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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 800761

ANTHONY W. ROGERS,
Appellant,

v.

NATIONWIDE MUTUAL INSURANCE COMPANY,
Appellee.

JOINT APPENDIX

C. Jacob Ladenheim, Esq.,
Wiegandt, Ladenheim and Campbell,
Attorneys at Law, P.C.,
13 Roanoke Street,
Fincastle, Virginia 24090.

Counsel for Appellant.

James W. Jennings, Jr., Esq.,
Woods, Rogers, Muse, Walker & Thornton,
Attorneys at Law,
105 Franklin Road, S.W.,
Roanoke, Virginia 24004.

Counsel for Appellee.

LAWYERS PRINTING COMPANY 7th & Franklin Bldg. Richmond, Virginia 23219 (804) 648-3664

TABLE OF CONTENTS

		PAGE
1.	Memorandum for Judgment	1
2.	Petition for Removal, filed September 17, 1979	2
3.	Stipulation, filed January 7, 1980	5
4.	Memorandum of Plaintiff, filed January 22, 1980	9
5.	Stipulation, filed January 31, 1980	12
6.	Opinion of Judge Stephenson, filed February 1, 1980	13
7.	Final Order, filed February 22, 1980	17
8.	Notice of Appeal, filed March 20, 1980	18
9.	Statements of Incidents of the Case	19
10.	Assignment of Error (2), filed May 22, 1980	20

Virginia:

Municipal Court
In the County Court
Civil and Police Justice Court

of BOTETOURT County/C

ANTHONY W. ROGERS, *Plaintiff*

vs.

NATIONWIDE MUTUAL INSURANCE COMPANY, *Defendant*

MEMORANDUM

Nature of Action Contract Returnable on September 14, 1979

Amount of claim $3,883.88 with Legal Interest from _____ to _____

Defendant's full name and last known address are as follows: (Do not use initials.)

Nationwide Mutual Insurance Company (Full Name)	Registered Agent: David Smythe (Last Known Address) 5401 Fort Avenue Lynchburg, Virginia
(Full Name)	(Last Known Address)
(Full Name)	(Last Known Address)

Being unable to furnish the full names and addresses of the defendants the following salient f are given to identify with reasonable certainty such defendant or defendants:

Race _____ Sex _____ Occupation _____

Resides with or on the property of _____

Employed by _____ at _____

Other identifying facts:

C. Jacob Ladenheim

C. Jacob Ladenheim

001

PETITION AND AFFIDAVIT
FOR REMOVAL

PETITION

The defendant, Nationwide Mutual Insurance Company, comes, by counsel, and moves the Court to remove this action to the Circuit Court of Botetourt County, pursuant to the provisions of §16.1-92 of the 1950 Code of Virginia, as amended.

AFFIDAVIT

STATE OF VIRGINIA)
) To-wit:
CITY OF ROANOKE)

I, James W. Jennings, Jr., being first duly sworn, do hereby make oath that:

(1) I am an attorney-at-law practicing with the firm of Woods, Rogers, Muse, Walker & Thornton, Roanoke, Virginia, attorneys for the defendant, Nationwide Mutual Insurance Company, in this case, and as such I am authorized to make this affidavit.

(2) The defendant has a substantial defense to the claim asserted by the plaintiff, Anthony W. Rogers.

(3) The Grounds of Defense of the defendant to the plaintiff's claim is as follows:

(a) It denies that the plaintiff is entitled to recover from it the amount alleged or any other sum whatever.

(b) It denies that it violated any legal duty, contractual or other, which it may have owed to the plaintiff.

(c) It denies that the plaintiff has a claim for breach of contract against it.

(d) It alleges that it fully and faithfully performed any contract it may have had with the plaintiff and every

duty and obligation on its part to be performed under the provisions of any such contract and that it breached none of its duties or obligations under any such contract.

(e) It alleges that any contract it may have had with the plaintiff provides no coverage of the claim asserted by the plaintiff in this proceeding.

(f) It alleges that the claim asserted by the plaintiff is expressly excluded from coverage under the provisions of any contract it may have had with the plaintiff.

(g) It alleges that all or a portion of the claim asserted by the plaintiff in this proceeding is barred by the applicable period of limitations.

