

**CAN A COMPLAINANT IN MARYLAND OBTAIN RELIEF ON BEHALF OF A
CLASS OF NON-PARTIES IN AN ADMINISTRATIVE PROCEEDING?**

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Introduction

Historically, regulatory matters brought before the Maryland Insurance Commissioner were technical in nature and, except for publicly prominent issues such as rate filings or withdrawal from a imperiled market, only concerned the Commissioner and the affected insurer. It was unusual for an insured or claimant to seek relief from the Insurance Commissioner for a coverage or claims complaint, and when such overtures were made, the Commissioner regularly deferred to the courts rather than undertaking any affirmative action. Those times are long gone.

Today insureds and third-party complainants regularly utilize the Insurance Commissioner as an alternative forum for their efforts to seek relief from perceived injuries arising from insurers' actions in claims handling or coverage matters. By complaining to the Commissioner, the complainant or his attorney generally seeks to avoid the costs of litigation in the courts and, hopefully, to have the Commissioner's attorneys and staff do the "heavy lifting" on the claim. The evolution of the Commissioner's regulatory role has encouraged this shift. Insurance Commissioners now focus upon "protecting the consumer" in their relationships with insurers, and substantial insurance department staffs have been established to assist insureds and claimants in dealing with their claims against insurers.

The protocols for the bringing of complaints to and the handling of those complaints by the Insurance Commissioner have been codified, particularly in the health insurance arena.¹ The continuing evolution of the regulatory process, however, sometimes brings efforts by complainants to reach beyond their individual situations. Thus they come to the Insurance Commissioner seeking relief, both for themselves and for a class of other similarly situated persons who are not parties to the complaint. It is these complaints seeking "class action type relief" which is the focus of this paper.²

The Maryland Statutory Framework

In Maryland, the Commissioner has general authority to undertake examinations of insurers for financial, market conduct or anti-fraud purposes. Consistent with this authority, the Legislature has stated that "[t]he Commissioner may hold hearings that the Commissioner considers necessary for any purpose . . ." under the Insurance Article.³ The discretion to hold hearings disappears, however, where the Commissioner is required to hold a hearing by the specific provisions of the Insurance Article.⁴ But the consumer oriented Maryland Legislature has gone further! It has required that "[t]he Commissioner shall hold a hearing . . . on written demand by a person aggrieved by any act of, threatened act of, or failure to act by the Commissioner or by any report, regulation, or order of the Commissioner, except an order to hold a hearing or an order resulting from a hearing. . . ."⁵ It is this provision that may require the Commissioner to hold a hearing at the behest of an insured or claimant even where the Commissioner believes that any claim of entitlement to the relief sought may be unfounded. Should the Commissioner deny the hearing request or refuse to act upon it within 30 days, the hearing is deemed to be refused.⁶ The refusal of a hearing by the Commissioner is an appealable act, and the requestor can appeal for judicial review and relief.⁷

The Commissioner has adopted regulations to give him some small amount of discretion in the face of a hearing request. Thus, upon receipt of a proper request there is a limited right for the Commissioner to refuse to grant a hearing where ". . . [i]n viewing the facts set forth by the person making the request, in the light most favorable to that person, the Commissioner has no authority to take action; . . ."⁸

*Dealing with a Request for Class Action Type Relief
in a Maryland Administrative Proceeding*

As noted, insureds and claimants against insurers now view administrative complaints brought to the Insurance Commissioner as being a viable and often cheaper alternative to action to support their perceived rights in the courts.

In the natural progression of overreaching by plaintiffs in their claims for relief, some claimants now demand hearings seeking relief against insurers not only on their own behalf but on behalf of other parties who may be similarly situated. Thus, they attempt to take their individual dispute with an insurer and convert it into a representative proceeding in the administrative hearing process. Typically such a claim may seek to have the Commissioner make a determination on a policy coverage issue concerning the individual claimant and then expand that decision into an order that the insurer pay all similar claims involving that coverage issue to all similarly situated claimants even though they are not parties to the administrative proceedings.

Put simply, a request by complainants for class action type relief from the Insurance Commissioner goes beyond any authority granted to the Commissioner by the Maryland Legislature. As an Official of the Executive Branch, the Commissioner only gains those rights which are specifically delegated by statutory authority. The Commissioner has the authority to deal with complaints brought by individuals; and where requested he must grant them hearings under the provisions of §2-210(a)(2) of the Insurance Article. He has no authority, however, to deal with complaints of a class action nature brought on behalf of persons not participating in the complaint proceedings before the Administration.

