

(For Publication)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

10	PROVIDENT LIFE & ACCIDENT INS.)	Case No. SA CV 99-725-GLT[kdv]
	CO.,)	
11	Plaintiff,)	SUPPLEMENTAL ORDER ON CROSS
)	MOTIONS FOR SUMMARY ADJUDICATION
12	vs.)	
)	
13	JOHN HENRY)	
)	
14	Defendant.)	
)	
15	_____		
)	
16	JOHN HENRY,)	
	Counterclaimant,)	
17	vs.)	
)	
18	PROVIDENT LIFE & ACCIDENT INS.)	
	CO.,)	
19)	
	Counterdefendant.)	
20)	

On apparent first impression in the Ninth Circuit, the Court holds a disability insurance policy may condition benefits on the insured's consent to appropriate medical care, which may include surgery.

I. BACKGROUND

In 1988 Provident Life & Accident Ins. Co. issued disability coverage to the insured doctor. Since 1997 Provident has paid policy disability benefits, with a reservation of rights, on the doctor's claim

1 that carpal tunnel syndrome makes him unable to practice his occupation
2 as a podiatric surgeon.

3 The coverage contains an "appropriate care" provision requiring
4 the insured to "receiv[e] care by a Physician which is appropriate for
5 the condition causing the disability."

6 In 1999 Provident sued the doctor for declaratory relief, money
7 had and received, and restitution of benefits. Provident asserts the
8 insured failed to fulfill the "appropriate care" policy provision. Among
9 other things, Provident contends the insured had a duty to undergo
10 carpal tunnel syndrome release surgery. Provident contends more
11 conservative treatment has failed, and the surgery in question is a
12 common, low-risk procedure with the potential to cure the insured's
13 disability and enable him to return to his practice. Provident argues
14 the policy's appropriate-care provision obligates the insured to submit
15 to carpal tunnel syndrome release surgery because it is appropriate
16 treatment under the circumstances.

17 The insured asserts Provident cannot require him to have surgery
18 as a condition of his benefits without specific policy language alerting
19 him he could be required to undergo surgery. He contends the
20 appropriate-care provision fails to do that.

21 II. DISCUSSION

22 The Court interprets the policy's appropriate-care provision to
23 create a duty to submit to appropriate medical treatment which, in some
24 circumstances, may include a surgical procedure.

25 A court interpreting an insurance contract under California law
26 must adhere strictly to the language of the contract. The court must
27 interpret any ambiguities in the insured's favor and construe language
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1 according to the expectations or understanding of a reasonable person.
2 The court cannot interpret the policy to add insured's duties not
3 evident in the language of the contract. See, e.g. Saltarelli v. Bob
4 Baker Group Medical Trust, 35 F.3d 382, 386-87 (9th Cir. 1994); Cal-Farm
5 Ins. Co. v. TAC Exterminators, 172 Cal. App. 3d 564, 572-73 (1985).

6 This Court's construction of the policy's appropriate care
7 provision conforms to these principles of insurance contract
8 interpretation. The policy does not state that the insured must obey
9 every doctor's recommendation or defer to Provident's judgment about the
10 appropriate care for his condition. Provident does not have that power,
11 and the Court does not interpret the policy to create it. Instead, the
12 Court interprets the policy's plain language to require "appropriate"
13 medical treatment. This would be determined objectively as the
14 treatment a patient would make a reasonable decision to accept after
15 duly considering the opinions of medical professionals. It is commonly
16 understood that, under some circumstances, the appropriate medical
17 treatment for some conditions may be surgical.

18 In support of the insured's proposed construction of the
19 appropriate care clause, he relies on Heller v. Equitable Life Assurance
20 Co. of the United States, 833 F.2d 1253 (7th Cir. 1987). In Heller,
21 the court refused to allow an insurer to condition a carpal tunnel
22 syndrome-disabled doctor's benefits on release surgery based on a policy
23 provision requiring the insured to be "under the regular care and
24 attendance of a physician." Id. at 1255. Heller found the physician's
25 care provision required no more than regular monitoring of the insured
26 by a physician to determine whether the disabling condition persisted.
27 Id. at 1257

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1 The Heller court cited a Delaware case, Casson v. Nationwide Ins.
2 Co., as concluding "the majority view does not even require the insured
3 to minimize his disability with medical treatment absent a specific
4 contractual requirement, much less require an insured to submit to
5 surgery." Id. at 1258 n.10, citing Casson, 455 A.2d 361 (Del. Super.
6 1982) collecting cases. The Casson court explained more fully that the
7 "apparent" majority view

8 is based upon the principle that an insured should not be required
9 to incur expense or risk injury or death where the insurer who
10 drafted the contract did not incorporate such a provision. The
11 imposition by law of such a requirement would, in effect, enlarge
12 the terms of the policy beyond those agreed to by the parties.

13 Casson, 455 A.2d at 366-67. Thus, Casson notes the majority of courts
14 will not imply an appropriate treatment requirement (surgical or
15 otherwise) into insurance contracts. Heller declined to interpret
16 "regular care and attendance [of the insured by] a physician" to mean
17 appropriate care for the insured's condition, or to imply an
18 appropriate-care requirement into a contract it interpreted as not
19 containing one.

20 Neither Heller nor Casson is inconsistent with this Court's
21 conclusion that the appropriate-care provision here creates an explicit
22 duty to seek and accept appropriate treatment. The policy provision is
23 broad and unambiguous, and does not enumerate the particular treatments
24 contemplated.

25 The insured argues appropriate-care provisions are intended only
26 to require monitoring of the insured's condition by a physician.
27 However, this appropriate-care provision does not merely state the
28 insured must be under a doctor's care. It provides the insured must
receive from a doctor the appropriate care for his condition. The only

1 reasonable interpretation of this clause is that it imposes a duty on
2 the insured to seek and accept appropriate care for his disabling
3 condition.^{1/}

4 The insured argues a policy interpretation allowing Provident to
5 condition benefits on his acceptance of appropriate treatment violates
6 California's public policy recognizing a strong right to control one's
7 own medical care. See, e.g., Bartling v. Superior Court, 163 Cal. App.
8 3d 186, 194 (1984)(describing "a clearly recognized legal right [in
9 California] to control one's own medical treatment," and noting "a
10 competent adult patient has the legal right to refuse medical
11 treatment.") However, requiring an insured to adhere to the terms of
12 his insurance contract by accepting appropriate care in order to receive
13 contractual disability payments does not deprive the insured of the
14 ultimate choice in his treatment. California's public policy is not
15 harmed by allowing people to make contracts which provide they will
16 receive appropriate care for disabling conditions.

17 There exists a triable issue whether, under the circumstances of
18 this insured's disability, carpal tunnel syndrome release surgery is
19 appropriate care. The parties present evidence on both sides. There
20 remains a genuine issue of material fact whether Defendant has fulfilled

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25 ^{1/} Because the Court finds the policy's appropriate-care
26 provision imposes a duty on the insured to accept appropriate
27 treatment, it does not address the issues whether such a duty can
28 be implied in an insurance policy from the insured's duty of good
faith and fair dealing or by analogy to social security, workers'
compensation, or tort law.

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3 his duty under the appropriate-care policy provision.^{2/}

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5 DATED: July _____, 2000.

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GARY L. TAYLOR
UNITED STATES DISTRICT JUDGE

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^{2/} In accordance with 28 U.S.C. § 1292(b), the Court is of the opinion that this order involves a controlling question of law as to which there is substantial ground for difference of opinion, and an immediate appeal from this order may materially advance the ultimate termination of the litigation.

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