

# DENIED Disability by Liberty Mutual



*Your  
Battle Plan for  
**WINNING DISABILITY  
INSURANCE**  
Benefits*

Marc Whitehead, Esq.

**Denied Disability by Liberty Mutual?**  
**Your Battle Plan for Winning Disability Insurance**  
**Benefits**

By

Marc Whitehead, Esq.

Copyright © 2017, Marc Whitehead & Associates, LLP

All Rights Reserved

Marc Whitehead, Esq.

Marc Whitehead & Associates - Attorneys at Law, LLP

5300 Memorial, Suite 725 - Houston, Texas 77007

(713) 228-8888 \ Toll Free: (800) 562-9830

# Denied Disability by Liberty Mutual?

## Your Battle Plan for Winning Disability Insurance Benefits

### Introduction

Perhaps an automobile crash left you with a severe soft tissue injury. Or maybe a sudden illness or infection has made you fatigued and foggy. In any case, you cannot work effectively or for long periods of time. In addition to rehabilitating and managing your responsibilities as a parent, friend and neighbor, you also need to handle the financial consequences of your disability. You're in a scary position. Few people expect to have to live years of their lives disabled, unable to enjoy their favorite activities or engage in meaningful, productive work.

Now is the time for friends, colleagues and family to pitch in to help you. But what happens when your support network doesn't come through? Unfortunately, Liberty Mutual, your long term disability insurer, has made it hard for you to obtain the benefits you need to handle your affairs and medical expenses.

Did Liberty Mutual deny your claim? Has the insurer sent you confusing, overwhelming documents or forced you to deal with challenging deadlines? You need clarity and support to get your critical benefits.

In this ebook, we'll go over in detail how to handle a claim denial, what to do to prove your case, and what to do (and to avoid doing) to ***obtain fair benefits from Liberty Mutual***. [Do note that this book should not be considered a substitute for speaking with an experienced disability denial attorney.]

Here's a quick outline of what we will discuss in this book:

### **History of Liberty Mutual Insurance Company**

- 1. Will You Get the Disability Benefits You've Paid to Receive?**
- 2. What Kind of Disability Policy Do You Have?**
- 3. Does Your Disability Benefit Check Look Small? Here's Why.**
- 4. How Pre-Existing Conditions Can Affect Your Disability Claim**
- 5. Appealing a Disability Claim Denial**
- 6. Make Your LTD Claim to Liberty Mutual As Strong as Possible**
- 7. Why Liberty Mutual Might Deny Your Disability Claim**
- 8. Other Factors Liberty Mutual Uses to Determine Your RFC**
- 9. Why You Need Help with the Disability Administrative Appeals Process**
- 10. Tactics that Liberty Mutual Uses to Deny Claims**
- 11. How to File a Long Term Disability Lawsuit against Liberty Mutual**
- 12. Finding the Most Effective Disability Attorney**
- 13. Summary: The Right Way to Approach a Disability Claim with Liberty Mutual**

## History of Liberty Mutual Insurance Company

Providing insurance for injured workers has been a primary focus of Liberty Mutual Insurance Company since its founding. Originally called the Massachusetts Employees' Insurance Association, the company opened its doors in 1912, just a year after the Massachusetts' legislature passed a law requiring businesses to provide workers' compensation insurance for their employees.

The insurer soon branched out into areas beyond workers' comp, offering its first automobile insurance policy in 1914. It adopted the Liberty Mutual Insurance Company name in 1917.

By 1936, Liberty Mutual was the country's primary writer of workers' comp insurance; by 1937, it had expanded operations to all 48 states. During World War II, the company offered insurance coverages internationally, covering employees of companies involved in the war effort.

In 1943, Liberty Mutual opened its first rehabilitation center in the country in Boston, and it also introduced a medical advisors network, providing specialists to review injured workers' treatment plans. Eleven years later, it opened the Liberty Mutual Research Center (now called the Liberty Mutual

Research Institute for Safety), which conducts peer-reviewed research to help reduce injuries and prevent disabilities.

Between 1960 and the turn of the century, Liberty Mutual grew its business offerings and expanded internationally. It opened a skid control school for truck drivers, helped develop a breakthrough prosthetic (the Boston arm) and founded a back school to help people with severe lower back pain. In 1999, it established the Center for Disability Research.

In the 1990s and early 2000s, as many mutual insurance companies converted to stock ownership, Liberty Mutual took a slightly different route, bringing its various businesses under an umbrella mutual holding company. It acquired Wausau Insurance in 1999 and Safeco Corporation in 2008 and sold off some financial services businesses during this period as well.

