



American Conference Institute's 18<sup>th</sup> National Advanced Forum on

# LITIGATING DISABILITY INSURANCE CLAIMS



The only disability insurance event where plaintiff & defense lawyers and in-house counsel & claims professionals meet to devise practical solutions for today's most critical issues

January 21–22, 2016 | The Union League | Philadelphia, PA

A unique opportunity to learn from and network with:

*Noreen M. Fierro*  
Prudential Financial

*Peter M. Kelly*  
Blue Cross and Blue Shield Association

*Kimberly Evans*  
The Hartford

*Stephen Broer*  
The Guardian Life

*Victoria L. Gorokhovich*  
Cigna Legal

*Julie K. Bolt*  
The Standard

*Kevin J. Tierney*  
Disability RMS

*Annie Hong*  
Cigna Group Insurance

*Maureen T. Mulville*  
Illinois Mutual

*Gordon Jermane*  
Manulife Financial

Top in-house counsel, plaintiff and defense lawyers and medical experts will provide valuable, practical information on key issues that arise in litigating disability claims. Sessions include:

- **Disability Case Law Year in Review:** What Are the High Courts Saying? Analyzing the Key ERISA & Non-ERISA Case Law Developments from 2015, and What They Mean for Your Practice in 2016
- An Update on State **Discretionary Bans**, the Latest Case Law Developments Stemming from These Bans, and Examining the Ultimate Impact of a Discretionary Clause on a Disability Case
- The Latest Court Decisions Affecting the **New Remedies Landscape**, the Fallout from *Rochow v. LINA*, Strategies for Addressing 502(a)(3) Relief Claims, and More
- Tackling the **Latest Discovery Issues** in Disability Claim Actions from Both the Plaintiff and Defense Perspectives
- Effectively Approaching and Utilizing the **IME's Evaluation, Treating Physician's Opinion, the FCE, Neuropsych Evaluations, Medical Records** and More
- The Latest **Vocational Issues** in Disability Claims: The Assessment of Own Occupation, Any Occupation, Dual Occupation and Employability; Defining Occupation in the National Economy; and Determining a Claimant's Entitlement to Full or Partial Disability Benefits
- **Contractual Limitations Periods** in the Post-*Heimeshoff* Era: A Circuit-by-Circuit Analysis of the Latest Relevant Court Decisions and Their Implications
- The Dos and Don'ts of **Social Media** Use in Conducting a Disability Claim Investigation
- A **Mediation** Tactical Tool-Kit: Hear from the Perspectives of the Plaintiff, the Defense and the Mediator on Strategies for Effective Mediation and Overcoming Frequently Arising Challenges and Hurdles in the Process
- **Mental Disorders and Other Limited Conditions** – Tackling the Challenges of Handling Mental/Nervous Claims and Establishing Objective Proof of Subjective, "Non-Visible" Disorders
- The Latest on "**Appropriate Care**," **Total vs. Residual Disability**, **Legal vs. Factual Disability**, Accident vs. Sickness, and Beyond
- Dealing with **Social Security Awards**, Calculating **Offsets** and Handling **Overpayments** in Disability Cases
- Preserving **Attorney-Client Privilege** During Disability Claim Handling
- What's New in **Bad Faith Litigation?** An Update on the Latest Trends Being Seen in Unreasonable Delay and Wrongful Denial Bad Faith Claims

Featuring unparalleled medical insights from:

*Leo J. Shea III, Ph.D.*  
Clinical Associate Professor of Rehabilitation at Rusk Institute  
President, Neuropsychological Evaluation and Treatment Services, P.C.

*Henry G. Conroe, MD*  
Clinical Assistant Professor  
Rush Medical College  
Regional Medical Advisor  
Social Security Administration  
Region V

*Ronald Roberts, Ph.D.*  
Forensic Neuropsychologist  
Forensic Psychiatric Associates  
Medical Corporation

*Patricia Enriquez, MA, CRC*  
Certified Vocational Rehabilitation Counselor  
NYC Expert Disability Associates, LLC

*Ellen Rader Smith, MA, OTR, CVE, CPE*  
Licensed Occupational Therapist, Certified Vocational Evaluator & Certified Professional Ergonomist  
Ergo & Rehab Services

Obtain insight as to the perspectives from the Bench. Hear from:



*Hon. Eric F. Melgren*  
U.S. Dist. Ct., D. Kan.



