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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

SAMUEL TOVEN,	)	<b>CASE NO.: CV 06-7260 ABC (RZx)</b>
	)	
Plaintiff	)	<b>FINDINGS OF FACT AND CONCLUSIONS</b>
	)	<b>OF LAW</b>
v.	)	
	)	
METROPOLITAN LIFE INSURANCE	)	
COMPANY; CONSOLIDATED GRAPHICS,	)	
INC. WELFARE BENEFIT PLAN,	)	
	)	
Defendants.	)	
	)	
_____	)	

Plaintiff Samuel Toven ("Plaintiff" or "Toven") filed a complaint against the Consolidated Graphics, Inc. Welfare Benefit Plan (the "Plan") alleging a failure to extend disability benefits in accordance with the Plan and the Employee Retirement Income Security Act of 1974. Metropolitan Life Insurance Company ("MetLife") administers the Plan. Both sides submitted their Opening Trial Briefs on January 7, 2008, and their Responsive Trial Briefs on January 28, 2008. Upon the filing of these briefs, the matter was taken under submission. However, on February 13, 2008, the parties submitted a stipulation to stay the case pending the United States Supreme Court's decision in Metropolitan Life Ins. Co. v. Glenn ("Glenn"). This Court approved

1 the stipulation and stayed the matter, and the Supreme Court issued  
2 its decision in Glenn on June 19, 2008. 128 S. Ct. 2343 (2008).  
3 Thereafter, both sides submitted supplemental opening briefs on August  
4 22, 2008, and supplemental responsive briefs on September 12, 2008.  
5 The matter was then once again taken under submission.

6 **Findings of Fact**<sup>1</sup>

7 This is an action under the Employee Retirement Income Security  
8 Act of 1974, 29 U.S.C. § 1001, et seq. ("ERISA") for recovery of long  
9 term disability benefits under the Plan. On November 14, 2006,  
10 Plaintiff filed a Complaint with this Court seeking review of  
11 MetLife's rejection of his claim for long term disability ("LTD")  
12 benefits under the Plan. The Administrative Record ("AR") is attached  
13 as Exhibit A to the Declaration of Cindy Broadwater, filed by  
14 Defendants on January 7, 2008.

15 Plaintiff Samuel Toven was employed as a bindery supervisor with  
16 Consolidated Graphics in Westlake Village, California, from 1994 to  
17 2006. (AR 73, 185.) In that position, Plaintiff oversaw up to  
18 twenty to thirty people, and "assist[ed] in all phases including  
19 planning material handling, set ups and some machine operations," such  
20 as "folders and cutters." (AR 73.) According to the description  
21 provided by his employer, Plaintiff's job consisted of "[o]versee[ing]  
22 the coordination and running of the equipment while assigning,  
23 observing, and directing personnel for each part of the bindery

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24  
25 <sup>1</sup>The Court has elected to issue its decision in narrative form  
26 because a narrative format more fully explains the reasons behind the  
27 Court's conclusions, which aids appellate review and provides the  
28 parties with more satisfying explanations. Any finding of fact that  
constitutes a conclusion of law is hereby adopted as a conclusion of  
law, and any conclusion of law that constitutes a finding of fact is  
hereby adopted as a finding of fact.

1 operation." (AR 19.) Physically, "[m]uch of the time [in Plaintiff's  
2 job] is spent walking, observing, reaching, bending, stooping, lifting  
3 (minimum of 35 pounds), and standing with intermittent pulling,  
4 pushing, climbing, and kneeling." (AR 19.)

5 The parties do not dispute that at all relevant times, Plaintiff  
6 was an eligible participant in the Plan, which is governed by ERISA.  
7 Pursuant to the terms of the Plan, MetLife determines eligibility for  
8 benefits. (AR 229.) MetLife also funds the benefits to be paid under  
9 the Plan. (AR 227.)

10 The Plan contains the following provisions granting MetLife  
11 discretion to administer claims:

12 MetLife in its discretion has authority to  
13 interpret the terms, conditions, and provisions of  
14 the entire contract. This includes the Group  
15 Policy, Certificate and any Amendments.

16 (AR 189.)

17 **Discretionary Authority of Plan Administrator and**  
18 **Other Plan Fiduciaries**

19 In carrying out their respective responsibilities  
20 under the Plan, the Plan Administrator and other  
21 Plan fiduciaries shall have discretionary  
22 authority to interpret the terms of the Plan and  
23 to determine eligibility for and entitlement to  
24 Plan benefits in accordance with the terms of the  
25 Plan. Any interpretation or determination made  
26 pursuant to such discretionary authority shall be  
27 given full force and effect, unless it can be  
28 shown that the interpretation or determination was  
arbitrary and capricious.

(AR 229.)

The Plan defines disability, in pertinent part, as follows:

"Disabled" or "Disability" means that, due to  
sickness, pregnancy, or accidental injury, you are  
receiving Appropriate Care and Treatment from a  
Doctor on a continuing basis; and

1. during your Elimination Period and the next 24  
month period, you are unable to earn more than 80%  
of your Predisability Earnings or Indexed

1 Predisability Earnings at your Own Occupation for  
2 any employer in your Local Economy; or

3 2. after the first 24 month period, you are unable  
4 to earn more than 80% of your Indexed  
5 Predisability Earnings from any employer in your  
6 Local Economy at any gainful occupation for which  
7 you are reasonably qualified taking into account  
8 your training, education, experience and  
9 Predisability earnings.

10 . . .

11 "Own Occupation" means the activity that you  
12 regularly perform and that serves as your source  
13 of income. It is not limited to the specific  
14 position you held with your Employer. It may be a  
15 similar activity that could be performed with your  
16 Employer or any other employer.

17 (AR 205.)

18 On August 26, 2004, Plaintiff suffered the loss of sight in his  
19 left eye when a bungee cord struck him in the face.<sup>2</sup> (AR 62, 134.)  
20 Over a year later, Plaintiff worked his last day at Consolidated  
21 Graphics on October 8, 2005. (AR 179, 185.) On approximately January  
22 12, 2006, Beth Digirolamo of Consolidated Graphics appears to have  
23 called MetLife to initiate a claim for disability benefits on  
24 Plaintiff's behalf. (AR 185.) MetLife recorded that Plaintiff was  
25 prevented from working by "blood sugar out of control, stress,  
26 depression, fatigue," without mention of the eye injury. (AR 185.)

