This year marks 30 years since the inception of C5 Group. It is time to match our brand with the dynamic strides we have made. See inside for details…

September 15-16, 2016 | The Omni Parker House Hotel | Boston, MA

19th 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

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 Year in Review
- Vocational Experts: Challenges and Difficulty in Finding Qualified and Newer Experts and Determining Occupational Demand and Suitability for Work
- The Latest Court Decisions Affecting the New Remedies Landscape, Strategies for Addressing 502(a)(3) Relief Claims, and More
- Effectively Approaching and Utilizing the IME's Evaluation, Treating Physician's Opinion, the FCE, Neuropsych Evaluations, Medical Records and More
- Contractual Limitations Periods in the Post-Heimeshoff Era
- The Dos and Don'ts of Social Media Use in Conducting a Disability Claim Investigation
- Mental Disorders and Other Limited Conditions – Tackling the Challenges of Handling Mental/Nervous Claims and Establishing Objective Proof of Subjective, "Non-Visible" Disorders
- 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
- Litigation Strategies for Filing ERISA Cases v. Filing Non ERISA Cases and Procedural Nuances in the Early Stages of Pleadings
- Discovery in ERISA Cases as Discretionary Clauses are Slowly Fading Out and Insurers are Relying on De Novo Review, and Proportionality Issues
- Reviewing Revised Disability Claims Regulation – How the DOL’s Changes will Impact the Landscape

View From the Bench:

Hon. James Robart
U.S. Dist. Ct., W.D. WA

Hon. Robert B. Collings

Hon. Anthony J. Mohr
LA Sup. Ct.

Hon. Lorenzo F. Garcia (ret.)
U.S. Dist. Ct., D. N.M.

Hon. Viktor V. Pohorelsky
U.S. Dist. Ct., E.D. NY

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- Berkshire Life Ins. Co. Of America
- Cigna
- Axis Accident & Health
- The Hartford

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
- 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
- Ronald Roberts, Ph.D.
  Forensic Neuropsychologist
  Forensic Psychiatric Associates Medical Corporation

Plus – Be Sure to Book for the Post-Conference Workshop: Handling a Disability Case from Start to Finish: The Complete Guide: Friday, September 16; 3:00 pm to 5:00 pm

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Register Now | 888 224 2480 | AmericanConference.com/DisabilityInsurance
The nation’s premier conference on Litigating Disability Insurance Claims returns to Boston for its 19th year, led by an unparalleled faculty of in-house industry experts, 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 19th Annual 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.

Here’s a small sampling of companies already registered to participate: Prudential, Berkshire Life Ins. Co. of America, Cigna, Axis Capital, The Hartford, Illinois Mutual, UNUM, Claims Bureau USA 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!

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- Litigation Specialists
- Disability Claim Consultants

This year marks 30 years since the inception of C5 Group.

It is time for a brand, logo and language in keeping with the dynamic strides we have made as a company. It is time for a brand that will take us forward for the next 30 years.

C5 Group, comprising American Conference Institute, The Canadian Institute and C5 in Europe, will unite under one central brand image, appropriately a globe. See how bringing together the power of people and the power of information can accelerate your growth and success.

Our new brand look and language will be fully revealed soon. Stay tuned for more exciting changes.
DAY ONE:
Thursday, September 15, 2016
7:15
Continental Breakfast and Registration
8:00
Co-Chairs' Welcoming Remarks
Robert K. Scott
Newmeyer & Dillion LLP
Kristina Pett
Pett Furman, PL
8:05
In-House Roundtable: Counsel and Claims
Professional Insights on New Emerging Issues in
Disability Insurance Claims
Nicole Guerin
Vice President & Head of Claims
Axis Accident & Health
Bethany Floherty
Associate Counsel
The Hartford
Heather Russo
Associate Counsel
Illinois Mutual
Cesar Britos
AVP & Senior Counsel
UNUM
Michael Parker
AVP & Special Counsel
UNUM
In-House Moderator to be announced
Check AmericanConference.com/DisabilityInsurance for this and other exciting speakers being added.

