Regulators Looking Forward to Seeing Results of Class-Action Litigation Study

NEW YORK 06/24/2003 (BestWire)-As regulators look into the full impact of class-action litigation on the authority of state insurance departments, they'll be closely watching a study by Rand Corp. on national class actions.

Multistate class-action litigation is infringing on the authority of state insurance departments, said Larry Mirel, Washington, D.C., insurance commissioner and chair of the class-action insurance litigation working group. The group discussed the issue at the 2003 summer national meeting of the National Association of Insurance Commissioners in New York City.

When class-action lawsuits are extended to more than one state, where regulations differ, court decisions may find against the insurer even in states where the company didn't violate any statutes, said David Snyder, vice president and assistant general counsel of the American Insurance Association. The courts therefore void policy decisions of states.

There's a conflict between two separate systems for resolving disputes, Mirel said. The common law system involves coming before a judge to decide justice between two parties. Judges and juries only see evidence presented in court. Insurance commissioners, on the other hand, fall into the legislative system, where legislators pass a law to protect the public interest and regulators enforce it.

"Legislators make a decision about how insurance should be regulated," he said. "What does it say when a trial judge makes a ruling that throws that system out the window?" And when insurers are faced with millions or billions of dollars of cost for the suits, it drives up the cost of insurance for everyone, he said.

Complicating matters, there's little awareness in the court on how the regulatory system works, and they don't feel an obligation to be aware, Mirel said. "That strikes me as wrong," he said. "We need to make better understanding of the role of regulators."

When the group set out to collect data on class-action litigation, it learned that the Rand Corp.'s Institute for Civil Justice had already begun a study on the same issue, Mirel said.

Rand's Robert T. Reville told the group that the company noticed a perceived rapid growth in the number and scope of litigation against insurers, banks, utility companies, pharmaceutical companies and others. "There's debate over whether that's a good or bad development," he said. Critics say they do the opposite of an official policy's goal, while defenders say they help compensate for regulators' inaction, he said.

Currently, there's no reliable national data on class-action filings or outcomes. The institute plans to collect data from insurance companies and compile a database on class actions against insurers. It will release a theoretical model description in October, a summary report in March 2004 and an empirical analysis and policy implications in the summer of 2004, he said.

"Judges and juries are good at resolving individual disputes," but they're not good at larger issues, AIA's Snyder said. In cases where a jury's ruling affects the company in other states, regardless of what the regulations say there, "the jury becomes the state regulator," he said. "We'd rather have a real one."

Of the hundreds of class-action lawsuits pending against insurers, the most troubling are multistate actions that force insurers into a "catch-22," Snyder said. The group supports mandatory pre-dispute arbitration instead of litigation.

A Tilllinghast-Towers Perrin report found that U.S. tort costs are equivalent to a 5% tax on wages, according to a statement from AIA. That costs each American about $721 a year. In 1950, each U.S. citizen paid an inflation-adjusted average of $87 in tort costs, the group said.

Although critics of arbitration have said the panels are skewed toward the industry, AIA said there's no evidence of that.

(By Marie Suszynski, associate editor, BestWeek: Marie.Suszynski@ambest.com)

Ambest Road, Oldwick, NJ 08858 Tel:(908) 439-2200 ext. 5742