27 From the beginning, there was confusion at MetLife regarding  
28 Plaintiff's benefits. MetLife initially tagged his application as one  
for short term disability ("STD") benefits, not LTD, with an expected  
return to work date of June 1, 2006. (AR 183, 185.) Accordingly,  
MetLife sent Plaintiff a letter on January 13, 2006, indicating it had

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<sup>2</sup>There is nothing in the record to suggest that this accident occurred at work, although for purposes of this case it is irrelevant whether his eye injury was work-related or not.

1 reviewed his application for STD benefits; the letter stated that  
2 MetLife had been unable to contact Plaintiff's physician by telephone,  
3 and informed Plaintiff that his application would be decided without  
4 further information unless his physician called within one week. (AR  
5 183.)

6 It is unclear where this confusion originated, but Plaintiff's  
7 employer seems to have been aware of the correct situation, informing  
8 MetLife by email on January 24, 2006 that Plaintiff's STD coverage was  
9 through the State of California, not MetLife. (AR 179.) Apparently,  
10 though, this caused MetLife to deny Plaintiff's "claim" for STD, and  
11 send Plaintiff a letter on January 26, 2006 informing him that he was  
12 "not eligible for Short Term Disability with Metropolitan Life." (AR  
13 168, 177.) Plaintiff's employer thus had to contact MetLife again, to  
14 explain that Plaintiff "was requesting LTD and was denied Short term.  
15 I think there has been some confusion on what he was actually  
16 requesting from MetLife." (AR 175.)

17 The record is unclear as to when Plaintiff's STD coverage through  
18 California was scheduled to (or did) expire.<sup>3</sup> However, on February 3,  
19 2006, MetLife finally opened an LTD claim file for Plaintiff, which  
20 was handled by a different case manager than the aborted STD "claim."  
21 (AR 1.) On February 22, 2006, the new case manager, Noemis Marcano-  
22 Molina, spoke with Plaintiff by phone, and sent him a letter

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23  
24 <sup>3</sup>The only documentation in the record regarding Plaintiff's state  
25 STD claim is a Physician's Supplementary Certificate completed by Dr.  
26 Azizad on December 8, 2005, in which he identified "DM II on Insulin"  
27 and "Depression" as Plaintiff's disabling conditions, and stated that  
28 Plaintiff could not return to work due to "blood sugars out of control  
causing extreme fatigue, poor health causing stress and depression."  
(AR 97, 158.) Again, there is no mention of the eye injury. Dr.  
Azizad estimated that Plaintiff might be able to return to work by  
June 1, 2006. (AR 97, 158.)

1 requesting specific information needed to consider his LTD claim. (AR  
2 2-3, 164.) She also requested records from Plaintiff's primary care  
3 physician, Dr. Masoud Azizad. (AR 162.)

4 On March 1, 2006, Plaintiff completed numerous required forms  
5 (see AR 62-76), including a "Disability Claim Employee Statement," in  
6 which he claimed to be disabled as of October 8, 2005 due to "stress -  
7 depression," "blood sugar control," and "neuropathy," with no mention  
8 of his eye injury. (AR 76). Dr. Azizad completed MetLife's Attending  
9 Physician Statement on March 10, 2006, in which he indicated that he  
10 had advised Plaintiff to cease work on October 6, 2005, diagnosed  
11 Plaintiff with poorly controlled diabetes and depression/anxiety, and  
12 noted subjective symptoms of high stress, insomnia, and depression  
13 causing an erratic eating pattern and poor diabetic control. (AR 47.)  
14 Dr. Azizad recommended that Plaintiff lower his stress by taking leave  
15 from work (AR 47), indicated that Plaintiff "is unable to engage in  
16 stress situations and engage in interpersonal relations," that  
17 Plaintiff could lift/carry up to 20 pounds "frequently" and more than  
18 20 pounds "occasionally" (AR 48), and that Plaintiff could "work a  
19 total of 0 hours per day." (AR 48.) Dr. Azizad indicated that  
20 Plaintiff had a Class 2 (slight) cardiac limitation and that his  
21 prognosis for returning to work was "fair." (AR 48.) Dr. Azizad did  
22 not mention Plaintiff's eye injury.

23 Plaintiff also submitted Dr. Azizad's treatment notes for the  
24 previous several months. The notes from October 5, 2005 indicate that  
25 Plaintiff's blood sugars were poorly controlled, and that he was  
26 experiencing insomnia, an inability to concentrate, depression and a  
27 lot of pressure at work. (AR 52.) The same day, Plaintiff was placed  
28

1 into an intensive glycemic control program called ACCORD. (AR 77.<sup>4</sup>)  
2 Dr. Azizad continued to treat Plaintiff into 2006. The January 5,  
3 2006 treatment notes indicate Plaintiff was "doing well but has severe  
4 wrist/hand pain esp[ecially] at night" and that Plaintiff might have  
5 carpal tunnel syndrome (CTS). (AR 50.)

6 On January 13, 2006, Plaintiff was treated by Dr. Ting-Lin Kao.  
7 Dr. Kao's treatment notes indicate that Plaintiff had diabetes ("DM  
8 II") and related neuropathy, that Plaintiff was participating in a  
9 diabetes research project, that he was on medication for numbness of  
10 toes and checked his feet daily, and that he complained he had had  
11 numbness in his fingers for six months and bilateral shoulder pain for  
12 several months, especially when he elevated his arms. (AR 127.) Dr.  
13 Kao's assessment was that Plaintiff had depression and probably CTS;  
14 for Plaintiff's shoulder pain, Dr. Kao recommended naproxen and  
15 ordered a shoulder x-ray. (AR 129-30.) This x-ray, performed January  
16 18, 2006, indicated "osteoarthritic changes of the acromioclavicular  
17 joint." (AR 124.)

18 Dr. Azizad's February 23, 2006 notes indicate that "Plaintiff is  
19 doing well[,] still under a lot of stress/depression. Feels better  
20 but still poor sleep and concentration." (AR 50.)

21 Plaintiff also submitted notes from Dr. Moises Vargas, from whom  
22 Plaintiff was receiving individual psychotherapy, dated from  
23 approximately November 22, 2005 through March 7, 2006. (AR 100-120.)  
24 In these notes, Dr. Vargas assessed Plaintiff as having symptoms of  
25 post-traumatic stress disorder, "and intermittent depressed mood

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26  
27 <sup>4</sup>This document appears to have been misdated originally. The  
28 handwritten date states "10/05/06," but that is inconsistent with the  
timeline established by the rest of Plaintiff's file, which suggests  
he began treatment in the ACCORD program in early October 2005.