9:15
Disability Case Law Year in Review: What are the
High Courts Saying? Discussing and Analyzing the Key
ERISA & Non-ERISA Case Law Developments from 2016
Including the Montanile Supreme Court Decision, and
What They Mean for Your Practice in 2017
Theodore F. Glockner
AVP & Senior Counsel, Law
Department
The Guardian Life Insurance
Company of America
René E. Thorne
Managing Principal, New Orleans Office
Jackson Lewis P.C.
This opening kick-off session will provide you with a comprehensive survey of the year’s most important federal circuit court decisions and highest state appellate court decisions involving disability claims. Follow along as counsel well versed in the new developments in case law over the past year engage you in an in-depth examination of the real-life impact of each case on ERISA and Non-ERISA disability practice. Participants will learn what these cases reveal about trends in disability litigation as well as recommendations for how in house counsel and practitioners can update their litigation strategies in response to recent developments going forward. Whether you are new to the practice of disability litigation or a senior practitioner in need of a refresher, you will find this session invaluable for getting up to speed on the latest cases, while maximizing your opportunity to engage in the advanced discussion that will be the hallmark of the main conference. Please note that the cases covered during this session will be updated to include all high profile cases resolved by September 2016.

10:15
Morning Break

“Disability claims for joint, musculoskeletal issues on the rise”
-Business Insurance, 5/5/16

10:25
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
Patricia Enriquez, MA, CRC
Certified Vocational Rehabilitation Counselor
NYC Expert Disability Associates, LLC
Ellen Roder Smith, OTR, CVE, CPE
Occupational Therapist, Vocational Evaluator
Jason A. Newfield, Esq.
Founding Partner
Frankel & Newfield, P.C.
• 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

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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.

Evan S. Schwartz, Esq.  
Founding Partner  
SchwartzLaw PC

The Latest IME and FCE Issues and Considerations

- The fundamental right to require IMEs or FCEs during each stage of the case: initial claim review, during litigation, during an appeal
- What type of testing is required under the contract and what type of testing is most relevant to the claim - Disabling Physical Illness – is an FCE warranted? A neuropsychiatric exam? - Disabling Mental Illness – is the Neuropsychiatric exam warranted? - In a “pain case” what testing is relevant?  
- Has direct evaluation of claimants been being de-emphasized in favor of consults (e.g., in-house or contracted paper reviews by doctors and vocational analysts)? What are the implications of this?  
- When facing the IME – addressing the questions of: - Is the examiner qualified? - Under what circumstances will you allow the person to go? - What if they refuse to go? What are the implications?

What Must Be Preserved and Produced Related to the Examinations

- The exchanges between the examiner and insurance company?  
- The raw data from an IME, or Neuropsychiatric or Neuropsychological Exam?  
- Can the examination be videotaped, audiotaped or witnessed?  
- What data, if any is confidential?  
- What are the latest trends, issues and challenges being faced by both sides during this process?

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  
- Taking action to establish unreliability and/or bias early on so that evidence of same can be included with appeal filing

Networking Lunch for Speakers and Attendees

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

Alicia Paulino-Grisham  
Bonny G. Rafel  
DI Law Group  
Bonny G. Rafel LLC

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

Mental Disorders and Other Limited Conditions – 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

- 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 defensible disability  
- 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 IMEs 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

4:15

Afternoon Break

4:25

The Dos and Don’ts of Social Media Use in Conducting a Disability Claim Investigation

Brian Landry
Executive Vice President
Claims Bureau USA

Frank N. Darras
Founding Partner
Darras Law

Kristina Pett
Founding Member
Pett Furman, 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

5:25

Bad Faith Litigation: An Update on the Latest Trends Being Seen in Unreasonable Delay and Wrongful Denial Bad Faith Claims; Defining the Duty and Remedies; and Strategies for Developing the Bad Faith Case or Defense

