

10th National Advanced Forum on Resolving

DISABILITY INSURANCE CLAIMS & LITIGATION

The LEADING Disability Insurance Event

Don't miss the special session:
"What's on the Disability
Insurance Radar?"

David Kalib

Vice President, General Counsel,
and Secretary
Berkshire Life Insurance
Company of America

H. Sanders Carter, Jr.

Partner
Carter & Ansley LLP

Mala M. Rafik

Rosenfeld & Rafik PC

**GAIN VALUABLE INSIGHTS FROM TOP INSURER,
POLICYHOLDER AND MEDICAL SPECIALISTS ON:**

- **Interpreting** "appropriate care", "own occ", "total disability" and other contractual provisions to benefit your client
- **Arguments** for and against paper reviewers
- **Chronic** physical disabilities and mental conditions: understanding diagnosis, treatment, and impact on the disability claim
- **Fraud:** red flags, winning assertions and effective counter-arguments



**A unique networking opportunity for disability insurance counsel!
Be where your peers and colleagues from across the country
will be on June 6 & 7.**

Plus! Optional Breakfast
Session on "Managing a Disability
Insurance Law Practice"

INTERACTIVE WORKSHOPS – JUNE 5 & 8, 2007

A — Handling a Disability Insurance Case from Start to Finish: The Complete Guide
Tuesday, June 5, 2007

B — Managing and Litigating Mental Illness Disability Claims
Friday, June 8, 2007

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Both Claims and Policy Sales are Rising Again...

Recent studies suggest that rising rates of obesity and diabetes are leaving younger workers **disabled for longer periods of time than previously**. Moreover, due to medical advances policyholders are living longer after accidents and serious diseases – but are often unable to go back to work. Add to this the fact that **individual and group plan demand are up after a period of decline** – and all the evidence points to a **continuing and inevitable rise in claims going forward**.

Are you prepared?

Every month, new disability insurance rulings are issued from courts across the country – and in response, wise lawyers tweak their arguments and shift their strategies to make sure they get the best results for their clients. **Every year, wise lawyers and claims managers attend this conference to assess the disability insurance landscape and get practical tools and tips for staying ahead of the curve. In this continually changing area, you cannot assume that last year's rules still apply.**

ACI's 10th Annual conference on Disability Insurance Claims and Litigation is a unique opportunity to convene with players on both sides of the issue – defense and plaintiff attorneys, in-house counsel and disability consultants – key stakeholders in the coverage disputes that arise in this complex area. You've come to rely on this **one-of-a-kind opportunity to meet with colleagues – and opponents – to assess your best move – and anticipate what the other side is thinking.**

Spaces go quickly for this event every year, so register now to ensure your place. And, all attendees will receive a CD-ROM with papers, presentations and other documents that will prove helpful long after you leave our conference. We look forward to seeing you in Boston in June.

Register now to ensure your place at this event by calling **888-224-2480**, faxing your registration to **877-927-1563** or registering online at **www.americanconference.com/Disability**.

Just look at the rave reviews this conference has received recently – from defense and plaintiff lawyers, in-house claims counsel and disability consultants:

“This conference should be a “must-attend” for anyone working with disability insurance claims in the US!”

“Best event related to disability insurance in the country.”

“I found the entire conference extremely informative and enlightening.”

“Excellent. Fair and balanced presentation from both the plaintiff and defendant points of view. A must for anyone working or practicing in the area.”

“The conference exceeded my high expectations—bringing together a Who's Who in this area of practice. Even for a seasoned practitioner, there were great practical tips to enhance handling these complex claims.”

“Good content, well organized.”

WHO YOU WILL MEET

• Attorneys Specializing in the Following Practice Areas:

- 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

- Third Party Administrators
- Disability Claims Consultants

• Life, Health, and Disability Insurance and Reinsurance Executives including:

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

DISABILITY INSURANCE CLAIMS & LITIGATION

WEDNESDAY, JUNE 6, 2007

7:30 Registration Opens and Continental Breakfast Served ☞

8:30 Co-Chairs' Opening Remarks

Frank Darras

Managing Partner
Shernoff, Bidart & Darras
(Claremont, CA)

H. Sanders Carter, Jr.

Partner
Carter & Ansley LLP
(Atlanta, GA)

8:45 What's on the Disability Insurance Radar?

