

Not Reported in F.Supp., 1993 WL 256755 (D.Kan.)
 (Cite as: 1993 WL 256755 (D.Kan.))

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United States District Court, D. Kansas.
 Sam J. **WALTERS**, D.C., Plaintiff,

v.

MONARCH LIFE INSURANCE CO., Defendant.
CIV. A. No. 91-2396-GTV.

Aug. 06, 1996.

[Thomas L. Thurston](#), Perry, Hamill & Fillmore, Overland Park, KS, [Anthony F. Rupp](#), Shughart, Thomson & Kilroy, Overland Park, KS, [W. James Foland](#), [Bradley J. Baumgart](#), [David H. Luce](#), Shughart, Thomson & Kilroy, Kansas City, MO, for Sam J. **Walters**, D.C.

[Lee M. Smithyman](#), **Smithyman & Zakoura, Chtd.**, Overland Park, KS, for **Monarch Life Insurance** Company.

MEMORANDUM AND ORDER

VAN BEBBER, Chief Judge.

*1 This case is before the court on defendant's "Motion for Declaratory Ruling That Plaintiff's Disability Insurance Policy Has Lapsed for Non-Payment of Premiums" (Doc. 345). Plaintiff has responded in opposition (Doc. 347) and has filed a "Cross-Motion for Declaratory Ruling That Plaintiff's Disability Insurance Policy Has Not Lapsed for Non-Payment of Premiums" (Doc. 348). The motions are denied.

I. BACKGROUND

This case arises out of two disability insurance policies issued by **Monarch Life Insurance** Company to Sam J. **Walters**. **Walters** alleged claims of breach of contract based upon defendant **Monarch's** termination of disability benefits which were being paid to **Walters** pursuant to a personal disability insurance policy. The action was tried to a jury in November and December, 1992. On December 4, 1992, the jury entered a verdict for plaintiff **Walters** in the amount of \$44,066.43 on his breach of contract claim.

In an order dated June 29, 1993 (Doc. 307), the court denied plaintiff's Motion to Correct Entry of Judgment (Doc. 274), concluding that [Fed.R.Civ.P. 60\(a\)](#) was not the correct avenue to address the substantive issue of whether plaintiff should be reinstated under his disability insurance policy. However, the court allowed plaintiff to file a motion for equitable relief on this issue if he so desired. In the same order, the court denied plaintiff's Motion for Judgment as a Matter of Law (Doc. 285) in which plaintiff argued that based upon the jury's finding of past and current total disability, he was entitled to damages totalling \$176,265.72, the total amount of damages requested by plaintiff. The court concluded it was within the evidence of the case for the jury to find that plaintiff was not continuously, totally disabled for the full time period at issue.

Following the court's ruling on these post-trial motions, **Monarch** filed its notice of appeal on July 26, 1993. On July 29, 1993, **Walters** filed a motion for reinstatement of his rights under the disability insurance policy issued to him by **Monarch**. (Doc. 313). On August 9, 1993, **Walters** filed his notice of cross appeal.

In an order dated April 4, 1994, the court denied plaintiff's motion for reinstatement of the policy. Although the notices of appeal to the Tenth Circuit had been previously filed by the parties, the court determined that it had jurisdiction to deny the motion under [Aldrich Enterprises, Inc. v. United States, 938 F.2d 1134 \(10th Cir.1991\)](#). The court concluded that plaintiff was not entitled to reinstatement of the policy in light of the jury's verdict and because plaintiff had failed to sustain his burden of proof that he was entitled to the remedy of reinstatement.

On April 14, 1994, **Walters** filed a further notice of cross appeal regarding the court's April 4, 1994 order denying reinstatement of the policy rights. On April 29, 1994, **Monarch** refiled its notice of appeal to avoid any argument that its previous notice was premature.

*2 On June 3, 1994, the Tenth Circuit issued an order consolidating all four appellate case numbers issued in response the notices of appeal filed in the case. **Walters** was given a further opportunity to file a

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supplemental brief, which he declined to do.

