

American Conference Institute's

11<sup>th</sup> National Advanced Forum on

# Litigating Disability Insurance Claims

June 11 – 12, 2008  
Hilton Boston Financial District,  
Boston, MA

**FEATURING A SPECIAL PANEL  
OF FEDERAL JUDGES**

“

“Great speakers. Whether a novice or experienced LTD practitioner you will benefit from this conference.”

Troy Rosasco, Attorney,  
Turley, Redmond & Rosasco LLP

“Very informative, dynamic and a must for any practicing in the area of disability law.”

Justin Frankel, Attorney,  
Frankel & Newfield, P.C.

”

Interactive Workshops June 10 & 13, 2008

**A. Handling a Disability Insurance Case from Start to Finish: The Complete Guide**

**B. Disability Insurance Trial Simulation**

The only event that gives you in-house experts and a distinguished faculty from both sides of the aisle. You will get practical insights on:

- New approaches for handling ERISA cases in light of the Supreme Court's actions in *MetLife v. Glenn*
- Shortcuts for completing the ERISA record through proven discovery techniques
- Satisfying the five-factor test in your petition for attorney's fees – whether or not you're the prevailing party
- Encouraging the court to construe undefined terms of the policy to your benefit
- Interpreting the results of the IME and FCE and using them to your benefit
- Determining whether the fiduciary exception to the attorney-client privilege applies to your ERISA case
- The best ways to use the findings of investigative surveillance to support your determination of functional capacity

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"This particular conference should be a "must attend" for anyone working with disability insurance claims in the US!"

Gerry Katz, Disability Claim Consultant, Disability Income Concepts, Inc.

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Dear Colleague:

American Conference Institute's 11th National Advanced Forum on Litigating Disability Insurance Claims is the **only** industry event to cater to defense counsel, insurance and reinsurance attorneys, plaintiffs' attorneys, and claims managers, has created this conference to provide the most up-to-date information on today's most pressing and contentious issues in the disability law arena. The program has been completely revised to present the most practical strategies and techniques to use on your next disability case.

Once again, this conference brings together leading litigators, medical experts, and other industry experts from across the country to offer you their perspectives and insights on key issues. A stellar faculty of top medical experts, leading claimant and defense attorneys, and senior insurance company representatives from across the country will provide you with all the information you need to prevail in your next disability case—from the initial evaluation through settlement or trial. If you are involved in the disability insurance industry, this unique, annual event is one you will not want to miss.

This is where you want to be on **June 11-12, 2008** for this one-of-a-kind networking opportunity. Reserve your space today by calling **888-224-2480** or by faxing your registration to **877-927-1563**, or visit us online at [www.americanconference.com/disability](http://www.americanconference.com/disability). Be sure to register before spaces are filled for this critical event.

I look forward to seeing you in Boston in June.

Best regards,



Holly B. Goldberg  
Legal Conference Director

## AGENDA-AT-A-GLANCE

### DAY 1

- Keynote Address: The DOL Claims Process and Considerations before Requesting an Opinion
- Discovery Strategies for Expanding/Protecting the Record
- Developing and Implementing a Winning Theme for Your Case
- Petitioning for – and Winning – Attorney's Fees under ERISA
- View from the Bench: Federal Judge's Dialogue
- Interpreting the Policy: Using the Ambiguities to Your Benefit
- Techniques for Using Medical and Vocational Experts to Prove or Refute the Claimant's Disability

### DAY 2

- Standard of Review in ERISA Litigation in Light of *MetLife v. Glenn*
- Subjective Disorders: Practical Tips for Utilizing the Medical Facts in Litigation
- Interpreting and Using the Results of Neuropsychological Exams and Other IMEs and FCEs
- Applicability of the Fiduciary Exception to Attorney-Client Privilege under ERISA
- Using Investigative Surveillance to Support your Determination of Functional Capacity
- Mediation Techniques for Achieving an Expedious and Appropriate Resolution

WEDNESDAY, JUNE 11, 2008

**8:00 Registration Opens and Continental Breakfast Served** 

**8:45 Co-Chairs' Opening Remarks**

For the Claimant

*Robert K. Scott*  
Attorney  
Law Offices of Robert K. Scott (Irvine, CA)

For the Defense

*H. Sanders Carter, Jr.*  
Partner  
Smith Moore LLP (Atlanta, GA)

**9:00 Keynote Address  
The DOL Claims Process and Considerations before Requesting an Opinion on a Matter**

*Daniel Maguire (Invited)*  
Director  
Office of Health Plan Standards and Compliance Assistance,  
Department of Labor  
U.S. Department of Labor (Washington, DC)