(4) The defendant desires to remove this action at law to the Circuit Court of Botetourt County, Virginia, and this affidavit is made for the purpose of removing this action to said Circuit Court.

(5) The amount in controversy exceeds the removal amount of $1,000.00, and the accrued costs of the plaintiff, writ tax, and the costs in the Circuit Court of Botetourt County are tendered with this petition and affidavit for removal, as required by statute. Accordingly, the undersigned hereby requests that the Clerk of this Court forward the papers in this case to the Clerk of the Circuit Court of Botetourt County, Virginia, in accordance with the provisions of §16.1-92 of the 1950 Code of Virginia, as amended.

Subscribed and sworn to before me, the undersigned notary public, this 11th day of September, 1979.

Sue C. St-Clair
Notary Public

My commission expires:
9-2-80

CERTIFICATE OF MAILING

I, James W. Jennings, Jr., hereby certify that I have this 11th day of September, 1979, mailed a true copy of the foregoing Petition and Affidavit for Removal to C. Jacob Ladenheim, Esquire, Minter, Wiegandt and Ladenheim, 13 Roanoke Street, Fincastle, Virginia 24090, counsel of record for the plaintiff.

STIPULATION

The parties to this action, by their counsel, hereby stipulate and agree that the attached copy of Nationwide Mutual Insurance Company automobile liability policy #53B-638113 was on September 17, 1977, the date of the collision, in full force and effect on the 1977 Toyota, identification #RA29055114, owned by Anthony W. Rogers. That the policy described above included medical payments coverage in the amount of $5,000.00.

ANTHONY W. ROGERS

By_____
C. Jacob Ladenheim, Of Counsel

NATIONWIDE MUTUAL INSURANCE COMPANY

By_____
James W. Jennings, Jr., Of Counsel

NATIONWIDE
MUTUAL INSURANCE COMPANY

(a mutual insurance company, herein called the Company)

YOUR INDEX TO PROTECTION UNDER THE FAMILY POLICY

PART I — PHYSICAL DAMAGE

Coverage A (1) — Comprehensive — Excluding Collision 1
(2) — Personal Effects 1
Coverage B — Collision 1
Coverage C — Towing and Labor Costs 1
Supplementary Payments 1
Exclusions 2
Limit of Liability 2
Other Insurance 2

PART II — LIABILITY

Coverage D — Property Damage Liability 3
Coverage E — Bodily Injury Liability 3
Supplementary Payments 3
Persons Insured 3
Exclusions 4
Financial Responsibility Laws 5
Limits of Liability 5
Other Insurance 5

PART III — EXPENSES FOR MEDICAL SERVICES

Coverage F — Medical Payments 5
Exclusions 6
Limit of Liability 6
Other Insurance 6

CONDITIONS

Protection Throughout U.S., Its Territorial Possessions or Canada 7
What To Do in Case of Accident 7
Changes or Additions to Policy 8
Termination of Policy 8
Out-of-State Insurance 10

MUTUAL POLICY CONDITIONS

What Mutual Means to You 10
Policy is Non-Assessable 10
Premium Notice 10
Participation in Company Affairs 10

UNINSURED MOTORISTS INSURANCE END. 1297

Coverage — Uninsured Motorists 11
Exclusions 11
Conditions 13
Schedule 14

in which the Named Insured or such resident is a partner, or any partner, agent or employee of the Named Insured, such resident or partnership;

(h) to a non-owned automobile while maintained or used by any person while such person is employed or otherwise engaged in

(1) the automobile business of the Insured or of any other person or organization,

(2) any other business or occupation of the Insured, but this exclusion (h) (2) does not apply to a private passenger automobile operated or occupied by the Named Insured or by his private chauffeur or domestic servant or a trailer used therewith or with an owned automobile;

(i) to injury to or destruction of (1) property owned or transported by the Insured or (2) property rented to or in charge of the Insured other than a residence or private garage;

(j) to the ownership, maintenance, operation, use, loading or unloading of an automobile ownership of which is acquired by the Named Insured during the policy period or any temporary substitute automobile therefor, if the Named Insured has purchased other automobile liability insurance applicable to such automobile for which a specific premium charge has been made.

