

insight



Newsletter

JUNE 2009

Insurance policy – claim by insured, who deliberately set fire to his home at a time when he was suffering from mental disorder

The case of Porter v. Zurich Insurance Company [2009] EWHC 376 (QB) will bring comfort to insurance companies. On the evening of 27th March 2001, following a series of disastrous events in his business and personal life, Raymond Porter, who had been drinking heavily and was suffering from a persistent delusional disorder, decided to kill himself by setting fire to his home. He set a fire, but once a large part of the living area was ablaze, he changed his mind and escaped from the property. The property was severely damaged in the fire and was rendered uninhabitable. He made a fire damage claim on his insurance policy with Zurich Insurance Company, which was rejected. The ensuing proceedings first concerned the preliminary point whether Zurich was liable to indemnify Mr Porter under the policy.

Zurich defended the claim on the ground that, as Mr Porter had started the fire intentionally, he could not recover under the policy, because that would be contrary to public policy or the general law of insurance or because the fire arose from his wilful or malicious act, which was excluded by one of the express exclusions under the policy. In answer, Mr Porter alleged that at the time of the fire his mental illness was so grave that his thoughts and judgment were grossly impaired so that he was not acting as a free agent. There might have been an issue in the case that, if at the time of the fire there was no equity in the house (it had been mortgaged twice against Mr Porter's borrowings), Mr Porter, in any event, could not make a recovery, having committed the crime of arson. However, the case turned not upon whether there was a crime but on whether Mr Porter had the appropriate mental capacity, when he set fire to the house.

Surprisingly, in English law there has been no decided insurance case where the appropriate test for mental capacity has been formulated for a case involving a deliberate act, but when there was no crime. MacGillivray on Insurance Law, 11th Edition, para 26-025 states:

'the question of the assured's insanity would probably have to be decided with reference to the McNaghten rules'

In McNaghten, as will be remembered, Lord Chief Justice Tindal defined the test:

'...to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong'

Such was the test adopted by Coulson J in Porter v. Zurich.

In Mr Porter's case, it was common ground that Mr Porter had a mental disorder as he was suffering from a persistent delusional disorder, moderate depression and, when worse for wear from alcohol, had a tendency to violence and self-harm.

He was on medication (anti-depressants and sleeping tablets) but not on anti-psychotics, which the two expert psychiatrists (who gave evidence at the trial) agreed would have helped to combat his mental disorder, had they been prescribed prior to the fire. For nearly 6 months until the evening before the fire, Mr Porter had abstained from all alcohol. However, he had attempted to commit suicide nearly 18 months before the fire and a matter of weeks before the fire was again contemplating suicide. Further, hours before the fire, whilst perfectly sober and being driven home by his wife, he had attempted twice to grab the steering wheel of the car to drive into incoming traffic. Having reached home, (acting under a delusion) he tried to strangle his wife, accusing her of infidelity and wrecking his business – she then ran away, seeking refuge with friends living nearby.

The Judge found that delusions were an element of Mr Porter's state of mind at the time of the fire. At the same time he found that Mr Porter was reacting to the effects of alcohol and to tragic life events:

St. James's

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he had lost his business; he was under the pressure of pending criminal proceedings (he had telephoned four co-directors and employees and threatened to kill them and subsequently been charged with threats to kill, though these charges, a week before the fire, had been reduced to the lesser charge of harassment, to which he had pleaded guilty, but which he knew could still lead to imprisonment); there was little or no equity in his home, which was effectively under forced sale. And, he had been abandoned by his wife.

Nevertheless, from the manner in which he set fire to the house, the Judge concluded that Mr Porter knew the nature and quality of his act, that is setting fire to his own home and attempting to commit suicide. It was the issue 'Did Mr Porter know he was doing what was wrong?', which might have provided the Judge with most difficulty, because of the presence of Mr Porter's delusional disorder. At the trial, the psychiatrists disagreed as to the impact of the delusional disorder. To confuse matters, there was also an inevitable overlap between understanding the nature and quality of one's act and knowing the difference between right and wrong. What the Judge considered was crucial were the absence of delusions at the moment and during the period when the suicide attempt was made and Mr Porter's state of mind immediately after the fire (contempt for what he had done). Consequently, Mr Porter was found to have known the difference between right and wrong and failed to satisfy the McNaghten test. He therefore failed on his fire damage claim.

