

Exclusion clause – causation.

BACKGROUND

The deceased, a 30-year old male, was granted cover under a policy the inception date of which was 14 July 2008. At the same time the policy was ceded to a financial institution to cover his credit agreement with them. He died on 26 February 2009 as a result of natural causes.

A claim was submitted to the insurer, who established that the deceased had died of severe gastro-duodenal bleeding due to peptic ulcer disease, and that he had been HIV/AIDS infected, in fact in an already severely immuno-compromised state at inception of the policy.

In declining the claim the insurer relied on an exclusion clause which read as follows:

“The insurer shall not be obliged to make payment in respect to any condition or event arising directly or indirectly from or traceable to:

- ...
d) any condition, physical defect, illness, bodily injury or disability which the insured was aware of and received medical advice or treatment for in the twelve months prior to becoming a life insured under this policy, or from 12 months of the reinstatement of any policy.”*

The insurer contended that diseases of the gastro-intestinal tract are common among those who are HIV/AIDS infected, and that their reliance on the exclusion clause was therefore justified.

DISCUSSION

We referred the case to a medical practitioner for an opinion and quote as follows from his report:

“The following facts seem undisputed:

- The deceased was HIV positive prior to inception date of the policy.
- The deceased was aware of this diagnosis.
- With a CD-count of 134 one week prior to inception date, it is fair to conclude that the deceased was in stage IV clinical AIDS.
- The cause of death was haematemesis (severe gastro-deodenal bleeding) due to peptic ulcer disease.

The problematic part is the causal link between Aids and peptic ulcer disease. The typical gastro-intestinal problems suffered by Aids patients, are esophageal- and colonic infections, with chronic diarrhoea. I am not aware that Aids patients have an increased incidence or more severe forms of peptic ulcer disease.

In order to come to an evidence-based decision, I have done a comprehensive literature research on this topic.

I have attached copies of the two most relevant studies for your information, the most important parts of which I have underlined. Both studies concur that there is no increased prevalence of peptic ulcer disease in Aids

patients. In fact, *Helicobacter pylori* ulcers, which are by far the commonest cause of peptic ulcers, have a lower prevalence in Aids patients than in healthy patients.

I therefore have to conclude that one cannot prove a direct or indirect causal effect between the pre-existing Aids, and the cause of death, i.e. peptic ulcer disease with haematemesis.

We also do not have evidence of other significant co-morbidities like opportunistic infections which may have been present at the time of death.

Therefore, with the evidence as presented, I would advise that the insurer reconsiders its decision to repudiate the claim. ”

CONCLUSION

When we provided a copy of the report to the insurer, it settled the claim together with interest.

HE
March 2011