On June 6, 1995, the Tenth Circuit affirmed the rulings of this court in all respects. [http://www.westlaw.com/Find/Default.wl?rs=d fa1.0&vr=2.0&DB=506&FindType=Y&SerialNum=1995125500Walters v. Monarch Life Ins. Co., 57 F.3d 899 \(10th Cir.1995\)](http://www.westlaw.com/Find/Default.wl?rs=d fa1.0&vr=2.0&DB=506&FindType=Y&SerialNum=1995125500Walters v. Monarch Life Ins. Co., 57 F.3d 899 (10th Cir.1995)). The Tenth Circuit declined to address the issue whether plaintiff was entitled to reinstatement of the policy. *Id.* at 906. The following passage indicates that the Tenth Circuit apparently was unaware that this court had denied Walters' request for reinstatement in its April 4, 1994 order:

[T]he district court denied plaintiff's motion to reinstate the disability policy as inappropriate under [Fed.R.Civ.P. 60\(a\)](#). The court left open a possible equitable remedy.

Because of what has been said relating to disability benefits over only a part of the time period in question, a question exists whether Walters can establish continuing coverage under the disability policy in the absence of having paid premiums when not disabled. However, we do not decide that issue here. Such question may be presented to the district court under its prior ruling. We cannot say, however, that reinstatement of the policy must follow from the jury award. Accordingly, we reject this ground of Walters' appeal.

Id. The Tenth Circuit denied Walters' petition for rehearing on the issue of reinstatement because he failed to bring the district court's order to its attention.

II. DISCUSSION

In the current cross motions the parties fail to cite any authority for the court to issue a declaratory ruling regarding the lapse of the disability policy following the Tenth Circuit's issuance of the mandate affirming this court's rulings. The only possible authority is under [Fed.R.Civ.P. 60\(b\)](#) for relief from a judgment or order. Relief under [Rule 60\(b\)](#) is discretionary and is warranted only in exceptional circumstances. *Van Skiver v. United States*, 952 F.2d 1241, 1243 (10th Cir.1991), cert. denied, 113 S.Ct. 89 (1992). The district court has substantial discretion in connection

with a [Rule 60\(b\)](#) motion. *Pelican Production Corp. v. Marino*, 893 F.2d 1143, 1146 (10th Cir.1990).

To demonstrate exceptional circumstances justifying relief under [Rule 60\(b\)](#), a party must satisfy one or more of the six grounds for relief contained in [Rule 60\(b\)](#). *Van Skiver*, 952 F.2d at 1243-44. The court need not "rigidly compartmentalize" its analysis based upon the specific subdivision of [Rule 60\(b\)](#) being relied upon. *Pelican Production Corp.*, 893 F.2d at 1146. The court need not pinpoint which clause of [Rule 60\(b\)](#) is the basis for the decision; instead, the court looks to the record in its entirety to determine whether there exists some excusable conduct or other compelling reason for relief to be granted. *Id.* Carelessness by a litigant or attorney does not afford a basis for relief under [Rule 60\(b\)\(1\)](#). *Id.* The party moving to have the judgment set aside bears the burden of pleading and proving excusable neglect. *Id.*

*3 In the present cross motions, the parties disagree whether plaintiff's disability policy issued by defendant has lapsed for non-payment of premiums. The court finds that it previously ruled on this issue in its memorandum and order dated April 4, 1994, in which it denied plaintiff's motion for reinstatement of the policy. Under the law of the case principles, the court must adhere to its previous rulings. See [Charles A. Wright et al., Federal Practice and Procedure § 4478 \(1981\)](#). The court finds that any further declaratory ruling on this issue is unnecessary.

To the extent that the parties seek relief from the court's prior ruling under [Rule 60\(b\)](#), it is denied. The parties had every opportunity to litigate these issues to this court and on appeal to the Tenth Circuit. The court concludes that the parties have failed to raise any issues or facts that persuade the court to grant relief from judgment.

IT IS, THEREFORE, BY THE COURT ORDERED that defendant's "Motion for Declaratory Ruling That Plaintiff's Disability Insurance Policy Has Lapsed for Non-Payment of Premiums" (Doc. 345) is denied.

IT IS FURTHER ORDERED that "Plaintiff's Cross-Motion for Declaratory Ruling That Plaintiff's Disability Insurance Policy Has Not Lapsed for Non-Payment of Premiums" (Doc. 348) is denied.

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Copies of this order shall be mailed to counsel of record for the parties.

IT IS SO ORDERED.

D.Kan.,1996.
Walters v. Monarch Life Ins. Co.
Not Reported in F.Supp., 1996 WL 507298 (D.Kan.)

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