

## **CASE 19 - PRE-EXISTING CONDITIONS EXCLUSION CLAUSE**

*Pre-existing conditions exclusion clause – claim declined on the grounds that the life assured's condition falls within the pre-existing conditions exclusion clause.*

### **Background**

Ms B who is the policyholder lodged a claim for temporary disability benefits with Liberty (“the insurer”) after suffering from depression.

Ms B was the victim of a hijacking incident in July 2011 and saw a psychologist for one session of trauma counseling on 25.07.2011.

The insurer repudiated the claim on the grounds that Ms B received treatment for depression prior to the inception date of the policy, 30.09.2011.

The insurer relied on the following exclusion clause in the contract:

#### *“4.2 Important: Exclusions for Pre-existing conditions*

*The insurer will not pay any claim in the first 24 months after the start, or reinstatement date of cover because of any pre-existing condition you had when cover started.*

*Pre-existing conditions are:*

- *Any form of:*
  - *heart disease or heart attack, high blood pressure high cholesterol*
  - *cancer*
  - *stroke*
  - *kidney disease*
  - *depression, epilepsy or fit*
  - *pneumonia, asthma, TB (tuberculosis) or lung disease*
  - *disability,*
  - *diabetes;*
  
- *The usage of any kind of chronic, long-term medication continuously, for at least six months*
- *Having had any special test, like a scan, or X-ray that was report as abnormal and required medical treatment of any form of chronic medication (continuous for at least 6 months);;*
- *Having undergone any special investigations like a scan or X-ray that was reported as abnormal and required medical treatment;*
- *Any treatment during the past 24 months for any form of back-illness, hip, knee or shoulder problem.”*

We wrote to the insurer on 14.04.2014 and raised the following:

“There is no indication that Ms B’s condition complies with the following:

- *'The usage of any kind of chronic, long-term medication continuously, for at least six months*
- *Having had any special test, like a scan, or X-ray that was report as abnormal and required medical treatment of any form of chronic medication (continuous for at least 6 months);;*
- *Having undergone any special investigations like a scan or X-ray that was reported as abnormal and required medical treatment;*
- *Any treatment during the past 24 months for any form of back-illness, hip, knee or shoulder problem.'*

If the above assumption is correct, then her condition would have to fall within the following:

*'Pre-existing conditions are:*

- *Any form of:*
- heart disease or heart attack, high blood pressure high cholesterol*
- cancer*
- stroke*
- kidney disease*
- depression, epilepsy or fit*
- pneumonia, asthma, TB (tuberculosis) or lung disease*
- disability,*
- diabetes;'*

I assume that you are relying on the section regarding *'depression, epilepsy or fit'*, for your decision. If this is so, please direct me to the relevant section/s in the medical documentation submitted in support of the claim that would indicate that Ms B was suffering from depression prior to the inception of the contract. Dr Y's report of 10.09.2013 only indicates one session for trauma counseling on 25.07.2011."

The insurer responded by reiterating their stance that the condition fell within the pre-existing conditions exclusion clause.

### **Provisional Determination**

A provisional determination was made against the insurer on 29.07.2014.

The provisional determination referred to the following:

- In terms of the wording of the exclusion clause, the claim will be excluded if it arises from any condition that existed prior to the inception date of the policy. The relevant link is between the claim and any pre-existing condition (as defined), not between the claim and the *incident* giving rise to the claim.
- Even though the complainant's depression may be linked to an *incident* that occurred prior to inception, in the absence of any evidence to show a

link between the complainant's depression and any '*pre-existing condition*', the exclusion clause does not apply.

In response to the provisional determination the insurer raised the following:

"The customer was treated by Dr Y (psychologist) for five sessions after the hijacking...

The customer suffered from fear and anxiety after the hijacking during the pre-existing period which led to depression."

The complainant's attorneys explained that Ms B "received a quotation for 5 sessions but did not attend any further sessions with that specific psychologist as she did not see the need thereto." She only attended one session.

We conveyed this information to the insurer, and their response was that ""The claim on account number X was repudiated as the policy was only taken after the incident date. Hence no cover existed at date of event."

### **Final Determination**

"This matter was discussed at an adjudicators' meeting, presided over by Judge RP McLaren, on 14.01.2015.

The unanimous view of the meeting was that no new argument or information was provided by you in response to our provisional ruling.

Our final determination is that:

- You failed to discharge the onus to prove the applicability of the pre-existing conditions exclusion clause to the complainant's claim.
- Even though the complainant's depression may be linked to an *incident* that occurred prior to inception, in the absence of any evidence to show a link between the complainant's depression and any '*pre-existing condition*', the exclusion clause does not apply in this instance.
- The claim under the temporary disability benefit is to be assessed."

### **Result**

The insurer paid the claim.