

Emerging Issues in Life Insurance, LTCi, and DI

May 11, 2026

Continuing Education

CREDIT INFORMATION

This program has been approved only for the following continuing legal education credits:

An application for approval of this course has been submitted and is pending in the following state(s):

Illinois, New Jersey, Pennsylvania and Wisconsin

CERTIFICATE OF ATTENDANCE

To receive your certificate of attendance you must do the following:

- Attend the program in full.
- Complete the Credit Submission Link/QR Code that will be provided to you after the program to provide your Bar Information.
- If you request CLE credit, you must provide your bar license number for any states in which you want to receive credit.

If the above requirements are met, your certificate of attendance will be sent via email within 30 days after completion of the program. Only those who have reviewed the full length of the webinar and responded to both attendance checks will receive a certificate of attendance. We will report attendance to any state where the Sponsor is required to report.

If you have any questions, please contact rosters@ceuinstitute.net



Life Insurance



California Life Policy Lapse Update

- 2013 statute found retroactive in 2021 (*McHugh*, Cal. Sup. Ct.)
- Ninth Circuit rejected strict liability argument in 2024; ruled all elements of breach of contract must be proven, e.g., causation (*Small*; see also *Siino*, *Farley*, *Poe*, *Moriarty*)
 - Plaintiffs still attempting class certification in some cases (*Phan*, *Lee*)
 - One class settlement to date (*Morneau*)
 - Other cases being tried (*McHugh*, *Moriarty*, potentially *Small*) or settled individually (*Poe*)
- Plaintiffs’ bar attempting to assert only “equitable claims” (UCL) and to litigate in state court
 - San Diego City Attorney suing four carriers on behalf of all policyholders in California (*People v. Am. Gen.*, *Everlake*, *LBL*, *Transamerica*), also alleging failure to comply with unclaimed property statutes
- *McHugh* back on appeal after trial
- Cal. Sup. Court accepted certified question from Ninth Circuit re: whether statute can be applied extraterritorially (*Pitt*), but case settled in 2025
- Section 72(a) form issue is before Ninth Circuit (*Linhart*)



Life Policy Recissions: Deceased's Medical Records



Case Example No. 1

***Frohn v. Globe Life and Accident Ins. Co.*, 99 F.4th 882 (6th Cir. 2024)**

- Plaintiff purchased policy on her husband's life; he died 9 months later
- Application denied husband had liver disease, muscular disorder, mental disorder, or abused alcohol
- As part of claim, plaintiff as beneficiary signed Authorization for Release of Health Information Pursuant to HIPAA
- Upon receiving husband's medical records, Globe denied plaintiff's claim
- Plaintiff filed putative class action alleging breach of contract and bad faith



Case Example No. 1

Frohn v. Globe Life and Accident Ins. Co., 99 F.4th 882
(6th Cir. 2024)

- Globe requested additional medical records, but plaintiff moved for protective order, arguing physician-patient privilege, and attempting to revoke the authorization
- On appeal, held that plaintiff had waived physician-patient privilege because she voluntarily signed authorization when she could have sued to enforce her rights under the policy or contested the request; the policy did “not require a beneficiary to submit the deceased’s medical records” before Globe processed her claim
- Also, plaintiff could only revoke authorization if Globe did not have a legal right to contest the claim, which Globe did
- **Beneficiary signed authorization, and not permitted to backtrack**



Case Example No. 2

Federal Case in Northern Dist. of Ohio

- Another putative class action
- In February 2022, insured purchased policy with \$50k death benefit and plaintiff listed as beneficiary
- In November 2023, beneficiary submitted insured's name, DOB, DOD, policy number, and death certificate to file claim
- Beneficiary refused to obtain letters of administration, and in February 2024 sued insurer for not paying proceeds (not a denial)
- Insurer requested court order for the release of the insured's medical records
- Court ordered custodian of insured's medical records to produce records for the last 10 years, without the need for a subpoena
- **Beneficiary refused to sign authorization and sued insurer, but insurer quickly obtained court order for records**