*Hon. James G. Carr*  
U.S. Dist. Ct., N.D. Ohio



*Hon. Robert B. Collings*  
U.S. Dist. Ct., D. Mass.



*Hon. Lorenzo F. Garcia*  
U.S. Dist. Ct., D. N.M.



*Hon. Michael Baylson*  
U.S. Dist. Ct., E.D. Pa.



*Hon. Toniianne J. Bongiovanni*  
Philadelphia Ct. C.P.



*Hon. Mark I. Bernstein*  
Philadelphia Ct. C.P.

# The nation's premier conference on Litigating Disability Insurance Claims returns for its 18<sup>th</sup> year, led by an unparalleled faculty of in-house industry experts, renowned jurists, cutting edge medical professionals, and renowned plaintiff and defense attorneys.

Along with the greater volume of long term, short term, individual and ERISA claims being seen by the industry, claimants, insurers and their counsel have been faced with additional challenges in responding to the rise in mental illness and other subjective, “non-visible” claims; adapting to the recent case law developments following *MetLife v. Glenn*, *Cigna v. Amara* and *US Airways v. McCutchen* which have shifted the scope of discovery and equitable remedies in disability claims; navigating the varying standards regarding the enforceability of discretionary clauses; determining the scope of the administrative record and conflict of interest discovery; and properly utilizing social media and other modern technology in conducting disability claim investigations – just to name a few.

ACI's 18<sup>th</sup> National Advanced Forum on **Litigating Disability Insurance Claims** will help you to tailor your practice to the on-going discovery battle, and highlight key strategies to making discovery useful and meaningful to your case in the face of both an “arbitrary & capricious” and “de novo” standard of review. Attendees will hear the latest on how other industry professionals are navigating the shifting remedies landscape in disability claims, and will be provided with the latest practical solutions and tips for handling these claims in various stages including pre-litigation, mediation and administrative review.

In total, this is the event you've come to rely on as a one-of-a-kind opportunity to meet with colleagues – and opponents – to assess your best move – and anticipate what the other side is thinking. The faculty features renowned judges, leading plaintiff and defense attorneys, medical experts, claims professionals, disability consultants, vocational experts, independent medical examiners, risk managers, reinsurers, carriers and insurers. Here's a small sampling of companies already registered to participate: *Prudential Financial, Blue Cross and Blue Shield Association, The Hartford, The Guardian Life Insurance Company of America, Cigna Legal, The Standard, Disability Reinsurance Management Services, Inc., Claims Bureau USA, Illinois Mutual Life Insurance Company, Manulife Financial, and more.*

This conference is your “one-stop” venue for the latest and most innovative material on today's most pressing and contentious disability law issues, including how to wade through the complexities of filing a claim, how to recover benefits when faced with mounting obstacles, how to hone and sharpen the skills needed to protect your client's interests, and how to successfully forge a defense against weak claims and overbroad discovery requests. **Get all the practical tips, strategies and solutions needed for every stage of the claims process!**

## Continuing Legal Education Credits



Accreditation will be sought in those jurisdictions requested by the registrants which have continuing education requirements. This course is identified as nontransitional for the purposes of CLE accreditation.

ACI certifies that the activity has been approved for CLE credit (including ethics) by the New York State Continuing Legal Education Board.

ACI certifies that this activity has been approved for CLE credit (including ethics) by the State Bar of California.

You are required to bring your state bar number to complete the appropriate state forms during the conference. CLE credits are processed in 4-8 weeks after a conference is held.

