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Recent Developments: Cheney v. Bell Nat'l Life: Widow Denied Recovery on Accidental Death Policy When Husband Died from Aids Contaminated Transfusion

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Cheney v. Bell Nat'l Life: **WIDOW DENIED RECOVERY ON ACCIDENTAL DEATH POLICY WHEN HUSBAND DIED FROM AIDS CONTAMINATED TRANSFUSION.**

In *Cheney v. Bell Nat'l Life*, 315 Md. 761, 556 A.2d 1135 (1989), the Court of Appeals of Maryland barred an insured widow's recovery under an accidental death policy after her husband died of AIDS (Acquired Immune Deficiency Syndrome) which he accidentally contracted from a necessary blood transfusion. The court held that hemophilia was a "sickness or disease" within the meaning of a policy which excluded recovery for death by "sickness or disease." *Id.* at 770, 556 A.2d at 1140. Thus, the court deemed that accidentally contracting AIDS while under medical treatment for a sickness or disease such as hemophilia was not the type of "accident" contemplated in the insurance policy.

Petitioner is the surviving spouse of Anthony Cheney, who suffered from hemophilia. While undergoing a treatment for hemophilia, Mr. Cheney received a transfusion containing the AIDS virus. At the age of 24, he died of respiratory failure, a direct consequence of the AIDS virus.

When Mr. Cheney died, he and his wife jointly held an accidental death policy under which the insurance company agreed to pay a designated amount in the event of the accidental death of either party. Upon Mr. Cheney's death, however, the insurance company refused payment asserting that his death was not "accidental" as defined in the policy. *Cheney*, 70 Md. App. at 164-65, 520 A.2d at 403. The policy excluded "any loss . . . caused by or resulting from . . . sickness or disease or medical or surgical treatment therefore (sic) . . . ." *Cheney*, 315 Md. at 763, 556 A.2d at 1136.

Mrs. Cheney filed suit in the Circuit Court for Baltimore City claiming that her husband's death was accidental. Judge Elsbeth Bothe granted the insurance company's motion for summary judgment based on its assertions that Mr. Cheney's death resulted from sickness or disease, or from medical treatment. The court of special appeals affirmed, also suggesting that no "accident" had occurred within the meaning of the policy. *Id.* at 764, 556 A.2d at 1137.

The court of appeals began its analysis by rejecting the insurance company's contention that coverage was excluded because death resulted from a sickness or disease. *Id.* (relying on *General Accounting Co. v. Homely*, 109 Md. 93, 99, 71 A. 524 (1908)). In *General Accounting*, the court of appeals held that where death resulting from a disease is caused by an accident, the accident is the true and predominant cause of death. As a result, the disease is merely a link in the chain of causation. *Cheney*, 315 Md. at 764, 556 A.2d at 1137.

The court of appeals then considered whether the insured's death resulted from medical treatment for sickness or disease. The court first determined that the accidental injury occurred when the contaminated blood was injected into Mr. Cheney and found unpersuasive Mrs. Cheney's argument that the accident occurred when the blood was drawn from the infected donor. Mrs. Cheney reasoned that the accident causing death occurred prior to any medical treatment for hemophilia. She argued, therefore, that the exclusion in the policy did not apply. *Id.* at 766, 556 A.2d at 1138.

Concluding that death resulted from the transfusion, namely, from the medical treatment for hemophilia, the court was faced with the question of whether the insured's hemophilia was a "sickness or disease" within the meaning of the policy. *Id.* To determine the meaning of the policy, the court looked to the intention of the parties which is ascertained from the policy as a whole. Under this construction, words are accorded their usual, ordinary and accepted meaning, unless there is evidence to the contrary. *Id.* (relying on *Pacific Indem. v. Interstate Fire & Casualty*, 302 Md. 383, 388, 488 A.2d 486 (1985)).

The court found no ambiguity in the meaning of the word "disease." The court noted that there was no evidence of any contrary or specific meaning and focused on the ordinary meaning of the word "disease." The court concluded that hemophilia was a "disease" within its commonly accepted meaning, and within the meaning of the insurance policy under which Mr. Cheney was covered. *Id.* at 770, 556 A.2d at 1140. Because Mr. Cheney's death resulted from medical treatment for a disease, Mrs. Cheney was precluded from receiving payment under the policy's exclusionary language.

The court of appeals concluded that the cause of Mr. Cheney's death was an accidental injury. However, because hemophilia was a disease within the meaning of the Cheney's insurance policy, the injury (receiving AIDS contaminated blood) was cause by medical treatment for a disease. Therefore, the accident was not covered by the accidental death policy. Consequently, the court of appeals has narrowly construed the meaning of "accidental" in death policies. As a result, the insurance industry's liability under such policies, specifically with regard to AIDS related death, has been limited.

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***State v. Gorman*: COURT UPHOLDS THE USE OF PEREMPTORY CHALLENGES TO STRIKE BLACK JURORS WHEN THE DEFENDANT IS WHITE**

In *State v. Gorman*, 315 Md. 402, 554 A.2d 1203 (1989), the Court of Appeals of Maryland held that the state's exercise of peremptory challenges to strike the only two black jurors from a jury panel was constitutionally permissible when the defendant in question was white.

Gorman, a male caucasian, was convicted by a jury in the Circuit Court for Harford County of robbery with a deadly weapon and related offenses. During voin dire, the prosecution exercised its peremptory challenges to strike the only two black veniremen from the panel. Gorman was sentenced to life imprisonment without parole, pursuant to Maryland's recidivist statute. *Id.* at 404, 554 A.2d at 1204.

On appeal, Gorman contended that the state's use of peremptory challenges to strike the black veniremen from the panel constituted a denial of equal protection in violation of the fourteenth amendment and a violation of the sixth amendment's guarantee of an impartial jury. The court of special appeals affirmed his conviction. After the court of appeals denied certiorari, the Supreme Court of the United States granted Gorman's petition for certiorari. The Supreme Court vacated the judgment of the intermediate appellate court and remanded the case to that court for reconsideration in light of the recent holding in *Griffith v. Kentucky*, 479 U.S. 314 (1987). On remand, the court of special appeals reversed, and remanded it for a new trial, relying on *Batson v. Kentucky*, 476 U.S. 79 (1986), *Griffith*, and *Chew v. State*, 71 Md. App. 681, 527 A.2d 332, *cert. granted*, 311 Md. 301, 534 A.2d 369 (1987), for its decision. After the court of special appeals denied the state's motion for reconsideration, the court of appeals granted both the state's petition and Gorman's cross petition for writs of certiorari. *Gorman*, 315 Md. at 404-405, 554 A.2d at 1204. On appeal, the parties stipulated that there were only three issues: