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Pickett v. Texas Mutual Insurance Company Failure to Exhaust Administrative Remedies Bars Bad Faith Claim

In *Pickett v. Texas Mutual Insurance Company*, 2007 WL 2140948 (Tex. App. – Austin, July 26, 2007, n.p.h.), the Austin Court of Appeals reiterated the requirement stated by the Texas Supreme Court in *American Motorists Insurance Co. v. Fodge*, 63 S.W.3d 801 (Tex. 2001) that workers' compensation claimants exhaust the mandatory administrative remedies of the Texas Workers' Compensation Act prior to bringing suit against an insurance carrier for bad faith for delay or denial of medical benefits. In *Pickett*, the claimant alleged that Texas Mutual had wrongfully denied certain medical treatments on the grounds that they were not related to her compensable workers' compensation injury. Pickett and Texas Mutual had entered into a Benefit Dispute Agreement that set forth what conditions were related to the compensable injury. Pickett contended that the medical treatments at issue were related to the conditions addressed in the Benefit Dispute Agreement. Therefore, she argued that she was not required to go back to the Division to have her entitlement to medical treatment determined. However, as the court pointed out, the Benefit Dispute Agreement did not address the question of medical treatment and Pickett was required to exhaust her administrative remedies before proceeding to court.

The court distinguished the Fifth Circuit Court of Appeals opinion in *Gregson v. Zurich American Insurance Company*, 322 F.3d 883 (5th Cir. 2003), which held that a claimant was not required to exhaust administrative remedies to dispute carrier's denial of antibiotic medication prescribed to prevent infection after a back surgery because the carrier had specifically agreed to provide the back surgery. Unlike the carrier involved in *Gregson*, Texas Mutual had not agreed to provide any specific medical treatment. The court stated that Texas Mutual was required by the Texas Workers' Compensation Act to approve or deny requests for preauthorization based solely upon the reasonable and necessary medical health care required to treat Pickett's compensable injury and to retrospectively review all complete medical bills and pay for or deny payment in accordance with the Act, rules, and the appropriate Commission fee and treatment guidelines.

The court also held that the exhaustion process required by *Fodge* is constitutional and rejected Pickett's argument that she should be excused from the exhaustion requirement because the large number of medical treatments involved made exhaustion impractical, holding that such an exception would be in direct contravention of *Fodge*.

The claims on which Pickett sought to base her bad faith claims were subject to the exhaustion requirement and the district court did not have jurisdiction to determine her claims of bad faith unless and until the Division had determined her entitlement to benefits.