TRAUB LIEBERMAN

INSURANCE LAW BLOG

December 20, 2021

Federal District Court Addresses Alleged Windfall Obtained by Insurer as a Result of COVID-19 Pandemic

BY: James M. Eastham

In EBCF Enterprises, Inc., Angelo Palivos, & Christina Palivos, v. Erie Insurance Exchange, No. 20 C 5476, 2021 WL 5280948 (N.D. Ill. Nov. 12, 2021), the United States District Court for the Northern District of Illinois addressed whether an insurer's failure to provide a larger COVID-19 related premium rebate breached an insurance contract, violated the Illinois Consumer Fraud and Deceptive Trade Practices Act, and constituted unjust enrichment. The crux of the Plaintiff's argument was that the defendant insurer obtained a windfall when the COVID-19 pandemic reduced driving and correspondingly reduced the number of automobile accident payouts. Although the Complaint acknowledged that the insurer did voluntarily refund a portion of the Plaintiff's premium, it was alleged that the refund "was and is inadequate to compensate for the excessive premiums that its customers have paid as a result of COVID-19." In response to the Complaint, the insurer moved to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure asserting that the Complaint failed to state a claim upon which relief can be granted.

In addressing whether a given course of conduct or act is unfair for purposes of the Illinois Consumer Fraud and Deceptive Trade Practices Act, the Court considered three factors: (1) whether the practice offended public policy; (2) whether it was immoral, unethical, oppressive, or unscrupulous; and (3) whether it caused substantial injury to consumers. In holding that the insurer's actions did not violate public policy, the court stated:

Plaintiffs do not allege defendant miscalculated the risk ex ante. Plaintiffs do not even allege that they should get a refund because they canceled the insurance policy in the middle of the term. Instead, plaintiff's theory is that it is unfair for defendant to retain a premium that was calculated for a risk that changed, because something (namely, the pandemic) occurred after the policy was issued that made many customers less likely to drive, such that, in retrospect, the premium seemed too high. That is not how insurance works. . . . In any case, Illinois public policy allows automobile insurers to price their insurance based not just on risk but also on economic (i.e., market) factors, as well.

*** * ***

In other words, insurers are allowed to consider supply and demand in pricing their automobile insurance. Thus, if defendant determined, after the pandemic struck, that it should refund some premiums in order to maximize its chances of retaining customers who might otherwise switch to a competitor (such as GEICO or Allstate), it was free to do so under Illinois public policy. It was also free to decide how much to refund, in order not to lose customers, without running afoul of Illinois public policy. Defendant is allowed to factor market conditions into its rates, so it's decision to return some but not all of the premiums (that plaintiffs allege were too high due to COVID) was not against Illinois public policy.

Correspondingly, the Court held that Plaintiffs cannot plausibly allege that the insurer's rate decision was against Illinois public policy.

The Court further held that Plaintiffs failed to plausibly allege that the rebate decision was immoral, unethical, oppressive, or unscrupulous. The Court dispatched this argument by holding that: "Seeking a profit is not inherently immoral, unethical, unscrupulous, or oppressive; it is the essence of our free-market economy. Defendant is not in the insurance business for its health; it is in the insurance business to make money." Finally, the Court held that the Plaintiffs filed to alleged a substantial injury because they could have avoided the harm by purchasing a different policy or not purchasing it at all. For these reasons, the Court dismissed the Illinois Consumer Fraud and Deceptive Trade Practices Act Count.

In addressing the remaining assertions, the Court further found in favor of the insurer. In dismissing the unjust enrichment allegations, the Court cited to prior precedent which held that when a party fails to state a claim under the Illinois Consumer Fraud Act, that party necessarily also fails to state a claim for unjust enrichment. As for the alleged breach of contract, the Court noted that the policy at issue provided that the policyholder could request a change and that the insurer "may" adjust the premium if the policy is changed. Despite this language, the Plaintiffs did not ask for any change to the policy. Moreover, the Court held that because the policies do not say defendant "must" or "shall" adjust the premium that Plaintiffs did not allege a breach of the plain terms of the contract.

Having disposed of all of the Plaintiff's assertions, the Court dismissed the complaint with prejudice.