



1-877-LTD-CLAIM

1 - 8 7 7 - 5 8 3 - 2 5 2 4



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

FIRM NEWS

Frankel & Newfield has launched our new website, www.frankelnewfield.com, which has many new features and information. We invite you to visit the site and as always, if you have any questions or comments, please call our offices.

LONG TERM DISABILITY LAW NEWS

Met Life v. Glenn Turns the Tables on Long Term Disability Insurance Companies

On June 19, 2008, the United States Supreme Court issued a long awaited decision critical to millions of Americans whose employers provide disability insurance policies as an employee benefit. The issue is simple: can the very same company that must open its coffers when payments are made to injured or sick policy owners be fair and impartial when it is also the company that decides whether or not payments should be made?

The obvious answer should be a clear and decisive "NO." But until a recent decision from the U.S. Supreme Court, *Met Life v. Glenn*, this is exactly the scenario that stymies legitimate disability policyholders. Insurance companies controlled all the cards—and the deck was clearly stacked against the policyholder. Now, that has changed, and our **firm has already had one significant victory as a result** (see second article in this section, below).

Until *Met Life v. Glenn*, the disability insurance company has been in complete control of the entire process, from selecting the doctor who reviews the claim, deciding what tests can and cannot be done to evaluate the claim, even deciding what results should and should not be considered, serving as the judge in the administrative process and even controlling the appeals process.

This decision may well prove to be the most significant decision on ERISA law in the past twenty years. Insurers' conduct will become more heavily scrutinized and the playing field more level, since now claimants will be better able to compel consideration of an insurer's dual role and the Courts will be forced to take the conflict of interest into account when deciding whether the administrator "abused its discretion" in reaching its claim decision.

The First Case Using Met Life v. Glenn is from Frankel & Newfield.

A District Court judge in New York has granted our application to compel discovery against Met Life, including depositions and significant documentation likely to uncover the relationship between Met Life and the doctors they regularly employ to deny and terminate claims. The Court embraced the need to conduct this discovery to appreciate and fully outline the impact of Met Life's conflict of interest as the single entity that pays and decides claims. This is the very first case embracing the changes from the *Met Life v. Glenn* decision.

585 Stewart Avenue • Suite 312 • Garden City, New York 11530
Telephone: (516) 222-1600 • Fax: (516) 222-0513

www.frankelnewfield.com

Our client, a former employee of a major technology company, brought an action against her LTD insurance company, Met Life under the rules of ERISA to recover long term disability benefits which were wrongfully denied. We made a motion to compel discovery concerning issues that would fully reveal the nature and extent of Met Life's conflict of interest, which is inherent in the dual role that Met Life plays as the entity that determines our client's eligibility for benefits and has a financial interest in doing so.

The Court concluded that discovery into Met Life's decision-maker's performance evaluations, compensation, and advancement prospects depended directly or indirectly upon the denial of benefits would be highly pertinent and that determining MetLife's structural conflict of interest warranted discovery, particularly in light of the U.S. Supreme Court's recent decision in *Met Life v. Glenn*.

EASTERN DISTRICT DECISION OPENS NEW DOORS FOR OUR CLIENT

In a groundbreaking decision from the Eastern District of New York, Magistrate Judge A. Kathleen Tomlinson has ruled that significant discovery must go forward in a disability claim action that seeks to demonstrate that insurers have inherent conflicts of interest in reviewing disability claims. One of the conflicts—the insurance company's role as both claim administrator and claim payer—marks the second time in a month that Frankel & Newfield has had success in securing meaningful decisions on these issues on behalf of our clients.

Our case highlights another glaring conflict of interest that plagues the plaintiff's bar—the nature of the Independent Medical Exam (IME) and the provider's relationship with the insurance company. IMEs are frequently conducted in disability claims, purportedly to evaluate the degree of impairment of a plaintiff, but are paid for by the insurance company, which here again is the entity that is both the claim administrator and the claim payer. The Federal Court in Burgio, which refers to both *Met Life v. Glenn* and *Hogan-Cross v. Met Life*, granted plaintiff the ability to proceed with demands for discovery, depositions of claim personnel and also a deposition of the doctor who performed the examination.