Today, Liberty Mutual has four business units: personal insurance, commercial insurance, Liberty International and Global Specialty. The commercial unit offers group benefits packages, which includes disability insurance.

In recent years, the Boston Globe newspaper has published articles questioning the very generous compensation packages provided for Liberty

Mutual executives' and the company's lack of accountability to its mutual policyholders.

## **1. Will You Get the Disability Benefits You've Paid to Receive?**

When you pay your disability premiums every month, you expect that you'll get the benefits that your policy promises. Unfortunately, that's not always the case.

In the 1980s, when insurers developed the concept of disability insurance for individuals and for employee groups, they thought they had developed a real money maker. People made few claims on these policies initially, so the insurance companies found them profitable. However, after a while, as people became older and suffered from more illnesses and injuries, disability policies began costing insurers money.

For a time, insurance companies could cover their losses with the revenues earned in a booming stock market. But when the market returns declined, insurers had to find another way to cover their expenses. They took a hard look at disability policies, trying to find any way that they could to avoid

paying benefits. As they scrutinized every claim closely, they became more creative in the methods they used to deny claims. Many people who had counted on those benefits to see them through difficult times found their disability payments denied or severely limited.

### **Policyholders Can Get Help**

To combat these practices, some attorneys have focused extensively on disability and ERISA (Employee Retirement Income Security Act) law. ERISA is the federal law that regulates group disability policies; like most federal laws, it's complex and difficult for the average person to understand. But a disability policyholder who doesn't understand and follow ERISA's regulations can end up forfeiting disability benefits.

That's why it's so important to have an attorney guide you through the ERISA maze and help you get the disability benefits you've paid to receive. A qualified attorney can help you construct and present the strongest case possible to win your claim.

\*\*\*\*\*

***CASE STUDY #1: COOK v. LIBERTY LIFE ASSUR. CO., United States Court of Appeals for the First Circuit, decided February 5, 2003***

Kathleen Cook, the plaintiff-appellee, was an employee of Lockheed Sanders, Inc. covered under an insurance benefits plan administered by the defendant-appellant. Ms. Cook received a diagnosis of Chronic Fatigue Syndrome. Further, a doctor found evidence of Epstein-Barr virus in Ms. Cook. She quit working in November 1994.

Ms. Cook filed for short-term disability benefits in February 1995. When those benefits expired, she applied for and was approved for long-term disability. The plaintiff, Ms. Cook, saw a doctor regularly while she was out of work. That doctor confirmed his diagnosis of her disability. During this time, Ms. Cook took a part-time job with a real estate company showing houses, but rarely worked.

In October 1998, Liberty terminated Ms. Cook's benefits finding that she could work under the "any occupation" standard. Ms. Cook's appeals were denied, so she filed a claim in district court.

The court found that Liberty's termination of her benefits was arbitrary and capricious. The court relied on the administrative record that showed no change in her condition after Liberty initially approved benefits. Liberty never gave a substantive explanation for denying the benefits.

Liberty appealed the decision to the Court of Appeals. The Court upheld the lower court's findings the award of benefits owed and attorney's fees.

\*\*\*\*\*

## 2. What Kind of Disability Policy Do You Have?

There are two ways to buy disability policies in the marketplace:

- **Group disability policies**, which you buy through your employer, fall under ERISA law. Liberty Mutual sells only group disability policies.
- Some insurance companies also sell **individual disability policies**, which you buy as an individual through a broker or agent. State laws govern these policies.

Both types of disability policies may provide short-term, long-term and/or catastrophic coverage.

- **Short term disability (STD) policies** generally pay benefits for six months, although their terms may be shorter. Your employer probably covers the costs of short-term disability payments for injured workers; that fact usually makes it easier for workers to receive STD benefits.

- If your illness or injury prevents you from working after you exhaust your short term disability benefits, **long term disability benefits (LTD)** come into play. The initial payout period for LTD benefits is usually about 24 months, although this can vary by policy. During this time, you can expect that Liberty Mutual will keep a close watch on your recovery progress to see whether it can reduce or cut off your benefits to save money. If your disability is so severe that you'll never be able to go back to work, most LTD policies will provide benefits through retirement age. You may find it difficult to obtain these benefits, however.
- **Catastrophic coverage** should help pay for a caregiver if you become so severely disabled that you can't eat, dress or bathe yourself.

### **3. Does Your Disability Benefit Check Look Small? Here's Why.**

Most disability benefits policies start off by paying you just 60 percent of your normal paycheck. If you're able to work at another job in your

company, but you earn 20 percent less than you did at your previous job, you might be eligible for **partial or residual disability payments**.

