendant.

No. 07-1549

UNITED STATES COURT OF APPEALS FOR THE **FOURTH CIRCUIT**

281 Fed. Appx. 240; 2008 U.S. App. LEXIS 12584

May 15, 2008, Argued
June 13, 2008, Decided**NOTICE:** PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.**SUBSEQUENT HISTORY:** US Supreme Court certiorari denied by **Isaacs v. Metro. Life Ins. Co.**, 2008 U.S. LEXIS 8662 (U.S., Dec. 1, 2008)**PRIOR HISTORY: [**1]**

Appeal from the United States District Court for the District of South Carolina, at Charleston. David C. Norton, District Judge. (2:06-cv-00288-DCN).

DISPOSITION: AFFIRMED.**CASE SUMMARY****PROCEDURAL POSTURE:** Plaintiff claimant sought a declaration of his entitlement to long-term disability (LTD) benefits under an employee welfare benefit plan governed by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C.S. § 1132. The United States District Court for the District of South Carolina, at Charleston, granted summary judgment in favor of defendant insurer. The claimant appealed.**OVERVIEW:** The district court found that the claimant had not exhausted his administrative remedies because he failed to file an LTD claim within ninety days after his date of loss, as required by the plan. The claimant asserted that he initiated an LTD claim through his February 18, 2005 phone call to the insurer but that the insurer prevented him from pursuing the claim by failing to send him forms necessary to perfect that claim; by not responding to his attorney's November 2005 and January 2006 letters; and by otherwise failing to act on his LTD claim. The insurer responded that the claimant never actually filed an LTD claim and that it processed and ultimately rejected the only properly-filed claims--the short-term disability plan and the Family and Medical Leave Act claims--

based on insufficient evidence of disability. The claimant's actions presented the instant court with a record which included neither a predicate finding of disability nor a completed claim for LTD benefits; therefore, there was no basis on which to grant him the relief he sought.


OUTCOME: The judgment of the district court was affirmed, albeit for slightly different reasons than those given by the district court.


CORE TERMS: disability, claim form, initiate, initiated, disability benefits, faxed, summary judgment, referencing, claimant, administrative remedies, short term, settlement, futility, documentation, short-term, processed, notice, doctor, failed to file, claims procedures, date of loss, exhaustion requirement, declaration, entitlement, long-term, exhausted, favorable, litigated, excused, written evidence


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
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HN1  An appellate court reviews de novo a district court's grant of summary judgment. It will affirm the district court's decision if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The appellate court views the record and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party. [More Like This Headnote](#)


COUNSEL: [Robert Edward Hoskins](#) , FOSTER LAW FIRM, LLP, Greenville, South Carolina, for Appellant.


[James Derrick Quattlebaum](#) , HAYNSWORTH, SINKLER & BOYD, PA, Greenville, South Carolina, for Appellee.

JUDGES: Before [NIEMEYER](#)  and [DUNCAN](#) , Circuit Judges, and [Claude M. HILTON](#) , Senior United States District Judge for the Eastern District of Virginia, sitting by designation. Judge [Duncan](#)  wrote the opinion, in which Judge [Niemeyer](#)  and Senior Judge [Hilton](#)  joined.

OPINION BY: [DUNCAN](#) 

OPINION

[*241] [DUNCAN](#) , Circuit Judge:

Jerry **Isaacs** ("**Isaacs**") brought this action seeking a declaration of his entitlement to long-term disability ("LTD") benefits under an employee welfare benefit plan governed by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1132. The district court granted summary judgment in favor of defendant-appellee [Metropolitan Life Insurance Company](#)  ("**MetLife**"), holding that **Isaacs** had not exhausted his administrative remedies because he failed to file an LTD claim within ninety days after his "date of loss," as required by the plan. We affirm, albeit for **[**2]** slightly different reasons

than those given by the district court.

I.

Isaacs appeals the district court's grant of summary judgment in favor of **MetLife**. Accordingly, we review the facts in the light most favorable to **Isaacs**. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

Isaacs was employed by the Robert Bosch Corporation ("Bosch") and participated in the Robert Bosch LTD Plan (the "LTD Plan"). **MetLife** is the claims administrator for the LTD Plan. **MetLife** [*242] also serves as the administrator for a separate Bosch short-term disability ("STD") plan, and for Bosch employees' requests for leave under the Family and Medical Leave Act ("FMLA").

The LTD Plan detailed two methods through which a claimant could initiate a claim for LTD benefits. One option allowed a claimant to submit a notice of claim and supporting written evidence directly to **MetLife**. Under the second option, a claimant could give notice to **MetLife** by calling a toll-free telephone number, after which **MetLife** would send a claim form to be returned by the claimant with supporting written evidence to **MetLife**.

