

NTUC Co-operative Insurance Commonwealth Enterprise Ltd v Chiang Soong Chee
[2007] SGHC 222

Case Number : DA 13/2007
Decision Date : 18 December 2007
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : N Sreenivasan and Palaniappan Sundararaj (Straits Law Practice LLC) for the appellant; Cheong Yuen Hee and Yeh Jin Sien (J S Yeh & Co) for the respondent
Parties : NTUC Co-operative Insurance Commonwealth Enterprise Ltd — Chiang Soong Chee

Insurance – General principles – Claims

Insurance – Interpretation of clauses in life policy – Whether broad or strict interpretation should apply

18 December 2007

Judgment reserved.

Woo Bih Li J

Introduction

1 This action is a claim by the plaintiff Chiang Soong Chee (“Chiang”) under a life insurance policy issued by the defendant NTUC Co-operative Insurance Commonwealth Enterprise Limited (“NTUC Income”). The policy provided for disability benefits. Chiang suffered a stroke and made a claim. NTUC Income made four annual payments but declined to make the fifth and last payment in circumstances which I shall elaborate on. Consequently, Chiang commenced this action. The District Court found in favour of Chiang and NTUC Income appealed to the High Court. Its appeal was heard by me. The background facts are elaborated upon below.

Background facts

2 In August 1988, NTUC Income issued a life policy for a term of 15 years on the life of Chiang who was 34 years old. The basic sum assured was \$150,000. The disability benefit was provided under clause 10. The relevant provisions were clause 10 (d), (e), (f) and (h) which stated:

10. Disability Benefit

At any time while this policy is in full force and effect, should the Life Assured prior to attaining the age of sixty years become disabled as hereinbelow defined, the Society shall waive payment of all future premiums beginning from the following policy anniversary date and shall pay annually as an advance one-tenth of the Basic Sum Assured, but in no case shall there be more than ten payments, all provided as follows:-

(d) Immediately after the happening of the disability, full particulars thereof must be given in writing to the Society together with the then address and whereabouts of the Life Assured and within 120 days after the happening of the disability, there must be given to the Society, upon forms furnished by the Society, satisfactory proof of disability and after payment of the first

advance similar proof must be made if required by the Society of such continuing disability at the time of each subsequent annual advanced payment.

(e) No suit on account of alleged disability shall be maintainable if commenced before the expiration of one year or after the expiration of two years from the date of the happening of the disability.

(f) If there is a failure to comply with any one of the foregoing provisions, no claim on account of disability or for any advanced payment shall arise or be valid or enforceable.

(h) The disability referred to herein must be total and permanent and such that there is neither then nor at any time thereafter any work, occupation or profession that the Life Assured can ever sufficiently do or follow to earn or obtain any wages, compensation or profit. The total and irrecoverable loss of the sight of both eyes or the loss by severance of a) both hands at or above the wrists or b) both feet at or above the ankles or c) one hand at or above the wrist and one foot at or above the ankle or d) loss of sight of one eye and loss by severance of one limb will be considered as total and permanent disability.

3 On or about 19 March 1992, Chiang suffered a stroke which caused him to be paralysed in his left limbs. At that time, he was a partner in Sai Sia Paint Company which was in the business of selling paints. I will say more about his business later. According to him, he did not make a claim then because he had been told by the insurance agent handling his policy that he could not do so. About nine years later, he submitted a claim form on or about 8 March 2001 on the advice of friends. As is evident, Chiang did not give particulars of his disability within the 120 day period stipulated in clause 10(d) but, to its credit, NTUC Income nevertheless processed his claim. Initially, it declined to make any payment to him because it did not receive a response from his doctor Dr Tong Hoo Ing as it requested. After Dr Tong responded and also elaborated on his response, NTUC Income made payment to Chiang. Instead of making ten annual instalments of 10% of the basic sum assured as provided under clause 10, NTUC Income intended to make payment in five instalments. Each of the first four instalments was for \$15,000 and the fifth and last instalment was to be for \$90,000. However, due to a certain response from Dr Tong before the fifth instalment was paid, NTUC Income declined to pay that instalment. In response, Chiang filed the action. I will now elaborate on Dr Tong's earlier reports and responses and his last case.

4 Dr Tong practises under the name of Tong Medical and Neurology Clinic at Gleneagles Medical Centre. In response to a request dated 9 March 2001 from the insurer, he issued a report dated 21 March 2001. At the time, the insurer's full name was NTUC Income Insurance Co-operative Limited. I will continue to refer to it as "NTUC Income".

5 Dr Tong's report stated that Chiang first saw him on 20 March 1992 for numbness and weakness of his left limbs which developed on 19 March 1992. Chiang's speech was slurred. He had a left facial palsy of the upper motor neurone type and dense left hemiplegia of grade 0. Fundoscopy showed normal findings. Chiang was admitted to Mount Alvernia Hospital for further management. Chiang's left limbs improved gradually and he could walk on discharge.

6 As regards outpatient follow-up, the report stated that regular MRI scans of Chiang's head showed clearing of the intracerebral haemorrhage. The latest MRI scan in 1998 showed an old infarct in the right parietal lobe. Chiang was initially walking with a quad stick. After a few months, he could walk without the stick. When last seen on 21 February 2001, he had mild residual weakness of his left limbs.

7 By a letter dated 16 April 2001, NTUC Income asked Dr Tong to let it know Chiang's current condition and whether Chiang's condition satisfied the definition of total and permanent disability (as set out in clause 10(h)). I will refer to such a disability as "TPD" for convenience. In the absence of a response from Dr Tong, NTUC Income sent a reminder dated 15 May 2001 and another one dated 29 May 2001. There was no response from Dr Tong for a while. Consequently, NTUC Income wrote to Chiang on 21 June 2001 and referred to Dr Tong's report (of 21 March 2001) which stated that Chiang could walk without the stick and there was mild residual weakness of his left limb and also referring to what clause 10(h) stated. NTUC Income's letter concluded that Chiang's condition: "does not fulfil the policy definition of permanent and total disability. As such, we are unable to admit your claim under the above policy".