**9:30 Discovery Strategies for Expanding/Protecting the Record**

For the Claimant

*Eric Buchanan*  
Attorney  
Eric Buchanan & Associates (Chattanooga, TN)

For the Defense

*Tony R. Dalton*  
Member  
Woolf, McClane, Bright, Allen & Carpenter, PLLC  
(Knoxville, TN)

- Building your claim file in anticipation of discovery
- Arguments for obtaining more information from the insurer
- Circuit-specific update on discovery rules for ERISA claims
  - Inclusion of claims handling procedures and the claims manual
  - Admissibility of evidence obtained in discovery
- Uncovering inconsistencies and other beneficial information when deposing:
  - Insurer's and plan sponsor's IT employees on document retention
  - Adjuster
  - Insurance agent that sold the individual policy
  - Claimant's friends and co-workers
  - Treating physician
  - Claims handler and claims supervisor
- Frequently overlooked questions that will uncover information to help your case

**10:30 Developing a Winning Theme for Your Case**

For the Claimant

*Thomas O. Sinclair*  
Partner  
Campbell, Gidiere, Lee, Sinclair & Williams (Birmingham, AL)

For the Defense

*Bryan D. Bolton*  
Partner  
Funk & Bolton, P.A. (Baltimore, MD)

- The link between storytelling and case themes
- Information needed to determine the best theme of your case
- Significance of accidental injury vs. a series of "micro-traumas" in different jurisdictions
- Weaving the claimant's condition into the fabric of your case
- Integrating the terms of the policy into your theme
- What works with a jury: effective themes for an individual disability claim
- ERISA claims:
  - Most effective themes in ERISA claims
  - Special considerations when developing your angle

**11:15 Coffee Break** 

**11:30 Petitioning for – and Winning – Attorney's Fees under ERISA**

For the Claimant

*Bonny G. Rafel*  
Attorney  
Bonny G. Rafel LLC (Livingston, NJ)

For the Defense

*H. Sanders Carter, Jr.*  
Partner  
Smith Moore LLP (Atlanta, GA)

- Showing of bad faith
- Establishing ability to satisfy an award
- Showing the deterrent effect of granting an award
- Demonstrating that the goals of the petitioner were to benefit all plan participants or to resolve significant legal ERISA issues
- Proving the merits of your case relative to opposing party's case
- Providing sufficient evidence of hours spent and fees charged
- Application of the lodestar method to determine the amount of the award

**12:15 Networking Luncheon for Delegates and Speakers** 

**1:30 View from the Bench: Federal Judge's Dialogue**

Moderator:

*Pamela Atkins*  
Attorney  
Atkins & Associates LLC (Atlanta, GA)

In this roundtable discussion, the panel of District Court Judges will talk about their experiences hearing disability insurance cases. Some of the topics that will be covered are the cases on the horizon around the Circuits;

"This seminar was fantastic. Great speakers and materials. Great selection of topics. Program moved well. Plan on attending next year. The caliber of this program makes it clear that it is one of the best."

Patricia McCabe, Attorney, Law Offices of Patricia McCabe

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### 3:00 **Interpreting the Policy: Using the Ambiguities to Your Benefit**

#### For the Claimant

*Douglas K. deVries*

Attorney

deVries Law Firm (Sacramento, CA)

#### For the Defense

*Pamela E. Cogan*

Partner

Ropers, Majeski, Kohn & Bentley (Redwood City, CA)

- Distinguishing between "occupation," "regular occupation," and "reasonably suited" occupation
- Determining whether duties are "substantial and material" or "incidental and peripheral"
- Differentiating between "total disability" and "partial disability"
- Determining "station in life" in evaluating "reasonably suited" alternative occupations
- What the standard is to evaluate "appropriate care and treatment"
- Application or avoidance of the "pre-existing condition" exclusion
- What constitutes a "bonus" when calculating pre-disability earnings and benefits
- When and how "reasonable accommodations" affect disability insurance rights

### 4:00 **Refreshment Break**

### 4:15 **Techniques for Using Medical and Vocational Experts to Prove or Refute the Claimed Disability**

#### For the Claimant

*John Tucker*

Partner

Tucker & Ludin PA (Clearwater, FL)

#### For the Defense

*Peter Jason*

Partner

Duane Morris LLP (Philadelphia, PA)

