CLASS ACTIONS – INSURANCE RELATED CLAIMS

Thomas F. Segalla

February 24, 2015

Whether prosecuting or opposing a motion for class certification, within the context of insurance related claims, there are certain principles that are critical to determining the allegations that are necessary to successfully assert such claims and the nature of any challenge to a motion to certify the punitive class. As the court noted, in the case of *Deborah Mahon v. Chicago Title Insurance Co.*:[1]

> In *Wal-Mart Stores Inc. v. Dukes*, ___ U.S. ___, 131 S.Ct. 2541, 180 L.E.2d 374 (2011), the court stated:
>
> The class action is "an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." In order to justify a departure from that rule, "a class representative must be part of the class and possess the same interest and suffer the same injury as the class members." Rule 23(a) ensures that the named plaintiffs are appropriate representatives of the class whose claims they wish to litigate. The Rule's four requirements –numerosity, commonality, typicality, and adequate representation – "effectively limit the class claims to those fairly encompassed by the named plaintiff's claims."[2]

The *Mahon* court further indicated that courts must determine through a "rigorous analysis" whether all four Federal Rule 23 requirements have been met. In addition, the courts have clearly indicated that the party seeking class certification bears the burden of establishing by a predonderance of the evidence that each of the federal class action rule's requirements has been satisfied.[3] It is only where all the class requirements have been proven through both "objective" and "reliable and administratively feasible" evidence that a class will be certified.[4] At that juncture, the class device saves resources of both the courts and the parties by permitting issues potentially affecting every class member to be litigated in an economical fashion under Rule 23 or the relevant state regulatory rule.[5] As an aside, under various state regulatory schemes, the interpretation of the Federal Rules, in assessing the viability of a class action, are considered.

This article provides case notes relative to decisions of courts throughout the United States that have grappled with the arguments forged by the litigants seeking to certify or opposing certification of a class action in the context of insurance related matters. These case notes are meant to issue spot and not resolve the various contentions. Further, they are intended to provide the reader with a keen understanding of how courts, in the context of insurance claims, have analyzed and applied the requirements of Rule 23 (a)(1)(2)(3) and 4 (*i.e.*, numerosity, commonality, typicality, and adequate representation) and answered the question of whether the class is "maintainable" under one of the three categories found in Rule 23(b)(1)-(3). Of the Rule 23(b) categories, the reader will see that the litigants often fence over whether the "predominance" requirement of Rule 23(b)(3) has been met. Specifically, the party seeking class certification "must establish that the issues in the class actions that are subject to generalized proof, and thus applicable to the class as a whole, . . . predominate over those that are subject only to individualized proof."[6] The decision of each of the courts should be referenced for the factual and legal details considered by the particular court in the granting or denying certification.

CALIFORNIA

1. Force-Placement of Insurance – Certification granted.

Stephen Ellsworth v. U.S. Bank, N.A., 2014 WL 2734953 (N.D. Cal. June 13, 2014).[7]

Plaintiffs challenge U.S. Bank's practice of force-placing backdated flood insurance on their real property that was underwritten by ASIC. The practice of purchasing insurance by the lender/mortgagee when a borrower/mortgagor does not obtain insurance coverage in an amount the lender/mortgagor requires is known as "force placement" of

insurance. Six causes of action were alleged – breach of mortgage contract; breach of implied covenant of good faith and fair dealing; unjust enrichment and violation of Business and Professions Code. Plaintiff moved to certify three multi-state classes with each multi-state class having two subclasses. The court certified the plaintiffs' classes noting that under Fed. R. Civ. P. 23(c)(1)(B) "an order that certifies a class must define the class and the class claims, issues and defenses." The classes were sufficiently defined and clearly ascertainable by objective standards and therefore, are administratively feasible in determining class membership and whether the member is bound by the judgment.

Further, the court noted that, "A party seeking class certification then must show the following prerequisites of Rule 23(a): numerosity, commonality, typicality and adequacy of representation." The court must perform a "rigorous analysis" of these prerequisites to determine if they have been satisfied. The court found that each of these prerequisites were met. The defendants did not challenge the numerosity and commonality prerequisites. With respect to the other prerequisites, the court made the following comments:

Typicality – Borrowers had identical form contracts; the policies were applied uniformly; harms are identical and classes and subclasses address different theories of liability:

Predominance – Common questions predominate when they evolve from contracts and standardized policies and practices applied on a routine basis to all customers by the bank. The court rejected the Defendants' claims that in six ways individual issues predominate over common issues.