David Kalib

Vice President, General Counsel, and Secretary
Berkshire Life Insurance Company of America
(Pittsfield, MA)

H. Sanders Carter, Jr.

Partner
Carter & Ansley LLP
(Atlanta, GA)

Mala M. Rafik

Rosenfeld & Rafik PC
(Boston, MA)

In this exciting kick-off session, you'll get a quick snapshot on what's happened in the past year in the disability law arena, including the newest developments and trends, the most difficult issues facing insureds, insurers, and their respective counsel, and a prediction of where the market is heading in the next few years – from seasoned counsel on both sides. Plus – you'll get practical analysis of how this will translate into developments for you and your client/firm going forward.

9:30 Key Clause Interpretation: Ensuring Factual and Legal Support for Your Definitions of Policy Language

Jonathan M. Feigenbaum

Phillips & Angley
(Boston, MA)

David A. Bryant

Daley, DeBofsky & Bryant
(Chicago, IL)

- Distinguishing between “regular care” and “appropriate care”
- What justifies experimental/aggressive medical treatment?
- “Own occupation”, “regular occupation” and “reasonably fitted occupation”: how to applying the distinction in your current cases

- Exploring the tensions between the “total disability” and “partial disability” benefit provisions in LTD policies
- Proving and rebutting dual occupation
 - establishing whether duties are “material and substantial” or “incidental and peripheral”
- The effect of the policy's initial sale and marketing on subsequent contractual interpretation
- Discretionary clauses:
 - after *Diaz v. Prudential Insurance*
 - status of state legislatures adopting the NAIC Model Act – and the impact to date on discretionary clauses

10:30 Coffee Break ☞

10:45 The IME Doctor, “Paper Reviewer”, and Treating Physician: Challenging/Supporting the Assessment of the Claimant

Bonny G. Rafel

Bonny G. Rafel LLC
(Livingston, NJ)

Edward S. Rooney

Eckert, Seamans, Cherin & Mellott, LLC
(Boston, MA)

- Recent decisions impacting the validity and use of paper reviewers
- What to look for when selecting a paper reviewer
- Finding vulnerabilities in the paper reviewer's conclusions
- Criteria for determining how much weight is granted to an IME vs. the opinion of the treating physician
- What does the proof of loss really require?
 - how does the claimant satisfy his/her burden?
 - when does the burden shift to the carrier to come up with medical proof of non-disability?
- The treating doctor: objectivity v. advocacy for the patient
- Strategies for disqualifying doctors on the case
- Doc to doc, peer to peer, questionnaires, interviews: how to get to the bottom of the medical evidence supporting disability
- Best use of capacity forms and questionnaires

11:45 Discovery Strategies to Boost Your Chances of Prevailing

Pamela Atkins

Atkins & Associates LLC
(Atlanta, GA)

Daniel W. Maguire

Galton & Helm LLP
(Palm Desert, CA)

- Practical tips for conducting the best possible, comprehensive investigation early in your case (while minding costs)

- Claims file checklist in anticipation of discovery
- What and how to obtain critical information from discovery: plaintiff and defense perspectives
- Defense strategies for responding and objecting to discovery requests
- Expert witnesses
 - who should you get and at what stage?
 - key evidentiary issues to consider re: expert testimony
- Depositions
 - preparing your witnesses
 - tips and traps for direct and cross examination of sympathetic plaintiffs
 - who should the claimant depose?
- When to conduct surveillance – without overstepping ethical boundaries

12:45 Networking Luncheon for Delegates and Speakers

Special Focus Session on Assessing Chronic Disabilities

2:00 Determination of Disability from CFS, Fibromyalgia, MS and More

Richard Podell, MD, MPH

Clinical Professor, Department of Family Medicine
UMDNJ-Robert Wood Johnson Medical School
(Springfield, NJ)

Michael K. Spodak, MD

General and Forensic Psychiatry
(Baltimore, MD)

- Standards for CFS diagnosis
 - role of laboratory testing
- CFS as “diagnosis of exclusion”: what are the hurdles that must be overcome?
- Effectiveness of fibromyalgia treatments
- Assessing, substantiating or discounting claims of chronic disabilities
- The objective v. subjective, physical v. mental debate: what impact does it have on subsequent handling of the claim?
- CDC criteria and the claimant’s subjective description of symptoms: how do they align?
 - effectiveness of FCEs in these situations
- The delayed onset post-exertional flare-u phenomenon: developing methods to observe whether or not this occurred
- Multiple sclerosis
 - typical and atypical presentations of the condition