- Balancing the opinion of the IME doctor, the treating physician, and the in-house consultant
  - Effective arguments to qualify your doctors and disqualify opposing doctors
  - Using information regarding credentials to decrease weight given to opposing party's medical professionals
  - Convincing the court that your experts are best equipped to provide the ultimate determination of disability
  - Presenting or countering the treating doctor's patient advocacy
  - Strategies for eliciting testimony on doc to doc, peer to peer, questionnaires, and interviews
- Vocational Experts:
  - Utilizing the differences between independent employability assessment and vocational rehabilitation
  - Latest successful arguments for distinguishing between own occ, any occ, and gainful occ
  - Assessing the claimant's actual ability to perform job functions
  - Interpreting the relevant differences between functional limitations and restrictions
    - physical capacity assessment forms
    - measuring a claimant's residual capacity
    - transferable skills analysis
    - labor market surveys

- Uncovering what resources the vocational expert used to evaluate occupational titles
- Verifying the existence of jobs identified vocational rehabilitation experts

### 5:15 **Conference Adjourns for the Day**

THURSDAY, JUNE 12, 2008

### 8:30 **Continental Breakfast Served**

### 9:00 **Standard of Review in ERISA Litigation in Light of *MetLife v. Glenn***

#### In-house

*Len Giusti*

Director and Corporate Counsel

Prudential Insurance Company of America (Livingston, NJ)

#### For the Claimant

*Scott M. Riemer*

Partner

Riemer & Associates LLC (New York, NY)

#### For the Defense

*Mark E. Schmidtke*

Member

Ogletree, Deakins, Nash, Smoak & Stewart, P.C. (Chicago, IL)

- Understanding the implications of the Supreme Court's review of *Glenn*
- Clarifying *Glenn*'s implications on the standard of review
- Persuading the court on the level of deference given to the plan administrator
- Incorporating the plan's inclusion of *Firestone* language into your litigation strategy
- Circumstances which may require application of a de novo standard of review
- Specific examples of a "structural conflict of interest"
- Effects of *Abatie*'s rejection of the burden-shifting approach
- Using inconsistent communications to your advantage

### 10:00 **Subjective Disorders: Practical Tips for Utilizing the Medical Facts in Litigation**

#### For the Claimant

*Jason A. Newfield*

Partner

Frankel & Newfield, P.C. (Garden City, NY)

#### For the Defense

*Kevin G. Horbatiuk*

Member

Russo, Keane & Toner, LLP (New York, NY)

#### Experts

*Mark I. Levy, MD, DFAPA*

Diplomate, American Board of Psychiatry and Neurology with Added Qualifications in Forensic Psychiatry  
Assistant Clinical Professor, Psychiatry  
University of California (San Francisco, CA)

*Ronald H. Roberts, PhD, ABPP*

Diplomate in Forensic Psychology, American Board of Professional Psychology and the American College of Law and Psychology (San Francisco, CA)

- Pre-claim development of supporting documentation
- Supporting your case by conducting thorough post-claim investigations
- Involving medical experts to strengthen your case
- Chronic Fatigue Syndrome, Fibromyalgia, and Multiple Sclerosis:
  - How accepted is the diagnosis of subjective disorders in the medical community
  - Methods of diagnosing subjective disorders
  - Objective classification of symptoms vs. the claimant’s subjective description
  - Effectiveness of functional capacity evaluations in cases of subjective disorders
  - Objective evidence of work capacity vs. clinical diagnosis
  - Admissible support for diagnosis
- Analysis of psychiatric conditions, medications and treatments
  - How to objectively assess functional impairment for psychiatric claims
  - Long-term prognoses: how long do common conditions typically last
  - Determining whether the impairment is a function of the job site or of the occupation itself
  - Special difficulties that arise in the handling of the mental health disability claim
  - Dealing effectively with the claimant in a mental health disability claim
  - The right questions to ask of the insured, the employer, and co-workers when conducting interviews in mental health disability cases

**11:30 Coffee Break ☕**

**11:45 Interpreting and Using the Results of Neuropsychological Exams and Other IMEs and FCEs**

For the Claimant

*Michail Z. Hack*  
Attorney  
Quadrino & Schwartz, PC (New York, NY)

For the Defense

*Wesley R. Payne, IV*  
Partner  
White and Williams LLP (Philadelphia, PA)

Experts

*George J. Carnevale, PhD*  
Clinical Neuropsychologist  
Vice President, Rehabilitation Specialists Assistant Professor,  
Department of Physical Medicine and Rehabilitation,  
UMDNJ-NJ Medical School (North Haledon, NJ)

*James Lawrence Thomas, PhD*  
Clinical Psychologist & Neuropsychologist  
Director, The Brain Clinic (New York, NY)

- Use of IMEs and FCEs in an “Own Occ” case
  - Incorporating the IME into your litigation strategy
  - Arguments for and against the plaintiff’s attorney being present during the test

