

FILED

13 FEB 21 PM 2:26

CLERK, U.S. DISTRICT COURT,  
SOUTHERN DISTRICT OF CALIFORNIA

BY: \_\_\_\_\_ DEPUTY

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
10

11 STANLEY HOFFMAN, individually, and on  
12 behalf of the Estate of PHYLLIS  
13 HOFFMAN,

Plaintiff,

14 vs.

15 AMERICAN SOCIETY FOR TECHNION-  
16 ISRAEL INSTITUTE OF TECHNOLOGY,  
17 INC.; et al.,

Defendants.

CASE NO. 09-CV-2482 BEN (KSC)

**ORDER GRANTING  
METROPOLITAN LIFE  
INSURANCE COMPANY'S  
MOTION FOR SUMMARY  
JUDGMENT**

[Docket No. 66]

18  
19 Presently before the Court is Metropolitan Life Insurance Company's Motion for Summary  
20 Judgment. (Docket No. 66.) For the reasons stated below, the Motion is **GRANTED**.

21 **BACKGROUND**

22 In 1991, Phyllis Hoffman, Plaintiff Stanley Hoffman's late wife, began to work for Defendant  
23 American Society for Technion-Israel Institute of Technology, Inc. ("ATS") as the Director of the San  
24 Diego Chapter. In and before 2007, ATS offered its full-time employees life insurance coverage  
25 through an employee welfare benefit plan administered by Defendant First Reliance Standard Life  
26 Insurance Company. During 2007, ATS decided to switch insurance carriers to Defendant  
27 Metropolitan Life Insurance Company ("MetLife"). On January 1, 2008, MetLife issued a group  
28 insurance policy to ATS to fund the ATS Basic Term Life Insurance & Accidental Death and

1 Dismemberment Insurance Plan (the "Plan"). The Plan is an ERISA-governed employee welfare  
2 benefit plan.

3 In September 2008, Ms. Hoffman was diagnosed with terminal cancer. Under the Plan, a life  
4 insurance premium waiver based on long-term disability is available to claimants with disabilities  
5 occurring before age 60. (Aceto Decl., Exh. A, at MET-HOF 6.) On November 26, 2008, Ms.  
6 Hoffman submitted a claim to MetLife for waiver of life insurance premiums based on total disability.  
7 (*Id.* at MET-HOF 7-11.) In connection with that claim, Ms. Hoffman submitted a check to MetLife  
8 from ATS in the amount of \$717.30. (*Id.* at MET-HOF 19.) The check purportedly represented nine  
9 months worth of insurance premiums for Ms. Hoffman, beginning from the time ATS cancelled Ms.  
10 Hoffman's life insurance coverage on March 1, 2008. (*Id.*) On November 24, 2008, MetLife sent Ms.  
11 Hoffman a denial letter, stating that Ms. Hoffman was not eligible for a premium waiver because she  
12 was 67-years-old when she allegedly became totally disabled. (Aceto Decl., Exh. A, at MET-HOF 6.)  
13 In addition, MetLife sent Ms. Hoffman a letter through her attorney, Ms. Janet Sobel, dated December  
14 30, 2008, which stated that Ms. Hoffman's premium waiver claim was denied due to the Plan's age  
15 limit provision. (*Id.* at MET-HOF 144.) The letter also stated that "[a]s discussed on December 30,  
16 2008 you will not be pursuing an appeal at this time." (*Id.*) On February 26, 2009, Ms. Hoffman  
17 passed away.

18 On November 5, 2009, Plaintiff filed suit individually and on behalf of the estate of Ms.  
19 Hoffman. (Docket No. 1.) The First Amended Complaint (the operative complaint) names ATS,  
20 Metropolitan Life Insurance Company, First Reliance Standard Life Insurance Company, and the  
21 American Society for Technion-Israel Institute of Technology, Inc. Group Life Insurance Benefit Plan<sup>1</sup>  
22 as defendants. (Docket No. 27.) The First Amended Complaint alleges four claims: (1) life insurance  
23 benefits under 29 U.S.C. § 1132(a)(1)(B); (2) denial of severance benefits under 29 U.S.C.  
24 § 1132(a)(1)(B); (3) life insurance benefits under 29 U.S.C. § 1132(a)(3) (equitable estoppel); and (4)  
25 life insurance benefits under 29 U.S.C. § 1132(a)(3) (surcharge). (*Id.*) On August 21, 2012, the third  
26 and fourth claims were dismissed. (Docket No. 55.)

