CARLTON FIELDS

Individualized Inquiries Defeat Class Certification in UM/UIM Case—Again

March 31, 2014

Since around 2003, several class action lawsuits have been brought in Colorado against insurers alleging that it was misleading and deceptive to offer for purchase uninsured/underinsured motorist (UM/UIM) coverage on additional vehicles because such coverage was rendered illusory by a 2001 Colorado Supreme Court decision, *DeHerrera v. Sentry Ins. Co.,* in which the court held UM/UIM coverage follows the insured person, not the insured vehicle. The latest round appears to have gone to the insurers. In *Maxwell v. United Services Automobile Association*, plaintiffs brought a putative class action on behalf of auto policyholders against USAA, alleging that it fraudulently concealed information necessary for policyholders to make an informed decision about purchasing uninsured/underinsured motorists coverage on additional vehicles. The trial court granted USAA summary judgment in 2007, but the Colorado Appellate Court reversed. Thereafter, the plaintiffs moved for certification of the class. The trial court denied the motion. The plaintiffs again appealed to the Colorado Appellate Court, which this time affirmed, holding the trial court did not abuse its discretion in (1) admitting data compiled by State Farm about insureds' retention of UM/UIM coverage even after receiving notification of the *DeHerrera* decision, (2) holding plaintiffs failed to demonstrate the necessary element of predominance under Col. R. Civ. Proc. 23, because it would require individualized inquiry to determine reliance, in light of the State Farm data that tended to show a statistical lack of reliance and, (3) finding the filed rate doctrine precluded a refund of any UM/UIM premiums that were paid based on rates filed with the Colorado Department of Insurance, thus barring recovery for plaintiffs' consumer fraud claims.

Authored By

John C. Pitblado