

American Conference Institute's 20th 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

February 1-2, 2017 | W Miami Hotel | Miami, FL

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Guardian Life Insurance


Catherine Gallo
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Claims Bureau USA


Julie K. Bolt
The Standard

and others

VIEW FROM THE BENCH:

 **Hon. Fernando Gaitan**
U.S. Dist. Ct., W.D. Mo.

 **Hon. Viktor V. Pohorelsky**
U.S. Dist. Ct., E.D.N.Y.

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

 **Hon. Mildred E. Methvin**
U.S. Dist. Ct., W.D. La.


 **Hon. Richard S. Schmidt**
U.S. Dist. Ct., S.D. Tex.


PLUS – Be Sure to Book for the Post-Conference Workshop:
Handling a Disability Case from Start to Finish: The Complete Guide:
Thursday, February 2; 2:15–4:15pm


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:** What Are the Courts Saying? Discussing and Analyzing the Key ERISA & Non-ERISA Case Law Developments Including the *Montanile* and *Wurtz* decisions, and What They Mean for Your Practice in 2017 and Beyond
- ▶ **Penalties For Failing to Provide Plan Documents Under ERISA Section 502(c)**
- ▶ **Vocational Experts**
- ▶ **Effectively Approaching and Utilizing the IME's Evaluation, Treating Physician's Opinion, the FCE, Neuropsych Evaluations, Medical Records and More**
- ▶ **Partial Disability v. Total Disability**
- ▶ **Subjective Claims and Constellations of Medical Issues – Tackling the Challenges of Handling Mental/Nervous Claims and Establishing Objective Proof of Subjective, "Non-Visible" Disorders**
- ▶ **The Dos and Don'ts of Social Media Use in Conducting a Disability Claim Investigation**
- ▶ **Discovery in ERISA Cases as Discretionary Clauses are Slowly Fading Out and Insurers are Relying on De Novo Review**
- ▶ **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**
- ▶ **Contractual Limitations Periods in the Post-*Heimeshoff* Era**
- ▶ **ETHICS: Preserving Attorney-Client Privilege During Disability Claim Handling**


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

 **Mark I. Levy, MD, DLFAPA**
Medical Director
Forensic Psychiatric Associates Medical Corporation

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

The nation's premier conference on **Litigating Disability Insurance Claims** moves to Miami for its 20th iteration, 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; evolving state of new remedies and equitable relief; discovery in ERISA cases as discretionary clauses are slowly fading out; and properly utilizing social media and other modern technology in conducting disability claim investigations – just to name a few.

ACI's 20th Conference 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. **Learn from and meet leaders at: The Guardian Life Insurance Company of America, The Hartford, Claims Bureau USA, The Standard, 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!

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



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DAY ONE

WEDNESDAY, FEBRUARY 1, 2017

7:15 Continental Breakfast and Registration

7:55 Co-Chairs' Welcoming Remarks

Robert K. Scott

Law Offices of Robert K. Scott

Nicole Y. Blohm

Meserve, Mumper & Hughes LLP

8:00 VIEW FROM THE BENCH

Hon. Fernando J. Gaitan. Jr.

U.S. Dist. Ct., W.D. Mo.

Hon. Viktor V. Pohorelsky

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Hon. Lorenzo F. Garcia

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Hon. Mildred E. Methvin

U.S. Dist. Ct., W.D. La.

Hon. Richard S. Schmidt

U.S. Dist. Ct., S.D. Tex.

Moderator

Pamela I. Atkins

Principal

Atkins & Associates, Attorneys-at-Law, LLC

9:35 Morning Break

9:45 Disability Case Law Year in Review: What Are the Courts Saying? Discussing and Analyzing the Key ERISA & Non-ERISA Case Law Developments Including the *Montanile* and *Wurtz* decisions, and What They Mean for Your Practice in 2017 and Beyond

John J. Myers

Member

Eckert Seamans Cherin & Mellott, LLC

Denise M. Clark

Founding Partner

Clark Law Group, PLLC

Blaire Bruns Johnson

Partner

Edison, McDowell & Hetherington LLP

- *Montanile*: recoupment of SSDI and WC overpayments in light of the Supreme Court decision
- *Wurtz*: Offsets against benefits
- *Harlick*: The administrative review process and the waiver rule
- Forum shopping and motion practice being used to transfer venue
- Filing suit immediately after the insurer's deadline to decide a claim has expired
- Attorney's fees motions

- The application of ERISA church plan exemptions as applied to hospitals and health organizations
- *Rescission*: what constitutes material representation?
- Remedies

10:50 The Dos and Don'ts of Social Media Use in Conducting a Disability Claim Investigation

Noreen M. Fierro

Corporate Chief Compliance Officer

The Guardian Life Insurance Company of America

Frank N. Darras

Founding Partner

Darras Law

Gregory P. McMahon

Equity Partner

Koleos, Rosenberg & McMahon, PL

- 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

11:50 Discovery in ERISA Cases as Discretionary Clauses are Slowly Fading Out and Insurers are Relying on De Novo Review, How the Amendments to the Federal Rules of Civil Procedure Will Impact Discovery, Administrative Review, and Proportionality Issues

Jennifer M. Danish

Managing Partner

Bryant Legal Group

Jason A. Newfield

Founding Partner

Frankel & Newfield P.C.