Financial Responsibility Laws

When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by this policy for bodily injury liability or for property damage liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The Insured agrees to reimburse the Company for any payment made by the Company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

Limits of Liability

Coverage D: The limit of property damage liability stated in the declarations as applicable to "each occurrence" is the total limit of the Company's liability for all damages arising out of injury to or destruction of all property of one or more persons or organizations, including the loss of use thereof, as the result of any one occurrence.

Coverage E: The limit of bodily injury liability stated in the declarations as applicable to "each person" is the limit of the Company's liability for all damages, including damages for care and loss of services, arising out of bodily injury sustained by one person as the result of any one occurrence; the limit of such liability stated in the declarations as applicable to "each occurrence" is, subject to the above provision respecting each person, the total limit of the Company's liability for all such damages arising out of bodily injury sustained by two or more persons as the result of any one occurrence.

Other Insurance

If the Insured has other insurance against a loss covered by Part II of this policy the Company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss; provided, however, the insurance with respect to a temporary substitute automobile or non-owned automobile shall be excess insurance over any other valid and collectible insurance.

PART III — EXPENSES FOR MEDICAL SERVICES

COVERAGE F — *Medical Payments*

To pay all reasonable expenses incurred within one year from the date of accident for necessary medical, surgical, X-ray and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services:

Division 1 — to or for the Named Insured and each relative who sustains bodily injury, sickness or disease, including death resulting therefrom, hereinafter called "bodily injury," caused by accident,

(a) while occupying the owned automobile,

(b) while occupying a non-owned automobile, but only

007

if such person has, or reasonably believes he has, the permission of the owner to use the automobile and the use is within the scope of such permission, or

(c) through being struck by an automobile or by a trailer of any type;

Division 2 — to or for any other person who sustains bodily injury, caused by accident, while occupying

(a) the owned automobile, while being used by the Named Insured, by any resident of the same household or by any other person with the permission of the Named Insured; or

(b) a non-owned automobile, if the bodily injury results from

(1) its operation or occupancy by the Named Insured or its operation on his behalf by his private chauffeur or domestic servant, or

(2) its operation or occupancy by a relative, provided it is a private passenger automobile or trailer,

but only if such operator or occupant has, or reasonably believes he has, the permission of the owner to use the automobile and the use is within the scope of such permission.

Definitions

The definitions under Part II apply to Part III, and under Part III:

"occupying" means in or upon or entering into or alighting from.

EXCLUSIONS

This policy does not apply under Part III to bodily injury:

(a) sustained while occupying (1) an owned automobile while used as a public or livery conveyance, or (2) any vehicle while located for use as a residence or premises;

(b) sustained by the Named Insured or a relative while occupying or through being struck by (1) a farm type tractor or other equipment designed for use principally off public roads, while not upon public roads, or (2) a vehicle operated on rails or crawler-treads;

(c) sustained by any person other than the Named Insured or a relative,

(1) while such person is occupying a non-owned automobile while used as a public or livery conveyance, or

(2) resulting from the maintenance or use of a non-owned automobile by such person while employed or otherwise engaged in the automobile business, or

(3) resulting from the maintenance or use of a non-owned automobile by such person while employed or otherwise engaged in any other business or occupation, unless the bodily injury results from the operation or occupancy of a private passenger automobile by the Named Insured or by his private chauffeur or domestic servant, or of a trailer used therewith or with an owned automobile;

(d) sustained by any person who is employed in the automobile business, if the accident arises out of the operation thereof and if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law;

(e) due to war.

Limit of Liability

The limit of liability for medical payments stated in the declarations as applicable to "each person" is the limit of the Company's liability for all expenses incurred by or on behalf of each person who sustains bodily injury as the result of any one accident.

Other Insurance

If there is other automobile medical payments insurance against a loss covered by Part III of this policy the Company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of liability of all valid and collectible automobile medical payments insurance; provided, however, the insurance with respect to a temporary substitute automobile or non-owned automobile shall be excess insurance over any other valid and collectible automobile medical payments insurance.

