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CLIENT BULLETIN

Seventh Circuit and Central District of Illinois Update: Two Key Decisions for Health and Life Insurers this Week

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The week of October 10, 2016 saw two significant decisions out of the seventh circuit for life and health insurers: a class certification in ERISA action against HCSC in Illinois, and a blow to a life insurer seeking to invalidate a life insurance policy for lack of insurable interest in Wisconsin.

Class Certification In ERISA Breach Of Fiduciary Duty Case

The Central District of Illinois recently certified four classes of plaintiffs in an ERISA-based suit against Health Care Services Corporation ("HCSC"). The plaintiffs in *Priddy, et al. v. Health Care Services Corporation*, Case No. 3:14-cv-03660-RM-TSH (C.D. Ill. Oct.11, 2016) allege HCSC failed to meet its obligations as a mutual insurance company by retaining benefits received from affiliates and providers rather than using them for the benefit of its insureds. Plaintiffs make various claims under ERISA and Illinois statutory and common law against HCSC, alleging that HCSC artificially inflated coinsurance payments, premium payments, and administration fees for medical services and prescription drugs, received discounts from providers, and profited from its purchased affiliates without sharing these assets or using them for the benefit of the insureds and plan owners. Named plaintiffs in the suit originally included individual insureds who purchased their own insurance from HCSC, individuals with employer-sponsored plans from HCSC, and the employers that purchased that coverage from HCSC. After the court dismissed the third group because the proposed employer class lacked standing for ERISA claims, the remaining named plaintiffs requested that four classes of similarly situated individuals and entities be certified.

Granting the motion, the court certified four classes of Plaintiffs under Rule 23: (1) individuals who sponsored benefit plans for themselves or their employees with HCSC in Illinois, Texas, Montana, New Mexico, and Oklahoma; (2) individuals and their beneficiaries who received employer-sponsored health care coverage with HCSC in Illinois, Texas, Montana, New Mexico, and Oklahoma; (3) individuals and their beneficiaries who received non-ERISA individual health care coverage with HCSC in Illinois, Texas, Montana, New Mexico, and Oklahoma; and (4) individuals and beneficiaries covered by "health care insurance" within the borders of Illinois.

The Court determined these four classes meet the numerosity, commonality, typicality, and adequacy of representation prongs of Rule 23(a). In particular, Plaintiffs allege class members can be easily identified and may include as many as 10 million individuals and entities. Despite HCSC's arguments that the number of class members would not reach 10 million and that members who fall within each class cannot be identified in its records, the Court agreed with Plaintiffs' assertions. HCSC argued that Plaintiffs failed to establish that their common questions of law and fact were actually common to any of the four classes, noting that the proposed classes are not limited to insureds of HCSC or to individuals who paid premiums. The Court found the commonality prong was met because "the contract language and the treatment of the putative class members in both classes rests on a uniform corporate policy and documentation." The Court permitted Plaintiff Priddy, an individual policyholder who resides in Illinois, to serve as representative for the two individual non-ERISA classes and Plaintiff Beiler to serve as class representative for the ERISA class participants.

The Court also found that Plaintiffs' proposed classes meet the Rule 23(b) requirements that common questions predominate and that a class action is the superior method of adjudication in this case. The Court specifically noted that joinder of all potential plaintiffs appears impracticable given their volume and that the expense of individual litigation would outweigh any potential benefit so that it would discourage potential plaintiffs from bringing the case individually.

Seventh Circuit Finds Wisconsin Statute Blocks Sun Life's Insurable Interest Argument

Also this week, in *Sun Life Assurance Co. of Canada v. U.S. Bank National Association*, Case No. 2016-1049 (7th Cir. Oct. 12, 2016), the Seventh Circuit affirmed the Western District of Wisconsin's decision requiring Sun Life Assurance Company of Canada ("Sun Life") to pay a $6 million life insurance benefit, plus statutory interest and bad faith damages, to U.S. Bank. Sun Life issued a life insurance policy to Charles Margolin in 2007. By the time Mr. Margolin died in 2014, the policy had been sold to U.S. Bank (potentially bundled with other policies as an investment vehicle) and U.S. Bank made a claim for the proceeds. Sun Life immediately initiated an investigation into the policy's validity, citing a concern that the policy lacked insurable interest and violated Wisconsin law prohibiting illegal wagering contracts. U.S. Bank, calling itself a "securities intermediary," filed suit against Sun Life for the proceeds of the policy, statutory interest, and damages for bad faith based on Sun Life's delay in payment.

The district court held for U.S. Bank, relying on Wis. Stat. § 631.07(4), which requires insurance policies to have insurable interest but does not automatically invalidate a policy without such an interest. Instead, Section 631.07(4) requires the insurer to pay the proceeds to the designated beneficiary or to someone who is "equitably entitled" to the proceeds. This statute stems from the Wisconsin legislature's desire to "discourage insurers from issuing insurance policies to persons without insurable interest" by making them pay if they do." Wis. Stat. § 631.07(4), comment.

Here, U.S. Bank was the only designated beneficiary and no one else stepped forward to claim the proceeds, equitably entitled or otherwise. Sun Life argued that the Wisconsin statute voiding gambling contracts should apply so that it was permitted to refuse to pay the policy's proceeds. The Wisconsin code, however, has a provision that mandates Section 631.07(4) governs if it comes in conflict with another section of the code. Thus, the Seventh Circuit concluded Section 631.07(4) applied here, requiring payment to U.S. Bank. Sun Life also argued the Wisconsin Constitution's provision prohibiting the legislature from authorizing gambling should prevent Section 631.07(4) from acting in this case. The Seventh Circuit noted that Section 631.07(4) still requires an insurable interest and gambling contracts are still prohibited. Section 631.07(4) merely requires the insurer to pay the proceeds rather than being allowed to invalidate the policy. Thus, the onus in Wisconsin is on the insurance company to prevent policies with lack of insurable interest from being issued.

If you have any questions about this Client Bulletin, please feel free to contact any of the attorneys listed or the CMN attorney with whom you regularly work.

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