Published on *The National Law Review* https://natlawreview.com

Second Circuit Rules That the Filed-Rate Doctrine Bars the Recalculation of Approved Auto Insurance Rates

Article By:

Kaila D. Clark

Richard G. Liskov

Mark S. Fragner

Elliott M. Kroll

Julius A. Rousseau, III

James M. Westerlind

On May 25, 2022, in Grossman v. GEICO Cas. Co. (No. 21-278), the Second Circuit Court of Appeals affirmed the District Court's dismissal of an attempted class action by two automobile policyholders alleging that GEICO unjustly retained windfall profits on personal auto insurance policies sold in New York due to the COVID-19 pandemic.

The court's Summary Order, invoking the "filed rate" doctrine, can be read here.

Background

As a result of the COVID-19 pandemic and due to the associated lockdowns instituted in New York and other states, the number of miles driven by the general public decreased dramatically after mid-March 2020, and automobile accidents also decreased dramatically. Naturally, auto insurance companies like GEICO saved billions of dollars because fewer accidents translate into fewer claims. In April 2020, GEICO announced the GEICO Giveback program, which offered a 15 percent credit to both new and existing customers that chose to renew their personal auto GEICO policy.

In New York, insurers must obtain approval for the rates for personal auto insurance from the New York State Department of Financial Services ("NYDFS") under Article 23 of the New York Insurance Law. GEICO's Giveback program, with its 15% premium credit, was approved by the NYDFS.

Certain GEICO policyholders brought a purported class action in federal court in the Southern District of New York alleging breach of contract, unjust enrichment, and violations of New York General

Business Law ("NY GBL") stemming from GEICO's alleged unfair profiting as a result of the COVID-19 pandemic. Specifically, the plaintiffs argued that GEICO charged excessive premiums, that the GEICO Giveback program was inadequate to compensate consumers for the excessive premiums charged, and that GEICO unjustly retained windfall profits. In response, GEICO argued that: (1) the action should be dismissed under the filed-rate doctrine; (2) the claim for breach of contract should be dismissed because no contractual term was breached; (3) the unjust-enrichment claim should be dismissed, as the parties' relationship is governed by contract; and (4) the NY GBL claims should be dismissed because no reasonable consumer would be misled by GEICO's promotional materials that offered 15% savings.

In September 2021, district court Judge Marrero, persuaded that the plaintiff's claims were barred by the filed-rate doctrine, granted Geico's motion to dismiss, and the plaintiffs appealed.

Analysis

The "filed-rate doctrine" is a judicially created rule that any rate filed and approved by the governing regulatory agency is per se reasonable and unassailable in judicial proceedings brought by ratepayers challenging the rate. It protects regulated entities from civil actions if the entity is required to file its rates with the governing regulatory agency and the agency has the authority to set, approve or disapprove rates. The filed-rate doctrine is a form of deference and preemption, and there are two principles that underpin the doctrine. First, the principle of "non justiciability" holds that the courts should not undermine agency rate-making authority by upsetting approved rates; and second, the principle of "nondiscrimination" holds that litigation should not become a means for certain ratepayers to obtain preferential rates through litigation. A claim that implicates either principle is barred.

The Second Circuit concluded that the plaintiffs' claims failed to state a claim as a matter of law, warranting dismissal, for at least three reasons. Most importantly, the filed-rate doctrine is expansive, reaching both federal and state causes of action, and protects rates set and approved by federal or state regulators. The doctrine's application does not depend on the nature of the cause of action, the culpability of the defendant's conduct, or the possibility of inequitable results. Therefore, no matter how a claim is styled, if either the non justiciability or nondiscrimination principle is implicated, the action is barred. Here, there was no dispute that GEICO's rates were filed with, and approved by, NYDFS and that the plaintiffs were charged that same rate.

According to the Second Circuit, by repeatedly noting that the charges were "excessive" or insufficient, the plaintiffs were fundamentally seeking a recalculation of the insurance rates that GEICO charged during the pandemic. For that reason, the court concluded that the action implicated the non justiciability principle and affirmed the dismissal. That principle embodies the understanding that regulators employ their particular expertise to consider the whole picture regarding the reasonableness of a proposed rate and rely on that expertise in determining whether a rate is appropriate. A court, lacking this expertise, is not suited to challenge the reasonableness of the filed rate. That the rates were approved by NYDFS rendered them per se reasonable and unassailable. Consequently, whether couched as a claim for breach of contract, unjust enrichment, or violation of the NY GBL, the suit implicated the principle of non justiciability and is therefore barred under the filed-rate doctrine. The court also stated that the plaintiffs' causes of action were legally insufficient, for the reasons stated by GEICO, even if the filed rate doctrine were inapplicable.

Takeaways

Although, as a Summary Order, the Second Circuit's ruling lacks the weighty precedential effect of a formal opinion, it nevertheless joins a number of other appellate decisions invoking the filed-rate doctrine in the insurance context. See, e.g., Granite State Ins. Co. v. Star Mine Servs., Inc., 29 F.4th 317 (6th Cir. 2022) (holding the filed-rate doctrine barred the judicial review of a workers' compensation insurer's audit noncompliance charge and its enforceability); Lewis v. M&T Bank, No. 21-933, 2022 WL 775758, at *1 (2d Cir. Mar. 15, 2022) (concluding the plaintiffs' claims violated both the non justiciability and nondiscrimination principles); Alpert v. Nationstar Mortg., LLC, 198 Wash. 2d 228, 494 P.3d 419 (2021) (holding that the filed-rate doctrine would apply to bar claims against intermediaries like a loan servicer and broker to the extent that awarding damages would directly attack the filed-rate); Rothstein v. Balboa Ins. Co., 794 F.3d 256, 263 (2d Cir. 2015) (rejecting, pursuant to the non justiciability principle, claims against a hazard insurance company that "rest[ed] on the premise that the rates approved by regulators were too high"); W. Park Assocs., Inc. v. Everest Nat'l Ins. Co., 975 N.Y.S.2d 445, 452 (2d Dep't 2013) ("[A] consumer's claim, however, disguised, seeking relief for an injury allegedly caused by the payment of a rate on file with a regulatory commission, is viewed as an attack upon the rate approved by the regulatory commission and, therefore, barred by the doctrine."); In re Complaint of Pilkington N. Am., Inc., 2015-Ohio-4797, 145 Ohio St. 3d 125, 47 N.E.3d 786 (holding a utility charged customer lawful rate under filed-rate doctrine); McCarthy Fin., Inc. v. Premera, 182 Wash. 2d 936, 347 P.3d 872 (2015) (holding that the insureds' class action claims were barred by the filed-rate doctrine).

Insurers and producers sued for alleged wrongs in the rate-setting context should determine, with expert counsel, whether the filed rate doctrine would serve as a complete or partial defense. Courts have shown receptivity to applying the doctrine where, as in the GEICO case, the facts warrant it.

© 2024 ArentFox Schiff LLP

National Law Review, Volumess XII, Number 154

Source URL:https://natlawreview.com/article/second-circuit-rules-filed-rate-doctrine-bars-recalculation-approved-auto-insurance