MEMORANDUM

To the Honorable Roscoe B. Stephenson, Jr., Judge of said Court:

STATEMENT OF THE FACTS

On September 17, 1977, Anthony W. Rogers, Plaintiff had in full force and effect an automobile liability policy with defendant, and on that date, Plaintiff was involved in a collision. The defendant's policy included coverage in the amount of $5,000.00 for "medical payments coverage" (See attached appendix A for the applicable policy provisions). Plaintiff sought chiropractic treatment for his injuries sustained during the collision and submitted the bills therefore to defendant. Defendant has denied coverage asserting inter alia that the policy does not provide for payment of expenses incurred through chiropractic treatment. (Defendant's answers to Interrogatories 3 [a]).

ISSUE

WHETHER DEFENDANT CAN LAWFULLY EXCLUDE CHIROPRACTIC TREATMENT FROM IT'S MEDICAL PAYMENT POLICIES.

ARGUMENT

Section 38.1-347.1, Code of Virginia as amended, requires insurance companies to reimburse it's medical payment policyholders for chiropractic treatment.

Section 38.1-347.1 provides in pertinent part:

> "Notwithstanding any provision of any policy of insurance, when such policy provides for reimbursement for any service which may be legally performed by a person licensed in this State for the practice of chiropractic, . . . reimbursement under such policy shall not be denied because such service is rendered by a person so licensed; . . . ."

This section falls within Article Two: "Accident & Sickness Insurance Policies". Section 38.1-347 defines a policy of accidents and sickness insurance as "any policy or contract covering the kind or kinds of insurance described in §38.1-5". Section 38.1-5 relates to ". . . loss resulting from sickness or from bodily injury or death by accident or accidental means or both.

The Plaintiff maintains that under these statutes defendant carrier cannot lawfully deny coverage for any of these services which would all be reimbursed if performed by a medical doctor.

Respectfully submitted,

C. Jacob Ladenheim

MAILING CERTIFICATE

I, C. Jacob Ladenheim, do hereby certify that I have this ____ day of January, 1980, mailed a true and correct copy of the foregoing Memorandum to James W. Jennings, Jr., Esquire, Woods, Rogers, Muse, Walker, & Thornton, Counsel of record for Defendant, 105 Franklin Rd, Roanoke, Virginia.

C. Jacob Ladenhein.

PART III — EXPENSES FOR MEDICAL SERVICES

OVERAGE F — *Medical Payments*

o pay all reasonable expenses incurred within one year from ıe date of accident for necessary medical, surgical, X-ray ıd dental services, including prosthetic devices, and neces- ıry ambulance, hospital, professional nursing and funeral ıvices:

if such person has, or reasonably believes he has, the permission of the owner to use the automobile and the use is within the scope of such permission, or

(c) through being struck by an automobile or by a trailer of any type;

Division 2 — to or for any other person who sustains bodily injury, caused by accident, while occupying

(a) the owned automobile, while being used by the Named Insured, by any resident of the same household or by any other person with the permission of the Named Insured; or

(b) a non-owned automobile, if the bodily injury results from

(1) its operation or occupancy by the Named Insured or its operation on his behalf by his private chauffeur or domestic servant, or

(2) its operation or occupancy by a relative, provided it is a private passenger automobile or trailer,

but only if such operator or occupant has, or reasonably believes he has, the permission of the owner to use the automobile and the use is within the scope of such permission.

Definitions

The definitions under Part II apply to Part III, and under Part III:

"occupying" means in or upon or entering into or alighting from.

EXCLUSIONS

This policy does not apply under Part III to bodily injury:

(a) sustained while occupying (1) an owned automobile while used as a public or livery conveyance, or (2) any vehicle while located for use as a residence or premises;

(b) sustained by the Named Insured or a relative while occupying or through being struck by (1) a farm type tractor or other equipment designed for use principally off public roads, while not upon public roads, or (2) a vehicle operated on rails or crawler-treads;

Division 1 — to or for the Named Insured and each relative who sustains bodily injury, sickness or disease, including death resulting therefrom, hereinafter called "bodily injury," caused by accident,

(a) while occupying the owned automobile,

(b) while occupying a non-owned automobile, but only

(c) sustained by any person other than the Named Insured or a relative,

(1) while such person is occupying a non-owned automobile while used as a public or livery conveyance, or

(2) resulting from the maintenance or use of a non-owned automobile by such person while employed or otherwise engaged in the automobile business, or

(3) resulting from the maintenance or use of a non-owned automobile by such person while employed or otherwise engaged in any other business or occupation, unless the bodily injury results from the operation or occupancy of a private passenger automobile by the Named Insured or by his private chauffeur or domestic servant, or of a trailer used therewith or with an owned automobile;

(d) sustained by any person who is employed in the automobile business, if the accident arises out of the operation thereof and if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law;

(e) due to war.

