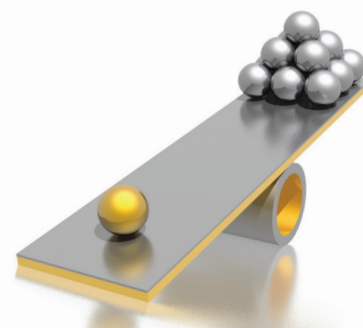




FRANKEL & NEWFIELD, PC
DISABILITY INSURANCE ATTORNEYS

1-877-LTD-CLAIM
1-877-583-2524

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, www.frankelnewfield.com to learn more about the firm and our successful representation of clients. If you have any questions, please call our firm at 1-877-LTD-CLAIM (1-877-583-2524). We look forward to hearing from you.



DISABILITY CONSIDERATIONS SPECIFIC TO THE MEDICAL PROFESSIONAL

Many of the medical professions involve hands on patient care with either repetitive force or fine precision and dexterity as a core physical requirement. Chiropractors often are applying significant thrusts of force repeatedly during the course of a day, while dentists are often maintaining static and uncomfortable postures for extended periods.

Because of the particular occupational nuances of these professions, the prevalence of these claims is much higher – a statistic not lost on the few insurers who covered such professions. These claims have received some “special” claim handling in the recent years, as claims incidence and exposure have greatly increased for these insurers. Some of the “special” claim handling has involved

requests for testing that is not often sought (Upper Extremity Functional Capacity Evaluations), or a paper only medical review that relies upon sporadic clandestine surveillance video in an attempt to undercut a claim surreptitiously.

However, the most aggressive opportunity for the insurers to defend these claims is at the outset, which is where counsel is often most effective. In that way, we often spot issues before they become problems. It allows us to prevent the proverbial “spill,” rather than come in after to “clean up the mess.” This approach has yielded great results for our clients, as noted in our numerous testimonials that can be found on our website at <https://www.frankelnewfield.com/Resources/Success-Stories/Testimonials>. ■





CAN THE INSURANCE COMPANY DICTATE YOUR CARE OR MAKE YOU HAVE SURGERY WHEN YOU ARE DISABLED AND SEEKING BENEFITS UNDER YOUR POLICY?

Many policies of disability insurance define Disability (whether total disability or partial disability) with elements which must be satisfied in order to secure benefits. One of the elements often is a medical care requirement. Different policies will define this medical care differently, and the potential implications of each such definition are significant.

There are different gradations of significance, as shall be offered below to address what could be problematic for an insured at the time of a claim, or during the claim process.

Regular Care of a Licensed Physician (typically a defined term in these policies) could be defined with either sections (1) alone, or (1) with (2), or (1), (2) and (3):

(1) Personal and in-person care and treatment by a Licensed Physician trained to treat the condition causing the disability.

(2) The care and treatment received by the Insured shall be in accordance with the medical standard of care appropriate to the condition causing the disability.

(3) The care and treatment shall be designed to lead to the Insured being able to return to the material and substantial duties of the regular occupation.

While the first two potential portions of the definition are pretty straightforward, in that they appear to require that the insured receive care for a condition that brings the claim for consideration, and that

such care is appropriate for such condition.

The third portion of a Medical Care definition brings potential for problems for claimants, as this could arguably be read to permit the insurance company to compel a claimant to pursue types of medical care (potentially regardless of risk), for the purpose of enabling the insured to make returning to their occupation the primary medical care objective. This could mean compelling an insured to consider risky back surgery, to enable a dentist to once again spend their days hovered over patients, or could potentially require bilateral carpal tunnel surgery for a hand surgeon performing delicate procedures requiring fine dexterity.

Logically, that would not seem appropriate, and many insureds who have faced these arguments have shared a universal story – that no one ever told them the insurance company could dictate their medical care. But today we are seeing this trend on many disability insurance claims.

In addition to the above logic dictating that such an approach is simply improper, the case law which addresses the issue of Appropriate Care and Treatment largely supports a claimants’ logical contentions. As noted in the case law, the medical care policy provision is intended to

ensure that claimants are, in fact, receiving medical care.

It is essentially designed to ensure that claimants continue to pursue treatment, and that they continue to have care provided, with the cases supporting the view of only a “minimal duty” to provide evidence of ongoing care. Importantly, as noted by one Federal Court, “by no means do such requirements allow an insurance company to dictate the type of treatment that the claimant should receive from a physician; instead, they require an effort by the claimant to seek appropriate treatment for the condition causing

the disability.” As also noted, “of course, the physician’s care requirement does not permit the insurer to determine the insured’s course of treatment.”

Despite this case law, we are seeing an increased prevalence of these situations with insurance companies addressing claims of medical professionals, often aggressively approaching this issue to compel medical treatment upon insureds. ■

CASE STUDY

Back-dated Residual Claim with Late Notice Issues Overcome

We recently faced a situation where our client had to overcome an insurer’s assertions of late notice of her claim, and were able to develop some collateral support which became compelling. Our client was a private disability insured who became impaired yet continued to keep trying to work, first agreeing to

a reduced salary from her employer to reflect her markedly decreased production and then attempting to simply maintain her practice until the time when she finally accepted her impairment and began a total disability claim. When consulting with our firm, we determined that prior periods of time should support the presentation of a claim back in time (back dated claim).

The concerns from the insurer related to the late notice, as well as the medical support. We were able to provide support from the IRS, for which our client had been deemed entitled to relief from her capacity to file timely tax returns – and utilized this with her insurer to address her late notice hurdle imposed by her insurer. ■

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DISABILITY NEWS UPDATE | WINTER 2018

ATTORNEY ADVERTISING · PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME.

Who we are and why we have sent you this newsletter.

Jason Newfield and Justin Frankel have attained the respect of their clients and their peers for the determined and relentless representation against large insurance companies that count on claimants not fighting back when disability benefits are denied.

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).

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 that have been denied outright
- Disability claims that are not being processed in a timely manner
- Overly excessive requests for information
- 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. When you need us, just call.

To learn more about Frankel & Newfield's Disability Insurance Law firm, visit www.frankelnewfield.com
Still have questions? Call us at 1-877-LTD-CLAIM (1-877-583-2524). We look forward to speaking with you.