In either case, Liberty Mutual may withhold more money from your benefits check due to offsets, which are payments that you receive from other sources because of your disability. Offsets can include:

- Workers' compensation benefits
- Social Security Disability (SSD) payments
- Court settlements you've won due to your disability
- Retirement benefits

### **Could You End Up Owing Liberty Mutual Money?**

Your long term disability payments should start as soon as you exhaust your short term disability payments. But it can take much longer to qualify for SSD payments, obtain workers' comp benefits or win a court case. If you do

get that additional money, however, Liberty Mutual will want you to repay at least some of the disability benefits it sent you.

- If you don't want to owe Liberty Mutual money when all of your payments come in, ask the insurer to deduct up front the amount it expects you to receive in offsets.
- You can wait until your checks arrive and repay the offsets to Liberty Mutual with that money.

\*\*\*\*\*

***CASE STUDY #2: Davidson v. Liberty Mut. Ins. Co., United States District Court for the Western District of Virginia, Abingdon Division, Decided July 1, 2003***

The plaintiff, Guy Davidson, was a field investigator for Liberty Insurance Company, the defendant. In December 1998, Mr. Davidson received a diagnosis of stenosis. He quit working in April 1999. Later, he requested and was approved for short-term disability benefits by the employer. When those benefits ended, he requested and received long-term disability. However, in March 2001, Liberty ended his long-term benefits. Liberty believed the plaintiff was physically able to work in other jobs with Liberty for which they deemed him qualified.

The plaintiff filed suit under ERISA, requesting he receive long-term benefits. He argued that Liberty did not consider his age, 64-years old, when Liberty denied long-term benefits, when making a determination whether he would be able to perform other duties at Liberty. The court agreed with the plaintiff, stating that Liberty could not have conducted a reasonable inquiry into his ability to work since they did not consider his age.

\*\*\*\*\*

## 4. How Pre-Existing Conditions Can Affect Your Disability Claim

Since insurers are reluctant to pay disability benefits, they often go to great lengths to make sure that you do not have any medical conditions that could have contributed to your disability before you bought your policy.

- **They could scrutinize your medical records from previous years** – anywhere from one to three years back, looking for problems that would allow them to deny your disability claim.
- **They could try to take an unrelated injury or illness and relate it to your current problems.** Suppose you took a muscle relaxant a year ago because of an anxiety problem; you felt better and went off the

medicine. Now you've hurt your back, and your doctor prescribes the same medication. Liberty Mutual might use that initial medication use as "proof" that you had a back problem before you made your disability claim.

## **Blaming Your Disability on Mental Health Issues**

Insurers may argue that your physical problems are really caused by mental health issues, since most disability policies cover those for only 24 months.

- Many people with disabling injuries and illnesses understandably suffer from depression; they worry about bills and the future, and they can't enjoy everyday life the way they did before. Insurers, sadly, sometimes claim the reverse causality – *that depression caused the disability* – in order to limit required payments.
- Pain medications cause diverse side effects, such as mental confusion. Liberty Mutual may claim that mental confusion – and not the injury or illness requiring you to take your medication – is what's preventing you from working.

- Insurers like documentation. However, it's impossible to document certain illnesses (e.g. chronic fatigue) with X-rays, blood tests or MRIs. Without this type of concrete medical evidence, however, you face challenges if Liberty Mutual denies or limits your disability benefits.

When insurers get a disability claim, they frequently assess the situation with a jaundiced eye – for instance, assuming the person is trying to game the system. They purposefully look for reasons to deny benefits, cut them off or significantly reduce them as soon as possible.

## **5. Appealing a Disability Claim Denial**

You've put in your claim and supplied what you thought was sufficient documentation of your disability to ensure that you'll get benefits. But Liberty Mutual has denied your claim. How do you appeal the decision?

You start by filing an administrative appeal of Liberty Mutual's decision. If they deny your claim again, you can pursue your claim:

- In your state court, if you have an individual policy.

- Through the federal court system, if you have a group policy.  
(Remember, ERISA laws regulate this process.)

State laws allow you to add more evidence to your administrative appeal if you decide to pursue the claim in court. You can have a jury trial, and you can ask for punitive damages to punish the insurer for unfair treatment.

However, that's not the way it works with ERISA law and the federal courts.

**The administrative appeal that you file with Liberty Mutual will serve as the evidence in your ERISA court case.** Under ERISA law:

- You don't have the option of a jury trial; a federal judge looks at the evidence, hears the lawyers' arguments and makes the decision.
- The presumption of the court is that Liberty Mutual made the right decision in denying your claim. It's up to *you* to prove that they made an error and that you deserve disability benefits.