Case Example No. 3

American General v. Broughton, 2008 WL 4977402
(D. Idaho June 3, 2008)

- In August 2004, insured completed policy application
- In December 2004, insurer issued policy containing a two-year contestable period
- In July 2006, insured died and his wife filed a claim for the policy proceeds, but she refused to cooperate by, inter alia, signing an authorization and submitting to an interview
- Insurer filed action seeking to compel her cooperation
- Court held beneficiaries must cooperate with contestable claim investigation based on the covenant of good faith and fair dealing
- **Beneficiary refused to cooperate, including by signing authorization, but insurer sued for cooperation and won**





Observations

There is a right to conduct a contestable claim investigation, but inability to complete may or may not be claimant's fault, and remedies are not necessarily clear

Obtaining deceased's medical records

- Pre-death authorization may not be sufficient
- May need authorization from executor of estate or next of kin, which may or may not be beneficiary
- Upon authorization, should be able to obtain records



Observations

Unable to obtain authorization

- No executor appointed, cannot locate next of kin or refusal to cooperate
- Options:
 - Build rapport with claimant
 - Issue letter with preliminary opinion (if possible)
 - File declaratory judgment action
 - Provides ability to obtain medical records, but potentially expensive adversarial process with potential for counterclaims

Considerations relating to seeking declaratory relief

- No indication of misrepresentation
 - Consider foregoing contestable investigation if small face value (cost of suit v. face amount)
 - Need to consider risk of bad faith
- Strong indication of misrepresentation
 - Consider making claim decision without medical record review
 - E.g., application denies any history of heart disease, but death certificate establishes lengthy and severe history of heart disease
 - File prompt declaratory judgment action
 - Litigation may be inevitable anyway



Non-Guaranteed Elements





COI: Failure to Decrease/Initial Rate Setting

- Typically asserted where forms have “single factor” language (“based on future expectations of mortality experience”) or no “change clause”
- Mixed results, often depending on jurisdiction:
 - Case Dismissed:** *Advanced Trust v. Protective* (N.D. Ala. Aug. 8, 2022), aff’d 93 F. 4th 1315 (11th Cir. 2024), following *Slam Dunk*, 853 Fed. Appx. 451 (11th Cir. 2021)
 - vs.
 - \$28 Million Jury Verdict:** *Karr v. Kansas City Life Ins. Co.* (Dec. 9, 2022), following *Vogt*. 963 F.3d 753 (8th Cir. 2020)





COI: Failure to Decrease Targeting Multi-Factor Policy

- Four cases filed by Susman Godfrey cite tax cuts as basis to decrease:
 - *Arbuckle Funding v. Talcott Resolution Life and Ann.* (SDNY Sept. 8, 2023)
 - *Zaben LLC v. John Hancock* (SDNY Sept. 15, 2023)
 - *Toolan v. NYL*, (SDNY Oct. 13, 2025)
 - *Atkinson v. Lincoln Benefit* (D. Neb. Mar. 19, 2026)
- All but one class rep's policy form specifically references "tax assumptions" or "taxes" as an experience factor in the COI rate provision
- Theory: COI rates should have decreased following decrease in corporate tax rate (35% to 21%) in the 2017 Tax Cuts and Jobs Act (TCJA)
- Different tactics:
 - *Arbuckle*: more detailed allegations concerning Talcott's alleged mortality experience and annual statements reflecting no material changes to its assumptions supporting NGEs
 - *Zaben*: broader approach; the decrease in tax rates should have resulted in concomitant decrease in COI rates, no negative experience on any other factor could offset gains





NGE: COI Class Certification Decisions

Class certification granted:

