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Interpretation of Disability Insurance Policies - New England Life Insurance Co. v. Hurst

INTERPRETATION OF DISABILITY INSURANCE POLICIES

New England Life Insurance Co. v. Hurst[1]

Insurer-appellant issued two policies of life insurance to insured-appellee. Each policy contained a supplemental agreement providing for payment of a monthly income and a waiver of premiums should the insured become "totally and permanently" disabled. Insured became addicted to alcohol, and through constant excessive use acquired the disease known as acute or chronic alcoholism (also known as delerium tremens or D. T.'s). For approximately five months he was unable to attend to his own affairs and spent part of that time as an inmate of a sanitarium for treatment of his condition. Some seven months after the onset of his disabling disease, insured regained his health and began at once to work for a brokerage house, receiving from such occupation a fairly remunerative salary. Insured then claimed the monthly income which had accrued during his period of disability, and brought suit to recover the same after insurer disallowed the claim. The trial court found for the insured, and insurer appealed. *Held:* Affirmed.

The opinion of the Court of Appeals discussed each of three points raised in the case. The first and most important question concerned the meaning of the word "perma-

[1] 199 Atl. 822 (Md. 1938).

nent" as used in the policies. This question being one of first impression in Maryland, the Court was forced to decide between the two prevailing views held by other appellate courts. The first, urged by insurer, gives the word "permanent" an absolute meaning and refuses to give relief for a "permanent" disability when it appears that in actual fact the insured has recovered from his illness at the time of bringing suit.[2] Such a view considers a disability from which there has been a recovery as being but "temporary."

Other courts which have decided this question give the word "permanent" a relative meaning and say that the insured may recover from a disability and still be said to have been permanently disabled.[3] This view was adopted by the Maryland Court. In arriving at this conclusion the Court reiterated the now familiar proposition in Maryland that contracts of insurance are to be construed as any other contract and not necessarily against the insurer.[4] However, the corollary of this proposition occurs when there is an ambiguity in the contract or policy and any such doubt is resolved so as to favor the insured or the party who had no hand in drafting the contract.[5] On this basis the Court found an ambiguity in the insurer's policies and applied the rule just stated.

This ambiguity lay in certain provisions of the agreement which inferred that a "permanent" disability could be terminated by recovery. One clause provided that the payment of income and waiver of premiums should cease

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[2] See cases cited in opinion, particularly Ginell v. Prudential Ins. Co., 237 N. Y. 554, 143 N. E. 740 (1923); Job v. Equitable Life, 133 Cal. App. 791, 22 P. (2d) 607 (1933); Metropolitan Life v. Blue, 222 Ala. 665, 133 So. 707, 79 A. L. R. 852 (1931); Hawkins v. John Hancock Ins. Co., 205 Iowa 760, 218 N. W. 313 (1928); Lewis v. Metropolitan Life, 142 So. 262 (La. 1932); Wetherall v. Equitable Life, 273 Mich. 580, 263 N. W. 745 (1935); Grenon v. Metropolitan Life, 52 R. I. 453, 161 Atl. 229 (1932); Richards v. Metropolitan Life, 184 Wash. 595, 55 P. (2d) 1067 (1935). Numerically at least, these cases adopting what is known as the New York rule, seem to represent the weight of authority.

[3] See cases cited in opinion, particularly Penn Mutual Life v. Milton, 160 Ga. 168, 127 S. E. 140 (1925); Maze v. Equitable Life, 188 Minn. 139, 246 N. W. 737 (1933); Laupeheimer v. Massachusetts Mutual, 224 Mo. App. 1018, 24 S. W. (2d) 1058 (1930), adversely noted (1930) 16 Va. L. Rev. 721; Garden v. New England Mutual, 218 Iowa 1094, 254 N. W. 287 (1934); Janney v. Scranton Life, 315 Pa. 200, 173 Atl. 189 (1934). Known as the Georgia rule, these cases seem to constitute a minority view.

[4] Frontier Mortgage Corporation v. Heft, 146 Md. 1, 12, 125 Atl. 772 (1924); Brownstein v. New York Life Ins. Co., 158 Md. 51, 148 Atl. 273 (1930); American Casualty Co. v. Purcella, 163 Md. 434, 436, 163 Atl. 870 (1933).