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

Questions about CLE credits for your state? Visit our online CLE Help Center at [www.americanconference.com/CLE](http://www.americanconference.com/CLE)

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**Wendy Tyler**

Director of Sales, American Conference Institute

Tel: 212-352-3220 x5242

[w.tyler@AmericanConference.com](mailto:w.tyler@AmericanConference.com)

## Who You Will Meet

### Attorneys Specializing in

- Life, Health and Disability Insurance litigation
- Long Term Disability
- ERISA
- Labor & Employment
- Worker's Compensation

### Insurance Industry Professionals including:

- In House Counsel
- Claims Specialists
- Adjusters
- Risk Managers
- Litigation Specialists
- Disability Claim Consultants

# DAY ONE – THURSDAY, JANUARY 21, 2016

7:15 Continental Breakfast and Registration

## 8:00 Co-Chairs' Welcoming Remarks

*Robert K. Scott*  
Newmeyer & Dillion LLP

*Kristina B. Pett*  
Pett Furman, PL

## 8:05 In-House Roundtable: Counsel and Claims Professional Insights on New and Emerging Issues in Disability Insurance Claims

Panel 1  
8:05 – 9:05

*Noreen M. Fierro*  
Vice President, Chief Compliance Officer  
Group Insurance Division  
Prudential Financial

*Peter M. Kelly*  
Deputy General Counsel and Chief Employee Benefits Counsel  
Blue Cross and Blue Shield Association

*Stephen Broer*  
Assistant Vice President, Senior Counsel, Law Department  
The Guardian Life Insurance Company of America

*Victoria L. Gorokhovich*  
Senior Counsel  
Cigna Legal

*Gordon Jermane*  
AVP & Senior Counsel – Litigation  
Institutional Law & Compliance  
Manulife Financial

Panel 2  
9:05 – 10:05

*Julie K. Bolt*  
Assistant Counsel  
The Standard

*Kevin J. Tierney*  
Vice President & General Counsel  
Disability Reinsurance Management Services, Inc.

*Annie Hong*  
Manager of Claims Solutions Department  
Cigna Group Insurance

*Maureen T. Mulville, CLU, FLMI*  
Vice President, Compliance & General Counsel  
Illinois Mutual Life Insurance Company

*Kimberly Evans*  
Counsel  
The Hartford

*Nicole Guerin*  
VP & Head of Claims  
AXIS Accident & Health

### Panel 1 and 2 Moderator:

*Robert M. Forni, Jr.*  
Ropers Majeski Kohn & Bentley PC

In this valuable panel, hear from in-house on the front lines at the leading carriers. Gain perspective as they walk you through a claim from start to finish, from their side. Join a great discussion with plenty of opportunities for Q&A. Topics include:

- Thoughts on investigation: using social media, surveillance and modern technology as investigative tools
- Pre-litigation resolution tactics
- Complaints to the department of insurance: the in house response
- Retaining outside counsel: factors to consider
- Views on mediation and settlement
- Challenges to sufficiency of the complaint
- The latest discovery issues and trends; and rule 26 disclosures
- Claims that result in the grant of benefits vs. those that end up in the denial of benefits – what factors play a contributing role in these determinations?
- Post litigation investigative techniques
- Punitive damages in non-ERISA
- How metrics can help foreshadow potential litigation and regulatory issues
- Complaints tied to claims – what they can tell us
- New compliance issues and hurdles created by the Affordable Care Act
- Handling issues related to self-funded disability plans
- Issues arising when a claimant is determined to be eligible for Social Security benefits; what impact does that have on the insurance policy?
- The latest issues in disability reinsurance

10:05 Morning Coffee Break

## ABOUT THE VENUE



The Union League, which occupies an entire city block in the center of Philadelphia's commercial and cultural district, is a shining jewel of history in a city defined by such treasure. *American Conference Institute* is pleased to offer our delegates a limited number of hotel rooms at a preferential rate.

Please contact the Union League directly at 215-587-5570 and mention the "ACI Litigating Disability" conference to receive this rate.

10:15 **Disability Case Law Year in Review: What Are the High Courts Saying? Discussing and Analyzing the Key ERISA & Non-ERISA Case Law Developments from 2015, and What They Mean for Your Practice in 2016**

*Amy S. Kline*  
Saul Ewing LLP

*Elizabeth G. Doolin*  
Chittenden Murday & Novotny LLC

This panel will provide you with a comprehensive survey of the year's most important federal circuit court decisions and highest state appellate court decisions involving disability claims. Follow along as counsel well versed in the new developments in case law over the past year engage you in an in-depth examination of the real-life impact of each case on ERISA and Non-ERISA disability practice. Participants will learn what these cases reveal about trends in disability litigation as well as recommendations for how in house counsel and practitioners can update their litigation strategies in response to recent developments going forward.