8 This letter to Chiang might have prompted a subsequent response from Dr Tong who wrote on 26 June 2001 to NTUC Income. Dr Tong referred to NTUC's letter dated 29 May 2001 and said he did not receive its letter dated 16 April 2001. His response was silent as to whether he received its letter dated 15 May 2001. The second and last paragraph of his 26 June 2001 letter stated:

With regard to the clarification you asked for, his cerebral haemorrhage sustained in March 1992 causing him to be paralysed in his left limbs and dysarthric, with present residual paralysis, does satisfy the permanent and total disability definition.

9 NTUC Income replied on 2 July 2001 to ask Dr Tong to elaborate on Chiang's current medical condition as follows:

Please let us know Mr Chiang's current medical condition; with special reference to the following:

- 1 When was Mr Chiang last seen at your Clinic?
- 2 What was his updated medical condition at that time? Please give details.
- 3 Does his condition affect his activities of daily living? If so, please give details.

10 Dr Tong replied on 6 July 2001 with the following answers:

- 1 30th May 2001.
- 2 He was alert, rational, B.P. 130/80 mmHg. His speech was slurred. His left limbs were spastic (stiff) of grade 3 to 4 motor power. Tendon reflexes were brisk on the left. He could walk but had a hemiplegic gait.
- 3 He has difficulty using his left limbs eg. to wear his clothes, bathe himself. He is unable to obtain gainful employment.

11 Apparently, NTUC Income also obtained an opinion from one Dr Adrian K. Y. Tan, a consultant neurologist practising at Paragon. His letter dated 14 August 2001 stated:

I saw Mr Chiang today. He is 47-years of age, and suffered a right cerebral hemorrhage in 1992. After the stroke, he was left with left upper and lower limb weakness. He suffers from hypertension.

On physical examination, his blood pressure was 110/70. His mental faculties were intact. There was a mild left facial palsy. His left upper limb strength was grade 4/5 and the left lower limb

strength was 3+/5. His reflexes were abnormally brisk on the left and the plantar responses were upgoing on the left. Sensation was decreased over the entire left half of the body. He walked very slowly with a limp.

From my examination, he fulfils the criteria for total and permanent disability.

12 NTUC Income then wrote to Chiang on 10 September 2001 enclosing a cheque for \$15,000 being the first of the five instalment payments I have mentioned. Thereafter, the second to fourth instalments were paid without further ado. However, before the fifth instalment was paid, NTUC Income wrote on 13 January 2005 to Dr Tong to seek clarification of Chiang's current condition as it was entitled to do under clause 10(d) and set out a list of questions. Question 8 asked whether Chiang satisfied the definition of TPD and stated:

8. Does the patient's current condition satisfy the definition of Permanent and Total Disability:

Disability referred to herein must be total and permanent and such that there is neither then nor at any time thereafter any work, occupation or profession that the life assured can ever sufficiently do or follow to earn or obtain any wages compensation or profit.

13 Dr Tong replied on 17 January 2005 stating:

I refer to your letter dated 13 January 2005.

Herewith are my answers to your questions:

1. I last reviewed Mr. Chiang on 27 November 2004.
2. The prognosis is fair.
3. The patient has left hemiparesis with grade 4 power in the upper and lower limbs. He also has a mild left facial palsy.

He walks with a limp and his left limbs are stiff.

He is unable to run or jog.

His mental functions are satisfactory although his recent memory is not as good as before his stroke.

4. Fortunately, he is self-employed and works at his own pace. It would be difficult for him to obtain employment in view of his limp and impaired recent memory.
5. He has returned to his own business. He would not be employable otherwise.
6. He has reached a plateau in his recovery and I do not expect further recovery.
7. He is hypertensive and has hyperlipidemia. His risk of a recurrent stroke is high.
8. The patient's current condition does not satisfy the definition of Permanent and Total Disability given in your letter.

14 By letter dated 15 April 2005, NTUC Income wrote to Chiang to state inter alia:

We are reviewing your last instalment payment which is supposed to be due on 30.5.2005 and obtained your latest medical report from your doctor from Tong Medical & Neurology Clinic.

The report states that you has [sic] left hemiparesis with grade 4 power in the upper and lower limbs. Your doctor is of the opinion that your current condition does not satisfy our definition of permanent and total disability clause. As such, we will cease any future instalment on this case.

Our life underwriter will inform you on your continuance of your policy for the balance sum assured in due course.

15 On 28 April 2005, Dr Tong issued another report. This was dated 28 April 2005. I set out below the material parts of this report:

Mr Chiang was first seen by me on the 20 March 1992 for numbness and weakness of his left limbs which developed on the 19 March 1992. He was admitted to Tan Tock Seng Hospital on 19 March 1992 and requested transfer to Mount Alvernia Hospital the next day.

...

On clinical examinaiton [sic] in 1992 he was found to be alert, rational, BP 130/80 mmHg.

His speech was slurred. He had a left facial palsy of the upper motor neurone type and a dense left hemiplegia of grade O. Fundoscopy showed normal findings.

...

Diagnosis

1. Right Intracerebral Haemorrhage with Left Hemiplegia.

Treatment

Nootropil 1.2Gm bd

Neurobion 1 om

Physiotherapy

Diabetic Diet 1500 calories per day.

Hospital Course

His left limbs improved gradually and he could walk on discharge with the help of a quad stick.

His blood glucose levels were within the normal range on dietary restriction.

Blood pressure was also stable at 130/80 mmHg.