Ronald K. Albers

Partner

Gordon Rees Scully Mansukhani, LLP

- Conflict of interest discovery
- Discretionary clause regulation
- Tackling the big issue of discovery in ERISA cases under de novo review
- The changing landscape of insurers and state regulators no longer requiring discretionary policies
- How do you try a de novo case in the 9th circuit where there are bench trials and no witnesses?
- State by state update on states that still allow discretionary policies
- Determining the claims that contain discretionary policies but litigating de novo review
- Amendments to the Federal Rules of Civil Procedure
 - Rule 26
- How are courts looking at the issue of proportionality in ERISA cases?
- Discovery obtained during administrative review

12:50 Networking Lunch for Speakers and Attendees

1:50 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
Member
Miller & Chevalier Chartered

Michelle Roberts
Partner
Roberts Bartolic LLP

- 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

2:40 Contractual Limitations Periods in the Post-*Heimeshoff* Era: A Circuit-by-Circuit Analysis of the Latest Relevant Court Decisions and Their Implication

Nikole M. Crow
Counsel
Womble Carlyle Sandridge & Rice LLP

Julie F. Wall
Attorney
Chittenden, Murday & Novotny LLC

- Whether plan limitation of actions provisions are enforceable if the plan does not advise the participant of its existence
- Benefit determination letters
- 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?
- Analyzing the *Diaz* decision – limitation of access provision not identified in denial letter cannot be enforced

3:30 Penalties For Failing to Provide Plan Documents Under ERISA Section 502(c)

Daniel W. Maguire
Partner
Burke, Williams & Sorensen, LLP

Eric L. Buchanan
Partner
Buchanan & Associates, PLLC

- Penalties for failing to provide Plan Documents under ERISA section 502(c)
- How employers can avoid these penalties
- How insurance companies can help their clients avoid these penalties
- How claimants can recover the highest possible penalties where appropriate

4:20 Afternoon Break

4:30 Partial Disability v. Total Disability: How the Courts are Drawing the Line for Determining Different Levels of Disability and the Formula Used for Calculating Payouts

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

Bryan D. Bolton
Founding Partner
Funk & Bolton, P.A.

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

- How courts are drawing the line differently in determining partial v. total disability
- What formula is used for determining payment in partial disability cases

5:30 ETHICS: Preserving Attorney-Client Privilege During Disability Claim Handling (.5 Ethics Credit)

John E. Meagher
Partner
Shutts & Bowen LLP

Nicole Y. Blohm
Partner
Meserve, Mumper & Hughes 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

6:30 Conference Adjourns

7:30 Continental Breakfast**8:00 IN-HOUSE THINK TANK: Counsel and Claims Professional Perspectives on New and Emerging Issues in Disability Insurance Claims****Catherine Gallo**

Assistant Vice President &
Assistant General Counsel
The Hartford

Noreen M. Fierro

Corporate Chief Compliance
Officer
The Guardian Life Insurance
Company of America

Brian Landry

Executive Vice President
Claims Bureau USA

Julie K. Bolt

Assistant Counsel
The Standard

Moderator:**Kristina B. Pett**

Founding Member
Pett Furman, PL

9:20 Morning Break**9:30 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

Leo J. Shea III, Ph.D.

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

- Restrictions and limitations
- FCE Exams, field visits and video
- Defeating bad claims
- Establishing credibility

10:45 Subjective Claims and Constellations of Medical Issues –Tackling the Challenges of Handling Mental/Nervous Claims and Establishing Objective Proof of Subjective, “Non-Visible” Disorders**Ronald Roberts, Ph.D.**

Forensic Neuropsychologist
Forensic Psychiatric Associates Medical Corporation

Mark I. Levy, MD, DLFAPA

Medical Director
Forensic Psychiatric Associates Medical Corporation

Patricia Enriquez, MA, CRC

Certified Vocational Rehabilitation Counselor
NYC Expert Disability Associates, LLC

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 summary judgment
- 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?
- 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 defense
- 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

12:15 Vocational Experts: Challenges and Difficulty in Finding Qualified and Newer Experts, Lack of Universal Standard for Qualifying Vocational Experts, Determining Occupational Demand and Suitability for Work, Assessment of Own Occupation, Any Occupation, Dual Occupation**Ellen Rader Smith, MA, OTR, CVE, CPE**

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

- Use of depositions
- Challenges and difficulty with vocational issues
- What resources are most appropriately used by insurers for purposes of determining occupational demand and suitability for work
- What affect does the insurance company reliance on DOL standards play into claims evaluation?
- 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

1:10 Conferences Ends; Lunch for Post-Conference Workshop Speakers and Attendees

POST-CONFERENCE WORKSHOP

THURSDAY, FEBRUARY 2, 2017

2:15-4:15 pm

(Registration begins at 2:00 pm; separate registration required)

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

Robert Scott

Partner

Newmeyer & Dillion LLP

Kristina B. Pett

Founding Member

Pett Furman, PL

This comprehensive session 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. Whether you are new to the area, have only limited experience, or just want a comprehensive refresher, this session will enable you to get the most out of the two conference days that follows. Topics to be covered include:

- 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
- Claimant side considerations
- Defense strategies
- Conducting a thorough investigation early on in your case
- Preparing and drafting:
- Understanding and strategically using the medicals in your case
- Effective courtroom tactics and strategies

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& claims professionals meet to devise practical solutions for today's most critical issues

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