

LITIGATING DISABILITY INSURANCE CLAIMS

The preeminent 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 24-25, 2013 | The Carlton Hotel | New York, NY

Hear from and network with:

Colleen A. DeNoto

The Prudential Insurance Company of America

Christine Dart

Chubb & Son

Nell Walker

Cigna Legal & Public Affairs

Stephen H. Broer

Guardian Life Insurance Company of America

Marybeth Fougere

Unum

Christina McNally

CIGNA Corporation

Peter M. Kelly

Blue Cross Blue Shield Association

Amy Y. Hudson

The Hartford

Gordon Jermane

Manulife Financial

Mark C. Taylor, MS, CCM, CDMS

RGA Reinsurance Company

Maureen T. Mulville, CLU, FLMI

Illinois Mutual Life Insurance Company

Leslie Perry

Chartis

R. Eric Powers, III

Crawford & Company

Top in-house counsel, plaintiff and defense lawyers and medical experts will provide valuable, practical information on all the key issues that arise in litigating disability insurance claims, including:

- **The ongoing discovery battle and the fallout from *Metlife v. Glenn*:** understanding its scope and limitations and implementing meaningful strategies in today's environment
- Spotlight on *Cigna v. Amara*: how the landmark case and its progeny have changed the disability insurance landscape and how to tailor your practice in response
- **Innovative Pre-trial Procedures:** deposition testimony, summary judgment, settlement, venue/choice of law and more
- Analyzing and interpreting the **IME's evaluation, treating physician's opinion, the FCE, neuropsych evaluations and medical records**
- **Subjective disorders:** objective proof for fibromyalgia, chronic fatigue syndrome, chronic pain, chronic Lyme disease and mental illness
- The methods, challenges and standards involved in the assessment of **own occupation, any occupation** and employability
- **Surveillance:** A good idea? Can it help or hurt a disability claim?
- The latest on the recovery of **attorney's fees:** ERISA and non-ERISA
- Unreasonable delay or wrongful denial **bad faith** claims: defining the duty and remedies and developing the case/defense
- Non-ERISA: An in-depth look at the emerging topics in **IDI and LDT claims**
- How to **calculate offsets** and identifying when to seek **refund of overpayment** while still complying with Social Security law

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



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



Hon. James L. Robart
U.S. Dist. Ct., W.D. Wash.



Hon. Matthew Kennelly
U.S. Dist. Ct., N.D. Ill



Hon. John C. Coughenour
U.S. Dist. Ct., W.D. Wash.



Hon. Daniel E. Knowles, III
U.S. Dist. Ct., E.D. La.



Hon. Roslyn O. Silver
U.S. Dist. Ct., D. Ariz.



Hon. David J. Waxse
U.S. Dist. Ct., D. Kan.



Hon. Anthony J. Mohr
Calif. Super. Ct.

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.

Ellen Rader Smith, MA, OTR, CVE, CPE

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

Richard Kaplan, MD

Founding Partner
Uniontown Medical Rehabilitation, P.C.

Henry Conroe, MD

Psychiatrist

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The nation's premier conference on Litigating Disability Insurance Claims returns for its 15th year, featuring an unparalleled faculty of in-house industry experts, renowned jurists, cutting edge medical professionals, and leading plaintiff and defense attorneys.

Today's weakened economy has brought a sharp increase in the filing of disability insurance claims (long term, short term, individual and ERISA). And mental illness claims are becoming more and more prevalent.

Case law developments have dramatically changed the disability litigation landscape. *Metlife v. Glenn* has changed the way practitioners are evaluating benefit claims. Where little or no discovery was considered the norm years ago, practitioners are now dealing with the changing scope of discovery. Insurers are often conflicted with their role as a fiduciary and with their interest in driving business in today's economy. Claimants are often seeking discovery beyond the record including internal policies and communication. Insurers are combating this broad discovery request by requesting the courts grant protective orders on the grounds that the information plaintiffs are seeking is proprietary and confidential. Plaintiff's attorneys are responding to the opening the Court granted in *Metlife* and making important decisions in terms of what and how much discovery to request. Often the issue of how to tailor and narrow broad discovery requests becomes the focal point early on in the case.