Outpatient Follow up

Regular MRI Scans of His Head showed clearing of the right intracerebral haemorrhage. His latest MRI Scan in 1998 showed an old infarct in the right parietal lobe.

In May 2001 he was found to have high blood pressure and put on Norvasc 5mg daily.

His left limbs improved gradually to grade 4 but have become spastic.

He walks with a limp and is unable to run or jog.

His mental functions are satisfactory although his recent memory is not as good as before his stroke.

He is self-employed and has returned to his own business.

It would be difficult for him to obtain employment in view of his limp and impaired recent memory.

When last reviewed on 18 April 2005, his general condition remained satisfactory, BP 130/80 mmHg.

He could walk independently but with an obvious limp. He had difficulty performing fine movements with his left hand like buttoning his shirt.

16 On 7 June 2005, NTUC Income wrote to Chiang to say that it had sought the opinion of its reinsurance panel to review his case and it regretted to inform him that its decision in its letter dated 15 April 2005 remained.

17 On 27 August 2005, Dr Tong issued another report. That report was similar to the report dated 28 April 2005. Some differences were:

(a) The dense left hemiplegia was stated specifically to be with his upper and lower limbs.

(b) Chiang's treatment included occupational therapy as well as the physiotherapy previously mentioned.

(c) The last part of the 27 August 2005 report stated that Chiang's left upper limb had improved to grade 3 and his left lower limb to grade 3+ when Chiang was seen on 1 December 2001.

The decision of the District Court

18 District Judge Lim Wee Ming ("DJ Lim") was of the view that under clause 10(h), it was sufficient for Chiang to establish that he could no longer substantially carry out his usual occupation ("the broad interpretation") and it was not necessary for him to establish that he was unable to carry out any work ("the strict interpretation"). DJ Lim also concluded on the evidence that Chiang had established that he could no longer substantially carry out his usual occupation, preferring the evidence of Dr Tong to the evidence of one Dr Chong Piang Ngok who was the expert witness for NTUC Income. Significantly, although Dr Tong was of the view that it would be difficult for Chiang to obtain any employment, DJ Lim did not make a finding that in any event, Chiang would have satisfied the strict interpretation. DJ Lim also did not venture a view on an argument raised by NTUC Income below that clause 10(h) had two requirements. Under this argument, the first requirement was that Chiang's ability must be total and permanent. The second requirement was the strict interpretation. NTUC Income's case was that it was the opinion of Chiang's own doctor that his disability was not total and permanent. That being the case, Chiang was not entitled to receive any further payment. If the second requirement was still to be considered, NTUC Income's position was that the strict

interpretation applied and Chiang did not come within it. Before me, NTUC Income ran the same arguments. Its counsel assured me that it was not seeking to recover the earlier payments already made to Chiang nor would it seek costs of the appeal even if it succeeded as it was more concerned as to whether the strict interpretation applied or not.

My decision

19 The issues are as follows:

- (a) Was there one or two requirements under clause 10(h)?
- (b) If there was only one requirement, *ie*, that “there is neither then nor at any time thereafter any work, occupation or profession that the Life Assured can ever sufficiently do or follow to earn or obtain any wages, compensation or profit”, would the broad or strict interpretation apply?
- (c) Would Chiang come within the broad interpretation only or would he also come under the strict interpretation as well?

One or two requirements under clause 10(h)?

20 NTUC Income’s argument for two requirements was based on the conjunction “and” in the first sentence of clause 10(h). As mentioned, it argued that the first requirement was that Chiang’s disability must be total and permanent. Secondly, his disability must satisfy the strict interpretation. I am of the view that the phrase “and such that” can also be interpreted so that “total and permanent” means that Chiang cannot engage in any work, occupation or profession. In any event, the second sentence of clause 10(h) stated:

The total and irrecoverable loss of the sight of both eyes or the loss by severance of a) both hands at or above the wrists or b) both feet at or above the ankles or c) one hand at or above the wrist and one foot at or above the ankle or d) loss of sight of one eye and loss by severance of one limb will be considered as total and permanent disability.

21 As can be seen, the second sentence suggested that the disability benefit would be payable if there was, say, a loss of sight of both eyes. There was no suggestion that an insured who suffered such a loss would also have to meet a second requirement. In other words, the second sentence suggested that there was only one requirement, that is, TPD. In turn, TPD meant that the assured could not engage in any work, occupation or profession as a result of the disability. However, if, for example, the assured suffered the loss of sight of both eyes, it would be deemed that he was suffering from TPD.

22 It seems to me that the above approach was the correct interpretation. When I asked counsel for NTUC Income whether an assured who suffered, say, the loss of both eyes would still have to establish what I will refer to as unemployability for convenience, he submitted that such an assured would still have to establish unemployability. However, he then also said that in such a case, the insurer would not check on employability.

23 To me, the second sentence of clause 10(h) clearly gave the impression that the disability benefit would be payable without more once there was, say, a total and irrecoverable loss of sight of both eyes. This in turn supported the argument that there was only one requirement in the first sentence of clause 10(h). If there was any ambiguity, the *contra proferentem* rule would mean that the provision was to be read against the insurer who drafted the terms and would reinforce the

argument for one requirement. Accordingly, I am of the view that there was only one requirement under clause 10(h). It is sufficient for Chiang to establish TPD by establishing unemployability but what the latter meant brings us to the next issue. Consequently, NTUC Income cannot rely solely on Dr Tong's opinion that Chiang was no longer suffering TPD to deny payment of the fifth instalment.

24 Although I have reached my decision on the first issue (of interpretation) without relying on documents issued subsequent to the policy, I would mention the following as a matter of interest:

(a) the letter dated 16 April 2001 from NTUC Income to Dr Tong, referred to "the following permanent and total disability definition" before it set out the first sentence of clause 10(h). Likewise, its letter dated 21 June 2001 to Chiang referred to the policy definition of TPD.