Adequacy of Representation – The court concluded that the representative parties will fairly and adequately protect the interest of the class (i.e., experience, knowledge, and resources).

Practice Note: A reading of various case notes indicates that force-placed insurance is being challenged in multiple jurisdictions.

2. Car Repair Parts – Certification denied.

Sarah Perez v. State Farm Mutual Automobile Insurance Co., 291 F.R.D. 425 (N.D. Cal. June 21, 2013).

The insured filed a putative class action alleging that automobile insurers engaged in an anticompetitive conspiracy to provide low quality car repair in California to increase profits. The trial court denied class certification. On this appeal, the court rejected the insured's motion to vacate the denial and concluded that the insureds has not produced a methodology for determining which categories of parts should qualify as inferior. Therefore, the insureds had not met their burden of establishing "*commonality or predominance*." The court also noted that it did not find "clear error, mistake or manifest injustice" to warrant reconsidering or vacating the prior order.

Practice Note: Auto repair has become an area of the insurance world that is subject to many challenges in the class action arena.

3. Automobile Repair Facilities – Certification granted and denied.

Eric E. Ortega v. Topa Insurance Company, 206 Cal. App. 4th 463, 141 Cal. Rptr. 3d 771 (May 24, 2012).

At issue in this case was a claim made by an insured under an automobile policy that the insurer's practice of providing two tiers of physical damage coverage, paying all of the reasonable costs incurred at a preferred repair facility ("PRF"), but only 80 percent of the reasonable costs incurred at an unapproved repair facility selected by the insured. The plaintiff sought to represent three putative classes. The trial court dismissed two of the three putative classes. With respect to the two dismissed classes, the trial court held that the complaint failed to allege common questions of the fact and law and therefore, these classes were not ascertainable. As to the remaining class the trial court found that the classes meet the requirements of class certification for "purposes of overcoming a pleading challenge." The appellate court, however, struck the class because the plaintiff's claim illustrates the individual inquiries that would have to be made by the court. Specifically, the court noted that plaintiff ". . . alleges the 'door locks' and 'headlamp' were replaced with unacceptable non-OEM parts." In reaching its decision, the court dismissed the plaintiff's claims alleged a breach of the insurance contract and breach of the implied covenant of good faith and fair dealing.

Practice Note: There is an interesting discussing of the issuance of a "restricted" insurance policy and the duties and obligations of the insured and insurer.

4. Life Insurance Policy – Class claims not precluded.

Freeman Investments, L.P. v. Pacific Life Insurance Co., 704 F.3d 1110 (9th Cir. 2013).

Plaintiffs were the purchasers of variable life insurance policies from the defendant and in this litigation plaintiffs contended that their insurer promised one thing and delivered another. Specifically, plaintiffs alleged that the insurer was levying excessive cost of insurance charges and instituted a class action alleging breach of contract, breach of the duty of good faith and fair dealing and unfair competition under California Business and Professions Code §17200. The court held that the class claims for breach of contract and breach of the duty of good faith and fair dealing were not precluded by the Securities Litigation Uniform Standards Act of 1998 ("SLUSA") which precluded private plaintiffs from bringing certain class actions. In this case, the court noted that the plaintiff's claim was a "straight contract claim" (*i.e.*, insurer charged them too much which reduced the value of their investments) that did not rest on a misrepresentation or fraudulent omission. Therefore, the breach of contract and breach of the implied covenant were not dismissed.

Practice Note: The court did dismiss the claim based on unfair competition violation of California law claim.

CONNECTICUT

1. Title Insurance – Overcharge class certified.

Deborah Mahon v. Chicago Title Co., 296 F.R.D. 63 (D. Conn., Sept. 30, 2013).[8]

Class certification was granted to a putative class alleging that their title insurer overcharged for title insurance in connection with refinance transactions. The court in reaching its decision noted that: "The class action is 'an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only. In order to justify a departure from that rule 'a class representative must be part of a class and possess the same interest and suffer the same injury as the class members.'" With respect to the Rule 23(a) prerequisites the court noted:

Numerosity – There are more than 40 members and the class is ascertainable. The court rejected the insurer's argument that the class selection process was speculative.