- *Handorf v. Transamerica*, 349 F.R.D. 540 (N.D. Iowa June 3, 2025) (certified 2 classes, each with a subclass, involving rate increases affecting 2 blocks of policies, 12 distinct forms, 39 analysis groups)
- *Sec. Advance Trust v. Security Life of Denver*, 2021 WL 62339 (D. Colo. Jan. 6, 2021) (finding “extrinsic evidence will be common to the class as the policies at issue are form contracts”)
- *Spegele v. USAA*, 336 F.R.D. 537 (W.D. Tex. 2020) (Applying Texas law to all class claims; Texas has most significant relationship to contract claim because decision to increase rates made in Texas by a Texas company)

But see:

- *Boaden v. Continental Cas. Co.*, 2026 WL 323274 (N.D. Ill. Feb. 6, 2026) (LTCi case; denying class certification and rejecting approach taken in *Security Life of Denver* to address differences in state law)
- *Taylor* (S.D. Iowa 2019) (improper COI rate determination and decrease case; predominance not met because of choice of law/competing extrinsic evidence)
- *Thao* (7th Cir. 2013) (commonality lacking: P’s theory of case would not benefit all policyholders, and would potentially hurt some)
- *Gregurek* (C.D. Cal. 2009) (individualized issues precluded class due to broker testimony concerning sales tactics, and impact on policy interpretation/extrinsic evidence)





NGE: Interest Rates

- Lesson: any NGE with (arguable) limits on insurer discretion are potential targets
- ***LSIMC v. Am. General Life Ins. Co.*** (C.D. Cal. filed Dec. 21, 2020)
 - Alleged insurer breached interest rate provision by relying on factors other than “expectations of future investment earnings” to set interest rates
 - **August 4, 2022, Class Certification Granted (Liability Only Class)**
 - **June 27, 2023, Final Approval of Class Action Settlement**
 - \$13 million settlement fund to account for “under-credits of interest”
 - Interest rate bonus for in-force policyholders, allegedly worth \$42.5 million





NGE: Administering COI Rates with an Active & Creative Plaintiff's Bar

- Various approaches, very little regulatory guidance
- Soft guidance from ASOP 2
- Some carriers are still raising rates: is regulatory approval needed?
 - New York, yes, under Reg. 210
 - Insurers often make informational filings in other states
 - Some states (e.g., Oregon) taking a more active approach, akin to LTCi, and may not permit confidential filing





NGE Takeaways

- ▶ Enterprising and sophisticated plaintiffs' bar
- ▶ Policy language paramount
- ▶ Understand actuarial approach to setting, managing, and changing NGE
- ▶ Consider changes to policy language for new products to align with preferred actuarial approach
- ▶ Consider having legal involved (if not already) with rate-related actuarial functions, e.g., responses to interrogatories in annual