- You can't ask for damages; if you win your case, the judge does have the option of requiring the insurer to pay your lawyer's fees and court costs, but that doesn't always happen.

**Throughout the entire process—the initial filing of your claim, the administrative appeal of an initial denial and the filing of a lawsuit—you must be scrupulous about understanding what information you need to supply and about meeting deadlines.** If you neglect to make a filing deadline, your disability benefits could be gone forever.

\*\*\*\*\*

***CASE STUDY #3: Degennaro v. Liberty Life Assur. Co. of Boston, United States District Court for the Western District of Michigan, Southern Division, Decided; June 20, 2008***

The plaintiff in this case, Barbara DeGennaro, was an employee of Spectrum Health as a billing clerk. Liberty Life Assurance, the defendant, administered and funded her company's insurance benefits plan. Ms. DeGennaro suffered from an array of ailments, including morbid obesity, migraine headaches, sleep apnea and degenerative joint disease. These ailments caused her to quit working in May 2004. She received short-term benefits, which expired in November of that year. She subsequently requested long-term disability benefits. Her physician based his determination that she was disabled after considering the cumulative effect of her various conditions.

Liberty denied her claim for long-term benefits. The defendant considered each of her conditions individually, finding that none prevented her from performing any occupation with her employer.

Ms. DeGennaro filed suit against Liberty, asking the court to review the administrative record. Liberty filed a motion for summary judgment, which the court denied. The court held that Liberty had not fully considered the cumulative effects of all of Ms. DeGennaro's illnesses, which combined may have prevented her from working. The court remanded the matter to Liberty to reconsider their decision in light of the court's instructions.

\*\*\*\*\*

## **6. Make Your LTD Claim to Liberty Mutual As Strong as Possible**

- **Fill out all the paperwork carefully and completely.** Don't be confused because Liberty Mutual seems to be asking the same question in several different ways; they're looking to see a consistent description of your disability. (So be consistent in how you describe it!)
- **Don't miss a deadline.** Filing paperwork even one day late may prevent you from ever receiving the disability benefits that you paid premiums to obtain.

- **If a problem isn't covered by your disability insurance, don't include it in your application.** It will just confuse the issue.
- **Apply for Social Security Disability (SSD).** Liberty Mutual will require you to apply for Social Security Disability to determine whether you qualify for benefits. This can be a long and drawn-out process, so it pays to get the paperwork started right away.
- **Make sure your description of your job matches your employer's description of your job.** Consistency is important in proving that you can't do the job that your employer requires.
- **Enlist the assistance of your medical team.** Let them know they'll be getting paperwork about your disability claim. Ask them to complete it and file it promptly so that you can meet all your deadlines.
- **Keep an eye out for Liberty Mutual's investigators.** They may watch your home to see whether you're doing anything that you claim you can't do. They may even come to your door asking to talk with you. (You're within your rights if you ask them to make an appointment and come back another time.)

**Filing a claim may look straightforward, but often it's not.** If you want to present the strongest case for receiving disability payments, consider working with an experienced ERISA attorney from the start. When you rely on disability payments to get through a tough time, it just makes sense to get assistance from someone who knows the ins and outs of the system.

## **7. Why Liberty Mutual Might Deny Your Disability Claim**

When you begin the process of applying for disability benefits, remember that Liberty Mutual has most of the advantages. They determined the terms of your policy and defined what a disability is; and they also get to say whether or not your injuries or illness fall within that definition.

- **They listen to the medical professionals on their staff rather than to your doctors.** It doesn't matter if your physicians actually examined you; they can let doctors and nurses working from your medical records *alone* decide whether or not you are disabled.
- **They don't always follow the Social Security Administration's (SSA) determinations.** While Liberty Mutual wants you to apply for Social

Security Disability, they don't always follow the findings if the SSA determines you are disabled.

- **They can use RFC evaluations to deny, reduce or stop your disability payments.** RFC stands for *residual functional capacity*. Liberty Mutual can use that measurement to determine whether or not you can do your job or another job.

### How Vocational Analysts Define Your RFC

- **Sedentary** (office job) – Can sit six hours a day, lift up to 10 pounds.
- **Light** (security job) – Can stand or walk up to six hours a day, occasionally lift and carry 10-20 pounds of weight.
- **Medium** (nursing job) – Can stand or walk all day, lift up to 50 pounds.
- **Heavy and Very Heavy** (construction worker) – Can stand and walk all day, lift up to 100 pounds (heavy) or more than 100 pounds (very heavy).

