INSURANCE - DISABILITY BENEFITS - INSURED'S DUTY TO REMOVE DISABILITY

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Insurance — Disability Benefits — Insured's Duty to Remove Disability — Plaintiff insured had suffered from diabetes since 1932. Defendant insurance company paid disability benefits till 1937 and thereafter refused to make further payments on the ground that plaintiff had refused to avail himself of the insulin and dietary treatment advised by his physician. Such treatment is neither dangerous, painful, nor detrimental to the patient. From an order sustaining plaintiff's demurrer to defendant's answer, defendant appealed. Held, plaintiff's demurrer sustained. The policies as written define the rights and duties of the contracting parties and should be construed as written. The court will not read into policies by operation of law a condition precedent to liability when the insurer who drafted the contract did not expressly incorporate such a provision. The doctrine of "avoidable consequences" does not apply in disability cases. Miller v. Mutual Life Ins. Co. of N. Y., 206 Minn. 221, 289 N. W. 399 (1939).

There is a split of authority on the question whether submission to medical treatment is a condition precedent to recovery of total disability benefits, with the majority of the courts holding that submission to medical treatment is a necessary condition precedent. The rationale by which the courts arrive at this result varies. Some courts adopt, by analogy, the doctrine of "avoidable consequences," which is extensively employed in the field of contracts, torts, and

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1 The essence of the doctrine of avoidable consequences is that one cannot recover for such consequences of the wrong or negligence of another as might, with ordinary prudence, have been avoided. McCormick, Damages, § 34 (1935).
2 Wavra v. Karr, 142 Minn. 248, 172 N. W. 118 (1919); McCormick Damages, § 34 (1935).
3 See 14 Minn. L. Rev. 294 (1930), which reviews the cases in which the refusal
workmen's compensation acts. Estoppel has also been suggested as a basis for denying insured recovery of disability benefits when he refuses to submit to medical treatment. Another theory used to substantiate the majority rule proceeds somewhat in this manner: the policy provides for benefits upon total and permanent disability; the word "permanent" is synonymous with the word "incurable," and since the insured can cure his disability through medical attention he is not permanently disabled. A few courts have even suggested "proximate cause" as a basis for decision, i.e., failure to submit to treatment is the proximate cause of the disability. The operation of the majority rule is, however, limited in its scope by considerations regarding the nature of the medical treatment to which the insured would have to submit in order to attempt to cure his disabilities. A rough line is usually drawn between treatment of a serious and hazardous nature and treatment which is simple and certain, with the courts holding that in the former case submission to treatment is not a condition precedent to recovery of disability benefits. Considerations which may influence the courts in deciding where to draw this line are the cost and convenience of treatment, the certainty of the cure, and the dangers of the treatment. One court has said that hope of a partial cure is sufficient to require of a plaintiff in a personal injury action to submit to prescribed medical treatment may be considered by the jury in mitigation of his damages.

Decisions under the workmen's compensation acts have generally held that an injured employee cannot claim further compensation if he refuses to submit to a relatively simple operation that is fairly certain to be successful. Gentry v. Williams Bros., 135 Kan. 408, 10 P. (2d) 856 (1932) (hernia); Lesh v. Illinois Steel Co., 163 Wis. 124, 157 N. W. 539 (1916) (removal of nodule on leg); Kobas v. American Boston Mining Co., 275 Mich. 616, 267 N. W. 751 (1936) (amputation of finger tips).


These four considerations are found clearly set forth in the tort cases but not so clearly in the insurance cases. Some courts simply rely on the "reasonably prudent man concept," i.e., insured must submit to treatment to which a reasonably prudent man would yield. Aetna Life Ins. Co. v. Sanders, 192 Ark. 590, 93 S. W. (2d) 141 (1936); Culver v. Prudential Ins. Co., 36 Del. 582, 179 A. 400 (1935).
submission to treatment. Others have held that cost and danger are irrelevant. Under the minority view the courts reject the doctrine of avoidance of consequences and by a strict contractual approach deny that insured must submit to medical treatment as a condition precedent to recovery of disability benefits. The typical approach in these decisions is that omission of a provision in the insurance contract requiring submission to medical treatment means no treatment is necessary. Or the court may say that such a condition precedent was not within the contemplation of the parties.

Roy L. Steinheimer

12 The principal case is also noted in 88 UNIV. PA. L. REV. 749 (1940).