



In *your* CORNER

The Disability Law Adviser

CASE CLOSED: Caring Pros **DESERVE** Justice

As attorneys and medical professionals, we choose our professions by investing time, money, and energy to reach our goals and fill an essential need in our communities. For Irene Frank – not her real name, but a real client – a long-time Registered Nurse, the years of wear and tear on her body led to her filing for disability.

Registered Nurses like Irene are often required to lift patients, stand, walk, and sometimes, even run. Over the years, the toll Irene’s work took on her body was extensive. Her medical conditions included: lumbar spondylolisthesis and stenosis, cervical degenerative disk disease and radiculopathy, rheumatoid arthritis, and carpal tunnel syndrome. All of these serious medical conditions eventually led to her inability to continue working in her profession.

When Irene could no longer push through her daily pain, she was forced to file a claim with her employer-sponsored disability insurance plan with Life Insurance Company of North America (LINA) and like most disability insurance

providers, LINA found reasons to deny her claim.

Denial is Beginning – Not the End

In reviewing Irene’s medical records, LINA’s Nurse Case Manager found diagnostic testing didn’t support any limitations, and that Irene’s surgeon who had performed left carpal tunnel surgery, released her to return to work. Finally, LINA’s Medical Director didn’t find her to be functionally limited.

When Irene came to our office, she was searching for help in her appeal to LINA’s denial of her benefits and it was my own personal experience as a former Registered Nurse that gave me a game plan on how to approach her case.

First, we reviewed the medical records in her claim file and researched the conditions from which she suffered. On appeal, we submitted updated medical records along with medical research to LINA stressing how her conditions would limit her ability to serve her patients and make accurate medical decisions on their behalf.

Armed with our extensive documentation, LINA was eventually persuaded to approve Irene’s disability claim and pay Irene the benefits she deserved. Irene was more than pleased with the outcome: She felt happiness and relief.

If you, your patients, or clients find themselves in the same predicament as Irene – doing good work in our community but now medically unable to continue in their profession – have them contact me for a free review of their case. *Case Closed.* ■



In Your CORNER by Claudeth Henry, Esq.

In this issue, ‘Case Closed’ recounts how a medical professional paid the ultimate price of serving her patients with the breakdown of her own health and how – with our help – she successfully fought to secure the disability benefits she deserved.

‘Spotlight’ introduces Hands Up Communications, Inc., whose goal is to provide access to improved communication for those who are hearing impaired or who don’t speak English as their native language.

In ‘Danger Zone’ we look at a recent court case where one man prevailed over his employer’s insurance provider’s denials and won his disability payments.

And finally, in ‘Claudeth’s World’ Cecil and I share our recent trip to Canada as we celebrate our 40th Wedding Anniversary.

I am ‘In Your Corner’ whenever you, your clients or patients are fighting for the disability benefits you deserve, so don’t hesitate to call me for a free case evaluation. ■



It Pays to Be Seen!



Every job requires different skill sets, with some demanding physical strength, like a construction or factory worker, whereas some demand mental strength and clear thinking, such as a banker or engineer, like Paul Viani who found himself in the Danger Zone when he heard the words “Any Occupation” and didn’t see that his claim might be in danger of being terminated.

In *Viani v. Lincoln National Life Ins. Co.*, No.: 3:21-cv-00004-BEN-DEB, (S.D. Cal, Jul. 12, 2022), Paul Viani worked as an engineer with Qualcomm. Paul had a seizure in 2016 while sleeping, had two more seizures in January 2017, was diagnosed with epilepsy, and placed on anti-seizure medication, affecting his cognitive ability.

Despite medication changes and testing requiring 6-month work absence, Paul continued to have seizures with increasing frequency. He returned to work briefly with modifications until finally filing a claim for long-term disability benefits, which Lincoln approved and paid from December 2017 through December 2019 – the duration of the 24-month “Own Occupation” eligibility of his employer-provided disability policy.

After paying Paul two years of benefits, his claim came up for review to see if he met the definition of disability under the “Any Occupation” portion of the policy, where he must be unable to “perform work with reasonable continuity given an individual’s age, education, training, experience, station in life and physical and mental capacity” and pay at least 80%

of his past earnings to continue to receive benefits.

For that review, Lincoln had an expert neurologist review Paul’s medical records, as well as a Transferrable Skills Analysis performed to find other jobs that Paul could do. Noting improvement in Paul’s seizure activity, those “paper” reviews resulted in a claim denial, which Paul appealed, Lincoln again denied, and Paul then filed suit.

You Should Have Seen Him!!

During litigation, both parties asked the court for its ruling. The court noted that Lincoln’s experts never personally observed Paul, so their observations were given less weight than Paul’s treating neurologist or his vocational evaluator who was able to interact with him to fully observe Paul’s slowness to answer questions and note his difficulty in responding to multi-part questions, test his memory, and observe his fatigue.

