RITCHIE v. NORWICH UNION FIRE INSURANCE SOCIETY (GIBRALTAR) LIMITED

SUPREME COURT (Alcantara, A.J.): October 4th, 1993

Insurance—personal accident insurance—waiver of benefits—signature of receipt for insurance benefits, disclaiming further entitlement, not valid waiver of rights under policy if intended to operate only in respect of period to date—standard form presented for insured's signature construed against insurer if wording inconsistent with clear object of transaction

Insurance—personal accident insurance—injury at work—"temporary disablement totally preventing insured from attending in any way to normal occupation" to be construed in favour of insured—includes injury effectively preventing return to work in normal job due to inability to perform particular tasks—need not preclude alternative work in other capacity

Insurance—personal accident insurance—injury at work—onus on insured to produce within reasonable time medical evidence reasonably required by insurer in support of claim

The plaintiff brought an action to recover moneys due under an insurance policy.

The plaintiff was employed as a harbour pilot. As a member of the Gibraltar Pilots Association, he was covered by an insurance policy in respect of accidents at work. The policy stated that compensation would be payable in the event of "temporary disablement which totally prevents the insured person from attending in any way to his/her normal occupation" for a maximum of two years, and that payment of compensation to an insured person would be evidence of the discharge of the insurer's liability in respect of such an event.

The plaintiff injured his shoulder in the course of his work and was absent from work for a period of several months. When he felt ready to return to work, he notified the insurer that he would be doing so and collected from it compensation owing to him under the policy for the preceding weeks. He signed a receipt stating that he had received "the sum of £2,000 in full and final payment for temporary disablement … for a period of eight weeks … at £250 per week as per policy conditions…"

The plaintiff then recommenced work as a pilot but found that his shoulder was not sufficiently healed to enable him to climb ladders, an essential part of the job. He notified the insurer of his continuing

disability and was told to supply further medical evidence. After some delay, he supplied a medical report stating that there was some residual disability in the shoulder, such that it could not be relied upon in hazardous conditions, but that it should heal completely within a year. The report failed, however, to state categorically that the plaintiff was unfit for work.

In the meantime, the plaintiff began work at a reduced rate of pay as a ship's master, a job which did not require him to climb ladders. The insurer informed him that it could not pay any further compensation, as he had returned to work, albeit in a limited capacity. When he persisted with his claim, the insurer told him that he would be entitled to benefit covering the period from payment of the £2,000 until the commencement of his new job, if he had not worked during that time. He was asked to submit a letter from his doctor. Over a year later, he submitted a report to the insurer from his osteopath to the effect that his shoulder was unlikely to improve sufficiently to enable him to resume his job as a harbour pilot. The insurer refused to make any further payment and the plaintiff commenced proceedings to recover compensation for his continuing disability.

He submitted that (a) he had been medically unfit to return to work as a pilot when he did and the medical report requested by the insurer confirmed this; (b) his work as a ship's master had no bearing on whether he was fit to work as a pilot, which was the risk covered by the policy; and (c) he had signed a receipt discharging the insurer from liability for compensation under the policy for a period of eight weeks only, and was entitled to receive further benefits in respect of his continuing disability up to the maximum specified.

The defendant submitted in reply that (a) the medical report commissioned shortly after the plaintiff's initial return to work did not state that he was unfit to work as a pilot, and the plaintiff had failed to respond to subsequent requests for medical evidence in support of his claim; (b) the plaintiff's return to work as a ship's master had shown that he was no longer unfit to work; and (c) since before his initial return to work he had signed a receipt in full and final payment of his claim for temporary total disablement under the policy, he could not claim further benefits.

Held, giving judgment for the plaintiff:

(1) The receipt signed by the plaintiff did not discharge the insurer from liability under the policy, since the wording of the receipt and the insurer's susequent conduct indicated that both parties intended it to be a discharge in respect only of the preceding eight weeks' benefits. The insurer had first sought to assert otherwise two years later. Had the receipt been worded less precisely, the court might nevertheless have given effect to the clear object of the transaction, on the basis that where one party presents another with a printed form of words for the other's signature, the court may limit or reject that form if it is inconsistent with the

underlying intention. This was not a case in which the plaintiff had voluntarily agreed to accept a lesser sum in discharge of all claims against the insurer (page 163, line 32 – page 164, line 24).

(2) Nor was the plaintiff disentitled from receiving further benefits by reason of commencing work as a ship's master, since "temporary total disablement" under the policy was defined as disablement which totally prevented an insured person from attending in any way to his normal occupation. On the proper construction of the policy, the plaintiff was effectively unable to perform his normal occupation as a pilot because of his inability to climb ladders, even though his injury did not prevent him from performing all aspects of the job and allowed him to work elsewhere (page 164, line 25 – page 165, line 3).