---

27  
28 <sup>1</sup> The American Society for Technion-Israel Institute of Technology, Inc. Group Life Insurance  
Benefit Plan was erroneously named as the American Technion Society Employee Benefit Plan in the  
First Amended Complaint.

1 Presently before the Court is MetLife's Motion for Summary Judgment. Being fully briefed,  
2 the Court finds the Motion suitable for determination on the papers without oral argument, pursuant  
3 to Civil Local Rule 7.1.d.1.

#### 4 DISCUSSION

5 Summary judgment must be granted where the record shows "there is no genuine dispute as  
6 to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a);  
7 *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The moving party has the initial burden  
8 of demonstrating that summary judgment is proper. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157  
9 (1970). This burden may be discharged by demonstrating that there is an absence of evidence to  
10 support an element of the nonmoving party's case. *Celotex*, 477 U.S. at 325. The burden then shifts  
11 to the nonmoving party to demonstrate the existence of specific facts showing that there is a genuine  
12 issue for trial. *Id.*

13 MetLife's Motion seeks summary judgment on the first claim, which challenges MetLife's  
14 denial of life insurance benefits under 29 U.S.C. § 1132(a)(1)(B).

15 "[A] claimant must avail himself or herself of a plan's own internal review procedures before  
16 bringing suit in federal court" for benefits under an ERISA governed claim. *Diaz v. United Agric.*  
17 *Emp. Welfare Benefit Plan & Trust*, 50 F.3d 1478, 1483 (9th Cir. 1995). "[T]he exhaustion doctrine  
18 is consistent with ERISA's background, structure and legislative history and serves several important  
19 policy considerations, including the reduction of frivolous litigation, the promotion of consistent  
20 treatment of claims, the provision of a nonadversarial method of claim settlement, the minimization  
21 of costs of claims settlement and a proper reliance on administrative expertise." *Id.* at 1483; *see also*  
22 *Amato v. Bernard*, 618 F.2d 559, 568 (9th Cir. 1980) ("[A] primary reason for the exhaustion  
23 requirement . . . is that prior fully considered actions by pension plan trustees interpreting their plans  
24 and perhaps also further refining and defining the problem in given cases, may well assist the courts  
25 when they are called upon to resolve the controversies."). Federal courts "have the authority to enforce  
26 the exhaustion [of a benefit plan's administrative procedures and remedies] requirement in suits under  
27 ERISA, and . . . as a matter of sound public policy they should usually do so." *Amato*, 618 F.2d at 568.

28

1 Here, the plan documents for the Plan lay out the process by which a claimant can pursue a  
2 claim for benefits, in a section entitled "FILING A CLAIM":

3  
4 **When a claimant files a claim for insurance benefits** described in this certificate, he  
5 should send Us both the notice of claim and the required Proof within 90 days of the  
6 date of a loss.

7 Notice of claim and Proof may also be given to Us by following the steps set forth  
8 below:

9 **Step 1**

10 A claimant may give Us notice by calling Us at the toll free number shown in  
11 the Certificate Face Page within 20 days of the date of a loss.

12 **Step 2**

13 We will send a claim form to the claimant and explain how to complete it. The  
14 claimant should receive the claim form within 15 days of giving Us notice of  
15 claim.

16 **Step 3**

17 When the claimant receives the claim form, he should fill it out as instructed  
18 and return it with the required Proof described in the claim form.

19 If the claimant does not receive a claim form within 15 days after giving Us  
20 notice of claim, he may send Us Proof using any form sufficient to provide Us  
21 with the required Proof.