In general, when Executive Branch officers and administrative agencies, such as the Insurance Commissioner, deal with complaints and hold hearings upon them, they are acting in a *quasi-judicial* capacity. In undertaking such activities, however, they can only act when granted the express authority to do so. Therefore, in order to be able to provide class action relief, the authority to provide that relief would have to exist in either Maryland's Administrative Procedures Act or the Insurance Article. The provisions of the Insurance Article dealing with the Commissioner's authority to enforce the provisions of the Insurance Article, §2-201, *et seq.*, and specifically the provisions in §2-210 dealing with hearings, do not expressly provide for an administrative authority to provide class action relief. The Maryland Administrative Procedures Act⁹ and the Code of Maryland Regulations (COMAR) are also silent.¹⁰

There are no reported decisions of the Maryland appellate courts' dealing with the Insurance Commissioner's authority to grant class action type relief in hearings demanded by complainants. There are, however, several analogous cases which delineate the authority of an Executive Branch regulator or agency to deal with complaints where the complainant seeks class relief.

In *Hooks, et al. v. Comptroller of the Treasury of the State of Maryland*,¹¹ the lessor of a taxicab objected to the imposition of certain sales taxes which he and other taxicab lessees paid to the State of Maryland. Hooks filed an action against the Comptroller seeking a refund of the taxes paid by him and by other lessees who drove for the same taxicab company. The Comptroller ruled, in part, that Hooks could act only for himself and not in a representative capacity. That decision was *affirmed* by the Maryland Tax Court and the Baltimore City Court. On the final appeal to the Maryland Court of Appeals, the Court held, in pertinent part, that Maryland's procedural rule dealing with class actions, although applicable to the courts of the State, is not applicable to either the Comptroller or the Maryland Tax Court which were the two relevant administrative entities involved.

The court in *Johnson, et al. v. Chrysler Credit Corp.*¹² dealt with the issue of whether the plaintiffs, who were seeking damages arising from the inclusion of an allegedly illegal provision in a retail installment sales contract, could act in a representative capacity on behalf of other persons similarly situated. Referring to *Hooks*, the court in *Johnson* recognized that:

[w]hile other jurisdictions have had numerous occasions to consider class action suits, we find a dearth of authority on the subject in Maryland. Only once have our appellate courts treated the question, and then only peripherally. . . .¹³

The *Johnson* court then went on to summarize the pertinent portions of *Hooks* as follows:

[i]n *Hooks*, the Court of Appeals analyzed the statute which provided the basis for the claim, to determine whether the appellant had a right to utilize the class action device. The Court found that 'while he may act in his own behalf, there is no warrant in the Act permitting him to advance a claim in behalf of others similarly situated. . . .' [Citation omitted.]¹⁴

After discussing *Hooks*, the court in *Johnson* analyzed the Retail Installment Sales Act of 1941 to determine whether it provided for class action relief. The court concluded that it did not, because there was no language that “. . . [E]xpressly or impliedly suggested that the Legislature intended to provide class action relief for violations of the Act. . . .”

The Law in Other Jurisdictions

Other jurisdictions have had more opportunity to consider the question of class action relief in administrative proceedings. Generally they are in agreement with *Hooks*, but have more broadly applied the lack of authority to hear class action suits and grant class action relief to all administrative courts.

In a Florida case, *Medley Investors, Ltd. v. Lewis*,¹⁵ the court *affirmed* the agency’s denial of a class action petition for administrative hearings seeking refund of certain filing fees. It held that the Florida Code made no provision for class action hearings, that the authority to give class action relief cannot be inferred in the absence of express statutory authority, and that only individual claims can be heard in administrative proceedings.

Many other states are directly in line with this decision. *Moncada, et al. v. The Illinois Commerce Comm.*¹⁶ involved a complaint against an electric utility company alleging violations of public utilities law which had resulted in overcharges to customers. The complaint was brought against the company before the Illinois Commerce Commission, an administrative agency, and sought refunds on a class action basis. While the court dismissed the interlocutory appeal by the complainants from the Commission’s refusal to consider their complaint on a class action basis, the court went on to specifically point out and discuss its line of cases which ruled that administrative agencies have “. . . no inherent or common law powers and are empowered only to act according to authority conferred upon the agency by law. . . .”¹⁷ The court continued with the admonition that administrative agencies have no authority to entertain class actions without specific statutory authority and noted that the rules of procedure authorizing class actions were only applicable to trial courts of general jurisdiction. *In re: State Employees’ Assn.*¹⁸ was an action brought before the New Hampshire Personnel Commission by several state academic employees seeking to have their dispute involving classification and compensation treated on a class action basis by the administrative agency. The Commission held a hearing on the class action issue and then dismissed the class action on the basis that, absent clear authority, the Commission could not grant class action status. While the court noted that it was not ruling on the issue of whether the Commission could adopt a class action procedure should it wish to do so, the court *affirmed* the dismissal and noted there was no authority requiring that such rules be adopted.