(3) However, the onus had been on the plaintiff to produce such medical evidence to support his claim as was reasonably required by the insurer. The court was satisfied that the plaintiff had been unfit to return to work as a pilot for a further 10 months after signing the receipt for benefits received and was entitled to benefits accordingly. The initial medical report, the plaintiff's unsuccessful attempt to resume work, and the insurer's refusal of his claim because of his work as a ship's master rather than on medical grounds supported this conclusion. But the court would disregard the evidence of continuing disability from the osteopath, submitted over a year after the further request for a doctor's letter, since the plaintiff had been obliged to provide such evidence within a reasonable time (page 165, line 4 – page 166, line 12).

Cases cited:
(1) *Arrale* v. *Costain Civil Engr. Ltd.*, [1976] 1 Lloyd's Rep. 98; (1975), 119 Sol. Jo. 527.
(2) *Neuchatel Asphalte Co. Ltd.* v. *Barnett*, [1957] 1 W.L.R. 356; [1957] 1 All E.R. 362, followed.
(3) *Welch* v. *Royal Exchange Assur.*, [1939] 1 K.B. 294; [1938] 4 All E.R. 289, followed.

C.A. Gomez for the plaintiff;
L.E.C. Baglietto for the defendant.

ALCANTARA, A.J.: At the relevant date the plaintiff was a ship's pilot of many years' experience. He was a member of the Gibraltar Pilots Association. In December 1980 the Association took out a group personal accident policy to cover all pilots against accident in the course of their work. The insurance company selected was the Norwich Union Fire Insurance Society. In the case of temporary total disablement a pilot was entitled to receive £250 per week. Proviso 3 of the personal accident policy reads: "Compensation payable under Benefit 5 shall be payable whilst such disablement continues but shall not be payable for more than

104 weeks in all." And Benefit 5 covers "temporary disablement which totally prevents the insured person from attending in any way to his/her normal occupation."

On May 31st, 1986 the plaintiff suffered an accident in the course of his work as a pilot. When jumping from a ship on to the pilot's cutter he fell and injured his left shoulder. There is no dispute that the accident took place and that the plaintiff injured his shoulder. Nor is it disputed that for a period of time he was incapacitated to perform his normal duties as a ship's pilot. The insurance company started to pay him compensation at the rate of £250 per week. The plaintiff did not collect the money weekly.

On February 2nd, 1987 the plaintiff thought he was now better and could return to work. (Maybe he wanted to get away from home during the day.) He notified the insurance company that he was returning to work and collected what was owing to him up to then. On that same day he was asked to sign the following receipt:

> "Received from the Norwich Union Fire Insurance Society (Gibraltar) Ltd., the sum of £2,000 in full and final payment for temporary total disablement commencing December 8th, 1986 for a period of 8 weeks to February 1st, 1987 at £250 per week as per policy conditions under Policy No.…"

The plaintiff, because of the roster arrangement of pilots, did not actually start work until February 10th, 1987. On that day he managed to do a number of ships but with difficulty because of his left arm, although the weather was calm. He experienced difficulty in climbing. On the following day he nearly had an accident again. When jumping from a ship on to a cutter he would have fallen had not a Moroccan sailor helped him. He saw the dangers and decided that he could not carry on or resume as yet as a pilot. He went to the insurance company to notify them of his continued disability as a pilot, expecting them to continue with the compensation.

The insurance company said that they would look into the matter, but that he would have to provide further medical evidence for the claim to be re-opened as he had signed a final discharge. For reasons which are not clear to me, the surgeon who had attended him and issued all previous certificates, Surgeon Commander Chakraverty, was apparently not prepared to make a further report or issue a certificate. The insurance company, in order to help, wrote to the surgeon on June 2nd, 1987 in the following terms:

> "Before we can consider Mr. Ritchie's case for further payment of benefit under his personal accident policy we require a medical report on his present state of health as regards the fracture. We would be grateful for your expert advice on whether Mr. Ritchie is medically unfit to carry out his job as pilot and, if so, whether he is able to do any other type of work."

The medical report of Surgeon Commander Chakraverty is dated July 13th, 1987. The relevant part reads:

> "He has not been able to resume his position as a pilot because of lack of confidence with his shoulder, which is functioning pretty well but cannot be trusted in hazardous conditions.
>
> Recovery from an injury of this nature is often protracted and although, for all practical purposes, it appears to be functioning well it is not surprising that he still has some medical disability (about 10%).
>
> Further improvement with time is expected and full recovery should take place within a year or so."