Long-Term Care Insurance



LTCi Regulatory Activity/Trends

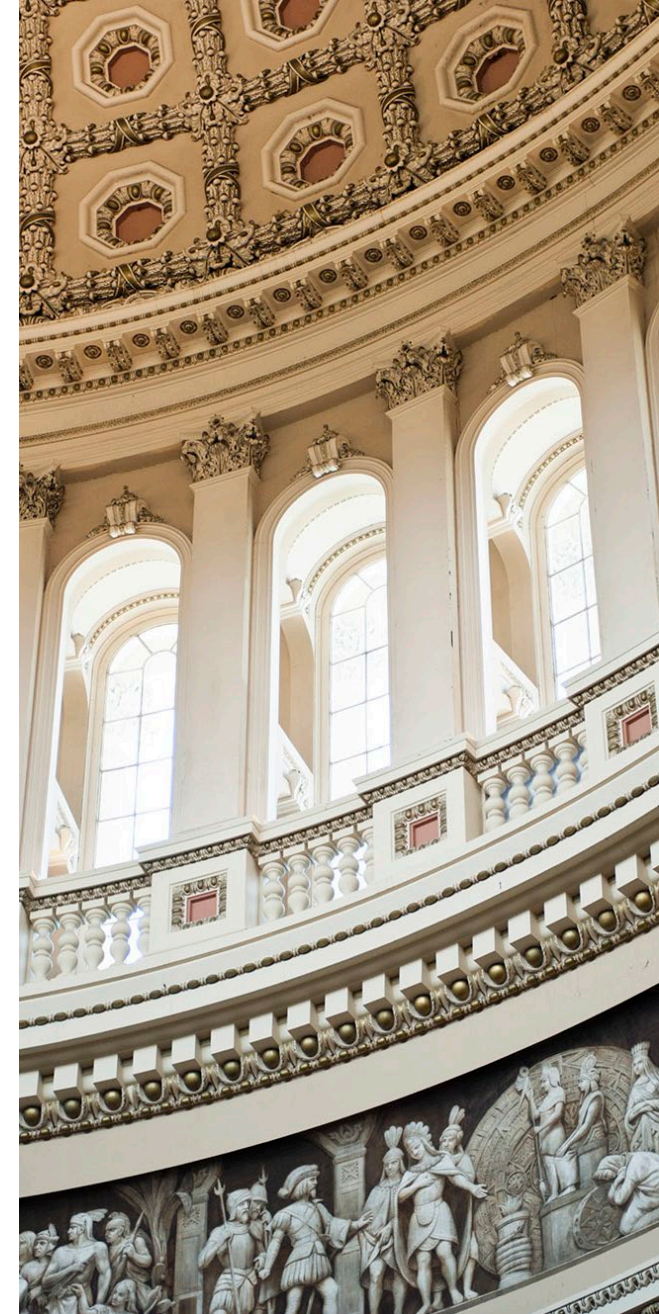
Policyholder communications

Use of AI in claims and fraud detection

NAIC priorities

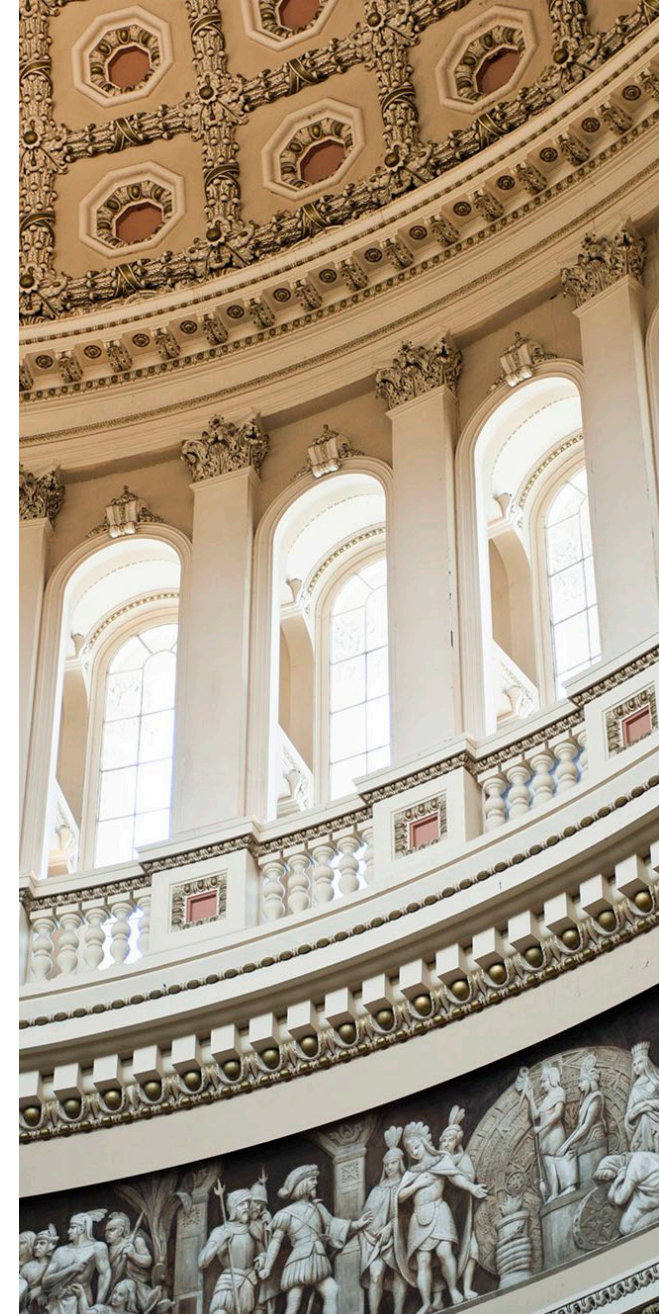
Electronic communications

Treatment of guaranteed renewable products



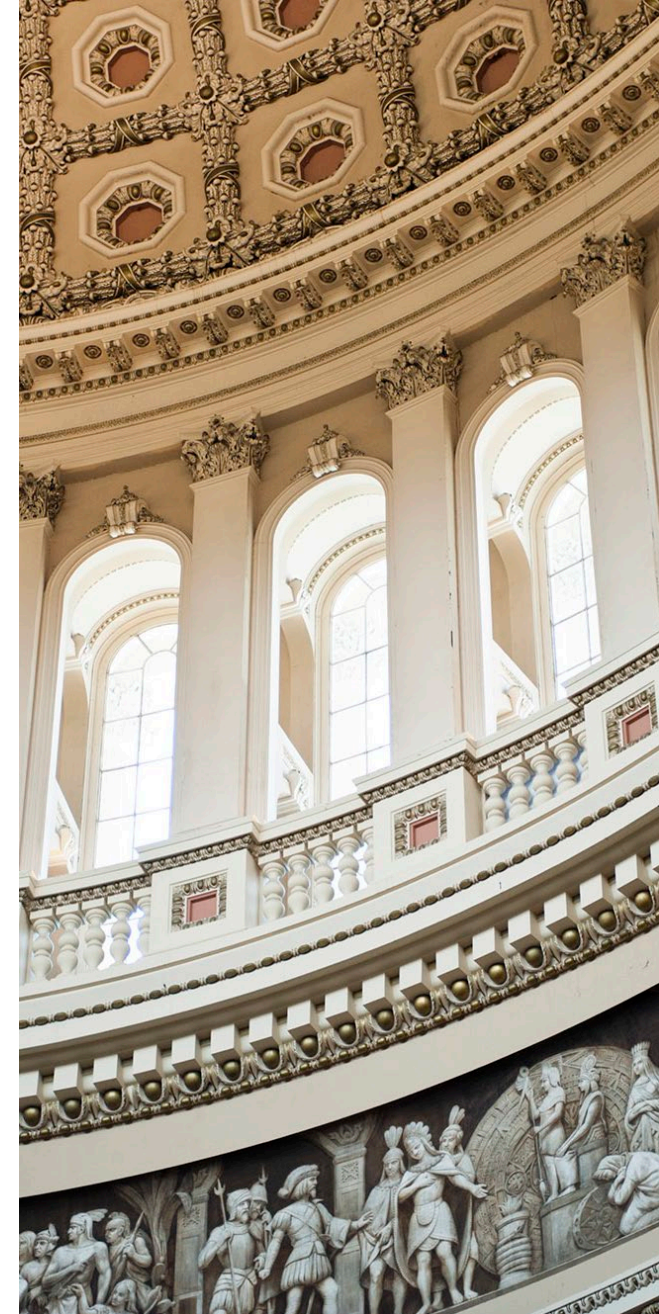
LTCi Litigation Trends

- Overall Litigation Down
 - There has been decreasing litigation around LTCi in general
 - Why? Will that change with changed economic conditions?
- Insurer Offensive Litigation Up
 - New ways to combat fraud
 - More aggressive strategies employed by some carriers
 - Litigation success (Dallal)
- What About Multi-Policyholder Litigation?
 - Class/Mass Action Litigation Down; Possibilities for Offensive Litigation?



