

SUPREME COURT OF TEXAS

In re Liberty Mutual Fire Insurance Company

In re Liberty Mutual Fire Insurance Company · No. No. 08-0742 · Decided August 28, 2009

SUMMARY

The Texas Supreme Court conditionally granted Liberty Mutual Fire Insurance Company’s petition for writ of mandamus in a workers’ compensation bad-faith dispute. The Court held that the claimant was required to exhaust administrative remedies concerning entitlement to medical benefits before pursuing his bad-faith claim, and that he had failed to do so by seeking preauthorization when it was unnecessary and not seeking it when required. The Court directed the trial court to grant Liberty’s plea to the jurisdiction and dismiss the case.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Texas
DECIDED	August 28, 2009
DOCKET	No. 08-0742
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Liberty Mutual petitioned for a writ of mandamus after the trial court and court of appeals denied its plea to the jurisdiction seeking dismissal of Nickelson's bad-faith claim for failure to exhaust workers' compensation administrative remedies.
STANDARD OF REVIEW	Mandamus relief was appropriate to correct the trial court's refusal to dismiss a claim that could not be brought before exhaustion of exclusive administrative remedies and to prevent disruption of the orderly processes of government.
PRECEDENTIAL VALUE	Published Texas Supreme Court opinion; precedential value is not otherwise qualified in the supplied text.
PARTIES	Liberty Mutual Fire Insurance Company v. Raymond Nickelson

TOPICS

- insurance bad faith
- exhaustion of remedies
- administrative law
- appellate procedure
- remedies

PRACTICE AREAS

Insurance bad faith

Workers' compensation

Administrative law

Mandamus

QUESTIONS PRESENTED

1. Whether Nickelson was required to exhaust workers' compensation administrative remedies before bringing a bad-faith claim dependent on his entitlement to additional medical care.
2. Whether the parties' settlement provision preserving entitlement to medical benefits dispensed with the administrative exhaustion requirement.
3. Whether the reasoning in *Gregson v. Zurich American Insurance Co.* excused exhaustion because the claimed treatment involved care incident to a preauthorized procedure.
4. Whether Nickelson exhausted administrative remedies through a telephone conversation with Liberty's adjuster.

HOLDINGS

1. A claimant may not bring a bad-faith claim dependent on entitlement to further workers' compensation medical care until the claimant first pursues the administrative remedies governing that medical-benefits dispute.
2. A settlement provision preserving the claimant's entitlement to medical benefits does not eliminate the requirement that disputes over whether additional treatment is reasonably required be pursued administratively.
3. The rule that additional treatment incident to an already preauthorized surgery need not be separately preauthorized does not apply when preauthorization for the surgery was never requested.
4. A claimant does not exhaust administrative procedures by failing to request preauthorization for treatment when preauthorization is required or by seeking preauthorization for treatment when it is not required.

KEY QUOTATIONS

"As his bad-faith suit could not be brought before first exhausting these administrative remedies, the courts below erred in denying Liberty's plea to the jurisdiction."

"A party does not exhaust administrative procedures by ignoring the applicable rules."

"But parties cannot avoid exhaustion of administrative remedies because they fear they might not prevail."

FACTUAL BACKGROUND

Nickelson alleged total and permanent disability from neck and back injuries sustained when he jumped from a four-foot platform. Liberty paid temporary income benefits and medical care, but Nickelson later claimed bad-faith denial of access to additional medical treatment, including office visits and possible back surgery. He had not sought preauthorization for the surgery, and preauthorization was not required for office visits. His prior administrative proceedings addressed income benefits rather than medical benefits.

PROCEDURAL HISTORY

Nickelson sued his workers' compensation carrier for bad-faith denial of access to medical care. Liberty moved to dismiss for lack of jurisdiction because Nickelson had not pursued administrative remedies concerning medical benefits. The trial court and court of appeals denied the plea. The Supreme Court of Texas conditionally granted mandamus and directed the trial court to grant the plea and dismiss the case.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The trial court was directed to enter an order granting Liberty Mutual's plea to the jurisdiction and dismissing the case. The writ would issue only if the trial court failed to comply.

CASES CITED

- American Motorists Insurance Co. v. Fodge, 63 S.W.3d 801, 803-05 (Tex. 2001)
- Gregson v. Zurich American Insurance Co., 322 F.3d 883, 885-87 (5th Cir. 2003)
- In re Southwestern Bell Telephone Co., 235 S.W.3d 619, 624 (Tex. 2007)
- In re Entergy Corp., 142 S.W.3d 316, 321 (Tex. 2004)

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