Again, Question 8 of its letter dated 13 January 2005 to Dr Tong asked whether the patient satisfied the definition of TPD. If one were to refer to the first sentence of clause 10(h) as a definition of "disability", it is arguable that that definition has the two requirements mooted by NTUC Income, one of which is the requirement of TPD. However, if one were to refer to a definition of "total and permanent disability", then "total and permanent disability" is not a requirement but the very phrase to be defined. This would support the argument that there is only one requirement under clause 10(h), *ie*, employability.

(b) In NTUC Income's letter dated 28 March 2006 to Chiang's solicitors, J S Yeh & Co, the third paragraph stated "Please note that total permanent disabled [*sic*] *means* the insured must not be able to engage in ANY form of occupation". [emphasis added].

(c) Paragraphs 22 and 23 of the affidavit of evidence-in-chief of Jessie Wong Siew Hoon, the claims manager of the Life Insurance Department of NTUC Income, took two inconsistent positions. Paragraph 22 suggested that there was only one requirement. It stated:

"I wish to state that under clause 10 of the Privileges and Conditions of the Insurance Policy, the disability benefits are given to the insured only when the disability suffered by the insured is total and permanent *in that* there is neither then nor any time thereafter any work, occupation or profession that the insured can ever sufficiently do or follow to earn or obtain any wages, compensation or profit. Further satisfactory proof of the total and permanent disability ought to be provided by the insured at the time of the first installment and at the time of the payment of every subsequent advanced payment. The disability must be a continuing permanent and total disability"

[emphasis added]

Paragraph 23 suggested that there were two requirements. It stated:

"The Defendants did not make the last installment payment of \$90,000 to the Plaintiff because he failed to provide satisfactory proof that he continued to suffers [*sic*] from total and permanent disability *and that* there is neither then nor any time thereafter any work, occupation or profession that the insured can ever sufficiently do or follow to earn or obtain any wages, compensation or profits. In fact the medical report of Dr Tong Hoo Ing was to the contrary".

[emphasis added]

The broad or the strict interpretation

25 DJ Lim relied on *Pocock v Century Insurance Company, Ltd* [1960] 2 Lloyd's Rep 150 ("*Pocock*") to decide in favour of the broad interpretation. He distinguished *Dufty v City Mutual General Insurance Limited* [1977] Qd R 94 ("*Dufty*"). In the appeal before me, Chiang's counsel also relied on *Sargent v GRE (UK) Limited* [2000] Lloyd's Rep I R 77 ("*Sargent*").

26 *Pocock* was a case involving a personal accident insurance policy. The plaintiff was a jobbing buyer in the grocery business who was injured in an accident. Under clause (f) of the benefits payable under the policy, there was a provision that the insurer "for temporary total disablement from attending to business of any and every kind" should pay benefit for such disablement at the weekly rate of £20. Under clause (g), for "temporary partial disablement, that is disablement from attending to some material portion of his usual business or occupation", the insurers should pay "benefit for the duration of such partial disablement at the weekly rate of £6".

27 The plaintiff had sustained a head injury in a motor accident and the issue was the period for which he should receive payment from the insurer at the higher rate of £20 per week instead of £6 per week. This raised the point whether clause (f) should be interpreted broadly or strictly as I have described, *ie*, whether the plaintiff would be entitled to payment at the higher rate if he could be engaged in any occupation. Mr Commissioner Molony QC decided in favour of the broad interpretation. He said:

Mr. Scott's contention, as I understand it, is that, if a man after an accident is capable of any part-time effort in the way of doing any business, he is thereby deprived of his right to the full £20 a week. The phrase "business of any and every kind" means, says Mr. Scott, just what it says: it means, for example, that, if a man makes entries in books, as happened indeed in this case, that is an aspect of "business" and, even if it is comparatively unimportant to the running of a business as a whole, it is nevertheless a part of business which is covered by the phrase "business of any and every kind".

I do not accept that argument. I have not accepted it in fixing the date at June 6, 1958. I think, as Mr. Dean contends, that the phrase must ne [*sic*] looked at as a whole and in its context; and that what attention is directed to is attending to business of any sort, which might be that of a wholesale grocer doing the business nominated in this case or might be some substituted business to which a person might turn; and, in order to bring the clause into operation, the question is whether a man is fit to go to business, to use a vernacular expression. Is he able to attend to a business of the nominated or some substituted type? My view is that a person cannot be said to attend to business in that sense simply because he is capable of doing – perhaps rather badly – some minor part of the work involved in that or any other sort of business.

Of course, the argument of Mr. Scott involves us considering every sort of business, and perhaps the conclusive example adverse to the argument is that cited by Mr. Dean of the business of selling matches at a street corner. The broad test that I think must be applied in order to understand the application of this clause is to ask oneself: Is a man fit to go to business? It does not mean that he has got to be fit to spend the whole day there; it does not mean that he has got to be fit to carry on all the activities which that business normally involves. The question is: Is he fit to attend there and play a worth-while part in the conduct of it? If the answer is "No", then in the view that I have already expressed, clause (f) applies, and in that sense I find that the plaintiff was disabled from attending to "business of any and every kind" up to the date that has been mentioned.

28 I should add that the Commissioner also expressed his finding on the facts on the alternative basis of the strict interpretation in case there was an appeal.

29 DJ Lim did not think that the Commissioner's reason for his primary decision was based on the words "attending to" but on the words "business of any and every kind". Accordingly, DJ Lim was of the view that *Pocock* was authority in support of the broad interpretation.

30 The judgment of the Commissioner does suggest that he might have relied on both phrases but it appears to me that he placed greater emphasis on the requirement of "attending to business" rather than to "any and every kind".

