Court of Appeal Holds that Insurance Companies Are Not Required to Disclose the Lowest Premium They Would Accept But Reaffirms Insurers' Duty to Disclose Material Facts as to Coverage

Understanding modern day insurance contracts is no easy task, even for experienced attorneys. The wording is dense and the language is often archaic and hard to comprehend. As a result, consumers often rely on their insurance company to help them navigate the multitude of different policy types, structures, pricing and provisions. Recently, the California Court of Appeal held that Blue Shield did not have a duty to disclose information on the lowest premium cost it would accept for a given coverage.

The case of *Levine v. Blue Shield of California* involved Michael Levine, who was an unmarried attorney with two dependants at the time he applied for health insurance. Blue Shield issued a health plan that covered Levine and one of his dependants and a separate policy was issued to cover his other dependent. After Levine married, he sought to add his wife on to his policy as an additional dependant. Blue Shield complied with this request and Levine continued to pay premiums.

At some point, Levine learned that the structure of his health insurance coverage was not ideal. Essentially, Levine claimed that he could have achieved the exact same coverage at a much lower rate if the polices were restructured as a family plan with his wife as a primary insured. Frustrated and understandably upset, Levine instituted a class action lawsuit against Blue Shield for fraudulent concealment, negligent misrepresentation, breach of the implied covenant of good faith and fair dealing, unjust enrichment, and unfair competition. In response, Blue Shield filed a demurrer to all causes of action arguing, among other things, that it did not owe a duty to disclose information about the lowest premium charge it would accept to bind coverage. The existence of this duty was the key issue addressed on appeal.

Unfortunately for Mr. Levine, the California Court of Appeal for the Fourth Appellate District agreed with Blue Shield. It reasoned that "a person's initial decision to obtain insurance and the insurer's decision to offer coverage generally should be governed by traditional standards of freedom to contract." Further, the court noted that "an insurer's negotiation of an insurance contract is not the type of transaction that would give rise to heightened duties of disclosure concerning price." In reaching this conclusion, the court acknowledged *California Service Station etc. Assn. v. American Home Assurance Co.*, 62 Cal.App.4th 1166 (1998), which recognized that an insurer does have a duty to disclose information regarding the *coverage* created by an insurance policy. And yet, the court declined to extend *California Service Station* any further. Instead, the court reasoned that there is no duty of ordinary care to disclose pricing information during arm's-length contract negotiations. The court acknowledged that the *California Service Station* court recognized that an insurer owes its insureds a duty concerning "representations about the coverage created by an insurance policy," but went on to explain that this duty "should be distinguished from a duty to disclose information about the calculation of premiums." (*Id.* at p. 1174, italics added.) Levine sought to distinguish *California Service Station* by highlighting the preexisting relationship with Blue Shield as an insured. This, Levine argued, imposed special obligations upon Blue Shield to adequately disclose information regarding the calculation of premiums. However, the court did not find this persuasive and instead noted that amount of money that an insurer is willing to accept in exchange for coverage is not information that implicates a special relationship.

Levine argued that Insurance Code Section 332 establishes a duty to disclose material facts. Blue Shield responded that this statute is not applicable to it as a health plan. However, the court assumed for purposes of argument that even if Section 332 applied, the Court found that it does not require the parties to an insurance contract to make available all information that may be material to the other party; rather, the Court said, it requires only that each party make available information that is "material to the contract [itself]." As a result, the court held that Blue Shield did not have a duty to disclose to Levine its best pricing.

This conclusion appears wrong. The distinction between that which is material to the other party vs. that which is material to the contract was a distinction here without a difference. Moreover, the court's attempt to distinguish *Pastoria v. Nationwide Insurance*, 112 Cal. App. 4th 1490, 1492-1493 (2003) was not persuasive. Policyholders will want to emphasize that this decision is very limited and should apply only to a calculations of premiums issue. They will want to focus on the holding that confirms insurers have a duty to disclose material facts ***regarding coverage offered***. Anticipate Levine filing a motion for a rehearing, and, failing that, the filing of a petition for review to the California Supreme Court.

By: M. Scott Koller
Associate
McKennon|Schindler LLP
20321 SW Birch St, Suite 200
Newport Beach, California 92660
877-MSLAW20
(877) 675-2920