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BAD FAITH BLOG

Predominant Individualized Damages Issues Require Decertification of Bad Faith PIP Benefits Class Action

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Summary: Plaintiffs sued GEICO alleging it used arbitrary computer "rules" to determine personal injury protection ("PIP") payments when a Delaware statute required GEICO to pay "reasonable and necessary" PIP benefits. The court initially certified classes to pursue counts for bad faith breach of contract, breach of the duty of good faith and fair dealing, and consumer fraud. Thereafter, the court granted summary judgment in favor of the defendant and against the plaintiffs' class representative. Thereafter, the court denied the motion to substitute a class representative while at the same time granting the defendant's motion to decertify the class primarily because the individual issues regarding the damages claims would predominate over any common questions of law or fact.

Johnson, et al. v. GEICO Casualty Company

When the court initially certified the bad faith breach of contract claim, it denied class certification for the breach of contract claim finding that "individualized inquiries would be required to determine whether each class members' individual claim was actually medically necessary and their expenses reasonable."At that time the court did not have plaintiffs' proposed trial plan for proving damages, but now it did. Because "plaintiffs' damages expert did not consider whether the billed medical expenses were reasonable or necessary" and plaintiffs had not shown the court how they would prove that GEICO's claims practices would have had a different result absent its use of a computer program to assist it in adjusting claims, the "individualized inquiries into each member's medical expenses would be required resulting in those individualized questions predominating over common issues on the bad faith breach of contract claim."

On the separate claim for breaching the covenant of good faith and fair dealing the court cited multiple Delaware Supreme Court opinions holding that an insurance company's bad faith failure to investigate, process a claim, or delay payment breaches the "implied obligations of good faith and fair dealing underlying all contractual obligations." Such bad faith conduct is "actionable where the insured can show that the insurer's denial of benefits was 'clearly without any reasonable justification.'"The covenant is breached when the conduct of a party "frustrates the 'overarching purpose' of the contract by taking advantage of [that party's] position to control implementation of the agreement's terms." The court agreed that GEICO's conduct toward the plaintiffs could "amount to a breach of the duty of good faith and fair dealing even if no underlying breach of contract ultimately occurs." (Emphasis in original.) The liability issue could still be litigated on a class-wide basis because a uniform course of conduct affected all class members in the same fashion. However, the court specifically found the "injury to each class member is not common among them." "[I]ndividualized inquiries would still be required to determine whether individual claims were medically necessary and their expenses were reasonable." The court reasoning was similar regarding the consumer fraud count.

The court ultimately relied on similar PIP class action cases from Colorado and Maryland which demonstrated "how readily individual damages issues, stemming from an insurer's overarching course of deceptive or illegal conduct designed to minimize the amount of PIP claims an insurer would pay, can predominate over common liability issues." As in those cases, the court found that the common liability issues in this case did not predominate over the individualized damages issues. For that reason, "Rule 23(b)(3)'s predominance requirement [was]not met as to plaintiffs' claims." Because there was no class representative at the time the court made its ruling, the judge did not address typicality or adequacy issues and found instead that even if an appropriate policyholder class representative could be found "my conclusion that individualized issues predominate would not change."

This case helps demonstrate that whenever there is a bad faith case in which the court has to determine whether each individual class member has medical claims which "were medically necessary and their expenses were reasonable," even if the insurer's conduct can be proven on a class-wide basis, the individualized inquiry about the medical necessity and reasonableness of expenses is likely to predominate. Accordingly, bad faith cases requiring such an inquiry will very rarely be susceptible to treatment as a class action case.

By Anthony L. Martin

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