[ACI's 15th Annual Conference on Litigating Disability Insurance Claims](#) will help you tailor your practice to the on-going discovery battle, and highlight key strategies to implement to make discovery useful and meaningful to your case.

Furthermore, the implications of *Cigna v. Amara* are being felt by the industry and could significantly affect the remedy landscape. And with 90% of ERISA cases settled at the summary judgment phase, it is essential for practitioners on both sides to utilize innovative pre-trial strategies including deposition, settlement, venue/choice of law and more. At this conference, a panel of the foremost plaintiff and defense litigators will offer unparalleled tips and advice on how to implement successful strategies during this critical stage in the case.

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:](#) The Prudential Insurance Company of America, Chubb & Son, Cigna, Crawford & Company, Guardian Life Insurance Company of America, Unum, Blue Cross Blue Shield Association, The Hartford, Manulife Financial, RGA Reinsurance Company, Illinois Mutual Life Insurance Company and Chartis.**

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!**

Plus, be sure to add value to your attendance by registering for the Post Conference Master Class:
[Advanced Master Class on Handling a Disability Case from Start to Finish](#) – Friday, January 25, 2013 • 3:00-5:00 PM

Register today to ensure your place by calling 888-224-2480, faxing your registration form to 877-927-1563 or registering online at:
www.AmericanConference.com/DisabilityInsurance

Who You Will Meet

- ✓ Attorneys Specializing in
 - Life, Health and Disability Insurance litigation
 - Long Term Disability
 - ERISA
 - Labor & Employment
 - Workers' Compensation
- ✓ Insurance Industry Professionals including:
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 - Claims Specialists
 - Adjusters
 - Risk Managers
 - Litigation Specialists
 - Disability Claim Consultants

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7:15 **Continental Breakfast and Registration**

8:00 **Co-Chairs' Welcoming Remarks**

Robert K. Scott
 Managing Partner
 Law Offices of Robert K. Scott

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

8:05 **Practical Guidance from the Insurers: Counsel and Claims Professional Insights on New & Emerging Issues in Disability Insurance Claims**

Panel 1 8:05-9:05	Panel 2 9:05-10:05
<p><i>Colleen A. DeNoto</i> Vice President Corporate Counsel The Prudential Insurance Company of America</p> <p><i>Christine Dart</i> Vice President Chubb & Son</p> <p><i>Nell Walker</i> Associate Chief Counsel Cigna Legal & Public Affairs</p> <p><i>R. Eric Powers, III</i> Vice President Associate General Counsel Corporate and Assistant Corporate Secretary Crawford & Company</p> <p><i>Stephen H. Broer</i> Counsel Guardian Life Insurance Company of America</p>	<p><i>Marybeth Fougere</i> AVP and Senior Counsel, Law Department Unum</p> <p><i>Amy T. Hudson</i> Assistant Vice President & Counsel, Wealth Management and Group Benefits Litigation The Hartford</p> <p><i>Gordon Jermane</i> Assistant Vice President & Counsel Manulife Financial</p> <p><i>Mark C. Taylor, MS, CCM, CDMS</i> Director, Claims/Consulting RGA Reinsurance Company</p> <p><i>Maureen T. Mulville, CLU, FLMI</i> Vice President, Compliance & General Counsel, Executive Services Department Illinois Mutual Life Insurance Company</p> <p><i>Leslie Perry</i> Claims Analyst Chartis</p>

Panel 1 and 2 Moderator:

Adrienne Publicover
 Partner
 Wilson Elser Moskowitz Edelman & Dicker LLP

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 as a tool
- Pre-litigation resolution tactics
- Complaint to the department of insurance: the in house response
- Retaining outside counsel: factors to consider
- Views of mediation
- Challenges to sufficiency of the complaint
- Discovery and rule 26 disclosures
- Post litigation investigative techniques
- And much more

10:05 **Morning Coffee Break**

10:15 **The Ongoing Discovery Battle: Understanding Its Scope and Limitations and Implementing Meaningful Strategies in Today's Environment**

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

Scott M. Riemer
Partner
Riemer & Associates

Richard N. Bien
Partner
Lathrop & Gage LLP

John V. Tucker
Attorney
Tucker & Ludin, P.A.

