Petition

Via Fax

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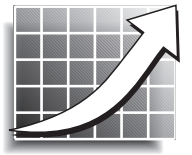
Consumer Class Actions and Bad Faith Claims Combat Insurance Abuses



Auto, health and life insurance have become near necessities for the economic security of America's consumers. Insurance companies continuously seek ways to increase profits from these insurance lines. The need for insurance, the complexity of today's insurance issues and the insurance industry's constant pursuit of increased profits, create opportunities for large scale abuses. Class action lawsuits and bad faith claims provide consumers with effective tools for combating abusive insurance practices. Here are but a few examples.

Auto Collateral Protection Insurance

Insurance companies and lending institutions have taken advantage of borrowers who allow their collision insurance to lapse on financed vehicles. They charge borrowers for insurance coverages that protect only the banks and that borrowers are not obligated to buy. **Leesfield Leighton & Rubio** lawyer George Mahfood successfully prosecuted the nation's first state-wide class action for unauthorized force-placed collateral protection insurance against Mellon Bank, Transamerica Premier Insurance Co. and Balboa Insurance Co. In *Baker v. Mellon Bank*, (W.D. Pa.), $6.5 million was recovered for 20,000 borrowers who were charged for unauthorized insurance coverages that only protected Mellon Bank and generated large profits for the insurers. Also, in *Kenty v. Transamerica Premier Insurance Co.*, 650 N.E. 2d 863 (Ohio 1995), Mahfood and his co-counsel successfully persuaded the Ohio Supreme Court that an insurance company selling collateral protection insurance to a bank could be liable to a class of vehicle borrowers for tortiously interfering with their contractual relationships with their lender.

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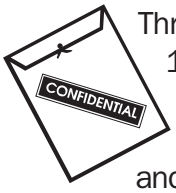
80/20 Health Insurance Programs

Health insurers offer policies in which they promise to pay 80% of allowable medical expenses. The consumer pays 20% of the medical provider's billed amount, but the insurer never actually pays its 80% share. Health insurers negotiate large scale discount arrangements with hospitals, doctors groups and other providers, allowing the insurers to carry a smaller than 80% share and burdening the insured with a greater than 20% share. Class actions have been successful in correcting this misconduct. *See* Doyle & Mahfood, *The 80/20 Percent Solution: Enforcing Medical Coverage Promises*, 32 TRIAL, No. 10, October 1996, p.32.

Replacement & Churning — Life Insurance



Throughout the 1980's and early 1990's, life insurance companies targeted their existing policyholders for the sale of replacement insurance policies which netted agents large commissions and deprived policyholders of long term cash value from existing policies. These sales were often induced by promises that the dividends from existing policies would pay for the replacement policy premiums. These promises were often false and policyholders were left with no cash value, lapsed policies or premiums they could not afford. Nationwide class action settlements have been negotiated in cases involving millions of policyholders of New York Life, Prudential and Phoenix Home Life Mutual. Class members have challenged these settlements as unfair and overreaching. The fate of these settlements is still in the hands of the courts. These cases underscore the need to employ the class action device judiciously.

First and Third Party Bad Faith Claims

First party bad faith claims were given a boost in *Rubio v. State Farm Fire & Cas. Co.*, 662 So.2d 956 (Fla. 3d DCA 1995). **Leesfield Leighton & Rubio** partner Maria Rubio persuaded Florida's Third District Court of Appeal to recognize both a statutory cause of action for first party bad faith cases as well as a common law cause of action for tortious breach of contract in a case arising from the failure to promptly investigate and pay a property loss claim stemming from a burglary.

Third party bad faith claims were strengthened in *Independent Fire Ins. Co. v. Paulekas*, 633 So.2d 1111 (Fla. 3d DCA 1994). Maria Rubio persuaded the Third District Court of Appeal that an insurer should only be able to challenge the reasonableness and good faith of a consent judgement against a third party tortfeasor. The insurer is not permitted to assert all of the defenses to the underlying action that were available to the tortfeasor. In *Paulekas*, a consent judgement of $650,000 was found reasonable by a jury despite policy limits of $300,000.

Helpful Insurance Web Sites:

Insurance News Network:
http://www.insure.com/index.html

Florida Insurance News Network:
http://www.insure.com/states/fl/index.html

Insurance Net: http://insuancenet.com

State Farm Insurance:
http://www.statefarm.com

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