31 Furthermore, with respect, if the Commissioner's decision was in favour of the broad interpretation for clause (f) and this meant that it was sufficient for the plaintiff to prove that he could not engage in his nominated or some substituted business, then there would be little distinction between clause (f) and (g) there for present purposes. Let me elaborate. clause (f) referred to temporary total disablement from attending to "business of any and every kind". clause (g) referred to temporary partial disablement from attending to some material portion of his "usual business or occupation". If the reference in (f) to "business of any and every kind" meant the insured's usual or substituted business, as the Commissioner was suggesting, then there would be no reason for clause (g) to use quite different words to mean the same thing. It seems to me that the different words in clause (g) meant that the "business of any and every kind" in clause (f) did not have the meaning of "usual business or occupation" stated in clause (g) and meant what they literally said in clause (f).

32 Indeed, this was the reason why DJ Lim distinguished *Dufty* which was a decision of the Supreme Court of Queensland. In that case, the plaintiff sustained injuries in a motorcycle accident which resulted in him becoming a paraplegic. He was a carpenter. One of the questions in that case was whether the plaintiff could recover under a provision which provided for payment in the event of TPD "from engaging in or attending to any profession, business or occupation whatsoever". Kniepp J decided he could not because his claim was properly to be made under a previous clause which provided for other compensation. That clause referred total disablement from engaging in or attending to a "usual" profession, business or occupation. Accordingly, he concluded that the provision in question relating to "any profession, business or occupation whatsoever" meant what it said having regard to the different language in the previous clause. But for the different language in the previous clause, he thought it might be open to say that a literal reading of the clause in question would be too extreme.

33 DJ Lim noted that the strict and broad scenarios were in fact covered under two different provisions in *Dufty*. However, in *Pocock*, the strict and broad scenarios were also provided for in two different provisions. Yet, DJ Lim distinguished *Dufty*, but not *Pocock*, from the present case.

34 If the decision in *Pocock* meant that clause (f) there should be interpreted broadly, I would depart from that decision. Besides, as I have said, it seems to me that the court there was persuaded more by the words "attending to business" than to "business of any and every kind". On the facts before me, there are no two different provisions covering each of the broad and strict scenarios. I am of the view that just as *Dufty* is not persuasive authority in favour of the strict interpretation for clause 10(h), *Pocock* is also not persuasive authority in favour of the broad interpretation for clause 10(h). However, those two cases do show that the word "usual" is used to refer to the broad interpretation whereas "any" is used to refer to the strict interpretation although in *Pocock*, the phrase was "any and every kind" and in *Dufty*, the phrase was "any... whatsoever". Do words like "every" and "whatsoever" add anything material to "any"? I would not have thought so.

35 I come now to *Sargent*. In that case, the plaintiff took out a personal accident insurance policy while he was serving in the Royal Corps of Transport. He left and was trained as a dry line jointer, a

semi-skilled occupation in which he was employed when he was injured on a football field. His right and dominant finger was badly damaged and had to be amputated about two years later. He was right-handed. While he could no longer use a machine for levelling off jointing material, he could still do manual work so long as it was not too arduous and he could drive heavy goods vehicles. The policy provided for a rate of compensation of £10,000 for "permanent total disablement from attending to any occupation" and £750 for "permanent loss/loss of use of at least one phalanx of any finger". The insurer accepted he was entitled to compensation of £750 but not for £10,000. The county court judge dismissed his claim on a strict interpretation of the provision for payment of £10,000. The Court of Appeal allowed his appeal.

36 Apparently, there the plaintiff's contention was that he was entitled to the higher compensation since he was not able to attend to his occupation and his ability to attend to other occupations was irrelevant. The county court judge rejected this contention because he was of the view that such a contention would mean that the plaintiff could still be a dry liner and get paid the higher compensation so long as he could identify an occupation he could not perform. In the case before me, clause 10(h) is worded differently. It would not be possible for Chiang to claim payment solely because he could identify some other occupation he could not perform as a result of the disability.

37 In the Court of Appeal, Mummery LJ was of the view that it was not particularly illuminating and indeed it might be positively misleading to adopt the dictionary approach to the interpretation of "any occupation". He was also of the view that the drafting of the provision was unclear. He said at pg 130:

The insurer's drafting of the relevant provisions in this policy is unclear. Hence this dispute. The purely linguistic approach to construction has produced two conflicting positions, each of which may be legitimately commended by its proponent as literally sustainable, and stigmatised by its opponent as patently absurd. Thus, Mr Sargent argues for a construction which has the effect that, if there is any occupation which he is unable to carry on by reason of the injury (for example, a concert pianist) he is entitled to £10,000; while the insurers argue that, if there is any occupation which he is able to carry on (for example, a heavy goods vehicle driver) he is not entitled to £10,000. Mr Reddiford for the insurers has not persuaded me, by reference to his authorities, notably *Pocock v. Century Insurance Co. Ltd* [1960] 2 Lloyd's List Rep. 150 at 154 (a decision on a significantly differently worded policy) that his construction of the policy does not produce absurd results.

38 Mummery LJ said that a broader approach embracing consideration of the policy as a whole, its context, scheme and the surrounding circumstances was appropriate and considered the items in a table of benefits, ie, items 6 and 7. It is unnecessary for me to set out item 6. Item 7 was the provision in question. After considering the two items, he concluded that the reference in item 7 was clearly a reference to any occupation outside H.M. Forces. He also said at pg 131:

Further, the potential width of the expression "any occupation", is circumscribed by its context and implicitly limited to any relevant occupation. The evident purpose of personal accident insurance against permanent disablement of a person, who is not in the special position of a member of H.M. Forces, is to provide for the event that he is permanently disabled from attending to his occupation as at the time of his disabling injury and not just to provide for the more drastic and remote event that he would not be able to attend to any occupation of any kind at all ever again.