1 starting this summer. [Plaintiff] is on Sertraline . . . and has  
2 noticed improvement in affect." (AR 100.) Plaintiff also submitted  
3 notes from approximately October 6, 2005 through March 9, 2006, from  
4 group therapy for Viet Nam veterans in which he was participating.  
5 (AR 138-153.)<sup>5</sup>

6 The information Plaintiff submitted to MetLife in March 2006  
7 included a "Personal Profile" form in which he described his present  
8 condition as follows: "I have been depressed and under a lot of  
9 stress. Problem with my feet, hands & shoulders. I have trouble  
10 seeing since I lost vision in left eye. I can not stand & walk for  
11 extended periods." (AR 68.) He also stated, "I have had very much  
12 trouble falling asleep and sleeping through the night. . . . My hands  
13 & shoulders hurt while dressing is a small problem reaching and  
14 fastening." (AR 69.) In response to the question, "When do you  
15 expect to return to your last job/occupation either on a full-time or  
16 part-time basis?" Plaintiff stated, "I can not say at this time for  
17 sure but physically I do not think I can perform my present job duties  
18 or handle the stress of my job and being on my feet for long periods  
19 of time." (AR 70.) When asked if accommodations could help him  
20 return to his job, Plaintiff responded "My job duties are pretty cut &  
21 dry. No room for modification that I can see." (AR 70.) With  
22 respect to his non-work activities, Plaintiff reported "My vision  
23 gives me problems on the computer for extended time. ½ hr to 1 hr at  
24 most at a sitting. Walking 10-15 min without discomfort." (AR 71.)  
25 Finally, Plaintiff also submitted proof that he had applied for social

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26  
27 <sup>5</sup> The notes from the group therapy sessions do not refer to any  
28 group member specifically. As such, they are not useful for assessing  
Plaintiff's particular condition at any given time.



1 security benefits. (AR 155.)

2 On March 16, 2006, Plaintiff's assigned case manager at MetLife  
3 referred Plaintiff's claim file for a clinical consult; the file was  
4 thereafter reviewed by two nurse consultants, including one  
5 specializing in psychological/psychiatric issues. (AR 4-7.) The  
6 first nurse consultant noted, on March 20, 2006, that the "medical  
7 record from 1/13/06 state[s] diabetes is currently followed by outside  
8 physician with good control. . . . These lab results and blood sugar  
9 readings show that your diabetes is under control. Physical medical  
10 on file does not support a severity of impairment. Action plan: Claim  
11 to be referred to PCS to review all psych notes." (AR 5.)

12 The nurse consultant specializing in psychiatric issues reviewed  
13 the medical records and concluded, also on March 20, 2006:

14 Medical does not support a severity of impairment  
15 based on a psychiatric diagnosis, as information  
16 from Dr. Vargas, a[s] state[d] in MSE [mental  
17 status examination], office visit notes dated  
18 12/27/2006 [sic] through 3/2006, that EE  
19 [employee] is well groomed, in casual clothing,  
20 good hygiene, calm, cooperative, no psychomotor  
21 disturbance notes, speech is normal rate, tone and  
22 fluency, mood is euthemic, affect is jovial, calm,  
23 thought process is linear, and goal directed,  
24 cognition is intact, alert and oriented. Insight  
25 and judgment and impulse control are good.

26 (AR 7.)

27 By letter dated March 24, 2006, MetLife denied Plaintiff's claim  
28 for benefits. (AR 43-45.) MetLife noted that Plaintiff was "claiming  
Total Disability due to Diabetes Mellitus Type II, Diabetic  
Neuropathy, Depression and Anxiety, with subjective complaints of High  
Stress, Insomnia, Depression Causing Erratic eating pattern and poorly  
[sic] Diabetic Control. You are a Binery [sic] Manager for  
Consolidated Graphics and your own occupation is considered to be

1 medium in nature." (AR 44.) In this denial letter, MetLife  
2 identified the records submitted with the claim and noted certain  
3 information contained therein. MetLife concluded, "In summary, there  
4 is no clinical evidence to support your inability to perform your work  
5 duties, such as; diagnosis and symptoms that would prevent you from  
6 completing your activities of daily living or that would prevent you  
7 from performing duties of your work. Specific impairments,  
8 restrictions and limitations, in overall functioning, that describes  
9 your current status. Current and planned treatment, including  
10 medication that describes your current status." (AR 44-45  
11 (punctuation as in original).) MetLife also informed Plaintiff of his  
12 right to appeal. (AR 45.)

13       Thereafter, Plaintiff sent MetLife a letter dated June 23, 2006,  
14 entitled, "RE: Long Term Disability / **Notice of Appeal**". (AR 32.)  
15 Plaintiff informed MetLife that Social Security had awarded him  
16 disability benefits, and further explained his physical condition.  
17 (AR 32.) Plaintiff stated:

18           [I]n my case my job is the major problem  
19           contributing to my physical ailments and my  
20           diabetes being harder and harder to manage. The  
21           everyday stress of the job is the cause of my  
22           depression and could be directly linked to the  
23           difficulties I am having controlling my diabetes.  
24           I was suffering from extreme fatigue and having  
25           problems sleeping, regularly sleeping 3-4 hours a  
26           night and not consecutively. Being on my feet 8  
27           to 10 hours a day was really causing me problems  
28           and my decision making was becoming questionable  
          at best. [¶] Yes a lot of these symptoms and  
          complications are improving since I have been  
          taken out of this environment and I have been  
          taking some new medication and I have increased  
          the dosage of others along with my bi-weekly  
          therapy sessions. Now I'm looking forward to  
          reducing the medications and hopefully benefit  
          from therapy where I can also reduce the number of  
          sessions. This is a goal that would provide for  
          me to live a longer and healthier life. The one

1 thing that will not change is the loss of sight in  
2 my left eye. This is a true problem in my  
3 occupation since as a working manager I must check  
4 and ok printed jobs for flaws and manage and  
5 assist people working on high speed equipment on a  
6 daily basis. This I fear could put myself and  
7 others in some danger at times. I must also admit  
8 that the loss of sight in my left eye may have  
9 also contributed to my depression because of the  
10 difficulty it was causing me on a day to day basis  
11 at my job.

12 (AR 32.)

13 Plaintiff also submitted additional medical records on appeal.  
14 He submitted a neurological evaluation completed by Dr. Azizad on  
15 April 6, 2006. Dr. Azizad indicated a diagnosis of "diabetes with  
16 neuropathy & depression/anxiety," and gave a prognosis of "fair." (AR  
17 37.) Dr. Azizad stated that, with regard to Plaintiff's hands and  
18 fingers, there is "poor sensation causing difficulties with  
19 manipulation & gripping of materials," and that Plaintiff had  
20 "[decreased] sensation." (AR 38.) Finally, Dr. Azizad noted two  
21 elements of "ocular involvement": "[left]-eye blindness, & retinopathy  
22 of [right eye.]" (AR 39.)

