

SUPREME COURT OF THE STATE OF DELAWARE

Wilmington Pain & Rehabilitation Center, P.A., on behalf of itself
and all others similarly situated v. USAA General Indemnity
Insurance Company and Garrison Property and Casualty Insurance
Company

Wilmington Pain · No. No. 472, 2017 · Decided December 12, 2017

SUMMARY

The Delaware Supreme Court refused an interlocutory appeal from the Superior Court’s denial of class certification in a proposed action concerning USAA’s computerized review and alleged underpayment of personal injury protection claims. The Court agreed that the principles and criteria under Delaware Supreme Court Rule 42(b) did not favor interlocutory review.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	Per Curiam; Justice Valihura; Justice Vaughn; Justice Seitz
JURISDICTION	Delaware
DECIDED	December 12, 2017
DOCKET	No. 472, 2017
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Wilmington Pain & Rehabilitation Center appealed from an interlocutory order denying its motion for class certification and sought certification of an interlocutory appeal under Delaware Supreme Court Rule 42.
STANDARD OF REVIEW	Applications for interlocutory review are addressed to the sound discretion of the Delaware Supreme Court.
PRECEDENTIAL VALUE	Published Delaware Supreme Court order; no reporter citation appears in the source.
PARTIES	Wilmington Pain & Rehabilitation Center, P.A., on behalf of itself and all others similarly situated v. USAA General Indemnity Insurance Company, Garrison Property and Casualty Insurance Company

TOPICS

interlocutory appeal

class actions

appellate procedure

insurance

civil procedure

PRACTICE AREAS

Appellate procedure

Civil procedure

Insurance

Health law

QUESTIONS PRESENTED

1. Whether the Delaware Supreme Court should accept interlocutory review of the Superior Court's order denying class certification under Delaware Supreme Court Rule 42.

HOLDINGS

1. Interlocutory review was not warranted because the principles and criteria in Delaware Supreme Court Rule 42(b) did not favor review of the Superior Court's order denying class certification.

KEY QUOTATIONS

“Applications for interlocutory review are addressed to the sound discretion of the Court.” (¶ 7)

“Rule 42(b)’s principles and criteria do not weigh in favor of interlocutory review” (¶ 7)

FACTUAL BACKGROUND

Wilmington Pain is a Delaware outpatient care facility treating Delaware residents injured in automobile accidents. It alleged that USAA's computerized bill-review system wrongfully reduced personal injury protection claims and brought the action as a proposed class action on behalf of Delaware health care providers whose claims had been reviewed through that system.

PROCEDURAL HISTORY

Wilmington Pain filed a proposed class action seeking declaratory relief concerning USAA's computerized review of personal injury protection claims. The Superior Court denied class certification under Superior Court Civil Rule 23. The Superior Court then denied Wilmington Pain's application for certification of an interlocutory appeal, and the Delaware Supreme Court refused interlocutory review.

DISPOSITION

writ_denied

OPINION

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF DELAWARE WILMINGTON PAIN & §
REHABILITATION CENTER, P.A., § No. 472, 2017 on behalf of itself and all others § similarly
situated, § Court Below—Superior Court § of the State of Delaware Plaintiff Below, § Appellant,

§ C.A. No. N15C-06-218 § v. § § USAA GENERAL INDEMNITY § INSURANCE COMPANY and § GARRISON PROPERTY AND § CASUALTY INSURANCE § COMPANY, § § Defendants Below, § Appellees. § Submitted: November 16, 2017 Decided: December 12, 2017 Before VALIHURA, VAUGHN, and SEITZ, Justices.

ORDER This 12th day of December 2017, having considered the appellant's notice and supplemental notice of appeal from interlocutory order under Supreme Court Rule 42, it appears to the Court that: (1) Wilmington Pain & Rehabilitation Center, P.A. ("WPRC") is a Delaware outpatient care facility that specializes in physical medicine and rehabilitation. WPRC regularly treats Delaware residents for injuries incurred in automobile accidents.

(2) USAA General Indemnity Insurance Company and Garrison Property and Casualty Insurance Company (collectively "USAA") are engaged in the business of insurance. USAA regularly sells automobile insurance policies in Delaware.

(3) Delaware law requires that owners of motor vehicles registered in Delaware must maintain insurance coverage for personal injury claims arising out of an automobile accident.¹ Personal injury protection ("PIP") coverage is defined as "[c]ompensation to injured persons for reasonable and necessary expenses incurred within 2 years from the date of the accident," including medical expenses.² (4) In 2015, WPRC filed a complaint seeking a declaratory judgment that USAA's use of a computerized bill review system to review the reasonableness of PIP claims has led to the wrongful underpaying of those claims.

WPRC filed the complaint as a proposed class action on behalf of all Delaware health care providers who, at any time since June 19, 2012, have billed medical-expense-related PIP claims to USAA, where USAA has subjected those claims to the computerized bill review system. 1 21 Del. C. § 2118(a)(2)(a). 2 Id. 2 (5) On October 17, 2017, the Superior Court issued an opinion denying WPRC's motion for class certification.

The Superior Court ruled that the proposed class did not meet the requirements for certification under Superior Court Civil Rule 23. (6) WPRC filed an application for certification of an interlocutory appeal from the Superior Court's October 17 opinion. By order dated November 15, 2017, the Superior Court denied the application after determining that certification of an interlocutory appeal from its October 17 opinion was not warranted under the principles and criteria of Rule 42(b).

(7) Applications for interlocutory review are addressed to the sound discretion of the Court.³ In this case, the Court agrees with the Superior Court that Rule 42(b)'s principles and criteria do not weigh in favor of interlocutory review of the Superior Court's October 17, 2017 opinion denying WPRC's motion to certify a class action. NOW, THEREFORE, IT IS HEREBY ORDERED that the interlocutory appeal is REFUSED.

BY THE COURT: /s/ James T. Vaughn, Jr. Justice 3 Del. Supr. Ct. R. 42(d)(v). 3

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