

GRADY RAY GIPSON

PLAINTIFF

VS

MUTUAL OF OMAHA INSURANCE
COMPANY

DEFENDANT

:

:

:

:

:

:

I

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO: 8819

I charge you under the Law of Alabama that house confinement
under a health policy of this nature does not mean the insured should be
actually restrained within four walls.

Swain
DeFair J. Morrison
Judge

GRADY RAY GIPSON : IN THE CIRCUIT COURT OF
PLAINTIFF : BALDWIN COUNTY, ALABAMA
VS : AT LAW
MUTUAL OF OMAHA INSURANCE :
COMPANY : CASE NO: 8819
DEFENDANT :
II

I charge you under the Law of Alabama, that in an action in a health policy, disability means inability to substantially perform the duties of any substantially gainful occupation for which insured is qualified by training, education or experience, and the proper test is not whether an insured can do all or substantially all of the things he previously did in following a gainful occupation, but whether the insured can substantially perform the material duties of some occupation for which he is qualified.

Given
Jefair G. Maslun
judge

GRADY RAY GIPSON : IN THE CIRCUIT COURT OF
PLAINTIFF : BALDWIN COUNTY, ALABAMA
VS : AT LAW
MUTUAL OF OMAHA INSURANCE :
COMPANY : CASE NO: 8819
DEFENDANT :

III

I charge you under the Law of Alabama that the provisions of a health policy covering confinement to the house should not be applied in a strict literal construction and the insured, if able, can enjoy the immediate surroundings of his house, and if necessary, for the improvement of his health, can enjoy occasional outings.

Siven,
Jeffrey J. Mascher
Judge

GRADY RAY GIPSON : IN THE CIRCUIT COURT OF
PLAINTIFF : BALDWIN COUNTY, ALABAMA
VS : AT LAW
MUTUAL OF OMAHA INSURANCE :
COMPANY : CASE NO: 8819
DEFENDANT :
IV

I charge you under the Law of Alabama, that if you are reasonably satisfied from the evidence presented in this case, that although from the standpoint of medical science the initial cause of the illness of Grady Ray Gipson may have preceded the issuance of the policy, if the condition did not manifest itself to the extend of rendering him totally disabled until after the benefits accrued in the contract, then you should find for the Plaintiff.

Siven,
Jefair J. Marshall
judge

GRADY RAY GIPSON : IN THE CIRCUIT COURT OF
PLAINTIFF : BALDWIN COUNTY, ALABAMA
VS : AT LAW
MUTUAL OF OMAHA INSURANCE :
COMPANY : CASE NO: 8819
DEFENDANT :
V

I charge you under the Law of Alabama, that if you are reasonably satisfied from the evidence presented in this case, that the normal body functions of Grady Ray Gipson were not hindered or prevented from operating until after benefits accrued in the contract, then you should find for the Plaintiff.

*Refused,
Jeffrey G. Maskeburn
Judge*

Ci. The Court charges with regard to the claim for benefits made in plaintiff's complaint, that with respect to the period of time following plaintiff's departure from the hospital on or about May 3, 1968, if you believe the evidence in this case you cannot award any damages in favor of the plaintiff and against the defendant under sub-part (1) of Part E for benefits for "TOTAL LOSS OF TIME WITH CONFINEMENT."

Refused
Jefair J. Marshall
judge.

C2. The Court charges that if you are reasonably satisfied from the evidence in this case that plaintiff is entitled to recover from the defendant, then plaintiff would not be entitled to recover benefits for more than a four-month period if you believe the evidence in this case.

Refused,
Jeffrey J. Maslowski
Judge

C3. The Court charges that with respect to the claim for benefits under Part E of the insurance policy for "TOTAL LOSS OF TIME WITH CONFINEMENT", if you are reasonably satisfied from the evidence in this case that plaintiff's condition or illness is not of such a nature as to require plaintiff to remain primarily or substantially within doors, then you should not award any damages in favor of plaintiff and against the defendant for "TOTAL LOSS OF TIME WITH CONFINEMENT" as those benefits are defined by the policy and contained in Part E of the Policy, if you believe the evidence in this case.