Isaacs stopped reporting for work at Bosch on February 10, 2005, for reasons that are beyond the scope of this appeal. [**3] On February 18, 2005, **Isaacs** initiated a telephonic claim for benefits. **MetLife** processed the call as a concurrent FMLA/STD claim and sent forms to **Isaacs**, which he completed. ¹ **Isaacs** visited Dr. Arlene Olaisen, who evaluated **Isaacs** and completed an Attending Physician Statement on his behalf. Dr. Olaisen informed **MetLife** that she had *not* advised **Isaacs** to stop working, and that in her opinion **Isaacs** could safely perform his job duties while on his current medication. Citing Dr. Olaisen's statements, **MetLife** denied **Isaacs's** STD claim by letter dated June 1, 2005. In a separate letter, **MetLife** denied **Isaacs's** FMLA claim, citing his "fail[ure] to provide the required medical certification of a serious health condition." J.A. 142.

FOOTNOTES

¹ **Isaacs** points out that forms sent to him by **MetLife** referred generically to a "disability claim" or "disability benefits" and did not differentiate among FMLA, STD, and LTD benefits. See J.A. 147, 151.

On June 6, 2005, **Isaacs** contacted **MetLife** to ask "what was needed in order for the claim to be accepted." J.A. 65. **MetLife** advised **Isaacs** "that in order for the decision to be re-evaluated his physician would need to submit medical documentation to support his [**4] disability claim." *Id.* The same day, in a face-to-face meeting, Janice Woods ("Woods"), a Medical Supervisor with Bosch, provided **Isaacs** with forms that she indicated would be sufficient to initiate a claim for LTD benefits. ² **Isaacs** took the forms to his doctor in July 2005, who completed them and later faxed a copy to **MetLife**. **Isaacs** also returned a copy of the completed forms to Woods and Bosch's head of personnel for the Plan, and was told by them "that these forms were all that was needed and that [he] would be contacted if anything further was required." J.A. 209. ³

FOOTNOTES

² There is a factual dispute surrounding these forms. Woods asserts that she gave **Isaacs** a set of three Long Term Disability Claim Forms: an LTD Claim Form Employee Statement, an LTD Claim Form Employer Statement; and a "Long Term Disability Claim Form Attending Physician Statement." J.A. 231-43. By contrast, **Isaacs** alleges that the

forms he received from Woods were limited to a generic four-page "Attending Physician Statement" that nowhere indicated that it pertained solely to LTD claims. J.A. 208-13. We accept **Isaacs's** view for purposes of resolving this appeal.

3 Contrary to **Isaacs's** argument that these forms were **[**5]** intended to initiate an LTD claim, the forms faxed to **MetLife** by **Isaacs's** doctor--ostensibly the same forms returned to Bosch--included a cover page and authorization form with the claim numbers for **Isaacs's** STD and FMLA claims and several pages specifically referencing the FMLA claim. None of the faxed forms referenced an LTD claim. J.A. 120-37.

In October 2005, **Isaacs** retained counsel. On November 3, 2005, **Isaacs's** attorney wrote a letter to **MetLife** captioned, "Short-Term Disability Claim," and referencing **Isaacs's** STD claim number. J.A. **[*243]** 109-11. In direct contradiction to the caption, the first sentence of the letter reads, "Please be advised that I have been retained to represent **[Isaacs]** in connection with the appeal of your denial of his claim for *long term disability benefits*." J.A. 109 (emphasis added). After a detailed request for review of **Isaacs'** claim and a request for a copy of the administrative record, the letter's penultimate paragraph reads,

The third purpose of this letter is with regard to my client's LTD claim. My client has been out long enough to where it is time to get her [sic] LTD claim in the works. If you could please forward any LTD claim forms or other **[**6]** documentation that needs to be completed in order to prefect [sic] the filing of that claim I would be most appreciative. If the LTD claim rolls over automatically after payment in full of the STD benefits then please just advise and I will proceed with the STD claim since, essentially, it will be considered to be the same claim.

J.A. 110. **MetLife** did not respond to this letter. On January 9, 2006, counsel wrote another letter to **MetLife**, again referencing **Isaacs's** "Short-Term Disability Claim" and listing his STD claim number, explaining, "Please be advised that I am appealing the denial of *both* Mr. **Isaac's** claim for short term disability and long term disability benefits. I wanted to clarify the foregoing in the event it was not clear [from the November 2005 letter]." J.A. 107. Counsel filed the complaint in this matter less than three weeks later, on January 29, 2006.

Isaacs's amended complaint named **MetLife** and the Robert Bosch Short Term Disability Plan as defendants and sought declarations of **Isaacs's** entitlement to LTD and STD benefits under 29 U.S.C. § 1132(a)(1)(B). **Isaacs** later dismissed the Robert Bosch Short Term Disability Plan as a defendant and dropped his STD claim **[**7]** from this case. Instead, **Isaacs** initiated a claim for STD benefits in state court. While **Isaacs's** federal claim was pending, **Isaacs** litigated the STD claim to settlement in state court.

Reviewing the LTD claim against **MetLife**, the district court held that **Isaacs** failed to file an LTD claim within ninety days after his "date of loss," as required by the plan, and that, as a result, he had not exhausted his administrative remedies. The court also rejected **Isaacs's** alternative argument that his failure to meet the exhaustion requirement was excused by the doctrine of futility. Accordingly, the court granted **MetLife's** motion for summary judgment. **Isaacs** appeals.