22 **Step 4**

23 The claimant must give Us Proof not later than 90 days after the date of the  
24 loss.

25 If notice of claim or Proof is not given within the time limits described in this section,  
26 the delay will not cause a claim to be denied or reduced if such notice and Proof are  
27 given as soon as is reasonably possible.

28 (Aceto Decl., Exh. A, at MET-HOF 187.) In addition, MetLife has an obligation to review the claim  
upon receiving notice and proof of loss. (*Id.* ("When we receive the claim form and Proof We will  
review the claim and, if We approve it, We will pay benefits subject to the terms and provisions of this  
certificate and the Group Policy."))

There is no evidence that Plaintiff exhausted his administrative remedies. The Administrative  
Record does not contain a claim submission for life insurance benefits under the MetLife Plan, nor any  
communication from Plaintiff or his attorneys that could be construed as a claim submission. In  
addition, Plaintiff's Initial Disclosures and Supplemental Disclosures do not contain a purported copy

1 of a claim submission to MetLife for life insurance benefits. Moreover, Plaintiff did not submit a  
2 claim to MetLife for life insurance benefits even after MetLife asserted failure to exhaust  
3 administrative remedies as an affirmative defense in its Answer to the First Amended Complaint.  
4 Plaintiff never submitted any documents detailing the circumstances of Ms. Hoffman's death, and  
5 therefore never provided MetLife with the opportunity to review the claim for life insurance benefits.  
6 (O'Dell Decl. ¶ 2.)

7 The only claim submitted under the Plan was Ms. Hoffman's November 2008 request for a life  
8 insurance premium waiver. (Aceto Decl., Exh. A, at MET-HOF 1-103.) The November 24, 2008  
9 letter from MetLife informing Ms. Hoffman that she was not eligible for a premium waiver did not  
10 address Ms. Hoffman's overall eligibility for life insurance coverage under the MetLife Plan. (*Id.* at  
11 MET-HOF 6.) Accordingly, Plaintiff has failed to show that he has exhausted his administrative  
12 remedies.

13 First, Plaintiff argues that he is deemed to have exhausted his administrative remedies because  
14 filing a formal proof of loss claim would have been futile. According to Plaintiff, MetLife never  
15 responded to Ms. Hoffman's request to convert coverage to an individual life insurance policy.  
16 Plaintiff, however, erroneously assumes that he could not submit a life insurance benefit claim because  
17 MetLife had not made a determination on the conversion request. According to the Plan language, an  
18 application to convert to an individual life insurance policy must be submitted during the Application  
19 Period as defined in the Plan: "If You die during the Application Period, Proof of Your death must be  
20 sent to Us. When we receive such Proof with the claim, We will review the claim and if We approve  
21 it will pay the Beneficiary the amount of Life Insurance to which You were entitled to convert." (*Id.*  
22 at MET-HOF 176.) Therefore, when a decedent dies while a conversion request is pending, the Plan  
23 directs the beneficiary to submit a claim for life insurance benefits. (*Id.*) Despite this, Plaintiff has  
24 failed to submit a claim for life insurance benefits to MetLife. Although MetLife asserted Plaintiff's  
25 failure to exhaust administrative remedies as a defense from the outset of the litigation, Plaintiff has  
26 still not submitted a claim to MetLife.

27 Second, Plaintiff argues that his counsel's request to reinstate or convert the life insurance  
28

1 policy as well as the present lawsuit constitutes a claim for life benefits under the Policy. As for the  
2 request to reinstate or convert the life insurance policy, the Administrative Record does not show that  
3 Ms. Hoffman complied with the Plan's requirements for submitting a conversion request or that  
4 Plaintiff submitted a life insurance benefit claim in connection with the conversion request following  
5 Ms. Hoffman's death. The Administrative Record shows that Ms. Hoffman submitted her request for  
6 reinstatement and ATS's check for 9 months worth of premiums as part of her claim for premium  
7 waiver, MetLife denied Ms. Hoffman's premium waiver claim, and Ms. Sobel confirmed that Ms.  
8 Hoffman would not be pursuing an administrative appeal of the denial determination. (*Id.* at MET-  
9 HOF 144.)<sup>2</sup> This shows only that Ms. Sobel communicated with a life insurance premium wavier  
10 claims examiner regarding possible conversion of group coverage to an individual life insurance  
11 policy.