Metlife v. Glenn and ERISA Cases:

- How has the Supreme Court's ruling trickled down to the lower courts?
- Understanding the extent of discovery that courts are allowing post *Metlife*
- Circuit Courts' interpretations: making sense of the different approaches throughout the country
- Conflict discovery of the Insurer
- Concerns regarding using *Metlife* to overreach

Discovery Requests

- 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

E-Discovery Nuances

- Recent trends and benchmarking best practices

Protective Orders

- Whether the documents (claim manuals and policies) used in one case can be transferred and utilized by plaintiffs in another case against the same insurer
- What are the parameters of a typical protective order? What is the scope?
- Responding to insurer's argument that certain documents are confidential

11:25 **Cigna v. Amara Revisited: How the Landmark Case and Its Progeny Have Changed the Disability Insurance Landscape and How to Tailor Your Practice in Response**

Peter M. Kelly
Chief Employee Benefits Counsel
Blue Cross Blue Shield Association

Mark E. Schmidtke
Partner
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

Jonathan M. Feigenbaum
Owner
Jonathan M. Feigenbaum, Esquire

- The holding of *Cigna*: what the Court was really saying
- How will *Cigna* affect the remedy landscape
- A specific look at the future of
 - o Equitable relief; Plan reformation; Detrimental Reliance
- Opening up broader relief to harmed plaintiffs
- Creating equitable relief beyond the claimed benefits
- Seeking reformation beyond the terms in the contract
- Best strategies for arguing against monetary damages as a form of "equitable relief"
- Exploiting the "actual harm/detrimental reliance" requirement and effectively using it as a tool to minimize damages

- Determining when a violation of law can lead to reformation
- Understanding the equitable remedy of "surcharge" and limiting fiduciary exposure to same

12:25 **Networking Luncheon for Speakers and Delegates**

1:25 **Analyzing and Interpreting the IME's Evaluation, Treating Physician's Opinion, the FCE, Neuropsych Evaluations and Medical Records**

Richard Kaplan, MD
Founding Partner
Uniontown Medical Rehabilitation, P.C.

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

Bonny Rafel
Bonny G. Rafel, LLC

David A. Bryant
Member
Daley DeBofsky & Bryant

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

The Fundamental Right to Require IMEs or FCEs During a Claim

- During each stage of the case: initial claim review, during an appeal, in litigation
- What type of testing is required under the contract and what type of testing is most relevant to the claim
 - o Disabling Physical Illness - is an FCE warranted? A neuropsychiatric exam?
 - o Disabling Mental Illness - is the Neuropsychiatric exam warranted?
 - o In a "pain case" what testing is relevant?

What Must Be Preserved and Produced Related to the Examinations

- The exchanges between the examiner and insurance company?
- The raw data from a Neuropsychiatric or Neuropsychological Exam?
- Can the examination be videotaped, audiotaped or witnessed?
- What data, if any is confidential

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

2:50 **Subjective Disorders: Objective Proof for Fibromyalgia, Chronic Fatigue Syndrome, Chronic Pain, Chronic Lyme Disease and Mental Illness**

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

Henry Conroe, MD
Psychiatrist

Mala Rafik
Managing Partner
Rosenfeld Rafik & Sullivan, P.C.

John T. Seybert
Special Counsel
Sedgwick LLP

Mental Illness

- Why does it matter whether the disability is physical or mental?
- 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 or record review
- Understanding the scope of discovery in mental illness claims
- 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?

Fibromyalgia, Chronic Fatigue Syndrome, Chronic Pain and Chronic Lyme Disease

- 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
- 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

4:05 **Afternoon Break**

4:15 **Innovative Pre-Trial Practice & Procedure Specific to Disability Insurance Litigation: Deposition Testimony, Summary Judgment, Settlement, Venue/Choice of Law and More**

Bradley J. Betlach
Shareholder
Nilan Johnson Lewis, P.A.

Lee W. Marcus
Founding Member
Marcus & Myers, P.A.

Venue, Choice of Law and Cost Effectiveness

- Effectively using venue and choice of law to your client's benefit
 - When removal should be implemented or challenged
- Developing cost effective measures
 - Balancing the costs of trial against the potential for obtaining benefits, extra-contractual damages, costs, attorneys' fees and punitive damages

Deposition Testimony

- Effectively preparing the claim administrator/analyst for testimony
 - Identifying key parts of the claim file and the likely scope of the claim administrator's testimony
 - Learning how to overcome potential deficiencies in both
- Effectively preparing for the plaintiff's deposition

Summary Judgment v. The Bench Trial

- Evaluating why an overwhelming majority of cases are decided at the summary judgment stage
 - Considering whether the courts are increasingly allowing ERISA cases to go to trial
- Exploring the critical summary judgment stage
- What to expect and how to implement successful strategies
 - The limitations and benefits of a paper review of the record at the summary judgment stage?

Mediation/Settlement

- Exploring the pros and cons of settling a case
- Utilizing mediation as a viable tool to help get claims resolved quickly
- Defining the scope of the confidentiality of settlement agreements

5:10 **Calculating Offsets and Identifying When to Seek Refund of Overpayment While Still Complying with Social Security Law**

Michael J. Hanman, III
Partner
Weathington Smith, P.C.

Lisa Bondurant
Partner
Smith Moore Leatherwood LLP

- What kind of offsets are LTD plans and insurers entitled to?
- 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)
- What creates the overpayment?: Policy/Plan language; The repayment agreement
- The mechanisms for recovering an LTD overpayment: ERISA: Section 502(a)(3); *Great West* and *Sereboff*; Establishing the insurer is a fiduciary with standing to bring suit for equitable relief; Do funds need to be traced or segregated to be recovered?; Is a constructive trust necessary?; Determining whether the repayment agreement constitutes an equitable lien by agreement; State law remedies; Difficulties posed when asserting unjust enrichment in ERISA and non-ERISA cases; Legal obstacles to overpayment claims; Interpretations of Social Security anti-assignment statute; Measures used to convince a judge recovery should be allowed; Practical obstacles to overpayment claims
- Trends and how courts have responded to overpayment recovery claims: Recoupment of overpaid long term disability benefits as a consequence of receipt of social security disability benefits: 9th Circuit recent case
- Use of skip tracing/asset searches to recover funds
- Post-judgment enforcement
- Settlement Approaches: Strategies by carriers, claimants and their attorneys for avoiding litigation; Use of overpayments in settlement discussions or mediation

6:00 **Conference Adjourns**

DAY TWO – Friday, January 25, 2013

7:30 **Continental Breakfast**

8:00 **The View From the Bench: What Works and What Doesn't in Their Courtrooms, Why Insurers Succeed and Don't Succeed in Claims Litigation, Novel Trial and Case Management Strategies, Examples of Bad Lawyering, and More**

The Honorable John C. Coughenour
U.S. Dist. Ct. W.D. Wash.

The Honorable James L. Robart
U.S. Dist. Ct., W.D. Wash.

The Honorable James Gray Carr
U.S. Dist. Ct., N.D. Ohio

The Honorable Roslyn O. Silver
U.S. Dist. Ct., D. Ariz.

The Honorable Daniel E. Knowles, III

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

The Honorable Matthew Kennelly

U.S. Dist. Ct., N.D. Ill.

The Honorable David J. Waxse

U.S. Dist. Ct., D. Kan.

