



1-877-LTD-CLAIM

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Frankel & Newfield, P.C. is a boutique law firm focused on representing individuals across the country with all matters concerning Long Term Disability Insurance claims. We invite you to visit our website at www.frankelnewfield.com to learn more about the firm. Please call or email if you have any questions. We look forward to hearing from you.

LTD MANAGEMENT/DISABILITY INSURANCE LAW UPDATE

Disability Law in the News

As we went to press, the Obama administration announced that it will boost consumer protection to the appeals process for disability insurance claims that fall under ERISA, which was not included in the national health insurance law. We will continue to follow this issue and keep you up to date through our blog, www.disabilityinsurancelawyerblog.com, where we focus on the latest developments and news in disability insurance law.

Our blog, Disability Insurance Lawyer, was named by the editors at LexisNexis as one of the top 50 insurance law blogs for 2009. LexisNexis is a leading global provider of content and information driven technology for the legal, business, government, law enforcement and academic markets. As a winner, DisabilityInsuranceLawyerBlog.com is described as offering "a wealth of information... timely news items, expert analysis, practice tips, frequent postings and helpful links..." Our blog examines disability insurance law news, reports and cases. We are proud that our efforts to inform and educate have been recognized by this prestigious organization.

SUCCESSFUL RESULTS FOR FRANKEL & NEWFIELD CLIENTS

We frequently receive compliments from clients about the personal nature of our practice. Our deliberate

decision to remain a two-partner firm reflects our commitment to providing our clients with superior experienced legal representation. If you have a concern regarding a disability insurance claim and wish to learn how this approach can help you through a difficult situation, please call us at 877-LTD-CLAIM (877-583-2524). Visit the success stories on our website at www.frankelnewfield.com and our blog, www.disabilityinsurancelawyerblog.com, to learn more about the clients we have helped.

SUCCESS IN OBTAINING TOTAL BENEFITS FOR PHYSICIAN WITH TWO PRIVATE POLICIES

We represent many clients regarding residual claims, a challenging area of disability insurance law, but one that potentially opens up claims for benefits which might otherwise not be payable. This is an area where we feel our practice shines. A residual disability benefit is a disability that causes an insured's income to fall more than 20% below its pre-disability level. This percentage may vary between policies, and some companies include a loss of time requirement or the inability to perform some duties in their definition. The concept is that you can still work and still earn income, but the disability policy is making up for the income loss caused by your disability, on a pro rata basis.

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In a recent matter, we represented a physician who was on claim for a condition that led to the loss of use of both of his feet. He was being paid residual benefits under one of two private policies that he owns, and engaged us to pursue a total disability claim under the presumptive disability portion of the second, non-residual policy. This policy provision allows for total disability benefits *even while working* in the case of the complete loss of feet, hands, eyes, ears, etc. The insurance company challenged this, claiming that our client was still driving and so he had not actually lost total use of his feet. With skilled and determined legal research, we were able to demonstrate that the law would indeed support benefits where the insured lost all practical use of the legs. We got his treating doctor to support this, which convinced the insurance company to pay total disability benefits – regardless of whether or not he continues to work.

ERISA APPEAL FOR CHRONIC FATIGUE

A client suffered from Chronic Fatigue Syndrome, and his claim was denied by a reviewing doctor who we know all too well. We took this claim to court, which agreed that the decision to deny his claim was arbitrary and capricious, based upon biased and selective reviews of his medical records and a complete failure to consider that our client had qualified to receive Social Security benefits. Our client received back benefits for *more than three years*, and is currently on claim.

LIFETIME BENEFITS FOR AN OB/GYN WITH CARPAL TUNNEL SYNDROME

A client who had been on residual disability for ten years struggled to continue working despite a disability that limited his ability to practice. His UNUM policy stated that if he became totally disabled before age 65 because of an injury, he would receive benefits for the rest of his life. Just before turning 65, he became totally disabled because of bi-lateral carpal tunnel syndrome. We immediately notified the insurance company. They stopped paying benefits after his 65th birthday, stating that he was not totally disabled and that carpal tunnel syndrome was not an injury. We believe that the \$20,000 monthly benefit may have had something to do with their decision.

Frankel & Newfield aggressively represented him in an appeal and won. He now receives full disability payment – more than \$20,000 per month – for the rest of his life.

ERISA APPEAL: JOB DESCRIPTIONS AND INCOMPLETE MEDICAL REVIEWS

We have a client whose claim was denied despite having several debilitating disabilities who is also a breast cancer survivor. Her claim was denied, which was astonishing – until we learned that her medical review was conducted by a third party company that reviews medical claims for insurance companies. In the words of their own mission statement, their goal is to “...allow our clients to achieve positive outcomes through cost effective solutions.” We submitted a vigorous appeal that attacked on two fronts: the insurer’s failure to provide the third party company with complete medical records and the use of long out of date occupational information and a completely inaccurate job title. Since when does a VP with an international financial services company have the same job responsibilities as a Manager with light duty tasks? Our appeal was successful and our client is now on claim.