## **8. Other Factors Liberty Mutual Uses to Determine Your RFC**

As they decide on your residual functional capacity, Liberty Mutual's vocational analysts will also consider:

- How well you can work with supervisors and co-workers. Are you still able to follow directions, remember instructions and work cooperatively with others?
- Your level of pain, and how it can affect your ability to do your job.
- What treatment you'll need to get better. Can you work regular job hours if you have a heavy schedule of medical treatments and therapy?
- Observations from your physicians, social workers, therapists and friends and family members about what you're capable of doing.

## **The 24-month “Own Occupation” Rule**

If vocational analysts determine that you can't work at your own job, most insurers will pay disability benefits for a limited period of time—usually 24 months. If you're still disabled after that time period, however, Liberty Mutual may try to find some other job for you, so that it can stop paying disability benefits or at least reduce the monthly amount.

Liberty Mutual will look at your education, your background and your current skills to try to find you another job for which you're qualified. Take the example of nurse who hurts his back so badly that he cannot lift patients or perform other duties that are part of a nursing job. If his disability continues after 24 months, the insurer may find him a desk job where he could use his medical knowledge without having to do any physical exertion. Even if he still has back pain, the insurer may insist that he take this job.

While you don't have to find an alternative job—that's Liberty Mutual's responsibility—the position they come up with may not feel like a good fit. But if the new job pays 80 percent of your previous paycheck, and you refuse to take it, the insurer may cut off your disability benefits entirely.

If your disability is so severe that Liberty Mutual can't find you a different job, you should receive disability benefits until your policy's cutoff date, which is usually age 65.

\*\*\*\*\*

***CASE STUDY #4: Gerhardt v. Liberty Life Assur. Co., United States District Court for the Eastern District of Arkansas, Western Division, Decided; June 17, 2008***

The plaintiff, Lisa Gerhard, was a registered nurse working as the Director of Addictive Services for a psychiatric hospital. In July 2000, the plaintiff quit working due to severe osteoporosis. She applied for long-term disability under the employer's benefits plan administered by the defendant Liberty Life Assurance. Liberty approved benefits initially.

During the period she received benefits, the plaintiff underwent surgeries and was under the constant care of a physician. Her physical condition improved; however, she suffered some significant mental illnesses during this time. Liberty determined that she improved to the point that she could work in some sedentary occupations with her employer. They terminated her long-term disability benefits.

After her requests for redetermination were denied, the plaintiff filed suit.

The court found that the plaintiff's osteoporosis did in fact improve.

However, Liberty did not show that they considered the effect of her mental disabilities, age and the medications she received when making the

determination she was able to return to work. The court remanded the case to Liberty after a review of the administrative record, instructing the defendant to consider the additional factors.

\*\*\*\*\*

## **9. Why You Need Help with the Disability**

### **Administrative Appeals Process**

ERISA law dictates the steps that you and Liberty Mutual must follow in the disability application process and in any appeal of a claim denial. **If you want to get the disability benefits to which you're entitled, you must follow every step of this process and make sure that you submit all your required documentation on time.**

**If Liberty Mutual denies your claim, the insurer must send you a letter with this information:**

- Why they denied your claim.
- The information (medical records, etc.) that they used to make that decision.

- The names of any doctors, nurses or claims representatives who made the determination to deny your claim.
- An explanation of the appeals process, including the deadlines for submitting your appeal, any documents you must include and the address to which you should send your appeal.

The initial claim and appeals process can take a long time.

- Liberty Mutual has up to 60 days to make its original determination; then you have about six months (180 days) to appeal a claims denial.
- Liberty Mutual gets another 45 to 90 days to rule on your appeal.
- If Liberty Mutual denies the appeal, your policy determines how long you have to file a court case. (It's often 36 months.)

**Look for an ERISA-experienced attorney to assist you in this process.**

Disability law can be very confusing for someone who doesn't work with it every day. Even if you can read all your policy documents very carefully, it's possible to miss important details that can determine whether or not your claim will be successful. You don't want to forfeit benefits because you've missed a deadline or forgotten to include essential medical information.

Seeking help from an experienced ERISA attorney is even more important if your claim is denied and you must appeal that decision. You must present the strongest case possible, because that case will serve as evidence if you need to take your case to court. Plus, an attorney who specializes in disability law will be able to review the actions that Liberty Mutual has taken to make sure that they have followed all the necessary rules in your case.

**When you file an administrative appeal with Liberty Mutual you must include:**

- **A point-by-point rebuttal of Liberty Mutual's claims denial.** You must address all the reasons that they dismissed your disability claim and explain why their decision was incorrect.

- **The facts to support your claim.** You must include everything from medical records from your physicians and therapists to letters from family and friends that explain how your disability has impacted your ability to function normally.
- **A correction of any distortion of medical evidence or facts** that Liberty Mutual has used as a reason for denying your claim.
- **Articles and studies from recent medical journals** that support your disability claim.