39 Leggatt LJ said at pg 131 and 132:

In my judgment, the words "any occupation" in this context bear the connotation that the policy holder is covered if he is permanently totally disabled from following any particular occupation or an occupation of whatever kind that he may happen to have been following at the date of his accident. If that were wrong, the phrase would be completely ambiguous because, at one extreme it would be contended that the policy holder could not recover if he was physically able to sell matches though nothing else, while at the other, he could recover if he was not physically able to be a concert pianist. In the event, the *contra proferentes* rule would apply and the insurers would still be liable. The appeal is therefore allowed.

40 It seems to me that the decision in *Sargent* should be confined to the wording of the relevant provision there which was considered ambiguous and the context of that provision in the policy with the two terms which were compared and the policy being for the armed forces. I do not think that case is persuasive authority that provisions like clause 10(h) should be accorded the broad interpretation. Leaving aside the issue as to whether the first sentence of clause 10(h) contains one or two requirements, I would not have considered clause 10(h) to be ambiguous as regards the second issue. The literal meaning of the first sentence clearly points in favour of the strict interpretation. It is only the policy consideration, *ie*, that the strict interpretation would result in extreme and unfair consequences that has caused me to pause. I will come back to such a consideration later.

41 According to an article on *Total and Permanent Disability Policies* by Michael Fotheringham [1998] 10 Insurance Law Journal 43, there are Australian authorities in support of either the broad or strict interpretation although his view is that a broad interpretation would give effect to the purpose of the policy which is to offer an insured income protection when he is no longer able to carry out his usual occupation. I do not find such a reasoning persuasive because it assumes that that is the purpose of such a policy and the purpose in turn answers the very question as to whether the broad or strict interpretation is applicable.

42 According to MacGillirary on *Insurance Law*, Tenth Edition at paragraph 25.50, the American courts favour the broad interpretation.

43 As referred to above, Mummery LJ in *Sargent* was also of the view that the evident purpose of personal accident insurance against permanent disablement for a person not in the armed forces was to provide for the event that he is permanently and totally disabled from attending to his occupation as at the time his disabling injury occurred. It seems to me that if that is the purpose of the policy I am considering then it answers the second issue as to whether the broad or the strict interpretation is applicable. I also note that in *Sargent*, the policy was a personal accident policy whereas the policy before me is a term life policy. Indeed, counsel for NTUC Income stressed that the policy was a life policy and said that the payments were being made in advance of the loss of life.

44 I have said that the literal interpretation of clause 10(h) on the second issue points in favour of the strict interpretation. I accept that this can result in extreme consequences against an insured. For example, as DJ Lim said, if the strict interpretation were to apply, it will only be in the most extreme cases that a claim can successfully be made under clause 10(h), for example, if the insured is in a vegetable-like state of existence. While this concern is valid, it must not be forgotten that the second sentence of clause 10(h) will allow payment under clause 10(h) if, for example, there is a loss of sight of both eyes or there is a loss of sight of one eye and loss by severance of one limb. In other words, in such a situation, the basic sum assured is payable whether or not the insured is employable. This mitigates to some extent the extreme consequences which DJ Lim mentioned.

45 Furthermore, there is, on the other hand, also undesirable consequences, although not as

extreme, if the broad interpretation were applicable. In other words, under the broad interpretation, a surgeon will receive the disability benefit if his dominant hand were to shake slightly such that he can no longer carry on as a surgeon, even if he could have an equally lucrative career in, say, banking. Likewise, if a concert pianist were to lose one of his fingers but can have an alternative career.

46 An important factor is the amount of the premium charged. The *Modern Law of Insurance* by Professor Andrew McGee, Second Edition refers at paragraph 35.6 to the case of *Sargent* and describes the decision as somewhat problematic. It goes on to say:

... There is an obvious distinction between being unable to attend to a 'relevant occupation' and being unable to attend to any occupation. The latter form of words provides much more restricted cover, and it seem [*sic*] sensible to assume that insurers are aware of the difference between the two forms of wording and will set premiums accordingly. It may be added that the number of people unable to follow any occupation as a result of accident is perhaps less than it once would have been in view of the greater number of technology-oriented jobs which can be done by those with physical disabilities. The value of policies which provide only the narrower form of cover is thus further reduced.

47 Were I to conclude in favour of a broad interpretation, it is likely that premiums for policies like the one before me will increase. Indeed, as counsel for NTUC Income intimated, that is the significance of the appeal by NTUC Income and not so much the question whether it has to pay an additional \$90,000 to Chiang.

48 I am also of the view that the premium for a policy with a disability benefit enabling compensation to be claimed when an insured is no longer able to carry out his usual occupation may vary greatly depending on the occupation even where the basic sum assured is the same. I would also expect such a policy to require written notification of change of occupation, a feature which is not present in the present policy.

49 All things considered, it seems to me that the purpose of the present life policy with the disability benefit is to provide a bit of extra cover without increasing premiums drastically.

50 I accept that some members of the public may be unaware that their life policies with such a benefit have a strict interpretation. On this score, insurers who rely on the strict interpretation should educate the public of the limited scope of the disability benefit in their policies so that the public can take further steps to see if the requisite cover is available. Of course, such education may well in turn make the existing policies marketed less attractive to the public but I think insurers must take a proactive and responsible approach. Besides highlighting what the cover of each policy extends to, insurers should also highlight the more obvious areas which the cover does not extend to, although this may be counter-intuitive to them, and not wait for legislation to compel them to do so. According to Fotheringham's article, there is a law reform commission report in Australia that recommends that insurers be required to provide a certain cover unless the insurer advises the insured that the contract does not cover that risk.

Would Chiang come within the broad interpretation only?

51 Would Chiang come within the broad interpretation only? In the proposal form for insurance, Chiang stated that he was a partner in Sai Sia Paint Co. He described the exact nature of his work as "daily running of co. business". In paragraph four of his affidavit of evidence-in-chief, he elaborated that the business was that of the sale of paints and that he was "fully employed in the running of the business which required me to handle, stack, move and make deliveries of the drums/tins of paint.