23 Plaintiff also submitted a letter from Dr. Vargas, his  
24 psychotherapist. (AR 40-41.) Therein, Dr. Vargas noted Plaintiff's  
25 initial report of his symptoms; provided his impressions of  
26 Plaintiff's condition; and stated his diagnosis that Plaintiff had  
27 post-traumatic stress disorder based on "childhood family dynamics  
28 further exacerbated by recent psychosocial stressors. His anxious  
diathesis progressed to a state of depression with neurovegetative  
symptoms." (AR 40.) Dr. Vargas stated that the glucose control  
program Plaintiff started was helping his primary endocrine problem,  
but that several of his symptoms such as nightmares, depressed mood,  
and decreased motivation were related to psychological distress. (AR

1 40.) Dr. Vargas stated that many of Plaintiff's psychiatric problems  
2 had improved on sertraline, and that he was undergoing group and  
3 individual psychotherapy to help him "reconnect with his affect and  
4 have better control of his internal and external stressors." (AR 40.)  
5 Dr. Vargas found that many of Plaintiff's stressors had to do with his  
6 work environment, and that Plaintiff would "need ongoing  
7 pharmacotherapy and psychotherapy to alleviate these stressors." (AR  
8 40-41.) Finally, Dr. Vargas recommended "gradual reintegration into  
9 normal social environments rather than prompt reintegration." (AR  
10 41.)

11 MetLife then requested independent physician review of  
12 Plaintiff's claim file by both a psychiatrist and an endocrinologist.  
13 (AR 28.) Reports from both Dr. Lyle Mitzner, board certified in  
14 internal medicine and endocrinology (AR 21-23), and Dr. Robert Polsky,  
15 board certified in psychiatry (AR 24-27), were faxed to MetLife on  
16 July 14, 2006 (AR 20). Both reports indicate that MetLife was seeking  
17 a determination of whether Plaintiff had any functional limitation or  
18 impairment, and that both doctors received Plaintiff's full medical  
19 and claim record.

20 Dr. Polsky's report (AR 24-27) reviews records for Plaintiff from  
21 September 14, 2005 to April 24, 2006. Dr. Polsky concluded, "[t]he  
22 medical information does not support a global level of psychiatric  
23 impairment beyond 10/08/05. . . . Information lacking from the medical  
24 documentation that would support global impairment includes suicidal  
25 or homicidal ideation, parasuicidal behaviors, evidence of mania,  
26 evidence of psychosis, or evidence of significant impairment at  
27 activities of daily living. There is also an absence of documentation  
28 of an objective nature for a mental status exam that would indicate

1 problems with memory, cognition, or concentration. . . . Based upon  
2 the medical information reviewed, [Plaintiff's] cognitive abilities  
3 are suggested to be unimpaired. . . . The medication [Plaintiff] is  
4 prescribed for psychiatric maintenance, sertraline, does not pose a  
5 safety risk or cause cognitive impairment or other significant adverse  
6 side effects. . . . There is an absence of documentation of an  
7 objective nature for a mental status exam that would indicate problems  
8 with memory, cognition, or concentration." (AR 26.)

9 Dr. Mitzner's report (AR 21-23) indicates that Dr. Mitzner  
10 discussed Plaintiff's condition with his treating physician, Dr.  
11 Azizad. The report notes that Dr. Azizad felt Plaintiff's "main  
12 reason for being unable to work was his stress and anxiety." (AR 22.)  
13 Dr. Azizad advised Dr. Mitzner that Plaintiff was improving: "In fact  
14 it seemed per our discussion that he felt that his stress and anxiety  
15 was better after that time as well and was evidenced by improvement in  
16 glycemic control. . . . I did not get the impression that his low  
17 blood sugar episodes were happening at a frequency that would preclude  
18 him from working at his job." (AR 22.) Dr. Mitzner also determined:  
19 "From an endocrinologic/glycemic perspective, [Plaintiff's] level of  
20 functionality would be full and unrestricted work. He would need to  
21 be able to take his insulin and eat meals on time but that is usually  
22 compatible with most lines of work. . . . The medical documentation  
23 does not support functional limitations from a diabetes perspective.  
24 As mentioned, his doctor felt that his anxiety and stress were better  
25 controlled subsequent to October 6, 2006. His hemoglobin Alc's have  
26 certainly been in reasonable range throughout the period and would not  
27 have precluded him from working. There is no specific mention of  
28 frequent hypoglycemic events. Diabetics who take insulin will from

1 time-to-time have low blood sugar episodes. It has to do with how  
2 frequently these occur that potentially can render people  
3 nonfunctional at work. There is no mention here that this was an  
4 issue for him. . . . [Dr. Azizad and I] both agree that [subsequent to  
5 October 6, 2005, Plaintiff's glycemic] control was not in a range that  
6 was preventing him from functioning at work. One would need to see  
7 frequent low blood sugar episodes or swings from high to low blood  
8 sugars or symptomatology or high blood sugars such as frequent  
9 urination, thirst, fatigue, blurred vision, and difficulty with  
10 concentration, to prevent someone from functioning on a regular basis  
11 at work. . . . Based on the information provided and my phone  
12 conversation with Dr. Azizad, [Plaintiff's] functional abilities  
13 should be full and unrestricted." (AR 22-23.)

14 The same day these reports were completed and sent to MetLife,  
15 July 14, 2006, MetLife finally received a job description from  
16 Plaintiff's employer. (AR 11.) It does not appear that this job  
17 description was provided to either Dr. Mitzner or Dr. Polsky.

18 After considering the additional material, MetLife notified  
19 Plaintiff by letter dated August 8, 2006, that it had upheld its  
20 denial decision. (AR 14-16.) In this letter, MetLife stated that its  
21 March 24, 2006 letter had indicated that the claim was declined "due  
22 to the lack of clinical evidence to support your inability to perform  
23 your work duties. Evidence such as diagnosis and symptoms that would  
24 prevent you from completing your activities of daily living or that  
25 would prevent you from performing the duties of your work was not  
26 received." (AR 15.) MetLife acknowledged receipt of Plaintiff's  
27 notice of appeal, wherein Plaintiff explained that the Social Security  
28 Administration had awarded him disability, but stated that it had to

1 administer the Plan as it was written and comply with the Plan's  
2 requirements, which might differ from those of Social Security. (AR  
3 15.) MetLife then explained that it had retained two separate  
4 Independent Physician Consultants ("IPCs") to assist in the review of  
5 Plaintiff's appeal, and summarized Dr. Polsky's and Dr. Mitzner's  
6 reports. (AR 16-17.) MetLife then stated, "In conclusion, your  
7 employer's Plan requires that we be provided with proof of disability  
8 in order to approve benefits. As outlined above, the medical  
9 documentation submitted for review did not offer proof of disability  
10 supporting your inability to earn more than 80% of your Predisability  
11 Earnings at your Own Occupation. Neither of the IPC's was able to  
12 identify objective evidence or proof of an impairment that would have  
13 precluded you from performing the duties of your occupation.  
14 Therefore, in accordance with your employer's plan, the original claim  
15 determination to decline LTD benefits was appropriate and it remains  
16 in effect." (AR 17.)

