

BAD FAITH BLOG

Class Rep's Individual Bad Faith Claim Doesn't Bar Injunctive and Declaratory Relief Class

AUTHOR: SANDBERG PHOENIX

Summary: Kent Roose was severely injured in an auto crash in 2007. The liability carrier for the negligent driver and the driver's estate paid sums to settle the case Roose filed, but his extensive medical expenses were insufficient to pay his more than \$300,000 in medical expenses. His group health plan had an exclusion providing that medical benefits would not be paid when any other liability insurance was available to pay medical costs which the Supreme Court of Montana ruled violated Montana's "made whole law." Roose pursued declaratory and injunctive relief on a class action basis, but individually "requested a trial seeking actual and punitive damages for bad faith." The trial court certified the declaratory judgment and injunctive relief claims and separately granted him a jury trial on the bad faith issues. These rulings were affirmed on appeal.

Roose v. Lincoln County Employee Group Health Plan

The Montana class certification rule mirrors the federal class action rule--FRCP Rule 23. Montana's class action rule is also designated Rule 23 of Montana's Rules of Civil Procedure. The Montana courts look to both Montana and federal case law when interpreting Montana's Rule 23.

Some key components in class action certification rulings are whether there are common questions of law or fact, whether the class representative's claims are typical of the claims in the class, and whether the class representative can "fairly and adequately protect the interests of the class." (M.R.Civ.P. 23(a)2-4) The insurers in this case challenged the certification findings on grounds that "Roose's individual bad faith claim conflicts with the purposes of the class and destroys Commonality and Typicality. Further, [insurers] state because of his bad faith claim it puts Roose in a unique situation, thus making him an inappropriate representative for such a class."

The insurers heavily relied upon the United States Supreme Court decision in Wal-Mart Stores, Inc. v. Dukes, where the Court had ruled FRCP Rule 23(b)(2) class certification was inappropriate whenever the “monetary relief is not incidental to the [requested] injunctive or declaratory relief.” The Montana Supreme Court distinguished Dukes on grounds that the “declaratory and injunctive relief granted was uniform because the coverage exclusion had been declared illegal and the injunctive relief was for the insurers to “cease violating Montana’s made whole laws and restore benefits to their insureds.” Because the class certified was for prospective relief only and no restitution was going to be ordered, the Supreme Court of Montana ruled that any “monetary relief granted to individual class members as a result of these rulings would occur outside the scope of the class action and would be incidental to the declaratory and injunctive relief ordered.”

The Supreme Court of Montana also noted the trial court had found Roose’s individual claim for bad faith damages did not create a conflict that destroyed commonality and typicality, and ruled “nothing in the bad faith claim implicated issues in the class action.” The Supreme Court of Montana concluded the trial court findings were not an abuse of discretion and specifically ruled that at this early stage in the litigation Roose’s bad faith claim and the manner in which his claim had been processed “makes it separate and apart from the issue of whether the exclusion itself should be enjoined.” The court relied upon the same reasoning to conclude “Roose’s individual claims of bad faith [did not] make him an inappropriate representative to advance the interests of the as certified Rule 23(b)(2) class.” For those reasons the Supreme Court of Montana upheld the trial court’s class certification rulings.

The majority opinion was challenged in a strong and lengthy dissent. The dissenting justice challenged the majority opinion on multiple grounds including that Roose’s “claim is fundamentally a claim for individual monetary and punitive damages, and is not merely incidental to injunctive relief[.] Roose has requested a separate trial for damages. His individual monetary claim should be prohibited under a 23(b)(2) class.” The dissent further noted the majority opinion was blurring “the distinction between the types of classes which may be certified.” the dissenting justice concluded by stating her belief that the evidence presented to the trial court only established a one-member class but allowed it to be certified so that discovery might show that additional class members existed. In light of her analysis, “Roose failed to provide sufficient evidence of numerosity which is fatal to his class action. It is therefore not necessary to address whether he has established commonality, typicality, and that he is an adequate representative for the class. Certification of a class, for the reasons stated above, was contrary to the requirements of Rule 23 and was an abuse of discretion.”

Whether one accepts the reasoning of the majority opinion or the dissent, this case helps demonstrate the kinds of class certification issues presented when the plaintiff/class representative seeks to pursue a bad faith claim either on an individual basis or a class-wide basis. The kinds of issues which arise on a class-wide basis are demonstrated in my blog on the case of Johnson v. GEICO Casualty Company.

By Anthony L. Martin

Martin, A found or type unknown