This work entails substantial physical strength and movement, climbing up and down ladders". He said he could not obtain employment and his (older) brother continued to employ him (at Sai Sia Paint Co) out of sympathy and brotherly affection.

52 In oral evidence, he said that he did not do paper work for the business which was done by employees. After he suffered the stroke in 1992, he was resting at home for many years and going to see the doctor to exercise. He said he did go back to the business premises but he did not work. He went to the business premises to sign documents like cheques. He went there to take a look and pass time. He could not carry tins of paint or climb ladders. His brother and sister made the decisions most of the time. He said his brother continued to treat him as a partner after his illness. Chiang is also a shareholder and director of Sparco Paint Pte Ltd ("Sparco"). The other directors are his brothers. Sparco manufactures paint and varnishes. After his illness, he turned up for work at Sai Sia only and went to Sparco occasionally.

53 His claim form revealed that before his illness, his average monthly income was \$2,000. After the illness, it was \$6,000 as at 31 December 2000. He said he was unable to do any other job. He does not know much about computers and English and his limbs are inflexible.

54 The only other witness for Chiang was Dr Tong. I have already set out the material parts of his reports and letters. Before I elaborate on his evidence, I should mention a point which caused some confusion initially. Looking at Dr Tong's letters dated 26 June 2001 and 26 July 2001 and his report dated 17 January 2005, it appeared to counsel for NTUC Income that Dr Tong was saying that although Chiang's limbs had power of grade 3 to 4 in 2001, Chiang was nevertheless still suffering from TPD. Then, in January 2005, when Chiang's left limbs had power of grade 4, Chiang was no longer suffering from a total and permanent disability. Counsel for NTUC Income went on to say that NTUC Income accepted grade 3 as constituting TPD but not grade 4. Counsel was unable to elaborate why there was such a fine distinction. Apparently, Dr Tong was not asked to elaborate presumably because NTUC Income was contented to accept such a distinction. Counsel for Chiang was also unable to elaborate.

55 After reviewing the letters and report as well as Dr Tong's initial report of 21 March 2001, it seems to me that Dr Tong may have been misunderstood. Let me elaborate.

56 At the time when Dr Tong first examined Chiang on 20 March 1992, the power in Chiang's left limb was grade 0 although by the time of Chiang's discharge from Mt Alvernia hospital, his left limbs had improved and he could walk. Indeed, by the time of Dr Tong's report of 21 March 2001, Dr Tong reported that after a few months, Chiang could walk without a quad stick.

57 Looking at Dr Tong's letter dated 26 June 2001 again, it seems to me that perhaps the reference to TPD was to Chiang's condition at the time he sustained the stroke and not to his condition thereafter.

58 As at 30 May 2001, the power in Chiang's left limbs had improved to grade 3 to 4. In Dr Tong's letter of 6 July 2001, when he mentioned grade 3 to 4 motor power, he said that Chiang was unable to obtain gainful employment. He did not say that Chiang was suffering TPD. That was only stated in the earlier letter of 26 June 2001 when he referred to the situation in March 1992.

59 Then in Dr Tong's report of 17 July 2005, he mentioned that the left limbs had grade 4 power and also that Chiang did not satisfy the definition of TPD.

60 At trial, Dr Tong maintained that while Chiang did not suffer TPD, he was not employable.

61 As I have said, DJ Lim was of the view that the broad interpretation applied to clause 10(h). DJ Lim was also of the view that so long as Chiang could carry out only a minor part of the work at his business, he should be entitled to recover the fifth payment. He was of the view that Dr Tong's evidence established that Chiang was able to carry out only a minor part of the business and accepted such evidence. As I have also mentioned, although Dr Tong's evidence was that Chiang was not employable, DJ Lim stopped short of reaching this conclusion. Had he done so, it would not have mattered whether the broad or strict interpretation was applicable since Chiang would have come within the strict interpretation as well.

62 Before me, counsel for Chiang focussed his arguments on the first two issues. He did not present any argument to persuade me that in any event Chiang was unemployable.

63 On the other hand, counsel for NTUC Income appeared to accept that Chiang could not carry on his usual occupation as a partner in the family business but contended that Chiang is not unemployable.

64 I accept that Dr Tong was in a better position to give evidence than Dr Chong who came into the picture rather later in the day. As I mentioned, it was Dr Tong who said that Chiang was unemployable although Chiang was not suffering from TPD.

65 I come now to Dr Tong's evidence during cross-examination when he said, at pg 20 of the notes of evidence:

Q: Would you agree that patients in the Plaintiff's condition, while they might not be able to do manual jobs, they would still be able to do desk bound jobs?

A: In his condition no one would employ him because he walks with a limp and his recent memory is not so good and he tends to make mistakes. I have patients who are physically normal and who suffer from epilepsy who have difficulty finding employment.

Q: Would you agree that he would be able to do desk bound jobs?

A: I don't agree.

Q: You agree that he would be able to do simple work such as telephone operator?

A: Possibly. Not probable.

Q: Is it your evidence that because he walks with obvious limp, he cannot be employed?

A: From my 40 years experience, employers are not prepared to employ employees with obvious limp or epilepsy.

Q: Do you agree that as of January 2005, the Plaintiff cannot be said to be totally and permanently disabled?

A: Yes, from insurance company's definition.

Q: Based on your expertise is it your evidence that he is totally and permanently disabled?

A: From employability point of view.

Q: 2AB22: This is in response to clarification sought from you by the Plaintiff's solicitors?

A: Yes.

Q: This was in response to BAEIC40.

A: Yes.

Q: You would agree that in response to this report, you were not asked to consider definition of insurers?