Six
Seaman J. Marshall
Judge

C4. The Court charges with respect to plaintiff's claim for benefits for "TOTAL LOSS OF TIME WITH CONFINEMENT" under Part E of the Policy, confinement means that period of time during which the nature of plaintiff's condition requires plaintiff to remain primarily or principally within doors, and if plaintiff's condition is not of such a nature as would be compatible with confinement primarily or principally within doors, then you cannot award any damages in favor of the plaintiff and against the defendant for "TOTAL LOSS OF TIME WITH CONFINEMENT" under Part E of the Policy.

Given
Jeffrey J. Maliburn
Judge

C5. The Court charges with respect to plaintiff's claim for benefits under the "TOTAL LOSS OF TIME WITH CONFINEMENT" portion of Part E of the policy, the policy defines the term "confinement" as follows:

"Confinement means that period of time during which sickness requires your (plaintiff) remaining withindoors. Confinement shall not be considered terminated by reason of your (plaintiff's) transportation for necessary treatment at a doctor's office or a hospital."

With respect to this definition and this aspect of plaintiff's claim, the Court charges that if you are reasonably satisfied from the evidence in this case that so long as plaintiff's illness or condition is not of such a nature as to require plaintiff to be primarily or principally confined withindoors, or so long as plaintiff's illness or condition is compatible with plaintiff going and remaining out of doors for significant periods of time in the normal course of plaintiff's activities, then you cannot award any damages in favor of the plaintiff and against the defendant under the "TOTAL LOSS OF TIME WITH CONFINEMENT" portion of Part E of the Policy for such period of periods of time.

Given
Sejain J. Masheer
Judge.

C6. The Court charges with respect to plaintiff's claim for benefits under the "TOTAL LOSS OF TIME WITH CONFINEMENT" portion of Part E of the policy, the policy defines the term "confinement" as follows:

"Confinement means that period of time during which sickness requires your (plaintiff) remaining withindoors. Confinement shall not be considered terminated by reason of your (plaintiff's) transportation for necessary treatment at a doctor's office or a hospital."

With respect to this aspect of plaintiff's claim, and this definition of "confinement", the Court charges that if you are reasonably satisfied from the evidence in this case that plaintiff's condition or illness is not of such a nature as to be compatible with remaining primarily or principally withindoors, then for that period of time when such is the nature of plaintiff's condition or illness you cannot return a verdict in favor of the plaintiff and against the defendant with reference to the "TOTAL LOSS OF TIME WITH CONFINEMENT" portion of Part E of the policy.

Refused,
Jeffrey G. Marshall
judge

Z-3. You are not to allow your verdict to be affected or influenced by sympathy in any degree whatsoever, but, on the contrary, the law requires that you should return a verdict entirely free from the effects of sympathy, passion or prejudice.

Given
J. G. Mansburn
Judge

Z-4. The court charges that if you should find that the evidence as to any fact essential to plaintiff's right of recovery and as to which the burden of proof rests on the plaintiff, is evenly balanced, or in equilibrium, your verdict must be for the defendant.

*Refused,
Jefair J. Marshall
Judge.*

1. The Court charges that you must
return a verdict in favor of the defendant.

Respectfully,
J. J. G. Madison
Judge

2. The Court charges that if you believe the evidence in this case you must return a verdict in favor of the defendant.

Respectfully,
J. P. Mansburn
Judge

3. The Court charges that if you are reasonably satisfied from the evidence in this case that on or about the 5th day of November, 1968, the defendant transmitted to plaintiff its draft in the amount of ~~\$295.36~~ which draft represented a return of premiums accepted by that date on the insurance policies referred to in plaintiff's complaint, and that defendant submitted said draft as an offer to rescind those policies to plaintiff, and further that plaintiff received and has retained that draft, then you must return a verdict in favor of the defendant.

Refused,
Jefair J. Maskeburn
Judge.

x 4. The Court charges that if you are reasonably satisfied from the evidence in this case that the defendant transmitted on or about November 5, 1968, defendant's draft in the amount of \$295 as an offer to plaintiff to rescind the policies referred to in plaintiff's complaint, and if you are further reasonably satisfied from the evidence in this case that plaintiff received and has retained defendant's said draft, then you must return a verdict in favor of the defendant.

Refused,
Jeffrey J. MacArthur
Judge.