Robert K. Scott
Partner
Newmeyer & Dillion LLP

• An overview of the latest trends being seen in unreasonable delay and wrongful denial bad faith disability claims
• What are the latest court decisions saying about how to define the duty of good faith and fair dealing in the context of a disability claim?
• Under what circumstances have the courts been finding: - Use of an improper standard in denying a claim - Unreasonable conduct in litigation - Bad faith in consulting and retaining experts - Deliberate misinterpretation of records or policy language to avoid coverage - Arbitrary or unreasonable demands for proof of loss - Failure to thoroughly investigate a claim - Failure to maintain adequate investigative procedures - Institutional bad faith
• Has direct evaluation of claimants been being de-emphasized in favor of consults? What are the bad faith implications of this?
• The latest on the types of remedies that may be sought in a bad faith claim from state to state • Plaintiff strategies for developing the bad faith case; and defense strategies for defeating the bad faith case
• Putting on the bad faith trial

6:10

Conference Adjourns

Day Two:
Friday, September 16, 2016

7:30

Continental Breakfast

8:00

View from the Bench

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

Hon. Anthony J. Mohr
LA Sup. Ct.

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

Hon. Viktor V. Pohorelsky
U.S. Dist. Ct., E.D. NY

Hon. Lorenzo F. Garcia (ret.)
U.S. Dist. Ct., D. N.M.

Moderator

Hon. Robert B. Collins

Pamela I. Atkins
Principal
Atkins & Associates, Attorneys-at-Law, LLC

9:20

Break

9:25


Eric L. Buchanan
President & Partner
Eric Buchanan & Associates, PLLC

Daniel W. Maguire
Partner
Burke, Williams & Sorensen LLP

• What are the litigation strategies for wanting ERISA to apply v. not wanting ERISA to apply to a disability case?
• Creative ways that both plaintiff and defendant are thinking of ways to further a claim
• Moving to transfer to a more favorable venue
• Attacking the pleadings
• Motion to dismiss based on ERISA preemption
• Motion to transfer venue
• Appropriate motion to strike components of the complaint even though entire complaint should not be thrown out

10:10

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

David A. Bryant
Managing Partner
Bryant Legal Group PC

Nicole Y. Blohm
Partner
Meserve, Mumper & Hughes LLP

• 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

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• How are courts looking at the issue of proportionality in ERISA cases?
• Discovery obtained during administrative review

10:55


Michelle Roberts, Partner
Roberts Bartolic LLP

Anthony F. Shelley, Member
Miller & Chevalier Chartered

Richard N. Bien, Partner
Lathrop & Gage 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? Is 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 judgment phase

11:50

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

Michael T. Grimes, Esq., US Regional Business Counsel
Cigna Legal

Denise M. Clark, Partner
Clark Law Group, PLLC

• A circuit-by-circuit survey of the most significant court decisions affecting ERISA contractual limitations provisions following *Heimeshoff* over the last year
• What are the implications of these decisions?
• 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?

12:35

Reviewing the Revised Disability Claims Regulation – How the DOL’s Changes Will Impact the Landscape

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

Noreen Fierro, Vice President, Chief Compliance Officer
Guardian Life Insurance

James A. Keller, Partner
Saul Ewing LLP

• The proposed changes will: (i) ensure the impartial adjuster review (ii) claimants access to claim files/evidence (iii) exhaustion of claims and appeals process (ii) expand definition of adverse benefit (iv) provide more notices
• How will the proposed changes impact litigating disability insurance claims?

1:30

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

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

2:00

Conferences Ends; Lunch for Post-Conference Workshop Speakers and Attendees
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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19th National Advanced Forum on

LITIGATING DISABILITY INSURANCE CLAIMS

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19th National Advanced Forum on
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U.S. Dist. Ct., E.D. NY

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