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Schwartz V. Poizner: Potential Game Changer

Law360, New York (April 6, 2011) -- In California, it is common for plaintiffs to join the California Department of Insurance in cases arising out of disability insurance policies. Because California law requires the insurance commissioner to approve disability insurance policies, the plaintiffs allege bogus mandamus claims to attempt to force the commissioner to withdraw or revoke the approval of the policy. For years, insurers have been thwarted in their efforts to remove these cases to federal court, as courts have rejected "fraudulent misjoinder" arguments.

However, California case law has found that a court cannot issue a writ of mandate to force the commissioner to withdraw approval of a disability insurance policy — and a recent case, Schwartz v. Poizner, has the potential to put an end to the practice entirely. This article will examine the reasons why insurers have been unsuccessful in the past in arguing for the removal of such cases to federal court, and how Schwartz has the potential to be a game-changer.

"Fraudulent Misjoinder" Argument Not Effective

Defendant insurers in these types of cases typically had two options to seek resolution: attempt to have the case removed to federal court on the basis of "fraudulent misjoinder" (arguing that there was an insufficient connection between the plaintiffs' claims against the commissioner and the claims against the commissioner were invalid, therefore allowing the case to be removed from state court), or filing a special demurrer for misjoinder and attempting to resolve the issue at the state court level.

The first option has not been successful as plaintiffs routinely beat back efforts to have the cases removed to federal court due to "fraudulent misjoinder." The California federal courts have agreed with the plaintiffs that because California law authorized the commissioner to revoke or withdraw approval of a disability insurance policy, the plaintiffs had a valid cause of action for mandamus relief against the commissioner.

Thus the federal courts would remand these actions back to state court, holding that there is a sufficient connection between the plaintiff's claims against the commissioner and the insurer because the outcome of the insurance contract dispute may "very well depend on whether the commissioner will withdraw approval of the policy in question." (Because no California state court had expressly ruled on the issue, the California federal courts relied on two opinions, Peterson v. Am. Life & Health Ins. Co., and Van Ness v. Blue Cross of Cal., neither of which even involved claims against the commissioner but inaccurately stated that an insured may petition for a writ of mandamus requiring the commissioner to "revoke" approval of a policy.

"Discretionary Acts" Cannot be Compelled

The other option available to the defendant insurers — filing a special demurrer for misjoinder and seeking to resolve the misjoinder at the state court level — has proved more successful. Typically, insurers found success in instances where the commissioner also demurred on the grounds that a court cannot issue a writ of mandate to compel the performance of a discretionary act.

For example, in Harris and Grotz the commissioner successfully argued that the court could not issue a writ of mandate compelling the commissioner to withdraw approval of a disability insurance policy because "[m]andamus will not lie to control an exercise of discretion, i.e., to compel an official to exercise his discretion in a particular manner."

Because California law provides that the commissioner "shall not withdraw approval of a policy theretofore approved by him except upon those grounds as, in his opinion, would authorize disapproval upon original submission thereof," the commissioner's decision to withdraw approval of a disability policy is discretionary. Thus, a court cannot issue a writ of mandate compelling the commissioner to exercise that discretion in a particular manner, i.e., to withdraw approval of a disability insurance policy.

Recent Decision Could Lead to More Federal Court Actions

Consistent with the above reasoning, a California Court of Appeal recently confirmed that a court cannot issue a writ of mandamus to compel the commissioner to perform a discretionary act. In Schwartz v. Poizner, the California Court of Appeals upheld the San Francisco Superior Court's dismissal of the plaintiff's petition for a writ of mandate compelling the commissioner to enforce the plaintiff's rights under an insurance policy.

The court rejected the plaintiff's argument that the commissioner had a ministerial duty to enforce the plaintiff's alleged rights under the Insurance Code, finding instead that nothing in the Insurance Code required the commissioner to enforce the plaintiff's rights in any particular manner.

The court held that "the provisions relating specifically to enforcement concerning alleged insurer misconduct demonstrate that the decision to pursue particular remedies or any remedy at all, falls with the commissioner's discretion."

Although it remains unclear how Schwartz will impact actions where the commissioner answers rather than demurs, the decision should, at a minimum, encourage the commissioner to demur. But where the commissioner has demurred, citing Schwarz, California state courts have sustained the demurrers, allowing the defendant insurers to remove the actions to federal court, where they belong.

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