SANDBERG PHOENIX

BAD FAITH BLOG

Montana UTPA Claim Properly Dismissed

AUTHOR: SANDBERG PHOENIX

Summary: Ibsen, Inc., the owner and operator of an urgent care medical clinic filed a four count complaint against a health insurance company, Caring For Montanans, and others, alleging violations of Montana's Unfair Trade Practices Act (UTPA) and alleged common law counts for breach of fiduciary duty, breach of contract, and unjust enrichment. The Montana District Court held that all four counts were essentially for alleged violations of the UTPA and found that Montana did not allow a private right of action for such violations. Accordingly, it dismissed the individual and class action claims Ibsen sought to pursue. A unanimous Montana Supreme Court affirmed.

Mark Ibsen Inc. v. Caring for Montanans Inc.

The *Ibsen* case was essentially a claim by Ibsen and the class Ibsen sought to represent alleging that the defendant health insurance companies had charged "excessive premiums and us[ed] the excess collections to pay kickbacks to the Chamber of Commerce." The supreme court discussed at great length the Montana statutory provisions, the legislative history of the enactment and amendments to the Montana UTPA, the Montana Supreme Court's treatment of private right of action issues under the UTPA and similar statutory schemes, and discussed the positions taken by the Montana Commissioner of Insurance over the history of the UTPA, including the current Commissioner's *amicus* brief filed in support of Ibsen. In addition, the court discussed at length the persuasive decisions by the federal district court and 9th Circuit Court of Appeals rulings on similar claims that the same insurance company had engaged in unfair discrimination "by charging a higher premium rate in violation of [the] UTPA."

When the UTPA was originally enacted, “The Commissioner was solely responsible for enforcement of the entire UTPA and no express private right of action was codified in the Act.” It was largely adopted as part of the National Association of Insurance Commissioners (NAIC) model act. The 1977 amendment made clear that the NAIC did not intend to create new private rights of action although the Montana Legislature did not incorporate “any provision precluding private rights of action or referencing the NAIC’s 1980 report.” Thereafter, the Montana Supreme Court and the Montana Legislature acted to “expressly grant [ ] an insured or a third party claimant a right to bring an independent cause of action against an insurer for actual damages caused by the insurer’s violation of [provisions which] prohibit unfair claim handling and settlement practices.” Subsequent Montana Supreme Court and federal court opinions clarified the law making clear that the 1987 amendment adding Section 242(1) “was the sole provision in the UTPA granting to insureds and third party claimants private rights of action arising from certain specified claims handling and settlement practices..., but for no other purpose.” (Emphasis added.)

In rejecting the current Commissioner’s amicus brief encouraging a finding that Ibsen could pursue a private right of action, the supreme court concluded “that the UTPA does not imply a private right of action. Rather, it expressly confers enforcement authority upon the Commissioner and narrowly provides a limited private right of action only in Section 242 [which prohibited specified unfair claim handling and settlement practices].” The Montana Supreme Court concluded that “Ibsen’s private enforcement claims” for UTPA violations were precluded. For that reason the Court affirmed the trial court dismissals.

The Ibsen case clarifies the parameters of the private right of action UTPA carve-out allowed in Montana. That Montana carve-out is not universally recognized. In fact, many states have adopted the NAIC provision (which Montana did not enact) which specifically precludes all private rights of action under the UTPA, while allowing UTPA violations to provide an evidentiary basis for bad faith actions against insurers.

By Anthony L. Martin

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