We are pleased that our clients are successfully protected as a result of our practice continuing at the forefront of legal change. We also expect that more meaningful discovery decisions will permit our clients to successfully uncover the nature of the relationships with these paid medical providers, leveling the playing field in litigation.

SUCCESSFUL OUTCOMES FOR LONG TERM DISABILITY LAW CLIENTS

Frankel & Newfield takes on cases that are challenging, and we have a track record of success.

One of our clients, an ER doctor, stopped practicing medicine because of PTSD, and also allowed her policies to lapse. Her LTD insurance company rejected the claim, maintaining that she made the decision to leave and not because of any disability. Her medical record was not strong, and the lapsed policies created a real challenge. We were able to negotiate a successful resolution for her two claims, securing a major cash settlement in spite of the case's difficulties.

Frankel & Newfield is also effective when it comes to helping clients obtain the disability benefits in their policies from employers.

Our client was fired from his job even though his employer was well aware that he had been diagnosed with a psychological condition. However, because he had been fired, he was unable to file a disability claim under his employee policy. We worked with his employer to ensure that our client's rights under the Family Medical Leave Act (FMLA) were recognized. He was then able to file for disability benefits, which were awarded to him. He is currently receiving these benefits, and remains on claim.

Fighting the insurance companies when they demand our clients undergo Functional Capacity Evaluations is an ongoing part of our practice. These tests are frequently not part of the contractual obligation of the policy and can be dangerous.

A client who suffers from Chronic Fatigue Syndrome was requested to undergo an FCE, which we challenged successfully. Our client's disability benefits continue to be paid, and the insurance company knows that this client will not be intimidated.

When our client, an orthopedic surgeon with a successful practice, could no longer perform surgery, he was able to continue to manage and perform as an administrator in the office. We reviewed his policy and determined that he was entitled to residual benefits for a period of time prior to the time of total disability. We advised him on how to file for the residual claim for the earlier time period, and helped him secure significant additional benefits. He did not need us to pursue the claim aggressively, but we were fully and completely prepared if he did.

DISABILITY INSURANCE COVERAGE DEFINITIONS

Residual Disability and Residual Disability Benefits

If a policy owner is still able to work, but at significantly reduced earnings levels or in a different job with different performance requirements, he or she is considered to have a residual disability. Residual disability benefit payments must be a provision in the policy and some companies include a loss of time requirement or the inability to perform some duties. The percentage varies with the insurance policy, benefits are almost always proportional to income loss, and there is usually a time limitation.

Mental Illness and Substance Abuse Limitations

Just like health insurance policies, some disability insurance policies have restrictions on benefits paid when a disability is the result of a mental, psychological, behavioral or emotional disorder, alcoholism or the non-medical (i.e., recreational or self-medicating) use of narcotics, illegal drugs, sedatives and other substances. Unless the insured is confined to a hospital or other qualifying institution, benefits are often limited to 12 or 24 months. If a claimant's physical illness leads to a mental or emotional reaction, insurance companies try to label the person as having an emotional disability in an effort to restrict payments. Frankel & Newfield aggressively attack insurance companies when these issues are presented.

IN THEIR OWN WORDS— *Testimonials*

As those of you who have worked with us know, we take our responsibility to our clients very seriously. We understand that having your disability insurance benefits paid makes a significant difference in the quality of life for you and your loved ones.

— *OB/GYN, Massachusetts*

I have known Jason Newfield for several years and I recommend him without reservation. Jason Newfield is a skillful navigator through the quagmire of obtaining disability insurance payments. He is empathetic, reliable and an honest attorney. Hire him, lean on him; he will be there for you.

— *Vascular Surgeon, New Jersey*

Not only has Justin Frankel been always on top of all issues, his personal care is extremely compassionate. Not only has my care and success been achieved by Justin Frankel, but additionally he was able to obtain two years of residual benefits.

— *Executive, Fortune 500 Company*

Frankel & Newfield guided the completion of the lengthy application forms and the doctors' preparation of medical reports, filed the necessary forms and, importantly, followed up with the insurer. Moreover, the "logistics" of working with the firm were facilitated by their willingness to use email and to make themselves available for phone consultation.

Not only has Frankel & Newfield represented my interests successfully, their attorneys *care* about their clients. Frankel & Newfield is a firm I can recommend unreservedly.

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.
Attorney Advertising.



YOU ARE NOT IN THIS ALONE.