ROBERT STERLING

(who was Counsel for Mr Porter)

SEATBELTS, CYCLING HELMETS AND CONTRIBUTORY NEGLIGENCE- WHERE ARE WE UP TO?

Stanton v Collinson [2009] EWHC 342 (QB)

Smith v Finch [2009] EWHC 53 (QB)

The two cases cited above are recent High Court decisions concerning the approach towards findings of contributory negligence where claimants have been injured whilst not wearing a seatbelt (Stanton) or a bicycle helmet (Smith) at the time of their accidents. In order to understand the Court's decisions it is necessary to consider the history of the principle of contributory negligence in this type of case.

The Basis for Findings Of Contributory Negligence

Before 1945 a claimant who was guilty of contributory negligence was disentitled from recovering anything if his own negligence was one of the substantial causes of the injury. The Law Reform (Contributory Negligence) Act 1945 allowed courts to apportion liability in such cases.

Lord Denning in Froom v Butcher (see below) stressed that contributory negligence is a man's carelessness in looking after his own safety. 'He is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable prudent man, he might hurt himself'.

An allegation of contributory negligence is not to be regarded as a defence to liability, it is a defence as to quantum and it is to be assessed by an assessment of blameworthiness and causative potency of the damage, and not of the accident itself.

The failure to wear a seatbelt was considered by the Court of Appeal in Froom v Butcher [1976] 1 Q.B. 286. That case concerned a collision that occurred in November 1972. The claimant had been injured and was not wearing a seatbelt. He did not like them and he had seen accidents where he felt that the drivers would have been trapped in the vehicle had they been wearing seatbelts. He sustained head and chest injuries as well as a broken finger. The evidence suggested that he would not have sustained the head and chest injuries had he been wearing his seatbelt.

At the time of the decision it was not compulsory for people travelling in cars to wear seatbelts.

Regulations had been passed in 1973 making it compulsory to fit seatbelts in all cars registered after 1964 however it was not a criminal offence not to wear them. The Highway Code, however, stated 'fit seat belts in your car and make sure they are always used' and had said as much since 1968. Mr Froom ought to have known this.

Lord Denning was of the view that all of the information before the court made it plain to see that people in the front seats of cars should wear seatbelts for their own safety. He was quick to reject arguments that some people queried the actual effectiveness of the belts and felt that there was more risk of injury through wearing them by stating

'in determining responsibility, the law eliminates the personal equation. It takes no notice of the views of the particular individual or of others like him. It requires everyone to exercise all such precautions as a man of ordinary prudence would observe'.

He summarised the position of the Court of Appeal in the following way. Where there is an accident the negligent driver must bear by far the greater share of responsibility. Where the damage might have been avoided or lessened by the wearing of a seatbelt the injured person must bear some share. Where the damage would have been the same even if a seatbelt had been worn then there should be no reduction. Where the damage would have been prevented altogether then a reduction of 25% would be appropriate. Where it can only be said that the failure to wear the seatbelt made a considerable difference to the damage then the appropriate reduction should be 15%.

The Recent Cases

In Stanton v Collinson the claimant was a front seat passenger in a car that was involved in a high-speed collision. The claimant was not wearing a seatbelt and had another passenger on his lap. He suffered a serious hand injury as well as severe head injuries. Engineering evidence suggested that the head injuries would have been reduced had the claimant worn a seatbelt, however the wearing of a belt would not have completely prevented serious injury to his head.



The defendant argued that because of developments since Froom v Butcher was decided the correct deductions for contributory negligence should be 50% for cases where the damage would have been avoided altogether, and 30% where it would have been lessened.

It pointed to the introduction of compulsory seatbelt use, increased public awareness of the need to wear seatbelts and submitted that a failure to wear a seatbelt in 2003 was more blameworthy and causatively potent than a failure to do so in the 1970s. This argument was rejected by Cox J who decided that the Froom guidelines were still appropriate

In this case there was to be no reduction as the judge was of the view that the defendant had failed to prove that the injuries would have been less severe had the seatbelt been worn. The burden of proof lay on the defendant in this regard.