LONG TERM DISABILITY LAW NEWS

One of the biggest challenges for ERISA claimants is that their claim can be denied or terminated based on an opinion that is paid for by the insurance company. Many of the large LTD companies rely upon a small group of doctors who perform “paper reviews” of medical records and never examine the patient before coming to their decision. We were pleased to read about a recent case, *Pauley v. Hartford Life & Acc Ins. Co.*, where the Court conducted a thorough analysis of the paper review, chastised the insurance company for basing a decision on one piece of aberrational evidence from a treating physician and took a critical view of the relationship between the insurance company and the so-called “independent” doctor. The tide has yet to turn completely, but this is yet another example of how change is coming.

A similar case came from a Federal Court in Ohio, wherein Hartford’s reliance on the opinion of a non-examining paper reviewing physician was

deemed insufficient to support a termination of disability benefits to an insured. The Court in *Bowers v. Hartford Life* opined that Hartford abused its discretion in terminating disability benefits because of this conflict of interest. It was troubled by the lack of any in-person examination, a common issue where insurers rely on the opinion of non-examining doctors who conduct a high volume of work on behalf of insurance companies.

Courts are also taking a harder look at "Results Driven" Functional Capacity Evaluations (FCE). This year has seen a large surge in the number of FCEs used by insurance companies. In *Lowery v. UNUM Life Ins. Co.*, the court concluded that the examiner focused the FCE on the purported self-limiting behavior of a claimant, rather than using the test to truly assess the claimant's functional capacity. We always aggressively challenge the insurer when they request an FCE, as these tests are not required by most policies, and often pose serious medical challenges to the safety and well-being of claimants.

NEWS ABOUT THE FIRM

Recognized as leaders in the field of long term disability insurance matters, Justin Frankel was invited to speak at the 2010 Greater Long Island Dental Meeting. His presentation, entitled "What You Need to Know About Filing a Claim for Disability Benefits," addressed the process of filing a claim, the issues that often arise during the claim process, and potential problems that must be avoided in order to successfully file and maintain a claim for disability benefits.

Jason Newfield and Justin Frankel authored an article that appeared in *Agents Sales News*. There is a reason for our slightly unorthodox approach to developing relationships with insurance professionals, including sales agents and financial advisors, who sell these policies to individuals and companies. We believe that they have a vested interest in maintaining client loyalty if/when their clients should need to file a claim, but rarely have a full understanding of what their clients are up against during this process. By reaching out to these professionals, we hope to facilitate a better dialogue not just when the policy sale takes place, but when it really matters – when a claim is filed.

DISABILITY FACTS:

- Every hour, almost 3,000 Americans become disabled. That's 49 every minute.¹
- Over 51 million Americans - 18% of the population - are classified as disabled.²
- Every :01 seconds another disabling injury occurs in the US.³
- Almost one-third of Americans entering the work force today (3 in 10) will become disabled before they retire.⁴
- Nearly 7 million former workers currently receive Social Security Disability benefits. Almost half are under age 50.⁵
- 350,000 personal bankruptcies every year are blamed on injuries and unexpected illnesses.⁶
- A new Harvard University report reveals that 62 percent of all personal bankruptcies filed in the U.S. in 2007 were due to an inability to pay for medical expenses.⁷
- Accident or illness will force 1 in 5 U.S. employees to miss work for at least a year before they turn 65.⁸
- 1 in 7 of us can expect to be disabled for more than five years.⁹
- The average long-term disability absence lasts 2½ years.¹⁰

1. National Safety Council, Injury Facts 2008 Ed.

2. US Census Bureau, Nov 2008

3. *Ibid*

4. Social Security Administration, Fact Sheet Jan 31, 2007

5. *Ibid*

6. "Illness and Injury as Contributors to Bankruptcy," Health Affairs, Feb 2, 2005

7. The American Journal of Medicine, June 4, 2009

8. Life and Health Insurance Foundation for Education, Nov 2005

9. Commissioners Disability Table, 1998, Health Insurance Association of America, NY Times, Feb 2000

10. Commissioner's Individual Disability Table A

LTD Management is published with the intent to inform readers of recent developments at the Firm and in the law. It is not intended, nor should it be used, as a substitute for legal advice or opinion which can be rendered only when related to specific fact situations. Prior results do not guarantee a similar outcome.
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Who we are, and why we have sent you this newsletter.

Frankel & Newfield, PC, is a boutique law firm that focuses solely on representing individuals with disability insurance policies. We represent individuals who own private policies, usually professionals and small business owners, and individuals whose policies are part of their employee benefits package (ERISA).

We are a national practice and represent clients throughout the United States from our New York office.

Partners Justin Frankel and Jason Newfield help clients at all stages of the disability claims process, including:

- before filing a claim or stopping going to work
- disability benefits have been denied outright
- disability claims are not being processed in a timely manner
- overly excessive information requests
- disability benefit funds are cut off
- checks begin to be slow in arriving
- disability benefits are being reviewed
- when video surveillance or investigations are commenced

If you have a disability insurance policy, we suggest you file this newsletter with your disability insurance policy paperwork. If you would like to receive a copy of the Frankel & Newfield Disability Insurance First Aid Kit, we'll be happy to send you one. This file folder is perfect for organizing your policies and contains important information about your rights as a policyholder.

**To learn more about Frankel & Newfield's Disability Insurance Law Firm,
visit www.frankelnewfield.com and our award-winning blog,
www.disabilityinsurancelawyerblog.com.
Still have questions? Call 1-877-LTD-CLAIM (1-877-583-2524)
We look forward to speaking with you.**