The Honorable Anthony J. Mohr

California Superior Court, Los Angeles County

Moderator

Pamela Atkins

Principal Owner

Atikins & Associates, LLC

Top Jurists who have presided over disability and ERISA and other insurance litigation matters will provide attendees with candid, practical insights on these and other topics:

- Survey of the individual disability and ERISA landscape: summary of the most influential 2012 cases
- Methods and processes utilized in deciding cases early
- Novel approaches to trial and case management
- Key do's and don'ts for counsel
- Trends and developments for 2013 and beyond
- What works and doesn't work in their courtrooms
- Where the insurers in cases before them and juries succeeded and why, and where they did not
- Examples of poor witness selection
- Connecting with the jury
- Examples of bad lawyering?
- What works best in jury instructions? Voir dire? Openings and closings?

9:40 **Morning Coffee Break**

9:50 **The Methods, Challenges and Standards Involved in the Assessment of Own Occupation, Any Occupation and Employability**

Christina McNally

Senior Counsel

CIGNA Corporation

Tim Mara

Counsel

Disability Management Services, Inc.

Mark Ramnauth, M.A. CRC ADR

Vocational Consultant/Expert

Apex Rehab Management

Glenn R. Kantor

Founding Partner

Kantor & Kantor, LLP

- 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
- Whether the claimant is constrained by financial pressures and returns to work disabled
- Defining any occupation
 - o What does it mean?
 - o What are the standards used to define any occupation?
 - o Whether the insured is protected under the any occupation standard
- Determining whether the claimant is unable to perform all duties or just one duty
- 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

- o Identifying terms that are ambiguous
- o Writing a clause that the occupation is based on the national economy
- o Determining how the claimant's employer is performing in the national economy
- o Whether utilizing the national economy standard restricts the claimant's rights
- Comparing the differences of the occupation in a rural area versus a metropolitan area
 - o Whether geography makes a difference
 - o Evaluating the disability based on the ability to carry out duties of the occupation in a different environment
- Adding in additional factors to the evaluation process
 - o Whether using technology affects whether the claimant is able to perform his/her job in another environment
 - o Whether the economy affects the ability to obtain another occupation
- What exactly are the occupational duties of a claimant?
 - o What are insurers looking for?
 - o What are the material and substantial duties of an occupation?
 - o How are the duties defined?
 - o Evaluating the factors to determine whether the material and substantial duties of an occupation can be performed
- Weighing the value of the opinion of the vocational expert
 - o Documenting the occupation of the claimant
 - o What factors come into play in the vocational rehabilitation expert evaluation?
- Restriction v. Limitation
 - o Identifying when the claimant is a risk to oneself or someone else and when the claimant is limited and loses their ability to perform their job

10:50 **Surveillance – A Good Idea?: Can it Help or Hurt a Disability Claim?**

Jason Newfield

Partner

Frankel & Newfield, PC

Gregory Dell

Partner

Attorneys Dell & Schaefer Chartered

Mark D. Greenberg

Shareholder

Carlton Fields

- Recent trends: more aggressive use of surveillance: When is video surveillance of a claimant most common? What are the boundaries?; Can a claimant video tape IME exams and field interviews?
- Legal Analysis of Court Decisions Discussing Video Surveillance
- Can surveillance be withheld during discovery?
- Use of hidden cameras and GPS tracking devices
- Risks of utilizing video surveillance: when it can harm a case more than it helps
- Utilizing surveillance and understanding its limitations: Whether Private Investigators are effective; Is video surveillance of a claimant on one day enough evidence to prove a claimant is not disabled?; How should a claimant respond to video surveillance once it has been disclosed?; Can surveillance buttress claimant's procedural irregularities arguments?; Insurers use of surveillance to influence treating doctors opinions

11:45 **The Latest on the Recovery of Attorneys Fees in the ERISA and Non-ERISA Context**

Eric L. Buchanan

President/Owner

Eric Buchanan & Associates, PLLC

Daniel W. Maguire

Partner

Burke Williams & Sorensen LLP

Ronald K. Alberts
Partner
Gordon & Rees LLP

Attorney's Fees: ERISA

- Whether the prevailing party will recover attorney's fees
- Whether the courts are creating an overly broad definition of the phrase "success on the merits"
 - How successful are plaintiffs in recovering attorneys' fees post *Hardt v. Reliance*?
 - Recovery of attorney's fees after remand or voluntary reinstatement of the claim by the insurer, etc.
- Addressing the issue of whether the courts are using attorney's fees as a punitive measure
- How do we deal with fee multipliers?
 - Addressing Plaintiff's entitlement to 2 ½ x the attorney's fees recovered