Commonality – The court held that there was commonality (*i.e.*, common questions of law and fact) and rejected the defendant's argument that there is no class-wide evidence to produce a common answer to the question of which borrowers were overcharged.

Typicality – Because the claims arise out of the same course of events (*i.e.*, the purchase of title insurance policies in residential mortgage transactions and they were overcharged) the typicality requirement was met. The court rejected the defendant's argument that the class should be defeated due to the differences in agents and transactions.

Adequate representation – The court held that plaintiff's counsel was qualified to conduct the litigation and the plaintiff's interests were aligned with the class.

Predominance – In noting that the predominance requirement involved more demanding criterion than commonality and that to satisfy this requirement issues applicable to the class as a whole predominate over those issues that are subject only to individualized proof. The court held as unpersuasive the defendants arguments that a "file-by-file review" would be necessary while such a review might be necessary, a file-by-file trial would not be.

Superiority – The court held that class certification is superior because the trial of common issues will reduce litigation costs and promote judicial efficiency.

Finally the court concluded that, "Class certification is appropriate given the standardized notice of the title transactions at issue and the claims being brought."

Practice Note: Class actions should be the exception to the rule which is highlighted by this decision.

DISTRICT OF COLUMBIA

1. Real Property/Mortgagee Insurance – Class recognized.

Andrea Cannon v. Wells Fargo Bank, N.A., 952 F.Supp.2d 1 (D.D.C. July 1, 2013).

At issue in this case was the application of a provision in the Deed of Trust relative to a mortgage obtained by the plaintiff which indicated:

. . . that if the borrower fails to maintain sufficient insurance coverage on the mortgage property, the lender "may obtain insurance coverage, at Lender's option and Borrower's expense" and "the cost of the insurance coverage might significantly exceed the cost of insurance that the borrower might have obtained."

Plaintiff instituted the action on behalf of herself and a class of "other similarly situated" District of Columbia residents and homeowners which contained claim against the mortgagor and the insurance carrier alleging claims based on unjust enrichment, negligence, and fraud claims. While the court held that these claims would not survive a motion to dismiss, the court allowed the plaintiff the right to amend her complaint as it relates to a breach of contract claim.

Practice Note: There is an excellent analysis of the rights and duties of the parties involved in real estate transactions as they relate to insurance issues.

GEORGIA

1. Diminished Value/Automobile – Class not certified.

Annette Tiller v. State Farm Mutual Automobile Insurance Co., 2013 U.S. Dist. LEXIS 15726 (N.D. Ga. Feb. 5, 2013).

The court granted the defendant/insurer's motion to dismiss the putative class action concerning third-party property damage class for diminished value arising out of automobile accidents. Specifically, the putative class alleged that the insured did not fully recover the diminished value of automobiles damaged in accidents because the methodology used to determine the diminished value resulted in substantially less than the actual lost value of the repaired vehicle. The complaint alleged that the methodology was contrary to Georgia law and causes of action based on fraud, unjust enrichment, breach of the implied covenant of good faith and fair dealing, injunctive relief and attorneys' fees and expenses. The court, in reviewing the applicable standards of each cause of action dismissed the putative class complaints, held that plaintiffs failed to meet the relevant standards.

Practice Note: With respect to the cause of action based on an alleged breach of the implied duty of good faith and fair dealing, the court dismissed the claim because plaintiffs did not allege a breach of the first-party insurance policy.

INDIANA

1. Bad Faith – Class assertion premature.

William Klepper v. ACE American Insurance Co., 999 N.E.2d 86 (C.A. Dec. 5, 2013).

At issue with respect to the bad faith claims asserted against the insurer was the insured's claim that regardless of coverage, an insurer may breach the covenant of good faith and fair dealing in other ways than the wrongful denial of coverage. For example, a bad faith claim can be based on the "manner of handling a claim." The court held that at the stage of the litigation the assertion by the class that they were entitled to judgment on this bad faith claim was premature. In reaching its decision, the court noted that there were two distinct theories available to an insured -- one in contract and one in tort.