\*\*\*\*\*

***CASE STUDY #5: Greenwald v. Liberty Life Assur. Co., United States District Court for the District of Nebraska, Decided; March 20, 2013***

Todd Greenwald, the plaintiff, filed a suit against Liberty Life Assurance Company under ERISA after the defendant denied short-term disability benefits. Greenwald was an employee of Wells Fargo as an account manager. During the entirety of his employment there, he suffered back problems caused by scoliosis and various surgeries, including one to remove a tumor in his leg. He had been out of work several times on temporary disability during his employment.

While recovering from surgery, the plaintiff received short-term disability from Wells Fargo via his insurance benefits plan. Greenwald returned to

work in February 2011 but stopped again that same month, citing an inability to work due to severe pain. He applied for short-term disability benefits. Liberty and Wells Fargo denied his request. They noted he had not provided supporting documents on his condition for his claim.

Greenwald appealed the decision. Liberty's review found that he was released to return to work in January 2011. His records did not indicate any worsening of symptoms. Greenwald then filed suit after having exhausted his appeals.

The court held that Liberty was arbitrary and capricious in denying his short-term disability benefits (note that in a separate matter, Liberty approved his long-term benefits upon remand by the court). Liberty, the court found, did not make a proper inquiry into the plaintiff's condition, specifically, whether Greenwald's injuries prevented him from performing his prior duties. The court found substantial evidence in the administrative record that he could not. The matter was remanded to Liberty for further review in light of the court's findings.

\*\*\*\*\*

## 10. Tactics that Liberty Mutual Uses to Deny Claims

- **Divide up your disability claim, and send different portions out separately.** A physician who only sees one aspect of your physical

condition can't make a good determination of how bad your overall disability really is.

- **Get private investigators to track your activities.** They can use surveillance video to try to prove you're doing something that you said you could not. They may even try to twist your trip to a doctor's office or a physical therapy appointment into "proof" that you aren't as disabled as you claim. Liberty Mutual's claims representative may not even take the time to review these videos but may simply take the investigator's word for what's on there. (If your claim is denied, ask to see the video yourself.)
- **Use an invalid RFC exam as a basis for their decision.** To get an accurate picture of your residual functional capacity, vocational analysts must follow every testing procedure carefully. Some don't, so the results aren't valid. If Liberty Mutual uses this measurement, they are making a decision based on bad data.
- **Claim you are malingering—trying to fake an injury to get disability benefits.** The insurer will be quick to pick up on any actions that they consider non-compliant, like your failing to take a medicine your physician prescribed. (They don't care if you can't tolerate the medicine because of its side effects.)

- **State that your disability is stress-related.** A bad back that prevents you from working is certain to cause you stress, but Liberty Mutual might say the stress came first and caused the bad back. Since disability policies don't usually pay for stress-related injuries, Liberty Mutual won't have to pay benefits.

## **11. How to File a Long Term Disability Lawsuit against Liberty Mutual**

If Liberty Mutual rejects your administrative appeal, your only option becomes filing a lawsuit to force them to pay disability benefits. Since Liberty Mutual only offers group policies, your attorney will file your suit in federal court. (Appeals of disability cases covered by individual policies are heard in state courts.)

### **ERISA law determines how your court case will proceed:**

- You'll have a judge hear your case—no option to ask for a jury.

- Your evidence will be limited to whatever information is in your administrative appeal.
- The court's presumption is that Liberty Mutual made the right decision; you have to prove they were mistaken.
- The judge can't award any damages or penalize Liberty Mutual in any way, even if it's obvious that they made the wrong decision.
- If you win your case, Liberty Mutual will owe you back payments from the time that you filed your application for disability benefits.
- If you win, Liberty Mutual may still decide to cut off or reduce your disability benefits at some point, so you might have to go through the whole appeals process again.

**Experienced ERISA attorneys can help you put together a strong case for your disability benefits.**

- They can make sure you have all the evidence you need to make the strongest case possible for your appeal.

- They can make sure that you meet all the filing deadlines.
- Since they know ERISA law, they can develop the best arguments to help you win your court case.
- When appropriate, they understand how to approach Liberty Mutual to work out a settlement that will spare you the costs of a court case.

