Insured May Not File Suit Against Insurers Under Unfair Competition Law Based on Allegedly Wrongful Denial of Benefits to *Other* Policyholders

In its recent decision in *Schwartz v. Provident Life and Accident Insurance Co.*, __ Cal.App.4th __ (May 21, 2013) the California Court of Appeals held that, in order to have standing to pursue a claim under California's "Unfair Competition Law" (Bus. & Prof. Code, section 17200 or "UCL"), an insured plaintiff must have suffered injury in fact and cannot rely on alleged wrongful denial of benefits to other policyholders. Although this decision limits the availability of remedies for prospective injuries to an insured, it does leave open the possibility that courts will allow insured to bring claims against insurers under the UCL where the plaintiff has suffered actual harm.

Schwartz involved an insured plaintiff who filed a claim against the issuer of his disability insurance, Provident Life and Accident Insurance Company ("Provident Life"), alleging deceptive claims handling practice in violation of the UCL. In October of 2005, the California Department of Insurance and Provident Life entered into a settlement agreement in which Provident Life agreed to pay $8 million in civil penalty resolving claims that it had wrongfully denied benefits to insured under their disability policy. The Plaintiff in *Schwartz* brought his claim on behalf of insured under the disability policy who *have not* been denied benefits and received no benefits from the settlement. The Plaintiff alleged that Provident Life engaged in a "systematic scheme" to deny and terminate disability claims by insured which "effectuated a reduction in coverage across the entire policy holder class."

The UCL prohibits unfair competition and it defines it as any unlawful, unfair, or fraudulent business act or practice. In 2004, an amendment to the UCL confined standing to plaintiffs who were *actually injured* by a wrongful defendant's business practices. Based on these provisions, the District Court granted summary adjudication to Provident Life, finding that the Plaintiff had failed to meet the standing requirement under the UCL because "he has never filed a claim and has never had a claim denied."

On appeal, the Court of Appeals reaffirmed the District Court's ruling and found that Plaintiff lacked standing under the UCL which had been "amended to confine standing to those actually injured by a defendant's business practices." The Court emphasized that standing to bring a claim under the UCL required proof of lost money or property which may include cases where plaintiff may:

> "(1) surrender in a transaction more, or acquire in a transaction less, than he or she otherwise would have; (2) have a present or future property interest diminished; (3) be deprived of money or property to which he or she has a cognizable claim; or (4) be required to enter into a transaction, costing money or property that would otherwise have been unnecessary."

The Court found that Plaintiff only alleged wrongful denial of benefits to *other* policy holders, but failed to allege that he lost any money or property as a result. The Court also specifically rejected the economic analysis submitted by the Plaintiff to show that denying benefits to some members under a policy plan harms all other members. The Court found that the economic analysis "posits no more than a potential harm to the purported class of policy holder" and that in any case, the insurer had already modified its prior policies in response to the settlement with the California Department of Insurance.

Thus, in denying standing to the Plaintiff in *Schwartz*, the Court of Appeals reaffirmed the strict standing requirements for UCL claims following the 2004 amendment. Specifically, that it is not sufficient for an insured plaintiff to plead harm to other policyholders because individual monetary or property loss is required for standing.

However, the Court's holding in *Schwartz* is perhaps more significant because it seems to suggest that had the Plaintiff alleged an actual denial and resulting loss, he would have been able to bring a claim under the UCL. Such a result would seem to potentially contradict, or at least restrict, the Supreme Court of California's decision in *Moradi-Shalal v. Fireman's Fund Ins. Companies*, 46 Cal.3d 287 (1988) which limited the ability of insureds to bring a cause of action against an insurer under the UCL where that same conduct is prohibited by California's Unfair Insurance Practices Act, namely, Insurance Code Section 790.03, *et seq*.. The *Schwartz* decision appears to follow the recent trend among California Courts to limit the scope of *Moradi-Shalal*. In fact, a crucial case which is currently before the Supreme Court, *Zhang v. California Insurance Co.*, S178542, could substantially broaden the scope of potential claims available to insured under the UCL. Significantly, unlike the Plaintiff in *Schwartz,* the plaintiff in *Zhang did* allege that she personally suffer actual harm as a result of the insurer's alleged wrongful actions. A decision in the *Zhang* case is 90 days of the oral argument on May 8.