Practice Note: The resolution of the contract/coverage dispute does not necessarily dispose of the tort based bad faith claim.

LOUISIANA

1. Class Member – insured failed to alleged membership in the class.

Lionel Williams v. Louisiana Citizens Property Insurance Company, 115 So. 3d 27 (La. Ct.App. 5th Cir. Apr. 10, 2013).[9]

Plaintiff in this action asserted a claim against its insurer for breach of contract and breach of the covenant of good faith and fair dealing for failure to pay their claims under a homeowners' policy for damages sustained as a result of Hurricane Katrina. The insurer filed exceptions of prescription in each of the cases. The insureds contended that prescription has been suspended because they were putative class members in the actions against the insurer. The court dismissed the insured's petition noting that the insured failed to allege in the petition that they were members of a timely-filed class action. The insureds were allowed to amend their petitions.

Practice Note: Statutes involving prescriptions are strictly construed and the party asserting has the initial burden of proof.

NEW JERSEY

1. Homeowners' Insurance – Class not ascertainable.

Miriam Haskins v. First American Title Insurance Co., 2014 WL 294654 (D.N.J. Jan. 27, 2014).

The court denied the putative class plaintiff/homeowner insureds' motion for class certification in a case where the homeowners alleged that the defendant/insurer systematically cheated New Jersey homeowners by misrepresenting the amount of money due and owning for title insurance. The court concluded, relying on expert testimony, that the putative class was not ascertainable and that individualized fact finding will overwhelm issues common to the proposed class. Specifically, the plaintiff could not meet the *predominance* requirement. Also, the court, without resolving the issue, stated that a plaintiff seeking class certification must present a reliable method of calculating damages on a class-wide basis. There, however, is a disagreement among the courts within the Third Circuit on this issue.

Practice Note: The predominance prerequisite is the most difficult to meet and often an insured's Achilles heel.

2. UM/UIM – Class certification granted (Bad Faith).

Shannon L. Ensey v. Governmental Employers Insurance Co., 2013 U.S. Dist. LEXIS 159373 (D.N.J. Nov. 7, 2013).

At issue in this case was the contention that the insurer failed to provide its insured with a coverage selection form at the inception of coverage and failed to apprise its insureds, at that time and throughout the course of coverage, of the opportunity to raise UM and UIM limits. The action was brought by the plaintiff in her individual capacity and as a representative of a putative class. It appears that class certification was not challenged. Plaintiff alleged in the Complaint cause of action based on breach of a statutory duty, breach of the implied covenant of good faith and fair dealing, breach of contract, violation of Consumer Fraud Act and a violation of the N.J. Truth in Consumer Contract, Warranty and Notice Act. The court dismissed the plaintiff's breach of the implied covenant of good faith and fair dealing cause of action because the plaintiff had fully received the benefit of the contract.

Practice Note: The court dismissed all causes of action, except the one pertaining to a statutory violation of the statutes relative to UM/UIM obligations.

NEW YORK

1. Force-Placed Insurance – Certification recognized.

James Hoover v. HSBC Mortgage Corp. (USA), 9 F. Supp. 3d 223 (N.D.N.Y. March 27, 2014).

This case is one of many similar cases brought in courts around the country challenging the practices of mortgage lender and insurers who "force place" or "lender place" insurance. There were three specific allegations made against the defendants.

- The bank required the borrowers to purchase and maintain flood insurance in the amounts greater than permitted under the mortgage (excessive coverage).

- The bank and insurer engaged in an improper scheme of kickbacks, commissions and other compensation.

- The bank and insurer improperly backdated force-placed flood insurance policies to cover periods for which there was no risk of loss.

As part of its claims, the plaintiff alleged a breach of the implied covenant of good faith and fair dealing and violation of the New York Deceptive Practices Act §349. The court refused to dismiss the implied covenant cause of action because the mortgage contract was ambiguous as to the bank's authority to require flood insurance in an amount greater than the federal minimums. The court did not dismiss the §349 claim because at this juncture of the litigation it could not be determined that the alleged deceptive actions were "likely to mislead a reasonable consumer acting reasonably under the circumstances."

