

STATEMENT OF THE ISSUES

I. Rules of Construction

II. Do the two “weight” exclusions in the Fortis Policy vary materially from the exclusions which are legally allowed in the standard policy and are therefore unenforceable? The Trial Court held in the negative.

III. Does insufficient evidence exist as to the “purpose” of the gastroplasty being solely for treatment of mere “obesity” under the facts of the instant case? The Trial Court held in the negative.

IV. Would it be an unlawful discrimination against the Appellant to deny the Appellant necessary surgical care for a disease? The Trial Court held in the negative.

V. If gastroplasty under the facts of the instant case is found to be excluded as a treatment for “weight control,” can coverage still be afforded in that the gastroplasty was medically necessitated treatment for two “covered concurrent causes” (blood pressure and joint deterioration) and were also “efficient predominant proximate causes? The Trial Court held in the negative.

VI. If an ambiguity exists in the Policy in that even if gastroplasty is deemed to be excluded weight control, does the fact that the Policy contains a provision whereby the insurer has discretion to decide whether or not a claim is covered in and of itself create an ambiguity that must be interpreted in favor of the insured? The Trial Court held in the negative.

VII. Would a reasonable policy holder understand and reasonably expect the “weight control exclusion” not to exclude treatment for medically necessary conditions?

The Trial Court impliedly held in the negative.

VIII. Should taxation of costs for “miscellaneous photocopies” be reversed?

The Trial Court held in the negative.