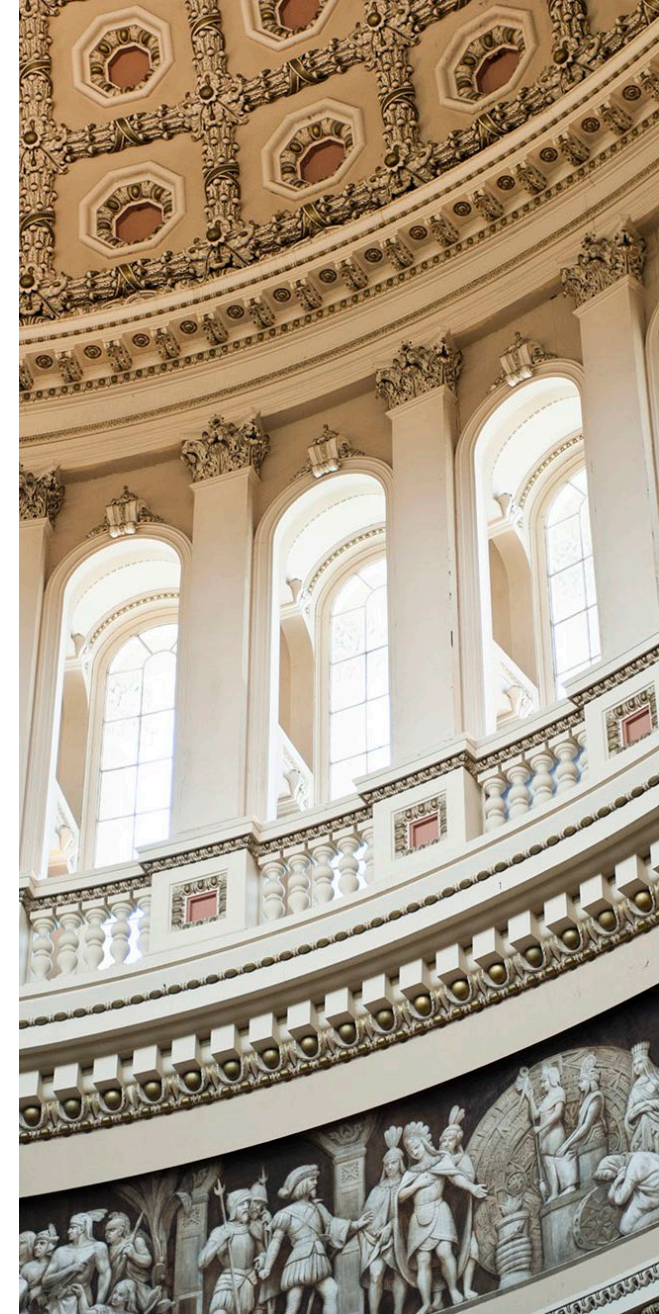
LTCi Litigation Trends

- District Court Rulings
 - *Gaudet v. Metropolitan Life Ins. Co.* (N.D. Cal.)
- Industry wins at federal appellate level
 - *Hartnett v. Jackson Nat'l Life Ins. Co.* (7th Circuit)
 - *Potovsky v. Lincoln Benefit Life Co.* (9th Circuit)
 - *Parker v. Sentry Ins. Co.* (11th Circuit)
- Fraud Litigation
 - *Meyer v. Massachusetts Mutual Life Ins. Co.* (CO)
 - *The Prudential Ins. Co. v. Gardina* (11th Circuit)