[5] McEvoy v. Security Fire Insurance Co., 110 Md. 275, 73 Atl. 157 (1909); Owens v. Graetzel, 146 Md. 361, 370, 126 Atl. 224 (1924).

if the disability became *"no longer permanent or total."* Also periodic examinations by the insurer were stipulated for so as to ascertain the *"continuance"* of the permanent disability. Such provisions, the Court felt, negatived the idea that the word "permanent" should be taken in its absolute sense, and rather conveyed the impression that its relative meaning was meant.

Accordingly the Court concluded that permanent disability, as used in the policies, had no reference to the duration but rather to the quality and nature of the disability, to be judged by "relevant evidence reasonably to establish that it will not be of temporary duration."[6]

The second point treated involved a determination of whether the insured's condition could be said to be the result of a "self-inflicted" injury so as to bar recovery, within a clause of the policy providing against such a contingency. Admitting that insured drank voluntarily, the Court said that since the consequences of his acts were unknown to him the resultant disease was not self-inflicted.[7] However, while denying that the alcoholism was self-inflicted in the instant case, the Court still refused to say that such a "disease" could never be a "self-inflicted injury."

> "If the evidence on this subject were such that reasonable men might differ upon whether or not the chronic alcoholism of the plaintiff was self-inflicted, the question of intent would have been for the jury."

The question of what evidence would be sufficient to conform to this dictum, of course, remains open. *Quaere:* Would the insured's having once had and recovered from the disease, so as to be apprised of his susceptibility, constitute such evidence as would permit the question to go to the jury.[8] Such a conclusion might be inferred from the following language.

> "Since the plaintiff here does not appear to have had conscious knowledge of the danger that his drinking might develop from a harmless indulgence into the baneful disease of chronic alcoholism, the disease may not be said to have been self-inflicted."

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[6] For a brief note on the principal case, with respect to this point only, see (1938) 52 Harv. L. Rev. 163.

[7] A case similar to the principal one, both on the facts and the holding, is New York Life v. Riggins, 178 Okla. 36, 61 Pac. (2d) 543, noted and approved (1937) 22 Wash. U. L. Q. 288.

[8] See Globe Indemnity v. Reinhart, 152 Md. 439, 137 Atl. 43 (1927).

The third question treated related to whether insured should recover benefits dating from the beginning of the disability or from the date of his furnishing proofs thereof. The Court decided the question very cursorily, saying that the language of the policies, (chiefly the heading ". . . . *Income during total and permanent disability*"), indicated that recovery should date from the onset of the disability. Although a number of cases have adopted this view,[9] only one case is cited by the Court in support of its conclusion.[10] Again the Court left itself free to decide the other way if given a proper case by saying that the policies in question were "unlike those policies which diminish the period of recovery by the time elapsed for furnishing proofs."

It might here be stated that several courts have decided this question differently from the Maryland Court on policies of like wording.[11] The main basis of these decisions seems to be an effort to prevent fabricated claims being brought against insurers where the disability allegedly ante-dates the proofs thereof.

The opinion in the case, on the first and main point of the meaning of "permanently," is well reasoned and seems functionally sound. To the average person having such insurance, coverage to the extent here allowed would seem to be contemplated by the policy. Insurers wishing to exclude the protection afforded under this decision may do so by explicit provisions in their policies. For that matter, such provisions could well be inserted to cover all the difficulties this case involved.

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[9] Fidelity Mutual Life v. Gardner's Adm., 233 Ky. 88, 25 S. W. (2d) 69 (1930); Storwick v. Reliance Life, 151 Wash. 153, 275 P. 550 (1929); Old Colony Life v. Julian, 175 Ark. 359, 299 S. W. 366 (1927).

[10] National Life v. King, 102 Miss. 470, 59 So. 807 (1912).

[11] Orr v. Mutual Life, 57 Fed. (2d) 901, affirmed in 64 Fed. (2d) 561 (1933); New England Mutual v. Reynolds, 217 Ala. 307, 116 So. 151, 59 A. L. R. 1075 (1928); Courson v. New York Life, 295 Pa. 518, 145 Atl. 530 (1929); Mutchnick v. John Hancock, 157 Misc. (N. Y.) 598, 284 N. Y. S. 565 (1935).