\*\*\*\*\*

***CASE STUDY #6: Kirkpatrick v. Liberty Mut. Group, Inc., United States District Court for the Southern District of Indiana, Indianapolis Division, Decided; March 6, 2012***

Leona Kirkpatrick, a claims specialist for the defendant Liberty Mutual Insurance Group, filed suit under ERISA after her employer denied her claim for benefits under a plan administered by the defendant. Ms. Kirkpatrick suffered from what the court found to be a “complex medical history” including diagnoses of lupus and diabetes mellitus. She also experienced a pulmonary embolism that required surgery to remedy. She continued to work until 2010, when she applied for short-term disability. Liberty denied her claim, citing a lack of objective evidence supporting her claim that she could not perform her regular duties.

The plaintiff requested a review of her record. Liberty, after receiving additional information from Ms. Kirkpatrick, submitted her claim for peer

review. The reviewer did not find evidence she was unable to perform her duties, and focused on her lupus condition, which was in the reviewer's opinion, stable at that time. Liberty subsequently denied her appeal. Ms. Kirkpatrick also requested long-term disability. Liberty denied her request because it could not find support for her claim in the record. The plaintiff sued under ERISA for the denial of both long-term and short-term benefits. The court held that Liberty acted arbitrarily and capriciously in denying her claims. The court found Liberty ignored substantive medical evidence regarding her ability to perform her duties. Further, the defendant did not consider how the pain from her condition might impact her ability to perform. The court remanded the matter to Liberty for further review in light of the court's decision.

\*\*\*\*\*

## 12. Finding the Most Effective Disability Attorney

Many people claim to be experts in disability law. How can you make sure that you're choosing the right professional to help?

- **Make sure you're working with an attorney.** Some LTD "experts" aren't lawyers, so they can't handle your case in court if you lose your

administrative appeal. Why not work from the start with an attorney who can represent you throughout the entire process?

- **Find someone with years of experience in handling ERISA LTD cases.** Do they focus extensively on LTD cases? How many clients with ERISA disability cases have they represented in the past year?
- **Have they established themselves as authorities on the subject within the legal profession?** Have they published in professional journals or spoken at conferences on LTD issues? Have they received any awards or honors from legal organizations because of their contributions to the field of LTD?
- **What do the attorney's peers think?** You can check sites like SuperLawyers.com, Avvo.com and martindale.com to see how other attorneys rate a prospective lawyer's performance.
- **What's their social media profile?** What's the consensus on sites like Yelp, Google and Yahoo? Do most past clients report positive experiences? How strong are these recommendations?

## **13. Summary: The Right Way to Approach a Disability Claim with Liberty Mutual**

When you suffer a disability that prevents you from working, life can get pretty hard, pretty quickly. Perhaps your finances are tight. Maybe you are in constant mental and physical pain. You're probably frustrated because you can't maintain your ordinary routines around home and at work.

Now add the burden of navigating a disability benefits system that's extremely complex and time-consuming. You may feel like you're fighting this big company alone; that no one is on your side. It doesn't have to be that way. An attorney experienced in ERISA law can serve as a powerful advocate for you and your disability claim. Your attorney can make sure that you meet deadlines, fill out forms correctly and make the strongest case possible with the right medical evidence and expert testimony.

You will feel less stressed once you have someone on your side who understands the system and who can advocate for you aggressively and intelligently.

Don't put yourself and your family through more unnecessary suffering and stress—get the legal help you need now. Call us at 800-562-9830; we're ready to work on your behalf to file your initial claim, make a strong administrative appeal or take Liberty Mutual to court if necessary.

You deserve fair disability benefits; let us help you fight for them.

# Disclaimer

## **Disclaimer for “Denied Disability by Liberty Mutual? Your Battle Plan for Winning Disability Insurance Benefits”**

You understand that this book is not intended as a substitution for a consultation with an attorney. Requesting this book or viewing the information in it does not create an attorney-client relationship with Marc Whitehead & Associates LLP or any of its attorneys. To obtain legal advice about your personal injury matter, please engage the services of Marc Whitehead & Associates LLP or another law firm of your choice. To discuss engaging Marc Whitehead & Associates LLP to help you with your probate matter, please contact the firm.

MARC WHITEHEAD & ASSOCIATES LLP IS PROVIDING “DENIED DISABILITY BY LIBERTY MUTUAL? YOUR BATTLE PLAN FOR WINNING DISABILITY INSURANCE BENEFITS” (HEREAFTER REFERRED TO AS "BOOK") AND ITS CONTENTS ON AN "AS IS" BASIS AND MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THIS BOOK OR ITS CONTENTS. MARC WHITEHEAD & ASSOCIATES LLP DISCLAIMS ALL SUCH REPRESENTATIONS AND WARRANTIES, INCLUDING FOR EXAMPLE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN ADDITION, MARC WHITEHEAD & ASSOCIATES LLP DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION ACCESSIBLE VIA THIS BOOK IS ACCURATE, COMPLETE OR CURRENT.