### 17 Conclusions of Law

#### 18 **I. Jurisdiction And Venue**

19 This action involves a claim for long term disability benefits  
20 under an employee welfare benefit plan regulated by ERISA. As such,  
21 the Court has original jurisdiction over this matter under 28 U.S.C.  
22 § 1331 and 29 U.S.C. § 1132(e). Metropolitan Life Ins. Co. v. Glenn,  
23 128 S. Ct. 2343, 2346 (2008). Venue in the United States District  
24 Court for the Central District of California is invoked pursuant to 29  
25 U.S.C. § 1132(e)(2). The parties do not dispute the facts requisite  
26 to federal jurisdiction or venue.

#### 27 **II. Standard of Review**

28 A denial of benefits under ERISA should be "reviewed under a de

1 de novo standard unless the benefit plan gives the administrator or  
2 fiduciary discretionary authority to determine eligibility for  
3 benefits or to construe the terms of the plan." Firestone Tire &  
4 Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989). Where the plan vests  
5 such discretionary authority in the administrator or fiduciary, the  
6 Court reviews the denial of benefits under the plan for an abuse of  
7 discretion. Id. However, in order for the abuse of discretion  
8 standard to apply, the plan must unambiguously grant discretion to the  
9 administrator or fiduciary. Kearney v. Standard Ins. Co., 175 F.3d  
10 1084, 1089-90 (9th Cir. 1999).

11 In this case, it is undisputed that the Plan unambiguously grants  
12 MetLife discretionary authority both to construe the policy terms and  
13 determine eligibility for benefits: "MetLife in its discretion has  
14 authority to interpret the terms, conditions, and provisions of the  
15 entire contract. This includes the Group Policy, Certificate and any  
16 Amendments." (AR 189.) It is true that there are no "magic words"  
17 which a plan must contain in order to invoke abuse of discretion  
18 review, Abatie v. Alta Health & Life Ins. Co., 458 F.3d 955, 963 (9th  
19 Cir. 2006); if there were, however, these could be the words.

20 Although Plaintiff at one point argued that de novo review should  
21 apply (see Pl.'s Responsive Trial Br., at 2), he has essentially  
22 conceded that the plan documents grant discretion to MetLife (see  
23 Pl.'s Opening Trial Br. at 11). Accordingly, abuse of discretion  
24 review is appropriate here. Glenn, 128 S. Ct. at 2348.<sup>6</sup>

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26 <sup>6</sup>The parties devoted significant effort to arguing the effect of  
27 Glenn on this case. However, in the Ninth Circuit, the answer is  
28 relatively simple. Glenn is entirely consistent with the previously  
governing framework for ERISA cases set forth in Abatie. See Burke v.

(continued...)



1 **III. Discussion**

2 Having found that MetLife's decision should be reviewed under an  
3 abuse of discretion standard, the Court must determine whether MetLife  
4 abused that discretion in denying benefits. In theory, any number of  
5 factors might be relevant to such a determination. See Glenn, 128 S.  
6 Ct. at 2351 ("Benefits decisions arise in too many contexts, concern  
7 too many circumstances, and can relate in too many different ways to  
8 conflicts -- which themselves vary in kind and in degree of  
9 seriousness -- for us to come up with a one-size-fits-all procedural  
10 system that is likely to promote fair and accurate review."). In  
11 practice, probably the most common such factor, and one argued at  
12 length by the parties here, is the existence of a conflict of  
13 interest. Unquestionably, a conflict of interest must be weighed as a  
14 factor in determining whether there has been an abuse of discretion.  
15 Firestone, 489 U.S. at 115.

16 In addition to conflict of interest, Plaintiff points to the  
17 existence of procedural irregularities in MetLife's handling of his  
18 claim as a factor that should weigh heavily against a finding that  
19 MetLife's denial of benefits was a proper exercise of discretion.  
20 Specifically, he argues that MetLife did not investigate or evaluate  
21 his claim in an adequate, sufficient manner, pointing to numerous  
22 particular failures by the company in collecting and reviewing the  
23 information relevant to his claim. Each of these issues will be  
24 discussed separately below, but the final decision must take into  
25 account all factors, "reaching a result by weighing all together."

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26  
27 <sup>6</sup>(...continued)  
28 Pitney Bowes Inc. Long-Term Disability Plan, 544 F.3d 1016, 1024 (9th  
Cir. 2008).

1 Glenn, 128 S. Ct. at 2351. One factor may "act as a tiebreaker when  
2 the other factors are closely balanced, the degree of closeness  
3 necessary depending upon the tiebreaking factor's inherent or  
4 case-specific importance," id., but all factors must be considered.

5 **A. The Impact of MetLife's "Conflict of Interest"**

6 The "[a]buse of discretion [standard of] review applies to a  
7 discretion-granting plan even if the administrator has a conflict of  
8 interest." Abatie, 458 F.3d at 965. However, "if 'a benefit plan  
9 gives discretion to an administrator or fiduciary who is operating  
10 under a conflict of interest, that conflict must be weighed as a  
11 "facto[r] in determining whether there is an abuse of discretion.'" "  
12 Glenn, 128 S. Ct. at 2348 (quoting Firestone, 489 U.S. at 115 (quoting  
13 Restatement (Second) of Trusts § 187, Comment d (1959))).

14 The Supreme Court recently confirmed that a company which "both  
15 evaluates claims for benefits and pays benefits claims" does suffer  
16 from this type of conflict of interest. Glenn, 128 S. Ct. 2348.  
17 Thus, "an insurer that acts as both the plan administrator and the  
18 funding source for benefits operates under what may be termed a  
19 structural conflict of interest." Abatie, 458 F.3d at 965.