One thing is clear: This report did not answer in unambiguous terms the question which the insurance company had posed in its letter dated June 2nd, 1987, namely, whether Mr. Ritchie was medically fit to carry out his job as a pilot. On a fair reading of the report, I think that the surgeon was giving a negative answer but leaving it to the insurance company to decide as a matter of fact. The evidence before me is that the work of a pilot is a hazardous one; having to climb and descend from ships by means of a Jacob's- or rope-ladder in all sorts of weather.

At the time, the full contents of the report were not disclosed to the plaintiff. Instead, the insurance company sent him the following letter dated September 21st, 1987:

> "We refer to your request for further benefit under the Gibraltar Pilots Association group personal accident policy, which has been receiving our attention.
>
> After much consideration, it has been agreed that the policy cannot be invoked because you have returned to work, albeit in a limited capacity.
>
> We regret that we are therefore unable to make any more payments and we shall close our file on this matter."

As a matter of semantics, the use of the phrase "returned to work" is not strictly correct. The correct phrase should have been "you have started to work." Mr. Ritchie never returned to work as a pilot after February 11th, 1987. Mr. Ritchie did start to work as a ship's master on June 22nd, 1987 in a supply vessel, earning half of what he used to earn as a pilot, but not having to climb or descend ladders. It would appear from the above letter that the insurance company was not rejecting the plaintiff's claim for further benefit now on medical grounds, but on the fact that he had started to work in another capacity.

The plaintiff still persisted with his claim by attending the insurance company. On December 4th, 1987 Mr. Ritchie received the following memo from the insurance company: "Herewith the medical report as requested. If you did not work from February to July, you are entitled to benefit. Please bring a letter from the doctor."

It would appear from the above that the insurance company was relying on two grounds to refuse further payments: (a) lack of evidence as

to medical disability, although it would appear that the insurance company was prepared to accept disability up to July 1987, the date of the surgeon's report; and (b) the fact that the plaintiff was working in another job. A further ground was put forward by the insurance company when their loss adjusters came into the picture. In a letter dated June 8th, 1989 to the plaintiff's solicitor, the loss adjusters stated:

> "We would further draw your attention to Condition 5 [of the policy] which states:
>
> 'In the event of compensation being paid by the company in respect of the events stated in the schedule of benefits, payment made to the insured person or the insured person's legal personal representative as appropriate shall be evidence of the completion of the company's liability in respect of the event for which compensation is paid.'
>
> In this latter regard, we attach a copy of the receipt signed by Mr. Ritchie on December 9th, 1986 [*sic*], discharging the Norwich Union of any further liability.
>
> Under the circumstances, there are no grounds upon which the policy can be called upon to make any further payment to your client and unless you are able to offer any valid legal arguments to the contrary, our principals can be of no further assistance in this matter."

This is a new ground of defence and would appear to be the main one. However, the defence as pleaded and argued before me relied on three grounds:

1. The plaintiff was not medically unfit to return work after February 2nd, 1987 and he failed to produce medical evidence that he was so medically unfit.

2. He started to work as a ship's master in June 1987.

3. In any case, he signed a receipt in full and final settlement in February 1987, discharging the insurance company from further liability.

Dealing with the issues raised in the reverse order, counsel for both parties have referred me to the case of *Neuchatel Asphalte Co. Ltd.* v. *Barnett* (2). The facts of that case were totally different, but Denning, L.J. (as he then was) said ([1957] 1 All E.R. at 365):

> "It is a well settled rule of construction that, if one party puts forward a printed form of words for signature by the other and it is afterwards found that those words are inconsistent with the main object and intention of the transaction as disclosed by the terms specially agreed, then the court will limit or reject the printed words so as to ensure that the main object of the transaction is achieved."

Mr. Gomez, for the plaintiff, argues that since the above case the court must look deeper at what was intended when the transaction (the signing of the receipt) took place. He submits that on the evidence it was not the intention of the insurance company to preclude the plaintiff for ever from

claiming further benefits if it was right and reasonable so to do. This, he argues, seems to be so, taking into consideration the way the receipt prepared by the insurance company was drafted: "in full and final payment … for a period of 8 weeks," and not "in full and final discharge of all claims or my claim."

In further support of his submission, counsel has cited the case of *Arrale* v. *Costain Civil Engr. Ltd.* (1) as an example in which the court, even on a receipt signed "in full satisfaction and discharge of all claims," held it not to be a full accord and satisfaction.

Mr. Baglietto, for the defendant, relies also on this case for the proposition that if a plaintiff, with full knowledge of his rights, freely and voluntarily agrees to accept a sum of money in discharge of all his claims, he should not be permitted to pursue his claim. I agree with the above proposition as a matter of law but I am satisfied, on the evidence before me, including what transpired after the signing of the receipt, that it was not the intention of both parties that the payment of the £2,000 on February 2nd, 1987 constituted a true accord and satisfaction. The wording of the receipt leads me to that conclusion.