3:15 Refreshment Break

3:30 Determining Overpayments and Social Security Offsets

John Tucker

Tucker & Ludin PA
(Clearwater, FL)

Mark E. Schmidtke

Hoeppner, Wagner & Evans LLP
(Valparaiso, IN)

- Impact of provisions in disability contracts providing for Social Security offsets
- How claims for Social Security disability benefits are affecting disability claims
- Recent ERISA court decisions involving Social Security and disability claims and their impact on your case
- Knudsen’s impact on insurer’s and plaintiff’s strategies
- Enforceability of offset provisions in individual policies
- Judicial estoppel in disability cases following favorable SSDI determinations

4:30 Claims and Lawsuits by Insurers For Benefits Paid Where Fraud is Alleged

Richard J. Quadrino

Quadrino & Schwartz, PC
(Garden City, NY)

Norman Tolle

Rivkin Radler
(Long Island, NY)

- What has been the basis for fraud allegations in these cases?
- The role materiality of the representations plays in subsequent fraud proceedings
- Grand larceny, insurance fraud: effective defenses for fending off the prosecutor
- Alleged “overpayments” and fraud: when do waiver and estoppel apply
- Arguing justifiable reliance
 - what constitutes payments made on a solid body of evidence?

5:15 Day One Concludes

THURSDAY, JUNE 7, 2007

7:30 Continental Breakfast and Registration Opens

8:00 Managing a Disability Insurance Law Practice

Robert K. Scott

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

Optional
Early Morning
Bonus Session

DISABILITY INSURANCE CLAIMS & LITIGATION

Robert Wright

White and Williams LLP
(Paramus, NJ)

Whether you are plaintiff or defense counsel, managing a disability insurance practice comes with its own unique challenges. In this valuable early bird session, hear from seasoned practitioners about what works and what doesn't – tips for making your practice really hum and pitfalls to avoid. Topics will include:

- Deciding which cases to accept and which to turn down: criteria to consider
 - how is this decision affected by what stage the claim is at when the case comes your way?
- Special considerations for office systems for the disability practice
 - timekeeping, billing and collection
- Personnel management
- Marketing the practice: strategies for success
- Client relations: going the extra mile

9:00 Co-Chairs' Recap and Remarks

9:15 Mental Disability Claims: Assessing Psychiatric Conditions, Medications And Treatment Modalities

George J. Carnevale, Ph.D.

Clinical Neuropsychologist &
Vice President, Rehabilitation Specialists
Asst. Professor, Dept. of Physical Medicine
and Rehabilitation
UMDNJ-NJ Medical School
(North Haledon, NJ)

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
(San Francisco, CA)

- When physical injury leads to mental disability: signs and treatment
- What the psychiatric evaluation covers
- What are the red flags that indicate exaggeration or malingering?
- 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
- The right questions to ask of the insured, the employer and co-workers when conducting interviews in mental health disability cases

10:30 Coffee Break ☕

10:45 Settling and Mediating the Disability Insurance Action: Strategies for Success

Frank Darras

Shernoff, Bidart & Darras
(Claremont, CA)

Philip Howe

Lecomte, Emanuelson and Doyle
(Quincy, MA)

Robert Beal

Consulting Actuary
Milliman USA
(Portland, ME)

Alan Fridkin

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

- For which circumstances is mediation best suited and most helpful? When should it be avoided?
- Pre-mediation considerations:
 - assessing the client's goals
 - are they realistic?
 - what is the claimant's demand/expectation?
 - checklist for evaluating the likelihood of prevailing
 - on summary judgment?
 - at trial?
 - selecting the mediator
 - assessing the mediator's background and track record in disability cases
 - assessing the mediator's credibility with opposing counsel
- Determining what the case is worth
 - factors for determining whether to use an actuary and what actuarial tables to use
 - accounting for probability of recovery
 - valuing future LTD benefit streams: insurer actuarial analysis versus claimant present cash calculations
 - other considerations: discount rates, cost of living increases, residual/partial benefits
 - effect of rehabilitation clauses
- Structured settlements: practical advice and traps to avoid
- Reserves and actual values: critical considerations
- Special considerations when settling the case that's morphing from STD to LTD

