

life annuity specialist

Lawyers Warn Insurers to Prepare for Wave of Covid-19 Lawsuits

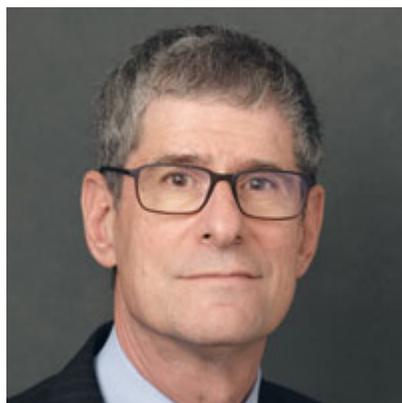
By Warren S. Hersch April 22, 2020

Life insurers bracing for a post-pandemic future may want to ponder what the next swelling wave of litigation may bring.

Lawyers say policyholders and beneficiaries of life, critical illness and disability income contracts could take to the courts in large numbers to fight for claims related to Covid-19.

Many of the expected complaints will involve deaths and medical conditions — heart attacks, strokes, kidney failure — resulting from the viral disease. But carriers could also potentially face a spike in disability claims connected with mental health issues, as front-line medical professionals struggle to cope in what some liken to a war-theater environment.

“I expect to see an increase in claims and litigation,” says **Evan Schwartz**, an attorney at the law firm **Schwartz, Conroy & Hack**. He points to the sheer number of infections nationwide, more than 824,000 as of Tuesday, as suggesting there will be a rise in litigation from denied claims of various kinds.



*Mark DeBofsky, an attorney at
DeBofsky Sherman Casciari
Reynolds*

Among the probable complainants: health-care workers filing for benefits, alleging symptoms of post-traumatic stress syndrome, according to **Mark DeBofsky**, an attorney at the law firm **DeBofsky Sherman Casciari Reynolds**.

“Almost all group disability insurance in the U.S. and a growing number of individual disability contracts have behavioral health provisions that limit the duration of benefit payments to 12 or 24 months,” he says. Meanwhile, he says many workers “are going to suffer from long-term impacts.”

What an Appeals Court Said

Case law offers clues on how courts might rule on lawsuits involving professionals who, having been exposed to or quarantined due to an infectious disease, can't work in their field, even if they're physically able, notes DeBofsky.

In a 2000 decision, a U.S. Court of Appeals for the Sixth Circuit ruled against **Great-West Life** in a disability suit brought by a dentist who contracted hepatitis. The court ruled that he probably would not be able to secure his patients' consent to serve them, though he was legally permitted and physically able to practice dentistry.

The court said the policy doesn't distinguish between an inability to perform based on physical factors, such as a loss of dexterity, and social factors, such as the duty to refrain from performing dental procedures when the patient hasn't given consent.

Schwartz predicts a rise in short- and long-term disability income cases. He expects many of them to arise from mental health issues — elevated levels of anxiety, depression, paranoia, visual hallucinations — that render policyholders unable to work in their own occupation or other fields.

Other disability claims can be expected from individuals who are severely affected physically, including those who suffer lasting damage of their lungs as a result of contracting pneumonia. There's also growing evidence, he notes, of Covid-19 patients coming down with acute intestinal malfunctions, heart inflammation, kidney disease, blood clots and liver problems.

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On group disability policies, Schwartz expects that insurers will prevail in many cases, in large measure because federal law governing retirement and health plans issued by private sector employers favors the carriers. Attorneys representing plaintiffs in such cases can't secure jury trials, have limited recourse to discovery processes, such as depositions of witnesses and, depending on the state, may be bound by contractual "discretionary clauses" that give the insurer full authority to decide on benefit eligibility.

Insurers may have a harder time pushing back against plaintiffs in cases involving individual disability policies, observes Schwartz. While many new and recently issued individual policies impose caps limiting payouts for mental or nervous disorders to 12 or 24 months, many older policies don't.

He doesn't expect, however, that many of the complaints will lead to class action suits. That's because of the difficulty of getting a judge to certify a class of people whose disabling conditions and policies may vary widely.

More Life Claims



*Schwartz, Conroy & Hack attorney
Evan Schwartz*

from a heart attack.

Much of the future litigation will also revolve around life insurance claims, according to **Elizabeth Eilender**, an attorney at the law firm **Jaroslavicz & Jaros**. She expects that life insurers will be scrutinizing claims for deaths resulting from medical conditions that contributed to Covid-19 deaths, but that people misrepresented or failed to disclose in a policy application. She cited one contract holder whose claim the insurer tried to deny because he failed to note on an application that he had a cancerous mole removed from the back of his ear — even though he died



*Elizabeth Eilender, an attorney at the
law firm Jaroslavicz & Jaros*

Insurers who are too zealous in defending themselves against claims might risk reputational damage, she warns, so that's something else they will have to consider.

"It's going to look bad for insurance companies who deny Covid-19 related claims, particularly the life insurance claims," she says.

Schwartz expects that suits over accidental death and dismemberment policies will also be a focus of coming litigation. Many of the Covid-19 disputes, he says, will center on whether policyholders died from the disease or from an accident.

Beneficiaries might claim in court, for example, that coronavirus-infected policyholders admitted to a hospital were given inappropriate medical care, resulting in their demise.

"This will be another battleground," he says. "You're going to see some courts go the way of the insurance companies and some courts go the way of the beneficiaries."

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