Price Optimization Class Actions Produce First Rulings

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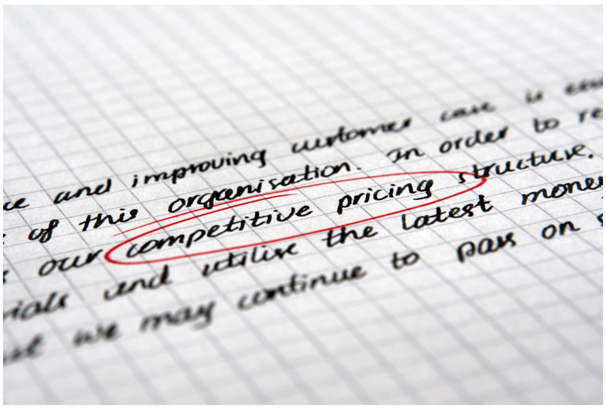

In recent weeks, two courts ruled on motions to dismiss the first wave of class action lawsuits based on alleged price optimization of auto insurance rates. In both *Stevenson v. Allstate Ins. Co.*, No. 15-cv-04788 (N.D. Cal. March 17, 2016), and *Harris v. Farmers Ins. Exch.*, No. BC579498 (Cal. Super. Jan. 25, 2016), the courts invoked the "primary jurisdiction" doctrine to stay the litigation, pending further proceedings by California regulators. Yet both courts also issued rulings on important elements of the plaintiffs' claims—holding, among other things, (1) that insureds whose rates are affected by price optimization suffer an "injury in fact"; (2) that failure to disclose price optimization can make advertisements "false and misleading"; and (3) that insurers using price optimization may have been unjustly enriched. These rulings raise more questions than they answer about the exposure insurers now face for their actual practices—especially because the two courts reached opposite conclusions as to what the defendants were accused of doing in the first place. **Staying the Litigation** The most important ruling in both cases was the decision to invoke the "primary jurisdiction doctrine," which comes into play "whenever enforcement of [a] claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body…" As a result, there will be no further proceedings until the California Department addresses the question of whether each insurer's alleged use of price optimization violates state law governing insurance rates. But both courts also issued several rulings on issues that the regulators' analysis might resolve. In effect, the courts ruled (1) that the conduct alleged in the complaint is unlawful; but (2) that the courts need the Insurance Commissioner's help to determine whether the defendants actually engaged in that conduct. **Interpreting the Complaints** This approach could potentially sow confusion, because the courts were unable to settle on a coherent account of just what conduct the plaintiffs actually alleged. In Harris, the court understood the amended complaint to say that the defendant improperly "applied" the rate that had been approved by California regulators, and so that it had charged policyholders something "higher than the approved rate." In *Stevenson,* the court found that identical language presented "a challenge to the approved rates and not the application thereof," and that the plaintiff was "unable to allege" she paid a higher premium than the approved rate. The courts therefore reached opposite conclusions about the applicability of the "filed rate" doctrine. **Multiple Rulings** This lack of clarity makes some of the courts’ other rulings problematic. Both courts found that the plaintiffs had stated a claim for unjust enrichment. In *Stevenson*, the court reasoned that price optimization had "artificially inflated" premiums, causing plaintiff to pay more than other insureds "who were not charged more based on price optimization." But the court's own description of how the alleged price optimization works did not support that conclusion. *Stevenson* also held that an insurer's advertisement might be "false and misleading," if it names factors relevant to the pricing of insurance without mentioning price optimization. But the court failed to explain how the practices before it differed from historic adjustments to insurance prices that did not give rise to false advertising claims. **More Information** A detailed examination of the *Harris* and *Stevenson* decisions is available at PropertyCasualtyFocus.com: *In Price Optimization Class Actions, Courts Defer To Regulators—But Still Leave a Mess*

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