20 In this case, the Court has already found that a "structural  
21 conflict of interest" is present. Toven v. Metropolitan Life Ins.  
22 Co., 517 F. Supp. 2d 1174, 1176 (C.D. Cal. 2007). MetLife both funds  
23 and administers the Plan, and Defendant does not argue otherwise.  
24 (Def.'s Opening Trial Br. at 2.) However, the parties differ with  
25 respect to the extent of the conflict here, and how heavily it should  
26 weigh. Plaintiff argues that the structural conflict of interest here  
27 is accompanied by evidence of misconduct requiring the Court to weigh  
28 that conflict much more heavily; Defendants argue that nothing in the

1 record requires the Court to give any more weight to the conflict than  
2 is implicit in the mere existence of a structural conflict of  
3 interest.

4       The weight to be given to a conflict will vary from case to case.  
5 For instance, a conflict may "prove more important (perhaps of great  
6 importance) where circumstances suggest a higher likelihood that it  
7 affected the benefits decision, including, but not limited to, cases  
8 where an insurance company administrator has a history of biased  
9 claims administration. . . . It should prove less important (perhaps  
10 to the vanishing point) where the administrator has taken active steps  
11 to reduce potential bias and to promote accuracy, for example, by  
12 walling off claims administrators from those interested in firm  
13 finances, or by imposing management checks that penalize inaccurate  
14 decisionmaking irrespective of whom the inaccuracy benefits." Glenn,  
15 128 S. Ct. at 2351. "A district court, when faced with all the facts  
16 and circumstances, must decide in each case how much or little to  
17 credit the plan administrator's reason for denying insurance coverage.  
18 An egregious conflict may weigh more heavily (that is, may cause the  
19 court to find an abuse of discretion more readily) than a minor,  
20 technical conflict might." Abatie, 458 F.3d at 968.

21       In evaluating a conflict, a "district court may, in its  
22 discretion, consider evidence outside the administrative record to  
23 decide the nature, extent, and effect on the decision-making process  
24 of any conflict of interest; the decision on the merits, though, must  
25 rest on the administrative record once the conflict (if any) has been  
26 established, by extrinsic evidence or otherwise." Id. at 970. An  
27 administrator can present evidence outside of the administrative  
28 record demonstrating "that any conflict did not influence its

1 decisionmaking process, evidence that would be helpful to determining  
2 whether or not it has abused its discretion." Id. at 969. An  
3 administrator might demonstrate the lack of a conflict by presenting  
4 evidence:

5 . . . that it used truly independent medical examiners or a  
6 neutral, independent review process; that its employees do  
7 not have incentives to deny claims; that its interpretations  
8 of the plan have been consistent among patients; or that it  
has minimized any potential financial gain through structure  
of its business (for example, through a retroactive payment  
system).

9 Id. at 969 n.7.

10 Here, both sides have offered brief excerpts from the depositions  
11 of Noemis Marcano-Molina and Karen Van Aernam, MetLife employees who  
12 handled Plaintiff's claim, and Dr. Lyle Mitzner, one of the two  
13 independent physicians who reviewed Plaintiff's claim at MetLife's  
14 request. Nothing in these excerpts indicates that MetLife had  
15 anything more than a routine structural conflict of interest -- but  
16 nothing indicates MetLife took any out of the ordinary steps to  
17 counteract that structural conflict, either. As the Supreme Court  
18 noted in Glenn, "[t]he record says little about MetLife's efforts to  
19 assure accurate claims assessment." Glenn, 128 S. Ct. at 2351. Thus,  
20 while both case managers testified that they did not receive bonuses  
21 for denying claims, and do not consider the fact that MetLife must pay  
22 any benefits awarded when they decide claims, there is no evidence  
23 MetLife took "active steps to reduce potential bias." Glenn, 128 S.  
24 Ct. at 2351.

25 Accordingly, the Court finds that any conflict of interest  
26 MetLife may have had was not "egregious," and does not weigh  
27 particularly heavily either for or against it. As was the case in  
28 Glenn, MetLife's structural conflict of interest, while a factor, is

1 not in itself determinative. Glenn, 128 S. Ct. at 2352.

2 **B. MetLife's Failure to Investigate and Review Plaintiff's**  
3 **Claim Adequately**

4 However, while MetLife's conflict, in itself, is not particularly  
5 striking, it may weigh more heavily in combination with other factors.  
6 "A court may weigh a conflict more heavily if, for example, the  
7 administrator provides inconsistent reasons for denial . . . fails  
8 adequately to investigate a claim or ask the plaintiff for necessary  
9 evidence . . . fails to credit a claimant's reliable evidence . . . or  
10 has repeatedly denied benefits to deserving participants by  
11 interpreting plan terms incorrectly or by making decisions against the  
12 weight of evidence in the record." Abatie, 458 F.3d at 968-69.  
13 Plaintiff here argues that MetLife failed to investigate his claim  
14 adequately, did not ask for necessary evidence, failed to credit his  
15 reliable evidence, and provided inconsistent reasons for denial.  
16 While not all of Plaintiff's arguments merit much discussion, the  
17 failure to investigate a claim adequately is a troubling procedural  
18 irregularity. "A procedural irregularity, like a conflict of  
19 interest, is a matter to be weighed in deciding whether an  
20 administrator's decision was an abuse of discretion." Abatie, 458  
21 F.3d at 972.<sup>7</sup>

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22  
23 <sup>7</sup>Plaintiff has attempted to submit additional medical evidence  
24 that was not provided to MetLife during the original processing of his  
25 claim. (Decl. of Brent Dorian Brehm Authenticating Portions of Depo.  
26 Trs. and Additional Evid. Pursuant to Case Law, Ex. C.) While it is  
27 true that procedural failures may require a court "to consider  
28 evidence outside the administrative record," Abatie, 458 F.3d at 973,  
the type of evidence submitted by Plaintiff is not the type of  
evidence this Court can consider. When procedural "irregularities  
have prevented full development of the administrative record," a court  
may have to "recreate what the administrative record would have been

(continued...)

1           Problematic here is the fact that MetLife failed to obtain a job  
2 description for Plaintiff's position from his employer until July 14,  
3 2006, more than three months after his claim had initially been  
4 denied. The definition of "disabled" under the Plan at that time was  
5 based on Plaintiff's "own occupation"; how MetLife could have known  
6 whether Plaintiff was able to perform his "own occupation" without  
7 knowing what that occupation entailed is puzzling, to say the least.  
8 Somehow, MetLife was able to describe Plaintiff's job as "medium" in  
9 nature when denying his claim (AR 43), but there is no evidence of how  
10 that conclusion was reached, or what it signifies. True, Plaintiff  
11 himself had provided some information about his job, but there is  
12 nothing to suggest that MetLife engaged in any vocational analysis of  
13 the information he submitted; nor does it appear that the company  
14 viewed the information submitted by Plaintiff to be sufficient, as it  
15 continued to request the information directly from Plaintiff's  
16 employer. Further, the independent physicians who reviewed  
17 Plaintiff's file on appeal never received the employer-provided job  
18 description. Yet MetLife nonetheless relied on that job description  
19 in its final denial letter, including a long paragraph with  
20 information pulled from the employer's description. (AR 15.)