LTCi Industry Trends: Fraud

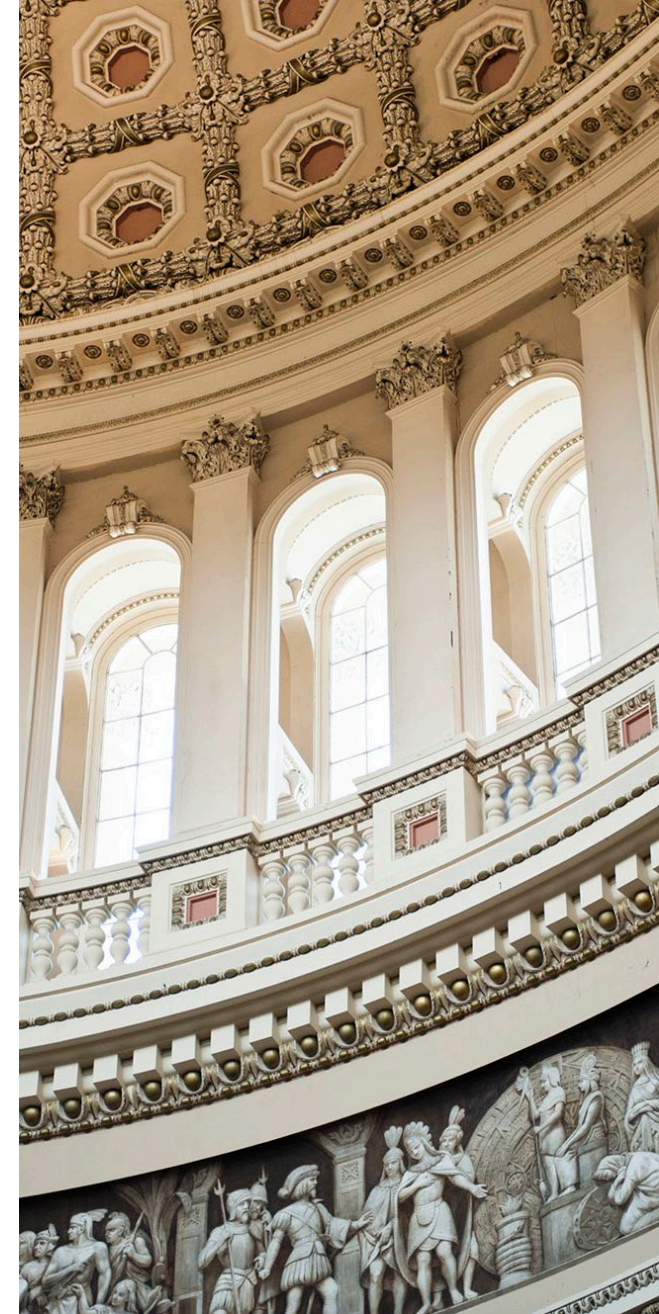
- Questions to ask:
 - Are we appropriately policing current claims to identify potential fraud?
 - Are your and/or your TPA well equipped to identify and act upon indicia of potential fraud – and are they regularly updating their training on this subject?
 - Is there an appropriate approach, when fraud has been identified, to efficiently and effectively cut it off, mitigate the current losses, and give the company the best opportunity to recoup past losses and/or terminate the policy?



LTCi Claim Fraud

Industry Focus Shifting to:

- Indemnification or Alternative Cash Benefit Riders
- Facility Fraud
- Producer Fraud
- Hybrid Products
- Generative AI



Disability Insurance



Claim Fraud

Claims submitted with the intention to deceive the company:

- **Life:** May present in the form of falsification, alteration or embellishment of claims forms, legal forms submitted in support of a claim, fictitious death claims, or murder for profit
- **DI and LTCi:** May present in the form of falsified claim forms, deliberate effort to establish false or misleading medical reports or diagnoses, falsified or embellishment of proof of loss, provider fraud and elder abuse, or agent fraud.



