



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.

Special Announcement

Frankel & Newfield has launched a blog, www.disabilityinsurancelawyerblog.com that focuses on the latest developments in disability insurance law and news from the firm. We invite you to subscribe to the blog and as always, if you have any questions or comments, please call our offices to speak with Justin Frankel or Jason Newfield.

SUCCESSFUL RESULTS FOR FRANKEL & NEWFIELD CLIENTS

Frankel & Newfield continues to take on challenging cases and build on our long track record of success for our clients. If you feel that your situation is unique or difficult, and no clear solution is in sight, call us at 877-LTD-CLAIM (877-583-2524).

The firm was retained to assist a vascular surgeon who had been disabled for more than one and a half years. He knew he needed our help, as his claim was for a mental/nervous disorder, and these can be challenging to file. During the consultation process, we learned that he had continued working despite a diagnosis of clinical depression and his practice was shrinking because he was not able to take on the same patient load. We determined that he was eligible for residual benefits under the terms of his

privately owned policy. We successfully negotiated a \$250,000 residual claim and secured his monthly benefits claim.

A dentist came to us before filing a claim. He wanted to sell his practice, but was unsure how filing his claim would affect the sale of the practice. This is a common occurrence among medical professionals who are no longer able to practice, and an issue that we see on a fairly frequent basis. By seeking our guidance prior to the commencement of his claim, we were able to successfully transition his claim and permit him to maintain the value of his practice for ultimate sale. He is currently on claim with numerous insurers, and has lifetime benefits payable on his claim.

Our client, a Chief Financial Officer, suffers from severe orthopedic problems and resultant cognitive problems from the pain medication he is forced to take. His disability insurance company terminated his claim, determining that his orthopedic problems were not severe enough to impair his ability to work. After an administrative appeal, the insurer upheld the termination based on its paper-only reviewing doctors' recommendations. We did not give up, and kept fighting the claim administratively. We secured neurocognitive testing which supported impairments in executive functioning. The insurer accepted our client's impairment as a result of his cognitive

dysfunction, and reinstated benefits of \$9,000 per month, paying arrears and opening the claim for further ongoing benefits. By attacking the claim handling conduct at each stage, and developing powerful evidence of impairment, we saved our client from foreclosure of his home.

Last summer, the Firm was contacted by an investment professional who had been struggling with a gastrointestinal disability. His illness made it impossible for him to perform the tasks required in his position, which required long periods of standing. As a result, he had unproductive days often, and when he was able to function, was unable to perform up to pre-illness levels. We discussed a time frame for pursuing the claim, noting the difficulties he faced, and started a dialogue with his insurance provider regarding his levels of functionality and capacity.

During this time, our client was advised that his employer was letting him go. He called us, and we immediately directed him not to leave the building until he had advised his employer of his intent to file a disability claim and had fully and correctly documented this intent. As a result, he was able to successfully navigate the severance process, carving out the ability to pursue his disability claim, and ultimately, secured his disability insurance benefits that were part of his employer sponsored benefits. Had he left the building and failed to advise the employer of his intent to file a claim, the insurer could have very easily taken the position that he was no longer covered, as he would no longer be an “active employee” under the terms of the policy.

LONG TERM DISABILITY LAW NEWS

With headlines announcing a seemingly never-ending diet of bad economic news, policyholders have a right to be concerned about the fiscal health of disability insurance companies, and whether the current downturn will impact their ability to pay benefits. Unfortunately, tough economic times make it harder to obtain benefits for claimants, and policyholders

must be more pro-active about protecting themselves. Remember, the worst that happens to the insurance company is they are forced to pay benefits as promised in your contract. The risk to policy owners is much greater.

