

FILED by _____ D.C.
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AUG 13 2004
CLARENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA. MIAMI

UNITED STATE DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO: 04-21541-CIV-SEITZ

GREGG P. WAGNER,

Plaintiff,

vs.

METROPOLITAN LIFE INSURANCE
COMPANY, a foreign corporation,

—/

FIRST AMENDED COMPLAINT

Plaintiff Gregg P. Wagner, by and through his undersigned counsel, sues the Defendant, Metropolitan Life Insurance Company, a foreign corporation, and alleges as follows

1. The jurisdiction of this Court is predicated upon 29 U.S.C. Sections 501, 1331, 1332 and 1144 in that this is an action for benefits under a "Employee Benefit Plan" and is therefore governed by the Employee Retirement Income Security Act ("ERISA") and therefore presents original federal question jurisdiction

2. At all times material hereto, Plaintiff Gregg P. Wagner was a resident of Orange County, Florida

3. At all times material hereto, the Defendant Metropolitan Life Insurance Company (hereinafter referred to as "Met Life"), was a foreign corporation, authorized to do business and in fact doing business in Miami-Dade County, State of Florida

WCF

4. On or about January 28, 2003, Plaintiff was an employee of Siemens Westinghouse Power Corporation (hereinafter "Siemens"), located at 4400 Alafaya Trail, Orlando, Florida, 32826.

5. Plaintiff Gregg P. Wagner was in the employ of Siemens from July 5, 1994. The Defendant Met Life was the short-term and long-term disability insurance provider to Siemens and its employees in January of 2003.

6. On or about January 28, 2003, Gregg P. Wagner filed a short-term disability claim with the Defendant and was assigned Claim Number 550301308145. Met Life approved Plaintiff's short-term disability claim from January 28, 2003, through March 14, 2003. Thereafter, Defendant Met Life indicated that they would not be honoring the short-term disability claim based upon Plaintiff's medical condition.

7. Plaintiff Gregg P. Wagner, pursuant to Met Life's policies and procedures, appealed Met Life's decision not to honor Plaintiff's short-term disability claim on March 28, 2003.

8. On May 21, 2003, Met Life wrote a letter to Plaintiff, advising him that they needed an additional forty-five (45) days to render a decision on Plaintiff's appeal. On August 25, 2003, Met Life completed its review of Gregg P. Wagner's appeal of Met Life's decision to deny Plaintiff's short-term disability claim. Met Life indicated that they would honor Plaintiff's short-term disability claim through May 3, 2003, after which date they would pay no additional benefits to the Plaintiff.

9. Plaintiff Gregg P. Wagner was suffering from fibromyalgia, fatigue, chronic

Epstein Barr virus, severe sleep disorder, severe testosterone deficiency, muscle and joint pain, dizziness, disorientation, and signs of cognitive impairment. These conditions were identified by at least four (4) of Gregg P. Wagner's treating physicians and were forwarded to Met Life with the Plaintiff's appeal of Met Life's decision to terminate his short-term disability, in that Met Life contended Gregg Wagner was capable of working.

10. Accordingly, on August 25, 2003, the Plaintiff received a letter from the Defendant advising them that Met Life had completed its review of the Plaintiff's appeal of his short-term claim and that the Defendant Met Life had determined that the Plaintiff was no longer entitled to short-term disability benefits. The Defendant indicated that the short-term disability benefits were withdrawn effective May 3, 2003, and that no additional benefits would be paid beyond that point.

11. Plaintiff thereby was not only precluded from receiving short-term disability benefits, but likewise long-term disability benefits pursuant to the policy issued by Met Life on behalf of Siemens' employees.

12. Plaintiff was required to retain the undersigned law firms and is obligated to pay his attorneys a reasonable fee for their services.

13. All conditions precedent to the filing of this action have been performed or waived.

14. Defendant Met Life has steadfastly and wrongfully refused to pay the sum due to the Plaintiff for his disability. At all times material hereto, Met Life, through its agents and/or representatives, had a fiduciary obligation to review Gregg P. Wagner's

claim for disability benefits and to apply the language of the Policy to the facts of Gregg P. Wagner's claim in a good faith and not arbitrary and capricious manner.

15. At all times material hereto, Met Life, through its agents and/or representatives have failed to pay Gregg P. Wagner disability benefits as required by the Policy and have breached their fiduciary obligations to Gregg P. Wagner and have acted arbitrarily, capriciously, in bad faith, and in a manner inconsistent with Met Life's good faith obligations under the policy.

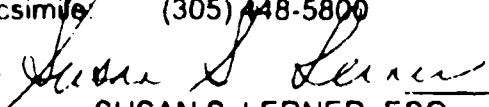
16. By refusing to honor the terms of its insurance contract, Defendant has breached its contract with Plaintiff Gregg P. Wagner thereby causing Gregg P. Wagner to suffer damages. Such damages are continuing to accrue.

WHEREFORE, Plaintiff Gregg P. Wagner demands judgment against the Defendant Metropolitan Life Insurance Company for actual damages, special damages, prejudgment interest, attorneys' fees, costs, and any further relief this Court deems just and proper

Respectfully submitted,

COUNSEL FOR PLAINTIFFS
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By: 
SUSAN S. LERNER, ESQ
FBN: 349186
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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 12th day of August, 2004, Ralph C. Losey, Esquire, Stephanie A. Segalini, Esquire, Akerman Senterfitt, P. O. Box 231, 255 S. Orange Avenue, Orlando, Florida 32802-0231.

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