Attorney's Fees: Non ERISA

- Recovering attorney's fees even in the absence of a jury trial
 - Recovering in settlement, mediation or other alternative methods
 - Attorney fee recovery limited to fees incurred to recover contract benefits

12:40 **Unreasonable Delay or Wrongful Denial Bad Faith Claims: Defining the Duty and Remedies and Developing the Case/Defense**

Robert K. Scott
Managing Partner
Law Offices of Robert K. Scott

Frank N. Darras
Founding Partner
DarrasLaw

- Defining the duty of good faith and fair dealing
- First party remedies including back due interest, attorney fees, extra-contractual and punitive damages
- Developing your unreasonable delay or wrongful denial bad faith case
 - Failure to investigate the primary, material and substantial duties, specialty letters, national economy
 - Field visits and the failure to cooperate
 - Claim forms, attending physician statements, two-week logs
 - Doctor to doctor phone interviews and the failure to accurately define occupational demands
 - On-site / in-house doctor reviews and uncovering financial bias of paper reviewing companies
 - The not-so-independent medical exam and functional capacity exams
 - ERISA-sizing the individual claimant
 - Bad faith or genuine dispute doctrine
 - Institutional bad faith issues
 - Consulting experts and bad faith retained experts
 - Putting on the bad faith trial

1:25 **Non-ERISA Claims: An In Depth Look at the Emerging Topics in IDI and LTD Claims**

Evan S. Schwartz
Founding Partner
Quadrino & Schwartz

- Evaluating the aftermath of liberal policies favoring the insured drafted in the 1980's and 1990's
- Reviewing the difficulties posed in claims management 20 years later
- Handling claims 20 years later when these claims are proving a negative income

- Requiring a sophisticated level of claims analysis for insurers
- Dealing with financial pressures filtering in claims decisions
- Difficulties posed when claims are mishandled
- Ways to make sure a thorough and unbiased investigation of the claims is completed
- Burden of proof on the claimant to disclose all the facts
- Responding to the argument that IDI policies should be treated similarly to ERISA policies
- Whether insurers are ignoring information claimants provide
- "Shelf claims" reexamined
- More scrutiny on 2 year contestability period

1:55 **Main Conference Ends –
Lunch for Master Class Participants**

**Post-Conference Master Class:
Friday, January 25, 2013 | 3:00-5:00 p.m.**

Advanced Master Class on Handling a Disability Case from Start to Finish

Evan S. Schwartz
Founding Partner
Quadrino & Schwartz

Glenn R. Kantor
Founding Partner
Kantor & Kantor, LLP

Daniel W. Maguire
Partner
Burke Williams & Sorensen LLP

This intensive session will take you through the process of litigating a disability insurance claim, from the initial claim through to final resolution. 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:
 - which cases to accept and which cases you should avoid
 - what to disclose and what not to disclose when filing the initial claim
- Defense side considerations:
 - making the decision of conducting an IME during the claim investigation
 - key elements of an effective response
 - completeness of administrative record
 - reasons for any deficiencies in record
- Conducting a comprehensive investigation early in the case
 - who you should interview
 - documents and records: what you need to have and how to get them
- Preparing and drafting:
 - retainer and fee agreements
 - complaints
 - answers to complaint and affirmative defenses
 - motions for summary judgment
 - motions in limine
 - disability claim appeal letter
- Understanding and strategically using the medical records in your case
- Utilizing disability experts: when is it necessary and cost-effective?
- When to settle and when to go to trial
- Establishing and building your case theme
- Effective courtroom tactics and strategies in jury trials

LITIGATING DISABILITY INSURANCE CLAIMS

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

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