21           While the employer's job description was not obtained by MetLife  
22 until late in the process, at least it was obtained. The company does

23 \_\_\_\_\_  
24           <sup>7</sup>(...continued)  
25 had the procedure been correct." Id. Here, however, the evidence  
26 submitted by Plaintiff postdates MetLife's final decision. If  
27 evidence had existed at the time of MetLife's denial that should have  
28 been in the claim file, but was not there because of MetLife's  
misconduct, it could have been presented to the Court now. But there  
is no way the evidence at issue could have been in the claim file at  
the time, since it did not yet exist. Accordingly, this Court has not  
considered Plaintiff's additional proffered evidence.

1 not appear to have ever obtained any medical records from the  
2 treatment Plaintiff obtained due to the loss of vision in his left  
3 eye. This may have been understandable initially, as Plaintiff's  
4 claim was not explicitly premised on his vision problems. However,  
5 Plaintiff's notice of appeal letter makes clear that his inability to  
6 function at work was due to a combination of many factors, including  
7 the direct impact his loss of vision had on the performance of his  
8 duties, and the indirect impact it had as a contributing factor to his  
9 depression. MetLife may not have had the obligation to track down the  
10 records of this treatment without any help from Plaintiff -- after  
11 all, as the company points out, the Plan requires claimants to provide  
12 proof of disability to MetLife at their own expense -- but Plaintiff  
13 had provided the name and address of his treating ophthalmologist to  
14 MetLife early in the process, and the company never informed Plaintiff  
15 that he would be responsible for obtaining and providing those  
16 records. In contrast, the company did request records directly from  
17 Dr. Azizad.

18 The failure to investigate or evaluate Plaintiff's vision issues  
19 is really just one part of a larger problem, though. That is, MetLife  
20 does not appear to have considered the global nature of Plaintiff's  
21 health concerns. Although MetLife obtained two independent physician  
22 evaluations, neither doctor was asked to, or did, examine the overall  
23 state of Plaintiff's health. Rather, discrete issues were carved out  
24 for each doctor to review in isolation. Dr. Mitzner evaluated  
25 Plaintiff's diabetes, and opined solely on Plaintiff's ability to  
26 function from "an endocrinologic/glycemic perspective." (AR 22.) Dr.  
27 Polsky evaluated only the psychiatric issues, and did not evaluate  
28 Plaintiff's physical condition. (AR 26.) Thus, no doctor reviewed

1 the problems Plaintiff had had with his hands and feet as a result of  
2 either neuropathy and/or carpal tunnel syndrome. Likewise, no one  
3 addressed the fact that Plaintiff's treating physician had noted  
4 Plaintiff could not "twist/bend/stoop" or "reach above shoulder level"  
5 (AR 48). These concerns become even more important in light of the  
6 job description no doctor ever saw, which, as MetLife noted in its  
7 final denial letter, indicated that "[m]uch of the time is spent  
8 walking, observing, reaching, bending, stooping, lifting (minimum of  
9 35 pounds), and standing with intermittent pulling, pushing, climbing  
10 and kneeling" (AR 15). Despite the fact that neither of the  
11 independent physicians was asked to evaluate the full picture, or was  
12 provided with Plaintiff's job description, MetLife's final denial  
13 letter nonetheless stated that "[n]either of the IPC's [sic] was able  
14 to identify objective evidence or proof of an impairment that would  
15 have precluded you from performing the duties of your occupation."  
16 (AR 17.)

17 It may be that none of Plaintiff's health problems was disabling  
18 on its own, but whether the particular combination of problems he had  
19 might together be disabling is a different question -- one that was  
20 not sufficiently addressed. Thus it appears that Plaintiff's main  
21 claim to be disabled was essentially not evaluated. He argued that it  
22 was stress from his job, in combination with, and exacerbated by, all  
23 of his other health problems (including major problems like diabetes,  
24 and more minor ones like insomnia, trying to review the quality of his  
25 subordinates' work with impaired vision, to fix machines with numb  
26 fingers and hands that had difficulty grasping, to stand for long  
27 periods on numb feet, to lift heavy objects when his shoulders hurt  
28 and he was not supposed to bend or stoop) that prevented him from



1 doing his job. Each individual complaint magnified the others, and  
2 contributed to his overall depression and stress. His complaints,  
3 however, were not evaluated in toto, but only in an incomplete,  
4 piecemeal fashion.

5 Thus, to the extent the individual pieces of Plaintiff's health  
6 puzzle may have been evaluated at all, they were not necessarily seen  
7 in the full context. As noted, the stress from his job, and trying to  
8 compensate for his various health problems while working, was a large  
9 component of his problem. Clearly, then, removing Plaintiff from the  
10 work environment should have had a positive impact on his health, and  
11 there is evidence that it did. But MetLife did not evaluate, and the  
12 independent reviewers were not asked to consider, what Plaintiff's  
13 condition was prior to leaving work, or to compare his condition while  
14 working to his condition while on leave. If anything, MetLife appears  
15 to have been operating largely in ignorance both of what Plaintiff's  
16 condition might have been like while working, and of the fact that he  
17 had already been determined to be entitled to short-term disability  
18 benefits.

19 This problem fully manifests in the complete failure to ask the  
20 question of whether Plaintiff, whose condition had improved after  
21 leaving work, would be able to return to work without a concomitant  
22 worsening of his condition. In other words, his condition may not  
23 have appeared that serious at the time it was reviewed, but that does  
24 not necessarily mean that Plaintiff was ready to return to work and  
25 stay healthy. It may be that Plaintiff had recovered enough to return  
26 to work safely -- his condition may truly have been a "short-term"  
27 disability, not a "long-term" one -- but the question of whether he  
28 could go back to work without danger was never posed, let alone

1 answered.

2 In part, the failure to evaluate Plaintiff's full problems in  
3 context may have been due to the fact that MetLife did not handle his  
4 STD claim. If MetLife had evaluated Plaintiff's request for STD,  
5 different information might have been obtained. Further, if MetLife  
6 had made the original decision that Plaintiff was disabled from  
7 performing his job for at least the short term, there would have been  
8 something in the file to support that finding when his claim for LTD  
9 benefits was reviewed.