Whether you are new to the practice of disability litigation or a senior practitioner in need of a refresher, you will find this session invaluable for getting up to speed on the latest cases, while maximizing your opportunity to engage in the advanced discussion that will be the hallmark of the main conference.

Please note that the cases covered during this session will be updated to include all high profile cases resolved by January 2016.

11:05 **The Battle Over Discretionary Clauses Continues: An Update on State Discretionary Bans, the Latest Case Law Developments Stemming from These Bans, and Examining the Ultimate Impact of a Discretionary Clause/Ban on a Disability Case**

*John J. Myers*  
Eckert Seamans Cherin & Mellott, LLC

*Jennifer Danish*  
Bryant Legal Group PC

*William Patton*  
Lane Powell PC

- Update on state prohibitions on discretionary clauses: which states have banned such clauses? How have the states varied in their application of such clauses?
- Which discretionary ban statutes have been effective? Which have been not so effective?
- How are these discretionary bans being disputed by different insurance carriers? What are the different arguments being used by the insurance companies to avoid these bans?
- An examination of the latest case law developments stemming from discretionary bans
- Is state regulation of discretionary clauses preempted by ERISA?
- Is a ban on discretionary clauses applicable if it conflicts with the plan's choice of law provision?
- Do state bans on discretionary clauses apply to policies "issued or delivered" in another state?
- Can a state ban on discretionary clauses be applied retroactively?
- What does evolving case law say regarding the language included in these clauses? What can the scope of them be?
- What have the courts been saying regarding the fairness and permissibility of such clauses?
- Can you evade the savings clause by putting discretionary language in the plan document separate from the policy?
- Examining the ultimate impact that discretionary bans can have on discovery and a disability case overall

12:00 **Networking Lunch for Speakers and Delegates**

12:55 **The Evolving State of New Remedies and Equitable Relief Under ERISA 502(a)(3): The Latest Court Decisions Affecting the New Remedies Landscape, the Fallout from *Rochow v. LINA*, Strategies for Addressing 502(a)(3) Relief Claims, and More**

*Anthony F. Shelley*  
Miller & Chevalier Chartered

*Denise M. Clark*  
Clark Law Group, PLLC

- Assessing the ongoing impact of *Amara, McCutchen* and their progeny on ERISA 502(a)(3) remedies
- Examining the latest court rulings affecting the new remedies landscape – taking a look at the developing case law
- Analyzing the 6th circuit *en banc* decision in *Rochow v. LINA* – what are the implications of this decision? What has been the fallout from this decision? What does the court's opinion indicate about the future of recovering disgorged profits as an appropriate form of equitable relief? In what limited circumstances might this be deemed permissible?
- Best strategies for arguing against monetary damages as a form of 'equitable relief'
- What recovery provisions qualify as clear and specific? When do equitable principles "augment" the plan?
- Minimizing damages in the wake of *Amara*
- How have *Amara, McCutchen, Rochow* and their progeny changed the remedies landscape from the plaintiff's viewpoint?
- What must plaintiffs prove in order to obtain remedies?
- How have the courts interpreted 'plan terms'?
- Can you look to SPDs and other documents?
- Equitable recoupment of benefit overpayments after *McCutchen*
- Current state of ERISA remedies available in fiduciary breach claims – how are the circuits coming down on this? How to handle the litigation of these claims
- How to strategically address 502(a)(3) relief claims – the pros and cons of addressing them as early as possible via motion to dismiss, versus waiting until the summary judgement phase

1:45 **Tackling the Latest Discovery Issues in Disability Claim Actions from Both the Plaintiff and Defense Perspectives – Conflict of Interest Discovery, the Scope of the Administrative Record, E-Discovery, Proportionality Arguments, and Beyond**

*Ronald K. Alberts*  
Gordon & Rees LLP

*Matthew R. Davis*  
Gallagher Davis, LLP

*Ashley B. Abel*  
Jackson Lewis P.C.

