

## **CASE 9/2011 FINAL DETERMINATION**

*Pre-existing exclusion clause – did clause cover condition for which insured was hospitalised*

### **Background**

#### **First Policy**

1. The complainant's first policy commenced on 01/02/2003, and provided a daily cash benefit of R400-00. On the written application for this policy, the complainant disclosed that he suffered from hypertension.
2. On receipt of the Application & Payment Authority, a letter stating *"the full terms and conditions of your Plan now apply"* was sent to the complainant. The policy schedule for this policy stated that the benefit would be paid *"provided the sickness or injury is independent of any pre-existing physical or medical condition."*
3. After dispatch of the letter, the Application and Payment Authority form was assessed by the insurer's underwriters, and a letter of acceptance was sent to the complainant.
4. The policy provisions included an exclusion clause which stated: *"The company shall not be liable in respect of bodily injury or sickness, directly or indirectly caused by, arising from, contributed to by, aggravated by, connected with or resulting from: pre-existing medical conditions as defined herein"*.
5. A pre-existing medical condition was defined as: *"Sickness contracted and commencing or bodily injury sustained by an insured person for which he or she has or should reasonably have received relevant medical treatment or advice by a Physician, prior to such insured person's initial commencement date of insurance under this policy, including, but not limited to, any physical or mental defect, disease, infirmity or condition which existed prior to the initial commencement date of this policy."*
6. As the reason for the complainant's hospitalization (coronary bypass surgery) was directly or indirectly caused by pre-existing conditions (hypertension, high cholesterol and diabetes), the office upheld the insurer's decision to decline the claim under this policy.

#### **Second policy**

7. The complainant's second policy was applied for telephonically, and commenced on 01/07/2009. It provided a daily cash benefit of R1000-00.
8. During the course of the telephone sale of this policy, the sales agent asked the complainant *"Is u gesondheid goed, geen hart probleme, diabetes, hoë bloeddruk, lei aan enige reeds bestaande mediese toestande of is u altyd (?) perdfris?"* the complainant replied *"Ek het 'n bietjie suiker ....."*. He also disclosed he was on Glucophage. The sales agent's comment to this was *"Nee, dis in die haak"*

9. Later on during the conversation the sales agent stated: *“Voorafgaande kondisies word gedek nadat u 24 premies betaal het. Vir enige ander kondisie is u gedek na 6 maande.”*
10. He also stated: *“Ons stuur ook vir u ‘n gesondheids verklaring in die pos wat u moet teken of u in goeie gesondheid is”*. This form was never returned by the complainant.
11. In declining this claim Clientèle Life relies on the following exclusion clause in the policy: *“Hospitalisation as a consequence of pre-existing conditions as defined herein during the first 2 years from date of commencement of the plan will not be covered.”*
12. A pre-existing condition was defined as: *“Sickness or bodily injury sustained or contracted by an insured person for which he or she has or should reasonably have received relevant medical treatment or advice by a Physician, prior to such insured person’s initial commencement date or reinstatement date of insurance under this policy, whichever is more recent, including but not limited to any physical or mental defect, disease, infirmity or condition which existed prior to the initial commencement or reinstatement date of this policy whichever is more recent. Pre-existing medical conditions will however be covered in full after the first 24 (twenty-four) premiums have been paid from the date of commencement or reinstatement date, excluding the accidental disability benefit.”*

### **Provisional determination**

Our office made a provisional determination against Clientèle Life on the following basis:

13. The complainant was not hospitalised for any of his pre-existing conditions (hypertension, raised cholesterol and diabetes). He was hospitalised due to chest pains, and was subsequently diagnosed with ischaemic heart disease, and underwent bypass surgery. There is no evidence that the complainant suffered from ischaemic heart disease prior to the commencement date of this policy.
14. The exclusion clause and definition on this policy do not allow a claim to be declined on the basis that the reason for hospitalisation is directly or indirectly traceable to a pre-existing condition.
15. The provisional determination was therefore that the claim under this policy should be paid.
16. The insurer disputed the provisional determination. Clientèle Life argued that it was entitled to rely on the exclusion clause as it believed hospitalisation was a direct consequence of a pre-existing condition.

### **Final Determination**

17. In interpreting the exclusion clause at issue, no reliance was placed on the wording of the exclusion clause in the first policy, as suggested by Clientèle Life.

18. The complainant was hospitalised due to his chest pains, then found to be the result of ischaemic heart disease. The hospitalisation was therefore as a consequence of ischaemic heart disease not of a condition(s) that had existed at the commencement of the policy.
19. The insurer's proposed interpretation seeks to introduce a further requirement. On its interpretation the clause would allow the insurer to decline the claim if the insured is hospitalised in consequence of a condition which in turn is a consequence of a condition that existed at the commencement of the policy. The clause as worded does not say this.
20. A clause which limits or excludes an insurer's obligation to perform has to be interpreted strictly. There is ample case law to support this principle. As the drafter of the policy an insurer has the duty to ensure that any limitation or exclusions of its risk is expressly spelt out.
21. In any event, at best for Clientèle Life the clause is unclear. In such a case the *contra proferentem* rule applies, which simply stated means that the interpretation that must be applied is against the party who was responsible for the drafting of the document. In this instance that would result in Clientèle Life not being able to rely on the pre-existing exclusion clause.
22. The provisional determination that was made on 16/03/2011, is accordingly made final, and Clientèle Life is instructed to comply with this determination within 30 days hereof, by paying the claim.