10 Of course, there is no requirement that the same company provide  
11 both short- and long-term disability coverage, but even apart from the  
12 fact that MetLife's file might have been more complete had it handled  
13 Plaintiff's STD claim, the company totally ignored the fact that  
14 Plaintiff appears to have been receiving STD benefits from the State  
15 of California. (AR 33, 172, 179.) Presumably, there must have been  
16 some determination that Plaintiff was entitled to these benefits  
17 before he began receiving them. Yet MetLife made no attempt to find  
18 out any information about Plaintiff's STD claim or benefits.

19 In slight contrast, MetLife at least acknowledged that Plaintiff  
20 had been determined to be disabled by the Social Security  
21 Administration. However, there is little to indicate that the company  
22 did anything more than acknowledge that fact. Certainly, as MetLife  
23 points out, the disability standard for social security purposes may  
24 be different from that in the Plan, but that does not mean Plaintiff's  
25 social security award was irrelevant. Simply noting that Plaintiff  
26 was receiving social security benefits, and reciting the fact that the  
27 Plan's requirements "may differ from those of the Social Security  
28 Administration," as MetLife did in its final denial letter, does not

1 qualify as an analysis of whether and how those standards are actually  
2 different.

3       Looking at the big picture, it appears that MetLife virtually  
4 ignored the fact that two other entities had already found Plaintiff  
5 to be disabled. If nothing else, this should have prompted MetLife to  
6 take a slightly closer look at Plaintiff's claim; if both the State of  
7 California and the Social Security Administration considered Plaintiff  
8 to be disabled, that would seem to indicate some possibility that he  
9 really was disabled, for at least some period of time. It is possible  
10 that the end result might have been the same -- that is, if MetLife  
11 had conducted a thorough investigation, it may still have concluded  
12 that, due to differences in standards or timing, Plaintiff did not  
13 qualify for LTD benefits under the Plan -- but no analysis of the  
14 differences between the Plan's disability standards and those of the  
15 Social Security Administration or the California program seems to have  
16 been undertaken. And MetLife's investigation here was far from  
17 thorough.

18       In short, MetLife did not properly investigate or evaluate  
19 Plaintiff's claim for LTD benefits, especially in light of the fact  
20 that both the federal and state governments had found Plaintiff to be  
21 disabled. Weighing this factor along with MetLife's structural  
22 conflict of interest, and considering all the facts of the case, the  
23 balance here tips in Plaintiff's favor. Accordingly, MetLife's denial  
24 of benefits was an abuse of discretion, and Plaintiff is entitled to  
25 LTD benefits for the period during which, under the Plan, the  
26 definition of disability was based on Plaintiff's "own occupation."  
27 As for the question of whether Plaintiff may be entitled to benefits  
28 for any period after the Plan definition of disability changed to "any

1 occupation," the matter is REMANDED to MetLife for a determination.

2 **IV. REMEDY**

3 Plaintiff has requested payment of back benefits, plus  
4 prejudgment interest. Plaintiff is entitled to back benefits for the  
5 24-month period ending January 6, 2008. However, under the terms of  
6 the Plan, Defendants are entitled to a setoff for "Other Income  
7 Benefits" Plaintiff may have received, as defined in Part B of the  
8 Plan. (AR 208-11.)

9 As for prejudgment interest, "[w]hether to award prejudgment  
10 interest to an ERISA plaintiff is 'a question of fairness, lying  
11 within the court's sound discretion, to be answered by balancing the  
12 equities.'" Landwehr v. DuPree, 72 F.3d 726, 739 (9th Cir. 1995)  
13 (quoting Shaw v. International Ass'n of Machinists & Aerospace Workers  
14 Pension Plan, 750 F.2d 1458, 1465 (9th Cir. 1985)). "Among the  
15 factors to be considered in determining whether prejudgment interest  
16 should be awarded is the presence or absence of 'bad faith or ill  
17 will.'" Id. While the Court has made no explicit finding of "bad  
18 faith or ill will" in this case, the equities nonetheless balance in  
19 favor of an award of prejudgment interest to Plaintiff. Plaintiff has  
20 been deprived of the value of benefits to which he was entitled for  
21 the period from January 2006 to the present. As such, MetLife (and  
22 not Plaintiff) has derived benefit from those funds (including  
23 interest), and Plaintiff has been forced to bring the present action  
24 to recover funds to which he was entitled. As the Supreme Court has  
25 often stated, "prejudgment interest 'is an element of [plaintiff's]  
26 complete compensation.'" Osterneck v. Ernst & Whinney, 489 U.S. 169,  
27 175 (1989) (quoting West Virginia v. United States, 479 U.S. 305, 310  
28 (1987)) (alteration in original). There is no indication that an

1 award of prejudgment interest would unduly burden Defendants. As  
2 such, the Court holds that such an award is appropriate.

3 Finally, Plaintiff has requested an order finding that he is  
4 entitled to attorneys' fees. However, he has not pointed to any  
5 authority for such an award. While the Court undoubtedly has  
6 discretion to award attorneys' fees in ERISA cases, the award of fees  
7 is not automatic, and the parties have not briefed the issue at all.  
8 The Court would be willing to consider a motion for fees filed by  
9 Plaintiff, but Plaintiff has to invest some effort in making the  
10 request. Further, Defendants should have the opportunity to address  
11 any arguments Plaintiff may raise in favor of fees. For now, however,  
12 Plaintiff's request for fees is DENIED, without prejudice.

13 **CONCLUSION**

14 For the foregoing reasons, the Court hereby finds in favor of  
15 Plaintiff, and against Defendants. Plaintiff shall be entitled to  
16 recover LTD benefits, and prejudgment interest, in an amount  
17 consistent with the terms of both this order and the Plan. The  
18 parties are ORDERED to meet and confer regarding both the amount of  
19 past due benefits and interest, and the amount of offset to which  
20 Defendants are entitled. Thereafter, the parties must SUBMIT to this  
21 Court, by no later than December 22, 2008, a stipulation regarding  
22 both awards. This may be in the form of a [Proposed] Final Judgment.  
23 The parties are further ORDERED to meet and confer prior to the filing  
24 of any motion by Plaintiff for the award of attorneys' fees and costs.

25 **IT IS SO ORDERED.**

26 **DATED: December 2, 2008**

*Audrey B. Collins*

27 **AUDREY B. COLLINS**  
28 **UNITED STATES DISTRICT JUDGE**