Court affirms lower court's decision that surveillance was abused

A recent case from the Fifth Circuit Court of Appeals (Texas) has upheld a lower court's determination that an insurance company's reliance upon surveillance constituted an abuse of discretion. The Court held that the surveillance video was generally consistent with the claimant's alleged limitations but it did not adequately address the ability to perform the duties of the claimant's occupation. Citing other cases, the Court held that the insurer unfairly equated the insured's known abilities with the more strenuous duties of her occupation, reflecting a plain lack of objectivity in its review. *Bray v. Fort Dearborn Life Insurance Co.*

Claimant must be under the ongoing care of a physician to make a claim

In a case that raises concerns for insureds, a plaintiff's claim for past disability benefits was dismissed because she was not under the regular care of a physician. This case also involved challenges concerning the dates that the person stopped working and when she finally retained an attorney and commenced a lawsuit. This was not one of our cases, but it serves as a strong reminder of information that we routinely share with clients: if you are disabled and cannot work, seek medical attention promptly, and make sure that you are being cared for on a regular and routine basis. Review your policy so that you are aware of time limitations. If you find the policy too complex to understand, and it is likely that you will, contact an experienced disability insurance lawyer who can assist you. The disability insurance claim process is difficult enough—trying to figure it out on your own can lead to devastating results.

NEWS ABOUT THE FIRM

As national leaders in the field of long term disability insurance, we are frequently invited to speak at national conferences. Jason Newfield will address legal colleagues and insurance company executives at the June 2009 American Conference Institute's 12th National Advanced Forum on Litigating Disability Insurance Claims. His presentation is entitled "A Circuit-by-Circuit Analysis of *Met Life v. Glenn* Interpretations and How to Adapt Your Litigation Strategies in Response." Since we reported on *Glenn* in this newsletter in June 2008, there have been a multitude of decisions on both discovery and dispositive issues which Mr. Newfield will address and provide insight as to the most effective strategies for the litigation process.

Jason Newfield has also been invited to speak at the Fall 2009 New Jersey Chronic Fatigue Syndrome Association (NJCFSA) conference, set for October 18, 2009. The New Jersey CFS Association, Inc. is a not-for-profit organization that supports patients, disseminates reliable information, and promotes research. There are support groups in nine counties in New Jersey and one in Rockland County, NY. For more information, talk with Jason Newfield or visit <http://njcfsa.org>.

Justin C. Frankel and Jason Newfield were published in the January/February 2009 issue of *The Journal of Medical Practice Management*. The article, "Disability Insurance and the Physician Practice: A Primer for Physicians and Office Managers," provides fundamental information about filing a long term disability claim, the issues that often arise in the claims process, and the potential problems that must be avoided to successfully maintain a claim for disability benefits. For a copy of the article, call our office at 877-LTD-CLAIM (877-583-2524) or visit our website at www.frankelnewfield.com. Jason and Justin were interviewed by the publisher for a podcast that explores additional issues of concern which can be heard at <http://www.soundpractice.net/article.cfm?id=344>.

IN THEIR OWN WORDS— *Testimonials*

For several years, I was dealing with a degenerative, progressive, optical condition which made it physically stressful and mentally exhausting to work. In October 2006, I was advised by my doctor that I was at that time legally blind, with no hope for any improvement. I did a little research and engaged the services of Frankel and Newfield who reviewed the matter, the medical reports, the company's policy and my disability insurance policy. About two weeks later, I was able to file for disability and cease working with the confidence that I would receive full disability. Frankel and Newfield handled all correspondence with the company and I began to build a new life. That gave me considerable peace of mind and alleviated the stress and exhaustion I was experiencing dealing with the daily rigors endured at work. It's now been two years and my life has started to turn around.

— *Financial Analyst, Texas*

Frankel & Newfield successfully represented me on an important disability matter. Justin Frankel provided professional, careful, and diligent assistance. He was always available and responded immediately to my inquiries and concerns. He was extremely helpful in gathering the medical and bureaucratic information and reports typically required. Owing to his expert care and attention, the matter was successfully resolved with remarkable speed and efficiency. I highly recommend Justin Frankel and his law firm to anyone, particularly a professional, with a disability problem.

— *Partner at an 800+ International Law Firm*

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