In any case, the action of the insurance company subsequent to the signing of the receipt confirms my conclusion. It was not until June 1989 that accord and satisfaction was put forward officially in writing by the insurance company as a reason for rejecting the claim for further benefits. I have come to the conclusion that accord and satisfaction does not constitute a defence or bar to the plaintiff's claim on the facts of this particular case.

I deal now with the question of whether the plaintiff is disentitled to any further benefit because he started to work as a ship's master (not as a pilot) in June 1986. This aspect of the matter is dealt with in *MacGillivray & Parkington on Insurance Law*, 8th ed. (1988). I quote from para. 1806, at 814, dealing with total incapacity for business:

> "If the insurance is limited to accidents wholly disabling the insured from following his usual business or occupation, full effect must be given to the word 'usual.' Thus a solicitor who sprains his ankle and is confined to his bedroom for a period of time is incapable of following his usual occupation, business or pursuits even if he can and does conduct some business from his bed. … Similarly, if an ear, nose and throat specialist sprains his wrist he is totally disabled from performing the duties of his occupation…
>
> After an accidental injury [a steel worker] was no longer capable of being employed as a steel worker and could only do the duties of a night watchman. It was held that he could not resume his normal calling…"

The plaintiff was insured as a ship's pilot and Benefit 5, referred to at the beginning, states that temporary disablement is that "which totally prevents the insured person from attending *in any way* to his/her *normal* occupation." I find, as a matter of interpretation, that under the policy,

doing work as a ship's master did not disentitle the plaintiff from the benefits he was entitled to, so long as he was not able to do his normal work as a pilot.

Finally, I come to the question of the medical evidence. The duty to produce such evidence is on the insured person. I rely once more on *MacGillivray & Parkington* (*op. cit.*, para. 1851, at 832–833):

> "**Obligation to furnish evidence.** A claimant may be required to furnish such evidence as the directors [of the insurance company] may require. This empowers the directors to call for evidence over and above such evidence as would satisfy a judge or jury in order to test or corroborate the evidence before them. But the evidence or information must not be required unreasonably and the fact that even a reasonable request is refused will not necessarily prevent the claimant from recovering."

The above should be read in conjunction with the case of *Welch* v. *Royal Exchange Assur.* (3) in which it was held (according to the headnote to the case in *The All England Law Reports* ([1938] 4 All E.R. at 289)) that—

> "upon the proper construction of the condition, the insured was bound to give the required particulars within a reasonable time of being asked to do so. If he did not do so, and, in the above circumstances, he had not done so, he was barred from recovering under the policy."

I have come to the conclusion on the evidence that at the date of Surgeon Commander Chakraverty's report of July 13th, 1987, the plaintiff was certainly not able to return to work to his normal duties as a pilot. Further, it would still take him some time before he would be able to resume work as a pilot. Taking into account that his claim was rejected on September 21st, 1987 not on medical grounds but because he had "returned to work, albeit in a limited capacity," it is a fair inference to make that the insurance company was satisfied, or so it appears, that at least until September 1987 he was medically disabled.

But the matter goes further, as on December 4th, 1987 the question of medical disability came up again (in the memo from the insurance company). This time the plaintiff was asked to bring a letter from the doctor, meaning, no doubt, a medical report or certificate. This the plaintiff was under an obligation to do if he wanted further benefits.

In fact, the plaintiff did nothing in this respect until March 30th, 1989, when he obtained a certificate from Mr. Robin Jackson, a registered osteopath, to the effect that in his opinion Mr. Ritchie's shoulder would not improve and therefore he would be unable to carry out his duties as a harbour pilot safely. I am of the opinion that this medical contribution or evidence by the plaintiff came much too late, on the authority of *Welch* v. *Royal Exchange Assur.* (3). I will not take the certificate or the evidence given by Mr. Jackson in court into consideration.

However, disregarding such evidence, what did the insurance company have in its possession regarding the disability of the plaintiff? I think that there was sufficient evidence based on the surgeon's report for the insurance company to come to the conclusion that up to the end of 1987, the plaintiff was still disabled from returning to his normal duties as a ship's pilot. That is what a judge and jury would have found and that is what a reasonable and responsible insurance company should have concluded. I have no evidence that the Norwich Union is not a reasonable and responsible insurance company. Consequently, I have come to the conclusion that the plaintiff is entitled to benefits at the rate of £250 per week until December 31st, 1987. The actual amount should be worked out by counsel so that judgment may be entered for a specific sum.

Judgment for the plaintiff.