

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

of an organized systematic conspiracy designed to persecute him and keep him in prison. At his trial, there were witnesses who testified that Mr. Matheney displayed odd behavior, and one psychiatrist testified that Mr. Matheney was showing signs of decompensation in prison before his eight-hour pass.

The jury did not find that Mr. Matheney was insane at the time of the crime and did not find Mr. Matheney guilty but mentally ill. The jury also found that the aggravating circumstances—intentional murder during a burglary and murder committed by lying in wait—outweighed the mitigating circumstances, including Mr. Matheney’s mental disorders. The jury unanimously recommended the death sentence, and the court sentenced Mr. Matheney to death.

The conviction and sentences were affirmed at each stage of subsequent review. Mr. Matheney then filed a Tender of Successive Petition for Post-Conviction Relief. He had two specific claims. One, the death sentence for a person who is mentally ill when committing a murder violated article I, section 16, of the Indiana Constitution, which states, in part, “cruel and unusual punishment shall not be inflicted” and “all penalties shall be proportional to the nature of the offense.” Two, the death sentence for mentally ill persons violates the right to equal protection under the U.S. Constitution’s Fourteenth Amendment. He claimed that he should be exempt from the death penalty because he was mentally ill when he committed the murder. Citing *Atkins v. Virginia*, 536 U.S. 304 (2002), he asserted that there was no rational basis for persons with serious mental illness to be treated differently from mentally retarded persons.

Rulings

On August 29, 2005, the Indiana Supreme Court ruled that Mr. Matheney had not met his burden of establishing a reasonable possibility that he was entitled to postconviction relief. The court noted that Mr. Matheney had already received extensive judicial review of his death sentence and declined to authorize a filing of a successive petition for postconviction relief. By separate order, Mr. Matheney’s execution was set for September 28, 2005.

Reasoning

Although Mr. Matheney argued that the death sentence for a seriously mentally ill person violated the Indiana Constitution, the court described Indi-

ana’s death penalty scheme that takes into account a person’s mental health.

The court noted that on five separate occasions, Mr. Matheney’s mental illness was considered. At the guilt phase of the trial, the jury could have found Mr. Matheney not guilty by reason of insanity or guilty but mentally ill. At the penalty phase, the jury had the option of finding that mitigating circumstances, such as Mr. Matheney’s mental health, outweighed the aggravating circumstances. The sentencing court considered Mr. Matheney’s mental health. The court had previously considered evidence regarding his mental health on direct appeal. It also considered mental health evidence at the first postconviction appeal: “We noted the evidence that Matheney suffered from a mental disease, which caused him to view life through a distorted and deluded version of reality, but found little evidence tending to show that his mental status left him no choice but to kill Bianco. . .” (833 N.E.2d at 457).

The court rejected the claim that a death sentence for a person who is mentally ill is unconstitutional, *per se*. The Indiana Supreme Court noted that Mr. Matheney was intelligent and manipulative. The court viewed his preparation, the way he approached the house, and the killing of Ms. Bianco as an indication that Mr. Matheney was not extremely mentally or emotionally disturbed at the time of the murder. The court noted his mental disease.

In response to Mr. Matheney’s second claim, that the death penalty for mentally ill persons violates their Fourteenth Amendment right to equal protection, the court stated that it was unconvinced that Mr. Matheney had a reasonable possibility of prevailing under the *Atkins* rationale. In *Atkins*, the U.S. Supreme Court held that the execution of mentally retarded individuals was unconstitutional because of the Eighth Amendment prohibition of cruel and unusual punishment. The court noted that the limitations of mentally retarded individuals makes them less culpable and that even many of those states that permit capital punishment prohibit the execution of the mentally retarded. The U.S. Supreme Court has held execution as an unconstitutional punishment for juveniles (*Roper v. Simmons*, 543 U.S. 551(2005)), for the mentally retarded (*Atkins*), and for those who are not competent to be executed (*Ford v. Wainwright*, 477 U.S. 399 (1986)). The Indiana Supreme Court noted that the U.S. Supreme Court

has not held that mentally ill persons are not subject to the death penalty.

Discussion

In 1972 the U.S. Supreme Court, in *Furman v. Georgia*, 408 U.S. 238 (1972), ruled that the then-existing death penalty laws led to the arbitrary and inconsistent imposition of the death penalty, violating the Eighth and Fourteenth Amendments, and that the death penalty was cruel and unusual punishment. This created a brief hiatus during which the death penalty could not be imposed. The hiatus ended in 1976 when, in *Gregg v. Georgia*, 428 U.S. 153 (1976), the U.S. Supreme Court held that the death penalty did not violate the Eighth and Fourteenth Amendments under all circumstances and upheld the constitutionality of Georgia's death penalty. The Georgia statute assured several protections to prevent the arbitrary and capricious application of the death penalty.

Since *Gregg*, the U.S. Supreme Court has provided some constitutional protection for those who are mentally impaired. In *Ford v. Wainwright*, 477 U.S. 399 (1986), the U.S. Supreme Court ruled on the mentally impaired person's competence to be executed. Alvin Ford was convicted in 1974 of the murder of a police officer and sentenced to death. While on death row, Ford developed a paranoid psychotic disorder.

The Supreme Court ruled that the Eighth Amendment prohibits the execution of an insane prisoner and that Ford had the right to a judicial hearing to determine his competence to be executed.

The U.S. Supreme Court ruled in *Penry v. Lynaugh*, 492 U.S. 302 (1989), that mental retardation did not automatically preclude a death sentence, though it could be a mitigating factor. In *Atkins v. Virginia*, 536 U.S. 304 (2002), "applying the Eight Amendment in the light of our 'evolving standards of decency,'" the U.S. Supreme Court ruled that the execution of mentally retarded individuals is "cruel and unusual punishment" prohibited by the Eighth Amendment. The Court found no reason to disagree with the legislatures that have debated the issue and have overwhelmingly prohibited the execution of the mentally retarded. The Court was not persuaded that execution of the mentally retarded would further the deterrent or retributive purpose of the death penalty.

In *Roper v. Simmons*, 543 U.S. 551 (2005), the U.S. Supreme Court ruled that the Eighth and Four-

teenth Amendments forbid imposition of the death penalty on criminals who committed their offenses when they were under 18 years of age. The Court identified a national and international consensus rejecting the juvenile death penalty and reasoned that juveniles' susceptibility to immature and irresponsible conduct results in diminished culpability that requires a sentence less severe than death.

The death penalty continues to remain an area under intense scrutiny. At this time, unlike the mentally retarded offender and the juvenile offender, the mentally ill offender is not categorically excluded from being sentenced to death. One wonders what the outcome will be when the U.S. Supreme Court confronts this issue in the future.

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ADA and Medical Examinations

Use of the MMPI in Employee Screening for Promotions Violates the ADA

In *Karraker v. Rent-A-Center, Inc.*, 411 F.3d 831 (7th Cir. 2005), the United States Court of Appeals for the Seventh Circuit found that the use of the MMPI, as a part of a series of tests relied on when deciding the promotion of employees, violates the Americans with Disabilities Act of 1990.

Facts of the Case

Rent-A-Center, a chain of stores that rents furniture, appliances and other household items on a rent-to-own basis, required employees to take the APT Management Trainee-Executive Profile to be promoted. The APT profile consists of nine separate tests that evaluate math and language skills as well as personality traits and interests. Included in the test are 502 questions from the MMPI.

The three Karraker brothers, employees of Rent-A-Center, took the test and received poor scores.