**The Latest Treatment of Conflict of Interest Discovery**

- How have the lower courts been continuing to interpret the scope of discovery in the aftermath of *MetLife v. Glenn*?
- The effect of insurer/plan administrator conflicts of interest on the scope of discovery
- Access to information outside of the administrator's claim file; requests for evidence outside of the record in "conflicts situations" – What are the courts allowing now?

**The Scope of the Administrative Record**

- Determining the contents of the administrative record and assessing claims of privilege
- Best practices for limiting discovery to the administrative record
- Determining which documents must be disclosed

**Discovery Requests/Responses in both ID and LTD Claim Cases**

- Identifying the key issues of discovery at the beginning stages of litigation



- What should the plaintiff request and how can the insurer properly respond to requests?
- Identifying the appropriate discovery motions to file
- Avoiding ERISA penalties when responding to document requests

#### E-Discovery & Proportionality

- The latest trends, issues and strategies surrounding e-discovery in disability claims
- Ethical and evidentiary considerations when seeking/exchanging e-discovery
- What types of discovery is exchangeable; how to make proportionality arguments from the defense side; and perspectives from the plaintiff side

2:40

### **Effectively Approaching and Utilizing the IME's Evaluation, Treating Physician's Opinion, the FCE, Neuropsych Evaluations, Medical Records and More**

*Henry G. Conroe, MD*

Clinical Assistant Professor, Rush Medical College  
Regional Medical Advisor, Social Security Administration  
Region V

*Ronald Roberts, Ph.D., ABPP*

Forensic Neuropsychologist  
Forensic Psychiatric Associates Medical Corporation

*Alicia Paulino-Grisham*

Paulino-Grisham, Smith & Chmielarz, P.A.

*Daniel W. Srsic*

Littler Mendelson P.C.

#### The Latest IME and FCE Issues and Considerations

- The fundamental right to require IMEs or FCEs during each stage of the case: initial claim review, during litigation, during an appeal
- What type of testing is required under the contract and what type of testing is most relevant to the claim
  - Disabling Physical Illness – is an FCE warranted?  
A neuropsychiatric exam?
  - Disabling Mental Illness – is the Neuropsychiatric exam warranted?
  - In a “pain case” what testing is relevant?
- Has direct evaluation of claimants (e.g., field interviews, surveillance, IMEs) been being de-emphasized in favor of consults (e.g., in-house or contracted paper reviews by doctors and vocational analysts)? What are the implications of this?
- When facing the IME – addressing the questions of:
  - Is the examiner qualified?
  - Under what circumstances will you allow the person to go?
  - What if they refuse to go? What are the implications?
  - Strategies for preparation

#### What Must Be Preserved and Produced Related to the Examinations

- The exchanges between the examiner and insurance company?
- The raw data from an IME, or Neuropsychiatric or Neuropsychological Exam?
- Can the examination be videotaped, audiotaped or witnessed?
- What data, if any is confidential?
- What are the latest trends, issues and challenges being faced by both sides during this process?

#### How to Establish the Credibility of Examinations

- Comparing and assessing the different approaches by physical therapists for the FCE
- Comparing and assessing the different approaches to the Neuropsychiatric and Neuropsychological exams – examples of testing used and their purpose
- Evaluating the Credentials of the examiners and potential bias
- Taking action to establish unreliability and/or bias early on so that evidence of same can be included with appeal filing

3:55

### **Afternoon Break**

4:05

### **The Latest Vocational Issues in Disability Claims: The Assessment of Own Occupation, Any Occupation, Dual Occupation and Employability; Defining Occupation in the National Economy; and Determining a Claimant's Entitlement to Full or Partial Disability Benefits**

*Patricia Enriquez, MA, CRC*

Certified Vocational Rehabilitation Counselor  
NYC Expert Disability Associates, LLC