Limit of Liability

The limit of liability for medical payments stated in the declarations as applicable to "each person" is the limit of the Company's liability for all expenses incurred by or on behalf of each person who sustains bodily injury as the result of any one accident.

Other Insurance

If there is other automobile medical payments insurance against a loss covered by Part III of this policy the Company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of liability of all valid and collectible automobile medical payments insurance; provided, however, the insurance with respect to a temporary substitute automobile or non-owned automobile shall be excess insurance over any other valid and collectible automobile medical payments insurance.

Filed: January 31, 1980
RBG.

STIPULATION

The parties to this action, by their counsel, hereby stipulate and agree that the attached copy of Nationwide Mutual Insurance Company automobile liability policy #53B-638113 was on September 17, 1977, the date of the collision, in full force and effect on the 1977 Toyota, identification #RA29055114, owned by Anthony W. Rogers. That the policy described above included medical payments coverage in the amount of $5,000.00.

ANTHONY W. ROGERS

By C. Jacob Ladenheim
C. Jacob Ladenheim, Of Counsel

NATIONWIDE MUTUAL INSURANCE COMPANY

By
James W. Jennings, Jr., Of Counsel

OPINION

The sole issue presented is whether the plaintiff (Rogers) is entitled to recover from the defendant (Nationwide) certain costs of chiropractic services which he alleges are covered by a medical payment coverage endorsement of a motor vehicle insurance policy issued to Rogers by Nationwide.

Part III of the policy requires Nationwide:

> "To pay all reasonable expenses incurred within one year from the date of accident for necessary medical, surgical, X-ray and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services: ...to or for the Named Insured and each relative who sustains bodily injury, sickness or disease, including death resulting therefrom, hereinafter called 'bodily injury', caused by accident, (a) while occupying the owned automobile, (b) while occupying a non-owned automobile..., or (c) through being struck by an automobile..."

Rogers, relying upon Virginia Code § 38.1-347.1, claims that "medical" services as stated in his policy include those performed by a licensed chirppractor. This section was enacted by the General Assembly in 1968, and the preamble of the Act reads as follows:

> "An Act to amend the Code of Virginia by adding a section numbered 38.1-347.1 so as to guarantee full protection and recompense for insured risks <u>under sickness and accident insurance contracts</u> providing for reimbursement of sickness and bodily injury claims." Acts of Assem., 1968, Ch. 588, p. 894. (emphasis added)

Section 38.1-347.1 in pertinent part provides:

> "Notwithstanding any provision of any policy of insurance, when such policy provides for reimbursement for any service which may be legally performed by a person licensed in this State for the practice of chiropractic, optometry, optician, psychology, podiatry or chiropody, reimbursement under such policy shall not be denied because such service is rendered by a person so licensed;..."

Nationwide contends that § 38.1-347.1 does not apply to a motor vehicle insurance policy as classified and defined by Code § § 38.1-21[1] and 38.1-380.1,[2] but applies solely to accident and sickness insurance as classified and defined by Code § § 38.1-5[3] and 38.1-347.[4]

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1. § 38.1-21 provides in pertinent part:

"Motor vehicle...insurance means and includes insurance against: (1) Loss of or damage resulting from any cause to motor vehicles,... (2) Legal liability of the insured,...and against loss, damage, or expense incident to a claim of such liability, arising out of the death or injury of any person resulting from the ownership, maintenance, or use of motor vehicles...

"Any policy of motor vehicle... insurance covering legal liability of the insured under paragraph (2) of this section...may include appropriate provisions whereby the insuring company assumes the obligation of payment of medical, hospital, surgical and funeral expenses arising out of the death or injury of any person,..."

2. § 38.1-380.1 provides in pertinent part:

"/E/very insurer licensed in this State issuing or delivering any policy or contract of bodily injury liability insurance,... covering liability arising from the ownership, maintenance or use of

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By statute, various kinds of insurance have been classified and defined. See Code § § 38.1-2 to 38.1-24, inclusive.[5] As previously stated, the policy in question falls within the motor vehicle insurance classification, and the pertinent language of the policy respecting medical payments conforms to the requirements of § 38.1-380.1 (i.e., "all reasonable and necessary expenses for medical, hospital, dental, surgical...services") (emphasis added).