- How to interpret the raw data resulting from the exam and who should have access to the data
- Advancing your interpretation of the results of the neuropsych exam
- Making evidentiary challenges to the use of a neuropsych exam and other IMEs
- Functional capacity examinations
  - Ensuring the incorporation of aspects of the FCE
  - Situations in which a carrier may request an FCE
  - Arguing the reliability and objectivity of the FCE
  - Accurately determining a claimant’s work capabilities through an FCE
- Utilizing data collected to support your case, and undermine your opponent’s case
- Measuring the credibility of the results
- Spotting the red flags of exaggeration or malingering
- Questions to ask on direct and cross-examination regarding the outcome of the exam

**1:00 Networking Luncheon for Delegates and Speakers** 

**2:15 Applicability of the Fiduciary Exception to Attorney-Client Privilege under ERISA**

For the Claimant

*Jonathan Feigenbaum*  
Principal  
Phillips & Angley (Boston, MA)

For the Defense

*Edward S. Rooney, Jr.*  
Member  
Eckert, Seamans, Cherin & Mellott, LLC (Boston, MA)

- Applicability of the fiduciary exception to ERISA claims
- Dissecting the argument over who is owed the fiduciary duty
- Determining who is the real client
- When it is appropriate for the attorney to be included in internal meetings
- Identifying the items that come under this exception
- Fiduciary exception around the Circuits

**3:00 Using Investigative Surveillance to Support your Determination of Functional Capacity**

For the Claimant

*Robert K. Scott*  
Attorney  
Law Offices of Robert K. Scott (Irvine, CA)

For the Defense

*Joseph M. Hamilton*  
Partner  
Mirick O’Connell (Westborough, MA)

- Disclosure of reports and surveillance tapes: when carriers have to produce their video to the other side
- What is the impact when the video surveillance finds nothing
- Utilizing video footage effectively at trial
- Courts’ perspectives on video surveillance

“This program brings the current issues to the forefront in a point counterpoint fashion that all can understand & synthesize.”

Caryn Montague, Diplomat, American Board of Disability Analysts, Certified Mediator

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## 4:00 Mediation Techniques for Achieving an Expedient and Appropriate Resolution

### In-house

*Alycia Sacco Duquette*

Counsel

Berkshire Life Insurance Company of America (Pittsfield, MA)

### For the Claimant

*Mala M. Rafik*

Attorney

Rosenfeld & Rafik (Boston, MA)

### For the Defense

*Daniel W. Maguire*

Partner

Galton & Helm LLP (Palm Desert, CA)

### Expert

*Alan Fridkin*

Certified Mediator

Former Claims Counsel, MassMutual Financial Services (Springfield, MA)

- Determining the likelihood of prevailing on summary judgment
- Preparing your client for the mediation process
- Evaluating the likelihood of success in mediation
- Selecting the “right” mediator for your case
- Figuring out what your case is worth
- When you should bring in an actuary
- Successful strategies for presentation of your case to the mediator
- Common pitfalls to in disability insurance mediations
- Structuring settlements

## 5:30 Conference Concludes

## WHO YOU WILL MEET

### Attorneys Specializing in:

- Life, Health, and Disability Insurance Litigation
- Long Term Disability
- ERISA
- Employee Benefits Litigation
- Insurance Bad Faith
- Labor and Employment
- Social Security
- Worker’s Compensation
- Class Actions
- Insurance Defense
- Personal Injury
- Reinsurance

### Life, Health, and Disability Insurance and Reinsurance

### Executives including:

- In-house Counsel
- Claims Managers
- Claims Adjusters
- Litigation Specialists

Third Party Administrators Disability Claims Consultants



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ACI’s highly trained team of attorney-producers are dedicated, full-time, to developing the content and scope of our conferences based on comprehensive research with you and others facing similar challenges. We speak your language, ensuring that our programs provide strategic, cutting edge guidance on practical issues.

### *Unparalleled Learning and Networking*

ACI understands that gaining perspectives from – and building relationships with – your fellow delegates during the breaks can be just as valuable as the structured conference sessions. ACI strives to make both the formal and informal aspects of your conference as productive as possible.

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Accreditation will be sought in those jurisdictions requested by the registrants which have continuing education requirements. This *transitional* course is appropriate for both experienced and newly admitted attorneys.

ACI certifies that the activity has been approved for CLE credit by the New York State Continuing Legal Education Board in the amount of the 15.5 hours. An additional 4.0 credit hours will apply to workshop participation.

ACI certifies that this activity has been approved for CLE credit by the State Bar of California in the amount of 13.0 hours. An additional 3.5 credit hours will apply to workshop participation.

ACI has a dedicated team who process requests for state approval. Please note that event accreditation varies by state and ACI will make every effort to process your request.