*Ellen Rader Smith, MA, OTR, CVE, CPE*

Licensed Occupational Therapist  
Certified Vocational Evaluator & Certified Professional Ergonomist  
Ergo & Rehab Services

*Larry Schneider*

Disability Income Insurance Specialist  
Disability Insurance Resource Center

*Bonny G. Rafel*

Bonny G. Rafel LLC

- What are the standards used to define: “Own Occupation” and “Any Occupation”?
- How to define the material duties of a claimant's “occupation” under an “own occupation” provision
- The latest on “true own occupation” vs. “transitional own occupation”
- The latest issues and challenges associated with defining one's occupation “in the national economy”
- What is the standard to determine whether the claimant can return to work?
- Proving the inability to return to work for the first 2 years
- Proving the inability to work in another occupation for the next several years
- What happens when the insured is not working at the time of disability?
- Navigating the implications and arising challenges when there is a change of definition from “own occupation” to “any occupation”
- How do different LTD policies define the “any occupation” standard, and what are the implications of the different definitions?
- Defining and interpreting “gainful” employment
- Treatment of sedentary occupations in LTD claims
- Determining whether a claimant is constrained by financial pressures and returns to work disabled
- Understanding the Physician-Specific classifications/standards of “Modified Own Occupation” and “Medical Occupation” – what do these classifications mean and what effect do they have on entitlement to benefits?
- Recent litigation trend in long term disability cases involving professionals, and especially doctors
- Tightening clauses in the policy and defining exactly the material duties of a claimant's occupation
- Examining the approaches taken by insurance carriers in processing/evaluating vocational reports submitted by disability claimants
- Recent challenges arising from claimants with dual occupations

5:20

### **On Reinsuring Your Disability Risk: the Most Frequently Raised Reinsurer Defenses for Non-Payment**

*Robert Tomilson*

Clark Hill PLC

5:45

### **Contractual Limitations Periods in the Post-Heimeshoff Era: A Circuit-by-Circuit Analysis of the Latest Relevant Court Decisions and Their Implications**

*Bryan D. Bolton*

Funk & Bolton, P.A.

*Norris A. Adams, II*

Essex Richards, P.A.

- A circuit-by-circuit survey of the most significant court decisions affecting ERISA contractual limitations provisions following *Heimeshoff* over the last year
- What are the implications of these decisions?
- Analyzing the four exceptions to the general rule that the Court laid out in *Heimeshoff* – what litigation has been arising regarding the application of these four exceptions? Where does this seem to be headed? What exceptions does the plaintiffs’ bar seem to be focusing on the most?
- Understanding how the terms of a plan or policy at issue relates to state statutes that purport to mandate contractual limitations and proof of loss provisions
- What are the latest court decisions saying about what the shortest period is that a plan could add?

6:30 **Conference Adjourns**

**DAY TWO – FRIDAY, JANUARY 22, 2016**

7:20 Continental Breakfast

7:50 **The View From the Bench**

*Hon. Michael Baylson*  
U.S. Dist. Ct., E.D. Pa.

*Hon. Eric F. Melgren*  
U.S. Dist. Ct., D. Kan.

*Hon. Robert B. Collings*  
U.S. Dist. Ct., D. Mass.

*Hon. Toniaanne J. Bongiovanni*  
U.S. Dist. Ct., D. N.J.

**Moderator:**

*Pamela Atkins*  
Principal Owner  
Atkins & Associates, LLC

*Hon. Mark Bernstein*  
Philadelphia Ct. C.P.

*Hon. Lorenzo F. Garcia*  
U.S. Dist. Ct., D. N.M.

