

# The Gottesman Report

## A Newsletter For Your Benefit

January 2005

### Happy New Year ...

Our office extends our heartfelt good wishes to all our clients, colleagues and professional contacts for a new year filled with health, prosperity and safety. As always, we renew our pledge to provide state-of-the-art legal services to all our clients in a timely and professional manner. If at any time there is a concern from any client about his/her case, we would welcome an inquiry to our office. Since Ms. Gottesman now splits her time between her NY and NJ locations, please allow 24 hours for a response, except in emergency situations. For quickest response, you are urged to leave a number where you can be reached, even if you are an ongoing client.

### Security Measures at 11 Penn Plaza

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Please be advised that, due to the sensitive location of our new office, Vornado, the building owner, has enacted strict security procedures designed to ensure the safety of all. Our office has been required to send Vornado a list of all of our active NY clients (names only) so that they can be cleared for entry into the building and up to the 5<sup>th</sup> Floor. We have advised Vornado that this is sensitive information, and they have assured us of the confidentiality of the list. Therefore, if any of our NY clients have reason to drop off papers at our NY office, please tell security that you are on the list. Because we do not wish any of our clients to be inconvenienced, we discourage you from dropping by without a pre-arranged

appointment. Should anyone have difficulty with this arrangement, please call our office. We appreciate your cooperation.

### Union Plus Legal Services ...

Our office is pleased to announce that Ms. Gottesman has become a participating attorney on the panel of Union Plus Legal services. Over one-hundred (100) different Unions and Locals offer this plan to their members. We are pleased to be able to reach many more individuals and families to provide quality legal representation in disability matters. Of course, we remain a member of the AARP Legal Services Network as well.

### SSI Claims ...

Effective March 2005, SSA will begin withholding attorney fees on SSI claims. SSA has, of course, withheld attorney fees on disability claims for many years. While our office has always accepted SSI matters when we have been able to make financing arrangements with our clients, most private attorneys have insisted on being paid up-front before they handle an SSI matter. As always, our office encourages referrals from all sources regarding potential SSI cases, and pledges to ensure the same top quality representation for each individual matter.

### Increase in Federal Court filing fees ...

Effective February 2005, the civil filing fee

in all U.S. District courts will increase to \$250 as a result of legislation passed in December 2004. This is the first increase in such fees since 1996.

Our office reminds all clients and potential clients that in every Federal Court matter there is the possibility of having the filing fee waived by a petition to the Court, called an *in forma pauperis* petition. The guidelines for making and granting this petition are quite strict, with the Petitioner having to disclose financial information under oath. In general, the Petitioner must be on a fixed income and must disclose budgeting arrangements. The Petition then must be granted by a Judge.

Our office is always willing to help clients complete this petition if we believe that they may be eligible for a waiver of this fee.

### **SSA's Use of Experts at Disability Hearings ...**

Many claimants for SSDI and SSI benefits are dismayed when, after waiting endless months for a hearing, they discover that the hearing will be attended by either a Medical Expert or a Vocational Expert, or both, sometimes more than one. This is particularly disturbing for Claimants who are not represented by an attorney, and who do not know what to say or do when confronted with expert testimony at a hearing.

SSA's stated purpose in retaining so-called "experts" at disability hearings is to enable the ALJ to understand the medical evidence prior to assessing an individual's Residual Functional Capacity ("RFC"). The law states that an ALJ, whether he or she knows something about medicine or not, cannot analyze and assess medical information except in the most basic of cases. If there is any question as to the impact of a Claimant's various medical

conditions on his or her ability to work, the ALJ must use a medical and/or vocational expert.

As with other procedures, this requirement is subject to abuse and mishandling by ALJs. Some Judges use a medical expert for every impairment that the Claimant has, thus requiring the attorney (or, in some instances, the Claimant) to cross-examine multiple "experts" at the hearing. It is difficult enough for attorneys to do this, let alone Claimants who are not well.

A Claimant first learns that the Judge plans to use an expert when he or she receives the notice of hearing. If an expert is being used, the notice will state, on the 3<sup>rd</sup> or 4<sup>th</sup> page, that "an expert will testify at your hearing." It also must indicate whether it will be a medical expert, a vocational expert, or both. When an unrepresented Claimant is confronted by the use of a medical or vocational expert at the hearing, it is best for the Claimant to ask for an adjournment so that he or she can obtain an attorney. A Claimant who attends a hearing at which an expert will testify, without an attorney, is asking for trouble. In such cases, the hearing will almost always result in an unfavorable decision. Our office always prepares our clients for expert testimony prior to a hearing.

### **Finally ...**

If you are interested in seeing a particular issue addressed in this Newsletter, or if anyone you know wishes to be placed on the mailing list for future Newsletters, please let us know.