A: By this definition, yes.

Q: You agree that your report clearly shows that the Plaintiff's condition had improved such that he is not totally and permanently disabled?

A: From legal definition. But practical viewpoint, he is unemployable.

Q: Looking at your report in 2005, the Plaintiff cannot be considered to be totally and permanently disabled?

Ct: What is his understanding of totally and permanently disabled.

Q: What do you understand from total and permanent disability?

A: Physical and mental disability to get gainful employment.

Q: Looking at physical and medical condition of the Plaintiff, do you agree with me that the Plaintiff cannot be considered to be totally and permanently disabled?

A: Yes.

66 Although the last part of Dr Tong's response in cross-examination, as stated above, suggested that he might have eventually equated TPD with unemployability, his evidence during re-examination suggested that he continued to maintain the distinction. So I will not say that he equated the one with the other.

67 Coming back to Dr Tong's evidence in cross-examination, it can be seen that he said that Chiang was not employable although it was not clear whether Dr Tong was relying on two or three reasons. I reiterate Dr Tong's evidence: "because he walks with a limp and his recent memory is not so good and he tends to make mistakes". However, in Dr Tong's letters and reports, there was no mention of Chiang making mistakes. If the making of mistakes were meant to be a distinct third reason, there was no elaboration on the mistakes made as a distinct third reason. If the making of mistakes was part of the point that Chiang's recent memory was not so good, then it was not a distinct third reason.

68 Coming to the second reason about Chiang's recent memory not being so good, Dr Tong did conduct memory tests on Chiang. In his oral evidence-in-chief, Dr Tong said Chiang was not able to remember his remuneration and profits as an example of Chiang's affected memory. However, during cross-examination, Dr Tong surprisingly referred to the unemployability of patients who have epilepsy to support his opinion about Chiang's unemployability. That was not Chiang's condition and the

reference to epilepsy suggested to me that Dr Tong was not confident of his opinion about Chiang's unemployability.

69 Coming to the first reason about Chiang's limp, Dr Tong said that from his experience, employers are not prepared to employ those with obvious limp or epilepsy. While I can understand the reluctance to employ those with epilepsy, I have difficulty accepting that those with a limp are unemployable, especially if the intended job is sedentary. Even for manual labour, it depends on the nature of the job and the extent of the limp.

70 However, I accept that a combination of a limp and impaired recent memory will make an insured less employable than one with a limp only assuming the extent of the limp to be equal. The issue then is the nature and extent of the impairment of recent memory but the only elaboration given by Dr Tong was in his evidence-in-chief when he said that, for example, Chiang could not remember his remuneration and profits. As mentioned, Dr Tong preferred to rely more on epilepsy than impaired recent memory to support his opinion about unemployability.

71 I also note that Chiang had gone back to the office of the family business. Was his continued involvement in that business as limited as he was suggesting? If so, why even go back to work daily? Surely, if he could not do much else it would seem meaningless for him to keep going to the office just to sign documents like cheques which could have been done easily by another sibling. There was no suggestion that his task could only be undertaken by him. Indeed, the suggestion was the other way around. Perhaps it was good therapy for him to keep on going to the office daily but there was no evidence to this effect. Also, was he receiving an average of \$6,000 a month post-disability solely because his siblings wanted to help him meet his medical expenses or partly because he was undertaking more responsibilities that did not require so much physical strength? It is tempting to assume it was the former but such a temptation cannot replace evidence which should have been given. As I have mentioned, the proposal form stated that he was running a business. This was not necessarily the same as physically running around and doing the manual work he was claiming he had done before his disability. It seems to me that Chiang had exaggerated the manual component of his work before disability. However, as NTUC Income apparently accepted that Chiang could not carry on his usual occupation as a partner in the family business, see [63], I need say no more on this point.

72 In any event, in the light of my conclusion that the strict interpretation is applicable, the burden is on Chiang to establish that he came within the strict interpretation. As mentioned, see [62], his counsel did not attempt to persuade me that Chiang came within that interpretation. In any event, I find that Chiang has not established that he was unemployable in the strict sense.

73 In the circumstances, it is unnecessary for me to deal in any detail with the evidence of Dr Chong for NTUC Income which I will mention briefly. He said in his report dated 15 November 2006 to Straits Law Practice LLC, solicitors of NTUC Income:

I saw Mr Chiang on 14 November 2006 for an independent assessment of his current neurological status.

I had with me various reports by Dr Tong HI.

...

Mr Chiang came to the consult along [*sic*]. He was totally independent although he exhibited a spastic gait. His speech was very slightly dysarthric. He had a mild left facial palsy. Muscle tone on the left was exaggerated. Motor power on the left was clearly weaker. Deep tendon reflexes

were exaggerated on the left.

Mr Chiang clearly showed the residual effects of a long standing stroke with paralysis. His mind appeared unimpaired. He is clearly not able to do manual work. But he could use his mind.

In a direct reply to your letter dated 13 November 2006, regarding the definition of "Total and Permanent Disability", I will have to conclude that Mr Chiang clearly does not satisfy the definition given in the letter.

74 In cross-examination, Dr Chong said that Chiang's mind appeared unimpaired because he was rational and was able to co-operate and understand what Dr Chong meant (when the doctor spoke to him). There was nothing irrational in his language and thoughts. However, Dr Chong did not conduct any memory test.

75 Dr Adrian Tan who had provided a report dated 14 August 2001, see [11], apparently did not give evidence at the trial and so I need say no more on his report.

76 In the circumstances, I will allow the appeal of NTUC Income, set aside the judgment of DJ Lim and dismiss Chiang's claim. Although counsel for NTUC Income said it will not claim costs of the appeal, nothing was said about the costs below. For the avoidance of doubt, I will hear the parties on costs unless they inform me that the question of costs below and of the appeal have been resolved.

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