*Hon. James G. Carr*  
U.S. Dist. Ct., N.D. Ohio

9:10 **The Dos and Don'ts of Social Media Use in Conducting a Disability Claim Investigation**

*Gregory P. McMahon*  
Koleos, Rosenberg & McMahon, PL

*Frank N. Darras*  
DarrasLaw

- The potential benefits and pitfalls of looking online and reviewing the content of social media/ networking sites during claims investigations – practical tips on what you should and should not do
- Effectively and legally using content found on social media
- Practical suggestions for successful research on social media sites and privacy implications
- How to lawfully make use of information/material found on social media
- A survey of the latest case law on the dos and don'ts of social media use in conducting a disability claim investigation

9:55 Morning Coffee Break

10:05 **A Mediation Tactical Tool-Kit: Hear from the Perspectives of the Plaintiff, the Defense and the Mediator on Strategies for Effective Mediation and Overcoming Frequently Arising Challenges and Hurdles in the Process**

*Doug deVries*  
deVries Dispute Resolution/Judicate West

*Glenn Kantor*  
Kantor & Kantor, LLP

*Michael Horrow*  
Donahue & Horrow LLP

*Elizabeth (Lisa) J. Bondurant*  
Womble Carlyle Sandridge & Rice, LLP

- Assessing the roles of the various participants in the mediation of a disability claim
- How does the mediator view their role in the process?
- What are the latest trends, issues and challenges that specialty ERISA and IDI mediators are seeing? Tackling and overcoming the frequently arising challenges and hurdles in mediation
- How are the parties dealing with the troubling trend of not sharing briefs or making pre-mediation demands?
- How to handle the mediation in the most economical way for your client
- Negotiating the value of benefit streams
- Mediation war stories from counsel and mediators on the front lines

11:15 **Mental Disorders and Other Limited Conditions – Tackling the Challenges of Handling Mental/ Nervous Claims and Establishing Objective Proof of Subjective, “Non-Visible” Disorders**

*Leo J. Shea III, Ph.D.*

Clinical Associate Professor or Rehabilitation at Rusk Institute President, Neuropsychological Evaluation and Treatment Services, P.C.

*Ronald Roberts, Ph.D.*  
Forensic Neuropsychologist  
Forensic Psychiatric Associates Medical Corporation

*Jason A. Newfield*  
Frankel & Newfield, P.C.

*Nicole Y. Blohm*  
Meserve, Mumper & Hughes LLP

**Mental Illness and Mental/Nervous Limitations**

- Understanding the complexities of the mental illness: Distinguishing between a physical problem in the brain chemistry and a mental symptom
- Evaluating the medical experts that are key to mental illness claims
- IME strategies and record review; building a medical record which supports your claim
- Losing or winning the mental illness claim at the summary judgment phase
- What are the limitations to the mental illness claims
- Interpreting the co-morbid condition: When the mental illness arises out of the physical illness; How to deal with co-morbid conditions?
- Identifying the primary medical condition causing the inability to work
- Identifying whether there is a cognitive component to a disability claim and whether or not that component should be classified as “mental/nervous”
- Preparing your client’s claim so that it is properly categorized by the insurance company
- Recent challenges to the mental/nervous limitations – what types of challenges have proven successful?
- The latest issues arising out of the “caused by or contributed to by” language
- Successfully challenging and changing an initially incorrect benefits determination
- Substance abuse and the risk of relapse as a viable defensible disability
- What kind of policy language is being seen regarding coverage for substance or alcohol abuse? How are these provisions being interpreted? What is the current state of the law on whether such a claimant is entitled to benefits?

## Fibromyalgia, Chronic Fatigue Syndrome, Chronic Pain and Chronic Lyme Disease; and Self-Reported Symptoms Limitations

- Proving the existence of the disorder
- How to identify the appropriate healthcare professionals to properly diagnose and/or evaluate a subjective condition: Should IME's be the norm? Are peer reviews sufficient to overcome clinical evaluations by treatment providers?
- Balancing the need for objective proof versus the subjective disorder: Understanding objective proof of diagnosis v. objective proof of limitations; Testing to objectively verify functional limitations
- Recent challenges to the application of self-reported symptoms limitations – what types of challenges have proven successful?
- Distinguishing one claimant's ability to work with these conditions and another claimant's inability to work with these conditions
- Educating courts and/or adversaries who are not medically savvy

12:30 Networking Lunch for Speakers and Delegates

## 1:25 An In Depth Look at Continuing and Emerging Topics in IDI and LTD Claims: The Latest on "Appropriate Care," Total vs. Residual Disability, Legal vs. Factual Disability, Accident vs. Sickness, and Beyond