The court ruled that *seeing* Paul’s physical demeanor and response to questions was *critical* in determining his reaction to medications and ability to perform work, while Lincoln relied strictly on a paper review. The court found that Paul met the “Any Occupation” definition of disability under the Policy and ordered Lincoln to continue paying Paul’s benefits.

If your patients or clients are applying for or have been denied disability benefits from an employer-sponsored disability insurance program, refer them to me for a free review of their case to keep them out of the *Danger Zone*. ■

Havin’ a LAUGH!!



A DAY OF HIKING, ANYONE?

With Autumn upon us and hopefully a respite from the scorching heat, perhaps you and your family would enjoy a hike in the 387,000-acre Ocala National Forest on the edge of town – the 2nd largest national forest in Florida. There you can hike the vast forestland on the trails that connect more than 600 swamps, lakes, rivers, and streams. Or maybe another of its available activities – canoeing, boating, fishing to snorkeling, diving and swimming – is more your thing. It’s right in our back yard, folks! ■

SPOTLIGHT HANDS UP = Here to Help!

Everyone wants to be heard, and that is especially true for those we serve in our practices. Maybe you have a client who is hearing impaired and neither you nor any member of your staff is trained in American Sign Language. Or you have a patient who doesn't speak English and you're trying to get accurate medical information to treat them. What do you do? Bill Ross, Vice President of the Florida office of Hands Up Communications, Inc. hears you and is ready, willing, and able to help answer that question.

Since 2009, Hands Up seeks to make it easier for hearing impaired or Limited English Proficient (LEP) people to communicate, offering on-site, video remote, and over the phone interpreting services; language translation to over 200 languages through their App, plus transcription statewide.

Their mission statement says it best:

“We believe in access for every person in every language.”

Did you know that providing interpreting services is also the law?

ADA requires it for anyone who is hearing impaired. Providing language access to Limited English Proficient individuals is also required by The Civil Rights Act of 1964.

So how did Bill and Hands Up connect?

“I’ve been interpreting for 35 years and teaching workshops across the U.S. and had a presentation at Hands Up in Cedar Rapids. I learned they wanted to launch an office in Florida but had no one to do that. I asked what I could do to help get it off the ground and was told, ‘You can run it!’ and well, I got the job!”

“Hello in a language that makes sense lets the whole world feel the comfort of belonging.”

Since opening the Florida office in August 2021 Hands Up hosts monthly “Deaf Night Out” events at a local restaurant.

“It is really one of the most meaningful things we do. We expected maybe 20 people to come out to our first one since it was during COVID; we ended up with 85! Since then, we average between 60 – 90 people. We are also



*(top to bottom) Most of the entire Ross family.
A few of the handsome Ross sons.*

working with a local movie theater to host “Open Caption Night” where every movie will be open captioned. This is the first time in my life where deaf people will have options to feel that they belong.”

A father of 8 and husband to wife Christine for over 30 years, Bill knows firsthand about deafness: both parents, an uncle and aunt, as well as his eldest son are deaf. “I’ve spent my entire career moving across the country trying to advocate for equal access to all. It’s not just my job; it’s my passion.”

If you need help with communication to better serve your clients or patients, contact Bill Ross at Hands Up Communications for expert help. ■



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Claudeth's WORLD

40 YEARS & STILL TRAVELIN' TOGETHER

Last month Cecil and I celebrated our 40th wedding anniversary by visiting Niagara Falls, Canada. While we weren't the blushing bride and groom, we enthusiastically joined the other honeymooners and tourists who trekked to Niagara Falls, often claimed as the 7th wonder of the world, to celebrate.



(above) The magnificence of Niagara Falls.

Located on the border between Canada and the United States, Niagara Falls consists of three falls which include the Horseshoe Falls, the American Falls, and the

Bride Veil Falls. Recognized as having the greatest water flow rate of any waterfall throughout the globe, Niagara Falls is the most popular tourist destination in Canada boasting 13 million visitors each year plus another 9 million tourists on the American side.

Among our many adventures during our stay, beyond the awe-inspiring Niagara Falls, was a stop at the Living Water Wayside Chapel, Canada's smallest church, claimed to be the smallest church in the world. There is only room for 4 people inside this tiny church, but it was big enough for Cecil and me to stop and give thanks for 40 years together.

Ever tasted Icewine?

Our tour at Niagara-on-the-Lake included a stop at Inniskillin Winery, famous for its Icewine, where grapes are left on the vine well into the frigid winter months allowing the grape's water content to freeze, thaw and dehydrate each grape to concentrate and intensify their flavors. Yum!

Moving southwest to Toronto, we reconnected with distant family members and caught the outstanding 100 mile 360-degree view from the 1,168-foot tall Skypod – CN Tower, the tallest building in the Western hemisphere.

Niagara Falls is the perfect spot for a honeymoon, even 40-years later. Happy Anniversary Cecil...Let's do this again in another 40 years. ■



(above) Cecil and me outside the tiny Living Water Wayside Chapel.



*(above) Traveling with this guy always puts a smile on my face!
(right) A dessert splurge for our anniversary.*

