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Pa. High Court To Mull Insurer-Ordered Medical Exams

By **Matt Fair**

Law360 (October 16, 2018, 6:02 PM EDT) -- The Pennsylvania Supreme Court has agreed to address a federal appeals court's question over whether insurance companies can force their policyholders to submit to medical examination by insurer-selected physicians when seeking medical benefits under their policies.

The Third Circuit had asked the justices to address the question after it came up in two cases, including a class action against Allstate Insurance Co., involving policyholders who said their insurers attempted to improperly force them to submit to independent medical examinations as they sought benefits after suffering injuries in car crashes.

The plaintiffs claim that the requirement from their insurers violated a provision of the state's Motor Vehicle Financial Responsibility Law giving courts the power to order examinations "whenever the mental or physical condition of a person is material to any claim for medical, income loss or catastrophic loss benefits."

Adopting language drafted by the plaintiffs, the justices agreed to consider whether being required "to submit to an independent medical examination by a physician selected by the insurer, when and as often as the insurer may reasonably require, as a condition precedent to the payment of first-party medical benefits" conflicted with the MVFRL and was void as against public policy.

The appeal stems from two separate cases: a class action against Allstate filed by policyholder Samantha Sayles in June 2016 and a single-plaintiff suit against Travelers Commercial Insurance Co. filed by policyholder William Scott in February 2014.

In both cases, the plaintiffs challenged efforts by their insurers to enforce policy provisions that would force them to "submit to mental and physical examinations by physicians selected by [the insurer] when and as often as [the insurer] may reasonably require."

The insurers have argued that the MVFRL did not impose any affirmative obligation on them to seek a court order when requiring medical examinations, but that it simply allowed an insurer to bring an action in court seeking an independent medical examination if necessary.

Without what they believed to be sufficient state-level legal precedent on the issue, the federal judges overseeing the Sayles and Scott cases both predicted that the Pennsylvania Supreme Court would not enforce the policies.

But as both judges found there was a substantial ground for a difference of opinion on the issue, they certified the issue for an interlocutory appeal to the Third Circuit.

The two cases were ultimately consolidated on appeal, and the Third Circuit agreed to ask the state Supreme Court whether it wanted to take a crack at the issue.

"We are persuaded that the enforceability of the [independent medical examination] clause remains unresolved as a matter of law and that this is an instance in which Pennsylvania law should be interpreted first by an authoritative opinion of the Pennsylvania Supreme Court," the Third Circuit said in a petition to the justices from Judge Cheryl Krause.

Attorneys for the policyholders praised the court's decision to take the case when contacted by Law360 on Tuesday.

"Citizens of Pennsylvania are well served by the Pennsylvania Supreme Court's decision to decide this important issue," said Charles Kannebecker, who represents Sayles. "Insurers have illegally used unlawful policy terms to try to avoid Pennsylvania law that protects persons who are innocently injured in motor vehicle accidents."

Adam Reedy, an attorney with Handler Henning & Rosenberg LLC representing Scott, said he believed that their reading of state law, and not the terms of the policies, should control.

"Obviously, we think state law should trump the language they're trying to put into these contracts," he said.

Sayles is represented by the Law Office of Charles Kannebecker LLC.

Scott is represented by Adam Reedy of Handler Henning & Rosenberg LLC.

Allstate is represented by David D'Aloia, Michael Grohs and Marc Wolin of Saiber LLC.

Travelers is represented by Audrey Jacobsen Copeland and Brooks Roderick Foland of Marshall Dennehey Warner Coleman & Goggin PC.

The cases are Samantha Sayles v. Allstate Insurance Co., case number 58 MAP 2018, and Williams Scott v. Travelers Commercial Insurance Co., case number 59 MAP 2018, before the Pennsylvania Supreme Court.

--Editing by Aaron Pelc.

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