Except as specifically stated in this book, neither Marc Whitehead & Associates LLP nor any authors, contributors, or other representatives will be liable for damages arising out of or in connection with the use of this book. This is a comprehensive limitation of liability that applies to all damages of any kind, including (without limitation) compensatory; direct, indirect or consequential damages; loss of data, income or profit; loss of or damage to property, and claims of third parties and punitive damages.

## Marc Whitehead Biography



Marc Stanley Whitehead is the founding partner of Marc Whitehead & Associates, Attorneys at Law, LLP which was established in 1992 in Houston, Texas. Born in Memphis, Tennessee, Marc was raised in Normangee, Texas. He graduated in 1985 from Normangee High School as class valedictorian. Marc

attended Texas A&M University where he graduated in 1989 with a Bachelor of Business Administration in Finance.

Marc attended the University of Houston Law Center and received his law degree (J.D.) in 1992, graduating in the top quarter of his class. He was admitted to the State Bar of Texas in 1992. He is also admitted to practice before all U.S. Federal District Courts in Texas, the U.S. Court of Appeals-Fifth Circuit and the U.S. Court of Appeals for Veterans Claims.

Marc's areas of practice include personal injury and wrongful death, social security disability, long-term disability insurance denials, employee benefit

denials, ERISA litigation and insurance claims and pharmaceutical and medical device litigation.

He is also a former adjunct professor of Law at the University of Houston Law Center teaching Civil Trial Advocacy. He has been an instructor for the National Institute of Trial Advocacy teaching Civil Trial Advocacy and an instructor for the National Business Institute teaching Social Security Disability Law.

Marc is double board certified in both Personal Injury Trial Law by the Texas Board of Legal Specialization and in Social Security Disability Law by the National Board of Social Security Disability Advocacy.

### **Professional Activities & Associations**

American Association for Justice-Leader Forum Member

AAJ Risperdal Litigation Group Member

AAJ Xarelto Litigation Group Member

AAJ Transvaginal Mesh Litigation Group Member

AAJ Toxic, Environmental, and Pharmaceutical Torts Section

Houston Trial Lawyers Association

President (2009-10)

President Elect (2008-2009)

Secretary/Treasurer (2007-08)

Vice-President (1999-2007)

Texas Trial Lawyers Association

Board Member (1997-Present)

Board of Advocates (1999-2001)

HBA Social Security Section Chairman (2004-2005)

### **Memberships and Honors**

Association of Civil Trial and Appellate Specialists

National Organization of Social Security Claims Representatives

College of the State Bar of Texas

Houston Bar Association

National Organization of Veterans Advocates

AV Rated by Martindale Hubble

10.0 AVVO Rating

Rated by SuperLawyers

## Top 100 Trial Lawyers in Texas by National Trial Lawyers Association

### Books and Publications

#### ***Published Books:***

- *The Social Security Disability Puzzle: How to Fit the Pieces Together and Win Your Claim;*
- *Disability Insurance Policies: How to Unravel the Mystery and Prove Your Claim*
- *Veterans Disability Claims: Strategies for a Winning Campaign*
- *Car & Truck Crashes: 10 Secrets Victims Should Know to Protect Their Rights*
- *Transvaginal Mesh Lawsuits: What You Need to Know If You Have Suffered Harm from Vaginal Mesh Implants*
- *The Fall of Testosterone: How a Vaunted “Low T” Therapy Has Backfired and Put Millions of Men at Risk for Heart Problems and Stroke*
- *The Xarelto Disaster: How Johnson & Johnson Failed to Warn Consumers of Deadly Internal Bleeding Risks*

- *The Zofran Tragedy: Marketing Anti-Nausea Drug "Off-Label" to Pregnant Women Linked to Birth Defects*
- *Risperdal: The Shocking Truth – Marketing Fraud Adds Up to Billion\$... While Boys & Young Men are Irreparably Harmed*
- *The Life Insurance Claims Kit: What To Do If Your Life Insurance Benefits Are Denied*
- *Denied Disability by Unum: How to Fight Back and Prove Your Claim*
- *Denied Disability by Aetna: How to Fight Back and Prove Your Claim*
- *Denied Disability by Liberty Mutual? Your Battle Plan for Winning Disability Insurance Benefits*

### ***Published Articles***

- *Tort Reform As It Relates to Strict Products Liability*
- *A Lawyer's Guide for Determining Eligibility of Social Security Disability Claimants*
- *Nuts & Bolts of Social Security Disability Law*
- *The Five Step Sequential Evaluation Process Used in Determining Disability For Social Security Claimants*