Practice Note: Force-placed insurance, as noted in several other cases in this article, is under scrutiny by courts in various jurisdictions.

NORTH DAKOTA

1. PIP Claims – Certification denied.

Gale Halvorson v. Auto-Owners Insurance Co., 718 F.3d 773 (8th Cir. July 3, 2013).

Plaintiffs instituted this class action for breach of and bad faith in both North Dakota and Minnesota. The action was based on the contention that the policy owners received less than the submitted amount for mid party and "pip" following the insurer's percentile-based review of the claim. The district court denied certification in Minnesota, but granted certification in North Dakota. This court reversed the certification determination relative to North Dakota and held that the predominance required of Rule 23(b)(3) was not met. In reaching its decision, the court considered the following factors:

- Individual interests to control prosecution or defense of separate actions.
- Nature of any litigation already begun.
- Desirability or undesirability to be in a particular forum.
- Difficulty in managing the class.

The court concluded that the class action will not be a superior method of adjudicating the reasonableness of any claim payment because it will have to be analyzed on an individual basis.

Practice Note: Individual fact inquiries were necessary to resolve the breach of contract and bad faith claims.

OKLAHOMA

1. Property Claim – Class allowed to proceed.

Justin and Brandy Porter v. Mutual Insurance Co., 330 P.3d 511 (2014).

Sewage backed up into and damaged the plaintiffs' home. The insurer denied coverage. The plaintiffs instituted this action and other class wide claims contending that the policy was ambiguous and that they were entitled to coverage because it contained conflicting provisions for loss caused by water damage. The court refused to find such an ambiguity in the policy and noted that the distinct court must determine where the sewage came from. With respect to the bad faith claim, the court held that the insurer had a good faith belief at the time of performance and a justifiable reason for withholding payment under the policy. Even though there was the insurer in its analysis did not follow an unreported case that had persuasive precedential effect, but no conclusion precedential effect that did not constitute bad faith.

Practice Note: It is critically important that insureds and insurers have an understanding of relative case law in assessing their actions or inactions in an insurance dispute.

OREGON

1. Automobile Accident – Class standing required.

Sabrina Carranza v. GEICO General Insurance Co., 2014 WL 6998088 (D. Or., 10/12/12). Plaintiff instituted this action as a class action on behalf of all other current and former holders of automobile insurance policies from various defendant insurers that issued policies with similar language. At issue was this policy language:

> . . . losses arising out of a single occurrence shall be subject to no more than one deductible.

When the plaintiff made a claim under her auto policy, after two vehicles owned by the plaintiff and insured by the same insurer collided, she was charged with a deductible for each vehicle. Plaintiff sued the insurer in this action.

Two of the defendants GEICO entities moved to dismiss the Complaint as to them because the plaintiff had no privity of contract. The court dismissed the Complaint against these defendants holding that plaintiff did not have standing noting that the plaintiff did not allege that neither the defendants is an "affiliate," "parent company," "wholly owned subsidiary," or that there was a "special relationship" as the claim relates to the determination of policy language on the decision to

charge more than one deductible. Specifically, the court noted that at least one named plaintiff in a class action must have standing in his or her own right to assert a claim against each named defendant.

Practice Note: Not only must an insured have standing to institute a class action, but insurer must have "some definable relationship" to make it liable.

PENNSYLVANIA (THIRD CIRCUIT)

1. Life Insurance Policy – Mistaken Value.

Joel Burstein v. Sun Life Assurance Company of Canada U.S., 573 Fed. Appx. 219 (3d. Cir. 2014).

After the insured's death, the life insurance company advised the insured's beneficiaries that inaccurate values of the Guaranteed Death Benefit and loan values had been reported to the insured. Both the death benefit and the loan balance stated in the reports were erroneously high due to the software error. The insurer refused to pay the higher value. The beneficiaries instituted their putative class action alleging breach of contract and a violation of Massachusetts Consumer Protection Act. The court granted summary judgment to the life insurance defendant noting that:

- A party may recover money paid by mistake.
- A party is not required to pay a mistaken amount if the mistake is discovered before payment is made.
- An insured or his or her beneficiary is not entitled to a windfall based on the mistake.