Emerging Issues/Hot Topics in Disability Insurance

Subjective v. Objective Impairments

- Increasing number of disability claims coupled with impairments that are difficult to measure or diagnose by objective data (e.g., general pain, anxiety, depression, fibromyalgia). These are also seen in younger claimants which have long-term disability policies with big benefit pools.
- These are not always mental-nervous condition claims and might not be subject to a mental disorder limitation in a policy. Often, allegations of pain will be coupled with other mental disorders (but they may not be directly caused by said disorder)
- Differentiating subjective “self report” and complaint from objective data (or lack thereof)



Emerging Issues/Hot Topics in Disability Insurance

Chronic Conditions

- Claims are submitted upon a diagnosis of a chronic condition. At the time of claim, there is usually not evidence significant enough to support a finding of disability.
- As the claim (which may now be in litigation) progresses, the chronic condition may worsen and could later support disability.
- Insurers are trying to limit the focus to the evidence that the insurer had at the time of the claim (as opposed to the later “worsening”), but the plaintiff’s bar is presenting the opposite – that the insurer should have known the chronic condition would worsen. There are a couple of cases we are watching closely here.
- The overall prognosis is important for the claim, but also for settlement/resolution potential



Emerging Issues/Hot Topics in Disability Insurance

Own Occupation for Business Owners

- We are seeing an increase in claims submitted by business owners who also perform an occupational task (e.g., physicians, attorneys, builders, roofers) and claim that while they can work and run their business, they can no longer perform the “task” (e.g., they can run the business of their law firm, but they have terrible anxiety and can no longer litigate)
 - We have seen coding for medical procedures change to an “affiliate” or associate, but it is hard to discern who truly performed the procedure.
 - Recent cases as to what is a “trial lawyer” as opposed to an attorney that can run an office and can hold a general advisory practice but claims they can no longer go to Court.
 - What do you do if income seems to be the same?



Emerging Issues/Hot Topics in Disability Insurance

Related: "Signature Duty" Argument by Plaintiff's Bar

- The Plaintiff's bar has been making an argument that total disability will apply in situations where an insured cannot complete a "signature duty" of his or her occupation, even if that duty accounts for 25% or so of their total time working.
 - *Example:* a general dentist who claims they can no longer do any drill work due to psoriatic arthritis pain, so they can no longer be a dentist – but drill work accounts for less than 25% of the work that they do.
 - This is difficult because they have the diagnosis and objective disability, but they can do other things. What is reasonable?



Emerging Issues/Hot Topics in Disability Insurance

Physician Care Policy Language

- Traditionally, policies require the claimant to be under the “care” of a physician, which is broad.
 - With these traditional policies, we argue that it is not enough to see a general practitioner for most disabilities, but that a specialist is required.
- New policies are being written that changes the definition to require the claimant to show they are receiving “appropriate care for the condition causing the disability.”



DI Claim Fraud

- Basis for eligibility is subjective and may evolve while on claim.
- Policies may lack limits on mental disorders, allowing claims for depression and anxiety to be paid.
- Conflicting medical records, although some doctors may seem to be going “over the top” to endorse a disability
- Company encounters difficulty obtaining follow-up information from providers or other sources
- Social media or other surveillance observations are inconclusive or otherwise not tailored to the actual disability or limitations claimed

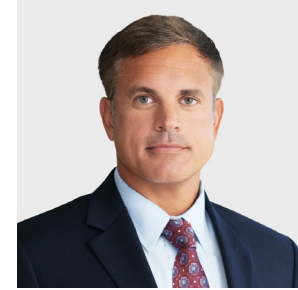


Contact



Jessica L. Gallagher

Partner
Insurance
Philadelphia
+1 215 988 2524
jessica.gallagher@faegredrinker.com



Timothy J. O'Driscoll

Partner
Insurance
Philadelphia
+1 215 988 2865
timothy.odriscoll@faegredrinker.com



Sandra K. Jones

Partner
Insurance
Philadelphia
+1 215 988 2993
sandra.jones@faegredrinker.com



Christopher F. Petillo

Partner
Insurance
Philadelphia
+1 215 988 3355
christopher.petillo@faegredrinker.com



Thank You for Attending!

- To request CLE credit, scan the QR code.
- Please provide your bar license information and indicate the sessions you attend.
- For CLE credit questions, contact cle@faegredrinker.com.