12:45 Networking Luncheon for Delegates and Speakers

2:00 Identifying – and Resolving – the Disability Claims Practices That Drive Bad Faith Allegations

Douglas K. deVries
deVries Law Firm
(Sacramento, CA)

Martin E. Rosen
Barger & Wolen LLP
(Los Angeles, CA)

- The impact of industry-wide changes in disability claims practices on bad faith claims and litigation
- Implementing “good faith” claims practices that can help defend against bad faith allegations
- Individual versus group (ERISA and non-ERISA) disability claims: what are the bad faith implications for how each are handled?
- Understanding the common threads in the successful prosecution and defense of disability bad faith cases

3:00 Refreshment Break

3:15 Developments in ERISA Claims Handling and Litigation

Scott M. Riemer
Riemer & Associates LLC
(New York, NY)

Timothy M. O'Brien
Shook, Hardy & Bacon
(New Orleans, LA)

- Resolving the limitations placed on discovery by the scope of the administrative record

- plaintiff’s perspective: tactics to expand discovery
- defense side strategies:
 - is it appropriate for claimants to create inferences from unrelated matters?
 - getting the standard of review ruled on prior to addressing the scope of discovery in ERISA cases: limiting the review to the record
- New changes to the ERISA standard of review and how they affect how you proceed with your case
- Doctrine of administrative exhaustion: how are the court (mis)applying it?
 - understanding the differences between administrative proceedings and ERISA cases – and their significance to your case
 - summary judgment
- Self-reported symptoms clauses in contracts and their impact on claims and litigation

4:15 Q & A Wrap-Up

4:30 Conference Concludes

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Benjamin Greenzweig
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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 experienced and newly admitted attorneys.



To request credit, please check the appropriate box on the Registration Form.

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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.

DISABILITY INSURANCE CLAIMS & LITIGATION

A

TUESDAY, JUNE 5, 2007 : PRE-CONFERENCE WORKSHOP

2:00 p.m. – 5:30 p.m. (Registration begins at 1:30 p.m.)

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

Mikhail Z. Hack

Quadrino & Schwartz, PC
(Garden City, NY)

Robert Wright

White and Williams LLP
(Paramus, NJ)

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 the fundamentals of handling disability insurance cases. Get an in-depth examination of disability claims and litigation through hands-on, interactive exercises, discussion, role-playing, and case studies. Topics to be covered in this 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:
- 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

This workshop has gotten rave reviews from the plaintiff and defense lawyers and insurance company counsel and claims managers who've attended in the past, so don't miss it. Whether you are new to the area, have limited experience with disability insurance claims, or just want a comprehensive refresher, this workshop will enable you to get the most out of the two advanced-level conference days that follow.

B

FRIDAY, JUNE 8 2007 : POST-CONFERENCE WORKSHOP

9:00 a.m. – 12:30 p.m. (Registration opens at 8:30 a.m.)

Managing and Litigating Mental Illness Disability Claims

Jonathan M. Feigenbaum

Phillips & Angley
(Boston, MA)

Philip Howe

Lecomte, Emanuelson and Doyle
(Quincy, MA)

With mental illness disability claims continuing to climb and now representing roughly half of all claims, now is the time to shore up your knowledge of this significant area of claims. In this intensive workshop, you'll receive an in-depth examination of disability claims and litigation through hands-on, interactive exercises, discussion, role-playing, and case studies. Topics to be covered in this half-day workshop include:

- Evaluating and building the mental illness disability claim
- Understanding the pitfalls of filing a claim:
 - what should a claimant be cognizant of when filing a mental illness disability claim?
 - what questions should the claimant be prepared to answer?
- Defending a decision to deny a mental illness claim
- Making effective use of neuropsychological testing
- Special considerations for using IMEs in mental illness cases
- Accusations of malingering, misrepresentation and fraud: practical advice for policyholder's and insurer's counsel
- Special considerations for mediating and settling mental illness disability cases

You'll come away from this workshop with practical tips, strategies and techniques you can use in your mental illness disability claim.

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@AmericanConference.com

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VENUE: Omni Parker House Hotel
ADDRESS: 60 School Street
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