II.

HN1 We review de novo the district court's grant of summary judgment. See *Ellis v. Metro. Life Ins. Co.*, 126 F.3d 228, 232 (4th Cir. 1997). We will affirm the district court's decision "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment

as a matter of law." Fed. R. Civ. P. 56(c). Again, we view the record and all reasonable inferences drawn therefrom in the light most favorable to **Isaacs**. See Williams v. Giant Food Inc., 370 F.3d 423, 428 (4th Cir. 2004).

A.

This **[**8]** appeal essentially distills to two somewhat interrelated arguments, which we discuss in turn. First, **Isaacs** asserts that he initiated an LTD claim through his February 18, 2005 phone call to **MetLife** but that **MetLife** prevented him from pursuing the claim by failing to send him forms necessary to perfect that **[*244]** claim; by not responding to his attorney's November 2005 and January 2006 letters; and by otherwise failing to act on his LTD claim. **MetLife** responds that **Isaacs** never actually filed an LTD claim and that it processed and ultimately rejected the only properly-filed claims--the STD and FMLA claims--based on insufficient evidence of disability.

Isaacs's argument ultimately implodes as it attempts to do two inherently contradictory things simultaneously. **Isaacs** fully pursued the claim he initiated on February 18, 2005 through the administrative process. **Isaacs's** attorney indicated in November 2005 that he understood that **Isaacs's** STD and LTD claims were one *and the same*, and in January 2006, referencing a single claim number, that he was "appealing the denial of *both* Mr. **Isaac's** claim for short term disability and long term disability benefits." J.A. 107. **Isaacs** eventually litigated **[**9]** this claim to settlement in state court. Now, **Isaacs** would have it that **MetLife** precluded him from pursuing a claim for LTD benefits by not processing a *separate LTD claim* based on his February 18, 2005 telephonic claim.

Isaacs cannot have it both ways. The initial claim on which he now seeks to rely was denied due to **Isaacs's** failure to provide sufficient evidence of a disability. ⁴ His dismissal of the appeal in that regard and pursuit and settlement of the matter in state court places the denial of benefits on that claim beyond the scope of our review, and the record is devoid of evidence that any other claim was filed pursuant to the LTD Plan claims procedures. See J.A. 194 (describing the two methods for filing a claim under the LTD Plan). ⁵

FOOTNOTES

⁴ It is unclear how **Isaacs** believes he would have benefitted had **MetLife** processed an LTD claim beginning on February 18, 2005. As **Isaacs** himself points out, "disability" is defined identically in the STD and LTD plans. Appellant's Br. at 8. **Isaacs's** failure to provide evidence of a disability therefore would likely have doomed his LTD claim just as it did his claim for STD benefits.

⁵ The evidence leaves no doubt that on June 6, 2005, if not **[**10]** before, **Isaacs** knew that **MetLife** had not yet received from him documentation sufficient to initiate a claim for LTD benefits. See **Isaacs** Aff., J.A. 208 ("[At the June 6 meeting] I was told that I needed to file for long-term disability [benefits] and I replied that I did not have the forms."). It seems disingenuous for **Isaacs** to claim that he continued to labor under the illusion that an LTD claim had been filed on February 18, 2005 and remained pending.

B.

Isaacs also argues that his receipt, completion, and return of the forms Woods gave him on June 6, 2005 was the functional equivalent of filing a claim under the LTD Plan. We disagree. Aside from the February 18, 2005 claim discussed above, **Isaacs** has never properly initiated any other claim for benefits with **MetLife**. Moreover, the documents faxed by **Isaacs's** doctor referenced either the STD and FMLA claims or no claim at all. We therefore hold that

the faxed forms were insufficient to initiate a claim under the LTD Plan. ⁶ **Isaacs's** attorney's subsequent letters were likewise insufficient either **[*245]** to initiate an LTD claim or to put **MetLife** on notice that **Isaacs** believed that such a claim existed separate and apart from his STD claim. **[**11]**

FOOTNOTES

⁶ **Isaacs** argues, in the alternative, that his failure to exhaust his administrative remedies with respect to his LTD claim should be excused because, in light of **MetLife's** denial of his STD claim, any attempt to pursue the LTD Plan remedies would have been futile. We find that **Isaacs** failed to show that he was (or would have been) denied access to the claims procedures provided by the LTD Plan. His "bare allegations of futility are no substitute for the 'clear and positive' showing of futility . . . required before suspending the exhaustion requirement." *Makar v. Health Care Corp. of Mid-Atlantic (Carefirst)*, 872 F.2d 80, 83 (4th Cir. 1989). We therefore find **Isaacs's** argument to be without merit.

III.

Isaacs's actions have presented us with a record which includes *neither* a predicate finding of disability nor a completed claim for LTD benefits. We therefore have no basis on which to grant him the relief he seeks.

AFFIRMED







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