In reaching its decision, the court rejected the insured beneficiaries' arguments that the insurer was aware of the mistake and there were available means to avoid it; the mistake was a mistake of law; the insurer ratified the mistake; and that the insurer assumed the rest.

Practice Note: Mistaken payments made globally can be ripe for class action certification.

TENNESSEE

1. Dismissal of Complaint – Certification denied.

John and Mary Stiers v. State Farm Insurance, 2012 U.S. Dist. LEXIS 87591 (E.D.Tn., June 25, 2012).

In this putative class action, the plaintiffs seek to represent "thousands" of State Farm homeowners insured under their replacement cost insurance policies of storm damage to their homes. The court held that because the plaintiff's failed to allege a plausible claim that they received insufficient funds from the insurer to repair their property, the complaint was dismissed including the claims for breach of contract, breach of the implied covenant of good faith and fair dealing, fraud, unjust enrichment and injunctive and declaratory relief.

Practice Note: Where a complaint is dismissed on its merits because the plaintiffs failed to state an individual claim, the plaintiffs cannot maintain those claims on behalf of the putative class.

TEXAS

1. Title Insurance – Charged premium is excess certification denied.

Stewart Title Guaranty Company v. John Mims, 405 S.W.3d 319 (C.A. of Tex., Dallas June 29, 2013).

The plaintiff insureds instituted this class against the title insurer alleging claims for breach of contract, unjust enrichment and many had and received based on allegations that the insurer charged premiums for policies that exceeded rates set by the Texas Department of Insurance ("TDI"). The district court had granted the insured's motion for certification. This court reversed and remanded the case. In reaching its decision, the court noted that the Texas Rule of Civil Procedure 42 governs certification of class actions in Texas and held that:

> Actual conformance with Rule 42 is indispensable, and compliance with the rule must be demonstrated, not presumed.

As with the Federal Rules,[10] under this statute there are four prerequisites:

- Numerosity;
- Commonality;
- Typicality; and
- Adequacy of representation.

The court specifically addressed the prerequisite that requires that questions of law or fact common to class members predominate over any questions affecting only individual members. In doing so, the court noted that "predominance" is one of the most stringent prerequisites to class certification. The court denied class certification because the plaintiffs failed to satisfy the predominance requirement under Rule 42(b)(3).

Practice Note: Where the insurance field is highly regulated, the premium charged could be subject to challenge.

2. Life Settlements Under Life Insurance Policy – Certification granted.

Life Partners v. Helen J. McDermott, 2014 WL 2810472 (C.A. of Tex., Dallas June 23, 2014).

The plaintiff, on behalf of herself and individuals similarly situated, filed this action against Life Partners one of the oldest and most active companies in the United States engaged in secondary market for life insurance known generally as "life settlements" – sale of an existing life insurance policy by the policyholder who is ill and/or elderly to another. Plaintiff asserted claims for breach of contract, breach of fiduciary duty, and unjust enrichment.

Under the mechanics of these policies, the plaintiff placed a sum of money in escrow with Life Partners which was for a factional interest in a life policy on another. This sum of money, with other escrow payments, was to be used to pay the premium of the life policy. It appears that Life Partners overpaid the premium because the individual insured under the policy died earlier than expected. The life insurance company did not refund the overpayment of the premium. The plaintiff in this action is seeking a return of her pro-rata share of the overpaid premium.

At issue was whether the class should be certified. Life Partners challenged this class certification on the "numerosity" and adequacy of representation prerequisites and not on commonality or typicality. The court granted certification and rejected the Life Partners' argument that the trial court failed to conduct a rigorous analysis to determine whether all prerequisites to certification were met.

Practice Note: Where state certification rules are based on the Federal Rules, Federal precedents can be used to analyze various prerequisites.

WISCONSIN

1. Insurance Infomercial Advertisement – Certification denied.

Harry R. Wiedenbeck v. Cinergy Health, Inc., 2013 U.S. Dist. LEXIS 134672 (D. WI., Sept. 20, 2013).