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any motor vehicle shall provide,...as a minimum coverage...the following hospital, medical and disability benefits for each accident:

"(a) All reasonable and necessary expenses for medical, hospital, dental, surgical, ambulance, prosthetic and rehabilitation services and funeral expenses, resulting from such accident..."

3.

"§ 38.1-5. Accident and sickness. - Accident and sickness insurance means and includes insurance against loss resulting from sickness, or from bodily injury or death by accident or accidental means, or both."

4.

"§ 38.1-347. Definition of accident and sickness insurance policy. - The term "policy of accident and sickness insurance" as used in this article includes any policy or contract covering the kind or kinds of insurance described in § 38.1-5."

5.

The various classifications are: Life, § 38.1-3; Annuities, § 38.1-4; Accident and sickness, § 38.1-5; Fire, § 38.1-6; Miscellaneous property, § 38.1-7; Water damage, § 38.1-8; Burglary and theft, § 38.1-9; Glass insurance, § 38.1-10; Boiler and machinery, § 38.1-11; Elevator, § 38.1-12; Animal, § 38.1-13; Collision, § 38.1-14; Personal injury liability, § 38.1-15; Property damage liability, § 38.1-16; Workmen's compensation and employer's liability, § 38.1-17; Fidelity and surety, § 38.1-18; Credit, § 38.1-19; Title, § 38.1-20; Motor Vehicle and Aircraft, § 38.1-21; Marine, § 38.1-22; and Legal services insurance, § 38.1-22.1.

Rogers further contends that even if § 38.1-347.1 is inapplicable, the provision in the policy for the payment of medical services is broad enough to include the services of a chiropractor. The word "medical" is not defined by either the policy in question or statute. "Medical" means "of, relating to, or concerned with physicians or the practice of medicine." Webster's New Collegiate Dictionary, 714 (1974). The "practice of medicine" does not include the "practice of chiropractic"; they are separate and distinct areas of "the healing arts". Code § 54-273. Because of this distinction, the General Assembly enacted § 38.1-347.1 to require reimbursement also for services performed by persons licensed for the practice of chiropractic, optometry, optician, psychology, podiatry or chiropody-none of which constitute "medical" services or the "practice of medicine". But § 38.1-347.1 applies to accident and sickness insurance policies and is not applicable to the policy in question which is for motor vehicle insurance. Since motor vehicle insurance is clearly classified and defined by statute, a policy issued under its classification cannot be classified as any other kind of insurance. Code § 38.1-24[6].

The court cannot make a contract for the parties which differs

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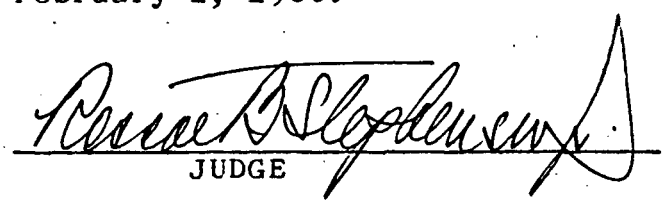
6.

"§ 38.1-24 Definitions to include other insurance of same general kind. The definition of any kind or class of insurance enumerated in this article shall include insurance against other loss, damage or liability of the same general nature or character, or of a similar kind, if such insurance may reasonably and properly be included in the definition and is not specifically included in the definition of some other class of insurance. (emphasis added).

from the one they themselves made, even though the contract it made may be more equitable. Verling v. Quarles, 217 Va. 188, 191, 227 S.E. 2d 684, 686 (1976). Nor can the court invade the province of the legislature in the cause of equity. The remedy, if any be needed, lies with the legislature-not the court.

Since the court holds that § 38.1-347.1 is inapplicable to the policy in question and that medical services are limited to those performed by or related to one engaged in the practice of medicine, Rogers' claim for reimbursement for expenses of a chiropractor under the medical payments provision of his motor vehicle insurance policy is denied. Accordingly, judgment will be entered for Nationwide.

February 1, 1980.