*Andrew I. Hamelsky*  
White and Williams LLP

*Evan S. Schwartz*  
Schwartz Law PC / Quadrino Schwartz

- Examining the continued struggle in interpreting/applying the "Appropriate Care" standard in LTD claims – When and under what circumstances can the failure to treat a medical condition lead to the termination of a claimant's long term disability benefits?
- An up-to-date discussion of the latest trends and developments relating to:
  - Total Disability vs. Residual Disability
  - Legal Disability vs. Factual Disability
  - Accident vs. Sickness
- Recent rise in state regulators' concerns about disability insurance claim handling procedures/practices

## 2:15 Dealing with Social Security Awards, Calculating Offsets and Handling Overpayments in Disability Cases

*Joseph M. Hamilton*  
Mirick, O'Connell, DeMallie & Lougee, LLP

*Eric L. Buchanan*  
Eric Buchanan & Associates, PLLC

*Steve Perrigo*  
VP of National Accounts  
Allsup, Inc.

- What kind of offsets are LTD plans and insurers entitled to? What is the latest case law saying?
- What language needs to be in the policy/plan to make an offset enforceable?
- Calculating the offsets: applying other monthly income benefits; estimating other monthly income benefits; applying a lump sum award of other income benefits (Workers comp, Tort recoveries against third parties, and Retroactive SSDI awards)
- Interplay of social security; how can a social security decision help or hurt you?
- Can you offset things like VA benefits that are not specifically set forth in the policy?
- An overview of how the different circuits are treating personal injury settlements and their effect on disability income benefits
- What creates the overpayment?: Policy/Plan language; The repayment agreement

- The mechanisms for recovering an LTD overpayment; defining the multi-step process for recovering overpayment of funds
- Identifying when to seek refund of overpayment while still complying with social security law
- The latest trends; and how courts have been responding to overpayment recovery claims

3:10 Afternoon Break

## 3:20 Preserving Attorney-Client Privilege During Disability Claim Handling (1 Ethics Credit)



*Stephen Broer*

Assistant Vice President, Senior Counsel, Law Department  
The Guardian Life Insurance Company of America

*D. Larry Kristinik*

Nelson Mullins Riley & Scarborough LLP

- Assessing whether privilege exists when attorneys act as claims managers rather than giving legal advice
- Ethical considerations when communicating with clients and protecting confidential information
- Knowing the exceptions to privilege when bad faith claims are involved or there are communications with overseas attorneys
- Avoiding waiver through over-dissemination or implicit reliance on advice of counsel
- Special ethics rules applicable to in-house legal departments which relate to maintaining privilege and confidentiality
- Resolving conflict of laws questions to determine governing privilege law
- Privilege issues when parent-subsidiary communications are involved
- Update on the fiduciary exception in ERISA cases and limits to that exception to privilege

4:20

## What's New in Bad Faith Litigation? An Update on the Latest Trends Being Seen in Unreasonable Delay and Wrongful Denial Bad Faith Claims; Defining the Duty and Remedies; and Strategies for Developing the Bad Faith Case or Defense

*Robert K. Scott*

Newmeyer & Dillion LLP

*Kristina B. Pett*

Pett Furman, PL

- An overview of the latest trends being seen in unreasonable delay and wrongful denial bad faith disability claims
- What are the latest court decisions saying about how to define the duty of good faith and fair dealing in the context of a disability claim?
- Under what circumstances have the courts been finding:
  - Use of an improper standard in denying a claim
  - Unreasonable conduct in litigation
  - Bad faith in consulting and retaining experts
  - Deliberate misinterpretation of records or policy language to avoid coverage
  - Arbitrary or unreasonable demands for proof of loss
  - Failure to thoroughly investigate a claim
  - Failure to maintain adequate investigative procedures
  - Institutional bad faith
- Has direct evaluation of claimants been being de-emphasized in favor of consults? What are the bad faith implications of this?
- The latest on the types of remedies that may be sought in a bad faith claim from state to state
- Plaintiff strategies for developing the bad faith case; and defense strategies for defeating the bad faith case
- Putting on the bad faith trial

5:10

## Conference Ends



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