12 As for the filing of the present lawsuit, the Plan documents contain instructions for submitting  
13 a life insurance benefit claim, which do not include filing a lawsuit. (*Id.* at MET-HOF187.) The Plan  
14 requires that a claimant send MetLife written notice of the claim and proof of loss or provide notice  
15 through a specified, toll-free telephone number. (*Id.*) Plaintiff never submitted the required proof of  
16 loss to MetLife. In addition, by Plaintiff's reasoning, a claimant would be able to side-step ERISA's  
17 administrative review process by filing a lawsuit and treating it as a claim submission. Under ERISA,  
18 a claimant must exhaust his administrative remedies before filing suit in court. *Diaz*, 50 F.3d at 1483  
19 ("[A] claimant must avail himself or herself of a plan's own internal review procedures before bringing  
20 suit in federal court."). Plaintiff's theory would violate ERISA's policy goal of expedience because  
21 it would equate a lawsuit with a claim for benefits and allow claimants to seek relief directly in the  
22 courts.

23 Third, Plaintiff argues that under California's "notice-prejudice" rule, MetLife's 90-day limit  
24 to submit a claim is unenforceable unless the insurer can prove prejudice. California's "notice-  
25 prejudice" rule provides that "[a] defense based on an insured's failure to give timely notice [of a  
26

---

27 <sup>2</sup> MetLife's evidentiary objections to the declarations of Barbara Casino and Janet Sobel  
28 (Docket Nos. 92-1, 92-2) are **OVERRULED** as moot.

1 claim] requires the insurer to prove that it suffered substantial prejudice.” *UNUM Life Ins. Co. of Am.*  
2 *v. Ward*, 526 U.S. 358, 366 (1999) (internal quotation marks omitted). MetLife, however, has not  
3 asserted that the Plan’s 90-day proof of loss provision precludes Hoffman from making a life insurance  
4 benefit claim. The Plan states: “If notice of claim or Proof is not given within the time limits described  
5 in this section, the delay will not cause a claim to be denied or reduced if such notice and Proof are  
6 given as soon as is reasonably possible.” (Aceto Decl., Exh. A, at MET-HOF 187.) MetLife is not  
7 arguing that granting its summary judgment motion would preclude Hoffman from pursuing his  
8 administrative remedies. Any late claim would be governed by California’s “notice-prejudice” rule.

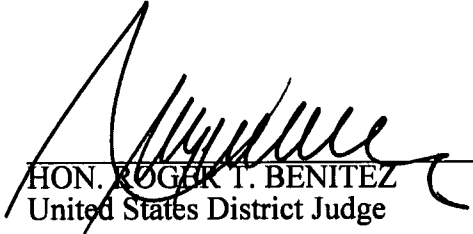
9 Accordingly, because Plaintiff has failed to show that he has exhausted his administrative  
10 remedies, summary judgment is granted in favor of MetLife on Plaintiff’s first claim. *See, e.g., Noren*  
11 *v. Jefferson Pilot Fin. Ins. Co.*, 378 Fed. App’x 696, 697-98 (9th Cir. 2010) (holding that summary  
12 judgment is proper when claimant fails to exhaust administrative remedies).

13 **CONCLUSION**

14 For the reasons stated above, MetLife’s Motion for Summary Judgment is **GRANTED**.  
15 Summary judgment is granted in favor of MetLife on Plaintiff’s first claim.

16 **IT IS SO ORDERED.**

17  
18 DATED: February 21, 2013

  
HON. ROGER T. BENITEZ  
United States District Judge

19  
20  
21  
22  
23  
24  
25  
26  
27  
28