*Sullivan v. Commonwealth of Pa. Ins. Dept. and Pacific Indemn. Co.*¹⁹ concerned a complaint by certain physicians about an insurer’s use of consent to rate provisions to gain increased premium rates for medical malpractice insurance. The physicians sought relief from the Insurance Commissioner on a class action basis. The Commissioner rejected the attempt to obtain class action relief and stated:

[t]he Commissioner rejected the petitioners’ assertion of class status because, he argues, class actions are unnecessary in the administrative setting and unauthorized by the applicable law. We agree. In the first place, the General Rules of Administrative Practice and Procedure [citation omitted] deal with the problem of similarly situated parties by providing for the intervention of interested parties in on-going proceedings and for the consolidation of proceedings which raise similar issues; and no evidence indicates these mechanisms are inadequate. In the second place, the proper use of a class action is a complex and controversial policy issue [citation omitted], and we do not think the right to assert class standing in an administrative proceeding should be inferred in the absence of a statute or rule specifically conferring and defining such a right. . . .²⁰

*Mass. Elec. Co. v. Mass. Comm. Against Discrimination*²¹ involved a denial of disability benefits for temporary pregnancy-related disabilities. It was brought before an administrative agency, and one of the issues on appeal was the action of the agency in granting class action status to the complainants. The court ruled that the agency erred in granting the class action status and noted that those portions of the complaint seeking class action relief should have been dismissed. In so ruling, the court stated that the Commission had only those powers authorized by statute, that there were no statutes authorizing the bringing of class actions before the Commission, that the Commission had not tried to adopt any such rule allowing class actions before it and that the authorization of class actions was not the

type of power normally comprehended within the grant of powers reasonably necessary for the proper functioning of the Commission.²²

Conclusion

The Maryland Legislature has granted the Commissioner authority to deal with individual complaints brought by policyholders against their own insurers. Where a policyholder is dissatisfied with the Commissioner's efforts to deal with the subject matter of the complaint, the policyholder may request a hearing thereon. Nonetheless, the Commissioner has been granted no statutory authority to deal with complaints on a representative and/or class action basis involving policyholders otherwise not participating in the administrative proceedings. Thus, such efforts to seek class action type relief within a hearing requested under §2-210(a)(2)(ii) of the Insurance Article should be barred by COMAR 31.02.01.03E.(1) as being beyond the authority of the Commissioner. In such an instance, the Commissioner need not hold the requested hearing and then deny the relief; rather, he may refuse to hold the hearing upon receipt of the hearing request.

Endnotes

¹ See, e.g., Maryland Code, Insurance Article, §15-10D-02 concerning appeals arising out of health insurance claims and Insurance Article, §27-605 concerning appeals of underwriting actions taken by insurers with respect to private passenger motor vehicle liability insurance policies. Hereafter all section references will be to the Insurance Article unless otherwise designated.

² The scenario discussed herein concerns complaints for class action type relief instigated and pursued by individual insureds or claimants. This differs from the general authority of the Insurance Commissioner, on his own account, to undertake market conduct or other compliance investigations and hearings and to seek relief on behalf of all affected claimants or insureds.

³ Section 2-210(a)(1).

⁴ Section 2-210(a)(2)(i).

⁵ Section 2-210(a)(2)(ii).

⁶ Section 2-210(b)(3).

⁷ Section 2-215(a)(2).

⁸ COMAR 31.02.01.03 E.(1):

The Commissioner may also deny hearing requests where:

- (1) The Commissioner determines that the request is frivolous or made in bad faith;
- (2) The request does not contain the information required by these regulations;
- (3) The request is untimely; or
- (4) At the end of the Commissioner's review, the request is moot.

⁹ Maryland Code, State Government Article, Title 10, and particularly Subtitle 2 dealing with contested cases.

¹⁰ The Insurance Commissioner has adopted extensive regulations dealing with *quasi-judicial* hearings which are held within the Maryland Insurance Administration or delegated to the Office of Administrative hearings for handling by an administrative law judge. See, COMAR 31.02.01.01. None of these regulations provide for class action or representative type proceedings.

¹¹ *Hooks, et al. v. Comptroller of Treasury of the St. of Md.*, 265 Md. 380, 289 A.2d 332 (1971).

¹² *Johnson, et al. v. Chrysler Credit Corp.*, 26 Md.App. 122, 126, 337 A.2d 210 (1975).

¹³ *Id.* at 213.

¹⁴ *Ibid.*

¹⁵ *Medley Investors, Ltd. v. Lewis*, 465 So.2d 1305, 1306-07 (Fla.App. 1985).

¹⁶ *Moncada, et al. v. The Illinois Commerce Comm., et al.*, 164 Ill.App.3d 867, 518 N.E.2d 349 (1987).

¹⁷ *Id.* at 872.

¹⁸ *In re: State Employees' Assn.*, 127 N.H. 89, 497 A.2d 860 (1985).

¹⁹ *Sullivan v. Commonwealth of Pa. Ins. Dept. and Pacific Indemn. Co.*, 48 Pa. Commw. 11, 408 A.2d 1174 (1979).

²⁰ *Id.* at 1176.

²¹ *Mass. Elec. Co. v. Mass. Comm. Against Discrimination*, 375 Mass. 160, 375 N.E.2d 1192 (1978).

²² *Id.* at 176-77.