In Smith v Finch the claimant was seriously injured following a collision between a motorcycle and his bicycle. He was not wearing a cycle helmet as he did not wear one when cycling around his own village as he felt safe cycling there. Williams J echoed Lord Denning in Froom by noting that the 2004 edition of the Highway Code states that cyclists '*should wear a cycle helmet which conforms to current regulations*'

He also noted the results of studies that showed that helmets could be effective in affording some protection in some circumstances. He was of the view that the Froom guidelines should apply to the wearing of cycle helmets. A cyclist of ordinary prudence should wear one no matter how short or long the trip. In this case there was no finding of contributory negligence as the defendant failed to discharge the burden that the wearing of a helmet would have made the claimant's injuries less severe

The court stressed the need for a defendant faced with this burden to call medical evidence as opposed to engineering evidence to satisfy the evidential requirements of such a test.

In conclusion it would appear that the guidelines laid down in Froom v Butcher remain persuasive and that their applicability is likely to stretch to cases where a cycling helmet has not been worn. Cyclists beware!

FAYAZ HAMMOND

Seminar season

June commences with a new term of SRA accredited seminars both in Chambers and also around the North. Listed below are the dates and locations.

The chambers website will have the full details and topics in the near future. All seminars are reasonably priced at £23.00 inclusive of vat per delegate. Should you wish to book a place on a seminar, please do not hesitate to contact chambers.

Wednesday 24th June 2009 Proprietary Estoppel

Warren Potts

In Chambers
1 CPD Point

Wednesday 1st July 2009 Accident Claims, Limitation and Costs

David Binns & Claire Hammond

The Village Hotel, Ashton
Moss,
Ashton-Under-Lyne, OL7 7LL
2 CPD Points

Tuesday 7th July 2009 An update on recent developments and cases in Employment Law

Karen Boyle & Elahe Youshani

In Chambers
2 CPD Points

Tuesday 14th July 2009 Employers Liability and Construction Regulations & Contributory Negligence and Limitation

Fayaz Hammond & James Hogg

The De-Vere Hotel, Blackpool,
FY3 8LL
2 CPD Points

Is "Payment Protection Insurance" the new "Bank Charges"?

To view this recent article by Nathan Banks, please visit the 'Online News' page of the chambers website.

Online Newsletters

If you would like to receive our Insight newsletters in electronic format in future please email:

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Chambers News...

St. James's ranked by Legal 500

Chambers have been ranked again as a leading provincial set.

Robert Sterling, Michael Mulholland, Lucy Wilson-Barnes, Sarah Harrison, James Hurd, Warren Potts, Paul Tindall, Claire Hammond and Sarah Lawrenson have all received recognition within their practice areas and feature in the 'Who's Who in the law' section of the Legal 500.

Launch of Professional Negligence Group

St. James's have recently launched a professional negligence group. With our long established reputation in this practice area we have a group of members at all levels of seniority with direct experience of professional negligence litigation.

The individual practice profiles for the group can be viewed through the 'Our Practice' link on the chambers website.

www.stjameschambers.co.uk

Pupillage news...

We will be recruiting for a 2010 Chancery / Commercial pupillage and a 2010 Common Law pupillage using our own application forms which are now available to download. Candidates are free to apply for either or both of the above pupillages. A separate form is required for each application.

The closing date for applications is Monday 15th June 2009.

It is recommended that you save the documents to your Desktop to complete and then email your completed forms to:

pupillage@stjameschambers.com

If you have any queries relating to pupillage please e-mail:

pupillage@stjameschambers.com

NEW CHANCERY / COMMERCIAL TENANT FOR 2009...

St. James's are delighted to welcome RICHARD SELWYN SHARPE to Chambers. Richard was formerly a member of St. John's Buildings in Manchester.

Called in 1985, Richard's areas of practice are general Chancery and Commercial law with an emphasis on property, company and insolvency law. Chambers wish him well for his future with us.

For further details of Richard's practice, please view his profile at:

www.stjameschambers.co.uk

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