

important governmental trial-related interests is a legal question.

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## Health Insurance and Mental Illness

### **Are Injuries From Attempted Suicide Covered by an Insurance Plan Despite Mental Illness Exclusion?**

In *Cary v. United of Omaha Life Insurance Company*, 108 P.3d 288 (Colo. 2005), the Supreme Court of Colorado, reversing the decision of the Colorado Court of Appeals, found that the health insurance plan was ambiguous, and resolved the ambiguity in favor of the insured.

#### *Facts of the Case*

Thomas A. Cary, the petitioner, was employed by the city of Arvada, Colorado. The city provided him with health insurance coverage for himself and his 14-year old daughter, Dena, under the Arvada Medical and Disability Care Plan (the Plan). This plan was a municipal health plan overseen by Arvada Medical and Disability Trust Fund (the Trust). The Trust retained Omaha Life Insurance Company (United) to administer the Plan. Mutual of Omaha of Colorado, Inc. (Antero) subcontracted with United to deal with some of United's claims investigations and appeals.

In June 1997, Dena Cary, in the midst of a major depressive episode, shot herself under the chin in an unsuccessful suicide attempt. She had been diagnosed with Bipolar Disorder, a biologically based mental illness, covered under the Plan. Her injuries required hospitalizations and multiple surgeries. When the insured applied for benefits to cover the cost of treatment, the insurance company (United), denied coverage, stating that self-inflicted injuries were not covered by the health insurance policy. The

insured appealed to the Trust, and his appeal was rejected. The insured then sued Arvada, the Trust, United, and Antero in the Denver District Court (trial court) to obtain coverage for Dena's injury and bring a bad-faith claim against the defendants. The trial court found the insurance policy to be ambiguous and resolved the ambiguity in favor of coverage. Following the decision of the trial court, Arvada and the Trust settled the claim.

United appealed, and the Colorado Court of Appeals reversed the trial court finding. The insured appealed to the Supreme Court of Colorado. The court found that the policy was ambiguous and ruled in favor of coverage.

#### *Rulings*

The state supreme court held that the Plan's wording could have more than one reasonable interpretation and hence was ambiguous. They resolved the ambiguity in favor of the insured, reversed the court of appeal's holding and remanded the case to the trial court.

#### *Reasoning*

The Court found that the Plan was susceptible to two reasonable interpretations. One interpretation is that "Injuries that occur as a result of illness, even if self inflicted, are defined out of the injury definition and covered by the Plan's promise to provide coverage for treatment of an illness." An alternate interpretation is, "Even if an injury is accidental or the result of an illness, it nonetheless would be excluded from coverage if it is self inflicted." Both interpretations are equally reasonable and this makes the Plan ambiguous. The court resolved the ambiguity in favor of the insured and providing coverage for injuries resulting from an attempted suicide caused by mental illness.

#### *Dissent*

The dissent argued that "the policy provisions should be read to avoid ambiguities, if possible declaring: The language should not be tortured to create ambiguities." The dissent wrote that determining the meaning of the policy by examining the entire instrument and not by viewing clauses or phrases in isolation would lead to the conclusion that the Plan excluded coverage for self-inflicted bodily injuries.

#### *Discussion*

This case highlights the use of the *contra proferentum* rule for interpreting contracts. It also touches on

the concern for parity in insurance coverage for physical and mental illness.

Contract disputes can arise as a result of differing opinion regarding the meaning of the wording of a contract. An insurance policy is a contract between the insured and the insurance company. The insurance policy is drafted by the insurance company and is expected to be clear, concise, and unambiguous. It should be clear to both the parties and should be enforced according to the terms of the Plan. When there are differing opinions over what the parties believe contract terms mean, as opposed to what is written, the contract must be interpreted to arrive at the terms' "true meaning." An insurance policy that contains wording that can be interpreted reasonably to have more than one meaning comes under the *contra proferentum* rule. An ambiguity occurs when the language of the contract is open to more than one interpretation. The *contra proferentum* rule holds that an ambiguity in a contract is construed against the author of the contract. If there is doubt about the meaning of a contract, the interpretation favorable to the consumer prevails.

Turning to the issue of mental health parity, it is interesting to consider how health insurance plans deal with the complications that result from physical illness and complications that may result from mental illness. For example, diabetes mellitus may result in renal failure, and most insurance would cover appropriate treatment (e.g., dialysis). In *Cary*, the court determined that the Plan covered the appropriate treatment of a self-inflicted injury resulting from a covered mental illness. However, health insurers often provide less coverage of mental illness compared with other medical conditions. Historically, health plans have imposed lower annual or lifetime dollar limits on mental health coverage, limited treatment of mental health illness by covering fewer hospitalizations and outpatient office visits, and increased cost sharing for mental health care by raising deductibles and copayments.

Several bills are pending in the House and the Senate concerning mental health parity. These bills are supported by advocates of the mentally ill and strongly opposed by employers and insurance organizations. The American Psychiatric Association's position on mental health parity states:

Individuals have the right to receive benefits for mental health and substance abuse treatment on the same basis as they do for any other illnesses, with the same provisions, co-payments, life-

time benefits, and catastrophic coverage in both insurance and self-funded and self-insured health plan.

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## Mental Illness and the Death Penalty

### ***Defendant's Mental Illness Does Not Place Him in the Same Protected Category, Preventing Execution, as a Mentally Retarded Defendant***

In *Matheney v. State*, 833 N.E.2d 454 (Ind. 2005), the Indiana Supreme Court found that the death penalty was not cruel and unusual punishment under the Indiana Constitution and that the U.S. Supreme Court had never included mentally ill murder defendants in the same protected category as mentally retarded murder defendants.

#### *Facts of the Case*

In March 1989, Alan Matheney, an inmate at an Indiana prison, was given an eight-hour pass to go to Indianapolis. Instead, Mr. Matheney went to St. Joseph's County where his ex-wife, Lisa Bianco, lived. He went to a friend's house and took an unloaded shotgun. He drove to the home of his ex-wife, parking a short distance from the house. Mr. Matheney broke into Ms. Bianco's house. When Ms. Bianco ran from the house, Mr. Matheney chased her. He caught up with her and beat her to death with the unloaded shotgun. Later that afternoon, Mr. Matheney turned himself into the police.

Mr. Matheney was seen by various mental health professionals. There was no expert testimony that Mr. Matheney was legally insane at the time he killed Ms. Bianco. One expert testified that Mr. Matheney had a paranoid personality disorder and another expert testified that he had a schizophreniform disorder. There was evidence that Mr. Matheney believed that his ex-wife, the prosecutor, and others were part