JUDGE

FINAL ORDER

On January 31, 1980, came the parties, by counsel, and stipulated to the Court that the threshold issue to be decided in this case is whether the defendant is liable to the plaintiff under the contract at issue for chiropractic care. As reflected by the opinion of the Court dated February 1, 1980, filed herein it is ADJUDGED that under the contract at issue the defendant is not liable to the plaintiff for chiropractic care for the reasons asserted in said opinion.

The determination of this issue being dispositive of this case it is hereby dismissed with prejudice.

Enter this 22nd day of February, 1980.

Judge

Seen by:

Counsel for Defendant

Objected to:

Counsel for Plaintiff

NOTICE OF APPEAL
FILE NO. 2380

Pursuant to the provisions of Rule 5:6, Rules of the Supreme Court of Virginia, Anthony W. Rogers, files this Notice of Appeal from the judgment of the Circuit Court of Botetourt County, Virginia, entered in the above captioned action on February 22, 1980.

No transcripts, testimony or other incidents of the case will be hereafter filed with the exception of a statement of facts which will be hereafter filed.

ANTHONY W. ROGERS

By_____
C. Jacob Ladenheim

MAILING CERTIFICATE

I, C. Jacob Ladenheim, do hereby certify that a true and correct copy of the foregoing Notice of Appeal was this 20 day of March, 1980, mailed to James W. Jennings, Jr., Esquire, Woods, Rogers, Muse, Walker & Thornton, Counsel for Defendant, 105 Franklin Road, Roanoke, Virginia.

EIM
.C.
O

_____
C. Jacob Ladenheim

7. The parties agreed that the defense referred to in paragraph 6 of the statement of incidents of the case would be dispositive of the case should the Court rule for defendant, and that issue was submitted to the Court for decision.

ANTHONY W. ROGERS,

By_____
C. Jacob Ladenheim, Of Counsel

I have seen this:

_____
Richard M. Thomas, Esquire
On behalf of James W. Jennings, Jr.
Woods, Rogers, Muse, Walker & Thornton
105 Franklin Road
Roanoke, Virginia

ENTERED _____ day of _____, 1980.

_____
Roscoe B. Stephenson, Jr., Judge

IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

******

ANTHONY W. ROGERS,

Petitioner

vs.

NATIONWIDE MUTUAL INSURANCE COMPANY,

Respondent

******

PETITION FOR APPEAL

AND

ASSIGNMENT OF ERROR

Ralph C. Wiegandt
C. Jacob Ladenheim
Attorneys at Law
Fincastle, Virginia 24090

ASSIGNMENT OF ERROR

(2) The Court erred in holding that "medical services" are limited to those performed by or related to one engaged in the practice of medicine.

ARGUMENT

The provision in the policy for the payment of medical services is broad enough to include the services of a chiropractor. "Medical" means "Pertaining, relating, or belonging to the study and practice of medicine, or, the science and art of the investigation, prevention, cure, and alleviation of disease." Black's Law Dictionary, 1133, Fourth Edition, 1957, (emphasis added). "Disease" means "deviation from the healthy or normal condition of any of the functions of tissues of the body." Blacks at 554. Under these definitions it is clear that chiropractic services are medical services.

Moreover, there are numerous examples in the Code of Virginia of utilization of "medical" as inclusive of all the healing arts. The "Medical" Board of Virginia regulates the practice of chiropractic, (§54-282, et. seq.); Every health care provider must file his license in the Circuit Court where he is going to practice and the Clerk must maintain a "Medical Register" to record the licenses, (§54-313); "Medical" malpractice review pannels have authority in malpractice claims against all health care providers, (§8.01-581.2); "Medical" Complaint Investigating Committees may hear complaints against practitioners of any of the healing arts, (§54-321.3).

Thus the Virginia General Assembly has adopted the usage of the term "medical" as a generic term encompassing or pertaining to the healing arts. That same usage is doubtless adopted by the general public. If the carrier intends to restrict medical payments to services performed by a doctor of medicine the policy should so provide.

CONCLUSION AND PRAYER

It is respectfully submitted that the judgment and order entered against your petitioner on the 22nd day of February, 1980, was erroneous for the reasons given and should be reversed and this matter should be remanded for trial on the remaining issues.

Respectfully submitted,

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