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United States Court of Appeals,  
Second Circuit.

Donald H. SMITH, Plaintiff-Counter-Defendant-Appellant,

v.

FIRST UNUM LIFE INSURANCE COMPANY,  
Long-Term Disability Plan of Morgan Stanley  
Dean Witter & Co., Welfare Plan Administration  
Committee of Morgan Stanley Dean  
Witter & Co., Defendants-Counter-Claimant-Appellees.

**Docket No. 04-6635-CV.**

Oct. 7, 2005.

**Background:** Plan participant brought action against plan administrator seeking payment of disability benefits under the Employee Retirement Income Security Act (ERISA). The United States District Court for the Southern District of New York, [Alvin K. Hellerstein](#), J., entered judgment, following bench trial, in favor of administrator. Participant appealed.

**Holding:** The Court of Appeals held that arbitrary and capricious standard of review applied to administrator's decision to deny benefits. Affirmed.

West Headnotes

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Arbitrary and capricious standard of review applied

to ERISA plan administrator's decision to deny plan participant's claim for disability benefits, despite administrator's dual status as plan insurer and administrator, absent showing that administrator's decision was influenced by conflict of interest, or that its dual status affected the reasonableness of the decision. Employee Retirement Income Security Act of 1974, § 2 et seq., [29 U.S.C.A. § 1001](#) et seq.

\*332 [Christopher P. Foley](#), McCormick Dunne & Foley, New York, NY, for Plaintiff-Appellant.

[Patrick W. Begos](#) (Nicole E. Allen, on the brief), Begos & Horgan, LLP, Westport, CT, for Defendants-Appellees.

Present: [CALABRESI](#), [KATZMANN](#), and B.D. PARKER, Jr., Circuit Judges.

**\*333 SUMMARY ORDER**

**ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the judgment of the district court be and hereby is **AFFIRMED**.

Donald H. Smith appeals from the November 29, 2004 judgment of the United States District Court for the Southern District of New York (Hellerstein, J.), entered after a bench trial on a stipulated record, denying Smith's claim that the termination of his disability benefits by defendant-counter-claimant-appellee First Unum Life Insurance Company ("First Unum") violated the Employee Retirement Income Security Act of 1974, [29 U.S.C. § 1001](#) et seq. We assume the parties' familiarity with the facts and procedural history of the case.

Smith contends that the district court should have applied a *de novo* standard of review because First Unum's decision denying his disability benefits was affected by a conflict of interest. See [Pulvers v. First UNUM Life Ins. Co.](#), 210 F.3d 89, 92 (2d Cir.2000) ("In order to trigger *de novo* review of an administrator's decision when the plan itself grants discretion to the administrator, a plaintiff must show that the administrator was *in fact* influenced by the conflict of interest.") (internal quotation marks omitted). But because Smith has not demonstrated that First Unum was *in fact* influenced by a conflict of interest, see *id.*, or that First Unum's dual status as a plan administrator and plan insurer "affected the reasonableness of the [administrator's] decision" to

deny benefits, [Sullivan v. LTV Aerospace & Def. Co.](#), [82 F.3d 1251, 1259 \(2d Cir.1996\)](#) (internal quotation marks omitted), the district court correctly applied the arbitrary and capricious standard. Under this standard of review, we cannot conclude that First Unum's decision was "without reason, unsupported by substantial evidence or erroneous as a matter of law." [Pagan v. NYNEX Pension Plan](#), [52 F.3d 438, 442 \(2d Cir.1995\)](#) (internal quotation marks omitted).

We have considered the rest of Smith's arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment of the district court.

157 Fed.Appx. 332

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