The insurer engaged in marketing in the State of Wisconsin through various internet and television "infomercials." It is the plaintiffs' contention that the infomercials were intentionally misleading and misrepresented the limited benefits health insurance policies. In rejecting class certification, the court reviewed the numerosity, typicality/commonality, adequacy of representation and predominance and superiority prerequisite. The court held that none of the prerequisites were met and therefore, denied certification.

Practice Note: Of interest, the court noted for various reasons the adequacy of representation was "dubious."

Endnotes

[1] 296 F.R.D. 63 (D. Conn. Sept. 30, 2013).

[2] *Mahon*, 296 F.R.D., at 71 (internal citations omitted).

[3] *Id.*

[4] *Hayes v. Wal-Mart Stores, Inc.*, 725 F.3d 349 LEXIS 15959 (3d Cir. Aug. 12, 2013).

[5] *Mahon* at 72 citing, *Gen. Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 155, 102 S.Ct. 2634, 72 L.Ed. 740 (1982).

[6] *See, Mahon* at 75 citing, *In re Visa Check/MasterMoney Antitrust Litig.*, 280 F.3d 124, 136 (2d Cir. 2001).

[7] *See, also, Lane v. Wells Fargo Bank, N.A.*, 2013 WL 269133 (N.D. Cal. 2013).

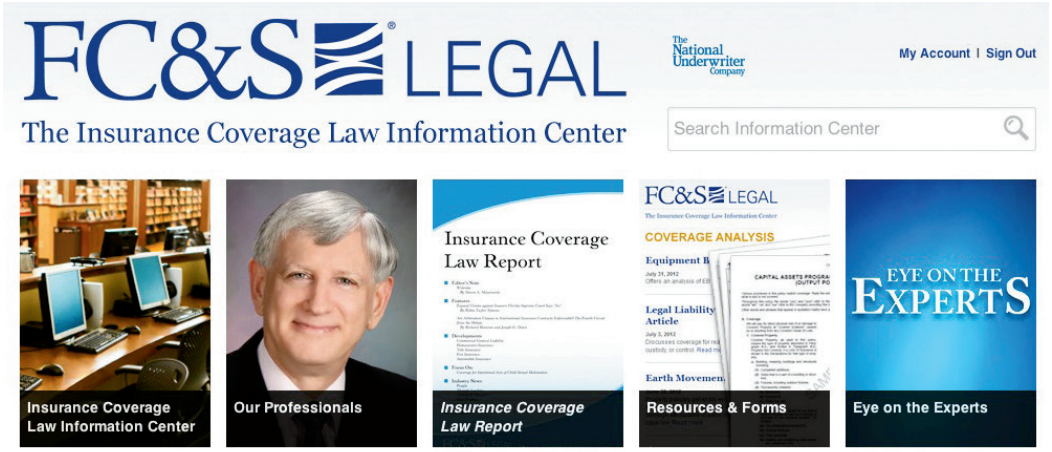
[8] *See, also, Bleich v. Chicago Title Insurance Co.*, 117 So.3d 1163 (D.Ct. of App. 3d Dist., June 21, 2013).

[9] *See, also, Rufus McKnight v. State Farm Fire & Cas. Co.*, 2012 U.S. Dist. LEXIS 8582 (E.D. La. Jan. 25, 2012)(concerning prescription applicable).

[10] Because Rule 42 is patterned under Federal Rule 23, federal decisions and authorities were considered instructive.

About The Author

Thomas F. Segalla, a member of the ***FC&S Legal*** Editorial Advisory Board, is a founding partner of **Goldberg Segalla** and a member of the firm's Global Insurance Services Group. Mr. Segalla is a nationally recognized authority on bad faith, reinsurance, and insurance, and an ARIAS Board-Certified Arbitrator and mediator. Resident in the firm's New York City office, Mr. Segalla can be reached at tsegalla@goldbergsegalla.com.



For more information, or to begin your free trial:

- Call: 1-800-543-0874
- Email: customerservice@SummitProNets.com
- Online: www.fcandslegal.com

FC&S Legal guarantees you instant access to the most authoritative and comprehensive insurance coverage law information available today.

This powerful, up-to-the-minute online resource enables you to stay apprised of the latest developments through your desktop, laptop, tablet, or smart phone —whenever and wherever you need it.