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Long-Term Disability Litigation: A Framework for Evaluating and Litigating These Complex Claims

Presented by:
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Evan Schwartz, Esq.
Founder of Schwartz Law, PC

**Long Term Disability Litigation: A
Framework for Evaluating and
Litigating These Complex Claims**

Schwartz
Law

1.800.745.1755

**MAKING INSURANCE COMPANIES
KEEP THEIR PROMISES**



**I. Identify Nature of
Claim:**

ERISA or non-ERISA

Identify Nature of Claim: ERISA or non-ERISA

A. Applicability of ERISA

1. Claims that ERISA applies to

B. Exceptions to the applicability of ERISA

1. Group insurance not covered by ERISA
2. Safe Harbor exemption
3. Shareholders in closely held corporations

C. Impact of ERISA applicability in general

II. Litigation

Litigation

A. Early suit investigation interviews

1. Claimant's Counsel

- I. Insured: policies, pre-suit investigation
(social media + internet), rescission analysis
- II. Spouse/Family members
- III. Colleagues/co-workers
- IV. Treating/diagnosing physicians

Litigation

A. Early suit investigation interviews

2. Carrier's Counsel

- I. Claims decider
- II. In house or outside investigation
- IV. In house medical, vocational, financials
consultants

Litigation

B. Choice of Forum – State or Federal

C. Causes of Action

1. Breach of Contract
2. Declaratory judgment
3. Bad faith
4. Deceptive acts and practices under state law

Litigation

B. Causes of Action...

5. Intentional or negligent infliction of emotional distress
6. Punitive damages
7. Pleading total vs. partial or residual disability
8. Other

Litigation

D. Affirmative Defenses

1. Failure to state a claim
2. Limitations of time
3. Conditions precedent
4. Performance

E. Initial Motion Practice

1. Specific causes of action
2. Requests for relief

Litigation

F. Discovery

1. Scope of paper discovery
 - I. Information beyond the claim file
 - II. Information regarding the company's practices

Litigation

F. Discovery

1. Scope of paper discovery

III. Information regarding other insureds

IV. Information regarding reserves and reinsurance

Litigation

F. Discovery

1. Scope of paper discovery

V. Claims manuals, training manuals, underwriting manuals

VI. Claimant's medical history

Litigation

F. Discovery

1. Scope of paper discovery

VII. Claimant's occupational history

VIII. Claimant's financial history

Litigation

F. Discovery

1. Scope of paper discovery

IX. Subpoena Duces Tecum (medical, occupational, and financial)

X. Surveillance Fact Depositions

Litigation

F. Discovery

1. Scope of paper discovery

XI. Identifying whom to depose

XII. Location of depositions

XIII. Other

Litigation

F. Discovery

2. Experts

I. Identifying experts

II. Depositions of experts

III. Other

Litigation

F. Discovery

3. Rule 35 Examination of the claimant prior to trial

4. Potential issues for summary judgment

Litigation

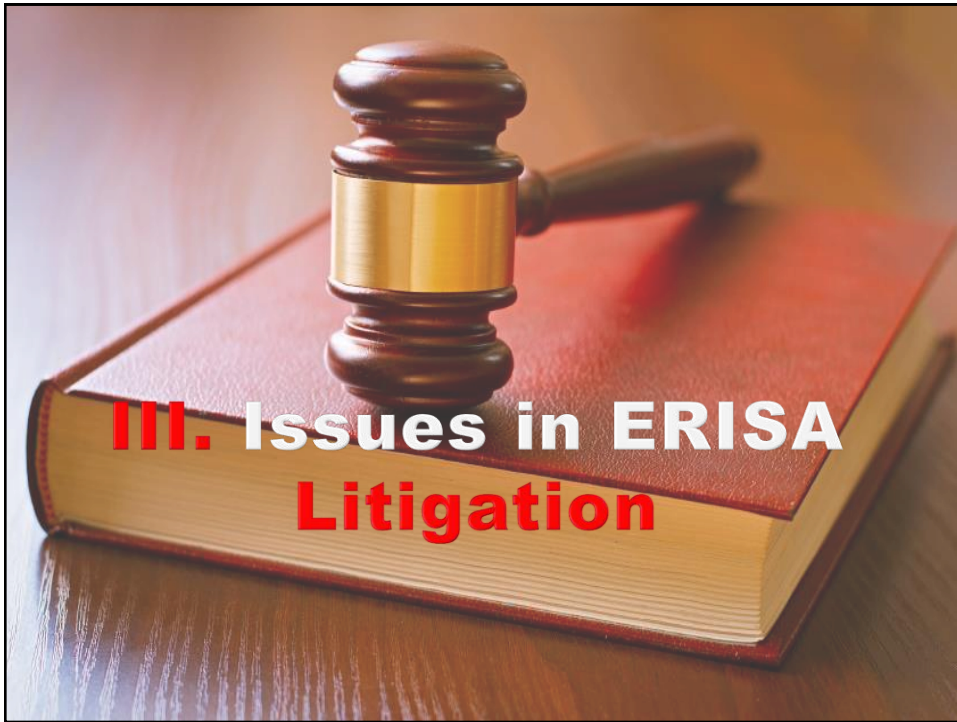
F. Discovery

5. Trial preparation

I. Witnesses

- Lay
- Expert

II. Exhibits



Issues in ERISA Litigation

3. Standard of review

4. Scope of review



Issues in ERISA Litigation

5. Entitlement to discovery

6. Entitlement to a jury trial



Issues in ERISA Litigation

7. Motion for judgment on the administrative record

8. Other



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