Insurer Has No Duty to Disclose Means of Obtaining Lower Premiums

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In *Levine v. Blue Shield of California*, the California Court of Appeal for the Fourth Appellate District, Division One, unanimously held that a health insurer has no duty to advise an applicant concerning how coverage could be structured to obtain lower monthly insurance premiums.

The Levines filed the action, both individually and on behalf of a putative class, alleging causes of action for fraudulent concealment, negligent misrepresentation, breach of the implied covenant of good faith and fair dealing, unjust enrichment and unfair competition under Business and Professions Code section 17200.

The appellate court affirmed the trial court's order sustaining Blue Shield's demurrer to the entire complaint, holding that Blue Shield had no duty to disclose the information that the Levines alleged was not provided during the application process.

The Levines alleged that, in November 2004, Plaintiff Michael Levine was 40-years old and unmarried. At that time, he and his two minor dependents applied for coverage with Blue Shield and, in December 2004, Blue Shield issued a health plan to Michael Levine and one of his dependents, and issued a separate policy to his other dependent.

In July 2007, Michael Levine married Victoria, who was then 25-years old. In August 2007, Victoria submitted an application to Blue Shield, seeking to be added as a dependent to Michael's coverage, with Michael to remain the primary insured.

The Levines alleged that Blue Shield failed to inform them that, if Victoria was designated as the primary insured or if they had purchased a family plan, they would save substantial sums of money, despite the fact that the risks to Blue Shield and the benefits to them would remain exactly the same.

The Levines also alleged that Blue Shield set the new premium for health coverage for the married couple and continued the children on separate individual policies at the higher rates.

The Levines further claimed that Blue Shield knew the premium rates would be lower if they were to make changes to the structure of the policies and that the Levines did not know and, in the exercise of reasonable diligence, could not have known, that the monthly premiums for the coverage would have been $500 less if they had made Victoria the primary insured on a family plan.

Blue Shield filed a demurrer to all causes of action in the complaint and a motion to strike the class allegations, arguing, among other things, that its application advised that

[i]ndicating the younger spouse/domestic partner as the primary applicant may reduce your monthly dues/payments."

The Levines claimed that, although the statement was in the application, the premium savings they could achieve if they were to change the designation of the primary insured would not be known until much later in the process, after underwriting was complete.

In affirming the trial court's order sustaining the demurrer without leave to amend, the court of appeal noted that the Levines failed to cite any authority requiring an insurer to disclose the lowest price that the insurer is willing to accept for insurance coverage.

In fact, citing *California Service Station etc. Assn. v. American Home Assurance Co.*, 62 Cal. App. 4th 1166 (1998), the court held that the opposite is true. Accordingly, the court concluded that:

an insurer does not owe a purchaser of insurance any 'special duty' in 'negotiating the price of an insurance contract.'"

The court explained 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" and no authority supports the Levines' assertion that an insurer is required to disclose the lowest price it is willing to accept.

Significantly, despite the fact that Michael and his minor dependents had Blue Shield health coverage at the time of Victoria's application, the court held that their pre-existing relationship with Blue Shield did not create a duty on Blue Shield's part to advise the Levines that they could have obtained cheaper coverage if they had restructured their insurance.

The court explained that it did not read *California Service Station* as suggesting any distinction with respect to an insurer's duties depending upon whether the purchasers were seeking to become insureds for the first time or were already insureds under another policy issued by the insurer. The court stated 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."

Although the Levine case deals with the duty to disclose pricing information, it is likely that the reasoning of the court of appeal, finding that the negotiation of an insurance contract does not give rise to any heightened disclosure duty, can and will be applied to other cases alleging non-disclosure of information during the insurer's pre-contract communications with the applicant.