

Silence Regarding Different Renewal Terms May Constitute Fraudulent Concealment by Insurer under

January 2001

The United States District Court for the Middle District of Pennsylvania, applying Pennsylvania law, has held that when an insurer issues a renewal policy that differs from the original policy without informing the policyholder, it may be liable for fraudulent concealment. *Guthrie Clinic, Ltd. v. The Travelers Indem. Co.*, No. 00CV1173, 2000 U.S. Dist. LEXIS 18727 (M.D. Pa. Dec. 18, 2000).

The policyholder filed this action alleging breach of contract, breach of duty of good faith, breach of fiduciary duty, fraud, intentional and negligent misrepresentation, and bad faith as a result of the insurer's asserted failure to disclose to the policyholder that it had redefined the term "claim" in its renewal policy. The insurer moved to dismiss the action under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief could be granted. The insurer claimed that the policyholder failed to plead its fraud count with sufficient particularity. Specifically, the insurer noted that the complaint only alleged that it remained silent regarding the new definition upon renewal and that no affirmative misrepresentation occurred. The court held that while "mere silence in the absence of a duty to speak cannot suffice to prove fraudulent concealment," insurers have an affirmative duty to advise their clients of changes in their policies. Accordingly, the court held that the policyholder had stated a claim upon which relief could be granted.

The court also denied the insurer's Rule 12(b)(6) motion because it was proper for the policyholder to plead breach of contract, breach of fiduciary duty and breach of duty of good faith simultaneously. The insurer claimed that because Pennsylvania law does not impose a fiduciary duty on insurers arising out of the duty of good faith, the breach of fiduciary duty and breach of common law duty of good faith counts were "redundant" of the breach of contract count. In addition, the court rejected the insurer's argument that a bad faith claim may only be predicated upon a denial of benefits, and not upon an insurer's actions in renewing a policy, i.e., failing to inform the policyholder of changes in his policy upon renewal.