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*Wendy Tyler*

Group Leader & Business Development Executive  
American Conference Institute

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w.tyler@AmericanConference.com

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# Interactive Workshops

## Workshop A

Tuesday, June 10, 2008 | 2:00pm – 5:30pm

### Handling a Disability Insurance Case from Start to Finish: The Complete Guide

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#### For the Claimant

*Richard J. Quadrino*, Partner, Quadrino & Schwartz, PC (Garden City, NY)

#### For the Defense

*David A. Bryant*, Partner, Daley, DeBofsky & Bryant (Chicago, IL)

Whether you are new to the area, have only limited experience, or just want a comprehensive refresher, this workshop will enable you to get the most out of the two conference days that follow. This workshop is for anyone practicing in disability insurance litigation, including claimant and defense attorneys, in-house counsel, and claims managers and adjusters. This comprehensive workshop will introduce you to individual disability and ERISA litigation and teach you everything you need to know from start to finish about handling your first long-term disability case. This session provides an in-depth examination of disability claims and litigation through hands-on, interactive exercises, discussion, role-playing, and case studies and will bring you up-to-speed before attending the conference that follows.

Topics to be covered in the half-day workshop include:

- Claimant side considerations:
  - which cases to accept-and which you should avoid
  - when, where, how, and why to file suit
  - what to disclose and what not to when initially filing the claim
  - underlying conditions: what needs to be disclosed and what doesn't?
  - what happens when underlying conditions surface later?
- Defense strategies:
  - how to respond when you are sued
  - when should outside defense counsel be brought into a case?
- Why the determination as to whether the case falls within ERISA or not is so important, and what aspects of the litigation it directly impacts
- Conducting a thorough investigation early on in your case:
  - who you should interview
  - what documents and records you will need to have – and how to get them
- Preparing and drafting:
  - complaints, including summons complaints
  - answers
  - retainer and fee agreements
  - motions for summary judgment and other pre-trial motions
  - other basic pleadings
- Understanding and strategically using the medicals in your case
- Effective courtroom tactics, strategies, and arguments

## Workshop B

Friday, June 13, 2008 | 9:00am - 12:30pm

### Disability Insurance Trial Simulation

*Bonny G. Rafel*, Attorney, Bonny G. Rafel LLC (Livingston, NJ)

*H. Sanders Carter, Jr.*, Partner, Smith Moore LLP (Atlanta, GA)

*Mark I. Levy, MD, DFAPA*, Diplomate, American Board of Psychiatry and Neurology with Added Qualifications in Forensic Psychiatry, Assistant Clinical Professor, Psychiatry University of California (San Francisco, CA)

In this new and exciting workshop, you will get the most practical guidance from experts in the industry on advanced techniques for litigating your disability insurance case. The entire workshop will be based on a hypothetical case. Whether you're handling an ERISA case or an individual claim, this workshop will provide you with invaluable tips from the insiders in the industry. Highlights of this workshop include:

- Mock deposition in an ERISA case
  - plaintiff's deposition of claims handler
  - defendant's deposition of the claimant's physician
- Mock jury trial for an individual claim
  - open forum on voir dire
  - mock opening statement settling forth the theme of your case
  - mock witness exam – direct and cross- of two witnesses
- Effective courtroom tactics, strategies, and arguments

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# Litigating Disability Insurance Claims

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## Interactive Workshops:

**Handling a Disability Insurance Case from Start to Finish: The Complete Guide**

Tuesday, June 10, 2008

**Disability Insurance Trial Simulation**

Friday, June 13, 2008

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APPROVING MANAGER \_\_\_\_\_ POSITION \_\_\_\_\_

ORGANIZATION \_\_\_\_\_

ADDRESS \_\_\_\_\_

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New York, NY 10010

**PHONE** 888-224-2480

**FAX** 877-927-1563

**ONLINE**  
AmericanConference.com/disability

**EMAIL**  
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### Hotel Information

American Conference Institute is pleased to offer our delegates a limited number of hotel rooms at a preferential rate. Please contact the hotel directly and mention the "ACI-Litigating Disability Litigation Claims conference to receive this rate:

VENUE: Hilton Boston Financial District  
ADDRESS: 89 Broad Street, Boston, Massachusetts, 02110  
RESERVATIONS: (617) 556-0006

### Registration Fee

The fee includes the conference, all program materials, continental breakfasts, lunches and refreshments.

### Payment Policy

Payment must be received in full by the conference date. All discounts will be applied to the Conference Only fee (excluding add-ons), cannot be combined with any other offer, and must be paid in full at time of order. Group discounts available to individuals employed by the same organization.

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