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Posted at 4:18 AM on October 15, 2010 by Sheppard Mullin

The Second District Court of Appeal Applies the "Filed Rate Doctrine" to California Insurance Ratemaking, and Holds that the Use of Approved Insurance Rates Cannot Create Tort Liability Against an Insurer in a Class Action

By Jennifer Hoffman

In MacKay v. Superior Court (October 6, 2010) ___ Cal.App.4th ___ the Second District Court of Appeal threw out a class action challenging an insurer's rating practices on the ground that California law prohibits insureds from challenging rates approved by the California Department of Insurance ("DOI") through a civil action. Writing for the court, Justice Croskey concluded that the "filed rate doctrine" applies to California insurance ratemaking, despite the voters' enactment of Proposition 103, and that the exclusive remedy for challenging an insurer's approved rating practices was through a statutory administrative review process.

The class action challenged two of 21st Century Insurance Company's ("21st Century") automobile insurance rating practices as violative of the California Insurance Code and California's Unfair Competition Law, Business and Professions Code section 17200 et seq. ("UCL"). After the trial court granted class certification, 21st Century moved for summary judgment on the ground that its rating practices were approved by the DOI, and the only means of challenging those practices was through an administrative review process pursuant to Insurance Code sections 1860.1 and 1858 et seq. The plaintiff opposed the motion, arguing that Insurance Code section 1861.03, which was enacted by the California voters under Proposition 103 and which subjects the "business of insurance" to all California laws applicable to business, permitted rating practice challenges under the UCL.

The Court of Appeal agreed with 21st Century, reasoning:

> The ratemaking chapter confers on the DOI the exclusive authority to approve insurance rating plans. An insurer charging a preapproved rate is doing an act or taking an action pursuant to the authority conferred by the chapter. [citation] Thus, Insurance Code section 1860.1 exempts such acts from "prosecution or civil proceedings under any other law of this State heretofore or hereafter enacted which does not specifically refer to insurance." That Insurance Code section 1861.03 provides that the "business of insurance shall be subject to

> the laws of California applicable to any other business," does not undermine this provision. The "business of insurance" is quite broad ….
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> [¶] Our task, therefore, is to harmonize a broad statute, subjecting the entirety of the business of insurance to all California laws governing business, and a very narrow one, exempting from other California laws acts done and actions taken pursuant to the ratemaking authority conferred by the ratemaking chapter. """It is well settled … that a general provision is controlled by one that is special, the latter being treated as an exception to the former. A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates."""" [citation]
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> [¶] In short, we conclude that … Insurance Code section 1860.1 exempts from other California laws acts done and actions taken pursuant to the ratemaking authority conferred by the ratemaking chapter, *including the charging of a preapproved rate.* [emphasis in original]

Because there was no triable issue of fact as to whether the DOI had approved 21st Century's rates, the class action challenging those rates ran contrary to Section 1860.1 and 21st Century was entitled to summary judgment as a matter of law.

In reaching its holding, the MacKay court noted that the "filed rate doctrine," which originated in federal courts and prohibits collateral attack of a rate duly adopted by a regulatory agency, supported its result. Reasoning that the doctrine applied equally to state agencies, the court disagreed with Fogel v. Farmers Group, Inc., 160 Cal.App.4th 1403 (2008), to the extent that it rejected application of the filed rate doctrine to approved California insurance rates.

The MacKay court also cautioned as to the limited nature of its decision, stating that it "protects from prosecution under laws outside the Insurance Code only 'act[s] done, action[s] taken [and] agreement[s] made pursuant to the authority conferred by" the ratemaking chapter. It does not extend to insurer conduct *not* taken pursuant to that authority." [emphasis in original] Particularly, the court distinguished cases where the underlying insurer conduct was not the charging of an approved rate. For example, the court noted that the exclusive administrative remedy of Sections 1860.1 and 1858 et seq. would not be applicable where the plaintiff alleged that an insurer applied an unapproved underwriting guideline, (Donabedian v. Mercury Ins. Co., 116 Cal.App.4th 968 (2004)), improperly collected attorney-in-fact fees by a reciprocal insurance exchange, (Fogel, supra, 160 Cal.App.4th at 1403), or improperly analyzed data before reporting it to the Workers' Compensation Insurance Rating Bureau. State Comp. Ins. Fund v. Superior Court, 24 Cal.4th 930 (2001).